

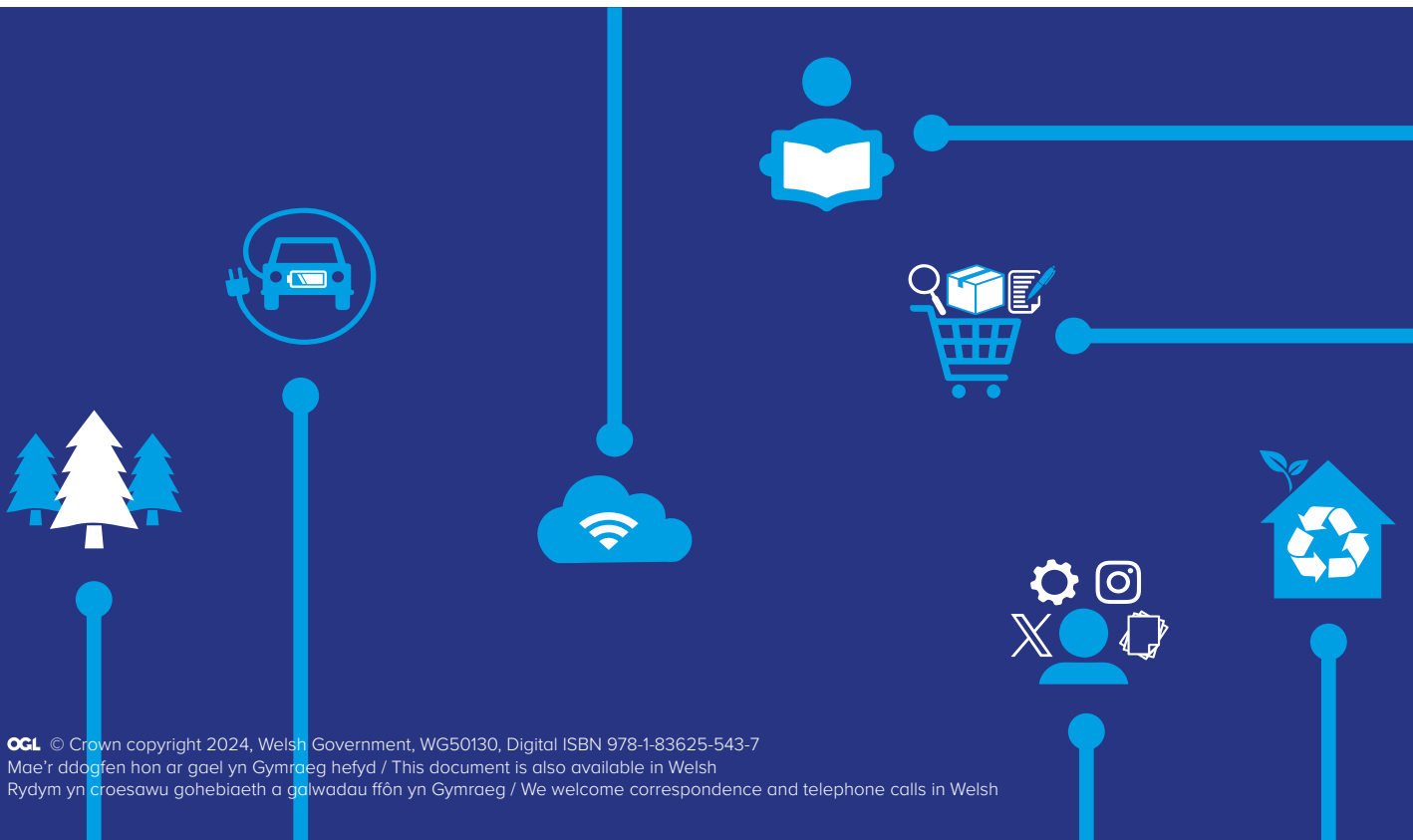


Llywodraeth Cymru
Welsh Government

Guidance

Procurement Reform in Wales

August 2024





Guidance: Procurement Reform in Wales

1. The procurement landscape in Wales has changed following the introduction of three areas of legislation that will affect the way public procurement is undertaken in Wales. These are:
 - [The Procurement Act 2023 \(The Act\)](#)
 - [The Social Partnership and Public Procurement \(Wales\) Act 2023 \(SPPP Act\)](#)
 - [The Health Service Procurement \(Wales\) Act 2024 \(HSP Act\)](#)
2. In addition to these areas of legislation, there is also the overarching framework for public procurement in Wales, [the Well-being of Future Generations \(Wales\) Act 2015](#) (WBFG Act).
3. This guidance will provide an overview of each area of legislation in the order listed above and, for the Act, it will also highlight any specific differences for Wales, as compared with England.

