

Agenda – Public Accounts and Public Administration Committee

Meeting Venue:	For further information contact:
Virtual via Zoom	Fay Bowen
Meeting date: 26 January 2023	Committee Clerk
Meeting time: 09.00	0300 200 6565
	SeneddPAPA@senedd.wales

This meeting will be broadcast live on www.senedd.tv

- 1 Introductions, apologies and substitutions**
(09:00)
 - 2 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**
(09:00)
Items 3, 6 and 7
 - 3 Consideration of Supplementary Legislative Consent Memorandum**
(09:00 – 09:30) (Pages 1 – 54)
- (Break)**
(09:30 – 09:35)
- 4 Regenerating Town Centres: Roundtable Session 1**
(09:35 – 10:50) (Pages 55 – 74)
Phil Prentice – Scottish Towns Partnership
Richard Roe – Trafford Council
- (Break)**
(10:50 – 11:00)



5 Regenerating Town Centres: Roundtable Session 2

(11:00 – 12:15)

Chris Jones

Ben Cottam – The Federation of Small Businesses Wales

6 Regenerating Town Centres: Consideration of the evidence received

(12:15 – 12:40)

7 Papers to note

(12:40 – 13:00)

7.1 Papers relating to the Office of the Future Generations Commissioner for Wales

(Pages 75 – 116)

7.2 Letter from the Permanent Secretary on the Welsh Government Annual Report and Accounts 2020–21

(Pages 117 – 140)

Document is Restricted

Rebecca Evans AS/MS
Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Mark Isherwood MS
Chair, Public Accounts and Public Administration Committee

21 December 2022

Dear Mark,

Thank you for the report on the Welsh Government's Legislative Consent Memoranda (LCM) on the Procurement Bill.

Following my letter of 2 December, I have now fully considered the five recommendations in the report, and I am pleased to provide my response to each of them below.

Recommendation 1. The Senedd's consent should also be sought for clauses 114 and 116, and any future memoranda in respect of the Bill should identify them accordingly.

[My response has already been provided in my letter of 2 December.](#)

Recommendation 2. We recommend that the Minister for Finance and Local Government provide the Public Accounts and Public Administration Committee with a timeframe for introducing and implementing secondary legislation, including regulations, which will contain the details of how procurement rules will operate.

[It is important that the timetable for introducing the Welsh legislation mirrors the UK Government's timetable as closely as possible to ensure there is minimal impact on buyers and suppliers.](#)

[The UK Government have set an ambitious timetable for introducing and implementing secondary legislation. Based on their current anticipated timetable, the UK Government expect to lay their main Statutory Instrument in late 2023 and have indicated their intention to provide a six-month period before commencement in 2024 for stakeholders to prepare for transition and implementation. The Cabinet Office has however advised my officials that they are reviewing this timetable so it may be subject to change.](#)

[As referenced above, it is important that the introduction and implementation of the Welsh secondary legislation be aligned with, and to the same timetable as, the UK Government's.](#)

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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.

Officials from both Governments are working closely together to ensure consistency of approach in any timetable changes for laying the Statutory Instruments.

Recommendation 3. We recommend the Minister for Finance and Local Government provide the Public Accounts and Public Administration Committee with an update in 12 months' time on the progress of the UK Government's Procurement Bill and its implementation within Wales.

Accepted.

Recommendation 4. We recommend the Minister for Finance and Local Government provides an update on the development of the project plan for secondary legislation that is necessary to put detail in place ahead of the Bill coming into force, the discussions with Cabinet Office to ensure a consistent approach and the timeframes for the secondary legislation.

My officials are continuing to develop and refine a flexible project plan for the secondary legislation, which enables them to adapt and respond to shifting priorities whilst remaining focused on the project's key milestones.

There are regular ongoing discussions with the Cabinet Office to ensure there is a consistent approach taken with the secondary legislation, which is important for both buyers and suppliers.

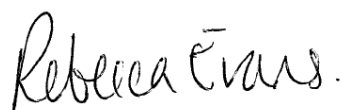
My response to recommendation 2 provides information on the timeframes for the secondary legislation.

Recommendation 5. We recommend the Minister for Finance and Local Government provide us with an update on discussions between the Welsh Government and the UK Government on bringing forward amendments to clause 110(10) to make regulations made by the Welsh Ministers under clause 70 subject to the affirmative procedure.

A government amendment has been agreed at the House of Lords Report Stage to require that regulations made by the Welsh Ministers under clause 70 (contract change notices and publication of modifications) will be subject to the affirmative procedure. An amendment has thereby been made to clause 110 (10) of the Bill as introduced (clause 118(10) of the Bill as amended on Report)

I trust the responses provided are helpful. Please do not hesitate to contact me if you need anything further.

Yours sincerely,



Rebecca Evans AS/MS

Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government
Pack Page 22

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 3)

Procurement Bill

1. This legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that an LCM must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Procurement Bill (“the Bill”) was introduced in the UK Parliament, House of Lords, on 11 May 2022 and I [laid an LCM on 9 June based on the Bill as introduced](#).
3. On 11 July I laid a [supplementary LCM \(Memorandum No 2\)](#), following amendments tabled by the UK Government for consideration at Lords Committee Stage which commenced on 4 July and ran until 26 October.
4. UK Government tabled further amendments on 15 November and 21 November for consideration at House of Lords Report Stage. Lords Report Stage commenced on 28 November.
5. On 18 November I wrote to the Llywydd to explain that this supplementary LCM would therefore cover both tranches of Government amendments tabled and has been laid within two-weeks of the tabling of the second tranche.
6. The tabled amendments can be found at: <https://bills.parliament.uk/bills/3159/publications>. The clauses referred to in this supplementary LCM are as set out in the Bill as amended at Grand Committee and published on 26 October. This version of the Bill can be found at: <https://bills.parliament.uk/bills/3159/publications>

Policy Objective(s)

7. The stated policy objectives of the UK Government for the Bill are:
 - to speed up and simplify public procurement processes
 - to place value for money at their heart
 - to create greater opportunities for small businesses and social enterprises to innovate public service delivery.

Summary of the Bill

8. The Bill is sponsored by the Cabinet Office (CO).
9. The purpose of the Bill is to introduce revised legislation for the processes and procedures governing public procurement. It will be a revision of the current procurement law regime (including the repeal of the Public Contract Regulations 2015) which are derived from EU Directives.
10. The Bill interacts with other legislation namely the Social Partnership and Public Procurement (Wales) Bill (SPPP Bill) which was introduced to the Senedd on 7 June, and the Trade (Australia and New Zealand) Bill which was introduced into the UK Parliament (House of Lords) on 11 May. The Trade (Australia and New Zealand) Bill is to be repealed by the Procurement Bill, as are the amendments to the Government of Wales Act 2006 (GoWA) made by the Trade (Australia and New Zealand) Bill.
11. The procurement landscape is quite complex when referring to public bodies. Therefore, the following references have been used in this document to provide clarity:
 - ‘Contracting authorities’ (CAs) - all public bodies subject to the Bill;
 - ‘Devolved Welsh Authorities’ (DWAs) - as defined by section 157A of the Government of Wales Act 2006 (“GoWA”); and
 - ‘Welsh Contracting Authorities’ (WCAs) - the contracting authorities in Wales which are subject to the Bill and in relation to whom relevant powers and duties conferred upon the Welsh Ministers under the Bill apply (these are referred to as “devolved Welsh authorities” in the Bill itself).

Update on position since the publication of the supplementary LCM (Memorandum No 2) laid on 11 July

12. I laid a supplementary LCM on 11 July. It covered the 320 government amendments tabled by the UK Government on 27 June, the majority of which made provision falling within the legislative competence of the Senedd.
13. Those amendments were considered at Lords Committee Stage which commenced on 4 July and concluded on 26 October. All government amendments were moved and agreed apart from the amendment to add

a 'new clause 1' (which aimed to define 'Procurement' and 'covered procurement').

