

HYSBYSIAD YNGHYLCH GWELLIANNAU

NOTICE OF AMENDMENTS

Cyflwynwyd ar 3 Hydref 2023
Tabled on 3 October 2023

Bil Caffael y Gwasanaeth Iechyd (Cymru)

Health Service Procurement (Wales) Bill

Mabon ap Gwynfor

13

Section 1, page 1, after line 12, insert –

‘(4) Section [*section to be inserted by amendment 26*] of this Act sets out the Senedd procedure that applies to regulations made under section 10A of the National Health Service (Wales) Act 2006.’.

Adran 1, tudalen 1, ar ôl llinell 13, mewnosoder –

‘(4) Mae adran [*yr adran sy’n cael ei mewnosod gan welliant 26*] o’r Ddeddf hon yn nodi gweithdrefn y Senedd sy’n gymwys i reoliadau a wneir o dan adran 10A o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006.’.

Mabon ap Gwynfor

14

Section 3, page 2, after line 19, insert –

() Regulations under subsection (1) must make provision to ensure that a relevant authority may not award a contract to a tenderer that has not provided assurance to the relevant authority of the payment of at least the Real Living Wage to its staff, and other staff that act on the tenderer’s behalf on a contractual or subcontractual basis.

() In this section –

(a) “economic operator” means any person or public entity or group of such persons and entities, including any temporary association of undertakings, which offers the execution of works or a work, the supply of goods or the provision of services on the market;

(b) “Real Living Wage” means the UK Living Wage set from time to time by the Living Wage Commission or successor bodies, or on its behalf by another body;

(c) “tenderer” means an economic operator that has submitted a tender.’.

Adran 3, tudalen 2, ar ôl llinell 19, mewnosoder –

- ‘() Regulations under subsection (1) must make provision to ensure that a relevant authority may not award a contract to a tenderer that has not provided assurance to the relevant authority of the payment of at least the Real Living Wage to its staff, and other staff that act on the tenderer’s behalf on a contractual or subcontractual basis.
- () In this section –
 - (a) “economic operator” means any person or public entity or group of such persons and entities, including any temporary association of undertakings, which offers the execution of works or a work, the supply of goods or the provision of services on the market;
 - (b) “Real Living Wage” means the UK Living Wage set from time to time by the Living Wage Commission or successor bodies, or on its behalf by another body;
 - (c) “tenderer” means an economic operator that has submitted a tender.’.

Mabon ap Gwynfor

15

Section 3, page 2, after line 19, insert –

- ‘() Regulations under subsection (1) must make provision for the purpose of ensuring independent oversight of the procurement of health services and goods or other services that are connected to those health services.’.

Adran 3, tudalen 2, ar ôl llinell 19, mewnosoder –

- ‘() Regulations under subsection (1) must make provision for the purpose of ensuring independent oversight of the procurement of health services and goods or other services that are connected to those health services.’.

Mabon ap Gwynfor

16

Section 3, page 2, after line 19, insert –

- ‘() Regulations under subsection (1) must make provision for ensuring that contracts above a threshold specified in the regulations are subject to a competitive tendering process.’.

Adran 3, tudalen 2, ar ôl llinell 19, mewnosoder –

- ‘() Regulations under subsection (1) must make provision for ensuring that contracts above a threshold specified in the regulations are subject to a competitive tendering process.’.

Mabon ap Gwynfor

17

Section 3, page 2, after line 19, insert –

- () Before consulting on regulations to be made under subsection (1), the Welsh Ministers must lay before the Senedd a statement of health service procurement principles.
- () The statement under subsection (*[first subsection to be inserted by this amendment]*) must include statements relating to the following principles that will apply to the procurement by a relevant authority of health services and goods or services that are connected to those health services –
 - (a) promoting the delivery of services and the supply of goods by –
 - (i) the relevant authority itself;
 - (ii) other public bodies;
 - (iii) voluntary sector and third sector bodies;
 - (iv) private sector bodies;in that order of preference;
 - (b) limiting the amount of spending with a single supplier (other than when following a competitive tending process);
 - (c) preventing the direct award of multiple contracts by multiple relevant authorities to a single supplier at any one time;
 - (d) the automatic extension of contracts;
 - (e) the duration of contracts.
- () In this section, “voluntary sector” and “third sector” mean bodies (other than public bodies) whose activities are carried on otherwise than for profit.
- () The Welsh Ministers may not make regulations under subsection (1) unless –
 - (a) Senedd Cymru approves by resolution the statement of health service procurement principles laid under subsection (*[first subsection to be inserted by this amendment]*); and
 - (b) the regulations reflect the statement and principles approved by Senedd Cymru.’.