The Procurement Act 2023

4. Once this legislation comes into force, it will replace the existing procurement legislation in Wales, namely the Public Contract Regulations 2015 (PCR), the Utilities Contract Regulations 2016 (UCR), and the Concession Contracts Regulations 2016 (CCR). Please see separate guidance on transitional and saving arrangements to determine how procurements which straddle the implementation date of the Act are to be carried out and which legislation will apply.
5. The Act will regulate the way that Devolved Welsh Authorities (DWAs) (as defined at section 111 of the Procurement Act) procure contracts covered by the Act and will ensure compliance with international agreements.
6. Welsh Government have made the [Procurement \(Wales\) Regulations 2024](#) (Welsh Regulations), which sit beneath the Act and which provide the detail needed for the law to operate in practice and be enforced.

Differences for Wales

7. The provisions within the Procurement Act and Welsh Regulations predominantly apply to DWAs and non-DWAs (such as English Contracting Authorities) in the same way, however there are some important differences. These are set out below:



Act	Regulation	Description
53(4) & 77(3)	-	DWAs are not required to publish public contracts or modified contracts valued over £5m. Wales has a derogation which removes this requirement except where a DWA awards a contract pursuant to a reserved (non-devolved) procurement arrangement. For example, under a framework which has been awarded by Crown Commercial Services (CCS).
14	-	DWAs are required to have regard to the Wales Procurement Policy Statement (WPPS) rather than the National Procurement Policy Statement (NPPS). Where there is cross border collaboration, the policy statement which applies will depend on who the lead authority / centralised procurement authority is.
-	28 - 31	DWAs are not required to publish the names of unsuccessful suppliers in Contract Award Notices for contracts valued above £5m, unless the contract was awarded under a reserved (non-devolved) procurement arrangement. DWAs will however need to provide this information for data collection and analysis purposes. The Welsh Government will be issuing separate guidance on this.
-	26	DWAs will need to confirm that a conflicts assessment was prepared and revised when publishing a dynamic market modification notice.
-	5	In order to fulfil the obligation to publish a notice, document or information on the Central Digital Platform (CDP), DWAs must submit the notice, document or information to the Welsh Digital Platform, Sell2Wales, unless it is unavailable. Sell2Wales will feed into the CDP and will publish on Sell2Wales itself (after it has been published on the CDP).
85		For regulated below-threshold contracts, DWAs are permitted to restrict the submission of tenders by reference to an assessment of the supplier's suitability to perform the contract (i.e. they can use a Pre-Qualification Questionnaire stage). A regulated below-threshold contract means a below-threshold contract which is not an exempted contract, a concession contract or a utilities contract.
-	37	Unique supplier IDs will be required for the notifiable below-threshold contract details notice. A notifiable below-threshold contract is a regulated below-threshold contract with a value above £30,000 (including VAT) to be awarded by a DWA. However, if a DWA is also a central government authority (CGA) and is awarding a



		notifiable below-threshold contract under a reserved (non-devolved) procurement arrangement (for example where a CGA has utilised a CCS framework), then the value is above £12,000 (including VAT). The list of CGAs is included at Schedule 2 of the Welsh Regulations.
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8. Welsh Government will lay further regulations later in the year which will come into force at the same time as the Act and the Welsh Regulations referenced above. These regulations will update the threshold amounts listed in Schedule 1 of the Act in line with the GPA thresholds, which are detailed in [PPN 11/23](#); and will provide detail on how the percentages contained within Schedule 2 of the Act (Exempted Contracts) are to be calculated, although it should be noted that the policy intent is to maintain the effect of the exemptions in the PCR and UCR.

The Social Partnership and Public Procurement (Wales) Act 2023

9. When brought into force the socially responsible procurement duty in the SPPP Act will require public bodies to improve economic, social, environmental and cultural wellbeing by carrying out procurement in a socially responsible way. The socially responsible procurement duties complement the existing well-being duties that certain public bodies are already subject to under Part 2 of the WBFG Act In this section of the guidance, a “public body” means a person listed as a “public body” in section 6(1) of the WBFG 2015, but for the purposes of sections 16 and 18 it does not include the Welsh Ministers.
10. The SPPP Act and the regulations which sit beneath the Act will come into force at a time when the Welsh Ministers consider appropriate in light of wider procurement reform activities.
11. The list of contracting authorities who must follow the socially responsible procurement duties in the SPPP Act differs from those defined as a DWA in the Act. A “contracting authority” (CA) in the SPPP Act means a body, office-holder or other person listed in Schedule 1 of that Act.
12. Public bodies and CAs covered by the SPPP Act can use this time to prepare for the changes the legislation will bring.
13. Summaries of the key procurement related requirements under the Act are listed below:



