

Draft Regulations laid before Senedd Cymru under section 122(10)(s) of the Procurement Act 2023, for approval by resolution of Senedd Cymru.

DRAFT WELSH STATUTORY
INSTRUMENTS

2025 No. (W.)

**PUBLIC PROCUREMENT,
WALES**

**The Procurement (Wales)
(Amendment) Regulations 2025**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make substantive amendments to the Procurement (Wales) Regulations 2024 (“the 2024 Regulations”) to enable the implementation of the Procurement Act 2023 (“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”), by creating a simpler and more transparent system, no longer based on transposed EU Directives. The 2024 Regulations supplement the 2023 Act.

Regulation 3 makes several amendments to the 2024 Regulations. Paragraph (2) removes the definition of “utility” from regulation 4 and paragraph (3) inserts it into regulation 3 instead, to enable the definition to apply to the whole Regulations. Paragraph (4) inserts new regulations 45E and 45F into the 2024 Regulations to set out how a calculation of the percentage of activities carried out by a person is to be made, in relation to vertical and horizontal arrangements.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from The Commercial and Procurement Directorate, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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**The Procurement (Wales)
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Made

Coming into force

23 June 2025

The Welsh Ministers⁽¹⁾ make the following Regulations in exercise of the powers conferred on them by section 122(3) of, and paragraphs 2(6) and 3(3) of Schedule 2 to, the Procurement Act 2023⁽²⁾.

In accordance with section 122(10)(s) of that Act, a draft of these Regulations has been laid before, and approved by a resolution of, Senedd Cymru.

Title and coming into force

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

(2) These Regulations come into force on 23 June 2025.

Interpretation

2. In these Regulations, “the 2024 Regulations” (“*Rheoliadau 2024*”) means the Procurement (Wales) Regulations 2024⁽³⁾—

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- (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) S.I. 2024/782 (W. 121), as amended by S.I. 2025/181 (W. 38).

Amendments to the 2024 Regulations

3.—(1) The 2024 Regulations are amended as follows.

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

““utility” (“*cyfleustod*”) has the meaning given by section 35(4) of the 2023 Act.”

(3) In regulation 4 (interpretation of Part 2), omit the definition of “utility”.

(4) After regulation 45D (water operator calculations) insert—

“Exempt contracts: vertical arrangements’ calculations

45E.—(1) For the purposes of paragraph 2(2)(c) of Schedule 2 to the 2023 Act (exempted contracts), the calculation of the percentage of activities carried out by a person is to be made in accordance with this regulation.

(2) Subject to paragraph (8), the percentage of activities carried out by a person for or on behalf of the contracting authorities or other persons described in paragraph 2(2)(c)(ii) of Schedule 2 to the 2023 Act is to be calculated by taking that person’s attributable turnover as a percentage of their total turnover, over the relevant period.

(3) A person’s attributable turnover is their turnover deriving from activities carried out on behalf of the contracting authorities or other persons described in paragraph 2(2)(c)(ii) of Schedule 2 to the 2023 Act.

(4) Where a person’s attributable turnover or total turnover is not available for the entirety of the relevant period because the person was created or commenced their activities following the beginning of the relevant period, the attributable turnover and total turnover is to be calculated in accordance with paragraph (5).

(5) A person’s attributable turnover and total turnover is to be calculated—

- (a) where there has been no turnover at all during the relevant period, using credible business projections for a period of three years beginning with the date of contract award;
- (b) in any other case, using—
 - (i) any attributable turnover or total turnover, as the case may be, generated during the relevant period, and

- (ii) credible business projections, for a period beginning with the date of contract award,

which, when combined, provide turnover information and projections for the entirety of the period of three years beginning with the date any turnover was first generated during the relevant period.

(6) Where a person's attributable turnover or total turnover for the entirety of the relevant period is, as at the date of contract award, no longer representative of the person's activities because the activities changed as a result of a reorganisation of the person which occurred following the beginning of the relevant period, the attributable turnover and total turnover is to be calculated in accordance with paragraph (7).

(7) A person's attributable turnover and total turnover is to be calculated—

- (a) where there has been no turnover at all generated after reorganisation, using credible business projections for a period of three years beginning with the date of contract award;
- (b) in any other case, using—
 - (i) any attributable turnover or total turnover, as the case may be, generated after reorganisation, and
 - (ii) credible business projections, for a period beginning with the date of contract award,

which, when combined, provide turnover information and projections for the entirety of the period of three years beginning with the date any turnover was first generated after reorganisation.

(8) Where the percentage of activities carried out by a person, as calculated in accordance with paragraphs (2) to (7), is not a suitable measure of the activities carried out by a person for the purposes of paragraph 2(2)(c) of Schedule 2 to the 2023 Act, the percentage of such activities must be calculated by taking, over the relevant period, one of the following—

- (a) costs incurred by the person on activities carried out for or on behalf of the authorities or other persons, as a percentage of their total costs;
- (b) time spent by the person on activities carried out for or on behalf of the authorities or other persons, as a percentage of their total time;

- (c) the value of goods, services or works supplied by the person to the authorities or other persons, as a percentage of the total value of goods, services or works supplied by the person;
- (d) the value of goods, services or works supplied to the person by the authorities or other persons, as a percentage of the total value of goods, services or works supplied to the person.

