



Our Ref/ Ein Cyf: MA/FM5845/19

Shan Morgan  
Permanent Secretary

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18 December 2019

Dew Shan,

Thank you for your letter of 18 December 2019 setting out your advice as Principal Accounting Officer on the proposed 'Scheme Pays' arrangements to counter staffing issues in the NHS for this winter period.

I am grateful for the scrutiny which you and other officials have given to this matter.

I note the advice that the scheme proposals involve tax planning and, depending upon the approach to implementation, could be deemed by HMRC to constitute tax avoidance. The proposed measure is therefore incompatible with paragraph 5.6.1. of Managing Welsh Public Money, and is a matter of regularity. In these circumstances I am able to bring to bear a wider consideration of the public interest, and you have requested I consider whether to grant a Direction to proceed with the proposals.

NHS Wales report that senior clinical staff are unwilling to take on additional work and sessions due to the potential tax liability which could in some circumstances lead to tax charges in excess of any additional income earned. This has led to some appointments and operations being delayed. In a recent Written Statement, the Minister for Health and Social Services noted that, between April and August 2019, over 2,000 outpatient, diagnostic, inpatient or daycase sessions have been lost affecting over 15,000 patients.

Let me be clear that I have fundamental disagreements with the solution which has been implemented in England. The tax problems should be resolved by the Treasury, not left to the health budget to absorb. Done properly, the HMRC uncertainties which now arise would have been resolved before, not after a solution was implemented. However, given the pressures experienced by the Welsh NHS following a decade of austerity, we cannot allow a position to develop in which our staff are denied access to arrangements available to their counterparts across our border. I very reluctantly see no option therefore but to put in place

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

temporary solutions while the UK Government is consulting on NHS pension legislation changes from April 2020.

I have considered your advice carefully in the context of the need to protect patient care over the winter, and the wider reforms to NHS pension arrangements expected from April 2020. I will therefore follow the course of action taken in the Department for Health in England and formally direct you to proceed with the NHS Pension Tax Proposals for 2019/20 so that the same arrangements in England can apply in Wales.

I am copying this letter to Adrian Crompton, Auditor General for Wales and Nick Ramsey AM, Chair of the Public Accounts Committee, Llyr Gruffydd AM, Chair of the Finance Committee and Dai Lloyd AM, Chair of the Health, Social Care and Sports Committee. I also note that your letter and this reply will be published on gov.wales

Best wishes,

Mark.

**MARK DRAKEFORD**