

LEGISLATIVE CONSENT MEMORANDUM

Procurement Bill

1. This legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Procurement Bill (“the Bill”) was introduced in the House of Lords on 11 May 2022 and Lords Second reading took place on 25 May. The Bill can be found at: [Procurement Bill \[HL\] - Parliamentary Bills - UK Parliament](#).
3. On 24 May I wrote to the Llywydd explaining that due to the scale and complexity of the Bill and the number of provisions which are subject to consent, it has not been possible to lay this LCM within the normal two week SO29 deadline.

Policy Objective(s)

4. The stated policy objectives of the UK Government are:
 - to speed up and simplify public procurement processes
 - to place value for money at their heart
 - to create greater opportunities for small businesses and social enterprises to innovate public service delivery.

Summary of the Bill

5. The Bill is sponsored by the Cabinet Office.
6. The purpose of the Bill is to introduce revised legislation for the processes and procedures governing public procurement. It will be a revision of the current procurement law regime (including the repeal of the Public Contract Regulations 2015) which are derived from EU Directives.
7. The procurement landscape is quite complex when referring to public bodies. Therefore, the following references have been used in this document to provide clarity:
 - ‘Contracting authorities’ (CAs) - all public bodies subject to the Bill
 - ‘Devolved Welsh Authorities’ (DWAs) - as defined by section 157A of the Government of Wales Act 2006 (“GoWA”)
 - ‘Welsh Contracting Authorities’ (WCAs) - the contracting authorities in Wales which are subject to the Bill (these are referred to as

“devolved Welsh authorities” in the Bill itself) and in relation to whom relevant powers and duties conferred upon the Welsh Ministers under the Bill apply.

8. The key differences and points of note for Wales in the Bill compared with the existing legislation include the following:

- The legislation includes a power for the Welsh Ministers to publish and a requirement for WCAs to have regard to the Wales Procurement Policy Statement.
- The contract term for reserving contracts to public service mutuals is increased from three years to five years.
- The number of procurement procedures is reduced with the introduction of a new competitive procedure which is flexible and can be tailored to the specific requirements of the procurement concerned.
- A new provision is included for direct award to protect life, etc.
- Increased requirements for ensuring transparency, which means a greater number of procurement notices will be published.
- A central debarment list will be created to ensure contracting authorities do not award contracts to suppliers who have breached exclusion grounds, which are also set out in the Bill.
- Provisions for WCAs to follow regulated below threshold procurements.
- A procurement oversight provision which will give the Welsh Ministers powers to investigate WCAs compliance with requirements of the legislation.

9. Another key difference, which is considered a significant benefit, is that the definition for WCAs within the Bill is wider than the definition of Devolved Welsh Authorities in GoWA. This means that a greater number of CAs in Wales will follow the ‘Welsh’ provisions within the Bill.

10. My officials have worked closely with officials in the Cabinet Office to ensure that Welsh policy objectives have been included in the Bill. The level of engagement with the Cabinet Office at official level has been generally positive.

Interaction of the Bill with other legislation

11. The Social Partnership and Public Procurement (Wales) Bill (SPPP Bill) was introduced into the Senedd on 7 June 2022. This Bill also proposes to place procurement obligations on defined Welsh public bodies, requiring them to carry out procurement in a socially responsible way.

12. Whilst the UK Government’s Procurement Bill focuses on the processes underpinning procurement, the SPPP Bill focuses on ensuring socially responsible outcomes are achieved from our procurement. Together these two Bills will provide a new regime for procurement that delivers

social, environmental, economic and cultural outcomes, including fair work.

13. My officials are working closely on both Bills to ensure that any areas where there is potential for duplication, contradiction or confusion will be resolved or mitigated.
14. It should be noted that the list of WCAs subject to the Procurement Bill is much wider than those that will be subject to the SPPP Bill. The scope of the Procurement Bill covers the processes and procedure that underpin procurement. The processes are key for delivery of procurement strategies and the other key procurement requirements in the SPPP Bill. Importantly, it will also ensure the UK's compliance to its obligations under the Agreement on Government Procurement (GPA), a plurilateral agreement within the framework of the World Trade Organisation.
15. The Bill also interacts with the Trade (Australia and New Zealand) Bill. That Bill was also introduced into the UK Parliament (House of Lords) on 11 May and is being sponsored by the Department for International Trade, it is available [here](#). Royal Assent is expected by late 2022/early 2023. The Trade (Australia and New Zealand) Bill is to be repealed by the Procurement Bill, as will the amendments to the GoWA made by the Trade (Australia and New Zealand) Bill be.

