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Welsh Government

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Consultation Document

Health Service Procurement Reform Wales

A consultation on proposed changes to the way that health services provided as part of the NHS are procured in Wales

Date of issue: **27 November 2023**

Action required: Responses by: **23 February 2024**

Mae'r ddogfen hon ar gael yn Gymraeg hefyd / This document is also available in Welsh
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg / We welcome correspondence and telephone calls in Welsh

Overview

This consultation document seeks views on proposals to change the way health services provided as part of the NHS are procured in Wales.

How to respond

Submit your comments by **23 February 2024**, in any of the following ways:

- accessing our online response form
- download, complete our response form and email:
healthcareprocurementreform@gov.wales
- download, complete our response form and post to:

Health care procurement reform
Health and Social Services Group
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

Health care procurement reform
Health and Social Services Group
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Email:

healthcareprocurementreform@gov.wales

This document is also available in Welsh

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The Welsh Government will be data controller for Welsh Government consultations and for any personal data you provide as part of your response to the consultation.

Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. The lawful basis for processing information in this data collection exercise is our public task; that is, exercising our official authority to undertake the core role and functions of the Welsh Government. (Art 6(1)(e))

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. In the case of joint consultations this may also include other public authorities. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation and that the Welsh Government may be under a legal obligation to disclose some information.

If your details are published as part of the consultation response, then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

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Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the UK GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ
e-mail:
dataprotectionofficer@gov.wales

The contact details for the Information Commissioner's Office are:
Wycliffe House
Water Lane
Wilmslow
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Tel: 01625 545 745 or
0303 123 1113
Website: <https://ico.org.uk>

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Ministerial Foreword

This consultation relates to the development of regulations and the accompanying statutory guidance for the procurement of health services delivered on behalf of the NHS in Wales.

The proposed regulations and statutory guidance will be made under the Health Service Procurement (Wales) Bill which I introduced in the Senedd in February. Should the Bill become an Act, it will give the Welsh Ministers the necessary powers to reform the way in which certain NHS health services are procured in Wales. It will also provide an opportunity to respond to changes that have been brought about by the Department of Health and Social Care's (DHSC) 'Provider Selection Regime' (PSR).

Under DHSC's PSR, the NHS and local authorities in England will have the flexibility to procure and arrange certain health services in a way that will encourage more stable collaborations and partnership working.

I would like to ensure that we also have the ability to benefit from more flexible procurement practices when sourcing health services in Wales. The provisions in the Health Service Procurement (Wales) Bill and future regulations will seek to do just that; providing an option to 'level the playing field' for health service procurement between England and Wales.

I said throughout the scrutiny of the Bill in the Senedd that, where appropriate, we will seek to align with the proposals under DHSC's proposed PSR in England, but only where such measures meet the needs of Wales first and foremost, and align with our values, ways of working and in a manner that continues to deliver vital services for the citizens of Wales.

The key purpose of this consultation is therefore to seek your views on the operational principles of a new health service procurement regime for Wales. The feedback you provide will enable us to shape our thinking and inform the development of the forthcoming regulations and accompanying statutory guidance that will underpin the operation of a new procurement regime for health services in Wales.

The consultation will close on 23 February 2024, after which we will fully consider and reflect upon the feedback received. We will publish a summary of the consultation responses as soon as possible thereafter. It is anticipated that the regulations and guidance will be published in summer 2024.

I very much welcome and value your opinion on the proposals set out in this consultation document. I look forward to hearing what you have to say and encourage you to engage in the process and submit your views.

Eluned Morgan MS
Minister for Health and Social Services

Chapter 1 – Why are we consulting?

1. This consultation seeks views on proposed changes to the way health services are procured by the NHS and local authorities in Wales.
2. Changes as part of the UK Government's Procurement Act 2023 will reform the way that public bodies in England, Wales and Northern Ireland procure goods and services under the current procurement regulations¹.
3. There are also changes proposed to the way health care services are procured in England under the Department of Health and Social Care's (DHSC's) proposed Provider Selection Regime (PSR).
4. In response to the aforementioned changes to public procurement, the Health Service Procurement (Wales) Bill², currently at stage 4 Senedd scrutiny, seeks to provide an appropriate legislative platform to create a new health service procurement regime. The Bill will amend the UK Government's Procurement Bill to enable the Welsh Ministers to disapply provisions of that Bill in relation to services provided as part of the health service and enable alternative provision to be made.
5. Subject to successfully achieving Royal Assent for the Health Service Procurement (Wales) Bill, the future regulations made in pursuance of the powers in that Bill will set out the operational details of the proposed new health service procurement regime in Wales. This will be supplemented by statutory guidance.
6. **The aim of this consultation exercise is to seek views on the operational principles of the proposed new health service procurement regime in Wales and whether the regime should, where appropriate, seek to align with or diverge from, proposals detailed in DHSC's PSR in England.**
7. **Stakeholder feedback from this consultation exercise will help inform and shape the operational elements of the proposed new health service procurement regime in Wales and how those provisions will be enacted in future regulations.**

Chapter 2 – Position and reason for change

Background

8. At present, there are a range of European Union (EU) Directives which set out the EU legal framework for public procurement. These EU Directives have been implemented into UK law by regulations which govern public sector procurement; the primary regulations currently in force are the Public Contract Regulations 2015 ('PCR 2015'). The PCR 2015 sets out the rules, including setting financial thresholds, requiring certain procurement processes to be followed and other related legal requirements.
9. The requirements of the PCR 2015 regime only apply to contracts which meet the requirements of those regulations, including thresholds set out in the PCR 2015

¹ The Public Contracts Regulations 2015 S.I. 2015/102, The Utilities Contracts Regulations 2016 S.I. 2016/274, The Concession Contracts Regulations 2015 S.I. 2016/273, and the Defence and Security Public Contracts Regulations 2011 S.I. 2011/1848.

² [Health Service Procurement \(Wales\) Bill \(senedd.wales\)](https://www.senedd.wales/Health-Service-Procurement-Bill)

Regulations, and the thresholds vary in value for goods, services and works contracts. As such the PCR 2015 creates a legal framework, as set out within the regulations, which is designed to ensure that all public contracts over the stipulated financial thresholds are awarded transparently, without discrimination, as well as ensuring that all potential suppliers are treated equally.

10. The procurement of tender opportunities for the supply of independent health services in Wales must therefore be undertaken in accordance with the prevailing PCR 2015 and Welsh Procurement Policy Statement. This requires that all above threshold requirements are appropriately advertised and awarded in accordance with principles which require the application of:
 - a. non-discrimination,
 - b. equal treatment,
 - c. transparency;
 - d. mutual recognition, and
 - e. proportionality.
11. The PCR 2015 requires that the competition is conducted against one of the five prescribed procedures that involve competition. There are also prescribed forms of notice that need to be followed when advertising and awarding a contract, using services such as Sell2Wales. The regulations also prescribe time limits whereby a competition must be 'live' and 'accessible' to bidders to submit a tender (i.e., the open procedure requires 35 days, which is reduced to 30 days if electronic tenders are permitted). 'Relevant authorities' are also required to have a prescribed qualification and selection/award criteria upon which they will evaluate all bids.

Changes to UK public procurement landscape

12. Following the UK's decision to leave the EU, there are proposals to change the way that public bodies currently procure goods and services. The UK Government is seeking to introduce a new public procurement regime through its Procurement Act 2023, which will repeal the PCR 2015 and reform the way public bodies procure goods and services in the UK.
13. Distinct from this, the Department of Health and Social Care is implementing the PSR to change the way health care services³ will be procured in England as a result of provisions in the UK Government's Health and Care Act 2022. This Act amends the National Health Service Act 2006 and enables the procurement of health care services in England to be removed from the scope of currently applicable procurement rules (as set out in the PCR 2015), and for a new set of procurement rules to be put in place to replace the PCR 2015 and, in turn, the Procurement Act 2023. It is intended that the new set of procurement rules will be the PSR.
14. DHSC's new PSR will apply to NHS procurement for healthcare services in England only, and stems from a desire to remove unnecessary competitive tendering, remove barriers to integrating care and promote stable collaborations for independent health services in England.

³ DHSC define health services as "health care services"

15. The overall aim of the PSR is to move away from the expectation of competition for health care services in all circumstances and towards a system of collaboration and partnership, which helps join services together across the whole health system. DHSC consider that the PSR will give decision-makers in NHS England and local government organisations in England, the flexibility to arrange health care services that best promote the interests of patients and the population within their areas, as well as considering the value for public money. This means that procurers and commissioners of health care services in England could move away from a position of competition by default, such as under the existing PCR 2015 regime, and to a position that gives procurers and commissioners a range of ‘decision making processes’ to award contracts under direct award arrangements or via competition.
16. The operational details of the PSR have been set out in regulations from DHSC (PSR Regulations) that were laid in Parliament on 19 October 2023⁴. Statutory guidance to accompany the PSR Regulations, setting out the operational elements of the proposed new procurement regime has been produced by NHS England and is published alongside the proposed regulations⁵. It is DHSC’s intention that the PSR Regulations will come into force on the 1 January 2024.

Future position on health service procurement in Wales

17. As detailed above, DHSC’s PSR Regulations will only apply to the procurement of health care services in England. The nature of health care services means that changes to procurement arrangements in England could have potential implications for the procurement of health services provided as part of the NHS in Wales, bringing about some unintended practical consequences for the future procurement and commissioning of health services in Wales such as:
- a. Distortion of the current parallel health services procurement platform between England and Wales;
 - b. Limiting the ability to commission health services on a co-compliant / collaborative basis between NHS England and NHS Wales, and the associated benefits of financial and resource economies of scale; and
 - c. Limiting suppliers’ desire to supply health services in Wales due to having to participate in different procurement regulatory regimes and undergo competitive tendering exercises, potentially increasing costs and resource pressures for NHS Wales to procure and attract high quality suppliers in the future.
18. The proposed public procurement reforms described earlier in this document and the associated potential risk described above could pose specific risks and challenges for the procurement of health services in Wales. In light of this, the Welsh Ministers recognised the opportunity to reform the existing health services procurement regime in Wales and develop a future regime which would seek to mitigate the aforementioned risks and challenges and meet the needs of health services in Wales.
19. In February 2023, the Health Service Procurement (Wales) Bill was introduced in the Senedd to seek primary powers for the Welsh Ministers to bring forward regulations

⁴ [The Health Care Services \(Provider Selection Regime\) Regulations 2023 \(legislation.gov.uk\)](#)

⁵ [NHS England » The Provider Selection Regime \(PSR\) draft statutory guidance](#)

which will introduce a bespoke procurement regime which will apply to the procurement of health services provided as part of the NHS in Wales. This move will seek to 'level the procurement playing field', between England and Wales for the sourcing of health services provided as part of the NHS, through where appropriate parity of procurement regimes.

20. The provisions in the Bill will give organisations such as the NHS and local authorities in Wales the ability to implement more flexible procurement practices when sourcing health services provided as part of the health service in Wales. This approach will support the delivery of Programme for Government objectives; develop a health service procurement regime that meets the needs of 'A Healthier Wales' and provides a consistency of approach in health service procurement regimes between England and Wales.
21. In turn, this will provide an opportunity to devise a new health service procurement regime that could align, if so desired, with the proposed PSR in England.

Operational details of the Provider Selection Regime in England

22. DHSC have now published the draft PSR Regulations⁶ underpinning the proposed PSR for England along with the statutory guidance to accompany the regulations which includes the operational details of DHSC's PSR.
23. The PSR Regulations, statutory guidance and supporting documentation have been reviewed to assess their potential applicability to the procurement of health services in Wales and have been considered as follows:
 - a. How the operational principles of the PSR could potentially apply to the current and future procurement of health services in Wales
 - b. Whether aligning, or diverging with the proposals in the PSR will meet the aims and objectives of 'A Healthier Wales' as well as wider Welsh Government's Programme for Government commitments;
 - c. Which elements of the PSR we would seek to replicate for the procurement of health services in Wales.
 - d. Which elements of the PSR we would choose not to replicate for the procurement of health services in Wales and where appropriate make alternative provisions.

Format of this consultation

24. A summary of the scope of the main operational details of DHSC's PSR, along with the proposed approach to changes to health service procurement in Wales, and relevant consultation questions is set out below in [Chapter 3](#).

