

**Eluned Morgan AS/MS**

**Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol**

**Minister for Health and Social Services**



Llywodraeth Cymru  
Welsh Government

Huw Irranca-Davies MS

Chair Legislation Justice and Constitution Committee

Senedd Cymru

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24 March 2023

Dear Huw,

Thank you for your letter and the questions put forward by your Committee relating to the Health Service Procurement (Wales) Bill. I am pleased to provide my response, which is attached at Annex A.

In your letter, you also offered the opportunity to provide supplementary written evidence in relation to the Bill and I have also received similar requests from the Chairs of the Health and Social Care Committee and Finance Committee. As such, I have provided additional information in Annex A to support all three Committees with the scrutiny of the Bill.

I trust my response answers your questions. However, if there are further questions or areas requiring clarification, my officials and I are happy to offer additional written evidence or provide a technical briefing session.

I am copying this letter to the Chairs of the Health and Social Care Committee and Finance Committee.

Yours sincerely

**Eluned Morgan AS/MS**

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**Minister for Health and Social Services**

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## ANNEX A

### HEALTH SERVICE PROCUREMENT (WALES) BILL - RESPONSE TO QUESTIONS FROM THE LEGISLATION, JUSTICE AND CONSTITUTION COMMITTEE, LETTER DATED 13 MARCH 2023

***Q1 - The timescales for the development of regulations to be made under the Bill to introduce a new separate procurement regime for health services in Wales, including consultation and the opportunities for the Senedd to undertake scrutiny of the draft and final regulations.***

At present and subject to Senedd approval, the expectation is for the Bill to receive Royal Assent in August.

Following Royal Assent, it is proposed to undertake a 12 week public consultation commencing as soon as practical, and likely to begin in early Autumn. However, this timing is predicated on having seen the final Regulations and statutory guidance on the Provider Selection Regime from DHSC in the next few months.

The consultation will focus on the operational principles of the new procurement regime for Wales, based on how the Provider Selection Regime will operate in England and whether this is an approach we should replicate in Wales to a greater or lesser degree, where appropriate.

The outcome of the consultation exercise will help inform the development of the future regulations and statutory guidance (which will be developed in partnership with NHS Wales). As such, we are not proposing to consult on the actual Welsh regulations and statutory guidance.

We anticipate laying regulations in early 2024 following the 'draft affirmative procedure' to allow the Senedd the opportunity to scrutinise the regulations, and aiming for those regulations coming into force in Spring 2024, subject to Senedd approval.

This proposed timeline aims to coincide as far possible with wider procurement reform changes as a result of the UK Government's Procurement Bill to minimise operational impact for the 'relevant authorities' who will be implementing the new procurement regimes.

***Q2 – As the regulations are developed, detail on any barriers that arise which may impede the Senedd's ability to scrutinise them within set timescales.***

The timelines provided in the response to Q1 are based on assumptions of the successful passage of both the UK Government's Procurement Bill receiving Royal Assent this Spring and the Health Service Procurement (Wales) Bill receiving Royal Assent in August. Crucially, we need to have sight of the detail and final regulations on the Provider Selection Regime from DHSC in the next few months, to enable us to develop operational principles of a new health service procurement regime for Wales.

**Q3 – Further examples of ‘mixed procurements’ for both healthcare services and goods, for which statutory guidance will state which procurement regime applies: either the rules provided by the UK Government’s Procurement Bill or the rules provided by regulations to be made under this Bill.**

The definition of ‘health services’ contained in the Bill relates to ‘**clinical**’ health services’ as described by sections 1 and 3 of the National Health Service (Wales) Act 2006. The clinical health services will be defined under future regulations by Common Procurement Vocabulary codes (“CPV codes”). For example, a **draft** list of proposed CPV codes under DHSC’s Provider Selection Regime in England can be found on the link [here](#). Once we have sight of the agreed list of CPV codes in DHSC’s final regulations, my officials and I will consider whether we choose to replicate the same CPV codes in the proposed future regulations.

The Bill therefore does not cover the procurement of ‘non-clinical services’ or goods **in isolation** (such as food). Goods and other services in isolation procured by the health sector in Wales will remain subject to the existing procurement regulations, until these are replaced by the wider procurement reforms under the forthcoming UK Government Procurement Bill.

The Health Service Procurement (Wales) Bill does however make provision for the procurement of goods or other services that are ‘**connected to**’ clinical health services (i.e. mixed procurement). Provisions around mixed procurement will need to be consistent with rules set out in provisions under existing procurement regulations and reforms under the forthcoming UK Government Procurement Bill.

