

Enterprise and Business Committee

Meeting Venue:
Committee Rooms 1 & 2 – Senedd

Meeting date:
8 March 2012

Meeting time:
09:45

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Siân Phipps
Committee Clerk
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Agenda

This will be a concurrent meeting with the House of Commons Welsh Affairs Committee

Private pre-meeting (09.45 – 10.15)

1. Introductions, apologies and substitutions

2. Inquiry into international connectivity through Welsh ports and airports – Evidence session (10.15 – 11.15) (Pages 1 – 4)

UK Government Department for Transport

Jonathan Moor, Director, Aviation

Richard Bennett, Deputy Director, Maritime Commerce and Infrastructure

3. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the remainder of the meeting

4. Consideration of draft letter to the Minister for Local Government and Communities (11.15 – 12.00)

5. Papers to note (Pages 5 – 12)

Letter from Alun Davies, AM, Deputy Minister for Agriculture, Food, Fisheries and European Programmes

Note of EU Procurement task and finish group on 2 February

Agenda Item 2

**NATIONAL ASSEMBLY FOR WALES: ENTERPRISE & BUSINESS
COMMITTEE
HOUSE OF COMMONS: WELSH AFFAIRS COMMITTEE
INTERNATIONAL CONNECTIVITY THROUGH WELSH PORTS AND
AIRPORTS**

MEMORANDUM BY THE UK DEPARTMENT FOR TRANSPORT

1. The Inquiry's terms of reference were these:
 - How important are major Welsh ports and airports, both to the economy of their own regions and to Wales as a whole?
 - What factors limit realisation of the potential offered by major Welsh ports and airports; what opportunities are available to develop this potential; and how can these be realised?
 - How effectively do Welsh Government policies support the development of major Welsh ports and airports?
2. Firstly it is necessary to define what we mean by 'major' ports and airports. By definition major transport nodes should be economically important.
3. Broadly, ports carrying more than 1 million tonnes *per annum* are usually classified as major ports. Those in Wales are:
 - Milford Haven
 - Cardiff
 - Holyhead
 - Newport
 - Port Talbot
 - Fishguard
 - Swansea

The last two have traffic below 1million tonnes but are classified as major ports for statistical purposes.
4. Milford Haven is much the largest Welsh port by tonnage and is highly important to the UK as well as to Wales and its more immediate hinterland. It is the third-largest UK port by tonnage, and the largest of all for bulk fuel, oil products and liquefied gas.
5. Cardiff Airport, which is owned and operated by Abertis SA, handled 1.4 million passengers in 2010. Cardiff Airport is the only airport in Wales offering international services, with scheduled flights to eight destinations in the UK and Ireland, and several to the continent including the hubs at Paris and Amsterdam (which provide worldwide connectivity). An extensive charter programme serves Mediterranean and the Caribbean routes.

6. Welsh ports and airports are free to compete with those elsewhere in the UK. Geography imposes its own inevitable limitations as well as advantages, but subject to these there are opportunities for commercial expansion, and most Welsh ports have capacity to deal with substantial traffic growth.
7. We do not propose to comment at this stage on the effectiveness of Welsh Government policies, beyond noting that the Department's officials have a constructive working relationship with those of the Welsh Government, for which we express appreciation.

What role do the Welsh Government and local authorities play in facilitating the development of Welsh ports and airports?

8. Ports policy is not devolved in Wales, except for small fisheries and leisure harbours. Nevertheless, the Department recognises that the Welsh Government and local authorities have significant interests, not least in relation to inland connectivity and hinterland planning, where policy responsibilities have been transferred. They would also be consulted on ports planning more generally.
9. Although aviation policy is generally a reserved matter in the UK, the Welsh Government has devolved powers relating to airports in terms of land use planning and airport surface access issues.
10. The Government has no plans for further devolution in relation to ports or airports. Any requests fall to be considered in the context of the Silk Commission's report.

