

Agenda – Public Accounts and Public Administration Committee

Meeting Venue:	For further information contact:
Committee Room 5	Fay Bowen
Meeting date: 2 March 2023	Committee Clerk
Meeting time: 09.30	0300 200 6565
	SeneddPAPA@senedd.wales

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

- 1 Introductions, apologies and substitutions**
(09:30)
- 2 Scrutiny of the Welsh Governments Annual Report and Accounts
2021–22 – Evidence Session – part 1**
(09:35 – 10:35) (Pages 1 – 35)
Dr Andrew Goodall – Permanent Secretary
Tim Moss – Chief Operating Officer
Gawain Evans – Director, Finance
Sally–Ann Efstathiou – Deputy Director, HR Operations & Performance
- (Break)**
(10:35 – 10:45)
- 3 Scrutiny of the Welsh Governments Annual Report and Accounts
2021–22 – Evidence Session – part 2**
(10:45 – 11:45)
Dr Andrew Goodall – Permanent Secretary
Tim Moss – Chief Operating Officer
Gawain Evans – Director, Finance
Sally–Ann Efstathiou – Deputy Director, HR Operations & Performance



4 Papers to note

(11:45 – 11:50)

4.1 Letter from the Chief Executive and Clerk of the Senedd – Public Accounts and Public Administration Committee Report on the Scrutiny of Accounts 2021–22

(Pages 36 – 45)

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

(11:50)

The remainder of the meeting.

6 Scrutiny of the Welsh Governments Annual Report and Accounts 2021–22 – Consideration of the evidence received

(11:50 – 12:15)

7 Supplementary Legislative Consent: Procurement Bill

(12:15 – 12:35)

(Pages 46 – 86)

8 Draft Report – Scrutiny of the Welsh Government Accounts 2020–21

(12:35 – 12:55)

(Pages 87 – 144)

Document is Restricted

Mark Isherwood MS
Chair of Public Accounts and Public Administration Committee
Senedd Cymru
Tŷ Hywel
Cardiff Bay
CF99 1SN

16 February 2023

Dear Mark,

Public Accounts and Public Administration Committee Report on the Scrutiny of Accounts 2021-22.

I am writing in response to the **Public Accounts and Public Administration Committee report on the Scrutiny of Accounts 2021-22**. I would like to thank the Committee for its scrutiny.

The Commission notes that the Committee is pleased to hear that its underspends are subject to rigorous evaluation, with reinvestment being allocated to improve services for staff and members and notes that the Committee is also pleased to hear about the YMLAEN initiative.

We are proud that, although there is some way to go, the report highlights the progress that is being made in making the Senedd a more diverse representation of modern Wales. I can assure the Committee that the Commission will continue to evaluate its recruitment campaigns with a view to expanding their aims and adding to the diversity of its staff.

I would like to take this opportunity to assure the Committee that we remain as committed as ever to providing greater clarity and assurance through external scrutiny and audit as well as through our internal governance framework. We have committed to a review into the effectiveness of the Commission's response to the COVID-19 pandemic and will share a copy of this review with the Committee.



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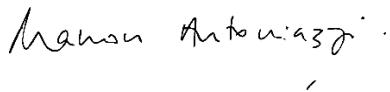
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Your Committee's recommendations concerning the Commission are addressed in full in the attached Annex. If you would like any further information on any matter covered in the Annex, please do not hesitate to let me know.

The Commission's approach is always to try to operate with openness, transparency and clarity. As ever, if there is any further information your Committee would like, please let me know.

Yours sincerely,



Manon Antoniazzi

Prif Weithredwr a Chlerc y Senedd / Chief Executive and Clerk of the Senedd

Croesewir gohebiaeth yn Gymraeg neu Saesneg. We welcome correspondence in Welsh or English.



Annex 1

Public Accounts and Public Administration Committee Report on the Scrutiny of Accounts 2021-22

Recommendation 1. The Committee would like to hear from the Commission on an annual basis with a breakdown of the projects actioned as part of the project fund and the funding allocated to these individual projects. This information should be provided ahead of the Committee's annual scrutiny of the Commission's Accounts.

Accepted

We welcome the Committee's scrutiny and request for further information on the Commission's project fund expenditure and its funding.

The Commission will provide the Committee with a letter, following the end of the 2022-23 financial year, outlining the breakdown of the projects actioned as part of the project fund and the funding allocated to these individual projects. We will also provide additional information, where necessary, to provide the required transparency in advance of the annual scrutiny session in Autumn 2023.