It is anticipated that ‘mixed procurement’ within the Health Service Procurement (Wales) Bill will only apply within a defined set of rules and under certain circumstances. For example, this could apply to arrangements where the main subject matter is a ‘clinical health service’ and the procurement of the connected goods or services are not reasonably separable, or procuring such goods and services separately would adversely impact the delivery of the ‘clinical health service’.

DHSC are considering a similar position on ‘mixed procurement’ in their Provider Selection Regime and the circumstances and scope of when such rules will apply. Information on DHSC’s approach to this matter is included on the link [here](#) and as detailed in the House of Lords debate on the UK Government’s Procurement Bill last November<sup>1</sup>.

In summary, my officials and I will consider the operational detail around how ‘mixed procurement’ will work in practice as part of the development of future regulations and new health service procurement regime guidance in Wales.

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<sup>1</sup> [https://hansard.parliament.uk/Lords/2022-11-28/debates/916A209A-EB71-4F08-A080-5DE3DE3A5284/ProcurementBill\(HL\)#contribution-A83EB580-2EC1-4C3F-A08F-DE7F493BC143](https://hansard.parliament.uk/Lords/2022-11-28/debates/916A209A-EB71-4F08-A080-5DE3DE3A5284/ProcurementBill(HL)#contribution-A83EB580-2EC1-4C3F-A08F-DE7F493BC143)

**ADDITIONAL SUPPLEMENTARY INFORMATION – following correspondence from the Chairs of the Health and Social Care Committee and the Finance Committee in relation to the Bill.**

***Ongoing relationship with the Department of Health and Social Care on the Provider Selection Regime***

I would like to take the opportunity to outline the position in relation to previous and ongoing dialogue with DHSC on the introduction of the Provider Selection Regime in England.

The UK Government's Health and Care Act received Royal Assent in April 2022 and the provisions in the Act relating to health service procurement applied to England only. There had been limited interaction between DHSC and my officials on the Provider Selection Regime at this time as DHSC's policy was being developed, and there was limited appreciation by DHSC on the perceived operational impact for health service procurement in Wales.

However, as policy was further developed and interaction increased, the potential impact of the proposed Provider Selection Regime on health service procurement in Wales was recognised. As a result, in July 2022 I wrote to the then UK Government's Minister for Health, Maria Caulfield MP, to express my desire to better understand how the planned introduction on the Provider Selection Regime in England would impact health service procurement in Wales. I stressed the importance of strengthening the existing relationship between our officials; continuing engagement on the matter and requesting sight of the draft Provider Selection Regime regulations at the earliest opportunity.

My officials and their counterparts in DHSC have since fostered an excellent working relationship. DHSC have maintained regular contact with my officials on the progress of the Provider Selection Regime and my officials have discussed the introduction of the Health Service Procurement (Wales) Bill. Where appropriate to do so, DHSC have provided my officials with draft information on the Provider Selection Regime proposals, including sight of draft regulations, which were shared in confidence early in their development. This close working relationship remains in place and we anticipate that DHSC will share copies of the completed regulations when finalised and ready for laying.

***Information on the detailed workings in relation to the increase in staff costs to NHS Bodies of £2.7 million identified in the Regulatory Impact Assessment of the Bill.***

A breakdown of the illustrative figures for NHS staffing costs set out in paragraph 93 and table 7 of the Regulatory Impact Assessment of the Bill is set out below:

<b>Health Service Procurement (Wales) Bill</b>		
<b>Illustration of NHS Wales staffing costs</b>		
Total revenue cost per annum of 257 NHS procurement staff		£ 10,470,018
10% capacity in revenue costs 257 NHS NHS procurement staff	<i>per annum</i>	£ 1,047,002
	<i>per month</i>	£ 87,250
year 1 2023-24	<i>(7months @ £87,250)</i>	£ 610,751
year 2 2024-25		£ 1,047,002
year 3 2025-26		£ 1,047,002
<b>Total</b>		<b>£ 2,704,755</b>
<b>Rounded to the nearest £000's</b>		<b>£ 2,705,000</b>

***Confirmation on the likelihood of the Welsh Government receiving consequential funding as a result of the expenditure in England.***

At present there is no indication that Welsh Government will receive consequential funding as a result of expenditure related to the proposed introduction of the Provider Selection Regime in England. Should this position change, I will provide an update to committees during the Bill scrutiny process.