⁶ [The Health Care Services \(Provider Selection Regime\) Regulations 2023 \(legislation.gov.uk\)](#)

25. The information in [Chapter 3](#) has been framed in a manner to:

- a. Provide stakeholders with a background summary of the provisions in the PSR Regulations;
- b. Provide our initial interpretation of provisions set out in DHSC's PSR Regulations and statutory guidance accompanying the regulations;
- c. Provide details of the applicability and suitability of the provisions in DHSC's PSR Regulations and whether the Welsh Ministers should seek to align or diverge with those provisions when developing a new health service procurement regime for Wales.

26. NHS England and DHSC have undertaken consultation exercises in relation to the establishment of a new procurement regime for health care services in England. In February 2021, NHS England published their consultation on proposals for the PSR in England⁷. In February 2022, DHSC undertook a supplementary consultation and published their response to this consultation exercise in July 2023⁸.

27. An overview of DHSC's supplementary consultation and their summary of responses to stakeholder feedback has been provided at [Annex A](#). This is provided to offer stakeholders an overview of the response to the PSR in England and to highlight the considerations raised by stakeholders in response to DHSC's supplementary consultation. It also provides context to the reasoning and rationale behind DHSC's decisions around the operational processes of DHSC's PSR in England.

28. The interpretation of the PSR Regulations contained in this consultation document should not be treated as an authoritative statement of the law. Interpretation of DHSC's PSR Regulations and the UK Government's Procurement Act 2023 will be for the Courts. The views set out in this document are therefore our current understanding of how the PSR Regulations and Procurement Act may operate and are only offered to assist stakeholders in responding to this consultation. Stakeholders should refer to the full and published versions of the PSR Regulations 2023⁹, the accompanying statutory guidance¹⁰ and the Procurement Act 2023¹¹, in conjunction with this consultation document.

⁷ [NHS England » NHS Provider Selection Regime: Consultation on proposals](#)

⁸ [Provider Selection Regime: supplementary consultation on the detail of proposals for regulations - government response - GOV.UK \(www.gov.uk\)](#)

⁹ [The Health Care Services \(Provider Selection Regime\) Regulations 2023 \(legislation.gov.uk\)](#)

¹⁰ [NHS England » The Provider Selection Regime \(PSR\) draft statutory guidance](#)

¹¹ [Procurement Act 2023 \(legislation.gov.uk\)](#)

Chapter 3 – Scope of the proposals and consultation questions

A - Application and general scope of health care services

- **Overview of DHSC’s approach:**

DHSC’s PSR application removes procurement of health care services from the scope of the PCR 2015.

The intention of such change is to ensure that tendering only takes place where it adds value, by giving commissioners the discretion to choose either to award a contract directly to a provider, or to undertake a competitive tendering exercise. In either case the aim is to ensure good quality care, good patient outcomes, and value for money when designing healthcare services.

DHSC’s PSR intends to give decision makers a flexible, proportionate decision-making process for selecting providers to deliver health care services to the public. DHSC’s aims of the PSR is to make it easier to integrate services and enhance collaboration, and to remove the rigidity associated with the current procurement rules, and the related bureaucracy and cost.

- **Application:**

A - Application and general scope of health services	
DHSC’s PSR England	Proposed approach to health service procurement in Wales
<p>PSR application: Relevant health care services arranged by NHS bodies and local government (defined as a ‘relevant authority’ under section 12ZB(7) of the National Health Service Act 2006).</p> <p>These are:</p> <ul style="list-style-type: none"> (a) a combined authority. (b) an integrated care board. (c) a local authority in England. (d) NHS England. (e) an NHS foundation trust. (f) an NHS trust established under section 25 	<p>Application Wales: We propose that the proposed new regime for the procurement of ‘health services’ in Wales will apply to a ‘relevant authority’ as defined in section 10A(9) of the National Health Service (Wales) Act 2006 (which is to be inserted by section 3 of the Health Service Procurement (Wales) Bill). Relevant authorities are defined as:</p> <ul style="list-style-type: none"> ○ a county council or county borough council in Wales (Local Authorities). ○ a local health board established under section 11. ○ a National Health Service trust established under section 18. ○ a special health authority established under section 22. <p>The application of the proposed new procurement regime could also apply to the provision of health services that are currently arranged</p>

DHSC's PSR scope:

DHSC are defining services within scope of the PSR as health care services which fall within one of more of the 'Common Procurement Vocabulary codes' (CPV codes) specified in the table contained in Schedule 1¹² to DHSC's PSR Regulations.

DHSC expect a 'relevant authority' to use the most relevant CPV code(s) for the health care service they are procuring. Where a more detailed code is not available, a 'relevant authority' is expected to use the overarching parent code for 'health care services'. If a more detailed CPV code is available, but not included within the CPV list, then the service is considered out of scope of the PSR.

DHSC are proposing that the following are outside of scope of the PSR unless included as '**mixed procurement**'*:

- goods (e.g. medicines, medical equipment)
- social care services
- essential and advanced pharmaceutical services arranged under the terms of Community Pharmacy Contract Framework
- non-health care services or health-adjacent services (e.g., capital works, business consultancy, catering, hospital administrative services, hospital bedding services or public health marketing campaigns) that do not provide health care to an individual.

***Mixed procurement** is defined below in [Section C](#) of this consultation document.

Threshold for application: DHSC's PSR will apply to all contracts, regardless of value.

between 'NHS to NHS' or 'NHS to Local Authorities' in Wales under service level agreements (SLA's) or long term agreements.

Proposed scope Wales:

The Health Service Procurement (Wales) Bill provides powers to implement a new regime in Wales for the procurement of health services provided as part of the health service in Wales and, goods and other services that are connected to those health services (see mixed procurement below).

We propose that the regulations for a future new procurement regime for Wales should include a list of Common Procurement Vocabulary codes (CPV codes) in the future regulations that defines the main subject matter, 'health services' that are in scope of the health service procurement regime. The scope of the main subject matter health services and list of applicable CPV codes will be finalised as a result of stakeholder feedback from this consultation process.

Proposed approach to 'mixed procurement' Wales: Our proposed approach to 'mixed procurement' as part of the proposed new regime for the procurement of health services in Wales is defined below – see [Section C](#) below.

Thresholds for application: We will consider whether the proposed new health service regime in Wales should align with DHSC's PSR approach

¹² [The Health Care Services \(Provider Selection Regime\) Regulations 2023 \(legislation.gov.uk\)](#)

Questions:	
Q1	<p>To what extent do you agree or disagree that the proposed new health service procurement regime in Wales should include a list of health services as defined by CPV codes?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details</p>
Q2	<p>To what extent do you agree or disagree that the list of codes presented in DHSC's draft PSR Regulations accurately represent the breadth and scope of defining health services currently delivered or may be procured in the future in Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details.</p>
Q3	<p>Are there any health services that are not included in the list of codes presented in DHSC's draft PSR Regulations, where health services are the main subject-matter, that are currently being delivered, or will be delivered in the future in Wales that you consider should be within scope of a proposed new health service procurement regime in Wales? If so, please provide details (and if applicable, the relevant CPV codes)?</p>
Q4	<p>Are there any CPV codes that are included in DHSC's list that are not applicable to the health service procurement and delivery of health service in Wales and therefore should not be replicated in a proposed new health service procurement regime in Wales? If so, please provide details.</p>
Q5	<p>Are there examples of health services currently procured in Wales that are not defined by a CPV code? If so, please state these services.</p>

Q6	DHSC's PSR CPV code list include some primary care services and are therefore captured under the PSR regime. Are there any CPV codes that are included in DHSC's list that are not applicable to the primary care services in Wales? Are there examples of primary care services currently procured in Wales that are not defined by a CPV code within the DHSC's list?
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B - Key criteria and basic selection criteria

- **Overview of DHSC's approach:**

DHSC has established a set of basic criteria that relevant authorities can require providers to meet. This includes suitability to pursue a particular activity, economic and financial standing; and technical and professional ability. DHSC has also established a set of key criteria that must be considered by relevant authorities when making decisions about provider selection under the regime. Key criteria are summarised as follows:

Quality and innovation	Ensures that decision-making bodies seek to maximise the quality of services and the performance of providers, to innovate and improve services, and to proactively develop services that are fit for the future.
Value	Ensures that decision-making bodies seek to maximise the value offered by a service by selecting the option with the best combination of benefits to individuals in terms of outcomes and to the population in terms of improved health and wellbeing, and brings value to taxpayers by reducing the burden of ill health over the lifetime of the arrangement and as such reducing the cost.
Integration, collaboration, and service sustainability	Ensures that decision-making bodies seek to maximise the integration of services for patients to improve outcomes, that decision-making bodies give due consideration to how their decisions may affect the stability and sustainability of services over time across providers, and that their decisions are consistent with local and national plans around integrating care and joining up services for patients and service users.
Improving access and reducing health inequalities	Ensures that decision-making bodies seek to maximise the choices available to patients, and that services and treatments are offered and accessible to all individuals who need them, with a particular focus on tackling health inequalities.
Social Value	Ensures decision-making bodies seek to maximise the social value created by the arrangements, recognising the role the health service plays in local communities including its leadership role in achieving a net zero carbon footprint.

- **Application:**

B - Key criteria and basic selection criteria	
DHSC's PSR England	Proposed approach to health service procurement in Wales
<p>Basic Criteria:</p> <p>DHSC's PSR Regulations set out that a relevant authority must not award a contract to, (or conclude a framework agreement with) a provider who does not meet the basic selection criteria. The basic selection criteria that providers need to meet is contained within Schedule 16 to the PSR Regulations. A 'relevant authority' may only impose on providers requirements which may relate to:</p> <ul style="list-style-type: none"> • suitability to pursue a particular activity. • economic and financial standing. • technical and professional ability. <p>The basic selection criteria must be applied by 'relevant authorities' when using Direct Award Process C, the Most Suitable Provider Process, or the Competitive Process. Relevant authorities are not required to apply the basic selection criteria when following direct award processes A or B.</p> <p>For example, DHSC's PSR Regulations specify that a 'relevant authority' needs to ensure that suppliers hold appropriate levels of professional risk indemnity insurance and minimum thresholds of turnover.</p> <p>Key criteria</p> <p>DHSC's PSR Regulations set out key criteria which must be considered by a 'relevant authority' when selecting a health care service provider using Direct Award Process C, the Most Suitable</p>	<p>Basic Criteria:</p> <p>We propose that a future new regime for Wales should seek to align with the basic selection criteria set out in DHSC's PSR Regulations, however we could also include additional criteria around meeting wider Welsh Government policy aims and objectives (e.g. socially responsible procurement).</p> <p>Key Criteria</p> <p>We propose that details on key criteria that a 'relevant authority' must consider when making decisions on the procurement of health services in Wales are included in future regulations.</p> <p>The key criteria will need to contribute to the aims and objectives of 'A Healthier Wales'¹³ strategy and the Welsh Government's overarching Programme for Government¹⁴ commitments, the Well-being of Future Generations (Wales) Act 2015¹⁵ as well as the Social Partnership and Public Procurement (Wales) Act 2023¹⁶.</p> <p>Key criteria will be developed and defined in the future regulations for the proposed new regime for the procurement of health services in Wales. The criteria could include, for example:</p> <ul style="list-style-type: none"> • Value for money • Quality and innovation • Social value • Value based healthcare (VBH) • Reducing health inequalities • Prevention/early intervention

¹³ [A healthier Wales: long term plan for health and social care | GOV.WALES](#)

¹⁴ [Programme for government | GOV.WALES](#)

¹⁵ [Well-being of Future Generations \(Wales\) Act 2015: the essentials \[HTML\] | GOV.WALES](#)

¹⁶ [Social Partnership and Public Procurement \(Wales\) Act | GOV.WALES](#)

<p>Provider Process or the Competitive Process (see below). The criteria do not apply to Direct Award Process A or Direct Award Process B because the 'relevant authority' is not selecting between providers in those processes.</p> <p>Key Criteria includes principles around:</p> <ul style="list-style-type: none"> • Quality and innovation • Value • Integration, collaboration and service sustainability • Improving access, reducing health inequalities and facilitating choice • Social value 	<ul style="list-style-type: none"> • Collaborative health and care • Foundation economy • Collaboration and partnership • Accessibility of services
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Questions:	
Q7	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach in Schedule 16 to DHSC's PSR regarding the basic selection criteria (i.e. A relevant authority may proportionately impose requirements to be met by providers which only relate to the basic selection criteria: (a) suitability to pursue a particular activity; (b) economic and financial standing; and (c) technical and professional ability)?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q8	<p>Are there additional basic criteria you feel should be included in a new future health service procurement regime for Wales? If so, please provide details?</p>
Q9	<p>To what extent do you agree or disagree with the key criteria proposed to be included in the new regime for the procurement of health services in Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree

	<ul style="list-style-type: none"> • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q10	Are there any other key criteria you think a ‘relevant authority’ needs to consider when making procurement decisions for the procurement of health services in Wales to reflect wider policy objectives for Wales? Please provide details.
Q11	<p>To what extent do you agree or disagree that key criteria should be defined in the future regulations for a proposed new health service regime for Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>

C - Mixed Procurement

- **Overview of DHSC’s approach:**

DHSC have acknowledged concerns raised during the consultation period with regards to the exclusion of social care from the scope of the PSR, and that the position would not help achieve increased integration and collaboration across health care and social care when decision-makers sought to arrange a service which contains a mixture of both health care and social care services.