Provisions in the Bill for which consent is required

16. I consider that consent is required in relation to provisions contained in the clauses identified below in so far as they make provision which is "relevant provision" for the purposes of SO29.

Part 1 – Key Definitions

17. This Part sets out the key definitions of the Bill and their meaning, including contracting authorities, public contracts, valuation of contracts, mixed procurement, utilities contracts, defence and security contracts, light touch contracts and concession contracts.
18. Associated information on estimating the value of a contract is detailed in Schedule 3 and information on utilities is detailed in Schedule 4.
19. Schedule 1 sets out the threshold amounts for the purpose of the definition of "public contract" in clause 2. Schedule 2 details information on contracts that are exempted from the legislation.
20. Consent is required in relation to provisions contained in clauses 1 to 5 and 7 to 9 and related provisions in Schedules 1, 2, 3 and 4.
21. These provisions confer functions on DWAs and are therefore "relevant provisions" for the purposes of SO29.

Part 2 – Principles and Objectives

22. This Part details the procurement principles and objectives to which contracting authorities must have regard to. It also includes reference to the Wales Procurement Policy Statement.
23. Where the legislation refers to a CA undertaking a procurement, this includes a CA undertaking a procurement on its own behalf; jointly with another person; through another person, or procurement by a centralised procurement authority.
24. The Welsh Ministers may publish a statement under this Part which sets out the Welsh Government's strategic priorities in relation to procurement, known as the Wales Procurement Policy Statement.
25. Consent is required in relation to provisions contained in clauses 10,11 and 13. These provisions confer functions on DWAs and are therefore "relevant provisions" for the purposes of SO29.

Part 3 – Award of Public Contracts and Procedures

26. This Part details the procedures for the award of public contracts.

Chapter 1 – Preliminary Steps

27. Preliminary steps include publication of planned procurement notices, detail on preliminary market engagement, etc. Preliminary market engagement includes using suppliers to help develop a specification or designing a procurement process but without allowing unfair advantage for those suppliers in the procurement itself.
28. This chapter also covers the practice of breaking contracts down into lots.
29. Consent is required in relation to provisions contained in clauses 14 to 17. These provisions confer functions on DWAs and are therefore "relevant provisions" for the purposes of SO29.

Chapter 2 – Competitive Award

30. This chapter deals with the award of public contracts and required notices. It also covers award criteria, specifications, and conditions of participation.
31. In a competitive tendering procedure, a CA may only award a contract to the supplier that submits the "most advantageous tender". This chapter details the provisions for this. Conditions of participation refers to the conditions that are essential to ensure that the supplier has the legal and financial capacity, and the technical ability to fulfil the requirements of the contract.
32. The exclusion of suppliers is also dealt with in this chapter. The exclusions regime under the Bill will help to ensure that public contracts

are not awarded to suppliers where their past behaviour or current circumstances (or that of connected individuals/entities e.g., those with “significant control” over the supplier) means it would be too risky to award the contract to that supplier and that risk outweighs the public interest in allowing the supplier to compete for a public contract. The list of exclusion grounds is provided in Schedules 6 and 7.

33. Consent is required in relation to provisions contained in clauses 18 to 39. These provisions confer functions on DWAs and are therefore “relevant provisions” for the purposes of SO29.

Chapter 3 – Direct Award

34. This chapter details direct award in special cases, to protect life and also details transparency notices.

35. Direct award allows a contract to be awarded directly to a supplier (as long as they are not an excluded supplier) where one of the justifications for direct award applies.

36. The purpose of this chapter is to ensure procurements during an emergency event (such as the Covid-19 pandemic) can be made as quickly and transparently as possible.

37. The details of the direct award justifications are set out in Schedule 5.

38. Consent is required in relation to provisions contained in clauses 40 to 43 and related provisions in Schedule 5.

39. Clauses 40, 42 and 43 confer functions on DWAs and clause 41 confers a power on a Minister of the Crown to make regulations in relation to DWAs.

40. These provisions are therefore “relevant provisions” for the purposes of SO29.

Chapter 4 – Award under Frameworks

41. This chapter details all requirements under the award of a framework, including open frameworks.

42. A “framework” is a contract between a CA and one or more suppliers in which the award of future contracts under the framework can be made.

