



Procurement is changing.  
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Procurement Act 2023 pack

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Last updated: 10<sup>th</sup> February 2025

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# 1 INTRODUCTION

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## **Procurement is changing. Get ready with Blake Morgan.**

The new Procurement Act will come into force on 24<sup>th</sup> February 2024 and will impact the procurement process for public sector organisations and private sector organisations who bid for work within the public sector. It is the biggest change in procurement law in a generation.

Blake Morgan's specialist procurement team provide expert legal advice on the impact of this legislation for public and private sector organisations. We have extensive experience assisting public and third sector clients with their procurement process from start to finish of the process, advising both bidders and contracting authorities, including advice on strategic and procedural issues as well as on challenges arising from public procurements.

Our understanding of the practical impact which the Act will have means that we can help your organisation navigate the changes happening within public sector procurement.

We act for a variety of private sector clients ranging from large multi-national companies to charities and SMEs. We also act for a substantial number of public sector organisations throughout the UK including NHS bodies in England and Wales, Welsh Government, emergency services and police forces, all Local Health Boards in Wales, and local authorities.

This pack contains all the crucial information that you need, including copies of the legislation itself and guidance published to date. We will in due course be publishing a supporting guidance document too.

Please note that the Cabinet Office continues to publish guidance. Additionally, there are still some regulations supplementing the Act that need to be published (in particular in relation to calculation of thresholds in relation to vertical or horizontal arrangement and to update the thresholds that appear in Schedule 1 of the Act).

Blake Morgan are here to help support you prepare and implement the changes that the new regime will introduce. We can offer bespoke training to your organisation as well as review your process and procedures and prepare the documents needed to comply with the Procurement Act 2023.

For further information - including details of our webinar series - please visit <https://www.blakemorgan.co.uk/procurement-act/>

Please do get in touch if you would like to discuss how we can help.

## About Blake Morgan

Blake Morgan LLP is a UK law firm providing highly tailored legal solutions to individuals, businesses, not-for-profit and government clients. Many of our lawyers and practice groups are leaders in their field and highly ranked by the legal directories. These lawyers will work closely with you, combining their technical expertise, experience and commercialism to help you manage your risk and achieve your goals.

It is this tailored and personalised approach, coupled with our real-world and varied experience that really set us apart. Our clients tell us we quickly become fully immersed in their business and act as an extension to their team. Our straight-talking and pragmatic approach to their legal matters are highly valued.

Blake Morgan has five offices in Cardiff, London, Reading, Oxford and Southampton, yet we act as one firm collaboratively with our clients' best interests at heart.

Whether you are a corporate client or looking for advice on your personal affairs, as your trusted advisor we'll focus on your objectives and work with you through the good times and the bad to make sure that you have the right legal support when you need it most.

Relationships mean everything to us and, like you, we're in it for the long-haul.



**5 offices**  
in England  
& Wales



**96 Partners**



**500+ Total**  
Staff

## Our procurement experts



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Tomos is a commercial lawyer specialising in general commercial law, public procurements law, projects, information technology, data protection and information governance.

Tomos regularly advises clients in the public and private sector on a range of commercial and public law issues. This includes advising clients on complex national procurements, from inception to awarding the contract, and tackling any challenges along the way. He also advises clients on drafting and negotiating high value services and supplies contracts, information technology arrangements, including software licensing, support and hosting arrangements as well as advising clients in relation to data protection and information governance arrangements.

Tomos advises a broad range of clients in the public and private sector, including national governments, local authorities, NHS bodies in Wales and England, charities, not for profit organisations, statutory bodies and private companies (from SMEs to large multi-national organisations and investment funds).

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Penri is a commercial lawyer specialising in utilities and public procurement law, projects and all aspects of general commercial law with an emphasis on long term, complex, high value services and supplies contracts.

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Oliver is a public procurement law specialist with extensive experience in the health and social care sector.

Oliver's clients include local and national commissioners of public services, as well as providers in both the public and private sectors.

Oliver has significant experience of leading on a range of major strategic projects that, in addition to engaging public procurement law, often involve complex commercial, contractual and policy issues.

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Anthony specialises in competition law, commercial contracts and trade regulation, including data protection, public procurement, sanctions, export control, anti-bribery, IP, IT and communications.

With extensive experience Anthony heads the Competition, Trade Regulation and Commercial teams in London. His competition law practice includes advice on merger control, cartels, anti-competitive agreements, abuse of dominance, and national subsidy/State aid. His Trade Regulation practice includes sanctions, export control, national security, anti-bribery and anti-corruption, consumer protection, unfair advertising and ESG/climate change regulation. His Commercial practice includes commercial contracts, data protection/privacy, intellectual property, technology, digital trade and communications.

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Joanne is a Partner in the Litigation and Dispute Resolution Team based in Cardiff, specialising in procurement challenges, public inquiries, commercial and contractual disputes, post-completion and corporate disputes, professional negligence and partnership disputes.

Joanne's practice areas cover a wide range of commercial and contractual disputes including those relating to procurements, breaches of contract, professional negligence and breaches of post-termination restrictions including breaches of confidence.

Joanne also has experience in dealing with public inquiries work.

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Sarah is a Legal Director in the Cardiff Litigation and Dispute Resolution Team with extensive experience of advising public sector and private clients on a wide range of commercial and public law disputes, in particular judicial reviews, public procurement disputes and disputes concerning intellectual property rights.

Sarah's practice areas cover a wide range of commercial and contractual disputes including those relating to procurements challenges, breaches of contract and intellectual property issues. Sarah has vast experience of advising public sector clients in relation the defence of challenges to their decisions by way of judicial review.

Sarah has represented a wide range of clients in her practice. Having spent nine months on secondment to the Department of Health and further time on secondment to a private finance company advising on their litigation policy, Sarah is ideally placed to advise both public and private sector clients on a wide range of commercial disputes.

She receives repeat instructions from NHS England, local authorities, local health boards and the Welsh Ministers alongside private companies, such as large

cosmetics brands, motor franchises, Universities, finance institutions and industrial companies.

She recently advised NHS England in its successful defence of a procurement challenge in both the High Court and the Court of Appeal in the seminal *Braceurself* proceedings.

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Daniel is a Senior Associate in the Litigation & Dispute Resolution team in Cardiff specialising in commercial disputes, and public law matters.

Daniel undertakes public law work, to include judicial review, procurement challenges, education, safeguarding, mental health and mental capacity law.

He also has experience in dealing with public inquiries work.

He recently advised NHS England in its successful defence of a procurement challenge in both the High Court and the Court of Appeal in the seminal *Braceurself* proceedings.

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## 2 PROCUREMENT ACT 2023

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# Procurement Act 2023

CHAPTER 54

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Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

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# Procurement Act 2023

## CHAPTER 54

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# Procurement Act 2023

## 2023 CHAPTER 54

An Act to make provision about procurement.

[26th October 2023]

**B**E IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### KEY DEFINITIONS

#### 1 Procurement and covered procurement

- (1) In this Act—
  - (a) “procurement” means the award, entry into and management of a contract;
  - (b) “covered procurement” means the award, entry into and management of a public contract.
- (2) In this Act, a reference to a procurement or covered procurement includes a reference to—
  - (a) any step taken for the purpose of awarding, entering into or managing the contract;
  - (b) a part of the procurement;
  - (c) termination of the procurement before award.
- (3) In this Act, a reference to a contracting authority carrying out a procurement or covered procurement is a reference to a contracting authority carrying out a procurement or covered procurement—
  - (a) on its own behalf, including where it acts jointly with or through another person other than a centralised procurement authority, and
  - (b) if the contracting authority is a centralised procurement authority—
    - (i) for or on behalf of another contracting authority, or

- (ii) for the purpose of the supply of goods, services or works to another contracting authority.
- (4) In this Act, “centralised procurement authority” means a contracting authority that is in the business of carrying out procurement for or on behalf of, or for the purpose of the supply of goods, services or works to, other contracting authorities.

## 2 Contracting authorities

- (1) In this Act “contracting authority” means –
- (a) a public authority, or
  - (b) in the case of a utilities contract, a public authority, public undertaking or private utility,
- other than an excluded authority.
- (2) In this Act –
- “public authority” means a person that is –
    - (a) wholly or mainly funded out of public funds, or
    - (b) subject to public authority oversight,and does not operate on a commercial basis (but see subsections (9) and (10));
  - “public undertaking” means a person that –
    - (a) is subject to public authority oversight, and
    - (b) operates on a commercial basis;
  - “private utility” means a person that –
    - (a) is not a public authority or public undertaking, and
    - (b) carries out a utility activity.
- (3) A person is subject to public authority oversight if the person is subject to the management or control of –
- (a) one or more public authorities, or
  - (b) a board more than half of the members of which are appointed by one or more public authorities.
- (4) The following are examples of factors to be taken into account in determining whether a person operates on a commercial basis –
- (a) whether the person operates on the basis that its losses would be borne, or its continued operation secured, by a public authority (whether directly or indirectly);
  - (b) whether the person contracts on terms more favourable than those that might reasonably have been available to it had it not been associated with a public authority;
  - (c) whether the person operates on a market that is subject to fair and effective competition.
- (5) The following authorities are excluded authorities –
- (a) a devolved Scottish authority;
  - (b) the Security Service, the Secret Intelligence Service and the Government Communications Headquarters;
  - (c) the Advanced Research and Invention Agency;
  - (d) any person that is subject to public authority oversight –
    - (i) only by reference to a devolved Scottish authority, or

- (ii) by reference to an authority mentioned in paragraph (b) or (c).
- (6) An authority is a “devolved Scottish authority” if its functions are exercisable only in or as regards Scotland, and –
  - (a) none of its functions relate to reserved matters, or
  - (b) some of its functions relate to reserved matters and some do not.
- (7) A contracting authority that is a public undertaking or private utility is to be treated as a devolved Scottish authority for the purposes of this Act if it operates only in or as regards Scotland, and –
  - (a) none of its activities relate to reserved matters, or
  - (b) some of its activities relate to reserved matters and some do not.
- (8) In this Act, a reference to a devolved Scottish authority includes a reference to an authority that is to be treated as a devolved Scottish authority for the purposes of this Act.
- (9) In this Act, a reference to a public authority includes a reference to the Common Council of the City of London.
- (10) For the purposes of this Act, a person that operates on a commercial basis but is, as a controlled person, awarded an exempted contract by a public authority in reliance on paragraph 2 of Schedule 2 (vertical arrangements) is to be treated as a public authority in relation to any relevant sub-contract.
- (11) This Act does not apply to His Majesty acting in his private capacity.
- (12) In this section –
  - “relevant sub-contract” means a contract substantially for the purpose of performing (or contributing to the performance of) all or any part of the exempted contract;
  - “reserved matters” has the same meaning as in the Scotland Act 1998.

### **3 Public contracts**

- (1) A “public contract” is a contract of a kind specified in subsection (2), (3) or (4).
- (2) Any contract for the supply, for pecuniary interest, of goods, services or works to a contracting authority which –
  - (a) has an estimated value of not less than the threshold amount for the type of contract, and
  - (b) is not an exempted contract.
- (3) Any framework which –
  - (a) has an estimated value of not less than the threshold amount for the type of contract, and
  - (b) is not an exempted contract.
- (4) Any concession contract which –
  - (a) has an estimated value of not less than the threshold amount for the type of contract, and
  - (b) is not an exempted contract.
- (5) Schedule 1 sets out the threshold amounts.
- (6) Schedule 2 sets out contracts that are exempted contracts for the purposes of this Act.

**4 Valuation of contracts**

- (1) For the purposes of this Act, the “estimated value” of a contract is its value for the time being estimated by a contracting authority.
- (2) A contracting authority that estimates the value of a contract must do so in accordance with Schedule 3.
- (3) A contracting authority must not exercise a discretion in connection with estimating the value of a contract with a view to securing that any requirement of this Act does not apply in relation to the contract.

**5 Mixed procurement: above and below threshold**

- (1) Subsection (3) applies if, on award of a below-threshold contract other than a framework, a contracting authority considers that –
  - (a) certain of the goods, services or works to be supplied under the contract could reasonably be supplied under a separate contract, and
  - (b) that contract would have an estimated value of not less than the threshold amount for a contract of its type.
- (2) Subsection (3) applies if, on award of a below-threshold contract that is a framework, a contracting authority considers that –
  - (a) certain of the goods, services or works to be supplied under contracts awarded in accordance with the framework could reasonably be supplied under a contract not awarded in accordance with the framework, and
  - (b) that contract would have an estimated value of not less than the threshold amount for a contract of its type.
- (3) The contract is to be treated as having an estimated value of not less than the threshold amount for the type of contract.
- (4) In considering whether goods, services or works could reasonably be supplied under a separate contract, a contracting authority may, for example, have regard to the practical and financial consequences of awarding more than one contract.
- (5) In this Act “below-threshold contract” means –
  - (a) a contract for the supply, for pecuniary interest, of goods, services or works to a contracting authority,
  - (b) a framework, or
  - (c) a concession contract,that has an estimated value of less than the threshold amount for the type of contract.
- (6) This section does not apply to a contract awarded in accordance with a framework.

**6 Utilities contracts**

- (1) In this Act, “utilities contract” means a contract for the supply of goods, services or works wholly or mainly for the purpose of a utility activity.
- (2) In this Act, “utility activity” means an activity that –
  - (a) is specified in Part 1 of Schedule 4,

- (b) is not specified in Part 2 of Schedule 4,
  - (c) is not carried out wholly outside the United Kingdom, and
  - (d) in the case of an activity carried out by a person that is not a public authority or public undertaking, is carried out pursuant to a special or exclusive right.
- (3) A person carries out a utility activity pursuant to a “special or exclusive right” if –
- (a) the person (whether alone or with others) has been granted a right to carry out the activity pursuant to any statutory, regulatory or administrative provision, and
  - (b) that provision also substantially limits the ability of persons not granted the right to carry on the activity.
- (4) But a right to carry out a utility activity is not a “special or exclusive right” if it is granted –
- (a) following award under section 19 (competitive award), or
  - (b) otherwise pursuant to a procedure in which –
    - (i) the opportunity to be granted the right was publicised widely enough to avoid an artificial narrowing of competition, and
    - (ii) the grant of the right was based on criteria that did not favour or disadvantage certain persons.
- (5) An appropriate authority may by regulations amend Part 2 of Schedule 4 for the purpose of –
- (a) specifying an activity, or
  - (b) removing an activity.
- (6) Regulations under subsection (5) may not specify an activity unless the authority is satisfied that –
- (a) the activity is carried out on a market that is subject to fair and effective competition, and
  - (b) entry to that market is unrestricted.
- (7) In this Act, a reference to a utilities contract includes a reference to a framework for the future award of contracts for the supply of goods, services or works wholly or mainly for the purpose of a utility activity.

## **7 Defence and security contracts**

- (1) In this Act, “defence and security contract” means a contract for the supply of –
- (a) military equipment;
  - (b) sensitive equipment;
  - (c) goods, services or works necessary for the development, production, maintenance or decommissioning of military equipment or sensitive equipment;
  - (d) logistics services relating to military equipment or sensitive equipment;
  - (e) goods, services or works for wholly military purposes;
  - (f) sensitive services or sensitive works;
  - (g) goods, services or works that are otherwise relevant to the operational capability, effectiveness, readiness for action, safety or security of the armed forces.

- 
- (2) In this Act, a reference to a defence and security contract includes a reference to a framework for the future award of contracts for the supply of goods, services or works of a kind described in subsection (1)(a) to (g).
- (3) A contract that is a defence and security contract only by virtue of subsection (1)(g) is not to be treated as a defence and security contract for the purposes of Schedule 1 (thresholds for application of this Act).
- (4) In this Act, “defence authority contract” means a defence and security contract awarded by a defence authority.
- (5) A “defence authority” is a contracting authority specified in regulations made by a Minister of the Crown.
- (6) A Minister of the Crown may only specify a contracting authority for the purposes of subsection (5) if the Minister considers that the authority exercises its functions wholly or mainly for the purposes of defence or national security.
- (7) In this section –
- “classified information” means information or other material which –
    - (a) in the interests of national security, requires protection from unauthorised access, distribution, or destruction, or from other compromise, and
    - (b) on the basis of those interests, has that protection under the law of any part of the United Kingdom;
  - “decommissioning”, in relation to equipment, includes –
    - (a) withdrawal of equipment from use;
    - (b) disposal or destruction of equipment;
  - “development”, in relation to equipment, includes –
    - (a) research allowing for the development of equipment, and
    - (b) development of industrial processes allowing for the production of equipment;
  - “equipment” includes any part, component or subassembly of equipment;
  - “maintenance”, in relation to equipment, includes –
    - (a) repair of equipment;
    - (b) modernisation of equipment;
    - (c) modifications to equipment;
    - (d) installing equipment, including after its transport to a new location;
    - (e) testing equipment;
  - “military equipment” means equipment specifically designed or adapted for military purposes, including –
    - (a) arms, munitions or war material, and
    - (b) any of the military goods, software and technology the export or transfer of which is controlled by virtue of Schedule 2 to the Export Control Order 2008 (S.I. 2008/3231), as amended from time to time;
  - “sensitive equipment” means equipment for use for security purposes where –
    - (a) the use or supply of the equipment may involve dealing with classified information,

- (b) the supply of the equipment requires access to a physical site or to other equipment as a result of which classified information is likely to be accessible to the supplier, or
  - (c) the equipment contains classified information;
- “sensitive services” means services performed for security purposes where performing the services –
- (a) involves dealing with classified information, or
  - (b) requires access to a physical site or to equipment as a result of which sensitive equipment or classified information is likely to be accessible to the supplier,
- and includes the training of personnel to use sensitive equipment;
- “sensitive works” means works undertaken for security purposes, where undertaking the works –
- (a) involves dealing with classified information, or
  - (b) requires access to a physical site or to equipment as a result of which sensitive equipment or classified information is likely to be accessible to the supplier;
- “supply”, in relation to equipment, other goods, services or works, includes the development of the equipment, other goods, services or works for the purposes of their supply to the contracting authority;
- “wholly military purposes” include –
- (a) the transportation of military personnel or military equipment;
  - (b) the training of military personnel;
  - (c) the training of other personnel to use military equipment;
  - (d) the construction of military facilities, including military airfields, military storage facilities or facilities for the maintenance of military equipment.

## 8 Concession contracts

- (1) In this Act, “concession contract” means a contract for the supply, for pecuniary interest, of works or services to a contracting authority where –
  - (a) at least part of the consideration for that supply is a right for the supplier to exploit the works or services, and
  - (b) under the contract the supplier is exposed to a real operating risk.
- (2) An “operating risk” is a risk that the supplier will not be able to recover its costs in connection with the supply and operation of the works or services, where the factors giving rise to that risk –
  - (a) are reasonably foreseeable at the time of award, and
  - (b) arise from matters outside the control of the contracting authority and the supplier.

