



Llywodraeth Cymru  
Welsh Government

# **Health Service Procurement (Wales) Bill**

**Explanatory Memorandum**  
incorporating the  
Regulatory Impact Assessment and  
Explanatory Notes

13 February 2023

## **Health Service Procurement (Wales) Bill**

### **Explanatory Memorandum to the Health Service Procurement (Wales) Bill**

This Explanatory Memorandum has been prepared by the Health and Social Services Group of the Welsh Government and is laid before Senedd Cymru.

#### **Minister's Declaration**

In my view, the provisions of the **Health Service Procurement (Wales) Bill** introduced by me on 13 February 2023, would be within the legislative competence of Senedd Cymru.

**Eluned Morgan MS**  
**Minister for Health and Social Services**  
Member of the Senedd in charge of the Bill

13 February 2023

## Contents

<b>PART 1 – EXPLANATORY MEMORANDUM</b> .....	5
<b>Chapter 1: Description</b> .....	5
<b>Chapter 2: Legislative competence</b> .....	6
<b>Chapter 3: Purpose and intended effect of the legislation</b> .....	7
<b>Chapter 4: Consultation</b> .....	14
<b>Chapter 5: Power to make subordinate legislation</b> .....	16
<b>Table summary of powers to make subordinate legislation in the provisions of the Health Service Procurement (Wales) Bill</b> .....	17
<b>PART 2 – REGULATORY IMPACT ASSESSMENT</b> .....	20
<b>Chapter 6: Regulatory impact assessment (RIA)</b> .....	20
<b>Summary</b> .....	20
<b>Introduction</b> .....	23
<b>Options</b> .....	25
<b>Costs and benefits</b> .....	27
<b>Chapter 7: Competition assessment</b> .....	33
<b>Chapter 8: Impact assessment summaries</b> .....	34
<b>Chapter 9: Post implementation review</b> .....	36
<b>ANNEXES</b> .....	37
<b>Annex 1 – Explanatory Notes</b> .....	37
<b>Annex 2 - Index of Standing Order requirements</b> .....	40

## Glossary of acronyms

CAMHS	Child and Adolescent Mental Health Services
DHSC	UK Government's Department for Health and Social Care
GOWA	Government of Wales Act 2006
HIA	Health Impact Assessment
KPI	Key Performance Indicator
PCR 2015	Public Contracts Regulations 2015
PSED	Public Service Equality Duty
PSR	Provider Selection Regime
RIA	Regulatory Impact Assessment
UNCRC	United Nations Convention on the Rights of the Child

## PART 1 – EXPLANATORY MEMORANDUM

### Chapter 1: Description

1. The Health Service Procurement (Wales) Bill provides a legislative basis for bringing forward subordinate legislation to enable the introduction of a bespoke procurement regime which will apply to Welsh NHS health services.
2. In summary the Bill makes provision for:
  - A “disapplication power” that will enable the Welsh Ministers to disapply provisions of the Procurement Act 2023 (currently a Bill going through the UK Parliament) that would otherwise apply to the procurement of Welsh NHS health services; and
  - A “creation power” to enable Welsh Ministers to introduce, via regulations, a new separate procurement regime for these NHS health services in Wales.
3. The Bill and potential subordinate legislation will seek to give organisations such as the NHS and local authorities in Wales the ability to implement more flexible procurement practices when sourcing services provided as part of the health service in Wales. This will support the delivery of Welsh Government’s strategic Programme for Government<sup>1</sup> objectives; developing a health service procurement regime that meets the needs of health services in Wales and addresses inconsistency in health service procurement regimes that are being proposed in England.

---

<sup>1</sup> [Programme for government | GOV.WALES](https://gov.wales/programme-for-government)

## Chapter 2: Legislative competence

4. Senedd Cymru ("the Senedd") has the legislative competence to make the provisions in the Health Service (Wales) Procurement Bill ('the Bill') pursuant to Part 4 of the Government of Wales Act 2006 ('GOWA 2006'), as amended by the Wales Act 2017.

## Chapter 3: Purpose and intended effect of the legislation

### Background

5. Procurement can act as a key enabler to support delivery of strategic priorities. Currently, the main legal framework governing the procurement of health services in England and Wales is the so-called 'light touch regime'<sup>2</sup> set out in regulations 74-78 of the Public Contracts Regulations 2015 (PCR 2015).<sup>3</sup>
6. Light touch services (which include health, social services and related services) are not subject to the full procurement regime under PCR 2015. This is designed to allow greater flexibility for contracting authorities in relation to the form of procurement to be followed for light touch services and allows contracting authorities to adapt a procedure to meet their particular needs, as long as the procedure adopted is sufficient to ensure compliance with the core principles of transparency and equal treatment.
7. Following the decision to leave the European Union, there are proposals to change the way that public bodies currently procure goods and services. The UK Government is seeking to introduce a new procurement regime through its Procurement Bill<sup>4</sup>, which is currently being considered by the UK Parliament. The Welsh Ministers have made the decision for Welsh contracting authorities to be included in the UK Government's procurement reforms and this is reflected in the drafting and coverage of the Procurement Bill.
8. Separately, there are proposals to change the way health care services will be procured in England as a result of provisions in the UK Government's Health and Care Act 2022<sup>5</sup>. This Act amends the National Health Service Act 2006 and enables the procurement of healthcare services in England to be removed from the scope of currently applicable procurement rules (set out in the PCR 2015) and for a new set of procurement rules to be put in place to replace the PCR 2015. The UK Government's Department for Health and Social Care (DHSC) has confirmed that it intends to introduce a new regime for health care services known as the Provider Selection Regime (PSR). To manage the potential overlap between the PSR and the Procurement Bill, the UK Government included a clause within the Procurement Bill which allows a Minister of the Crown, by regulations, to disapply provisions of the Bill where provisions made in regulations under the National Health Service Act 2006 applies. This clause has recently been removed by way of non-government amendment but if successfully reinstated during the passage of the Bill and passed, this will enable the PSR to operate in place of the Procurement Bill for the procurement of healthcare services in England.

---

<sup>2</sup> [Microsoft Word - LTR guidance v28 updated October 2015 to publish \(1\).docx \(publishing.service.gov.uk\)](#)

<sup>3</sup> [The Public Contracts Regulations 2015 \(legislation.gov.uk\)](#)

<sup>4</sup> [Procurement Bill \[HL\] - Parliamentary Bills - UK Parliament](#)

<sup>5</sup> [Health and Care Act 2022 \(legislation.gov.uk\)](#)

9. DHSC's new PSR regime will apply to NHS procurement in England only. Whilst the detail of the new regime will be set out in forthcoming regulations from UK Government, its overall aim is to move away from the expectation of competition in all circumstances and move towards a system of collaboration and partnership, which helps join services together across the whole health system. This approach intends to remove unnecessary levels of competitive tendering, remove barriers to integrating care, and promote the development of stable collaborations.
10. The PSR would give decision-makers in NHS England and local government organisations in England the flexibility to arrange health services that best promote the interests of patients and the population within their areas, as well as considering the value for public money.

