

Financial implications of the Health Service Procurement (Wales) Bill

April 2023

1. Introduction

- 1.** The Health Service Procurement (Wales) Bill¹ (the Bill) was introduced by Eluned Morgan MS, the Minister for Health and Social Services (the Minister) on 13 February 2023. It was accompanied by an Explanatory Memorandum² (EM), including a Regulatory Impact Assessment (RIA).
- 2.** On the 14 February 2023, the Minister made an introductory statement on the Bill in Plenary.³
- 3.** The Bill is a framework Bill, conferring regulation-making powers that will allow the Welsh Government to establish a new health service procurement regime in Wales. It has been introduced following UK Government proposals to change the health service procurement regime in England, which would have implications for certain bodies in Wales.
- 4.** The Bill includes provision for:
 - A ‘disapplication power’ to enable the Welsh Ministers to disapply provisions of the UK Government’s Procurement Act 2023⁴ (currently a Bill going through the UK Parliament) that would otherwise apply to the procurement of health services in Wales; and
 - A ‘creation power’ to enable Welsh Ministers to develop and implement a new procurement regime for health services in Wales through regulations.⁵
- 5.** The Finance Committee (the Committee) took evidence on the financial implications of the Bill on 8 March 2023⁶, from:
 - Eluned Morgan MS, Minister for Health and Social Services
 - Dafydd Evans, Deputy Director, Life Sciences and Innovation
 - Leanne Roberts, Head of Procurement Reform Policy, Health and Social Care

¹ [Welsh Government, Health Service Procurement \(Wales\) Bill \(as introduced\)](#)

² [Welsh Government, Explanatory Memorandum](#)

³ [Plenary, RoP, 14 February 2023](#)

⁴ [UK Government, Procurement Bill](#)

⁵ [Welsh Government, Explanatory Memorandum, page 5](#)

⁶ [Finance Committee, RoP, 8 March 2023](#)

6. Policy scrutiny of the Bill was undertaken by the Health and Social Care Committee.⁷

7. The Legislation, Justice and Constitution Committee considered the Bill in accordance with matters which fall within its remit.⁸

⁷ Health and Social Care Committee

⁸ Legislation, Justice and Constitution Committee

2. Background

Changes to the procurement framework in England

8. The EM states that the “main legal framework” governing the procurement of health services in England and Wales is currently the ‘light touch regime’, set out in the Public Contracts Regulations 2015⁹ (PCR 2015). Light touch services are not subject to the full procurement regime under PCR 2015. This is designed to allow greater flexibility for contracting authorities.¹⁰

9. Following the decision to leave the European Union, there are proposals to change the way public bodies procure goods and services. The UK Government is looking to introduce a new procurement regime through its Procurement Bill¹¹ (the UK Procurement Bill), 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 UK Procurement Bill.¹²

10. Separately, there are proposals to change the way health care services will be procured in England, resulting from the UK Government’s Health and Care Act 2022 (which received Royal Assent on 28 April 2022). That allows for the procurement of healthcare services in England to be removed from the scope of PCR 2015 and for a new set of procurement rules to replace it.¹³ The UK Government’s Department for Health and Social Care (DHSC) intends to introduce a new health care services procurement regime (known as the Provider Selection Regime or PSR).¹⁴ The Welsh Government says the “exact details” of how the PSR will operate in England are currently under development. The details of the new regime will be set out in forthcoming regulations.¹⁵

11. The UK Procurement Bill would continue to cover healthcare services in England that are out of the scope of the PSR, and services procured by authorities not defined as “relevant authorities” under the Health and Care Act 2022.¹⁶ The

⁹ [Public Contract Regulations 2015](#)

¹⁰ [Welsh Government, Explanatory Memorandum, page 7](#)

¹¹ [UK Government, Procurement Bill](#)

¹² [Welsh Government, Explanatory Memorandum, page 7](#)

¹³ [UK Government, Health and Care Act 2022](#)

¹⁴ [NHS England, NHS Provider Selection Regime](#)

¹⁵ [Welsh Government, Explanatory Memorandum, page 9](#)

¹⁶ [House of Commons Library, Research Briefing – Procurement Bill 2022-23, page 23](#)

DHSC consulted on the proposals for the PSR between February and March 2022 and is currently analysing the responses.¹⁷

12. The Welsh Government says the PSR aims to move away from the expectation of competition in all circumstances. The intention is to remove unnecessary competitive tendering, barriers to integrating care and promote the development of stable collaborations. The Welsh Government goes on to say that it gives decision-makers in NHS England and local government organisations in England:

