

Explanatory Memorandum to The Procurement Act 2023 (Specified International Agreements) (Amendment) (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's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Procurement Act 2023 (Specified International Agreements) (Amendment) (Wales) Regulations 2025. I am satisfied the benefits justify the likely costs.

Mark Drakeford MS
Cabinet Secretary for Finance and Welsh Language
18 November 2025

PART 1

1. Description

1.1 The Procurement Act 2023 (“The 2023 Act”) contains regulation-making powers for Welsh Ministers in relation to Public Procurement for Wales.

1.2 The Procurement Act 2023 (Specified International Agreements) (Amendment) (Wales) Regulations 2025 (“the Regulations”) will be made using the affirmative procedure using powers conferred by the Procurement Act 2023 to implement procurement of two new international agreements entered into by the United Kingdom:

- The Agreement on Partnership and Cooperation between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Iraq (signed 14 January 2025).
- The Strategic Partnership and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Kazakhstan (signed 24 April 2024).

1.3 Schedule 9 to the 2023 Act lists international agreements to which the UK is a party and which contain procurement obligations to which effect must be given in the UK.

1.4 Regulation 1 and 2 of the Regulations provide the title, details of when the Regulations will come into force and includes “interpretation” details.

1.5 Regulation 3 of the Regulations amends Schedule 9 to the 2023 Act to reflect the agreements with Iraq and Kazakhstan entered into by the United Kingdom.

1.6 Regulation 4 of the Regulations makes provision for transitional arrangements, so that the Regulations will not affect any procurement which relates to the agreements with Iraq and Kazakhstan entered into by the United Kingdom, where the procurement has commenced before the day on which the relevant agreement enters into force.

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

2.1 None

3. Legislative background

- 3.1 The Regulations are being made by the Welsh Ministers in exercise of the powers conferred on them by section 89(3)(a) and 122(3)(b) and (d) of the Procurement Act 2023.
- 3.2 In accordance with the provisions of section 122(10)(i) of the 2023 Act, the draft affirmative procedure will apply to Regulations made under sections 89(3)(a) to the Procurement Act 2023 which update Schedule 9 to the Procurement Act 2023.
- 3.3 In addition, the Welsh Ministers have consented to the UK Government laying and making of a connected instrument, namely “the Procurement Act 2023 (Specified International Agreements) (Amendment) Regulations 2025”.
- 3.4 The majority of the UK Statutory Instrument (UKSI) is giving effect to the international agreements ““the Agreement on Partnership and Cooperation with Iraq” and “the Strategic Partnership and Cooperation Agreement with Kazakhstan” and does not require the Welsh Ministers consent. This document refers to the regulations being laid and made by Welsh Ministers in relation to the Implementation of the two Trade Agreements in relation to contracts being entered into under the Procurement Act 2023.
- 3.5 However, there is a small element of the UKSI which relates to transitional and savings provisions and amends a current UKSI known as The Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024. This element does require WM’s consent.

4. Purpose and intended effect of the legislation

- 4.1 The Regulations are required to ensure that the procurement chapters of the new international agreements with Iraq and Kazakhstan are implemented in Wales, as required by the UK’s international obligations. The amendments to Schedule 9 ensure that suppliers from these countries are treated in accordance with the agreements.

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

- 5.1 The Regulations will ensure compliance with the UK’s international obligations in respect of public procurement included in the two new trade agreements.
- 5.2 They will provide legal certainty for Welsh Contracting Authorities (“WCA’s”) and suppliers regarding the application of the new agreements.

5.3 As drafted, the Regulations will avoid application to ongoing procurements.

5.4 Regulation 4 of the Regulations makes provision for transitional arrangements, so that the Regulations will not affect any procurement which relates to the agreements with Iraq and Kazakhstan entered into by the United Kingdom, where the procurement has commenced before the day on which the relevant agreement enters into force.

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

6.1 By updating Schedule 9 to reflect the UK's new international agreements, the Regulations provide clarity and certainty for contracting authorities and suppliers, supporting efficient and lawful procurement processes.

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

7.1 The Regulations and the 2023 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.

7.2 Alongside the Wales Procurement Policy Statement ("WPPS") and the Well-Being of Future Generations Act ("WBFGA"), this will ensure that the Welsh public sector use procurement as an effective lever to deliver social, cultural, economic and environmental outcomes, including fair work.

7.3 The provisions contained in the Regulations are technical in nature and relate to the implementation of international procurement obligations. They do not directly impact access or outcomes for disadvantaged or excluded groups.

7.4 While the Regulations and associated 2023 Act do not make any other direct reference to any protected characteristics, WCA's should consider how they can use public procurement to deliver additional outcomes through procurement, maximising opportunities to deliver economic, social, environmental and cultural well-being.

7.5 The Regulations and associated 2023 Act do not disadvantage some people or groups more than others. No direct or indirect negative impacts or barriers have been identified for people with protected characteristics.

8. Consultation

8.1 As these Regulations are technical amendments to implement international obligations, no formal public consultation has been undertaken.

PART 2 – REGULATORY IMPACT ASSESSMENT

9. Introduction

9.1 This Regulatory Impact Assessment (RIA) assesses the potential impacts of the proposed Regulations namely The Procurement Act 2023 (Specified International Agreements) (Amendment) (Wales) Regulations 2025. 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 the procurement obligations arising from the new agreements with Iraq and Kazakhstan would not be implemented in Wales, resulting in non-compliance with the UK’s international obligations.

10.2 Failure to implement procurement obligations could jeopardise the UK’s compliance with the details included in these FTAs, potentially leading to disputes or sanctions at an international level. Wales, as part of the UK, would be implicated in any such breach.

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 being brought into force on this matter.

11. Option 2: Make Secondary Legislation

11.1 This option implements the International Obligations included in the two signed UK Trade Agreements.

11.2 The Regulations are technical and do not impose additional costs on contracting authorities or suppliers.

11.3 The benefit is legal certainty and compliance with the UK’s international obligations.

11.4 Transitional provisions ensure that ongoing procurements are not affected, minimising disruption.

11.5It would achieve parity for Contracting Authorities in England and Wales.

12. Costs and benefits - Option 1: Do nothing

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

12.2No additional benefit has been identified.

13 Costs and benefits - Option 2: Make Secondary Legislation

13.1The Regulations implement the agreed international obligations included in these trade agreements. As these obligations do not go beyond those covered by existing trade agreements, other than applying specifically to the countries indicated and no further amendments are being introduced. Therefore, it is not anticipated that any additional costs will be incurred.

13.2The benefit of option 2 is legal certainty, parity and compliance with the UK's International Obligations. The Trade Agreements may offer the potential to access a broader pool of suppliers, including those from the countries covered by these agreements. Trade deals also create reciprocal arrangements, meaning Welsh businesses would benefit from access to the other parties procurement market.

13.3For these reasons, option 2 is the preferred option.