### **Current health services procurement in Wales**

11. In situations where NHS Wales has neither the internal capacity or specialist capability to meet patient needs, it commissions this care from NHS England or the charitable sector/private providers within Wales and England (collectively termed 'non-NHS providers'). NHS Wales commissions providers across a wide range of disciplines including:
  - Mental Health Services, including Child and Adolescent Mental Health Services (CAMHS);
  - Learning Disability Services;
  - Care Homes and Nursing Homes;
  - Domiciliary Care including Supported Accommodation; and
  - Older persons care.
12. These services are currently accessed by NHS Wales through a variety of mechanisms including NHS Wales to NHS England agreements, call off agreements (including frameworks), or via the procurement procedures under PCR 2015.

### **Impact of the proposed UK Government changes on current procurement of health services in Wales**

#### **PCR 2015 'Light touch regime'**

13. Healthcare services in Wales are currently procured in accordance with the so-called 'light touch regime' under PCR 2015. Light touch services are not subject to the full regime under the PCR 2015, and the light touch regime allows flexibility for contracting authorities to use discretion as to the form of procurement, and an ability to adopt and/or adapt a procedure to meet a contracting authority needs; although the procedure adopted must be sufficient to ensure compliance with the principles of transparency and equal treatment.



## **UK Government Procurement Bill**

14. The Procurement Bill does not retain the 'light touch regime' in its current form and will seek to introduce the concept of a 'light touch contract' (as defined in regulations) which benefits from exceptions to full competitive tendering under the main provisions of the Bill. The Bill will also allow the direct award of public contracts for the supply of user choice services in line with services designated under the light touch regime.

## **DHSC's Provider Selection Regime**

15. The proposed Provider Selection Regime will replace the existing procurement rules for healthcare services in England and provide opportunities for contracting authorities to move away from the expectation of competition in all circumstances and towards a system of collaboration and partnership. This arrangement will 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.
16. The position currently is that procurement of health services in Wales will remain under the scope of the PCR 2015 'Light Touch Regime' and forthcoming reforms made under the UK Government's Procurement Bill; whereas the procurement of health services in England will adopt the proposed PSR.
17. The proposed changes will result in two distinct separate health care services procurement regimes in operation in the two countries. This potentially brings about some unintended practical consequences for the future procurement and commissioning of health services in Wales. The impacts could include:
  - i. Distortion of the current parallel health services procurement platform between England and Wales;
  - ii. Limiting the ability to commission health services on a co-compliant / collaborative basis between NHS England and NHS Wales, and the associated benefits of financial and resource economies of scale;
  - iii. Potential difficulties for the NHS Wales in accessing existing health care service frameworks; and
  - iv. Limiting suppliers' desire to supply health services in Wales due to having to participate in different procurement regulatory regimes and undergo competitive tendering exercises, potentially increasing costs and resource pressures for NHS Wales to procure and attract high quality suppliers in the future.
18. The exact details of how the PSR will operate in England is currently under development by DHSC and will be set out in subordinate legislation and

guidance produced by NHS England. Therefore, the above potential impacts have been identified based upon consideration of details provided in DHSC's PSR consultation document<sup>6</sup>.

## The Health Service Procurement (Wales) Bill

19. The proposed reforms described earlier in this Chapter could pose specific risks and challenges for health services in Wales. In light of this, Welsh Ministers recognise that there is an opportunity to reform the existing health services procurement regime in Wales and develop a future regime which will seek to mitigate the aforementioned risks and challenges and meet the needs of health services in Wales.
20. The Health Service Procurement (Wales) Bill will seek to bring forward the powers needed to create a new health service procurement regime that can be developed in a way which both supports the delivery of Welsh Government's strategic Programme for Government<sup>7</sup> objectives and reduces the potential for Wales to be disadvantaged as a result of procurement reforms being progressed for health services in England.

### Purpose of the provisions

21. In order to address the inconsistent procurement regimes for health services between England and Wales which will result from the introduction of the PSR in England, the Welsh Ministers will need new primary legislative powers to enable them to make future subordinate legislation on the matter, as is now being done in England.
22. The powers sought through the Bill will enable the Welsh Ministers to bring forward secondary legislation for a new procurement regime for health services provided as part of the health service in Wales, which best meets the needs of the sector and is mindful of the potential effects of alignment with, or divergence from, the PSR approach being taken in England. As part of this, the Bill confers a disapplication power on Welsh Ministers so that health services procurement in Wales can be taken out of the general procurement regime (whether under the current PCR 2015 regime, or forthcoming reforms under the UK Government's Procurement Bill). This proposed action therefore places the issue on an even footing and seeks to address the issues raised by the approach that has been taken by DHSC in England.
23. The Bill provisions are based around the following two primary powers:
  - i) A "disapplication power" to enable the Welsh Ministers to disapply provisions of the Procurement Act (once passed) that would otherwise apply to the procurement of health services in Wales; and

---

<sup>6</sup> [Provider Selection Regime: supplementary consultation on the detail of proposals for regulations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/provider-selection-regime-supplementary-consultation-on-the-detail-of-proposals-for-regulations)

<sup>7</sup> [Programme for government | GOV.WALES](https://www.gov.wales/programme-for-government)

- ii) A “creation power” to enable Welsh Ministers to develop and implement a new procurement regime for health services in Wales, through subordinate legislation.

### **Intended effect of the provisions**

- 24. The Bill will enable the Welsh Ministers to develop a regime for the procurement of health services to meet the needs of the sector in Wales. In doing so, it will enable the development of the new health services procurement regime (the detail of which will be set out in future subordinate legislation) to take into account equivalent changes being implemented outside Wales. This will aim to reduce the potential risks outlined earlier in this document and take opportunities to introduce changes which are fit for purpose for health services in Wales.
- 25. The powers conferred by the Bill will not affect the procurement of generic ‘goods’ by the health service in Wales. It is proposed that regulations made under the Bill will only apply to the procurement of health services within specified categories. In relation to the procurement of goods, it is anticipated that the regulations will only apply if they are ‘connected to’ the health service being procured and meet any other criteria set out in those regulations (such as a limit on relative value). The procurement of all other goods and services will still be subject to the current PCR 2015 regime approach and the proposed broader reforms being taken forward through the UK Government’s Procurement Bill.
- 26. The approach taken by the Bill will allow the subsequent development of subordinate legislation, as well as the procurement guidance which will be needed to accompany it, to take advantage of a number of opportunities for using procurement processes to better support the sector in Wales.
- 27. For example, it is envisaged that there will be opportunities to support clinical and procurement professionals in Wales to spend less resource on tendering activity and focus on more “value adding” activities (such as contract management, Key Performance Indicator (KPI) monitoring and developing collaborative partnerships), whilst maintaining key principles around value for money considerations. The Bill will also enable future regulations to assist with levelling the procurement playing field (if that is the preferred policy position) and allow the future regime to align and support patient care, recovery from the impact of Covid-19 on health care service provision and help deliver better health outcomes and quality of patient care.

### **Risks**

- 28. If the ability to replace existing arrangements with a new procurement regime for health services in Wales is not secured, NHS Wales and local authorities in Wales who procure health services may be disadvantaged as a result of the effects of changes being progressed in England. The risks and challenges

outlined earlier in this document may be realised; although it is difficult to estimate the extent of their effects at this stage as this will depend on factors such as market and supplier reaction to the changes being brought about.