14. UK Government tabled further amendments for consideration at House of Lords Report Stage. Lord Report Stage commenced on 28 November and the amendments were tabled on two separate dates (i.e., 15 and 21 November).
15. These tabled amendments include a new clause 1 (defining 'Procurement' and 'covered procurement') which was initially considered in the [first set of amendments](#) but not moved.
16. The amendments tabled on 15 and 21 November, to the extent that they make provision which falls within the legislative competence of the Senedd, are the subject of this supplementary LCM. **Annex A** contains a table which outlines the changes to clause numbers following the amendments made at Lords Committee Stage.
17. My previous legislative consent memoranda confirmed that whilst I was content to begin the legislative consent process in the Senedd there were a number of key matters of concern which needed to be resolved before I could consider recommending consent. Some of these areas have been resolved, such as the disapplication power for healthcare services and the duty to have regard to the Wales Procurement Policy Statement (WPPS) enforceable in civil proceedings, while the following are still outstanding:
 - The power to add international agreements to the list in Schedule 9 to the Bill has been included as a concurrent power, with no requirement to obtain the consent of Welsh Ministers when UKG Ministers are exercising this power in relation to devolved areas, which is unacceptable to the Welsh Ministers. Similar provisions are also contained in the Trade (Australia and New Zealand) Bill. Detailed discussions are ongoing at official level and when agreement has been achieved, it is expected that the outcome of those discussions will be reflected in the Procurement Bill.
 - I am seeking an amendment to the definition of WCAs, with a view to ensuring that the clauses work more fairly in relation to some cross border procurements. My officials are regularly meeting with UK Cabinet Office officials to resolve this issue. Discussions have been positive, and we are hopeful for a successful outcome.
 - Commencement Powers: The Bill (as amended in Grand Committee in the House of Lords) provides for Minister of the Crown only powers.

There was an initial commitment from UK Government to Welsh Ministers having commencement powers in the Bill. Discussions are continuing between officials on the powers.

- Powers to make consequential provision. The Bill (as amended in Grand Committee in the House of Lords) provides for concurrent powers with no requirement to obtain the consent of the Welsh Ministers when the UK Government Ministers are exercising this power in relation to devolved areas. My officials have asked for the power to be amended to concurrent plus powers and discussions are ongoing.

Provisions tabled by the UK Government to the Bill for consideration at Lords Report stage for which consent is required

18. The amendments outlined in paragraphs 19.1 to 19.14, and 20.1 to 20.11 tabled to the Bill by the UK Government on 15 and 21 November for consideration at Lords Report Stage, are considered to be for a purpose within the legislative competence of the Senedd and are therefore “relevant provisions” for purposes of SO 29.

19. Amendments tabled on 15 November

19.1. Definition of procurement (New Clause 1 and consequential amendments to clauses 10, 11, 13, 29, 30, 54, 65, 70, 76, 77, 78, 79, 83, 84, 89, 90, 92, 102, 104, 105, 106 and 115)

A technical amendment to define “procurement” and “covered procurement” that causes many consequential amendments in the Bill. Adding these definitions differentiates between:

- covered procurement that is the mainstay of the full regime in the Bill; and
- other procurement not covered by the full regime set out in the Bill but still attracting some specific obligations, which may include sub-threshold procurement, some international agreement procurements and other matters.
- The consequential amendments remove the existing definition of “procurement”, clarify whether procurement in a specific clause is the defined term “procurement” or “covered procurement”, remove text that is unnecessary due to the new definitions, replace “award of contracts” with the defined term “procurement” and add the new defined terms to the list of defined expressions.

19.2. Definition of contracting authority (Clause 1)

The Bill incorrectly draws in some organisations which should fall outside the scope of the procurement regime. The amendment refines the definition of “contracting authority” to ensure relevant organisations are correctly brought within or are excluded from the scope of bodies which the procurement regime ought to apply to.

19.3. Utilities Contracts (Clause 5(2))

This amendment would ensure that a private utility is only a contracting authority in respect of the utility activities for which the utility has a special or exclusive right.

19.4. VAT and value of concession contracts (Clause 114)

The Bill requires contracting authorities to include any VAT payable as part of the amount ‘payable’ on contracts when calculating the value of a contract. This does not work when considering Concessions contracts where VAT must also be included on any amount ‘receivable’ as well as the amount payable. Concession contracts involve the right to exploit works or services provided and to receive the income from that exploitation. This amendment is necessary to ensure that VAT payable on such sums must be included in the valuation calculation.

19.5. Procurement investigations (Clause 99)

Clause 99 allows Welsh Ministers to undertake investigations of Welsh contracting authorities’ compliance with the provisions of the Bill and requires Welsh contracting authorities to have regard to statutory guidance provided following these investigations. This would apply the Senedd Commission in its capacity as a contracting authority. To resolve the constitutional impropriety of the Senedd Commission being subject to oversight by the Welsh Government, this amendment includes the Senedd Commission as a contracting authority which is not subject to procurement investigations.

19.6. Exclusion grounds relating to insolvency and bankruptcy (Schedule 7)

This amendment simplifies the exclusion grounds for suppliers which are insolvent or bankrupt. When reviewed, it became apparent that the ground relating to suppliers who are unable to pay their debts was unnecessary and would not work effectively for overseas suppliers and

certain non-company entities. The other exclusion grounds for suppliers which are in insolvency situations are sufficient to cover the risk in this area.

19.7. Amendments to Schedules 6 and 7 to the Bill

Schedule 6 – An amendment to paragraph 4 would ensure that additional relevant Scots common law offences are contained in the mandatory exclusion ground in paragraph 4. Amendments to ensure clarity that the offence of theft is covered under the mandatory exclusion ground in paragraphs 6 and 7 and an amendment to ensure that the new mandatory exclusion ground inserted in Committee (conspiracy to defraud) is reflected in paragraph 43(3).

Schedule 7 – These amendments would ensure that the discretionary exclusion ground in paragraph 13(4) (publishing of adverse information) is reflected in paragraph 16(3) and (4), so far as that ground is triggered by the publishing of information in relation to a breach of contract by a supplier.

19.8. Sufficient information to prepare tenders (Clause 20)

This amendment requires contracting authorities to provide sufficient information (in the tender notice or associated tender documents) to enable suppliers to prepare tenders, this must be provided prior to the tendering period starting. This closes a potential loophole which could allow the tendering period to start without this information having been provided.

19.9. Definition of an educational institution (Clauses 63, 64, 65, 68, 79(2)(a), 114, 115)

Maintained schools, academies, sixth form colleges and other educational establishments should be exempt from the rules in the Bill relating to sub-threshold contracts. As currently drafted, the Bill does not achieve this as it does not accurately identify all the types of contracting authorities which are to be carved out. These amendments ensure that these bodies do not face disproportionate administrative burdens.

19.10. Thresholds for frameworks (Schedule 1)

This amendment ensures that references in the financial thresholds tabled in Schedule 1 of the Bill include references to frameworks for the future award of contracts for goods, services or works.

19.11. Exempted Contracts (Schedule 2)

The changes made to paragraph 1 of Schedule 2 will mean that the amended paragraph 1(1) will read: “A contract is an exempted contract if it is (a) a contract of a kind listed in this Schedule, or (b) a framework for the future award of contracts only of a kind listed in this Schedule”. The effect of this amendment will be to ensure that a framework for the future award of contracts only of a kind listed in Schedule 2 is also an exempted contract.

19.12. Mixed Procurement (Clause 9)

These amendments provide legal clarity on the applicable obligations in situations where a mixed procurement contains two or more elements covered by the “special regimes” that apply to concessions, defence, light-touch and utilities contracts. As currently drafted, clause 9 only envisages the possibility of mixed regime contracts comprising an element covered by the full regime and an element covered by the special regime. Although we expect the occasions where mixed contracts involving multiple special regime elements will be rare, the absence of legal clarity is undesirable and potentially incompatible with our international agreement obligations, this amendment therefore resolves that.

19.13. Dynamic markets: establishment (Clause 34)

This amendment would ensure that documents establishing or modifying a dynamic market are not subject to any requirements applicable to contracts under the Bill, whether or not those contracts are public contracts as defined in clause 2.

19.14. Transport (Schedule 4, para 4)

This amendment would clarify that networks which are to be made available to the general public fall within this utility activity. A network is no longer defined. As currently drafted, the description of utility transport services in the Bill (i.e., rail, tram, bus, or other means) does not fully cover all utility transport providers, meaning they may in some instances be subject to more burdensome, mainstream provisions in the Bill when carrying out utility transport activities, rather than the more flexible utility provisions. This amendment to paragraph 4 of Schedule 4 to the Bill therefore clarifies the scope to ensure they have the flexible provisions intended.

20. Amendments tabled on 21 November

20.1. Taking account of ‘small and medium sized enterprises’ (SMEs) (Clauses 11 and 92)

The Bill as drafted does not explicitly require contracting authorities to take account of SMEs in the procurement process. The amendment to clause 11 would require a contracting authority, in carrying out a covered procurement, to have regard to the particular barriers to participation in public procurement that small and medium-sized enterprises may have, and whether they can be removed or reduced. A consequential amendment is also made to clause 92 which would mean that the duty to have regard to barriers facing SMEs inserted by the amendment to Clause 11 is not enforceable under Part 9.

20.2. Definition of SMEs and power to amend this definition (Clauses 113 and 114)

Amendments to clause 114 (interpretation) will add a definition of “small and medium sized enterprises” (SMEs) and confer a power on an “appropriate authority” to make regulations changing the definition, including the power to amend this clause. This means that the Welsh Ministers will have equivalent powers to make regulations changing the definition in so far as it applies to the duties of Welsh contracting authorities under the amended clause 11 and the new clause after clause 80 (see below)

An amendment to clause 113 (regulations) will require the making of such regulations by the Welsh Ministers to be subject to the affirmative procedure in the Senedd.

