

Explanatory Memorandum to The Procurement (Miscellaneous Amendments) (Wales) Regulations 2025

This Explanatory Memorandum has been prepared by the Commercial and Procurement Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Cabinet Secretary Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Procurement (Miscellaneous Amendments) (Wales) Regulations 2025.

Mark Drakeford MS

Cabinet Secretary for Finance and Welsh Language

14 January 2025

PART 1

1. Description

- 1.1 The Procurement Act 2023 (“The Act”) once fully brought into force, repeals the current procurement Regulations and lays out new rules and procedures for Welsh Contracting Authorities (WCAs) relating to public procurement.
- 1.2 The Act will also provide for the UK to meet its international obligations on public procurement included in treaties that it has signed including the World Trade Organisation’s (WTO) Agreement on Government Procurement (GPA), EU-UK Trade and Cooperation Agreement (TCA) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).
- 1.3 The Act will regulate the procurement process and will have enhanced transparency requirements under a new notice regime which will span the full lifecycle of procurement.
- 1.4 These Regulations, namely “The Procurement (Miscellaneous Amendments) (Wales) Regulations 2025” are made under a number of powers provided to the Welsh Ministers (WMs) within the Act and make substantive amendments to the Act itself and to The Procurement (Wales) Regulations 2024 (“the 2024 Regulations”).
- 1.5 Part 1 of these Regulations provide the title, details of when the Regulations will come into force and includes definitions of the 2023 Act and 2024 Regulations.
- 1.6 Part 2 of these Regulations amends Schedules 1 and 9 to the 2023 Act. These amendments will apply to contracting authorities that are devolved Welsh authorities or are treated as such.
- 1.7 Regulation 3 amends Schedule 1, which contains threshold amounts. Those thresholds determine the value above which contracts of different types fall to be regulated by the substantive regime. The thresholds are set under the World Trade Organisation’s Agreement on Government Procurement. The 2023 Act was enacted with the threshold values applicable at the time; these were updated in January 2024 and regulation 3(2) ensures that the threshold figures will be appropriately updated ahead of the 2023 Act fully coming into force.
- 1.8 Regulation 3(4) makes amendments to Schedule 9 to reflect additions and amendments to the UK’s international obligations in respect of procurement.
- 1.9 Part 3 of these Regulations makes various amendments to the 2024 Regulations. These amendments are being made prior to the coming

into force of the 2024 Regulations and address a small number of matters which were overlooked in those Regulations.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 These Regulations provide further clarification and address points raised by the Committee in their [report](#) and subsequent correspondence relating to the principal 2024 Regulations.

3. Legislative background

- 3.1 These Regulations are being made by the Welsh Ministers in exercise of the powers conferred on them by sections, 69(4), 89(3), 95(1), (2) and (3), 122(3) 125, and by paragraphs 2, 3(a) and 5(1) of Schedule 1, paragraph, 6(4) of Schedule 2, and paragraphs 1(3), 2(3), and 3(5) of Schedule 4 to The Act.
- 3.2 In accordance with the provisions of section 122(10) of the 2023 Act, the draft affirmative procedure will apply to Regulations made under sections 69(4), 89(3), 95(1), (2) and (3), and 125 (but only insofar as the Regulations modify primary legislation), paragraph 3(a) and 5(1) of Schedule 1, paragraphs 6(4) of Schedule 2, and paragraphs 1(3), 2(3) and 3(5) of Schedule 4.
- 3.3 In accordance with Section 122(11) of the Act, the negative procedure will apply to Regulations made under any other section of the Act.
- 3.4 Under Section 40 of the Legislation (Wales) Act 2019, provision subject to the negative procedure may be combined in the same instrument as provision subject to the draft affirmative procedure. As a result, the draft affirmative procedure applies to these Regulations.

4. Purpose and intended effect of the legislation

- 4.1 The public procurement landscape in Wales is evolving. With over £8 billion spent on public procurement each year in Wales, improving the way public procurement is regulated can drive innovation and resilience, and deliver benefits across Wales by supporting our local economy and saving the taxpayer money.
- 4.2 Through the lens of the Well-being of Future Generations (Wales) Act (WBFG), the Welsh Government (WG) is committed to harnessing new and existing opportunities and to working with partners across Wales and beyond to develop a modern and sustainable approach to procurement.