DHSC recognised that although stand-alone social care services will fall out of the scope of the PSR, they understood that some support packages require a mixture of health care and other goods and services (including social care services) to be arranged under a single provider. DHSC recognised that inevitably, some procurements may contain multiple elements, some of which are clearly within the scope of their PSR, and other elements that are within the scope of the wider procurement regulations. DHSC created ‘mixed procurements’ to ensure that decision-making bodies can apply the PSR when arranging different types of services together under a single contract in certain circumstances.

Should a decision be made to adopt a similar approach in Wales, this will apply when the ‘main subject-matter’ of the procurement is health services and any other goods or other services are connected to those health services.

- **Application:**

C - Mixed procurement	
DHSC's PSR England	Proposed approach to health service procurement in Wales
<p>DHSC stated in their consultation document that their approach to 'mixed procurement' aims to ensure that a 'relevant authority' can apply the PSR when arranging different types of services and goods, together under a single contract, in circumstances where it is essential in order to deliver a health care service, or because it is explicitly in the interests of patients, the taxpayer, and the population to do so.¹⁷</p> <p>For the purposes of the PSR Regulations, 'mixed procurement' means the procurement of:</p> <p>(a) relevant health care services for the purposes of the health service in England; and</p> <p>(b) other goods or services that are procured together with those health care services,</p> <p>where both of the following criteria are met:</p> <p>(a) the main subject-matter of the procurement is relevant health care services for the purposes of the health service in England; and</p> <p>(b) the 'relevant authority' is of the view that the other goods or services could not reasonably be supplied under a separate contract ('reasonably separable').</p>	<p>We propose that a new health service procurement regime for Wales should align with DHSC's approach to mixed procurement within the future Welsh regulations. This will seek to enable a position where the provisions of the proposed new health service procurement regime in Wales dovetails with the provisions of the existing Public Contracts Regulations 2015 (PCR 2015); and the provisions in the forthcoming Procurement Act 2023 and future regulations.</p> <p>Contracts for the procurement of mixed goods and services by a 'relevant authority' in Wales which are outside of the scope of the regime for the procurement of health services in Wales will need to follow the existing PCR 2015¹⁸ and the proposed changes to public procurement rules that are being introduced under the UK Government's Procurement Act 2023.</p> <p>For avoidance of doubt, the Welsh Government are proposing that standalone social care services are not in scope of the PSR; social services are only included when part of 'mixed procurement' i.e. as other goods or services.</p>

¹⁷ [Provider Selection Regime: supplementary consultation on the detail of proposals for regulations - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/provider-selection-regime-supplementary-consultation-on-the-detail-of-proposals-for-regulations)

¹⁸ [The Public Contracts Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2015/1017/contents/matter)

<p>For these purposes:</p> <p>(a) the main subject-matter of the contract is determined by which of the estimated lifetime value of the relevant health care services or the estimated lifetime value of the other goods or services is the higher; and</p> <p>(b) a ‘relevant authority’ may only determine that the other goods or services could not reasonably be supplied under a separate contract where the ‘relevant authority’ is of the view that procuring the relevant health care services and the other goods and services separately would, or would be likely to, have a material adverse impact on the ‘relevant authority’s’ ability to act in accordance with the procurement principles set out in accordance with the procurement principles.</p> <p>Contracts for the supply of mixed goods and services which do not meet the definition of ‘mixed procurement’ as defined in DHSC’s PSR Regulations will remain under the current public procurement regime – the Public Contracts Regulations 2015 (PCR 2015) and changes to public procurement rules that are being brought forward under the UK Government’s Procurement Act 2023.</p>	
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Questions:	
Q12	Apart from social care services, what other types of goods or services are currently procured, or may in the future be procured within the scope of health services by a ‘relevant authority’ for the delivery of health services in Wales – i.e., mixed procurement? Please provide examples (and if possible, CPV codes).

Q13	<p>To what extent do you agree or disagree with the ‘main subject-matter’ threshold definition for mixed procurement and its applicability to a new health service procurement regime in Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q14	<p>To what extent do you agree or disagree with the ‘reasonably separable’ threshold being applied in Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q15	<p>When considering how independent health services and social care services are currently procured in Wales, do you foresee any problems or benefits in creating such approaches to mixed procurement in Wales? Please provide details.</p>
Q16	<p>To what extent do you agree or disagree that the ‘main subject-matter’ being health services</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Do you foresee any issues with this approach? If so please provide further details.</p>
Q17	<p>To what extent do you believe that these changes will impact on integration of health and social care services and any ‘pooled budget’ arrangements? Please provide details.</p>

D – Procurement Processes

- **Overview of DHSC’s approach:**

DHSC’s intention is that the PSR will need to be applied as part of the commissioning process whenever contracts for health care services are coming to an end, changing considerably, or being awarded for the first time. The first step decision-makers will need to take when applying the PSR is to identify which of the following processes will be followed:

Direct Award Process A and Direct Award Process B: continuation of existing arrangements: where the incumbent provider is the only viable provider due to the nature of the service. **Direct Award Process A** means there is no realistic alternative to the current providers; **Direct Award Process B** a range of accredited alternative providers are already available to patients (based on NHS England’s ‘Patient Choice’).

Direct Award Process C: continuation of existing arrangements: This circumstance is used when the incumbent provider is assessed to be doing a good job (in relation to the key decision-making criteria), is likely to continue to do so, and the service is not changing.

The Most Suitable Provider Process: when the decision-maker wants to use a new provider or for new/substantially changed arrangements: For circumstances where existing arrangements need to change considerably; where a new service is being arranged; where the incumbent is no longer able and/or no longer wants to provide the service; or where the decision-making body wants to use a different provider and the decision-making body considers it can identify a suitable provider without running a competitive procurement process

The Competitive Process: for situations where the decision-making body cannot identify a single provider or group of providers that is most suitable without running a competitive process or wants to test the market.

- **Application:**

D - Processes for contract award	
DHSC’s PSR England	Proposed approach to health service procurement in Wales
Part 2 of DHSC’s PSR Regulations ¹⁹ sets out a number of ‘decision making circumstances’ to be applied when contracts for health care services are either coming to an end, changing considerably, or being awarded for the first time.	We propose that a future new health service procurement regime for Wales should seek to align to DHSC’s approach to decision making circumstances: <ul style="list-style-type: none"> • ‘Direct Award Process A’

¹⁹ [The Health Care Services \(Provider Selection Regime\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

These are as follows:

- **‘Direct Award Process A’** – for circumstances where there is an existing provider, the ‘relevant authority’ is satisfied that due to the nature of the service, it can only be provided by the existing provider and the procurement is not to conclude a framework agreement. There can be a direct award as there is no realistic alternative provider due to the nature of the service.
- **‘Direct Award Process B’**– for circumstances where the contract relates to services for which a patient is offered a choice of provider (‘Patient Choice), the number of providers is not restricted by the relevant authority, the ‘relevant authority’ will offer contracts to all providers to who meet the requirements, the relevant authority has arrangements in place to enable providers to express an interest in providing such services and the procurement is not to conclude a framework agreement. This allows for the ‘relevant authority’ to direct award for these services since competition is already achieved when a patient chooses their provider.
- **‘Direct Award Process C’**– for circumstances where an existing contract is due to expire, the ‘relevant authority’ proposes a new contract with the existing provider and is of the view that the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard, and the “considerable change threshold” as set out in DHSC’s PSR Regulations has not been met, and the procurement is not to conclude a framework agreement. This process gives ‘relevant authorities’ flexibility to award a contract without competition where there is unlikely to be overall value in selecting a new provider.
- **‘The Most Suitable Provider Process’** for circumstances when the ‘relevant authority’ is of the view, taking into account likely providers and all relevant information available to the ‘relevant authority’ at the time, that it is likely to be able to identify the most suitable provider, and the procurement is not to conclude a framework agreement. This process intends to give ‘relevant

- **‘Direct Award Process C’**
- **‘The Most Suitable Provider Process’**
- **‘The Competitive Process’**

This approach will enable health service procurement to operate on a ‘level playing field’ basis between England and Wales; providing ‘relevant authorities’ in Wales with the same flexibility that will be provided to English ‘relevant authorities’ when making decisions on the procurement of health services.

We do not propose to align with **‘Direct Award Process B’** in respect of ‘patient choice’ under the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013, as there is no equivalent regulatory provision in Wales.

<p>authorities’ flexibility to award a contract without competition because the circumstances and context for the services to which the contract relates mean there is an identifiable most suitable provider. This may for example be because there is only one suitable provider who can play the pivotal role in a wider integrated system of health care delivery.</p> <ul style="list-style-type: none"> • ‘The Competitive Process’– the ‘relevant authority’ must follow the ‘Competitive Process’ in circumstances where the other processes above cannot be used. It should be noted that ‘framework agreements’ can only be concluded under the Competitive Process. <p>The detail of each procurement process including the necessary steps and the information requirements for each decision-making process can be found in DHSC’s PSR Regulations (see Regulations 7-11)²⁰.</p>	
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Questions:	
Q18	<p>To what extent do you agree or disagree that a proposed new health service procurement regime for Wales should align ‘decision-making circumstances’ with those set out in DHSC’s PSR Regulations (except for Direct Award Process B – ‘Patient Choice’)?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q19	<p>In respect of current or future health service procurement in Wales, do you have any views on any other circumstances where a different process should apply to a future new health service procurement regime in Wales? Please provide an explanation.</p>

²⁰ [The Health Care Services \(Provider Selection Regime\) Regulations 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

E - Modification of contracts during their term

- **Overview of DHSC’s approach:**

DHSC’s PSR provides limited circumstances where modifications can be made to a contract without a need for a new award process. Should the modification not meet the limited circumstances detailed within the Regulation the ‘relevant authority’ would not be able to continue the contract with the current provider.

Application:

E - Modification of contracts	
DHSC’s PSR England	Proposed approach to health service procurement in Wales
<p>Modification of contracts: DHSC’s PSR Regulations set out that contracts and framework agreements can be modified during their term without the need for a new procurement exercise in certain circumstances.</p> <p>A modification to a contract during its term will be permitted under the PSR Regulations without the need for a new procurement exercise in the following circumstances:</p> <ul style="list-style-type: none"> • For Direct Award Process A and Direct Award Process B where the modification does not materially alter the character of the contract • For Direct Award Process C, The Most Suitable Provider process, or The Competitive Process modifications are permitted in the following instances: <ul style="list-style-type: none"> ○ the modification is clearly and unambiguously provided for in the original contract or framework agreement documents, ○ the modification is solely a change in the identity of the provider due to succession into the position of provider following corporate changes including takeover, merger, acquisition, or insolvency and the relevant authority is satisfied that the provider meets the basic selection criteria, 	<p>We propose that a future new health service procurement regime for Wales should seek to align to DHSC’s approach to modifications of contracts during their term as set out in DHSC’s PSR Regulations.</p> <p>As set out in Section D above, we do not propose to align with ‘Direct Award Process B’ (‘Patient Choice’) in respect of ‘patient choice’ under the National Health Service (Procurement, Patient Choice, and Competition) (No. 2) Regulations 2013, as there is no equivalent regulatory provision in Wales.</p>

<ul style="list-style-type: none"> ○ the modification is made in response to external factors beyond the control of the relevant authority and the provider including but not limited to the following: <ul style="list-style-type: none"> ○ changes in patient or service user volume ○ changes in prices in accordance with a formula provided for in the contract documents, and the modification does not render the contract materially different in character. ○ the modification is attributable to a decision of the relevant authority and both of the following criteria are met: <ul style="list-style-type: none"> ○ the modification does not render the contract or framework materially different in character; and ○ the cumulative change in the lifetime value of the original contract or framework agreement since it was entered into or concluded is: <ul style="list-style-type: none"> ▪ below £500,000; or ▪ less than 25% of the lifetime value of the original contract or framework agreement when it was entered into or concluded. 	
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Questions:	
Q20	<p>Do you agree or disagree that a future new regime for the procurement of health services in Wales should seek to align with the application of DHSC's approach to contract modifications as set out in the PSR Regulations?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q21	<p>Do you have any views as to whether an alternative approach to modification of contracts should be taken in Wales? Please provide details.</p>

F - 'Considerable change' threshold

Overview of DHSC's approach:

Where the 'relevant authority' is not required to follow Direct Award Process A or Direct Award Process B, the term of an existing contract is due to expire and the 'relevant authority' proposes a new contract to replace that existing contract at the end of its term, **the 'considerable change' threshold is not met** and the existing provider is satisfying the existing contract and will likely satisfy the proposed contract to a sufficient standard the relevant authority may follow Direct Award Process C. If the 'considerable change' threshold is not met the 'relevant authority' will need to use either the Most Suitable Provider process or the Competitive process.