“...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.”¹⁸

Current health services procurement in Wales

13. 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’). These services are accessed in a number of ways, including procurement procedures under the PCR 2015.¹⁹

14. The UK Procurement Bill does not retain the light touch regime in its current form but seeks to introduce the concept of a ‘light touch contract’. It also allows for direct award of public contracts for the supply of user choice services in line with services designated under the light touch regime.²⁰

15. The Welsh Government outlines that Wales would remain under the scope of the light touch regime in PCR 2015 without further legislative change (and forthcoming reforms made under the UK Procurement Bill). This contrasts with England where health services will adopt the proposed PSR. This means there would be two distinct health care services procurement systems in Wales and England.²¹

¹⁷ [UK Government. Department for Health and Social Care. Provider Selection Regime: Supplementary consultation on the detail of proposals for regulations](#)

¹⁸ [Welsh Government. Explanatory Memorandum. page 8](#)

¹⁹ [Welsh Government. Explanatory Memorandum. page 8](#)

²⁰ [Welsh Government. Explanatory Memorandum. page 9](#)

²¹ [Welsh Government. Explanatory Memorandum. page 9](#)

3. The Health Service Procurement (Wales) Bill

Purpose and need for the Bill

16. The Minister said the Bill, and the future associated regulations, will:

“...aim to provide a supportive mechanism to maintain the current procurement ‘level playing field’ for NHS health services between England and Wales. This approach will seek to mitigate the risk of NHS Wales being adversely affected by the operation of a different health service procurement regime in England.”²²

17. The Bill itself does not introduce a new procurement regime. Rather, it provides the legislative basis for bringing forward regulations to enable the introduction of a bespoke procurement regime to apply to Welsh NHS health services.²³

18. The EM states that the Bill and potential regulations 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.²⁴

19. The RIA states that the Bill “will only apply to services provided as part of the health service in Wales (and other goods or services connected to those services)”.²⁵

20. The Welsh Government originally sought an amendment to the UK Procurement Bill to include a disapplication power for Welsh Ministers to support making regulations to potentially mirror the changes to the procurement of healthcare services in England under the Health and Care Act 2022²⁶. However, the Welsh Ministers subsequently decided not to pursue the inclusion of this power in the Bill.²⁷

²² [Welsh Government, Written Statement: Health Service Procurement \(Wales\) Bill](#)

²³ [Welsh Government, Explanatory Memorandum, page 5](#)

²⁴ [Welsh Government, Explanatory Memorandum, page 5](#)

²⁵ [Welsh Government, Explanatory Memorandum, page 23](#)

²⁶ [UK Government, Health and Care Act 2022](#)

²⁷ [Welsh Government, Supplementary Legislative Consent Memorandum: Procurement Bill \(Memorandum No. 2\), page 3](#)

21. The Minister explained that, while the UK Government could carve out Welsh health services from the UK Procurement Bill, it could not give the powers to “switch something else on”. The Minister therefore said she took “the first legislative slot” to bring forward a stand-alone Bill.²⁸

22. The Legislation, Justice and Constitution Committee sought clarification on the decision to introduce a separate Bill, rather than including the provisions in the Social Partnership and Public Procurement (Wales) Bill currently before the Senedd. The Minister explained that the “framework that is within the social partnership Bill is a way of working, whereas what we're talking about is something that will lead to some quite technical changes when it comes to procurement”. She went on to say:

“We've explored every avenue, if I'm honest. We found that it didn't sit comfortably with other Bills, and that's why we've taken this route. We did explore that as an option and found that it wouldn't have worked.”²⁹

23. The Welsh Government states that the pace of the reforms being progressed in England mean that the effects, and the risks of not legislating in Wales, would likely start to be felt “within a relatively short timeframe”.³⁰

24. The Bill has been proposed under an expedited process (allowing seven weeks for Stage 1 scrutiny) to enable regulations to be brought forward as quickly as possible.³¹ During her introductory oral statement, the Minister explained:

“The provider selection regime in England is expected to commence later this year. Therefore, to reduce any potential market distortion and to ensure continued delivery of key NHS health services in Wales, there is some urgency to minimise the period of time when NHS health service procurement platforms in England and Wales will operate on a different basis ... This timeline will also seek to maximise procedural efficiencies for NHS Wales by coinciding with wider changes being brought

