

Senedd Cymru | Welsh Parliament

[Y Pwyllgor Iechyd a Gofal Cymdeithasol](#) | [Health and Social Care Committee](#)

[Bil Caffael y Gwasanaeth Iechyd \(Cymru\)](#) | [Health Service Procurement \(Wales\) Bill](#)

Ymateb gan Socialist Health Association Cymru | Evidence from Socialist Health Association Cymru

General principles of the Bill

What are your views on the general principles of the Health Service Procurement (Wales) Bill?

Socialist Health Association – Cymru is very worried about this Bill.

The UK Parliament is introducing procurement legislation following Brexit. The preceding EU legislation favoured a pro-free market framework though there were exemptions for major public services such as health care. Some elements of the Westminster legislation will allow for welcome flexibility in the NHS procurement process and places a greater emphasis on collaboration rather than competition.

However this has to be seen in the context of the major drive in the English NHS towards outsourcing and privatisation. The Welsh Bill seeks to mitigate any disadvantage that might arise in the use of non-public services in a Welsh context. This leaves open the possibility that Welsh NHS could end up following the English NHS out-sourcing and privatisation agenda.

While the Westminster proposals do offer increased flexibility the removal of the competitive tendering element does create the risk of cosy, crony relationships developing in the procurement process. New transparent governance arrangements are needed to obviate this risk.

Is there a need for legislation to deliver the Welsh Government's stated policy intention?

No

Please outline your reasons for your answer to question 2 (we would be grateful if you could keep your answer to around 500 words)

The Westminster proposed legislation will have jurisdiction in England, Wales and Northern Ireland. In the absence of a Welsh response, the law, as proposed for England, could be applied to Wales. It is therefore better that the Welsh Government should propose its own legislative programme in this area.

Regulation making powers

What are your views on the 'disapplication' regulation-making power in section 2 of the Bill?

The Welsh Government should disapply

- any requirements in UK Government legislation that places an onus or expectation on Welsh health bodies to outsource or privatise health services in Wales.
- Any requirement that would leave staff in contracted or outsourced Welsh health providers with less favourable terms of service than their public service colleagues.

What are your views on the 'creation' regulation-making power in section 3 of the Bill?

The Welsh Government should ensure:-

- That public service provision is the preferred means of delivery of health care services in Wales.
- Other than where needed for cross border services with the English NHS, there would no market testing or outsourcing of Welsh NHS services except in the most exceptional circumstances.
- Where exceptional conditions justify such activity provisions should be put in place to regularly review whether these conditions still continue. Where possible "sunset" clauses should be in place to finish with such arrangements.
- That staff are not disadvantaged by any change in terms of employment following tendering / outsourcing / privatisation.
- That where services are not subject to a competitive tendering strong, transparent governance arrangements are in place to ensure that cosy, crony collaboration is avoided e.g. the Minister should report to Senedd Cymru or its Health Committee on such arrangements. Where necessary Audit Wales should also regularly monitor such arrangements.
- Any NHS public procurement should be subject to the same enlightened general public procurement regime being currently proposed by the Welsh Government.

Implementation and impact of the Bill

Are there any potential barriers to the implementation of the Bill's provisions? If so, what are they, and are they adequately taken into account in the Bill and the accompanying Explanatory Memorandum and Regulatory Impact Assessment?

There remains a lot of uncertainty about what is being proposed in England and the rest of the UK. It is therefore difficult to come up with a full range of Welsh legislative responses. Consequently there are limitations on the scrutiny that can be applied to this legislation and its ultimate implications.

Are any unintended consequences likely to arise from the Bill?

SHA-Cymru is very concerned that this legislation will enable outsourcing, tendering and privatisation of NHS services in Wales. We believe that such activity is unduly expensive, divisive,

disruptive, gives poor value for money, demoralising for staff and damaging to our public service ethos.

The Minister presented the legislation as relatively unexciting and uninteresting. We do not agree. We strongly believe that this primary legislation and any consequent secondary legislation / guidance should be subject to full scrutiny, debate and democratic approval.

What are your views on the Welsh Government's assessment of the financial and other impacts of the Bill as set out in Part 2 of the Explanatory Memorandum?

In view of the uncertainty about the potential scope of the legislation it is hard to make an accurate judgement.

Any marketing / tendering / outsourcing exercise involves wasteful transactional costs which does not seem to have been covered by the Explanatory Memorandum.

The Explanatory Memorandum also overlooks the fact that many smaller (often Third Sector) enterprises are at a competitive disadvantage in tendering against bigger commercial organisations that have bespoke procurement departments. These smaller enterprises are more likely to be local and based in Wales.

Development of the policy and legislative proposals

What are your views on the approach taken by the Welsh Government to develop the policy and legislative proposals reflected in the Bill?

Socialist Health Association – Cymru is worried about the downbeat way that these proposals are being taken forward. This seems to seriously downplay the risks and wider implications that are involved with this legislation.

Any other issues

Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?

While we understand that the Welsh Government has to respond to a post-Brexit environment in a constructive and creative way, we support its view that much of this environment is being fashioned by a Westminster Government whose values and ethos is very much at odds with those of the Welsh Government.