

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 4)

Procurement Bill

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

Policy Objective(s)

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

Summary of the Bill

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. Amendment 91 – Schedule 7 – Discretionary exclusion grounds

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

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

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

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

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

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

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

Reasons for making these provisions for Wales in the Procurement Bill

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

Financial implications

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

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

Conclusion

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

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

Annex A – Comparison table between versions of the Procurement Bill

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

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

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

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

Clause number on introduction	Clause description	Clause as amended in Grand Committee
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4	Mixed procurement: above and below threshold	4
5	Utilities contracts	5
6	Defence and security contracts	6
7	Concession contracts	7
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15	Preliminary market engagement	15
16	Preliminary market engagement notices	16
17	Duty to consider lots	17
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<i>Terms of a procurement</i>		
18	Award of public contracts following a competitive procedure	18

Clause number on introduction	Clause description	Clause as amended in Grand Committee
	Amended clause title: <i>Award of public contracts following a competitive tendering procedure</i>	
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20	Tender notices and associated tender documents	20
21	Conditions of participation	21
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23	Refining award criteria	23
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25	Sub-contracting specifications	24
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26	Excluding suppliers from a competitive award	25
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