

Welsh Government - Healthcare procurement reform Wales

1. Introduction:

There are proposals to change the way that public bodies procure goods and services in the UK following the decision to leave the European Union. A new regime is being introduced by the UK Government's Procurement Reform Bill to change the existing EU procurement law. In tandem, there are also proposals to change the way healthcare services will be procured in England as a result of the introduction of the UK Government's Health and Care Act earlier this year.

Changes via the Procurement Reform Bill and the Health and Care Act will have an impact on the procurement of healthcare services in Wales. This paper sets out the detail of the changes and seeks to gather thoughts on proposed approaches to the future of procuring healthcare services for Wales.

2. Background:

UK Government Procurement Reform Bill

On 15 December 2020, the UK Government published a [Green Paper](#) on "Transforming Public Procurement", outlining proposals for procurement reform as a result of the UK leaving the EU.

The UK Government's Procurement Reform proposals aim to reduce the complexity of current arrangements and move towards a position whereby procurement is focused on delivering an outcome/performance based whole life cost approach.

In August 2021, Welsh Ministers agreed to join the UK Government's Procurement Reform as the mechanism for procuring goods and services in Wales.

The Bill is currently undergoing the UK Government's Parliamentary scrutiny process – more information can be found on the link [here](#).

3. Healthcare procurement England:

UK Government Health and Care Act 2022

In February 2021, the Department of Health and Social Care (DHSC) published a [White Paper](#) 'Integration and Innovation: working together to improve health and social care for all' which set out proposals for a Health and Care Bill. The White Paper included a proposal for a new regime to remove the procurement of healthcare services from the scope of existing Public Contracts Regulations 2015 (PCR 2015), and the forthcoming UK Government's Procurement Reform Bill.

The Health and Care Bill became the [Health and Care Act](#) in April 2022 and the primary legislation by which the UK Government intend to deliver their health and care agenda in England.

Provider Selection Regime (PSR)

The Health and Care Act includes a proposed regime for [healthcare services](#) in England known as the [Provider Selection Regime](#) which removes healthcare services from the forthcoming UK Government Procurement Reform Bill and replaces current procurement practice with a non-competitive mechanism. Other services such as Social Care remain within the context of the UK Government's Procurement Reform Bill.

The aim of the PSR is to move away from the expectation of competition in all circumstances and move towards a system of collaboration and partnership, joining services together across the whole health and care system. This approach is intended to remove unnecessary levels of competitive tendering, remove barriers to integrating care, and promote the development of stable collaborations.

The PSR would give decision-makers in NHS England and local government organisations in England the flexibility to arrange services that best promote the interests of patients and the population within their areas, as well as considering the value for public money.

The Regime is intended to make it straightforward to continue with existing arrangements for service provision where those arrangements are working well and there is no value for patients, the population or public finances in seeking an alternative provider.

Where there is a need to consider making changes to arrangements for service provision, the PSR will provide a new process for achieving transparent and proportionate decision-making that will include the option of competitive tendering.

The PSR will also cover integrated healthcare and care services, where services such as Social Care may need to join together with healthcare services.

A list of the healthcare services/activities included in the PSR by Common Procurement Vocabulary (CPV) codes can be found [here](#) and at **Annex B**. This link also provides further detail on how DHSC intends to operate the new Provider Selection Regime.

The Regulations to bring the PSR into effect in England are currently being developed by DHSC and may be introduced later this year.

4. Healthcare procurement Wales:

The proposals for use of the PSR does not apply in Wales under the Health and Care Act.

Welsh Ministers have agreed the procurement of healthcare services in Wales would continue to form part of the development of the UK Government's Procurement Reform Bill. PCR 2015 will continue to apply until these regulations are repealed and the new Procurement Reform Bill receives Royal Assent and subsequent Regulations come into force (likely by Summer / Autumn 2023).

The changes to healthcare services under the Health and Care Act potentially brings about some unintended consequences for the future procurement and commissioning of Welsh healthcare services and other services such as social care when there is a need for integrated services to be in place.

Under PCR 2015, healthcare services are subjected to competition. With the introduction of the PSR in England, a more non-competitive approach to commissioning and procuring healthcare services may change the way in which public bodies in Wales work with healthcare providers.