Adran 3, tudalen 2, ar ôl llinell 19, mewnosoder –

- () Before consulting on regulations to be made under subsection (1), the Welsh Ministers must lay before the Senedd a statement of health service procurement principles.
- () The statement under subsection (*[yr is-adran gyntaf sy’n cael ei mewnosod gan y gwelliant hwn]*) must include statements relating to the following principles that will apply to the procurement by a relevant authority of health services and goods or services that are connected to those health services –

- (a) promoting the delivery of services and the supply of goods by –
 - (i) the relevant authority itself;
 - (ii) other public bodies;
 - (iii) voluntary sector and third sector bodies;
 - (iv) private sector bodies;in that order of preference;
 - (b) limiting the amount of spending with a single supplier (other than when following a competitive tending process);
 - (c) preventing the direct award of multiple contracts by multiple relevant authorities to a single supplier at any one time;
 - (d) the automatic extension of contracts;
 - (e) the duration of contracts.
- () In this section, “voluntary sector” and “third sector” mean bodies (other than public bodies) whose activities are carried on otherwise than for profit.
- () The Welsh Ministers may not make regulations under subsection (1) unless –
- (a) Senedd Cymru approves by resolution the statement of health service procurement principles laid under subsection (*[yr is-adran gyntaf sy’n cael ei mewnosod gan y gwelliant hwn]*); and
 - (b) the regulations reflect the statement and principles approved by Senedd Cymru.’.

Mabon ap Gwynfor

18

Section 3, page 2, after line 19, insert –

- ‘() Explanatory material accompanying regulations made under subsection (1) must set out –
- (a) the extent to which the regulations mirror section 12ZB regulations;
 - (b) the extent to which the regulations diverge from section 12ZB regulations;
 - (c) any risk associated with mirroring or diverging from section 12ZB regulations;
 - (d) any other risk associated with making the regulations.
- () In this section, “section 12ZB regulations” means regulations made under section 12ZB of the National Health Service Act 2006 (c. 41).’.

Adran 3, tudalen 2, ar ôl llinell 19, mewnosoder –

- ‘() Explanatory material accompanying regulations made under subsection (1) must set out –
- (a) the extent to which the regulations mirror section 12ZB regulations;

- (b) the extent to which the regulations diverge from section 12ZB regulations;
 - (c) any risk associated with mirroring or diverging from section 12ZB regulations;
 - (d) any other risk associated with making the regulations.
- () In this section, “section 12ZB regulations” means regulations made under section 12ZB of the National Health Service Act 2006 (c. 41).’.

Mabon ap Gwynfor

19

Section 3, page 2, after line 19, insert –

- ‘() Regulations under subsection (1) must make provision for –
- (a) ensuring that contracts relating to health services and goods or other services connected to those services procured by a relevant authority may be extended on a rolling basis;
 - (b) providing limitations to the automatic renewal of contracts on a rolling basis.’.

Adran 3, tudalen 2, ar ôl llinell 19, mewnosoder –

- ‘() Regulations under subsection (1) must make provision for –
- (a) ensuring that contracts relating to health services and goods or other services connected to those services procured by a relevant authority may be extended on a rolling basis;
 - (b) providing limitations to the automatic renewal of contracts on a rolling basis.’.

Mabon ap Gwynfor

20

Section 3, page 2, after line 19, insert –

- ‘(e) ensuring the involvement of persons whom the services or goods are intended to benefit.’.

