

Rebecca Evans MS
Minister for Finance and Local Government

26 January 2023

Dear Rebecca,

The UK Government's Procurement Bill – supplementary legislative consent memoranda

At our meeting on 24 January 2023, we considered the supplementary legislative consent memoranda (Memorandum No. 3 and Memorandum No. 4) you have laid in respect of the UK Government's Procurement Bill.

To inform our further consideration, we would be grateful to receive further clarity on some matters referred to in the memoranda; these are set out in the Annex.

Since the deadline for reporting on both memoranda is 2 March, we would be grateful to receive your responses to these questions by noon on 10 February.

I am copying this letter to the Chair of the Public Accounts and Public Administration Committee.

Yours sincerely,

Huw Irranca-Davies

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Chair

Annex

1. You state in the memoranda that you continue to have concerns with the Bill which need to be resolved before you could consider recommending consent. These matters are in respect of the power to add international agreements, the definition of Welsh Contracting Authorities, commencement powers, and powers to make consequential provision. Please could you:
 - a. provide an update on the degree to which each of these matters have been resolved, if at all;
 - b. indicate whether, since Memorandum No. 3 and No. 4 have been laid, discussions on each of these matters have been held at Ministerial level, or at official level;
 - c. indicate whether you have escalated any of these disagreements to a dispute under the Dispute Avoidance and Resolution Process established by the review of intergovernmental relations, and if not, why not.

2. In Memorandum No. 3 you state that the concern you had with regard to a disapplication power for healthcare services, which you referred to in previous legislative consent memoranda, had been resolved. You stated in the first memorandum that the UK Government had committed to bring forward the required amendment. However, in Memorandum No. 2 you stated that the Welsh Ministers had decided not to pursue the inclusion of the power, but were considering various options, which may include taking forward the powers required via Senedd legislation. The Minister for Health and Social Services has recently informed the Health and Social Care Committee that the Welsh Government will introduce a Health Service Procurement (Wales) Bill to make provision for a “disapplication power” for Welsh health services procurement and a “creation power” to enable the Welsh Ministers to introduce a new separate procurement regime for NHS health services in Wales. The Minister states that the Welsh Government will propose an expedited timetable for the Bill. Please could you:
 - a. explain why the Welsh Government has changed its position on the inclusion of the disapplication power for healthcare within the Procurement Bill, considering a commitment to bring forward the relevant amendment was secured from the UK Government;
 - b. confirm whether the Welsh Government has assessed the impact of its decision on the accessibility of Welsh procurement law, and if an assessment has been undertaken, please set out the outcome of that assessment. For these purposes, it would appear to us that a Welsh contracting authority may have to consider the Procurement Bill and subordinate legislation to be made under it, the Health Service Procurement (Wales) Bill, the Social Partnership and Public Procurement (Wales) Bill and the *Well-being of Future Generations (Wales) Act 2015*;
 - c. confirm whether the Welsh Government had considered broadening the scope of the Health Service Procurement (Wales) Bill to include wider provisions relating to the processes underpinning procurement law in Wales, which would largely mirror those

in the UK Government's Procurement Bill, and seek provisions within the legislative competence of the Senedd to be removed from the Procurement Bill;

- d. indicate whether you believe legislating on procurement law via three bills introduced in different legislatures in close succession to each other follows a logical approach to legislating; and whether you will undertake an internal review of the approach taken to inform future practice.
3. Clause 50 of the Bill (Contract details notices and publication of contracts), as referenced in both memoranda, includes a regulation-making power for the Welsh Ministers subject to the negative procedure. However, by virtue of an amendment, the corresponding power to Ministers of the Crown is subject to the affirmative procedure. Please could you provide an overview of any discussions you are having to seek to amend the power for the Welsh Ministers to also be subject to the affirmative procedure.
 4. Clause 88 of the Bill (Notices, documents and information: regulations and online system), as referenced in Memorandum No. 3, provides that a Minister of the Crown must make arrangements to establish and operate an online system for the purpose of publishing notices, documents and other information under the Bill. There are Welsh online systems which may have some of the same functionality. Please could you clarify how these systems may interact, or whether the new system to be established by a Minister of the Crown will replace any existing systems, and could you indicate if you are seeking amendments to provide the Welsh Ministers with an equivalent power.
 5. You consider clause 12 and 80 of the Bill to be within the legislative competence of the Senedd. However, these provisions do not apply to devolved Welsh procurement arrangements. Additionally, devolved Welsh authorities (within the meaning of section 157A of the *Government of Wales Act 2006*) are not required to have regard to the national procurement policy statement under clause 12 and are not subject to clause 80, except in relation to procurement under a reserved procurement arrangement. Please could you clarify why you believe these clauses require consent.