



Llywodraeth Cymru
Welsh Government

Number: WG48217

Welsh Government
Consultation – summary of response

Wales Consultation on Public Procurement Secondary Legislation: Part 1 and Part 2

14 November 2023

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 document provides a summary of responses, and the Welsh Government's response to them, to the consultation on the draft secondary legislation to implement the new procurement regime in Wales. This was a technical consultation split into two parts.

Action Required

This document is for information only.

Further information and related documents

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

Contact details

For further information:

Procurement Reform Team
Commercial Procurement Directorate

Chief Operating Officer's Group
Welsh Government
Cathays Park
Cardiff CF10 3NQ

Email: TimDiwygiorBrosesGaffael@llyw.cymru / ProcurementReformTeam@gov.wales

Additional copies

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation:

[Consultation Part 1](#)

[Consultation Part 2](#)

Contents

Contents.....	3
Introduction and Consultation process	4
Consultation responses and Welsh Government response.....	6

Introduction and Consultation process

Procurement is one of the most important levers we have to support the more equal, more sustainable and more prosperous Wales we all want to see. It can help us build the modern infrastructure we need to get to net zero; it can support a green recovery and it can contribute to our shared ambition for a Wales of Fair Work.

Welsh Ministers are committed to harnessing those opportunities and to working with partners across Wales to develop a modern and sustainable approach to procurement.

The Procurement Act is introducing a new legislative framework to govern public procurement. Royal Assent was granted on 26 October 2023.

The changes being introduced will create a simpler, more flexible set of rules, making public procurement more accessible to businesses including Welsh SMEs and increase transparency.

Welsh Ministers have equivalent standalone regulation-making powers in most areas of the Procurement Act and therefore intend to lay secondary legislation before the Senedd. The consultation on this secondary legislation was split into two parts, which ran for a period of six weeks each. Consultation Part 1 ran from 19/06/2023 to 28/07/2023 and Consultation Part 2 ran from 17/07/2023 to 25/08/2023.

The UK Government also ran two very similar consultations on their secondary legislation at the same time as the Welsh Ministers. The respective consultations were undertaken at the same time to make it easier for stakeholders and potential respondents to get involved in the consultation and for consistency reasons.

Views were not sought on the policy itself which has already been established by the Act.

The first part of the consultation sought views on whether the technical detail of the drafting was accurate and achievable. It focused on areas of the Procurement Act which require lists, calculations or further definitions to be used in practice.

The second part of the consultation predominantly focused on the transparency notices which allow contracting authorities to progress procurement processes through the procurement lifecycle in an open, transparent and informative manner.

The Welsh Government and UK Government have worked closely on the development of the Procurement Act and their respective statutory instruments (SIs) to ensure there is maximum alignment between the legislation and to minimise any risk of potential divergence. Securing maximum alignment between the procurement rules as they apply in Wales and England will have the effect of ensuring a level playing field for buyers and suppliers on both sides of the border. As a result, changes may be required to the draft Welsh SI following our analysis of the UK Government's response to their consultation, to ensure this consistency continues whilst also allowing for devolved differences where appropriate.

The Welsh Government received twelve responses to the first part of the consultation and eighteen responses to the second part of the consultation.

Responses were received from a wide range of stakeholders including the WLGA on behalf of Welsh Local Authorities, the Higher Education Sector in Wales, the social housing sector, fire, government bodies including WGSBs, academia and the private sector.

The Welsh Government welcomes the responses to the consultation and would like to thank those who responded.

Consultation responses and Welsh Government response

Consultation Part 1 – Welsh Government Response

Part 1 of the consultation was split into mandatory questions and follow up questions asking for additional information where the respondent had disagreed or strongly disagreed to each question. In addition, there were two questions relating to the Welsh Language.

Twelve responses were received to this part of the consultation.

1. Scope of Light Touch Regime Contracts and Reservable Light Touch Services

Q1. To what extent do you agree or disagree that CPV codes set out in the SI accurately capture those services which can be supplied via a light touch contract under the new regime?

Q1a. If you disagree or strongly disagree, please indicate which services should be included or excluded, or clarify any other perceived issues with the list such as inconsistencies with other areas of the Bill or SI.

Summary of responses

Overall, the response was positive, with ten of the twelve responses that strongly agreed or agreed to the question.

One respondent disagreed and provided some CPV codes they wished to be added to the legislation.

One respondent stated that it was not applicable to their organisation.

Welsh Government response

The CPV codes included in the draft legislation capture the same services as those which are identified by the CPV codes in Schedule 3 of the existing Public Contracts Regulations 2015. As the CPV codes proposed for inclusion in the draft legislation are already included in international agreements, new CPV codes cannot be added to the list of Light Touch Regime Contracts.

On this basis it is not intended to change the statutory instrument.

Q2 To what extent do you agree or disagree that the SI accurately captures those services which should be 'reservable' to public service mutuals under the new regime?

Q2a. If you disagree or strongly disagree, please indicate which services should be included or excluded, or clarify any other perceived issues with the list such as inconsistencies with other areas of the Bill or SI.

Summary of response

Out of the twelve responses, eight agreed or strongly agreed to the question. Four neither agreed nor disagreed with the question. No comments were received.

Welsh Government response

As the majority agreed to the question no changes are proposed to the SI.

2. Exempt Contracts: Vertical and Horizontal Activities Calculations

Q3. To what extent do you agree or disagree that the methodology of calculating the percentages of the activity thresholds set out in the SI is clear and meets the policy intent to exempt horizontal and vertical procurement from the requirements of the Bill?

Q3a. If you disagree or strongly disagree, please explain why you believe the calculation is not clear or does not otherwise meet the policy intent.

Summary of response

Of the twelve responses received, all agreed or strongly agreed that the methodology of calculating the percentages of the activity thresholds set out in the SI is clear and meets the policy intent to exempt horizontal and vertical procurement from the requirements of the Act. No comments were received as no respondents disagreed or strongly disagreed.

Welsh Government response

No change to the SI is proposed.

