

Agenda – Health and Social Care Committee

Meeting Venue:

[INSERT LOCATION]

Meeting date: 7 June 2023

Meeting time: 09.00

For further information contact:

Helen Finlayson

Committee Clerk

0300 200 6565

SeneddHealth@senedd.wales

Private pre-meeting

(09.00–09.15)

1 Introductions, apologies, substitutions and declarations of interest

(09.15)

2 Papers to note

(09.15)

2.1 Letter from the Minister for Health and Social Services regarding the Health Service Procurement (Wales) Bill

(Pages 1 – 2)

2.2 Letter from the Minister for Health and Social Services to the Finance Committee regarding the Health Service Procurement (Wales) Bill

(Pages 3 – 6)

2.3 Letter from the Minister for Health and Social Services to the Legislation, Justice and Constitution Committee regarding the Health Service Procurement (Wales) Bill

(Pages 7 – 10)

2.4 Response from the Minister for Health and Social Services to the Committee's report on the Health Service Procurement (Wales) Bill

(Pages 11 – 17)

2.5 Letter to UK Parliament Committees and Welsh MPs regarding the Health Service Procurement (Wales) Bill

(Pages 18 – 19)



**2.6 Letter from the Minister for Health and Social Services regarding Stage 2
Welsh Government amendment to the Health Service Procurement (Wales) Bill**
(Pages 20 – 22)

3 Health Service Procurement (Wales) Bill: Stage 2 proceedings
(09.15–11.00)

The Health and Social Care Committee agreed on 10 May 2023, under Standing Order 26.21, that the order of consideration for Stage 2 proceedings would be: sections 2 to 5; section 1; Long Title.

Attending on behalf of the Welsh Government will be:

Eluned Morgan MS, Minister for Health and Social Services

Dafydd Evans, Deputy Director, Life Sciences and Innovation, Welsh
Government

Leanne Roberts, Head of Procurement Reform Policy, Health and Social Care,
Welsh Government

Mari Williams, Senior Government Lawyer, Welsh Government

Lowri Lewis, Government Lawyer, Welsh Government

Supporting documents:

[Marshalled List of Amendments](#)

[Groupings of Amendments](#)

[Health Service Procurement \(Wales\) Bill \(as introduced\)](#)

[Explanatory Memorandum](#)



Llywodraeth Cymru
Welsh Government

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Russell George MS
Chair, Health and Social Care Committee
Senedd Cymru
Cardiff
CF99 1SN

SeneddHealth@senedd.wales

5 May 2023

Dear Russell,

Thank you for the opportunity to provide evidence to the Health and Social Care Committee on the 30 March in respect of the Health Service Procurement (Wales) Bill.

I have taken the opportunity to consider the transcript of the session, where a number of questions were raised by Committee Members to explore the provisions in the Bill for transparency and competitive tendering as part of the proposed new health service procurement regime in Wales.

Paragraphs 145-146 and 176-177 of the transcript detail the discussion on the steps that will need to be followed as part of a competitive tendering exercise under the future procurement regime, and in particular, how these matters are addressed on the face of the Bill.

I would like to provide clarity on how the Bill will address this matter.

Section 10A(2) of the NHS (Wales) Act 2006, as would be inserted by section 3(2) of the Bill, includes a provision to ensure that the future regulations must specify the steps to be taken when following a competitive tendering process. In addition, section 10A(3) states that future regulations must make provision for the purposes of ensuring key procurement principles of transparency and fairness, as well as ensuring compliance can be verified and manage conflicts of interest.

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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.

As such, the face of the Bill itself does not set out the detailed steps that 'relevant authorities' need to take when following a competitive tendering process and ensure transparency under the proposed new procurement regime – these steps will be included as part of the detail in the future regulations. Having reviewed the transcript of the session and responses to these matters, I wanted to take the opportunity to clarify these points for accuracy.

If there are any further questions or areas requiring clarification, my officials and I are happy to provide information as necessary to support the Bill as it navigates the Senedd scrutiny process.

I am copying this letter to the Chair of the Legislation, Justice and Constitution Committee and Chair of the Finance Committee for information.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

Minister for Health and Social Services



**Llywodraeth Cymru
Welsh Government**

Ein cyf/Our ref : MA-EM -1104-23

Peredur Owen Griffiths MS

Chair, Finance Committee

5 May 2023

Annwyl Peredur,

I refer to the Finance Committee's report published on the 25 April with their findings and recommendations as part of Stage 1 scrutiny of the Health Service Procurement (Wales) Bill.

