

Explanatory Memorandum to The Procurement (Wales) Regulations 2024

This Explanatory Memorandum has been prepared by the Commercial and Procurement Directorate and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Procurement (Wales) Regulations 2024.

I am satisfied that the benefits justify the likely costs.

Rebecca Evans MS

Cabinet Secretary for Finance, Constitution & Cabinet Office

30 April 2024

PART 1

1. Description

- 1.1 The Procurement Act 2023 (“The Act”) repeals the current EU procurement Regulations and lays out new rules and procedures for Welsh Contracting Authorities (WCAs) when selecting suppliers and awarding contracts with a value above and below certain thresholds.
- 1.2 The Act will also provide for the UK to meet its international obligations on public procurement included in treaties that it has signed including the World Trade Organisation’s (WTO) Agreement on Government Procurement (GPA), EU-UK Trade and Cooperation Agreement (TCA) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).
- 1.3 The Act will regulate the procurement process and will have enhanced transparency requirements under a new noticing regime which will span the full lifecycle of procurement.
- 1.4 These Regulations, namely “The Procurement (Wales) Regulations 2024” are made under a number of powers for the Welsh Ministers (WMs) included within the Act and provide additional detail and requirements which are necessary to ensure the functioning of the Act. In conjunction with the provisions of the Act, the Regulations are designed to improve the procurement process in Wales.
- 1.5 The changes being introduced through these Regulations and associated Procurement Act will drive increased focus on procurement planning and improving contract management.
- 1.6 These Regulations contain the following details:
 - The Regulations will specify the services which can be supplied under a light touch contract, including reservable light touch services. Light touch contracts reflect that certain services require different treatment, particularly those that are individual, locally or community-focused. The Regulations also provide for certain light touch contracts to be “reserved” for organisations meeting certain criteria e.g. public service mutuals and social enterprises.
 - Definitions of ‘Central Government Authority’ and ‘Works’ for the purposes of the thresholds in Schedule 1 of the Act.
 - Rules on using the central digital platform and the Welsh digital platform for the publishing of procurement notices.
 - The form and content of the procurement notices. This refers predominantly to the transparency notices which allow contracting authorities to progress procurement processes through the procurement lifecycle in an open, transparent and informative manner. These notices are as follows:

- Pipeline Notice
- Planned Procurement Notice
- Preliminary Market Engagement Notice
- Tender Notice
- Utilities Dynamic Market / Dynamic Market Notice, including Qualifying Utilities Dynamic Market Notice
- Transparency Notice
- Procurement Termination Notice
- Contract Award Notice
- Contract Details Notice
- Payments Compliance Notice
- Contract Performance Notice
- Contract Change Notice
- Contract Termination Notice
- Assessment summaries – providing feedback to suppliers.
- Consequential Provisions.
- Below threshold procurement.
- Disapplication of Section 17 of the Act (preliminary market engagement notices) to private utilities.

1.7 Due to the Act and Regulations being required to work together, this Explanatory Memorandum and Regulatory Impact Assessment considers the impact of both the Procurement Act and these Regulations.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 The Procurement Act 2023 applies to England, Wales and Northern Ireland (NI), however, in some cases there are differences (or derogations) in the legislation for NI and Wales. Contracting Authorities (CAs) will need to understand these differences / derogations when calling off from or establishing contracts under Frameworks or Dynamic Markets. For example, if a CA in England wishes to use a Framework which was put in place by a Welsh Contracting Authority (WCA) then the Welsh rules will apply, and vice-versa, if a WCA wishes to utilise an English or NI arrangement then they will be subject to those rules.

3. Legislative background

3.1 These Regulations are being made by the Welsh Ministers in exercise of the powers conferred by sections 9(2), 33(8), 69(4), 87 (7), 95 (1), (2) and (3), 97(1) and (2), 111(1), 121(1) and (2), 122(3) and 125(1) and (2), and paragraph 5(1) of Schedule 1, to the Procurement Act 2023.

3.2 The Welsh Ministers have, in accordance with section 120(3) of the Act—
 (a) consulted persons appearing to the Minister to represent the views of private utilities, and

(b) consulted such other persons as the Minister considers appropriate, on the provision contained in regulation 35.

- 3.3 In accordance with sections 9(3) and (4) of the Act, the Welsh Ministers consider it appropriate to make these Regulations, having considered the matters listed in section 9(4).
- 3.4 It is intended that the coming into force of these regulations will be tied to a foundational provision of the Act, namely Section 11. This mirrors the approach adopted by the UK Government (UKG) and will avoid any potential risk around a lack of legal certainty associated with coming into force on different dates of these and the equivalent English regulations.
- 3.5 In accordance with the provisions of section 122(10) of the Act, the draft affirmative procedure will apply to Regulations made under sections 9, 33, 69, 87, 95, 97, 121, 124 (but only insofar as the Regulations modify primary legislation), paragraph 5 of Schedule 1.
- 3.6 In accordance with Section 121(11) of the Act, the negative procedure will apply to Regulations made under section 124 insofar as they amend secondary legislation.
- 3.7 Under Section 40 of the Legislation (Wales) Act 2019, provision subject to the negative procedure may be combined in the same instrument as provision subject to the draft affirmative procedure. As a result, the draft affirmative procedure applies to these Regulations.