3. Exempt Contracts: Utilities Intra-group Turnover Calculations

Q4. To what extent do you agree that the methodology of calculating the percentages of the affiliated turnover test as set out in the SI is clear and meets the policy intent to exempt contracts to affiliates as described in Schedule 2, paragraph 6?

4a. If you disagree or strongly disagree, please explain why you do not believe that the calculation will deliver the policy intent.

Summary of responses

Out of the twelve responses, five agreed or strongly agreed, one neither agreed nor disagreed and six stated it was not applicable to them.

No comments were received.

Welsh Government response

No change to the SI is proposed.

4. Utility Turnover and Supply Tests

Q5 To what extent do you agree or disagree that the methodology to make the appropriate calculations for the relevant exemptions in paragraphs 1(2), 2(2) and 3(4) of Schedule 4 is clear and meets the policy intent to exempt the supply of gas, heat, electricity and drinking water where the relevant conditions apply?

Q5a If you disagree or strongly disagree, please explain why you believe the calculation is not clear or does not otherwise meet the policy intent.

Summary of responses

On the whole the responses were positive with five of the twelve respondents 'strongly agreeing' or 'agreeing' that the methodology is clear and meets the policy intent to exempt the supply of gas, heat, electricity and drinking water where the relevant conditions apply. Of the remaining seven, six responded N/A, and the remaining one neither agreed nor disagreed.

The general consensus of those organisations responding 'N/A' or 'neither agree or disagree' was due to the regulations for utilities not being relevant to their organisation.

Welsh Government response

To ensure consistency and enable cross-border business with England to largely continue without confusion or potential additional costs for users, it is important that Welsh Ministers remain aligned with UK Government in this area.

Therefore no change is proposed to the SI at this stage.

5. Intra-UK Procurement

Q6 To what extent do you agree or disagree that the regulation meets the policy intent of permitting Scottish devolved authorities to undertake joint procurement or collaborate with other authorities across the UK under the auspices of the Procurement Bill

Q6a. If you disagree or strongly disagree, please explain why you do not think that the regulation will provide Scottish devolved authorities with this opportunity.

Summary of responses

Ten respondents either agreed or strongly agreed with the question. No negative scores or comments were received.

Welsh Government response

Therefore no change is proposed to the SI at this stage.

6. Definitions of ‘Central Government Authority’ and ‘Works’ for Thresholds

Q7. To what extent do you agree or disagree that this approach achieves the policy objective of ensuring a clear, consistent and familiar approach to defining Central Government Authorities and Works?

Q7a. If you disagree or strongly disagree, please explain why you do not believe that the definitions are clear, consistent and/or familiar.

Summary of responses

10 respondents either agreed or strongly agreed with the details. One respondent neither agreed or disagreed and one respondent disagreed.

Only one comment was received for this question, saying that it is not clear whether the Welsh Government Sponsored Bodies (WGSBs) listed in Annex 1 will be amended to include all WGSBs or only those listed (subject to name changes).

Welsh Government response

As stated in the consultation, it is important that the list reflects the commitments we have made under the Agreement on Government Procurement (GPA) and other International Agreements. As such, we are currently unable to amend the list.

It is therefore not proposed to make any changes to the SI.

7. Disapplication of section 17 of the Local Government Act 1988

Q8 To what extent do you agree or disagree that the regulations permit local authorities and other bodies subject to the Local Government Act 1998 to take advantage of policy on reserving below-threshold contracts for suppliers in a specific geographic location and (if the contracting authority chooses) are SMEs or VCSEs?

Q8a. If you disagree or strongly disagree please explain why you do not think the regulations will allow the below-threshold policy to be applied by authorities subject to the LGA 1988.

Summary of numbers and scores

Three of the responses were positive in their scores. Four responses were negative and provided comments with the remaining five organisations either answering Do Not Agree or Disagree or Not Applicable.

Comments and Welsh Government response

Some respondents were concerned that the Procurement Act would reduce flexibility in relation to reserving below-threshold procurements to SMEs and/or VCSEs. This is not the case. Contracting authorities will still be able to reserve below-threshold procurements to SMEs and/or VCSEs when the Procurement Act comes into force in the way they are able to now.

Other respondents had concerns over the lack of flexibility, as the draft SI included in the Consultation restricts invitations to tender to suppliers in just one county. In the consultation document, it was proposed to make different provision for Wales which aligns itself to [WPPN 05/21](#). The difference which is proposed for Welsh legislation will allow Welsh Contracting Authorities to reserve below-threshold procurements to suppliers based within a single specified geographic location provided that the geographic location comprises the areas of no more than ten counties whether within Wales or across Wales and England. For example, a Welsh Contracting Authority might choose to invite suppliers in Cardiff, Newport and Bristol City Councils to tender. Please note that this should always be clearly stated in the tender documents.

Some respondents questioned how this section interacts with other legislation such as the Well-being of Future Generations Act and the Social Partnership and Public Procurement (Wales) Act. These other areas of legislation can and should be considered in all procurements.

The draft SI included with the consultation will be amended to reflect the differences set out above.

8. Welsh Language

Q9. We would like to know your views on the effects that the proposed Secondary Legislation would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Summary of responses

Eight responses were received to this question.

One respondent wished for the Welsh Language to be recognised as an official language with a statement that it wouldn't be treated less favourably than English. They would also like to see bilingual provisions targeted and for the legislation to mirror the Welsh Language Standards.

Five out of the eight responses suggested that a positive effect of the new legislation could be the ability to publish Notices on the Central Digital Platform (currently FTS) in Welsh as well as English.

Two respondents recommended that Single Procurement Document (SPD) functionality is improved when the SPD is used for one opportunity in both Welsh and English.

All other comments received were either positive, considered as representing no change to current practice or felt it was difficult to comment due to the technical nature of this consultation.

Welsh Government response

There are already existing legislative obligations in relation to the Welsh Language, negating the need for duplication in the Procurement Act and associated SI. However, the Welsh Ministers have secured standalone equivalent regulation making powers in most areas of the Act, meaning that this SI and any subsequent secondary legislation will be brought before the Senedd in both Welsh and English.

