

## **Explanatory Memorandum to The Procurement (Wales) (Amendment) 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 (Wales) (Amendment) Regulations 2025. I am satisfied the benefits justify the likely costs.

**Mark Drakeford MS**  
**Cabinet Secretary for Finance and Welsh Language**  
**29 April 2025**

## **PART 1**

### **1. Description**

- 1.1 The Procurement Act 2023 (“The Act”) established regulation-making powers for Welsh Ministers for Wales.
- 1.2 The Regulations which are the subject of this Explanatory Memorandum, namely The Procurement (Wales) (Amendment) Regulations 2025 (“Amendment Regulations 2025”) will be made using equivalent powers included within the Act to set out how a calculation as to the percentage of activities carried out by a person is to be made in relation to vertical and horizontal arrangements (exempted contracts).
- 1.3 The Amendment Regulations 2025 will also make a minor amendment to The Procurement (Wales) Regulations 2024 to address comments received from Legislation, Justice and Constitution Committee (LJCC) on The Procurement (Miscellaneous Amendments) (Wales) Regulations 2025.
- 1.4 Regulation 1 and 2 of the Amendment Regulations 2025 provide the title, details of when the Regulations will come into force and includes “interpretation” details.
- 1.5 Regulations 3(2) and 3(3) amends Regulations 3 and 4 of the 2024 Regulations which concerns the definition of “utility”. These amendments will apply to contracting authorities that are devolved Welsh authorities or are treated as such.
- 1.6 Regulation 3(4) amends Regulation 45 of the 2024 Regulations and concerns “Exempt contracts: vertical arrangements’ calculations” and “Exempt contracts: horizontal arrangements’ calculations”.

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

- 2.1 The Amendment Regulations 2025 address points raised by the Committee in their report<sup>1</sup> on the Procurement (Miscellaneous Amendments) (Wales) Regulations 2025, SL(6)571.

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<sup>1</sup> <https://senedd.wales/media/lq3l01zs/cr-ld16940-e.pdf>

### **3. Legislative background**

3.1 The Amendment Regulations 2025 are being made by the Welsh Ministers in exercise of the powers conferred on them by sections, 122(3), and paragraphs 2(6) and 3(3) of Schedule 2, to the Procurement Act 2023.

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 2(6) and 3(3) of Schedule 2, to the Procurement Act 2023.

### **4. Purpose and intended effect of the legislation**

4.1 The Amendment Regulations 2025 are required to ensure that Welsh Contracting Authorities (WCAs) are able to apply the requirements relating to Schedule 2 of the Act in a consistent way. They are due to come into force on 23 June 2025.

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

5.1 These Regulations require WCAs to undertake the calculations process for both vertical and horizontal arrangements in a consistent manner with clear detail on what should be considered when undertaking these calculations.

5.2 Enhanced Clarity: Clear definitions and calculation methods improve understanding and consistency in procurement practices relating to the calculation of percentages relating to a vertical or horizontal arrangement.

5.3 Improved Efficiency: Streamlined procedures save time and resources and minimise the risk of challenge.

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

6.1 The Amendment Regulations 2025 mainly focus on ensuring a consistent approach to calculating the percentage of activities carried out by a person in relation to vertical and horizontal arrangements, thus enabling a WCA to determine if a contract is exempt from the requirements of the Act. This will ensure a consistent approach is adopted across the Welsh Public Sector, the key benefits of which are set out at section 5 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 Social Partnership and Public Procurement (Wales) Act 2023 (SPPP) and the Health Service Procurement (Wales) Act 2024 (HSP), will all dovetail together to provide an effective framework for procurement in Wales which, alongside the Wales Procurement Policy Statement (WPPS) and the Well-Being of Future Generations Act (WBFGA), 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 the Amendment Regulations 2025 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 For the Procurement (Wales) 2024 Regulations 2024, formal public consultations were held using the UK Government's Draft Statutory Instruments (SIs) with bilingual supporting documentation explaining the proposed derogations / differences for Wales. The vertical and horizontal Arrangements Calculations were included in that consultation.

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 The amendment to the placing of the definition of “utility” responds to the technical point included in the LJCC report on The Procurement (Miscellaneous Amendments) (Wales) Regulations 2025. This is technical in nature and therefore a further consultation has not been held on this element.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **9. Introduction**

- 9.1 This Regulatory Impact Assessment (RIA) assesses the potential impacts of the proposed Regulations under the Procurement Act. The assessment considers two options: Business as Usual (do nothing) and Make Secondary Legislation.
- 9.2 The RIA aims to identify any additional transition costs to the Welsh Government (WG), Welsh Contracting Authorities (WCAs), or potential bidders, as well as any ongoing costs associated with the implementation of the proposed Regulations.

### **Options Considered**

#### **10. Option 1: Business as Usual (Do Nothing)**

- 10.1 Doing nothing would mean that Welsh Ministers would not take forward the powers contained within the Procurement Act 2023 in relation to making Regulations for vertical and horizontal arrangements calculations and correcting a minor issue related to interpretation which was identified by the LJCC.
- 10.2 This would mean that the process used by WCAs to calculate the percentages in Schedule 2, paragraphs 2 and 3 of the Act would not be on a Statutory footing, and be in [guidance](#) alone.
- 10.3 This could cause confusion for WCAs and be inconsistent with the approach taken by the Minister of the Crown and Northern Ireland department where Regulations are in force on this matter.
- 10.4 Doing nothing in relation to the minor issue raised by LJCC would mean that the required correction identified by the committee could not be made.

#### **11. Option 2: Make Secondary Legislation**

- 11.1 This option involves implementing the WG policy approach to vertical and horizontal arrangements calculations (currently in guidance) into Regulations.
- 11.2 This will provide clarity to WCAs, ensure alignment and provide a statutory footing for the calculation process.

## **12. Costs and benefits - Option 1: Do nothing**

12.1 This is the baseline option and, as such, there are no additional costs associated with this option.

12.2 No additional benefit has been identified.

## **13 Costs and benefits - Option 2: Make Secondary Legislation**

13.1 The Regulations are clear on the process that should be followed and largely mirror the process within current guidance. The guidance will need some minor revisions but the opportunity cost associated with the Welsh Government staff resource needed to make those changes is expected to be minimal.

13.2 Given that the process set out in the Regulations largely reflects existing guidance, we do not expect there to be any additional transition costs incurred by contacting authorities. No training or familiarisation costs are anticipated.

13.3 We do not have any data on the frequency with which the horizontal and vertical arrangements calculations are currently required. However, we assume the current guidance is being used when required. Given that the process set out in the Regulations is largely in line with that in the guidance, we do not anticipate there being any additional ongoing costs incurred by WCAs.

13.4 Similarly, placing the guidance onto a statutory footing is not expected to impose an additional cost on contractors or impact on the awarding of contracts.

13.5 The benefit of option 2 is that it will provide clarity on the process that needs to be followed, and brings the policy included in guidance onto a statutory footing thus ensuring a consistent approach is used by WCAs. It will also correct a minor issue raised by LJCC. For these reasons, option 2 is the preferred option.