²⁸ Finance Committee, RoP, 8 March 2023, paragraphs 14-15

²⁹ [Legislation, Justice and Constitution Committee, RoP, 6 March 2023, paragraphs 43 and 45](#)

³⁰ [Welsh Government, Explanatory Memorandum, page 12](#)

³¹ [Letter from the Minister for Health and Social Service to the Health and Social Care Committee, 18 January 2023](#)

*about as part of the UK Government's Procurement Bill reforms, which are currently programmed for next year.*³²

25. The EM indicates that “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”. However, due to the timescale adopted, no formal consultation on a draft Bill was undertaken. The Welsh Government intends to undertake a full consultation as part of the development of any regulations and during preparation of any new procurement guidance.³³

26. In correspondence to the Health and Social Care Committee, the Minister provided further detail on the proposed 12 week consultation:

*“At present, the expectation is for the consultation to take place as soon as is practical, following Royal Assent, subject to Senedd approval. This would mean the consultation period is likely to begin in early Autumn. However, this timing is predicated on having seen the final Regulations and guidance on the Provider Selection Regime from the DHSC in the next few months, to enable us to develop operational principles for Wales, on which we intend to consult.”*³⁴

27. The Minister emphasised the urgency of the Bill:

*“Obviously, we've been discussing with the people involved in this very niche approach to commissioning, and they were very clear, 'Look, we don't want much of a gap. We don't want to be exposed in this place.' So, the idea is that we try to mirror what is happening in England, but we can't know whether we really want to mirror it until we see the detail.”*³⁵

28. In terms of the potential impact of timescales not aligning with the changes being proposed in England, the Minister said “I guess there will be a bit of a gap, so we're just trying to make that gap as short as we can”.³⁶

³² [Plenary, RoP, 14 February 2023, paragraph 239](#)

³³ [Welsh Government, Explanatory Memorandum, page 14](#)

³⁴ [Letter from the Minister for Health and Social Services, 17 March 2023](#)

³⁵ Finance Committee, RoP, 8 March 2023, paragraph 14

³⁶ Finance Committee, RoP, 8 March 2023, paragraph 42

29. When pressed further on this potential gap in alignment, the Minister indicated that the regulations in England are expected “maybe this year”, and suggested that “we won’t be able to get this through and get the detail done until maybe spring next year”.³⁷

30. In a letter to the Health and Social Care Committee, the Minister said the DHSC is “advising stakeholders that the Provider Selection Regime is not expected to be in use before July 2023” and the Welsh Government anticipates “laying regulations in early 2024 and those regulations [...] coming into force in Spring 2024”.³⁸

31. While the Bill has been introduced to enable the Welsh Government to legislate for changes to the system in Wales, the Minister said:

“In terms of whether we’ll just cut and paste whatever they do in England, we haven’t seen what they’re going to do in England yet. We haven’t seen the detail of their secondary legislation. So, we don’t know whether we want to copy and paste that. We’ll have to have a look. It may be that we want to do things differently.”³⁹

32. Once the regulations in England are available, the Minister emphasised that “we’re not necessarily signing up at that point” but consulting on the principles of those regulations.⁴⁰

33. When challenged on the dangers of varying too much from the regulations in England, the Minister said what the Welsh Government is “working towards is a level playing field”, but went on to say “we want the flexibility, if they land somewhere where we really, really don’t like it, that we don’t have to follow them”.⁴¹

Committee view

34. The Committee acknowledges the arguments presented in respect of the need for the Bill, and recognise that making legislative provision will enable the Welsh Government to decide whether or not to mirror the forthcoming PSR in England. We heard that the Minister has taken the first legislative slot available

³⁷ Finance Committee, RoP, 8 March 2023, paragraphs 48 and 50

³⁸ [Letter from the Minister for Health and Social Services, 17 March 2023](#)

³⁹ [Plenary, RoP, 14 February 2023, paragraph 252](#)

⁴⁰ Finance Committee, RoP, 8 March 2023, paragraph 116

⁴¹ Finance Committee, RoP, 8 March 2023, paragraph 127

within the Welsh Government's legislative programme to bring forward a stand-alone Bill, having explored and discounted alternative legislative routes via the UK Procurement Bill and the Social Partnership and Public Procurement (Wales) Bill.

35. The key driver for the Bill is to mitigate the risk associated with health service procurement in Wales operating under a different regime to England. Mitigating that risk is also the Welsh Government's justification for pursuing an expedited process, which has limited the time available for the Senedd's Stage 1 scrutiny. This is regrettable and the Committee would have preferred to see the Bill introduced much earlier to enable fuller scrutiny and understanding of the practical implications of the Bill.