29. In addition to the substantive nature of the risks, the pace of the reforms being progressed in England mean that their effects would likely start to be felt within a relatively short timeframe. The Bill is intended to mitigate this risk by seeking the required powers at the earliest opportunity whilst allowing for appropriate levels of scrutiny. In relation to the subsequent subordinate legislation, it is the intention that this will be brought forward as quickly as practicable and informed by continued consultation and engagement with affected stakeholders.

## Evidence base

30. Evidence provided as part of the core impact assessments<sup>8</sup> for scrutiny of DHSC's Health and Care Bill included a summary of the perceived impacts relating to Provider Selection and Choice. The summary included information gathered as part of a consultation by NHS England on its 'Long Term Plan'<sup>9</sup> and engagement on proposals to possible changes to legislation<sup>10</sup>, which indicated strong support for changes to allow NHS commissioners more freedom to determine when a procurement process is needed.
31. In 2019, NHS England consulted on the proposals set out in DHSC's Health and Care Bill<sup>11</sup> and in 2021 consulted on the detail of the proposed PSR in England<sup>12</sup>, which demonstrated a strong consensus to the proposals and welcomed a shift away from competition by default and a move towards a regime which reduced unnecessary costs and bureaucracy.
32. In addition, DHSC published a public consultation in spring 2022 to seek views and evidence from wider stakeholders to understand the anticipated impacts, benefits, costs and savings from implementing the proposed Provider Selection Regime in England.<sup>13</sup> The outcomes of this consultation exercise have not yet been published.
33. The feedback and evidence gathered as part of consultation exercises on the PSR in England is likely to be similar for Wales. This assumption is based on the fact that current procurement practice within the sector operates UK wide, with a number of joint NHS England and Wales supplier contracts already in place and health service suppliers currently working on a UK wide basis. Therefore, the feedback from DHSC's and NHS England's consultation exercises on the PSR and their transferability and applicability to Wales are not expected to deviate greatly.
34. Proactive engagement with key stakeholders in Wales has been carried out during the development of the Bill, which is covered further in Chapter 4.

---

<sup>8</sup> [Health and Care Act 2022 Core Measures Impact Assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>9</sup> [NHS Long Term Plan](#)

<sup>10</sup> [PowerPoint Presentation \(england.nhs.uk\)](https://www.england.nhs.uk)

<sup>11</sup> [Microsoft Word - NHS's recommendations to Government and Parliament - Final.docx \(england.nhs.uk\)](#)

<sup>12</sup> [B0706-NHS-Provider-Selection-regime-response-to-consultation.pdf \(england.nhs.uk\)](#)

<sup>13</sup> [Provider Selection Regime: supplementary consultation on the detail of proposals for regulations - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

## Chapter 4: Consultation

35. Due to the specialised nature of the topic, the urgency to respond to the effects of the proposed procurement reforms in England and given the view that the powers created by the Bill only impact NHS Wales and specific sectors of the health service, a formal open consultation on a draft Bill has not been undertaken.
36. A full open public 12 week consultation exercise will be undertaken as part of the development of regulations and during the preparation of any new procurement guidance alongside NHS Wales.
37. In the interim, a focussed, proactive engagement with key stakeholders in Wales has been carried out during the development of the Bill, including NHS Wales, Health Unions, WLGA and social care commissioners; and the third sector.
38. An opportunity to fully consider the issues identified by stakeholders will be covered during any future subordinate legislation stage. A brief summary of the key engagement undertaken is provided below.

### NHS Wales

39. An informal consultation with NHS Wales finance, procurement and commissioning leads was undertaken during summer 2022.
40. The procurement and commission leads in NHS Wales were familiar with the proposed UK Government procurement reforms, including the DHSC's intention to implement health service procurement reform in England via the proposed PSR.
41. A workshop was held with NHS procurement and commissioning leads to gather views on the introduction of DHSC's PSR in England and to understand how such proposals could impact on the sourcing and delivery of outsourced health services in Wales, and whether action around health service procurement reform was required in Wales to mitigate any unintended effects of the introduction of the PSR in England.
42. Discussions with NHS procurement and commissioning leads indicated broad support for adopting a similar approach to DHSC's proposed PSR and identified a number of risks / issues for NHS Wales from not doing so. These most commonly included:
  - Difficulty in accessing existing frameworks;
  - Negative impacts on resources and increased staff costs due to the requirement to tender a wide range of framework agreements to substitute those already used;

- NHS Wales requirements possibly becoming less attractive to providers; and;
- Depleted recruitment market for Procurement Services in Wales.

43. By having the ability to adopt a similar approach to DHSC's PSR and an opportunity to implement health service procurement reforms in Wales, NHS Wales also identified a number of potential benefits. These included:

- Opportunity for a leaner procurement process; and
- Opportunity to refocus clinical and procurement professional resources on more value adding activities such as contract management, KPI monitoring and developing supplier partnerships.

44. In summary, the exercise suggested a broad consensus amongst NHS Wales procurement and commissioning leads in favour of taking action to implement health service procurement reforms in Wales with a regime based around the proposed PSR approach in England, in order to place health service procurement in Wales on an even footing.

### **Health Unions in Wales**

45. Consultation with the Health Unions in Wales was undertaken in autumn 2022 via the Wales Partnership Forum Business Committee. The group was asked whether any action on health service procurement reform was required in Wales as a result of the introduction of the procurement reforms in England.

46. Whilst acknowledging that the details of such an approach are difficult to quantify at primary powers stage, the committee identified that further analysis is required to understand the full impact of introducing health services procurement reform in Wales and its interrelation with the PSR in England.

47. In summary, the committee raised specific questions around the impact on existing services, staff and employees of NHS Wales; transparency and fairness of contract award for health services providers, and links to other current and proposed wider procurement reform initiatives being introduced by both the UK Government and Welsh Government.

### **Other stakeholders**

48. Consultation with a number of stakeholder groups including the Wales Council for Voluntary Action (WCVA), Welsh Local Government Association (WLGA).

49. In summary, stakeholder feedback was gathered around the potential impact of the Bill on existing services and employees of NHS Wales; transparency and fairness of contract awards; better opportunities for engagement with third sector health care suppliers and better opportunities for collaborations across the sector, both between suppliers and commissioning bodies. The interlinks

between the aims of the Bill and other procurement reform initiatives being led by UK Government and Welsh Government was raised.

50. Consultation with economic groups and industry will take place in Spring 2023.

## **Chapter 5: Power to make subordinate legislation**

51. The Bill contains provisions to make subordinate legislation. Below is a table of subordinate legislation which sets out:

- (i) The person upon whom, or the body upon which, the power is conferred;
- (ii) The form in which the power is to be exercised;
- (iii) The appropriateness of the delegated power; and
- (iv) The applied procedure - that is whether it is “affirmative”, “negative”, or “no procedure”, together with reasons why it is considered appropriate.

52. The Welsh Government will consult on the content of the subordinate legislation where it is considered appropriate to do so. The precise nature of consultation will be decided when the proposals have been formalised.

53. The Bill also contains provisions about developing guidance. The second table below provides detail about these provisions.



