

Y Memorandwm Cydsyniad Deddfwriaethol ar y Bil Caffael

Legislative Consent Memorandum on the Procurement Bill

Y Pwyllgor Cyfrifon Cyhoeddus a Gweinyddiaeth Gyhoeddus
Public Accounts and Public Administration Committee

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* Saesneg yn unig | English only

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Tystiolaeth i Bwyllgor Cyfrifon Cyhoeddus y Senedd – Y Bil Caffael Cyhoeddus

Cymdeithas Llywodraeth Leol Cymru – Llais Cynghorau Cymru

Mae Cymdeithas Llywodraeth Leol Cymru (y Gymdeithas) yn sefydliad trawsbleidiol dan arweiniad gwleidyddol sy'n ceisio rhoi llais cryf i lywodraeth leol ar lefel genedlaethol. Rydym yn cynrychioli buddiannau llywodraeth leol ac yn hybu democratiaeth leol yng Nghymru.

Ein haelodau yw'r 22 o Gynghorau yng Nghymru ac mae'r tri awdurdod tân ac achub ac awdurdodau'r tri pharc cenedlaethol yn aelodau cyswllt.

Credwn fod y syniadau sy'n newid bywydau pobl yn digwydd yn lleol.

Mae cymunedau ar eu gorau pan maent yn teimlo eu bod wedi cysylltu â'u cynghorau trwy ddemocratiaeth leol. Trwy hyrwyddo'r cysylltiadau hynny, ei hwyluso a'u cyflawni, gallwn ddatblygu democratiaeth leol fywiog sy'n galluogi cymunedau i ffynnu.

Ein nod pennaf yw hyrwyddo llywodraeth leol ddemocrataidd a buddiannau Cynghorau yng Nghymru, eu diogelu, eu cefnogi a'u datblygu.

Byddwn yn cyflawni ein gweledigaeth drwy

- Hyrwyddo swyddogaeth a statws cynghorwyr ac arweinwyr cynghorau
- Sicrhau'r rhyddid mwyaf yn lleol mewn deddfwriaeth neu ganllawiau statudol
- Dadlau o blaid cyllid cynaliadwy a hirdymor i gynghorau a'i sicrhau
- Hybu gwelliant dan arweiniad y sector
- Annog democratiaeth leol fywiog gan hybu mwy o amrywiaeth
- Cefnogi cynghorau i reoli eu gweithluoedd yn effeithiol

Rhagarweiniad

Mae'r Bil Caffael Cyhoeddus yn ymwneud â diwygio'r rheoliadau Caffael a Chontractio presennol, a gychwynnodd gyda Chyngor Gweinidogion yr Undeb Ewropeaidd ym 1962, a'r deddfwriaeth Rhaglenni Cyffredinol a geisiodd gysoni rheolau caffael yn yr aelod-wladwriaethau.

Y diweddariad sylweddol diwethaf oedd Rheolau Caffael a Chontractio 2015 (PCR2015). Roedd hwn yn welliant sylweddol ar y rheolau blaenorol. Gellid gwneud llawer o'r gwelliannau rydym yn ystyried eu gwneud dan y Bil newydd heddiw.

Cafodd cytundebau a wnaed yn yr UE eu deddfu fel is-ddeddfwriaeth o fewn yr aelod-wladwriaethau. Roedd rheolau y cytunwyd arnynt gan y DU o fewn yr Undeb Ewropeaidd yn cael eu hysgrifennu yng nghyfraith y DU ar lefel Genedlaethol y DU. Byddai cyfraniad cychwynol Cymru wedi bod ar lefel Ewropeaidd, yna o amgylch yr is-ddeddfwriaeth mewn cydweithrediad â Llywodraeth y DU.

Roedd "rheoliadau'r UE" wastad wedi cael eu cytuno gan y DU a'u deddfu yng nghyfraith y DU. Cynigiodd Brexit gyfle i ddiwygio a gwella ymhellach. Fodd bynnag, nid oedd yn cynnig rhyddid llwyr. Lluniwyd y rheolau blaenorol gan ymrwymadau'r Undeb Ewropeaidd mewn cytundebau masnach rhyngwladol. Mae ymrwymadau tebyg yn gymwys ym Mhrydain ar ôl Brexit.

Y dasg anodd ar gyfer diwygiad y DU yw bodloni'r rhwymedigaethau hynny yn ogystal â chynnig y rhyddid a'r cyfleoedd i ddylanwadu ar gaffael gwasanaethau cyhoeddus a chefnogi polisiâu ein Gwledydd Cartref. Efallai y bydd gennym ryddid newydd. Fodd bynnag, efallai na fydd ein dewisiadau ymarferol y tu allan i'r UE mor wahanol. Os mai dyma'r achos, efallai y byddwn yn newid y rheoliadau heb fawr o effaith.