43. An “open” framework is a scheme under which new suppliers can be added to the scheme at set times during its lifetime. It sets out the minimum frequency of when an open framework must be reopened.

44. Consent is required in relation to provisions contained in clauses 44 to 47. These provisions confer functions on DWAs and are therefore “relevant provisions” for the purposes of SO29.

Chapter 5 – After award, standstill periods and notices

45. Contact award notices, standstill and key performance indicators are detailed in this chapter.

46. An ‘award notice’ is a notice setting out that the contracting authority intends to enter a contract.

47. The mandatory standstill period is 8 working days which begins on the day the award notice is published. A contract must not be entered into before the end of any mandatory standstill period. Before entering into a contract worth £2 million or more, CAs must set and publish at least three key performance indicators in respect of the contract.

48. Consent is required in relation to provisions contained in clauses 48 to 51. These provisions confer functions on DWAs and are therefore “relevant provisions” for the purposes of SO29.

Chapter 6 – General Provision about award and procedures

49. This chapter details time limits and termination, excluding suppliers and debarment.

50. The Bill requires a CA to confirm (by way of a notice) if it decides not to award a procurement, i.e., if it terminates a procurement process.

51. CAs have always had the ability to exclude suppliers but the Bill will place a duty on them to notify the appropriate Minister regarding suppliers which they have excluded. WCAs will need to provide this notification to the Welsh Ministers who will have powers to investigate such suppliers. If the Welsh Ministers consider it appropriate, they may refer the supplier to a Minister of the Crown who will ultimately decide if the supplier should be debarred. The debarment list will be centralised and managed by UK Government and its effect will be to exclude suppliers from Government contracts for a specified period or until self-cleaning has taken place. The debarment list will be published and it will sit alongside the exclusions regime as an additional protection against contracts being awarded to unfit suppliers.

52. Schedules 6 and 7 contain provision in relation to the mandatory exclusion grounds and the discretionary exclusion grounds.

53. Consent is required in relation to provisions contained in clauses 52 to 61 and related provisions in Schedules 6 and 7.

54. Clauses 52 to 58, 60 and 61 confer functions on DWAs and clause 59 confers functions on a Minister of the Crown which are exercisable in relation to DWAs.
55. These provisions are therefore “relevant provisions” for the purposes of SO29.

Part 4 – Management of Public Contracts

56. This Part includes clauses on implied terms, notices relating to payments and performance, sub-contracting, the modifying of public contracts and termination rights and notices.
57. It introduces provisions relating to e-invoicing and prompt payment.
58. There is also a power for the Welsh Ministers to make regulations changing the relevant financial threshold or time limit in relation to the prompt payment provisions.
59. CAs may modify a contract during its term. Permitted contract modifications are laid out in Schedule 8.
60. Consent is required in relation to provisions contained in clauses 62 to 73 and related provisions in Schedule 8. These provisions confer functions on DWAs and are therefore “relevant provisions” for the purposes of SO29.

Part 5 – Conflicts of Interest

61. This Part deals with the identification, mitigation and assessment of conflicts of interest.
62. Consent is required in relation to provisions contained in clauses 74 to 76. These provisions confer functions on DWAs and are therefore “relevant provisions” for the purposes of SO29.

Part 6 – Below-threshold Contracts

63. Below threshold contracts, including notices, procedures and implied payment terms are detailed in this Part.
64. Schedule 1 contains a table setting out the various thresholds applicable to the different categories of contract. Whether the estimated value of a contract is above or below the relevant threshold determines whether it is subject to the main regime for public contracts set out in the Bill, or the below-threshold regime.
65. Consent is required in relation to provisions contained in clauses 77, 79 and 80. These provisions confer functions on DWAs and are therefore “relevant provisions” for the purposes of SO29.

Part 7 – Implementation of international Obligations

66. This Part deals with treaty state suppliers and non-discrimination.
67. Some international agreements, to which the UK is a party, place obligations on the UK to ensure that certain contracting authorities extend access to the UK public procurement opportunities to other parties to the agreement. A treaty state supplier is a supplier that benefits from an international agreement listed in Schedule 9 (treaty state suppliers (specified international agreements)).
68. Consent is required in relation to provisions contained in clauses 81 and 82 and related provisions in Schedule 9.
69. Clause 81 confers a power on an “appropriate authority” (which includes Welsh Ministers) to make regulations amending the list of international agreements in Schedule 9. These powers are exercisable in relation to DWAs. Clause 82 confers functions on DWAs.
70. These provisions are therefore “relevant provisions” for the purposes of SO29.

