



Llywodraeth Cymru
Welsh Government

GUIDANCE

WPPN 02/21: Reserving contracts with businesses with a public service mission

This WPPN is intended to promote the opportunities to use the 2 reserved contracting provisions in the Public Contracts Regulation 2015.

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Annex 4

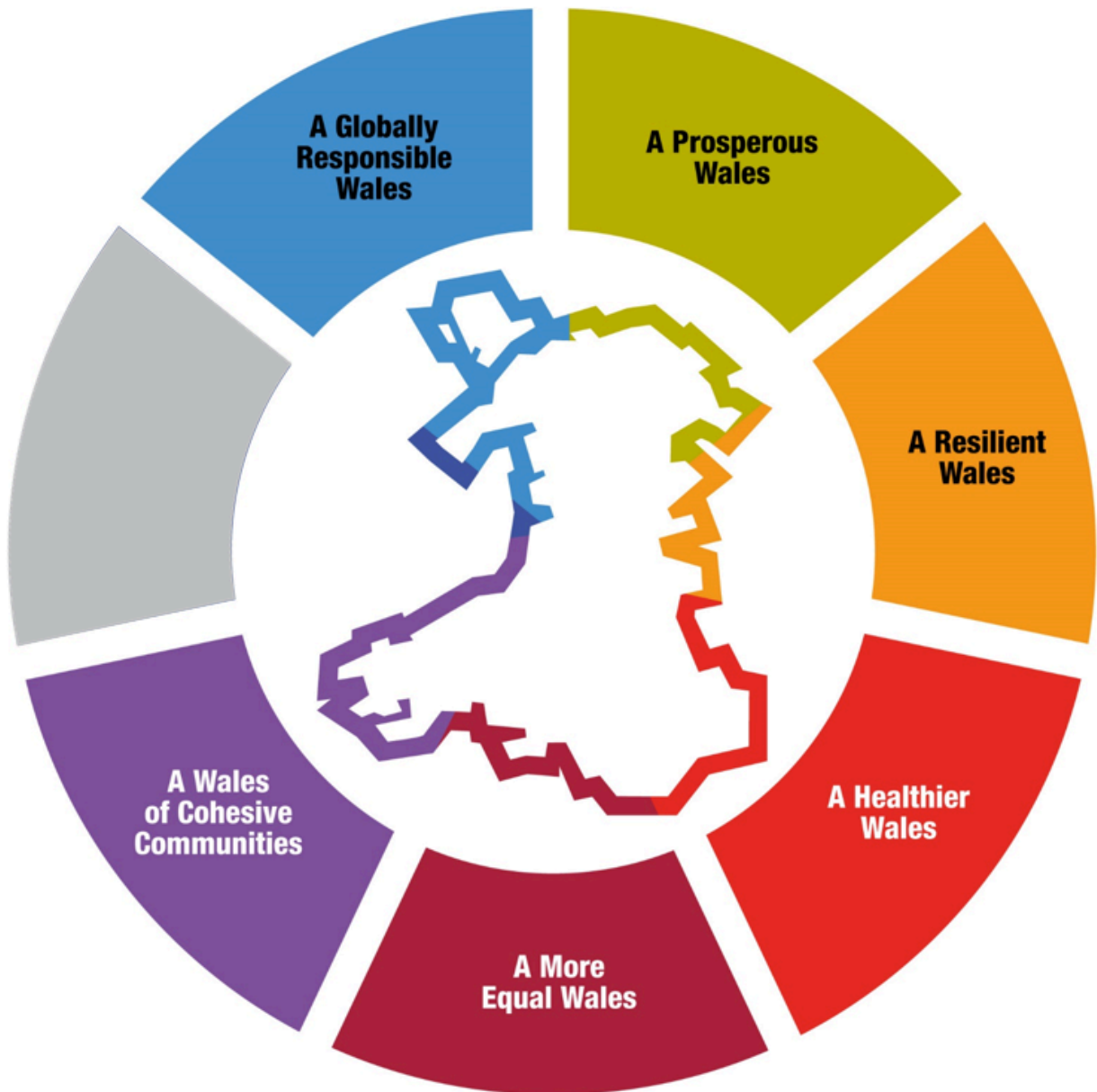
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Well-being of Future Generations Act's well-being goals supported by this WPPN



- A prosperous Wales

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- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of more cohesive communities
- A globally responsible Wales

1. Points to note

- The information set out in this document is not legal advice and is not intended to be exhaustive – contracting parties should seek their own independent advice as appropriate. Please also note that the law is subject to constant change and advice should be sought in individual cases. This document reflects the position as at February 2021.
- The provisions of Regulation 20 and 77 remain unaffected by the UK Statutory Instrument (SI) no: 1319 The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020, effective from 1 January. The SI corrects deficiencies arising from the UK's exit from the EU and implements the relevant aspects of the UK/EU Withdrawal Agreement.
- This Wales Procurement Policy Note (WPPN) is drafted primarily for public sector officials in procurement, commercial and finance roles and therefore assumes a certain level of knowledge of public procurement.
- This WPPN is available via the Welsh Government website Gov.Wales and any queries should be directed to CommercialPolicy@gov.wales or via the [Welsh Government customer services](#).