DHSC's PSR Regulations include a defined threshold (the 'considerable change threshold') which, for services coming to the end of their contract, will effectively differentiate between services which may be rolled over and those that need to go through either the Most Suitable Provider process or the Competitive process.

It is DHSC's view that their PSR Regulations set out a robust and well-formulated threshold for what constitutes a considerable change to ensure that their PSR is applied in the best interests of patients, the taxpayer, and the population.

The threshold set for services coming to the end of their contract will effectively differentiate between services which may be rolled over using Direct Award Process C (where Direct Award processes A and B are not required) and services for which decision-makers should have to compare with alternative providers, either through using the approach to identify the most suitable provider process or through a competitive process.

- **Application:**

F - 'Considerable change' threshold	
DHSC's PSR England	Proposed approach to health service procurement in Wales
<p>'Considerable change' DHSC's proposed application of the rules for use of Direct Award Process C, as described in the PSR Regulations, need to satisfy the rules regarding 'considerable change'</p> <p>DHSC's PSR Regulations include a defined threshold (the 'considerable change threshold') which, for services coming to the end of their contract, will effectively differentiate between services which may be rolled over ('Direct Award Process C') and services for which decision-makers should have to compare with alternative</p>	<p>We propose that a future new health service procurement regime for Wales should seek to align to DHSC's approach to 'considerable change' within the future Welsh regulations.</p>

providers, either through using the approach to identify the most suitable provider ('**The Most Suitable Provider Process**'), or through a competitive tender exercise ('**The Competitive Process**').

The considerable change threshold is met where:

(a) the proposed contracting arrangements are materially different in character to the existing contract when that existing contract was entered into (apart from where this is linked to provider corporate changes (Regulation 6 (11) (a))); or where:

(b) The change is in response to external factors beyond the control of the relevant authority (Regulation 6 (12) b) and:

6 (12) (b) (i) changes in the relevant health care services to which the proposed contracting arrangements relate (compared with the existing contract) are attributable to a decision of the 'relevant authority'; and

6 (12) (b) (ii) the lifetime value of the proposed contracting arrangements is at least £500,000 higher than the lifetime value of the existing contract when that existing contract was entered into; and

6 (12) (b) (iii) the lifetime value of the proposed contracting arrangements is at least 25% higher than the lifetime value of the existing contract when that existing contract was entered into.

NB. All 3 tests detailed in 6 (12) (b) (i) (ii) and (iii) must be met for the considerable change threshold to be met.

It should be noted that 'relevant authorities' will not be permitted to use **Direct Award Process C** where the considerable change

threshold is met, requiring the 'relevant authority' to follow **The Most Suitable Provider Process** or **The Competitive Process**.

The considerable change threshold is not met where:

The character of the existing contract is materially different as a result of a change in the identity of the provider due to changes including takeover, merger, acquisition or insolvency and the relevant authority is satisfied that the provider meets the basic selection criteria, or where 6 (12) (b) (i) (ii) and (iii) is not met and the change between the existing and proposed contract is in response to external factors such as a change in patient or service user volumes or changes in prices in accordance with a formula provided for in the contract documents.

Questions:	
Q22	<p>To what extent do you agree or disagree with the proposed threshold of 'considerable change' as set out in DHSC's PSR Regulations and their applicability for the procurement of the delivery of health services in Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q23	<p>If you consider that the considerable change thresholds should be different in Wales to those specified in DHSC's PSR Regulations, please explain why. Please state what you believe to be a more appropriate threshold for considerable change in a new regime for the procurement of health services in Wales.</p>

G - Review of decisions under the procurement regime

- **Overview of DHSC’s approach:**

DHSC’s consultation questions did not specifically relate to independent scrutiny of decisions made under the PSR, including recourse for providers seeking to challenge decision-making bodies. These proposals were included in NHS England’s consultation²¹ on the PSR in 2021. However, during DHSC’s supplementary consultation in 2022²², respondents raised concern on this topic (as summarised in **Annex A** of this consultation document).

Concerns were raised on the assurance of good governance, and concern with the decision-making body being required to review and adjudicate on its decisions when challenged by a provider without the involvement of an independent body. Under the PCR 2015 challenges are brought via the courts which can act as a barrier to collaborative working, leading to an adversarial system that relies on litigation to resolve disputes. Ultimately, there will always be the option open to a provider that deems the decision-making body to have acted unlawfully to challenge a decision through judicial review, however DHSC recognised the merit in introducing a greater degree of independence before litigation would be required into the review of decisions made under the PSR.

Therefore, DHSC and NHS England intend on establishing a panel to be chaired by an independent person who can look at and advise on issues relating to the PSR Regulations. This will help ensure that: procurement processes are accountable, transparent, fair, and proportionate, enabling all providers to compete for contracts; and providers are not unfairly excluded from offering services to patients and service users.

Should a provider be unsatisfied about a relevant authority’s response to a representation sent during the standstill period (see [Section I](#) below) the provider may apply to the independent PSR review panel to consider their representation further and the panel will consider whether the ‘relevant authority’ has complied with the PSR Regulations. DHSC’s PSR panel members will be independent experts capable of reviewing the ‘relevant authority’s’ compliance with the PSR Regulations. It is expected that the panel will endeavour to consider and share any findings and recommendations with the provider and the ‘relevant authority’ within 25 working days. The panel will provide the ‘relevant authority’ with advice but ultimately the final decision remains with the ‘relevant authority’.

- **Application:**

G – Review of decisions under the procurement regime	
DHSC’s PSR England	Proposed approach to health service procurement in Wales
DHSC’s PSR Regulation 12 contains provisions on how aggrieved providers make initial representations to a ‘relevant authority’ following	The need and the ability to establish a panel to provide independent advice on procurement decisions for a new future health service

²¹ [NHS England - provider-selection-regime-consultation.pdf \(england.nhs.uk\)](#)

²² [DHSC - Provider Selection Regime: supplementary consultation on the detail of proposals for regulations - GOV.UK \(www.gov.uk\)](#)

a decision to award a contract and that the relevant authority must review the decision (for more information regarding the standstill period, see [Section I](#) below). Regulation 23 provides that, when making decisions in accordance with the PSR Regulations, a 'relevant authority' may seek or otherwise receive independent expert advice. The PSR Regulations state that this will not breach any obligation of confidence but is subject to any express restriction on disclosure in other legislation.

Independent expert advice means advice relating to the procurement of relevant health care services under the PSR Regulations from a person with relevant expertise, qualifications or experience who is or who is made available by, or endorsed by, NHS England or the Secretary of State.

The statutory guidance provides that NHS England intend to establish an independent 'PSR review panel' chaired by an independent person for the purpose of advising upon procurement decisions made by 'relevant authorities' under the PSR Regulations and offer impartial/unbiased opinions.

If a provider is not happy with a 'relevant authority's' response to a representation sent during the standstill period, the provider can request that a review by the PSR review panel is undertaken. The panel may consider whether the 'relevant authority' complied with the regulations and may provide advice to the 'relevant authority' (it will endeavour to do so within 25 working days) and the 'relevant authority' should then make a further decision on how to proceed. The statutory guidance contains further information regarding the establishment of the review panel and the process that is undertaken.

Full details are included in the PSR statutory guidance produced by NHS England²³.

procurement regime in Wales will be considered as part of the development of future regulations for a new health service procurement regime for Wales.

²³ [NHS England » The Provider Selection Regime: draft statutory guidance](#)

Questions:	
Q24	<p>Considering the proposed approach that DHSC have adopted on review of decisions in their proposed PSR, to what extent do you agree or disagree with the establishment of an independent panel to advise on procurement decisions during the operation of a proposed new health service regime in Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q25	Please provide details on how you think an independent panel could operate in Wales?
Q26	Do you think that an alternative approach to that set out by DHSC on independent advice on the operation of a future new health service procurement regime, would be more suitable in Wales? If so, please provide details.

H – Transparency, monitoring and publication of information

- **Overview of DHSC’s approach:**

DHSC consider the principle of transparency in public procurement is central to the integrity and accountability of the system and the fight against corruption, ensuring opportunities are accessible, and processes and decisions can be monitored and scrutinised. DHSC’s aim of transparency arrangements in the PSR Regulations is to ensure that the outcomes of decisions made under the regime are made public and that sufficient scrutiny is applied to ensure the regime is followed in good faith. Transparency in the health and care system is upheld by a wider range of duties that a ‘relevant authority’ is expected to uphold. DHSC’s PSR also includes proposals for transparency to complement such requirements. When a decision-making body uses the decision-making circumstances contained in the PSR Regulations DHSC has set clear requirements on steps to ensure transparency, including the issuing of notices to be published by ‘relevant authorities’.

The detail is included in the PSR Regulations and in DHSC’s PSR statutory guidance produced by NHS England²⁴ and set out in **Tables 1 and 2** below.

DHSC also requires ‘relevant authorities’ to monitor its compliance with the PSR Regulations and publish online an annual report of the results of that monitoring, as well as publish an annual summary of its contracting activity and keep records of certain information -including processes, decisions made under the PSR, contract modifications, and declaration and management of conflicts of interest. The detail of these requirements are contained in the PSR Regulations and DHSC’s PSR statutory guidance produced by NHS England²⁵.

Table 1 – DHSC’s PSR - Transparency notices needed for the award of contracts under the provider selection processes.

	Direct award process A	Direct award process B	Direct award process C	Most suitable provider process	Competitive process
Clear intentions: Publish the intended approach in advance				Yes	
Clear intentions: Publish a notice for a competitive tender					Yes
Communicating decisions: Publish the intention to award notice			Yes	Yes	Yes
Confirming decisions: Publish a confirmation of award notice	Yes	Yes	Yes	Yes	Yes

²⁴ [NHS England » The Provider Selection Regime \(PSR\) draft statutory guidance](#)

²⁵ [NHS England » The Provider Selection Regime \(PSR\) draft statutory guidance](#)

Contract modification: Publish a notice for contract modifications	Yes	Yes	Yes	Yes	Yes
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Table 2 - DHSC's PSR - Transparency notices needed for processed in relation to framework agreements.