20.3. Regulated below-threshold contracts: duty to consider small and medium-sized enterprises (New clause after clause 80)

This new Clause would require a contracting authority, before inviting the submission of tenders for a regulated below-threshold contract (other than under a framework), to have regard to the particular barriers to competing for a contract that SMEs may have and remove or reduce them where possible. A consequential amendment is made to clause 100(3) which would mean that the duty in the new clause may not be the subject of a “section 100 recommendation” which are recommendations following a procurement investigation.

20.4. Procurers cannot require audited accounts from bidders except where they are already required under the Companies Act (Clauses 21, 35 and 43)

These amendments remove an administrative barrier for new SMEs participating in procurements by ensuring contracting authorities can

only ask for audited accounts to test financial standing if businesses are already required to provide them under the Companies Act 2006. This will apply in procurements, the establishment of dynamic markets and the award of contracts under frameworks (and has necessitated a technical amendment to split clause 43 into two clauses).

20.5. Procurers cannot require insurance relating to the performance of the contract to be in place prior to award (Clauses 21, 35 and 43)

These amendments would avoid potentially wasted costs for SMEs by making explicit that contracting authorities must not require insurance levels relating to the performance of the contract to be in place prior to award. They will be able to accept confirmation from suppliers that required insurance levels will be in place if they are successful. This will apply in procurements, the establishment of dynamic markets and the award of contracts under frameworks (and has necessitated a technical amendment to split clause 43 into two clauses).

20.6. Thresholds – Key performance indicators (Clause 49)

Before entering into a public contract valued at more than £2 million, a contracting authority must set and publish at least three key performance indicators in respect of the contract. This amendment raises the threshold from £2 million to £5 million, thereby reducing the administrative burden on contracting authorities in publishing the data and on suppliers in agreeing the data for publication.

20.7. Amendments relating to utilities:

• **Standstill period for direct awards (Clause 48).**

This amendment will remove the requirement for a mandatory standstill period in relation to contracts awarded under clause 39 or 41 (direct award and switching to direct award) by a private utility, meaning that a private utility would not have to wait until the expiry of a standstill period before directly awarding a contract.

A voluntary standstill period may still be used to protect the procurement from post-contractual claims, but in some circumstances the risk of delaying the contract by having a standstill may be greater and this amendment allows private utilities to make a risk-based decision.

• **Qualifying utilities dynamic market notices: no duty to publish a tender notice (new clause after Clause 38)**

This amendment would remove a burden requiring utilities to publish tender notices for individual procurements run under utilities dynamic markets. Where the notice advertising the utilities dynamic market meets

certain criteria, tender notices will only be required to be provided to suppliers that are on the dynamic market (or an appropriate part of it).

20.8. Conflicts of Interest – small amend to wording (Clause 78 (4))

Clause 78(4) as amended in Committee exists to help contracting authorities consider apparent bias as both this and actual bias exist as possible grounds for judicial review. This amendment maintains the importance of considering the perception of others in relation to conflicts. However, it avoids authorities having to address all circumstances it is aware of which a reasonable person “might” consider a conflict. Instead, they need only address the circumstances that the authority considers are “likely” to cause a reasonable person to consider there to be a conflict.

20.9. Amendments in response to the Delegated Powers and Regulatory Reform Committee (DPRRC):

• Financial threshold powers – affirmative procedure for the regulations made under Clauses 50, 65, 70, 81, and 86)

The DPRRC objected to using the negative procedure to amend thresholds in six clauses (51, 65, 70, 78, 79 and 84 of the Bill as introduced – now clauses 50, 65, 70, 80, 81 and 86) to implement above-inflation increases. These amendments ensure that the affirmative procedure is used at every use rather than only where regulations would make an above-inflation increase to thresholds.

The amendments do not change the procedure applied to regulations under clause 80 (in the Bill as amended in Committee), as this clause relates to GPA thresholds and maintaining the position is consistent with the approach taken to GPA thresholds elsewhere in the Bill.

• Exemption for utility activities exposed to competition (Clauses 5 and 113, schedules 4 and 11)

Following concern from the DPRRC, this amendment removes the power in paragraph 7 of Schedule 4 to make regulations to determine how an exemption determination is to be made to exempt utility activities exposed to competition. This is replaced with a more transparent procedure whereby the power is instead for an appropriate authority to exempt such utility activities only by secondary legislation, using the affirmative procedure. The test to be met as to whether utility activities can be exempted will remain as originally set out at paragraph 7(2) of Schedule 4 (this test is now set out in clause 5); that is, there must be fair and effective competition in the relevant utility market and entry to that market must be unrestricted.

Schedule 4 is now divided into two parts; part 1 defines utility activities which will be subject to the Bill, and part 2 sets out activities which are not utility activities and therefore exempt from the Bill. These reflect the exemptions that were previously included at paragraph 8 of schedule 4, which has now been removed.

Clause 5 confers a power on “an appropriate authority” to make regulation amending Part 2. This means that Welsh Ministers have an equivalent power to make regulations. There are consequential amendments to clause 113 to provide that the affirmative procedure applies to the making of regulations under clause 5.

There are also amendments to schedule 11 (repeals and revocations) which would ensure that Commission Decisions in relation to existing exemptions are not repealed as they need to be retained for Scottish devolved authorities.

A new paragraph has been added to Schedule 2 (32A) which would ensure that exemptions to the scope of utilities contracts under Part 2 of Schedule 4 apply to exempt those contracts from the Bill where entered into by public authorities.

• Power to exempt public passenger transport services (Schedule 2 paragraph 17)

The Bill currently contains a power to exempt “public passenger transport services” of a kind to be specified in regulations. The DPRRC objected to this power and required the Government to fully justify or amend it to include detailed criteria to be used when determining any exemption. This amendment removes the power entirely and makes clear in the Bill the services to be exempt by reference to the meaning given by section 136(11) of the Railways Act 1993.

• Power to exempt concession contracts for air service (Schedule 2, paragraph 34)

The Bill currently contains a power to exempt concession contracts for air services provided by a “qualifying air carrier” to be specified in regulations. The DPRRC objected to this power and required the Government to fully justify or amend it. This amendment more clearly describes the exemption without the need for regulations.

20.10. Transparency - duty on the Minister for the Cabinet Office to provide a freely accessible, central digital platform (Clause 88)

To further improve transparency in public procurement, this amendment creates a duty on the Minister for the Cabinet Office to provide a freely accessible, central digital platform.

20.11. Information relating to procurement (Clause 90)

This amendment would remove an unnecessary power to establish and operate an online system, since it can be done using common law powers.

Reasons for making these provisions for Wales in the Procurement Bill

21. As the amendments detailed within this supplementary LCM fall within the legislative competence of the Senedd and all relate to the provisions set out in previous LCMs, the rationale for making these provisions in the Bill continue to apply.

Financial implications

22. I set out the potential financial implications associated with the reform of public procurement in Wales that are likely to be borne by the Welsh Government and the wider Welsh Public Sector in my original LCM laid on 9 June.
23. The proposed amendments will not levy any additional financial implications on Welsh Government or the wider Welsh Public Sector.

Conclusion

24. It is my view that it is appropriate to deal with these provisions in this UK Bill, as the Bill is the most effective way for these provisions to come into force. My officials have worked closely with officials in Cabinet Office to ensure Welsh Government's policy objectives have been included and I consider these provisions would provide a simplified, transparent procurement regime in Wales.
25. Although I consider the proposed amendments to be reasonable, both in the sense that they appear to make improvements to the Bill as introduced and do not give rise to any fresh areas of concern for me, I also consider that it is not appropriate to recommend consent until the outstanding matters of concern as outlined in paragraph 17 have been resolved. My officials will continue to work with the UK Government to resolve these matters.