I would like to express my thanks to the Committee for scrutinising the Bill and it's supporting documentation.

I have carefully considered the report and have set out in Annex A my responses to the committee's recommendations in advance of the Stage 1 General Principles Debate on the 10 May.

Yn gywir

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

Minister for Health and Social Services

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ANNEX A

HEALTH SERVICE PROCUREMENT (WALES) BILL

WELSH GOVERNMENT RESPONSE TO THE FINANCE COMMITTEE'S STAGE 1 SCRUTINY REPORT 25 APRIL 2023.

Recommendation 1: The Committee recommends that the Welsh Government provides an assessment of the risks and financial impact of temporarily having two different health service procurement regimes operating in England and Wales

Response: ACCEPT IN PRINCIPLE

At the time of producing the Explanatory Memorandum and Regulatory Impact Assessment to support the introduction of the Bill it was not considered practicable to attempt to undertake a full detailed financial assessment of the proposed new health service procurement regime. This is because, without knowing the full extent of the required changes to existing procurement procedures, governance and regimes as a result of the Bill; the health services in scope and the way they are currently procured between the NHS and local authorities in Wales, it is not possible to quantify the financial impact of the new regime in an accurate and meaningful way.

The information in the Explanatory Memorandum and Regulatory Impact Assessment therefore set out a 'best estimate' of the financial impacts of the Bill and the introduction of a new procurement regime for health services in Wales, based on the best available evidence and information at that point in time.

Therefore, it is considered that this is also the case when seeking to assess the risks and financial impacts of temporarily having two different health service procurement regimes operating in England and Wales.

In noting the committee's recommendation around this, my officials will continue to work with the 'relevant authorities' and stakeholders that that will be affected by the introduction of the Bill, to explore if the impact of temporarily having two different health service procurement regimes operating in England and Wales can be meaningfully quantified. In any event, my officials will seek to provide the best available evidence and as much information as practically possible on the financial impacts and present as part of our commitment to undertake a full Regulatory Impact Assessment for the future regulations.

Recommendation 2: The Committee recommends that the Welsh Government provides a full and robust Regulatory Impact Assessment for any regulations made as a result of the Health Service Procurement (Wales) Bill and that sufficient time is provided to allow the Senedd to consider any related financial implications that will arise.

Response: ACCEPT

Following on from the response above in Recommendation 1 and in line with requirements under Standing Order 27 of the 'Standing Orders of the Welsh Parliament' and the policy set out in the Welsh Ministers' RIA Code for Subordinate Legislation, we are fully committed to undertaking a Regulatory Impact Assessment, using the best available evidence to include within the Explanatory Memorandum that will accompany the future regulations.

The proposed future regulations will follow the 'draft affirmative process', allowing the Senedd the appropriate timeframe to consider the draft regulations and supporting documentation, including the Regulatory Impact Assessment.

Recommendation 3: The Committee recommends that the Welsh Government provides information on how it will explore with stakeholders:

- ***the estimated familiarisation and implementation costs to local authorities and service providers,***
- ***the estimated cost savings to procuring authorities, providers and service users, and***
- ***the ongoing costs of the new regime.***

Response: ACCEPT IN PRINCIPLE

As outlined in Recommendation 1 above, the Explanatory Memorandum and Regulatory Impact Assessment produced when introducing the Bill, set out a 'best estimate' of the financial impacts of the Bill.

It is acknowledged that there are likely to be costs associated with the familiarisation and ongoing implementation of the proposed new health service procurement regime for relevant authorities (including local authorities) and service providers.

However, it is difficult to quantify the full financial impact of the new regime to provide an accurate assessment of the financial impacts this stage, as those costs are unknown. Further analysis of costs will be undertaken in coming months as part of the detailed development of the future regulations, including measures to understand any cost savings and ongoing costs for implementation of the proposed new procurement regime. As such, my officials will seek to provide best available evidence and as much information as practically possible as part of the commitment to undertake a full Regulatory Impact Assessment as part of scrutiny for the future regulations.