## 9 Light touch contracts

- (1) In this Act, “light touch contract” means a contract wholly or mainly for the supply of services of a kind specified in regulations under subsection (2).
- (2) An appropriate authority may by regulations specify services for the purposes of the definition in subsection (1).
- (3) But an appropriate authority may specify services only if, having had regard to the nature of those services, the authority considers that it is appropriate for

the award of public contracts for their supply to be exempted from the provisions of this Act that do not apply to light touch contracts.

- (4) In having regard to the nature of services for that purpose, the appropriate authority must, in particular, consider the extent to which –
  - (a) suppliers from outside the United Kingdom are likely to want to compete for contracts for the supply of the services;
  - (b) the services are supplied for the benefit of individuals (for example, health or social care services) or the community generally;
  - (c) proximity between the supplier and the recipient of the services is necessary or expedient for the effective and efficient supply of the services.
- (5) In this Act, a reference to a light touch contract includes a reference to a framework for the future award of contracts wholly or mainly for the supply of services of a kind specified in regulations under subsection (2).

## 10 Mixed procurement: special regime contracts

- (1) Subsection (3) applies if, on award of a special regime contract other than a framework, a contracting authority considers that –
  - (a) certain of the goods, services or works to be supplied under the contract could reasonably be supplied under a separate contract, and
  - (b) that contract –
    - (i) would not be a special regime contract of the same kind (or at all), and
    - (ii) would have an estimated value of not less than the threshold amount for the type of contract.
- (2) Subsection (3) applies if, on award of a special regime contract that is a framework, a contracting authority considers that –
  - (a) certain of the goods, services or works to be supplied under contracts awarded in accordance with the framework could reasonably be supplied under a contract not awarded in accordance with the framework, and
  - (b) that contract –
    - (i) would not be a special regime contract of the same kind (or at all), and
    - (ii) would have an estimated value of not less than the threshold amount for the type of contract.
- (3) The contract is not to be treated as a special regime contract for the purposes of this Act.
- (4) Subsection (3) does not apply to prevent the contract from being treated as a defence and security contract if the contracting authority has good reasons for not awarding separate contracts.
- (5) In considering whether goods, services or works could reasonably be supplied under a separate contract, a contracting authority may, for example, have regard to the practical and financial consequences of awarding more than one contract.
- (6) A “special regime contract” means –
  - (a) a concession contract,



- (b) a defence and security contract,
- (c) a light touch contract, or
- (d) a utilities contract,

and a reference to a special regime contract of a particular kind is a reference to a special regime contract of a kind described in paragraph (a), (b), (c) or (d).

- (7) This section does not apply for the purpose of determining whether a contract is a public contract.
- (8) This section does not apply to a contract awarded in accordance with a framework.

## PART 2

### PRINCIPLES AND OBJECTIVES

#### 11 Covered procurement only in accordance with this Act

- (1) A contracting authority may not carry out a covered procurement except in accordance with this Act.
- (2) Accordingly, a contracting authority may not enter into a public contract unless it is awarded in accordance with—
  - (a) section 19 (competitive award);
  - (b) section 41 (direct award in special cases);
  - (c) section 43 (direct award after switching procedures);
  - (d) section 45 (award under frameworks).

#### 12 Covered procurement: objectives

- (1) In carrying out a covered procurement, a contracting authority must have regard to the importance of—
  - (a) delivering value for money;
  - (b) maximising public benefit;
  - (c) sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions;
  - (d) acting, and being seen to act, with integrity.
- (2) In carrying out a covered procurement, a contracting authority must treat suppliers the same unless a difference between the suppliers justifies different treatment.
- (3) If a contracting authority considers that different treatment is justified in a particular case, the authority must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage.
- (4) In carrying out a covered procurement, a contracting authority must—
  - (a) have regard to the fact that small and medium-sized enterprises may face particular barriers to participation, and
  - (b) consider whether such barriers can be removed or reduced.

**13 The national procurement policy statement**

- (1) A Minister of the Crown may publish a statement setting out the Government’s strategic priorities in relation to procurement.
- (2) In this section, “the national procurement policy statement” means the statement for the time being published under this section.
- (3) Before publishing the national procurement policy statement, a Minister of the Crown must –
  - (a) carry out such consultation as the Minister considers appropriate,
  - (b) make any changes to the statement that appear to the Minister to be necessary in view of responses to the consultation, and
  - (c) lay the statement before Parliament.
- (4) A Minister of the Crown must withdraw the national procurement policy statement if, before the end of the 40-day period, either House of Parliament resolves not to approve it.
- (5) “The 40-day period” is the period of 40 days beginning with the day on which the statement is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the days on which it is laid).
- (6) When calculating the 40-day period, ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (7) A Minister of the Crown must keep the national procurement policy statement under review.
- (8) The national procurement policy statement may be amended or replaced by a subsequent statement, and this section applies in relation to any amended or replacement statement as it applies in relation to the original statement.
- (9) A contracting authority must have regard to the national procurement policy statement.
- (10) Subsection (9) does not apply –
  - (a) to private utilities;
  - (b) in relation to the award of a contract –
    - (i) in accordance with a framework, or
    - (ii) by reference to suppliers’ membership of a dynamic market;
  - (c) in relation to procurement under a devolved Welsh procurement arrangement or transferred Northern Ireland procurement arrangement;
  - (d) to a devolved Welsh authority or transferred Northern Ireland authority, except in relation to procurement under a reserved procurement arrangement (but not an arrangement of a kind mentioned in paragraph (b)).

**14 The Wales procurement policy statement**

- (1) The Welsh Ministers may publish a statement setting out the Welsh Government’s strategic priorities in relation to procurement.
- (2) In this section, “the Wales procurement policy statement” means the statement for the time being published under this section.

- (3) Before publishing the Wales procurement policy statement, the Welsh Ministers must –
  - (a) carry out such consultation as the Welsh Ministers consider appropriate,
  - (b) make any changes to the statement that appear to the Welsh Ministers to be necessary in view of responses to the consultation, and
  - (c) lay the statement before the Senedd.
- (4) The Welsh Ministers must withdraw the Wales procurement policy statement if, before the end of the period of 40 days beginning with the day on which the statement is laid before the Senedd, the Senedd resolves that the statement be annulled.
- (5) When calculating the period of 40 days for the purposes of subsection (4), ignore any period during which the Senedd is dissolved or in recess for more than four days.
- (6) The Welsh Ministers must keep the Wales procurement policy statement under review.
- (7) The Wales procurement policy statement may be amended or replaced by a subsequent statement, and this section applies in relation to any amended or replacement statement as it applies in relation to the original statement.
- (8) The following contracting authorities must have regard to the Wales procurement policy statement –
  - (a) a devolved Welsh authority, except in relation to procurement under a reserved procurement arrangement or transferred Northern Ireland procurement arrangement;
  - (b) a contracting authority other than a devolved Welsh authority in relation to procurement under a devolved Welsh procurement arrangement.
- (9) But subsection (8) does not apply –
  - (a) to private utilities;
  - (b) in relation to the award of a contract –
    - (i) in accordance with a framework, or
    - (ii) by reference to suppliers’ membership of a dynamic market.
- (10) In this section “the Senedd” means Senedd Cymru.

### PART 3

#### AWARD OF PUBLIC CONTRACTS AND PROCEDURES

#### CHAPTER 1

#### PRELIMINARY STEPS

### 15 Planned procurement notices

- (1) Before publishing a tender notice, a contracting authority may publish a planned procurement notice.
- (2) A “planned procurement notice” means a notice setting out –
  - (a) that the contracting authority intends to publish a tender notice, and

- (b) any other information specified in regulations under section 95.
- (3) A “qualifying planned procurement notice” means a planned procurement notice published at least 40 days but not more than 12 months before the day on which the tender notice is published.
- (4) See section 54(4) for provision for reduced tendering periods in cases where a qualifying planned procurement notice has been published.

## **16 Preliminary market engagement**

- (1) Before publishing a tender notice in respect of a public contract, a contracting authority may engage with suppliers and other persons for the purpose of –
  - (a) developing the authority’s requirements and approach to the procurement;
  - (b) designing a procedure, conditions of participation or award criteria;
  - (c) preparing the tender notice and associated tender documents;
  - (d) identifying suppliers that may be able to supply the goods, services or works required;
  - (e) identifying likely contractual terms;
  - (f) building capacity among suppliers in relation to the contract being awarded.
- (2) Engagement under subsection (1) is called “preliminary market engagement”.
- (3) In carrying out preliminary market engagement, a contracting authority must take steps to ensure that –
  - (a) suppliers participating in the preliminary market engagement are not put at an unfair advantage, and
  - (b) competition in relation to the award of the public contract is not otherwise distorted.
- (4) Subsection (5) applies if a contracting authority considers that –
  - (a) a supplier’s participation in preliminary market engagement has put the supplier at an unfair advantage in relation to the award of a public contract, and
  - (b) the advantage cannot be avoided.
- (5) The contracting authority must in relation to the award –
  - (a) treat the supplier as an excluded supplier for the purpose of –
    - (i) assessing tenders under section 19 (competitive award), or
    - (ii) awarding a contract under section 41 or 43 (direct award), and
  - (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.

## **17 Preliminary market engagement notices**

- (1) If a contracting authority carries out preliminary market engagement, the authority must –
  - (a) publish a preliminary market engagement notice before publishing a tender notice, or
  - (b) provide reasons for not doing so in the tender notice.
- (2) A “preliminary market engagement notice” means a notice setting out –

- (a) that the contracting authority intends to conduct, or has conducted, preliminary market engagement, and
- (b) any other information specified in regulations under section 95.

## **18 Duty to consider lots**

- (1) Before publishing a tender notice in respect of a public contract, a contracting authority must consider –
  - (a) whether the goods, services or works to be supplied under the contract could reasonably be supplied under more than one contract, and
  - (b) whether such contracts could appropriately be awarded by reference to lots.
- (2) If the contracting authority considers that the goods, services or works could reasonably be supplied under more than one contract and such contracts could appropriately be awarded by reference to lots, the authority must –
  - (a) arrange for the award of the contract or contracts by reference to lots, or
  - (b) provide reasons for not doing so.

## **CHAPTER 2**

### **COMPETITIVE AWARD**

#### *Terms of a procurement*

## **19 Award of public contracts following a competitive tendering procedure**

- (1) A contracting authority may award a public contract to the supplier that submits the most advantageous tender in a competitive tendering procedure.
- (2) The “most advantageous tender” is the tender that the contracting authority considers –
  - (a) satisfies the contracting authority’s requirements, and
  - (b) best satisfies the award criteria when assessed by reference to –
    - (i) the assessment methodology under section 23(3)(a), and
    - (ii) if there is more than one criterion, the relative importance of the criteria under section 23(3)(b).
- (3) In assessing tenders for the purposes of this section a contracting authority –
  - (a) must disregard any tender from a supplier that does not satisfy the conditions of participation;
  - (b) may disregard any tender from a supplier that –
    - (i) is not a United Kingdom supplier or treaty state supplier, or
    - (ii) intends to sub-contract the performance of all or part of the contract to a supplier that is not a United Kingdom supplier or treaty state supplier;
  - (c) may disregard any tender that offers a price that the contracting authority considers to be abnormally low for performance of the contract;
  - (d) may disregard any tender which breaches a procedural requirement set out in the tender notice or associated tender documents.

- (4) Before disregarding a tender under subsection (3)(c) (abnormally low price), a contracting authority must—
  - (a) notify the supplier that the authority considers the price to be abnormally low, and
  - (b) give the supplier reasonable opportunity to demonstrate that it will be able to perform the contract for the price offered.
- (5) If the supplier demonstrates to the contracting authority's satisfaction that it will be able to perform the contract for the price offered, the authority may not disregard the tender under subsection (3)(c) (abnormally low price).
- (6) The reference to a tender breaching a procedural requirement includes a reference to a supplier breaching a procedural requirement in relation to the tender.
- (7) In this Act, a reference to a contracting authority's requirements is a reference to requirements described in the tender notice or associated tender documents (see section 21(5) and (6)).
- (8) See sections 26 and 28 for provision about disregarding tenders from suppliers that are excluded or excludable suppliers or that are sub-contracting to excluded or excludable suppliers.
- (9) See sections 32 and 33 for provision about reserving public contracts to supported employment providers and qualifying public service mutuals.
- (10) See section 34 for provision about disregarding tenders from suppliers that are not members of a dynamic market.
- (11) In this section "procedural requirement" includes a requirement that a supplier provide information.

## **20 Competitive tendering procedures**

- (1) Before awarding a public contract under section 19, a contracting authority must carry out a competitive tendering procedure in accordance with a tender notice and any associated tender documents.
- (2) A "competitive tendering procedure" is—
  - (a) a single-stage tendering procedure without a restriction on who can submit tenders (an "open procedure"), or
  - (b) such other competitive tendering procedure as the contracting authority considers appropriate for the purpose of awarding the public contract (a "competitive flexible procedure").
- (3) A contracting authority must ensure that the procedure is a proportionate means of awarding the public contract, having regard to the nature, complexity and cost of the contract.
- (4) A competitive flexible procedure—
  - (a) may limit the number of participating suppliers, generally or in respect of particular tendering rounds or other selection processes;
  - (b) may provide for the refinement of award criteria in accordance with section 24;
  - (c) may not permit the participation of suppliers that did not submit a tender in the first round of tendering or that were excluded following an earlier round.

- (5) A competitive flexible procedure may provide for the exclusion of suppliers –
  - (a) by reference to conditions of participation (see section 22);
  - (b) by reference to an intermediate assessment of tenders;
  - (c) that are not United Kingdom suppliers or treaty state suppliers;
  - (d) that intend to sub-contract the performance of all or part of the contract to a supplier that is not a United Kingdom supplier or treaty state supplier.
- (6) The reference in subsection (5)(b) to an intermediate assessment of tenders is a reference to an assessment of which tenders –
  - (a) satisfy the contracting authority’s requirements, and
  - (b) best satisfy the award criteria at the point of exclusion, when assessed by reference to –
    - (i) the assessment methodology under section 23(3)(a), and
    - (ii) if there is more than one criterion, the relative importance of the criteria under section 23(3)(b),in each case, at the point of assessment.
- (7) A competitive tendering procedure may, if a contract is being awarded by reference to lots, limit the number of lots in respect of which any one supplier can submit a tender.
- (8) See sections 27, 28 and 30 for provision about excluding suppliers that are excluded or excludable suppliers, that are sub-contracting to excluded or excludable suppliers or for improper behaviour.
- (9) See sections 32 and 33 for provision about reserving public contracts to sheltered employment providers and qualifying mutual societies.
- (10) See section 34 for provision about excluding suppliers that are not members of a dynamic market.

## **21 Tender notices and associated tender documents**

- (1) A contracting authority must publish a tender notice for the purpose of –
  - (a) inviting suppliers to submit a tender as part of an open procedure, or
  - (b) in the case of a competitive flexible procedure –
    - (i) inviting suppliers to submit a request to participate in the procedure, or
    - (ii) where no such invitation is made, inviting suppliers to submit their first, or only, tender as part of the procedure.
- (2) A “tender notice” means a notice setting out –
  - (a) that a contracting authority intends to award a public contract under section 19, and
  - (b) any other information specified in regulations under section 95.
- (3) A contracting authority must provide any associated tender documents in accordance with the tender notice.
- (4) “Associated tender document” means, in relation to a tender notice, a document setting out information specified in regulations under section 95 that supplements that set out in the tender notice.

- (5) A contracting authority may not invite suppliers to submit a tender as part of a competitive tendering procedure unless it is satisfied that the tender notice or associated tender documents contain—
  - (a) information sufficient to allow suppliers to prepare such a tender, and
  - (b) in particular, details of the goods, services or works required by the contracting authority.
- (6) In detailing its requirements, a contracting authority must be satisfied that they—
  - (a) are sufficiently clear and specific, and
  - (b) do not break the rules on technical specifications in section 56.
- (7) See section 40 for an exception to the duty in subsection (1) for contracts awarded by reference to suppliers' membership of certain utilities dynamic markets.

## **22 Conditions of participation**

- (1) A contracting authority may set conditions of participation in relation to the award of a public contract under section 19 only if it is satisfied that the conditions are a proportionate means of ensuring that suppliers have—
  - (a) the legal and financial capacity to perform the contract, or
  - (b) the technical ability to perform the contract.
- (2) A “condition of participation” is a condition that a supplier must satisfy if the supplier is to be awarded the public contract.
- (3) A condition set under subsection (1)(a) may not—
  - (a) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;
  - (b) require insurance relating to the performance of the contract to be in place before the award of the contract.
- (4) A condition set under subsection (1)(b) may relate to suppliers' qualifications, experience or technical ability, but may not—
  - (a) require suppliers to have been awarded a contract by a particular contracting authority,
  - (b) break the rules on technical specifications in section 56, or
  - (c) require particular qualifications without allowing for their equivalents.
- (5) When considering whether a condition is proportionate for the purposes of subsection (1), a contracting authority must have regard to the nature, complexity and cost of the public contract.
- (6) A condition of participation may require the provision of evidence that is verifiable by a person other than the supplier.
- (7) If a supplier does not satisfy a condition of participation, the contracting authority may exclude the supplier from participating in, or progressing as part of, the competitive tendering procedure.
- (8) A supplier is to be treated as satisfying a condition of participation to the extent that a supplier associated with the supplier satisfies the condition.



- (9) For the purposes of this section, a supplier is associated with another supplier if –
- (a) the suppliers are submitting a tender together, or
  - (b) the contracting authority is satisfied that the suppliers will enter into legally binding arrangements to the effect that –
    - (i) the supplier will sub-contract the performance of all or part of the contract to the other, or
    - (ii) the other supplier will guarantee the performance of all or part of the contract by the supplier.

## 23 Award criteria

- (1) In this Act, “award criteria” means criteria set in accordance with this section against which tenders may be assessed for the purpose of awarding a public contract under section 19 (award following competitive tendering procedure).
- (2) In setting award criteria, a contracting authority must be satisfied that they –
- (a) relate to the subject-matter of the contract,
  - (b) are sufficiently clear, measurable and specific,
  - (c) do not break the rules on technical specifications in section 56, and
  - (d) are a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.
- (3) In setting award criteria, a contracting authority must –
- (a) describe how tenders are to be assessed by reference to them and, in particular, specify whether failure to meet one or more criteria would disqualify a tender (the “assessment methodology”), and
  - (b) if there is more than one criterion, indicate their relative importance by –
    - (i) weighting each as representing a percentage of total importance,
    - (ii) ranking them in order of importance, or
    - (iii) describing it in another way.
- (4) In setting award criteria for the assessment of tenders by reference to lots, a contracting authority –
- (a) may limit the number of lots that may be awarded to any one supplier, and
  - (b) in doing so, must provide an objective mechanism for supplier selection in circumstances where a supplier would otherwise exceed the limit.
- (5) In subsection (2), the reference to the subject-matter of a contract includes a reference to –
- (a) the goods, services or works to be supplied under the contract, including in respect of any aspect of their production, trading or other stage in their life-cycle;
  - (b) how or when those goods, services or works are to be supplied;
  - (c) the qualifications, experience, ability, management or organisation of staff where those factors are likely to make a material difference to the quality of goods, services or works being supplied;
  - (d) price, other costs or value for money in all the circumstances.