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2. Purpose

The Public Contracts Regulations 2015 (SI 2015/102) include 2 reserved contracting provisions Regulation 20 and 77 designed to help WPS bodies address social inclusion goals.

This WPPN is intended to promote the opportunities to use the 2 reserved contracting provisions in the Public Contracts Regulation 2015 and to provide guidance for Welsh public sector bodies to consider when using these provisions.

3. Guidance

The Welsh Government recognises that public procurement can drive economic, social and environmental benefits and support jobs and growth by providing mechanisms that allow suppliers of all sizes to flourish, promote Wales as a good place to do business and to find opportunities for all that make Wales a good place to live. This means that as well as taking into account the direct costs of contracts, consideration should also be given to the wider social value/ community benefits public bodies may be able to achieve through the influence of their expenditure.

Reserving a contract under either Regulation 20 or Regulation 77 allows WPS bodies to reserve contracts for businesses with a social purpose. Only those businesses that meet the relevant criteria may tender. This guarantees contracts that will deliver social value along with value for money goods or services.

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3.1 Regulation 20 Reserved contracts

Regulation 20 enables WPS bodies to support employment and training opportunities for disabled or disadvantaged people, by enabling:

- Contract award procedures to be reserved to sheltered workshops (often referred to as supported businesses in the UK) and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons, or
- Such contracts to be performed in the context of sheltered employee programmes
- Provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers. Annex 2 provides more detailed guidance in relation to this.

3.2 Regulation 77 Reserved contracts for specific services

Regulation 77 allows contract award procedures for certain services contracts to be reserved to organisations with a public service mission focused on the delivery of certain essential social, health and educational services, provided that the contract does not exceed a maximum duration of 3 years and provided that the WPS body has not awarded a similar contract to that organisation in the previous 3 years. Annex 3 provides more detailed guidance in relation to this.

3.3 The benefits of reserving contracts

3.3.1 Ensuring value for money

It should be remembered that supported businesses eligible to bid for reserved

contracts under Regulation 20 and those social businesses eligible to bid for contracts under Regulation 77, like any other business, function in competitive markets, selling their goods and services to consumers, the public sector and to other businesses. It should not be assumed that they will be uncompetitive or unable to meet quality or service delivery requirements. Consequently, 'reserving' a contract does not mean specifications, selection or award criteria should be 'relaxed' from those that would be used to ensure the WPS body's requirements are met in an open competition.

Pre market engagement, using the provisions of Regulation 40 of the Public Contracts Regulations 2015, would likely provide additional assurance of value for money prior to commencing a reserved contracting procurement procedure. This could include seeking advice from independent experts or from market participants, including, where relevant, supported businesses themselves.

Where the market of supported organisations under Regulation 20 or those qualifying organisations eligible to participate under Regulation 77 is small, WPS bodies may wish to benchmark winning bids against the open market. However, it should be noted that such an exercise should not be limited to a simple price comparison but should encompass the wider socio-economic or environmental benefits that such businesses offer. Standing Orders and Standing Financial Instructions may need minor amendments in order to permit the reserving of contract award procedures or other measures designed to improve participation of supported organisations or qualifying organisations meeting the eligibility requirements to bid for contracts reserved under Regulation 77.

As with all contracts, once awarded and in place for a period of time, WPS bodies can assess the performance of the 'reserved' contract. During this process, WPS bodies can examine the actual outcomes, the delivery of the procurement against what was expected and extent to which value for money is achieved.

Where reserved contracts have been used and have delivered value for money,

these positive experiences and benefits should be used to promote the use of Regulations 20 or 77.

3.3.2 Additional benefits of reserving contracts

Contribute to your own organisation's objectives to deliver against the requirements of the Well-being of Future Generations (Wales) Act 2015 ("WFG Act"). Reserving contracts may be used to address the Well-being Goals of supporting a more prosperous, more equal, healthier and resilient Wales with more cohesive communities.

- Enable greater access to employment opportunities for disabled or disadvantaged people
- Increase the diversity of the public sector supplier base to help deliver better public goods and services that meet the needs of those who use them by drawing from the wider pool of talent and skills available in the workforce that are currently underutilised i.e. 'disadvantaged' workers who face barriers to entering the labour market, and
- Contribute to increased social inclusion and interaction of disabled people in the labour market and their communities.

4. Additional information

Detailed guidance on the use of Regulation 20 and Regulation 77 is set out in Annexes 2 and 3 respectively. Annex 4 details other ways to engage with Regulation 20 and Regulation 77 eligible organisations.

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5. Timing

This WPPN is effective from the date of publication until it is superseded or cancelled.

6. Dissemination and scope

This WPPN is directly applicable to all Welsh public sector bodies and should be circulated (for information) within your organisation, particularly drawing it to the attention of those with a commissioning, procurement planning or contract management role.

7. Actions required by Welsh Public Sector bodies

All WPS bodies should consider the potential benefits of reserving contracts under PCR Reg 20 or 77 provisions whether in whole or in part as part of their procurement planning procedures. Annex 4 details other ways to engage with Regulation 20 and Regulation 77 eligible organisations, e.g. reserving lots within a contract or framework or by specific goods or services or reserving a percentage of the whole contract or a percentage of a Lot.