In response to suggestions regarding improved bilingual Find a Tender Service (FTS) functionality, it is anticipated that there will be the ability to input both Welsh and English into one notice template which will result in one notice, available in both Welsh and English and published on both Sell2Wales and the Central Digital Platform.

It should be noted that it is possible for above threshold notices to be published in both English and Welsh on FTS now.

It was recommended that the bilingual functionality of the SPD is improved. The SPD is currently available in both Welsh and English however, the user must be logged into Sell2Wales in the required language to create / save responses to the SPD. The SPD as a whole is undergoing a review due to the requirement for suppliers to provide their information in the Central Digital Platform if they wish to participate in a tender opportunity (see draft Regulations 7-10 published with Consultation 2). Respondents' comments on the SPD will be considered as part of the SPD review.

It is therefore not proposed to make any changes to the SI.

Q10. Please also explain how you believe the proposed technical detail of the drafting could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Summary of numbers and scores

Six Responses were received to this question.

One of the respondents noted that restricting opportunities to local areas could have negative effects for bilingual business and that it should be managed.

All other comments received were either positive, considered as representing no change to current practice or felt it was difficult to comment due to the technical nature of this consultation.

Welsh Government response

Regulation 17 under Part 6 of the SI is designed to allow Local Authorities and other bodies subject to the Local Government Act 1988 to reserve below-threshold contracts for suppliers in a specific geographic location, and if they choose to, SMEs or voluntary, community and social enterprises (VCSEs). This could have a positive impact on the Welsh Language as all Welsh Contracting Authorities under the new Regulations will be able to take advantage of the policy for below-threshold contracts to boost local suppliers who may be more likely to use the Welsh Language.

It is therefore not proposed to make any changes to the SI.

Consultation Part 2 – Welsh Government Response

Part 2 of the consultation was split into mandatory questions and follow up questions where we asked respondents to provide comments where they had disagreed or strongly disagreed to the previous question. In addition, there were two questions relating to the Welsh Language.

Eighteen responses were received to this part of the consultation.

1. Pipeline Notice

Q 1 To what extent do you agree or disagree that the pipeline notice, as described in the draft SI, will usefully provide advance notice to suppliers of forthcoming contracting opportunities?

Q 2: If you answered disagree or strongly disagree to Question 1 please explain why you do not believe this delivers the policy intent

Eighteen responses to the question were received.

Summary of responses

Eleven respondents strongly agreed that the pipeline notice would usefully provide advance notice to suppliers of forthcoming opportunities. Two respondents neither agreed nor disagreed. Five respondents disagreed.

On the whole, respondents (including those who qualified their responses) generally agreed that the pipeline notice would be an appropriate way of providing advance notice to suppliers of forthcoming opportunities.

Some respondents who disagreed or further qualified their responses raised concerns in relation to potential risks of challenge to contracting authorities. The concern centred on the potential for wasted effort by suppliers who prepare for a contract which never comes to fruition.

Some systems-related concerns were raised, including concerns relating to the potential for duplication with other notices. Additional technical queries were raised in relation to call off contracts and whether the contracting authority intended to split the opportunity into lots.

Welsh Government response

The Act is clear that the pipeline notice includes information about a public contract for which the CA “intends” to publish a tender or transparency notice. This point will be addressed further in guidance.

To reduce the administrative impact on CAs and avoid unnecessary duplication, it is anticipated that any additional resource obligations arising from the changes to transparency requirements will be largely mitigated by the enhanced automation of procurement systems and platforms.

The Pipeline Notice is required for public contracts estimated at over £2m in respect of which the CA intends to publish a tender or transparency notice. Therefore, since call-off contracts under Frameworks do not require a tender or transparency notice, there is no obligation to include call-off contracts under Frameworks, however, call-off contracts under Dynamic Markets would be included in the pipeline notice if above the relevant thresholds.

Whilst one respondent suggested there should be some instances where an exemption to the Pipeline Notice should be permitted, the Act only requires a Pipeline Notice if certain thresholds are met. Any additional exemptions would undermine the policy intent, which is to usefully provide advance notice to suppliers of forthcoming contracting opportunities.

It is therefore not proposed to make any changes to the SI.

2. Planned Procurement Notice

Q3. To what extent do you agree or disagree that the contents of the notice described in the draft SI provide the information needed by suppliers to determine their interest in the upcoming procurement that is the subject of the notice?

Q4: If you answered disagree or strongly disagree to Question 3 please explain why you do not believe this delivers the policy intent.

Summary of responses

Sixteen respondents either agreed or strongly agreed, one respondent neither agreed nor disagreed, and one respondent disagreed.

The respondent who neither agreed nor disagreed considered that further information should be provided with the planned procurement information relating to whether the contracting authority is intending to advertise the opportunity in lots.

The respondent who disagreed with the proposed SI raised a concern regarding the timescales this process allows if suppliers are in the process of ISO verification.

Another of the “agree” responses noted that it is not clear in the SI if this notice is discretionary or mandatory.

Welsh Government response

Authorities can publish these discretionary notices up to 12 months before issuing a tender notice which will allow more time for suppliers to ensure they are ready to tender. The notice is intended to provide suppliers and the market with advanced notice of an upcoming tender to allow extra time for market suppliers to prepare, including enabling them to complete any certification, and the contracting authority to finalise its procurement strategy. The notices also require Contracting Authorities to provide “*a statement explaining how and when an interest in the contract may be expressed*”. Authorities may use the responses to the expressions of interest to determine and refine procurement strategies.

In some cases the market and suppliers may have even further notice of an intended procurement in order to prepare, where contracting authorities have published a pipeline notice.

Where authorities choose to provide information on intended lots this can be provided within the information provided under 11(3)(j) of the statutory Instrument.

It is therefore not proposed to make any changes to the SI.

3. Preliminary Market Engagement Notice

Q5. To what extent do you agree or disagree that the notice as set out in the draft SI delivers the policy intention of encouraging the use of preliminary market engagement (PME) in an open and transparent way?

