

House of Commons  
Welsh Affairs Committee

**THE DRAFT NATIONAL HEALTH  
SERVICE (WALES) BILL: RESPONSE  
OF THE GOVERNMENT  
to the Third Report of The Committee  
of Session 2001-02**

Fifth Special Report  
of Session 2001–02

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## The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales).

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# FIFTH SPECIAL REPORT

**The Welsh Affairs Committee has agreed to the following Special Report:**

## **THE DRAFT NATIONAL HEALTH SERVICE (WALES) BILL: RESPONSE OF THE GOVERNMENT TO THE THIRD REPORT OF THE COMMITTEE OF SESSION 2001-02**

The Welsh Affairs Committee published its Third Report of Session 2001–02, on the Draft National Health Service (Wales) Bill (HC 959), on 10 July 2002. The Government's response was received on 8 October 2002, and it is published as an Appendix to this Special Report.

### **APPENDIX**

#### **Letter from Don Touhig MP, the Parliamentary Under-Secretary of State for Wales to the Chairman of the Committee**

I am writing in response to your report into the draft NHS (Wales) Bill. May I take this opportunity to thank you for agreeing to undertake this element of the pre-legislative scrutiny process. This process has, I think, been a genuinely useful exercise, in consulting more widely during the planning phase for this proposed legislation. I feel sure that this has genuinely improved the quality of the Bill that we hope to bring forward.

7 October 2002

### **THE GOVERNMENT RESPONSE TO THE WELSH AFFAIRS COMMITTEE'S THIRD REPORT, SESSION 2001-02: THE NATIONAL HEALTH SERVICE (WALES) BILL (HC 959)**

#### **INTRODUCTION**

This is the Government's response to the Select Committee's Report on the draft National Health Service (Wales) Bill.

#### **BACKGROUND**

It is now standard practice for draft legislation to be scrutinised by Departmental Select Committees. The Committee's scrutiny of the draft National Health Service (Wales) Bill was unique however, in that it was the first time a Bill having effect only in Wales had been the subject of such scrutiny.

The Committee's scrutiny took place in parallel with scrutiny of the draft Bill by the National Assembly for Wales and public consultation undertaken by the Secretary of State for Wales.

The Committee invited written memoranda of evidence from certain bodies, took oral evidence from interested organisations and Wales Office and Assembly Ministers and

attended a meeting of the Health and Social Services Committee of the National Assembly for Wales when it debated the draft Bill.

The Committee's Report was published on 10 July 2002 and has been considered carefully. It contained nine conclusions, all of which have been noted and 13 recommendations (two of them each containing three recommendations, bringing the total to 17). Eight of the recommendations have been accepted and two have been noted. Each of the conclusions and recommendations ((a) - (v) as presented in the Committee's Report) is set out in full in the following section, together with the Government response. Where there are any timing issues these are noted.

## RESPONSE TO CONCLUSIONS AND RECOMMENDATIONS

### Draft legislation for Wales

**(a) We warmly welcome the publication of this first ever draft Bill for Wales, and hope that it will in due course become the standard practice, not only for stand-alone "Wales-only" Bills, but also for clauses in England and Wales Bills which have particular implications for Wales (paragraph 6).**

**Noted.** Pre-legislative scrutiny of draft Bills is a new process and the experience gained on this draft Bill demonstrates its value. Its purpose is to expose legislative proposals to critical examination by the public, by professional and other stakeholders and by Parliament, and the devolved administrations where appropriate. By taking account of the views expressed before finalising the content of a Bill the Government believes the quality of draft Bills will be improved, stakeholders will be more involved and the planning and conduct of Parliamentary business will benefit. The Government is committed to submitting draft Bills for pre-legislative scrutiny wherever possible.

### Publication of regulations in draft

**(b) We welcome the commitment by the National Assembly for Wales to provide for public consultation on the regulations to be made under the Bill prior to its eventual enactment (paragraph 13).**

**Noted.** Pre-legislative scrutiny of draft Bills is a valuable process, to which the Government is committed. The benefits to the quality of new legislation are accepted and similar principles in respect of secondary legislation are accepted also. Wherever possible, in addition to the legislative requirements for consultation, the Government will make proposed Orders and Regulations available to stakeholders in draft before they are laid before Parliament. The National Assembly for Wales, which will bring in secondary legislation under the provisions in the draft NHS (Wales) Bill, has Standing Orders that require public consultation on proposed secondary Legislation and will normally consult also before issuing directions to any body.