	Establishing a framework agreement (following the competitive process)	Contracts based on a framework agreement without competition	Contracts based on a framework agreement following competition
Clear intentions: Publish a notice for a competitive tender	Yes		
Communicating decisions: Publish the intention to award notice	Yes		Yes
Confirming decisions: Publish a confirmation of award notice	Yes	Yes	Yes
Contract modification: Publish a notice for contract modifications	Yes	Yes	Yes

- **Application:**

H - Transparency and monitoring	
DHSC's PSR England	Proposed approach to health service procurement in Wales
<p>DHSC's PSR Regulations (Regulations 24-26) make provisions around transparency including information record-keeping requirements, publishing annual summaries and monitoring requirements when awarding contracts to health care service providers under the PSR. This includes the necessity to regularly report and publish details of contract awards in the public domain with the aim to ensure that the outcomes of decisions are made public, and that sufficient scrutiny is applied to ensure the PSR is appropriately followed.</p> <p>DHSC PSR Regulation 7-11 require the publication of transparency notices and set out the timelines within such notices should be published. Such publication requirements are summarised above in Tables 1 and 2 and in detail in DHSC PSR statutory guidance produced by NHS England²⁶</p> <p>Schedules 2 – 15 of DHSC's PSR Regulations sets out the details on the information that needs to be published on the content of a notice regarding a 'relevant authority's' intended procurement approach in advance; communicating a decision made; confirming a decision made or modifying a contract. Notices contain information requirements for all processes, such as:</p> <ul style="list-style-type: none"> • a statement that an award has been made. • contract title and reference • name and address of the registered office or principal place of business of the provider 	<p>We propose that a future new health service procurement regime for Wales should seek to align to DHSC's approach to transparency through information requirements, annual summaries, monitoring requirements and transparency notices within the future Welsh regulations.</p> <p>This approach will enable the health service procurement to operate on a 'level playing field' basis between England and Wales and ensure that 'relevant authorities' have as a minimum the same level of accountability.</p>

²⁶ [NHS England » The Provider Selection Regime \(PSR\) draft statutory guidance](#)

<ul style="list-style-type: none"> • description of the relevant health care services to which the contract relates, including the most relevant CPV code. • the lifetime value of the contract or, where it is not known, the amounts payable to the provider under the contract. • dates between which the contract provides for the services to be provided. • details of the award decision-makers • any declared conflicts or potential conflicts of interest • information as to how any conflicts or potential conflicts of interest were managed. <p>Please note the above list is not exhaustive with different notices requiring slightly different information which is clearly set out within the applicable schedule.</p>	
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Questions:	
Q27	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on transparency, monitoring and publication of information requirements in DHSC's proposed PSR Regulations?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q28	<p>Do you think there is an alternative approach or other types of information that would be helpful to demonstrate transparency and monitoring of the application of a new health service procurement regime for Wales? Please provide details on your thoughts.</p>
Q29	<p>To what extent do you agree or disagree that a proposed new health service procurement regime for Wales should align with the timings and frequency of reporting on transparency as outlined above and in DHSC's PSR?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree

	<ul style="list-style-type: none"> Strongly disagree. Please provide further details?
Q30	Do you have any thoughts in relation to the information that needs to be published within the content of a notice specified by DHSC and its applicability to new health service procurement regime for Wales? Please provide details on your thoughts.
Q31	Do you have any thoughts in relation to the requirement for 'relevant authorities' in Wales to publish details of the 'decision makers' as part of the information on contract award? Please provide details on your thoughts

I – Standstill Periods

- Overview of DHSC’s approach:**

DHSC’s PSR Regulations set out that when a procurement process is undertaken, ‘relevant authorities’ need to observe a standstill period to give providers an opportunity to make representations before a contract is awarded under ‘Direct Award Process C’, the ‘Most Suitable Provider Process’ and the ‘Competitive Process’. A relevant authority must not award a contract until the standstill period ends. The detail of what notices are required before awarding a contract and entering a standstill period is included in DHSC’s PSR statutory guidance produced by NHS England²⁷ and set out in **Table 3 and 4**:

Table 3 – DHSC’s PSR Transparency notices needed for the award of contracts under the provider selection processes.

	Direct award process A	Direct award process B	Direct award process C	Most suitable provider process	Competitive process
Communicating decisions: Publish the intention to award notice			Yes	Yes	Yes

²⁷ [NHS England » The Provider Selection Regime \(PSR\) draft statutory guidance](#)

Table 4 - DHSC's PSR Transparency notices needed for processed in relation to framework agreements.

	Establishing a framework agreement (following the competitive process)	Contracts based on a framework agreement without competition	Contracts based on a framework agreement following competition
Communicating decisions: Publish the intention to award notice	Yes		Yes

DHSC have set out that the purpose of this period is to allow an opportunity for providers to make representations to decision-makers, and discuss any concerns or issues, and for decision-making bodies to respond to any representations received. DHSC's standstill period is a minimum period of eight working days, during which representations can be made. If a representation is received during this period, then the standstill period will be extended to allow the 'relevant authority' to consider the representation.

Under DHSC's approach, providers cannot submit a representation after midnight of the eighth working day of the standstill period, even if the standstill period has been extended in response to a representation from another provider. If providers are dissatisfied with the 'relevant authority's' response to their representation, the provider may apply to the independent PSR review panel to consider the representation further (as outlined in [Section G](#) above - Review of decisions under the procurement regime). Should a provider send a representation to the PSR review panel, the 'relevant authority' cannot award the contract until it has received the PSR review panel's advice, notified the provider of its further decision, and then wait 5 working days before making the final award of contract (or before it returns to an earlier step in the process or abandons the procurement).

- **Application:**

I - Standstill period(s)	
DHSC's PSR England	Proposed approach to health service procurement in Wales
Regulation 12 of DHSC's PSR Regulations make provision for a 'standstill period', the period begins the day after the publication of a notice of intention to award or conclude and ends at midnight on the 8 th working day after the standstill begins.	We propose that a future new regime for Wales should seek to align with the standstill period set out in DHSC's proposed PSR Regulations.

Where a 'relevant authority' follows 'Direct Award Process C', 'the Most Suitable Provider Process' or the 'Competitive Process', (including concluding a framework agreement or intention to award a contract based on a framework agreement following a mini competition), it must **not** enter into the contract or conclude a framework agreement during the standstill period.

The purpose of the standstill period is to allow an opportunity for health service providers to make written representations to 'relevant authorities' in respect of contracts awarded and allow a 'relevant authority' a period of time to review procurement decisions made and take alternative action if required.

The 'relevant authorities' must ensure each provider who has made representations is afforded such further opportunity to explain or clarify their representations, and once the 'relevant authority' has reviewed the decision to award the contract or conclude the framework agreement, taking into account the representations made, it must then make a further decision either to award the contract as intended, repeat steps in the procurement process, or abandon the procurement.

'Relevant authorities' must provide any information requested by an aggrieved provider which the 'relevant authority' has a duty to record under Regulation 24 (subject to some exceptions).

On receipt of a representation the standstill period will continue until the 'relevant authority' completes their review and communicates its decision. The provider may also seek an additional review of their representation by the PSR review panel within 5 working days of the relevant authority's decision if they remain unsatisfied by the 'relevant authority's' response to their representation, during which the standstill period will continue. The PSR review panel will share its findings and recommendations with the provider and 'relevant authority'. The 'relevant authority' can make a final award no fewer than 5 working

This approach will enable health service procurement to operate on a 'level playing field' basis between England and Wales, aligning with the approach taken by DHSC; demonstrating transparency of decisions by 'relevant authorities'; giving providers an opportunity to challenge decisions and make representations.

<p>days since the it informed providers of its final decision following the PSR review panel process.</p> <p>Further information regarding DHSC's PSR standstill timescales can be found within Regulation 12.</p>	
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Questions:	
Q32	<p>To what extent do you agree or disagree that a proposed new health service procurement regime for Wales should align with a standstill period to be followed for 'Direct Award Process' C, 'The Most Suitable Provider Process', and 'The Competitive Process' establishing a framework agreement or intention to award a contract based on a framework agreement following a competitive process?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q33	<p>To what extent do you agree or disagree that a proposed new health service procurement regime for Wales should align with the timescale for representations as set out in DHSC's proposed regime? Should there be an alternative timescale for the application of the regime within Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details.</p>
Q34	<p>Do you have any views on the role of the 'independent review panel' in relation to the standstill period in any new future health service regime for Wales? Please provide details.</p>

J - Conflicts of Interest

- **Overview of DHSC’s approach:**

DHSC’s PSR Regulations sets out provisions to ensure that ‘relevant authorities’ implement good governance arrangements and require appropriate measures to be undertaken to effectively prevent, identify and remedy conflicts of interests. Any declared conflicts or potential conflicts of interests are required to be included within transparency notices, including contract award notices, as well as part of the information requirements contained in Regulation 24.

- **Application:**

J - Conflicts of interest	
DHSC’s PSR England	Proposed approach to health service procurement in Wales
DHSC’s proposed PSR Regulations include provisions around managing conflict of interest (Regulation 21). The PSR Regulations provide that the concept of conflicts of interest includes any situation where an individual has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement process. Any such individual is required to recuse themselves from the decision-making process.	<p>We propose that a future new regime for Wales should seek to align with proposals around conflicts of interest set out in DHSC’s proposed PSR Regulations, (except for references to Integrated Care Boards as these bodies do not exist in Wales).</p> <p>Further consideration on the approach to managing conflicts of interest will be considered in light of stakeholder feedback to this consultation and included as part of the development of future regulations for a new health service procurement regime in Wales.</p>
Questions:	

Q35	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on conflicts of interest as outlined in DHSC proposed PSR Regulations?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
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Q36	Do you have any views on how any 'conflicts of interest' could be identified, monitored and managed more effectively in a proposed new health service procurement regime in Wales?
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K - Termination of Contracts

- Overview of DHSC's approach:**

DHSC's PSR requires relevant authorities to ensure that every contract it awards provides that it can be terminated in certain circumstances. This includes where a contract has been subject to modifications which are not permitted under the regime without following a new procurement process or when the provider, at the time of award, should have been excluded from the procurement process in accordance with the relevant exclusion regulation.

- Application:**

K - Termination of contracts	
DHSC's PSR England	Proposed approach to health service procurement in Wales
DHSC's PSR Regulations include provision regarding termination of contracts (Regulation 22). The regulation requires that every contract awarded under the regime must include a provision that enables the contract to be terminated where the contract has been subject to a modification which cannot be made under Regulation 13, therefore requiring the 'relevant authority' to undertake a new process; or the provider, at the time of award, should have been excluded from the procurement process in accordance with Regulation 20(1).	We propose that a future new regime for Wales should seek to align with the termination provisions set out in DHSC's proposed PSR Regulations.

Questions:	
Q37	To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on termination of contracts as outlined in DHSC proposed PSR Regulations? Please provide details on your thoughts.

L - Framework Agreements

- **Overview of DHSC’s approach:**

DHSC’s PSR Regulations sets out that the Competitive Process must be used when establishing a framework agreement. The establishment of a framework agreement under the PSR must be for the establishment of health care services in scope of the regime (or that meet the requirements for mixed procurement within the regime). DHSC have established that a framework agreement under PSR must not exceed four years (except in exceptional cases) and may allow opportunity for ‘relevant authorities’ to allow new providers to be party to the framework during its term.

- **Application:**

L - Framework agreements	
DHSC’s PSR England	Proposed approach to health service procurement in Wales
<p>DHSC’s PSR Regulations makes provision that ‘relevant authorities’ may establish framework agreements to arrange relevant health care services in scope of the regime (Part 3, Regulations 16 -18 of the PSR Regulations).</p> <p>DHSC’s PSR Regulations state that the length of a framework agreement must not exceed four years (other than in exceptional cases that are justified by the subject of the framework) and allow ‘relevant authorities’ to select further providers to be party to the framework.</p> <p>DHSC’s PSR Regulations state that a contract based on a framework agreement may only be awarded in accordance with the regulation and must not entail substantial modifications laid down in that framework agreement. Where a framework is concluded with a single provider an award of contract can be made without a competition. Where a framework agreement is concluded with more than one provider an award of contract can either be made without a</p>	<p>The Welsh Government propose that a future new regime for Wales should seek to align with the framework agreement provisions set out in DHSC’s proposed PSR regulations.</p> <p>However, this position will be reviewed in line with stakeholder feedback on current and future needs and processes for establishing and operating frameworks for the provision of health services.</p> <p>For example, we may want to ensure that there is flexibility in approach to periodically open up a framework to new entrants or have the ability to have a longer timescale for a framework agreement.</p> <p>We may also need to consider the rules on frameworks for wider goods and services that will be set out in the Procurement Act i.e., the establishment of ‘closed’ and ‘open’ framework agreements and any associated timeframes for framework agreements.</p>

competition or following a competitive process in accordance with the framework agreement.	
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Questions:	
Q38	To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on framework agreements as outlined in DHSC proposed PSR Regulations? <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. Please provide further details?
Q39	Do you think that a future new health service procurement regime for Wales should seek to have an alternative maximum timescale for a framework? If so please provide details on what you think would be an appropriate timescale and why?
Q40	Do you think that a future new health service procurement regime for Wales should seek to have the opportunity to open a framework up at certain intervals for new entrants to become party to a framework?

M - Urgent awards or modifications

- **Overview of DHSC’s approach:**

DHSC recognise that there may be limited occasions where a ‘relevant authority’ may need to act urgently to address immediate risks to the safety and quality of care, and therefore have established processes to award a contract or modify an existing contract in circumstances where a new service is required to manage unforeseen emergencies (for example an urgent safety concern poses risks to patients or an incumbent provider is suddenly unable to operate).