Part 8 – Information and Notices: general provision

71. This includes pipeline notices, general exemptions for disclosing information, electronic communications and information relating to procurement.
72. Any CA that considers that, in the next financial year, it will spend more than £100m on relevant contracts must publish a notice, referred to as a pipeline notice.
73. A ‘pipeline notice’ must contain information about any public contract with an estimated value of more than £2m for which the CA is expecting to publish a tender notice (which relates to certain types of competition).
74. Consent is required in relation to provisions contained in clauses 84 to 88. These provisions confer functions on DWAs and are therefore “relevant provisions” for the purposes of SO29.

Part 9 – Remedies for breach of statutory duty

75. This section details the duties under the Bill enforceable in civil proceedings, including contractual remedies.
76. A CA can be challenged through civil proceedings if it fails to comply with Parts 1-5 and 7 and 8 of the Bill. The duty is only enforceable in such proceedings where the supplier has suffered, or is at risk of suffering, loss, or damage in consequence of breach of the duty (including, for example, by missing out on an opportunity to compete for a public contract).

77. Consent is required in relation to provisions contained in clauses 89 to 95. These provisions relate to the enforcement of the duty of DWAs to comply with Parts 1 to 5, 7 and 8 and are therefore “relevant provisions” for the purposes of SO29.

Part 10 – Procurement Oversight

78. This Part includes provisions on procurement investigations, recommendations and guidance.

79. The Welsh Ministers will have a power to investigate whether a WCA is complying with the requirements of this legislation.

80. Consent is required in relation to provisions contained in clauses 96 to 98. These provisions confer powers on the Welsh Ministers in relation to DWAs and confer functions on DWAs. They are therefore “relevant provisions” for the purposes of SO29.

Part 11 – Appropriate authorities and cross border procurement

81. This Part details the restrictions on the exercise of powers for Welsh Ministers. The areas of this Bill in which the Welsh Ministers can exercise functions and the powers granted to Welsh Ministers under the Bill only apply to certain CAs and certain contracts.

82. Consent is required in relation to provisions contained in clauses 99, 101, 102 and 103.

83. Clause 99 makes provision in relation to the exercise of the powers of Welsh Ministers in relation to DWAs.

84. Clause 101 makes provision in relation to the exercise of the powers of a Minister of the Crown in relation to DWAs.

85. Clause 102 makes provision in relation to “devolved Welsh procurement arrangements” (as defined in clause 102(2)).

86. Clause 103 make provision in relation to the exercise of the powers of a Minister of the Crown in relation to the award of contracts under devolved Welsh procurement arrangements.

87. These are therefore “relevant provisions” for the purposes of SO29.

Part 12 – Amendments and repeals

88. This Part contains provision in relation to the disapplication of section 17, concurrent powers and GoWA and details of repeals and revocations.

89. Section 17 of the Local Government Act (LGA) 1988 requires certain public procurement functions to be exercised by Local Authorities and certain other public authorities (as listed in Schedule 2 of the LGA 1988) without reference to specified non-commercial considerations. This is being dis-applied as it could prevent some contracting authorities from realising the full range of benefits from the Bill.
90. Provision is made for the removal of the restrictions in Schedule 7B of the GoWA on the Senedd legislating for reserved authorities and amending functions of a Minister of the Crown that relate to qualified devolved functions. The removal of these restrictions means that a subsequent Senedd Bill could remove or modify any of the concurrent functions under the Bill without the need to obtain the consent of the relevant UK Government Minister.
91. This Part also gives effect to Schedule 11, which lists the primary and secondary legislation and retained direct EU legislation which will be repealed or revoked by the Bill.
92. Consent is required in relation to provisions contained in clauses 104, 106 and 107 and related provisions in Schedule 11.
93. Clause 104 confers a power on a Minister of the Crown and the Welsh Ministers to make regulations in relation to an authority to which section 17 of the Local Government Act 1988 applies.
94. Clause 106 amends GoWA in a way which modifies the Senedd's legislative competence.
95. Clause 107 repeals and revokes enactments which apply in relation to DWAs.
96. These provisions are therefore "relevant provisions" for the purposes of SO29.