### Long and short titles

**(c) We recommend reconsideration of the long and short titles of the draft Bill (paragraph 14).**

**Noted.** Short and long titles of Bills are a matter for Parliamentary Counsel to determine in consultation with the House authorities and the department. They are being considered as a normal part of preparing the Bill for Introduction.

### Diversity

**(d) Such diversity offers ideal opportunities for discovering what works best where and why. There may in due course be a case for some mechanism to ensure that the full potential benefits are realised of the diversity of provision among the nations of the UK (paragraph 16).**

**Noted.** The forging of good working relationships between the 4 countries and key organisations relevant to professional healthcare practice is a key factor in ensuring that best practice is developed and shared across the UK. There are already arrangements in place at Ministerial and official level between all the nations of the UK to meet and share views and experience. Many initiatives are worked on collaboratively across the 4 UK countries. In addition to this the Chief Medical Officers, Chief Nursing Officers and Human Resources Directors of all 4 countries have regular meetings to share developments, concerns and issues.

**Timing:** Ongoing.

#### **CHCs: general**

**(e) Our examination of the proposals on CHCs in the draft Bill have been based on a desire to ensure that no opportunity is missed for ensuring that the new-look CHCs in Wales fulfil their potential (paragraph 22).**

**Noted.** The Committee's approach is welcomed.

#### **CHCs: appointment of members**

**(f) We see no reason to constrain the freedom to be given to the National Assembly for Wales to lay down the principles underlying the appointment of CHC members (paragraph 23).**

**Noted.** It is important that CHCs are able to benefit from the appointment of members able to bring to the Councils a wide range of skills and experience, drawn from a variety of backgrounds.

**Timing:** Subject to the passage of the draft Bill, Regulations will be brought forward by the National Assembly for Wales once the powers become available.

#### **CHCs: time off for members**

**(g) We recommend that the Bill be amended to give CHC members the statutory right to time off work for public duties (paragraph 24).**

**Not Accepted.** It is not necessary to make this amendment. The Employment Rights Act 1996 lists the bodies of which membership entitles an employee to time off to attend meetings and for other specified purposes. CHCs are not listed. However the list of public bodies can be amended by Order. The absence of a statutory right to time off should not be allowed to stand in the way of attracting the best people to CHCs and further consideration will be given to approaching the relevant Secretary of State to make an Order.

**Timing:** To be considered in the light of the emerging timetable for recruitment of new CHC members.

#### **CHCs: co-terminosity**

**(h) We recommend adding a third rider to the existing conditions in new Clause 20A, obliging the National Assembly for Wales to have due regard to the boundaries of Local Health Boards and other agencies subject to CHC scrutiny when deciding the districts of CHCs (paragraph 28).**

**Not Accepted.** It is not necessary to amend the draft Bill to achieve this. The National Assembly for Wales intends in the future to achieve closer co-terminosity between CHCs and health bodies. CHCs are already largely co-terminous with NHS arrangements and many of the arrangements reflect the variations across Wales, e.g. rural areas may need more CHCs, urban areas may be able to more easily concentrate activity in one place.

Many CHCs are working in federal structures and these arrangements will need to evolve further to ensure that each locality is represented in such a way that variations across Wales continue to be properly addressed, and that CHCs are engaging effectively with the new NHS structure.

**Timing:** Regulations defining the boundaries of CHCs will be brought forward, subject to the progress of the Bill and to consultation with interested parties, as powers become available.

**CHCs: National Assembly for Wales power to extend remit**

- (i) **We recommend that the new Schedule 7A be amended so as to give the National Assembly for Wales power to extend by regulations the scope of CHC powers to inspect premises used to provide publicly-funded health care for the public in their district (paragraph 32).**

**Not Accepted.** The current proposals for rights of entry for CHCs strike the right balance and there are no plans to extend their remit, for example to prisons (a point raised by the Committee when it took evidence from Ministers on 25 June 2002 (Ev38 123 and 125). The NHS Reform and Health Care Professions Act 2002 requires the prison service and prescribed NHS bodies to co-operate with a view to improving the way in which health care is secured for prisoners. It is not felt that CHCs should be directly involved in this process.