- (6) In the case of a light touch contract, the reference to the subject-matter of the contract also includes a reference to –
- (a) the views of an individual for whose benefit the services are to be supplied (a “service recipient”), or of a person providing care to a service recipient, in relation to –
    - (i) who should supply the services, and
    - (ii) how and when they should be supplied;
  - (b) the different needs of different service recipients;
  - (c) the importance of proximity between the supplier and service recipients for the effective and efficient supply of the services.

## **24 Refining award criteria**

- (1) A contracting authority may refine an award criterion as part of a competitive flexible procedure if –
- (a) the tender notice or associated tender documents provide for the refinement of the criterion, and
  - (b) the authority is yet to invite suppliers to submit tenders to be assessed under section 19 (award following competitive tendering procedure).
- (2) A contracting authority may, in consequence of refining an award criterion under subsection (1), refine the indication of the relative importance of the award criteria under section 23(3)(b).
- (3) A contracting authority may not make a refinement under this section if it would result in award criteria that would, had the refinement been made earlier, have allowed one or more suppliers that did not progress beyond an earlier round or selection process to have done so.
- (4) A contracting authority must modify and republish or provide again the tender notice and any associated tender documents affected by refinements under this section.

## **25 Sub-contracting specifications**

- (1) Subsection (2) applies if a contracting authority considers that the authority could award a contract for the supply of certain goods, services or works to a particular supplier under section 41 (direct award in special cases).
- (2) In awarding a contract that is wholly or partly for the supply of those goods, services or works under section 19 (award following competitive tendering procedure), the contracting authority may require that a supplier sub-contracts the supply of those goods, services or works to the particular supplier.

### *Exclusions and modifications*

## **26 Excluding suppliers from a competitive award**

- (1) In assessing tenders under section 19, a contracting authority must disregard any tender from a supplier that is an excluded supplier.
- (2) Before assessing which tender best satisfies the award criteria for the purposes of section 19, a contracting authority –
- (a) must consider whether a supplier is an excludable supplier, and

- (b) may disregard any tender from an excludable supplier.
- (3) If the supplier is an excluded or excludable supplier only by virtue of an associated person being an excluded or excludable supplier, the contracting authority must, before disregarding a tender –
  - (a) notify the supplier of its intention to disregard, and
  - (b) give the supplier reasonable opportunity to replace the associated person.
- (4) In this Act, “associated person” means a person that the supplier is relying on in order to satisfy the conditions of participation (see section 22(8)), but not a person who is to act as guarantor as described in section 22(9).

## **27 Excluding suppliers from a competitive flexible procedure**

- (1) Before permitting a supplier to participate in a competitive flexible procedure, a contracting authority must determine whether the supplier is –
  - (a) an excluded supplier, or
  - (b) an excludable supplier.
- (2) The contracting authority must exclude an excluded supplier from participating in, or progressing as part of, the competitive flexible procedure.
- (3) The contracting authority may exclude an excludable supplier from participating in, or progressing as part of, the competitive flexible procedure.
- (4) Before excluding a supplier that is an excluded supplier or excludable supplier only by virtue of an associated person, a contracting authority must –
  - (a) notify the supplier of its intention, and
  - (b) provide the supplier with reasonable opportunity to replace the associated person.
- (5) In this section, a reference to a supplier participating in a competitive flexible procedure is a reference to a supplier participating beyond the initial submission of tenders or requests to participate.

## **28 Excluding suppliers by reference to sub-contractors**

- (1) A contracting authority must as part of a competitive tendering procedure –
  - (a) request information about whether a supplier intends to sub-contract the performance of all or part of the public contract, and
  - (b) seek to determine whether any intended sub-contractor is on the debarment list.
- (2) A contracting authority may, as part of a competitive tendering procedure, request information for the purpose of determining whether any intended sub-contractor is an excluded or excludable supplier.
- (3) If, after requesting information under subsection (1) or (2), a contracting authority considers that a supplier intends to sub-contract to a supplier that is an excluded supplier, the contracting authority must –
  - (a) treat the supplier as an excluded supplier for the purpose of assessing tenders under section 19, and
  - (b) exclude the supplier from participating in, or progressing as part of, the competitive tendering procedure.

- (4) If, after requesting information under subsection (1) or (2), a contracting authority considers that a supplier intends to sub-contract to a supplier that is an excludable supplier, the contracting authority –
  - (a) must treat the supplier as an excludable supplier for the purpose of assessing tenders under section 19, and
  - (b) may exclude the supplier from participating in, or progressing as part of, the competitive tendering procedure.
- (5) Before disregarding a tender or excluding a supplier under subsection (3) or (4), a contracting authority must –
  - (a) notify the supplier of its intention, and
  - (b) give the supplier reasonable opportunity to find an alternative supplier with which to sub-contract.
- (6) In this section, a reference to a supplier participating in a competitive tendering procedure is a reference to a supplier participating beyond the initial submission of tenders or requests to participate.
- (7) Subsections (3) and (4) do not apply if the intended sub-contractor is an associated person.

## **29 Excluding a supplier that is a threat to national security**

- (1) This section applies if a relevant contracting authority intends to disregard a tender under section 26 or 28 or exclude a supplier under section 27 or 28 on the basis of the discretionary exclusion ground in paragraph 14 of Schedule 7 (threat to national security).
- (2) The contracting authority may not disregard the tender, exclude the supplier or notify the supplier of its intention unless –
  - (a) the authority has notified a Minister of the Crown of its intention, and
  - (b) the Minister of the Crown considers that –
    - (i) the supplier or an intended sub-contractor is an excludable supplier by reference to paragraph 14 of Schedule 7, and
    - (ii) the tender should be disregarded or supplier excluded.
- (3) The reference in subsection (2) to a contracting authority notifying a supplier of its intention is a reference to notification in accordance with section 26(3), 27(4) or 28(5).
- (4) In this section, a “relevant contracting authority” means a contracting authority other than –
  - (a) a Minister of the Crown or a government department,
  - (b) the Corporate Officer of the House of Commons, or
  - (c) the Corporate Officer of the House of Lords.

## **30 Excluding suppliers for improper behaviour**

- (1) Subsection (2) applies if a contracting authority determines that –
  - (a) a supplier has acted improperly in relation to the award of a public contract,
  - (b) in consequence, the supplier is put at an unfair advantage in relation to the award, and

- (c) the unfair advantage cannot be avoided other than by excluding the supplier.
- (2) The contracting authority must in relation to the award –
  - (a) treat the supplier as an excluded supplier for the purpose of assessing tenders under section 19, and
  - (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.
- (3) Before making a determination of the kind described in subsection (1), a contracting authority must give the supplier reasonable opportunity to –
  - (a) make representations, and
  - (b) provide relevant evidence.
- (4) In subsection (1), the reference to a supplier acting improperly is reference to a supplier –
  - (a) failing to provide information requested by the contracting authority,
  - (b) providing information that is incomplete, inaccurate or misleading,
  - (c) accessing confidential information, or
  - (d) unduly influencing the contracting authority’s decision-making.
- (5) Subsection (6) applies if –
  - (a) a contracting authority has, in relation to the award of a public contract, requested –
    - (i) information about a supplier’s connected persons or associated persons for the purpose of determining whether the supplier is an excluded or excludable supplier, or
    - (ii) other information under section 28(2) (excluding suppliers by reference to sub-contractors), and
  - (b) the supplier has –
    - (i) failed to provide the information requested, or
    - (ii) provided information that is incomplete, inaccurate or misleading.
- (6) The contracting authority must in relation to the award –
  - (a) treat the supplier as an excluded supplier for the purpose of assessing tenders under section 19, and
  - (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.

### **31 Modifying a section 19 procurement**

- (1) A contracting authority may modify the terms of a covered procurement before the following deadlines have passed –
  - (a) in the case of an open procedure, the deadline for submitting tenders;
  - (b) in the case of a competitive flexible procedure –
    - (i) the deadline for submitting a request to participate in the procedure, or
    - (ii) where there has been no invitation to submit such requests, the deadline for submitting a first or only tender.
- (2) In the case of a competitive flexible procedure, a contracting authority may also modify the terms of a covered procurement before the deadline for submitting

- a tender for assessment under section 19 (award following competitive tendering procedure) has passed if –
- (a) the modification is not substantial, or
  - (b) the procurement relates to the award of a light touch contract.
- (3) A modification is “substantial” if –
- (a) it would permit suppliers that are not participating suppliers to submit a tender, or
  - (b) the contracting authority considers that, had the modification been reflected in the tender notice or associated tender documents before a deadline referred to in subsection (1)(b) passed –
    - (i) one or more participating suppliers would not be a participating supplier, or
    - (ii) one or more suppliers that are not participating suppliers would be a participating supplier.
- (4) Whenever a contracting authority modifies the terms of a covered procurement, the authority must consider revising applicable tender deadlines and other time limits in accordance with section 54 (time limits).
- (5) If a contracting authority modifies the terms of a covered procurement under subsection (1), the authority must revise and republish or provide again the tender notice and any associated tender documents affected by the modifications or time limit revisions.
- (6) If a contracting authority modifies the terms of a covered procurement under subsection (2), the authority must notify each participating supplier.
- (7) In this section –
- “terms of a covered procurement” means anything set out in a tender notice or associated tender documents, including any requirements of a competitive tendering procedure, conditions of participation or award criteria;
- “participating supplier” means a supplier that –
- (a) has submitted a request to participate in, or a tender as part of, the competitive tendering procedure, and
  - (b) has not been excluded in accordance with the procedure or under this Act.
- (8) See section 43 for provision about switching to direct award.

*Reserving contracts to certain suppliers*

### **32 Reserving contracts to supported employment providers**

- (1) A competitive flexible procedure may provide for suppliers that are not supported employment providers to be excluded from participating in, or progressing as part of, the procedure.
- (2) Subsection (3) applies in relation to the award of a public contract under section 19 if the competitive flexible procedure provides for suppliers to be excluded as set out in subsection (1).
- (3) In assessing tenders under section 19, a contracting authority must disregard any tender from a supplier that is not a supported employment provider.

- (4) A “supported employment provider” means an organisation that operates wholly or partly for the purpose of providing employment, or employment-related support, to disabled or disadvantaged individuals where –
- (a) disabled or disadvantaged individuals represent at least 30 per cent of the workforce of the organisation,
  - (b) if a particular part of the organisation is to perform the contract, disabled or disadvantaged individuals represent at least 30 per cent of the workforce of that part of the organisation, or
  - (c) if more than one organisation is to perform the contract, disabled or disadvantaged individuals represent at least 30 per cent of the combined workforce of –
    - (i) those organisations,
    - (ii) where a particular part of each organisation is to perform the contract, those parts, or
    - (iii) where a combination of organisations and parts is to perform the contract, those organisations and parts.

### **33 Reserving contracts to public service mutuals**

- (1) This section applies in relation to the award of a public contract under section 19 if the contract –
- (a) is for reservable light touch services, and
  - (b) has a maximum term of five years or less.
- (2) A competitive flexible procedure may provide for suppliers that are not qualifying public service mutuals to be excluded from participating in, or progressing as part of, the procedure.
- (3) Subsection (4) applies in relation to the award of a public contract under section 19 if the competitive flexible procedure provides for suppliers to be excluded as set out in subsection (2).
- (4) In assessing tenders under section 19, a contracting authority must disregard any tender from a supplier that is not a qualifying public service mutual.
- (5) A “qualifying public service mutual” means a public service mutual that has not entered into a comparable contract during the period of three years ending with the day on which the contract referred to in subsection (1) is awarded.
- (6) A “public service mutual” means a body that –
- (a) operates for the purpose of delivering public services and mainly for the purpose of delivering one or more reservable light touch services,
  - (b) is run on a not-for-profit basis or provides for the distribution of profits only to members, and
  - (c) is under the management and control of its employees.
- (7) In this section –
- “comparable contract” means a contract that was –
    - (a) a contract for the same kind of services,
    - (b) awarded by the same contracting authority, and
    - (c) awarded in reliance on this section;
  - “reservable light touch services” means services of a kind specified in regulations under subsection (8).

- (8) An appropriate authority may by regulations specify services of a kind specified in regulations of the authority under section 9 (light touch contracts).

*Awarding contracts by reference to dynamic markets*

**34 Competitive award by reference to dynamic markets**

- (1) A competitive flexible procedure may provide for the following suppliers to be excluded from participating in, or progressing as part of, the procedure –
- (a) suppliers that are not members of an appropriate dynamic market, or
  - (b) suppliers that are not members of an appropriate part of an appropriate dynamic market.
- (2) Subsection (3) applies in relation to the award of a public contract under section 19 if the competitive flexible procedure provides for suppliers to be excluded as set out in subsection (1).
- (3) In assessing tenders under section 19, a contracting authority must disregard any tender from a supplier that is not a member of –
- (a) the appropriate dynamic market, or
  - (b) the appropriate part of the appropriate dynamic market.
- (4) A contracting authority must, before excluding suppliers or disregarding tenders under this section, consider any applications for membership of the market or part of the market from suppliers that have submitted a request to participate in the competitive flexible procedure, or submitted a tender as part of the competitive flexible procedure.
- (5) Subsection (4) does not apply in relation to an application for membership if, due to exceptional circumstances arising from the complexity of the particular procurement, a contracting authority is unable to consider the application before –
- (a) the deadline for submitting a request to participate in the procedure, or
  - (b) where there has been no invitation to submit such requests, the deadline for submitting a first or only tender.
- (6) A dynamic market or part of a dynamic market is “appropriate” for the purposes of this section if its terms permit the award of the contract by the contracting authority.
- (7) This section does not apply in relation to the award of a concession contract, unless the concession contract is also a utilities contract.
- (8) In this Act –
- “dynamic market” means arrangements established under section 35(1);
  - references to a contract being awarded by reference to suppliers’ membership of a dynamic market are references to a contract being awarded in reliance on this section;
  - references to suppliers’ membership of a dynamic market are references to suppliers’ participation in arrangements established under section 35(1).



### **35 Dynamic markets: establishment**

- (1) A contracting authority may establish arrangements for the purpose of a contracting authority awarding public contracts by reference to suppliers' participation in the arrangements.
- (2) In this Act a “utilities dynamic market” means a dynamic market established only for the purpose of the award of utilities contracts by utilities.
- (3) If arrangements established by any person comply with the requirements of this Act that apply in relation to a utilities dynamic market established by a private utility –
  - (a) the arrangements are to be treated for the purposes of this Act as a utilities dynamic market established by a private utility, and
  - (b) a utility may award public contracts that are utilities contracts by reference to suppliers' membership of the market.
- (4) In this Act, “utility” means –
  - (a) a public authority, or public undertaking, that carries out a utility activity;
  - (b) a private utility.
- (5) Documents establishing or modifying a dynamic market are not a contract for the purposes of this Act.

### **36 Dynamic markets: membership**

- (1) A contracting authority may set conditions for membership of a dynamic market or part of a dynamic market only if it is satisfied that the conditions are a proportionate means of ensuring that members –
  - (a) have the legal and financial capacity to perform contracts awarded by reference to membership of the market or the part of the market;
  - (b) have the technical ability to perform such contracts.
- (2) A condition set under subsection (1)(a) may not –
  - (a) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;
  - (b) require insurance relating to the performance of the contract to be in place before the award of the contract.
- (3) A condition set under subsection (1)(b) may relate to suppliers' qualifications, experience or technical ability, but may not –
  - (a) require suppliers to have been awarded a contract by a particular contracting authority,
  - (b) break the rules on technical specifications in section 56, or
  - (c) require particular qualifications without allowing for their equivalents.
- (4) When considering whether a condition is proportionate for the purposes of subsection (1) a contracting authority must have regard to the nature, complexity and cost of contracts to be awarded by reference to suppliers' membership of the market.
- (5) A condition for membership may require the provision of evidence that is verifiable by a person other than the supplier.

- (6) A contracting authority must –
- (a) accept applications for membership of a dynamic market or part of a dynamic market at any time during the term of the market;
  - (b) consider such applications within a reasonable period;
  - (c) admit to the market or the part of the market, as soon as reasonably practicable, any supplier that –
    - (i) is not an excluded or excludable supplier, and
    - (ii) satisfies the conditions for membership;
  - (d) consider whether to admit to the market or the part of the market any supplier that –
    - (i) is an excludable supplier, and
    - (ii) satisfies the conditions for membership;
  - (e) inform a supplier of the outcome of their application, together with reasons for the decision, as soon as reasonably practicable.
- (7) A contracting authority may not –
- (a) limit the number of suppliers that can be admitted to a dynamic market or part of a market, or
  - (b) modify the conditions for membership of a dynamic market or part of a market during the term of the market.

### **37 Dynamic markets: removing members from the market**

- (1) A contracting authority must remove a supplier from a dynamic market if the authority considers that the supplier is an excluded supplier under section 57(1)(b) (debarment by reference to mandatory exclusion ground).
- (2) A contracting authority may remove a supplier from a dynamic market if –
- (a) the authority considers that the supplier –
    - (i) is an excluded supplier under section 57(1)(a),
    - (ii) does not satisfy the conditions for membership, or
    - (iii) has, since becoming a member, become an excludable supplier, or
  - (b) the authority discovers that, on becoming a member, the supplier was an excludable supplier.
- (3) The reference to a supplier becoming an excludable supplier includes a reference to a supplier becoming an excludable supplier by virtue of a discretionary exclusion ground that –
- (a) did not apply before the supplier became a member, or
  - (b) applied before the supplier became a member by reference to different circumstances.
- (4) Before removing a supplier from a dynamic market, a contracting authority must inform the supplier of its decision to do so, together with reasons for the decision.

### **38 Dynamic markets: fees**

- (1) Documents establishing a dynamic market other than a utilities dynamic market may provide for the charging of fees to suppliers that are awarded a contract by reference to their membership of the market.

- (2) Fees charged by virtue of subsection (1) must be set as a fixed percentage to be applied to the estimated value of the awarded contract.
- (3) Documents establishing a utilities dynamic market may provide for the charging of fees to suppliers in connection with obtaining and maintaining membership of the market.