8. Welsh Government Procurement Policy Statement (WPPS) relevance

Use of Regulation 20 and 77 aligns with the WPPS 2021 vision for Procurement

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in Wales as a facilitator of change that builds commercial activities that will foster vibrant Welsh supply markets...' and promotes 'value-based procurement which delivers optimum long-term outcomes for Wales. WPPS 2021 Principle 10.

9. Legislation

This approach to procurement supports the aim of achieving value for money and aims to help WPS bodies subject to the WFG Act demonstrate how their procurement processes and outcomes contribute to their WFG Act objectives. Use of Regulation 77 also supports action required under section 16 of the Social Services and Well-being (Wales) Act 2014.

This approach can be used in conjunction with WPS bodies' social value/ community benefits objectives under the Public Contracts Regulations 2015.

10. Contact details

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[/PolisiMasnachol@llyw.cymru](mailto:PolisiMasnachol@llyw.cymru)

11. Acknowledgements

Value Wales acknowledges that it has drawn upon the following publications and organisations (links are provided where appropriate):

- [Wales Procurement Policy Statement 2021](#) (Welsh Government 2021)
- [The Public Contracts Regulations 2015](#) (SI 2015 / 102) (Crown Commercial Services Feb 2015)

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- **The Public Contracts Regulations 2015: Guidance On The New Light Touch Regime For Health, Social, Education And Certain Other Service Contracts.** (Crown Commercial Services 2015)
- **Social Services and Wellbeing (Wales) Act 2014** (Welsh Government 2014)
- **The Well Being of Future Generations Act 2015** (Welsh Government 2015)
- **Joint Bidding Guide** (Welsh Government 2015)
- **Social Businesses in Wales: Mapping the Social Business Sector in Wales (June 2019)** (Social Business Wales)
 - **Resource for locating social enterprises directly**
 - **A full, downloadable social business directory**
 - **Social Business Connect Service** offers support to public and private sector bodies looking to enhance their social value outputs and more details of that service.
- **Supporting Care Commissioners and procurers to promote “social value” models of delivery** (Wales Co-operative Centre and Cartrefi Cymru Co-operative, 2020)
- **Sustainability Risk Assessment template - Goods**
- **Sustainability Risk Assessment template - Services**

Annex 1: Establishing the main aim of prospective bidders is social and professional integration of disabled or disadvantaged workers

Pre-qualification/supplier selection question

“ To be eligible to participate in this tender, you must demonstrate that your

organisation's main aim is the social and professional integration of disabled or disadvantaged people. Therefore please confirm that this is your organisation's main aim and provide a copy of (or a link to) the constitutional or founding documents of your organisation.

“ This is a PASS/FAIL question. If you are unable to confirm that your organisation's main aim is the social and professional integration of disabled or disadvantaged people, supported by the constitutional or founding documents, you will not be eligible to participate in this tender. ”

Guidance

By “constitutional or founding documents” we mean the memorandum and articles (if you are incorporated), charitable objects (if a charity), membership or trustee agreement, or similar legal document. A mission or policy statement alone will not be sufficient, unless supported by other evidence such as a resolution, business plan or similar and accompanied by an explanation (e.g. new organisation or ongoing business change) of (a) why the main aim (i.e. the social and professional integration of disabled or disadvantaged people) is not set out in the constitutional or founding documents; and (b) what steps you are taking to ensure that this is done and the envisaged timescale.

Tender question (method statement)

“ Please describe what your organisation does or plans to do to achieve social and/or professional integration of disabled or disadvantaged people. Your answer should be supported if possible by documentary evidence such as training/development plans, course outlines; training materials or similar. ”

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Maximum word count (not including attachments): [Number]

Guidance

We need to see evidence that your organisation's main aim is the social and professional integration of disabled or disadvantaged people. Therefore we need you to provide evidence of a structured approach within your organisation to promoting or achieving such integration. For example, this might include:

- Structured opportunities to grow in confidence / develop self-esteem, develop social interaction skills, etc.
- Provision of training either directly or facilitated (e.g. through day release to local colleges or NVQ scheme on the job)
- Structured employment and training opportunities aimed at up-skilling disabled or disadvantaged people for employment
- Helping to move disabled or disadvantaged people into mainstream employment to provide them with opportunities for career progression.

Note: the above are examples only and are not intended to limit the types of integration that may be provided.

Annex 2: Regulation 20 guidance

Regulation 20 Public Contracts Regulations 2015: 'Reserved contracts'

Regulation 20 is designed to support employment and training opportunities for disabled or disadvantaged persons. It is important to note that although the regulation refers to "sheltered workshops", referred to in the UK as supported factories and businesses or supported employment programmes, it is not

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necessary that an organisation refer to itself as sheltered or supported or that it be a charity, community interest company (CIC) or social enterprise (although many such organisations are likely to be) or that the organisation be in receipt of funding from government or elsewhere.

