



Llywodraeth Cymru  
Welsh Government

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# **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020**

**DATE**            **12 October 2020**

**BY**                **Rebecca Evans MS, Minister for Finance and Trefnydd**

## **The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020**

### **The Law which is being amended:**

- Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (2019/560)
- Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (2019/623)
- The Greater London Authority Act 1999
- The Equality Act 2010
- The Public Services (Social Value) Act 2012
- The Public Contracts Regulations 2015
- The Concession Contracts Regulations 2016
- The Utilities Contracts Regulations 2016
- The Public Contracts Regulations 2006
- The Utilities Contracts Regulations 2006
- The Service Charges (Consultation Requirements) (England) Regulations 2003
- The Provision of Services Regulations 2009
- The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013
- Annex 16 to the EEA Agreement
- Regulation 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary
- Commission Decision 2006/211/EC
- Commission Decision 2007/141/EC
- Commission Decision 2010/192/EU

- Commission Implementing Regulation (EU) No 2015/1986
- Commission Implementing Regulation (EU)2016/7
- Commission Implementing Decision (EU) 2017/1870

### **Any impact the SI may have on the Senedd’s legislative competence and/or the Welsh Ministers’ executive competence**

This SI contains provisions that enable functions to be exercised by the Minister for the Cabinet Office, some of which require the prior consent of the Welsh Ministers in relation to Devolved Welsh Authorities. The SI also contains provisions that enable functions to be exercised by either the Cabinet Office or the Minister for the Cabinet Office, and the Welsh Ministers concurrently in relation to Devolved Welsh Authorities.

These functions (Minister for the Cabinet Office/Cabinet Office) would constitute functions of either a Minister of the Crown or public authority (Cabinet Office) for the purposes Schedule 7B of the Government of Wales 2006, and this therefore will be a relevant consideration in the context of the Senedd’s competence to legislate in these areas in the future.

The effect of the concurrent functions contained in this SI have potential to engage the consent requirements in Schedule 7B to GoWA and as such represent a potential restriction on the future competence of the Senedd. However, we are in negotiations with the OSSfW in relation to a s.109 Order to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

### **The purpose of the amendments**

The purpose of the amendments is twofold. Firstly, it corrects deficiencies in legislation relating to public procurement (including consequential amendments to non-procurement legislation) arising from the withdrawal of the United Kingdom from the European Union. Secondly, the Regulations give effect to Title 8 of Part 3 of the Withdrawal Agreement (which includes the NI Protocol) and Title 5 of Part 3 of the EEA EFTA Separation Agreement (together, the relevant withdrawal provisions), to ensure that retained EU law in the field of public procurement operates effectively after the Transition Period ends on 31 December 2020.

The Regulations also amend section 155(2) and (3) of the Equality Act 2010 to define a term by reference to the Public Contract Regulations 2015, rather than by reference to the Public Sector Directive (2014/24/EU). This amendment is technical in nature and is required in order for this provision to operate effectively after the end of the transition period.

The previous Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (2019/560) and the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (2019/623) have been revoked and replaced with these Regulations.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://www.legislation.gov.uk/ukdsi/2020/9780348212952>

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

None identified.

### **Why consent was given**

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to an England and Wales and Northern Ireland wide SI ensures that there is a single legislative framework across those parts of the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance. Those directives have been separately, and to some degree differently, transposed into the law of Scotland, and so the Scottish Ministers will be bringing forward a separate amending instrument in respect of the equivalent Scottish regulations.

A Statutory Instrument Consent Memorandum has also been laid in the Senedd in respect of the amendments to the Equality Act 2010.