Ymateb i Gwestiynau'r Pwyllgor:

Gwestiynau'r Pwyllgor:	Ein Hymateb
Ystyriaeth Llywodraeth Cymru o ran defnyddio'r amser y mae wedi'i nodi ar gyfer y Bil Partneriaeth Gymdeithasol a Chaffael Cyhoeddus (Cymru) i gyflwyno Bil caffael ehangach a fyddai'n cynnwys cwmpas Bil Caffael y DU a'r Bil Partneriaeth Gymdeithasol a Chaffael Cyhoeddus (Cymru);	Ymdriniwyd â phob Bil ar wahân. Rydym wedi bod yn ymgynghori ar y Bil Partneriaeth Gymdeithasol a Chaffael Cyhoeddus, a nododd rhywfaint o'n hadborth bod y darpariaethau sy'n cael eu cynnig eisoes i'w gweld ym Mil Caffael y DU. Ymdriniwyd â'r ymgynghoriad ar hyn ar wahân drwy Swyddogion LIC ac/neu yn uniongyrchol gyda Llywodraeth y DU. Rydym wedi ymgysylltu'n helaeth â Grŵp Cynghori Cenedlaethol Cymdeithas Llywodraeth Leol ar Fil Caffael y DU.
Y diffyg cyfleoedd a'r amserlenni cyfyngedig i'r Senedd gynnal gwaith craffu deddfwriaethol manwl, gan gynnwys ymgysylltu'n drylwyr â rhanddeiliaid o	Mae CLILC a Chynghorau Cymru wedi ymateb i ymgynghoriad Llywodraeth y DU, fel y cynghorwyd gan ein cydweithwyr yn Llywodraeth Cymru.

<p>Gymru, ar faes polisi cyhoeddus mor bwysig</p>	<p>Fodd bynnag, diferyn bychan yn unig oedd ein hymatebion ni ym môr ymatebion grŵp llawer mwy o Wasanaethau Cyhoeddus Lloegr.</p> <p>Mae'n galonogol ac yn achos pryder mai dim ond un llais yn y dorf oedd Cymru. Y farn gyffredin ymysg Cynghorau Cymru yw bod y cynnwys yn cael ei benderfynu gan fwyafrif llawer mwy yn Lloegr.</p> <p>Wedi dweud hynny, mae yna lawer yn gyffredin a llawer i'w hoffi yn y Bil newydd. Mae ein gallu cyfunol i ystyried ei weithrediad yng Nghymru yn cynnig cyfle i wella ei ddarpariaethau ymhellach.</p> <p>Mae yna awydd cryf am ymgynghoriad ar sut y bydd Cymru'n derbyn Bil Caffael y DU.</p> <p>Ymysg agweddau mwy dadleuol y Bil, mae gofynion gweinyddol newydd nad oes gennym yr adnoddau cyffredinol i'w bodloni. Trafodwyd y Gofynion Tryloywder yn benodol o fewn Rhwydwaith Caffael Cenedlaethol CLILC, gyda rhai arweinwyr caffael yn mynnu y dylem dderbyn y darpariaethau fel y'u cyflwynwyd; mae eraill yn dadlau'n angerddol bod y rhain yn risgiau i'n sefydliadau.</p> <p>O fewn y grŵp swyddogion Llywodraeth Leol, lluniwyd Grŵp Diddordeb Arbennig i edrych yn fanwl ar dryloywder. Mae'n amlwg bod llawer o waith eto i'w wneud cyn rhoi'r polisi hwn ar waith.</p>
<p>Hygyrchedd y drefn gaffael newydd a hithau'n cael ei rhannu rhwng dau Fil;</p>	<p>Mae'n debyg y byddai un Bil yn fwy eglur. Fodd bynnag, mae'r pwnc yn bwysig, a gallwn ddeall sut y daethpwyd i lunio dau Fil.</p> <p>Wrth ddeddfu'r drefn, bydd rheol uchafiaeth yn gymwys. Byddai'n gwneud synnwyr i gefnogi'r rheol hon drwy sicrhau bod yr elfennau craidd ar gyfer Cymru yn cael eu sefydlu yn y ddeddfwriaeth</p>

	<p>sylfaenol. Mae'n debyg mai'r Bil Caffael yw hwn.</p> <p>Mae'n debyg y bydd y Bil Caffael yn cynnwys llawer y byddwn eisiau ei gynnwys yn y Bil Partneriaeth Gymdeithasol a Chaffael Cyhoeddus (Cymru). Yn weithredol, mae gan Gyngorau Cymru lawer yn gyffredin â Chyngorau Lloegr. Mae gennym gyfle hefyd i ychwanegu at y rheoliadau newydd wrth eu cymhwyso i Gymru, gan roi gofal dyledus i amrywiaeth diangen, gan y gallai hyn greu problemau anfwriadol gyda systemau, cyflenwyr neu bartneriaid.</p> <p>Fodd bynnag, efallai nad yw deddfwriaeth y DU yn ddigon cryf. Efallai y bydd angen mwy arnom. Rhaid i ni ddeall hefyd a oes yna wahaniaethau pwysig ar gyfer Cymru a sut y bydd y gwahaniaethau hynny'n amlygu yma.</p> <p>P'un a fydd Cymru'n mabwysiadu rheolau'r DU neu'n llunio darn o ddeddfwriaeth ar wahân, y dylem fod yr un mor ddyfal yn ei gylch, yr ystyriaeth o safbwynt CLILC yw cefnogi Cyngorau Cymru.</p> <p>Mae hynny'n golygu gweithredu. Dod o hyd i'r ffordd orau o ddeall y polisiau, ac yna eu cyflawni.</p>
<p>Y graddau y mae'r Gweinidog Cyllid a Llywodraeth Leol a'i swyddogion wedi ymwneud â'r gwaith o lunio a drafftio cymalau ym Mil Caffael y DU a'r prosesau sy'n ymwneud â hyn</p>	<p>Mae CLILC wedi bod yn cyfarfod â swyddogion bob pythefnos, gyda gohebiaeth reolaidd a diweddariad sefydlog yng Nghyfarfodydd misol y Rhwydwaith Caffael Cenedlaethol a gynhaliwyd gan CLILC.</p> <p>Hyd yma, gwnaed y rhan fwyaf o'r gwaith o fewn amserlenni tyn gan Swyddogion Llywodraeth Cymru. Mae mwyafrif y Cyngorau i'w gweld yn fodlon â hyn, ond nid pob un.</p> <p>Gwrthodwyd ein hymdrechion i gynnwys cynrychiolydd yn uniongyrchol yn y tîm gan Lywodraeth Cymru, a nododd broblemau gyda'r polisi Adnoddau Dynol.</p>