Rebecca Evans MS
Minister for Finance and Local Government
6 December 2022

Annex A – Comparison table between versions of the Procurement Bill

Bill as introduced to the House of Lords on 11 May 2022:

<https://bills.parliament.uk/publications/46439/documents/1777>

Bill as amended in House of Lords Grand Committee on 26 October 2022:

<https://bills.parliament.uk/publications/48269/documents/2396>

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7	Concession contracts	7
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15	Preliminary market engagement	15
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18	Award of public contracts following a competitive procedure	18

Clause number on introduction	Clause description	Clause as amended in Grand Committee
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<i>Excluding suppliers</i>		
54	Meaning of excluded and excludable supplier	54
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56	Notification of exclusion of supplier	56
57	Investigations of supplier: exclusion grounds	57
58	Investigations under section 57: reports	58
59	Debarment list	59
60	Debarment list: application for removal	60
61	Debarment decisions: appeals	61
PART 4 MANAGEMENT OF PUBLIC CONTRACTS		
<i>Terms implied into public contracts</i>		
62	Electronic invoicing: implied term	62
63	Implied payment terms in public contracts	63
<i>Notices about payments and performance</i>		
64	Payments compliance notices	64
65	Information about payments under public contracts	65
66	Assessment of contract performance	66
<i>Sub-contracting</i>		
67	Sub-contracting: directions	67
68	Implied payment terms in sub-contracts	68
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69	Modifying a public contract	69
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74	Conflicts of interest: duty to identify	76
75	Conflicts of interest: duty to mitigate	77
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<i>PART 6 BELOW-THRESHOLD CONTRACTS</i>		
77	Regulated below-threshold contracts	79
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<i>PART 7 IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS</i>		
81	Treaty state suppliers	83
82	Treaty state suppliers: non-discrimination	84
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<i>PART 8 INFORMATION AND NOTICES: GENERAL PROVISION</i>		
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99	Welsh Ministers: restrictions on the exercise of powers	102
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101	Minister of the Crown: restrictions on the exercise of powers	104
102	Definitions relating to procurement arrangements	105
103	Powers relating to procurement arrangements	106
<i>PART 12 AMENDMENTS AND REPEALS</i>		
104	Disapplication of duty in section 17 of the Local Government Act 1988	107
105	Single source defence contracts	108
106	Concurrent powers and the Government of Wales Act 2006	109
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<i>PART 13 GENERAL</i>		
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SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 4)

Procurement Bill

1. This legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that an LCM must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Procurement Bill (“the Bill”) was introduced in the UK Parliament, House of Lords, on 11 May 2022 and I [laid an LCM on 9 June based on the Bill as introduced](#).
3. On 11 July I laid a [supplementary LCM \(Memorandum No 2\)](#), following amendments tabled by the UK Government for consideration at Lords Committee Stage which commenced on 4 July and ran until 26 October.
4. UK Government tabled further amendments on 28 November and 30 November for consideration at House of Lords Report Stage. Lords Report Stage concluded on the 30 November. On 6 December I laid a [supplementary LCM \(Memorandum No 3\)](#) in respect of these amendments.
5. Non-government amendments were also considered during Lords Report Stage on 28 and 30 November and six of these amendments were agreed, five of which are the subject of this supplementary LCM. The amendments can be found at: [2549 \(parliament.uk\)](#) and [2568 \(parliament.uk\)](#)
6. The clauses referred to in this supplementary LCM are as set out in the Bill as amended at Grand Committee and published on 26 October. This version of the Bill can be found at: <https://bills.parliament.uk/publications/48269/documents/2396>

Policy Objective(s)

7. The stated policy objectives of the UK Government for the Bill are:
 - to speed up and simplify public procurement processes
 - to place value for money at their heart
 - to create greater opportunities for small businesses and social enterprises to innovate public service delivery.

Summary of the Bill

8. The Bill is sponsored by the Cabinet Office (CO).
9. The purpose of the Bill is to introduce revised legislation for the processes and procedures governing public procurement. It will be a revision of the current procurement law regime (including the repeal of the Public Contract Regulations 2015) which are derived from EU Directives.
10. The Bill interacts with other legislation namely the Social Partnership and Public Procurement (Wales) Bill (SPPP Bill) which was introduced to the Senedd on 7 June, and the Trade (Australia and New Zealand) Bill which was introduced into the UK Parliament (House of Lords) on 11 May. The Trade (Australia and New Zealand) Bill is to be repealed by the Procurement Bill, as are the amendments to the Government of Wales Act 2006 (GoWA) made by the Trade (Australia and New Zealand) Bill.
11. The procurement landscape is quite complex when referring to public bodies. Therefore, the following references have been used in this document to provide clarity:
 - ‘Contracting authorities’ (CAs) - all public bodies subject to the Bill;
 - ‘Devolved Welsh Authorities (DWAs) - as defined by section 157A of the Government of Wales Act 2006 (“GoWA”); and
 - ‘Welsh Contracting Authorities’ (WCAs) - the contracting authorities in Wales which are subject to the Bill and in relation to whom relevant powers and duties conferred upon the Welsh Ministers under the Bill apply (these are referred to as “devolved Welsh authorities” in the Bill itself).

Update on the assessment of provisions in the Bill in relation to which an LCM is required to be laid

12. **Clause 12 (The National Procurement Policy Statement (NPPS))**

The duty to have regard to the NPPS will apply to contracting authorities which are WCAs in relation to procurement under certain kinds of reserved procurement arrangement.

This means that the provisions of this clause are for a purpose within the legislative competence of the Senedd to the extent that it confers functions on contracting authorities which are WCAs and are therefore “relevant provisions” for the purposes of SO 29. An LCM is therefore required for this clause.

13. **Clause 50 (Contract details notices and publication of contracts); clause 72 (Publication of modifications); clause 80 (Regulated below threshold contracts: procedure)**

The provisions of clauses 50, 72 and 80 will apply in relation to a contract awarded as part of a procurement by a WCAs if the contract is awarded under a reserved procurement arrangement.

This means that the provisions of these clauses are for a purpose within the legislative competence of the Senedd to the extent that it confers functions on contracting authorities which are WCAs and are therefore “relevant provisions” for the purposes of SO 29. An LCM is therefore required for these clauses.

Update on position since the publication of the supplementary LCM (Memorandum No 3) laid on 6 December

14. There is no change since my previous LCM whereby I confirmed that, whilst I was content to begin the legislative consent process in the Senedd, there were a number of key matters of concern which needed to be resolved before I could consider recommending consent.

Non-government amendments agreed at Lords Report stage for which consent is required

15. There were six non-governmental amendments agreed during Lords Report Stage on 28 and 30 November. Five of these make provision which fall within the legislative competence of the Senedd and are the subject of this supplementary LCM.
16. Annex A contains a table which outlines the changes to clause numbers following the amendments made at Lords Committee Stage.
17. The non-governmental amendments outlined in paragraphs 18 to 22 which were agreed during Lords Report stage on 28 and 30 November are considered to be for a purpose within the legislative competence of the Senedd and are therefore “relevant provisions” for the purposes of SO 29.
18. **Amendment 3 - Contracting Authorities** (Clause 10 (As an amendment to Amendment 2))
- 18.1 Amendment 3 has the effect of including the NHS in the definition of a public authority for the purposes of the Act. The amendment does not include a definition of the term “NHS” and there is no existing reference to the term “NHS” in clause 114 (interpretation). In the absence of any limitation to NHS bodies in

England, the inclusion of “the NHS” in the definition of a public authority would apply to NHS bodies in Wales.

19. **Amendments 46 and 47 – the National Procurement Policy Statement (NPPS)**

19.1 Amendment 46 amends clause 12(3) and has the effect of requiring a Minister of the Crown to consider a set of principles before publishing the national procurement policy statement.

19.2 Amendment 47 inserts a new subsection after Clause 12(3) which has the effect of requiring that the priorities listed in the amendment are among the strategic priorities in relation to procurement included in the National Procurement Policy Statement.

20. **Amendment 91 – Schedule 7 – Discretionary exclusion grounds**

20.1 Amendment 91 adds a further discretionary exclusion ground to Schedule 7.

20.2 This discretionary exclusion ground will apply to a supplier if a decision maker determines that the supplier or a connected person has been, or is, involved in forced organ harvesting or unethical activities relating to human tissue, including where they are involved in providing a service or goods relating to such activities.

20.3 This would enable a contracting authority to decide that a supplier is an “excludable supplier” if it considers that this ground applies to the supplier or an associated person.

21. **Amendment 94: Timeline for removal of suppliers (new clause after clause 61)**

21.1 The effect of this new clause is to place a duty on the Secretary of State to publish a timeline within 6 months, for the removal of physical technology or surveillance equipment from the Government’s procurement supply chain where the Secretary of State is satisfied there is established evidence that a provider has been involved in— (a) modern slavery, (b) genocide, or (c) crimes against humanity.

21.2 As the term “the Government” is not limited to the UK Government, it is considered that the duty placed on the Secretary of State to publish a timeline also applies to the removal of suppliers from the Welsh Government’s procurement supply chain.

22. One other non-government amendment was agreed. Amendment 173 removes clause 111 and replaces it with a new clause headed “Application of this Act to procurement by NHS England”. As this only applies to England, it is not considered to be within the legislative competence of the Senedd and an LCM is therefore not required in relation to this amendment.

Reasons for making these provisions for Wales in the Procurement Bill

23. As the amendments detailed within this supplementary LCM fall within the legislative competence of the Senedd and all relate to the provisions set out in previous LCMs, the rationale for making these provisions in the Bill continue to apply.