36. The Minister discussed the timescales to which the regimes in England and Wales could come into force. It is concerning to learn that, despite the Welsh Government's approach, the Minister is still anticipating a gap in alignment with the PSR in England. We heard about the risks and issues that may arise from operating two different systems and it is unclear, from the evidence received and the information contained in the RIA, to what extent a gap between the implementation of changes in England and Wales will impact stakeholders.

Conclusion 1. The Committee regrets that this Bill is subject to an expedited timetable, and believes that the Minister could have done more to bring forward legislative proposals addressing this issue sooner, especially given that the Welsh Government has been aware of the development of the Health and Care Act 2022 for some time.

Recommendation 1. The Committee recommends that the Welsh Government provides an assessment of the risks and financial impact of temporarily having two different health service procurement regimes operating in England and Wales.

4. Costs of the Bill

37. The overall cost of the Bill is estimated to be £3.4 million (or £3.2 million in Net Present Value terms) across a three year appraisal period (2023-24 to 2025-26). The appraisal period covers the design and initial implementation phase of any new health services procurement regime. Further work to assess any ongoing financial implications will be undertaken as part of developing the new regime.⁴²

38. The first year of costs covers the seven months from Royal Assent (estimated as August 2023). The costs in years two and three will only materialise if the Welsh Government decides to implement a new health service procurement regime in Wales. The costs comprise administrative costs to the Welsh Government to develop and implement the regime (including stakeholder engagement) and costs to NHS bodies for familiarisation and implementation of the new regime.⁴³

Table 1: Summary of costs - Health Service Procurement (Wales) Bill (£)

	2023-24 ¹	2024-25	2025-26	Total
Welsh Government	156,496	268,279	268,279	693,054
NHS Wales	610,751	1,047,002	1,047,002	2,704,755
Total	767,247	1,315,281	1,315,281	3,397,809

Source: *Welsh Government, Explanatory Memorandum and Regulatory Impact Assessment, page 30, Letter from the Minister for Health and Social Services on 24 March 2023 and author's calculations*

¹For period from August 2023 to March 2024

39. All costs are outlined as transitional, with no ongoing costs identified. The RIA states:

“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.”⁴⁴

⁴² *Welsh Government, Explanatory Memorandum, pages 20 and 27*

⁴³ *Welsh Government, Explanatory Memorandum, page 30*

⁴⁴ *Welsh Government, Explanatory Memorandum, page 31*

40. Addressing the financial cost of not bringing forward the Bill, the Minister said “it is quite difficult to quantify, because we don’t know what the regulations are going to be”.⁴⁵

41. The RIA highlights that:

“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.”⁴⁶

42. When asked whether the three year implementation period set out in the RIA is a reasonable assumption, the Minister’s official explained:

“...I think we would expect, within three years, for this effectively to have been landed. Because it would be the first 12 or 18 months where you would be implementing a new regime in terms of training and making that live, and then it's all about, then, the whole suite of contracts that there are currently, how long they take to effectively be renewed and come through on a PSR...”⁴⁷

Administrative costs

UK Procurement Bill

43. The RIA identifies baseline “do nothing” costs of £5.1 million over the appraisal period. This is the cost of Welsh Government staff supporting the interface between the UK Government on the introduction of the UK Procurement Bill. This cost is expected to be incurred irrespective of the proposed Bill.⁴⁸

44. The Welsh Government states that it is currently “difficult to quantify the costs to public bodies in Wales (such as NHS Wales) and providers” until the full extent of changes required as a result of the UK Procurement Bill are known.⁴⁹

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⁴⁵ Finance Committee, RoP, 8 March 2023, paragraph 18

⁴⁶ [Welsh Government. Explanatory Memorandum. page 24](#)

⁴⁷ Finance Committee, RoP, 8 March 2023, paragraph 63

⁴⁸ [Welsh Government. Explanatory Memorandum. pages 27 and 30](#)

⁴⁹ [Welsh Government. Explanatory Memorandum. page 28](#)

45. The Bill is estimated to result in administrative costs to the Welsh Government of around £693,000 over the appraisal period. This represents the staff resource needed for policy development and implementation, procurement policy expertise and policy support for implementation of regulations and guidelines. This is outlined as an opportunity cost, as opposed to additional expenditure.⁵⁰

46. When questioned on the Welsh Government's capacity to deal with both the changes arising from the UK Procurement Bill and this Bill, the Minister said:

