

Agenda – Public Accounts Committee

Meeting Venue:

Committee Room 3 – Senedd

Meeting date: 3 February 2020

Meeting time: 13.00

For further information contact:

Fay Bowen

Committee Clerk

0300 200 6565

SeneddPAC@assembly.wales

(Private pre-meeting)

(13.00 – 13.15)

1 Introductions, apologies, substitutions and declarations of interest

(13.15)

2 Paper(s) to note

2.1 My Travel Pass: Letter from the Welsh Government (16 January 2020)

(Pages 1 – 6)

2.2 Welsh Government Financial Support for Business: Letter from the Welsh Government (23 January 2020)

(Page 7)

3 Ministerial Direction – NHS pension arrangements for 2019/20: Evidence Session with the Welsh Government

(13.15 – 14.30)

(Pages 8 – 29)

Research Briefing

PAC(5)–05–20 Paper 1 – Correspondence from the Permanent Secretary (20 December 2019)

PAC(5)–05–20 Paper 2 – Correspondence from the Auditor General for Wales (6 January 2020)

Shan Morgan – Permanent Secretary, Welsh Government

Dr Andrew Goodall – Director General of Health and NHS Chief Executive



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

David Richards – Director of Governance and Ethics

- 4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(14.30)

Item 5

- 5 Ministerial Direction – NHS pension arrangements for 2019/20:
Consideration of evidence received**

(14.30 – 15.00)

Grwp yr Economi, Sgiliau a Chyfoeth Naturiol
Economy, Skills and Natural Resources Group

Cyfarwyddwr Cyffredinol - Director General



Llywodraeth Cymru
Welsh Government

Nick Ramsay AM
Chair
Public Accounts Committee

16 January 2020

Dear Chair

The Welsh Government's youth discounted bus fare scheme – MyTravelPass

Thank you for your letter of 29 October requesting further clarification on the number of 19-21 year olds holding MyTravelPass passes and the Welsh Government's approach to marketing of the scheme. I am sorry for the inconsistency in the numbers we have previously provided and the delay in responding to you, and hope that this response will address the various points you raised.

Number of 19-21 years old holding MyTravelPass passes

My letter of 1 October 2019 stated the number of 19-21 year olds holding passes in August 2019 was 551. This was inconsistent with previous information provided to PAC, which indicated there were 834 passes in May 2019.

We have been working to understand why the reported numbers had changed. Transport officials receive management information from different providers, with the data presented in different ways. We are now aware that some of the numbers provided previously were incomplete and did not include postal applications. Additionally, we are aware that timing delays inherent in updating the systems used for new cards approved and cards withdrawn – for example, as people age out – also led to inconsistencies in the data.

ACT, our back office provider, operates the database of journeys undertaken by MyTravelPass holders used by the bus industry to record discounted (and concessionary) bus journeys. We are working with ACT on reporting of data, but have agreed with them what data set should be used for consistency of reporting as we move forward. On this basis, the figures reported for the 19-21 age bracket should have been 931 valid cards created by the end May 2019; 1,619 cards by end August 2019; and 4,547 cards by end October 2019.

Parc Cathays/Cathays Park
Caerdydd/Cardiff
CF10 3NQ

Annex 1 provides a breakdown by age bracket of the number of valid travel cards created each month between January and October 2019. The significant increase in October 2019 is due to the improved marketing of the scheme, as illustrated below.

Welsh Government's approach to marketing of the scheme

Annex 2 details the marketing activities undertaken since January 2019.

You will see we have used social media to promote the initiative as it is a highly targeted method to reach the primary audience (16-21 year olds) and secondary audience (parents and guardians of 16-18 year olds), and it can be measured.

Facebook advertising and "Snapchat Top Snaps" were the most engaging platforms for 16-21 year olds. Display and audio advertising did not perform as well as expected.