## Table summary of powers to make subordinate legislation in the provisions of the Health Service Procurement (Wales) Bill

Table 1

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
2(1)	Welsh Ministers	Regulations	<p>Power that enables the Welsh Ministers to make regulations for the purpose of disapplying provisions of the (UK Parliament) Procurement Act 2023 in relation to regulated health procurement in Wales to the extent that alternative provision is made in that respect. The power is necessary to avoid an overlap between the Procurement Act and the new regime to be established under Section 3 of the Bill. There is a need for the power to be flexible in order to respond to the scope of the regulations made under Section 3 when they come into effect.</p> <p>Furthermore, there is a need for it to allow for future amendments to that regime as it may evolve in future.</p> <p>The intention of this power is not to deregulate health services in Wales, it is only to disapply</p>	Affirmative	<p>As this power enables the Welsh Ministers to disapply procurement legislation in relation to regulated health procurement in Wales, the affirmative procedure is deemed as the appropriate procedure to ensure it is subject to Senedd scrutiny and the Senedd's agreement.</p>

Health Service Procurement (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			procurement legislation where the procurement of services for the purposes of the health service in Wales is regulated under the new regime.		
3(2)	Welsh Ministers	Regulations	Power that enables the Welsh Ministers to make regulations imposing requirements on relevant authorities in relation to the procurement of health services for the purposes of the health service in Wales. One of the primary purposes of taking the power is to put in place a consistent procurement regime with England's. The current detail of this system is not yet known and therefore the Welsh Ministers need the flexibility to be able to implement a regime that takes account of the English system. Furthermore, there is also a need to enable flexibility in the regime for the future. As the nature of the health service and the challenges that it is facing may change over time, it may be appropriate to alter the regime as time goes on so that it is more	Affirmative	The power enables the Welsh Ministers to introduce a new procurement system for Welsh health services therefor the affirmative procedure is deemed to be appropriate to ensure it is subject to Senedd scrutiny and the Senedd's agreement.

Health Service Procurement (Wales) Bill

Section	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
			appropriate for the health service at that point in time.		

Table 2 – Guidance

Section or Schedule of Bill	Power conferred on	Form	Power
3(4)	Welsh Ministers	Guidance	This power places Welsh Ministers under a duty to publish appropriate guidance for relevant authorities to accompany any regulations brought forward under section 3(2), about compliance with the regulations.

## PART 2 – REGULATORY IMPACT ASSESSMENT

### Chapter 6: Regulatory impact assessment (RIA)

#### Summary

54. A Regulatory Impact Assessment has been completed for the Bill.

55. There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

<p>The following table presents a summary of the costs and benefits for the Bill as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix).</p>		
<h3>Health Service Procurement (Wales) Bill</h3>		
<p><b>Preferred option:</b>                  Option 2 - Introduce the Health Service Procurement (Wales) Bill to provide the Welsh Ministers with primary legislative powers to bring forward subordinate legislation to enable the introduction of a bespoke procurement regime which will apply to Welsh NHS health services.</p>		
<p><b>Stage:</b> Introduction</p>	<p><b>Appraisal period:</b>                  2023-24 to 2025-26</p>	<p><b>Price base year:</b>                  2022-23</p>
<p><b>Total Cost</b>                  Total: £3,398,000                  Present value: £3,155,000</p>	<p><b>Total Benefits</b>                  Total: 0                  Present value: £0</p>	<p><b>Net Present Value (NPV):</b>                  £-3,155,000</p>

### Administrative cost

<b>Costs:</b>			
The Bill is expected to result in an administrative costs for Welsh Government of approximately <b>£693,000</b> . This cost represents the staff resources needed to develop and implement a new health service procurement regime for Wales.			
<b>Transitional: £693,000</b>	<b>Recurrent: £0</b>	<b>Total: £693,000</b>	<b>PV: £644,000</b>
<b>Cost-savings:</b> No cost savings have been identified at this stage.			
<b>Transitional: 0</b>	<b>Recurrent: £0</b>	<b>Total: £0</b>	<b>PV: £0</b>
<b>Net administrative cost: £693,000</b>			

### Compliance costs

<p>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.</p> <p>The on-going costs/cost-savings to commissioning authorities and service providers are unknown at this stage.</p>			
<b>Transitional: £2,705,000</b>	<b>Recurrent: £0</b>	<b>Total: £2,705,000</b>	<b>PV: £2,512,000</b>

### Other costs

N/A			
<b>Transitional: 0</b>	<b>Recurrent: 0</b>	<b>Total: 0</b>	<b>PV: £0</b>

## Unquantified costs and disbenefits

This Bill provides the Welsh Ministers with powers to introduce a new procurement regime for NHS health services in Wales. Since any new regime is yet to be designed, it is not possible to undertake a detailed assessment of the associated costs and benefits at this stage.

Potential unquantifiable impacts include:

- i. Costs to providers for familiarisation and process changes for adoption of the new procurement regimes (both UK Government Procurement Bill and Health Service Procurement (Wales) Bill)
- ii. Potential cost and resource savings to NHS Wales could arise from the option not to competitively tender in all cases. This could result in a reduced need to undertake unnecessary procurement exercises and staff resource efficiency savings.
- iii. Removal of mandatory tendering exercises could result in reduced administration costs for providers, with savings made from no longer having to formulate and submit competitive tenders. This could open up market opportunities for SMEs and the Foundational Economy who do not necessarily have the resources to enter competitive tendering exercises for contracts that ultimately do not result in contract award.

## Benefits

- i. The Bill will enable the Welsh Ministers to bring forward proposals for a new procurement regime for NHS health services for Wales, which best meets the needs of the sector, assist with removing barriers for commissioners and procurers to better enhance patient care and is mindful of the potential effects of alignment with, or divergence from, the PSR approach being taken in England.

**Total: 0**

**PV: 0**

## Key evidence, assumptions and uncertainties

As noted above, the detail and scope of any future health services procurement regime represents a key uncertainty at this stage. Further assessment of the likely costs and benefits to procuring authorities, providers and service users will be undertaken alongside the development of the new regime. A Regulatory Impact Assessment will be published alongside any future subordinate legislation.

## Introduction

56. The provisions made by the Bill are limited to conferring regulation making powers on the Welsh Ministers. As such, costs included in this RIA are limited to staff resource costs for Welsh Government and NHS Wales at this point in time, post Royal Assent.
57. The Bill will confer regulation making powers on the Welsh Ministers in respect of implementing changes to the procurement of health services in Wales. A full cost-benefit analysis will be undertaken as part of the detailed development of subordinate legislation which will seek to include evidence around the impact of any new regime on health service contract and delivery costs for health services.
58. Costs provided for Welsh Government staff time relate to the work involved in implementing the provisions of the Bill. These are opportunity costs as opposed to an additional financial outlay.
59. Costs provided for NHS Wales would need to be borne under both options presented. The Health Service Procurement (Wales) Bill will only apply to services provided as part of the health service in Wales (and other goods or services connected to those services). All other goods and services will be subject to the regime set out in the current PCR 2015 regime approach and the proposed broader reforms being taken forward through the UK Government's Procurement Bill. Therefore, costs to NHS Wales under option 1 are likely to materialise as a result of proposed changes to UK Government Procurement Bill. Costs to NHS Wales under option 2 (Health Service Procurement (Wales) Bill) will only materialise in the event of the Health Service Procurement (Wales) Bill receiving Royal Assent **and** regulations for a new procurement regime being put into place.
60. The scope and breadth of any new health services procurement regime will be determined through the process of developing the regulations. Accordingly, the specific costs in relation to health service delivery are difficult to quantify at this stage. As such there are number of unquantifiable costs and benefits in this RIA, including the financial impact of any changes to health service procurement regimes on health service delivery costs in Wales. There are also unquantifiable costs of the impact of any changes on health service providers, including public, private and 3<sup>rd</sup> sector providers that will be affected by the changes in procurement regimes.
61. For example, for health service providers participating in tendering exercises, it is difficult to measure any cost impact, due to the range and nature of procurement exercises and individual companies resource capacity and ability to respond to tenders. However, an assumption is made that the cost to providers should not be

overly excessive in comparison to costs already incurred for participating in current UK public procurement regimes.

