

Rebecca Evans MS

Cabinet Secretary for Finance, Constitution and Cabinet Office

1 July 2024

Dear Rebecca

The Procurement (Wales) Regulations 2024

Thank you for your swift letter of reply (dated 27 June 2024), in response to the letter we sent to you last Monday, 24 June, in relation to the draft Procurement (Wales) Regulations. We were able to consider the correspondence at our meeting this afternoon. We welcome and appreciate your timely engagement with us as we discharge our obligations to the Senedd to scrutinise the draft Regulations ahead of you seeking the Senedd's approval for them to be made.

Unfortunately, a handful of matters remain unresolved. Again, the Committee agreed to write to you urgently in advance of tomorrow's scheduled debate on the draft Regulations.

We note your view that it is not the case that the Welsh Government has deferred to UK Government during the development of these Regulations, and that you consider a better depiction of the relationship "would be one of constructive partnership, characterised by a shared focus on the wider long-term opportunities for buyers and suppliers".

In respect of technical reporting points 10 and 11, you have told us that the list of central government bodies in Schedule 2 of the Regulations mirrors the existing list of central government bodies in Schedule 1 of the amended Public Contracts Regulations 2015 (the 2015 Regulations). You state "This was a deliberate decision to ensure that bodies covered by existing legislation continued to be covered by the new legislation."

You have also told us that, historically, the Welsh Government has been unable to amend the names of central government bodies because of an absence of relevant powers in trade legislation to make these amendments. In addition, you state that the Welsh Government is exploring the feasibility of utilising the powers contained within the *Procurement Act 2023* (the 2023 Act) to update the list set



out at Schedule 2 of the Regulations “whilst simultaneously considering potential risks regarding compliance with international trade obligations”.

In relation to the distinction between “Welsh National Health Service Trusts and Local Health Boards” (LHBs) and “Welsh NHS Bodies”, you told us that you took a deliberate decision to mirror the existing list of central government bodies in the 2015 Regulations “to ensure that bodies covered by existing legislation continued to be covered by the new legislation, and to ensure that there is no ambiguity as we move to the new regime”.

We remain unclear as to why, in now exercising the powers in the 2023 Act to make new regulations, an opportunity has not been taken to use the correct name of the Senedd Commission. We are similarly unclear as to why using the current and correct name would make it unclear that the law continues to apply to that body. It is our understanding that the same body is covered by the new legislation whether the previous or current name is used. In our view it would be clearer that the law continues to apply to that body if its current name is used.

Furthermore, we are also unclear as to how making new legislation that simply uses the correct and current name of the Senedd Commission could pose a potential risk to compliance with international trade obligations.

It is disappointing that you have not provided us with the UK Government advice on this matter which you indicated the Welsh Government has received and was following when drafting these Regulations.

We acknowledge that the Welsh Government will perhaps have access to information to which we are not party. However, in our view, that demonstrates a need for as much detail as possible to be offered to the Senedd to provide absolute clarity as to why the Welsh Government has adopted an approach when legislating which to us seems irregular.

With regards to our technical reporting points 4 and 5, we acknowledge your comments that the decision not to define the terms ‘significant influence’ in regulation 12(7) and ‘concerted practice’ in regulation 13(8) included consideration of the equivalent drafting adopted by the UK Government in its Procurement Regulations 2024. We also note that you decided that each term “should bear its ordinary meaning in the context in which it is to be considered”.

You also state that “Should the need arise then further context can be given to stakeholders via guidance and advice”. You will be aware that there is a counter-view, often expressed by this Committee, that providing definitions on the face of legislation would be better for legal certainty and accessibility, and such matters should not be left to guidance.

Should you wish to provide additional comments and information to the Committee, we would welcome and would carefully consider, as always, any further correspondence we receive.

Given the timescales involved in the Senedd's consideration of these draft Regulations, I will be asking the Committee Clerk to make the necessary arrangements for our exchange of correspondence to be made available to all Members of the Senedd via the agenda for tomorrow's Plenary sitting.

Yours sincerely,

A handwritten signature in black ink that reads "Mike Hedges". The signature is written in a cursive style and is underlined with a single horizontal line.

Mike Hedges
Chair

