

SL(6)361 – The Public Procurement (International Trade Agreements) (Amendment) (Wales) (No. 2) Regulations 2023

Background and Purpose

These Regulations revoke and replace the Public Procurement (International Trade Agreements) (Amendment) (Wales) Regulations 2023. They amend various United Kingdom public procurement regulations for the purpose of implementing the procurement chapters of two Free Trade Agreements entered into by the United Kingdom, one with Australia (the “UK-Australia FTA”) and the other with New Zealand.

The Regulations also make the following general amendments to public procurement regulations to ensure compliance with commitments made in the UK-Australia FTA:

- the introduction of a rule that, where the value of a procurement cannot be estimated, the procurement is to be treated as having been valued at the relevant threshold for that type of procurement (including special provision for situations in which the value of one or more lots cannot be estimated);
- the removal of the possibility of using a prior information notice or periodic indicative notice as the call for competition; and
- a prohibition on contracting authorities and utilities from terminating contracts in a manner that circumvents obligations in the UK-Australia FTA.

The Regulations also make provision for transitional arrangements.

The Regulations apply in relation to devolved Welsh authorities and come into force on 26 May 2023.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



Merits Scrutiny

The following 2 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

These Regulations revoke and replace the Public Procurement (International Trade Agreements) (Amendment) (Wales) Regulations 2023 in order to address the technical reporting points identified by this Committee in its report on those Regulations.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Rebecca Evans MS, Minister for Finance and Local Government, in a letter to the Llywydd dated 23 May 2023.

In particular, we note that the letter says:

“The effect of ...[these Regulations]... will be to fulfil an obligation to implement the Free Trade Agreements between the UK and Australia and the UK and New Zealand in respect of devolved Welsh authorities, to avoid any possible disputes with the member states and/or their bidders and to avoid uncertainty which may have an impact on UK bidders into these procurement markets. The UK Government have made similar Regulations which will come into force on 25 May 2023.

The Welsh Government is not adhering to the 21-day convention due to the fact that the coming into force of...[these Regulations].. is required to align with the coming into force of the UK Government Regulations in order for the Free Trade Agreements to be fully implemented across the United Kingdom. Both the UKG Regulations and...[these Regulations]... have related provisions, which require their coming into force consecutively. A commitment has been provided to Australia and New Zealand that the Regulations will be in force no later than 26 May 2023.”

Welsh Government response

A Welsh Government response is not required.

Committee Consideration

The Committee considered the instrument at its meeting on 5 June 2023 and reports to the Senedd in line with the reporting points above.

