



Llywodraeth Cymru
Welsh Government

From:

NR

Public Health Division

259271

Cleared by:

NR

Date:

22 March 2020

MINISTERIAL ADVICE

For decision by: First Minister, Minister for Health and Social Services, Minister for Education, Deputy Minister for Health and Social Services, Minister for Housing and Local Government, Minister for Economy, Transport and North Wales, Minister for Environment, Energy and Rural Affairs, Counsel General and Minister for European Transition.

Copied to: Minister for Finance and Trefnydd.

Subject	Legislative Consent Memorandum regarding provisions for Wales in the UK Government Coronavirus Bill.
100 word summary	Ministers are asked to agree the Legislative Consent Memorandum (Doc 1) regarding provisions for Wales in the UK Government's Coronavirus Bill.
Timing	URGENT. Ministers are asked to agree in order to meet the tabling deadline of Monday 23 March 2020 at 5pm.
Recommendation	Ministers are asked to: <ul style="list-style-type: none"> • Note the UK Government's introduction of the Coronavirus Bill on 19 March 9 (Annex A); • Agree to lay, in English only initially, a Legislative Consent Memorandum in relation to the provisions in the Coronavirus Bill which relate to Wales (Doc 1) on 23 March; • Agree to a debate on the Legislative Consent Motion.
Decision report	This decision does not require a Decision Report.

ADVICE

1. Context

- 1.1 The First Minister and Minister for Health and Social Services informally agreed the drafting of Welsh provisions to be included in the draft UK Coronavirus Bill. Subsequently, the Minister for Health and Social Services, Minister for Education, Deputy Minister for Health and Social Services and Minister for Housing and Local Government agreed for provisions in relation to Wales to be inserted into the draft Coronavirus Bill (MA-L-VG-0809-20).
- 1.2 Officials have been working at pace with UK Government colleagues to instruct the Office of Parliamentary Council appropriately for Wales.

2. Advice

- 2.1 The Coronavirus Bill was introduced to Parliament on 19 March (**Annex A**). The Bill's provisions will enable the Government to respond to an emergency situation as part of a concerted effort across the whole of the UK to tackle the covid-19 outbreak.
- 2.2 Officials have been liaising with all relevant departments of UK Government (with DHSC leading the Bill) and provisions for Wales that are arguably within the competence of the Senedd are included in the Bill. As this is the case, a Legislative Consent Memorandum is required (**Doc 1**) and sets out the detail of the provisions in the Bill for which consent is sought. Given the extremely challenging timetable for preparing this LCM and the likelihood of last-minute amendments, the LCM will be tabled in English only initially.
- 2.3 The Bill is likely to progress rapidly through Parliament with a second reading planned to take place on Monday. The current timetable expects the Bill to complete its passage very quickly, most likely on Wednesday but there is a possibility that it may complete sooner, on Tuesday. Officials are working with Senedd clerks on the arrangements for the Plenary debate. Further advice will be provided to you once these arrangements have been finalised.
- 2.4 The Plenary debate is scheduled to last for 90 minutes and will be led by the Minister for Health and Social Services. A briefing and speaking notes will be provided before the debate. The debate will also cover the Health Protection (Coronavirus) (Wales) Regulations which were laid on 17 March and came into force on 18 March 2020.

3. Legal Advice

- 3.1 A number of provisions in the Coronavirus Bill are within the legislative competence of the Senedd assuming that the emergency powers

reservation (at paragraph 47 of Schedule 7A of GOWA 2006) is not engaged, which accords with the UK Government four nations approach to this Bill and they are considered compatible with Convention rights. The Secretary of State has made a declaration of compatibility when introducing the Bill. Although it is likely that some of the provisions will engage Convention rights, there are safeguards in the Bill to promote proportionality and so, compatibility arguments. For example, the Bill has a sunset clause of two years for most provisions (although with some powers to extend); there are powers to suspend and revive provisions that impact on citizens' rights; there are requirements for a trigger declaration of serious and imminent threat (having regard to the advice of the Chief Medical Officer) to be made by relevant ministers before some more of the restrictive powers can be exercised.

- 3.2 The Minister for Health made a declaration on 17 March 2020 under the Health Protection (Coronavirus) Regulations 2020 "that the incidence or transmission of Coronavirus constitutes a serious and imminent threat to public health, and that the incidence or transmission of Coronavirus is at such a point that the measures outlined in these Regulations may reasonably be considered as an effective means of delaying or preventing the further, significant transmission of Coronavirus" and this declaration will apply in relation to equivalent provisions in the Bill (clause 49 and Schedule 20) until such a time as it is revoked.
- 3.3 The specific provisions that require the consent of the Senedd through the LCM process which are identified in the LCM advice are attached at **Doc 2**. The LCM advice includes overarching advice about covering the objectives of the Bill and the LCM process and also contains an Annex (**Doc 2, Annex 1**) which provides a clause by clause analysis of the provisions and whether a LCM is required. This document has been created through a collaborative process of all relevant legal services teams. Due to the timescales involved in scrutiny of this Bill, the LCM legal advice also covers the amendments that we are aware of and provides relevant analysis and conclusion as to whether a LCM will be needed if those amendments are passed.