	<p>Beth bynnag fo'r trafferthion hyn, rydym yn parhau i fod wedi ymrwymo i weithio gyda'r Gweinidog a'i Thîm ar yr hyn sy'n cael ei gynnwys yn y gyfraith yma yng Nghymru.</p>
<p>Rôl y fframwaith cyffredin dros dro ar gyfer caffael cyhoeddus yn natblygiad y Bil;</p>	<p>Mae'r fframwaith cyffredin dros dro yn ymwneud â rhyngweithrediad masnach o fewn cenhedloedd y DU ac ni chaiff ei ystyried yn sylweddol berthnasol i ddatblygiad y Bil.</p> <p>Cyhoeddwyd y fframwaith cyffredin ar gyfer Caffael Cyhoeddus dros dro ar 27 Ionawr 2022 i alluogi marchnad fewnol y DU i weithredu ar ôl Brexit.</p> <p>Yng nghyd-destun Cymru, ffurfioldeb angenrheidiol ydoedd, i gymryd lle trefniadau a oedd wedi'u gwreiddio yn aelodaeth y Deyrnas Unedig o'r Undeb Ewropeaidd.</p> <p>Ychydig iawn o ran a chwaraeodd Cynghorau Cymru yn ei ddatblygiad, ac ni cheisiwyd eu cyfraniad; er y cafwyd cyfathrebu, trafodaethau ac esboniadau am newidiadau i arferion ar y pryd.</p> <p>Roedd y prif ymholiad i'w weld yn ymwneud â throthwyon, a oedd eisoes yn ddyledus am ddiweddariad rheolaidd. Un newid annisgwyl oedd yr angen am ffordd wahanol o ystyried TAW wrth bennu a fyddai contractau'n cael eu derbyn dan y rheoliadau.</p> <p>Bydd y rheoliadau hyn yn cario drosodd i'r Rheolau newydd.</p>
<p>Lefel yr ymgynghori a gynhaliwyd, os o gwbl, â rhanddeiliaid Cymru i lywio'r broses ddrafftio;</p>	<p>Rhannwyd y Bil drafft gyda budd-ddeiliaid Cymru, er nad oedd yn hysbys ar y pryd pa mor berthnasol a fyddai yn y cyd-destun Cymreig.</p> <p>Bu i'r rhan fwyaf o'r budd-ddeiliaid gael Bil Drafft Lloegr fel rhagflaenydd tebygol i ddeddfwriaeth Cymru, a bu iddynt ymateb i</p>

	<p>Lywodraeth y DU yn yr un modd, gyda chopïau i Lywodraeth Cymru.</p> <p>Mae yna awydd parhaus ymysg Cyngorau Cymru i fabwysiadu rheolau'r DU i'w defnyddio yng Nghymru.</p>
<p>A yw cymalau'r Bil yn wahanol i'r sefyllfa ddeddfwriaethol bresennol ynteu a yw'n ei hatgynhyrchu</p>	<p>Mae'r farn eang yn optimistaidd, gyda'r rhybudd bod y Bil, lle mae'n ymddangos i fod yn rhoi mewn cymal llai cyfyngol, i'w weld yn cymryd yr un faint drwy gymalau eraill.</p> <p>Ystyrir y prosesau caffael newydd arfaethedig yn welliant, a chânt eu croesawu. Mae beichiau gweinyddol mewn mannau eraill yn achos pryder.</p> <p>Yr ystyriaeth bwysig yw p'un a yw'r newid yn ei gyfanrwydd yn cefnogi gwell caffael o'i gymharu â'r rheolau presennol. Rydym yn dal i aros am dystiolaeth ei fod, ond rydym yn obeithiol.</p> <p>Rydym yn cydnabod sut y mae siâp y Bil wedi cael ei ddylanwadu gan ddeng mlynedd o waith ar y Ddeddf Gwerth Cymdeithasol yn Lloegr, gydag ymgais i alluogi mwy o'r arferion da a ddatblygwyd dan ddarpariaethau'r Ddeddf honno.</p> <p>Rydym yn croesawu'r ymgais i wella ar y sefyllfa ddeddfwriaethol bresennol, ond yn cydnabod trafferthion gwneud hynny. Ers i'r DU adael yr Undeb Ewropeaidd, rydym wedi canfod bod y cymalau a briodolwyd i'r UE yn ofynnol yn yr un modd gan gytundebau masnach rydd y tu allan i'r UE.</p> <p>Y manylion a ddywed. Gallwn ddyfalu, ond yn anffodus, nid fydd yr holl fanylion gennym nes y bydd prosesau pellach yn cael eu cwblhau yn Lloegr.</p>
<p>Cyfranogiad y Gweinidog a'i swyddogion drwy gydol y broses graffu a diwygio yn San Steffan</p>	<p>Mae'n anodd gwneud sylwadau'n uniongyrchol ar gyfraniad y Gweinidog gan nad ydym yn monitro gwaith y Gweinidog.</p>

