

Draft Regulations laid before Senedd Cymru under section 122(10)(e), (i), (l), (q), (r), (s) and (t) of the Procurement Act 2023, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2025 No. (W.)

**PUBLIC PROCUREMENT,
WALES**

**The Procurement (Miscellaneous
Amendments) (Wales) Regulations
2025**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make substantive amendments to the Procurement Act 2023 (“the 2023 Act”) and to the Procurement (Wales) Regulations 2024 (“the 2024 Regulations”), as well as other amendments arising from the coming into force of the 2023 Act.

The purpose of the 2023 Act is to reform the United Kingdom’s public procurement regime following its exit from the European Union (EU), creating a simpler and more transparent system not based on transposed EU Directives. The 2024 Regulations supplement the 2023 Act.

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. Regulation 3(2) and (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. Regulation 3(4) makes amendments to Schedule 9 to reflect additions and amendments to the UK’s international obligations in respect of procurement.

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.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. It was determined that the Regulatory Impact Assessment which was carried out for the 2024 Regulations is also applicable to these Regulations and as such no further assessment is required.

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2025 No. (W.)

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**The Procurement (Miscellaneous
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Made

Coming into force

24 February 2025

The Welsh Ministers⁽¹⁾ make the following Regulations in exercise of the powers conferred on them by sections 69(4), 89(3), 95(1), (2) and (3), 122(3) and 125 of, and 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 Procurement Act 2023⁽²⁾.

In accordance with sections 122(10)(e), (i), (l), (q), (r), (s) and (t) of that Act, a draft of these Regulations has been laid before, and approved by a resolution of, Senedd Cymru⁽³⁾.

(1) The Welsh Ministers are the “appropriate authority” as defined in section 123(1) of the Procurement Act 2023, subject to the restrictions set out in section 111(1) of that Act.

(2) 2023 c. 54.

(3) See also section 40 of the Legislation (Wales) Act 2019 (anaw 4) for provision about the procedure that applies to this instrument.

PART 1

Introductory

Title and coming into force

1.—(1) The title of these Regulations is the Procurement (Miscellaneous Amendments) (Wales) Regulations 2025.

(2) These Regulations come into force on 24 February 2025.

Interpretation

2. In these Regulations—

“the 2023 Act” (“*Deddf 2023*”) means the Procurement Act 2023⁽¹⁾;

“the 2024 Regulations” (“*Rheoliadau 2024*”) means the Procurement (Wales) Regulations 2024⁽²⁾.

PART 2

Amendments to the 2023 Act

Amendments to Schedules 1 and 9 to the 2023 Act

3.—(1) The 2023 Act is amended as follows.

(2) In Schedule 1 (threshold amounts), in paragraph 1(1)—

(a) in the words before the table—

(i) after “the table below is” insert “the threshold set out in the corresponding row of the third column.”;

(ii) omit paragraphs (a) and (b) and the “and” between those paragraphs;

(b) in the table—

(i) omit the third column (so that the fourth column becomes the third column);

(ii) in the heading of the new third column, omit “: any other contract”.

(3) Omit paragraph 1(1A) of Schedule 1.

(4) In Schedule 9 (treaty state suppliers)—

(a) omit paragraph A1 and the italic headings before and after it;

(b) in paragraph 9—

(i) omit paragraph (a) and the “In—” before it;

(1) 2023 c. 54.

(2) S.I. 2024/782 (W. 121).

- (ii) at the beginning of paragraph (b), omit “(b) any other case, the”;
- (c) in paragraph 10—
 - (i) omit paragraph (a) and the “In—” before it;
 - (ii) at the beginning of paragraph (b), omit “(b) any other case, the”;
- (d) in paragraph 11—
 - (i) omit paragraph (a) and the “In—” before it;
 - (ii) at the beginning of paragraph (b), omit “(b) any other case, the”;
- (e) in paragraph 13—
 - (i) omit paragraph (a) and the “In—” before it;
 - (ii) at the beginning of paragraph (b), omit “(b) any other case, the”;
- (f) in paragraph 17—
 - (i) omit paragraph (a) and the “In—” before it;
 - (ii) at the beginning of paragraph (b), omit “(b) any other case, the”;
- (g) in paragraph 20—
 - (i) omit paragraph (a) and the “In—” before it;
 - (ii) at the beginning of paragraph (b), omit “(b) any other case, the”.