What factors have contributed to the decline in business through Cardiff Airport?

11. Regional airports in the UK experienced significant growth in passenger numbers until 2007, when the effect of the current economic downturn reduced passenger demand. Between 2008 and 2010 overall passenger demand at regional airports dropped off by around 17%. At Cardiff Airport passenger numbers have reduced from a peak of 2.1 million in 2007 to 1.4million passengers in 2010.
12. The current economic climate has resulted in uncertainty for services from many regional airports. In a competitive, demand-driven market, some air services from regional airports have inevitably ceased as airlines rationalise their networks to focus on the most profitable routes.

How effectively does Welsh Government policy, primarily in the areas of transport, economic development, and land use planning policy, support the development of Welsh ports and airports?

13. The Welsh Government has responsibility for airport land use planning and airport and port surface access issues and is accountable for its policies in these matters. It would not be appropriate in this memorandum to express views on the effectiveness of Welsh Government policy.

How can the Welsh Government develop economic opportunities, for example from tourism, international trade, freight and, in the case of ports, opportunities including the energy and renewable energy industries? What role do ports and airports, particularly Cardiff Airport, play in the key sectors identified by the Welsh Government?

14. This is primarily for the Welsh Government to answer. Industrial development funding, including for promoting renewable energy manufacturing facilities at ports, is a devolved matter and it is for the Welsh Government to decide whether and how to provide support in so far as would be compatible with State Aids rules. Investment in port and airport facilities generally can and should be funded on a commercial basis, to ensure fair competition within and beyond Wales.

How effective is Welsh transport infrastructure and interconnectivity in supporting the development of Welsh ports and airports?

15. This again is a matter primarily for the Welsh Government.

Given that ports and airports policy is a reserved matter, how effectively does the Welsh Government engage with the UK Government in the interests of Wales?

16. The Department for Transport welcomes the positive engagement it receives from the Welsh Government on ports and airports matters.

What impact do EU State Aid regulations have on the ability of the Welsh Government to provide support, and what opportunities are presented by EU ports and airports policy to support development in Wales?

17. HM Government has primary responsibility for compliance with State Aid rules, and we also apply, as a matter of policy, the general presumption against revenue support to ports in Wales as in England. On the other hand, ports in Wales as in England are at liberty to apply for grants from available funding schemes, which may be subject to block State Aid exemption provided that appropriate conditions are met. It is also appropriate for the importance of international gateways to be recognised when setting priorities for connecting public infrastructure investment.

18. EU State Aid rules regulate the provision of aid for airline services and airports. The Aviation State Aid Guidelines (2005) prescribe the rules in relation to route development funds and the provision of aid to airports. The rules for imposing Public Service Obligations (PSO) are set out in European regulations (Regulation 1008/2008).
19. All UK transport aid schemes require the Department's policy clearance before they can go forward to the European Commission for determination. A PSO service is currently operated between Cardiff and Anglesey, linking north and south Wales. In addition, in May 2011, the European Commission granted state aid clearance for the Welsh Government to contribute £5m to the Cardiff Airport's proposed capital investment programme.
20. The Commission is currently reviewing the 2005 guidelines. The UK has highlighted that the current guidance on start-up aid does not provide sufficient scope to support the establishment of routes from peripheral and development regions of the EU, including Wales.
21. The Commission is also consulting on the Community Guidelines on State Aid to maritime transport. The latest guidelines were adopted in 2004. The Commission's consultation was launched on 14 February and the deadline for replies is 14 May.

Department for Transport
February 2012

Agenda Item 5

Alun Davies AC / AM
Y Dirprwy Weinidog Amaethyddiaeth, Bwyd, Pysgodfeydd a
Rhaglenni Ewropeaidd
Deputy Minister for Agriculture, Food, Fisheries and
European Programmes



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Nick Ramsay AM
Chair of the Enterprise and
Business Committee
Cardiff Bay
CF99 1NA

27th February 2012

Dear Nick,

EUROPEAN STRUCTURAL FUNDS PROGRAMMES: PRIVATE SECTOR ENGAGEMENT

I am writing to you as Chair of the Enterprise and Business Committee to clarify a comment made at a meeting of the Committee on 22 September 2011.