Financial implications

24. I set out the potential financial implications associated with the reform of public procurement in Wales that are likely to be borne by the Welsh Government and the wider Welsh Public Sector in my original LCM laid on 9 June.

25. The proposed amendments will not levy any additional financial implications on Welsh Government or the wider Welsh Public Sector.

Conclusion

26. I consider that it is not appropriate to recommend consent until the outstanding matters of concern as referred to in paragraph 14 and LCM No. 3 have been resolved. My officials will continue to work with the UK Government to resolve these matters.

Rebecca Evans MS
Minister for Finance and Local Government
19 December 2022

Annex A – Comparison table between versions of the Procurement Bill

Bill as introduced to the House of Lords on 11 May 2022:

<https://bills.parliament.uk/publications/46439/documents/1777>

Bill as amended in House of Lords Grand Committee on 26 October 2022:

<https://bills.parliament.uk/publications/48269/documents/2396>

Clause number on introduction	Clause description	Clause as amended in Grand Committee
<i>PART 1 KEY DEFINITIONS</i>		
1	Contracting authorities	1
2	Public contracts	2
3	Valuation of contracts	3
4	Mixed procurement: above and below threshold	4
5	Utilities contracts	5
6	Defence and security contracts	6
7	Concession contracts	7
8	Light touch contracts	8
9	Mixed procurement: special regime contracts	9
<i>PART 2 PRINCIPLES AND OBJECTIVES</i>		
10	Procurement only in accordance with this Act	10
11	Procurement objectives	11
12	The national procurement policy statement	12
13	The Wales procurement policy statement	13
<i>PART 3 AWARD OF PUBLIC CONTRACTS AND PROCEDURES</i>		
<i>CHAPTER 1 PRELIMINARY STEPS</i>		
14	Planned procurement notices	14
15	Preliminary market engagement	15
16	Preliminary market engagement notices	16
17	Duty to consider lots	17
<i>CHAPTER 2 COMPETITIVE AWARD</i>		
<i>Terms of a procurement</i>		
18	Award of public contracts following a competitive procedure	18

Clause number on introduction	Clause description	Clause as amended in Grand Committee
	Amended clause title: <i>Award of public contracts following a competitive tendering procedure</i>	
19	Competitive tendering procedures	19
20	Tender notices and associated tender documents	20
21	Conditions of participation	21
22	Award criteria	22
23	Refining award criteria	23
24	Technical specifications Amended clause: <i>This clause has been moved to Chapter 6 'General provision about award and procedures', under a new sub-section "Technical specifications"</i>	53
25	Sub-contracting specifications	24
<i>Exclusions and modifications</i>		
26	Excluding suppliers from a competitive award	25
27	Excluding suppliers from a competitive tendering procedure Amended clause title: <i>Excluding suppliers from a competitive flexible procedure</i>	26
28	Excluding suppliers by reference to sub-contractors	27
29	Excluding a supplier that is a threat to national security	28
30	Excluding suppliers for improper behaviour	29
31	Modifying a section 18 procurement	30
<i>Reserving contracts to certain suppliers</i>		
32	Reserving contracts to supported employment providers	31
33	Reserving contracts to public service mutuals	32
<i>Awarding contracts by reference to dynamic markets</i>		
34	Competitive award by reference to dynamic markets	33
35	Dynamic markets: establishment	34
36	Dynamic markets: membership	35
37	Dynamic markets: removing members from the market	36

Clause number on introduction	Clause description	Clause as amended in Grand Committee
38	Dynamic markets: fees	37
39	Dynamic market notices	38
CHAPTER 3 DIRECT AWARD		
40	Direct award in special cases	39
41	Direct award to protect life, etc	40
42	Switching to direct award	41
43	Transparency notices	42
CHAPTER 4 AWARD UNDER FRAMEWORKS		
44	Frameworks	43
45	Frameworks: maximum term	44
46	Frameworks: implied terms	45
47	Open frameworks	46
CHAPTER 5 AFTER AWARD, STANDSTILL PERIODS AND NOTICES		
48	Contract award notices and assessment summaries	47
49	Standstill periods on the award of contracts	48
50	Key performance indicators	49
51	Contract details notices and publication of contracts	50
CHAPTER 6 GENERAL PROVISION ABOUT AWARD AND PROCEDURES		
<i>Time limits and termination</i>		
52	Time limits	51
53	Procurement termination notices	52
<i>Technical Specifications</i>		
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Llywodraeth Cymru
Welsh Government

Dr Andrew Goodall
Ysgrifennydd Parhaol
Permanent Secretary

Mark Isherwood MS
Chair, Public Accounts and Public Administration Committee
Welsh Parliament
Cardiff Bay
CF99 1SN

09 December 2022

Dear Mr Isherwood

Public Accounts and Public Administration Committee – Welsh Government Annual Report and Accounts 2020-21

Thank you for your letter of 11 November 2022 following the Committee scrutiny of the Welsh Government Annual Report and Accounts 2020-21 on the 6 and 19 October 2022. I welcome the constructive scrutiny of the Committee and am pleased to provide responses to the information you have requested as set out below.

The following annexes respond accordingly to:

- Annex 1 – COVID-19 Support for Business
- Annex 2 – Other COVID-19 Expenditure
- Annex 3 – Further information agreed to be provided and additional points the Committee wishes seek clarity on.

I trust that this additional information helps the committee in any final reflections and that the evidence sessions we attended in respect of the 2020-21 accounts were helpful.

*Yours,
Andrew Goodall*

Dr Andrew Goodall
Ysgrifennydd Parhaol/ Permanent Secretary
Llywodraeth Cymru/ Welsh Government



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Annex 1: COVID-19 Support for business:

Post Completion Monitoring (PCM)

1.1 Can you provide an update about the progress and results of PCM for Phases 1 and 2? We would like to see the current position compared with the position in July as set out in the Auditor General's Memorandum. If this has not been completed, do you have a deadline by which you expect it to be done.

Position at July 2022 (Auditor General for Wales' Memorandum)

As at July 2022 the ERF PCM teams had:

- issued 9,094 surveys to micro businesses supported during phases 1 and 2, receiving returns from 3029 (33%).
- issued 2,527 surveys to SMEs, receiving returns from 1,370 (54%) – the fuller PCM for these phases had not been completed.
- issued requests for information to 52 large businesses, receiving returns from 41 (79%).

Having been through a further pilot, Post Completion Monitoring for phase 3 was underway with plans to progress the arrangements for later phases of support over the summer.

Position at November 2022

As at November 2022 the ERF PCM teams have:

- Issued 9,094 surveys to micro businesses supported during phases 1 and 2, receiving returns from 3029 (33%).
- Issued 1,257 surveys to SME's supported during phases 1 and 2, receiving returns from 421 (33% response).
- Issued 1,270 requests for fuller PCM information to SME's supported during phases 1 and 2 with 599 responses currently being considered and 466 cases closed (36% closure rate).
- Issued requests for information to 52 large businesses supported during phases 1 and 2 with 46 cases closed (88%).



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In addition to Phases 1 and 2

- ERF phase 3 (November 2020) is well under way with 1,205 surveys issued and 690 returned (57%). There are 804 awards requiring fuller PCM with 342 businesses receiving requests for information to November 2022 and 66 cases closed.
- ERF phases 4 -7 (January – August 2021) began in the summer of 2022, with 3,866 surveys issued and 1,248 returned (32%) and 236 requests for fuller PCM issued for completion by businesses and 4 cases closed.

The ERF PCM activity is being managed on a rolling portfolio basis to ensure momentum is maintained and make the most effective use of resources.

It is difficult to impose a deadline on this activity, as completion is very dependent on the speed and quality of the response provided by the businesses. In some cases we are yet to receive a response despite a number of requests.

1.2 Can you provide details on the revised time frames for PCM for schemes from Phase 3 onwards including planned start and finish times?

As noted in 1.1 above ERF phase 3 (November 2020) is well under way. It is difficult to impose a deadline on this activity, it is at an early stage and like earlier rounds of PCM activity, completion is very dependent on the speed and quality of the response provided by the businesses.

Evaluation

1.3 How have you determined the evaluation arrangements for your COVID-19 support for business, including what have you taken from existing approaches for evaluating business support, and what have you had to develop?

Welsh Government developed a working group to develop the evaluation arrangements for the COVID-19 support for business, this group included the Knowledge and Analytical Services team (KAS) who are responsible for research and analysis within the Welsh Government.



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The methodology of the evaluation was drawn from previous successful methodologies within KAS and the Entrepreneurship team. The methodology consisted of administrative data analysis, beneficiaries survey as well as an element of an additional survey to ascertain survivability and employment safeguarding as well as other areas.