4. Purpose and intended effect of the legislation

- 4.1 The public procurement landscape in Wales is evolving. With over £8 billion spent on public procurement each year in Wales, improving the way public procurement is regulated can drive innovation and resilience, and deliver benefits across Wales by supporting our local economy and saving the taxpayer money.
- 4.2 Through the lens of the Well-being of Future Generations (Wales) Act (WBFG), the Welsh Government (WG) is committed to harnessing new and existing opportunities and to working with partners across Wales and beyond to develop a modern and sustainable approach to procurement.
- 4.3 The legislative changes being introduced through the Procurement Act and associated Regulations, the Social Partnership and Public Procurement (Wales) Act 2023 (“SPPP”) and the Health Service Procurement (Wales) (HSP) Act will help to deliver the Welsh Government’s Programme for Government aspirations. They will initiate a new way forward for Wales that will enable the Welsh public sector to leverage the power of procurement to support the more equal, sustainable and prosperous Wales we all want to see in the future.

- 4.4 This Explanatory Memorandum and Regulatory Impact Assessment has been developed in relation to the Welsh Government's Procurement Regulations (the "Regulations") which derive from the Act. These Regulations are required to implement the new public procurement regime established by the Act. The narrative included in this assessment therefore also consider what is included within the Act.
- 4.5 The main policy objectives for the Regulations are to:
- Create a simpler and more flexible commercial system that better meets our needs while remaining compliant with our international obligations.
 - Open up Welsh public procurement to new entrants such as small businesses and social enterprises so that they can bid for more public contracts.
 - Embed transparency throughout the commercial lifecycle so that the spending of Welsh taxpayers' money can be properly scrutinised.
- 4.6 A key factor in the WMs' decision to join the UK Government's Procurement Bill was to ensure certainty, consistency and continuity for contracting authorities and suppliers, especially Welsh Small and Medium sized Enterprises (SMEs) and Voluntary, Community and Social Enterprises (VCSEs).
- 4.7 Securing maximum alignment between the procurement rules as they apply in Wales and England will have the effect of ensuring a level playing field for buyers and suppliers on both sides of the border, whilst still allowing for devolved differences. It is important to emphasise that failure to agree these Regulations will have considerable negative consequences for, and be to the detriment of, suppliers, WCAs and the wider Welsh public sector.
- 4.8 The Regulations primarily set out the detail of what is needed in procurement notices and, if the WMs do not make the Regulations for Wales, then WCAs would be unable to publish notices and suppliers would not be notified of new procurement opportunities. In these circumstances, the WMs would not consent to commencing the provisions of the Act and arrangements would need to be made to retain the existing Public Contracts Regulations 2015 in respect of public procurements undertaken by WCAs. This will create a two-tier procurement system with different procurement rules in effect in Wales and England, which will cause confusion and uncertainty for Welsh suppliers, and may lead to additional, unnecessary, and avoidable costs.
- 4.9 If, having failed to agree these Regulations, WMs decide at some future point to similarly reform procurement legislation in Wales, it is highly likely that Welsh public sector buyers and suppliers will find themselves at a disadvantage to their English counterparts as a result of not having the

opportunity to realise the many benefits of wider procurement reform sooner.

4.10 The main benefits of the new regime are:

- Making it easier to do business with the public sector by reducing and removing barriers for, and creating more competitive bidding opportunities for, Welsh SMEs, and improved prompt payment rules.
- Creating an open and transparent system which will strengthen accountability and potential collaboration opportunities.
- Delivering Welsh procurement policy ambitions through Welsh contracting authorities having regard to the Wales Procurement Policy Statement (“WPPS”).

5. Improvements the subordinate legislation will make to the current situation;

5.1 The Act and supporting Regulations will provide the detail that will enable Wales to achieve and improve the following:

5.1.1 Greater transparency

- Embed transparency throughout the commercial lifecycle so that the spending of public money can be properly scrutinised.
- Everyone will have access to public procurement data.
- Citizens will be able to scrutinise spending decisions.
- Suppliers will be able to identify new opportunities to bid and collaborate.
- Buyers will be able to analyse the market and benchmark their performance against others, for example on their spend with SMEs. They will also have the data they need to collaborate better, drive value for money and identify and monitor social value and community benefits in their procurements.
- Improved access to detailed information will help to monitor for signs of waste and inefficiency and identify potential corruption. Access to this improved information will also provide better evidence for policy decisions related to procurement in the future.

5.1.2 Better for suppliers

- There is a specific duty for WCAs to have regard to the particular barriers facing SMEs, and to consider whether those barriers can be removed or reduced.
- The Regulations help to create a system which is simpler, more open, fair and competitive.
- The legislation will provide consistency for suppliers ensuring that cross-border business with England can continue without

confusion.

- Improved transparency means there will be more information available to suppliers, for example, the Act will require large contracting authorities to publish a pipeline notice forward look for 18 months for opportunities over £2m.
- There will also be a single digital platform for suppliers to register some of their details once, so that they can be used for multiple bids.
- 30-day payment terms will apply throughout public sector supply chains – regardless of whether they are written into the contract. Prime contractors who may be working with smaller businesses in supply-chains will be required to follow this rule.
- Make it easier to do business with the public sector by creating more competitive bidding opportunities for Welsh SMEs, and improved prompt payment rules.

5.1.3 Deliver greater value for money

- Supported by greater transparency and a bespoke approach to procurement, the Act will provide greater flexibility for buyers to design their procurement processes and create more opportunities to negotiate with suppliers. For example, the new competitive flexible procedure means a contracting authority will be able to design their own procurement process; this will help to drive innovation as it will be possible to build in stages, such as demonstrations and testing prototypes, where appropriate.