62. It is also difficult at this stage to quantify the staff resource costs and benefits for NHS Wales for changes to tendering practices on a contract by contract basis. Therefore, within this assessment, an estimate of direct staff resource costs/benefits has been limited to the costs of introducing and becoming familiar with a new health services procurement regime by NHS Wales. It is however anticipated that any cost increases will be limited to short term staff resource and process readjustment costs in relation to establishing and implementing a new procurement regime including familiarisation and staff training costs. These costs will be reviewed in full as part of developing subordinate legislation.
63. It should be noted that as part of the consultation on the primary legislation in England for the Health and Care Act 2022, the DHSC completed a core measures impact assessment, including a review of impacts on Provider Selection and Choice<sup>14</sup> and potential implementation of the PSR in England. This assessment was limited to high level impacts and the findings **are likely to be similar for Wales**, should the Welsh Ministers choose to adopt a new health services procurement regime based on the PSR. DHSC is currently undertaking a fully costed impact assessment as part of making regulations for the PSR. The result of this exercise and applicability to Wales is not expected to deviate greatly from the potential costs and impacts identified for implementation of the PSR in England.

---

<sup>14</sup> [Health and Care Act 2022 Core Measures Impact Assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/106444/Health_and_Care_Act_2022_Core_Measures_Impact_Assessment.pdf) – Provider Selection and Choice. p36.



## Options

64. Two options have been considered:

<b>Option 1</b>	<b>Do nothing</b> - maintain the status quo whereby procurement for health services in Wales continues to be governed by the Public Contracts Regulations 2015/UK Government's forthcoming Procurement Bill, with a different procurement regime governing these services in England.
<b>Option 2</b>	<b>Introduce legislation</b> – to provide Welsh Ministers with the power to make subordinate legislation to enable the introduction of a bespoke procurement regime which will apply to Welsh NHS health services.

65. Procurement legislation regulates the procurement of goods and services by public authorities in the UK within a defined and formal legislative and regulatory framework. Therefore, to make the necessary changes to facilitate health service procurement reform in Wales, amendments to the legislative framework is the only viable route to give Welsh Ministers the ability to make regulatory changes. Therefore, no other non-regulatory option has been considered.

### **Option 1 – Do nothing**

#### **Description**

66. Under this option, the Welsh Ministers would not obtain primary legislative powers to provide an option to implement subordinate legislation and guidance for a new health services procurement regime for Wales. This would mean the procurement of all health services in Wales would remain under the Public Contracts Regulations 2015 (PCR 2015) until superseded by reforms under the UK Government Procurement Bill for the general procurement of goods and services in the UK.

67. Procurers and commissioners of health services in Wales will need to adapt their existing procurement processes, which are currently regulated under PCR 2015 to meet the requirements of the UK Government's Procurement Bill and regulations and procurement guidelines put in place under it.

68. The UK Government have committed to a 6 month transition period to facilitate the move from the current PCR 2015 regime to the new procurement regime under the UK Procurement Bill. Procurers and commissioners of health services in Wales will need to adapt longstanding established procurement procedures, putting in place

new policies, procedures and guidelines as well as training staff to ensure procurement exercises operate in compliance with the requirements of the forthcoming UK Government's Procurement Bill.

69. This approach will not provide the necessary legislative powers for Welsh Ministers to implement a new health services procurement regime. As a result, two distinct separate health service procurement regimes will be in operation between England and Wales, which could bring about the unintended consequences outlined in Chapter 3 of this document. **Therefore, option 1 is not the preferred option.**

### **Option 2 – Preferred option –**

**Introduce the Health Service Procurement (Wales) Bill to provide the Welsh Ministers with the power to make subordinate legislation to enable the introduction of a bespoke procurement regime which will apply to Welsh NHS health services.**

#### **Description**

70. Under this option a Bill will be introduced to give the Welsh Ministers powers to make regulations and related guidance to introduce a new bespoke procurement regime which will apply to Welsh NHS health services.
71. The Bill will allow the procurement of services provided as part of the health service in Wales to be removed from the scope of the Public Contracts Regulations 2015 (PCR 2015) and the UK Government's forthcoming procurement reforms and will enable the Welsh Ministers to bring forward a new health service procurement regime for Wales via regulations.
72. In turn this will provide an opportunity to devise a new health services procurement regime with NHS Wales that could align, if so desired, with the proposed PSR in England. This option will assist in restoring the procurement 'level playing field' and minimise risk to the procurement of health services in Wales as a result of reforms being pursued outside Wales.

## Costs and benefits

73. Costs and benefits have been assessed over a three-year period, 2023-24 to 2025-26. This period would cover the design and initial implementation phase of any new health services procurement regime. As noted above, further work to assess any ongoing financial implications will be undertaken as part of developing the new regime. Costs have been discounted using HM Treasury’s central discount rate of 3.5%.

### Option 1 – do nothing

#### Costs

74. This is the baseline option and, as such, the following is a summary of the baseline costs and is presented to enable a comparison to be made with the costs under Option 2.

75. There will be Welsh Government administration and running costs for officials who are supporting the interface between UK Government on the introduction of the UK Government’s Procurement Bill. This activity is undertaken by Welsh Government’s Commercial Procurement Directorate.

76. This option would represent ‘business as usual’ and incur no additional cost to Welsh Government as these costs will be incurred irrespective of the proposed Health Service Procurement (Wales) Bill.

77. The estimated cost for Welsh Government staff cost in the Commercial Procurement Directorate (CPD) supporting the interface between UK Government on the introduction of the UK Government’s Procurement Bill is circa **£5,078,000** (rounded to the nearest £000), over a 3-year period.

#### 78. Table 4:

UK Procurement Bill – Welsh Government CPD staffing costs				
Financial Year	1 (2023-24) <sup>15</sup>	2 (2024-25)	3 (2025-26)	Totals
	1,146,749	1,965,856	1,965,856	<b>5,078,461</b>

<sup>15</sup> To enable comparison with costs in option 2 under the Health Service Procurement (Wales) Bill, figures included in year 1 are for the period from August 2023-March 2024.