Recommendation 4: The Committee recommends that the Welsh Government clarifies its approach to monitoring and reviewing the implementation of the Health Service Procurement (Wales) Bill, including the proposed timescales

Response: ACCEPT

As set out in the Explanatory Memorandum, the Welsh Government is committed to monitoring and reviewing the implementation of this Bill, together with the impacts of its provisions, in the post implementation period.

I note the committee's recommendation and will seek to ensure that provisions are built into statutory guidance for the new regime that will monitor the use and effectiveness in a timely manner.

During the development of the future regulations and statutory guidance, my officials and I will consider the most meaningful methods for monitoring the implementation of the Bill's outputs, being mindful of ongoing stakeholder feedback on the effectiveness of the proposed new regime, and alignment with any future changes instigated by the Department of Health and Social Care under their Provider Selection Regime.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

Minister for Health and Social Services



**Llywodraeth Cymru
Welsh Government**

Huw Irranca-Davies MS

Chair,

Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

18 May 2023

Dear Huw,

I refer to the Legislation, Justice and Constitution Committee's report published on the 25 April with their findings and recommendations as part of Stage 1 scrutiny of the Health Service Procurement (Wales) Bill.

I outlined my responses to the Committee's recommendations as part of the General Principles debate on the Bill in Plenary on the 9 May, where I also gave a commitment to provide a full written response. This can be found at Annex A.

I would like to reiterate my thanks to the Committee for scrutinising the Bill and its supporting documentation.

Yours sincerely

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol

Minister for Health and Social Services

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ANNEX A

HEALTH SERVICE PROCUREMENT (WALES) BILL

WELSH GOVERNMENT RESPONSE TO THE LEGISLATION, JUSTICE AND CONSTITUTION COMMITTEE'S STAGE 1 SCRUTINY REPORT 25 APRIL 2023.

Recommendation 1: The Minister should table an amendment to the Bill to alter the heading of the new section 116A of the National Health Service (Wales) Act 2006, to be inserted by section 2 of the Bill, to clarify that the provisions of the Procurement Bill, once enacted, may be disapplied in respect of health services procurement undertaken by NHS organisations and local authorities in Wales.

Response: NOT ACCEPTED

I understand why the Committee has raised this issue in relation to specifically referencing local authorities in the heading of the new section, which is to be inserted into the Procurement Act 2023.

When developing the Bill we were cognisant that the wording should seek to mirror the approach and powers being taken by the UK Government's Department of Health and Social Care for their Provider Selection Regime, and that the wording should demonstrate that the powers being sought by the Welsh Ministers are identical to those for a Minister of the Crown in the preceding clause.

Also, we were mindful that local authorities procure a wide range of goods and services outside of 'health services' as defined by the Bill. Specifically referencing local authorities in the heading of the new section could in effect be interpreted that the proposed health service procurement regime has a wider application for local authorities; causing confusion and implying that the disapplication power applies to all services procured by local authorities.

The Bill makes it clear that local authorities are named as a 'relevant authority' under section 10A(6) of the National Health Service (Wales) Act 2006, as is to be inserted by section 3 of the Bill.

It is for these reasons that I do not accept recommendation 1 from the Committee.

Recommendation 2: The Minister should share for public consultation draft versions of regulations to be made under the new section 10A of the National Health Service (Wales) Act 2006, to inform their further development ahead of the laying of regulations subject to the draft affirmative procedure in the Senedd.

Response: NOT ACCEPTED

We are fully committed to undertaking a public consultation on the operational principles to inform the development of future regulations for the proposed new health service procurement regime.

As a result, the regulations will be directly developed in partnership with the 'relevant authorities' as defined in the Bill, including NHS Wales, local authorities, and other relevant stakeholders. This stakeholder engagement will take place through various routes; including dialogue with representative organisations and the establishment of working groups to develop and refine the regulations.

We are also mindful that we need to align with the changes being brought about by the introduction of the Provider Selection Regime in England at the earliest opportunity, to minimise the time gap and associated risks of having two differing health service procurement regimes in place between England and Wales.

Undertaking a public consultation on the draft regulations (in addition to the consultation programmed for the development of the regulations), will have limited operational benefit, and place a considerable time delay on the implementation of the new health service procurement regime in Wales and alignment with the proposed procurement regime changes in England.

I do not feel additional consultation processes over and above those already committed to are necessary, and therefore do not accept recommendation 2 from the Committee.