"I don't think we need additional staffing; it's just a question of training staff who are currently employed in a new system."⁵¹

47. The Minister's official indicated that this is the Welsh Government's best estimate at this stage, adding:

"...we know that, on the Procurement Bill, there is generic training that'll be developed there by UK Government, and we will be able to use that in Wales. So, we will want to have similar conversations with the Department of Health and Social Care around what training there is on the provider selection regime, and, just like things like the regulations, how much of that we can use and bring that forward."⁵²

Transitional costs

NHS Bodies

48. The RIA identifies additional costs to NHS Wales of an estimated £2.7 million to implement a Wales specific health services procurement regime. The transitional costs include staff resources to engage with stakeholders, amend existing procedures, establish new procurement regime guidance, familiarisation and associated training. It has been calculated at a maximum of a 10 per cent increase in staff running costs over a maximum of three years associated with 257 NHS Wales procurement staff.⁵³

⁵⁰ [Welsh Government. Explanatory Memorandum. pages 29-30](#)

⁵¹ Finance Committee, RoP, 8 March 2023, paragraph 66

⁵² Finance Committee, RoP, 8 March 2023, paragraphs 70 and 72

⁵³ [Welsh Government. Explanatory Memorandum. page 30](#)

49. The Minister stressed that this figure relates to training those undertaking specialised procurement for clinical services, rather than all staff involved in procurement. She also said:

“We are expecting them to do it within their existing staff, but it's just trying to make sure that there's an understanding that they're going to have to do things differently. If you were to carve out the time, then that's effectively what it would cost.”⁵⁴

50. In developing the costs, the Minister and her officials confirmed that the Welsh Government has engaged informally with the NHS shared services partnership and trade unions.⁵⁵

51. Appearing before the Health and Social Care Committee, Jonathan Irvine, Director of Procurement Services for NHS Wales Shared Services Partnership, said:

“...there have been costs discussed from a procurement services perspective as to the investment that we would require, to make sure that we could bed this in successfully.”⁵⁶

52. He also identified a cost associated with “putting in the governance and transparency arrangements that maybe currently aren't there” to ensure “common and standard practice across the piece”.⁵⁷

53. Addressing the costs to NHS Bodies, Huw Thomas, Director of Finance for Hywel Dda University Health Board, told the Health and Social Care Committee:

“...they will be marginal, and mainly in management time. It's very difficult to quantify what the impact of that is. Clearly, there's lost opportunity cost to do something else, I guess, but it's all fairly marginal from a health board perspective, I would say. The cost of not doing it would probably be greater; the cost of staying with the status quo and having regulatory divergence would be greater for us. So, I think it's incumbent on us to make sure that we do change.”⁵⁸

54. The RIA states that it is “difficult at this stage to quantify the staff resource costs and benefits for NHS Wales for changes to tendering practices on a contract

⁵⁴ Finance Committee, RoP, 8 March 2023, paragraphs 75 and 82

⁵⁵ Finance Committee, RoP, 8 March 2023, paragraphs 85 and 87-88

⁵⁶ [Health and Social Care Committee, RoP, 9 March 2023, paragraph 102](#)

⁵⁷ [Health and Social Care Committee, RoP, 9 March 2023, paragraph 128](#)

⁵⁸ [Health and Social Care Committee, RoP, 9 March 2023, paragraph 129](#)

by contract basis”, but it is anticipated “that any cost increases will be limited to short term staff resource and process readjustment costs” and these costs will be reviewed when developing the regulations.⁵⁹

Local authorities

55. The RIA suggests that transitional costs may also be incurred by local authorities, where they are the lead procuring authority. In such instances, the local authority “would be expected to incur a familiarisation and implementation cost for adapting to a new procurement regime”.⁶⁰

56. While the RIA notes that a focussed, proactive engagement with stakeholders, including the Welsh Local Government Association (WLGA) was undertaken, it states:

“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.”⁶¹

57. Addressing the absence of estimated costs for local authorities, the Minister explained that “clinical commissioning in local authorities is very, very limited” and “until we know where the regulations are, we don't know the scope and the amount to which it will be impacted”.⁶² The Minister added:

“The main cost is about training, and in the scope of it, we're not talking about a lot of money at all, I don't think.”⁶³

58. The Minister's official also highlighted the impact of timing on the costs to local authorities:

“...we also know that local authorities, if we timed this at the same time, would be spending a lot of their time implementing the wider Procurement Bill anyway. So, part of the issue is that, actually, incrementally it'll cost less to bring this in at roughly the same time, because there'll be quite a lot of expenditure in local authorities about understanding the new wider procurement regime that will apply to them. So, I think the