Q6: If you answered disagree or strongly disagree to Question 5 please explain why you do not believe this delivers the policy intent

Summary of responses

Eleven respondents strongly agreed or agreed that the draft SI delivers the policy intention of encouraging the use of preliminary market engagement in an open and transparent way. One respondent neither agreed nor disagreed. Six respondents disagreed or strongly disagreed.

Generally, responses were favourable that the draft SI delivers the policy intention of encouraging the use of preliminary market engagement in an open and transparent way. Where respondents qualified their responses, the concerns that were highlighted were similar to those raised in relation to the Pipeline notice. For example, concerns were raised regarding the risk of duplication, administrative challenges, and lotting strategies. Each of these concerns has been addressed in the response to Q1 above.

There was concern that a supplier could challenge a Contracting Authority if a PME Notice or a Tender Notice is used to tell the market that PME has already occurred.

Welsh Government response

The Act specifically allows Contracting Authorities to tell the market that PME has occurred via this Notice. There is no requirement in the Act to carry out preliminary market engagement in a certain way or with a specific number of suppliers etc. Further information, including what constitutes PME, will be provided in guidance.

It is therefore not proposed to make any changes to the SI.

4. Preliminary Market Engagement Notice - Private Utilities

Q 7. To what extent do you agree or disagree that private utilities should be exempted from the preliminary market engagement notice requirements in clause 17 of the Bill?

Q8: If you answered disagree or strongly disagree to Question 7 please explain your reasoning

Summary of responses

The responses extended across the whole range of scoring options, with the largest response (seven) neither agreeing nor disagreeing, or deeming the question wasn't applicable.

Four respondents strongly agreed or agreed that private utilities should be exempted from the preliminary market engagement notice requirements.

Of the six remaining responses five disagreed and the other one strongly disagreed.

There were concerns around the lack of transparency and equal treatment as a result of exempting private utilities from PME notice requirements, as well as concerns that this approach would reduce visibility of future opportunities to the supply market.

Additionally, if private and public utilities are not being treated the same, concerns were raised that there is a risk of a two-tier approach being in operation based on the ownership model rather than the actual activities involved. Some respondents commented that the requirements were not sufficiently onerous to exclude private utilities from this requirement.

Welsh Government response

Private utilities are covered by the Procurement Act to ensure the UK meets its international trade obligations, such as the UK-EU Trade and Co-operation Agreement.

Private utilities come under utility statutory frameworks and regulators (such as OFGEM, OFWAT, etc.). They are also accountable to their board, investors or shareholders, which will drive efficient and effective procurements.

To ensure consistency and enable cross-border business with England to largely continue without confusion or potential additional costs for users, it is important that Welsh Ministers remain aligned with UK Government in this area.

It is therefore not proposed to change the SI.

5. Tender Notice

Q9. To what extent do you agree or disagree that the tender notice as set out in the draft SI enables a contracting authority to effectively advertise and commence a competitive procedure?

Q10: If you answered disagree or strongly disagree to Question 9 please explain why you do not believe this delivers the policy intent.

Summary of responses

Seventeen of the eighteen responses agreed with the question (13 Agreed and 4 Strongly Agreed) and one responder disagreed with the question.

Clarification was requested on regulation 13 sub paragraph 3 in respect to timescales and whether there was duplication in notices.

Clarification was also requested on Regulation 11. In Reg 11 there is the ability to publish a Planned Procurement Notice which would allow timescales to be reduced; clarification was requested on what 13(3)(s)(iii) meant in this context.

The wording on timescales for contracting authorities that are not Central Government Agencies in Reg 54(3) and (4) was also considered confusing.

Concerns were also raised about why a tender notice would be required for Call offs and Dynamic Markets.

Welsh Government response

Welsh Government will consider the areas for clarification and provide more details on these areas in the guidance and training.

Further investigations are ongoing on Regulation 11 and appropriate amendments to the Regulation will be made if it is deemed necessary.

The requirement for a tender notice for a Dynamic market relates to obligations under international obligations in trade agreements and therefore cannot be amended.

Transparency is a key element of the new Procurement Act and the tender notice provides information on one aspect of the procurement cycle. To reduce the burden and avoid unnecessary duplication, the Sell2Wales system will be designed so that much information will be pre-populated, where possible, into notices where a previous notice related to the same procurement has been published.

It is not intended currently to amend the SI, but this is subject to further investigation into the wording of Regulation 11. Stakeholders will be informed of any changes that are deemed necessary.

6. Utilities Dynamic Market /Dynamic Market Notice, including Qualifying Utilities Dynamic Market Notice

Q11. To what extent do you agree or disagree that the DM notice as set out in the draft SI permits a contracting authority to effectively create a dynamic market (including a utilities dynamic marketplace) for the future award of public contracts?

Q12: If you answered disagree or strongly disagree to Question 11 please explain why you do not believe this delivers the policy intent.

Summary of responses

Fifteen respondents strongly agreed or agreed that the Dynamic Market (DM) notice permits a contracting authority to effectively create a dynamic market (including a utilities dynamic marketplace) for the future award of public contracts.

Two respondents neither agreed or disagreed.

One respondent stated not applicable.

Welsh Government response

As respondents overwhelmingly agreed with the question, it is not proposed to make any changes to the SI.

Q13. To what extent do you agree or disagree that the Qualifying QUDM notice as set out in the draft SI permits a contracting authority to effectively create a utilities dynamic marketplace that maintains the effect of a qualification system under the existing rules?

Q14: If you answered disagree or strongly disagree to Question 13 please explain why you do not believe this delivers the policy intent

Summary of responses

Seven respondents strongly agreed or agreed. Six respondents neither agreed or disagreed. Four respondents stated not applicable.

One respondent disagreed, however there was no explanation detailing their concerns.

Welsh Government response

As there was no explanation why the respondent disagreed and a significant number agreed to the question, it is not proposed to make any changes to the SI.

7. Transparency Notice

Q15. To what extent do you agree or disagree that the transparency notice as set out in the draft SI will provide visibility of upcoming procurements to be awarded using the direct award procedure?

Q16: If you answered disagree or strongly disagree to Question 15 please explain why you do not believe this delivers the policy intent

Summary of numbers and scores

Eleven respondents strongly agreed or agreed whilst seven respondents disagreed.

