

Rebecca Evans MS

Minister for Finance and Local Government

9 November 2023

Dear Rebecca,

Legislative Consent Memorandum on the Economic Activity of Public Bodies (Overseas Matters) Bill

At our meeting on 6 November 2023 we considered the above legislative consent memorandum. As part of that consideration we noted your response of 1 November to correspondence sent by the Chair of the Public Accounts and Public Administration (PAPA) Committee in respect of the memorandum.

The Chair of the PAPA Committee requested clarity on your view, as stated in the memorandum, that clause 15 of the Economic Activity of Public Bodies (Overseas Matters) Bill modifies the ability of the Welsh Ministers to exercise the power in section 115 of the Procurement Bill (now the Procurement Act 2023). In response, you stated:

"... Clause 15(3)(a) provides the Secretary of State with a regulation making power to be able to disapply s.17(5)(f) of the Local Government Act 1988 (the 1988 Act). Clause 115(2) of the Procurement Act provides a power for Welsh Ministers (or a Minister of the Crown) to disapply the duty under section 17(1) of the 1988 Act so far as it relates to a relevant authority. Such regulations can include disapplying the duty in s.17(1) of the 1988 Act as it relates to "all non-commercial matters (see section 17(5) of the 1988 Act) or those that are specified" (clause 115(3)(d) applies). The Senedd has legislative competence in relation to any provision of the Procurement Act which confers functions on contracting authorities which are devolved Welsh authorities or which confers a power to make regulations or issue guidance in relation to contracting authorities which are devolved Welsh



authorities. Therefore, clause 15(3)(a) of the Bill arguably modifies the ability of the Welsh Ministers to exercise the power in clause 115(2) of the Procurement Act. However, the modified power will continue to allow Welsh Ministers to make regulations to disapply provisions of section 17(1) of the 1988 Act for relevant Welsh contracting authorities as they see fit."

It would be helpful for my Committee's consideration of the memorandum to receive further clarity as to how section 115(2) of the Procurement Act 2023 provides a power to the Welsh Ministers to disapply the duty under section 17(1) of the 1988 Act, and whether the reference should instead be to section 111 of the Procurement Act 2023. Also, you refer to "clause 115(3)(d)" of the Procurement Act 2023; however, there does not appear to be a subsection (3)(d).

I am copying this letter to the Chair of the Public Accounts and Public Administration Committee.

As we are required to report on the memorandum by Friday 24 November, I would be grateful to receive your response by 16 November 2023.

Yours sincerely,

Huw Irranca-Davies

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Chair