4.3 The legislative changes being introduced through The Act 2023 and associated Regulations; the Social Partnership and Public Procurement (Wales) Act 2023 (SPPP) and the Health Service Procurement (Wales) Act 2024 (HSP) will help to deliver the Welsh Government's Programme for Government aspirations. They will initiate a new way forward for Wales that will enable the Welsh public sector to leverage the power of procurement to support the more equal, sustainable and prosperous Wales we all want to see in the future.

4.4 This Explanatory Memorandum has been developed in relation to the Welsh Government's Procurement Regulations "The Procurement (Miscellaneous Amendments) (Wales) Regulations 2025" which derive from the Act. These Regulations and the Procurement (Wales) Regulations 2024 are required to implement the new public procurement regime established by the 2023 Act. The narrative included in this assessment therefore also considers what is included within the Act.

4.5 The main policy objectives for the Act and Regulations are to:

- Create a simpler and more flexible commercial system that better meets our needs while remaining compliant with our international obligations.
- Open up Welsh public procurement to new entrants such as small businesses and social enterprises so that they can bid for more public contracts.
- Embed transparency throughout the commercial lifecycle so that the spending of Welsh taxpayers' money can be properly scrutinised.

4.6 A key factor in the WMs' decision to join the UK Government's Procurement Bill was to ensure certainty, consistency and continuity for contracting authorities and suppliers, especially Welsh Small and Medium sized Enterprises (SMEs) and Voluntary, Community and Social Enterprises (VCSEs).

4.7 Securing maximum alignment between the procurement rules as they apply in Wales and England will have the effect of ensuring a level playing field for buyers and suppliers on both sides of the border, whilst still allowing for devolved differences. It is important to emphasise that failure to agree these Regulations will have considerable negative consequences for, and be to the detriment of, suppliers, WCAs and the wider Welsh public sector.

4.8 These Regulations are also required to ensure that WCAs are able to apply the requirements in The Act, which will commence on 24 February 2025.

4.9 The main benefits of the new regime are:

- Making it easier to do business with the public sector by reducing and removing barriers for, and creating more competitive bidding opportunities for, Welsh SMEs, and improved prompt payment rules.
- Creating an open and transparent system which will strengthen accountability and potential collaboration opportunities.
- Delivering Welsh procurement policy ambitions through WCAs having regard to the Wales Procurement Policy Statement (“WPPS”) published under the Act.

5. Improvements the subordinate legislation will make to the current situation

5.1 The Act and supporting Regulations will provide the detail that will enable Wales to achieve and improve the following:

5.1.1 Greater transparency

- Embed transparency throughout the commercial lifecycle.
- Provide open access to public procurement data.
- Suppliers will be able to identify in one platform new opportunities to bid and collaborate.
- Buyers will be able to analyse the market and benchmark their performance against others.
- Improved access to detailed information will help to monitor for signs of waste and inefficiency and identify potential corruption and provide better evidence for policy decisions related to procurement in the future.

5.1.2 Better for suppliers

- There is a specific duty for WCAs to have regard to the particular barriers facing SMEs and to consider whether such barriers can be removed or reduced.
- The Regulations help to create a system which is simpler, more open, fair and competitive and provide consistency for suppliers ensuring that cross-border business with England can continue without confusion.
- There will also be a central digital platform for suppliers to register their core details once, so that they can be used for multiple bids.
- 30-day payment terms will apply throughout public sector supply chains, regardless of whether they are written into the contract.

5.1.3 Deliver greater value for money

- Supported by greater transparency and a bespoke approach to

procurement, the Act will provide greater flexibility for buyers to design their procurement processes.

5.1.4 Most Advantageous Tender

- The Act enables contracts to be awarded on the basis of the “Most Advantageous Tender”, which reassures contracting authorities that contracts can be awarded on a range of social, economic, environmental, and cultural criteria.

5.1.5 Wales Procurement Policy Statement (WPPS)

- Deliver Welsh procurement policy ambitions through WCAs having regard to the WPPS.