Regulation 20 provides that WPS bodies may:

- a. Reserve the right to participate in public procurement procedures to sheltered workshops (referred to as supported factories and businesses in the UK) and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons, or
- b. Provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30% of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

In such cases, the call for competition shall make reference to Regulation 20 of the Public Contracts Regulations 2015. Regulation 20 may be used both for contracts above the relevant value threshold and those below, for which only supported businesses may tender.

7.1 Establishing the eligibility of organisations tendering for contracts reserved under Regulation 20

As the Public Contracts Regulations 2015 are silent on how a sheltered workshop or economic operator might demonstrate their “main aim is the social and professional integration of disabled or disadvantaged persons” or how a sheltered workshop or economic operator might demonstrate it meets the threshold of 30% of employees being either disabled or otherwise disadvantaged, the Welsh Government has prepared guidance on the following issues to assist WPS bodies when reserving contracts under Regulation 20.

The 3 key issues for consideration are:

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7.1.1 Evidencing an organisation's 'main aim'

How might a sheltered workshop or economic operator objectively demonstrate, in a way that could be verified by contracting authorities, that its 'main aim' is the “social and professional integration of disabled or disadvantaged people”?

'Main aim' should be construed to mean the sole or main purpose for which the organisation has been set up. It should not therefore include organisations which carry out activities and for whom integration of disabled and disadvantaged persons is not the sole or main purpose, or those who have only recently included this goal in their objectives, unless they are a new organisation set up for the purpose of helping disabled and disadvantaged people, or have recently changed their function.

Tests or measures which might be adopted to establish what the 'main aim' of an organisation is, could include:

- Whether the goal of assisting disabled/disadvantaged people to achieve social and professional integration is set out in the constitutional documents of the relevant organisation, for instance
- Memorandum and articles (if a company)
- Charitable objects (if a charity)
- Membership agreement or similar (if a partnership or unincorporated body)

A mission statement or similar, for instance on a website, would not be sufficient unless supported by evidence such as a resolution of members, business plan or something similar showing that the organisation has genuinely adopted this as its main aim, together with an explanation of why this is not stated in the constitutional documents and what steps the organisation is taking to establish it as its main aim.

WPS bodies could also conduct their own research to verify the information

received.

Annex 1 provides sample questions that may be used at the prequalification questionnaire / supplier selection stage to help WPS bodies determine the main purpose of the organisation and how organisations manage social and or professional integration of disabled or disadvantaged workers.

7.1.2 Evidencing an organisation’s “Social and professional integration”

How might “social and professional integration” be defined and demonstrated to allow for objective evaluation?

This is part of the 'main aim' test above and is intended to be quite wide and flexible. Providing evidence of what the organisation does (or plans to do, in the case of a new organisation) is part of the means of proof that this is their 'main aim'. If social and/or professional integration is part of the organisation’s 'main aim', then it would seem reasonable that they should be able to set out either a summary of what it is they do, or append plans showing what they do, to assist disabled or disadvantaged workers to achieve integration. So as not to place too great a burden on smaller, voluntary organisations and so as not to limit the types of activity that might fall under this heading the requirement ought not to be too prescriptive about the type of activity. What is important is that there is evidence of a genuine structured approach to achieving social integration in one form or another.

Given the purpose of Regulation 20 is to assist organisations which have as their main aim “social and professional integration” of disabled or disadvantaged workers, WPS bodies may wish to interpret this provision so that it is not necessary to show both social and professional integration or to demonstrate each separately. Consequently, a broad open approach may be taken to the type of social and professional integration that the organisation seeks to deliver

as its main aim, and it is not necessary to require them to show both elements separately.

7.1.3 Evidencing that ‘30% of the workforce is disabled or disadvantaged’

7.1.3.1 At the supplier selection / pre-qualification stage

How might the 30% threshold be evidenced in such a way as to be verifiable at the supplier selection / pre-qualification stage to ensure only eligible bidders may proceed to tender?

- The bidders should be required to self-certify at qualification stage, and
- The WPS body should reserve the right to require the bidder to produce more detailed information, or
- To undertake certain checks, including site inspections in order to verify that the bidder is eligible to be invited to tender or be awarded the contract.

It should also be explicitly stated both in the tender documents and in the contract terms and conditions that the contract may be terminated immediately without compensation if the bidder is found to have made a false declaration.

The purpose of the verification is to ensure that the bidder meets the requirements set out in Regulation 20 and therefore the WPS body is not restricted by Regulation 60 in the means of proof it may request, since this does not relate to proving the technical or professional qualification of a bidder, but their eligibility to participate in a reserved tender. See Annex 1 for example selection questions WPS bodies may wish to include.

This is in line with the Welsh Government’s policy to promote open, accessible competition. The risk of deliberate misreporting is likely to be low given that the

organisation will have to provide credible evidence that its “main aim” is the integration of disabled / disadvantaged workers. If it can get over that threshold, the organisation is likely to employ more than 30% disabled / disadvantaged workers or else it will be failing significantly in its stated objectives.

7.1.3.2. At the pre-contract award stage

How might the 30% threshold be evidenced in such a way as to be verifiable at the pre-contract award stage?

