

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Virtual – Video conference via Zoom	P Gareth Williams
Meeting date: 24 June 2024	Committee Clerk
Meeting time: 13.30	0300 200 6565
	SeneddLJC@senedd.wales

Remote – Supplementary Pack

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

2 Instruments that raise issues to be reported to the Senedd under Standing Order 21.2 or 21.3

(13.30 – 13.35)

2.3 SL(6)493 – The Procurement (Wales) Regulations 2024

(Pages 1 – 3)

[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-21-24 – Paper 11 – Welsh Government response

4 Papers to note

(13.40 – 13.45)

4.4 Correspondence from the Cabinet Secretary for North Wales and Transport: The Automated Vehicles Bill

(Pages 4 – 5)



Attached Documents:

LJC(6)-21-24 – Paper 12 – Letter from the Cabinet Secretary for North Wales and Transport, 21 June 2024

Agenda Item 2.3

Government Response: The Procurement (Wales) Regulations 2024

Technical Scrutiny point 1: The Government notes the reporting point but believes that this does not materially affect the operation of the provisions, and in each instance precedes the definition of “the 2023 Act”.

Technical Scrutiny point 2: The Government agrees with the point raised and we will amend this via a statutory instrument that is intended to be made in the Autumn ahead of this regulation coming into force.

Technical Scrutiny point 3: The Government notes the reporting point but does not believe this materially affects the operation of the regulations.

Technical Scrutiny point 4 and 5: The Government notes the reporting points, however these were a deliberate drafting and policy decision. Attempting to define these terms may have the effect of inadvertently narrowing their scope. Also, this would be a variation with the equivalent provision in the Procurement Regulations 2024 and potentially create issues as to legal certainty between England and Wales.

Technical Scrutiny point 6: The Government notes the reporting point and whilst we think the intended meaning is clear here, we will look to amend this by adding ‘or’ via a statutory instrument that is intended to be made in the Autumn ahead of this regulation coming into force, this amendment will be included in that instrument.

Technical Scrutiny point 7: The Government agrees with the reporting point on regulation 28(2)(e)(vi), we will look to amend this via a further statutory instrument intended to be made in the Autumn ahead of this regulation coming into force.

Regulation 41(3) signposts the reader to the provision which requires contracting authorities to publish contracts as modified or modifications in certain cases.

Technical Scrutiny point 8: The Government notes the reporting point but we believe that the Welsh text can remain as it is. The existing translation reads “that is a works contract with an estimated value of £2,000,000 or more”, this is unambiguous. We would argue that adding “sy’n hafal i” (“is equal to”) would not make the meaning any more or any less clear.

Technical Scrutiny point 9: The Government agrees the reporting point in respect of regulation 46(3)(b) and (c) and regulation 49, we will look to amend this via a further statutory instrument intended to be made in the Autumn ahead of these regulations coming into force and these amendments will be included within that instrument.

Technical Scrutiny point 10: The Government notes the reporting point. We are aware that some of the references to organisations are not current and were advised by UK Government (UKG) that names could not be changed. However, as successor bodies were covered, we adopted a similar approach to previous regulations. UKG have changed this advice and therefore, if UKG decide to amend their list to reflect machinery of government changes, Welsh Government officials will look to amend these discrepancies in future regulations. This would then also provide the opportunity to consider changes required as Higher Education Funding Council Wales (HEFCW) will cease to exist in the summer and be replaced by the Commission for Tertiary Education and Research.

Technical Scrutiny point 11: The Government notes the reporting point. Please see the response to reporting point 10. Please also note the effect of regulation 44(2).

Merits Scrutiny point 12: The Government notes the reporting point, officials have been in dialogue with their counterparts in the UKG. Given the scale of changes to the procurement regimes in both England and Wales, including:

- the need for legal certainty,
- the need to ensure that stakeholders have ample time to familiarise themselves with the new legislation, and accompanying materials and training,
- the need to ensure a level playing field for buyers and suppliers on both sides of the border,

it is intended that section 11 will be brought into force on the 28 October. This has been confirmed in [The Procurement Act 2023 \(Commencement No. 3 and Transitional and Saving Provisions\) Regulations 2024](#), which were made on 22 May 2024.

