Wales consultation on Public Procurement Secondary Legislation: Part 1 – Response form

# Introduction

This is the response form for the Welsh Government’s consultation on the secondary legislation required to implement the new public procurement regime established by the Procurement Bill. This is a technical consultation, split into 2 parts. This form relates to Part 1 and covers the following sections:

1. Scope of Light Touch Regime Contracts and Reservable Light Touch Services
2. Exempt Contracts: Vertical and Horizontal Activities Calculations
3. Exempt Contracts: Utilities Intra-group Turnover Calculations
4. Utility Turnover and Supply Tests
5. Intra-UK Procurement
6. Definitions of ‘Central Government Authority’ and ‘Works’ for Thresholds
7. Disapplication of section 17 of the Local Government Act 1988
8. Welsh Language

Full details are available in the consultation document itself.

## How to respond

Please provide details of your name, organisation and whether you are responding as an Individual or on behalf of an Organisation below:

Your name:

Organisation (if applicable):

email address:

Do you live in Wales?

[ ]  Yes

[ ]  No

[ ]  No Answer

Do you have a business interest in Wales?

[ ]  Yes

[ ]  No

[ ]  No Answer

Please provide the first part of your home postcode e.g CF10:

If you are not responding via the online questionnaire, Please return this completed response form to ProcurementReform.ConsultationPart1@Gov.wales / DiwygioCaffael.YmgynghoriadRhan1@Llyw.cymru or

Chief Operating Officer's Group

Commercial Procurement Division

Procurement Reform Team

Welsh Government

Cathays Park

Cardiff

CF10 3NQ

Responses to the consultation must be received by 23.45 on 28/07/23.

Please consider and answer all Mandatory questions, choosing one of the following responses:

* Strongly agree
* Agree
* Neither agree nor disagree
* Disagree
* Strongly disagree
* N/A

For those Mandatory questions where you have answered disagree or strongly disagree, please provide further information on this in the follow up question with a free text box.

Please keep to the maximum character count allowed (Maximum of 2000 characters). Any additional characters received above this limit will not be considered.

* Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous in these circumstances, please tick here.

# Questions

## Light Touch – scope of light touch contracts and reservable light touch services

### Summary of details in consultation document

Part 4 & Schedule 1 of the SI includes information on Light touch contracts and services.

Light touch contracts reflect that certain services require different treatment, particularly those that are individual, locally or community-focused. Common Procurement Vocabulary (CPV) codes are used to specify the services that can be procured as a light touch contract. The SI also makes clear which services are ‘reservable light touch services’ under the Bill, where the field of suppliers is limited to public service mutuals.

### Question 1: To what extent do you agree or disagree that CPV codes set out in the SI accurately capture those services which can be supplied via a light touch contract under the new regime?

**Q1 Response: Please choose one of the following responses only**

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| [ ] Strongly agree[ ]  Agree[ ]  Neither agree nor disagree[ ]  Disagree[ ]  Strongly disagree[ ]  N/A |

**Question 1a: If you answered disagree or strongly disagree to Q1, please indicate which services should be included or excluded, or clarify any other perceived issues with the list such as inconsistencies with other areas of the Bill or SI.**

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| (Maximum 2000 characters) |

### Question 2: To what extent do you agree or disagree that the SI accurately captures those services which should be ‘reservable’ to public service mutuals under the new regime?

**Please choose one of the following responses only**

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| [ ] Strongly agree[ ]  Agree[ ]  Neither agree nor disagree[ ]  Disagree[ ]  Strongly disagree[ ]  N/A |

**Question 2a: If you answered disagree or strongly disagree to Q2, please indicate which services should be included or excluded, or clarify any other perceived issues with the list such as inconsistencies with other areas of the Bill or SI.**

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| (Maximum 2000 characters) |

## Exempt contracts: Vertical and horizontal activities calculations

### Summary of details in consultation document

Part 2 of the SI is relevant when looking at this section.

The vertical and horizontal arrangements exemptions within Schedule 2 of the Procurement Bill replicate exemptions in regulation 12 of the PCR, often referred to as the “Teckal” and “Hamburg” exemptions.  Both exemptions include a percentage activity threshold test.  Part 2 of the SI establishes how these percentages are to be calculated.

### Question 3: To what extent do you agree or disagree that the methodology of calculating the percentages of the activity thresholds set out in the SI is clear and meets the policy intent to exempt horizontal and vertical procurement from the requirements of the Bill?

**Please choose one of the following responses only**

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| [ ] Strongly agree[ ]  Agree[ ]  Neither agree nor disagree[ ]  Disagree[ ]  Strongly disagree[ ]  N/A |

**Question 3a: If you answered disagree or strongly disagree to Question 3, please explain why you believe the calculation is not clear or does not otherwise meet the policy intent.**

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| (Maximum 2000 characters) |

## Exempt contracts: Utilities intra-group turnover calculations

### Summary of details in consultation document

Part 2 Regulation (6) of the SI is relevant when looking at this element.

Utilities sometimes rely on separate entities within their group to carry out certain activities when delivering a contract. This is referred to as an arrangement between “affiliated” persons and an exemption from the procurement regime is available where a utilities contract is awarded by a relevant utility to a relevant affiliated person provided the “turnover test” is met.

