

Government Response: *The Procurement (Miscellaneous Amendments) (Wales) Regulations 2025*

Technical Scrutiny point 1:

The Welsh Government notes the reporting point but does not fully agree with it.

In respect of the comments in relation to the definitions of “affiliated turnover amount” and “affiliated person”, regulation 45A is enacted pursuant to the power in paragraph 6(4) of Schedule 2 to the Procurement Act 2023 (“the 2023 Act”).

The scope of the power in paragraph 6(4) of Schedule 2 is, and can only be, to “make provision about how to calculate a person's affiliated turnover amount and total turnover amount for the purposes of sub-paragraph (3)”, therefore for the terms “affiliated turnover amount” and “affiliated person” to bear a meaning other than that in paragraph 6 of Schedule 2 would raise a potential matter of vires.

The words “For the purposes of” in r.45A(1) confirm this obvious dependence and make it clear to the reader that the terms attract the meaning contained in paragraph 6 of Schedule 2.

Further, we note and agree with paragraph 4.2 of Writing Laws for Wales that: “A definition should not be included unless it will aid clarity or certainty..... if it is obvious from the context what the term is referring to, there should be no need for a definition”.

We therefore do not intend to add definitions of “affiliated turnover amount” and “affiliated person” to regulation 45A.

On the definition of “utility” we agree that for absolute clarity and as the definition exists it should move from regulation 4 to regulation 2 of The Procurement (Wales) Regulations 2024. We anticipate that additional regulations will be needed to finalise implementation of the 2023 Act. We will include this change in those Regulations. All being well, this will be taken forward by late spring, barring any unforeseen circumstances.

We do not believe that in the meantime this presents an issue as to legal certainty because of the context in which “utility” is used in regulation 45A. Paragraph 6 of Schedule 2 is entirely premised on the basis that it applies to utilities contracts– “A utilities contract awarded for the supply of goods, services or works”, therefore we are content the provision will operate as intended until such time as we are able to amend the definition of “utility”.

Merit Scrutiny point 2:

The Government notes the scrutiny point and as mentioned in the letter of 2 September 2024 from the then Cabinet Secretary for Finance, Constitution and Cabinet Office, Welsh Ministers have a power under paragraph 5(1) of Schedule 1 to the 2023 Act to update the names of central government authorities as specified.

In exercising this power, we considered potential implications on the Welsh Government's international obligations derived from the trade agreements listed in Schedule 9 to the 2023 Act. It was determined that the concerns, as outlined in the letter of 2 September 2024, of updating the names in Schedule 2 to The Procurement (Wales) Regulations 2024 to correctly refer to the Senedd Cymru Commission instead of the National Assembly for Wales Commission, and to other public bodies by their current titles, were minimal. Indeed, updating the names ensures that suppliers and buyers can readily identify the relevant organisations, avoiding confusion caused by outdated references. This approach also addresses concerns raised previously by the LJCC and ensures that the Regulations remain accurate and clear.