In general, respondents who qualified their responses agreed that the Transparency Notice increases transparency and therefore achieves the policy intent. They did, however, note some concerns.

There were concerns that the Transparency Notice will create additional resource implications on contracting authorities who may not have the capacity to publish them in line with the requirements of the Procurement Act and Regulations. There were also concerns that the Contract Award Notice (CAN) duplicates the function of the Transparency Notice, and that the CAN should not be required when a Transparency Notice is published.

There were also concerns that the Transparency Notice will increase the likelihood of supplier challenge for contracts awarded via direct award or could delay the award of a contract required due to an emergency. One respondent suggested there should be some instances where an exemption to the Transparency Notice requirement should be permitted.

Clarity was also requested concerning section 42 of the Act “Direct award to protect life, etc” concerning what type of contracts could be specified.

Welsh Government response

The Transparency Notice is only for above-threshold contracts. Furthermore, it is not required for public contracts awarded without competition under a framework if the framework already provides for this. These notices are intended to serve different functions and will include different information, therefore it is not deemed a duplication.

The Procurement Act permits the direct award of contracts in certain limited specific circumstances, and contracting authorities will be required to include the justification for the direct award in their Transparency Notice. Therefore a supplier should only have grounds for challenge if they deem that a contracting authority intends to directly award a contract outside these limited specific circumstances set out in the Procurement Act. Any exemption would undermine the increased transparency around direct awards which this notice is seeking to achieve.

Concerns that the Transparency Notice could delay the award of a contract required due to an emergency are already addressed in the Act, which sets out the

circumstances where a contract can be awarded without the need for a standstill period for emergency situations.

The purpose of section 42 is to ensure procurements during an emergency event (like the Covid-19 pandemic) can be conducted as quickly and transparently as possible, even if the circumstances leading to the event are foreseeable (which may rule out the extreme urgency justification for direct award contained in Schedule 5).

It is therefore not proposed to make any changes to the SI.

8. Procurement Termination Notice

Q17. To what extent do you agree or disagree that the contents of the termination notice, as set out in the draft SI, provide greater transparency about procurement processes that have not resulted in a contract?

Q18: If you answered disagree or strongly disagree to Question 17 please explain why you do not believe this delivers the policy intent

Summary of responses

Sixteen respondents agreed and two strongly agreed. However, one respondent questioned whether this notice would continue to be automatically produced by the Sell2Wales system.

Welsh Government response

As detailed above, work is currently underway to adapt the functionality within Sell2Wales to automate the process as much as possible.

As all respondents agreed, it is not proposed to make any changes to the SI.

9. Assessment Summary

Q 19. To what extent do you agree or disagree that the contents of the assessment summary (along with the provision of the successful supplier's assessment summary) will provide adequate information to suppliers so that they can reasonably understand why they did or did not win the contract while reducing the time it takes for contracting authorities to provide this information?

Q20: If you answered disagree or strongly disagree to Question 19 please explain why you do not believe this delivers the policy intent.

Summary of numbers and scores

Sixteen respondents agreed or strongly agreed to this question. One respondent neither agreed nor disagreed with the question. However, one respondent referred to the inclusion of a redacted copy of the winning bidders assessment and the additional administrative impact on CA.

Welsh Government response

The new assessment summary removes the obligation to make direct comparisons between the successful and unsuccessful bids. Instead, the advantages will be evident from reading the successful supplier's assessment summary alongside the unsuccessful supplier's summary. This information is already generated during the assessment process and will enable summaries to be drafted once only minimising any administrative impact, rather than revising information for each unsuccessful supplier.

It is therefore not proposed to make any changes to the SI.

10. Contract Award Notice

Q 21: To what extent do you agree or disagree that the contract award notice as set out in the draft SI will be a suitable vehicle for alerting the market to the contracting authority's intent to enter into a public contract and triggering the standstill period?

Q22: If you answered disagree or strongly disagree to Question 21 please explain why you do not believe this delivers the policy intent

Summary of responses

Eleven respondents strongly agreed or agreed. Two neither agreed nor disagreed. Five respondents strongly disagreed or disagreed.

There was general agreement that the contract award notice would be a suitable vehicle for alerting the market to the contracting authority's intent to enter into a public contract and triggering the standstill period. Where respondents qualified their response, some concerns were highlighted in relation to the potential administrative challenges associated with publishing this new notice, the risk of duplication with the contract details notice and the potential impact on suppliers. Additionally, respondents raised some technical concerns regarding terminology.

Welsh Government response

The new noticing regime being introduced by the Procurement Act will significantly improve transparency across the entire procurement lifecycle, and on the whole respondents to the consultation agree that increasing transparency within Welsh public sector procurement is a positive development.

The contract award notice and the contract details notice serve different functions and will contain different information. Also, publishing the contract award notice will trigger the commencement of the standstill period.

In relation to concerns around terminology and also on the impact on suppliers, Welsh Government will explore these concerns further with UK Government, and as such there may be some amendments to the drafting of the SI.

Q 23: To what extent do you agree or disagree that it is appropriate for private utilities to publish a reduced version of the contract award notice for contracts awarded under a framework?

Q24: If you answered disagree or strongly disagree to Question 23 please explain your reasoning

Summary of responses

Three respondents strongly agreed or agreed. Seven neither agreed nor disagreed. Five respondents strongly disagreed or disagreed. Two stated not applicable.

Several respondents raised concerns that the private utilities would be less transparent compared to the public sector.

Welsh Government response

The UK Government aims to minimise the burdens on private businesses, and a reduced Contract Award Notice would support this aim. It is important that Welsh Ministers ensure alignment to UK Government in this area. It is therefore not proposed to change the SI at this stage.

11. Contract Details Notice

Q25. To what extent do you agree or disagree that the contents of the contract details notice, as set out in the draft SI, will give the required level of transparency of the existence and substance of government contracts?

Q26: If you answered disagree or strongly disagree to Question 25 please explain why you do not believe this delivers the policy intent

Summary of responses

Eleven respondents strongly agreed or agreed. One respondent neither agreed nor disagreed. Six respondents disagreed.