	<p>Fodd bynnag, rydym wedi croesawu diweddariadau rheolaidd gan swyddogion y Gweinidog a oedd yn llawn gwybodaeth ac yn fuddiol.</p> <p>Mae oedi naturiol wedi digwydd wrth geisio cael gwybodaeth gan Lywodraeth y DU drwy ein cydweithwyr yn Llywodraeth Cymru, ond roeddem yn hyderus bod y swyddogion wedi gwneud pob ymdrech i'n diweddarau cymaint ag y gallent. Bu'n bosib i ni ymateb yn yr un modd a darparu gwybodaeth i swyddogion, diolch i gysylltiadau CLILC â'r CLIL a'n sianeli ein hunain i ffynonellau Lloegr, gan gynnwys arbenigwyr caffael mewn Cyngorau yn Lloegr a'u cysylltiadau yn Whitehall.</p> <p>Galluogodd hyn i ni gydweithio a chefnogi ein gilydd yn dda. Rhyngom, bu i ni lwyddo i roi'r holl wybodaeth angenrheidiol i'r rhwydweithiau ymarferwyr.</p> <p>Byddwn yn disgrifio'r berthynas waith fel un agos. Mae'r trefniadau gwaith a luniwyd yn ystod Pandemig Covid-19 wedi sicrhau bod y cyswllt rhwng swyddogion polisi caffael Llywodraeth Cymru, swyddogion CLILC ac Ymarferwyr Caffael Cyngorau Cymru yn gadarn iawn, yn well erbyn hyn nag y bu erioed.</p>
<p>Y rheoliadau a fydd yn angenrheidiol o bosibl i weithredu'r diwygiadau o dan y Bil ac o dan ba bwerau (a gweithdrefnau) yn y Bil.</p>	<p>Effaith Reoliadol</p> <p>Mae caffael yn cyfeirio at unrhyw a phob polisi sy'n ymwneud â darparu nwyddau a gwasanaethau gan drydydd parti, gan gynnwys darpariaeth fewnol sy'n destun penderfyniadau "Gwneud neu Brynu".</p> <p>Mae hyn yn cynnwys yr holl nwyddau, gwasanaethau, cyfleustodau a chonresiynau sy'n cael eu caffael yn gyhoeddus.</p> <p>Mae'r pwerau (a gweithdrefnau) yn y Bil felly'n debygol o fod yn gymwys i'r rhan</p>

fwyaf o'r pwerau sydd gan sefydliadau gwasanaeth cyhoeddus.

Gweithredu

Bydd pŵer Cyngorau dros Les Cymunedol yn helpu'r gweithrediad a dylai sicrhau cymhwysiad sy'n cefnogi gwell darpariaeth o wasanaethau rheng flaen.

Mae Deddf Llesiant Cenedlaethau'r Dyfodol a'r Ddeddf Gwasanaethau Cymdeithasol hefyd yn bwysig yng nghydestun darparu, gan eu bod yn egluro ymhellach y ffordd o weithio a'r blaenoriaethau ar gyfer gwasanaethau cyhoeddus mewn categori hanfodol strategol. Fodd bynnag, ychydig iawn o ddeddfwriaeth sydd heb ei gyffwrdd gan y Bil hwn mewn rhyw ffordd.

Cynnydd gyda'r Bil, Polisi Cymru, MCD

Mae yna gryn dipyn o optimistaeth yma, ond mae yna risgiau hefyd, yn arbennig ein gallu ymarferol i gyflawni'r uchelgais.

Mae caffael yn fater sydd wedi'i ddatganoli, yn dod o dan gymhwysedd Gweinidogion Cymru. Yn ymarferol, rydym yn disgwyl cyd-fynd â diwygiadau Llywodraeth y DU ar y cyfan, oni fod rheswm da dros beidio, e.e. pan fyddai'n llesteirio cymhwysiad polisiâu Cymreig pwysig.

Rydym wedi bod yn dilyn cynnydd deddfwriaeth yn Lloegr er mwyn rhagweld cyfeiriad ac effaith y diwygiad yma. Ond ni allwn wybod yn iawn beth fydd hyn yn ei olygu i Gymru nes y bydd Llywodraeth y DU wedi cwblhau ei brosesau ac y bydd Gweinidogion Cymru wedi penderfynu a fyddant yn derbyn y darpariaethau fel y maent neu'n gweithredu'n wahanol.