Adran 3, tudalen 2, ar ôl llinell 19, mewnosoder –

- ‘(e) ensuring the involvement of persons whom the services or goods are intended to benefit.’.

Mabon ap Gwynfor

21

Section 3, page 2, after line 19, insert –

- ‘() Before making regulations under subsection (1), the Welsh Ministers must prepare and publish a statement of policy that promotes the involvement of the voluntary sector and the third sector in the procurement of health services and goods or other services that are connected to those health services where those sectors are able to provide the services and goods.

- () In relation to a statement of policy published under subsection (*[first subsection to be inserted by this amendment]*), the Welsh Ministers –
 - (a) may revise a statement of policy and must publish the revised statement;
 - (b) may publish a new statement of policy.
- () The Welsh Ministers must lay a copy of a statement of policy (or revised statement) published under this section before Senedd Cymru.
- () The Welsh Ministers must have regard to the most recent statement of policy published under this section when making regulations under subsection (1) and publishing guidance under this section.
- () In this section, “voluntary sector” and “third sector” mean bodies (other than public bodies) whose activities are carried on otherwise than for profit.’.

Adran 3, tudalen 2, ar ôl llinell 19, mewnosoder –

- () Before making regulations under subsection (1), the Welsh Ministers must prepare and publish a statement of policy that promotes the involvement of the voluntary sector and the third sector in the procurement of health services and goods or other services that are connected to those health services where those sectors are able to provide the services and goods.
- () In relation to a statement of policy published under subsection (*[yr is-adran gyntaf sy'n cael ei mewnosod gan y gwelliant hwn]*), the Welsh Ministers –
 - (a) may revise a statement of policy and must publish the revised statement;
 - (b) may publish a new statement of policy.
- () The Welsh Ministers must lay a copy of a statement of policy (or revised statement) published under this section before Senedd Cymru.
- () The Welsh Ministers must have regard to the most recent statement of policy published under this section when making regulations under subsection (1) and publishing guidance under this section.
- () In this section, “voluntary sector” and “third sector” mean bodies (other than public bodies) whose activities are carried on otherwise than for profit.’.

This amendment requires that the Welsh Ministers prepare and publish a statement of policy that promotes the involvement of the voluntary and third sectors in the procurement of health services and connected goods or other services but only where those sectors are able to provide the services and goods. The amendment requires that the statement be laid before the Senedd and the Welsh Ministers have regard to it when making regulations and publishing guidance under the “creation power”.

Mae'r gwelliant hwn yn ei gwneud yn ofynnol i Weinidogion Cymru lunio a chyhoeddi datganiad polisi sy'n hybu cyfranogiad y sector gwirfoddol a'r trydydd sector yn y gwaith o gaffael gwasanaethau iechyd a nwyddau cysylltiedig neu wasanaethau eraill ond dim ond pan fo'r sectorau hynny yn gallu darparu'r gwasanaethau a'r nwyddau. Mae'r gwelliant yn ei gwneud yn ofynnol i'r datganiad gael ei osod gerbron y Senedd ac i Weinidogion Cymru roi sylw iddo wrth wneud rheoliadau a chyhoeddi canllawiau o dan y "pŵer creu".

Mabon ap Gwynfor

22

Section 3, page 2, line 21, after 'appropriate', insert 'and publish a summary of the responses they receive'.

Adran 3, tudalen 2, llinell 21, ar ôl 'appropriate', mewnosoder 'and publish a summary of the responses they receive'.