- **Application:**

M - Urgent award or modifications	
DHSC’s PSR England	Proposed approach to health service procurement in Wales

<p>Urgent awards/modifications</p> <p>DHSC's PSR Regulations make provision under Regulation 14 to allow an urgent contract award or modification of an existing contract to be made under certain circumstances where a 'relevant authority' considers that;</p> <ul style="list-style-type: none"> • an award or modification must be made urgently, • the reasons for the urgency was not foreseeable by/attribution to the 'relevant authority' and • delaying the award of the contract or modification to follow one of the other procurement processes in the regulations before the existing contract expires would likely pose a risk to patient or public safety. <p>This will give 'relevant authorities' the flexibility to act quickly where delay would likely pose risks to patient or public safety in response to unforeseeable events, and where the reason for the urgency is not attributable to the 'relevant authority'.</p>	<p>We propose that a future new regime for Wales should seek to align with the urgent awards or modifications provisions set out in DHSC's proposed PSR Regulations.</p>
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Questions:	
Q41	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach in Regulation 14, urgent awards or modifications?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>

N - Abandonment of or repetition of steps in a procurement

- **Overview of DHSC’s approach:**

DHSC have made allowances within the PSR Regulations for a ‘relevant authority’ to abandon the process of provider selection and not award a contract under that approach providing that the decision to abandon a process is transparent, fair, and proportionate. The PSR Regulations also allow for a ‘relevant authority’ to go back and repeat a step in a provider selection process under Direct Award Process C, the Most Suitable Provider Process, or the Competitive Process in certain circumstances.

- **Application:**

N - Abandonment of or repetition of steps in a procurement	
DHSC’s PSR England	Proposed approach to health service procurement in Wales
<p>Regulation 15 allows a ‘relevant authority’ to abandon a procurement and not award a contract or not conclude a framework agreement; or go back to an earlier step in the selection process and repeat that step and subsequent steps.</p> <p>Decisions to abandon a process should be transparent, fair, and proportionate, and a notice must be submitted within 30 days of the decision to abandon a provider selection process.</p> <p>When following Direct Award Process C, the Most Suitable Provider Process, or the Competitive Process, ‘relevant authorities’ may decide to return to an earlier step in a decision process. However, different rules apply to decisions that are made in the standstill period (Regulation 15 (3)) NB. ‘Relevant authorities’ must not use the option to return to an earlier step in a provider selection process as an opportunity to modify the selection parameters. Relevant authorities must also keep a record of their reasoning for abandoning a provider selection process.</p>	<p>We propose that a future new regime for Wales should seek to align with the abandonment or repetition of steps provisions set out in DHSC’s proposed PSR Regulations.</p>

Questions:

Q42	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach in Regulation 15, abandonment of or repetition of steps in a procurement?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
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O - Exclusions

- **Overview of DHSC’s approach:**

DHSC PSR Regulations require a ‘relevant authority’ to undertake reasonable and proportionate due diligence on providers. A ‘relevant authority’ must not award a contract to a provider and may exclude a provider from any of the PSR processes if the provider meets the exclusion criteria detailed in Regulation 20.

- **Application:**

O - Exclusions	
DHSC’s PSR England	Proposed approach to health service procurement in Wales
<p>Regulation 20 sets out that a ‘relevant authority’ must not award a contract to a provider and may exclude a provider from a procurement process, where the ‘relevant authority’ would be obliged to exclude the provider from participation in a procurement procedure under Regulation 57 of the Public Contract Regulations 2015 (exclusion grounds) as if the ‘relevant authority’ was the contracting authority and the provider an economic operator under that regulation.</p> <p>The ‘relevant authority’ may also exclude a provider from a procurement process where the relevant authority would be able, at its discretion, to exclude the provider from participation in a procurement procedure under Regulation 57 of the Public Contracts Regulations</p>	<p>We propose that a future new regime for Wales should seek to align with the exclusion provisions set out in DHSC’s proposed PSR Regulations.</p>

<p>2015. The exclusion period applicable is as set out under 57(11) of the Public Contracts Regulations 2015.</p> <p>The provider may provide evidence detailing measures taken by the provider and that evidence may be deemed sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion. Where the 'relevant authority' considers measures evidenced by the provider are sufficient, the 'relevant authority' must not exclude the provider from the procurement process. Where the 'relevant authority' considers such measures to be insufficient, the relevant authority must give the provider a statement of the reasons for that decision.</p> <p>NB. This regulation does not apply to a contract based on a framework agreement.</p>	
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Questions:	
Q43	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach in PSR Regulations 20, exclusions?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>

P - Primary Care

- **Overview of DHSC’s approach:**

NHS England have created guidance in respect of DHSC’s PSR proposal and have included an annex providing supplementary information for commissioners of primary care services (Annex C of the statutory guidance produced by NHS England²⁸). The annex provides additional information about how the regime is expected to be applied when selecting providers for the delivery of primary care services.

- **Application:**

P - Primary Care	
DHSC’s PSR England	Proposed approach to health service procurement in Wales
<p>Primary care services collectively refer to primary medical care, community pharmacy, primary dental care, and primary eye care services. The procurement of most primary care services is in scope of DHSC’s regime.</p> <p>NHS England’s guidance provides detail of how the regime may be applied when selecting providers for primary medical care services across the following scenarios: the continuation of existing contracts, modifications of existing contracts, planned provider exit, sudden or unplanned changes to existing contracts and new and integrated services.</p> <p>NHS England guidance provides information regarding contracts that are continuous contracts that run until they are terminated, time limited contracts and how these should be managed under the PSR regime.</p>	<p>We propose that the guidance for a future new regime for Wales should seek to align with the application of primary care services provisions as set out in the PSR statutory guidance.</p> <p>We do not propose to align with GP Practice ‘Personal Medical Services’ (PMS) in respect of GP practice providers under the PSR Regulations, as there is no equivalent provision in Wales.</p> <p>We do, however, propose to add guidance regarding contracts that are specific to Wales, namely:</p> <ul style="list-style-type: none"> • Community/Standard Contracts • Enhanced Services Contracts • Prison Contracts • Alternative Provider Contracts

Questions:	
Q44	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on primary care contract as outlined in DHSC proposed PSR guidance?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree

²⁸ [NHS England » The Provider Selection Regime: draft statutory guidance](#)

	<ul style="list-style-type: none"> • Neither agree nor disagree • Disagree • Strongly disagree. Please provide further details?
Q45	In respect of current or future health service procurement in Wales, do you have any views or concerns around the omission of GP practice 'Personal Medical Services' (PMS) from a future new health service procurement regime guidance for Wales? Please provide an explanation.
Q46	Are there examples of primary care services contracts currently procured in Wales that are not defined within NHS England guidance or captured as known points of divergence above? If so, please state these services.

Q - Transitional arrangements, roll out and implementation

- **Overview of DHSC's approach:**

DHSC's PSR is intended to give decision makers a flexible and proportionate process for selecting providers to deliver health care services to the public with an aim of enhancing collaboration and removal of the inflexibility associated with the existing procurement rules. The scope of DHSC's PSR Regulations will necessitate transitional arrangements, roll out and implementation for all 'relevant authorities', named within the Regulations.

- **Application:**

Q - Transitional arrangements, roll out and implementation	
DHSC's PSR England	Proposed approach to health service procurement in Wales
DHSC and NHS England are committed to supporting the transition and implementation of PSR by making dedicated resources available via implementation tools.	Should a new health services procurement regime in Wales be established in the future, we propose to support the transition and implementation through the publication of toolkits and undertaking awareness raising sessions.

Questions:	
Q47	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales transition and implementation should be supported by the establishment of toolkits and awareness raising sessions?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree Strongly disagree. <p>Please provide further details?</p>
Q48	<p>In respect of the implementation of a proposed health service procurement regime in Wales, do you have any views or concerns regarding transitional arrangements, roll out and timing of implementation? Please provide further details on your thoughts.</p>
Q49	<p>When do you think a future new health service procurement regime for Wales should come into force? Please provide details as to your thoughts.</p>
Q50	<p>Do you have views on whether any new health service procurement regime for Wales should aim to align with the timelines for the introduction of proposed changes being brought forward for wider public procurement under the UK Government Procurement Act, or be introduced at a separate point in time?</p>

R - General questions

General	
Impacts on resources and costs for organisations and individuals	
Q51	<p>Please provide details of any anticipated increase/decrease in resources/operational running costs for your organisation associated with the implementation of a new health service provider regime in Wales?</p>
Q52	<p>DHSC's PSR guidance talks about the 'provider landscape'²⁹ and expectations to develop and maintain sufficiently detailed knowledge of relevant providers. Do you have any views on how this could be achieved in Wales, if we chose to coordinate with DHSC's PSR for this element?</p>

²⁹ [NHS England » The Provider Selection Regime: draft statutory guidance](#), see section 'Provider Landscape'

Q53	DHSC's PSR guidance sets out expectations in relation to provider selection and good practice in relation to a 'relevant authority's' forward planning and clearly mapping out the expected future commercial activity ³⁰ . Please provide details on your thoughts on how that could be achieved as part of any new future health service procurement regime for Wales?
Review of the new regime	
Q54	There is a requirement for the Welsh Ministers to review the operation of the proposed new health service procurement regime for Wales within 5 years after the proposed future Regulations come into force. Do you have any views on how that should be undertaken?
Impact on Welsh language	
Q55	<p>What, in your opinion, would be the likely effects of the proposed new health service procurement regime be on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English.</p> <ul style="list-style-type: none"> ○ Do you think that there are opportunities to promote any positive effects? If so, how can this be achieved? ○ Do you think that there are opportunities to mitigate any adverse effects? If so, how can this be achieved?
Q56	<p>In your opinion, could the proposed new health service procurement regime be formulated or changed so as to:</p> <ul style="list-style-type: none"> ○ have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English; or ○ mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English? <p>Please provide details on your thoughts.</p>
Any other comments	
Q57	Are there any other issues you would like to raise in relation to the operational principles for the implementation of a proposed new health service procurement regime for the delivery of health services in Wales that have not been covered in this document? If you have any related issues which we have not specifically addressed, please provide details.
Q58	<p>Please provide details of your organisation. Are you responding on behalf of:</p> <ul style="list-style-type: none"> • NHS • Local Authority • Third/voluntary sector • Private sector • Other – please specify.

³⁰ [NHS England » The Provider Selection Regime: draft statutory guidance](#), see section 'Applying the regime, Planning'

Q59	Responses to consultations are likely to be made public, published as part of a summary of responses on the internet or as part of a publicly available report. If you would prefer your response to remain anonymous, please tick here:

Chapter 4 – Summary of consultation questions

A	Application and general scope of health care services
	Questions:
Q1	<p>To what extent do you agree or disagree that the proposed new health service procurement regime in Wales should include a list of health services as defined by CPV codes?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details</p>
Q2	<p>To what extent do you agree or disagree that the list of codes presented in DHSC's draft PSR Regulations accurately represent the breadth and scope of defining health services currently delivered or may be procured in the future in Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details.</p>
Q3	<p>Are there any health services that are not included in the list of codes presented in DHSC's draft PSR Regulations, where health services are the main subject-matter, that are currently being delivered, or will be delivered in the future in Wales that you consider should be within scope of a proposed new health service procurement regime in Wales? If so, please provide details (and if applicable, the relevant CPV codes)?</p>
Q4	<p>Are there any CPV codes that are included in DHSC's list that are not applicable to the health service procurement and delivery of health service in Wales and therefore should not be replicated in a proposed new health service procurement regime in Wales? If so, please provide details.</p>
Q5	<p>Are there examples of health services currently procured in Wales that are not defined by a CPV code? If so, please state these services.</p>
Q6	<p>DHSC's PSR CPV code list include some primary care services and are therefore captured under the PSR regime. Are there any CPV codes that are included in DHSC's list that are not applicable to the primary care services in Wales? Are there examples of primary care services currently procured in Wales that are not defined by a CPV code within the DHSC's list?</p>

B	Key criteria and basic selection criteria
Questions:	
Q7	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach in Schedule 16 to DHSC's PSR regarding the basic selection criteria (i.e. A relevant authority may proportionately impose requirements to be met by providers which only relate to the basic selection criteria: (a) suitability to pursue a particular activity; (b) economic and financial standing; and (c) technical and professional ability)?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q8	<p>Are there additional basic criteria you feel should be included in a new future health service procurement regime for Wales? If so, please provide details?</p>
Q9	<p>To what extent do you agree or disagree with the key criteria proposed to be included in the new regime for the procurement of health services in Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q10	<p>Are there any other key criteria you think a 'relevant authority' needs to consider when making procurement decisions for the procurement of health services in Wales to reflect wider policy objectives for Wales? Please provide details.</p>
Q11	<p>To what extent do you agree or disagree that key criteria should be defined in the future regulations for a proposed new health service regime for Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>

C	Mixed Procurement
Questions:	
Q12	<p>Apart from social care services, what other types of goods or services are currently procured, or may in the future be procured within the scope of health services by a 'relevant authority' for the delivery of health services in Wales – i.e., mixed procurement? Please provide examples (and if possible, CPV codes).</p>

Q13	<p>To what extent do you agree or disagree with the ‘main subject-matter’ threshold definition for mixed procurement and its applicability to a new health service procurement regime in Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q14	<p>To what extent do you agree or disagree with the ‘reasonably separable’ threshold being applied in Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q15	<p>When considering how independent health services and social care services are currently procured in Wales, do you foresee any problems or benefits in creating such approaches to mixed procurement in Wales? Please provide details.</p>
Q16	<p>To what extent do you agree or disagree that the ‘main subject-matter’ being health services</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Do you foresee any issues with this approach? If so please provide further details.</p>
Q17	<p>To what extent do you believe that these changes will impact on integration of health and social care services and any ‘pooled budget’ arrangements? Please provide details.</p>

D	Procurement Processes
	Questions:
Q18	<p>To what extent do you agree or disagree that a proposed new health service procurement regime for Wales should align ‘decision-making circumstances’ with those set out in DHSC’s PSR Regulations (except for Direct Award Process B – ‘Patient Choice’)?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree.