Nid oeddem wedi ein synnu o ddysgu bod nifer o gwestiynau wedi codi o amgylch y ddeddfwriaeth yn Lloegr, gyda Chyngorau Lloegr yn amlygu pryderon dilys a fyddai'r

	<p>un mor berthnasol yma. Er enghraifft, bu i ni nodi barn gref ymysg y proffesiwn cyfreithiol ynglŷn â drafftio, natur a gweithrediad rhestr wahardd a reolir yn ganolog.</p> <p>Y targed ar gyfer Llywodraeth y DU yw deddfu'r Rheoliadau Caffael newydd erbyn diwedd 2023.</p> <p>O ystyried nifer a natur yr ymholiadau, rydym yn bryderus bod amserlenni Llywodraeth y DU yn ymddangos yn uchelgeisiol ac yn mynd yn fwyfwy anodd eu bodloni.</p> <p>Ein dealltwriaeth yw y bydd pob ymdrech yn cael ei wneud i gydweddu, er na fydd hynny'n bosib bob tro, ac yn y manylion y mae'r maglau.</p> <p>Gwelsom fod Llywodraeth Cymru wedi gosod Memorandwm Cydsyniad Deddfwriaethol (MCD) ar y Bil ger bron y Senedd ar 9 Mehefin 2022, ac yna MCD Atodol ar 11 Gorffennaf 2022. Bydd y rhain yn cael eu hystyried a bydd adroddiad yn cael ei lunio arnynt, i'r Senedd, erbyn 10 Tachwedd 2022.</p> <p>Roeddem o'r farn bod y ddau MCD wedi'u hysgrifennu'n dda ac yn amlygu materion perthnasol. Hoffem feddwl bod swyddogion a Gweinidogion yn cael yr holl wybodaeth angenrheidiol drwy'r cyfarfodydd a'r trafodaethau parhaus â'r Cyngorau, gan gynnwys y cymorth rydym ni'n ei roi iddynt drwy CLILC. Ac yn yr un modd, ein bod ninnau'n cael yr holl wybodaeth angenrheidiol ganddynt hwythau.</p>
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Evidence to the Senedd Public Accounts Committee – Public Procurement Bill

Welsh Local Government Association - The Voice of Welsh Councils

The Welsh Local Government Association (WLGA) is a politically led cross party organisation that seeks to give local government a strong voice at a national level.

We represent the interests of local government and promote local democracy in Wales.

The 22 councils in Wales are our members and the 3 fire and rescue authorities and 3 national park authorities are associate members.

We believe that the ideas that change people’s lives, happen locally.

Communities are at their best when they feel connected to their council through local democracy. By championing, facilitating, and achieving these connections, we can build a vibrant local democracy that allows communities to thrive.

Our ultimate goal is to promote, protect, support and develop democratic local government and the interests of councils in Wales.

We’ll achieve our vision by

- Promoting the role and prominence of councillors and council leaders
- Ensuring maximum local discretion in legislation or statutory guidance
- Championing and securing long-term and sustainable funding for councils
- Promoting sector-led improvement
- Encouraging a vibrant local democracy, promoting greater diversity
- Supporting councils to effectively manage their workforce

Introduction

The Public Procurement Bill concerns reform of the current Procurement & Contracting regulations which originated with the European Union Council of Ministers in 1962 and the General Programmes legislation which sought to harmonise procurement rules in member states.

The last substantial update was the Procurement & Contracting Rules 2015 (PCR2015). This was a significant improvement on previous rules. Many of the improvements we’re looking to do under the new Bill could be done today.

Agreements made in the EU were enacted as secondary legislation within member states. Rules agreed by the UK within the European Union written in UK law at UK National level. Welsh involvement would initially have been at European level; then around the secondary legislation in collaboration with UK Government.

“EU regulations” had always been agreed by the UK and enacted in UK law. Brexit offered an opportunity for reform and further improvement. It did not however provide free reign. The previous rules were shaped by the European Union’s commitments in international trade agreements. Similar commitments apply to post-Brexit Britain.

The difficult task for the UK's reform is to meet those obligations while providing the freedoms and opportunities to leverage public service procurement and support the policies of our Home Nations. It may be that we have new freedoms. It may however be that our practical options outside the EU are not so different. If this is the case, we might change the regulations to little effect.

Response to the Committee's Questions:

Committee's Question	Our Response
<p>The consideration given by the Welsh Government to using the time it has identified for the Social Partnership and Public Procurement (Wales) Bill to bring forward a wider procurement Bill that covered the scope of both the UK Procurement Bill and the Social Partnership and Public Procurement (Wales) Bill</p>	<p>Each Bill has been handled separately.</p> <p>We've been consulting on the SPPP Bill and some of our feedback identified that the provisions being proposed are already in the UK procurement Bill.</p> <p>The consultation on this has been handled separately via WG Officials and/or directly with UK Government.</p> <p>We have been engaged extensively with the Local Government Association's National Advisory Group on the UK Procurement Bill.</p>
<p>The lack of scope and constrained timeframes for detailed legislative scrutiny by the Senedd, including thorough engagement with Welsh stakeholders, on such an important area of public policy;</p>	<p>WLGA and Welsh councils have responded to the UK Government consultation, as advised by colleagues in Welsh Government.</p> <p>Our responses will however have been as a drop in the ocean of responses from a much bigger group of English Public Services.</p> <p>It is both assuring and concerning that the Welsh voice was merely one in the crowd. The prevailing view among Welsh Councils is that the content is being decided by a much bigger majority in England.</p>