Recommendation 2. The Commission should keep the Committee updated about the work of the Risk Assurance Committee specifically in relation to future planning around Senedd reform, with a particular focus on future staffing and funding considerations.

Accepted

We agree with the Committee's observation that it considers the work of the Audit and Risk Assurance Committee (ARAC) to be of vital importance and we will provide the Committee with an update of ARAC's work, specifically in relation to future planning around Senedd Reform, in advance of the annual scrutiny session in Autumn 2023.

Recommendation 3. The Committee recommends that the Commission provide an update to the Committee, ahead of the scrutiny of next year's Accounts, of the learnings from the review of the effectiveness of their response to the COVID-19 pandemic. The update should include details about how efficiencies, costs, and savings from changes to ways of working and how services were delivered during the pandemic have been incorporated into current practices, and how these savings have been made recurrent.



Accepted

We note that the Committee would welcome a copy of the review and we agree to provide the Committee with an update on the Commission's learnings from the review of the effectiveness of its response to the COVID-19 pandemic, in advance of the annual scrutiny session in Autumn 2023.

Recommendation 4. The Commission should continue providing details about contract awarded to Welsh suppliers by the Commission. The Committee requests that this information be provided by size of contract in the future, to include contracts up to £10,000, between £10,000 and £50,000, between £50,000 and £100,000 and in excess of £100,000.

Accepted

We agree to provide the Committee with an update, in advance of the annual scrutiny session in Autumn 2023, on progress in this area.

Recommendation 5. The Commission should share a summary of the results of each pulse survey, when available, with the Committee with a focus on mental ill health, indices of mental ill health and staff absences more generally. The Committee also looks forward to reviewing the results of the annual staff survey for 2022.

Accepted

We agree to share a summary of the results of the next pulse survey and the results of the next staff survey, once these are available in early/mid-2023.

Recommendation 6. The Committee encourages the Commission to share updates, as and when they arise, of staff recruitment projects aimed at increasing the diversity of the organisations as a whole, as well as updates on the progress of the YMLAEN project, amongst others.

Accepted

We agree to provide the Committee with updates, as and when they arise and in advance of the annual scrutiny session in Autumn 2023, on progress in this area.



Recommendation 7. Data in relation to engagement during 2021-22 should be shared with the Committee, to evaluate the impact of online engagement tools. The Commission should provide a breakdown of the types of engagement activity with the Committee and the parts of Wales who are engaging or visiting the Senedd.

Accepted

The following table provides information on the types of engagement activity and the parts of Wales that are engaging with or visiting the Senedd during 2021-22.

The data provided shows the different types of engagement activity delivered during this period, the number of sessions held, and participants. This period includes the lead up to the Senedd Election, and the need to diversify our offer due to restrictions imposed as result of the pandemic, which impacted our services in different ways. The transition from the 5th to the 6th Senedd also meant that the amount of activity to directly support committees (through the Citizen Engagement Team) is lower than it would be in other financial years because of the time it took for committees to set up and conduct their strategic planning work before deciding what scrutiny work to undertake.

We were able to successfully adapt our offer to deliver online engagement and engage with large numbers of people across all local authority areas at a very challenging time. We have taken the learning from this period to provide a more varied offer now that restrictions have lifted, and are able to utilise in person, hybrid, and fully online means to engagement and participation to best fit the need of the project, and the audiences we are aiming to engage, which helps us provide more accessible options to the public.

We will continue to develop our engagement offer over the coming months by sourcing online engagement tools that will provide digital forums for the public to engage and feed into the work of our committees and be able to maintain contact with groups and individuals in a more secure manner for on-going, longer-term engagement.



Manon Antoniazzi

Prif Weithredwr a Chlerc y Senedd
 Chief Executive and Clerk of the Senedd

Engagement type	Number of sessions / events online	Number of sessions / events in person	Number of participants / visitors online	Number of participants in person / visitors
Citizen Engagement (including focus groups, interviews and events)	92	11	274	119
Education and Youth Engagement (workshops, presentations, and events)	283	20	37,882	851
Community Engagement	19	0	308	0
Senedd Tours (including 'introduction to your Senedd session' and pre-booked tours)	86	23 (They started again on the w/c 14 March 2022)	537 for online presentations 1,629 (Unique views of virtual 360 tour of the Senedd)	566
Senedd Visitors	N/A	N/A	N/A	6,463

