



Llywodraeth Cymru  
Welsh Government

# **Health Service Procurement (Wales) Bill**

## **Statement of Policy Intent for Subordinate Legislation**

13 February 2023

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#### **Introduction**

1. This document provides an indication of the current policy intention for the subordinate legislation which the Welsh Ministers would be empowered to make by virtue of the amendments made to the National Health Service (Wales) Act 2006 and the Procurement Act 2023 (currently a Bill going through the UK Parliament, and which may be subject to further amendment as the Bill progresses through the parliamentary process) by the Health Service Procurement (Wales) Bill (“the Bill”).
2. The Statement has been prepared in order to assist committees during the scrutiny of the Bill. It should be read in conjunction with the Bill and the Explanatory Memorandum and Explanatory Notes which accompany it. Full details of the Senedd procedure associated with each of these powers are set out in Table 1 Chapter 5 of the Explanatory Memorandum and are not repeated in this document.
3. The Bill provides powers in primary legislation to enable the Welsh Ministers to bring forward subordinate legislation to introduce a new procurement regime for health services provided as part of the health service in Wales. In developing subordinate legislation, the Welsh Government will work closely with NHS Wales and stakeholders in order to ensure the provisions are relevant, valid and proportionate.
4. In summary, the Bill provisions are based around the following two powers:
  - i. A “disapplication power” to enable the Welsh Ministers, by regulations, to disapply provisions of the Procurement Act (once passed) that would otherwise apply to the procurement of NHS health services in Wales; and
  - ii. A “creation power” to enable Welsh Ministers to develop and implement a new alternative procurement regime for NHS health services in Wales, through subordinate legislation.
5. A table setting out the description of the power and the policy intent is found at **Annex A**.

**Annex A**

Section of the Bill	Description of power	Reason for and policy intent of the power
<b>Power to disapply provisions of the Procurement Act 2023 in relation to NHS procurement in Wales (“disapplication power”)</b>		
2	<p>Power for Welsh Ministers to disapply provisions of the Procurement Act 2023, to the extent that they are inconsistent with alternative provisions made in respect of the procurement of health services in Wales. This is to be done by inserting a new section (currently intended to be section 116A) into the UK Government’s Procurement Act 2023.</p> <p>Subsection (1) of the new section 116A provides the Welsh Ministers with the power referred to above, which is to be exercised by making regulations (by statutory instrument).</p> <p>The power applies only to ‘regulated health service procurement in Wales’. This is defined in subsection (2)(a) of the new section 116A as the procurement of goods and services by a ‘relevant authority’ that is subject to provisions made by regulations under a new section 10A that is to be inserted into the National Health Service (Wales)</p>	<p><b>Reason for the power:</b> This power enables the Welsh Ministers to disapply procurement legislation in relation to regulated NHS health services procurement in Wales. The disapplication power is required in order to ensure that there is no overlap between the provisions of the Procurement Act 2023 and the new health service procurement regime for Wales which is to be established by the subsequent regulations.</p> <p><b>Policy intent of the power:</b> The power will allow the Welsh Ministers to disapply provisions of the Procurement Bill which would otherwise apply to NHS health service procurement in Wales to the extent that alternative provision has been made in that regard pursuant to the creation power described below. The intention of this power is not to deregulate health services in Wales; it is only to disapply procurement legislation where the procurement of services for the purposes of the health service in Wales is regulated under the new regime.</p>

	<p>Act 2006. ‘Relevant authority’ has the meaning given in the new section 10A (see below for further detail).</p>	<p>The definition of ‘relevant authority’ is reflected in the “creation power” detailed below.</p> <p>The regulations will follow the <b>draft affirmative procedure</b> and will therefore be subject to Senedd scrutiny and agreement.</p>
<p><b>Power to develop and implement a new procurement regime for health services in Wales (“creation power”)</b></p>		
<p>3</p>	<p>Power for Welsh Ministers to make regulations setting out the requirements applying to relevant authorities in the procurement of services provided as part of the health service in Wales, as well as goods and other services which are connected to those health services.</p> <p>This will be done by amending the National Health Service (Wales) Act 2006 to insert a new section (section 10A).</p>	<p><b>Reason for the power:</b></p> <p>This creation power is required in order to make regulations imposing requirements on relevant authorities in relation to the procurement of health services for the purposes of the health service in Wales.</p> <p>One of the primary purposes of taking the power is to give an option to put in place a new health services procurement regime to <i>in so far</i> align with proposals being brought forward by the Department of Health and Social Care (DHSC) in England, known as the Provider Selection Regime (PSR)<sup>1</sup>.</p> <p>The creation power in the Bill does not prescribe detail about the content of any new health service procurement regime and the final details of the PSR regulations and the</p>

<sup>1</sup> [Provider Selection Regime: supplementary consultation on the detail of proposals for regulations - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