PART 3

Amendments to the 2024 Regulations

Amendment to Part 1 of the 2024 Regulations

4.—(1) Part 1 of the 2024 Regulations is amended as follows.

(2) In regulation 3 (interpretation), at the appropriate place insert—

““utilities contract” (“*contract cyfleustodau*”) has the meaning given by section 6 of the 2023 Act;”.

Amendments to Part 2 of the 2024 Regulations

5.—(1) Part 2 of the 2024 Regulations is amended as follows.

(2) In regulation 4 (interpretation of Part 2)—

- (a) in the English text, for “(“*Deddf 2006*”)” substitute “(“*DC 2006*”)”,
- (b) omit the definition of “utilities contract”,

- (c) in the English text in the definition of “utility”, omit—

““Welsh digital platform” (*“platform digidol Cymreig”*) means the online system provided by the Welsh Government for use by contracting authorities to whom regulation 2 applies;”, and

- (d) in the appropriate place in the English text insert—

““Welsh digital platform” (*“platform digidol Cymreig”*) means the online system provided by the Welsh Government for use by contracting authorities to whom regulation 2 applies;”.

- (3) In regulation 12 (supplier’s connected person information)—

- (a) at the end of paragraph (6)(f), omit “and”, and
- (b) in paragraph (6)(g) omit the full stop, and then after paragraph (6)(g) insert—

“, and

- (h) where the connected person is a company registered under the CA 2006, the person’s registration number given under that Act.”

- (4) In regulation 13 (supplier’s exclusion grounds information)—

- (a) in paragraph (1), for “(13)” substitute “(13A)”,
- (b) at the end of paragraph (8)(a)(i), insert “or”,
- (c) at the end of paragraph (13)(d)(ii), insert “and”,
- (d) omit paragraph (13)(e) and the “and” after it, and
- (e) after paragraph (13), insert—

“(13A) If the supplier or one or more connected persons has been the subject of an event mentioned in paragraphs (2) to (12), any evidence that the supplier or connected person—

- (a) took the event seriously, for example by paying any fine or compensation,
- (b) took steps to prevent the event occurring again, for example by changing staff or management, or putting procedures or training in place, and
- (c) committed to taking further preventative steps, where appropriate.”

- (5) In regulation 19(2) (tender notices: open procedure), omit sub-paragraph (v).

(6) In regulation 20(2) (tender notices: competitive flexible procedure)—

- (a) omit the “and” after sub-paragraph (g), and
- (b) in sub-paragraph (h) omit the full stop, and then after sub-paragraph (h) insert—

“, and

- (i) whether an associated tender document is being, or may be, provided in accordance with the tender notice after the date when that notice is published and, if so, a link to the web page where it will be provided, or an explanation of how the document will be provided.”

(7) In regulation 27 (transparency notices)—

- (a) after paragraph (2)(d), insert—

“(da) in the case of a procurement where the direct award justification at paragraph 8 of Schedule 5 to the 2023 Act applies, the unique identifiers of the earlier competitive tendering procedure (that is the procurement identifier) and the earlier contract referred to in paragraph 8(a) of Schedule 5,”;

- (b) after paragraph (2)(k)(i), omit “and”;

- (c) after paragraph (2)(k)(ii), insert—

“and

- (iii) the direct award justification in Schedule 5 to the 2023 Act which applies and an explanation of why the contracting authority considers that it applies,”;

- (d) after paragraph (2)(p), insert—

“(pa) a description of any option which will be included in the contract—

- (i) to supply additional goods, services or works, or
- (ii) to extend or renew the term of the contract,”.