There were concerns that the requirements of the Contract Details Notice was overly bureaucratic and that there would be duplication of what is required in the Contract Award Notice.

There were concerns that publishing a Contract Details Notice may be resource intensive, particularly for below threshold contracts and in relation to the requirement to include KPIs. Some respondents also deemed it unnecessary for this notice to be required for call-off contracts as a framework would have already been advertised by the contracting authority.

There was concern that the number of notices could cause confusion for suppliers when identifying suitable opportunities. It was also suggested there should be some instances where an exemption to the Contract Details Notice requirement should be permitted or the notice is made on a voluntary basis.

A respondent suggested that it would be useful to include in the Contract Details Notice if the contract was awarded to a supported employment provider or a public service mutual and if the contract was reserved under Section 32 or 33.

Welsh Government response

Similar concerns were raised in relation to the Contract Award Notice, which were addressed above.

The notice is required for notifiable below-threshold contracts as well as public contracts in order provide the required level of transparency of the existence and substance of government contracts. Many contracting authorities will have implemented this requirement by the time the new Procurement legislation is in force in line with [WPPN02/22](#).

KPIs are only required to be included in the notice for public contracts with an estimated value of more than £5m. Regardless of value, KPIs do not need to be included for public contracts that are a framework, a utilities contract awarded by a private utility, a concession contract, or a light touch contract. This is deemed proportionate for the type and value of the contract.

To avoid confusion on the notices being produced, there is information for Buyers and Suppliers at the following link which provides clarity on the purpose of each notice so that notices related to forthcoming opportunities can be clearly identified: [Procurement Bill: Notice flowchart | GOV.WALES](#)

The Contract Details Notice will provide transparency on Framework and Dynamic Market use and the existence and substance of call-off contracts. Any exemption or making the notice voluntary would undermine the increased transparency regarding the existence and substance of public contracts which this notice is seeking to achieve.

Welsh Government will discuss the potential inclusion of whether the contract was awarded to a supported employment provider or a public service mutual and if the contract was reserved under Section 32 or 33 with the UK Government to ensure a joined up approach.

In light of the above responses, there may be some changes to the SI.

12. Payments Compliance Notice

Q27. To what extent do you agree or disagree that the payments compliance notice provides the transparency necessary to hold the public sector to account for its performance in paying suppliers on time?

Q28: If you answered disagree or strongly disagree to Question 27 please explain why you do not believe this delivers the policy intent.

Summary of responses

Sixteen respondents strongly agreed or agreed to the question. Two respondents neither agreed nor disagreed.

Welsh Government response

As respondents agreed there is no change proposed to the SI.

13. Contract Performance Notice

Q.29 To what extent do you agree or disagree that the contract performance notice will provide adequate information about a supplier's performance on a contract?

Q.30: If you answered disagree or strongly disagree to Question 29 please explain why you do not believe this delivers the policy intent

Summary of responses

Nine respondents agreed or strongly agreed with the question, four respondents neither agreed nor disagreed, whilst five neither disagreed or strongly disagreed.

Where respondents qualified their response through Q30, some concerns were highlighted in relation to the potential administrative challenges, why the details needed to be published, what information should be included/reported on, whether changes could be made and potential concerns around challenge. In addition, comments questioned how this would work in practice and clarification was requested on what determines a serious breach.

Welsh Government response

Transparency is a central pillar upon which the procurement Act is built, and the provisions within the Act will increase transparency throughout the whole procurement lifecycle, including contract management and contract performance.

Effective contract and supplier relationship management should help to mitigate against these risks of challenge and serious breaches. In addition, training and guidance is being developed by both Welsh Government and UK Government Welsh Government to assist stakeholders in the implementation of the new procurement regime. As part of the pre-implementation process, organisations should identify relevant individuals in their organisation who may benefit from the training that will be made available.

It is not intended for the SI to be amended.

Q31. To what extent do you agree or disagree that the Contract Performance Notice will provide adequate information relating to a serious breach of contract by a supplier?

Q32: If you answered disagree or strongly disagree to Question 31 please explain why you do not believe this delivers the policy intent.

Summary of responses

Sixteen respondents agreed with the question. One respondent disagreed and one strongly disagreed.

Welsh Government response

Where respondents qualified their answers to question 31, their concerns were of a similar nature to those raised in relation to question 29. As the response was generally positive, it is not intended to amend the SI in this area.

14. Contract Change Notice

Q33. To what extent do you agree or disagree that the contents of the contract change notice will provide greater transparency of the proper management of government contracts?

Q34: If you answered disagree or strongly disagree to Question 33 please explain why you do not believe this delivers the policy intent

Summary of responses

Fourteen respondents strongly agreed or agreed. Two respondents neither agreed nor disagreed. One respondent strongly disagreed but did not clarify the rationale for their response. One respondent stated not applicable.

Welsh Government response

The majority of respondents agree that the contract change notice will provide greater transparency of the proper management of contracts, and no concerns were raised in relation to this question. Therefore no change to the SI is proposed.

15. Contract Termination Notice

Q35. To what extent do you agree or disagree that the contents of the contract termination notice, as set out in the draft SI, will give greater clarity and transparency about which government contracts are still in force?

Q36: If you answered disagree or strongly disagree to Question 35 please explain why you do not believe this delivers the policy intent.

Summary of responses

On the whole the response from respondents was positive with fifteen respondents either strongly agreeing or agreeing. One respondent disagreed and two strongly disagreed.

One respondent commented that differentiation between a contract naturally ending and a contract termination for other reasons would be beneficial, as this could have implications if a contract is terminated. Another respondent suggested that a

termination notice where a contract has come to a natural end creates an unnecessary administrative process.

Welsh Government response

The function of the contract termination notice is to inform stakeholders that a contract has been terminated and to ensure that data records are kept up to date.

The reason for a contract termination will form part of the notice fields, and the contract termination notices will provide distinction between contracts that have been terminated and those that have been extended.

No change is proposed to the SI.

16. Central Digital Platform

Q37. To what extent do you agree or disagree that the SI drafting provides clarity about the operation of the central digital platform?