1.4 Economic Intelligence Wales has published two evaluation reports to date (in December 2020 and April 2022). How are you implementing any recommendations it has made for future research and could any publication of future evaluation reports be drawn to the attention of the Committee when published?

Economic Intelligence Wales has published two reports to date and will publish a third report by January 2023.

Headlines from the second report are as follows:

- 85% of respondents agreed (overall) that assistance was as important as furlough
- 89% (overall agreed) that assistance worked well to safeguard employment in business.
- 89% of respondents agreed that the assistance worked to safeguard employment in the business.
- At the time of survey 95% of businesses were still trading.

A conclusion within the second bespoke report noted the following we expect to accept:

- “There is a further element of future research that will need to consider comparative survival and growth trends of assisted organisations. There is particular interest, in later analysis, in identifying the survival trends in businesses assisted by Welsh Government support compared to businesses who were not beneficiaries of this same support.
- Ideally this analysis will be undertaken within the framework of company accounts information and with the need to wait until financial records are available for the 2020-21 Periods”.

The research team are considering how this can be undertaken in future bespoke reports of the ERF evaluation.

We will notify the Committee when future evaluation reports are published.



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1.5 What broader lessons have you learnt from the evaluation undertaken to date to inform the Welsh Government's approach to financial support for business in the future?

The importance of communication with the businesses impacted cannot be overstated, this developed throughout the various rounds of funding and early communication of eligibility criteria, funding levels and step by step guides and transparency of application progress is key.

The utilisation of Artificial Intelligence checks proved to be an effective tool in identifying potentially ineligible applications, and this should be expanded for future grant funding schemes.

The importance of teamwork, continuous learning and the quality of public servants across Wales able to generate programmes of scale with pace and accuracy.



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Annex 2: Other Covid 19 Expenditure

2.1 How are you obtaining assurance over, and evaluating the impact of, the COVID-19 grants to organisations other than local authorities, including those COVID-19 grants administered by other organisations, such as the Arts Council of Wales and the Third Sector such as the WCVA?

The significant grants other than those to local authorities and through the Covid-19 Support for Business were for the Third Sector and the Culture Recovery Fund.

Third Sector

Background

The circa £42 million Third Sector Covid Response fund had a number of components:

- Voluntary Service Emergency Fund - to support volunteers in responding to the initial impact
- Voluntary Service Recovery Fund – to support volunteers in responding to the longer-term impacts from the pandemic.
- Third Sector Resilience Fund - supporting voluntary sector organisations to re-invest for growth out of and beyond COVID restrictions.

Assurance

The Third Sector funds have been reviewed by Audit Wales. This review covered reports and other documents that provide evidence of controls being in place that are intended to target funding, manage financial risks, and ensure value for money. No issues were identified with either this review or the one carried out by internal audit.

Impact of funding

Impact monitoring and reporting requirements were all an integral part of the Third Sector Covid response Fund.

WCVA have published impact reports of both the VSEF and VSRF, details of these reports can be found at Voluntary Services Emergency and Recovery Fund - WCVA. Regarding TSRF, organisations were required to submit project progress reports after three and twelve months to WCVA.



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In addition, WCVA providing data throughout the pandemic, which during the first wave was daily. This data enabled officials to assess impact and work with other funders to ensure that organisations supporting those experiencing the greatest effects were able to be supported.

Culture Recovery Fund

Background

The £108m delivered via the CRF was split into three key areas:

- A CRF fund delivered by the Culture, Sport, and Tourism Directorate in Welsh Government. This support was available to creative, cultural, events and their technical suppliers, and heritage organisations.
- The Arts Council of Wales (ACW) received funds to deliver similar support to organisations operating in the disciplines of music, dance, theatre, literature, visual and applied arts, combined arts, digital art.
- A dedicated Freelancer Fund was also created to support individuals in the sector who have been impacted by the pandemic. The fund was open to freelancers in the sub sectors of arts, creative industries, arts and heritage events, culture and heritage, whose work has direct creative/cultural outcomes. This has been administered through local authorities in Wales.

The three schemes had identical governance structures in place led by Director Culture, Sports and Tourism.

Reviews of the first two rounds of support have been undertaken. A representative from ACW attended the evaluation steering group meetings. These included responses from stakeholders. We are exploring when it will be possible to undertake a review of round three of support which ran over the Christmas and New Year 2021-22 period.

The results of the review of rounds 1 and 2 of the support highlighted that:

- *Cultural Organisations.* Across CRF Rounds 1 and 2 there were 2,013 applications in total of which 1,211 organisations (60 per cent) secured grant funding support (Table 5.1). The applications were made by 1,517 individual organisations, 871 of whom were approved. Some 503 businesses made repeat applications, 242 of whom secured funding in both rounds.



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- Freelancer Fund. The administrative data from both rounds of the Freelancer Fund that was delivered by local authorities shows that 4,157 freelancers were supported with the total value of the grants awarded amounting to £10.39 million (3,425 in Round 1 and 732 in Round 2). Analysis of the data also indicates that 995 freelancers received funding support across both rounds of funding.

Use of CRF funding

Stakeholder feedback revealed that the CRF was used as a means of safeguarding jobs, organisations, and the sector. For a few, safeguarding assets and buildings was closely linked to the wider rationale, whilst others also saw the fund as a means of supporting communities by extension.

When asked to state how they had used their funding, organisations responding to the survey most frequently reported they used their grant to pay bills and cover overheads (78 per cent) followed by staff salaries (60 per cent) (Figure 6.1). However just over half of recipient organisations also used the funding they received to revise their business model or services (55 per cent) or invest in equipment (54 per cent).

Impact of the CRF

Stakeholder feedback from grant recipients ascertained that if they had not received the funds just over half (52 per cent) of respondents would have had to close.

In addition, 38 per cent of stakeholders who provided feedback felt that without the CRF they would have had to make staff redundant.

Conclusions from the review

CRF has helped and is helping with mitigating the negative impacts of the pandemic. Funding has protected financial reserves and income, enabled and facilitated innovation, developed and strengthened networks and collaboration and supported organisations and freelancers alike to retain confidence in their future prospects as Wales emerged from COVID-19.

The design and delivery of the Fund has been successful in achieving an appropriate balance between ensuring that funding has been provided at pace given the financial crisis facing many organisations whilst at the same time protecting the public purse.



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Stakeholder feedback indicated that the Fund was generally well designed, providing clarity and ease of access. The speed with which the funding had been delivered was felt to have been a key strength. Moreover, the engagement between the sector, public bodies and the Government has provided a further, unforeseen but positive outcome. This level of engagement and collaboration now has the potential to focus on longer-term and structural support needs within the cultural sector in Wales as the nation moves into a recovery and rebuilding phase.

2.2 How has the Welsh Government worked with the Third Sector to address the 'future issues' noted in the COVID-19 evaluation report, including reviewing the general funding approach post pandemic?

The key future issues noted in the report related to Support and Engagement.

On Support

The Third Sector Partnership Council Funding & Compliance Sub-Committee has been working with WG's Grant Centre of Excellence to enable grant managers to offer 3+3 years of funding where this is appropriate.

Our Third Sector Support Wales (TSSW) grant provides core funding to the Wales Council for Voluntary Action (WCVA) and County Voluntary Councils across Wales to provide a third sector support infrastructure. For 2022-23 we have increased the baseline of this grant to £6.98m, an increase of 10% on pre-pandemic levels.

We have also, for the first time, given the TSSW partnership a three year grant commitment to allow them to undertake long-term planning, whilst retaining staff and skills. It will allow the continued development of longer-term partnerships and relationships (with Local Authorities and Health Boards) which were so important when responding to the pandemic, and for projects to be run over several years leading to better outcomes and learning.

The Minister for Social Justice recently announced a £2.2m package of support for the sector. This includes an additional £1m in 2024-25 for Third Sector Support Wales, which comprises WCVA and the 19 Country Voluntary Councils, and £1.2m over this and the next three financial years for the Newid partnership (led by WCVA, Wales Coop and Promo Cymru) to continue supporting digital skills in the voluntary sector.



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On Engagement with Partners

Officials regularly meet with a range of third sector funders including the National Lottery Community Fund. These meetings, established during the pandemic ensure that there is no duplication of effort and identify gaps, having been used to inform our response to supporting those fleeing the conflict in Ukraine, are currently focussed on the cost-of-living crisis.

Along with the Third Sector Partnership Council, we have co-produced a Third Sector Covid Recovery Plan setting out our joint priorities, which we are working with the sector and other partners to implement. The plan has three key work streams – Support, Relationships and Volunteering. This work will include a review of Welsh Government’s Volunteering Policy and the development of a Community Policy, and a review of the Code of Practice for Funding the Third Sector. Together these pieces of work will create an environment that will enable third sector organisations to be more sustainable.