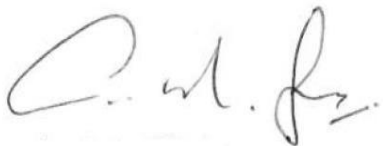
An excellent digital performer was UCAS Media as it targeted 10,000 freshers attending Welsh Universities. Attending fresher events is a very important vehicle to actively reach the target audience to create awareness and stimulate signup.

Ambient activity (e.g. bus stop posters) cannot be measured, but remains an important marketing tool to help create the awareness of the product.

I hope this information will assist you with your further deliberations.

With best wishes.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Slade', with a stylized flourish at the end.

Andrew Slade
Director General
Economy, Skills and Natural Resources

Annex 1: Number of valid travel cards created for each of the age bands from January to October 2019

Age	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	TOTAL
15	4	0	2	6	7	20	20	34	0	4	97
16	265	87	125	364	334	429	541	926	1,336	1,557	5,964
17	163	72	104	244	228	195	235	224	334	744	2,543
18	23	22	83	185	186	149	161	332	412	1,608	3,161
19	0	26	192	214	166	55	138	196	261	1,162	2,410
20	0	10	92	88	68	23	92	97	158	783	1,411
21	0	0	25	22	28	6	29	52	79	485	726
TOTAL	455	217	623	1123	1017	877	1216	1,861	2,580	6,343	16,312

Data source: ACT Analytics system report: as at end October 2019

Annex 2: Marketing activities undertaken since January 2019

Medium	Timing and audience	Impact
New content written on MyTravelPass website.	December	This site is the call to action for all the social media, digital and ambient activity
Press Releases – announcing the extension up to 21	Nov/ December Articles online on: <ul style="list-style-type: none"> BBC wales news ITV news 	
New content written on external websites	From January 2019 <ul style="list-style-type: none"> Neath Port Talbot Council Gwynedd Council Swansea University Swansea University Students Union Cardiff Met University Flintshire Council NPTC Group of colleges St David's College Ysgol Greenhill Tenby Wrexham Council Gov.UK – Apprentices discount 	
Spring campaign – Social media advertising <ul style="list-style-type: none"> Facebook Snapchat – Top Snaps Instagram 	Feb/March/April <ul style="list-style-type: none"> Facebook – to target parents Instagram and Snapchat – target 16-21 year olds 	Facebook – 2,304 clicks to website Instagram – 926 clicks to website Snapchat – 14,387 swipes on advert
New content drafted, sent and appeared on operator's websites:	January <ul style="list-style-type: none"> Stagecoach Travel Line Arriva First Cymru Cardiff Bus Bwcabus TfW 	

Medium	Timing and audience	Impact
Autumn Campaign – Social media and digital advertising <ul style="list-style-type: none"> Facebook Snapchat Spotify Audio Display Banner 	September/October <ul style="list-style-type: none"> Facebook and Display banner – targeting parents and guardians in Wales via Daily Mail, Mums Net, Wales Online, Mirror, eBay, Sky Sports, South Wales Argus, Diply Snapchat and Spotify – targeting 16-21 year olds in Wales 	In total resulted in over 24k clicks and swipes to website Facebook – 3,960 clicks to website Snapchat – 19,214 swipes on advert Display banner – 1,127 clicks to website
Bus stop advertising	September/October <ul style="list-style-type: none"> 2 digital sites in Cardiff and Swansea (near university campuses) executed 1 million impressions 44 static poster sites (13 North Wales; 16 South Wales; 15 South East Wales) 	
Fresher's events at Universities and colleges across Wales	From September <ul style="list-style-type: none"> 26 events attended to date. More to follow in the New Year 	
UCAS media	September <ul style="list-style-type: none"> Targeted 10,000 freshers starting at Welsh universities 	<ul style="list-style-type: none"> Website was opened by 6,429 Achieved 1,159 unique clicks
Bus Wraps	September/October <ul style="list-style-type: none"> 3 x First Bus publicity in South East Wales 	