Prior to contract award, the winning bidder(s) could be asked to supplement their self-certification at the supplier selection/ pre-qualification stage with a more detailed but still anonymised register of employees (ensuring that individuals are not identifiable) which gives summary details of the types of disability / disadvantage relating to each employee. This should be signed as being true by a director of the organisation along with:

- an acknowledgment that (without prejudice to any other right or remedy) an incorrect declaration may lead to exclusion from the tender process or cancellation of the contract award, and
- reference in the tender documents to a site inspection (if the WPS body determines it can build in this process in accordance with the Public Contracts Regulations 2015), with the freedom to walk around and speak to employees on a randomised, non-selected basis. While this would not be a precise method it would be a useful check of the proportion of disadvantaged employees declared in the self-certification at the pre-qualification / supplier selection.

7.2 How often should the eligibility of organisations delivering contracts reserved under Regulation 20 be reassessed during the contract?

It is not a requirement under the Public Contracts Regulations 2015 to verify that the threshold is met throughout the life of the contract. It is therefore important to consider what terms and conditions should be built into the contract, such as a continuing warranty by the supplier that it meets the Regulation 20 criteria and will continue to meet them for the duration of the contract. This could also contain an obligation to notify the WPS body immediately if the criteria cease to be met. Breach of these obligations could be classified as leading to immediate termination (at the sole discretion of the WPS body).

It is recommended that WPS bodies build in ongoing monitoring to ensure that the criteria continue to be met, particularly if the WPS body believes that there is a high risk of non-compliance. The precise nature of this monitoring will need to be written into the contract.

The terms and conditions of the contract could include:

- a. Continuing Warranty Clause – Requiring the supplier to notify the WPS body immediately if the ‘main aims’ or 30% disadvantaged ratio of employees change. Failure to notify the WPS body of such changes or were the supplier is found to be in breach of either the ‘main aims’ or 30% disadvantaged ratio of employees may result in immediate termination (at the sole discretion of the WPS body)
- b. Contract Termination Clause – To allow the WPS body at its sole discretion to immediately terminate the contract should the supplier fail to meet the requirements of the Continuing Warranty Clause or be found to be in breach of ‘main aims’ or 30% disadvantaged ratio of employees requirements. For contracts where the WPS body believes that there is a high risk of non-

compliance, WPS bodies could consider some or all of the following for inclusion into the contract:

- Contract Monitoring Clause - The WPS body reserves the right to conduct annual or more frequent inspection site visits or random spot checks and consequences of this:
- Declaration of Compliance Clause – requiring on a periodic basis (e.g. 6 monthly or annually) at the sole discretion of the WPS body, a declaration confirming that the:
 - i. ‘main aims’ of the supplier have not changed, and
 - ii. 30% disadvantaged ratio of employees has been maintained and is still met.

7.3. Defining disabled and ‘disadvantaged’ persons

What do “disabled” and “disadvantaged” mean?

The EU Procurement Directive which the Public Contracts Regulations 2015 transposed prior to the UK’s exit as a Member State of the European Union, offered only a broad suggestion of what ‘disadvantaged’ might mean - “such as the unemployed, members of disadvantaged minorities or otherwise socially marginalised groups”. For clarity Crown Commercial Services have provided that the following definition of “disadvantaged” from the Commission Regulation (EU) No 651/2014 (State aid definition) of 17 June 2014, which can be used by WPS bodies in formulating their requirements if they wish.

A ‘disadvantaged worker’ means any person who:

- a. has not been in regular paid employment for the previous 6 months, or
- b. is between 15 and 24 years of age, or
- c. has not attained an upper secondary educational or vocational qualification

- (International Standard Classification of Education or is within 2 years after completing full-time education and who has not previously obtained his or her first regular paid employment, or
- d. is over the age of 50 years, or
 - e. lives as a single adult with one or more dependants, or
 - f. works in a sector or profession in a Member State where the gender imbalance is at least 25 % higher than the average gender imbalance across all economic sectors in that Member State, and belongs to that underrepresented gender group, or
 - g. is a member of an ethnic minority within a Member State and who requires development of his or her linguistic, vocational training or work experience profile to enhance prospects of gaining access to stable employment.

The Public Contracts Regulations 2015 use the [Equality Act 2010 \(see section 6\) definition of a disability](#).

A 'disabled person' being:

“ A person (P) has a disability if:

- “a. P has a physical or mental impairment, and
- b. the impairment has a substantial* and long-term** adverse effect on P's ability to carry out normal day-to-day activities”. ”

* 'substantial' is more than minor or trivial, e.g. it takes much longer than it usually would to complete a daily task like getting dressed.

** 'long-term' means at least 12 months, e.g. a breathing condition that develops as a result of a lung infection (see Schedule 1 to the Equality Act 2010).

Annex 3: Regulation 77 guidance

8. Regulation 77 Public Contracts Regulations 2015 - 'Reserved contracts for certain services'

Regulation 77 allows contract award procedures for certain services contract to be reserved to certain organisations, provided that the contract does not exceed a maximum duration of 3 years and provided that the WPS body has not awarded a similar contract to that organisation in the previous 3 years.