Recommendation 3: The Minister should table an amendment to the Bill to require that regulations under the new section 10A of the National Health Service (Wales) Act 2006 shall not be made until 60 days have elapsed since the laying of draft regulations.

Response: NOT ACCEPTED

As detailed above in my response to recommendation 2 from the Committee, we are mindful that we need to align with the proposed changes being brought about by the introduction of the Provider Selection Regime in England at the earliest opportunity. The future regulations will follow the government's default timeline for the scrutiny for laying regulations which is 20 days via an affirmative procedure; providing the Senedd with the appropriate timeframe to scrutinise the regulations prior to voting on whether to approve them.

Placing additional timescales for Senedd scrutiny of the regulations will delay the introduction of the proposed new health service procurement regime in Wales. This requirement could also impede our ability to respond to any changes to the Provider Selection Regime regulations brought forward by Department of Health and Social Care in a timely way in the future, creating the risk of a future misalignment in the health service procurement regimes between England and Wales.

As such, I do not accept recommendation 3 from the Committee.

Recommendation 4: The Minister should table an amendment to the Bill to provide that the Welsh Ministers must consult such other persons as they consider appropriate in preparing regulations to be made under the new section 10A of the National Health Service (Wales) Act 2006, to be inserted by the Bill.

Response: ACCEPTED IN PRINCIPLE

Recommendation 4 from the Committee in respect of consultation crosses over with recommendation 5 from the Health and Social Care Committee, both of which seek an amendment to the Bill to place a duty on Welsh Ministers to consult in respect of the future regulations.

As stated above, we are fully committed to undertaking a public consultation on the operational principles to inform the development of future regulations for the proposed new procurement regime.

However, I note the comments from both Committees and the desire to fully ensure that appropriate individuals and groups are formally offered the opportunity to input into the process of preparing the regulations.

Therefore, whilst I am unable to fully accept the suggested wording set out in recommendation 4 of the Legislation, Justice and Constitution Committee's report and recommendation 5 of the Health and Social Care Committee's report, I am happy to accept in principle the recommendations and will seek to bring forward an amendment at Stage 2 which places consultation on the development of the regulations on the face of the Bill.

Recommendation 5: The Minister should table an amendment to the Bill to provide that the Welsh Ministers must consult such other persons as they consider appropriate in preparing guidance about complying with regulations made under section 10A of the National Health Service (Wales) Act 2006, to be inserted by the Bill.

Response: NOT ACCEPTED

Following on from my response to recommendation 4 above, I am committed to bringing forward an amendment in relation to consultation in respect of the development of regulations.

The regulations will be developed in cooperation with relevant authorities, and consequently, will inform the subsequent guidance which explains the requirements in those regulations.

Furthermore, we need to ensure we have an approach that will be flexible and agile and allow changes to the guidance in an appropriate and timely manner to ensure we have a regime that is fit for purpose, reflects best practice, ongoing stakeholder and user feedback and to react to any changes brought about by the proposed Provider Selection Regime once operational in England.

As such, I do not consider it practical or necessary to undertake a formal consultation on the preparation of the guidance to comply with the regulations.

Therefore, I do not accept recommendation 5 from the Committee.



Llywodraeth Cymru
Welsh Government

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Russell George MS
Chair,
Health and Social Care Committee
SeneddHealth@senedd.wales

18 May 2023

Dear Russell,

I refer to the Health and Social Care Committee's report published on the 28 April with their findings and recommendations as part of Stage 1 scrutiny of the Health Service Procurement (Wales) Bill.

I outlined my responses to the Committee's recommendations as part of the General Principles debate on the Bill in Plenary on the 9 May, where I also gave a commitment to provide a full written response. This can be found at Annex A.

I would like to reiterate my thanks to the Committee for scrutinising the Bill and its supporting documentation.

Yours sincerely

Eluned Morgan AS/MS
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Minister for Health and Social Services

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ANNEX A

HEALTH SERVICE PROCUREMENT (WALES) BILL

WELSH GOVERNMENT RESPONSE TO THE HEALTH AND SOCIAL CARE COMMITTEE'S STAGE 1 SCRUTINY REPORT 28 APRIL 2023.

Recommendation 1: The Senedd should agree the general principles of the Health Service Procurement (Wales) Bill, but throughout the scrutiny of the Bill and any regulations and guidance made under it, Members of the Senedd should have regard to the issues highlighted in our report.