Part 13 – General

97. This Part contains the powers in regard to private utilities and consequential provisions, and the extent of the Act and Commencement details. The regulations within the Act are also listed along with the Interpretation of the Act and an index of defined expressions.
98. Consent is required in relation to provisions contained in clauses 109, 110 to 113 and 115.
99. Clause 109 confers a power for an appropriate authority to make regulations for the purpose of reducing the regulation of private utilities under the Act. This is a purpose within the legislative competence of the Senedd in so far as it relates to utilities in Wales.

100. Clause 110 provides for the exercise of powers to make regulations under the Act (including the exercise of powers of the Welsh Ministers) and the procedure which applies to the making of those regulations.
101. Clauses 111 to 113 and 115 contain provision which is ancillary to the substantive provisions in the Bill for which consent is required.
102. These are therefore “relevant provisions” for the purposes of SO29.

Welsh Contracting Authorities

103. Consent is required in relation to provisions contained in the clauses identified above in so far as they make provision in relation to Welsh Contracting Authorities (as defined above) which are not DWAs but exercise functions or carry out activities only in relation to Wales. To this extent, they are “relevant provisions” for the purposes of SO29.
104. Consent is also required in relation to provisions contained in the clauses identified above in so far as they make provision in relation to WCAs which are not DWAs but exercise functions or carry out activities outside Wales. To this extent, they are provisions which relate to devolved matters. Section 107(6) of the Government of Wales Act 2006 (GoWA) provides that “...it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Senedd”.

Welsh Ministers Powers

105. The following provisions include powers for the Welsh Ministers to make subordinate legislation using the Affirmative Senedd procedure.
- Section 8 (light touch contracts)
 - section 33 (reserving contracts to public service mutuals)
 - section 64 (payment compliance notices)
 - section 81 (treaty state suppliers: international agreements)
 - section 86 (notices, documents and information)
 - section 88 (information relating to a procurement)
 - section 104 (disapplication of section 17 of Local Government Act 1988)
 - section 109 (amendment of Act in relation to private utilities)
 - section 113 (consequential provision), if the regulations made under it modify primary legislation
 - paragraph 3 or 5 of Schedule 1 (threshold amounts)
 - Schedule 2 (exempted contracts)
 - Schedule 4 (utility activities)

106. The following provisions include powers for the Welsh Ministers to make subordinate legislation using the Negative Senedd procedure.

- Section 50 (Key Performance Indicators)
- Section 62 (Electronic Invoicing: implied term)
- Section 63 (Implied payment terms in public contracts)
- Section 65 (Information about payments under public contracts)
- Section 79 (Regulated below-threshold contracts: notices)
- Section 80 (Regulated below-threshold contracts: implied payment terms)
- Section 84 (Pipeline Notices)
- Section 113 (consequential provision)
- Schedule 1 (threshold amounts, paragraphs 3)

107. It should be noted that section 70 (Contract change notices and publication of modifications) does not provide a power for Welsh Ministers equivalent to that provided for the Minister of the Crown to make regulations to amend the value thresholds in subsection (2). My officials have raised this with their counterparts in UK Government as an essential required amendment.

108. It should be noted that the power in these sections within the Bill is conferred on an 'appropriate authority', which means a Minister of the Crown, Welsh Ministers or a Northern Ireland Department (see clause 111 (interpretation)). The effect of clauses 99 and 101(1) is that the default position is that the Welsh Ministers have equivalent powers to a Minister of the Crown in relation to devolved areas. However, the effect of clause 101(5) is that this default position does not apply to the powers under clauses 81 (treaty state suppliers), 113 (consequential provision) and 115 (commencement).

109. My officials have sought an amendment to clause 101(5) from the UK Government, which it is anticipated could be included as part of a batch of government amendments at Lords Committee Stage. It is intended that such an amendment would have the effect of giving the Welsh Ministers equivalent powers under clauses 81, 113 and 115 in relation to devolved areas.