79. Under this option, there are no administration duties related to the health service procurement reform for Welsh Government staff. Input and interaction on the UK Procurement Bill will be led by staff currently working in Welsh Government's Commercial Procurement Directorate.
80. The financial costs for NHS Wales and local authorities associated with this option will be attributed to costs incurred for meeting the new regulatory regime that will be introduced as part of the UK Government Procurement Bill. This will potentially include short term staff time and resources to amend existing procedures, establish new procurement regime guidance and associated familiarisation and training.
81. In terms of wider cost impacts associated with the implementation of the UK Government's Procurement Bill, the Cabinet Office has undertaken an impact assessment of the Bill<sup>16</sup>, which sets out the high-level costs and options of implementing a new public procurement regime for goods and services in the UK. Costs and benefits included in that assessment include assumptions around staff costs for public 'contracting authorities', business and third sector organisations. This data is UK wide and not Wales specific.
82. Without knowing the full extent of the subsequent regulations and required changes to existing procurement procedures, governance and regimes as a result of the UK Government's Procurement Bill, it is difficult to quantify the costs to public bodies in Wales (such as NHS Wales) and providers at this point in time.
83. The Procurement Bill is currently being considered by Parliament, therefore further detail of any new procurement regime and the subsequent impacts will be reviewed at subsequent regulation stage and when full detail of the proposed regime change is known.

### **Benefits/Disbenefits**

84. Under this option, procurement of all NHS health services in Wales will remain under the existing PCR 2015 regime and forthcoming UK Government Procurement Bill. This will result in two distinct separate health care services procurement regimes in operation in the two countries and potentially brings about some unintended practical consequences for the future procurement and commissioning of health services in Wales (as outlined in Chapter 3). A standalone Bill to obtain primary powers specific to health service procurement in Wales will not be required. Welsh Government staff time and resources could be diverted to other Welsh Government Programme for Government priorities. No additional staff costs, over and above the costs indicated in Table 4 for the commercial procurement directorate, will be incurred.

---

<sup>16</sup> <https://bills.parliament.uk/publications/46429/documents/1767>

## **Option 2 – Preferred option - Introduce the Health Service Procurement (Wales) Bill**

### **Costs**

85. Under this option, there will be an additional cost to Welsh Government should the Welsh Ministers opt to implement a new health service procurement regime. This administrative cost would cover policy development and implementation, procurement policy expertise and policy support for implementation of the subordinate legislation and guidelines. A best estimate of this cost is set out in Tables 2 and 3 below. The cost, which is expected to be incurred between 2023-2026, represents the opportunity cost of existing staff resource and is not expected to result in an additional financial outlay.

86. **Table 5:**

<b>Role</b>	<b>Grade</b>	<b>Annual staff cost (£)<sup>17</sup></b>	<b>Whole Time Equivalent</b>	<b>Cost per annum (£)</b>
Deputy Director	Senior Civil Servant	116,407	0.2	23,281
Policy lead	Grade 7	83,229	1	83,229
Procurement professional	Grade 7	83,229	0.2	16,646
Policy support	HEO	51,503	1	51,503
Lawyer (health)	Grade 7	83,229	0.5	41,615
Lawyer (procurement)	Grade 7	83,229	0.5	41,615
Lawyer	Grade 6	103,909	0.1	10,391
	<b>TOTAL</b>	<b>500,826</b>		<b>268,279</b>

<sup>17</sup> Costs for Welsh Government staff are based on average gross costs for civil staff pay bands 2021-22. This includes additional employment costs (pensions, national insurance contributions, etc).

87. Costs based over a **3 year period** are estimated as follows:

88. **Table 6:**

	<b>Year 1 (2023-24)<sup>18</sup></b>	<b>Year 2 (2024-25)</b>	<b>Year 3 (2025-26)</b>	<b>Total (£)</b>
<b>Costs</b>	156,496	268,279	268,279	<b>693,054</b>

89. The above Welsh Government staff costs in year 1 are based on 7 month period **post the forecasted point of Royal Assent** (estimated August 2023) and will include administration around the regulations, stakeholder engagement and drafting of new regime guidance with NHS Wales

90. The Welsh Government staff costs for Option 2 over a 3-year period are therefore estimated at **£693,000** (rounded to the nearest thousand). It should be emphasised the costs in years 2 and 3 will only materialise should Welsh Ministers opt to implement a new health service procurement regime in Wales.

91. Under this option, the costs associated with implementation of the UK Government's Procurement Bill will also be incurred. The Welsh Government administration and running costs for this element are covered in paragraphs 74-77 and **table 4** above under option 1 are **£5,078,000** (rounded to the nearest £000), over a 3-year period. This is not an additional cost for this option.

92. As with option 1, NHS Wales will incur a familiarisation and implementation cost as a result of the UK Government Procurement Bill. This cost is assumed to be the same as Option 1 and is not additional. However, under this option, NHS Wales may also need to implement a new, Wales specific health services procurement regime. The transitional costs associated with this include staff resources to engage with stakeholders, amend existing procedures, establish new procurement regime guidance, familiarisation and associated training. This represents the additional transition cost of Option 2. The cost associated with the Health Service Procurement (Wales) Bill will however, only be incurred after the Bill has received Royal Assent and only if the subordinate legislation and the new procurement regime comes into force.

93. For illustration purposes, an assumption has been made that this additional work will result in a maximum 10% increase in staff running costs for 257 NHS Wales procurement personnel over a maximum of 3 years. Based on data from NHS

<sup>18</sup> For period from August 2023 to March 2024

Wales, this represents an additional cost of **£2,705,000** (rounded to the nearest £000), over a 3-year period.

94. **Table 7:**

<b>Health Service Procurement (Wales) Bill – NHS Wales staffing costs</b>				
<b>Financial Year</b>	<b>1 (2023-24)<sup>19</sup></b>	<b>2 (2024-25)</b>	<b>3 (2025-26)</b>	<b>Total (£)</b>
<b>Cost (£)</b>	611,000	1,047,000	1,047,000	<b>2,705,000</b>

95. In certain circumstances, the lead procuring authority for a health related service might be the local authority rather than NHS Wales. Where this is the case, the local authority would be expected to incur a familiarisation and implementation cost for adapting to a new procurement regime. Further work will be undertaken during the development of the new procurement regime to determine the financial impact on local authorities. At this stage, the cost to local authorities is unknown.

96. At this stage, it is not considered practicable to attempt to undertake a detailed assessment of the ongoing financial implications of a new health services procurement regime. The ongoing financial implications to procuring authorities and service providers are therefore unknown.

### **Benefits/Disbenefits**

97. Under this option, the Welsh Ministers will obtain powers in primary legislation to enable the option to implement a new health service procurement regime through subordinate legislation. This allows an opportunity to implement measures to mitigate against some of the unintended practical consequences for the future procurement and commissioning of health services in Wales (as outlined in Part 1 - Chapter 3 of this Explanatory Memorandum).

### **Unquantifiable impacts and further work**

98. Without knowing the full extent of the required changes to existing procurement procedures, governance and regimes as a result of the Health Service Procurement (Wales) Bill, it is difficult to quantify the benefits to public bodies in Wales (such as NHS Wales), suppliers and businesses at this point in time.

99. Part 1 of this Explanatory Memorandum identifies, in broad terms, a number of potential impacts of a new health services procurement regime. The impacts will be

<sup>19</sup> Costs in year 1 are for the period from August 2023-March 2024.

considered further during the development of a new regime and a detailed assessment published alongside the relevant subordinate legislation.