		<p>associated operational guidance are still being developed by the DHSC. Therefore, to provide Welsh Ministers the flexibility to adapt appropriately once the final details of the proposed PSR in England are known, the content of the proposed new regime will be developed as part of the future regulations and new regime operational guidelines. This will also provide an element of flexibility to shape the new regime to meet future challenges and needs of the citizens of Wales.</p> <p><b>Policy intent of the power:</b></p> <p>The introduction of the PSR in England aims to give decision-makers in NHS England and local government organisations the flexibility to arrange health services that best promote the interests of patients and the population within their areas, as well as considering the value for public money. It is proposed that the PSR moves away from a position of competition in all circumstances, and moves towards a system of collaboration and partnership with independent health service providers.</p> <p>As a consequence, the operational changes to health services procurement in England under the PSR may have an impact on NHS Wales’s ability to maintain and secure health services in Wales, including:</p>
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		<ul style="list-style-type: none"> <li>• Distortion of the current parallel health services procurement platform between England and Wales;</li> <li>• Limiting the ability to commission health services from health providers on a co-compliant / collaborative basis between NHS England and NHS Wales, and the associated benefits of financial and resource economies of scale;</li> <li>• Limiting the NHS Wales in accessing existing health care service frameworks; and</li> <li>• Limiting suppliers' desire to supply health services in Wales although it is difficult to estimate the extent of their effects at this stage as this will depend on factors such as market and supplier reaction to the changes being brought about.</li> </ul> <p><b>Potential policy intent of future regulations:</b> The future regulations will seek to mitigate against the impacts described above by developing regulations and a new health service procurement regime in Wales to <i>in so far</i> align with DHSC's PSR being introduced in England.</p> <p>This approach will aim to ensure health service procurement in England and Wales continue to operate on a similar basis. This will 'level the procurement playing field'; ensuring that the marketplace in Wales remains attractive to independent health service providers. This will support the NHS in Wales</p>
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		<p>to maintain continuity of health service provision for the citizens of Wales.</p> <p>DHSC have consulted on their proposals under the PSR<sup>2</sup> - aligning a new health service procurement regime in Wales with the PSR in England <b>could</b> include changes in operational procurement procedures in Wales such as:</p> <ul style="list-style-type: none"><li>• Moving away from a position of competition by default;</li><li>• Enabling the continuation of contracting arrangements with an incumbent health service provider in certain circumstances where it is assessed that the continuation of existing arrangements is beneficial;</li><li>• Allowing options for direct award with an identified suitable provider;</li><li>• Options to follow a new competitive procurement process where this is in the best interest of patients, taxpayers and the population.</li></ul> <p>The above approaches will seek to encourage more collaboration and partnerships between the NHS and independent health service providers and potentially give more flexibility to continue engagement with existing service</p>
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<sup>2</sup> [Preview of proposals for the Provider Selection Regime - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

		<p>providers where existing arrangements are assessed to be working well. Any changes will also need to ensure that new procurement regime procedures are underpinned with transparency, scrutiny and accountability.</p> <p>In relation to the scope of 'health services', it is likely that the future regulations will seek to align to the common procurement vocabulary (CPV) codes so far identified in the PSR<sup>3</sup>. The range of services included in this list will be reviewed under the development of future regulations to understand applicability to NHS health services in Wales.</p> <p>Under the Bill, it is proposed the future regulations must be accompanied by statutory guidance, to which 'relevant authorities' must have regard. 'Relevant authorities' include county councils, health boards and trusts and special health authorities in Wales. Such guidance will be considered as part of the development and co-design of the new regime undertaken in partnership with the 'relevant authorities' that procure health services in Wales.</p> <p>The future regulations will follow the <b>draft affirmative procedure</b> and will therefore be subject to the Senedd scrutiny and agreement.</p>
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<sup>3</sup> [Provider Selection Regime: supplementary consultation on the detail of proposals for regulations - GOV.UK \(www.gov.uk\)](http://www.gov.uk)



Other information	
<p><b>Timing of the primary legislation</b></p>	<p>The Bill sets out that the primary legislation will come into force the day after the Bill receives Royal Assent.</p> <p>Subject to the timelines and outcomes of the Senedd scrutiny process, it is proposed that the Bill reaches Royal Assent in Summer 2023.</p>
<p><b>Timing of the proposed subordinate legislation and implementation</b></p>	<p>Subject to the Bill becoming an Act, development of subordinate legislation and associated statutory guidance, developed in collaboration with the ‘relevant authorities’ including NHS Wales procurement leads, will commence after Royal Assent.</p> <p>A 12 week public consultation period on the operational principles of a new health service procurement regime for Wales will take place.</p> <p>Following consultation, production of the new regime guidance will commence and subordinate legislation developed and laid in the Senedd. The regulations will be made under the <b>draft affirmative procedure</b> in the Senedd.</p> <p>Subject to the outcome of the Senedd scrutiny process, it is proposed that the new health service procurement regulations and regime guidelines will aim to come into force in Spring 2024.</p>