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Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
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Llywodraeth Cymru
Welsh Government

Huw Irranca-Davies MS
Chair,
Legislation, Justice and Constitution Committee

SeneddLJC@senedd.wales

18 May 2023

Dear Huw,

I refer to the Legislation, Justice and Constitution Committee's report published on the 25 April with their findings and recommendations as part of Stage 1 scrutiny of the Health Service Procurement (Wales) Bill.

I outlined my responses to the Committee's recommendations as part of the General Principles debate on the Bill in Plenary on the 9 May, where I also gave a commitment to provide a full written response. This can be found at Annex A.

I would like to reiterate my thanks to the Committee for scrutinising the Bill and its supporting documentation.

Yours sincerely

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

ANNEX A

HEALTH SERVICE PROCUREMENT (WALES) BILL

WELSH GOVERNMENT RESPONSE TO THE LEGISLATION, JUSTICE AND CONSTITUTION COMMITTEE'S STAGE 1 SCRUTINY REPORT 25 APRIL 2023.

Recommendation 1: The Minister should table an amendment to the Bill to alter the heading of the new section 116A of the National Health Service (Wales) Act 2006, to be inserted by section 2 of the Bill, to clarify that the provisions of the Procurement Bill, once enacted, may be disapplied in respect of health services procurement undertaken by NHS organisations and local authorities in Wales.

Response: NOT ACCEPTED

I understand why the Committee has raised this issue in relation to specifically referencing local authorities in the heading of the new section, which is to be inserted into the Procurement Act 2023.

When developing the Bill we were cognisant that the wording should seek to mirror the approach and powers being taken by the UK Government's Department of Health and Social Care for their Provider Selection Regime, and that the wording should demonstrate that the powers being sought by the Welsh Ministers are identical to those for a Minister of the Crown in the preceding clause.

Also, we were mindful that local authorities procure a wide range of goods and services outside of 'health services' as defined by the Bill. Specifically referencing local authorities in the heading of the new section could in effect be interpreted that the proposed health service procurement regime has a wider application for local authorities; causing confusion and implying that the disapplication power applies to all services procured by local authorities.

The Bill makes it clear that local authorities are named as a 'relevant authority' under section 10A(6) of the National Health Service (Wales) Act 2006, as is to be inserted by section 3 of the Bill.

It is for these reasons that I do not accept recommendation 1 from the Committee.

Recommendation 2: The Minister should share for public consultation draft versions of regulations to be made under the new section 10A of the National Health Service (Wales) Act 2006, to inform their further development ahead of the laying of regulations subject to the draft affirmative procedure in the Senedd.

Response: NOT ACCEPTED

We are fully committed to undertaking a public consultation on the operational principles to inform the development of future regulations for the proposed new health service procurement regime.

As a result, the regulations will be directly developed in partnership with the 'relevant authorities' as defined in the Bill, including NHS Wales, local authorities, and other relevant stakeholders. This stakeholder engagement will take place through various routes; including dialogue with representative organisations and the establishment of working groups to develop and refine the regulations.

We are also mindful that we need to align with the changes being brought about by the introduction of the Provider Selection Regime in England at the earliest opportunity, to minimise the time gap and associated risks of having two differing health service procurement regimes in place between England and Wales.

Undertaking a public consultation on the draft regulations (in addition to the consultation programmed for the development of the regulations), will have limited operational benefit, and place a considerable time delay on the implementation of the new health service procurement regime in Wales and alignment with the proposed procurement regime changes in England.

I do not feel additional consultation processes over and above those already committed to are necessary, and therefore do not accept recommendation 2 from the Committee.

Recommendation 3: The Minister should table an amendment to the Bill to require that regulations under the new section 10A of the National Health Service (Wales) Act 2006 shall not be made until 60 days have elapsed since the laying of draft regulations.

Response: NOT ACCEPTED

As detailed above in my response to recommendation 2 from the Committee, we are mindful that we need to align with the proposed changes being brought about by the introduction of the Provider Selection Regime in England at the earliest opportunity. The future regulations will follow the government's default timeline for the scrutiny for laying regulations which is 20 days via an affirmative procedure; providing the Senedd with the appropriate timeframe to scrutinise the regulations prior to voting on whether to approve them.

Placing additional timescales for Senedd scrutiny of the regulations will delay the introduction of the proposed new health service procurement regime in Wales. This requirement could also impede our ability to respond to any changes to the Provider Selection Regime regulations brought forward by Department of Health and Social Care in a timely way in the future, creating the risk of a future misalignment in the health service procurement regimes between England and Wales.

As such, I do not accept recommendation 3 from the Committee.

Recommendation 4: The Minister should table an amendment to the Bill to provide that the Welsh Ministers must consult such other persons as they consider appropriate in preparing regulations to be made under the new section 10A of the National Health Service (Wales) Act 2006, to be inserted by the Bill.

Response: ACCEPTED IN PRINCIPLE

Recommendation 4 from the Committee in respect of consultation crosses over with recommendation 5 from the Health and Social Care Committee, both of which seek an amendment to the Bill to place a duty on Welsh Ministers to consult in respect of the future regulations.

As stated above, we are fully committed to undertaking a public consultation on the operational principles to inform the development of future regulations for the proposed new procurement regime.

However, I note the comments from both Committees and the desire to fully ensure that appropriate individuals and groups are formally offered the opportunity to input into the process of preparing the regulations.

Therefore, whilst I am unable to fully accept the suggested wording set out in recommendation 4 of the Legislation, Justice and Constitution Committee's report and recommendation 5 of the Health and Social Care Committee's report, I am happy to accept in principle the recommendations and will seek to bring forward an amendment at Stage 2 which places consultation on the development of the regulations on the face of the Bill.

Recommendation 5: The Minister should table an amendment to the Bill to provide that the Welsh Ministers must consult such other persons as they consider appropriate in preparing guidance about complying with regulations made under section 10A of the National Health Service (Wales) Act 2006, to be inserted by the Bill.

Response: NOT ACCEPTED

Following on from my response to recommendation 4 above, I am committed to bringing forward an amendment in relation to consultation in respect of the development of regulations.

The regulations will be developed in cooperation with relevant authorities, and consequently, will inform the subsequent guidance which explains the requirements in those regulations.

Furthermore, we need to ensure we have an approach that will be flexible and agile and allow changes to the guidance in an appropriate and timely manner to ensure we have a regime that is fit for purpose, reflects best practice, ongoing stakeholder and user feedback and to react to any changes brought about by the proposed Provider Selection Regime once operational in England.

As such, I do not consider it practical or necessary to undertake a formal consultation on the preparation of the guidance to comply with the regulations.

Therefore, I do not accept recommendation 5 from the Committee.