(8) In regulation 28 (contract award notices except those published by private utilities)—

- (a) in paragraph (2)(e)(vi), omit “(“associated person” (*“person â chyswllt”*) has the meaning given by section 26(4) of the 2023 Act)”, and

- (b) after paragraph (8), insert—

“(9) In this regulation “associated person” has the meaning given by section 26(4) of the 2023 Act.”

(9) In regulation 30 (contract award notices published by private utilities: direct awards)—

(a) after paragraph (2)(g)(i), omit “and”, and

(b) after paragraph (2)(g)(ii), insert—

“and

(iii) the direct award justification in Schedule 5 to the 2023 Act which applies and an explanation of why the contracting authority considers that it applies,”.

(10) In regulation 36 (contract details notices: direct award), for paragraph (2)(e), substitute—

“(e) if sub-paragraph (d) applies—

(i) the direct award justification in Schedule 5 to the 2023 Act which applies and an explanation of why the contracting authority considers that it applies,

(ii) the offence or other event mentioned in Schedule 6 to the 2023 Act by virtue of which the supplier is an excluded supplier, and

(iii) which ground in section 41(5) of the 2023 Act applies and an explanation of why the contracting authority considers that it applies,”

(11) In regulation 39(2) (payments compliance notices)—

(a) after sub-paragraph (c), insert—

“(ca) the proportion of invoices paid in accordance with the term in section 68(2) of the 2023 Act during the reporting period, expressed as a percentage of the total number of invoices that were, or should have been, paid in accordance with that term within the reporting period,”;

(b) in paragraph (5), for “is to” substitute “includes”.

Amendments to Part 3 of the 2024 Regulations

6. After regulation 45 (meaning of “works” in paragraph 5(1) of Schedule 1 to the 2023 Act), insert—

“Exempt contracts: affiliated persons’ calculations

45A.—(1) For the purposes of the turnover test in paragraph 6(3) of Schedule 2 to the 2023 Act, an affiliated person’s—

- (a) affiliated turnover amount⁽¹⁾ is to be calculated using their entire affiliated turnover amount generated over the relevant period, and
- (b) total turnover amount is to be calculated using their entire total turnover amount generated over the relevant period.

(2) Where an affiliated person’s affiliated turnover amount or total turnover amount is not available for the entirety of the relevant period because the affiliated person⁽²⁾ was created or commenced their activities following the beginning of the relevant period, the affiliated turnover amount and total turnover amount is to be calculated in accordance with paragraph (3).

(3) An affiliated person’s affiliated turnover amount and total turnover amount is to be calculated—

- (a) where there has been no turnover during the relevant period, using credible business projections for a three-year period, starting from the date of contract award;
- (b) in any other case, using—
 - (i) any affiliated turnover or total turnover, as the case may be, generated during the relevant period, and
 - (ii) credible business projections, starting from the date of contract award, for such part of the three-year period as are not covered by paragraph (i).

(4) In calculating the affiliated turnover amount and total turnover amount in relation to a person (“A”), the equivalent turnover of a person who is an affiliated person in relation to A, but is not the utility⁽³⁾, is to be treated as part of A’s turnover.

(5) In this regulation—

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- (1) See paragraph 6(3) of Schedule 2 to the 2023 Act for the definition of “affiliated turnover amount”.
 - (2) See paragraph 6(2) of Schedule 2 to the 2023 Act for the definition of “affiliated person”.
 - (3) See section 35(4) of the 2023 Act for the definition of “utility”.