MS Sponsored Events	7 (hybrid and online)	34 (started again in November 2021)	214	1,077
Commission Sponsored Events	2	2	100	100

Local Authority Area (of the group, or where the session was held in person)	Citizen Engagement	Education & Youth Engagement	Community Engagement	Senedd Tours / sessions	Senedd Visitors*	MS Sponsored Events	Commission Sponsored Events	Total
Activity held at the Senedd	1	14	0	23	-	34	2	74
Wales wide (including online/hybrid events open to all)	39	35	12	86 online sessions	-	7	2	181
Groups from outside of Wales	0	2	0	2	-	-	-	4
Blaenau Gwent	1	1	0	0	-	-	-	2

Bridgend	2	6	0	0	-	-	-	8
Caerphilly	4	18	0	1	-	-	-	22
Cardiff	18	30	2	4	-	-	-	54
Carmarthenshire	0	3	0	0	-	-	-	3
Ceredigion	1	10	0	0	-	-	-	11
Conwy	3	45	1	0	-	-	-	49
Denbighshire	1	12	0	0	-	-	-	13
Flintshire	2	7	1	0	-	-	-	10
Gwynedd	0	22	0	0	-	-	-	22
Isle of Anglesey	4	7	0	0	-	-	-	9
Merthyr Tydfil	1	4	0	0	-	-	-	5
Monmouthshire	0	9	0	0	-	-	-	9

Neath Port Talbot	0	11	0	1	-	-	-	12
Newport	7	26	0	2	-	-	-	35
Pembrokeshire	1	4	1	1	-	-	-	7
Powys	3	5	0	0	-	-	-	8
Rhondda Cynon Taf	7	6	0	0	-	-	-	13
Swansea	5	5	0	0	-	-	-	10
Vale of Glamorgan	0	5	0	0	-	-	-	5
Torfaen	0	4	0	1	-	-	-	5
Wrexham	3	28	0	1	-	-	-	32

* (data capture began in July 2022)

Unique visits to visit webpages	12,858
Likes / followers of Visit social media Facebook	2,812
Followers of Visit social media Twitter	2,741
Followers of Visit social media Instagram	3,348
Number of profile views across three platforms	46,188
Number of Impressions / Reach to all posts (number of views)	857,768

Agenda Item 7

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 5)

Procurement Bill

1. This legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that an LCM must be laid before Senedd Cymru if a UK Parliamentary Bill makes “relevant provision” (that is to say provision in relation to Wales for any purpose within the legislative competence of the Senedd, or which modifies the legislative competence of the Senedd) or if a UK Parliamentary Bill, by virtue of amendments tabled by a Minister of the Crown or published with the name of a Minister of the Crown in support, in either House, makes (or would make) relevant provision for the first time or beyond the limits of any consent previously given by 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. On 6 December I laid a [supplementary LCM \(Memorandum No 3\)](#), following amendments tabled by the UK Government for consideration at Lords Report Stage which commenced on 28 November and ran until 30 November.
5. On 19 December I laid a [supplementary LCM \(Memorandum No 4\)](#), following non-government amendments agreed at Lords Report Stage which commenced on 28 November and ran until 30 November.
6. The UK Government has tabled amendments for consideration at House of Commons Committee stage which began on 31 January 2023. The tabled amendments can be found at: https://publications.parliament.uk/pa/bills/cbill/58-03/0218/amend/procurement_rm_pbc_0125.pdf. The clauses referred to in this supplementary LCM are as set out in the Bill as brought from the House of Lords published on 14 December. This version of the Bill can be found at: <https://publications.parliament.uk/pa/bills/cbill/58-03/0218/220218.pdf>

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 4) laid on 19 December

12. I laid a supplementary LCM on 19 December. It covered the six non-government amendments agreed at Lords Report Stage, the majority of

which made provision falling within the legislative competence of the Senedd.