Grwp yr Economi, Sgiliau a Chyfoeth Naturiol
Economy, Skills and Natural Resources Group

Cyfarwyddwr Cyffredinol - Director General



Llywodraeth Cymru
Welsh Government

Chair
Public Accounts Committee

23 January 2020

Dear Chair

WELSH GOVERNMENT FINANCIAL SUPPORT FOR BUSINESS

Thank you for your helpful letter of 10 January on the subject of the Committee's ongoing inquiry into the above, setting out the Committee's observations on a number of specific matters and requesting an update to be provided in summer 2020.

I can confirm my intention is to provide a full response to your letter by 12 June 2020, to help inform your further deliberations.

I am copying to the Chair of the EIS Committee.

Best wishes.

Yours sincerely

Andrew Slade
Director General
Economy, Skills and Natural Resources



Agenda Item 3

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Shan Morgan
Ysgrifennydd Parhaol
Permanent Secretary



Llywodraeth Cymru
Welsh Government

20 December 2019

Dear Committee Chairs

I am writing to inform you that as Permanent Secretary and Principal Accounting Officer for the Welsh Government I have written to the First Minister requesting a Ministerial Direction to proceed with proposed changes to NHS Pension arrangements for 2019/20.


The proposal brings NHS Wales in line with NHS England's solution for 2019/20 to address the operational challenges arising as a consequence of current pension tax arrangements. NHS Pension scheme and pension tax legislation is not devolved to us in Wales.

The need for a Ministerial Direction has arisen as the proposed scheme constitutes tax planning and therefore raises an issue of regularity due its incompatibility with paragraph 5.6.1 of Managing Welsh Public Money. The same issue of regularity was encountered in England.

Whilst Directions are rare, this is the exceptionally unusual position in that, as England have issued a Direction on this matter, Wales has little alternative but to follow suit. Failure to implement the proposed change would result in NHS clinicians in Wales being worse off relative to NHS clinicians in England.

The First Minister formally issued the direction on 18/12/2019.

Both I and the First Minister are agreed on the need to address the operational issues being addressed by the NHS and ensure fair and equitable treatment of our NHS staff with those working in England.

Yours,


Shan Morgan
Ysgrifennydd Parhaol/ Permanent Secretary
Llywodraeth Cymru/ Welsh Government



BUDDSODDWYR | **INVESTORS**
MEWN POBL | **IN PEOPLE**

Parc Cathays • Cathays Park Ffôn • Tel 0300 025 3289
Caerdydd • Cardiff PS.PermanentSecretary@gov.wales
CF10 3NQ Gwefan • Website: www.gov.wales

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. Dilynwch y ddolen i gael arweiniad ar sut fyddwn yn trin a defnyddio'ch data, yn unol â'r Rheoliadau Diogelu Data Cyffredinol. <https://gov.wales/about/welsh-government-privacy-notice/?skip=1&lang=cy>

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. Please follow the link for guidance on how we will handle & use your data, in accordance with the General Data Protection Regulations. <https://gov.wales/about/welsh-government-privacy-notice/?lang=en>

Shan Morgan
Ysgrifennydd Parhaol
Permanent Secretary



Llywodraeth Cymru
Welsh Government

Mark Drakeford
First Minister
PS.FirstMinister@gov.wales

18 December 2019

Dear First Minister

I am writing to you to formally request a Ministerial Direction.

On 26 November 2019, officials in Health and Social Services Group provided advice to the Minister for Health and Social Services in respect of NHS Pension Tax Proposal 2019/20. The proposal sought to bring NHS Wales in line with NHS England's solution to the tax implications of the pension scheme for clinicians who incur tax charges for undertaking work in 2019/20. This recommendation was subsequently agreed by the Minister for Health and Social Services.

