

HEALTH SERVICE PROCUREMENT (WALES) ACT 2024

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Health Service Procurement (Wales) Act 2024 which was passed by Senedd Cymru on 14 November 2023 and received Royal Assent on 5 February 2024.
2. The notes have been prepared by the Welsh Government's Health and Social Services Group in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Senedd.
3. These Explanatory Notes should be read in conjunction with the Act. They are not meant to be a comprehensive description of the Act. Where an individual section of the Act does not seem to require any explanation or comment, none is given.

GENERAL OVERVIEW OF THE ACT

4. The Act has 5 sections. It enables the Welsh Ministers to disapply provisions of the Procurement Act 2023, that would otherwise be relevant when procuring services provided as part of the health service in Wales, to the extent that alternative provision is made in that respect. The Act also enables Ministers to create a new alternative procurement regime for these services. It does not prescribe detail about the content of any new regime, which would be set out in the regulations made under the power the Act inserts into the National Health Service (Wales) Act 2006.
5. The Act only applies to the procurement of services provided as part of the health service, and goods or other services that are connected to those health services. Other forms of procurement carried out by the health sector will remain subject to the current Public Contract Regulations 2015 rules, until these are replaced by any future wider procurement reforms.

COMMENTARY ON SECTIONS

Section 2 – Power to disapply procurement rules in relation to NHS procurement in Wales

6. Section 2 of the Act enables the Welsh Ministers to disapply provisions of the Procurement Act 2023, to the extent that they are inconsistent with alternative provisions made in respect of the procurement of health services in Wales. This is done by inserting a new section 120A into the Procurement Act 2023.

7. Subsection (1) of the new section 120A provides the Welsh Ministers with the power referred to above, which is to be exercised by making regulations (by statutory instrument).
8. Subsection (2) provides additional information about how the power in subsection (1) operates, by defining two relevant terms.
9. First, it explains that the reference in subsection (1) to 'regulated health service procurement in Wales' means the procurement of goods and services carried out by a 'relevant authority' under the arrangements made under a new section 10A that is inserted into the National Health Service (Wales) Act 2006 by section 3 of this Act. The power to disapply these provisions is available to the Welsh Ministers irrespective of whether regulations made under the new section 10A of the National Health Service (Wales) Act 2006 have come into force.
10. Second, subsection (2) also explains that the reference to a 'relevant authority' has the same meaning as found in the new section 10A inserted into the National Health Service (Wales) Act 2006. This means that the term 'relevant authority' includes local authorities in Wales, Local Health Boards, NHS Trusts (for example the Welsh Ambulance Services Trust) and special health authorities (for example Health Education and Improvement Wales, and Digital Health and Care Wales).
11. In accordance with section 122(10) of the Procurement Act 2023, regulations made under the section inserted into that Act, by this Act are subject to the affirmative procedure. This means that they must be approved by Senedd Cymru before they can be made.

Section 3 – Procurement of services etc. as part of the NHS in Wales

12. This section should be read in conjunction with section 2, as it provides the Welsh Ministers with the ability to put in place new arrangements for health service procurement in Wales. If the Welsh Ministers do introduce new arrangements for health service procurement via regulations made under this section, relevant authorities will be obliged to follow those arrangements rather than wider procurement legislation when procuring services for the health service in Wales. These new arrangements, once introduced, will take the place of arrangements under the Procurement Act 2023, which Ministers are able to disapply through regulations made under section 2 but only to the extent that they apply to the procurement of services for the health service in Wales.
13. Section 3 provides the ability for the Welsh Ministers to introduce new legislative requirements through regulations. These regulations would set out the requirements applying to the procurement of services by relevant authorities as part of the health service in Wales, as well as goods and services which are connected to those health services.
14. The Act does this by amending the National Health Service (Wales) Act 2006 to insert a new section (section 10A). The full wording of the new section being inserted into the National Health Service (Wales) Act 2006 is set out in subsection (2).

15. The new section 10A of the National Health Service (Wales) Act 2006 includes a number of matters that must be covered by the new regulations. Inclusion of these is therefore a legislative requirement and not a discretionary matter for the Welsh Ministers in developing the regulations. Subsections (2) and (3) of the new section 10A provide that the regulations must include detail about the processes relevant authorities need to follow when carrying out a competitive tendering exercise, as well as providing that the regulations must make provision to ensure that procurement processes support transparency, fairness, verification of compliance, and manage conflicts of interest. Subsection (4) includes a requirement that the Welsh Ministers must undertake appropriate public consultation and publish a summary of received responses before making regulations.
16. Subsection (6) of the new section 10A provides that regulations detailing a new regime for health service procurement must be accompanied by appropriate guidance. Subsection (7) places a corresponding requirement on relevant authorities to take account of this guidance.
17. Subsection (8) places a duty on the Welsh Ministers to review the operation of regulations and publish the conclusions of the review within 5 years of the regulations coming into force.
18. Subsection (9) defines 'relevant authorities' for these purposes – the definition is the same as that referred to in paragraph 10 of these Explanatory Notes.
19. Subsection (3) of section 3 of the Act makes a further related addition to the National Health Service (Wales) Act 2006. This adds the regulations that may be made under the newly inserted section 10A of the National Health Service (Wales) Act 2006 to the list of regulations (in that Act) that are subject to the affirmative procedure. This means that they must be approved by Senedd Cymru before they can be made.

Section 5 – Short title

20. The short title of this Act is the Health Service Procurement (Wales) Act 2024.

RECORD OF PROCEEDINGS IN SENEDD CYMRU

21. The following table sets out the dates for each stage of the Act's passage through the Senedd. The Record of Proceedings and further information on the passage of this Act can be found on the Senedd website at:

[Health Service Procurement \(Wales\) Act 2024 \(senedd.wales\)](https://www.senedd.wales)

Stage	Date
Introduced	13 February 2023
Stage 1 – Debate	9 May 2023
Stage 2 Scrutiny Committee – consideration of amendments	7 June 2023
Stage 3 Plenary – consideration of amendments	10 October 2023

*These notes refer to the Health Service Procurement (Wales) Act (asc 1)
which received Royal Assent on 5 February 2024*

Stage	Date
Stage 4 Approved by the Senedd	14 November 2023
Royal Assent	5 February 2024