**CHCs: explanation of inspection powers**

- (j) **In publishing the Explanatory Notes with the eventual Bill, we recommend a translation into plain English of the terms of paragraph (3) of Schedule 7A, and in particular of the arcane language in sub-paragraphs (g) and (h) (paragraph 33).**

**Accepted.** The draft Bill mirrors Section 17 of the NHS Reform and Health Care Professions Act 2002 in respect of Patients' Forums. This is because CHCs are intended to have reciprocal rights with Patients' Forums. The Explanatory Notes to be published with the Bill will be revised to clarify the position, with examples added where appropriate.

**Timing:** Subject to drafting of the Bill.

**CHCs: rights to information**

- (k) **We are entitled to expect publication in the Bill of provisions on the obligations of providers of health services to supply information to CHCs, which should reflect the full range of CHC visit rights, and should include English providers (paragraph 36).**

**Accepted.** This was an oversight and will be rectified. Consideration will be given to listing the bodies and organisations to which it should apply.

**Timing:** Immediate.

**CHCs: advocacy services**

- (l) **We recommend examination of the terms of paragraph 2 (g) of Schedule 7A, to ensure that it allows for the National Assembly for Wales to provide for CHCs to commission other bodies to carry out independent advocacy services (paragraph 40).**

**Not Accepted.** The Bill provides for CHCs to undertake the independent advocacy services relating to the NHS complaints procedure prescribed under Section 19A of the NHS Act 1977 on behalf of the National Assembly for Wales. The Bill as drafted

adequately discharges this duty. The Government is keen to confer responsibility on the National Assembly for Wales to set out the detail in Regulations, thus ensuring that arrangements are as flexible as possible and are settled after appropriate consultation.

**Timing:** Subject to the passage of the draft Bill, Regulations will be brought forward by the National Assembly for Wales as soon as possible.

**CHCs: cross-border functions**

**(m) We recommend that the terms of the new Schedule 7A be reviewed so as to ensure that Welsh CHCs will not be constrained in the exercise of their functions as a result of Welsh patients receiving treatment outside Wales, and that there will be full reciprocal rights for the equivalent English bodies (paragraph 41).**

**Not Accepted.** No review is necessary. The current Schedule is drafted in terms identical to those in the NHS Reform and Healthcare Professions Act 2002 giving powers of inspection to Patients' Forums in England. It has effect in England in the same way that the Act of 2002 allows Patients' Forums to inspect premises in Wales providing treatment to patients resident in England. The intention is that reciprocal arrangements for inspections will be made between CHCs and Patients Forums.

**CHCs: reporting**

**(n) We recommend a review of the terms of Schedule 7A to establish whether it provides sufficient authority for the National Assembly for Wales to provide for a system of reporting by CHCs to the AWCHC, and the AWCHC to the National Assembly for Wales (paragraph 45).**

**Accepted.** The Bill as currently drafted contains sufficient Regulation making powers to cover these points, however these could be made clearer and the Schedule will be reviewed with a view to making these powers more explicit.

**Timing:** Immediate.

**CHCs: additional functions for AWCHC**

**(o) We recommend that the power which it is proposed to give to National Assembly for Wales to allocate any functions to AWCHC be constrained by providing that they should be related to its core statutory functions of advice, assistance and support to CHCs (paragraph 46).**

**Not Accepted.** The provision of an all-Wales voice on patient representation is an appropriate function for AWCHC but would fall outside its core functions and could not be allocated if this recommendation were accepted. There may be others. For this reason it is considered right to maintain a broad enabling power. However the exercise of this power would only be in respect of functions appropriate to AWCHC and would have due regard to the independence of CHCs.

**CHCs: staff**

**(p) No doubt the National Assembly for Wales will bear in mind the importance of reflecting the emphasis placed on the independence of CHCs in any arrangements made for the employment of their staff (paragraph 47).**

**Noted.** This will be borne in mind.

**WCH: independence**

**(q) (i) We recommend a review of the terms in the draft Bill under which the WCH is obliged to comply with any direction of the National Assembly for Wales, with a view to limiting that obligation to the exercise of its administrative or financial functions.**

**(ii) We recommend that the terms of paragraph 16(2) of Schedule 2 be revisited with a view to using the sub-paragraph to enshrine the operational independence of the WCH.**

**(iii) We recommend further consideration as to how best to provide within this founding statute for the real independence of the WCH (paragraphs 55 to 57).**

**Accepted.** It is important that the independence the National Assembly for Wales intends WCH to enjoy is perceived clearly by all. A number of respondents to the public consultation exercise expressed similar concerns. Accordingly, further consideration will be given to these provisions, and to the possibility of adopting a model for independence similar to that introduced for the Food Standards Agency.

