



Ein cyf/Our ref: MA/RE/0044/22

Huw Irranca-Davies MS
Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

By Email: SeneddLJC@senedd.wales

03 May 2022

Dear Huw,

The Public Procurement (International Trade Agreements) (Amendment) Regulations 2022.

Policy Overview of the SI

The above titled SI is necessary for procurement legislation (detailed below) to be amended so as to effect in domestic legislation implementation of the United Kingdom's (UK) procurement obligations covered by the Free Trade Agreement between the UK and Iceland, Liechtenstein and Norway (the EFTA Agreement).

The Law which is being amended:

- The Public Contracts Regulations 2015
- The Concession Contracts Regulations 2016
- The Utilities Contracts Regulations 2016

together referred to as the 'Domestic Procurement Regulations'

The purpose of the amendments

The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (the EU Exit SI) made under the European Union (Withdrawal) Act 2018 preserved the UK's procurement

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

obligations contained in existing international agreements, for 12 months from the end of the Implementation Period.

The EFTA Agreement was laid before UK Parliament on 16 July 2021, and the scrutiny period ended on 26 October 2021. As such, the procurement obligations covered by the EFTA Agreement need to be implemented into Domestic Procurement Regulations. In relation to Wales, the amended legislation will ensure that international procurement obligations under the EFTA Agreement are appropriately implemented within the Domestic Procurement Regulations, and consequently allow authorities across Wales to comply with the same.

Why consent was given

Section 2 of the Trade Act 2021, which is being relied upon for the current SI, provides the Welsh Ministers with regulation making powers, subject to the restrictions contained in the Act. However, exercising these powers in this instance is not recommended for the reasons set out below.

It is normally our policy that where powers lie with the Welsh Ministers, it is the responsibility of the Welsh Ministers to legislate for Wales. However, the purpose of the SI is to make technical amendments to existing procurement legislation to ensure that international procurement obligations are implemented fully across the UK. Therefore, on this occasion I consider it is appropriate for the UK Government to legislate in this devolved area. Legislating at pace is also important in order to mitigate the risk of a gap in Domestic Procurement Regulations being compliant with our international obligations; if Domestic Procurement Regulations remain unaligned to international obligations then this would open the risk of legal challenge against the UK from a third country.

There is no policy divergence between the Welsh Government and the UK Government and the substance of the amendments are not, in my view, controversial. Further, although the Domestic Procurement Regulations being amended extends to Wales, there is no equivalent legislation made by the Welsh Ministers in this area. Updating Domestic Procurement Regulations in alignment with England and in one piece of legislation is logical so as to ensure that the current constancy of position is maintained.

The SI will have no impact on the Welsh Ministers' executive competence, or on the Senedd's legislative competence.

As such, I have given my consent to the Minister for Brexit Opportunities and Government Efficiency to make this SI in relation to Wales, which the UK Government has requested in line with the UK Government's non-statutory commitments to ensure the powers in the Trade Act 2021 are not normally used to legislate in areas of devolved competence without the consent of the relevant devolved governments, and not without first consulting them. I have laid a Written Statement, which can be found at:

[Eich cyf \(senedd.wales\)](https://www.senedd.wales).

The SI is subject to the affirmative procedure, and was laid before the UK Parliament on 25 April 2022.

I have written in similar terms to the Chair of the Economy, Trade, and Rural Affairs Committee, Paul Davies MS.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive style with a period at the end.

Rebecca Evans AS/MS

Y Gweinidog Cyllid a'r Trefnydd

Minister for Finance and Trefnydd