### **39 Dynamic market notices**

- (1) A notice under this section is called a “dynamic market notice”.
- (2) Before establishing a dynamic market, a contracting authority must publish a notice setting out –
  - (a) that the authority intends to establish a dynamic market, and
  - (b) any other information specified in regulations under section 95.
- (3) As soon as reasonably practicable after establishing a dynamic market, the contracting authority must publish a notice setting out –
  - (a) that the dynamic market has been established, and
  - (b) any other information specified in regulations under section 95.
- (4) As soon as reasonably practicable after modifying a dynamic market, the contracting authority must publish a notice setting out –
  - (a) the modifications made to the market, and
  - (b) any other information specified in regulations under section 95.
- (5) As soon as reasonably practicable after a dynamic market ceases to operate, the contracting authority that established the market must publish a notice setting out –
  - (a) that the dynamic market has ceased to operate, and
  - (b) any other information specified in regulations under section 95.
- (6) Subsection (5) does not apply to private utilities.

### **40 Qualifying utilities dynamic market notices: no duty to publish a tender notice**

- (1) The duty to publish a tender notice in section 21(1) does not apply in relation to the award of a contract by reference to suppliers’ membership of –
  - (a) a utilities dynamic market established by reference to a qualifying utilities dynamic market notice, or
  - (b) a part of such a market.
- (2) A contracting authority must instead provide a tender notice to members of the market, or part of the market, for the purposes set out in section 21(1).
- (3) A contracting authority may also provide a tender notice to suppliers that have applied for membership of the market, or part of the market, but have yet to be accepted or rejected.
- (4) The reference in section 21(5) to a tender notice or associated tender documents includes a reference to a qualifying utilities dynamic market notice.
- (5) Section 34(4) (duty to consider applications for membership) does not apply in relation to the award of a contract by reference to suppliers’ membership of –

- (a) a utilities dynamic market established by reference to a qualifying utilities dynamic market notice, or
  - (b) a part of such a market.
- (6) In this section, “a qualifying utilities dynamic market notice” means a dynamic market notice under section 39(2) (dynamic market notices) that –
  - (a) relates to the establishment of a utilities dynamic market, and
  - (b) sets out –
    - (i) that only members of the market will be notified of a future intention to award a contract by reference to suppliers’ membership of the market, and
    - (ii) any other information specified in regulations under section 95.
- (7) In this Act, a reference to publication of a tender notice includes a reference to provision of a tender notice under subsection (2) or (3).

### CHAPTER 3

#### DIRECT AWARD

#### **41 Direct award in special cases**

- (1) If a direct award justification applies, a contracting authority may award a public contract directly –
  - (a) to a supplier that is not an excluded supplier, or
  - (b) in accordance with subsection (2).
- (2) A contracting authority may award a contract to a supplier that is an excluded supplier if the contracting authority considers that there is an overriding public interest in awarding the contract to that supplier.
- (3) A contracting authority may carry out a selection process or take such other preliminary steps as it considers appropriate for the purpose of awarding a contract under this section.
- (4) Before awarding a contract to a supplier under this section, a contracting authority must consider whether the supplier is an excludable supplier.
- (5) There is an overriding public interest in awarding a public contract to an excluded supplier if –
  - (a) it is necessary in order to construct, maintain or operate critical national infrastructure,
  - (b) it is necessary in order to ensure the proper functioning of a sector on which the defence, security or economic stability of the United Kingdom relies,
  - (c) failure to do so would prejudice the conduct of military or security operations, or the effective operation of the armed forces or intelligence services, or
  - (d) the contract is being awarded by reference to paragraph 13 of Schedule 5 (extreme and unavoidable urgency) and cannot be awarded to, or performed by, a supplier that is not an excluded supplier within the necessary time frame.
- (6) The direct award justifications are set out in Schedule 5.

- (7) In this section, “intelligence services” means the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.

#### **42 Direct award to protect life, etc**

- (1) If a Minister of the Crown considers it necessary, the Minister may by regulations provide that specified public contracts may be awarded under section 41 as if a direct award justification applies.
- (2) In subsection (1), “necessary” means necessary to –
- (a) protect human, animal or plant life or health, or
  - (b) protect public order or safety.
- (3) Provision under subsection (1) may –
- (a) specify contracts or classes of contract, or otherwise describe contracts by reference to purpose, subject-matter or contracting authority;
  - (b) include other conditions or limitations;
  - (c) confer a discretion.
- (4) A Minister of the Crown must –
- (a) keep regulations made under subsection (1) under review, and
  - (b) if the Minister considers that direct award under section 41 is no longer necessary, revoke the regulations.

#### **43 Switching to direct award**

- (1) A contracting authority may award a public contract directly to a supplier that is not an excluded supplier if –
- (a) the authority has invited suppliers to submit tenders as part of, or requests to participate in, a competitive tendering procedure in respect of the contract,
  - (b) it has not received any suitable tenders or requests in response, and
  - (c) it considers that award under section 19 is not possible in the circumstances.
- (2) A tender or request is not suitable if the contracting authority considers that –
- (a) it would be disregarded in an assessment of tenders under section 19(3)(a), (b) or (c);
  - (b) it does not satisfy the contracting authority’s requirements or the award criteria when assessed by reference to the assessment methodology and the relative importance of the criteria indicated under section 23(3);
  - (c) there is evidence of corruption or collusion between suppliers or between suppliers and contracting authorities;
  - (d) it materially breaches a procedural requirement in the tender notice or associated tender documents.
- (3) A reference to a tender breaching a procedural requirement includes a reference to a supplier breaching a procedural requirement in relation to the tender.
- (4) A breach is material if the contracting authority considers that ignoring it would put the tender at an unfair advantage.

- (5) A contracting authority may carry out a selection process or take such other preliminary steps as it considers appropriate for the purpose of awarding a contract under subsection (1).
- (6) Before awarding a contract to a supplier under this section, a contracting authority must consider whether the supplier –
  - (a) is an excludable supplier, or
  - (b) submitted an unsuitable tender or request in response to the invitation referred to in subsection (1)(a).

#### **44 Transparency notices**

- (1) Before awarding a contract under section 41 or 43 a contracting authority must publish a transparency notice.
- (2) A “transparency notice” means a notice setting out –
  - (a) that a contracting authority intends to award a contract directly, and
  - (b) any other information specified in regulations under section 95.
- (3) This section does not apply in relation to the award of a contract under section 41 by virtue of paragraph 15 of Schedule 5 (direct award: user choice contracts).

### **CHAPTER 4**

#### AWARD UNDER FRAMEWORKS

#### **45 Frameworks**

- (1) A contracting authority may award a public contract in accordance with a framework.
- (2) A “framework” is a contract between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers.
- (3) Unless subsection (4) applies, a framework may only provide for the future award of a public contract following a competitive selection process.
- (4) A framework may provide for the future award of a public contract without competition between suppliers –
  - (a) in circumstances where only one supplier is party to the framework, or
  - (b) if the framework sets out –
    - (i) the core terms of the public contract, and
    - (ii) an objective mechanism for supplier selection.
- (5) A framework must include the following information –
  - (a) a description of goods, services or works to be provided under contracts awarded in accordance with the framework;
  - (b) the price payable, or mechanism for determining the price payable, under such contracts;
  - (c) the estimated value of the framework;
  - (d) any selection process to be applied on the award of contracts;
  - (e) the term of the framework (see section 47);

- (f) the contracting authorities entitled to award public contracts in accordance with the framework;
  - (g) whether the framework is awarded under an open framework (see section 49).
- (6) A framework may not –
- (a) permit the award of a public contract to an excluded supplier, or
  - (b) prevent a contracting authority from requesting additional information from suppliers before awarding a contract.
- (7) A framework may provide for the charging of fees at a fixed percentage of the estimated value of any contract awarded to the supplier in accordance with the framework.
- (8) This section does not apply in relation to the award of –
- (a) a concession contract, or
  - (b) a framework.
- (9) Subsections (3) to (5) do not apply to a framework that is a light touch contract (see section 9(5)).

#### **46 Frameworks: competitive selection process**

- (1) A competitive selection process may provide for conditions of participation only if the contracting authority is satisfied that the conditions are a proportionate means of ensuring that suppliers party to the framework have –
- (a) the legal and financial capacity to perform the contract, or
  - (b) the technical ability to perform the contract.
- (2) In this section, a “condition of participation” means a condition that a supplier must satisfy in order to be awarded a public contract in accordance with the framework.
- (3) A condition set under subsection (1)(a) may not –
- (a) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;
  - (b) require insurance relating to the performance of the contract to be in place before the award of the contract.
- (4) A condition set under subsection (1)(b) may relate to suppliers’ qualifications, experience or technical ability, but may not –
- (a) require suppliers to have been awarded a contract under the framework or by a particular contracting authority,
  - (b) break the rules on technical specifications in section 56, or
  - (c) require particular qualifications without allowing for their equivalents.
- (5) When considering whether a condition is proportionate for the purposes of subsection (1), a contracting authority must have regard to the nature, complexity and cost of the public contract.
- (6) A condition of participation may require the provision of evidence that is verifiable by a person other than the supplier.

- (7) If a supplier does not satisfy a condition of participation, the contracting authority may exclude the supplier from participating in, or progressing as part of, the competitive selection process.
- (8) A competitive selection process may provide for the assessment of proposals, but only by reference to one or more of the award criteria against which tenders were assessed in awarding the framework.
- (9) The award criteria may be refined for the purposes of subsection (8).
- (10) In this section, a “competitive selection process” means a competitive selection process for the award of a public contract in accordance with a framework.
- (11) This section does not apply to a framework that is a light touch contract.

#### **47 Frameworks: maximum term**

- (1) The term of a framework may not exceed –
  - (a) in the case of a defence and security framework or a utilities framework, eight years, and
  - (b) otherwise, four years.
- (2) Subsection (1) does not apply if the contracting authority considers the nature of the goods, services or works to be supplied under contracts awarded in accordance with the framework means that a longer term is required.
- (3) If a contracting authority relies on subsection (2) in awarding a framework with a term exceeding four or eight years, the contracting authority must set out its reasons in the tender or transparency notice for the framework.
- (4) In this section –
  - (a) “a defence and security framework” is a framework which does not provide for the future award of public contracts other than defence and security contracts;
  - (b) “a utilities framework” is a framework which does not provide for the future award of public contracts other than utilities contracts.
- (5) This section does not apply in relation to –
  - (a) a framework awarded under an open framework (see section 49),
  - (b) a framework awarded by a private utility, or
  - (c) a framework that is a light touch contract (see section 9(5)).

#### **48 Frameworks: implied terms**

- (1) It is an implied term of every framework that a contracting authority may exclude a supplier that is an excluded supplier or has, since the award of the framework, become an excludable supplier from participating in any selection process run in relation to the award of a contract under the framework.
- (2) For the purposes of the term in subsection (1), the reference to a supplier becoming an excludable supplier includes a reference to –
  - (a) a supplier becoming an excludable supplier on the basis of a discretionary exclusion ground that –
    - (i) did not apply before award of the contract, or
    - (ii) applied before award of the contract by reference to different circumstances, and



- (b) a contracting authority discovering that, before award of the contract, the supplier was an excludable supplier.
- (3) Before excluding a supplier that is an excluded or excludable supplier only by virtue of an associated person, the contracting authority must give the supplier reasonable opportunity to replace the associated person.
- (4) Any term purporting to restrict or override the term implied by subsection (1) is without effect.

#### **49 Open frameworks**

- (1) An “open framework” is a scheme of frameworks that provides for the award of successive frameworks on substantially the same terms.
- (2) An open framework must provide –
  - (a) for the award of a framework at least once during –
    - (i) the period of three years beginning with the day of the award of the first framework in the scheme, and
    - (ii) each period of five years beginning with the day of the award of the second framework in the scheme;
  - (b) for the expiry of one framework on the award of the next (but see subsection (3));
  - (c) for the final framework to expire at the end of the period of eight years beginning with the day on which the first framework under the scheme is awarded.
- (3) An open framework may provide that, if a framework expires in accordance with subsection (2)(b) while a process for the award of a contract in accordance with the framework is ongoing, the contracting authority may continue the process and award the contract as though the framework had not expired.
- (4) If there is no limit on the number of suppliers that can be party to a framework under an open framework, a contracting authority may award the framework to an existing supplier by reference to –
  - (a) the fact that the supplier has already been awarded a framework under the scheme,
  - (b) a tender relating to an earlier award under the scheme, or
  - (c) a tender relating to the current award.
- (5) Otherwise, a contracting authority may award a framework under an open framework to an existing supplier by reference to –
  - (a) a tender relating to an earlier award of a framework under the scheme, or
  - (b) a tender relating to the current award.
- (6) If a framework under an open framework is awarded to only one supplier, the framework, and the open framework, must expire before the end of the period of four years beginning with the day on which the framework is awarded.
- (7) Subsection (6) applies despite subsection (2)(c) and any term of the framework or open framework.
- (8) In this section, an “existing supplier” means a supplier that is party to a framework under the open framework.

- (9) A reference to an award on substantially the same terms is a reference to an award that could be made by reference to the same tender or transparency notice without substantial modification (see section 31).
- (10) A framework under an open framework may not be awarded under section 41 (direct award in special cases) or 43 (switching to direct award).

## CHAPTER 5

### AFTER AWARD, STANDSTILL PERIODS AND NOTICES

#### **50 Contract award notices and assessment summaries**

- (1) Before entering into a public contract, a contracting authority must publish a contract award notice.
- (2) A “contract award notice” means a notice setting out –
  - (a) that the contracting authority intends to enter into a contract, and
  - (b) any other information specified in regulations under section 95.
- (3) Before publishing a contract award notice in respect of a contract awarded under section 19 (award following competitive tendering procedure), a contracting authority must provide an assessment summary to each supplier that submitted an assessed tender.
- (4) An “assessment summary” means, in relation to an assessed tender, information about the contracting authority’s assessment of –
  - (a) the tender, and
  - (b) if different, the most advantageous tender submitted in respect of the contract.
- (5) In this section, an “assessed tender” is a tender which –
  - (a) was submitted in respect of the contract and assessed for the purposes of determining the most advantageous tender under section 19(1), and
  - (b) was not disregarded in the assessment of tenders.
- (6) Subsection (1) does not apply in relation to –
  - (a) a defence and security contract awarded under a defence and security framework;
  - (b) a contract awarded under section 41 by reference to paragraph 15 of Schedule 5 (direct award: user choice contracts).

#### **51 Standstill periods on the award of contracts**

- (1) A contracting authority may not enter into a public contract before –
  - (a) the end of the mandatory standstill period, or
  - (b) if later, the end of another standstill period provided for in the contract award notice.
- (2) The “mandatory standstill period” is the period of eight working days beginning with the day on which a contract award notice is published in respect of the contract.
- (3) Subsection (1) does not apply in relation to a contract that is –

- (a) awarded under section 41 by reference to paragraph 13 of Schedule 5 (direct award: extreme and unavoidable urgency);
  - (b) awarded under section 41 by reference to regulations under section 42 (direct award to protect life, etc);
  - (c) awarded under section 41 or 43 (direct award and switching to direct award) by a private utility;
  - (d) awarded in accordance with a framework;
  - (e) awarded by reference to a dynamic market;
  - (f) a light touch contract.
- (4) If a contract is of a kind described in subsection (3), a contracting authority may not enter into the contract before the end of any standstill period (a “voluntary standstill period”) provided for in the contract award notice.
- (5) A voluntary standstill period may not be less than a period of eight working days beginning with the day on which the contract award notice is published.

## **52 Key performance indicators**

- (1) Before entering into a public contract with an estimated value of more than £5 million, a contracting authority must set at least three key performance indicators in respect of the contract.
- (2) Subsection (1) does not apply if the contracting authority considers that the supplier’s performance under the contract could not appropriately be assessed by reference to key performance indicators.
- (3) A contracting authority must publish any key performance indicators set under subsection (1).
- (4) A “key performance indicator” is a factor or measure against which a supplier’s performance of a contract can be assessed during the life-cycle of the contract.
- (5) An appropriate authority may by regulations amend this section for the purpose of changing the financial threshold.
- (6) This section does not apply in relation to a public contract that is –
- (a) a framework,
  - (b) a utilities contract awarded by a private utility,
  - (c) a concession contract, or
  - (d) a light touch contract.
- (7) See section 71 for provision about assessing performance against, and publishing information about, key performance indicators.

## **53 Contract details notices and publication of contracts**

- (1) A contracting authority that enters into a public contract must publish a contract details notice –
- (a) if the contract is a light touch contract, before the end of the period of 120 days beginning with the day on which the contract is entered into;
  - (b) otherwise, before the end of the period of 30 days beginning with the day on which the contract is entered into.
- (2) A “contract details notice” means a notice setting out –

- (a) that the contracting authority has entered into a contract, and
  - (b) any other information specified in regulations under section 95.
- (3) A contracting authority that enters into a public contract with an estimated value of more than £5 million must publish a copy of the contract –
  - (a) if the contract is a light touch contract, before the end of the period of 180 days beginning with the day on which the contract is entered into;
  - (b) otherwise, before the end of the period of 90 days beginning with the day on which the contract is entered into.
- (4) Subsection (3) does not apply in relation to a contract –
  - (a) awarded by a devolved Welsh authority or a transferred Northern Ireland authority, unless it is awarded under a reserved procurement arrangement, or
  - (b) awarded under a devolved Welsh procurement arrangement or a transferred Northern Ireland procurement arrangement.
- (5) A Minister of the Crown may by regulations amend this section for the purpose of changing the financial threshold.
- (6) This section does not apply –
  - (a) to private utilities, or
  - (b) in relation to a contract awarded under section 41 by reference to paragraph 15 of Schedule 5 (direct award: user choice contracts).