	Please provide further details?
Q19	In respect of current or future health service procurement in Wales, do you have any views on any other circumstances where a different process should apply to a future new health service procurement regime in Wales? Please provide an explanation.

E	Modification of contracts during the term of a contract
	Questions:
Q20	Do you agree or disagree that a future new regime for the procurement of health services in Wales should seek to align with the application of DHSC's approach to contract modifications as set out in the PSR Regulations? <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. Please provide further details?
Q21	Do you have any views as to whether an alternative approach to modification of contracts should be taken in Wales? Please provide details.

F	'Considerable change' threshold
	Questions:
Q22	To what extent do you agree or disagree with the proposed threshold of 'considerable change' as set out in DHSC's PSR Regulations and their applicability for the procurement of the delivery of health services in Wales? <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. Please provide further details?
Q23	If you consider that the considerable change thresholds should be different in Wales to those specified in DHSC's PSR Regulations, please explain why. Please state what you believe to be a more appropriate threshold for considerable change in a new regime for the procurement of health services in Wales.

G	Review of decisions under the procurement regime
	Questions:
Q24	Considering the proposed approach that DHSC have adopted on review of decisions in their proposed PSR, to what extent do you agree or disagree with the

	<p>establishment of an independent panel to advise on procurement decisions during the operation of a proposed new health service regime in Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q25	Please provide details on how you think an independent panel could operate in Wales?
Q26	Do you think that an alternative approach to that set out by DHSC on independent advice on the operation of a future new health service procurement regime, would be more suitable in Wales? If so, please provide details.

H	Transparency and monitoring
	Questions:
Q27	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on transparency, monitoring and publication of information requirements in DHSC's proposed PSR Regulations?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q28	Do you think there is an alternative approach or other types of information that would be helpful to demonstrate transparency and monitoring of the application of a new health service procurement regime for Wales? Please provide details on your thoughts.
Q29	<p>To what extent do you agree or disagree that a proposed new health service procurement regime for Wales should align with the timings and frequency of reporting on transparency as outlined above and in DHSC's PSR?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q30	Do you have any thoughts in relation to the information that needs to be published within the content of a notice specified by DHSC and its applicability to new health service procurement regime for Wales? Please provide details on your thoughts.

Q31	Do you have any thoughts in relation to the requirement for 'relevant authorities' in Wales to publish details of the 'decision makers' as part of the information on contract award? Please provide details on your thoughts
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I	Standstill Periods
	Questions:
Q32	<p>To what extent do you agree or disagree that a proposed new health service procurement regime for Wales should align with a standstill period to be followed for 'Direct Award Process' C, 'The Most Suitable Provider Process', and 'The Competitive Process' establishing a framework agreement or intention to award a contract based on a framework agreement following a competitive process?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q33	<p>To what extent do you agree or disagree that a proposed new health service procurement regime for Wales should align with the timescale for representations as set out in DHSC's proposed regime? Should there be an alternative timescale for the application of the regime within Wales?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details.</p>
Q34	<p>Do you have any views on the role of the 'independent review panel' in relation to the standstill period in any new future health service regime for Wales? Please provide details.</p>

J	Conflicts of Interest
	Questions:
Q35	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on conflicts of interest as outlined in DHSC proposed PSR Regulations?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>

Q36	Do you have any views on how any 'conflicts of interest' could be identified, monitored and managed more effectively in a proposed new health service procurement regime in Wales?
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K	Termination of Contracts
	Questions:
Q37	To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on termination of contracts as outlined in DHSC proposed PSR Regulations? Please provide details on your thoughts.

L	Framework Agreements
	Questions:
Q38	To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on framework agreements as outlined in DHSC proposed PSR Regulations? <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. Please provide further details?
Q39	Do you think that a future new health service procurement regime for Wales should seek to have an alternative maximum timescale for a framework? If so please provide details on what you think would be an appropriate timescale and why?
Q40	Do you think that a future new health service procurement regime for Wales should seek to have the opportunity to open a framework up at certain intervals for new entrants to become party to a framework?

M	Urgent awards or modifications
	Questions:
Q41	To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach in Regulation 14, urgent awards or modifications? <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. Please provide further details?

N	Abandonment of or repetition of steps in a procurement
	Questions:
Q42	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach in Regulation 15, abandonment of or repetition of steps in a procurement?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>

O	Exclusions
	Questions:
Q43	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach in PSR Regulations 20, exclusions?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>

P	Primary Care
	Questions:
Q44	<p>To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on primary care contract as outlined in DHSC proposed PSR guidance?</p> <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. <p>Please provide further details?</p>
Q45	<p>In respect of current or future health service procurement in Wales, do you have any views or concerns around the omission of GP practice 'Personal Medical Services' (PMS) from a future new health service procurement regime guidance for Wales? Please provide an explanation.</p>
Q46	<p>Are there examples of primary care services contracts currently procured in Wales that are not defined within NHS England guidance or captured as known points of divergence above? If so, please state these services.</p>

Q	Transitional arrangements, roll out and implementation
	Questions:
Q47	To what extent do you agree or disagree that a new future health service procurement regime in Wales transition and implementation should be supported by the establishment of toolkits and awareness raising sessions? <ul style="list-style-type: none"> • Strongly agree. • Agree • Neither agree nor disagree • Disagree Strongly disagree. Please provide further details?
Q48	In respect of the implementation of a proposed health service procurement regime in Wales, do you have any views or concerns regarding transitional arrangements, roll out and timing of implementation? Please provide further details on your thoughts.
Q49	When do you think a future new health service procurement regime for Wales should come into force? Please provide details as to your thoughts.
Q50	Do you have views on whether any new health service procurement regime for Wales should aim to align with the timelines for the introduction of proposed changes being brought forward for wider public procurement under the UK Government Procurement Act, or be introduced at a separate point in time?

R	General questions
	Impacts on resources and costs for organisations and individuals
Q51	Please provide details of any anticipated increase/decrease in resources/operational running costs for your organisation associated with the implementation of a new health service provider regime in Wales?
Q52	DHSC's PSR guidance talks about the 'provider landscape' ³¹ and expectations to develop and maintain sufficiently detailed knowledge of relevant providers. Do you have any views on how this could be achieved in Wales, if we chose to coordinate with DHSC's PSR for this element?
Q53	DHSC's PSR guidance sets out expectations in relation to provider selection and good practice in relation to a 'relevant authority's' forward planning and clearly mapping out the expected future commercial activity ³² . Please provide details on your thoughts on how that could be achieved as part of any new future health service procurement regime for Wales?
	Review of the new regime
Q54	There is a requirement for the Welsh Ministers to review the operation of the proposed new health service procurement regime for Wales within 5 years after the

³¹ [NHS England » The Provider Selection Regime: draft statutory guidance](#), see section 'Provider Landscape'

³² [NHS England » The Provider Selection Regime: draft statutory guidance](#), see section 'Applying the regime, Planning'

	proposed future Regulations come into force. Do you have any views on how that should be undertaken?
Impact on Welsh language	
Q55	<p>What, in your opinion, would be the likely effects of the proposed new health service procurement regime be on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English.</p> <ul style="list-style-type: none"> ○ Do you think that there are opportunities to promote any positive effects? If so, how can this be achieved? ○ Do you think that there are opportunities to mitigate any adverse effects? If so, how can this be achieved?
Q56	<p>In your opinion, could the proposed new health service procurement regime be formulated or changed so as to:</p> <ul style="list-style-type: none"> ○ have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English; or ○ mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English? <p>Please provide details on your thoughts.</p>
Any other comments	
Q57	<p>Are there any other issues you would like to raise in relation to the operational principles for the implementation of a proposed new health service procurement regime for the delivery of health services in Wales that have not been covered in this document? If you have any related issues which we have not specifically addressed, please provide details.</p>
Q58	<p>Please provide details of your organisation. Are you responding on behalf of:</p> <ul style="list-style-type: none"> • NHS • Local Authority • Third/voluntary sector • Private sector • Other – please specify.
Q59	<p>Responses to consultations are likely to be made public, published as part of a summary of responses on the internet or as part of a publicly available report.</p> <p>If you would prefer your response to remain anonymous, please tick here:</p>

Annex A - Summary of DHSC's government response - Provider Selection Regime: supplementary consultation

Background:

In 2021, NHS England undertook a consultation exercise on the principles of introducing the PSR in England³³.

In February 2022, DHSC undertook a supplementary consultation on the proposed operational details of the PSR in England. DHSC published their response to this consultation exercise in July 2023. Copies of both documents can be viewed on DHSC's website³⁴

An overview of DHSC's supplementary consultation and their summary of responses to stakeholder feedback has been set out below.

This is a summary and is provided solely to highlight the main issues raised by stakeholders in response to DHSC's supplementary consultation and provide context as to the reasoning and rationale behind DHSC's decisions around the operational processes of DHSC's PSR in England.

The interpretation of the PSR Regulations contained in this consultation document should not be treated as an authoritative statement of the law. Interpretation of DHSC's PSR Regulations and the UK Government's Procurement Act will be for the Courts. The views set out in this document are therefore our current understanding of how the PSR Regulations and Procurement Act 2023 may operate and are only offered to assist stakeholders in responding to this consultation. Stakeholders should refer to the full and published versions of the draft PSR Regulations 2023³⁵, the accompanying statutory guidance³⁶ and the Procurement Act 2023³⁷, in conjunction with this consultation document.

DHSC's Provider Selection Regime: supplementary consultation on the detail of proposals for regulations - UK Government response

Context:

DHSC supplementary consultation on the PSR opened on 21 February 2022 and closed on 28 March 2022. In total, 124 responses were received. The percentages referred to DHSC's response and included below, relate to responses received via the online survey.

Sections 1&2 – DHSC's proposals for defining the scope of the PSR in England

³³ [NHS England » NHS Provider Selection Regime: Consultation on proposals](#)

³⁴ [Provider Selection Regime: supplementary consultation on the detail of proposals for regulations - government response - GOV.UK \(www.gov.uk\)](#)

³⁵ [The Health Care Services \(Provider Selection Regime\) Regulations 2023 \(legislation.gov.uk\)](#)

³⁶ [NHS England » The Provider Selection Regime \(PSR\) draft statutory guidance](#)

³⁷ [Procurement Act 2023 \(legislation.gov.uk\)](#)

DHSC's consultation document set out our proposals for the scope of the PSR, seeking views on the merits of including a proposed list of Common Procurement Vocabulary (CPV) codes in the regulations to clarify the scope of services which can be procured under the PSR in England. Overall, respondents agreed with DHSC's proposal to include CPV codes in the regulations, considering it would help to clarify which services are and are not in scope of the PSR. However, some respondents considered the codes proposed were broad and therefore may be interpreted differently and lead to inconsistent application.

Respondents who disagreed with DHSC's proposal to include CPV codes in regulations cited specific examples of codes that were absent from our proposed list, including those relating to public health commissioning, as they considered the list was too focused on acute care, and that other services such as those provided in the community and/or relating to public health (for example, substance misuse services; health visiting; school nurses; sexual health services) were not clearly in scope of the PSR.

