


Iechyd da to the Welsh Provider Selection Regime

26 March 2025  Jan Cumming and Athina Agrafioti

Timed to come into force alongside the Procurement Act 2023 (PA2023), the Health Services (Provider Selection Regime) (Wales) Regulations 2025/Rheoliadau Gwasanaethau Iechyd (Y Gyfundrefn Dethol Darparwyr) (Cymru) 2025 (Welsh PSR) have gone live on 24 February 2025 and apply in place of the PA2023 where a relevant authority procures health services for the purposes of the health service in Wales (whether NHS or public health in Wales).

A relevant authority is a county council or county borough council in Wales, a local health board, an NHS trust or a special health authority. Health services consist of the provision of health services to individuals or groups of individuals and fall within one or more of the specified CPV codes.

The Welsh PSR does not apply to the procurement of goods or non-health care services unless the procurement of those goods or non-health care services alongside the health services falls within the remit of a mixed procurement. Relevant authorities should, where this may be relevant to a procurement, undertake an analysis on a case-by-case basis to determine whether the main subject-matter of the contract is in-scope health services and the other goods or services could not reasonably be supplied under a separate contract. If it does not fall within the remit of a mixed procurement then separate procurement processes must be carried out to procure the different aspects separately to the procurement of the health services under the Welsh PSR.

The Welsh PSR have some key differences to their older English cousin, the Health Care Services (Provider Selection Regime) Regulations 2023 (English PSR) which came into force in England on 1 January 2024 and applies to the procurement of health care services for the purposes of the health service in England by relevant authorities being NHS England (before it transitions to the Department of Health and Social Care), integrated care boards, NHS trusts and foundation trusts and local authorities or combined authorities.

Direct Award Processes

One of the most notable differences between the two regimes is the difference in the number of Direct Award Processes.

The English PSR has three Direct Award Processes which could be used (subject to the relevant authority carrying out an analysis to ensure that the requirements of the Direct Award Processes having been met), in summary these are:

- **Direct Award Process A** – where the incumbent provider is the only provider who is able to deliver the health care services (Regulation 7 of the English PSR);
- **Direct Award Process B** – where patients have a choice of providers and the number of providers is not restricted by the relevant authority (Regulation 8 of the English PSR); and
- **Direct Award Process C** – where the incumbent provider is satisfying the existing contract, will likely satisfy the new contract to a sufficient standard and the proposed contracting arrangements are not being changed considerably (Regulation 9 of the English PSR).

The Welsh PSR on the other hand has two Direct Award Processes which could be used (subject to the relevant authority carrying out an analysis to ensure that the requirements of the Direct Award Processes having been met), in summary these are:

- **Direct Award Process 1** – where the incumbent provider is the only provider who is able to deliver the health services (Regulation 7(4) and Regulation (8) of the Welsh PSR); and

- **Direct Award Process 2** – where the incumbent provider is satisfying the existing contract, will likely satisfy the new contract to a sufficient standard and the proposed contracting arrangements are not being changed considerably (Regulation 7(5) and Regulation (9) of the Welsh PSR).

As there is no equivalent Patient Choice regime in Wales as there is in England allowing patients to choose a provider, an equivalent to Direct Award Process B is not included in the Welsh PSR.

Frameworks

A further change between the Welsh and English PSR is in the lengths of framework agreements.

In the Welsh PSR, a framework agreement must not exceed eight years, other than in exceptional cases where the relevant authority is satisfied that the subject matter of the framework agreement justifies a longer term whereas, in the English PSR, a framework must not exceed four years, other than in exceptional cases where the relevant authority is satisfied that the subject matter of the framework.

Notice requirements

Essentially the process and requirements of the Most Suitable Provider Process and the Competitive Process are the same across both the Welsh PSR and English PSR regimes. However, it should be noted that the information requirements to be contained in the 'notices of intention to follow the Most Suitable Provider Process', the 'notices of intention to award under the Most Suitable Provider Process' and the 'notice following award' have some subtle differences. This is also the case for the 'notice inviting offers', the content of the communication to any unsuccessful provider(s), the 'notice of intention to award' and the 'notice followed award' in accordance with the Competitive Process.

For example, the information to be included in notices of intention to follow the Most Suitable Provider Process, detailed at Schedule 6 of the Welsh PSR and Schedule 5 of the English PSR are the same, other than the English PSR requiring only the most relevant CPV code to be noted, whereas the Welsh PSR requires one or more of the relevant CPV codes to be noted. This difference is also highlighted in the 'notice inviting offers', 'notice of intention to award' and 'notice following award' in accordance with the Competitive Process.

The information required to be included in notices issued notifying the market of an intention to award are again largely the same across both regimes, with the Welsh PSR again requiring one or more relevant CPV codes and requiring the following additional information to be included when following either the Most Suitable Provider Process or the Competitive Process:

- A statement as to whether any providers were excluded from the procurement process;
- Where a relevant authority intends to award the contract to an excluded provider because it is considered necessary to protect public health, the reasons for such a decision; and
- Any information that has not been published or is otherwise withheld under regulation 23(1).

Finally, in relation to notices issued to the market following award, as well as the above points, both regimes require the dates between which the contract provides for the services to be provided, with the Welsh PSR also requiring confirmation of the duration of the contract including potential extensions beyond the initial term. Both regimes also require the lifetime value of the contract to be included, with the English PSR stating that if this is not known, the amounts payable to the provider under the contract should be included.

Standstill period

Like the English PSR, the Welsh PSR provides that a relevant authority must not enter into a contract or conclude a framework agreement before the end of a standstill period where a relevant authority has procured health services in accordance with Direct Award Process 2 (equivalent to English Direct Award Process C), the Most Suitable Provider Process or the Competitive Process.

The standstill period in both regimes, must last for a minimum of eight working days, and unless a written representation is made, ends at midnight on the eighth working day after the standstill period has begun. If a written representation is received during this period, then the standstill period will remain open until the representation process has been followed and completed (for further guidance on [the representation process](#), please refer to our [article](#) setting this out in more detail).

However, the day on which the standstill period begins differs with the English PSR providing that 'the standstill period begins on the day after the day a notice of intention to award or conclude is published on the UK e-notification service' and the Welsh PSR providing that

'the standstill period begins on the day the relevant authority submits for publication a notice of intention to award a contract or conclude a framework agreement'.

Should you have any queries in relation to either the Welsh PSR or English PSR, please do get in touch with the team and we would be delighted to help.

Contact



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