

## **Government Response: The Procurement (Wales) Regulations 2024**

Technical Scrutiny point 1: The Government notes the reporting point but believes that this does not materially affect the operation of the provisions, and in each instance precedes the definition of “the 2023 Act”.

Technical Scrutiny point 2: The Government agrees with the point raised and we will amend this via a statutory instrument that is intended to be made in the Autumn ahead of this regulation coming into force.

Technical Scrutiny point 3: The Government notes the reporting point but does not believe this materially affects the operation of the regulations.

Technical Scrutiny point 4 and 5: The Government notes the reporting points, however these were a deliberate drafting and policy decision. Attempting to define these terms may have the effect of inadvertently narrowing their scope. Also, this would be a variation with the equivalent provision in the Procurement Regulations 2024 and potentially create issues as to legal certainty between England and Wales.

Technical Scrutiny point 6: The Government notes the reporting point and whilst we think the intended meaning is clear here, we will look to amend this by adding ‘or’ via a statutory instrument that is intended to be made in the Autumn ahead of this regulation coming into force, this amendment will be included in that instrument.

Technical Scrutiny point 7: The Government agrees with the reporting point on regulation 28(2)(e)(vi), we will look to amend this via a further statutory instrument intended to be made in the Autumn ahead of this regulation coming into force.

Regulation 41(3) signposts the reader to the provision which requires contracting authorities to publish contracts as modified or modifications in certain cases.

Technical Scrutiny point 8: The Government notes the reporting point but we believe that the Welsh text can remain as it is. The existing translation reads “that is a works contract with an estimated value of £2,000,000 or more”, this is unambiguous. We would argue that adding “sy’n hafal i” (“is equal to”) would not make the meaning any more or any less clear.

Technical Scrutiny point 9: The Government agrees the reporting point in respect of regulation 46(3)(b) and (c) and regulation 49, we will look to amend this via a further statutory instrument intended to be made in the Autumn ahead of these regulations coming into force and these amendments will be included within that instrument.

Technical Scrutiny point 10: The Government notes the reporting point. We are aware that some of the references to organisations are not current and were advised by UK Government (UKG) that names could not be changed. However, as successor bodies were covered, we adopted a similar approach to previous regulations. UKG have changed this advice and therefore, if UKG decide to amend their list to reflect machinery of government changes, Welsh Government officials will look to amend these discrepancies in future regulations. This would then also provide the opportunity to consider changes required as Higher Education Funding Council Wales (HEFCW) will cease to exist in the summer and be replaced by the Commission for Tertiary Education and Research.

Technical Scrutiny point 11: The Government notes the reporting point. Please see the response to reporting point 10. Please also note the effect of regulation 44(2).

Merits Scrutiny point 12: The Government notes the reporting point, officials have been in dialogue with their counterparts in the UKG. Given the scale of changes to the procurement regimes in both England and Wales, including:

- the need for legal certainty,
- the need to ensure that stakeholders have ample time to familiarise themselves with the new legislation, and accompanying materials and training,
- the need to ensure a level playing field for buyers and suppliers on both sides of the border,

it is intended that section 11 will be brought into force on the 28 October. This has been confirmed in [The Procurement Act 2023 \(Commencement No. 3 and Transitional and Saving Provisions\) Regulations 2024](#), which were made on 22 May 2024.

Merits Scrutiny point 13: The Government notes the reporting point, and there may be procurement of health services which do not fall within the definition of regulated health service procurement, most likely because the contracting authority is not a relevant authority within the meaning given by section 10A of the National Health Service (Wales) Act 2006.

The proposed regulations for the new health services procurement regime will only regulate certain bodies (i.e. those defined in the regulations as “relevant authorities”). Other contracting authorities will still be regulated by the Procurement Act when buying

such health services. The list included at Schedule 1 therefore provides a list of all relevant light touch services covered by the Procurement Act, whereas the health services procurement regulations will contain a shorter list of health services that will only be in scope of the proposed regulations (and consequently disapplied from the scope of the Procurement Act) when certain criteria are met.