⁵⁹ [Welsh Government, Explanatory Memorandum, page 24](#)

⁶⁰ [Welsh Government, Explanatory Memorandum, page 31](#)

⁶¹ [Welsh Government, Explanatory Memorandum, pages 14 and 31](#)

⁶² Finance Committee, RoP, 8 March 2023, paragraph 92

⁶³ Finance Committee, RoP, 8 March 2023, paragraph 94

question is—. As we develop the regulations and the next RIA, we would get into that level of detail where we hopefully can quantify that better for local authorities.”⁶⁴

59. When asked whether the Welsh Government could meet the costs to local authorities, the Minister said:

“We're not on that page at the moment, and we'll cross that bridge when we come to it. I don't think we've got any other choice; we're going to have to see this through. So, obviously, we would have to find—. I'm not expecting that cost to be additional.”⁶⁵

Other bodies and service providers

60. The RIA identifies unquantifiable costs associated with the potential impact of changes on health service providers, including public, private and third sector providers. The RIA states:

“...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.”⁶⁶

61. Given that the financial implications for other bodies have not been estimated, the Committee asked how the Welsh Government has assessed the impact of the Bill and future changes on service providers. The Minister said:

“It'll be much easier for us to do that once we know what the regulations look like, and that's the time when we'll be doing that financial impact assessment that we're talking about. It's just too difficult to do that without knowing what the detail says and who, therefore, would be impacted.”⁶⁷

⁶⁴ Finance Committee, RoP, 8 March 2023, paragraph 95

⁶⁵ Finance Committee, RoP, 8 March 2023, paragraph 97

⁶⁶ [Welsh Government. Explanatory Memorandum. page 23](#)

⁶⁷ Finance Committee, RoP, 8 March 2023, paragraph 102

Unquantified costs, benefits and uncertainties

62. A main benefit of the Bill outlined by the Welsh Government is the ability to establish a new procurement regime for NHS health services in 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.”⁶⁸

63. During her introductory oral statement on the Bill, the Minister said:

“It is hoped that a more flexible, collaborative and less bureaucratic approach will open up more supplier opportunities for small and medium-sized enterprises and third sector organisations based here in Wales and, therefore, as a consequence, bring economic benefits across other programme for government priorities, such as our commitment to the foundational economy of Wales.”⁶⁹

64. The RIA states that the “on-going costs/cost-savings to commissioning authorities and service providers are unknown at this stage”.⁷⁰

65. Addressing the cost savings, the Minister said the Bill:

“...will mean spending a lot less on tendering activities, and you know how much time and effort particularly the third sector spend on tendering. So, that's quite a huge saving for them, I think. I think there are potential savings for the NHS, but obviously we won't know the detail of that until we've got those regulations.”⁷¹

66. The Minister’s official told the Committee the Bill “is trying to find efficiencies, find collaboration, improve services, and therefore save costs where we can” but that it is “very difficult to quantify those at this point”. He highlighted that freeing up some time from “churning” contracts would allow the NHS time to focus “on

⁶⁸ [Welsh Government. Explanatory Memorandum. page 22](#)

⁶⁹ [Plenary. RoP. 14 February 2023. paragraph 237](#)

⁷⁰ [Welsh Government. Explanatory Memorandum. page 21](#)

⁷¹ Finance Committee, RoP, 8 March 2023, paragraph 107

KPIs, on understanding performance better, and understanding the sector better in terms of knowing effectively where those services are coming from”.⁷²

67. The Welsh Government says it will undertake a further assessment of the likely costs and benefits to procuring authorities, providers and service users alongside the development of the new regime.⁷³

68. The Minister confirmed that an RIA will be published alongside any future regulations.⁷⁴

69. The Minister’s official highlighted that the regulations will be subject to the affirmative procedure “so we’re very clear that that detail needs the full scrutiny in the Senedd”.⁷⁵

70. The Committee has previously expressed concerns where Bills enable Welsh Ministers to make changes through subordinate legislation, but the RIA does not provide financial estimates relating to that change. In its report on the Agriculture (Wales) Bill, the Committee concluded:

“We reiterate previous calls that Regulatory Impact Assessments must contain the best estimate possible for costs and benefits to enable us to fully scrutinise the overall financial implications of a Bill.”⁷⁶