“equivalent turnover” (“*trosiant cyfwerth*”) means—

- (a) where the turnover test is being applied in respect of a utilities contract for the supply of goods, in respect of—
 - (i) the affiliated turnover amount, turnover deriving from the supply of goods to the utility or other persons affiliated with the utility;
 - (ii) the total turnover amount, the total turnover deriving from the supply of goods,

where, for the purposes of paragraph (i), those goods are the same or similar to the goods A supplies to the utility or other persons affiliated with the utility and are supplied over the relevant period or, where A’s turnover has been calculated in accordance with paragraph (3), a corresponding three-year period;

- (b) where the turnover test is being applied in respect of a utilities contract for the supply of services, in respect of—
 - (i) the affiliated turnover amount, turnover deriving from the supply of services to the utility or other persons affiliated with the utility;
 - (ii) the total turnover amount, the total turnover deriving from the supply of services,

where, for the purposes of paragraph (i), those services are the same or similar to the services A supplies to the utility or other persons affiliated with the utility and are supplied over the relevant period or, where A’s turnover has been calculated in accordance with paragraph (3), a corresponding three-year period;

- (c) where the turnover test is being applied in respect of a utilities contract for the supply of works, in respect of—
 - (i) the affiliated turnover amount, turnover deriving from the supply of works to the utility or other persons affiliated with the utility;
 - (ii) the total turnover amount, the total turnover deriving from the supply of works,

where, for the purposes of paragraph (i), those works are the same or similar to the works A supplies to the utility or other persons affiliated with the utility and are supplied over the relevant period or, where

A's turnover has been calculated in accordance with paragraph (3), a corresponding three-year period;

"relevant period" (*"cyfnod perthnasol"*) means either—

- (a) the period of three years ending with the date of contract award, or
- (b) where information relating to turnover for the period in sub-paragraph (a) is not available, a three-year period corresponding with the accounting periods of the affiliated person, ending not earlier than one year before the date of contract award.

Gas or heat operator calculations

45B.—(1) For the purposes of paragraph 1(2)(c) of Schedule 4 to the 2023 Act—

- (a) the amount of gas or heat supplied to the network is to be calculated using the total turnover generated by the supply of gas or heat by the operator to the network ("network turnover") during the relevant period, and
- (b) the operator's turnover amount is to be calculated using the operator's total turnover during the relevant period.

(2) Where an operator's network turnover or total turnover is not available for the entirety of the relevant period because the operator was created or commenced their activities after the beginning of the relevant period, turnover is to be calculated in accordance with paragraph (3).

(3) An operator's network turnover and total turnover is to be calculated—

- (a) where there has been no turnover during the relevant period, using credible business projections for a three-year period starting from the date of contract award;
- (b) in any other case, using—
 - (i) any network turnover or total turnover, as the case may be, generated during the relevant period, and
 - (ii) credible business projections, starting from the date of contract award, for such part of the three-year period as are not covered by paragraph (i).

(4) In this regulation—

“quarter” (“*chwarter*”) means a period of three months beginning with 1 January, 1 April, 1 July or 1 October in any given year; “relevant period” (“*cyfnod perthnasol*”) means either—

- (a) the period of three years ending with the date of contract award, or
- (b) where information relating to gas and heat supplied to the network or turnover for the period in subparagraph (a) is not available, a three-year period corresponding with the accounting periods of the operator, ending with the last quarter before the date of contract award for which the operator has such information available.

Electricity operator calculations

45C.—(1) For the purposes of paragraph 2(2)(d) of Schedule 4 to the 2023 Act—

- (a) the amount of electricity supplied to the network is to be calculated using the total amount of electricity supplied by the operator to the network during the relevant period, and
- (b) the amount of energy produced by the operator is to be calculated using the total amount of energy produced by the operator during the relevant period.

(2) Where the amount of electricity supplied by the operator to the network, or the amount of energy produced by the operator, is not available for the entirety of the relevant period because the operator was created or commenced their activities after the beginning of the relevant period, the amount of electricity supplied by the operator to the network and the amount of energy produced by the operator is to be calculated in accordance with paragraph (3).