	<p>That said, there is much in common and much to like in the new Bill. Our collective ability to consider its implementation in Wales does provide an opportunity to further improve its provisions.</p> <p>There is a strong appetite to consult on the Welsh uptake of the UK Procurement Bill.</p> <p>Among the more controversial aspects of the Bill are new administrative requirements that we are not universally resourced to meet. The Transparency Requirements in particular have been discussed within the WLGA's National Procurement Network, with some procurement leads adamant that we should accept the provisions as given; others arguing passionately that there are risks to our organisations.</p> <p>Within the Local Government officer group, a Special Interest Group has been formed to look closely at transparency. There is evidently much work still to do before the implementation of this policy.</p>
<p>The accessibility of the new procurement regime when it is split over two Bills;</p>	<p>One Bill would probably be clearer. The subject matter is however important, and we can understand how two Bills came to be formed.</p> <p>In enacting the regime, the rule of primacy will apply. It would make sense to support his rule by ensuring that the core elements for Wales are embedded in the primary legislation. This is probably the Procurement Bill.</p> <p>It is likely that the Procurement Bill will include much that we want in the Social Partnership & Public Procurement (Wales) Bill. Operationally, Councils in Wales</p>

	<p>have much in common with Councils in England. We also have an opportunity to supplement the new regulations in their Welsh application; with due caution for unnecessary variation as this might create unintended issues with systems, suppliers or partners.</p> <p>It might however be that the UK legislation isn't strong enough. We may need more. We must also understand if there are important distinctions for Wales and how those distinctions are to be manifested here.</p> <p>Whether done as Welsh adoption of the UK Rules; or as a separate piece of legislation for Wales, in which we should be equally diligent; the consideration from the WLGA perspective, is to support Welsh Councils.</p> <p>That means deployment. Finding the best way to get the policies understood, then delivered.</p>
<p>The degree of involvement the Minister for Finance and Local Government and her officials have had in shaping and drafting clauses of the UK Procurement Bill and the processes relating to this;</p>	<p>WLGA has been meeting fortnightly with officials, supported by regular correspondence and a standing update at the monthly National Procurement Network meetings hosted by WLGA.</p> <p>So far, the majority of work has been done to tight timescales by Welsh Government Officials. Most Councils seem to be content with the contingency of this; but not all.</p> <p>Our attempts to get a representative directly involved in the team were rejected by Welsh Government, citing issues relating to Human Resources policy.</p>

	<p>Whatever these difficulties were, we remain committed to working with the Minister and her team on what goes into the law here in Wales.</p>
<p>The role the provisional common framework for public procurement had in the development of the Bill;</p>	<p>The provisional common framework is around the interoperation of trade within the nations of the UK and not considered to be substantively relevant to the development of the Bill.</p> <p>The provisional common framework for Public Procurement was published on 27 January 2022 to enable the functioning of the UK internal market, post Brexit.</p> <p>In the Welsh context, it was a necessary formality, replacing arrangements that had been embedded in the United Kingdom’s membership of the European Union.</p> <p>There was little involvement by Welsh Councils in its development and none was sought; although there were communications, discussions and clarifications about practice changes at the time.</p> <p>The main query seemed to be around thresholds, which were already due for periodic update. One unexpected change was the need for a different way of considering VAT when determining whether contracts were captured by the regulations.</p> <p>These provisions will carry forward into the new Rules</p>
<p>The level, if any, of consultation undertaken with Welsh stakeholders to inform the drafting process;</p>	<p>The draft Bill was shared with Welsh stakeholders although it was not known at the time what the relevance was going to be in the Welsh context.</p>

	<p>Most stakeholders received the English Draft Bill as a likely precursor to the Welsh legislation and responded to the UK Government in that vein with copies to the Welsh Government.</p> <p>There is an ongoing appetite from Welsh Councils to inform the adoption of the UK rules into Welsh application.</p>
<p>Whether clauses of the Bill differ from or replicate the current legislative position;</p>	<p>The broad view is optimistic; with the caveat that where the Bill appears to give in a less restrictive clause it seems to take in equal measure through other clauses.</p> <p>The proposed new procurement processes are considered an improvement and are welcome. New administrative burdens elsewhere are cause for concern.</p> <p>The important consideration is whether the whole change supports better procurement, when compared to the current rules. We have yet to see evidence that it does; but we are hopeful.</p> <p>We recognise how the shape of the Bill has been influenced by ten years of work on the Social Value Act in England with an attempt to enable more of the good practice developed under the provisions of that Act.</p> <p>We welcome the attempt to improve on the current legislative position; but recognise the difficulties in doing so. Since the UK left the European Union, we have discovered that the clauses attributed to the EU are similarly</p>

	<p>required by free trade agreements outside of the EU.</p> <p>The detail will tell. We can speculate, but unfortunately, we do not have all of that detail until further process is completed in England.</p>
<p>The involvement of the Minister and her officials throughout the scrutiny and amending process in Westminster;</p>	<p>It is difficult to comment directly on the Minister's involvement; we do not monitor the Minister's work.</p> <p>We have however been provided with periodic updates by the Ministers officials which were welcome, informative and helpful.</p> <p>There have been natural delays in getting information from UK Government via Welsh Government colleagues; but we were confident that officials had made every effort to keep us up to date as best they could. We were able to reciprocate and provide information to officials thanks to WLGA's connections to the LGA and our own channels into English sources, including procurement experts in English Councils and their contacts in Whitehall.</p> <p>This enabled good collaboration and mutual support. Between us, we were able to keep the practitioner networks well informed.</p> <p>I would describe the working relationship as close. The working arrangements formed during the Covid-19 Pandemic have ensured that the link between Welsh Government procurement policy officials, WLGA officers and procurement Practitioners in Welsh Councils is very strong, better now than it has ever been.</p>

