



Llywodraeth Cymru
Welsh Government

GUIDANCE

Welsh Procurement Policy Note WPPN 02/23: Public Procurement Amendments following the Australia and New Zealand Free Trade Agreements 2023 Amendments – Wales

This WPPN sets out changes to public procurement obligations arising from free trade agreements with Australia and New Zealand.

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



- A globally responsible Wales

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1. Points to note

- The information set out in this document is neither legal advice nor statutory guidance and is not intended to be exhaustive. Nor is it intended to override existing legal obligations applicable to Welsh Public Sector (WPS) contracting authorities – contracting parties should seek their own independent legal 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 26 May 2023.
- This Welsh Procurement Policy Note (WPPN) builds on, and is consistent with, the [Wales Procurement Policy Statement](#) and existing UK procurement legislation, as amended (the Public Contracts Regulations 2015, Utilities Contracts Regulations 2016 and Concession Contracts Regulations 2016 as amended by The Public Procurement (International Trade Agreements) (Amendment) (Wales) (No.2) Regulations 2023).
- This note assumes a certain level of knowledge of public procurement. It is available via the [Welsh Government website GOV.WALES](#) and any queries should be directed to CommercialPolicy@gov.wales or via the [Welsh Governments' customer services](#).

2. Issue

This WPPN sets out changes to public procurement obligations which arise from 2 free trade agreements (FTAs) entered into by the United Kingdom, one with Australia, and the other with New Zealand insofar as they relate to devolved Welsh authorities. Similar implementing legislation has been laid by UK government for contracting authorities in England and Northern Ireland, and by Scottish Government for contracting authorities in Scotland. The UK government regulations also apply to contracting authorities in Wales that are not devolved Welsh authorities.

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Although the amendments arise from this particular agreement, they apply to all procurements from the 26 May 2023, not just those involving Australian and New Zealand suppliers.

These changes affect the treatment of contracts whose value cannot be estimated, the use of Prior Information Notices and, the circumstances in which termination of contracts is permissible.

3. Dissemination and scope

This WPPN applies to contracting authorities whose functions are wholly or mainly Welsh devolved functions as defined by regulation 1(7) and 1(8) Public Contracts Regulations 2015 (PCRs). Separate guidance has been produced by UK government (PPN 05/23) which apply to those contracting authorities in Wales that do not fall within this category.

Contracting authorities must take action to apply this WPPN to all procurements where it is relevant. This means procurements above the thresholds set out in the Public Contracts Regulations (PCRs), Utilities Contracts Regulations 2016 (UCRs) and Concession Contracts Regulations 2016 (CCRs).

Please circulate this WPPN across your organisation and to other relevant organisations that you are responsible for, drawing it to the specific attention of those in procurement, commercial and finance roles.

4. Background

The UK-Australia FTA was signed in December 2021 and the UK-New Zealand FTA was signed in February 2022. The FTAs contain new obligations that

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require amendment to UK public procurement regulations in order to ensure full compliance.

The UK government provided powers to the Welsh Ministers within the Trade (Australia and New Zealand) Act 2023 to make secondary legislation to fully implement these obligations. Among other things, the SI amends the PCRs, UCRs and CCRs so as to:

- a. require contracting authorities and utilities who are unable to estimate the value of a procurement to treat it as being valued at the relevant threshold and therefore subject to the full regime
- b. remove the option for sub-central contracting authorities and utilities of using a Prior Information Notice or Periodic Indicative Notice as a call for competition, and
- c. make it explicit that contracting authorities and utilities must not terminate a contract to avoid international obligations.

It is expected that these new requirements will only result in minor changes to how practitioners carry out procurements.

5. Guidance

Changes for contracting authorities:

Unknown contract value

The previous procurement regulations provided various methods for estimating the value of contracts to determine whether the relevant thresholds apply. This statutory instrument means that contracts whose value cannot be estimated must be treated as being equal to the relevant threshold by contracting

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authorities, and thus subject to the full regime.

Removal of the option of using a prior information notice or periodic indicative notice in certain circumstances

Previous procurement regulations permitted sub-central contracting authorities and utilities to use a prior information notice or periodic indicative notice as a call for competition instead of a standard contract notice where certain requirements are met. This SI means that sub-central contracting authorities and utilities are no longer permitted to do this. Prior information notices and periodic indicative notices may otherwise continue to be used for any other purpose as permitted under the relevant regulations.

Termination of contracts

Previous procurement regulations contained provisions which ensured that procuring entities could not use options, cancel a covered procurement, or modify awarded contracts in order to circumvent regulations. The FTA imposes the additional requirement that contracting authorities should not terminate awarded contracts to avoid procurement obligations. This SI means that contracting authorities must note this additional statutory restriction.

6. Actions required by contracting authorities

The Welsh Ministers have made a **statutory instrument** that amends the UK's public procurement regulations for Wales to implement new obligations contained in the Australia and New Zealand FTA's. All contracting authorities must act in accordance with the changes to UK procurement regulations in this secondary legislation which came into force on 26 May 2023.

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7. Legislation

The regulations are called the Public Procurement (International Trade Agreements) (Amendment) (Wales) (No.2) Regulations 2023.

8. Timing

This WPPN must be applied to new procurements after the Regulations came into force on the 26 May 2023 until the WPPN is superseded or cancelled.

9. Wales Procurement Policy Statement (WPPS) relevance

This WPPN aligns with **all of the principles** contained in the **Wales Procurement Policy Statement**

10. Additional information

A full list of **Welsh procurement policy notes** are available on GOV.WALES.

11. Contact details

If you have any questions about this WPPN, please contact Commercial Policy – Polisi Masnachol: **CommercialPolicy@gov.wales**.

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