During the evidence-taking session on European Structural Funds at that meeting I outlined my belief that 'Wales is second from top of the European countries in working with the private sector. Only the Netherlands has a better record than us.....'

This view was based on longstanding feedback provided by the European Commission (EC) to the Welsh European Funding Office (WEFO) which had been communicated verbally to me about Wales' historic performance of the amount of private sector match funding for the programmes. This has been the long-held view of government and has been quoted in evidence in the past, for example, a paper to the European and External Affairs Committee in March 2006 noted 'only the UK and Netherlands have levered in private match funding to any great extent...'

Since that meeting I have asked WEFO to undertake a number of in-depth studies of the place of the private sector and the role played by that sector in the management and delivery of European programmes. Members of the Committee will note the publication of a paper on private sector involvement in the European programmes in the coming few weeks.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

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In terms of understanding the current position, clearly, the position is continually changing, as certified expenditure continues to be confirmed by Member States to the EC and as closure work for the 2000–2006 programming period is yet to be finalised by the EC. Reporting practices among Member States also vary widely, as do definitions of 'private' match funding. For example, the EC has confirmed that under EC Regulations, Member States have the option to express the ERDF contribution either as a percentage of the total eligible cost or the total public cost.

Given the above, it is difficult to provide the Committee with evidence to underpin and support the remarks made to the Committee in September. I was therefore very anxious to write to the Committee with this clarification at the earliest opportunity to ensure that no Member is inadvertently misled by this comment.

I can assure the Committee, however, that the private sector is benefiting significantly from the European Structural Fund programmes 2007–2013. To date, we have invested £740m (EU funds £350m) to support businesses, with schemes such as JEREMIE having already invested £82m to 385 SMEs. Overall, EU projects have reported to date, the assistance of 7,600 businesses and the creation of over 2,150 businesses. In addition, private sector organisations have won 900 procurement contracts worth £380m to help deliver the activities of EU projects.

As part of the development arrangements for the prospective European programmes 2014–2020 in Wales, we will also be working very closely with the private sector, which is already strongly represented on the European Programmes Partnership Forum and our Programme Monitoring Committees. Furthermore, as I indicated above I will be publishing a specific consultation document which seeks to increase private sector involvement in the delivery of any future tranche of European programmes.

I would wish to repeat my view that business will drive the growth of the Welsh economy and we are keen to build on the progress made so far in engaging the private sector, both as beneficiaries of investments and in the delivery of the programmes.

A handwritten signature in dark ink, appearing to read 'Yn eidd' followed by a stylized signature that looks like 'Alun'.

Alun Davies AC / AM

Y Dirprwy Weinidog Amaethyddiaeth, Bwyd, Pysgodfeydd a Rhaglenni
Ewropeaidd

Deputy Minister for Agriculture, Food, Fisheries and European Programmes

Procurement Task and Finish Group

Meeting Venue: **Committee Room 1 – Senedd**

Meeting date: **Thursday, 2 February 2012**

Meeting time: **09:32 – 12:15**

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Concise Minutes:

Assembly Members:

Julie James (Chair)
Eluned Parrott
David Rees
Leanne Wood

Witnesses:

Mark Roscrow, Assistant Director Procurement Services, NHS Wales Shared Services Partnership
Nic Cowley, Procurement Services, NHS Wales Shared Services
Vince Hanly, Service Director for Procurement, Rhondda Cynon Taf
Rob Jones, Procurement Manager, Welsh Purchasing Consortium
Paul Charkiw, Head of Efficiency and Procurement, Welsh Local Government Association
Sally Collier, Executive Director of Efficiency and Reform Group, Cabinet Office
Martin Leverington, Procurement Policy Advisor, Cabinet Office
Liz Lucas, Head of Procurement, Caerphilly County Borough Council