<p>The regulations potentially necessary to implement the reforms under the Bill and under which powers (and procedures) in the Bill. It would also be helpful if you could share with us any further thoughts you have on the Legislative Consent Memorandums for the UK Procurement Bill.</p>	<p>Regulatory Impact</p> <p>Procurement refers to any and all policies concerned with the provision of goods and services by third parties; including in-house provision that is subject to “Make or Buy” decision making.</p> <p>This includes all public procurement of goods, services, utilities, and concessions.</p> <p>The powers (and procedures) in the Bill are therefore likely to apply to most of the powers that public service organisations have.</p> <p>Implementation</p> <p>Councils power for Community Well Being will help implementation and should assure application that supports better deliver of front-line services.</p> <p>The Well Being of Future Generations Act and the Social Services Act are also important in the context of delivery because they further clarify the way of working and the priorities for public services in a strategic critical category. There is however little legislation that is untouched by this Bill in some form.</p> <p>Progress of the Bill, Welsh Policy, LCM’s.</p> <p>There is great optimism here; but there are also risks, not least of which is our practical capability to deliver the ambition.</p> <p>Procurement is a devolved matter, falling within the competence of</p>
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Welsh Ministers. In practical terms we expect to largely go along with the UK Government reforms, unless there is a good reason not to e.g. where it would fetter the application of important Welsh policies.

We have been following the progress of legislation in England to anticipate the direction and impact of reform here; but we cannot know for sure what this will mean to Wales until the UK Government has completed its processes and Welsh Ministers have decided whether to accept the provisions as written, or act differently.

We were not surprised to learn that there were many queries around the legislation in England; with valid concerns highlighted by English Councils which would apply equally here. As a ready example, we noted strong views from the legal profession around the drafting, nature and operation of a centrally controlled debarment list.

The target for UK Government is to have the new Procurement Regulations enacted in late 2023. Given the number and nature of queries, we are concerned that the UK Government's timelines are looking ambitious and increasingly difficult to meet.

Our understanding is that every effort will be made to create alignment; although that might not always be possible, and the devil is in the detail.

We saw that the Welsh Government laid a Legislative Consent Memorandum (LCM) on the Bill before the Senedd on 9 June 2022, then on 11 July 2022

	<p>a Supplementary LCM. These will be considered and reported on, to the Senedd, by 10 November 2022.</p> <p>We considered both LCM's to be well written, highlighting relevant matters. We like to think that officials and Ministers are being well informed by the ongoing meetings and discussions that they are having with Councils, including the help we are giving through the WLGA. And that we are likewise well informed in return.</p>
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Senedd Cymru	Welsh Parliament
Y Pwyllgor Cyfrifon Cyhoeddus a Gweinyddiaeth Gyhoeddus	Public Accounts and Public Administration Committee
Y Memorandwm Cydsyniad Deddfwriaethol ar y Bil Caffael	Legislative Consent Memorandum on the Procurement Bill
Ymateb gan Gyngor Bwrdeistref Sirol Caerffili	Evidence from Caerphilly County Borough Council

Caerphilly County Borough Council Response – September 2022

Public Accounts and Public Administration Committee - Legislative Consent Memorandums in relation to the UK Procurement Bill

1. The consideration given by the Welsh Government to using the time it has identified for the Social Partnership and Public Procurement (Wales) Bill to bring forward a wider procurement Bill that covered the scope of both the UK Procurement Bill and the Social Partnership and Public Procurement (Wales) Bill.

Answer: - Procurement reform should be formulated into one bill that covers all aspects of procurement across UK/Wales and supports the well-being and future generation act. The principles of procurement need to remain across the UK, however with aspects of the social partnership and procurement Bill that could strengthen the UK procurement Bill. This was highlighted as part of early consultation on the social partnership and procurement bill. Local government in Wales were consulted on options for a UK and Wales Bill on Public procurement. For clarity, it is felt Wales should adopt the UK Bill in entirety, to have more than one procurement regime across the UK would cause confusion amongst the supply chain and in some cases may reduce bidders for Welsh contracts, which will impact best value. The application of more than one procurement regime will cause confusion in what is already an over legislative policy area, which lacks resource and resilience.

2. The lack of scope and constrained timeframes for detailed legislative scrutiny by the Senedd, including thorough engagement with Welsh stakeholders, on such an important area of public policy.

Answer: - In relation to stakeholder engagement and consultation, UK Government held extensive consultation on the draft legislation. However, it is understood that the Bill has been subject to a number of amendments via the

house of Lords therefore current direction of travel for the UK procurement Bill lacks detail and consultation.

3. The accessibility of the new procurement regime when it is split over two Bills.

Answer: - It is concerning that procurement within Wales may have long term confusion due to process being covered by two Bills. For consistency and simplicity one Bill which mirrors that of the UK government will provide transparency and confidence for both the buyer and seller. It is a concern that the amount of process and reporting that could be generated by two bills in an area of public procurement which is already over scrutinised and constantly reviewed within Wales. Currently, there is far too much duplication and uncertainty on procurement policy within Wales, as detailed in question 1 above.