This work will be our focus over the remaining assembly term, demonstrating progress against the Programme for Government commitment to ‘Continue our strong partnership with voluntary organisations across the range of our responsibilities’.



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Annex 3: Further information agreed to be provided and additional points the Committee wishes seek clarity on.

3.1 A copy of the terms and conditions framework that has been agreed between the Cabinet Office and Welsh Government regarding your employment as Permanent Secretary

The Welsh Government HR team worked with their Cabinet Office counterparts on a Permanent Secretary terms and conditions framework that is now in operation. This clearly sets out roles, responsibilities and decision making across all aspects of employment, reflecting the Welsh Government context and ensuring both organisations are involved appropriately in future matters.

This has been put in place in advance of broader work the Cabinet Office intend to undertake on the relationship between Cabinet Office and the Permanent Secretaries of both Welsh Government and Scottish Government.



WG Permanent
Secretary terms and c

3.2 The timeline for the Welsh Government's request to carry forward at 31 March 2021 a sum in excess of the limit on the Wales Reserve and the response from HM Treasury, which rejected it.

At the end of the 2020-21 financial year, the outturn reported was within the overall (i.e., combined revenue and capital) DEL budget. Therefore, Welsh Government worked on the basis that the net underspend could be accommodated within the Wales Reserve. This would require a revenue to capital switch in line with HMT's Consolidated Budgeting Guidance – a mechanism that Welsh Government has utilised previously.

In November 2021, HMT officials advised that unused revenue budget could not be retrospectively switched to capital to offset an overspend against the capital budget. As a result, the revenue underspend exceeded that which could be accommodated within the Wales Reserve.

In December 2021, Welsh Government provided options to HMT with suggestions of how the 'excess' could be utilised including reprofiling into future years and ring-fencing to be used on specific programmes.



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In March 2022, HMT advised it did not accept any of the suggestions and would apply its position as set out in November 2021.

The Minister for Finance and Local Government met with the Chief Secretary to the Treasury on 29 March 2022 to discuss this issue and followed up in writing on 4 April 2022 requesting the CST reconsider this decision.

The CST responded on 19 April 2022 rejecting the Minister's request.

3.3 Confirmation that the £155.5 million that was lost to Wales as result, which was either not drawn down or paid back to HM Treasury, equates to around two-thirds of 1p on income tax.

In 2022-23, based on the ready reckoner published alongside the 2022-23 draft Budget¹, £155.5 million is equivalent to around two-thirds of the revenue raised from putting 1p on each of the Welsh rates of income tax.

3.4 Information about the Welsh Government's estimate of the risk of fraud and error relating to its COVID-19 support for business, as reported in the Governance Statement in the Consolidated Accounts 2020-21, by scheme. This said the estimated incidence of fraud and error was between 0.08% to 4.17%, which the Welsh Government quantified to range from £0.7m to £37.2m. This information should include details of how these figures were calculated. We referred to the approach taken by the UK Government Department for Business, Energy and Industrial Strategy (BEIS), in providing these details in relation to UK Government COVID-19 Grants in its Annual Report and Accounts 2020-21, which appeared to be more detailed. The Welsh Government may wish to replicate this approach.

The estimated level of potential fraud and error was calculated on the basis of information received from Local Authorities (LA) following the completion of a survey looking at the 2020/2021 financial year for the LA administered schemes and for ERF Welsh Government administered schemes from the PCM that had been undertaken at that point.

¹ <https://gov.wales/sites/default/files/publications/2021-12/welsh-rates-of-income-tax-ready-reckoner-2022-to-2023.pdf>



- To note we do not have the data split between fraud and/or error – however no instances of fraud have been identified in the PCM on the ERF administered by the Welsh Government, to obtain any further split we would need to contact the Local Authority teams.
- At the time from the LA returns received 195 instances of Fraud and Error were calculated out of 246,127 awards, which gave a fraud and error rate of 0.08%. This related to LA administered awards
- We also reported a maximum rate of 4.17% This figure represented the highest incidence of fraud and error we found in ERF or LA Awards. Namely in the ERF phase 3 SME Business Development Grant where we had 24 Post Completion monitoring Reports completed, one of which contained a potential recovery, $1/24 = 4.17\%$

So, taking the range of the overall fraud and error incidence rates gives the following results for the potential risk of fraud and error when applied to £893m of grants provided with enhanced eligibility criteria and for which PCM was not complete at the reporting date:

Range of fraud and error incidences based on volumes of grants issued		0.08%	4.17%
Applied to value of grants in review	£ 892,915,580	£ 708,341	£ 37,204,816
Applied to volume of grants in review	199,720	158	8,322
Applied to average value of grant in review	4,471	708,341	37,204,816

3.5 A breakdown of the risk of fraud and error to distinguish cases relating to eligibility from incidences of detected fraud in respect of Welsh Government administered schemes and, when available, for NDR related (Local Authority administered schemes).

Local Authority administered schemes - Fraud and Error

From the 18 of 22 Local Authority 2021-22 returns to date, 8 cases of fraud (from 21,887 payments made) have been identified for a combined value of £28,000 and 13 errors for a combined value of £45,000. The main reason for the low fraud rate was the high level of rejected applications for funding:



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- NDR – pre payment at application average rejection rate of 13.4%
- Discretionary Funds – pre payment at application average rejection rate of 44.4%

Economic Resilience Fund - Fraud and Error

Working in parallel with the WG Counter Fraud team to date there have not been any cases of fraud identified as a result of the Welsh Government ERF PCM activities undertaken to date, should any concerns be identified, we would refer these to the Head of Counter Fraud for discussion and investigation.

To date Welsh Government has recovered £1,125,652 in relation to overpayments between the administration of the NDR scheme and the initial phases of the Economic Resilience Fund.

To date £105,525 has been recovered by the Welsh Government ERF PCM team in overpayments in relation to delivery of the Economic Resilience Fund.

3.6 Confirmation of the funds recovered by Welsh Government following its Post Completion Monitoring and whether, having identified sums to be clawed back, any businesses in receipt of those funds have not yet returned the funding. We request this information be broken down by scheme and details provided on the corresponding figures for the schemes administered by local authorities.

Local Authority administered schemes – Post Completion activity

We do not hold the information on the amount or value of monies recovered by the Local Authorities, they would pursue these amounts using their normal operating procedures, and any funds recovered would be subsequently returned to the Welsh Government.

Economic Resilience Fund – Post Completion activity

As part of the ERF Post Completion Monitoring activities, at November 2022, the following funds have been received. Cases relating to error/overpayments quoted at question 12 (£105,525) are included in the figures detailed below.



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RECOVERIES - Complete	Number of Cases	Total Value of Recovery
Phase 1	16	£588,884
Phase 2	6	£195,000
Phase 3	1	£60,000
Phase 4 - SSF1	8	£174,347
Phase 5 - SSF2	2	£22,396
Phase 6 - May/June	3	£20,000
Phase 7 - Jul/Aug	0	0
	36	£1,060,627

As part of the ERF Post Completion Monitoring activities, at November 2022 the following are the recoveries that are in progress, (some of these cases will relate to insolvencies where the actual return may eventually be smaller.)

RECOVERIES - In progress	Number of Cases	Potential Total Value of Recovery
Phase 1	24	£1,308,230
Phase 2	17	£843,408
Phase 3	2	£125,000
Phase 4 - SSF1	4	£69,943
Phase 5 - SSF2	2	£59,905
Phase 6 - May/June	1	£5,000
Phase 7 - Jul/Aug	0	0
Total	50	2,411,486



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Permanent Secretary terms and conditions – approval framework:

LEARNING AND DEVELOPMENT	
Aspect / Action	Communication / Approval
Training that is a WG requirement / mandatory or part of standard L&D offer e.g. DSE	<ul style="list-style-type: none"> No approval needed – central record maintained as for all employees
Learning and development to support the WG context that incurs a cost	<ul style="list-style-type: none"> WG HR Director approval of expenditure Cabinet Secretary informed by Perm Sec
Professional development programme for Permanent Secretaries	<ul style="list-style-type: none"> Cabinet Secretary/Cabinet Office in discussion with Perm Sec WG HR Director approval of expenditure if it incurs cost
Personal development requested by Perm Sec	<ul style="list-style-type: none"> Perm Sec to discuss and agree with Cabinet Secretary WG HR Director to endorse and approve expenditure
<i>Annual update to RemCom of learning and development activity undertaken by the Permanent Secretary</i>	