## CHAPTER 6

### GENERAL PROVISION ABOUT AWARD AND PROCEDURES

#### *Time limits and termination*

#### **54 Time limits**

- (1) In setting time limits for the purposes of this Part, a contracting authority must, where relevant, have regard to –
  - (a) the nature and complexity of the contract being awarded;
  - (b) the need for site visits, physical inspections and other practical steps;
  - (c) the need for sub-contracting;
  - (d) the nature and complexity of any modification of the tender notice or any associated tender documents;
  - (e) the importance of avoiding unnecessary delay.
- (2) Time limits set for the purposes of this Part must be the same for each supplier.
- (3) A participation period set under this Part must equal or exceed the shortest minimum period specified in an entry in the second column of the following table that corresponds with an entry in the first column which applies to the circumstances of the case –

<i>Circumstance</i>	<i>Minimum period</i>
The contract being awarded is a light touch contract	No minimum period
The contracting authority considers there to be a state of urgency that means that a 25 day participation period is impractical	10 days
Neither of the above circumstances apply	25 days

- (4) A tendering period set under this Part must equal or exceed the shortest minimum period specified in an entry in the second column of the following table that corresponds with an entry in the first column that applies to the circumstances of the case –

<i>Circumstance</i>	<i>Minimum period</i>
The contract being awarded is a light touch contract	No minimum period
The contract – (a) being awarded is a utilities contract, or (b) is being awarded by a contracting authority that is not a central government authority, and is subject to a negotiated tendering period	No minimum period
The contract – (a) being awarded is a utilities contract, or (b) is being awarded by a contracting authority that is not a central government authority, and tenders may be submitted only by pre-selected suppliers	10 days
A qualifying planned procurement notice has been issued	10 days
The contracting authority considers there to be a state of urgency that means any other applicable minimum tender period is impractical	10 days
The contract being awarded is being awarded by reference to suppliers’ membership of a dynamic market	10 days
Tenders may be submitted electronically, and the tender notice and associated tender documents are all provided at the same time	25 days

<i>Circumstance</i>	<i>Minimum period</i>
Tenders may be submitted electronically, but the tender notice and associated tender documents are not all provided at the same time	30 days
Tenders may not be submitted electronically, but the tender notice and associated tender documents are all provided at the same time	30 days
Tenders may not be submitted electronically, and the tender notice and associated tender documents are not all provided at the same time	35 days

- (5) In this section –
- “central government authority” has the meaning given in paragraph 5 of Schedule 1;
  - “negotiated tendering period” means a tendering period agreed between a contracting authority and pre-selected suppliers in circumstances where tenders may be submitted only by those pre-selected suppliers;
  - “qualifying planned procurement notice” has the meaning given in section 15;
  - “participation period” means the period beginning with the day following the day on which a contracting authority invites the submission of requests to participate in a competitive flexible procedure and ending with the day by which those requests must be submitted;
  - “pre-selected supplier” means a supplier that –
    - (a) has been assessed as satisfying conditions of participation before being invited to submit a tender as part of a competitive tendering procedure, or
    - (b) in the case of a contract that is being awarded by reference to suppliers’ membership of a dynamic market, is a member of that market;
  - “tendering period” means the period beginning with the day following the day on which a contracting authority invites the submission of tenders as part of a competitive tendering procedure and ending with the day by which tenders must be submitted.

## **55 Procurement termination notices**

- (1) This section applies if, after publishing a tender or transparency notice in respect of a public contract, a contracting authority decides not to award the contract.
- (2) As soon as reasonably practicable after making the decision, the contracting authority must give notice to that effect.
- (3) This section does not apply to private utilities.

*Technical specifications*

**56 Technical specifications**

- (1) This section applies in relation to –
  - (a) a competitive tendering procedure;
  - (b) an award of a public contract in accordance with a framework;
  - (c) a process to become a member of a dynamic market.
- (2) The procurement documents may not refer to design, a particular licensing model or a description of characteristics in circumstances where they could appropriately refer to performance or functional requirements.
- (3) The procurement documents may not refer to a United Kingdom standard unless –
  - (a) the standard adopts an internationally-recognised equivalent, or
  - (b) there is no internationally-recognised equivalent.
- (4) If the procurement documents refer to a United Kingdom standard, they must provide that tenders, proposals or applications that the contracting authority considers satisfy an equivalent standard from another state, territory or organisation of states or territories will be treated as having satisfied the United Kingdom standard.
- (5) In considering whether a standard is equivalent to a United Kingdom standard for the purposes of subsection (4), a contracting authority may have regard to the authority’s purpose in referring to the standard.
- (6) A contracting authority may require certification, or other evidence, for the purpose of satisfying itself that a standard is satisfied or equivalent.
- (7) Unless the contracting authority considers it necessary in order to make its requirements understood, the procurement documents may not refer to a particular –
  - (a) trademark, trade name, patent, design or type,
  - (b) place of origin, or
  - (c) producer or supplier.
- (8) If the matters mentioned in subsection (7) are referred to, the procurement documents must also provide that tenders, proposals or applications demonstrating equivalent quality or performance will not be disadvantaged.
- (9) In this section –
  - “procurement documents” means –
    - (a) the tender notice or associated tender documents, including any requirements of a competitive tendering procedure, conditions of participation or award criteria;
    - (b) documents inviting suppliers to participate in a competitive selection process under a framework, including details of the process, any conditions of participation or criteria for the award of the contract;
    - (c) documents inviting suppliers to apply for membership of a dynamic market, including any conditions for membership;
  - “United Kingdom standard” means a standard that is –
    - (a) set by the British Standards Institution, or

- (b) primarily developed for use in the United Kingdom, or part of the United Kingdom.

*Excluding suppliers*

## **57 Meaning of excluded and excludable supplier**

- (1) A supplier is an “excluded supplier” if—
  - (a) the contracting authority considers that—
    - (i) a mandatory exclusion ground applies to the supplier or an associated person, and
    - (ii) the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or
  - (b) the supplier or an associated person is on the debarment list by virtue of a mandatory exclusion ground.
- (2) A supplier is an “excludable supplier” if—
  - (a) the contracting authority considers that—
    - (i) a discretionary exclusion ground applies to the supplier or an associated person, and
    - (ii) the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or
  - (b) the supplier or an associated person is on the debarment list by virtue of a discretionary exclusion ground.
- (3) If a supplier is an excluded supplier on the basis of the supplier or an associated person being on the debarment list only by virtue of paragraph 35 of Schedule 6 (threat to national security), the supplier is to be treated as an excluded supplier only in relation to public contracts of a kind described in the relevant entry.
- (4) For the purposes of a covered procurement carried out by a private utility—
  - (a) an excluded supplier is to be regarded as an excludable supplier, and
  - (b) a reference in this Act to an excludable supplier includes a reference to such an excluded supplier.
- (5) In this Act “debarment list” means the list kept under section 62.
- (6) The mandatory exclusion grounds are set out in Schedule 6.
- (7) The discretionary exclusion grounds are set out in Schedule 7.

## **58 Considering whether a supplier is excluded or excludable**

- (1) In considering, for the purposes of section 57(1)(a) or (2)(a), whether the circumstances giving rise to the application of an exclusion ground are continuing or likely to occur again, a contracting authority may have regard to the following matters—
  - (a) evidence that the supplier, associated person or connected person has taken the circumstances seriously, for example by paying compensation;
  - (b) steps that the supplier, associated person or connected person has taken to prevent the circumstances continuing or occurring again, for



- example by changing staff or management, or putting procedures and training in place;
- (c) commitments that such steps will be taken, or to provide information or access to allow verification or monitoring of such steps;
  - (d) the time that has elapsed since the circumstances last occurred;
  - (e) any other evidence, explanation or factor that the authority considers appropriate.
- (2) Before determining whether a supplier is an excluded supplier under section 57(1)(a) or an excludable supplier under section 57(2)(a), a contracting authority must give the supplier reasonable opportunity to –
- (a) make representations, and
  - (b) provide evidence as to whether exclusion grounds apply and whether the circumstances giving rise to any application are likely to occur again (including information of a kind referred to in subsection (1)).
- (3) But a contracting authority may not require particular evidence or information unless the authority is satisfied that the requirements are proportionate in the circumstances, having regard to –
- (a) the nature and complexity of the matters being assessed, and
  - (b) where relevant, the preliminary nature of a consideration under section 27(3).

### *Debarment*

## **59 Notification of exclusion of supplier**

- (1) This section applies where –
- (a) a contracting authority –
    - (i) has disregarded a tender from an excluded or excludable supplier under section 26 or 28,
    - (ii) has excluded an excluded or excludable supplier from participating in, or progressing as part of, a competitive tendering procedure under section 27 or 28,
    - (iii) is aware of an associated person or sub-contractor having been replaced under section 26(3), 27(4) or 28(5) (replacing an excluded or excludable associated person or sub-contractor),
    - (iv) has rejected an application from a supplier for membership of a dynamic market on the basis that the supplier is an excluded or excludable supplier (see section 36), or
    - (v) has removed an excluded or excludable supplier from a dynamic market under section 37, and
  - (b) the supplier was an excluded or excludable supplier –
    - (i) under section 57(1)(a) or (2)(a) by virtue of a relevant exclusion ground, or
    - (ii) on the basis of being on the debarment list by virtue of paragraph 35 of Schedule 6 (threat to national security).
- (2) The contracting authority must, before the end of the period of 30 days beginning with the day on which the tender was disregarded or the supplier excluded, replaced or removed, give notice of that fact to the relevant appropriate authority.

- (3) A notice under subsection (2) must set out –
  - (a) any relevant exclusion ground that the authority considers applies to the supplier, and
  - (b) any other information specified in regulations under section 95.
- (4) If any proceedings under Part 9 are brought in respect of the disregard, exclusion, replacement or removal, the contracting authority must give notice to the relevant appropriate authority of –
  - (a) the commencement of those proceedings or any appeal proceedings;
  - (b) the outcome of any proceedings within paragraph (a).
- (5) Notice under subsection (4)(a) or (b) must be given before the end of the period of 30 days beginning with the day the proceedings concerned are commenced or determined.
- (6) In this section –
  - “exclusion ground” means a mandatory exclusion ground or a discretionary exclusion ground;
  - “relevant exclusion ground” means any exclusion ground except the one listed in paragraph 43 of Schedule 6 (failure to cooperate with investigation);
  - “relevant appropriate authority” means –
    - (a) if the contracting authority is a devolved Welsh authority, the Welsh Ministers;
    - (b) if the contracting authority is a transferred Northern Ireland authority, the Northern Ireland department that the contracting authority considers it most appropriate to notify;
    - (c) in any other case, a Minister of the Crown.

## **60 Investigations of supplier: exclusion grounds**

- (1) An appropriate authority may, for the purpose of considering whether an entry could be added to the debarment list in respect of a supplier, investigate whether a supplier is, by virtue of the application to the supplier of a relevant exclusion ground –
  - (a) an excluded supplier under section 57(1)(a), or
  - (b) an excludable supplier under section 57(2)(a).
- (2) A Minister of the Crown must –
  - (a) have regard to the fact that contracting authorities may be unknowingly awarding public contracts to suppliers that –
    - (i) could be excludable suppliers by virtue of paragraph 14 of Schedule 7 (threat to national security), or
    - (ii) are sub-contracting to suppliers that could be excludable suppliers by virtue of that paragraph, and
  - (b) in light of that fact, keep under review whether particular suppliers or sub-contractors should be investigated under this section.
- (3) If an appropriate authority decides to investigate under this section, the authority must give the supplier concerned a notice setting out –
  - (a) the relevant exclusion grounds in respect of which the investigation is being conducted,
  - (b) how and when the supplier may make representations to the appropriate authority, and

- (c) any other information specified in regulations under section 95.
- (4) The appropriate authority may by notice require a contracting authority –
  - (a) to provide such relevant documents as the appropriate authority may reasonably require for the purposes of the investigation, in the form or manner specified in the notice;
  - (b) to give such other assistance in connection with the investigation as is reasonable in the circumstances and is specified in the notice.
- (5) A contracting authority must comply with a notice under subsection (4) before the end of the period specified in the notice.
- (6) The appropriate authority may by notice request that the supplier concerned, or a connected person in relation to the supplier –
  - (a) provide such relevant documents as the appropriate authority may reasonably require for the purposes of the investigation, in the form or manner, and before the end of the period, specified in the notice;
  - (b) give such other assistance in connection with the investigation as is reasonable in the circumstances and is specified in the notice, before the end of the period so specified.
- (7) A notice under subsection (6) must set out the potential consequences for the supplier of non-compliance with the request (see paragraph 43 of Schedule 6).
- (8) In this section –
  - “relevant documents” means documents or other information that –
    - (a) are specified or described in a notice under subsection (4) or (6), and
    - (b) are in the possession or control of the recipient of the notice;
  - “relevant exclusion ground” has the meaning given in section 59.

## **61 Investigations under section 60: reports**

- (1) This section applies where an appropriate authority has conducted an investigation under section 60.
- (2) The Welsh Ministers or a Northern Ireland department –
  - (a) may refer the case to a Minister of the Crown for the Minister’s consideration for the purposes of section 62(1), and
  - (b) if they do so, must provide the Minister with all information relevant to their findings.
- (3) A Minister of the Crown who has conducted, or considered the findings of, an investigation must –
  - (a) prepare a report in relation to the findings of the investigation,
  - (b) give a copy to the supplier concerned as soon as reasonably practicable after the report is prepared, and
  - (c) publish it.

Paragraphs (b) and (c) are subject to subsection (5).
- (4) The report must, in particular, set out whether the Minister is satisfied that the supplier is, by virtue of a relevant exclusion ground, an excluded or excludable supplier, and if the Minister is so satisfied –
  - (a) in respect of each applicable relevant exclusion ground –
    - (i) whether it is a mandatory or discretionary ground,

- (ii) the date on which the Minister expects the ground to cease to apply (see paragraph 44 of Schedule 6 and paragraph 15 of Schedule 7), and
    - (iii) whether the Minister intends to make an entry to the debarment list,
  - (b) in respect of the exclusion ground in paragraph 35 of Schedule 6 (if applicable), the description of contracts in relation to which the Minister –
    - (i) is satisfied the ground applies, and
    - (ii) intends to refer to in a relevant entry in the debarment list, and
  - (c) in each case, the Minister’s reasons.
- (5) If the Minister considers it necessary to do so for a purpose mentioned in subsection (6), the Minister may –
  - (a) remove information from a report before publishing it or giving it to the supplier concerned;
  - (b) decide not to publish the report;
  - (c) decide not to give the report to the supplier;
  - (d) disclose the report only to such persons as the Minister considers appropriate.
- (6) The purposes are –
  - (a) safeguarding national security;
  - (b) preventing the publication of information that is sensitive commercial information where there is an overriding public interest in it being withheld from publication or other disclosure.
- (7) In this section –
  - “relevant exclusion ground” has the meaning given by section 59;
  - “sensitive commercial information” has the meaning given by section 94.

## **62 Debarment list**

- (1) Subsection (3) applies where a Minister of the Crown –
  - (a) has conducted an investigation under section 60 or considered the findings of such an investigation conducted by the Welsh Ministers or a Northern Ireland department, and
  - (b) is satisfied that the supplier is, by virtue of the application of a relevant exclusion ground, an excluded or excludable supplier.
- (2) Subsection (3) also applies where a Minister of the Crown has made a determination as mentioned in paragraph 43 of Schedule 6 in relation to a supplier (mandatory exclusion ground for failing to cooperate with investigation).
- (3) The Minister may enter the supplier’s name on a list kept by a Minister of the Crown for the purposes of this section and, as part of that entry, must include the relevant debarment information.
- (4) In this section, the “relevant debarment information” means –
  - (a) the exclusion ground to which the entry relates;
  - (b) whether the exclusion ground is mandatory or discretionary;

- (c) in the case of an entry made on the basis of paragraph 35 of Schedule 6 (threat to national security), a description of the contracts in relation to which the supplier is to be an excluded supplier;
  - (d) the date on which the Minister expects the exclusion ground to cease to apply (see paragraph 44 of Schedule 6 and paragraph 15 of Schedule 7).
- (5) Before entering a supplier's name on the debarment list, the Minister must give notice to the supplier setting out –
  - (a) the decision to do so,
  - (b) an explanation of the supplier's rights under sections 63 to 65, and
  - (c) any other information specified in regulations under section 95.
- (6) The Minister may not enter a supplier's name on the debarment list before the end of the period of eight working days beginning with the day on which the Minister gives notice to the supplier in accordance with subsection (5) (the "debarment standstill period").
- (7) The Minister may not enter a supplier's name on the debarment list if –
  - (a) during the debarment standstill period –
    - (i) proceedings under section 63(1) (interim relief) are commenced, and
    - (ii) the Minister is notified of that fact, and
  - (b) the proceedings have not been determined, discontinued or otherwise disposed of.
- (8) A Minister of the Crown –
  - (a) must keep the debarment list under review,
  - (b) may remove an entry from the debarment list,
  - (c) in the case of an entry added on the basis of paragraph 35 of Schedule 6 (threat to national security), may revise an entry to remove a description of contracts, and
  - (d) may revise a date indicated under subsection (4)(d).
- (9) If a Minister of the Crown voluntarily removes or revises an entry in connection with proceedings under section 65 (debarment decisions: appeals), a Minister of the Crown may reinstate the entry only after the proceedings have been determined, discontinued or otherwise disposed of.
- (10) A Minister of the Crown must –
  - (a) remove an entry if the Minister is satisfied that the supplier is not an excluded or excludable supplier by virtue of the ground stated in the entry;
  - (b) in the case of an entry added on the basis of paragraph 35 of Schedule 6 (threat to national security), revise the entry to remove a description of contracts if the Minister is satisfied the exclusion ground in that paragraph does not apply in relation to contracts of that description.
- (11) A Minister of the Crown must publish the debarment list (including any amended list).
- (12) A Minister of the Crown must consult the Welsh Ministers and the Northern Ireland department that the Minister considers most appropriate before –
  - (a) entering a supplier's name on the debarment list, or
  - (b) removing or revising an entry pursuant to an application under section 64.

- (13) In this section, “relevant exclusion ground” has the meaning given by section 59.

### **63 Debarment decisions: interim relief**

- (1) A supplier may apply to the court for suspension of the Minister’s decision to enter the supplier’s name on the debarment list.
- (2) Proceedings under subsection (1) must be brought during the debarment standstill period.
- (3) The court may make an order to—
  - (a) suspend the Minister’s decision to enter the supplier’s name on the debarment list until—
    - (i) the period referred to in subsection (2)(c) of section 65 (appeals) ends without proceedings having been brought, or
    - (ii) proceedings under that section are determined, discontinued or otherwise disposed of, and
  - (b) if relevant, require that an entry in respect of the supplier be temporarily removed from the debarment list.
- (4) In considering whether to make an order under subsection (3), the court must have regard to—
  - (a) the public interest in, among other things, ensuring that public contracts are not awarded to suppliers that pose a risk,
  - (b) the interest of the supplier, including in relation to the likely financial impact of not suspending the decision, and
  - (c) any other matters that the court considers appropriate.
- (5) In this section—
 

“the court” means—

  - (a) in England and Wales, the High Court,
  - (b) in Northern Ireland, the High Court, and
  - (c) in Scotland, the Court of Session;

“debarment standstill period” has the meaning given in subsection (6) of section 62 (debarment list).

### **64 Debarment list: application for removal**

- (1) A supplier may at any time apply to a Minister of the Crown for the removal or revision of an entry made on the debarment list in respect of the supplier.
- (2) The Minister is only required to consider such an application if—
  - (a) in the opinion of the Minister, there has been a material change of circumstances—
    - (i) since the entry was made or, where relevant, revised, or
    - (ii) in a case where the supplier has made a previous application under subsection (1) in relation to the entry or, where relevant, revision, since the most recent application that was considered by the Minister was made, or
  - (b) the application is otherwise accompanied by significant information that has not previously been considered by a Minister of the Crown.
- (3) After considering an application under subsection (1), the Minister must—

- (a) notify the supplier of the Minister’s decision, and
- (b) give reasons for the decision.

