

## **Government Response: The Procurement (Wales) (Amendment) Regulations 2025**

Technical Scrutiny point 1: Regulations 45E and 45F make specific provision in respect of calculations to be made under paragraphs 2 and 3 of Schedule 2 to the Procurement Act 2023 (the “2023 Act”). The Welsh Government does not agree that there is any ambiguity as it is clear the definition of “date of contract award” applies to just regulations 45E and 45F respectively. However, we will look to make an amendment in a future set of regulations, in early 2026, to clarify the definitions in Regulations 45A to D which are already made.

Technical Scrutiny point 2: Whilst the Welsh Government note there is a connection between regulations 45E and 45F and the extant regulations 45A-D, we do not believe that the use of the formulation “beginning with”, as opposed to “starting from”, suggests any difference in interpretation as both are clearly qualified by the subsequent words “date of contract award”. We therefore consider an amendment is not necessary.

Technical Scrutiny point 3: The Welsh Government note that Writing laws for Wales (“WLW”) at paragraph 6.15(8) describes a scenario where “A regulation, rule or article, or a paragraph numbered (1), (2) etc., may also contain an unnumbered list of definitions. Lists of this kind work in the same way in statutory instruments as they do in Acts”. The relevant paragraph in WLW dealing with Acts is paragraph 6.13(7), which states that “A section or subsection may also contain an unnumbered list of definitions. Refer to such a definition as “the definition of x”. An unnumbered definition may contain paragraphs (a), (b), (c) etc. which may contain sub-paragraphs (i), (ii), (iii) etc.”

However, paragraph 6.12 of WLW also clearly states that “a division of a paragraph is always a sub-paragraph”. In each provision cited there is a division of a paragraph. Whilst the Welsh Government recognise the merit of the technical point raised, on balance we are not minded to make any amendment.

Technical Scrutiny point 4: The Welsh Government note the point raised and agree that there is inconsistency in the Welsh text. It is noted that there is very little difference in meaning, if any, between the phrases “lleiaf” and “bach iawn” as both phrases accurately convey the intended meaning of “minimal”. The meaning of “incidental” is less specific, and “ansylweddol” and “achlysurol” both accurately convey aspects of the meaning. However, the Welsh Government intend to deal with this as a correction prior to making as outlined in the table below, for the benefit of consistency.

Technical Scrutiny point 5: Regulation 45F is expressly enacted pursuant to paragraph 3(2)(b) of Schedule 2 to the 2023 Act, therefore it is clear that “horizontal arrangement” can only bear the meaning in that paragraph.

Further, we note and agree with paragraph 4.2(2) of WLW 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”. As such the Welsh Government are not minded to define a horizontal arrangement in these Regulations.

Technical Scrutiny point 6: Regulation 48F(8) is clear that “the arrangement” means a horizontal arrangement. This is achieved by both referring to paragraphs (2) to (7) which precede it and which refer to horizontal arrangements, and secondly by a subsequent reference to paragraph 3(2)(b) of Schedule 2 to the 2023 Act which also refers to both arrangements and horizontal arrangements. The Welsh Government therefore does not believe that any amendment is required to this provision and that it is entirely consistent with the terminology used in the enabling power.

Technical Scrutiny point 7: The Welsh Government believe the formulation of the definition of “reorganisation” in regulation 45F(9) is clear precisely because of the preceding references to “horizontal arrangements” included in the definition, and that therefore no amendment is needed.

Technical Scrutiny point 8: The Welsh Government note this point and agree this appears to be a typographical error in the English text. Given this is an obvious typographical error that does not affect the substantive meaning, we intend to deal with this as a correction prior to making as outlined in the table below.

<b>CORRECTIONS MADE TO THE WELSH TEXT PRIOR TO MAKING</b>	<b>CORRECTIONS MADE TO THE ENGLISH TEXT PRIOR TO MAKING</b>
<b>Rheoliadau Caffael (Cymru) (Diwygio) 2025</b>	<b>The Procurement (Wales) (Amendment) Regulations 2025</b>
The phrase “heblaw newid lleiaf neu achlysurol” used in regulation 45E(9) should be changed from “heblaw newid lleiaf neu achlysurol” to “heblaw newid bach iawn neu ansylweddol”.	N/A
N/A	In the definition of “relevant period” in regulation 3(4) and the new regulation 45F(9) in (b) the following words will be omitted: “of the preparation”.
Minor issues such as formatting, minor changes to the explanatory note and footnotes and correcting typographical errors will also be corrected prior to making.	