5.1.4 Most Advantageous Tender

- The Act enables contracts to be awarded on the basis of the “Most Advantageous Tender”, which removes any misperception about the importance of price in award criteria and reassures contracting authorities that tenders can be awarded on a range of social, economic, environmental, and cultural criteria.

5.1.5 Wales Procurement Policy Statement (WPPS)

- Deliver Welsh procurement policy ambitions through WCAs having regard to the WPPS.
- WMs currently publish the WPPS which will set out the national strategic priorities for procurement. As a result of this legislation WCAs will be required to have regard for the statement when they are carrying out procurement activities.
- This will ensure WCAs take account of current policy priorities in their procurements and will enable suppliers to tailor their bids to best match these, which should be clearly set out in the tender documents for every procurement.

5.1.6 Tougher action

- The Act will make it easier to exclude suppliers who have

underperformed on other contracts. It will also create a new 'debarment register', accessible to all public sector organisations, which will list suppliers who must or may be excluded from contracts.

- It will also enable CAs to take tougher action on underperforming suppliers making it easier to exclude suppliers who have underperformed on other contracts.

5.1.7 Strengthening exclusion grounds

- The Act toughens the rules to combat modern slavery by allowing suppliers to be excluded where there is evidence of modern slavery.

5.1.8 Effective emergency procurement

- The Act will allow faster more transparent competition processes for emergency buying, reducing the reliance on direct awards while retaining (and improving) the ability to act at pace in situations similar to the COVID pandemic.

5.1.9 Protect national security

- The ability to exclude suppliers from procurements if they present a threat to national security.

5.1.10 Comply with International Trade obligations

- The Act will help ensure that Contracting Authorities within the UK meet its international trade obligations on public procurement included in treaties that it has signed including the WTO GPA, TCA and CPTPP.
- Will help ensure that UK businesses can continue to be successful in competing for public contracts in other countries around the world.

6. How will the legislation enable sectors to operate more efficiently?

- 6.1 The Regulations and associated Procurement Act will have a far-reaching impact beyond an organisation's procurement and commercial teams. The behavioural and cultural change generated as a result of the evolution in procurement legislation in Wales will help WCAs achieve their well-being objectives and the seven national well-being goals by improving strategic procurement, increasing innovation, collaboration and cross-sector working, and delivering better outcomes for Wales. The Regulations mainly focus on increasing transparency through

procurement, the key benefits of which are set out at paragraph 5.1.1 above.

7. Whether the legislation will improve access or outcomes for disadvantaged or excluded sections of society;

- 7.1 These Regulations and the associated Act, alongside the SPPP and the HSP Act, will all dovetail together to provide an effective framework for procurement in Wales which, alongside the WPPS and the WBFG Act, will ensure that the Welsh public sector use procurement as an effective lever to deliver social, cultural, economic and environmental outcomes, including fair work.
- 7.2 The provisions contained in the Procurement Regulations are largely technical in nature, regulating how public procurements are undertaken. The nature of these Regulations means they have limited equality impacts, whether direct or indirect.
- 7.3 The Procurement Act makes provision for certain contracts to be 'reserved' so that only supported employment providers can participate in the procurement. Supported employment providers are organisations that operate for the purpose of providing employment or employment-related support to disabled or disadvantaged individuals, and whose workforce are made up of 30 percent of people who are disabled or disadvantaged. By providing for certain contracts to be protected for these organisations, the Act helps support the closing of the employment gap between workers who are disabled or disadvantaged and other workers.
- 7.4 While the Regulations and associated Procurement Act do not make any other direct reference to any protected characteristics, WCAs will be required to have due regard to the WPPS. WCAs should consider how they can use public procurement to deliver additional outcomes through the procurement we are doing so is in line with value for money and related to the subject matter of the contract. Such additional outcomes are outlined within the WPPS.
- 7.5 The Regulations and associated Procurement Act do not disadvantage some people or groups more than others. No direct or indirect negative impacts or barriers have been identified on people with protected characteristics. Positive benefits were identified as outlined above.

8. Consultation

- 8.1 A formal public consultation was held on the UK Government's Draft Statutory Instrument (SI) with bilingual supporting documentation explaining the proposed derogations / differences for Wales.

- 8.2 The SI was a lengthy and complex technical document, and it was therefore split into two parts:
- Part 1 included the technical and non-transparency related provisions of the SI and referred to areas of the Act which require lists, calculations, or thresholds to be used in practice. This was consulted on over a six-week time period from 19 June 2023 until 28 July 2023. Consultation Part 1 is available here. <https://www.gov.wales/wales-consultation-on-public-procurement-regulations-part-1-html>
 - Part 2 focused mainly on the transparency-related provisions of the SI. This referred to the transparency notices which allow contracting authorities to progress procurement processes through the procurement lifecycle in an open, transparent, and informative manner. Part 2 was consulted on over a six week time period, with the process beginning on 17 July 2023 and ending on 25 August 2023. Consultation Part 2 is available here. <https://www.gov.wales/sites/default/files/consultations/2023-07/wales-consultation-on-public-procurement-regulations-part-2-consultation-document.pdf>
- 8.3 Officials held discussions with key stakeholders in relation to the 2-part consultation approach, sent letters to key stakeholders and broadcasted widely via newsletter.
- 8.4 The consultation asked whether the technical detail of the drafting was accurate and achievable. Views were not sought on the policy itself which has already been established by the Act.
- 8.5 Compulsory questions were asked to respondents and asked to detail, where applicable, if they answered “disagree” or “strongly disagree” with the question posed under each section. In addition, there were two Welsh Language Questions in the Consultations.
- 8.6 Separating the consultation across two consecutive parts enabled stakeholders to consider each part separately, making feedback less onerous.
- 8.7 The WG received twelve responses to the first part of the consultation and eighteen responses to the second part.
- 8.8 Responses were received from a wide range of stakeholders including The Welsh Local Government Association (WLGA) on behalf of Welsh Local Authorities, the Higher Education Sector in Wales, the social housing sector, fire, government bodies including Welsh Government Sponsored Bodies (WGSBs), academia and the private sector.
- 8.9 The consultation documents and Welsh Government’s summary of responses has been published at <https://www.gov.wales/wales->