Q38: If you answered disagree or strongly disagree to Question 37 please explain why you do not believe this delivers the policy intent

Summary of responses

Thirteen respondents were positive, two were neutral and three disagreed.

One respondent suggested that it would be useful to gain further information from suppliers during this process.

One respondent raised a concern about the impacts and resource burden on any transition to new working practices. Similarly, another respondent raised a concern about the resource challenges associated with these reforms.

One other respondent also expressed concerns that not enough information was provided on the operation of the system for them to be able to answer this question with confidence.

Welsh Government response

One of the key functions of the central digital platform is to gain information from suppliers. Further detail regarding the information requested from suppliers can be found in Regulations 7 to 10 of the SI.

Concerns on the resource impacts and challenges were raised in relation to previous questions, and these have been covered in detail previously. However, we are working hard to minimise any transition impacts and will be engaging with those affected to help to mitigate any disruption.

Further information on the systems development and transition work will be provided in due course. Associated learning and development for those affected will be provided as the implementation work is progressed and appropriate support will be in place to assist with the transition.

On the basis of the feedback we received, it is not proposed to amend the SI.

Q39. To what extent do you agree or disagree that the workaround procedure provides a viable alternative in the event of a failure in the central digital platform?

Q40: If you answered disagree or strongly disagree to Question 39 please explain why you do not believe this delivers the policy intent.

Summary of responses

Seven respondents agreed or strongly agreed, eight neither agreed nor disagreed, while three disagreed.

Some respondents stated that they would like more information on the workaround procedure. Whilst one respondent added that they were concerned that the workaround may be resource intensive.

Welsh Government response

Further detail will be provided in guidance in due course, and it is the intention that Sell2Wales will operate as an alternative platform to allow publication of notices in situations where the central platform is unavailable. It is intended that this process will be automated as far as possible.

It is therefore not proposed to change the SI.

17. Central Digital Platform: Supplier Information

Q41. To what extent do you agree or disagree that the information required by the draft SI to be obtained via the central digital platform will save duplication and re-submission time by suppliers bidding for multiple government contracts?

Q42: If you answered disagree or strongly disagree to Question 41 please explain why you do not believe this delivers the policy intent.

Summary of numbers and scores

Fifteen respondents were positive, one neither agreed or disagreed and two disagreed.

One respondent raised a concern about the level of information requested in the supplier qualification and information system and queried what was happening with the Single Procurement Document (SPD).

Welsh Government response

The SPD as a whole is undergoing a review due to the impact of the Procurement Act regarding the manner in which suppliers are required to provide their information in the Central Digital Platform if they wish to participate in a tender opportunity. Respondent comments on this topic will be considered as part of the SPD review.

Further information on this process will be provided in additional guidance as well as learning and development being rolled out to support procurement reform.

Q43. To what extent do you agree or disagree that use of the Central Digital Platform: Supplier Information should be made mandatory during the tendering period and that 'until the end of the tendering period' contracting authorities may only use the registered core supplier information submitted to the platform?

Q44: If you answered disagree or strongly disagree to Question 43 please explain your reasoning.

Summary of numbers and scores

Thirteen respondents either agreed or strongly agreed, one neither agreed nor disagreed and four disagreed.

Some respondents expressed that they were unclear how the Central Digital Platform: Supplier Information would work in practice and other respondents queried whether authorities would still be able to ask additional questions.

Other respondents queried the potential impact on suppliers and how the system will ensure submissions are current and accurate.

Welsh Government response

Suppliers will only need to update information in the supplier registration system if something has changed between submissions and will be prompted to confirm that the information is correct at the time of the submission. Where something changes during the tender, suppliers will be required to withdraw and resubmit the requested information.

On the basis of the feedback received, it is not proposed to change the SI.

18. Unique Identifiers

Q45. To what extent do you agree or disagree that the provisions on unique identifiers will enable tracking of procurement data?

Q46: If you answered disagree or strongly disagree to Question 45 please explain why you do not believe this delivers the policy intent.

Summary of responses

Overall the response was positive, with sixteen respondents either strongly agreeing or agreeing. One respondent disagreed as they felt that the wording needs to be more focused on ensuring that unique identifiers are actually used.

Welsh Government response

There was overwhelming support in response to this question. Processes are being designed to ensure users register in the correct way and obtain a unique identifier. This will be reinforced by appropriate guidance, which will sit along-side these regulations.

On the basis of the feedback received, it is not proposed to amend the SI.

19. Transitional Provisions

Q47. To what extent do you agree or disagree with the approach to transitional arrangements set out in this consultation?

Q48: If you answered disagree or strongly disagree to Question 47 please explain your reasoning.

Summary of responses

Seventeen respondents strongly agreed or agreed to the question. One respondent strongly disagreed with the approach.

Welsh Government response

Respondents overwhelmingly agreed that the approach to transitional arrangements was appropriate, and therefore no change to the SI is proposed.

20. Below threshold contracts (Wales only)

Q49. To what extent do you agree or disagree to the amendment to the threshold amounts to be used for below threshold contracts for CGAs?

Q50: If you answered disagree or strongly disagree to Question 49 please explain your reasoning

Summary of responses

Seventeen responses were received to Q49. Seven respondents either agreed or strongly agreed with the details with two strongly agreeing and five agreeing. Two respondents neither agreed nor disagreed and one respondent replied that this question was not applicable. Seven respondents disagreed with the question with five disagreeing and two strongly disagreeing.

Respondents comments via Q50 agreed with changes to the thresholds on the whole but highlighted concerns around why the thresholds were different for CGA's and Sub Central Organisations with some commenting that the thresholds were too low.

Welsh Government response

The Welsh Government have considered various options to establish the most appropriate values for below-threshold contracts based on previous concerns raised by Welsh stakeholders, availability of relevant information, and feedback following the proposed amendments as detailed in the consultation.