Response: ACCEPT

I would like to thank the Committee for its considered scrutiny of the Bill. I am pleased that the Committee has recognised the need to bring this Bill forward and for recommending that the Senedd agrees the General Principles of the Bill.

Recommendation 2: In its response to our report, and during the Stage 1 debate, the Welsh Government should provide further information and assurance about how the provision in the new section 10A of the National Health Service (Wales) Act 2006 (to be inserted by section 3 of the Health Service Procurement (Wales) Bill) will ensure that there are sufficient arrangements embedded in any new health service procurement regime for Wales to ensure that it operates openly, transparently and in a manner that gives confidence to providers and potential providers as well as patients and service users. In providing this information and assurance, the Welsh Government should reflect and comment on the calls we have heard for the regulations to include provision for relevant authorities to consult and engage patients and service users when making procurement decisions.

Response: ACCEPT IN PRINCIPLE

I have considered the Committee's recommendation and its request to provide specific assurances that there are sufficient safeguards in place to ensure that the proposed new procurement regime operates in an open and transparent manner; and takes into account the views of patients and service users.

I am happy to accept in principle recommendation 2 from the Committee and would like to address these points raised under this recommendation individually:

- ***Provisions for openness and transparency under the proposed new health service procurement regime.***

I would like to assure the Committee that the issue of transparency under the proposed new procurement regime has been carefully considered during the development of the Bill.

The key procurement principles around openness and transparency are already covered under existing provisions on the face of the Bill. The new section 10A(3) of the National Health Service (Wales) Act 2006, as is to be inserted by section 3(2) of the Bill, places a duty on the Welsh Ministers to make provisions in the future regulations for the purpose of ensuring transparency, fairness and compliance, and to manage conflicts of interest. The detail of how these principles will be embedded throughout the proposed new regime will be developed and expressly set out in the future regulations and statutory guidance. An example of how this could work in practice, may include requirements for 'relevant authorities' to publish details of contract awards via agreed reporting mechanisms, the establishment and implementation of robust recording and decision making rationale, or the publishing of notices for competitive tendering.

As such, I am confident that the provisions already on the face of the Bill provide the necessary safeguards to ensure that the proposed new procurement regime will operate in an open and transparent manner.

- ***Views of patients and service users***

I note the Committee's comments in relation to consultation and engagement of patients and service users when making procurement decisions.

Delivering health services that work for patients and service users is paramount; however, we need to be cognisant of the practicalities of consulting the general public, alongside delivering individual service contracts, whilst seeking to reduce bureaucracy for 'relevant authorities' and service providers.

As such, I will further consider how the views of service users could be reflected during the development of the future regulations and statutory guidance. This could include for example, exploring the role of 'Llais' and how it could contribute towards this aim.

Recommendation 3: The Welsh Government should consider bringing forward amendments to the definition in the new section 10A(1)(b) of the National Health Service (Wales) Act 2006 (to be inserted by section 3 of the Health Service Procurement (Wales) Bill) to clarify that only goods and/or other services that are 'substantively' or 'directly' connected to the health service that is being procured may be procured under any new health service procurement regime.

Response: NOT ACCEPTED

I understand the committee's comments that 'mixed procurement' under the proposed new procurement regime needs to be clearly and narrowly defined.

Section 10A(1)(b) of the National Health Service (Wales) Act 2006, to be inserted by section 3(2) of the Bill allows the Welsh Ministers to make provision, via regulations, for the processes and objectives to be followed by 'relevant authorities' when procuring goods or other services that are 'connected to' health services (i.e. 'mixed procurement').

This aligns with the approach being taken by the Department of Health and Social Care's (DHSC) for their proposed Provider Selection Regime (PSR) in England, where the detailed tests for 'mixed procurement' will be included in their forthcoming regulations. I am aware that the PSR could include tests that will only allow in-scope health care services, to be mixed with other goods or services that are normally procured outside of the PSR, when these cannot reasonably be supplied under a separate contract, and where the PSR health care service element is the highest value.

It is our desire to maintain the option to align our proposed procurement regime with the proposed PSR in England. As such, I do not feel that it is sensible to place additional tests on the face of the Bill and diverge from the approach being undertaken by DHSC at this point in time. Therefore, I maintain my position that the best place to include provisions that deal with the detailed tests for 'mixed procurement' is in the future regulations, rather than adding additional criteria on the face of the Bill.