[consultation-on-public-procurement-regulations-part-1](https://www.gov.wales/wales-consultation-on-public-procurement-regulations-part-1)
<https://www.gov.wales/wales-consultation-on-public-procurement-regulations-part-2>

- 8.10 Feedback received was generally positive with respondents welcoming the opportunity to give their views. There was broad agreement to the proposals in the consultation.
- 8.11 The Welsh Government and UK Government have worked closely on the development of the Procurement Act and their respective statutory instruments to ensure there is maximum alignment between the legislation and to minimise any risk of potential divergence. Securing maximum alignment between the procurement rules as they apply in Wales and England will have the effect of ensuring a level playing field for buyers and suppliers on both sides of the border. As a result, changes have been made to some parts of the Welsh SI to ensure this consistency continues whilst also allowing for devolved differences where appropriate.

PART 2 – REGULATORY IMPACT ASSESSMENT

9. Regulatory Impact Assessment

- 9.1 Due to the Act and Regulations being required to work together, this Explanatory Memorandum and Regulatory Impact Assessment considers the impact of both the Procurement Act and these Regulations.
- 9.2 A Regulatory Impact Assessment (RIA) has been completed for the Procurement Regulations, and it follows below.
- 9.3 The RIA presents a best estimate of the costs and benefits of the Regulations based upon the available evidence. The analysis has been informed by data taken from Sell2Wales, which is an information source and procurement portal. It is the national advertising portal where Welsh public sector organisations post their contract opportunities and manage their tender opportunities. Suppliers can find opportunities, promote their services, and bid for opportunities. It is provided by the WG and is free to use for both suppliers and buyers.
- 9.4 It has been necessary to make a series of assumptions in order to complete the calculations due to insufficient data being available. Any assumptions made are explained in the narrative. Unless otherwise stated, all costs in the RIA have been rounded to the nearest £100. Some of the totals may not sum due to this rounding.
- 9.5 This RIA takes into account estimated costs over the period 2024 to 2025.

Options

10. Option 1: Business as usual (Do Nothing)

- 10.1 Doing nothing would mean that the WMs would not take forward the powers contained within the Procurement Act 2023. This would ultimately result in the provisions of the Act becoming unworkable without the Regulations since, if the WMs do not make the Regulations, then WCAs would be unable to publish notices and suppliers would not be notified of new procurement opportunities.
- 10.2 In these circumstances, the WMs would not consent to commencing the provisions of the Act for WCAs. If this happens, the UK Government can commence the Act in relation to non-devolved CAs and make provision to ensure that the Act does not regulate procurement by WCAs and that the existing Procurement Regulations continue to regulate procurement by WCAs. It will not be possible for the Act to be commenced in relation to procurement by WCAs in the future.
- 10.3 This would then mean that there would be three different regimes in the UK – CAs in England and Northern Ireland would follow the new Procurement Act 2023, Scotland have their own Procurement Reform (Scotland) Act 2014 and Wales would be under the existing Procurement Regulations.
- 10.4 This option would mean little change to current procurement practice however WCAs would still need to follow UKG's new Regulations and the Procurement Act when procuring from ("calling off") frameworks or dynamic markets established by English CAs. This would have a significant impact since, for example, call offs from Crown Commercial Services frameworks by WCAs was valued at over £295m in 2022/23.
- 10.5 In the future, there could be the potential for WG to create their own Act. However, this raises two main issues:
1. The Welsh Act could end up the same as the UKG Act which would then be time and resources wasted.
 2. WG could create a new regime which is different to the rest of the UK. This would depend upon the political objectives at the time but would ultimately lead to differing schemes, causing cross border issues and realisation of the risks detailed below.
- 10.6 Option 1 carries a number of risks (whether retaining the existing procurement Regulations or WG developing its own Act), the key ones being:
- Lack of consistency and certainty for WCAs and suppliers, particularly those who conduct business across the borders. There would be different rules between England and Wales, meaning suppliers could

become confused as to which rules apply and how to provide goods, services or works across the border. This could put suppliers off bidding for contracts in Wales given that Wales does not have the same buying power as England.

