

HSP2 Cytun; Size of Wales; Welsh Centre for International Affairs; and Fair Trade Wales

Senedd Cymru | Welsh Parliament

Y Pwyllgor Iechyd a Gofal Cymdeithasol | Health and Social Care Committee

Bil Caffael y Gwasanaeth Iechyd (Cymru) | Health Service Procurement (Wales) Bill

Ymateb gan Cytun; Size of Wales; Welsh Centre for International Affairs; and Fair Trade Wales | Evidence from Cytun; Size of Wales; Welsh Centre for International Affairs; and Fair Trade Wales

We have also consulted with Hub Cymru Africa, Oxfam Cymru and Amnesty International.

General principles of the Bill

What are your views on the general principles of the Health Service Procurement (Wales) Bill?

We believe that the purpose and effect of the bill needs to be clarified. Currently Section 2 of the Bill states that it refers to "procurement of—(a) services provided as part of the health service in Wales ("health services"), and (b) goods or other services that are connected to those health services." which implies a potentially wide scope, including (for example) catering services, the purchase of beds and furniture, etc; but the attached Explanatory Memorandum states in para 25 "It is proposed that regulations made under the Bill will only apply to the procurement of health services within specified categories." If the latter is the policy intention, the wording of the Bill should reflect that. Even if the narrower interpretation is intended and the Bill is amended accordingly, the Bill should make it clear that such procurement should take place following the principles of the Social Partnership & Public Procurement (Wales) Bill and the Well-Being of Future Generations Act, and the Bill should be subject to an impact assessment in light of the well-being goals and the five ways of working, and stated Welsh Government policies such as those referenced in (1) above. Statutory Guidance under the Bill should conform with Guidance under the Social Partnership & Procurement Bill.

Is there a need for legislation to deliver the Welsh Government's stated policy intention?

Yes

We support the necessity to opt-out of the UK Procurement Bill to enable this to remain a devolved matter.

Regulation making powers

What are your views on the 'disapplication' regulation-making power in section 2 of the Bill?

We understand the need for this power.

What are your views on the 'creation' regulation-making power in section 3 of the Bill?

1. Currently Section 3(2) of the Bill states that it refers to "procurement of—(a) services provided as part of the health service in Wales ("health services"), and (b) goods or other services that are connected to those health services." which implies a potentially wide scope, including (for example) catering services, the purchase of beds and furniture, etc; but the attached Explanatory Memorandum states in para 25 "It is proposed that regulations made under the Bill will only apply to the procurement of health services within specified categories." If the latter is the policy intention, the wording of the Bill should reflect that, as once the wider power is provided to Ministers it could be used without further need to legislate.
2. We are deeply concerned at the lack of a requirement to consult or seek Senedd consent for regulations made or for guidance issued. Indeed, as drafted Welsh Ministers "may" but need not issue any guidance at all. We believe this should be amended in line with the equivalent clauses in the Social Partnership & Public Procurement (Wales) Bill.
3. Section 3(3) includes a few (rather vague) requirements on Welsh Ministers as to the content of Regulations under this section. We believe that Section 3(3) should be expanded so that regulations made must conform also to the principles of the Social Partnership & Public Procurement (Wales) Bill and the Well-Being of Future Generations Act.
4. Welsh Government is publicly committed to being a Fair Trade Nation, a Deforestation Free Nation, to eliminating modern slavery in public sector supply chains, to Net Zero and biodiversity loss targets, and to measuring consumption emissions regarding carbon. Public procurement, including in the NHS, is key to delivering these goals, and the wording of the primary legislation must require Welsh Ministers to take such factors into account in their procurement decision – while accepting that the detail would be included in Regulations and/or Guidance.

Implementation and impact of the Bill

Are there any potential barriers to the implementation of the Bill's provisions? If so, what are they, and are they adequately taken into account in the Bill and the accompanying Explanatory Memorandum and Regulatory Impact Assessment?

Are any unintended consequences likely to arise from the Bill?

1. We believe that the Bill should be amended to ensure that Statutory Guidance under the Bill is consistent with Guidance under the Social Partnership & Procurement Bill, as well as stated Welsh Government policies such as those listed in part 4 of our answer to Question 5, so that the whole Welsh public sector is working together to use its procurement powers for the well-being of all. If such a requirement is not included, then procurement made under this Bill could have the unintended consequence of undermining several Welsh Government strategies, as listed in part 4 of our answer to Question 5.

2. The lack of specificity in the Bill means that many further unintended consequences could arise. For example, medical equipment manufacture is very likely to continue to be sourced from overseas and there are a lot of problematic practices in the supply chain. Without a requirement on the face of the Bill for Welsh Ministers to act to tackle these, the Bill could have the unintended effect of using Welsh public money in a way which perpetuates suffering in other countries. Please see here for some examples of the potential harms and what ethical sourcing in healthcare can look like:

- <https://www.bma.org.uk/what-we-do/working-internationally/our-international-work/fair-medical-trade>
- <https://www.bma.org.uk/media/1134/ethical-trade-overview-1.pdf>

What are your views on the Welsh Government's assessment of the financial and other impacts of the Bill as set out in Part 2 of the Explanatory Memorandum?

Development of the policy and legislative proposals

What are your views on the approach taken by the Welsh Government to develop the policy and legislative proposals reflected in the Bill?

Despite our being engaged in intensive engagement with Welsh Government and MSs regarding the procurement clauses of the Social Partnership and Public Procurement (Wales) Bill, the publication of this further procurement Bill, which contains none of the

safeguards and positive policy intent in the earlier Bill, came as a complete surprise to us. We therefore conclude that the Welsh Government's engagement with stakeholders has been wholly inadequate.

Any other issues

Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?

1. In the light of the breadth of the powers and lack of scrutiny involved, we believe that the Regulatory Impact Assessment should be amended to include an assessment of its consistency with the well-being goals and the five ways of working under the WBFGA, and stated Welsh Government policies such as those listed in part 4 of our answer to Question 5
2. We note that a Biodiversity Impact Assessment (paras 124-5 of the RIA) has been prepared but not published. We welcome the commitment to developing this further with regard to Regulations and Guidance under the Bill, but believe that the Welsh Government should publish and consult immediately on the BIA already prepared.