

HSP12 Association of Directors of Social Services (ADSS) Cymru

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 Association of Directors of Social Services (ADSS) Cymru | Evidence from Association of Directors of Social Services (ADSS) Cymru

Background

The Association of Directors of Social Services (ADSS) Cymru is the professional and strategic leadership organisation for social services in Wales and is composed of statutory directors of social services, the All-Wales Heads of Children's Service (AWHOCs), the All-Wales Adult Service Heads (AWASH) and tier three managers who support them in delivering statutory responsibilities: a group which consists of over 300 social services leaders across the 22 local authorities in Wales.

The role of ADSS Cymru is to represent the collective, authoritative voice of senior social care leaders who support vulnerable adults and children, their families, and communities, on a range of national and regional issues in relation to social care policy, practice, and resourcing. It is the only national body that articulates the view of those professionals who lead our social care services.

As a member-led organisation, ADSS Cymru is committed to using the wealth of its members' experience and expertise. We work in partnership with a wide range of partners and stakeholders to influence the important strategic decisions around the development of health, social care, and public service delivery. Ultimately, our aim is to benefit the people our services support and the people who work within those services.

General Comment

ADSS Cymru welcomes the opportunity to contribute to the Senedd's legislative scrutiny of the the Health Service (Wales) Procurement Bill.

As the UK has now left the European Union, we understand the requirement for the UK Government to introduce a new legal procurement framework, via the Procurement Bill which is presently going through the UK Parliamentary process. It is our understanding that Welsh Ministers have agreed that Contracting Authorities in Wales (like local authorities) should be subject to the legislation when it becomes enacted later this year.

At the same time, the Health and Care Act 2022 amends the National Health Service Act 2006 in England and enables the procurement of healthcare services to be removed from the scope of the normal rules, i.e., the Procurement Bill (Act 2023). The Department for Health and Social Care in England has said that it intends to create an alternative set of rules for health care services known as the Provider Selection Regime (PSR), which will allow more flexibility to procure and arrange independent health services.

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This intended course of action will create a situation where Wales has different procurement rules to England for health care services. Therefore, we understand why the Welsh Government want to bring forward primary legislation to disapply aspects of the Procurement Bill (Act 2023) and replace them with alternative rules via future Regulations, to mitigate against the risk of having different systems in both nations. Having two procurement regimes between two countries that share a porous border and collaborate in many aspects of healthcare arrangements for their citizens could be potentially problematic and be disadvantageous for NHS Wales. The risks are set out in the Explanatory Memorandum (EM), for example:

- Limiting the ability of NHS England and NHS Wales to collaborate and realise economies of scale benefits.
- Difficulties for NHS Wales in accessing existing health care service frameworks.
- Limiting suppliers' desire to supply health services in Wales due to having to participate in different procurement regulatory regimes.

Therefore, ADSS Cymru understand the risks of not implementing specific Welsh legislation.

Yet, this is currently a complex space with the Procurement Bill going through Westminster. That proposed legislation has improved markedly through the parliamentary scrutiny process than when it was first introduced. The provisions of the Procurement Bill are now very different from the 2015 Procurement & Contracting Rules on which the original case for the Healthcare Procurement Bill was based.

Ideally, given the progress that has been made with the UK Government legislation, we think Welsh Ministers should re-examine its position and look to make provisions within the legislation passing in Westminster, which avoids different frameworks and practices in different jurisdictions.

However, if there really is no alternative for Welsh Government to 'piggy-back' on UK Government legislation, then we need some clarity on the unknowns. As this is very much a health focused Bill, therefore there has been little engagement with the local government sector to date. Therefore, it would be helpful to fully understand the potentially ramifications for us in Wales. For Example:

- What are the legislative implications for Social Care in Wales?