Regulation 77 is designed to help organisations to establish themselves and compete to deliver services that have a health, social, educational or cultural dimension. There are a number of conditions that have to be met for organisations to qualify to bid for any reserved contracts that may be procured under Regulation 77. The intention is to allow organisations meeting the qualifying conditions in Regulation 77 to have the opportunity to establish themselves before such contracts are either put out to open competition or re-tendered under Regulation 77 for other qualifying organisations to bid. These organisations are usually Social Enterprises organised around Mutual and or Co-Operative principles.

8.1 Qualifying organisations

In order to be allowed to take part in a tender reserved under Regulation 77 'qualifying organisations' must meet all of the following conditions:

- a. The primary objective of the qualifying organisations must be the pursuit of a public service mission linked to the delivery of services covered by the CPV codes relevant to Regulation 77 (see Annex 5).
- b. Profits are reinvested with a view to achieving the organisation's objective, and any distribution of profits is based on participatory considerations

- c. The structures of management or ownership of the organisation are (or will be, if and when it performs the contract):
 - i. based on employee ownership or participatory principles, or
 - ii. require the active participation of employees, users or stakeholders and
- d. the organisation has not been awarded a contract under Regulation 77 for the services concerned by the WPS body within the past 3 years.

8.2 Establishing the eligibility of organisations tendering for contracts reserved under Regulation 77

Businesses expressing an interest in a contract being reserved under Regulation 77 can confirm the eligibility of their business with regards to requirements b) and c) above (section 8.1 Qualifying Organisations) by submitting the following:

- For Companies Limited by Guarantee - Memorandum and Articles of Association registered at Companies House.
- For Community Interest Companies (CICs) - Memorandum and Articles of Association registered with the CIC Regulator, Companies House.
- For Co-operatives, Community Benefit Societies or bona fide co-operative - Rules registered with the Financial Conduct Authority.
- Mutual businesses - Trust Deeds (if owned by an employee trust) or Terms of Reference of the Workers Council.

8.3. CPV codes relevant to Regulation 77

Regulation 77 may only be applied to services contracts which are covered by the CPV codes detailed in Regulation 77 (and attached in Annex 5 of this WPPN for reference). The CPV codes relate to services covered by the “light touch regime” (Regulation 74 of the Public Contracts Regulations 2015).

8.4. Contract duration and other limitations

Contracts tendered pursuant to Regulation 77 must:

- not be awarded to organisations who have previously won contracts tendered under Regulation 77 for the same services by the same WPS body within the past 3 years, and
- not exceed a maximum duration of 3 years.

8.5. Links to Social Services and Wellbeing (Wales) Act 2014

Local authorities may find Regulation 77 a useful mechanism to help them put in place solutions that meet their section 16 duty to ‘promote social enterprises, co-operatives, user led services and the third sector’, with particular reference to care, support and preventative services of the Social Services and Wellbeing (Wales) Act 2014 that introduced a duty to ‘promote social enterprises, co-operatives, user led services and the third sector’, with particular reference to care, support and preventative services.

Reserving contracts under Regulation 77 also provides an opportunity to support the growth of such businesses and develop the markets for this sector.

Annex 4: Other ways to engage with supported businesses

9. Other ways to engage with supported businesses and Regulation 77 eligible organisations

Welsh Government procurement policy encourages public bodies to ensure that

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contract opportunities are open to all, and that smaller suppliers, including third sector organisations are not precluded from winning contracts individually, as consortia, or through roles within the supply chain.

As a rule, WPS bodies should try to avoid unnecessary complexity or over-reliance on standard documentation particularly at the supplier selection / pre-qualification stage. Many of these businesses will be SMEs and as such will have limited resources to allocate to preparing tenders, may not be able to produce all the collateral information required, or may find it prohibitively expensive to do so.

In situations where contracts are too large or complex to be tendered on a reserved contract basis in their entirety, WPS bodies have a number of other options they can use to engage with businesses who meet the eligibility criteria of Regulation 77.

9.1 Joint Bidding: invite collaborative or consortia bids

Being receptive to collaborative or consortia bids from businesses eligible to bid for 'reserved contracts' may allow contracts to be reserved that would otherwise be too large or complex for single organisations to meet. Joint bidding can take many different forms and, crucially, allows companies to pool their resources to increase their collective capacity or coverage in order to compete for contracts that may otherwise have been out of reach. It is important that adequate time be built into the tendering process to allow suppliers to prepare a joint bid. The Joint Bidding Guide developed by Welsh Government, WCVA and Wales Co-Operative Centre provides guidance for both public sector buyers and suppliers on how to approach and manage 'joint bids' can be found on Gov.Wales.

9.2 Award criteria

WPS bodies are required to base award criteria on the basis of “most economically advantageous tender” under Regulation 67 of the Public Contracts Regulations 2015. This includes the best “price-quality” ratio, which can include evaluation of social considerations where those social considerations are linked to the subject matter of the contract. This may allow factors which may not be economically measurable to be considered. These can include but are not limited to criteria linked to the WPS bodies wider aims and functions and can be used to ensure credit is given to bidders that can meet the WPS body’s ‘social value’ objectives (See WPPN 01/29 WPPN 01/20 Social value clauses/ community benefits through public procurement on Gov.Wales). The light touch regime provides significant flexibilities around award criteria, provided that the criteria is linked to the subject matter of the contract. As when setting other award criteria it is important to ensure the criteria are capable of objective evaluation and do not confer unrestricted freedom of choice on the WPS body.

