



Huw Irranca-Davies
Chair, Legislation, Justice and Constitution Committee

cc. Mark Isherwood
Chair, Public Accounts and Public Administration Committee

18 April 2023

Dear Huw,

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

Thank you for the report on the Welsh Government's Legislative Consent Memoranda (LCM) 3, 4 and 5 on the Procurement Bill which was laid in the Senedd on 14 March.

I responded to the points you raised in your recommendations during the Procurement Bill debate in Plenary on 28 March. Thank you also for your letter of 11 April requesting a written response which I am pleased to provide below.

Recommendation 1.

The Minister should explain her reasons for being content with the absence of commencement powers for the Welsh Ministers in the Bill, when an amendment to ensure those powers was originally sought.

When the decision was made to join the UK Government Bill, equivalent commencement powers were seen to be risk mitigation if the Welsh Ministers had any issues with the Bill or parts of the Bill. This is not the case as the Bill has largely been developed jointly between Welsh Government and UK Government officials.

Whilst Welsh Ministers do not have commencement powers, following detailed discussions, we have ensured that UK Government must obtain Welsh Ministers consent before commencing the provisions for Welsh Contracting Authorities. This agreement ensures our constitutional position is protected.

I consider this solution to be appropriate as both the Welsh and UK Governments are committed to commencing the provisions of the Bill at the same time to avoid the detrimental

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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.

impact on cross-border suppliers and buyers of doing otherwise. This unique piece of legislation has significant cross-boundary aspects with impacts for buyers and suppliers if England and Wales commence at different times. We want to avoid any risk of Welsh suppliers finding themselves at a disadvantage when bidding for and performing contracts caused by a delay between the legislation being commenced in England and Wales.

This topic has been discussed at ministerial and official level several times and it has been collectively agreed that commencing at the same time is crucial.

My officials will continue to work closely with Cabinet Office officials to ensure that the English and Welsh Regulations can be commenced at the same time.

Recommendation 2.

The Minister should set out the Welsh Government's assessment of the implications of a refusal to consent to the UK Government's commencement of the Bill's provisions in relation to Welsh contracting authorities, and a subsequent decision by the UK Government to remove those provisions from the Bill.

The effect of clause 123 is that the UK Government must obtain the consent of the Welsh Ministers before they are able to commence provisions in the Bill regulating procurement for Welsh contracting Authorities. If the Welsh Ministers give their consent, the legislation will come into effect at the same time in Wales, England and Northern Ireland. However, if Welsh Ministers withhold consent, this will potentially lead to a delay in commencement for Welsh Contracting Authorities.

As a result, Wales and England would be operating separate legislative regimes, with the current procurement rules continuing to apply to Welsh contracting authorities. This would cause inconsistency and uncertainty for Welsh contracting authorities and suppliers, particularly those who conduct business across the borders.

My officials therefore consider that there would be unintended operational consequences of commencing at a different time to England, which is why we are committed to commencing at the same time as UK Government.

Recommendation 3.

The Minister should set out the potential financial implications of clause 123, as amended, for the Welsh Government and the wider public sector in Wales.

Both the Welsh and UK Governments are committed to commencing the provisions of the Bill at the same time to avoid the detrimental impact on cross-border suppliers and buyers of doing otherwise. However, if Welsh Ministers withheld consent to the date of commencement of certain provisions of the Bill, there could be a potential delay in commencement for Welsh Contracting Authorities.

It is not possible to carry out a financial assessment at this time as the financial impact would be dependent on the length of the delay. Any financial implications and operational

consequences of commencing at a different time to England would be determined at that time and would be fully considered by Welsh Ministers before any decisions to withhold consent are made.

You also asked in your letter dated 11 April if I have now escalated the concerns related to clauses 89 and 92 of the Bill via the Dispute Avoidance and Resolution Process, and if I have yet to do so, explain why that is not the case.

From a policy perspective, the changes these powers would make are not controversial. However, the use of concurrent powers presents a threat to fundamental constitutional principles and our devolution settlement.

We hope the UKG will recognise the strength of feeling of the Senedd on the outstanding matters of concern and will bring forward an amendment at Report stage to amend the Bill so that these powers are changed to concurrent plus.

As acknowledged in the Intergovernmental Relations Review, the dispute resolution mechanisms you refer to are a last resort. We will continue to press our concerns about the Bill with UKG at every opportunity, using the full suite of intergovernmental machinery in place, recognising that escalation processes are available if needed.

I trust the responses provided are helpful. Please do not hesitate to contact me if you need anything further.

I am copying this letter to the Chair of the Public Accounts and Public Administration Committee, who will also be interested to see a copy of my response to you.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Rebecca Evans AS/MS

Y Gweinidog Cyllid a Llywodraeth Leol
Minister for Finance and Local Government