## 65 Debarment decisions: appeals

- (1) A supplier may appeal to the court against a decision of a Minister of the Crown—
  - (a) to enter the supplier’s name on the debarment list,
  - (b) to indicate contracts of a particular description as part of an entry made in respect of the supplier on the basis of paragraph 35 of Schedule 6 (threat to national security),
  - (c) to indicate a particular date as part of an entry in respect of the supplier under section 62(4)(d), or
  - (d) not to remove or revise an entry made in respect of the supplier following an application under section 64 (application for removal).
- (2) Proceedings under subsection (1)—
  - (a) may only be brought by a United Kingdom supplier or a treaty state supplier,
  - (b) may only be brought on the grounds that, in making the decision, the Minister made a material mistake of law, and
  - (c) must be commenced before the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the Minister’s decision.
- (3) Subsection (4) applies if, in proceedings under subsection (1)(a) or (b), the court is satisfied that—
  - (a) the Minister made a material mistake of law, and
  - (b) in consequence of the mistake, a contracting authority excluded the supplier from participating in a competitive tendering procedure, or other selection process, in reliance on section 57(1)(b) or (2)(b).
- (4) The court may make one or more of the following orders—
  - (a) an order setting aside the Minister’s decision;
  - (b) an order to compensate the supplier for any costs incurred by the supplier in relation to participating in the procedure or process referred to in subsection (3)(b).
- (5) Otherwise, if the court is satisfied that the Minister made a material mistake of law, the court may make an order setting aside the Minister’s decision.
- (6) In this section—
  - “the court” has the meaning given in section 63 (interim relief);
  - the reference to a supplier being excluded includes a reference to—
    - (a) the supplier’s tender being disregarded under section 26;
    - (b) the supplier becoming an excluded supplier for the purposes of section 41(1)(a), 43(1) or 45(6)(a).

## 66 Debarment proceedings and closed material procedure

Part 2 of the Justice and Security Act 2013 (disclosure of sensitive material) applies in relation to proceedings under sections 63(1) (interim relief) and 65 (appeals) as if, in each of the following provisions, each reference to the Secretary of State included a reference to the Minister for the Cabinet Office—

- (a) section 6(2)(a), (7) and (9)(a) and (c);
- (b) section 7(4)(a);
- (c) section 8(1)(a);
- (d) section 11(3);
- (e) section 12(2)(a) and (b).

#### PART 4

##### MANAGEMENT OF PUBLIC CONTRACTS

###### *Terms implied into public contracts*

#### 67 **Electronic invoicing: implied term**

- (1) The term set out in subsection (2) is implied into every public contract entered into by a contracting authority.
- (2) The contracting authority must accept and process for payment any electronic invoice issued to the authority for payment under the contract which is—
  - (a) in the required electronic form, and
  - (b) not disputed by the authority.
- (3) For the purposes of the term in subsection (2)—
 

“electronic invoice” means an invoice which is issued, transmitted and received in a structured electronic format that allows for its automatic and electronic processing;

“required electronic form” means a form that—

  - (a) complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1:2017 (Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice), and
  - (b) uses a syntax which is listed as a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution.
- (4) A reference to a standard or document is a reference to the standard or document as it stands—
  - (a) on the day that the contract is entered into, or
  - (b) if the parties agree, on the day on which the invoice is issued.
- (5) Any term purporting to restrict or override the implied term is of no effect.
- (6) The implied term does not prevent a contracting authority—
  - (a) requiring the use of a particular system in relation to electronic invoices;
  - (b) in the case of a defence authority (as defined in section 7(5)), requiring the use of a system that requires the payment of fees by the supplier.
- (7) An appropriate authority may by regulations amend this section for the purpose of changing what it means for an invoice to be in the required electronic form.



- (8) Before making regulations under subsection (7), an appropriate authority must consult such persons as the authority considers appropriate.

## **68 Implied payment terms in public contracts**

- (1) The terms in subsections (2) to (5) are implied into every public contract entered into by a contracting authority, except a public contract that is –
- (a) a concession contract,
  - (b) a utilities contract awarded by a private utility, or
  - (c) a contract awarded by a school.
- (2) Any sum due to be paid under the public contract by the contracting authority must be paid before the end of the period of 30 days beginning with –
- (a) the day on which an invoice is received by the contracting authority in respect of the sum, or
  - (b) if later, the day on which the payment falls due in accordance with the invoice.
- (3) The term in subsection (2) does not apply if the contracting authority –
- (a) considers the invoice invalid, or
  - (b) disputes the invoice.
- (4) On receiving an invoice from a payee, the contracting authority must notify the payee without undue delay if –
- (a) it considers the invoice invalid, or
  - (b) it disputes the invoice.
- (5) A contracting authority may rely on a payment made by a third party to satisfy the term in subsection (2) only with the agreement of the payee.
- (6) Any term purporting to restrict or override the terms implied by this section is without effect.
- (7) But nothing in this section prohibits the parties to a contract from agreeing that a sum due under the contract must be paid earlier than would be required by the term in subsection (2).
- (8) For the purposes of the terms in subsections (2) to (5), an invoice is valid if –
- (a) it is an electronic invoice issued in the required electronic form, or
  - (b) it sets out the minimum required information and meets any other requirement set out in the contract.
- (9) The minimum required information is –
- (a) the name of the invoicing party,
  - (b) a description of the goods, services or works supplied,
  - (c) the sum requested, and
  - (d) a unique identification number.
- (10) An appropriate authority may by regulations amend this section for the purpose of changing the period within which a sum due under a contract must be paid, but the period may not exceed 30 days.
- (11) In this section –
- “electronic invoice” and “required electronic form” have the meanings given in section 67(3);

“payee” means the person due to be paid under the invoice concerned; a reference to a contracting authority receiving an invoice includes a reference to an invoice being delivered to an address, or through an electronic invoicing system, specified in the contract for the purpose.

*Notices about payments and performance*

**69 Payments compliance notices**

- (1) Before the end of the period of 30 days beginning with the last day of a reporting period, a contracting authority must publish a payments compliance notice if during that period –
  - (a) the authority made a payment under a public contract;
  - (b) a sum owed by the authority under a public contract became payable.
- (2) A “payments compliance notice” means a notice setting out –
  - (a) specified information about the contracting authority’s compliance with the term set out in section 68(2) (payment within 30 days), and
  - (b) any other specified information.
- (3) For the purposes of this section, a reporting period is –
  - (a) the period beginning with the day on which this section comes into force and ending with the 31 March or 30 September following that day, whichever is earlier, and
  - (b) each successive period of six months.
- (4) A Minister of the Crown or the Welsh Ministers may by regulations make provision about the preparation of a payments compliance notice, including provision requiring that the notice must be approved by a person of a description specified in the regulations.
- (5) In subsection (2), “specified information” means information specified in regulations under section 95.
- (6) This section does not apply –
  - (a) to a transferred Northern Ireland authority,
  - (b) to private utilities,
  - (c) in relation to a public contract awarded by a school, or
  - (d) in relation to a concession contract.

**70 Information about payments under public contracts**

- (1) A contracting authority must publish specified information about any payment of more than £30,000 made by the authority under a public contract.
- (2) The information must be published before the end of the period of 30 days beginning with the last day of the quarter in which the payment was made.
- (3) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing –
  - (a) the financial threshold;
  - (b) the time limit for publication.
- (4) This section does not apply in relation to a public contract that is –
  - (a) a utilities contract awarded by a private utility,

- (b) a concession contract,
  - (c) awarded by a school,
  - (d) awarded by a transferred Northern Ireland authority, unless it is awarded as part of a procurement under a reserved procurement arrangement or devolved Welsh procurement arrangement, or
  - (e) awarded as part of a procurement under a transferred Northern Ireland procurement arrangement.
- (5) In this section –
- “quarter” means a period of three months ending with 31 March, 30 June, 30 September or 31 December in any year;
  - “specified information” means information specified in regulations under section 95.

## 71 Assessment of contract performance

- (1) Subsection (2) applies where a contracting authority has set key performance indicators in accordance with section 52(1).
- (2) At least once in every period of twelve months during the life-cycle of the contract and on termination of the contract the contracting authority must –
  - (a) assess performance against the key performance indicators, and
  - (b) publish information specified in regulations under section 95 in relation to that assessment.
- (3) Subsection (5) applies if –
  - (a) a supplier has breached a public contract, and
  - (b) the breach results in –
    - (i) termination (or partial termination) of the contract,
    - (ii) the award of damages, or
    - (iii) a settlement agreement between the supplier and the contracting authority.
- (4) Subsection (5) also applies if a contracting authority considers that a supplier –
  - (a) is not performing a public contract to the authority’s satisfaction,
  - (b) has been given proper opportunity to improve performance, and
  - (c) has failed to do so.
- (5) Before the end of the period of 30 days beginning with the day on which this subsection first applies in relation to a particular breach or failure to perform, the contracting authority concerned must publish the following information –
  - (a) that this subsection applies,
  - (b) the circumstances giving rise to its application, and
  - (c) any other information specified in regulations under section 95.
- (6) Subsection (5) does not apply in relation to a light touch contract.
- (7) This section does not apply to private utilities.

### *Sub-contracting*

## 72 Sub-contracting: directions

- (1) This section applies in relation to a supplier if –

- (a) a contracting authority, as a condition of awarding a public contract, required that the supplier sub-contract the supply of certain goods, services or works to another supplier, or
- (b) the supplier –
  - (i) indicated to a contracting authority that it intended to sub-contract all or part of a public contract to another supplier, and
  - (ii) relied on that other supplier to satisfy any conditions of participation (see section 22(8)).
- (2) The contracting authority may direct that the supplier enter into a legally binding arrangement with the other supplier for the purpose of that supplier performing all or part of the contract (as required or indicated).
- (3) If a supplier fails to enter into a legally binding arrangement as directed by the contracting authority, the contracting authority may –
  - (a) choose not to enter into the contract with the supplier,
  - (b) where subsection (1)(b) applies, direct the supplier to enter into a legally binding arrangement with another appropriate supplier, or
  - (c) if the contract has already been entered into, terminate the contract.
- (4) In subsection (3), an “appropriate supplier” means a supplier that –
  - (a) is not an excluded supplier, and
  - (b) could have been relied on in place of the supplier referred to in subsection (1)(b)(ii).
- (5) In subsection (1)(a), the reference to a condition of award includes, in the case of a direct award, any condition attaching to the award of a contract.
- (6) For the purposes of subsection (1), a supplier is not to be treated as having relied on another supplier to satisfy conditions of participation if the conditions were satisfied by the first supplier alone.

### **73 Implied payment terms in sub-contracts**

- (1) The terms in subsections (2) to (5) of section 68 (implied payment terms in public contracts) are implied into every public sub-contract.
- (2) But for the purposes of subsection (1) –
  - (a) references in those terms to the contracting authority are to be read as references to the person to whom goods, services or works are supplied under the public sub-contract, and
  - (b) section 68(8)(a) (electronic invoices) does not apply.
- (3) Any term purporting to restrict or override the terms implied by this section is without effect.
- (4) But nothing in this section prohibits the parties to a public sub-contract from agreeing that a sum due under the contract must be paid earlier than would be required by the term in section 68(2).
- (5) In this section, “public sub-contract” means a contract substantially for the purpose of performing (or contributing to the performance of) all or any part of a public contract.
- (6) This section does not apply in relation to a public sub-contract that is for the purpose of performing (or contributing to the performance of) all or any part of –

- (a) a concession contract,
- (b) a utilities contract awarded by a private utility, or
- (c) a contract awarded by a school.

### *Modifying public contracts*

#### **74 Modifying a public contract**

- (1) A contracting authority may modify a public contract or a contract that, as a result of the modification, will become a public contract (a “convertible contract”) if the modification –
  - (a) is a permitted modification under Schedule 8 (permitted modifications),
  - (b) is not a substantial modification, or
  - (c) is a below-threshold modification.
- (2) A contracting authority may also modify a public contract or a convertible contract if the contract is a light touch contract.
- (3) A “substantial modification” is a modification which would –
  - (a) increase or decrease the term of the contract by more than 10 per cent of the maximum term provided for on award,
  - (b) materially change the scope of the contract, or
  - (c) materially change the economic balance of the contract in favour of the supplier.
- (4) A modification is a “below-threshold modification” if –
  - (a) the modification would not itself increase or decrease the estimated value of the contract by more than –
    - (i) in the case of a contract for goods or services, 10 per cent;
    - (ii) in the case of a contract for works, 15 per cent,
  - (b) the aggregated value of below-threshold modifications would be less than the threshold amount for the type of contract,
  - (c) the modification would not materially change the scope of the contract, and
  - (d) the modification is not within subsection (1)(a) or (b).
- (5) In this section, a reference to a modification changing the scope of a contract is a reference to a modification providing for the supply of goods, services or works of a kind not already provided for in the contract.
- (6) For the purposes of subsection (4), the “aggregated value of below-threshold modifications” is the amount of the estimated value of the contract after modification that is attributable to below-threshold modifications.
- (7) Subsection (8) applies if, on modifying a public contract under this section, a contracting authority considers that –
  - (a) the modification could reasonably have been made together with another modification made to the contract under this section, and
  - (b) that single modification would not have been permitted under subsection (1).
- (8) The modification is to be treated as not within subsection (1).

- (9) Except as provided for in paragraph 9 of Schedule 8 (modification permitted on corporate restructuring), a contracting authority may not modify a public contract so as to change the supplier.
- (10) Part 3 does not apply in relation to a contract to modify a contract where the modification is made in accordance with this section.

## 75 Contract change notices

- (1) Before modifying a public contract or a convertible contract (see section 74(1)), a contracting authority must publish a contract change notice.
- (2) Subsection (1) does not apply if—
  - (a) the modification increases or decreases the estimated value of the contract by—
    - (i) in the case of a contract for goods or services, 10 per cent or less,
    - (ii) in the case of a contract for works, 15 per cent or less, or
  - (b) the modification increases or decreases the term of the contract by 10 per cent or less of the maximum term provided for on award, unless the modification is a permitted modification under paragraph 9 of Schedule 8 (novation or assignment on corporate restructuring).
- (3) A “contract change notice” is a notice setting out—
  - (a) that the contracting authority intends to modify the contract;
  - (b) any other information specified in regulations under section 95.
- (4) Subsection (5) applies if, on making a modification within subsection (2)(a) or (2)(b), a contracting authority considers that—
  - (a) the modification could reasonably have been made together with an earlier modification of the contract, and
  - (b) subsection (1) would have applied to that single modification.
- (5) Subsection (1) is to be treated as applying to the modification.
- (6) This section does not apply in relation to a modification of a contract that—
  - (a) is a defence and security contract,
  - (b) is a light touch contract,
  - (c) was awarded by a private utility,
  - (d) was awarded by a transferred Northern Ireland authority, unless it was awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement, or
  - (e) was awarded as part of a procurement under a transferred Northern Ireland procurement arrangement.
- (7) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing the percentage thresholds.

## 76 Voluntary standstill period on the modification of contracts

- (1) A contracting authority may not modify a public contract or a convertible contract before the end of any standstill period (“a voluntary standstill period”) provided for in a contract change notice in respect of the contract.
- (2) A voluntary standstill period may not be less than a period of eight working days beginning with the day on which the contract change notice is published.

## 77 Publication of modifications

- (1) Before the end of the period of 90 days beginning with the day on which a contracting authority makes a qualifying modification under section 74(1), the authority must publish a copy of –
  - (a) the contract as modified, or
  - (b) the modification.
- (2) A “qualifying modification” is a modification –
  - (a) in respect of which the contracting authority is required to publish a contract change notice under section 75, and
  - (b) which modifies, or results in, a public contract with an estimated value of more than £5 million.
- (3) Subsection (1) does not apply in relation to a modification of a contract that –
  - (a) was awarded by a devolved Welsh authority, unless it was awarded as part of a procurement under a reserved procurement arrangement, or
  - (b) was awarded as part of a procurement under a devolved Welsh procurement arrangement.
- (4) A Minister of the Crown may by regulations amend this section for the purpose of changing the financial threshold.

### *Terminating public contracts*

## 78 Implied right to terminate public contracts

- (1) It is an implied term of every public contract that the contract can, if a termination ground applies, be terminated by the contracting authority in accordance with this section.
- (2) Each of the following circumstances is a termination ground –
  - (a) the contracting authority considers that the contract was awarded or modified in material breach of this Act or regulations made under it;
  - (b) a supplier has, since the award of the contract, become an excluded supplier or excludable supplier (including by reference to an associated person);
  - (c) a supplier (other than an associated person) to which the supplier is sub-contracting the performance of all or part of the public contract is an excluded or excludable supplier.
- (3) The termination ground in subsection (2)(c) is not available unless –
  - (a) the contracting authority requested information under section 28(1)(a) (information about sub-contractors) in relation to the award of the public contract, and
  - (b) subsection (4), (5) or (6) applies.
- (4) This subsection applies if, before awarding the public contract, the contracting authority did not know the supplier intended to sub-contract the performance of all or part of the contract.
- (5) This subsection applies if –
  - (a) the sub-contractor is an excluded or excludable supplier under section 57(1)(b) or (2)(b) (the debarment list), and
  - (b) before awarding the contract the contracting authority –

- (i) sought to determine whether that was the case in accordance with section 28(1)(b), but
  - (ii) did not know that it was.
- (6) This subsection applies if –
  - (a) the sub-contractor is an excluded or excludable supplier under section 57(1)(a) or (2)(a),
  - (b) the contracting authority requested information about the sub-contractor under section 28(2), and
  - (c) before awarding the contract, the contracting authority did not know that the sub-contractor was an excluded or excludable supplier.
- (7) Before terminating a contract by reference to the term implied by subsection (1), a contracting authority must –
  - (a) notify the supplier of its intention to terminate,
  - (b) specify which termination ground applies and why the authority has decided to terminate the contract,
  - (c) give the supplier reasonable opportunity to make representations about –
    - (i) whether a termination ground applies, and
    - (ii) the authority’s decision to terminate.
- (8) Before terminating a contract by reference to the fact that a supplier to which the supplier is sub-contracting is an excluded or excludable supplier (whether under subsection (2)(b) or (c)), a contracting authority must give the supplier reasonable opportunity to –
  - (a) cease sub-contracting to the excluded or excludable supplier, and
  - (b) if necessary, find an alternative supplier to which to sub-contract.
- (9) A public contract may contain provision about restitution and other matters ancillary to the termination of the contract by reference to the term implied by subsection (1).
- (10) But any term purporting to restrict or override the implied term is without effect.
- (11) In subsection (2)(b), the reference to a supplier becoming an excludable supplier includes a reference to –
  - (a) a supplier becoming an excludable supplier on the basis of a discretionary exclusion ground that –
    - (i) did not apply before award of the contract, or
    - (ii) applied before award of the contract by reference to different circumstances, and
  - (b) a contracting authority discovering that, before award of the contract, the supplier was an excludable supplier.
- (12) In this section, “material breach” means a breach that the contracting authority considers could reasonably result in a successful legal challenge under Part 9 or otherwise.

