

SL(6)613 – The Procurement (Wales) (Amendment) Regulations 2025

Background and Purpose

These Regulations make substantive amendments to the Procurement (Wales) Regulations 2024 (“the 2024 Regulations”) to enable the implementation of the Procurement Act 2023 (“the 2023 Act”).

The purpose of the 2023 Act is to reform the United Kingdom’s public procurement regime following its exit from the European Union (“EU”), by creating a simpler and more transparent system, no longer based on transposed EU Directives. The 2024 Regulations supplement the 2023 Act.

Regulation 3 makes several amendments to the 2024 Regulations. Paragraph (2) removes the definition of “utility” from regulation 4 and paragraph (3) inserts it into regulation 3 instead, to enable the definition to apply to the whole Regulations. Paragraph (4) inserts new regulations 45E and 45F into the 2024 Regulations to set out how a calculation of the percentage of activities carried out by a person is to be made, in relation to vertical and horizontal arrangements.

Procedure

Draft Affirmative

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following eight points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In regulation 3(4), in the new regulations 45E(9) and 45F(9), the term “date of contract award” has been defined with the same meaning for both of those regulations. However, the same term is already used in several places in the existing regulations found in Part 3 of the Procurement (Wales) Regulations 2024 as amended, such as regulations 45A to 45D, where its meaning has not been defined.

Could the Welsh Government explain whether the term “date of contract award” bears the same meaning in the existing regulations 45A to 45D in Part 3 of the 2024 Regulations as



given by the definitions for the new regulations 45E and 45F?

If the intention is for the term to bear the same meaning in all of these regulations in Part 3 of the 2024 Regulations, should a new definition of “date of contract award” be inserted in each of regulations 45A to 45D or in a separate provision for the whole of Part 3 of the 2024 Regulations?

Otherwise, the inclusion of the new definitions of “date of contract award” for regulations 45E and 45F suggests that its meaning differs for those regulations when compared to the other existing regulations in Part 3 of the 2024 Regulations.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In regulation 3(4), in the new regulations 45E and 45F, there are several provisions that set out methods of calculating attributable or non-attributable turnover and total turnover. These provisions refer to credible business projections for various periods which are described as “**beginning with** the date of contract award”. However, similar provisions in the existing regulations 45A to 45D of the 2024 Regulations describe the credible business projections as being for periods “**starting from** the date of contract award”. This does potentially suggest a difference in meaning as to the date of the beginning of the period for the calculations. This is because the phrase “beginning with the date” is usually interpreted as starting at the beginning of that date but “starting from the date” could be interpreted as excluding that date so that the period starts from the following day - see WLW 8.3(1) and (3). Should the descriptions for the beginning of these periods be consistent with each other in these provisions for the calculations?

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements

In regulation 3(4), in the new regulations 45E(9) and 45F(9), in the definitions of “relevant period”, there is a cross-reference to “sub-paragraph (a)”. However, it should be correctly described as “paragraph (a)” rather than “sub-paragraph (a)” as it is a division within a definition. This error already occurs in the existing definitions of “relevant period” already found in regulations 45A(5), 45B(4), 45C(4) and 45D(4) of the 2024 Regulations.

4. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 3(4), in the new regulations 45E(9) and 45F(9) of the 2024 Regulations, in the definitions of “reorganisation”, there is an inconsistency in the expression used in the Welsh text to convey the meaning of the phrase “other than a minimal or incidental change”. In regulation 45E(9), the phrase “heblaw newid lleiaf neu achlysurol” has been used to express its meaning, but in regulation 45F(9) a different phrase “heblaw newid bach iawn neu anylwyddol” has been used. The Welsh text should be consistent in both places.



5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In regulation 3(4), in the new regulation 45F, the term “horizontal arrangement” is used on its own in several places such as paragraphs (1), (3), (6) and (9), and also as part of the term “horizontal arrangement’s activities” which is defined for that regulation by regulation 45F(9). However, the term “horizontal arrangement” is a defined term in paragraph 3(2) of Schedule 2 to the Procurement Act 2023. Therefore, should a definition of “horizontal arrangement” also be included in the new regulation 45F(9) so that it will have the same meaning in that regulation as given by the 2023 Act?

6. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In regulation 3(4), in the new regulation 45F(8), in the words before sub-paragraph (a), the term “the arrangement” is used without an earlier reference to “the horizontal arrangement”. Should the phrase “the horizontal arrangement” be used in this place rather than only “the arrangement”?

7. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In regulation 3(4), in regulation 45F(9), in the definition of “reorganisation”, in paragraph (b), the term “the arrangement” is used, but the term “the horizontal arrangement” has been noted in full in both places it is used previously in the same definition. Therefore, should the term “the horizontal arrangement” also be used in paragraph (b) of this definition?

8. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 3(4), in regulation 45F(9), in the definition of “relevant period”, in paragraph (b), in the English text, it notes “the timing of the preparation **of the preparation** of accounts”. Therefore, it appears that “of the preparation” has been mistakenly repeated twice in the sentence. In addition, it also means that there is a difference between the English and Welsh text because those words have not been repeated twice in the corresponding place in the Welsh text.

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

7 May 2025



Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Welsh Parliament
Legislation, Justice and Constitution Committee