Act	Description
24	Socially responsible procurement duty. This requires a CA to seek to improve the economic, social, environmental and cultural well-being through procurement, contributing to well-being goals, setting and publishing objectives. It applies to all procurement.
25	For major construction contracts (which are over £2m), CAs must have regard to social public works clauses, consider their inclusion in relevant contracts, and ensure they are implemented where they are included. (NB. A notification duty applies if a decision is made not to include the clauses, see below).
26	For outsourcing services contracts, CAs must have regard to the public services outsourcing and workforce code and the social public workforce clauses, consider the inclusion of these clauses in relevant contracts, and ensure they are implemented where they are included. (NB. A notification duty applies if a decision is made not to include the clauses, see below)
28 & 34	Where social public works/workforce clauses have been included in a major construction or outsourcing services contract, respectively, the CA must take all reasonable steps to ensure that the obligations in the social public works clauses are implemented where the contractor enters into a subcontract with any other economic operator.
29 & 35	The CA must notify Welsh Ministers if social public works /workforce clauses are not to be, or have not been included in the relevant contracts, or there is no process to ensure the obligations in such clauses are implemented in the contract/sub-contract. Welsh Ministers will consider the reasons. They may be satisfied with the reasons, and if they are not satisfied, they may direct the CA to include the clauses. A summary of the outcome of Welsh Minister's considerations will be published.
38	The CA must prepare a procurement strategy setting out how the authority intends to carry out public procurement.
39	CAs that have awarded any prescribed contracts during a financial year must prepare and publish an annual report on its public procurement setting out how it has met its objectives. The information that must be included in the annual reports will be described in regulations
40	CAs must create, maintain and publish a contracts register. "Registrable contracts" will be defined in regulations.



The Health Service Procurement (Wales) Act 2024

14. The provisions in the HSP Act provide the Welsh Ministers with powers to change the way health services, delivered on behalf of the NHS in Wales, are procured.
15. The forthcoming regulations under the HSP Act will reform the way certain health services are procured in Wales by 'relevant authorities' (as defined by the National Health Service (Wales) Act 2006¹) by introducing a new regime that will increase flexibility, reduce bureaucracy, and encourage supplier collaborations and partnerships. The proposed changes to health service procurement are partly in response to the introduction of the UK Government's Department of Health and Social Care's Provider Selection Regime (PSR) in England.
16. The HSP Act received Royal Assent on 5 February 2024. The Welsh Government undertook a consultation exercise on the operational principles of the proposed new health service regime for Wales and have recently published a summary of responses². Stakeholder feedback will inform the forthcoming PSR Wales regime, regulations and statutory guidance which will set out the steps that relevant authorities need to follow when implementing the proposed new procurement regime for health services.
17. It is the intention to lay the PSR Wales regulations that underpin the new health services procurement regime before the Senedd in the coming months. Subject to the Senedd's agreement of the regulations, it is proposed that the new PSR Wales regime will come into force later this year (2024).

Proposed application of the PSR Wales

18. It is proposed that if a relevant authority as defined by the National Health Service (Wales) Act 2006 is making decisions about awarding a contract or concluding a framework agreement for 'health services' that fall within one or more of the Common Procurement Vocabulary (CPV) codes set out in the forthcoming PSR Wales regulations, referred to as 'relevant health services', they must use the procurement processes set out in the proposed new PSR Wales regime. In addition, the regulations will make provision for mixed procurements whereby goods and other services that are 'connected to' a

¹ [National Health Service \(Wales\) Act 2006 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2006/17/section/10A) – section 10A(9) defines a relevant authority as a county council or county borough council, a local health board, a National Health Service trust and a special health authority in Wales.

² [Health service procurement in Wales | GOV.WALES](#)



relevant health service can be procured under the PSR Wales regime in certain circumstances, which will be set out in the regulations.

19. Conversely, if the health service is not covered by the list of CPV codes in the proposed PSR Wales regulations, then the relevant authority will need to follow the requirements of the Procurement Act 2023.
20. Regardless of whether a contracting authority or relevant authority procures under the Procurement Act regulations or the PSR Wales regulations, they may still have to comply with the wider procurement principles and key criteria, such as the Socially Responsible Procurement Duties under the SPPP Act, the WBFG Act, etc.
21. Further detail of the proposed application will be provided in the statutory guidance for the PSR Wales.

The Well-being of Future Generations (Wales) Act 2015

22. The WBFG Act requires public bodies in Wales to think about the long-term impact of their decisions, to work better with people, communities and each other, and to prevent persistent problems such as poverty, health inequalities and climate change. The WBFG Act provides an opportunity to transform the way procurement is planned and delivered in Wales. By moving from a process-driven approach towards an outcomes-based approach, this can ensure that public sector spend in Wales delivers the best outcomes for current and future generations.
23. The WBFG Act puts in place seven well-being goals and makes it clear that the public bodies covered by the WBFG Act must work to achieve all of the goals, not just one or two.
24. The seven well-being goals are:



25. The following links provide access to key information:

- [Well-being of Future Generations \(Wales\) Act 2015 \(legislation.gov.uk\)](https://legislation.gov.uk)
- [The Well-being of Future Generations | GOV.WALES](https://gov.wales)
- [Well-being of future generations act: the essentials \(gov.wales\)](https://gov.wales)

Other potential requirements

26. You should also consider whether any of the [Wales Procurement Policy Notes](#) may apply to your procurement. For example, WPPN 3/21 encourages the use of project bank accounts (PBAs) as a means of addressing poor payment practices in public sector supply chains; and WPPN 04/21 provides the guidelines for deploying this project bank account policy.
27. A digital policy mapping tool is being developed by Welsh Government, which will, through completion of a short questionnaire, enable you to determine what policies will apply to your procurement and the appropriate actions that you should undertake.