How does this help with providing opportunities for supported and Regulation 77 eligible businesses to bid outside of using a full reserved process?

Where a WPS body may be uncertain about the size of the supply market available WPS bodies can use the wording of those criteria, with or without reference to the Public Contracts Regulations 2015, in the specification or as a variant in tenders managed.

This will ensure the supply of the required goods or services as it will allow bids from all comers while allowing any businesses that meet the higher variant standard of eligibility to potentially score well in the tender evaluation.

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9.3 Lotting strategies (Division of contracts into lots)

Under Regulation 46(1) of the Public Contracts Regulations 2015, 'WPS bodies' may decide to award a contract in the form of separate lots and may determine the size and subject matter of such lots'. Subject to the certain restrictions, WPS bodies can incorporate these provisions into a light touch regime procurement to engage with businesses eligible to bid for reserved contracts in order to determine the most appropriate lotting strategy for delivery of the WPS body's requirements. Subject always to wider obligations under the Public Contracts Regulations 2015, WPS bodies could consider providing opportunities for supported factories and businesses meeting the requirements of Regulation 20 or businesses meeting the requirements of Regulation 77 by:

- a. Reserving one or more lots
- b. Reserving lots by specific goods or services where you know eligible businesses are active, or
- c. Reserving a percentage of the whole contract or a percentage of a Lot.

9.4 Supply chain opportunities

WPS bodies may encourage their main / Tier 1 supplier (s) / contractor(s) to include Regulation 20 or Regulation 77 eligible businesses within their supply chain to deliver a specified element of the contract. Under the encouragement scenario main / Tier 1 supplier (s) / contractor(s) would be left to explore the market for such businesses. It is also possible for WPS bodies to more strongly encourage by 'nominating' specific businesses for the main / Tier 1 supplier (s) / contractor(s) to have discussions on potential to supply.

The "encouragement" route carries much less of a risk than "nominating" sub-contractors as the final decision on which suppliers will be engaged in the supply chain should remain with the prime contractor. However, where the WPS body

has validly awarded a contract to an organisation under either Regulation 20 or Regulation 77 it may wish to consider whether it can “nominate” this organisation in the procurement for the main/ Tier 1 supplier/contractor.

It is recommended that this requirement is explained in the pre-market engagement phase in order to allow prospective bidders the time to consider the needs of the WPS body and to research the market to strengthen their bid.

9.5 Conditions of contract: Contract clauses and KPIs

Contractual terms and/or KPIs could be included regarding delivery of the specified elements of the contract through supported factories and businesses meeting the requirements of Regulation 20 or those meeting the requirements of Regulation 77.

Careful attention needs to be paid to contract terms and/or KPIs to ensure that they are non-discriminatory and that the Tier 1 supplier/contractor retains responsibility for all sub-contractors. This will depend upon the wording of the contract which you use and will need to be addressed on a case by case basis.

Except for instances where the WPS body may wish to nominate a supplier it has validly awarded a contract to under either Regulation 20 or Regulation 77, WPS bodies should direct main contractors to the appropriate sources of information on supported factories and businesses meeting the requirements of Regulation 20 or those businesses meeting the requirements of Regulation 77.

Social Business Wales will be able to help you identify those businesses that meet the eligibility requirements for either Regulation 20 or 77. Social Business Wales is funded by the European Regional Development Fund and Welsh Government. It is delivered by the Wales Co-operative Centre. Enquiries should be directed to Social Business Wales: sbwenquiries@wales.coop.

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There may be other sources of information on supported businesses or those businesses meeting the requirements of Regulation 77 that WPS bodies can direct are aware of and have alerted to the possibility of an approach from the appointed prime contractor. However, WPS bodies should not limit the prime contractor to only considering those businesses you are aware of.

10. Promoting Business-to-Business opportunities

Public sector bodies who have supported businesses in their communities and/or have had a positive experience with supported factories and businesses meeting the requirements of Regulation 20 or those businesses meeting the requirements of Regulation 77, either as prime contractors or as sub-contractors, can help these businesses by promoting them to private sector organisations to explore business to business opportunities.

11. Tools and guidance

Sources of information for assessing the market for goods and services:

- **Sell2Wales** allows suppliers to indicate that they are a supported business when they register and the Common Procurement Vocabulary categories that they are interested in supplying
- The Directory of Social Businesses in Wales (June 2019) compiled by **Social Business Wales** (Social Business Wales is funded by the European Regional Development Fund and Welsh Government. It is delivered by the Wales Co-operative Centre), and
- The **Supported Business Directory** maintained by the British Association of Supported Enterprises (BASE) lists its members across the UK by region and by categories of supply.