UK Government view on the need for consent

110. The UK Government's view is that the Bill engages the legislative consent motion process in legislating for procurements undertaken by WCAs and certain private utilities (as defined in the Bill). The UK Government notes that there are some exceptions to this where the Welsh Government has requested a derogation from the core rules in the Bill. The UK Government considers that, in these cases, the 'core' provisions do not engage the legislative consent motion process as they do not apply to WCAs, but they are accompanied by separate provisions for WCAs which do engage the

legislative consent motion process. They have listed these areas of divergence as follows:

- The ability for the Welsh Ministers to publish a Wales Policy Statement and the obligation for WCAs to have regard to this;
- WCAs would not be required to publish contracts valued over £2 million on the Central Platform;
- WCAs would not be required to update published contracts when they have been modified, or to publish contracts if a modification has taken the value of the contract over £2 million; and
- Prohibition on a separate pre-qualification stage for procurements below GPA thresholds. WCAs are not caught by this prohibition.

111. I agree that the Bill engages the legislative consent motion process in legislating for procurements undertaken by WCAs and certain private utilities (as defined in the Bill).
112. I agree that the legislative consent motion process is not engaged in relation to provisions in the Bill which do not apply to Wales.
113. My view is that the legislative consent motion process is engaged in relation to the publication of the Wales Procurement Policy Statement but is not engaged in relation to the publication of the National Procurement Policy Statement.
114. I agree that the legislative consent motion process is not engaged in relation to the requirement to publish contracts valued over £2 million (see clause 51(3)) but is engaged in relation to the other requirements in clause 51.
115. I agree that the legislative consent motion process is not engaged in relation the requirement to update published contracts when they have been modified or to publish contracts if a modification has taken the value of the contract over £2 million (see clause 70(6)) but is engaged in relation to the other requirements in clause 70.
116. I agree that the legislative consent motion process is not engaged in relation to the prohibition on a separate pre-qualification stage for procurements below GPA thresholds (see clause 78).

Reasons for making these provisions for Wales in the Procurement Bill

117. The main benefits of the Bill are:

- Simpler procedures for users and a single registration system for suppliers which will help to create a consistent approach to procurement.

- Increased flexibility in procurement procedures will give WCAs greater ability to negotiate and innovate at home and internationally.
- There will be a requirement for increased transparency which will be embedded throughout the commercial lifecycle from planning through to procurement, contract award and performance. Procurement data will be published in a standard open format, accessible to anyone. More transparent procurement data will support analysis of how Welsh public money is spent.
- WCAs will be able to select the Most Advantageous tender which best meets the award criteria rather than lowest cost becoming the most important factor. This means that contracts should be awarded to the supplier which best meets the contract's requirements.
- The provisions within the Bill will help to improve the capability of the procurement profession across Wales.
- The Bill ensures compliance with our international obligations including the WTO Government Procurement Agreement, which gives British businesses guaranteed access to £1.3 trillion in public procurement opportunities overseas.
- There will be a requirement for WCAs to have regard to the Wales Procurement Policy Statement (WPPS), thereby helping to ensure our policy ambitions in Wales are realised. This requirement has never previously been legislated for.

118. There are several reasons why opting to pursue this procurement reform legislation on an England and Wales basis is pragmatic:

- Continuity for suppliers and buyers and to ensure the procurement system is as seamless as possible. Cross border business with England can largely continue without confusion or potential additional costs for users.
- Differences in procurement rules and policies across devolved governments are subject to the Common Framework, which ensures synergy between different sets of legislation. It does not, however, detract from risks such as lack of consistency and certainty for WCAs and suppliers, particularly those who conduct business across the borders.
- Procurement is covered by a number of the UK's international trade agreements and the World Trade Organisation's Agreement on Government Procurement (GPA). The regime in the Bill is compliant with these obligations and will allow a degree of futureproofing through targeted delegated powers to update the regime when new agreements are signed.
- Policy alignment: Most of the provisions within the Bill align with our policy agenda. Where they do not align, we have obtained derogations or carve-outs.
- My officials were working with UK Government officials to develop the Bill and made suggestions for some provisions to be included in

the Bill. The key provisions requested have been included in the Bill as introduced.

- The Bill's provisions are sensible and important: they address widely acknowledged weaknesses in procurement processes, such as lack of flexibility in procurement procedures, the need for increased transparency, etc.
- Timing: the UK Government have been able to introduce legislation to Parliament far sooner than the Senedd's timetable would allow. A joint approach will allow reforms to be enacted earlier in Wales than would otherwise be possible.
- Using the UK Bill allows the Welsh Government to focus resource on the other important aspects of procurement that enable social value and are key drivers of change, such as the SPPP Bill and Wales Procurement Policy Statement (WPPS), etc.
- To support prompt payment, a 30-day payment term will be implied into every public contract and every public sub-contract. To align more closely to the private sector, the 30 days will begin from the date on which the invoice is received by the CA. CAs will also be required to publish a payments compliance notice which will evidence their compliance with this payment term.