More specifically, there remains uncertainty surrounding, for example, the ability of NHS Wales to continue to contract on a cross-border basis for healthcare services which are currently commissioned under Public Contracts Regulations 2015. This could potentially:

- Impact on access to UK Healthcare Frameworks if DHSC decide to move to operate Frameworks under the PSR approach;
- Impact on Wales' ability to continue to remain attractive to healthcare suppliers in the marketplace; and
- result in the need for NHS Wales to consider any future additional resources that may be required to support the procurement and commissioning of healthcare provisions.

It should be noted it is intended that goods procurement would remain under the rules of PCR 2015 and the proposed Procurement Reform Bill. However, there may be instances where goods are within the scope of the Provider Selection Regime **if** they are part of service provision. More information on this can be found in the DHSC's consultation document (link [here](#)).

5. Future options for healthcare procurement Wales

Welsh Ministers wish to give consideration to whether it would be beneficial to consider moving to a position of adopting a similar approach to the Provider Selection Regime in Wales.

This could include options to 'mirror' the procurement arrangement in England as proposed by the PSR.

To help inform Welsh Ministers current thinking, Welsh Government are seeking views on whether moving to a non-competitive approach similar to that proposed by DHSC would support addressing Ministerial priorities for Health and Social Care in Wales as outlined under '[A Healthier Wales](#)'. Specifically, this could include supporting better collaboration and partnership to enhance patient care, support recovery from the impact of Covid 19 on healthcare service provision and help deliver better health outcomes and quality of patient care.

If Welsh Ministers were to consider this approach, it is proposed to consider new legislative powers via the Senedd in this Government term (2021-2026).

Your feedback on the proposed way forward in Wales is sought to inform our next steps.

Please consider the questions below in **Annex A** and return written responses on the proforma provided to the following mailbox **no later than 5pm 19 September 2022:**

- healthcareprocurementreform@gov.wales
- DiwygioCaffaelGofallechyd@llyw.cymru

Annex A

Consultation questions

1. Awareness

1.1. How many people in your organisation do you anticipate will need to be aware of the UK Government's changes to Procurement, i.e., the Procurement Reform Bill and the DHSC's new Provider Selection Regime?

- a) less than 10
- b) 10 to 100
- c) 100 to 300
- d) 300 to 500
- e) more than 500

1.2. What functions do these people cover (for example, procurement specialists, lead commissioners, senior leaders, policy and delivery teams)? Where possible, it would be helpful if you could state the function undertaken and then the number of people across your organisation within those functions.

1.3. Have you started to make arrangements within your organisation to raise awareness of these changes? If yes, please explain what action you have taken.

1.4. Do you consider your organisation will be prepared for these changes within the next 12 to 18 months? If not, please state why.

2. Transition arrangements

2.1. What do you consider to be the main issues to be addressed in transitioning from the current procurement arrangements to the new UK Government arrangements? It would be helpful if you could explain your views on both:

- a) proposed way forward under the UK Government's Procurement Reform Bill (at the moment this will include procurement of goods and healthcare services in Wales).
- b) and your views if a similar approach to the DHSC's Provider Selection Regime, were to be considered and adopted by Welsh Ministers?

2.2. Please outline any key challenges you anticipate for transitioning to the new UK Government's Procurement Bill regime including any future challenges

that may arise from implementation of a similar approach to that of the DHSC's Provider Selection Regime?

- 2.3. If Welsh Ministers were to move to a regime similar to that of the DHSC's Provider Selection Regime, are there ways in which Welsh Government could support your organisation to successfully move to this type of procurement/commissioning regime in the short/medium term future? If so, please provide details.

3. Cost of Transition/Adoption

- 3.1. Do you consider there to be short-term costs (£) which would be incurred from transitioning to the new procurement regime under the UK Government's Procurement Reform Bill? If yes,

- a) how do you anticipate these short-term costs would arise? If possible, please provide a breakdown and estimate of these costs (in £); and
- b) to what extent could these costs be accommodated in your existing budgets?

- 3.2. Do you consider there would be short-term costs (£) which would be incurred from the adoption and transitioning to an approach similar to that of the DHSC's Provider Selection Regime for healthcare services? If yes,

- a) how do you anticipate these short-term costs would arise? If possible, please provide a breakdown and estimate of these costs (in £); and
- b) to what extent could these costs be accommodated in your existing budgets?