The Bill appears to be focused on giving Welsh Ministers the power to create a new procurement regime for health care services only. The EM acknowledges that the new

regime will be relevant for local authorities, but only in the context of where we are the lead organisation in any joint commissioning. Provided the service being commissioned is primarily deemed to be for a healthcare need then we would be able to rely on the new regime. In all other instances, local authorities will continue to be reliant on the Public Contracts Regulations 2015 and possible subsequent legislation such as the Procurement Bill (Act 2023), with its concept of the light-touch contract.

However, as the EM itself confirms, the health service is routinely required to procure services for people with a mental illness, learning disability, those in need of residential care and nursing homes, and domiciliary care including supported living. These are, of course, the same services local authorities commission courtesy of its social care duties. A new regime would be beneficial for local authorities for the same reasons that it is said to be beneficial for the NHS. Moreover, it would support efforts to move at pace to deliver greater health and social care integration, and the creation of a co-ordinated, joined up and seamless system that supports people to live well. If the Welsh Government does not allow social services the opportunity to work under the same regime as our health colleagues, then there is a risk that we do not have a level playing field within Wales.

The authors of the Public Contracts Regulations 2015 understood the interdependency between health and social care and made the same exceptions applicable to both areas (the light-touch approach). Welsh Government should be minded of this in developing this legislation and subsequent Regulations.

- What will the secondary legislation look like?

As this is only a framework Bill, we would want to understand what the Welsh Government has planned for the substantive Regulations that will be developed beyond it, especially if there is an impact on local government social services. If there is an impact, ADSS Cymru would welcome the opportunity to shape that secondary Regulation.

- Does the Welsh Government intend to recreate the PSR model in Wales?

The UK Government has indicated that the overall aim of the PSR is to “move away from the expectation of competition in all circumstances and move towards a system of collaboration and partnership”. This will reportedly allow contracting authorities to either continue existing arrangements with an incumbent provider, identify a contract

with a suitable provider without running a competitive procurement process, or the ability to test the market via a competitive procurement process.

Council Practitioners were impressed with the early proposals for the Provider Selection Regime (PSR) which improved on the 2015 rules and contrasted with the proposals for the Contract & Procurement Rules (CPR) at the time. There was promise for a much-improved administrative regime that would promote the development of stable working relationships with trusted and high-quality providers. Our members know that competitive tendering is resource hungry for both local authorities and for commissioned providers and can take us all away from undertaking work which is more valuable for the people we serve. It is also apparent that it often results in increased prices for the Council. Therefore, any reform or opportunity to design procurement exercises to achieve better outcomes we would be in support of.

With time however, we have seen that promise narrow. This might be expected as both pieces of legislation concern procurement in the same global regulatory environment. Both are seeking to enable better procurement practice and better supply management.

The CPR are much improved, yet the PSR is becoming complex. The operational freedoms promised by the PSR now seem to require additional process. We are concerned that the overall process for PSR is beginning to look onerous and it is something we would not want to see recreated in Wales.

- What will be the implementation cost?

The EM states that:

“There will be an additional cost to the NHS or local authorities for familiarisation and implementation of the new procurement regime under the Bill. The transitional cost to NHS Wales is estimated to be £2,705,000 and will be spread over the period 2023 to 2026. In addition, there is a potential transitional cost to local authorities where they are the lead procuring authority. Further work will be undertaken during the development of the new procurement regime to understand the split of responsibilities and the financial implications.”

Given the significant cost pressures that already exist within local government, particularly social services, we would want to fully understand the resource implications of implementing the legislation.

Conclusions

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Competitive tendering can be the right solution in certain circumstances, but a new regime that affords decision-makers the flexibility to consider a range of solutions would be enormously beneficial. We believe that the Welsh Government should reappraise its position in relation to the UK Government’s Procurement Bill because events in Westminster seem to have overtaken the requirement for additional legislation in Wales.

However, if the Welsh Government intend to proceed with legislation in Wales, we would advise that:

- any future powers are clearly extended to encompass social care and associated services; and
- that we are properly consulted on the development of the secondary legislation and guidance.