13. UK Government tabled further amendments for consideration at House of Commons Committee Stage on 25 January. These amendments, 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 House of Lords Report Stage.
14. 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. The majority of these areas have been resolved, including the following:
 - Amendment to the definition of WCAs: An amendment to the definition of a WCA was being sought so that it is clear which provisions apply to cross-border procurements. The terms of the amendment have now been agreed and are included at amendments 66 and 67 (see paragraph 18.16 below for further information).
 - Powers to make consequential provision: The Bill provided for concurrent powers with no requirement to obtain the consent of the Welsh Ministers when UK Government Ministers are exercising this power in relation to devolved areas. The Cabinet Office has agreed to our request for concurrent plus powers, which means consent will need to be obtained in these circumstances. The amendment number is 68 (see paragraph 18.17 below for further information).
 - Commencement Powers: the Cabinet Office has agreed to table an amendment to this clause which would ensure a Minister of the Crown obtains the consent of the WMs before commencing the Bill's provisions which regulate procurement by a devolved Welsh authority.
15. The following matters of concern 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 it is expected that the

outcome of those discussions will be reflected in the Procurement Bill.

- A new matter of concern has arisen as a result of one of the amendments tabled by the UKG on 25 January (see paragraph 18.12 below for further information). It relates to trade disputes whereby a MoC can make regulations to deal with the procurement consequences of a trade dispute under a treaty implemented by way of Schedule 9 (other than the Trade and Cooperation Agreement with the EU, which is dealt with under existing legislation). This power is therefore 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.

Provisions tabled by the UK Government to the Bill for consideration at House of Commons Committee stage for which consent is required

16. The amendments outlined in paragraphs 18.1 to 18.19 and 19.1 have been tabled by the UK Government for consideration at House of Commons Committee Stage. With the exception of the amendments to clause 107 (see paragraph 17 below), these amendments are considered to be for a purpose within the legislative competence of the Senedd and are therefore “relevant provisions” for purposes of SO 29.
17. The amendments to clause 107 (see 18.16) are not within the legislative competence of the Senedd to the extent that they make provision for the purpose of regulating contracting authorities which operate or whose functions are exercisable otherwise than in relation to Wales. However, the provision made by the amendments does relate to devolved matters in so far as it only applies in relation to contracting authorities whose activities are wholly or mainly activities that do not relate to reserved matters or whose functions are wholly or mainly functions that do not relate to reserved matters. This does not alter the conclusion in the legislative consent memorandum laid on 9 June 2022 that this clause contains provision which is within the legislative competence of the Senedd and is therefore relevant provision for the purposes of SO 29.

18. Amendments tabled on 25 January

18.1. Debarment list (3 amendments to clause 62)

Amendment 42 would make clearer that each entry onto the debarment list will relate to one exclusion ground and as such, could be challenged individually by the supplier.

Amendment 43 would ensure that an application for interim relief (see 18.3) would suspend the Minister's decision to add a supplier's name to the debarment list.

Amendment 44 would limit the amendments a Minister of the Cabinet Office could make to an entry on the debarment list, ensure that a Minister of the Cabinet Office can voluntarily suspend a decision to add an entry to the debarment list in light of an appeal, and clarify that a Minister of the Cabinet Office can remove an entry where the particular exclusion ground does not apply (even if there are other entries relating to the supplier on the list).

18.2. Debarment list: application for removal (3 amendments to clause 63)

Amendment 45 would ensure suppliers can apply to change the date indicating when it will cease to be an excluded or excludable supplier.

Amendment 46 links with the first amendment to clause 62 in paragraph 18.1. It would allow for the fact that a supplier may make separate applications should they have more than one entry on the debarment list.

Amendment 47 is a consequential amendment which would allow challenges of the date indicating when it will cease to be an excluded or excludable supplier as stated under clause 62

18.3. Debarment decisions – interim relief (NC 9)

This new clause would allow suppliers to apply to suspend a Minister's decision to add their name to the debarment list. If the decision is suspended, the supplier will not be able to be excluded from any procurements on the basis of the debarment list until the suspension is lifted.

18.4. Debarment decisions: appeals (amendment to clause 64)

Amendment 48 would amend clause 64 to replace a power to make provision about appeals with detailed provision for their operation.

Other amendments relating to debarment appeals

Amendment to clause 97. This amendment would ensure that challenges to debarment decisions are dealt with under section 64 (debarment decisions: appeals).

Amendment to clause 118. This amendment is consequential on the deletion of the power to make provision about debarment appeals

18.5. Reduced time periods for utilities and sub central entities (amendment to clause 54)

Amendment 34 will permit sub central authorities and utilities to use significantly shorter than usual time periods for returning tenders when using the competitive flexible tendering procedure. This flexibility is currently included in the existing procurement legislation.

Amendments 35 and 36 define terms used in Amendment 34

18.6. Contract Change Notices (amendment to clause 74)

Amendment 54 will remove the contradiction in the Contract Change Notice clause regarding light touch contracts. The effect of the amendment will ensure that all light touch contracts are exempt from the requirement to publish a contract change notice.