Mabon ap Gwynfor

23

Section 3, page 2, after line 33, insert –

'10B Public interest test

- (1) Subject to subsection (7), where a relevant authority –
 - (a) is considering procuring health services that are at the time of consideration provided directly by the relevant authority itself;
 - (b) procures health services that are due for renewal under a contract;the relevant authority must demonstrate that it has considered whether the procurement provides greater public value than providing the service itself.
- (2) As part of the duty in subsection (1), the relevant authority must demonstrate that it has assessed the potential benefits and impact of the procurement against a public sector comparator, with assessments based on criteria specified by the Welsh Ministers in regulations.
- (3) Assessments under subsection (2) must assess the potential benefits and impacts of the procurement over the 5-year period beginning with the procurement of the service.
- (4) Regulations under subsection (2) must include the following assessment criteria –
 - (a) service quality and accessibility;
 - (b) value for money of the expenditure;
 - (c) implications for other public services and public sector budgets;
 - (d) resilience of the service being provided;
 - (e) implications for the local economy and availability of good work in relevant sub-national labour markets;
 - (f) implications for public accountability and transparency;

- (g) effect on employment conditions, terms and standards within the provision of the service to be procured and when procured;
 - (h) implications for public sector contributions to climate change targets;
 - (i) implications for the equality policies of the relevant authority and its compliance with the public sector equality duty in section 149 of the Equality Act 2010 (c. 15);
 - (j) the impact upon the Welsh language.
- (5) Before procuring health services, a relevant authority must publish objectives to demonstrate that the procurement will not negatively impact on any of the matters set out in subsection (4).
- (6) The relevant authority and the supplier of any procured health service must monitor the performance of the service against –
- (a) the public interest test set out in this section, and
 - (b) the objectives published by the relevant authority under subsection (5).
- (7) The Welsh Ministers must, at intervals of no more than 4 years beginning with the day this section comes into force, by regulations set budget thresholds for when the duty in subsection (1) applies.
- (8) In this section “relevant authority” and “health services” have the meanings given in section 10A.”.

Adran 3, tudalen 2, ar ôl llinell 33, mewnosoder –

‘10B Public interest test

- (1) Subject to subsection (7), where a relevant authority –
- (a) is considering procuring health services that are at the time of consideration provided directly by the relevant authority itself;
 - (b) procures health services that are due for renewal under a contract;
- the relevant authority must demonstrate that it has considered whether the procurement provides greater public value than providing the service itself.
- (2) As part of the duty in subsection (1), the relevant authority must demonstrate that it has assessed the potential benefits and impact of the procurement against a public sector comparator, with assessments based on criteria specified by the Welsh Ministers in regulations.
- (3) Assessments under subsection (2) must assess the potential benefits and impacts of the procurement over the 5-year period beginning with the procurement of the service.
- (4) Regulations under subsection (2) must include the following assessment criteria –
- (a) service quality and accessibility;
 - (b) value for money of the expenditure;

- (c) implications for other public services and public sector budgets;
 - (d) resilience of the service being provided;
 - (e) implications for the local economy and availability of good work in relevant sub-national labour markets;
 - (f) implications for public accountability and transparency;
 - (g) effect on employment conditions, terms and standards within the provision of the service to be procured and when procured;
 - (h) implications for public sector contributions to climate change targets;
 - (i) implications for the equality policies of the relevant authority and its compliance with the public sector equality duty in section 149 of the Equality Act 2010 (c. 15);
 - (j) the impact upon the Welsh language.
- (5) Before procuring health services, a relevant authority must publish objectives to demonstrate that the procurement will not negatively impact on any of the matters set out in subsection (4).
- (6) The relevant authority and the supplier of any procured health service must monitor the performance of the service against –
- (a) the public interest test set out in this section, and
 - (b) the objectives published by the relevant authority under subsection (5).
- (7) The Welsh Ministers must, at intervals of no more than 4 years beginning with the day this section comes into force, by regulations set budget thresholds for when the duty in subsection (1) applies.
- (8) In this section “relevant authority” and “health services” have the meanings given in section 10A.”.

Mabon ap Gwynfor

24

Section 3, page 2, line 34, leave out subsection (3).

Adran 3, tudalen 2, llinell 34, hepgorer is-adran (3).

Mabon ap Gwynfor

25

Section 3, page 2, after line 34, insert –

‘() In section 203(6), before “section 25B(3)(c)” insert “section 10B,”.’.

Adran 3, tudalen 2, ar ôl llinell 34, mewnosoder –

‘() Yn adran 203(6), o flaen “section 25B(3)(c)” mewnosoder “section 10B,”.’.