Annex 5: CPV codes relevant to Regulation 77

- 75121000-0 - Administrative educational services
- 75122000-7 - Administrative healthcare services
- 75123000-4 - Administrative housing services
- 79622000-0 - Supply services of domestic help personnel
- 79624000-4 - Supply services of nursing personnel
- 79625000-1 - Supply services of medical personnel

- 80110000-8 - Pre-school education services
- 80300000-7 - Higher education services
- 80420000-4 - E-learning services
- 80430000-7 - Adult-education services at university level
- 80511000-9 - Staff training services
- 80520000-5 - Training facilities
- 80590000-6 - Tutorial services

- 85000000-9 - Health and social work services
 - 85100000-0 Health services
 - 85110000-3 Hospital and related services
 - 85111000-0 Hospital services
 - 85111100-1 Surgical hospital services
 - 85111200-2 Medical hospital services
 - 85111300-3 Gynaecological hospital services
 - 85111310-6 In vitro fertilisation services
 - 85111320-9 Obstetrical hospital services
 - 85111400-4 Rehabilitation hospital services
 - 85111500-5 Psychiatric hospital services
 - 85111600-6 Orthotic services
 - 85111700-7 Oxygen-therapy services
 - 85111800-8 Pathology services
 - 85111810-1 Blood analysis services

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- 85111820-4 Bacteriological analysis services
- 85111900-9 Hospital dialysis services
- 85112000-7 Hospital support services
- 85112100-8 Hospital-bedding services
- 85112200-9 Outpatient care services
- 85120000-6 Medical practice and related services
- 85121000-3 Medical practice services
- 85121100-4 General-practitioner services
- 85121200-5 Medical specialist services
- 85121210-8 Gynaecologic or obstetric services
- 85121220-1 Nephrology or nervous system specialist services
- 85121230-4 Cardiology services or pulmonary specialists services
- 85121231-1 Cardiology services
- 85121232-8 Pulmonary specialists services
- 85121240-7 ENT or audiologist services
- 85121250-0 Gastroenterologist and geriatric services
- 85121251-7 Gastroenterologist services
- 85121252-4 Geriatric services
- 85121270-6 Psychiatrist or psychologist services
- 85121271-3 Home for the psychologically disturbed services
- 85121280-9 Ophthalmologist, dermatology or orthopaedics services
- 85121281-6 Ophthalmologist services
- 85121282-3 Dermatology services
- 85121283-0 Orthopaedic services
- 85121290-2 Paediatric or urologist services
- 85121291-9 Paediatric services
- 85121292-6 Urologist services
- 85121300-6 Surgical specialist services
- 85130000-9 Dental practice and related services
- 85131000-6 Dental-practice services
- 85131100-7 Orthodontic services
- 85131110-0 Orthodontic-surgery services

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- 85140000-2 Miscellaneous health services
- 85141000-9 Services provided by medical personnel
- 85141100-0 Services provided by midwives
- 85141200-1 Services provided by nurses
- 85141210-4 Home medical treatment services
- 85141211-1 Dialysis home medical treatment services
- 85141220-7 Advisory services provided by nurses
- 85142000-6 Paramedical services
- 85142100-7 Physiotherapy services
- 85142200-8 Homeopathic services
- 85142300-9 Hygiene services
- 85142400-0 Home delivery of incontinence products
- 85143000-3 Ambulance services
- 85144000-0 Residential health facilities services
- 85144100-1 Residential nursing care services
- 85145000-7 Services provided by medical laboratories
- 85146000-4 Services provided by blood banks
- 85146100-5 Services provided by sperm banks
- 85146200-6 Services provided by transplant organ banks
- 85147000-1 Company health services
- 85148000-8 Medical analysis services
- 85149000-5 Pharmacy services
- 85150000-5 Medical imaging services
- 85160000-8 Optician services
- 85170000-1 Acupuncture and chiropractor services
- 85171000-8 Acupuncture services
- 85172000-5 Chiropractor services
- 85200000-1 Veterinary services
- 85210000-3 Domestic animal nurseries
- 85300000-2 Social work and related services
- 85310000-5 Social work services
- 85311000-2 Social work services with accommodation

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- 85311100-3 Welfare services for the elderly
 - 85311200-4 Welfare services for the handicapped
 - 85311300-5 Welfare services for children and young people
 - 85312000-9 Social work services without accommodation
 - 85312100-0 Day-care services
 - 85312110-3 Child day-care services
 - 85312120-6 Day-care services for handicapped children and young people
 - 85312200-1 Home delivery of provisions
 - 85312300-2 Guidance and counselling services
 - 85312310-5 Guidance services
 - 85312320-8 Counselling services
 - 85312330-1 Family-planning services
 - 85312400-3 Welfare services not delivered through residential institutions
 - 85312500-4 Rehabilitation services
 - 85312510-7 Vocational rehabilitation services
 - 85320000-8 Social services
 - 85321000-5 Administrative social services
 - 85322000-2 Community action programme
 - 85323000-9 Community health services
- 92500000-6 - Library, archives, museums and other cultural services
 - 92600000-7 - Sporting services
- 98133000-4 - Services furnished by social membership organisations
 - 98133110-8 - Services provided by youth associations

* As CPV codes are amended from time to time this list is only provided as a guide and should not be relied on when planning any specific procurement at which time you should check the current CPV coding.

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