A subsequent review of the mechanism for introducing this solution in England, has enabled us to identify that recommendations in the earlier advice should have drawn attention to the fact that this recommendation raises an issue of regularity due to its contravention of Managing Welsh Public Money (MWPM). MWPM specifically states (para 5.6.1) that *"Public Sector organisations should not engage in or conspire at, tax evasion, tax avoidance or tax planning."*

The same issue of regularity has already been encountered in England (Managing Public Money and Managing Welsh Public Money are aligned on this issue). Therefore, on 22 November the Secretary of State for Health and Social Care issued a Direction to the Accounting Officer for NHS England to proceed with the NHS Pension Tax Proposal 2019/20.

It is my duty as Principal Accounting Officer to ensure the regularity of expenditure within the Welsh Government but the need has arisen for a Direction because tax planning is considered an issue of irregularity. Whilst Directions are rare, this is the exceptionally unusual position that, as a UK Government Minister has issued a



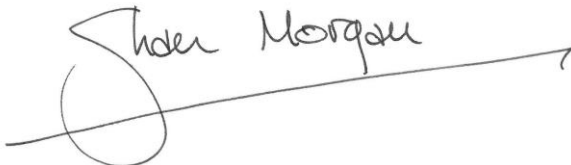
Parc Cathays • Cathays Park Ffôn • Tel 0300 025 3289
Caerdydd • Cardiff PS.PermanentSecretary@gov.wales
CF10 3NQ Gwefan • Website: www.gov.wales

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. Dilynwch y ddolen i gael arweiniad ar sut fyddwn yn trin a defnyddio'ch data, yn unol â'r Rheoliadau Diogelu Data Cyffredinol. <https://gov.wales/about/welsh-government-privacy-notice/?skip=1&lang=cy>

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. Please follow the link for guidance on how we will handle & use your data, in accordance with the General Data Protection Regulations. <https://gov.wales/about/welsh-government-privacy-notice/?lang=en>

Direction on this matter in England, I have little alternative but to follow suit and seek one from you for Wales.

Annex A contains the extracts from Managing Welsh Public Money and Managing Public Money regarding tax which give rises to this regularity issue.

Yours,


Shan Morgan
Ysgrifennydd Parhaol/ Permanent Secretary
Llywodraeth Cymru/ Welsh Government



Parc Cathays • Cathays Park Ffôn • Tel 0300 025 3289
Caerdydd • Cardiff PS.PermanentSecretary@gov.wales
CF10 3NQ Gwefan • Website: www.gov.wales

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. Dilynwch y ddolen i gael arweiniad ar sut fyddwn yn trin a defnyddio'ch data, yn unol â'r Rheoliadau Diogelu Data Cyffredinol. <https://gov.wales/about/welsh-government-privacy-notice/?skip=1&lang=cy>

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. Please follow the link for guidance on how we will handle & use your data, in accordance with the General Data Protection Regulations. <https://gov.wales/about/welsh-government-privacy-notice/?lang=en>

Managing Welsh Public Money - Extract

5.6 Tax

5.6.1 Public sector organisations should not engage in, or conspire at, tax evasion, tax avoidance or tax planning. If a public sector organisation was to obtain financial advantage by moderating the tax paid by a contractor, supplier or other counterparty, it would usually mean that the public sector as a whole would be worse off – thus conflicting with the Accounting Officer's duties (see section 3.3). Thus artificial tax avoidance schemes should normally be rejected. It should be standard practice to consult HM Revenue and Customs (HMRC) about transactions involving non-standard approaches to tax before going ahead.

5.6.2 There is of course no problem with using tax advisers to help meet normal legitimate requirements of carrying on public business. These include administration of VAT, PAYE and NICs, where expert help can be useful and efficient.