119. Whilst I am content, to begin the legislative consent process in the Senedd, the following key matters of concern will need to be resolved before consent can be recommended:

- The power to add international agreements to the list in Schedule 9 has been drafted in the Bill as introduced as a concurrent power with no requirement to obtain the consent of Welsh Ministers when UKG Ministers are exercising this power in relation to devolved areas. This is not acceptable to the Welsh Ministers and on 23 May I wrote to the Minister for Brexit Opportunities and Government Efficiency to ask the UK Government to reconsider its position;
- I am seeking amendment to the definition of WCAs, with a view to ensuring that the clauses work more fairly in relation to some cross border procurements, i.e., a single procurement which relates to both Wales and England. I wrote to the Minister for Brexit Opportunities and Government Efficiency on 18 May to ask the UK Government to consider an amendment to the Bill to address this issue;
- Commencement powers – UK Government officials have committed to giving the Welsh Ministers commencement powers but the Bill as introduced provides for Minister of the Crown only powers. This will need to be amended to reflect powers for the Welsh Ministers in this area. My officials have requested an amendment from their counterparts in the Cabinet Office as part of the request for government amendments;
- Power to make consequential etc provision – the Bill as introduced provides for concurrent powers with no requirement to obtain the consent of Welsh Ministers when UKG Ministers are exercising this power in relation to devolved areas. This will need to be amended

to reflect powers for the Welsh Ministers in this area. My officials have requested an amendment from their counterparts in the Cabinet Office as part of the request for government amendments;

- Disapplication power for healthcare services – An amendment is needed for a disapplication power for the Welsh Ministers to make regulations equivalent to the power of the UK Government in relation to healthcare services. UK Government has already committed to bringing forward this amendment at Lords Committee Stage in a letter received from the Minister for Brexit Opportunities and Government Efficiency on 11 May.
- The Bill as introduced states that a CAs duty to comply with the Parts 1 to 5, 7 and 8 would be enforceable in civil proceedings. Our understanding is that this would include a WCA's duty to have regard to the WPPS (contained in Part 2). This does not reflect the WG's policy position and officials in the Cabinet Office have already committed to bringing forward this amendment.

Financial implications

120. There are likely to be a number of costs associated with the reform of public procurement in Wales although the exact details are still to be confirmed. These include direct costs to Welsh Government and the wider Welsh Public Sector associated with the development and delivery of a training and development programme, as well as costs associated with the enhancement of e-procurement systems. The majority of these costs will be met from within existing budgets. For example, the Welsh Government funded eProcurement systems have been allocated an additional £1m revenue per annum for the financial years (FY) 2022/23, 2023/24 and 2024/25 to enable the systems provided by Welsh Government to either be enhanced or new functionality to be procured in readiness for the introduction of procurement reform.
121. Whilst the majority of costs will be met from within existing budgets, additional funding will be required to support the development, translation and publication of the secondary legislation, regulations and / or statutory guidance. It is anticipated that additional legal services resource will be required until 2023/24 at a cost of approximately £250k. Further, based on a requirement to produce 20 pieces of statutory guidance, the anticipated cost associated with translation and publication is £87,000, which will be spread over FY 2022/23, 2023/24 and 2024/25. We will work to identify how these costs will be met in due course.
122. There will also be costs to the wider Welsh Public Sector as a result of the reforms. The costs associated with upskilling procurement teams and any members of staff who undertake procurement / contract management duties in the new regulations and e-procurement systems are estimated to be circa £903k. There will also be one-off costs incurred due to the requirement to update internal procedures / standing orders, documents and templates, estimated at circa £10k per Welsh Contracting Authority.

Conclusion

123. 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 that Welsh policy objectives have been included and I consider that these provisions would provide a simplified, transparent procurement regime in Wales. However, it is not appropriate to recommend consent until the matters of concern as outlined in paragraph 119 above have been resolved.

Rebecca Evans MS
Minister for Finance and Local Government
9 June 2022