- The Wales market becoming an unattractive business prospect if Welsh procedures are different to those in England. The procedures in Wales would be more onerous than those in England, therefore suppliers may be put off by the additional requirements.
- Stakeholder disengagement as, in general, they would wish to maintain the same rules as England.
- Reputational risks associated with the significant work undertaken to date on reforming procurement legislation in Wales and then not taking it forward. This would result in a lack of confidence from stakeholders in WG's decision-making. There would also be a reputational risk for our relationship with UKG. The relationship has been positive, both at official and Ministerial levels and it is likely that pursuing option 1 would have a negative impact on our relationship with UKG going forward.
- It is unclear how systems in Wales would work with those of UKG on cross-cutting issues, such as proposals on digital data standards, central debarment and non-discrimination.
- It is unclear how divergence would affect reserved bodies that operate in Wales e.g. those that wish to purchase from Welsh procurement frameworks.
- It is unclear if WCAs would continue to have access to the UKG's Frameworks. The risk of not having access to the UKG's Frameworks would have a significant negative impact on resources and buying power for WCAs. This could also have an impact on economic development in Wales, supplier attractiveness and/or economies of scale as Wales receives enhanced commercial benefits from using some of UKG's Frameworks.
- It is unclear if the links between Sell2Wales and the central platform would work efficiently and effectively. If not, and WCAs were unable to publish notices on the central platform, then there would be a risk of WCAs breaching these obligations in International Agreements.

10.7 This option would also lead to lost opportunities, such as:

- Digital – work currently undertaken on the systems being developed to support the new procurement legislation, including the procurement notices, data collection, etc. would be lost for Wales. It is likely this would cause integration issues between UKG and Wales Systems.
- Transparency – there would be a lost opportunity of embedding transparency throughout the commercial lifecycle. This increased transparency would mean that the spending of public money could be properly scrutinised by all citizens in Wales, suppliers would be able to identify new opportunities to bid and collaborate, buyers would be

able to analyse the market and benchmark their performance against others, and the WG will have better evidence to make policy decisions related to procurement in the future.

- Learning and Development (L&D) – Under the current arrangement the UKG are creating learning and development products for the public sector. Wales has been given access to these training products, which will be supplemented by WG with bilingual Welsh specific training (additional eLearning modules) to address the wider changes to the procurement landscape in Wales. Option 1 would result in a missed opportunity to upskill procurement professionals in Wales.

10.8 Option 1 is not recommended due to the risks and lost opportunities stated above and because it does not meet the policy objectives for procurement reform in Wales as detailed in paragraph 4.5 above. Option 1 also runs the risk that, without extra oversight, public procurements may not be compliant and aligned with international trade obligations.

11. Costs and benefits – Option 1: Do Nothing

11.1 Option one has the following potential costs:

- **Re-engagement with the public sector** - in the event of do nothing, WG would need to undertake a new series of announcements, newsletters, and webinars to explain why we have taken the decision to retain the existing legislation. The Minister for Finance and Local Government would also need to publish a Written Statement.
- **Amendments to the online portal** – the digital team would need to liaise with UKG regarding integration with the central platform and amend the noticing requirements, etc. for Wales.
- **Legal costs** – will be incurred by both UKG and WG, if the Act is not commenced for WCAs.
- **Legislation development** – the funding and costs for resources to develop the legislation to date would have been wasted. The above are resource costs and not direct costs to the WG. It is not possible to predict what the actual costs would be.
- **Training costs** – please see below.

11.2 Currently, UKG are funding the development of the comprehensive L&D programme for procurement reform, including WCAs, and they will be hosting some on their eLearning platform and facilitating interactive tutor-led courses for those needing to become experts in operating under the new regime.

11.3 However, under option 1, it is considered that the UKG's L&D provision would not be needed for WCAs. Rather, the WG would need to provide its own eLearning, which is likely to consist of up to six modules which would be aimed at Welsh procurement and commercial practitioners, and other

personnel who regularly undertake procurement activity or need a deeper understanding of the procurement legislative landscape in Wales.

- 11.4 The eLearning would be designed to help WCAs understand how the existing procurement legislation will link with the SPPP Act and HSP Act. It will also highlight in which circumstances WCAs need to follow the Procurement Act, i.e. if they are calling off a Framework or Dynamic Market which has been established by a non-reserved CA. The cost of developing the eLearning package has been estimated to be £9,400.
- 11.5 In addition to the eLearning, some of the voiceovers for the UKG Knowledge Drops have already been recorded by Welsh Government staff so the estimated £100.00 (see Annex 1) will be incurred regardless.
- 11.6 The estimated cost for WCAs to undertake this training is in the region of £248k. The detailed breakdown of all estimated costs to Wales for Option 1 is available at Annex 1.

12. OVERALL ESTIMATED COSTS SUMMARY – OPTION 1

All costs detailed below exclude VAT.

Total L&D costs

Knowledge Drop Cost (voice overs)	£100.00
eLearning Cost	£9,400
Total L&D Cost	£9,500

Total cost for WCAs to attend training

eLearning Trainees	£248,300
Total Option 1 Overall Costs	£257,800

13. Option 2: Make Secondary Legislation

- 13.1 Option 2 would mean that the WMs would take forward the powers contained within the Act via secondary legislation. This would result in the provisions of the Act being commenced for WCAs, therefore enabling stakeholders to realise all the benefits the legislation will bring (please see paragraph 5.1 above for the full list of benefits).
- 13.2 The secondary legislation will result in:
- New procurement procedures being implemented, giving greater flexibility to buyers and opportunities to achieve better commercial outcomes.
 - Transparency – significant increase in the level of transparency for procurement processes which will enable the collection of better more focused data. It will also aid suppliers in the bidding process.