100. The detailed assessment may include consideration of the following:

- i. Potential to remove barriers for commissioners and procurers to enhance patient care.
- ii. Short term resource implications for public bodies adapting to the new regime. In the longer-term, the extent of any cost and resource savings which could arise from the option not to competitively tender; leading to reduced need to undertake unnecessary procurement exercises
- iii. Whether removal of mandatory tendering exercises could result in reduced administration costs for businesses, with savings made from the necessity to formulate and submit competitive tenders. This could open up market opportunities for SMEs and the Foundational Economy who do not necessarily have the resources to enter competitive tendering exercises for contracts that ultimately do not result in contract award. This is covered further in the competition assessment below.
- iv. Whether the change in procurement regime might increase/decrease the costs associated with litigation following the award of contracts, and;
- v. The potential impact on competition and whether this will have longer-term consequences for the cost and quality of services in Wales.

101. In their Health and Care Bill impact assessment<sup>20</sup>, DHSC provided a largely narrative assessment on the introduction of Provider Selection and Choice and the PSR, and the perceived impacts on the NHS England, suppliers and businesses for adoption of a new health services procurement regime in England. Similar impacts and outcomes would be expected in Wales if we were to introduce a similar procurement regime. DHSC committed to undertake further analysis of their finalised Provider Selection Regime and publishing their assessment at secondary legislation stage.

## **Conclusion**

102. In conclusion, legislation regulates the procurement of goods and services by public authorities in UK within a defined and formal legislative and regulatory framework. Therefore, Welsh Ministers will need to obtain powers in primary legislation to change the way NHS health services are procured in Wales.

103. Option 2 provides opportunities to introduce legislation specific to NHS health service procurement and allow options to implement measures to mitigate against

---

<sup>20</sup> [Health and Care Act 2022 Core Measures Impact Assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)



some of the unintended practical consequences for the future procurement and commissioning of health services in Wales.

104. In terms of cost impact and benefits, neither option under consideration incurs substantial costs or duties on Welsh Government nor NHS Wales at the primary legislation stage.

## Chapter 7: Competition assessment

105. A competition assessment has been undertaken to assess the potential impacts of implementing the Health Service Procurement (Wales) Bill.
106. It is difficult at this stage to quantify the additional cost implications to businesses, markets and competition because the scope of any new health service procurement regime will be determined as part of developing regulations. Full consideration of the impacts on markets, businesses and competition will be completed in due course at subordinate legislation stage and with NHS Wales as part of any new procurement regime guidance.
107. The filter test has been completed and it is concluded that the Bill is not expected to have a significant detrimental effect on competition. A summary of the findings is included below.

### **Would the costs of the Bill affect some firms more than others?**

108. The primary legislative powers will not have a direct impact on firms or businesses. However, it is anticipated that any new NHS health service procurement regime that is implemented in reliance on those powers could have a moderate impact on businesses, both positively and negatively. The new health services regime may seek to move away from a position of competitive tendering by default and provide NHS Wales with discretion to negotiate contracts and undertake direct contract award to private health services providers, where there is no justifiable benefit in going out to the market – i.e. the incumbent service provider is providing best financial and patient value, or there is limited choice of a single preferred provider.

### **Will the proposals affect the market structure and changing the number or size of firms? Would the Bill lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet? Would the Bill lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?**

109. The scope of any new NHS health service procurement regime has not yet been finalised and therefore the full consideration of the impacts on market structure and size of firms cannot be quantified. However, a new procurement regime for health services could benefit businesses in reducing staff time and costs associated with

preparing and submitting tenders that do not translate into contract award for some organisations. This is particularly important to smaller and micro sized businesses or those business in the third sector, that do not have financial or staff resource or expertise to repeatedly compile bids and not win work. This could include 'Foundational Economy' service providers based in Wales – many of whom are SMEs and third sector – providing an opportunity to secure contracts without needing to bid in complex, costly and time consuming tendering exercises.

## **Chapter 8: Impact assessment summaries**

### **Children's rights impact assessment**

110. A Children's Rights Impact Assessment has been considered. The discrete nature of the Bill will not have a direct positive or negative impact on children and young people, in isolation. Any impacts on children and young people in Wales as a result of introducing a new health services procurement regime will be the same for adults. As a result, a full standalone Children's Rights Impact Assessment has not been completed.
111. There are no specific links between the proposals for primary legislation for health services procurement in Wales and the Child Poverty Strategy for Wales.
112. The primary legislation will not specifically maximise the outcomes of the United Nation Convention on the Rights of the Child (UNCRC) as it is not aimed uniquely at children and young people. The proposal has been considered in the light of children's rights and no clashes with UNCRC articles have been identified.
113. Measures to support children and young people will be considered in full during the development of regulations as part of wider obligations to improve public services through socially responsible public procurement.

### **Equality impact assessment**

114. The Equality Impact Assessment has been considered and has identified that the proposed primary legislation will not have a direct positive or negative impact on equalities for the citizens of Wales.
115. The Equality Impact Assessment will be further considered during the development of regulations and guidance produced in relation to a new NHS health services procurement regime in Wales.
116. NHS Wales is one of the organisations subject to the Public Service Equality Duty (PSED) which forms part of the Equality Act 2010. This duty will not be affected by

the proposed primary legislative powers and any changes for a new NHS health services procurement regime in Wales.

### **Health Impact Screening Tool**

117. The proposed primary legislation has been considered alongside the screening process for undertaking a Health Impact Assessment (HIA) and against the Health and Determinants Checklist to understand if the proposed primary legislative powers could impact certain population groups.
118. The responses to the screening questions have been considered in light of the Determinants Checklist and no direct impacts have been found. Therefore, a full HIA has not been completed. However, this will be further considered at the stage of developing regulations and related guidance.

### **Justice Impact Assessment**

119. The Bill does not create or modify criminal offences. A full justice impact assessment has been undertaken and consultation with the Ministry of Justice is ongoing – the results of this are imminent and will be updated when available.
120. The only perceived litigation capable of being generated are as a result of judicial reviews or challenge of the public health bodies in Wales implementing a new NHS health services procurement regime under the future regulations. Therefore, the propensity for legal challenge is not known at this point in time. Detail and any net impact of the new scheme is yet to be defined. This will be explored further during the development of regulations and related guidance.

### **Welsh Language impact assessment**

121. The Welsh Language Impact Assessment has been completed and shared with the Welsh Government's Welsh Language Unit.
122. It is determined that the proposed primary legislative powers have no direct impact on themes 1 & 3 of the impact assessment. They are expected to be supportive of theme 2: increasing the use of Welsh.
123. This will be explored further during the development of regulations and related guidance.

### **Biodiversity impact assessment**

124. The Biodiversity Impact Assessment has been completed and shared with Welsh Government's biodiversity policy leads.

125. Having considered the proposals against the priorities of the Natural Resources Policy, no impacts were identified as a result of the proposed Bill. However, further consideration will be given to how biodiversity can be integrated into health service procurement during the development of regulations and related guidance.

## **Chapter 9: Post implementation review**

126. The Welsh Government is committed to monitoring and reviewing the implementation of this Bill, and the impacts of its provisions in the post implementation period. Consideration will be given to the most meaningful methods for monitoring impacts, including administrative NHS Wales procurement data and independent reviews where appropriate.

## **ANNEXES**

### **Annex 1 – Explanatory Notes**

#### **HEALTH SERVICE PROCUREMENT (WALES) BILL**

---

#### **EXPLANATORY NOTES**

##### **INTRODUCTION**

1. These Explanatory Notes relate to the Health Service Procurement (Wales) Bill as introduced to Senedd Cymru on 14 February 2023.
2. They have been prepared by the Welsh Government’s Health and Social Services Group in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Senedd.
3. These Explanatory Notes should be read in conjunction with the Bill. They are not meant to be a comprehensive description of the Bill. Where an individual section of the Bill does not seem to require any explanation or comment, none is given.