4. Ongoing Operational Costs and Savings

- 4.1. Do you anticipate there will be any increased operational or running costs if healthcare services were to be arranged under a similar approach to that of the DHSC's Provider Selection Regime?

- 4.2. Do you think these costs would be more or less than compared with the existing operational costs incurred when arranging services under the current procurement rules? If possible, please provide specific examples.

- 4.3. Do you anticipate that any operational savings would be realised when arranging services under an approach similar to that of the DHSC's Provider Selection Regime, when compared with arranging services under the current procurement? Please provide examples where possible.

5. Scope

5.1. If Welsh Ministers were to consider moving to an approach similar to that of the DHSC's Provider Selection Regime, do you consider the following services should be within scope? Please explain why you consider these services to be within scope or why they should not be within scope.

- a) Healthcare services (see **Annex B**),
- b) Social Care services where there is a need to join healthcare and social care together as one service provision.
- c) Social Care services.

5.2. Do you consider the CPV codes for healthcare services listed in **Annex B** to be sufficient? Are there other CPV codes for healthcare services that should be added? If so, please state these.

5.3. Are there any other services that you consider should be within scope of any future changes? If yes, please provide details.

6. Benefits

6.1. Overall, would you be supportive of a move in Wales to adopt an approach similar to the DHSC's Provider Selection Regime for Healthcare services as set out in this document.

7. Other issues

7.1. Are there any other issues you feel should be considered as part of future transition arrangements, such as training and development; skills and capability? If so, please explain.

8. Responses

The deadline for responses and comments **is no later than 5pm 19 September 2022:**

Please send your written responses on the proforma provided to the following mailbox:

- healthcareprocurementreform@gov.wales
- DiwygioCaffaelGofallechyd@llyw.cymru

Thank you

Annex B

List of healthcare services CPV codes included in the PSR consultation paper:

CPV code	Description
85100000-0	Health services
85110000-3	Hospital and related services
85111000-0	Hospital services
85111100-1	Surgical hospital services
85111200-2	Medical hospital services
85111300-3	Gynaecological hospital services
85111310-6	In vitro fertilisation services
85111320-9	Obstetrical hospital services
85111400-4	Rehabilitation hospital services
85111500-5	Psychiatric hospital services
85111600-6	Orthotic services
85111700-7	Oxygen-therapy services
85111800-8	Pathology services
85111810-1	Blood analysis services
85111820-4	Bacteriological analysis services
85111900-9	Hospital dialysis services
85112200-9	Outpatient care services
85120000-6	Medical practice and related services
85121000-3	Medical practice services
85121100-4	General-practitioner services
85121200-5	Medical specialist services
85121210-8	Gynaecologic or obstetric services
85121220-1	Nephrology or nervous system specialist services
85121230-4	Cardiology services or pulmonary specialist services
85121231-1	Cardiology services
85121232-8	Pulmonary specialist services
85121240-7	ENT or audiologist services

85121250-0	Gastroenterologist and geriatric services
85121251-7	Gastroenterologist services
85121252-4	Geriatric services
85121270-6	Psychiatrist or psychologist services
85121271-3	Home for the psychologically disturbed services
85121280-9	Ophthalmologist, dermatology, or orthopaedics services
85121281-6	Ophthalmologist services
85121282-3	Dermatology services
85121283-0	Orthopaedic services
85121290-2	Paediatric or urologist services
85121291-9	Paediatric services
85121292-6	Urologist services
85121300-6	Surgical specialist services
85130000-9	Dental practice and related services
85131000-6	Dental-practice services
85131100-7	Orthodontic services
85131110-0	Orthodontic-surgery services
85140000-2	Miscellaneous health services
85141000-9	Services provided by medical personnel
85141100-0	Services provided by midwives
85141200-1	Services provided by nurses
85141210-4	Home medical treatment services
85141211-1	Dialysis home medical treatment services
85141220-7	Advisory services provided by nurses
85142000-6	Paramedical services
85142100-7	Physiotherapy services
85143000-3	Ambulance services
85144000-0	Residential health facilities services
85145000-7	Services provided by medical laboratories