This approach will also align with proposals for 'mixed procurement' as part of the UK Government's Procurement Bill; ensuring that there is a clear and coherent approach and the correct application of the appropriate procurement regime.

Therefore, I do not accept this recommendation.

Recommendation 4: The Welsh Government should outline what steps it is taking to assess whether similar reforms to those proposed for health service procurement in Wales would also be beneficial for the procurement of social care services.

Response: ACCEPT

I note the Committee's recommendation to explore whether similar procurement reforms can benefit the future delivery of social care services in Wales.

Our policy in the first instance is to align with the DHSC's PSR in England, which doesn't currently include the procurement of social care services in isolation. There is also the added issue of a number of legal complexities in respect of social care procurement. For these reasons we are not considering widening the scope of the proposed new procurement regime at this point in time to include social care in isolation.

However, I am happy to accept the Committee's recommendation to assess and review our position in relation to the procurement of social care services at a future point in time.

Recommendation 5: The Welsh Government should bring forward amendments to include requirements on the face of the Health Service Procurement (Wales) Bill that the Welsh Ministers must consult stakeholders before the regulation making power in the new section 10A(1) of the National Health Service (Wales) Act 2006 (to be inserted by section 3 of the Bill) is used for the first time.

Response: ACCEPT IN PRINCIPLE

Recommendation 5 from the Committee in respect of consultation crosses over with recommendation 4 from the Legislation, Justice and Constitution Committee, both of which seek an amendment to the Bill to place a duty on Welsh Ministers to consult in respect of the future regulations.

As I outlined in the General Principles debate and in my response to the Legislation, Justice and Constitution Committee's report, we are fully committed to undertaking a public consultation on the operational principles to inform the development of future regulations for the proposed new procurement regime.

However, I note the comments from both Committees and the desire to ensure that appropriate individuals and groups are formally offered the opportunity to input into the process of preparing the regulations.

Therefore, whilst I am unable to fully accept the suggested wording set out in recommendation 5 of the Health and Social Care Committee's report and recommendation 4 of the Legislation, Justice and Constitution Committee's report, I am happy to accept in principle the recommendations and will seek to bring forward an amendment at Stage 2 which places consultation on the development of the regulations on the face of the Bill.

Recommendation 6: The Welsh Government should outline how it will ensure that the implementation, and requirements, of the new health service procurement regime (expected in spring 2024) are communicated effectively and accessibly to all relevant stakeholders, including relevant authorities, and providers or potential providers in the private sector and third sector.

Response: ACCEPT

I note and accept the Committee's recommendation in relation to communicating the requirements of the proposed new procurement regime to 'relevant authorities' and stakeholders. There is also cross over with recommendation 9 from the Committee in relation to engagement with people with protected characteristics (or their representatives).

The details of how we will undertake stakeholder engagement will be produced as part of a comprehensive stakeholder engagement plan for the development of the future regulations and implementation for the proposed new health service procurement regime in Wales. We are also mindful to align with proposed stakeholder engagement and training planned by DHSC for their proposed PSR and wider procurement reforms under the UK Government's Procurement Bill.

I am committed to providing more detail on the proposed stakeholder engagement in due course.

Recommendation 7: The Welsh Government should provide more information about how the impact and effectiveness of the Health Service Procurement (Wales) Bill, and any regulations and guidance made under it, will be monitored and reviewed. This should include clarity on the timescales for any actions, and confirmation that the outcomes of any review will be published.

Response: ACCEPT

Recommendation 7 from the Committee crosses over with recommendation 4 from the Finance Committee's report in respect of monitoring and reviewing the impact of the Bill.

I note and accept the recommendation from both committees and will seek to ensure that provisions are built into statutory guidance to monitor the use and effectiveness of the proposed new regime in a timely manner.

The Explanatory Memorandum to accompany the Bill sets out our commitment to monitor and review the implementation of this Bill, together with the impacts of its provisions, in the post implementation period.

During the development of the future regulations and statutory guidance, my officials and I will consider the most meaningful methods for monitoring the implementation of the Bill's outputs, being mindful of ongoing stakeholder feedback on the effectiveness of the proposed new regime, and the ability to adapt and align with any future changes instigated by DHSC under their proposed PSR.

