

Eluned Morgan AS/MS
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Russell George MS
Chair, Health and Social Care Committee

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

Peredur Owen Griffiths MS
Chair, Finance Committee

30 June 2023

Dear Colleague,

The Health Service Procurement (Wales) Bill – Stage 2 and Stage 3 Senedd scrutiny

I am writing to update you on progress of the Health Service Procurement (Wales) Bill ("HSP Bill"), and to provide additional information to support a number of recommendations or amendments that have been raised by Committee Members when undertaking scrutiny of the Bill.

1. Progress of the Health Service Procurement (Wales) Bill and inter-relation with the UK Government's Procurement Bill.

Section 2 of the HSP Bill amends the Procurement Act 2023 (currently a Bill in the final stages of parliamentary scrutiny), by inserting a new section to enable the Welsh Ministers to disapply provisions of that Act which would otherwise apply to the procurement of services provided as part of the health service in Wales. Section 3 of the HSP Bill inserts a new section (10A) into the National Health Service (Wales) Act 2006 which allows for alternative provision to be made in respect of the procurement of NHS health services in Wales.

The UK Government's Procurement Bill is only now entering its final stage of scrutiny in the House of Commons and House of Lords. This is taking longer than was originally anticipated when we first sought to introduce the HSP Bill on a fast-tracked timeline back in February this year. Our timeline at that point was based on the original timetable for the Procurement Bill, which would have seen it complete its

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

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.

parliamentary scrutiny cycles and receive Royal Assent in late Spring of this year. Whilst there have been slippages, we remained hopeful that it would be completed before Senedd summer recess. However, this now looks highly unlikely and unfortunately this has a knock on effect to the timings and progress of the HSP Bill.

At this point, the final provisions and order of the Procurement Bill are not yet 'settled' and are still subject to changes prior to moving towards Royal Assent. These final stages could in practice take several more weeks and there is no pre-defined date for completion; meaning that a date for a finalised position on the Procurement Bill is as yet unknown.

The Procurement Bill needs to be settled to facilitate a small number of technical numerical amendments to the HSP Bill following changes in the Procurement Bill that have occurred since the introduction of the HSP Bill in February. These relate to the numbering of the disapplication power, as set out above, ensuring it follows immediately after the similar power for Ministers of the Crown in England; and to ensure other consequential amendments are inserted in the correct place and the cross-references are accurate.

Stage 3 proceedings for the HSP Bill are currently scheduled in the Senedd for the 11 July; meaning that the Procurement Bill needs to be settled prior to that date. As it is becoming increasingly unlikely that this will occur by 11 July, I am now proposing that Stage 3 and Stage 4 scrutiny of the HSP Bill are postponed until after the Senedd's summer recess. This will enable sufficient time for the Procurement Bill to be settled and therefore allow accurate reflection of numbering within the HSP Bill prior to any further Senedd scrutiny proceedings taking place.

I am mindful that Members may be disappointed, as am I, with the delayed progress of the HSP Bill particularly in light of agreeing to my request for a fast-track Bill at introduction stage. However, I am sure that they will understand the position and that it is out of our hands; but I maintain that this is the correct approach to ensure the HSP Bill is accurate, prior to completion of the Senedd's scrutiny process.

My officials and I will continue to closely monitor the progress of the Procurement Bill and I will liaise with the Llywydd and Business Committee to agree a revised date for Stage 3 and 4 proceedings after the summer recess.

In the interim, my officials will proceed with tabling the revised Explanatory Memorandum and Explanatory Notes in line with Standing Order 26.28, which requires the documentation to be laid at least 5 working days prior to stage 3 proceedings.

2. Additional information in response to recommendations or amendments raised by Committees.

During Senedd scrutiny of the Bill, I made a commitment to provide a written response to a number of matters raised by the scrutiny committees. This additional information is set out in **Annex A**.

Once again, I would like to take the opportunity to reiterate my thanks to all three Committees for their scrutiny of the Bill and its supporting documentation.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

ANNEX A

ADDITIONAL INFORMATION IN RESPONSE TO RECOMMENDATIONS OR AMENDMENTS - HEALTH SERVICE PROCUREMENT (WALES) BILL.