WORKING ARRANGEMENTS	
Aspect / Action	Communication / Approval
Requesting annual leave and monitoring leave balance	<ul style="list-style-type: none"> Perm Sec manages own annual leave – recorded by Perm Sec’s Private Office Perm Sec’s office to provide Perm Sec’s leave info to Cabinet Office when they collate plans / intentions for peaks periods (e.g. summer, Christmas) Perm Sec / Cabinet Secretary to include annual leave as a regular item for their 1-2-1s Perm Sec to alert WG HR Director if unable to take annual leave
Taking special leave	<ul style="list-style-type: none"> Perm Sec to make Cabinet Secretary aware of intention / need Application made to WG by Perm Sec WG HR Director approval

Banking leave	<ul style="list-style-type: none"> ● Perm Sec to discuss with Cabinet Secretary ● Application made to WG by Perm Sec ● WG HR Director approval
*Claiming overtime - <i>only appropriate when a specific business case approved by Cabinet Office for SCS (e.g. crisis response)</i>	<ul style="list-style-type: none"> ● Perm Sec to discuss with Cabinet Secretary ● Application made to WG by Perm Sec ● WG HR Director approval
Claiming T&S	<ul style="list-style-type: none"> ● Claim made by Private Office on Perm Sec's behalf – no further approval needed
*Monitoring sickness absence	<ul style="list-style-type: none"> ● WG HR Director to be made aware of sickness absence and arranges any support needed (e.g. OH referral) ● If it relates to a period of long terms sickness, the Cabinet Secretary will also be informed. ● WG HR Director will agree cover arrangements with Perm Sec – arrangements to be endorsed by Chair of WG RemCom and Cabinet Secretary and discussed with FM
*Considering Conflicts of Interest (Col)	<ul style="list-style-type: none"> ● Col form to be completed by Perm Sec / Private Office ● Considered by Director of Propriety and Ethics and Chair of WG ARAC, copied to Perm Sec HR team in CO
Requesting to change working hours	<ul style="list-style-type: none"> ● Perm Sec to discuss with WG HR Director ● Perm Sec to seek approval from Cabinet Secretary and First Minister of request ● WG HR team to liaise with Cabinet Office Perm Sec HR team
Requesting partial retirement	<ul style="list-style-type: none"> ● Perm Sec to discuss with WG HR Director ● Perm Sec to seek views from Chair of WG RemCom and Chair of WG ARAC ● Perm Sec to alert Cabinet Secretary and First Minister of request

	<ul style="list-style-type: none"> • WG HR team to liaise with Cabinet Office HR team • Perm Sec to complete partial retirement request form and submit to HR director for employer approval • Request submitted to MyCSP
<i>*Annual update provided to RemCom</i>	

PERFORMANCE

Aspect / Action	Communication / Approval
Managing Perm Sec performance process on an ongoing basis	<ul style="list-style-type: none"> • WG HR Director, liaising with Chair of WG RemCom to capture any perceived issue and inform Cabinet Secretary
Permanent Secretary annual performance review	<ul style="list-style-type: none"> • Cabinet Office write annually to confirm process • Chair of WG RemCom collates feedback for Cabinet Secretary, including contribution from HR Director • Cabinet Secretary undertakes performance review
Complaint made about Perm Sec conduct or Perm Sec raising a complaint	<ul style="list-style-type: none"> • Complaint raised with Cabinet Secretary and action managed by Chair of WG ARAC, working with Director of Propriety and Ethics in line with WG Dignity at Work policy
<i>RemCom to be updated</i>	

PAY, REWARD AND PENSION (AG is a secondee and not on WG payroll – see annex 1)

Aspect / Action	Communication / Approval
Basic pay on appointment for internal and external candidates / annual pay <i>(refer to annex 1 on actioning secondments)</i>	<ul style="list-style-type: none"> • Perm Sec pay tiers set centrally based on weight and complexity of role. Cabinet Secretary and Head of Civil Service decide which tier each role sits in – applies to internal and external candidate on appointment • Chief Secretary to the Treasury (CST) signs off

	<ul style="list-style-type: none"> ● Perm Sec salary reported in annual accounts and pay policy statement
Performance related pay	<ul style="list-style-type: none"> ● Cabinet Office Perm Sec bonus committee consider performance and award an in-year and / or end-year bonus if applicable. WG Perm Sec will not accept a bonus even if offered one in line with Welsh Ministers views
Capability Based Pay (CBP)	<ul style="list-style-type: none"> ● CBP currently not confirmed at Perm Sec level – awaiting further information from Cabinet Office
Pension arrangements	<ul style="list-style-type: none"> ● Perm Sec is responsible for own pension arrangements but is able to access the same support as other staff, e.g. specialist pension tax advice. Arrangements for partial retirement outlined above. ● Perm Sec pension value and growth reported in annual accounts as part of total remuneration
Tax arrangements	<ul style="list-style-type: none"> ● Perm Sec is responsible for own tax arrangements. PAYE if paid through payroll.
<p><i>Perm Sec pay details published in annual accounts and pay policy statement. Also reported to Cabinet Office in SCS annual return and high earners reporting (latter published on gov.uk)</i></p>	

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LEAVING THE ORGANISATION	
Aspect / Action	Communication / Approval
Perm Sec death in service	<ul style="list-style-type: none"> ● WG HR Director to discuss cover arrangements with FM and Cabinet Secretary ● WG HR Director to update Chair of WG RemCom and to engage Cabinet Secretary ● WG HR team to liaise with Cabinet Office HR team

<p>Perm Sec resignation or retirement from organisation before contract end</p>	<ul style="list-style-type: none"> ● Perm Sec to discuss with WG HR Director and Cabinet Secretary ● Perm Sec to write to WG HR Director and Cabinet Secretary (copy to CO HRD) ● WG HR team to liaise with Cabinet Office HR team ● FM informed ● Chair of RemCom and Chair of ARAC informed
<p>Perm Sec end of contract</p>	<ul style="list-style-type: none"> ● Initial end of contract discussion one year before end date between WG HR Director and Perm Sec and Perm Sec to discuss outline plans with Cabinet Secretary ● WG HR team to liaise with Cabinet Office HR team ● CO HRD to start replacement process 9 months before end date following discussion with FM and Cabinet Secretary ● Cabinet Secretary discussion with Perm Sec on their wishes and plans 6-9 months before end of tenure - Cab Sec will seek the views of Chair of WG RemCom before seeking the FM's approval (and informing the PM) ● Stocktake by Perm Sec's office 6 months prior to end date of leave, banked leave etc. – update to be provided to WG HR Director and CO HRD
<p>Payments due on exit (e.g. any banked leave, if payment in lieu of notice is appropriate etc)</p> <p><i>(in the exceptional case of a special severance payment, the requirements of 'Managing Welsh Public Money' would also be followed)</i></p>	<ul style="list-style-type: none"> ● If appropriate and relevant, proposal to be developed by WG pay team on advice of HR Director ● WG HR Director to consult Cabinet Office HR team on proposal – CO HR to advise on appropriate approval routes ● Payment proposal to be considered by Director of Propriety and Ethics and a recommendation made to Chair of RemCom ● Chair of WG RemCom endorsement required ● FM briefed by WG HR Director
<p style="text-align: center;"><i>RemCom briefed on leaving arrangements and any exit payment</i></p>	

OFFICIAL: SENSITIVE
To be reviewed 1 April 2023

STATUS: signed off by CO HR and WG HR 29.09.2022
Endorsed by Chair of WG RemCom 30.09.2022
Endorsed by Chair of WG ARAC 30.09.2022

General principles:

If an eventually arises that is not already documented or written into policy, the WG HR Director would develop a proposal in liaison with Director of Propriety and Ethics and CO HRD for discussion and endorsement by the Chair of WG RemCom and Chair of WG ARAC (proposal would outline any additional approval routes needed). Consideration to be given on whether FM and / or Cabinet Secretary agreement is needed depending on the nature of the development.

Annex 1: Actioning Secondments at all grades

All secondment agreements are drafted using a standard template. There are a number of mandatory paragraphs included in the agreement which protect both parent and host organisation, and other areas where we include information relevant to the specific secondee e.g. salary, terms of appointment (fair and open or direct) etc.

We ask for confirmation of salary from the parent organisation at the point of drafting the agreement, which is then sent to the parent organisation for approval and eventual sign off. For Permanent Secretary appointments, there would be liaison with Cabinet Office on salary and T&C prior to approval and sign off*.

We do not review secondment agreements or update them to reflect salary changes after all parties have signed the agreement. We are invoiced for salary payment by the parent department and any uplift of salary awarded by the parent organisation would be included in the monthly invoice received.

Salary ranges and salary increases if a Permanent Secretary is a secondee

*If a Permanent Secretary is a secondee, the appropriate approval route of salary range will be agreed between the WG HR team and the CO HR team on appointment. The individual will alert the Welsh Government HR team and Cabinet Office HR team of any salary uplift or pay award made by the parent organisation during the secondment term, at the point it is made. The outcome of that discussion should be documented, and the individual's personal HR file will be updated accordingly.