71. Following scrutiny of the Welsh Tax Acts etc. (Power to Modify) Bill, the Committee said:

“The RIA for this Bill identifies unknown expenditure for secondary legislation, with no attempt to provide costs for fear of potentially misleading or failing to add any value. However, providing no information at all on potential costs makes financial scrutiny of this Bill virtually impossible.”⁷⁷

72. In 2017, the Finance Committee of the Fifth Senedd conducted an inquiry into the financial estimates accompanying legislation⁷⁸ and recommended that “the Welsh Government commit to providing as full a picture of the costs of

⁷² Finance Committee, RoP, 8 March 2023, paragraphs 40 and 111

⁷³ [Welsh Government, Explanatory Memorandum, page 22](#)

⁷⁴ Finance Committee, RoP, 8 March 2023, paragraph 133

⁷⁵ Finance Committee, RoP, 8 March 2023, paragraph 33

⁷⁶ [Finance Committee, Financial Implications of the Agriculture \(Wales\) Bill, page 19](#)

⁷⁷ [Finance Committee, Welsh Tax Acts etc. \(Power to Modify\) Bill: Committee Stage 1 Report, page 77](#)

⁷⁸ [Finance Committee \(Fifth Senedd\), Inquiry into the financial estimates accompanying legislation](#)

subordinate legislation as possible when proposing primary legislation”.⁷⁹ The Welsh Government accepted this recommendation, referring to its legislation handbook.⁸⁰ The current published version (May 2019) states:

“The RIA should set out a best estimate of the cost of the legislation as a whole and this includes any associated subordinate legislation. Even where the precise detail of subordinate legislation has not been finalised, a best estimate of the likely costs and benefits is required to enable the [Senedd] to fully scrutinise the legislation.”⁸¹

73. When asked whether the RIA complies with the Welsh Government’s legislation handbook, the Minister’s official said:

“...the RIA sets out the best estimate based on what we currently know at the moment, which I think is what was asked in that.”⁸²

Post-implementation review

74. The Welsh Government includes a brief description of how it may approach post-implementation in the RIA:

“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.”⁸³

75. When questioned further on the Welsh Government’s approach to monitoring and reviewing the implementation of the Bill so that learning can inform any future procurement regime, the Minister said “we will be complying with the normal processes, obviously, and with best practice in Welsh Government”.⁸⁴

⁷⁹ Finance Committee (Fifth Senedd). [Inquiry into the financial estimates accompanying legislation, October 2017, Recommendation 13](#)

⁸⁰ [Welsh Government, Response to the Finance Committee’s inquiry into the financial estimates accompanying legislation, December 2017](#)

⁸¹ [Welsh Government, Legislation Handbook on Assembly Bills, May 2019, page 51](#)

⁸² Finance Committee, RoP, 8 March 2023, paragraph 104

⁸³ [Welsh Government, Explanatory Memorandum, page 36](#)

⁸⁴ Finance Committee, RoP, 8 March 2023, paragraph 131

76. The Minister's official added:

"...we'd need to understand what's the right time to actually review a new regime. We'll want to do that through independent reviews and, actually, working with the Department of Health and Social Care. So, I think committing to a time now may be difficult..."⁸⁵

Committee view

77. The Health Service Procurement (Wales) Bill is an enabling Bill, conferring regulation-making powers that will allow the Welsh Ministers to establish a new health service procurement regime in Wales. The Committee accepts the arguments regarding the need for legislation to level the health service procurement 'playing field' and notes that this is the Minister's preferred policy position. However, while we are mindful of the risks and disadvantages of divergence, very little detail has been provided on the proposed health service procurement regime or the circumstances that may lead to one approach being more desirable than the other. The full financial implications of the new regime will not be known until the policy details are developed and brought forward in regulations. It is therefore disappointing that we are unable to take a view on many aspects of the financial implications arising from the Bill due to the lack of information available.