1. Recommendation 6 of the Health and Social Care Committee's stage 1 scrutiny report – in relation to ensuring that the implementation, and requirements, of the new health service procurement regime are communicated effectively and accessibly to all relevant stakeholders.

During the General Principles debate I indicated that I was happy to accept this recommendation. I committed to providing the Committee with further details of how we will achieve effective stakeholder engagement during the implementation of the proposed new health service procurement regime.

My officials will produce a comprehensive stakeholder engagement plan as part of the development of the future regulations, statutory guidance and implementation of the proposed new procurement regime. This plan will build upon the initial stakeholder engagement undertaken to date in the preparation of the Bill and will seek to proactively engage with relevant stakeholders, groups and individuals that will be affected by the implementation of the new health service procurement regime.

It is anticipated that in relation to the operational principles of the future regulations and supporting statutory guidance, the engagement will take the form of 1-2-1 meetings with appropriate stakeholder groups to raise awareness of the proposals. This proactive engagement will be supported by a formal 12-week public consultation on the operational principles following Welsh Government's established public consultation processes.

In relation to the communication of the implementation of the proposed new regime, my officials will work with the relevant authorities to deliver training on the operational requirements of the proposed new regime. It is anticipated that this will be undertaken in partnership with procurement teams in NHS Wales and Welsh local authorities, and rolled out over a number of months, prior to the new regime coming into force. In doing this, my officials are also mindful that there will be a requirement to align with planned training by the Department of Health and Social Care for their proposed Provider Selection Regime and training in relation to the wider procurement reforms under the UK Government's Procurement Bill that will be led by officials in the Welsh Government's Corporate Procurement Division, in partnership with the UK Government's Cabinet Office.

2. Recommendation 7 from the Health and Social Care Committee's stage 1 scrutiny report and Recommendation 4 from the Finance Committee's stage 1 scrutiny report - in relation to monitoring and reviewing the implementation of the Bill.

During the General Principles debate I indicated that I was happy to accept the above two recommendations in relation to reviewing the effectiveness of the future new procurement regime and committed to including provisions in the statutory guidance to monitor the effectiveness of the proposed new regime. I also committed to writing to the scrutiny Committees to set out our proposed approach.

At the stage 2 scrutiny committee proceedings, an amendment was brought forward from Gareth Davies MS in the form of Amendment 10 to review the effectiveness of the Act. Whilst I accepted the principle of the amendment proposed, I could not accept the amendment as drafted. The reason for this was twofold – firstly, the amendment as drafted would undertake a review of two provisions that amend two other pieces of legislation and would therefore not be particularly effective in monitoring the effectiveness of the Act. Secondly, we needed to be mindful that any proposed review period needs flexibility to tie in with review periods that the Department of Health and Social Care will implement for their proposed Provider Selection Regime.

Acknowledging the principle of the proposed amendment, during the stage 2 proceedings I offered to work with Gareth Davies MS to find an agreeable solution to include a review provision on the face of the Bill that can be included at Stage 3 scrutiny.

3. Involvement of service end users with procurement decisions

At the stage 2 scrutiny committee proceedings, an amendment was brought forward from Rhun ap Iorwerth MS in the form of Amendment 14 in relation to 'ensuring the involvement of persons whom the services or goods are intended to benefit'.

Whilst I recognise the importance of ensuring that health services meet the needs of service users, I could not accept this amendment as I believe that placing a provision on the face of the Bill to consult with service users (which could in theory extend to seeking service users opinions on the award of contracts to individual service providers) will be unworkable in practice and be overly onerous. Such a provision will also duplicate the role of the newly established independent body, Llais, and their role to gather the views and experiences of service users to shape health service delivery in Wales.

Furthermore, Section 15 the Health and Social Care (Quality and Engagement) (Wales) Act 2020 already makes provision to enable Llais (in its role as the Citizen Voice Body) to make representations to 'local authorities and NHS Wales bodies' in relation the provision of health and social care services. This would include representations as to how such services are procured.

Therefore, there is already a statutory mechanism in place to ensure that relevant authorities are made aware of service users' views and must have regard to those views. This is underpinned by the Statutory Guidance on Representations made by The Citizens Voice Body – link to which can be found [here](#).

As not to duplicate the statutory functions of Llais, I will ensure that there is suitable cross references to Llais in the statutory guidance that will accompany the future regulations and implementation of the proposed new health service procurement regime.