

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 6) on the Procurement Bill

July 2023



1. Background

The UK Government's Procurement Bill

1. The Procurement Bill was introduced into the House of Lords on 11 May 2022.¹ It is sponsored by the Cabinet Office.

2. The Explanatory Notes to the Bill state:

*"The purpose of the Procurement Bill is to reform the United Kingdom's public procurement regime following its exit from the European Union (EU), to create a simpler and more transparent system not based on transposed EU Directives."*²

3. The Bill completed its passage through the House of Lords on 13 December 2022. The Bill received its First Reading in the House of Commons the next day³ and completed its passage through that House on 13 June 2023.

4. The Bill has now been returned to the House of Lords for consideration of amendments on a date to be determined. The to and fro of amendments between both Houses (ping pong) will continue until agreement has been reached, following which the Bill will be submitted for Royal Assent.

The Welsh Government's previous Legislative Consent Memoranda

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.

6. We have to date issued two reports covering five memoranda:

- our first report,⁴ reported on the first⁵ and second⁶ memoranda.

¹ [Procurement Bill, as introduced](#) (HL Bill 4)

² [Procurement Bill, Explanatory Notes](#), paragraph 1

³ [Procurement Bill, as brought from the House of Lords](#) (HC Bill 218)

⁴ Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memoranda on the Procurement Bill](#), October 2022; [Welsh Government response](#), 14 November 2022

⁵ Welsh Government, [Legislative Consent Memorandum, Procurement Bill](#), June 2022

⁶ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\), Procurement Bill](#), July 2022

- our second report,⁷ reported on the third,⁸ fourth⁹ and fifth memoranda.¹⁰

7. These reports were the subject of debates on two legislative consent motions in the Senedd on 28 March 2023:¹¹

- Motion 1: To propose that the Senedd, in accordance with Standing Order 29.6 agrees that provisions in the Procurement Bill, namely Part 1 “Key Definitions”, Part 2 “Principles and Objectives”, Part 3 “Award of Public Contracts and Procedures”, Part 4 “Management of Public Contracts”, Part 5 “Conflicts of Interest”, Part 6 “Below-Threshold Contracts”, “Treaty state suppliers: non-discrimination”, Part 8 “Information and Notices: General Provision”, Part 9 “Remedies for Breach of Statutory Duty”, Part 10 “Procurement Oversight”, Part 11 “Appropriate Authorities and Cross-Border Procurement”, Part 12 “Amendments and Repeals”, Part 13 “General” and related provisions in Schedules 1 to 8, 10 and 11, in so far as they fall within the legislative competence of the Senedd, should be considered by the UK Parliament.
- Motion 2: To propose that the Senedd, in accordance with Standing Order 29.6, agrees that provisions in the Procurement Bill, namely “Treaty state suppliers”, “Trade Disputes” and related provisions in Schedule 9, in so far as they fall within the legislative competence of the Senedd, should be considered by the UK Parliament.

8. The Senedd agreed motion 1 but did not agree motion 2.¹²

⁷ Legislation, Justice and Constitution Committee, The Welsh Government's Supplementary Legislative Consent Memoranda (Memoranda No. 3, No. 4 and No. 5) on the Procurement Bill, March 2023; Welsh Government response, 18 April 2023

⁸ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 3), Procurement Bill, December 2022

⁹ Although Memorandum No. 4 was first laid on 19 December 2022, on 24 January 2023 the Welsh Government replaced it with another version: Supplementary Legislative Consent Memorandum (Memorandum No. 4) Procurement Bill. The content of the English version was unchanged; the Welsh version was corrected to resolve discrepancies with the English version.

¹⁰ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 5), Procurement Bill, February 2023

¹¹ Plenary, 28 March 2023, RoP [417 to 466]

¹² Plenary, 28 March 2023, RoP [545 to 546]

The Welsh Government's Supplementary Legislative Consent Memorandum No. 6 (Memorandum No. 6)

9. On 21 June 2023 the Minister laid before the Senedd a further Supplementary Legislative Consent Memorandum (Memorandum No. 6)¹³ in respect of amendments tabled to the Bill by the UK Government on 7 June 2023 for consideration at the House of Commons Report stage, which commenced on 13 June 2023. In Memorandum No. 6 the Minister notes that "The tabled Government amendments were all agreed"¹⁴ and states:

*"These amendments, to the extent that they make provision which falls within the legislative competence of the Senedd, are the subject of this supplementary LCM."*¹⁵

10. Paragraph 18 and Annex A to Memorandum No. 6 set out information about the amendments.

11. The Minister also provided a factual update on the position since the publication of Memorandum No. 5 on 6 February 2023.¹⁶

12. The Business Committee agreed that the Public Accounts and Public Administration Committee and the Legislation, Justice and Constitution Committee should report on Memorandum No. 6 by 3 July 2023.¹⁷

The Welsh Government's position on the amendments made to the Bill

13. In Memorandum No. 6 the Minister states:

*"As the amendments detailed within this supplementary LCM which fall within the legislative competence of the Senedd all relate to the provisions set out in previous LCMs, the rationale for making these provisions in the Bill continue to apply."*¹⁸

¹³ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 6), Procurement Bill, 21 June 2023

¹⁴ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 6), Procurement Bill, 21 June 2023, paragraph 7

¹⁵ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 6), Procurement Bill, 21 June 2023, paragraph 17

¹⁶ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 6), Procurement Bill, 21 June 2023, paragraphs 14 to 17

¹⁷ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(Memorandum No. 6\) on the Procurement Bill](#), June 2023

¹⁸ Memorandum No. 6, paragraph 19

14. The Minister concludes:

"It is my view that it is appropriate to deal with these provisions in this UK Bill, as the Bill is the most effective way for these provisions to come into force. My officials have worked closely with officials in Cabinet Office to ensure Welsh Government's policy objectives have been included and I consider these provisions would provide a simplified, transparent procurement regime in Wales.