Committee Staff:

Lara Date (Clerk)
Sarah Bartlett (Deputy Clerk)

1. Introductions, apologies and substitutions

1.1 The Chair welcomed the Members. Apologies were received from Byron Davies, there were no substitutions.

2. Inquiry into Influencing the modernisation of EU Procurement

Policy: Evidence Session (09.30 – 10.15)

The Chair welcomed Mark Roscrow and Nic Cowley from the NHS Wales Shared Services Partnership.

NHS Wales said efforts to clarify and simplify the EU rules were helpful. The rules had become more complex and more about compliance than innovation and bringing in SME's.

The Remedies Directive has made it easier for companies to challenge outcomes and in the current economic climate they were now much more prepared to do this. Procurement staff felt an increasing need to invest in legal advice as a result. A number of challenges had been made in Wales in the past six months, but very few go to court. In Northern Ireland there had been a more significant impact in terms of legal cases. The Remedies Directive does not require providers to go to court, a form can be submitted which stops the procurement process in its tracks, which can have implications for clinical safety when procuring NHS goods and services. Some parts of the marketplace appear to be particularly litigious, e.g. pathology services. The approach to addressing this challenge is to challenge back, and only to roll back the process to where the problem started, before moving on with the process again. It is not clear whether all procurement officers take this approach, rather than going right back to the start of the procurement process as a result of legal challenge. The time taken to resolve issues can vary from one day to several weeks, depending on the complexity of the challenge. The proposal for creating an 'ombudsman' regulatory role was described as a 'bureaucratic nightmare waiting to happen' if suppliers could use it as a stalling tactic.

The importance of being an 'intelligent client' was discussed. It was critical to plan and manage the procurement process correctly and have the right procurement strategy in each case. Inadequate planning is more the issue than problems with the specification changing, although there could be problems where clinicians without procurement expertise get involved in the process. There can also be time pressure to spend funds coming available towards the end of the year without understanding the timescales involved in running a compliant procurement exercise.

Training and development on procurement rules must be constant to avoid procurement expertise becoming diluted due to staff turnover within contracting authorities. Sharing best practice is also very important but it should be on a case-by-case basis as what is right for the NHS may not be right elsewhere. There was concern that the people responsible for supporting SMEs and informing them about procurement rules are not employed in the procurement sector and may not have access to the most up-to-date information – there should be more interaction between practitioners on the ground and the civil servants and advisers tasked with giving advice and guidance to the SME sector.

Procurement procedures: – the competitive dialogue process is more complex and can take longer, but does give the opportunity of flexibility to ensure the requirement is met by bidders, for example it is often used as a default procedure for procurement of IT systems. The real issue with competitive dialogue (CD) and negotiation is the investment of time needed by SME's – there may be several rounds of discussion in procuring 'big ticket' items, but the restricted procedure is the one most often used.

Improving opportunities for SME's and making them more aware of the regulations: The tension between the relentless drive for efficiency savings and supporting economic benefit to the local economy was acknowledged. NHS Wales does have a mechanism to track the value of business going to Welsh SME's, but access by Welsh companies will depend on the market for a particular product or service. Work has been done with the Welsh Government on increasing awareness of Welsh SME's in areas such as food procurement for example.

Meeting social objectives through procurement: A lighter, more flexible set of procurement regulations with which to apply criteria such as sustainability, environmental and community benefits would be helpful. Sustainable development measures around recycling, packaging, food miles are commonly built into NHS procurement planning and a weighting needs to be given to environmental issues within the procurement process (e.g. reducing the number of vans delivering to an NHS site by using consolidation stores). It was thought that the new regulations could give more flexibility, e.g. to allow a carbon footprint clause to be built into the evaluation criteria for contracts. Increasing e-Procurement practices, such as e-Invoicing was important.