Recommendation 8: The Welsh Government should update the Explanatory Memorandum after Stage 2 to provide further information about how the Health Service Procurement (Wales) Bill (and the anticipated regulations and statutory guidance) reflect, are consistent with, and contribute to the broader policy, legislative and strategic context, including the Well-being of Future Generations (Wales) Act 2015; the Social Partnership and Public Procurement (Wales) Bill; the programme for transforming and modernising planned care and reducing NHS waiting lists; and commitments to being a Fair Trade Nation and a Deforestation Free Nation, developing the Foundational Economy, eliminating modern slavery from public sector supply chains, measuring consumption emissions regarding carbon, and Net Zero and biodiversity loss targets.

Response: ACCEPT

I am happy to accept this recommendation from the Committee and will ensure that the Explanatory Memorandum is updated after Stage 2 scrutiny to reflect how the Bill and future regulations and statutory guidance consider the broader legislative, strategic and policy aims outlined above.

Recommendation 9: The Welsh Government should set out how it will ensure that the process of developing regulations and statutory guidance under the Health Service Procurement (Wales) Bill includes meaningful engagement and consultation with people with protected characteristics (or their representatives).

Response: ACCEPT

I am happy to accept this recommendation from the Committee. I am committed to providing more detail on the proposed stakeholder engagement in due course, as detailed above in my response to recommendation 6.

Recommendation 10: The Welsh Government should update the Explanatory Memorandum after Stage 2 to clarify that local authorities are subject to the Public Sector Equality Duty.

Response: ACCEPT

I am happy to accept this recommendation from the Committee and will ensure that the Explanatory Memorandum is updated after Stage 2 scrutiny to clarify that local authorities are subject to the Public Sector Equality Duty.

Recommendation 11: When the Welsh Government lays regulations under the new section 10A of the National Health Service (Wales) Act 2006 (to be inserted by section 3 of the Health Service Procurement (Wales) Bill) before the Senedd, the Explanatory Memorandum for the regulations should include an assessment of whether any of the objectives in the regulations engage the UK Internal Market Act 2020 as they relate to the procurement of goods connected to health services, and if so whether is a risk that the practical effect of the objectives could be undermined.

Response: ACCEPT

I am happy to accept this recommendation from the Committee and will ensure that the Explanatory Memorandum is updated after Stage 2 scrutiny to provide details on assessments in relation to whether any of the objectives in the regulations engage the UK Internal Market Act 2020.

Agenda Item 2.5

Y Pwyllgor Iechyd a
Social Cymdeithasol

Health and Social Care Committee

Jessica Morden MP

Chair, Joint Committee on Statutory Instruments

The Rt Hon. The Lord Hunt of Wirral MBE

Chair, House of Lords Secondary Legislation Scrutiny Committee

MPs representing constituencies in Wales

24 May 2023

Dear colleague

Health Service Procurement (Wales) Bill

The Welsh Government's Health Service Procurement (Wales) Bill ("the HSP Bill") is currently passing through the Senedd. It has been referred to the Health and Social Care Committee for Stage 1 (general principles) and Stage 2 (committee consideration of amendments) scrutiny.

As you may be aware, the Welsh Government Minister for Health and Social Services has said that she has introduced the HSP Bill in response to the UK Government's anticipated health service procurement reforms for England. Those reforms include the proposed introduction of a Provider Selection Regime ("PSR") using the regulation-making power inserted into the National Health Service Act 2006 by section 79 of the Health and Care Act 2022 ("HC Act 2022"), and the power in clause 119 of the Procurement Bill (as amended in Public Bill Committee) for a Minister of the Crown to disapply any provision of the Procurement Bill where provision made in regulations under the NHS Act 2006 apply. The HSP Bill would, if passed, provide the Welsh Ministers with equivalent regulation-making powers in respect of health service procurement in Wales.