*Aside from these amendments, the Bill has already been debated and voted upon in the Senedd. I consider the proposed amendments in this supplementary LCM to be reasonable. I therefore recommend consent to these amendments."*¹⁹

2. Committee consideration

15. We considered Memorandum No. 6 and agreed our report on 3 July 2023.

Our view

16. We note the Welsh Government's reasons for making provision for Wales in the Bill, as set out in Memorandum No. 6.

Conclusion 1. We agree with the Welsh Government's assessment that the provisions referred to in Memorandum No 6. fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and as a result require the Senedd's consent.

17. We note the Minister's comments that all the amendments referred to in Memorandum No. 6 relate to the provisions set out in previous Memoranda. However, we would have preferred to see more explanation of the relationship between these amendments and the provisions referred to in the other Memoranda, and also an explicit statement about whether the amendments relate in any way to motion 2 considered by the Senedd on 28 March 2023. This is particularly important because it is not easy to track how clause numbers have changed between versions of the Bill in the UK Parliament.

¹⁹ Memorandum No. 6, paragraphs 22 to 23

Conclusion 2. In our view all legislative consent memoranda should, as a matter or routine, include information (for example in table format²⁰) tracking any changes to the clause numbers in a UK Bill as a result of amendments made during its passage through the UK Parliament.

Recommendation 1. The Minister should outline in the forthcoming legislative consent debate to which Memorandum No. 6 relates how the provisions included in Memorandum No. 6 relate to provisions in previous memoranda, and also how they relate to the outcome of the Senedd debates on consent motions which took place in Plenary on 28 March 2023.

18. While the Minister provided a factual update on the position since the publication of Memorandum No. 5 on 6 February 2023, Memorandum No. 6 does not contain any analysis on whether any progress has been made with the UK Government regarding matters contained in motion 2, to which the Senedd has not consented. These matters include provisions related to international agreements, namely “Treaty State suppliers”, “Trade Disputes” and related provisions in section 9.

Recommendation 2. The Minister should outline in the forthcoming legislative consent debate to which Memorandum No. 6 relates what action she has taken to resolve the matters for which the Senedd did not provide its consent as set out in motion 2 of the legislative consent debate held on 28 March 2023.

Recommendation 3. The Minister should write to the Committee providing detailed responses to recommendations 1 and 2 for the public record.

Recommendation 4. The Minister should write to the Committee:

- explaining the implications for the procurement regime in Wales of the Senedd not consenting to motion 2 on 28 March 2023;
- identifying to what extent the Secretary of State will be able to exercise regulation-making powers in Wales in devolved areas;
- explaining what action the Minister proposes to take to address her outstanding areas of concern, including by means of introducing future Welsh legislation.

²⁰ The Welsh Government has adopted this approach previously; see for example, [Supplementary Legislative Consent Memorandum \(Memorandum Number 5\) Police, Crime, Sentencing And Courts Bill, 28 February 2022](#), Annex A - Comparison table between the original and new version of the Bill 18 January 2022

19. In our two previous reports we expressed concern at the level of detail provided in Memorandum No. 2²¹ and Memorandum No. 5.²²

20. As we indicate above, we expected Memorandum No. 6 to provide more information explaining the relationship between the matters it covers and the previous Memoranda. Having expressed concern at the level of detail in two previous Memoranda this is disappointing.

21. As regards Memorandum No. 6 specifically, we recognise that the Senedd has already debated and voted on legislative consent motions related to the Bill. However, that should not preclude the Welsh Government from ensuring that any subsequent legislative consent memoranda following such debates provide enough detailed information to enable Members of the Senedd to reach an informed view when considering legislative consent motions. This is particularly the case where the time available for scrutiny is limited because of timing constraints resulting from the legislative timetable at Westminster.

Conclusion 3. Where the Welsh Government either chooses, or accepts an offer from the UK Government, to use a UK Bill to legislate in a devolved area it is imperative that any legislative consent memorandum in respect of any such Bill contains full and detailed information to enable Members of the Senedd to make informed decisions on legislative consent motions.

²¹ Legislation, Justice and Constitution Committee, The Welsh Government's Legislative Consent Memoranda on the Procurement Bill, October 2022, paragraph 88

²² Legislation, Justice and Constitution Committee, The Welsh Government's Supplementary Legislative Consent Memoranda (Memoranda No. 3, No. 4 and No. 5) on the Procurement Bill, March 2023, paragraphs 74 to 76