Mabon ap Gwynfor

26

Page 2, after line 34, insert a new section –

[] Procedure for regulations under section 10A

- (1) The National Health Service (Wales) Act 2006 (c. 42) is amended as follows.
- (2) After section 203(5) insert –
 - “(5A) Schedule 16 provides for the procedure that applies to a statutory instrument containing regulations under section 10A.”
- (3) After Schedule 15 insert –

“SCHEDULE 16
(introduced by section 203(5A))

PROCEDURE FOR REGULATIONS UNDER SECTION 10A

Enhanced procedure

- 1 (1) This paragraph applies to a statutory instrument containing regulations made under section 10A of this Act.
- (2) If the Welsh Ministers consider it appropriate to proceed with the making of regulations they must lay a draft of the regulations before Senedd Cymru along with a statement setting out the Welsh Ministers’ view on whether the procedure in sub-paragraphs (5) to (9) should apply.
- (3) If after the expiry of the 40-day period the draft regulations laid under sub-paragraph (2) are approved by a resolution of Senedd Cymru, the Welsh Ministers may make regulations in the terms of the draft regulations, unless the procedure in sub-paragraphs (5) to (9) applies.
- (4) The procedure in sub-paragraphs (5) to (9) applies to the draft regulations instead of the procedure in sub-paragraph (3) if –
 - (a) Senedd Cymru resolves within the 30-day period that the procedure should apply, or
 - (b) a committee of Senedd Cymru charged with reporting on the draft regulations recommends within the 30-day period that the procedure should apply and Senedd Cymru does not by resolution reject the recommendation within that period.
- (5) The Welsh Ministers must have regard to –
 - (a) any representations,
 - (b) any resolution of Senedd Cymru, and
 - (c) any recommendations of a committee of Senedd Cymru charged with reporting on the draft regulations,made during the 60-day period with regard to the draft regulations.
- (6) If, after the expiry of the 60-day period, the Welsh Ministers wish to

make regulations in the terms of the draft, they must lay before Senedd Cymru a statement –

- (a) stating whether any representations were made, and
 - (b) if any representations were made, giving details of them.
- (7) The Welsh Ministers may, after the laying of a statement, make regulations in the terms of the draft if it is approved by a resolution of Senedd Cymru.
 - (8) But a committee of Senedd Cymru charged with reporting on the draft regulations may, at any time after the laying of a statement under sub-paragraph (6) and before the draft regulations are approved by Senedd Cymru under sub-paragraph (7), recommend that no further proceedings be taken in relation to the draft regulations.
 - (9) Where a recommendation is made by a committee of Senedd Cymru under sub-paragraph (8) in relation to draft regulations, no proceedings may be taken in relation to the draft under sub-paragraph (7) unless the recommendation is rejected by a resolution of Senedd Cymru.
 - (10) For the purposes of this paragraph, regulations are made in the terms of draft regulations if they contain no material changes to their provisions.
 - (11) In this paragraph, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Senedd Cymru.
 - (12) For the purposes of sub-paragraph (11), no account is to be taken of any time during which Senedd Cymru is dissolved or in recess for more than four days.

Disclosure of representations

- 2 (1) Where a person making representations about draft regulations under paragraph 1 has requested the Welsh Ministers not to disclose them, the Welsh Ministers must not disclose them under paragraph 1 if or to the extent that to do so would (disregarding any connection with proceedings in Senedd Cymru) constitute a breach of confidence actionable by any person.
- (2) If information in representations relates to another person, the Welsh Ministers need not disclose the information under paragraph 1 if or to the extent that –
 - (a) it appears to the Welsh Ministers that the disclosure of that information could adversely affect the interests of that other person, and
 - (b) the Welsh Ministers have been unable to obtain the consent of that other person to the disclosure.
- (3) Sub-paragraphs (1) and (2) do not affect any disclosure that is requested by, and made to, a committee of Senedd Cymru charged with reporting on the draft regulations.”.