(9) In this regulation—

“accounting period” (*“cyfnod cyfrifyddu”*) means a period in respect of which accounts are prepared in relation to the person;

“date of contract award” (*“dyddiad dyfarnu’r contract”*) means the date when the contracting authority decided to award the contract;

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

- (a) the period of three years ending with the date of contract award, or
- (b) where, due to the timing of the preparation of the person’s accounts, information relating to turnover for the period in sub-paragraph (a) is not available as at the date of contract award, a period of three years ending with the date the last accounting period before the date of contract award for which such information is available ends;

“reorganisation” (*“ad-drefnu”*) means a change, other than a minimal or incidental change, to a person’s structure, operations, funding or ownership.

Exempt contracts: horizontal arrangements’ calculations

45F.—(1) For the purposes of paragraph 3(2)(b) of Schedule 2 to the 2023 Act (exempted contracts), the calculation of the percentage of activities contemplated by the horizontal arrangement is to be made in accordance with this regulation.

(2) Subject to paragraph (8), the percentage of activities intended to be carried out, other than for the purposes of the contracting authorities’ public functions, is to be calculated by taking the non-attributable turnover generated by the horizontal arrangement’s activities as a

percentage of the total turnover generated by the horizontal arrangement's activities, over the relevant period.

(3) A horizontal arrangement's non-attributable turnover is turnover generated by the horizontal arrangement's activities that is attributable to purposes other than the contracting authorities' public functions.

(4) Where the non-attributable turnover or total turnover generated by a horizontal arrangement's activities is not available for the entirety of the relevant period because the arrangement was created, or the activities commenced, after the beginning of the relevant period, the non-attributable turnover and total turnover is to be calculated in accordance with paragraph (5).

(5) Non-attributable turnover and total turnover generated by a horizontal arrangement's activities is to be calculated—

- (a) where there has been no turnover at all during the relevant period, using credible business projections for a period of three years beginning with the date of contract award;
- (b) in any other case, using—
 - (i) any non-attributable turnover or total turnover, as the case may be, generated during the relevant period, and
 - (ii) credible business projections, for a period beginning with the date of contract award,

where, when combined, provide turnover information and projections for the entirety of the period of three years beginning with the date any turnover was first generated during the relevant period.

(6) Where the non-attributable turnover or the total turnover generated by a horizontal arrangement's activities for the entirety of the relevant period is, as at the date of contract award, no longer representative of the horizontal arrangement's activities because the activities changed as a result of a reorganisation of the horizontal arrangement which occurred following the beginning of the relevant period, the non-attributable turnover and total turnover is to be calculated in accordance with paragraph (7).

(7) Non-attributable turnover and total turnover generated by a horizontal arrangement's activities is to be calculated—

(a) where there has been no turnover generated after reorganisation or the change in activities, using credible business projections for a period of three years beginning with the date of contract award;

(b) in any other case, using—

(i) any non-attributable turnover or total turnover, as the case may be, generated after reorganisation or the change in activities, and

(ii) credible business projections, for a period beginning with the date of contract award,

where, when combined, provide turnover information and projections for the entirety of the period of three years beginning with the date any turnover was first generated after reorganisation or the change in activities.

(8) Where the percentage of activities intended to be carried out, other than for the purposes of the contracting authorities' public functions, as calculated in accordance with paragraphs (2) to (7), is not a suitable measure of the activities intended to be carried out by the arrangement for the purposes of paragraph 3(2)(b) of Schedule 2 to the 2023 Act, the percentage of such activities must be calculated by taking, over the relevant period, one of the following—

(a) costs incurred in respect of the horizontal arrangement's activities for purposes other than the authorities' public functions as a percentage of its total costs;

(b) time spent in respect of the horizontal arrangement's activities for purposes other than the authorities' public functions as a percentage of its total time;

(c) the value of goods, services or works supplied in respect of the horizontal arrangement's activities for purposes other than the authorities' public functions as a percentage of the total value of goods, services or works supplied in respect of the activities.

(9) In this regulation—

“accounting period” (“*cyfnod cyfrifyddu*”) means a period in respect of which accounts are prepared in relation to the horizontal arrangement's activities;

“date of contract award” (*“dyddiad dyfarnu’r contract”*) means the date when the contracting authority decided to award the contract;

“horizontal arrangement’s activities” (*“gweithgareddau’r trefniant llorweddol”*) means the activities contemplated by, or undertaken in pursuance of, a horizontal arrangement;

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

- (a) the period of three years ending with the date of contract award, or
- (b) where, due to the timing of the preparation of the preparation of accounts related to the horizontal arrangement’s activities, information relating to turnover for the period in sub-paragraph (a) is not available as at the date of contract award, a period of three years ending with the date the last accounting period before the date of contract award for which such information is available ends;

“reorganisation” (*“ad-drefnu”*) means a change, other than a minimal or incidental change, to any terms of the horizontal arrangement in respect of—

- (a) the horizontal arrangement’s activities, or
- (b) where the arrangement establishes a person to undertake those activities, the structure, operations, funding or ownership of that person.”.

Name

The Cabinet Secretary for Finance and Welsh

Language, one of the Welsh Ministers

Date