Managing Public Money - Extract

5.6 Tax

5.6.1 Public sector organisations should not engage in, or connive at, tax evasion, tax avoidance or tax planning. If a public sector organisation were to obtain financial advantage by moderating the tax paid by a contractor, supplier or other counterparty, it would usually mean that the Exchequer as a whole would be worse off – thus conflicting with the accounting officer's duties (section 3.3). Thus artificial tax avoidance schemes should normally be rejected. It should be standard practice to consult HMRC³ about transactions involving non-standard approaches to tax before going ahead.

5.6.2 There is of course no problem with using tax advisers to help meet normal legitimate requirements of carrying on public business. These include administration of VAT, PAYE and NICs, where expert help can be useful and efficient.

5.6.3 Proposals to create new taxes in order to assign their proceeds to new spending proposals are rarely acceptable. Decisions on tax are for Treasury ministers, who are reluctant to compromise their future fiscal freedom to make decision.



BUDDSODDWYR | **INVESTORS**
MEWN POBL | **IN PEOPLE**

Parc Cathays • Cathays Park
Caerdydd • Cardiff
CF10 3NQ

Ffôn • Tel 0300 025 3289
PS.PermanentSecretary@gov.wales
Gwefan • Website: www.gov.wales

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. Dilynwch y ddolen i gael arweiniad ar sut fyddwn yn trin a defnyddio'ch data, yn unol â'r Rheoliadau Diogelu Data Cyffredinol. <https://gov.wales/about/welsh-government-privacy-notice/?skip=1&lang=cy>

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. Please follow the link for guidance on how we will handle & use your data, in accordance with the General Data Protection Regulations. <https://gov.wales/about/welsh-government-privacy-notice/?lang=en>



Our Ref/ Ein Cyf: MA/FM5845/19

Shan Morgan
Permanent Secretary

ps.permanentsecretary@gov.wales

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

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400
YP.PrifWeinidog@llyw.cymru • ps.firstminister@gov.wales

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 to 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

24 Cathedral Road / 24 Heol y Gadeirlan
Cardiff / Caerdydd
CF11 9LJ

Chair, Public Accounts Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Tel / Ffôn: 029 2032 0500
Fax / Ffacs: 029 2032 0600
Textphone / Ffôn testun: 029 2032 0660
info@audit.wales / post@archwilio.cymru
www.audit.wales / www.archwilio.cymru

Reference: AC/174/caf

Date issued: 6 January 2020

Dear Chair

Ministerial Direction: NHS Pension Tax proposals

As you will be aware, on 18 December 2019 the First Minister issued a Ministerial Direction to the Permanent Secretary. She had requested this from him via a letter of the same date, in her capacity as Principal Accounting Officer for the Welsh Government.

The purpose of this letter is to aid your Committee's consideration of the Ministerial Direction, in accordance with paragraph 3.4.3 of *Managing Welsh Public Money* and Standing Order 18.3(ii).

The nature and purpose of Ministerial Directions

As this is the first occasion that a Ministerial Direction has been sought and issued in Wales since devolution in 1999, it may be helpful to your Committee if I briefly set out the nature and purpose of such Directions.

Accounting Officers are personally responsible for their actions and must be able to assure the National Assembly and the public of high standards of probity in the management of public funds. They are required to have regard to:

- **Regularity** – ensuring that expenditure is within legal powers and complies with parliamentary authority, including budget ambits;
- **Propriety** – ensuring that expenditure is in accordance with the values and behaviour expected of the public sector;
- **Value for money** – ensuring economy, efficiency and effectiveness in public expenditure decisions; and
- **Feasibility** – ensuring that spending proposals can be implemented accurately, sustainably or to the intended timetable.

A Ministerial Direction is a written instruction to an Accounting Officer to proceed with expenditure that the Accounting Officer considers breach one or more of these four criteria.

An Accounting Officer in receipt of a Ministerial Direction is required to comply with its instructions promptly, and to copy the relevant papers to the Auditor General. The Accounting Officer should be prepared to explain the Minister's course of action, if asked, but does not bear personal responsibility for the actions taken to comply with the Direction or for the associated expenditure.