Speaking about the HSP Bill on its introduction to the Senedd, the Minister said:

"The provisions in the Bill and the future regulations will facilitate [...] flexibility, providing a supportive mechanism that aims to maintain the current procurement level playing field for NHS health services between England and Wales. This will assist in mitigating the risk of NHS Wales being adversely affected by the operation of a different health service procurement regime in England. It will retain the ability

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**Senedd Cymru
Welsh Parliament**

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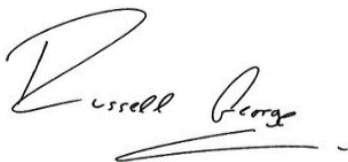
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for the NHS in Wales to commission independent health service providers on a co-compliant and collaborative basis, in turn supporting and optimising financial and staff resources, supporting the NHS in Wales to deliver efficiently and effectively".¹

Throughout the Senedd's scrutiny of the HSP Bill the Minister has consistently said that the powers it contains will provide "the opportunity and the ability to be able to align, should [the Welsh Government] wish to do so",² but that she will not determine the detail of any new health service procurement regime for Wales until she has been able to consider the final details of the UK Government's PSR for England.

The complexity of the policy and legislative context, and the interrelationships and dependencies between health service procurement reforms in England and Wales, and the wider public sector procurement reforms taking place on an England, Wales and Northern Ireland basis as set out in the Procurement Bill, has been a consistent theme during our scrutiny.

Any regulations brought forward by the UK Government under section 79 of the HC Act 2022 and clause 119 of the Procurement Bill will be subject to the affirmative scrutiny procedure in the UK Parliament. On this basis, we agreed to write to you to draw your attention to our Stage 1 report on the general principles of the Bill, and to ask that when you scrutinise regulations under section 79 of the HC Act 2022 and clause 119 of the Procurement Bill, you take into account any potential implications for Wales, including any cross-border issues.

Yours sincerely



Russell George MS

Chair, Health and Social Care Committee

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

¹ Plenary RoP [para 236], 14 February 2023

² Health and Social Care Committee RoP [para 10], 30 March 2023

Agenda Item 2.6

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Russell George MS
Chair, Health and Social Care Committee

Huw Irranca-Davies MS
Chair, Legislation, Justice and Constitution Committee

Peredur Owen Griffiths MS
Chair, Finance Committee

24 May 2023

Dear Chair,

The Health Service Procurement (Wales) Bill – Stage 2 Government Amendment

Today I have tabled a Government Amendment for Stage 2 of the Health Service Procurement (Wales) Bill. The Purpose and Effect table (copy attached at **Annex A**) provides an explanation of the amendment.

The amendment is in response to Scrutiny Committee recommendations; in particular in response to Health and Social Care Committee recommendation 5 and Legislation, Justice and Constitution Committee recommendation 4. These two recommendations have been considered together, as both seek to place a duty to consult in relation to regulations made under s.10A(1) of the National Health Service (Wales) Act 2006 (to be introduced by section 3 of the Bill) on the face of the Bill.

In the General Principles debate on the 9 May and in the follow up correspondence to the Chairs of both Health and Social Care Committee and Legislation, Justice and Constitution Committee, I indicated that whilst we were unable to fully accept the suggested wording in the two recommendations, I was happy to accept in principle, both committees recommendations. As such, I have brought forward an amendment at Stage 2 which places a requirement on the face of the Bill for the Welsh Ministers to consult before making regulations under s.10A(1). The intention of the proposed Government amendment is to provide a middle-ground between the two recommendations proposed by both Committees.

Bae Caerdydd • Cardiff Bay
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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.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I would like to take the opportunity again to reiterate my thanks to all three Committees for scrutinising the Bill and it's supporting documentation.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

THE HEALTH SERVICE PROCUREMENT (WALES) BILL – STAGE 2 GOVERNMENT AMENDMENT

This table provides information about the amendment tabled in the name of Eluned Morgan MS on 24 May 2023.

No.	GOVERNMENT AMENDMENT	GWELLIANT Y LLYWODRAETH	PURPOSE AND EFFECT
1.	Section 3, page 2, after line 19, insert— ‘() Before making regulations under subsection (1), the Welsh Ministers must carry out such consultation as they consider appropriate.’	Adran 3, tudalen 2, ar ôl llinell 19, mewnosoder— ‘() Before making regulations under subsection (1), the Welsh Ministers must carry out such consultation as they consider appropriate.’	The purpose of this amendment is to amend the section of the Bill which inserts a new section (10A) into the National Health Service (Wales) Act 2006, which enables Ministers to make regulations in relation to the procurement of health services in Wales. The effect of this amendment is to add a requirement that the Welsh Ministers carry out such consultation as they consider appropriate before making regulations under s.10A(1). .