DHSC welcomed the support and acknowledged the omission of codes which would apply to services that are in scope of the PSR and therefore proposed that these services were included in the regulations to define the scope of the PSR. DHSC also stated the regulations will make clear that CPV code 85149000-5 (pharmacy services) will not extend to community pharmacies that are arranged under 'The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013'.

DHSC reiterated that the procurement of 'goods' is outside the scope of the PSR. However, contracts for which the main subject matter is the delivery of a healthcare service to individuals (that is, patients and service users) may be arranged together with 'goods' under specific criteria as per our proposals for 'mixed procurement'.

DHSC acknowledged responses relating to services without a specific CPV code. As the CPV is a classification system used and developed by the European Commission, DHSC acknowledged there will be some services procured for the health service in that do not clearly align with a specific code. DHSC stated that they do not have the powers to create new codes. DHSC responded that further information to help decision-making bodies determine whether a service is in scope of the PSR will be set out in guidance, alongside examples of services that are in scope.

Section 3: DHSCs response to proposals for mixed procurement under the PSR in England

DHSC acknowledged that procurements will sometimes contain multiple elements, some of which are in scope of the PSR and others that fall within the scope of wider procurement regulations. DHSC's consultation document sets out our proposals for mixed procurement under the PSR, asking respondents if there were other types of services (apart from social care) which, when arranged in a single contract with healthcare, may further promote the

best interests of patients, the taxpayer, and the population. DHSC also sought views on the merits of using CPV codes to clarify the scope of social care services which may be arranged with healthcare as part of a mixed procurement (noting that social care services may frequently be arranged alongside healthcare as part of a mixed procurement). DHSC's proposed list of CPV codes for this purpose was included in the consultation document.

Respondents gave examples of services where healthcare is arranged alongside other provision under a single contract with examples relating to contracts which contain both healthcare and social care elements such as accommodation-based services, social prescribing, patient transport services, courier services, IT and digital services and solutions including telecare and call handling, and goods. Responses to these questions exemplified the range of services which decision-making bodies may arrange alongside healthcare services in a single contract.

DHSC considered responses and reiterated that community health, substance misuse and sexual and reproductive health, would be in scope and therefore can be arranged under the PSR in a standalone manner. DHSC welcomed examples respondents gave of the many services that combine elements of healthcare and social care such as homeless, rough sleeping services, domestic abuse support services and rehabilitation services. DHSC recognised that arranging the healthcare and social care elements of these services together, supports the delivery of integrated care in a way that benefits patients and service users. DHSC also noted the examples respondents gave of procurements that combine healthcare services with services (for example, IT and digital services and solutions). DHSC recognised that when the main subject matter of the contract is the delivery of healthcare to individuals, the procurement of these services alongside healthcare can also provide significant benefits. DHSC responded by stating that their regulations will make clear that the PSR can be used to procure 'in scope' healthcare services alongside any goods and services that are out of scope. **This would only apply when the main subject matter is healthcare.**

Section 4: DHSC's responses to proposals for defining a 'considerable change' under the PSR in England

DHSC have stated that NHS England's consultation on the PSR in 2021³⁸ was 'largely supportive of decision-making bodies being able to continue with existing arrangements in certain circumstances'. This included where a service is not changing and the incumbent provider is deemed to be doing a good job, such that there is no overall value in seeking another provider.

DHSC sought views on the merits of using a combination threshold which includes both a fixed change in contract value (over £500,000) and percentage change in contract value (25%) as a threshold for a 'considerable change.' Therefore, once both thresholds are

³⁸ [NHS England » NHS Provider Selection Regime: Consultation on proposals](#)

reached, decision-making bodies cannot continue with the incumbent under decision-making circumstance and must select a provider either by identifying the single most suitable provider or running a competitive tender exercise.

DHSC set out a list of changes which were proposed should not be deemed considerable, regardless of any resulting change in value, and irrespective of when they are made. DHSC sought views on this list from respondents. In consideration of whether a considerable change should require a change of a set amount (£) in contract value and a percentage change in the contract value 48% of respondents agreed with DHSC proposal considering that only having one criterion could lead to the PSR being applied inconsistently or disproportionately, believing the proposed for a 'considerable change' would ensure transparency.

Where respondents disagreed with DHSC's proposals on thresholds for 'considerable change' several explained the percentage change alone was sufficient. Other respondents suggested DHSC proposals were too narrowly focused and qualitative factors such as service quality should be considered. Some respondents who disagreed felt the threshold was too low and suggested a more flexible approach, for example that what is deemed a 'considerable change' should be dependent on the size of the contract, increasing flexibility for decision-making bodies by setting out in guidance what constitutes a 'considerable change' as an alternative to regulations.

DHSC responded by welcoming respondents' overall support for their proposal that a 'considerable change' should be defined as jointly a change of a set amount (£) in contract value and a percentage (%) change in contract value. This means that change would only be identified as considerable when both criteria are met. DHSC acknowledged respondents' other suggestions for what constitutes a 'considerable change' such as changes in service quality. DHSC stated that a contract change would be deemed considerable if it materially alters the nature of the contract; and that when a contract is changed to deliver different services, this would be a material alteration and therefore would be deemed a 'considerable change.'

Respondents less supportive of DHSC threshold of £500,000, often citing concerns this amount was too low and would mean minor changes to large contracts would necessitate a provider to be selected using the PSR. However, DHSC noted that respondents were generally supportive of the £500,000 threshold when also used in conjunction with a percentage change to determine when a contract is 'changing considerably.'

Further responses to DHSC on 'considerable change' centred around alignment with thresholds in the Public Contracts Regulations 2015 on variations and suggestions that thresholds should be being determined by contract size or value, with flexibility for decision-making bodies to justify why some changes are not 'considerable' despite meeting the criteria. DHSC noted that some respondents believed a threshold of 50% would be consistent with the PCR 2015 which currently governs the arrangement of healthcare

services, and which the PSR would replace in governing the arrangement of those services. The 50% threshold in the PCR 2015 applies to contract variations rather than a 'considerable change', as under the PCR 2015, contracts must always be re-tendered at the end of the contract term. DHSC noted that the 50% threshold only applies where other conditions are met. Under DHSC proposals the PSR will allow decision-making bodies greater flexibility to continue existing arrangements with the incumbent provider at the end of the contract term without going to tender. As such, DHSC require a threshold to prompt a consideration of new providers to ensure decision-making bodies remain open to developments in the market. DHSC therefore intend to continue with their threshold of 25%.

Section 5: DHSC's response to proposals for contract variations and the PSR in England

DHSC's consultation document set out a list of contract variations that should not warrant reapplication of the PSR and sought views on a proposed list of variations. Respondents who agreed that the list of variations should not warrant reapplication of the PSR, considered reapplying the PSR in such circumstances would increase the burden on decision-making bodies however greater transparency was needed. Some respondents to DHSC suggested additions to the proposed list to provide greater clarity or additional safeguards such as nationally mandated cost increases, pay increases and National Insurance are excluded as per tariff changes, a percentage change in patient volume that would not trigger a revisiting of the PSR despite meeting the percentage and value threshold.

Respondents who disagreed with DHSC proposed list, cited concerns about the 25% and £500,000 thresholds, also referencing circumstances in a takeover or merger where the purpose and social value of an organisation taking over may differ materially from the original provider.

When considering whether the threshold for a considerable change should be a set amount (£) in contract value, or a percentage of the contract value, respondents agreed, with some respondents expressing a need for flexibility. Respondents who disagreed stated that a fixed change in the financial value (£) of a contract was inappropriate as a percentage provides greater flexibility and applicability.

In consideration of the measurement of a change in contract value, respondents to DHSC gave opinions on the percentage threshold. Some respondents raised other suggestions, for example around flexibility for decision-making bodies or different thresholds based on contract value i.e., a sliding scale that reflects overall lifetime contract value.

DHSC welcomed support from most respondents for their proposed list of contract variations which would not necessitate the reselection of a provider using the PSR. DHSC consultation document sets out that if either of the conditions (£ or %) apply in relation to

the cumulative change in the lifetime value of the contract, the contract would not be deemed to have varied considerably and reapplication of the PSR would not be warranted.

DHSC noted respondents desire for greater flexibility and discretion for decision-making bodies, however DHSC stated their belief that this approach risks the PSR being applied inconsistently between decision-making bodies with the potential to erode common understanding of the provisions of the PSR and lead to unwarranted discrepancies in how services are arranged across England.

Section 6: DHSC's responses to stakeholder feedback on their proposals for using the PSR when establishing lists of providers to offer patient choice

DHSC's consultation document sets out our proposals for how the PSR should apply when decision-making bodies decide to voluntarily offer patients a choice when patients do not have a legal right to choose a provider. In these circumstances, how the PSR may be applied is dependent on whether the decision-making body seeks to limit the number of providers from which patients can choose.

DHSC propose that where decision-making bodies decide to offer patients a choice of a limited number of providers of services for which patients do not have a legal right to choice, they must use decision-making circumstances 2 or 3 to select the provider(s) from which patients can choose. DHSC state that this will ensure decision-making processes are transparent and proportionate, and decisions are made in the best interests of patients, the taxpayer and the population.

Section 7: DHSC's responses to stakeholder feedback on their proposals for transparency requirements when arranging services under the PSR

The aim of DHSC state that the aims of their transparency arrangements under the PSR is to ensure that the outcomes of decisions are made public, and that sufficient scrutiny is applied to ensure the PSR is followed in good faith.

DHSC consultation sought views on further proposals for the intention to award notice and more detailed proposals for decision-making bodies to publish annual summaries outlining their application of the PSR.

Some respondents to DHSC were supportive of their proposals under the PSR to include a requirement to publish details of awards and decisions. Some respondents supported transparency as a principle and as a way of reducing the likelihood of legal challenges. Some respondents raised concerns around the administrative burden of publishing this information and its potentially sensitive nature.

Respondents to DHSC provided opinions on measures to include information in the notice on how to challenge or appeal the decision, also suggesting it could be helpful to publish

information on other providers that were considered by the decision-maker, as well as on market testing and negotiations.

DHSC asked to what extent respondents agreed/disagreed with their proposals around annual summaries. Some respondents agreeing with the proposals for annual summaries in an effort to promote accountability and transparency. Those respondents who disagreed, commented that DHSC proposals would be an unnecessary duplication of effort.

In consideration of any additional information respondents would suggest is included in the summaries, responses to DHSC included suggestions to provide more detail on individual contracts, number of contracts awarded in each circumstance each year, the value of each contract, contract length, a standard form of reporting for each body to allow regional comparison.

DHSC noted that some respondents expressed a concern that their proposals could lead to a requirement to publish information that is commercially sensitive, however their expectation is that decision-making bodies will not publish confidential or commercially sensitive information.

DHSC acknowledged respondents concerns about the administrative burden of their proposals for the intention to award notice and accept that decision-makers should not be constrained in how to effectively present a rationale which accurately reflects their approach to decision-making. In response, DHSC stated that they intend the PSR intention to include measures that the award notice will include a statement explaining the decision-making body's rationale for choosing the selected provider with reference to the relevant key criteria.

Some respondents considered DHSC proposals to be too administratively burdensome. In response, DHSC stated that the PSR will seek to achieve a balance between production of high-level information and the administrative burden on decision-making bodies. DHSC proposal will ensure the collation of high-level information in a way that is least burdensome, also acknowledging the notices required to be published under the PSR will contain more detail on individual arrangements. DHSC also noted many respondents referenced the significant benefits of annual summaries for increasing public transparency, accountability and confidence in decisions made using the PSR.

Section 8: DHSC's response to stakeholder feedback on the independent review of decisions made under the PSR

DHSC consultation questions did not specifically relate to independent scrutiny of decisions made under the PSR, including recourse for providers seeking to challenge decision-making bodies, as these proposals were included in NHS England's previous consultation on the PSR. However, in response to DHSC's supplementary consultation, some respondents provided opinions on the adequacy of DHSC proposals around transparency

to ensure good governance and whether a decision-making body itself would be required to review and adjudicate on its decision when challenged by a provider, without the involvement of an independent body.

In response DHSC recognised the potential merit in introducing a greater degree of independence into the review of decisions made under the PSR and propose to establish a panel which is chaired by an independent person who can look at and advise on issues relating to the PSR regulations. This will help ensure that: procurement processes are transparent, fair, and proportionate, enabling all providers to compete for contracts; and providers are not unfairly excluded from offering services to patients and service users.