## **79 Terminating public contracts: national security**

- (1) A relevant contracting authority may not terminate a contract by reference to the implied term in section 78 on the basis of the discretionary exclusion ground in paragraph 14 of Schedule 7 (threat to national security) unless –



- (a) the authority has notified a Minister of the Crown of its intention, and
  - (b) the Minister considers that—
    - (i) the supplier or sub-contractor is an excludable supplier by reference to paragraph 14 of Schedule 7, and
    - (ii) the contract should be terminated.
- (2) A relevant contracting authority may not terminate a contract by reference to the implied term in section 78 on the basis of the mandatory exclusion ground in paragraph 35 of Schedule 6 (threat to national security) unless the authority has notified a Minister of the Crown of its intention.
- (3) In this section, a “relevant contracting authority” means a contracting authority other than—
- (a) a Minister of the Crown or a government department,
  - (b) the Corporate Officer of the House of Commons, or
  - (c) the Corporate Officer of the House of Lords.

## **80 Contract termination notices**

- (1) Before the end of the period of 30 days beginning with the day on which a public contract is terminated, a contracting authority must publish a contract termination notice.
- (2) A “contract termination notice” is a notice setting out—
- (a) that the contract has been terminated, and
  - (b) any other information specified in regulations under section 95.
- (3) In this section, a reference to termination includes a reference to—
- (a) discharge,
  - (b) expiry,
  - (c) termination by a party,
  - (d) rescission, or
  - (e) set aside by court order (whether or not under Part 9).
- (4) This section does not apply—
- (a) to private utilities, or
  - (b) in relation to a contract awarded under section 41 by reference to paragraph 15 of Schedule 5 (direct award: user choice contracts).

## **PART 5**

### **CONFLICTS OF INTEREST**

## **81 Conflicts of interest: duty to identify**

- (1) A contracting authority must take all reasonable steps to identify, and keep under review, in relation to a covered procurement any—
- (a) conflicts of interest, or
  - (b) potential conflicts of interest.
- (2) There is a conflict of interest in relation to a covered procurement if—
- (a) a person acting for or on behalf of the contracting authority in relation to the procurement has a conflict of interest, or

- (b) a Minister acting in relation to the procurement has a conflict of interest.
- (3) A person who influences a decision made by or on behalf of a contracting authority in relation to a covered procurement is to be treated as acting in relation to the procurement.
- (4) In this section –
  - “interest” includes a personal, professional or financial interest and may be direct or indirect;
  - “Minister” means –
    - (a) a Minister of the Crown;
    - (b) a member of the Welsh Government;
    - (c) the First Minister, deputy First Minister or a Northern Ireland Minister;
  - “member of the Welsh Government” means a person referred to in section 45 of the Government of Wales Act 2006.

## 82 Conflicts of interest: duty to mitigate

- (1) A contracting authority must take all reasonable steps to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage in relation to a covered procurement.
- (2) Reasonable steps may include requiring a supplier to take reasonable steps.
- (3) Subsection (4) applies if a contracting authority considers that –
  - (a) a conflict of interest puts a supplier at an unfair advantage in relation to the award of a public contract, and
  - (b) either –
    - (i) the advantage cannot be avoided, or
    - (ii) the supplier will not take steps that the contracting authority considers are necessary in order to ensure it is not put at an unfair advantage.
- (4) The contracting authority must in relation to the award –
  - (a) treat the supplier as an excluded supplier for the purpose of –
    - (i) assessing tenders under section 19 (competitive award), or
    - (ii) awarding a contract under section 41 or 43 (direct award), and
  - (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.
- (5) In this section, “conflict of interest” has the meaning given in section 81.

## 83 Conflicts assessments

- (1) Before publishing a tender or transparency notice in relation to a covered procurement, a contracting authority must prepare a conflicts assessment in relation to the procurement.
- (2) Before publishing a dynamic market notice in relation to the establishment of a dynamic market, a contracting authority must prepare a conflicts assessment in relation to the establishment.
- (3) A conflicts assessment must include details of –

- (a) conflicts or potential conflicts of interest identified in accordance with section 81 (duty to identify), and
  - (b) any steps the contracting authority has taken or will take for the purposes of section 82 (duty to mitigate).
- (4) If a contracting authority is aware of circumstances that it considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest, a conflicts assessment must also include details of any steps the contracting authority has taken or will take to demonstrate that no such conflict or potential conflict exists.
- (5) A contracting authority must –
  - (a) keep any conflicts assessment under review,
  - (b) revise the assessment as necessary, and
  - (c) when publishing any relevant notice, confirm that a conflicts assessment has been prepared and revised in accordance with this section.
- (6) Subsection (5) does not apply after –
  - (a) a contracting authority has given notice of its decision not to award the contract (under section 55),
  - (b) a contract termination notice is published in relation to the procurement, or
  - (c) a dynamic market notice is published in relation to the market ceasing to operate.
- (7) In the case of a contracting authority that is a private utility –
  - (a) the reference in this section to notice of a decision not to award a contract is a reference to the decision;
  - (b) the reference in this section to a contract termination notice being published in relation to a procurement is a reference to the contract being terminated;
  - (c) the reference in this section to a dynamic market notice being published in relation to a market ceasing to operate is a reference to the market ceasing to operate.
- (8) In this section –
  - “conflict of interest” has the meaning given in section 81;
  - “relevant notice” means –
    - (a) a tender notice,
    - (b) a transparency notice,
    - (c) a dynamic market notice in relation to the establishment of a dynamic market,
    - (d) a contract details notice relating to a public contract, or
    - (e) a contract change notice;
  - “terminated” is to be understood by reference to section 80(3).

**PART 6**

## BELOW-THRESHOLD CONTRACTS

**84 Regulated below-threshold contracts**

- (1) In this Part, a “regulated below-threshold contract” means a below-threshold contract which is not—
  - (a) an exempted contract,
  - (b) a concession contract, or
  - (c) a utilities contract.
- (2) This Part does not apply in relation to procurement—
  - (a) by a school,
  - (b) by a transferred Northern Ireland authority, other than procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement, or
  - (c) under a transferred Northern Ireland procurement arrangement.

**85 Regulated below-threshold contracts: procedure**

- (1) If a contracting authority invites the submission of tenders in relation to the award of a regulated below-threshold contract, the authority may not restrict the submission of tenders by reference to an assessment of a supplier’s suitability to perform the contract.
- (2) The reference to a supplier’s suitability to perform the contract includes a reference to a supplier’s—
  - (a) legal and financial capacity;
  - (b) technical ability.
- (3) Subsection (1) does not apply in relation to a works contract if the contract has an estimated value of—
  - (a) in the case of a contract to be awarded by a central government authority, not less than £138,760, or
  - (b) otherwise, not less than £213,477.
- (4) A Minister of the Crown may by regulations amend this section for the purpose of amending the financial thresholds.
- (5) This section does not apply in relation to—
  - (a) the award of a contract by a devolved Welsh authority, unless it is awarded under a reserved procurement arrangement,
  - (b) the award of a contract under a devolved Welsh procurement arrangement, or
  - (c) the award of a contract in accordance with a framework.

**86 Regulated below-threshold contracts: duty to consider small and medium-sized enterprises**

- (1) Before inviting the submission of tenders in relation to the award of a regulated below-threshold contract, a contracting authority must—
  - (a) have regard to the fact that small and medium-sized enterprises may face particular barriers in competing for a contract, and

- (b) consider whether such barriers can be removed or reduced.
- (2) Subsection (1) does not apply in relation to the award of a contract in accordance with a framework.

### **87 Regulated below-threshold contracts: notices**

- (1) A contracting authority may not advertise for the purpose of inviting tenders in relation to the award of a notifiable below-threshold contract without first publishing a below-threshold tender notice.
- (2) Subsection (1) does not apply if a contracting authority advertises only for the purpose of inviting tenders from particular or pre-selected suppliers.
- (3) As soon as reasonably practicable after entering into a notifiable below-threshold contract, a contracting authority must publish a contract details notice.
- (4) A “notifiable below-threshold contract” is a regulated below-threshold contract with an estimated value of –
  - (a) in the case of a contract to be awarded by a central government authority, not less than £12,000, or
  - (b) otherwise, not less than £30,000.
- (5) A “below-threshold tender notice” is a notice setting out –
  - (a) that the contracting authority intends to award a contract, and
  - (b) any other information specified in regulations under section 95.
- (6) Any time limits provided for in a below-threshold tender notice must be –
  - (a) reasonable, and
  - (b) the same for each supplier.
- (7) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of amending the financial thresholds.

### **88 Regulated below-threshold contracts: implied payment terms**

- (1) The terms in subsections (2) to (5) are implied into every regulated below-threshold contract entered into by a contracting authority.
- (2) Any sum due to be paid under the contract by the contracting authority must be paid before the end of the period of 30 days beginning with –
  - (a) the day on which an invoice is received by the contracting authority in respect of the sum, or
  - (b) if later, the day on which the sum first became due in accordance with the invoice.
- (3) The term in subsection (2) does not apply if the contracting authority –
  - (a) considers the invoice invalid, or
  - (b) disputes the invoice.
- (4) On receiving an invoice from a payee, the contracting authority must notify the payee without undue delay if –
  - (a) it considers the invoice invalid, or
  - (b) it disputes the invoice.

- (5) A contracting authority may rely on a payment made by a third party to satisfy the term in subsection (2) only with the agreement of the payee.
- (6) For the purposes of the terms in subsections (2) to (5), an invoice is valid if it sets out the minimum required information and meets any other requirement set out in the contract.
- (7) The minimum required information is –
  - (a) the name of the invoicing party,
  - (b) a description of the goods, services or works supplied,
  - (c) the sum requested, and
  - (d) a unique identification number.
- (8) The terms in subsections (2) to (5) are also implied into any contract that is wholly or substantially for the purpose of performing (or contributing to the performance of) all or any part of the contract referred to in subsection (1).
- (9) But for the purpose of subsection (8), references in those terms to the contracting authority are to be read as references to the person to whom goods, services or works are supplied for the purpose of performing (or contributing to the performance of) all or any part of the contract referred to in subsection (1).
- (10) Any term purporting to restrict or override the terms implied by this section is without effect.
- (11) But nothing in this section prohibits the parties to a contract from agreeing that a sum due under the contract must be paid earlier than would be required by the term in subsection (2).
- (12) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing the number of days referred to in subsection (2), but the number of days may not be more than 30 days.
- (13) In this section –
  - (a) “payee” means the person due to be paid under the invoice concerned;
  - (b) a reference to a contracting authority receiving an invoice includes a reference to an invoice being delivered to an address specified in the contract for the purpose.

## PART 7

### IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS

#### 89 Treaty state suppliers

- (1) In this Act, a “treaty state supplier” means a supplier that is entitled to the benefits of an international agreement specified in Schedule 9.
- (2) But a supplier is a treaty state supplier only to the extent that it is entitled to the benefits of an international agreement specified in Schedule 9 in relation to the procurement being –
  - (a) carried out, or
  - (b) challenged.
- (3) An appropriate authority may by regulations amend Schedule 9 for the purpose of –

- (a) specifying an international agreement to which the United Kingdom is a signatory, or
  - (b) removing, or amending a reference to, an international agreement.
- (4) In subsection (3)(a), the reference to being a signatory to an international agreement includes a reference to having –
  - (a) exchanged instruments, where the exchange constitutes the agreement;
  - (b) acceded to the agreement.
- (5) In this Part a reference to a supplier being entitled to the benefits of a treaty includes a reference to a supplier being entitled by virtue of the place of origin of goods, services or works supplied.
- (6) In this Act –
  - (a) a reference to a treaty state supplier does not include a reference to a supplier that is entitled to the benefits of an international agreement only by reference to the United Kingdom being party to that agreement;
  - (b) a reference to a state or territory being party to an agreement includes a reference to a state or territory being part of an organisation of states or territories that is party to an agreement.

## **90 Treaty state suppliers: non-discrimination**

- (1) A contracting authority may not, in carrying out a procurement, discriminate against a treaty state supplier.
- (2) A contracting authority discriminates against a treaty state supplier if it treats the supplier less favourably than it treats, or would treat, a United Kingdom supplier or other treaty state supplier because of –
  - (a) the supplier’s association with the supplier’s treaty state, or
  - (b) the supplier’s lack of association with –
    - (i) the United Kingdom, or
    - (ii) another treaty state.
- (3) On a comparison of cases for the purposes of subsection (2), there must be no material difference between the circumstances relating to each case.
- (4) In this section, a reference to a supplier’s association with a state includes a reference to the fact that the state is the place of origin of goods, services or works supplied by the supplier.
- (5) In this section, a “treaty state” means a state, territory or organisation of states or territories that is party to an international agreement specified in Schedule 9, other than the United Kingdom.
- (6) And, in subsection (2)(a), a treaty state is a supplier’s treaty state if the supplier is entitled to the benefits of such an international agreement by reference to that treaty state being party to the agreement.
- (7) In this Act, “United Kingdom supplier” means a supplier that is –
  - (a) established in, or controlled or mainly funded from, the United Kingdom, a British Overseas Territory or a Crown Dependency, and
  - (b) is not a treaty state supplier.

**91 Treaty state suppliers: non-discrimination in Scotland**

- (1) A Minister of the Crown or the Scottish Ministers may by regulations make provision for the purpose of ensuring that treaty state suppliers are not discriminated against in the carrying out of devolved procurements.
- (2) Regulations under subsection (1) may only include provision that is equivalent to provision in –
  - (a) subsection (1), (2), (5) or (6) of section 89 (treaty state suppliers),
  - (b) section 90 (treaty state suppliers: non-discrimination), or
  - (c) Schedule 9 (specified international agreements).
- (3) Regulations under subsection (1) may not be made unless a Minister of the Crown considers, or the Scottish Ministers consider, that the regulations are necessary in order to ratify or comply with an international agreement to which the United Kingdom is a signatory.
- (4) In subsection (3), the reference to being a signatory to an international agreement includes a reference to having –
  - (a) exchanged instruments, where the exchange constitutes the agreement;
  - (b) acceded to the agreement.
- (5) In this section –
  - (a) “devolved procurement” means procurement carried out by a devolved Scottish authority;
  - (b) a reference to discrimination is a reference to discrimination as defined in section 90.
- (6) Regulations under subsection (1) may modify primary legislation (whenever passed).

**92 Trade disputes**

- (1) This section applies where there is, or has been, a dispute relating to procurement between the United Kingdom and another state, territory or organisation of states or territories in relation to an international agreement specified in Schedule 9.
- (2) An appropriate authority or the Scottish Ministers may by regulations make such provision relating to procurement as the authority considers, or the Scottish Ministers consider, appropriate in consequence of the dispute.
- (3) Any provision made by the Scottish Ministers under subsection (2) must relate to procurement –
  - (a) carried out by devolved Scottish authorities, or
  - (b) under devolved Scottish procurement arrangements.
- (4) Regulations under this section may include provision modifying primary legislation, whenever passed (including this Act).
- (5) In subsection (1), the reference to an international agreement specified in Schedule 9 does not include a reference to the Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part, signed at Brussels and London on 30 December 2020.



## PART 8

### INFORMATION AND NOTICES: GENERAL PROVISION

#### 93 Pipeline notices

- (1) This section applies in relation to any contracting authority that considers that, in the coming financial year, it will pay more than £100 million under relevant contracts.
- (2) A contracting authority must publish a pipeline notice before the end of the period of 56 days beginning with the first day of the financial year referred to in subsection (1).
- (3) A “pipeline notice” means a notice setting out specified information about any public contract with an estimated value of more than £2 million in respect of which the contracting authority intends to publish a tender notice or transparency notice during the reporting period.
- (4) In this section –
  - “financial year” means –
    - (a) the period of twelve months beginning with the 1 April following the day on which this section comes into force, and
    - (b) each successive period of 12 months;
  - “relevant contracts” means any contracts for the supply of goods, services or works to the contracting authority other than exempted contracts;
  - “reporting period” means the period of 18 months beginning with the first day of the financial year referred to in subsection (1);
  - “specified information” means information specified in regulations under section 95.
- (5) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing the financial thresholds.
- (6) This section does not apply to –
  - (a) private utilities, or
  - (b) a transferred Northern Ireland authority.

#### 94 General exemptions from duties to publish or disclose information

- (1) A contracting authority is not required to publish or otherwise disclose information under this Act if the authority is satisfied that –
  - (a) withholding the information from publication or other disclosure is necessary for the purpose of safeguarding national security, or
  - (b) the information is sensitive commercial information and there is an overriding public interest in its being withheld from publication or other disclosure.
- (2) “Sensitive commercial information” is information which –
  - (a) constitutes a trade secret, or
  - (b) would be likely to prejudice the commercial interests of any person if it were published or otherwise disclosed.

- (3) If a contracting authority withholds information under this section, the authority must publish or notify anyone to whom the information would otherwise be provided of –
  - (a) the fact that information is being withheld, and
  - (b) whether it is being withheld under subsection (1)(a) or (1)(b).
- (4) A contracting authority is not required to publish or notify someone under subsection (3) if the authority is satisfied that it would be contrary to the interests of national security to do so.

## **95 Notices, documents and information: regulations and online system**

- (1) An appropriate authority may by regulations make provision about –
  - (a) the form and content of notices, documents or other information to be published or provided under this Act;
  - (b) how such notices or documents are, or information is, to be published, provided or revised.
- (2) Regulations under subsection (1) may for example –
  - (a) require a notice or document to contain specified information;
  - (b) require publication on a specified online system.
- (3) Regulations under subsection (1) may –
  - (a) make different provision for different kinds of notice, document or information;
  - (b) make different provision for the same kind of notice, document or information for different purposes.

See also section 122(3).

- (4) A Minister of the Crown must make arrangements to establish and operate an online system for the purpose of publishing notices, documents and other information under this Act.
- (5) An online system established or operated under subsection (4) must –
  - (a) make notices, documents and other information published under this Act available free of charge, and
  - (b) be accessible to people with disabilities.