5.1.6 Tougher action

- The Act will create a new ‘debarment register’, accessible to all public sector organisations, which will list suppliers who must or may be excluded from contracts.
- It will also enable CAs to take tougher action on underperforming suppliers, making it easier to exclude suppliers who have underperformed on other contracts.

5.1.7 Strengthening exclusion grounds

- The Act toughens the rules to combat modern slavery by allowing suppliers to be excluded where there is evidence of modern slavery.

5.1.8 Effective emergency procurement

- The Act will allow faster more transparent competition processes for emergency buying, reducing the reliance on direct awards while retaining (and improving) the ability to act at pace in situations similar to the COVID pandemic.

5.1.9 Protect national security

- The ability to exclude suppliers from procurements if they present a threat to national security.

5.1.10 Comply with International Trade obligations

- The Act will help ensure that Contracting Authorities within the UK meet its international trade obligations on public procurement included in treaties that it has signed including the WTO GPA, TCA and CPTPP.

- Will help ensure that UK businesses can continue to be successful in competing for public contracts in other countries around the world.

6. How will the legislation enable sectors to operate more efficiently?

6.1 The Regulations and the 2023 Act will have a far-reaching impact beyond an organisation's procurement and commercial teams. The behavioural and cultural change generated as a result of the evolution in procurement legislation in Wales will help WCAs achieve their well-being objectives and the seven national well-being goals by improving strategic procurement, increasing innovation, collaboration and cross-sector working, and delivering better outcomes for Wales. The Regulations mainly focus on increasing transparency through procurement, the key benefits of which are set out at paragraph 5.1.1 above.

7. Whether the legislation will improve access or outcomes for disadvantaged or excluded sections of society

7.1 These Regulations and The Act, alongside the SPPP Act and the HSP Act, will all dovetail together to provide an effective framework for procurement in Wales which, alongside the WPPS and the WBFG Act, will ensure that the Welsh public sector use procurement as an effective lever to deliver social, cultural, economic and environmental outcomes, including fair work.

7.2 The provisions contained in the 2024 Regulations are largely technical in nature, regulating how public procurements are undertaken. The nature of these Regulations means they have limited equality impacts, whether direct or indirect.

7.3 The Act makes provision for certain contracts to be 'reserved' so that only supported employment providers can participate in the procurement. Supported employment providers are organisations that operate for the purpose of providing employment or employment-related support to disabled or disadvantaged individuals, and whose workforce are made up of 30 percent of people who are disabled or disadvantaged. By providing for certain contracts to be protected for these organisations, the Act helps support the closing of the employment gap between workers who are disabled or disadvantaged and other workers.

7.4 While the Regulations and associated Act do not make any other direct reference to any protected characteristics, WCAs will be required to have due regard to the WPPS published under the Act. WCAs should consider how they can use public procurement to deliver additional outcomes through the procurement they are doing so it is in line with

value for money and related to the subject matter of the contract. Such additional outcomes are outlined within the WPPS.

7.5 The Regulations and associated Act do not disadvantage some people or groups more than others. No direct or indirect negative impacts or barriers have been identified on people with protected characteristics. Positive benefits were identified as outlined above.

8. Consultation

8.1 Formal public consultations were held on the UK Government's Draft Statutory Instruments (SIs) with bilingual supporting documentation explaining the proposed derogations / differences for Wales. Many of the elements included in the consultations are being taken forward in these Regulations and the information gathered therefore applies. A separate consultation exercise was therefore not held.

8.2 The consultation documents and Welsh Government's summary of responses has been published at:

- [wales-consultation-on-public-procurement-regulations-part-1](#) and
- [wales-consultation-on-public-procurement-regulations-part-2](#).

8.3 Feedback received was generally positive with respondents welcoming the opportunity to give their views. There was broad agreement to the proposals in the consultation.

PART 2 – REGULATORY IMPACT ASSESSMENT

9. Regulatory Impact Assessment

9.1 The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a Regulatory Impact Assessment as to the likely costs and benefits of complying with these Regulations.

9.2 A Regulatory Impact Assessment was laid as part of the [Explanatory Memorandum](#) to The Procurement (Wales) Regulations 2024.