4. Policy Compliance

- 4.1 Including provisions for Wales in the Coronavirus Bill gives effect to the agreement of the approaches set out in MA-L-VG-0809-20. However, there are a number of issues which have subsequently been included in the Bill that were not part of MA-L-VG-0809-20. Details of these were provided in informal advice to Ministers.
- 4.2 There are a number of provisions upon which officials are still working to finalise the details. It is the intention that these provisions are laid as amendments to the Bill during its passage through Parliament. Officials will seek Ministers agreement on these issues once details are fully known and will make any necessary amendments to the LCM before it is laid on

Monday. The LCM does currently cover the amendments that are known about and makes clear that it relates to amendments as opposed to clauses in the Bill on introduction. These cover the following areas:

- Mental Health Act (Wales) - Remove restrictions requiring 3 members to sit on the Mental Health Review Tribunal and requiring oral hearings; permit the nomination of a temporary deputy if the President of the Tribunal is temporarily unable to act in the office.
- Wales only provision that will be broadly equivalent to s.3 and Schedule 2 (Emergency arrangements concerning medical practitioners: Scotland) so as to adapt requirements for GP's being registered under s. 18A Medical Act 1983 and ensure that they can provide primary care services as quickly as possible.
- Providing further time to tenants facing eviction by extending to three months the notice period that a landlord is required to serve on a tenant before they can issue proceedings for possession.
- Indemnifying returning officers
- Elections – relating to postponement of polls from 15 March 2020
- A technical amendment to clause 31(4)(a) (dis-application by Welsh Ministers of DBS provisions) to ensure that an individual is not identified by name in any notice issued. This is needed to align the clause with similar provisions throughout the Bill.

5. Financial implications

- 5.1 This advice concerns the making of legislation to give effect to the policy decisions made under MA-L-VG-0809-20 and raises no new financial implications. Since then, the UK Government has announced a range of measures to respond to the COVID-19 crisis, many of which have had significant fiscal implications. While the bulk of these measures have been UK-wide (e.g. Statutory Sick Pay), a number have been in devolved areas and have, therefore, generated consequentials.
- 5.2 To-date, the funding available to Wales as a result of the measures announced amounts to £1.65bn revenue and £2.4m capital. Of the revenue consequentials, £250m is a Barnett share of a £5bn Covid-19 Response fund in England to support the NHS and other public services and £30m relates to a £500m Hardship Fund in England so local authorities can support economically vulnerable people and households. In response to outbreak, the Welsh Government has already agreed some specific measures for Wales (such as business rate relief measures and a £30m Local Authority Emergency Fund) which draw on the funding available. It is anticipated that all of residual consequentials (c£258m) – and more – will be needed to fund costs of responding to COVID-19 in the NHS and local authorities.
- 5.3 The Minister for Finance and Trefnydd, together with the Scottish Finance Minister and the Northern Ireland Finance Minister, have impressed on the Chief Secretary to the Treasury that funding to mitigate and respond to the outbreak should be based on need.

6. Communication engagement and media activity

- 6.1 The Bill will attract additional media interest. Communications handling is in the process of being discussed with special advisers and a public-facing Q&A has been produced.

Annex 1: ASSURANCE AND COPY RECIPIENTS**CLEARANCE TRACKING**

Aspect	Tracking	Yes	No	N/A	Clearance no.
Finance	Financial implications over £50,000?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Group Finance?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	SE 2020/7509 EPS/VG/5/20
	Cleared by Strategic Budgeting?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Cleared by Margaret Davies
	Cleared by Local Government Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Legal	Legal issues?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Cleared by relevant lawyers?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Governance	Novel and contentious issues?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Corporate Governance Centre of Excellence?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

DEPUTY DIRECTOR, STATEMENT OF ASSURANCE

In clearing this MA, I confirm that I, NR have quality assured this advice, ensuring it is provided on the basis of evidence, accurately presents the options and facts and I am accountable for the recommendations made

I am satisfied that the recommended decision or action, if agreed, would be lawful, affordable and comply with all relevant statutory obligations. Welsh Government policy priorities and cross portfolio implications have been fully considered in line with delivery of the government objectives.

I have fully considered the statement of assurance contained in the MA guidance to ensure all relevant considerations have been taken into account and that the actions and decisions take account of regularity, propriety and value for money.

COPY LIST

All mandatory copy recipients (as indicated in the guidance)

- Madeleine Brindley, Special Advisor
- Cabinet Office
- CAPL
- CGU MAILBOX
- Margaret Davies, Strategic Budgeting
- Finance Department
- Freedom of Information Officer
- Legislative Programme and Governance Unit

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Additional copy recipients specifically interested in this advice:

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