

Government Response: Health Services (Provider Selection Regime) (Wales) Regulations 2025 ('the Regulations')

Technical Scrutiny point 1: The Government notes the reporting point in relation to regulation 5(c) of the Regulations and the Wales procurement policy statement (WPPS).

Regulation 5 sets out the 'Procurement Principles' that relevant authorities must observe when undertaking a procurement. The provisions in 5(a) and (b) are intended to be consistent with the approach set out in the UK Government's Health Care Services (Provider Selection Regime) Regulations 2023 ('the Provider Selection Regime England').

Regulation 5(c) enhances the 'Procurement Principles' in the Regulations, over and above what has been included in the Provider Selection Regime England. It has been included partly in response to points raised by Members in relation to procurement principles during the scrutiny of the Health Service Procurement (Wales) Act 2024 ('the 2024 Act').

The WPPS sets out the Welsh Government's 'strategic priorities' for public sector procurement in Wales.

Regulation 5(c) is framed on the basis of a relevant authority, as defined under the 2024 Act, having regard to the WPPS published under s.14 of the Procurement Act 2023.

Regulation 5(c) requires that the WPPS must be given consideration when undertaking procurements under the Regulations; but a duty to 'have regard' does not impact on or override the purpose and effect of the Regulations. In every case the relevant authority will need to take a view on the relevance of the WPPS to the particular procurement being undertaken, and will have the choice as to whether, and to what extent they should follow the principles set out in the WPPS.

In respect of the Committee's point regarding the enabling powers, section 10A(1) of the National Health Service (Wales) Act 2006 provides expressly that "the Welsh Ministers may, by regulations, make provision in relation to the processes to be followed and objectives to be pursued by relevant authorities in the procurement". This indicates that it was intended that the regulations would include reference to broader strategic principles and objectives, as well as the detailed processes to be followed by relevant authorities when undertaking a procurement.

Therefore, the view of the Welsh Government is that regulation 5(c) is set out in a manner which requires the relevant authority to have regard to the WPPS when procuring health services and does no more than provide strategic context to a procurement. Having regard to the WPPS does not determine, nor override how the procurement processes in the Regulations operate. Therefore, it is not considered an ultra vires sub delegation.