Benefits of the EU proposals:- The view of NHS Procurement specialists was that shorter timescales for procurement exercises would help them as a contracting authority because longer timescales add costs. The flexibility to aggregate demand to make financial savings, but also to be able to divide contracts into lots and support SMEs, as appropriate to the market in each case, was helpful.

The thresholds at which the EU rules apply were too low and it would be better if they were raised – £250,000 was suggested – and also unified as often it was difficult in NHS procurement to differentiate between goods and services. It also does not make sense that the thresholds applying to the NHS and Local Authorities are different in the context of taking All-Wales collaborative Procurement approach.

Standing Financial Instructions and regulations had been standardised across NHS Wales Local Health Boards and act as a good practice guide as to how to procure in each case and whether or not to apply the full EU rules to contracts below threshold

Procurement of services and removal of the distinction between Part A and Part B services:-in reality the full procurement rules and due process were usually applied to both types of services in NHS procurement to ensure rigour and control of the process, although there were some 'grey areas' within procurement of health services where greater clarity would be better.

3. Inquiry into Influencing the modernisation of EU Procurement Policy: Evidence Session (10.15 – 11.00)

The Chair welcomed Vince Hanly the Service Director for Procurement at Rhondda Cynon Taf, Rob Jones the Procurement Manager at the Welsh Purchasing Consortium, Liz Lucas, Head of Procurement at Caerphilly County Borough Council and Paul Charkiw the Head of Efficiency and Procurement at the WLGA.

Although the EU proposals contained simplification measures, e.g. clarifying selection and aware procedures and reducing process burdens, there were other aspects that could add tiers of bureaucracy, such as the oversight body proposal. It was recognised

that procurement practice is not as advanced in some Member States as in the UK, and the way rules are interpreted can differ, but it would be important to understand the implications of these oversight proposals for Wales – ‘the devil is in the detail’.

However the legislative proposals would give more flexibility to have dialogue with the supply base which is fundamental in getting more innovation into projects.

There is also a variety of maturity in procurement practice and approaches to risk management between the 22 local authorities in Wales, and it was important to create a level playing field. More guidance and the sharing of good practices across local authorities would be welcome, particularly guidance around the below-threshold procurement.

The witnesses advised the group on developments with standardising the contract Standing Orders on procurement rules within each local authority. They talked about a fit-for-purpose infrastructure in terms of e-Procurement that is available to the market, local authorities and the Welsh public.

Witnesses discussed the different systems that are used for tendering and also noted issues with the Xchange Wales e-procurement programme. Uncertainty about the future of the programme was holding back progress in some local authorities. There was evidence of e-procurement being very successful in certain parts of the market in Wales, but the e-procurement strategy for Wales must be fit for purpose and SME's needed adequate support to implement it.

Use of social clauses:- this has increased over the last 12 months – the new road build in Church Village was noted as a best practice example.

In general there is a risk averse culture in the UK and the Remedies Directive has made officers take a step back and be more risk averse. This Directive doesn't help develop procurement and doesn't promote innovation. In-house legal advice could tend to err on the side of caution, and a skills gap and/or lack of status of procurement professionals within the local authority could lean towards a more risk averse approach.

Lotting within contracts was welcomed. It suits local authorities in terms of working collaboratively. It was questionable whether the wording of the EU proposals on 'Shared Services' and 'inter-authority transactions' was supportive of the Welsh model of collaboration. The proposals refer to 'reciprocal rights and obligations', which might not be appropriate to Welsh local authorities of different sizes and with different resource bases working in partnership to administer services across the piece, rather than as a competitive exercise.

There was still a debate to be had within local government as to whether the proposals to remove the distinction between Part A and B services would be of any benefit to contracting authorities and suppliers. There was an argument for keeping social services in Part B because sometimes decisions on contracts for looked-after children are taken by the child, not necessarily the social workers, and cannot be taken on economic terms. There was scope to develop more guidance for local authorities on how to consistently interpret the current rules on Part B services.