78. We have been critical of similar approaches taken in relation to other framework Bills introduced in this Senedd, such as the Agriculture (Wales) Bill and the Welsh Tax Acts etc. (Power to Modify) Bill, as it makes it difficult to assess the total cost of a Bill and understand the implications of the change being enabled. We expect RIAs to include a best estimate of the costs and benefits associated with subordinate legislation alongside the relevant primary legislation, to enable us to fully scrutinise the overall financial implications of a Bill. Indeed, the Welsh Government's own Legislation Handbook states that "even where the precise detail of subordinate legislation has not been finalised, a best estimate of the likely costs and benefits is required".⁸⁶

79. While the Committee welcomes the Minister's commitment to publish an RIA alongside any future regulations, the timescales for scrutiny will be constrained by the affirmative procedure and the Senedd's legislative role will be limited to an "accept or reject" vote. Given the limited information the Committee

⁸⁵ Finance Committee, RoP, 8 March 2023, paragraph 134

⁸⁶ [Welsh Government. Legislation Handbook on Assembly Bills. May 2019. page 51.](#)

has been able to scrutinise in the RIA accompanying the Bill, we expect an RIA for any future regulations to fully cost the financial implications of the new health service procurement regime. However, it is disappointing that important elements of the financial implications of the change enabled by this Bill were not available to be scrutinised as part of this process, and that any future changes brought forward through regulations will not be subject to the same degree of scrutiny as those included alongside the Bill itself.

80. We recognise that implementing the UK Procurement Bill reforms will result in significant disruption and costs, irrespective of the changes to health service procurement proposed in this Bill. However, we are mindful of the capacity and expertise available to deliver the changes demanded by both Bills, particularly given the desired timescales for implementation. We note that the Welsh Government intends to undertake a full consultation as part of the development of any regulations and new procurement guidance. While we acknowledge the informal consultation with stakeholders in the preparation of the Bill, those discussions are likely to have been limited given that policy details are not currently known.

81. Although the RIA does not assess the ongoing financial implications of a new regime, it sets out the Welsh Government's best estimate for the cost of developing the regime and its initial implementation. This consists of £3.4 million in transitional costs to the Welsh Government and NHS Wales over a three year appraisal period. The cost to the Welsh Government of around £693,000 is outlined as an opportunity cost rather than additional expenditure, with the Minister suggesting it relates to training existing staff. However, it is not clear how the Welsh Government had assessed the implications of diverting existing resource away from business as usual tasks. The cost to NHS Wales is estimated to be £2.7 million over the three year appraisal period – this assumes that the additional work will result in a 10 per cent increase in staff running costs for 257 NHS Wales procurement personnel. We note the evidence presented by the panel representing NHS Bodies to the Health and Social Care Committee regarding engagement with the Welsh Government on the financial impact of the Bill on their organisations.

82. Despite the Welsh Government providing its best estimate for developing the regime and its initial implementation, a number of gaps remain. The RIA suggests that familiarisation and implementation costs will be incurred by local authorities in situations where they are the lead procuring authority. Though the RIA describes engagement with the WLGA, the costs to local authorities have not

been estimated. It is not clear why this is the case for local authorities when the equivalent activities for NHS bodies as the lead procuring authority have been calculated. Similarly, no financial assessment has been made of the costs to service providers. We were also told that the Bill will find efficiencies and lead to savings, but no attempt has been made to estimate these benefits either.

83. The Committee has consistently called for all Bills to include a robust post-implementation review as a matter of good practice.⁸⁷ It helps to establish whether the objectives of legislation are being delivered in line with expectations and whether value for money has been achieved. We welcome that a post-implementation review is included in the RIA, however, we were struck by the lack of detail regarding the timing and approach to that review.

Conclusion 2. We are disappointed with the lack of financial information presented in the Regulatory Impact Assessment. While we accept the difficulty in seeking to quantify the costs of future changes to the health service procurement regime, the Committee is unable to draw a conclusion as to whether the resources are adequate and reasonable to deliver the ambitions of the legislation.

Conclusion 3. We reiterate previous calls that Regulatory Impact Assessments must contain as much detail as possible, and must include the best estimate for costs and benefits associated with subordinate legislation alongside the relevant primary legislation, to enable us to fully scrutinise the overall financial implications of a Bill.

Recommendation 2. The Committee recommends that the Welsh Government provides a full and robust Regulatory Impact Assessment for any regulations made as a result of the Health Service Procurement (Wales) Bill and that sufficient time is provided to allow the Senedd to consider any related financial implications that will arise.

Recommendation 3. The Committee recommends that the Welsh Government provides information on how it will explore with stakeholders:

- the estimated familiarisation and implementation costs to local authorities and service providers,

⁸⁷ [Finance Committee, Financial Implications of the Tertiary Education and Research \(Wales\) Bill, March 2022, Recommendation 10](#)

- the estimated cost savings to procuring authorities, providers and service users, and
- the ongoing costs of the new regime.

Recommendation 4. The Committee recommends that the Welsh Government clarifies its approach to monitoring and reviewing the implementation of the Health Service Procurement (Wales) Bill, including the proposed timescales.