Ministerial Directions are a relatively rare occurrence in Whitehall, and only 60 were issued between 1990 and 2017. They generally arise in situations where the relevant Minister wishes to proceed with spending that is contrary to the formal written advice provided to that Minister by their departmental Accounting Officer.

The Ministerial Direction issued on 18 December 2019 to the Permanent Secretary for the Welsh Government

Section 3.4 of '[*Managing Welsh Public Money*](#)' sets out the arrangements under which a Ministerial Direction can be issued in Wales. It is triggered by the Principal Accounting Officer and is sought in writing from the First Minister.

In this case, the issue has arisen in respect of potentially irregular expenditure by the Welsh Government and NHS Wales employer bodies (the local health boards and NHS Trusts in Wales) on reimbursing NHS Wales clinical staff for any pension tax charges that they may incur whilst undertaking additional shifts during the 2019-20 tax year.

NHS Pension scheme and pension tax legislation is not devolved to Wales, and HM Treasury has made several changes to the tax arrangements on pension contributions in recent years. These include the introduction of tapering, and also a reduction in the Annual Allowance limit from over £200k in 2011-12 to £40k in 2018-19. As a result, in cases where an individual's pension contributions exceed certain annual and / or lifetime pension contribution allowance limits, then they are taxed at a higher rate on the whole of their contributions, creating a sudden 'cliff edge' increase in tax liability.

In a [Written Statement](#) on 13 November 2019, the Minister for Health and Social Services had noted that NHS Wales bodies were:

‘regularly reporting that senior clinical staff are unwilling to take on additional work and sessions due to the potentially punitive tax liability. In certain circumstances this could lead to additional tax charges in excess of any additional income earned’.

These personal tax implications have driven a significant behavioural change which the Welsh Government considers is impacting on the ability to deliver NHS services to patients. Across the UK, the NHS relies very heavily on clinicians undertaking additional hours to support the delivery of services, to fill gaps in rotas and cover for colleagues who are absent. Undertaking these additional hours results in increased pay and hence increased pension contributions. As this additional pay is generally variable, it can tip those contributions over the 'cliff edge' and result in significant additional tax liability. As it is difficult for individual doctors to work out which individual extra shift will push them over the additional

tax threshold, NHS Wales has found that they are simply declining to take the extra shifts.

The Minister noted in his 13 November statement that:

‘This has led to some appointments and operations being delayed, with information provided by health boards to officials suggesting that between April and August 2019, over 2,000 outpatient, diagnostic, inpatient or day-case sessions have been lost affecting over 15,000 patients. Other areas impacted by the very real concern over the additional tax implications include:

- Senior clinical staff not putting themselves forward for additional responsibilities and clinical leadership roles such as Clinical Directors;
- Senior clinical staff bringing forward their planned retirement dates thereby, in times of material levels of vacancies, reducing clinical capacity in the NHS.’

Whilst the UK Government has committed to looking to change the tax and pension arrangements to avoid this issue in the future, any such changes are highly unlikely to address the service delivery impact over the remainder of the current financial year, which is also the period of greatest annual pressure on NHS services.

In addressing this issue, the Welsh Government has had to take account of the way in which the Department for Health and NHS England has opted to act. On 22 November 2019, the Secretary of State for Health and Social Care issued a [Direction](#) to the Accounting Officer for NHS England to proceed with plans to commit to making payments to clinical staff outside of the NHS pension schemes to restore the value of their pensions benefits packages. In essence, if NHS England clinicians opt to use the ‘Scheme Pays’ facility to settle annual allowance tax charges arising from their 2019-20 NHS pension savings (ie settling the charge by way of reduced annual pension, rather than by making an immediate one-off payment), then their NHS employers will meet those tax charges on their behalf.