Threshold levels:- Unifying the thresholds for different types of procurement to be subject to the full EU procurement rules would be helpful. There was scope to raise the

thresholds for procurement of services, although it was stressed that this should not lead to avoidance of advertising contracts below the thresholds, as there are many businesses in Wales who want local authority contracts below threshold. On the other hand the threshold for construction contracts (works) was considered too high, as a volume of refurbishment works in Wales fell below the current threshold.

4. Inquiry into Influencing the modernisation of EU Procurement

Policy: Evidence Session (11.15 – 12.00 via video conference)

The Chair welcomed Sally Collier, the Executive Director of Efficiency and Reform Group, Cabinet Office and Martin Leverington, a Procurement Policy Advisor, Cabinet Office.

The Cabinet Office was generally in favour of the proposed legislative reforms but raised a few concerns. It was considered that the proposal for a single national oversight body was too prescriptive, assuming some quasi-judicial powers. The group noted that evidence from Welsh stakeholders had raised concerns about it introducing an unnecessary layer of bureaucracy.

Level of compliance with the rules across the EU and risk aversion: – Formal investigation by the UK Government had shown that other EU countries do not break the rules more than the UK and the UK has a relatively low number of challenges in domestic courts and infractions, but there is a difference in how the letter of the rules is applied and the UK is certainly more risk-averse in its application and interpretation of the rules. The procurement reform programme underway in the UK is trying to address this issue.

Pre-procurement dialogue:– it was a myth that it was not possible to talk to industry before procurement commences. Pre-procurement dialogue is being encouraged to ensure UK firms know about possible procurement exercises that are up-coming, including publishing ‘pipelines’ in 31 sectors.

The proposal for a European procurement passport was sensible but the Cabinet Office is pleased that it is not a more far-reaching proposal than requesting provision of standard information.

The pre-qualification threshold questionnaire for below-threshold contracts has been abolished by central government, and that above the threshold it was moving to a presumption that procurement would use the open procedure.

The Cabinet Office was keen to see thresholds increase but this was not achievable at present because it was linked to the World Trade Organisation agreement and Government Agreement on Procurement (GPA). Cabinet Office will press for early increase of GPA thresholds and subsequent review of the directive threshold.

Cabinet Office is concerned about the proposed removal of the distinction between Part A and Part B services, and would like public procurement to be generally subject to a lighter regime.

In relation to the tension between aggregating for efficiency savings and improving SME access to the market, breaking contracts into lots was a welcome proposal. There was also evidence of smaller companies winning contracts in sectors where

traditionally business had tended to go to larger companies. A central government travel management contract was cited as an example.

Reserved contracts:- Cabinet Office welcomed the flexibility in the draft directive to favour disadvantaged people, social integration issues, and protection of the environment, extending the old article 19 which is currently quite restrictive in its definition.

Proposals regarding restrictions on turnover requirements:- the Cabinet Office understood the European Commission's decision to specify this in the draft Directive to prevent disproportionate turnover requirements, but also argued that setting a figure 'in stone' could run the risk of the quoted maximum turning into the default position.

New proposed procurement procedures:- The new 'innovation partnership' procedure was welcomed as a big area of potential growth but the wording of this proposal needed to be clarified. Cabinet Office noted that like some other Member States the UK would have liked to have seen a single procedure, but understood that the Commission proposed to give flexibility to Member States on how many of the four proposed procedures are transposed. The UK Government had previously supported competitive dialogue but it had been misused and resulted in lengthy procurement processes. The UK Government did not now favour competitive dialogue and therefore now wanted to see some form of negotiation in the other procedures proposed by the European Commission. It was thought that the majority of Member States were pressing for the negotiated procedure to be opened further but it remained to be seen how negotiations would develop. The rules would require the transposition of the open and restricted procedures, but Member States could decide how many of the other procedures to transpose.