Merits Scrutiny point 13: The Government notes the reporting point, and there may be procurement of health services which do not fall within the definition of regulated health service procurement, most likely because the contracting authority is not a relevant authority within the meaning given by section 10A of the National Health Service (Wales) Act 2006.

The proposed regulations for the new health services procurement regime will only regulate certain bodies (i.e. those defined in the regulations as “relevant authorities”). Other contracting authorities will still be regulated by the Procurement Act when buying

such health services. The list included at Schedule 1 therefore provides a list of all relevant light touch services covered by the Procurement Act, whereas the health services procurement regulations will contain a shorter list of health services that will only be in scope of the proposed regulations (and consequently disapplied from the scope of the Procurement Act) when certain criteria are met.

Agenda Item 4.4

Ysgrifennydd y Cabinet dros Drafnidiaeth a Gogledd Cymru
Cabinet Secretary for North Wales and Transport



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA/KSNWT/5412/24

21 June 2024

Mike Hedges MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru
SeneddLJC@senedd.wales

Dear Mike

I am writing to respond formally to your Committee's report¹² on the Legislative Consent Memorandum No. 3 re: the Automated Vehicles Bill. I am grateful for the consideration given to this matter, including by your predecessor Huw Irranca-Davies MS.

It is pleasing to note the Committee's conclusion concurs with the Welsh Government view that "the amendments to the Bill as set out in Memorandum No. 3 fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd."

Please see below my response to your Committee's recommendation and comments:

Recommendation 1.

We would welcome clarification from the Cabinet Secretary on any further discussions the Welsh Government has had with the UK Government about the typographical errors introduced into clause 97 of the Bill during Commons' Committee Stage, and whether the Welsh Government is aware of how and when the errors will be rectified.

Welsh Government Response: Accept.

¹ <https://senedd.wales/media/pquntsus/cr-ld16455-e.pdf>

² <https://senedd.cymru/media/sypoxlz3/cr-ld16455-w.pdf>

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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.

I can confirm that my officials have maintained regular contact with their UKG counterparts regarding the Automated Vehicles Bill and its amendments and the typographical errors in clause 97 of the Bill have been repeatedly flagged to them. You will be aware that my officials first requested that these errors be corrected as part of Supplementary Legislative Consent Memorandum No. 2.

Latterly, UK Government officials have provided assurances that these spelling corrections will be made when the Act is published. They have further advised that since the Bill is currently awaiting Royal Assent such changes will be addressed by those in Parliament and not the Department for Transport, the UK Government sponsor department. Such minor typos do not constitute amendments so do not currently appear on the UK Parliament's webpages on the Automated Vehicles Bill³.

Financial implications – None.

I note that in your Committee's second report you highlighted that it would have assisted your scrutiny if the former Deputy Minister had:

- made it clear when the UK Government had tabled the amendments which were the subject of Memorandum No. 2; and
- specified the formal amendment numbers attached to the amendments to clauses 88(5) and clause 97.

You again raised these in relation to Memorandum No. 3. In response to the latter I accept that such additional information would have been helpful however I'm mindful of mitigating factors at play, not least the very strict timetable relating to Memorandum No.3. that required it to be laid over the Easter recess.

May I take this opportunity once again to thank you and your Committee for its diligent work regarding the numerous LCMs relating to the Automated Vehicles Bill. Also, for scrutinising and reporting on Memorandum No. 3. to such a tight deadline.



Ken Skates AS/MS

Ysgrifennydd y Cabinet dros Drafnidiaeth a Gogledd Cymru
Cabinet Secretary for North Wales and Transport

³ <https://bills.parliament.uk/publications/55379/documents>