18.7. Publication of Modifications (amendment to clause 76)

Amendment 55 will ensure that the provisions on publication of modifications only apply when a contract change notice should be published and the underlying contract value is over £5M (whether before or after the amendment is made). This clause continues to exempt WCAs from the requirement to publish contract modifications, unless the contract was awarded as part of a procurement under a reserved procurement arrangement.

Amendments 56 to 58 are consequential on amendment 55

18.8. Concessions payment notices (clause 68)

Amendment 53 would exempt all CAs from publishing payment notices relating to concession contracts. This minor technical amendment aligns with the scope set out in clause 67, implied payment terms in public

contracts (from which concession contracts are excluded) and brings consistency across the payment clauses.

18.9. Abnormally low tenders (clause 19)

It is intended that CAs should be able to exclude abnormally low tenders. Currently the Bill purports to allow for a CA to consider that a tender is unsuitable if the price is abnormally low when switching to a direct award (see clause 43(2)(c)), however no specific provision is included that allows for a tender to be excluded due to an abnormally low price. The effect of amendment 30 is therefore to add explicit provision to the Bill to allow contracting authorities to disregard tenders offering an abnormally low price. Amendment 31 would require CAs to notify suppliers of the fact that the CA considers the price to be abnormally low and give suppliers reasonable opportunity to demonstrate that it is workable before disregarding their tender.

18.10. Technical Specifications (clause 56)

Amendments 37 to 41 will allow CAs to refer to a UK standard if the standard adopts an internationally recognised equivalent. It clarifies how a CA assesses whether tenders, proposals or applications satisfy equivalent standards to UK standards. The amendment removes the definition of standard and clarifies the definition of United Kingdom standard.

These amendments widen the scope to capture anything a CA requires to ensure their standard is appropriate.

18.11. Electronic Communications Systems (clauses 66, 67 and 94)

Amendment 50 would amend Clause 66 to ensure that CAs can require the use of a particular system in relation to electronic invoices. Also, that a CA which is a defence authority can require that the system requires the payment of fees by the supplier.

Amendments 51 and 54 would amend Clause 67 to clarify the meanings of 'electronic invoice' and 'required electronic form' to ensure consistency with clause 66. These amendments would also clarify that a reference to a contracting authority receiving an invoice for the purposes of clause 67 includes receiving an electronic invoice through a system specified in the contract.

There are four amendments to clause 94 (amendments 61 to 64):

Amendment 61 would ensure that the requirement for electronic systems is restricted to covered procurements.

Amendment 62 would create an exception to this where a contracting authority can charge suppliers where those systems are used **after** award of a public contract or in relation to a utilities dynamic market.

Amendments 63 and 64 would extend the security risk exemption to the whole clause, with the result that if a contracting authority considers an electronic communication system – or the use of one – poses a security risk, then the requirements of the clause do not apply.

18.12. Trade Disputes (new clause 11)

This clause includes the power to make regulations to deal with the procurement consequences of trade disputes, which arise from a treaty listed in Schedule 9 (other than the Trade and Cooperation Agreement with the EU, which is dealt with under existing legislation). This power is conferred on an appropriate authority which includes the Welsh Ministers.

Amendment 69 will amend clause 109 to allow a Minister of the Crown to exercise the trade dispute power under NC11 in relation to devolved Welsh authorities and transferred Northern Ireland authorities.

The effect of this amendment is that a MoC is able to exercise this power without obtaining the consent of Welsh Ministers which is unacceptable to the Welsh Ministers.

Amendment 79 will amend clause 118 to ensure that the making of the regulations by Welsh Ministers under this new clause will be subject to the affirmative procedure. It will therefore be subject to Senedd scrutiny.

18.13. Reserving contracts for supported employment providers (clause 32)

Amendments 32 and 33 would amend clause 32 to ensure that an organisation could meet the test of “supported employment provider” if part of the organisation meets that test and that part is to perform the contract, or the test is met by the combined workforce of organisations or parts of organisations that will together perform the contract.

18.14. Schedule 2 (Exempted contracts) – amendment to application of exception in paragraph 1(2)

Amendment 85 will amend Schedule 2 to make clear that contracts which fall within the exemption for vertical and horizontal arrangements (currently paragraphs 2 and 3) are always exempted from being public contracts and therefore exempt from the requirements of the Bill. Certain defence and security contracts (those which fall within the current paragraph 25) and certain utilities contracts (those which fall within the current paragraphs 31 and 32) will also be always exempt. The contracts which are always exempt will be contained in the new Part 1 of Schedule 2.