- Digital platforms – Wales will use the Sell2Wales portal, which will link into the UKG Central Platform, this will enhance notices and data collection and ease the process for suppliers and buyers.
- Investment in training – WCAs will be able to access a range of training dependent upon their role and requirements, leading to a better understanding of the new procurement Regulations and also helping to upskill users across the Welsh public sector.
- Policy objectives being met as the Act requires WCAs to have regard to the WPPS.
- Suppliers offering more innovative solutions through the new procurement processes.
- Time savings achievable through streamlined procedures.
- Time savings for suppliers not having to provide "core" information each time they wish to tender for an opportunity. Suppliers will only have to provide this information once (and update when required) in the Central Digital Platform.

13.3 Risks

- Additional noticing requirements might overwhelm procurement teams and they therefore do not publish them and breach the legislation.
- Procurement practitioners do not embrace the new flexibilities and therefore revert to using familiar procedures, e.g., not building in testing prototypes in the procurement process where this might be beneficial to achieving the best commercial outcome.

14. Costs and benefits - Option 2: Make Secondary Legislation

- 14.1 There are likely to be a number of costs associated with the reform of public procurement in Wales. These include direct costs to WG associated with the development and delivery of a L&D programme, as well as costs associated with the enhancement of e-procurement systems.
- 14.2 The majority of these costs will be met from within existing budgets. For example, the WG funded eProcurement systems have been allocated additional revenue to enable the systems provided by WG to either be enhanced or new functionality to be procured in readiness for the introduction of procurement reform.
- 14.3 There will also be upgrades required to Sell2Wales for the new procurement legislation. This is being carried out under a separate business as usual budget within the WG. It is estimated that this will cost £350k. Please note, this cost is not yet known so the estimate is based on previous development work undertaken on the Sell2Wales system.
- 14.4 There will also be direct costs to WCAs to implement the new Regulations as they will need to publish additional procurement notices. WCAs already

publish procurement notices on Sell2Wales, therefore it will only be the new notice requirements which will result in additional time and cost. These timeframes and costs are difficult to assess as it is unknown how many new notices will be published and how long it will take to populate these new notices. To reduce the administrative challenges and unnecessary duplication for WCAs, it is the intention to design the Sell2Wales system so that much of the information required for the notices will be pre-populated by using a unique identifier which will be given to each procurement. It is therefore not possible to include detailed costs for this element.

- 14.5 There will also be costs for WCAs in relation to the need to change internal procedures / standing orders. These direct costs will include elements such as redrafting and updating existing policies, procedures, templates, translation, approval processes, and so on. The true cost for each WCA will vary, as there are lots of dependencies such as how large the CA is, what their standing orders say now (i.e. some may not need to be changed as much as others), gathering information on pipeline notices will depend on the size of the CA, some may be collecting this data already, etc. Therefore, to include detailed costs for this element is not possible.
- 14.6 There will also be indirect costs to WCAs associated with upskilling procurement teams and any members of staff who undertake procurement / contract management duties in the new Regulations and e-procurement systems. Further information on this is provided below, and a detailed breakdown of these costs is available at Annex 2.
- 14.7 There will also be benefits for suppliers as detailed in 5.1.2 above.

15. Learning and Development Costs

- 15.1 The main cost will be the significant training package, the majority of which will be delivered prior to the legislation commencing. This is mainly being funded by UKG however WG are producing supplementary training which will highlight differences and derogations from UKG's Regulations. It will also cover any relevant links to the SPPP Act, the HSP Act and the WBFG Act.
- 15.2 Information regarding the training costs is provided below:

16. Knowledge Drops

- 16.1 These 'Knowledge Drops' will be provided and funded by UKG who will be making them available to anyone who needs to gain a level of understanding of the new legislation. They are designed to provide a high-level overview of the procurement Regulations and are tailored to different audiences. There will be separate versions for contracting authorities, suppliers, VCSEs and SMEs.

- 16.2 These are informative videos hosted on gov.uk and YouTube and can be viewed at any time. They were launched in December 2023 and are available to the public in general, non-commercial leaders, suppliers and other persons who have an interest in the new legislation and want to improve their procurement knowledge and general level of awareness of the new rules.
- 16.3 It is not possible to calculate this resource cost as it is unknown how many suppliers and/or individuals may access these Knowledge Drops.
- 16.4 UKG is producing these knowledge drops so there will be no cost to the WG for this element. WG provided voiceovers for some of the knowledge drops as UKG wanted a diverse range of regional accents to address the stakeholder community.
- 16.5 These voice overs took approximately 4 hours of two WG officials time, the estimated sunk cost of this is £84.80.

17. eLearning

- 17.1 This is the core training product, which will be open to all relevant procurement and commercial practitioners from contracting authorities (and nominated individuals who regularly undertake procurement activity on behalf of contracting authorities). It is designed to cover all the relevant knowledge and understanding of the different elements of the new regime.
- 17.2 This will be for skilled practitioners, designed to provide a grounding in each element of the new procurement Regulations. These will be accessed via the UKG's Government Commercial College (GCC) site and will be self-guided, consisting of 10 modules of approximately 1 hour per session. The intention is for it to launch in March/April 2024.
- 17.3 WG will also supplement UKG's eLearning with an additional 6 modules that focus on priority areas identified by WCAs via a WG survey (see below). This supplementary eLearning will be aimed at Welsh procurement and commercial practitioners, and other personnel who regularly undertake procurement activity or need a deeper understanding of the procurement legislative landscape in Wales.
- 17.4 The WG eLearning will cover areas of specific interest to WCAs, including:
- The changing procurement landscape in Wales
 - Links between the Procurement Act, the SPPP Act, and the HSP Act
 - Procedures
 - Transparency requirements
 - Framework Agreements and Dynamic Markets
 - Procurement Notices
- 17.5 There will be no cost to the WG for the development of the 10 eLearning modules being developed by UKG. The Welsh specific modules are

currently being developed in-house and an estimate of what will be contained within each module and how much material will be needed has been made to calculate the potential costs.

