

Differences between the UK Government's 'Transforming Public Procurement' Green Paper and Consultation Response published 6 December 2021.

January 2022

1. Background

The UK Government's response to the public consultation on the Green Paper on Transforming Public Procurement was published on Monday 6 December 2021, and is available on the [UK Government website](#).

Whilst many of the original proposals set out in the Green Paper are being maintained, in its response the UK Government has clarified or amended some of its initial proposals based on the feedback received. The purpose of this paper is to signpost stakeholders to some of the main changes that have been proposed, and to highlight where this will feed into Welsh Government's future stakeholder engagement activity.

Chapter 1: Procurement that better meets the UK's needs

- The proposed principles put forward in the original Green Paper have been clarified into a set of "Principles" and "Objectives"
 - **Transparency** (principle)
 - **Fair treatment of suppliers** (principle) – covers equal treatment of suppliers and procedural fairness during procurement procedures
 - **Non-discrimination** (principle)

 - **Integrity** (objective)
 - **Public good** (objective)
 - **Value for money** (objective)
- An additional objective of **promoting the importance of open and fair competition** has been added.
- Proportionality will not be retained as an over-arching principle, instead it is to be included as a requirement in specific provisions.
- The consultation response indicated that the **principles** will impose obligations on contracting authorities (such as transparency obligations that will apply at each stage of the procurement process), whilst the **obligations** are intended to influence decision making in the procurement process.
- Welsh Government will be undertaking stakeholder engagement to develop guidance on these principles and objectives.

- The response also clarified the UK Government's intention to introduce a 'Procurement Review Unit' (PRU).
- The PRU will deliver the same service as the Public Procurement Review Service (also known as the 'Mystery Shopper Unit'), however the main focus will be on addressing systemic or institutional breaches of the procurement regulations rather than intervening in any specific individual procurement decisions.
- The PRU will not replace the Supplier Feedback Service (SFS) in Wales, and will not investigate Welsh Contracting Authorities.

- The PRU will consult and be advised by a non-statutory panel of subject matter experts appointed by the Cabinet Office.
- The consultation response also outlined some of the UK Government Ministerial powers and duties that will be required to investigate procurement functions and issue reports and recommendations. In Wales, the initial intention will be to secure equivalent powers for Welsh Ministers to strengthen the existing SFS.
- In the Green Paper, the UK Government proposed legislating to require contracting authorities to have regard to the strategic priorities for public procurement that were set out in their National Procurement Policy Statement (NPPS). Whilst this proposal remains unchanged, Welsh Government officials are working with UK government officials to determine how contracting authorities in Wales can have regard to the strategic vision for procurement as set out in the Wales Procurement Policy Statement (WPPS) as an alternative to the NPPS.

Chapter 2: A simpler regulatory framework

- The UK Government's intention is still to consolidate existing regulations into a single legislative framework, but consideration will be given to some sector-specific flexibility that is included in the current Utilities Contracts Regulations and Defence and Security Public Contracts Regulations

Chapter 3: Using the right procurement procedures

- Feedback from stakeholders was that they want more guidance, 'template' examples and case studies. Welsh Government will be engaging with stakeholders to develop guidance on the new procurement procedures.
- There is a proposal to move away from the term 'crisis' and include a limited tendering ground, in the form of a new power (via statutory instrument) to 'declare when action is necessary to protect life'. Welsh Government officials are currently working with colleagues in the UK Government to determine how this new power can be used by Welsh Ministers.
- Light Touch Regime is to remain, but there are likely to be changes to its scope and application (for example, exemption from competition those services where service user choice is important).

Chapter 4: Awarding the right contract to the right supplier

- The UK Government intends to review the changes that were originally put forward in the Green Paper in relation to excluding suppliers from procurements. The aim is to develop a 'simpler and clearer' exclusions framework which is 'better suited to the UK's commercial and legal landscape', and is more focussed on those suppliers who cause a genuine risk to public procurement.
- Deferred Prosecution Agreements will not be a ground for discretionary exclusion.

Chapter 5: Using the best commercial purchasing tools

- The proposal to replace the existing DPS with a new DPS+ is being taken forward, but it will now be called a 'Dynamic Market'. Also the tool will now be available for use with all types of works, services and goods procurements

Chapter 6: Ensuring open and transparent purchasing

- The majority of respondents to the consultation were supportive of embedding transparency throughout the commercial lifecycle, although a number of concerns were raised, such as:
 - the resource intensive implementation of the proposed changes; and
 - the administrative burden associated with transactional, low value contracts.
- Welsh Government have also engaged with stakeholders in relation to the proposed transparency changes for below threshold procurements. On the whole, Welsh stakeholders too are supportive of embedding transparency in procurement, although further stakeholder engagement will be undertaken in relation to the IT systems to support the implementation of these transparency proposals.
- There were also concerns from suppliers around the protection of commercially sensitive and personal information, and the impact on competition.
- Further changes that UK Government have made in response to the feedback include:
 - Proposals to publish bidder's response documents are not being taken forward
 - Redacted contracts will need to be published above £2m
 - Unsuccessful bidders will receive redacted evaluation documents relating to the winning bid, as well as their own bids
 - The proposed Tender Web Form Notice and Web Form (Clarification) Notice will not be introduced

Chapter 7: Fair and fast challenges to procurement decisions

- The proposed cap on damages payable following a successful challenge to a contract award decision has been removed.
- The UK Government has indicated that it will continue to explore feasible options for faster and more accessible routes for valid challenge in response to concerns that the proposed court reforms which aimed to deliver a faster, cheaper and more accessible review system could lead to more challenges and speculative claims.
- Several original proposals are also not being taken forward, including:
 - Proposed process of independent contracting authority review
 - Proposal for using an existing tribunal to deal with low value claims
 - Proposal that that pre-contractual remedies should have stated primacy over post-contractual damages

Chapter 8: Effective contract management

- The proposal to cap the profit paid on contract extensions where the incumbent raises a legal challenge is not being taken forward.
- The proposal to publish contract amendment notices is being taken forward, and there is the intention to provide a power to amend those exemption thresholds if necessary.

Future stakeholder engagement opportunities

Subject	Reason for engagement	Format	Timescale
New principles & objectives of public procurement	<ul style="list-style-type: none"> • How can we define the principle / objective in the context of the Welsh Public Sector? • How will the principles and objectives can be implemented in CA • How will the objectives inform decision making? • How will the principles / objectives support WBFGA? SPPP Bill? etc 	Series of small workshops with stakeholders from across the Welsh Public Sector	Q1 / Q2 2022
Wales Procurement Policy Statement	<ul style="list-style-type: none"> • Identify challenges associated with adopting WPPS • Understand what guidance / support CA need to adopt WPPS. 	Initial stakeholder feedback survey, followed by a series of small workshops with stakeholders from across the Welsh Public Sector	January / February 2022
Procurement Procedures	<ul style="list-style-type: none"> • Aim to understand what support / guidance CA need? • Ensure the procedures are applied consistently across the Welsh Public Sector. 	Series of small workshops with stakeholders from across the Welsh Public Sector	Q1 / Q2 2022
Transparency throughout the commercial lifecycle	<ul style="list-style-type: none"> • What support do CA require in relation to future developments to improve transparency in the procurement process? 	Series of small workshops with stakeholders from across the Welsh Public Sector	Q1 / Q2 2022