Amendment 86 would create a new Part 2 named "Subject-Matter Exempted Contracts". This retains the original requirement for Contracting Authorities to consider if any of the goods, services or works representing the main purpose of the contract could be reasonably supplied under a separate contract, and whether that contract would be an exempt contract. This allows a determination to be made as to whether the contract should be an exempted contract. An example of what is considered reasonable is now provided within the amendment, which includes consideration of the practical and financial consequences of awarding more than one contract.

18.15. Power to amend KPI thresholds (clause 52) to be subject to the affirmative procedure

Amendment 78 will amend Clause 118 (Regulations) to ensure that when there is an amendment to the KPI thresholds in regulations made by Welsh Ministers under clause 52, the making of the regulations will be subject to the affirmative procedure rather than the negative procedure. It will therefore be subject to Senedd scrutiny.

18.16. Amendment to the definition of WCAs (clause 107)

The provisions of clause 107 which relate to CAs which are treated as devolved Welsh authorities for the purpose of the Act will be amended to ensure that the Welsh rules apply to such authorities if they operate or exercise functions wholly or mainly in relation to Wales.

Amendment 66 would mean that a public undertaking or private utility that operates "wholly or mainly in relation to Wales" will be treated as a devolved Welsh authority.

Amendment 67 would mean that a contracting authority whose functions are exercisable "wholly or mainly in relation to Wales" will be treated as a devolved Welsh authority regardless of the subject-matter of a particular procurement.

18.17. **Powers to make consequential provision (clause 109)**

Amendment 68 will amend Clause 109 such that a Minister of the Crown could not make consequential provision under clause 121 for the purpose of regulating a devolved Welsh authority without the consent of Welsh Ministers.

18.18. **Schedule 7**

Amendment 88 would insert a definition of “event” for the purposes of paragraph 16 of Schedule 7.

18.19. **Amendments overturning non-government amendments agreed during House of Lords Report Stage**

There are a number of amendments which overturn the non-government amendments agreed during the House of Lords Report Stage.

To the extent that these amendments remove provision which was considered to be within the legislative competence of the Senedd, it is considered that these amendments are also within legislative competence and therefore make relevant provision for the purposes of SO 29.

The amendments which make relevant provision are as follows:

- Amendment 27: Amendment to clause 2 (contracting authorities) to remove the words “including the NHS” in the definition of “public authority” in clause 2(2).
- Amendments 28 and 29: Amendments to clause 13 (the national procurement policy statement) to remove subsection (3) and (4).
- Amendment 49: The removal of clause 65 (Timeline for removal of suppliers).
- Amendment 87: The removal of paragraph 15 of Schedule 7 (Involvement in forced organ harvesting).

19. **Amendments tabled on 2 February 2023**

19.1 **Commencement (clause 123)**

Amendment 115 would amend clause 123 to make commencement of devolved Welsh aspects of the Bill subject to the consent of the Welsh Ministers.

In the event that such consent was refused, the amendment would make provision to allow UK Ministers to amend the Act resulting from this Bill

so that the Act no longer applies in respect of devolved Welsh procurement and could be commenced without the consent of Welsh Ministers.

Amendment 113 would amend clause 107 (Welsh Ministers: restrictions on the exercise of powers). This amendment is consequential on amendment 115.

Reasons for making these provisions for Wales in the Procurement Bill

19. 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

20. 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.
21. The proposed amendments will not levy any additional financial implications on Welsh Government or the wider Welsh Public Sector.

Conclusion

22. 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.
23. I consider the majority of the proposed amendments to be reasonable. Now that the majority of issues of concern have been resolved, I recommend consent to the core procurement elements of the Bill, which represent the majority of the Bill. However, I recommend that consent is withheld for the areas of the Bill which concern international trade, for the reasons outlined in paragraph 15.

Rebecca Evans MS
Minister for Finance and Local Government
6 February 2023

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>

Bill (as brought from the House of Lords) on 14 December 2022:

<https://publications.parliament.uk/pa/bills/cbill/58-03/0218/220218.pdf>

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16	Preliminary market engagement notices	16	17
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Clause number on introduction	Clause description	Clause as amended in Grand Committee	Clause as brought from the HOL
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