**Timing:** Immediate.

**WCH: basic function**

**(r) On balance we are satisfied that the basic statutory function of dealing with the protection and improvement of health in Wales is broad enough to allow for the National Assembly for Wales and the Centre itself to develop its work as appropriate; and we are confident that the desire to see the Centre as a genuinely accessible public resource for the people of Wales is well understood within the National Assembly for Wales (paragraph 59).**

**Noted.** This conclusion is welcomed. WCH will play an important part in the development of the public health function in Wales and serve as a valuable resource for the statutory and voluntary sectors and the public at large.

**WCH: public health medical data**

**(s) The grave difficulties confronting public health data collection will offer an early challenge to the new Wales Centre for Health. Urgent and concerted action by Government, in consultation with all the stakeholders involved, is required to ensure that a proper level of collection of public health medical data can be resumed (paragraph 60).**

**Noted.** These issues are not unique to Wales and cannot be resolved in the context of the draft Bill.

**HPW: additional functions**

**(t) (i) We consider that the phrase "in particular" should be removed from subsection (1) of Clause 4, and a third phrase added at the end of that subsection to allow for HPW to exercise functions in relation to "similar matters".**

**(ii) We are uneasy about allowing functions to be conferred on HPW by direction, as a means of avoiding the requirement for consultation and democratic process. We recommend the removal of subsection (2) (c) of Clause 4, under which a function can be conferred on HPW by direction.**

**(iii) We also recommend that the Explanatory Notes to be published with the Bill include a full list of those professions whose activities the National Assembly for Wales has already determined will be covered by HPW (paragraphs 71 to 72).**

**Noted.**

**(i) The drafting of paragraph 4(1) will be reconsidered in conjunction with Parliamentary Counsel.**

**Accepted.**

(ii) The power of direction in paragraph 4(2) was intended as a reserve power, but as there is no foreseeable intention to allocate any additional functions to HPW, this will be removed.

(iii) A list of professions will be annexed to the Explanatory notes.

**Timing:** Immediate.

**HPW: National Assembly for Wales powers of direction**

**(u) We recommend that the National Assembly for Wales's power of direction to HPW in exercising a function, as set out in subsection (4) of Clause 4, should explicitly require prior consultation where it concerned functions carried out by HPW on behalf of the HPC or NMC (paragraph 73).**

**Not Accepted.** A duty to consult is not necessary. HPW may only take on functions from HPC or NMC by request and subject to agreement. The functions are regulatory and would therefore have been consulted on by NMC or HPC. The National Assembly for Wales could not direct HPW to act in conflict with those agreements as it could lead to withdrawal of the functions by NMC or HPC.

**HPW and WCH: Welsh Language Act**

**(v) We would welcome written confirmation that it is necessary to have a specific reference to WCH in section 6 of the Welsh Language Act, but not to HPW (paragraph 74).**

**Noted.** Schedule 3 to the draft Bill specifically extends the Welsh Language Act 1993 to CHCs and WCH, which are respectively continued in existence and established by the draft Bill. HPW will be established by Order (subject to the passage of the Bill) once the powers become available. The National Assembly for Wales has powers under the Act of 1993 to add by Order any body and therefore will bring HPW into being and make it subject to the Act of 1993 by way of an Order.

**CONCLUSION**

The Government welcomes this Report, which plays a valuable part in the pre-legislative scrutiny process. It helps achieve the Government's aim to improve the quality of draft Bills by opening them to greater involvement by stakeholders and, consequently, will contribute to the wider objective of improving the whole process of making legislation in Parliament.





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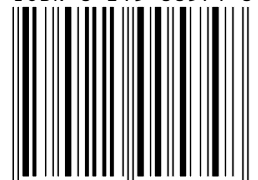
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