Amending the minimum financial thresholds as set out in the consultation will achieve the most effective and appropriate balance between the potential administrative burden it would create for smaller CGAs and the benefits it will bring. There are a number of reasons for this, including:

- Increased transparency in relation to lower value procurements will provide more opportunities for SMEs to bid for contracts.
- The increased transparency will also provide additional information for reporting purposes.
- It is considered important to have different thresholds for CGAs and sub-central authorities since, if the thresholds were the same, it could inadvertently cause confusion in relation to other thresholds.

The threshold levels will therefore remain as amended by Welsh Government (£24,000 including VAT for CGAs) and the Welsh Government SI will reflect these levels.

In the future, and subject to the availability of relevant and reliable supporting data, Welsh Ministers may consider the appropriateness of exercising their regulation-making powers in this area to amend the financial thresholds should it be in the best interests of Wales and the Welsh public procurement community.

Q51. To what extent do you agree or disagree that requiring suppliers to register on the Central Platform's Supplier Registration System for notifiable below threshold tenders will improve transparency, data consistency and commercial data availability?

Q52: If you answered disagree or strongly disagree to Question 51 please explain why you do not believe this delivers the policy intent.

Summary of numbers and scores

Fourteen positive responses were received, three were neither agreed nor disagreed and one disagreed.

One respondent noted that this needs to be reinforced in system and behavioural changes. Another respondent noted that this could impact SMEs ability to bid for opportunities.

Welsh Government response

The required changes are being built into the systems design and will be made clear in guidance to ensure that processes are designed in a way that ensures compliance.

The potential impacts of requiring registration for both notifiable below threshold procurements and covered procurements have been reviewed in detail and on balance it was considered that this change would support SMEs by ensuring they are registered to view future opportunities and saving them time in resubmitting information in future bids.

As such, no change to the SI is proposed.

Q53. To what extent do you agree or disagree that contracting authorities should be required to collect basic supplier information only via the Central Platform's Supplier Registration System?

Q54: If you answered disagree or strongly disagree to Question 53 please explain your reasoning

Summary of responses

Thirteen respondents agreed or strongly agreed, one neither agreed nor disagreed, three respondents disagreed, and one strongly disagreed.

One respondent stated that they required clarity on what is planned for the SPD in Wales before being able to respond. Another of the respondents cited a concern regarding the appointment subject experts who do not "trade as suppliers in the usual sense".

Welsh Government response

As detailed above, the SPD is undergoing a review and respondent's comments on this topic will be considered as part of this review.

The supplier information required to initially register and access opportunities will be minimal and where suppliers do not have an existing Companies House or charity number a unique identifier will be allocated to them. We are ensuring the processes and systems are designed to minimise the impact on suppliers.

No change to the SI is proposed.

21. Welsh Language

The following questions replicate questions that were included in Part 1 of the consultation.

Q55: We would like to know your views on the effects that the proposed Secondary Legislation would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Summary of responses

Six respondents provided no comments or had no strong views on the matter.

Two respondents suggested that the ability to restrict opportunities by region could have a positive impact on increasing Welsh speaking suppliers. It was also noted that this must be well managed.

Two respondents wished for requirements regarding the Welsh Language to be included in the Regulations.

Two respondents suggested that a positive effect of the new legislation could be the ability to publish Notices on the Central Digital Platform (currently FTS) in Welsh as well as English and recommended that SPD functionality is improved when the SPD is used for one opportunity in both Welsh and English.

One respondent identified that there may be training requirements in Welsh Language for both Buyers and Suppliers.

A number of respondents commented that there was greater opportunity to use Welsh and that there is greater recognition of the Welsh Language.

A couple of respondents commented that everything should be in Welsh and evaluators should be bilingual.

Respondents positively commented that there were more opportunities to use Welsh and to treat Welsh Language no less favourably than English, the move from MEAT to MAT was welcomed and the Welsh Language is now recognised.

Welsh Government response

Feedback received in response to this question were broadly consistent with responses received to Part 1 of the consultation.

Respondents commented that there was a need to manage the ability to restrict opportunities to local areas in both Part 1 and 2 of the consultation, therefore please see our response to Part 1 Question 10.

Respondents commented regarding the need for legislation to mirror the Welsh Language Standards and for Welsh Language to be included in the Regulations in response to both Part 1 and 2 of the consultation. Therefore please see our response to Part 1 Question 9 above. To support stakeholders operating within the new regime, a supplementary bilingual Learning and Development package for the new Procurement legislation is being developed by Welsh Government specifically for Welsh Contracting Authorities.

Respondents commented concerning the need for improved bilingual Find a Tender Service functionality in both Part 1 and 2 of the consultation, therefore please see our response to Part 1 Question 9 above.

Respondents commented concerning the functionality of the SPD in both Part 1 and 2 of the consultation, therefore please see our response to Part 1 Question 9 above.

In response to the comments on everything being in Welsh and evaluators being bilingual, each CA will need to determine how best to proceed with any tender opportunity in line with their obligations under the Welsh Language Standards.

No change to the SI is required.

Q56: Please also explain how you believe the proposed technical detail of the drafting could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Summary of numbers and scores

Seventeen responses were received.

One respondent wished for the Regulations to encourage Contracting Authorities to publish bilingual tender packs.

One respondent wished for the Regulations to be bilingual and Welsh Language supported.

Three respondents suggested that a positive effect of the new legislation could be the ability to publish Notices on Sell2Wales and the Central Digital Platform (currently FTS) in Welsh as well as English and one recommended that SPD functionality is improved when the SPD is used for one opportunity in both Welsh and English.

One respondent wished to put an obligation on suppliers in terms of Welsh language compliance.

One respondent commented that there is already equal treatment.

Nine respondents did not provide comments.

Welsh Government response

In response to this question, respondents raised similar points to those raised in regarding Q.55 above.

There are already existing legislative obligations and best practice in terms of the Welsh Language. To support stakeholders operating within the new regime, a supplementary bilingual Learning and Development package for the new Procurement legislation is being developed by Welsh Government specifically for Welsh contracting authorities.

In response to the wish to put obligation on suppliers in the Regulations in terms of Welsh language compliance, Welsh Government deem that any such requirements should be considered on a case by case basis by Contracting authorities, and considered as part of their procurement strategy.

Welsh Government Officials deem that no change to the SI is required.