4. The degree of involvement the Minister for Finance and Local Government and her officials have had in shaping and drafting clauses of the UK Procurement Bill and the processes relating to this.

Answer: - We would not know the level of detail of engagement from Welsh Ministers and Officers, however, there has been adequate consultation and awareness raising on these matters. Stakeholders have provided feedback when requested. Stakeholders have been assured by Officers of Welsh Government that Welsh Government have participated in the development of the proposed UK Procurement Bill.

5. The role the provisional common framework for public procurement had in the development of the Bill.

Answer: - This question is for Welsh Government Officials to answer.

6. The level, if any, of consultation undertaken with Welsh stakeholders to inform the drafting process.

Answer: - As above, adequate consultation undertaken at all junctures.

7. Whether clauses of the Bill differ from or replicate the current legislative position.

Answer: - In many cases the clauses of the Bill differ from those of current legislation, however the outcomes could remain the same. The current legislation has clear linkages with policy and wider Welsh legislation. It is hoped that the proposed new legislation will provide more flexibility and clarity

on delivering key outcome objectives associated with the Well Being and Future Generation Act.

8. The involvement of the Minister and her officials throughout the scrutiny and amending process in Westminster.

Answer: - This question is for Welsh Government Officials to answer; however, stakeholders have been assured that Officers have been participating in all aspects of the development of the Bill.

9. The regulations potentially necessary to implement the reforms under the Bill and under which powers (and procedures) in the Bill.

Answer: - This level of detail is currently unknown at the moment due to the fact that the amendments to the proposed bill are not fully known. As with the introduction of any new legislation extensive regulations and training will be required. It is important that Welsh Government allows sufficient time, resource, and funding for the upskilling of Procurement professionals and other professionals impacted by this legislation. The current proposals of the UK Legislation and the Welsh Government Social Partnership & Procurement Bill is a fundamental change in mind set and culture, therefore, dedicated support will be required on the buyer and supplier side. Consideration needs to be given how this element is supported by the work of the proposed Procurement Centre of Excellence-Wales.

Senedd Cymru	Welsh Parliament
Y Pwyllgor Cyfrifon Cyhoeddus a Gweinyddiaeth Gyhoeddus	Public Accounts and Public Administration Committee
Y Memorandwm Cydsyniad Deddfwriaethol ar y Bil Caffael	Legislative Consent Memorandum on the Procurement Bill
Ymateb gan Gartrefi Cymunedol Cymru	Evidence from Community Housing Cymru

Public Accounts and Public Administration Committee consultation - Welsh Government Legislative Consent Memorandum on the UK Procurement Bill

About CHC and HAs

Community Housing Cymru (CHC) is the voice of housing associations in Wales. We represent and support 36 housing associations. Our members provide almost 165,000 homes to 10% of the Welsh population and contribute significantly to the Welsh foundational economy.

For the purposes of this briefing, housing associations are referred to as Registered Social Landlords (RSLs).

Clarification on exemption of RSLs from the UK Procurement Bill

This response builds upon our submission to the Welsh Government consultation on the Social Partnerships and Procurement (Wales) Bill in summer 2022.

We note the proposed benefits of the UK Procurement Bill are to apply a consistent procurement regime to all public sector bodies in England, Wales and Northern Ireland.

CHC noted the exemption of RSLs from the Social Partnerships and Procurement (Wales) Bill. The relevant text within the explanatory memorandum to the Bill as introduced reads: '*Bodies subject to the Socially Responsible Public Procurement Duties do not include HE and FE institutions or Registered Social Landlords.*' However we understand that RSLs will be considered a contracting authority under the UK legislation.

The divergence in approach risks confusion which could create additional cost and administrative burden on RSLs. It is as yet unclear what the Welsh procurement statement will require RSLs to have due regard to and therefore it

is difficult to anticipate the additional costs and requirements of RSLs who often have a small procurement function or no dedicated procurement staff at all.

We note that the Procurement Bill considers RSLs to be contracting bodies for the purpose of the bill. It would be helpful to understand the rationale for this given that RSLs are not classified as public bodies. We would like assurance that the inclusion of RSLs in this manner does not jeopardise their position as non-public bodies by extending control from the state over RSLs. The reclassification of Welsh RSLs by the ONS in 2016 presented significant risks for the sector and, if it had not subsequently been reversed, would have required the transfer of debt onto the public balance sheet and the limitation of borrowing powers by RSLs. The work of the Welsh and UK Government to reduce the degree of national and local government control of housing associations has mitigated this risk and RSLs were reclassified back into the private sector in 2018. We are keen to ensure that there are no unintended consequences from this legislation and the associated requirements on the operations and purchasing decisions of RSLs. RSLs in Wales currently have access to up to £4bn of borrowing facilities which they use to invest in homes and communities in Wales, thereby making every pound of public investment go further and it is crucial to their business model that they remain outside of the public sector.

RSLs operate on a basis of delivering maximum value for money to tenants and wider communities. Therefore, RSLs largely agree with the principles and objectives of the Bill. Welsh RSLs are committed to building the foundational economy in the areas they operate and they routinely incorporate community benefits into their tendering processes. CHC, on behalf of RSLs, are currently working with the Welsh government to better understand the UK and Welsh legislation so that they are able to operate within its spirit.