Tudalen 2, ar ôl llinell 34, mewnosoder adran newydd –

[] Gweithdrefn ar gyfer rheoliadau o dan adran 10A

- (1) Mae Deddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006 (p. 42) wedi ei diwygio fel a ganlyn.
- (2) Ar ôl adran 203(5) mewnosoder –
“(5A) Schedule 16 provides for the procedure that applies to a statutory instrument containing regulations under section 10A.”
- (3) Ar ôl Atodlen 15 mewnosoder –

“SCHEDULE 16
(introduced by section 203(5A))

PROCEDURE FOR REGULATIONS UNDER SECTION 10A

Enhanced procedure

- 1 (1) This paragraph applies to a statutory instrument containing regulations made under section 10A of this Act.
- (2) If the Welsh Ministers consider it appropriate to proceed with the making of regulations they must lay a draft of the regulations before Senedd Cymru along with a statement setting out the Welsh Ministers’ view on whether the procedure in sub-paragraphs (5) to (9) should apply.
- (3) If after the expiry of the 40-day period the draft regulations laid under sub-paragraph (2) are approved by a resolution of Senedd Cymru, the Welsh Ministers may make regulations in the terms of the draft regulations, unless the procedure in sub-paragraphs (5) to (9) applies.
- (4) The procedure in sub-paragraphs (5) to (9) applies to the draft regulations instead of the procedure in sub-paragraph (3) if –
 - (a) Senedd Cymru resolves within the 30-day period that the procedure should apply, or
 - (b) a committee of Senedd Cymru charged with reporting on the draft regulations recommends within the 30-day period that the procedure should apply and Senedd Cymru does not by resolution reject the recommendation within that period.
- (5) The Welsh Ministers must have regard to –
 - (a) any representations,
 - (b) any resolution of Senedd Cymru, and
 - (c) any recommendations of a committee of Senedd Cymru charged with reporting on the draft regulations,made during the 60-day period with regard to the draft regulations.
- (6) If, after the expiry of the 60-day period, the Welsh Ministers wish to make regulations in the terms of the draft, they must lay before Senedd

Cymru a statement –

- (a) stating whether any representations were made, and
 - (b) if any representations were made, giving details of them.
- (7) The Welsh Ministers may, after the laying of a statement, make regulations in the terms of the draft if it is approved by a resolution of Senedd Cymru.
- (8) But a committee of Senedd Cymru charged with reporting on the draft regulations may, at any time after the laying of a statement under sub-paragraph (6) and before the draft regulations are approved by Senedd Cymru under sub-paragraph (7), recommend that no further proceedings be taken in relation to the draft regulations.
- (9) Where a recommendation is made by a committee of Senedd Cymru under sub-paragraph (8) in relation to draft regulations, no proceedings may be taken in relation to the draft under sub-paragraph (7) unless the recommendation is rejected by a resolution of Senedd Cymru.
- (10) For the purposes of this paragraph, regulations are made in the terms of draft regulations if they contain no material changes to their provisions.
- (11) In this paragraph, references to the “30-day”, “40-day” and “60-day” periods in relation to any draft regulations are to the periods of 30, 40 and 60 days beginning with the day on which the draft regulations were laid before Senedd Cymru.
- (12) For the purposes of sub-paragraph (11), no account is to be taken of any time during which Senedd Cymru is dissolved or in recess for more than four days.

Disclosure of representations

- 2 (1) Where a person making representations about draft regulations under paragraph 1 has requested the Welsh Ministers not to disclose them, the Welsh Ministers must not disclose them under paragraph 1 if or to the extent that to do so would (disregarding any connection with proceedings in Senedd Cymru) constitute a breach of confidence actionable by any person.
- (2) If information in representations relates to another person, the Welsh Ministers need not disclose the information under paragraph 1 if or to the extent that –
- (a) it appears to the Welsh Ministers that the disclosure of that information could adversely affect the interests of that other person, and
 - (b) the Welsh Ministers have been unable to obtain the consent of that other person to the disclosure.
- (3) Sub-paragraphs (1) and (2) do not affect any disclosure that is requested by, and made to, a committee of Senedd Cymru charged with reporting on the draft regulations.”.