- 17.6 The Welsh specific eLearning modules will be hosted on the NHS learning platform. There will be no cost to translate, build, host and maintain the eLearning modules on the NHS platform as this is funded by WG and therefore there is no service cost.
- 17.7 It is anticipated that it will take in the region of 2 weeks to develop each module, from drafting, testing and uploading. This is based upon previous time taken to prepare similar types of learning.
- 17.8 There will be six WG eLearning modules which are anticipated to contain approximately 1500 words per module. It has also been estimated that there will be approximately 1952 trainees wishing to access this training.
- 17.9 Based on the above estimated numbers, the total cost for developing the six eLearning modules is estimated at just over £9k.
- 17.10 The estimated cost for WCAs to undertake the training is £662k. The detailed breakdown of all estimated costs to Wales for the eLearning is available at Annex 2 table 2.

18. Deep Dives

- 18.1 Designed for expert procurement practitioners, these 'deep dives' will provide a deeper understanding on the application of the legislative changes. The course will run over three consecutive days, it will be an interactive instructor-led virtual class in small cohorts. There will be six different topics and participants will be awarded a certificate of attendance and e-badge.
- 18.2 To ensure consistency, UKG will share its Deep Dive training materials with WG. UKG have estimated that the Deep Dive sessions will last around 20 hours for each attendee. There are no development costs associated with the deep dives as these are being created by UKG.
- 18.3 The WG will also make the deep dives available through the medium of Welsh which will be delivered by an external trainer. The slides and training materials will also be provided in Welsh. These sessions will be held virtually which will incur no cost.
- 18.4 The translation requirements for these deep dive sessions are estimated as follows:
 - Slide decks consist of approximately 8900 words
 - Training materials consist of approximately 8700 words
- 18.5 These figures have been based on a WG subordinate legislation virtual training course. Translation costs have been taken from the NPS Translation Framework and for English to Welsh translation 1000 words

is £64.00. The translation costs are therefore anticipated to be approximately £1k (see Annex 2 table 3 for further information).

- 18.6 It is anticipated that there will be approximately 850 people from Wales participating in the deep dive training. There is an expectation that 8% will express an interest in this training being delivered in the Welsh language. This figure is based on previous lunch and learn sessions, whereby 4% of attendees wished for these to be held in Welsh. It is anticipated however that it will be more than 4% for these deep dive sessions as they will be more interactive sessions and other stakeholders beyond those who attended the lunch and learn sessions may prefer to have the training delivered in the medium of Welsh. Therefore, 8% of 850 individuals equates to approximately 68 trainees. There will be a maximum of 15 trainees per event meaning that approximately 5 Welsh language deep dive sessions will be needed.
- 18.7 The deep dives are estimated to launch in May 2024 with the intention of them running over a 12-month period.
- 18.8 The trainer will also need an additional 2.5 days to prepare for the deep dive sessions. It is therefore anticipated that the total cost to deliver the deep dive training in the Welsh language will be approximately £17k as per Annex 2 table 3.
- 18.9 In addition, the resource cost for WCAs to undertake the training is approximately £360k as per Annex 2 table 3.

19. Written Guidance

- 19.1 All of the L&D will be supported with written guidance to help buyers understand what the legislation says and why. It is anticipated that approximately 56 areas of guidance will need to be developed by existing WG resources.
- 19.2 Developing the guidance is estimated to take approximately 8 hours of WG officials' time based on the guidance which has already been drafted. The total cost for WG officials' time to develop all of the guidance is thereby estimated to be just over £9k.
- 19.3 It is expected that the average number of words per piece of guidance will be approximately 2,500. Translation costs have been taken from the National Procurement Service (NPS) Translation Framework and for English to Welsh translation 1000 words is £64.00. Therefore, the translation cost is estimated to be almost £9k.
- 19.4 The total cost for developing the guidance is just over £18k. Please see Annex 2 table 4 for the full detail.

20. Communities of Practice

- 20.1 The formal learning and development will be supported by Communities of Practice for commercial/procurement professionals across central

government and the wider public sector. Supported by a central team and superusers, these communities will help individuals to embed what they have learned and provide opportunities for groups to come together and foster collaborative learning, by sharing best practice, innovative approaches and challenges.

20.2 This will be in the format of meetings which may be online/in person, there will be no cost to WG. These are anticipated to start in May 2024.

21. Overall Costs

21.1 None of the training on offer is mandatory. However, WG does recommend that commercial and procurement staff in the public sector undertake the eLearning to demonstrate that they have been trained and are equipped to operate under the new regime. Members of some professional bodies will be able to claim CPD hours for the time they commit to completing the programme of learning.

21.2 The total overall estimated costs related to option 2 is £1,417,300 as summarised below:

22. OVERALL ESTIMATED COSTS SUMMARY – OPTION 2

All costs detailed below exclude VAT.