This solution required the issue of a Direction because it could be viewed by HMRC to constitute tax avoidance and *Managing Public Money* (which is mirrored by its Welsh equivalent) specifically states that ‘public sector organisations should not engage in...tax evasion, tax avoidance or tax planning’.

The First Minister’s Direction of 18 December therefore serves to bring NHS Wales into line with the position in England, by replicating the solution adopted by the NHS Executive under the Secretary of State’s Direction. It is clear from the 18 December exchange of letters that, given the potentially adverse impacts on NHS Wales of the English decision, both the Permanent Secretary and the First Minister considered that the Welsh Government had little alternative but to follow suit.

Further information regarding the NHS Pension Scheme and the mechanics of the tax mitigation measures covered by the Ministerial Direction can be found on the website of the [NHS Wales Confederation](#).

Potential Assembly examination of the Ministerial Direction

I am pleased to see that the Welsh Government has taken the initiative in providing copies of the correspondence to the Chairs of the Public Accounts, Finance and Health, Social Care & Sport Committees of the National Assembly. It is for the Assembly to determine how best to scrutinise Ministerial Directions and I suggest that some co-ordination of activity may well be needed.

Whilst the Direction has been issued by the First Minister at the request of the Principal Accounting Officer, this is because that is the mechanism specified under Managing Welsh Public Money. However, it may be the case that any detailed Assembly scrutiny is best directed towards the Minister for Health and Social Services and to the Director General of the Health and Social Services Group, as the proposals covered by the Direction sit within their portfolio and budget.

The following areas may, in particular, warrant further examination by the Assembly:

Effectiveness of inter-governmental communications

1. The UK Government's Ministerial Direction was issued on 22 November, but the First Minister's Direction was not issued until 18 December. Why is there a four-week time gap between the two Directions?
2. When did the Welsh Government first become aware of the UK Government's intention to implement the 'Scheme Pays' NHS pensions solution?
3. The Permanent Secretary's 18 December letter to the First Minister explains that officials had not identified the regularity issue regarding potential tax avoidance within their 26 November submission to the Minister for Health and Social Services. Why was this key point omitted from their consideration, given that the regularity issue had already been specifically addressed within the UK Government's Direction issued on 22 November?
4. The Permanent Secretary's letter of 18 December encloses an extract from 'Managing Welsh Public Money', which notes at para 5.6.1 that *'it should be standard practice to consult HMRC about transactions involving non-standard approaches to tax before going ahead'*. However, the letter is silent on this point. Did the Welsh Government consult HMRC, or has it relied on the UK Government to do so on its behalf? If the latter, what assurances did the Welsh Government receive?

Budgetary implications

5. The Direction provides no indication of expected cost. What estimates have the Welsh Government made regarding the potential level of irregular expenditure that it may incur in the 2019-20 financial year and beyond? How confident is it in those estimates?
6. How will the expenditure be funded? Will NHS Wales bodies receive additional in-year funding to cover the costs of the scheme, or will they be expected to meet this from within their existing resource allocations?
7. Does the Welsh Government intend to continue with these arrangements in future years, in the event that the UK Government's proposed April 2020 consultation on changes to NHS pension legislation is either delayed or does not result in changes to that legislation?

The Welsh Government's process for issuing Ministerial Directions

8. Are there lessons for the Welsh Government from this first experience of issuing a Ministerial Direction since devolution in 1999? What are they?
9. What changes (if any) could usefully be made to the requirements set out in 'Managing Welsh Public Money' for any future Directions?

I understand that the Public Accounts Committee intends to consider the Ministerial Direction at its 6 January meeting, and I hope that this advice is helpful to the Committee in its deliberations.

I am copying this letter to the Chair of the Finance Committee and the Chair of the Health, Social Care & Sport Committee. Given this is the first time that a Ministerial Direction has been issued since the start of devolution, I am also copying to the Llywydd so that she can consider any procedural precedents it may set or issues that arise.

Yours sincerely



ADRIAN CROMPTON
Auditor General for Wales