##### **GENERAL OVERVIEW OF THE BILL**

4. The Bill has 5 sections. It enables the Welsh Ministers to disapply provisions of the Procurement Act 2023 (currently a Bill under consideration by the UK Parliament, the general principles of which have been agreed by both Houses) that would otherwise be relevant when procuring services provided as part of the health service in Wales, to the extent that alternative provision is made in that respect. The Bill also enables Ministers to create a new alternative procurement regime for these services. It does not prescribe detail about the content of any new regime, which would be set out in regulations developed under the Bill.
5. The Bill only applies to the procurement of services provided as part of the health service, and goods or other services that are connected to those health services. Other forms of procurement carried out by the health sector will remain subject to the current Public

Contract Regulations 2015 rules, until these are replaced by any future wider procurement reforms.

## **COMMENTARY ON SECTIONS**

### **Section 2 – Power to disapply procurement rules in relation to NHS procurement in Wales**

6. Section 2 of the Bill enables the Welsh Ministers to disapply provisions of the Procurement Act 2023, to the extent that they are inconsistent with alternative provisions made in respect of the procurement of health services in Wales. This is to be done by inserting a new section (currently intended to be section 116A) into the Procurement Act 2023.
7. Subsection (1) of the new section 116A provides the Welsh Ministers with the power referred to above, which is to be exercised by making regulations (by statutory instrument).
8. Subsection (2) provides additional information about how the power in subsection (1) operates, by defining two relevant terms.
9. First, it explains that the reference in subsection (1) to ‘regulated health service procurement in Wales’ means the procurement of goods and services carried out by a ‘relevant authority’ under the arrangements to be made under a new section 10A that is to be inserted into the National Health Service (Wales) Act 2006 by section 3 of this Bill. The power to disapply these provisions is to be available to the Welsh Ministers irrespective of whether regulations made under the proposed section 10A of the National Health Service (Wales) Act 2006 have come into force.
10. Second, subsection (2) also explains that the reference to a ‘relevant authority’ has the same meaning as found in the new section 10A to be inserted into the National Health Service (Wales) Act 2006. This means that the term ‘relevant authority’ includes local authorities in Wales, Local Health Boards, NHS Trusts (for example the Welsh Ambulance Services Trust) and special health authorities (for example Health Education and Improvement Wales, and Digital Health and Care Wales).
11. In accordance with (current) section 118(10) of what will become the Procurement Act 2023, regulations made under the section to be inserted into that Act by this Bill are subject to the affirmative procedure. This means that they must be approved by Senedd Cymru before they can be made.

### Section 3 – Procurement of services etc. as part of the NHS in Wales

12. This section should be read in conjunction with section 2, as it provides the Welsh Ministers with the ability to put in place new arrangements for health service procurement in Wales. If the Welsh Ministers do introduce new arrangements for health service procurement via regulations made under this section, relevant authorities will be obliged to follow those arrangements rather than wider procurement legislation when procuring services for the health service in Wales. These new arrangements, once introduced, will take the place of the previous arrangements, which Ministers are able to disapply through regulations made under section 2 but only to the extent that they apply to the procurement of services for the health service in Wales.
13. Section 3 provides the ability for the Welsh Ministers to introduce new legislative requirements through regulations. These regulations would set out the requirements applying to the procurement of services by relevant authorities as part of the health service in Wales, as well as goods and services which are connected to those health services.
14. The Bill does this by amending the National Health Service (Wales) Act 2006 to insert a new section (section 10A). The full wording of the new section being inserted into the National Health Service (Wales) Act 2006 is set out in subsection (2).
15. The new section 10A of the National Health Service (Wales) Act 2006 prescribes a number of matters that must be covered by the new regulations. Inclusion of these is therefore a legislative requirement and not a discretionary matter for the Welsh Ministers in developing the regulations. Subsections (2) and (3) of the new section 10A provide that the regulations must include detail about the processes relevant authorities need to follow when carrying out a competitive tendering exercise, as well as providing that the regulations must support key procurement principles of openness, fairness and propriety.
16. Subsection (4) of the new section 10A provides that regulations detailing a new regime for health service procurement must be accompanied by appropriate guidance for relevant authorities. Subsection (5) places a corresponding requirement on relevant authorities to take account of this guidance. Subsection (6) defines ‘relevant authorities’ for these purposes – the definition is the same as that referred to in paragraph 10 of these Explanatory Notes.
17. Subsection (3) of section 3 of the Bill makes a further related addition to the National Health Service (Wales) Act 2006. This adds the regulations that may be made under the newly inserted section 10A of the National Health Service (Wales) Act 2006 to the list of regulations (in that Act) that are subject to the affirmative procedure. This means that they must be approved by Senedd Cymru before they can be made.

## Annex 2 - Index of Standing Order requirements

Standing order		Section	pages/ paragraphs
26.6(i)	Statement the provisions of the Bill would be within the legislative competence of the Senedd	Member's declaration	Page 2
26.6(ii)	Set out the policy objectives of the Bill	Part 1- Purpose and intended effect of the legislation	Chapter 3, Page 7 / Paragraphs 5-29
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – Regulatory Impact Assessment	Chapter 6, Page 25 / Paragraphs 64-72
26.6(iv)	Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts)	Part 1 – Consultation	Chapter 4, Page 14 / Paragraphs 35-50
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Part 1 – Consultation	Chapter 4, Page 14 / Paragraphs 35-50
26.6(vi)	If the bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	Part 1 - Consultation	Chapter 4, Page 14 / Paragraphs 35-50
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill.	Annex 1 – Explanatory Notes	Page 37 / – sections 4 & 5



Standing order		Section	pages/ paragraphs
26.6(viii)	<p>Set out the best estimates of:</p> <ul style="list-style-type: none"> <li>(a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise;</li> <li>(b) the administrative savings arising from the Bill;</li> <li>(c) net administrative costs of the Bill's provisions;</li> <li>(d) the timescales over which such costs and savings would be expected to arise; and</li> <li>(e) on whom the costs would fall</li> </ul>	Part 2 – Regulatory Impact Assessment	Chapter 6, Page 27 / Paragraphs 73-101
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – Regulatory Impact Assessment	Chapter 6, Page 31 / Paragraphs 98-101
26.6(x)	<p>Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:</p> <ul style="list-style-type: none"> <li>(a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;</li> <li>(b) why it is considered appropriate to delegate the power; and</li> <li>(c) the Senedd procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is</li> </ul>	Part 1 - Power to make subordinate legislation	Chapter 5, Page 17 / Tables 1 and 2

Standing order	Section	pages/ paragraphs
	to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure);	
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate	The requirement of Standing Order 26.6(xi) does not apply to this Bill
26.6(xii)	Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.	Part 2 – Regulatory Impact Assessment
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	Chapter 8, Page 35 / Paragraphs 119-120
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement of Standing Order 26.6 B does not apply to this Bill
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill and setting out clearly how that wording is amended by the Bill.	The requirement of Standing Order 26.6 C does not apply to this Bill