

## HSP4 Wales Council for Voluntary Action

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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 Wales Council for Voluntary Action | Evidence from Wales Council for Voluntary Action

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### General principles of the Bill

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

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WCVA understands the need for this legislation, given the problems that could arise were Wales locked into healthcare procurement framework that is not developed for or aligned to the health and care landscape in Wales.. There are a number of advantages to making this change:

- allowing procuring organisations and service providers to be more flexible and nimble in their approach to service provision,
- to allow more opportunity for third sector organisations and the public sector to work in genuine partnership, and
- to allow greater opportunity for genuinely co-produced services.

However, how this legislation is used will depend very much on the intentions of the government in charge. While it could, and hopefully will, be used as outlined above, it could equally, as pointed out by Coops and Mutuals Wales, be used to pursue an agenda of outsourcing and privatisation.

As Cytun have noted, the Bill states its intention to be around the procurement of services only, yet Section 2 gives scope for the procurement of 'goods that are connected to health services'. This is a contradiction that needs to be clarified, but if goods are to be part of this act, regulations must be in place to ensure that any goods procurement does not go against the principles of the Net Zero Strategic Plan. On a similar subject, any new procurement regime must adhere to the principles of the Future Generations Act, the Social Services and Wellbeing (Wales) Act, the Net Zero Strategic Plan and the Social Partnership and Public Procurement (Wales) Bill, in order to further develop the Foundational Economy. Clauses should be introduced into the Bill to ensure that this happens, or activity could take place that undermines these plans and legislation.

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

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Yes

This legislation is necessary for reasons outlined in Question 1 – to avoid being locked into a procurement framework that even our closest neighbours would not be using and ensure health remains a devolved matter.

## **Regulation making powers**

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

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This power is necessary for the reasons set out in our response to Q3.

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

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There is potential for Welsh Government to use this 'creation' power to develop regulations that ensure the third sector is meaningfully integrated into healthcare service provision, remove any current restrictive practices, and require that all procurers and providers engage in full and meaningful co-production of services with their service users. However, provisions for strong scrutiny must also be put in place to ensure this is actually happening.

What Welsh Ministers do with the powers this Bill provides must also be scrutinised. As drafted currently, the Bill absolves Ministers of the need to seek Senedd consent or even issue any guidance when they make changes to procurement regulations. However, transparency is key for trust in democracy. A clause should be drafted to ensure effective scrutiny of, and communication about, how and why Ministers make decisions relating to this legislation.

Above all, however, any new procurement processes should be as simple as possible. Previously, some processes have been so long and/or complicated that smaller organisations have lacked the capacity to take part. This must be avoided under any new regime to enable all organisations to play their part in improving healthcare outcomes and creating a healthier Wales.

In our response to the consultation around the Social Partnership and Public Procurement Bill, we noted that 'measures should be taken to ensure all workers on supply chains receive the Living Wage'. That applies equally to this Bill – all involved in supplying goods or services under this Bill should receive the Living Wage.

The Social Partnership Council (SPC), established under the Social Partnership and Public Procurement Bill, will meet to discuss issues to do with fair work in Wales. For work to be fair for those providing procured services, procurement systems must be fair. What the Health Service Procurement Bill does not seem to make clear is how it will link with the Social Partnership and

Public Procurement Bill, and if items under its remit will be discussed by the SPC. (WCVA believes that they should be.) Guidance should be issued on this subject for the clarity of all. We recommend Welsh Government engages with the Fair Work Forum on this issue in relation to ensuring that purchasing of staffing costs is fair.

Procurement regimes developed under this Bill must adhere to the Code of Practice for Funding the Third Sector.

## **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?**

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We are not aware of any barriers that would stop the intentions of this Bill being carried out.

### **Are any unintended consequences likely to arise from the Bill?**

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Some organisations, for instance Ethnic Youth Support Team, are concerned that the Bill will increase the length of time it takes, or make it more difficult, for decisions to be made around healthcare, and therefore increase the length of time it takes for services to engage with organisations.

British Red Cross in Wales have expressed concerns that if commissioners have greater flexibility in their approach to procurement will simply mean that organisations will end up having to tailor how they operate to fit in with commissioners' preferred approaches. A reporting mechanism should be devised to allow providers to give feedback on their relationships with commissioners.

A shift in procurement regimes may well lead to a delay in services being commissioned as providers and commissioners will need time to understand new regulations. This will impact heavily on those who rely on said services. This must be prevented, or else problems around healthcare and poverty are likely to be exacerbated, at least in the short term.

There are likely to be issues for those organisations who provide services across the Wales/England border, given that two different procurement regimes will be in action. As CTA Cymru note, these issues will need to be fully understood and disseminated over time, although they also point out that each Health Board already commissions in isolation, so service providers are already used to a degree of separation.

This Bill represents a chance for the NHS in Wales to use its purchasing power more effectively to invest in Welsh communities. Any changes must ensure they do not cause negative consequences for the Welsh supply chain, and must take into account the economic and social

impact that small suppliers will experience if enabled to be part of Welsh consortium/partnership bids.

Welsh Government should bear in mind the National Principles for Public Engagement when engaging with service providers and service users about the change this legislation will represent.

## **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?**

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### **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?**

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There will need to be an extensive stakeholder engagement programme around this Bill if enacted. The third sector will need support to understand the issues and opportunities the legislation represents. In particular, those offering cross-border services will require support, as noted above, as they may end up having to navigate two differing procurement regimes, which will be resource intensive.

More generally, a thorough grounding will be needed to support groups and organisations effectively on new procedures. However, small organisations will likely lack the capacity to fully delve into the details about the implications of this legislation and could be disadvantaged in comparison with larger, more well-resourced organisations.

### **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?**

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We would like to thank all the organisations who engaged with WCVA on this consultation response, including Glamorgan Voluntary Services, Community Transport Association Wales, Cytun, Contact Cymru, Swansea Samaritans, British Red Cross, St John Ambulance Cymru and Ethnic Youth Support Team.