22.1 Total Digital Enablement Costs

Sell2Wales	£350,000
TOTAL	£350,000

22.2 Total L&D costs

Knowledge Drop Cost	£100.00
eLearning Cost	£9,400
Deep Dive Cost	£16,900
Guidance Cost	£18,500
Total L&D Cost	£44,900

22.3 Total cost for WCAs to attend training

eLearning Trainees	£662,000
Deep Dives Trainees	£360,400
TOTAL	£1,022,400

Total Option 2 (Secondary Legislation) Overall Costs	£1,417,300
---	-------------------

23. Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

23.1 There are unlikely to be any detrimental effects on competition. These Regulations will enable increased flexibility for suppliers, and it is hoped that this will encourage new entrants to the market, thereby providing increased competition from access to a more diverse range of suppliers and increasing the number of bids on public procurements.

23.2 Suppliers will be able to offer more innovative solutions in the public procurement process. There will also be time savings to suppliers from not having to complete tender information they have already uploaded and saved to the central digital platform. It is hoped that all of this will help to stimulate confidence in the bidding process and thereby increase competition.

24. Post Implementation Review

24.1 The new transparency provisions within the Regulations and associated Procurement Act will increase the availability of robust and reliable data, which will help to inform decision making, and identify and monitor trends.

24.2 The Procurement Act also includes standalone equivalent regulation-making powers for the Welsh Ministers in most areas of the Act. The improved transparency provisions and resulting data will make it possible to identify and analyse systemic trends which can be used to detect areas where intervention and corrective action is required, and promote more informed policy decisions in the future.

ANNEX 1- Estimated Costs for Option 1

All costs detailed below exclude VAT.

Table 1 – Estimated resource cost for WG Knowledge drop voice-overs

Number of hours	Median wage per hour*	Total Cost
4	£21.20	£84.80

Table 2 – Estimated resource cost for WCAs to attend WG eLearning

Number of eLearning Modules (10 UKG)	Total time for completion (1hr per module)	Number of trainees	Median Wage per hour*	Total cost per trainee to complete all modules	Total Cost
6	6 hours	1952	21.20	£127.20	£248,294.40

Table 3: Estimated Development Costs for WG eLearning

Number of eLearning Modules	Time to create each module	Median Wage per hour*	Total cost per document	Total Cost
6	74 hours	21.20	£1,568.80	£9,412.80

TOTAL Option 1 Cost	£257,792
----------------------------	-----------------

*The median wage is taken from the Annual Survey for Hours and Earnings (ASHE) data for a “Buyer and Procurement Officer” 2022, where the median hourly wage is £16.30. Plus 30% on-costs.

ANNEX 2 – Estimated Costs for Option 2

All costs detailed below exclude VAT.

Table 1 – Costs for Digital Enablement

TOTAL Digital Cost	£350,000
---------------------------	-----------------

Table 1 – Estimated resource cost for WG Knowledge drop voice-overs

Number of hours	Median wage per hour*	Total Cost
4	£21.20	£84.80

TOTAL Knowledge Drop Cost	£84.80
----------------------------------	---------------

Table 2: Estimated costs for eLearning

Estimated Development Costs:

Number of eLearning Modules	Time to create each module	Median Wage per hour*	Total cost per document	Total Cost
6	74 hours	21.20	£1,568.80	£9,412.80

Estimated resource cost for WCAs to attend eLearning:

Number of eLearning Modules (10 UKG and 6 WG)	Total time for completion (1hr per module)	Number of trainees	Median Wage per hour*	Total cost per trainee to complete all modules	Total Cost
16	16 hours	1952	21.20	£339.20	£662,118.40

TOTAL eLearning Cost	£671,530
-----------------------------	-----------------

*The median wage is taken from the Annual Survey for Hours and Earnings (ASHE) data for a “Buyer and Procurement Officer” 2022, where the median hourly wage is £16.30. Plus 30% on-costs.

Table 3 - Estimated costs for Deep Dives

Estimated trainer costs:

Number of deep Dive training sessions	Number of days per course	Cost per day Welsh trainer	Total cost deep dive	Total Cost
5	3 days	£900.00	£2,700	£13,500

Trainer preparation days	Cost per day Welsh trainer	Total Cost
2.5 days	£900	£2,250

Estimated translation costs:

	Total for 3 days training	Cost per 1000 words translation	Total Cost
Training materials	8,700	£64.00	£558.14
Slide decks	8,900	£64.00	£570.24
		TOTAL	£1,128.38

Estimated resource costs for WCAs to attend training:

Deep Dives time to complete	Number of trainees	Median Wage per hour*	Total cost per trainee	Total Cost
20 hours	850	21.20	£424.00	£360,400

TOTAL Deep Dive Cost	£377,278.38
-----------------------------	--------------------

*The median wage is taken from the Annual Survey for Hours and Earnings (ASHE) data for a "Buyer and Procurement Officer" 2022, where the median hourly wage is £16.30. Plus 30% on-costs.

Table 4 – Costs for developing Guidance

Estimated cost of translation:

Number of Guidance Documents	Approx words per document	Cost per 1000 words translation	Cost for each piece of guidance	Total Cost
56	2,500	£64.00	£160.00	£8,960

Estimated development costs:

Number of Guidance Documents	Time to create document	Median Wage per hour*	Total cost per document	Total Cost
56	8 hours	21.20	£169.60	£9,497.60

TOTAL Guidance Cost	£18,457.60
----------------------------	-------------------

*The median wage is taken from the Annual Survey for Hours and Earnings (ASHE) data for a “Buyer and Procurement Officer” 2022, where the median hourly wage is £16.30. Plus 30% on-costs.

TOTAL Option 2 Cost	£1,417,300
----------------------------	-------------------