



Bwrdd Iechyd Prifysgol  
Bae Abertawe  
Swansea Bay University  
Health Board



<b>Meeting Date</b>	<b>15 September 2022</b>	<b>Agenda Item</b>	<b>8.2</b>
<b>Report Title</b>	Consultation document on healthcare procurement reform in Wales		
<b>Report Author</b>	Keir Warner, Head of Procurement		
<b>Report Sponsor</b>	Darren Griffiths, Director of Finance and Performance		
<b>Presented by</b>	Keir Warner, Head of Procurement		
<b>Freedom of Information</b>	Open		
<b>Purpose of the Report</b>	<p>This paper summarises the proposed changes to healthcare procurement legislation in Wales. Swansea Bay University Health Board (SBUHB) is required to formally respond to the Welsh Government consultation on this by the 19<sup>th</sup> September 2022 and the views of the Audit Committee will help to inform this response.</p>		
<b>Key Issues</b>	<p>The UK government has introduced the <i>Procurement Reform Bill</i>, which Welsh Ministers have agreed will apply in Wales. Concurrently, there are also proposals to change the way <i>healthcare services</i> will be procured in England as a result of the introduction of the UK Government's Health and Care Act</p> <p>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.</p> <p>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. The Health Board has been asked to complete a consultation proforma so that Welsh Ministers can consider all views before making a final decision.</p>		

	Should the procurement regime for Healthcare Services in Wales diverges from that applicable in England, then we will no longer be able to use framework agreements that are let in England (as is the current practice across a range of contract areas). Bespoke NHS Wales agreements will have to be put in place. This will also make cross border collaboration more difficult in some instances.			
<b>Specific Action Required</b> <i>(please choose one only)</i>	<b>Information</b>	<b>Discussion</b>	<b>Assurance</b>	<b>Approval</b>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Recommendations</b>	Members are asked to: <ul style="list-style-type: none"> <li>• <b>COMMENT</b> on the report</li> <li>• <b>RESPOND</b> to the Head of Procurement by the 14<sup>th</sup> September 2022 with further comments</li> <li>• <b>AGREE</b> that the Director of Finance and Performance will submit the response on behalf of the Health Board</li> </ul>			

# CONSULTATION DOCUMENT ON HEALTHCARE PROCUREMENT REFORM IN WALES

## 1. INTRODUCTION

Following the UK's exit from the European Union (EU), the procurement legislation applicable at the time was transposed in to UK law; namely the Public Contract Regulations (PCR) 2015. The UK government has introduced the *Procurement Reform Bill*. Concurrently, 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

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 summarises the detail of the changes. Views on the impact, relative benefits and dis-benefits are required from the Management Board before the Health Board responds formally to the consultation by the 19<sup>th</sup> September 2022. The Head of Procurement for the Health Board will collate comments received from Management Board members by 14<sup>th</sup> September 2022 for submission by the Director of Finance and Performance on 19<sup>th</sup> September 2022.

Section 2 provides a summary of the key points, as taken from the Welsh Government consultation paper, *Consultation document on healthcare procurement reform in Wales - NHS commissioners and procurement leads*, published on the 29<sup>th</sup> July 2022.

## 2. BACKGROUND

On 15<sup>th</sup> December 2020, the UK Government published a Green Paper on "Transforming Public Procurement", outlining proposals for procurement reform both as a 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.

### **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. 2

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 at **Annex A**.

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

### **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.

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.

### **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.

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).

### **3. GOVERNANCE AND RISK ISSUES**

Should NHS Wales follow a different procurement regime to NHS England going forward then the use of framework contracts let by NHS England will not be able to be used by NHS Wales.

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.

Existing (at the time of transition) contracts that are in place would not be affected as the contractual terms/basis of letting those contracts would still apply.

#### **4. FINANCIAL IMPLICATIONS**

Should the ability of NHS Wales to utilise NHS England frameworks for the services affected cease, then NHS Wales would need to ensure that appropriate contract arrangements are in place. Given the complex and litigious nature of letting Healthcare contracts, a procurement specialist at band 8a level, and a Band 6 category manager would be required to support the Health Boards requirements. The recurrent costs of these would be c. £90k per annum. Conversations with NWSSP are ongoing in terms of the possibility of establishing a central/all Wales team to support this activity, if required.

Notwithstanding the direct costs above, there would be resource costs to the Health Board in the form of the need for increased clinical time to write service specification documents and to score and evaluate returned tenders.

Given the relative small size of the NHS in Wales, when compared to the NHS in England then the economies of scale that we currently benefit from by being part of larger national frameworks may be impacted significantly.

#### **5. RECOMMENDATION**

Members are asked to:

- **COMMENT** on the report
- **RESPOND** to the Head of Procurement by the 14<sup>th</sup> September 2022 with further comments
- **AGREE** that the Director of Finance and Performance will submit the response on behalf of the Health Board

<b>Governance and Assurance</b>		
<b>Link to Enabling Objectives</b> <i>(please choose)</i>	<b>Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities</b>	
	Partnerships for Improving Health and Wellbeing	<input checked="" type="checkbox"/>
	Co-Production and Health Literacy	<input checked="" type="checkbox"/>
	Digitally Enabled Health and Wellbeing	<input type="checkbox"/>
	<b>Deliver better care through excellent health and care services achieving the outcomes that matter most to people</b>	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input checked="" type="checkbox"/>
	Excellent Staff	<input type="checkbox"/>
	Digitally Enabled Care	<input type="checkbox"/>
Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>	
<b>Health and Care Standards</b>		
<i>(please choose)</i>	Staying Healthy	<input checked="" type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>
	Effective Care	<input checked="" type="checkbox"/>
	Dignified Care	<input type="checkbox"/>
	Timely Care	<input checked="" type="checkbox"/>
	Individual Care	<input type="checkbox"/>
	Staff and Resources	<input checked="" type="checkbox"/>
<b>Quality, Safety and Patient Experience</b>		
There would be a need to ensure that appropriate procurement arrangements for NHS Wales are in place should the same approach as NHS England not be taken.		
<b>Financial Implications</b>		
There will be a need for additional Procurement staff to deliver suitable framework agreements/contracts should the Health Board not be able to use NHS England frameworks going forward (c. £90k per annum).		
There will be additional unknown costs in the form of the need for additional clinical input to creating the framework agreements and the loss of economies of scale from being a part of larger frameworks.		
<b>Legal Implications (including equality and diversity assessment)</b>		
Continuing to utilise NHS England framework agreements for Healthcare contracts will not legally be an option should there be a divergence in procurement regulations. Bespoke arrangements by NHs Wales would have to be made which meet the requirements of applicable law.		
<b>Staffing Implications</b>		
A Band 8a Procurement specialist and a Band 6 Category manager would be required to support the additional activity.		
<b>Report History</b>	N/A	
<b>Appendices</b>	Appendix A – Blank consultation document Appendix B – full consultation document and contract areas potentially affected	