### Question 4: To what extent do you agree that the methodology of calculating the percentages of the affiliated turnover test as set out in the SI is clear and meets the policy intent to exempt contracts to affiliates as described in Schedule 2, paragraph 6?

**Please choose one of the following responses only**

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| [ ] Strongly agree[ ]  Agree[ ]  Neither agree nor disagree[ ]  Disagree[ ]  Strongly disagree[ ]  N/A |

**Question 4a: If you answered disagree or strongly disagree to Question 4, please explain why you do not believe that the calculation will deliver the policy intent.**

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| (Maximum 2000 characters) |

## Utility turnover and supply tests

### Summary of details in consultation document

Part 3 of the SI focuses on the calculations and relevant time periods that will be used to determine the maximum percentage turnover or production, as the case may be, that apply to operators in the sectors of gas, heat, electricity and water before the supply of that commodity is deemed to be a utility activity and therefore subject to the rules in the Procurement Act.

### Question 5: To what extent do you agree or disagree that the methodology to make the appropriate calculations for the relevant exemptions in paragraphs 1(2), 2(2) and 3(4) of Schedule 4 is clear and meets the policy intent to exempt the supply of gas, heat, electricity and drinking water where the relevant conditions apply?

**Please choose one of the following responses only**

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| [ ] Strongly agree[ ]  Agree[ ]  Neither agree nor disagree[ ]  Disagree[ ]  Strongly disagree[ ]  N/A |

**Question 5a: If you answered disagree or strongly disagree to Question 5, please explain why you believe the calculation is not clear or does not otherwise meet the policy intent.**

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| (Maximum 2000 characters) |

## Intra-UK procurement (Part 5 and Schedule 2 of the SI)

### Summary of details in consultation document

The regulation, included at Part 5 of the SI, is to allow Scottish devolved authorities to carry out a joint procurement under the Bill and/or make use of a commercial tool established under UK legislation.

### Question 6: To what extent do you agree or disagree that the regulation meets the policy intent of permitting Scottish devolved authorities to undertake joint procurement or collaborate with other authorities across the UK under the auspices of the Procurement Bill?

**Please choose one of the following responses only**

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| Strongly agree [ ] Agree [ ] Neither agree nor disagree [ ] Disagree [ ] Strongly disagree [ ] N/A [ ]  |

**Question 6a: If you answered disagree or strongly disagree to Question 6, please explain why you do not think that the regulation will provide Scottish devolved authorities with this opportunity.**

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| (Maximum 2000 characters) |

## 6. ‘Central Government Authority’ and ‘Works’ for thresholds

### Summary of details in consultation document

Part 8 and Schedules 3 and 4 of the SI is relevant when looking at this element.

Schedule 1 to the Procurement Bill provides that the definitions of ‘Central Government Authority’ (CGA) and ‘Works’ shall be set out in regulations. The list of CGAs attached to the UK Government’s SI at Schedule 3 is not relevant to Wales. The draft list of CGAs applicable for Wales are available at Annex 1 of the consultation document. The definition of works / works contracts is available at Schedule 4 of the draft SI.

### Question 7: To what extent do you agree or disagree that this approach achieves the policy objective of ensuring a clear, consistent and familiar approach to defining Central Government Authorities and Works?

**Please choose one of the following responses only**

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| Strongly agree [ ] Agree [ ] Neither agree nor disagree [ ] Disagree [ ] Strongly disagree [ ] N/A [ ]  |

**Question 7a: If you answered disagree or strongly disagree to Question 7, please explain why you do not believe that the definitions are clear, consistent and/or familiar.**

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| (Maximum 2000 characters) |

## Disapplication of Section 17 of Local Government Act

### Summary

This regulation is included at Part 6 of the SI. Its purpose is to enable local government and other authorities subject to the LGA 1988 to take advantage of the policy for below-threshold contracts.

### Question 8: To what extent do you agree or disagree that the regulations permit local authorities and other bodies subject to the Local Government Act 1998 to take advantage of policy on reserving below-threshold contracts for suppliers in a specific geographic location and (if the contracting authority chooses) are SMEs or VCSEs?

**Please choose one of the following responses only**

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| Strongly agree [ ] Agree [ ] Neither agree nor disagree [ ] Disagree [ ] Strongly disagree [ ] N/A [ ]  |

**Question 8a: If you answered disagree or strongly disagree to Question 8, please explain why you do not think the regulations will allow the below-threshold policy to be applied by authorities subject to the LGA 1988.**

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| (Maximum 2000 characters) |

## 8. Welsh Language

### Summary

The Welsh Government and the UK government have worked closely on the development of their respective statutory instruments to ensure there is maximum alignment between the legislation and to minimise any risk of potential divergence. Whilst this consultation uses the draft statutory instrument that has been developed by the UK government, the Welsh SI (when published) will be available bilingually in accordance with Senedd Cymru Standing Orders.

### Question 9. We would like to know your views on the effects that the proposed Secondary Legislation would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

**What effects do you think there would be?  How could positive effects be increased, or negative effects be mitigated?**

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| (Maximum 2000 characters) |

### Question 10: Please also explain how you believe the proposed technical detail of the drafting could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

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| (Maximum 2000 characters) |