(3) The amount of electricity supplied by the operator to the network and the amount of energy produced by the operator is to be calculated—

- (a) where there has been no electricity supplied or energy produced during the relevant period, using credible business projections for a three-year period starting from the date of contract award;
- (b) in any other case, using—
 - (i) any electricity supplied to the network or energy produced, as

the case may be, during the relevant period, and

- (ii) credible business projections, starting from the date of contract award, for such part of the three-year period as are not covered by paragraph (i).

(4) In this regulation—

“quarter” (“*chwarter*”) means a period of three months beginning with 1 January, 1 April, 1 July or 1 October in any given year;

“relevant period” (“*cyfnod perthnasol*”) means either—

- (a) the period of three years ending with the date of contract award, or
- (b) where information relating to electricity supplied or energy produced for the period in sub-paragraph (a) is not available, a three-year period corresponding with the accounting periods of the operator, ending with the last quarter before the date of contract award for which the operator has such information available.

Water operator calculations

45D.—(1) For the purposes of paragraph 3(4)(d) of Schedule 4 to the 2023 Act—

- (a) the amount of drinking water supplied to the network is to be calculated using the total amount of drinking water supplied by the operator to the network during the relevant period, and
- (b) the amount of drinking water produced by the operator is to be calculated using the total amount of drinking water produced by the operator during the relevant period.

(2) Where the amount of drinking water supplied by the operator to the network or the amount of drinking water produced by the operator is not available for the entirety of the relevant period because the operator was created or commenced their activities after the beginning of the relevant period, the amount of drinking water supplied and the amount of drinking water produced is to be calculated in accordance with paragraph (3).

(3) The amount of drinking water supplied by the operator to the network and the amount of drinking water produced by the operator is to be calculated—

- (a) where there has been no drinking water supplied or produced during the relevant period, using credible business projections for a three-year period starting from the date of contract award;
 - (b) in any other case, using—
 - (i) any drinking water supplied to the network or drinking water produced, as the case may be, during the relevant period, and
 - (ii) credible business projections, starting from the date of contract award, for such part of the three-year period as are not covered by paragraph (i).
- (4) In this regulation—
- “quarter” (“*chwarter*”) means a period of three months beginning with 1 January, 1 April, 1 July or 1 October in any given year;
- “relevant period” (“*cyfnod perthnasol*”) means either—
- (a) the period of three years ending with the date of contract award, or
 - (b) where information relating to drinking water supplied or produced for the period in sub-paragraph (a) is not available, a three-year period corresponding with the accounting periods of the operator, ending with the last quarter before the date of contract award for which the operator has such information available.”

Amendments to Part 4 of the 2024 Regulations

7.—(1) Part 4 of the 2024 Regulations is amended as follows.

(2) In regulation 46(3)—

- (a) in the English text, in sub-paragraph (b) omit “(“*gweithiau*””, and
- (b) in the English text, in sub-paragraph (c) omit “(“*contract gweithiau*””.

(3) In regulation 49, in the English text, omit “(“*hysbysiad cyhoeddus*””.

Amendments to Schedule 2 to the 2024 Regulations

8.—(1) The Table in Schedule 2 to the 2024 Regulations (central government authorities) is amended as follows.

(2) In the left hand column (lead authority (1))—

- (a) for “The National Assembly for Wales Commission” substitute “Senedd Commission”,
 - (b) for “Care Council for Wales” substitute “Social Care Wales”, and
 - (c) for “Sport Wales” substitute “The Sports Council for Wales, known as “Sport Wales””.
- (3) In the right hand column (related authority (2))—
- (a) for “Higher Education Funding Council for Wales” substitute “The Commission for Tertiary Education and Research”,
 - (b) for “Welsh National Health Service Trusts and Local Health Boards” and “Welsh NHS Bodies”, substitute—

“National Health Service

A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006

An NHS Trust established under section 18 of that Act

A Special Health Authority established under section 22 of that Act.”

Name

The Cabinet Secretary for Finance and Welsh Language, one of the Welsh Ministers

Date