## **96 Electronic communications**

- (1) In carrying out a covered procurement, a contracting authority must so far as practicable –
  - (a) communicate with suppliers electronically, and
  - (b) take steps to ensure that suppliers participating in the procurement communicate electronically.
- (2) In carrying out a covered procurement, a contracting authority may only use, or require the use of, electronic communication systems that are –
  - (a) free of charge and readily accessible to suppliers,
  - (b) generally available, or interoperable with other generally available systems, and
  - (c) accessible to people with disabilities.

- (3) Subsection (2)(a) does not apply in relation to an electronic communications system used, or required to be used –
  - (a) after the award of the public contract, or
  - (b) in relation to a utilities dynamic market.
- (4) This section does not apply if the contracting authority is satisfied that electronic communication, or the use of an electronic communication system meeting the requirements of subsection (2), poses a particular security risk in the circumstances.
- (5) In this section, “electronic communication system” includes any electronic system used for the purpose of communication with suppliers.

### **97 Information relating to a procurement**

- (1) An appropriate authority may by regulations make provision requiring certain information to be shared in a particular way, including through a specified online system.
- (2) Regulations under subsection (1) may require a contracting authority to –
  - (a) share information in a particular way, or
  - (b) take steps to ensure that suppliers participating in a procurement share information in a particular way.
- (3) In this section, “information” means information shared under, or for a purpose relating to, this Act.

### **98 Record-keeping**

- (1) A contracting authority must keep such records as the authority considers sufficient to explain a material decision made for the purpose of awarding or entering into a public contract.
- (2) For the purposes of subsection (1), a decision is “material” if, under this Act, a contracting authority is required –
  - (a) to publish or provide a notice, document or other information in relation to the decision, or
  - (b) to make the decision.
- (3) A contracting authority must keep records of any communication between the authority and a supplier that is made –
  - (a) in relation to the award or entry into of a public contract, and
  - (b) before the contract is entered into.
- (4) A record under this section must be kept until –
  - (a) the day on which the contracting authority gives notice of a decision not to award the contract (see section 55), or
  - (b) the end of the period of three years beginning with the day on which the contract is entered into or, if the contract is awarded but not entered into, awarded.
- (5) This section does not apply in relation to defence and security contracts.
- (6) This section does not affect any other obligation under any enactment or rule of law by virtue of which a contracting authority must retain documents or keep records, including for a longer period.

**99 Data protection**

- (1) This Act does not authorise or require a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the powers conferred and the duties imposed by and under this Act).
- (2) In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

**PART 9**

## REMEDIES FOR BREACH OF STATUTORY DUTY

**100 Duties under this Act enforceable in civil proceedings**

- (1) A contracting authority’s duty to comply with Parts 1 to 5, 7 and 8 is enforceable in civil proceedings under this Part.
- (2) For the purposes of this Part, the duty is owed to any supplier that is –
  - (a) a United Kingdom supplier, or
  - (b) a treaty state supplier.
- (3) Proceedings under this Part may be brought in the court by a supplier that –
  - (a) is a United Kingdom or treaty state supplier, and
  - (b) has suffered, or is at risk of suffering, loss or damage in consequence of a breach of the duty.
- (4) See section 106 for time limits applicable in respect of claims under this Part.
- (5) A contracting authority’s duty to comply with section 12(4) (requirement to have regard to barriers facing SMEs), or section 13(9) or 14(8) (requirement to have regard to procurement policy statements), is not enforceable in civil proceedings under this Part.
- (6) A contracting authority’s duty to comply with section 90 (treaty state suppliers: non-discrimination) in relation to a procurement is not enforceable in civil proceedings under this Part, except in relation to a covered procurement.
- (7) A supplier may not bring proceedings under this Part on the grounds that one or more of the following decisions of a Minister of the Crown was unlawful –
  - (a) a decision to enter a supplier’s name on the debarment list;
  - (b) a decision relating to the information included in an entry on the debarment list;
  - (c) a decision not to remove an entry from the debarment list, or revise information included in such an entry,
 (see section 65 (debarment decisions: appeals)).
- (8) This Part applies irrespective of section 2(2) and 21 of the Crown Proceedings Act 1947.
- (9) In this Part –
 

“claimant” –

  - (a) in relation to a claim in Northern Ireland, means plaintiff;
  - (b) in relation to a claim in Scotland, means pursuer;

“the court” means—

- (a) in England and Wales, the High Court,
- (b) in Northern Ireland, the High Court, and
- (c) in Scotland, the Court of Session.

### **101 Automatic suspension of the entry into or modification of contracts**

- (1) A contracting authority may not enter into a public contract, or modify a public contract or a convertible contract, if during any applicable standstill period—
  - (a) proceedings under this Part are commenced in relation to the contract, and
  - (b) the contracting authority is notified of that fact.
- (2) The court may lift or modify the restriction in subsection (1) by order under section 102.
- (3) The restriction in subsection (1) does not apply if—
  - (a) the proceedings at first instance have been determined, discontinued or otherwise disposed of, and
  - (b) the court has not made an order to extend the restriction.
- (4) In this section “convertible contract” has the meaning given in section 74.
- (5) See sections 51 and 76 for provision about standstill periods.

### **102 Interim remedies**

- (1) In proceedings under this Part, the court may make one or more of the following orders—
  - (a) an order lifting or modifying the restriction in section 101(1);
  - (b) an order extending the restriction or imposing a similar restriction;
  - (c) an order suspending the effect of any decision made or action taken by the contracting authority in carrying out the procurement;
  - (d) an order suspending the procurement or any part of it;
  - (e) an order suspending the entry into or performance of a contract;
  - (f) an order suspending the making of a modification of a contract or performance of a contract as modified.
- (2) In considering whether to make an order under subsection (1), the court must have regard to—
  - (a) the public interest in, among other things—
    - (i) upholding the principle that public contracts should be awarded, and contracts should be modified, in accordance with the law;
    - (ii) avoiding delay in the supply of the goods, services or works provided for in the contract or modification (for example, in respect of defence or security interests or the continuing provision of public services);
  - (b) the interests of suppliers, including whether damages are an adequate remedy for the claimant;
  - (c) any other matters that the court considers appropriate.

- (3) An order under subsection (1) may not permit a contract to be entered into or modified before the end of any applicable standstill period (see sections 51 and 76).
- (4) An order under subsection (1) may provide for undertakings or conditions.

### 103 Pre-contractual remedies

- (1) This section applies if the court is satisfied that a decision made, or action taken, by a contracting authority breached the duty referred to in section 100(1) and –
  - (a) the contract in relation to which the breach occurred has not been entered into, or
  - (b) where the breach occurred in relation to a modification of a contract, the modification has not yet been made.
- (2) The court may make one or more of the following orders –
  - (a) an order setting aside the decision or action;
  - (b) an order requiring the contracting authority to take any action;
  - (c) an order for the award of damages;
  - (d) any other order that the court considers appropriate.

### 104 Post-contractual remedies

- (1) This section applies if the court is satisfied that a decision made, or action taken, by a contracting authority breached the duty referred to in section 100(1) and –
  - (a) the contract in relation to which the breach occurred has already been entered into, or
  - (b) where the breach occurred in relation to a modification of a contract, the modification has already been made.
- (2) The court –
  - (a) must, if a set aside condition in section 105 is met, make an order setting aside the contract or modification, and
  - (b) may, in any case, make an order for the award of damages.
- (3) The duty in subsection (2)(a) does not apply if the court is satisfied that there is an overriding public interest in not setting aside the contract or modification (for example, in respect of defence or security interests or the continuing provision of public services).
- (4) In which case, the court may make an order reducing –
  - (a) the term of the contract;
  - (b) the goods, services or works to be supplied under the contract.
- (5) In considering whether there is an overriding public interest in not setting aside a contract or modification, the court –
  - (a) may have regard to the financial consequences of setting aside the contract or modification only in exceptional circumstances, and
  - (b) must in any event disregard costs that are directly associated with –
    - (i) the contracting authority having to award another contract or enter into a contract to a different supplier,

- (ii) a delay in the performance of the contract or the contract as modified, or
  - (iii) any legal obligations arising from setting aside the contract or modification.
- (6) If a contract or modification is set aside, it is to be treated as without effect from the date of the order.
- (7) An order setting aside a framework or modification of a framework may not operate to set aside contracts already awarded under the framework.
- (8) An order setting aside or reducing the term of, or supplies under, a contract may make provision for restitution and other consequential or supplementary matters.

### **105 Post-contractual remedies: set aside conditions**

- (1) A set aside condition is met if the court is satisfied that the claimant was denied a proper opportunity to seek a remedy under section 103 (pre-contractual remedies) because –
  - (a) a required contract award notice was not published;
  - (b) the contract was entered into or modified before the end of any applicable standstill period (see sections 51 and 76);
  - (c) the contract was entered into or modified during a period of automatic suspension under section 101 or in breach of a court order;
  - (d) in the case of a contract of a kind described in section 51(3) (exceptions to mandatory standstill), the breach became apparent only on publication of a contract award notice;
  - (e) in the case of a modification under section 74, the breach became apparent only on publication of a contract change notice;
  - (f) the breach became apparent only after the contract was entered into or modified.
- (2) Subsection (1)(d) does not apply if –
  - (a) the contract award notice provided for a standstill period, and
  - (b) the contract was not entered into before the end of that standstill period.
- (3) Subsection (1)(e) does not apply if –
  - (a) the contract change notice provided for a standstill period, and
  - (b) the modification was not made before the end of that standstill period.
- (4) References in this section to a notice not being published include references to a notice that, though published, did not provide accurate information in respect of the contract as entered into.

### **106 Time limits on claims**

- (1) A supplier must commence any specified set-aside proceedings before the earlier of –
  - (a) the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim;
  - (b) the end of the period of six months beginning with the day the contract was entered into or modified.

- (2) A supplier must commence any other proceedings under this Part before the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim.
- (3) The court may make an order extending a time limit referred to in subsection (1)(a) or (2) if it considers there to be a good reason for doing so.
- (4) An order under subsection (3) may not permit proceedings to be commenced after –
  - (a) in the case of specified set-aside proceedings, the end of the period referred to in subsection (1)(b), and
  - (b) in any case, the end of the period of 3 months beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim.
- (5) In this section, “specified set-aside proceedings” means proceedings under section 104(2) to –
  - (a) set aside a public contract in circumstances where the contracting authority did not publish a contract details notice in respect of the contract in accordance with section 53, or
  - (b) set aside a modification of a contract.

#### **107 Part 9 proceedings and closed material procedure**

Part 2 of the Justice and Security Act 2013 (disclosure of sensitive material) applies in relation to proceedings under this Part as if, in each of the following provisions, each reference to the Secretary of State included a reference to the Minister for the Cabinet Office –

- (a) section 6(2)(a), (7) and (9)(a) and (c);
- (b) section 7(4)(a);
- (c) section 8(1)(a);
- (d) section 11(3);
- (e) section 12(2)(a) and (b).

### **PART 10**

#### **PROCUREMENT OVERSIGHT**

#### **108 Procurement investigations**

- (1) An appropriate authority may investigate a relevant contracting authority’s compliance with requirements of this Act.
- (2) An appropriate authority conducting a procurement investigation may by notice require a relevant contracting authority –
  - (a) to provide such relevant documents as the appropriate authority may reasonably require for the purposes of the procurement investigation, in the form or manner specified in the notice;
  - (b) to give such other assistance in connection with the procurement investigation as is reasonable in the circumstances and is specified in the notice.
- (3) The relevant contracting authority must comply with a notice under subsection (2) before the end of –



- (a) the period specified in the notice (which must be at least 30 days beginning with the day on which the notice is given), or
  - (b) such longer period as the appropriate authority may agree to.
- (4) The appropriate authority may publish the results of a procurement investigation, including any section 109 recommendation issued.
- (5) In this section –
- “procurement investigation” means an investigation under subsection (1);
  - “relevant contracting authority” means a contracting authority other than –
    - (a) a Minister of the Crown or a government department;
    - (b) the Welsh Ministers;
    - (c) a Northern Ireland department;
    - (d) the Corporate Officer of the House of Commons;
    - (e) the Corporate Officer of the House of Lords;
    - (f) the Senedd Commission;
    - (g) the Northern Ireland Assembly Commission;
    - (h) a private utility;
  - “relevant documents” means documents or other information that –
    - (a) are specified or described in a notice under subsection (2), and
    - (b) are in the possession or control of the relevant contracting authority to which the notice is given;
  - “section 109 recommendation” has the meaning given in section 109.

## **109 Recommendations following procurement investigations**

- (1) This section applies where an appropriate authority –
- (a) has conducted a procurement investigation under section 108, and
  - (b) considers, in light of the results of that procurement investigation (whether alone or in conjunction with the results of other such investigations), that a relevant contracting authority is engaging in action giving rise, or that is likely to give rise, to a breach of any requirement of this Act.
- (2) The appropriate authority may issue a recommendation (a “section 109 recommendation”) to the relevant contracting authority as to –
- (a) the action the relevant contracting authority should take with a view to ensuring that it complies with the requirements of this Act specified in the recommendation;
  - (b) the timing of such action.
- (3) A section 109 recommendation must not relate to how the relevant contracting authority should –
- (a) comply with section 12 (procurement objectives);
  - (b) have regard to the national procurement policy statement (see section 13) or the Wales procurement policy statement (see section 14);
  - (c) comply with section 86 (regulated below-threshold contracts: duty to consider SMEs);
  - (d) exercise a discretion in relation to a particular procurement.

- (4) In considering how to comply with the requirements of this Act, a relevant contracting authority must have regard to a section 109 recommendation issued to it.
- (5) A relevant contracting authority to which a section 109 recommendation has been issued must, where the recommendation so specifies, submit a progress report to the appropriate authority at such intervals as may be specified.
- (6) A “progress report” is a report setting out—
  - (a) what action (if any) the relevant contracting authority has taken as a result of the recommendation, or
  - (b) if the authority has taken no such action, a statement to that effect.
- (7) Where the relevant contracting authority has taken no action as a result of the section 109 recommendation, or has taken different action to that recommended, the progress report must also include the authority’s reasons for doing so.
- (8) The appropriate authority may publish a progress report or, where the relevant contracting authority fails to submit one, notice of that fact.
- (9) In this section—
  - “action” includes acts and omissions;
  - “procurement investigation” and “relevant contracting authority” have the meanings given in section 108.

## 110 Guidance following procurement investigations

- (1) Where an appropriate authority has conducted a procurement investigation under section 108, the authority may publish guidance setting out what the authority considers to be the lessons of the matters considered in the procurement investigation for compliance with the requirements of this Act by contracting authorities generally.
- (2) In considering how to comply with the requirements of this Act, a contracting authority must have regard to relevant guidance published under subsection (1).
- (3) In subsection (2), the reference to relevant guidance is a reference to guidance that could, in light of Part 11, be addressed to the contracting authority.

## PART 11

### APPROPRIATE AUTHORITIES AND CROSS-BORDER PROCUREMENT

## 111 Welsh Ministers: restrictions on the exercise of powers

- (1) The Welsh Ministers may only exercise a power under this Act for the purpose of regulating—
  - (a) contracting authorities that are devolved Welsh authorities (within the meaning given in section 157A of the Government of Wales Act 2006),
  - (b) contracting authorities that—
    - (i) are not devolved Welsh authorities, but
    - (ii) for the purposes of this Act, are to be treated as devolved Welsh authorities, or
  - (c) procurement under a devolved Welsh procurement arrangement.

- (2) A contracting authority that is a public undertaking or private utility is to be treated as a devolved Welsh authority for the purposes of this Act if –
  - (a) it operates wholly or mainly in relation to Wales, and
  - (b) its activities are wholly or mainly activities that do not relate to reserved matters.
- (3) Otherwise, a contracting authority is to be treated as a devolved Welsh authority for the purposes of this Act if the authority’s functions –
  - (a) are exercisable wholly or mainly in relation to Wales, and
  - (b) are wholly or mainly functions that do not relate to reserved matters.
- (4) Other than in this section and section 127 (commencement), a reference in this Act to a devolved Welsh authority includes a reference to an authority that is to be treated as a devolved Welsh authority for the purposes of this Act.
- (5) Subsection (1) does not apply in relation to a power under sections 59 to 66 (debarment).
- (6) In this section –
  - “reserved matters” has the meaning given in the Government of Wales Act 2006;
  - “Wales” has the meaning given in section 158 of the Government of Wales Act 2006 (when read by reference to section 157A(9) of that Act).

## 112 Northern Ireland department: restrictions on the exercise of powers

- (1) A Northern Ireland department may only exercise a power under this Act for the purpose of regulating –
  - (a) contracting authorities that are transferred Northern Ireland authorities,
  - (b) contracting authorities that are public undertakings or private utilities that –
    - (i) are not transferred Northern Ireland authorities, but
    - (ii) for the purposes of this Act, are to be treated as transferred Northern Ireland authorities, or
  - (c) procurement under a transferred Northern Ireland procurement arrangement.
- (2) For the purposes of this section, an authority is a “transferred Northern Ireland authority” if its functions –
  - (a) are exercisable only in or as regards Northern Ireland, and
  - (b) are wholly or mainly functions that do not relate to reserved or excepted matters (within the meaning given by the Northern Ireland Act 1998).
- (3) A contracting authority that is a public undertaking or private utility is to be treated as a transferred Northern Ireland authority for the purposes of this Act if –
  - (a) it operates only in or as regards Northern Ireland, and
  - (b) its activities are wholly or mainly activities that do not relate to reserved or excepted matters.
- (4) Other than in this section, a reference in this Act to a transferred Northern Ireland authority includes a reference to an authority that is to be treated as a transferred Northern Ireland authority for the purposes of this Act.

- (5) Subsection (1) does not apply in relation to a power under sections 59 to 66 (debarment).

### 113 Minister of the Crown: restrictions on the exercise of powers

- (1) A Minister of the Crown may exercise a power under this Act for the purpose of regulating a contracting authority that is a devolved Welsh authority only in relation to procurement under –
- (a) a reserved procurement arrangement, or
  - (b) a transferred Northern Ireland procurement arrangement.
- (2) Subsection (1) does not apply in relation to a power under section 67 (electronic invoicing) or 110 (guidance following procurement investigation).
- (3) A Minister of the Crown may not make regulations under section 67 or section 125, or publish guidance under section 110, for the purpose of regulating a devolved Welsh authority without the consent of the Welsh Ministers, unless the regulations relate to, or the guidance relates to, procurement under –
- (a) a reserved procurement arrangement, or
  - (b) a transferred Northern Ireland procurement arrangement.
- (4) A Minister of the Crown may not make regulations under this Act for the purpose of regulating a transferred Northern Ireland authority without the consent of a Northern Ireland department, unless the regulations relate to procurement under –
- (a) a reserved procurement arrangement, or
  - (b) a devolved Welsh procurement arrangement.
- (5) A Minister of the Crown may not publish guidance under section 110 for the purpose of regulating a Northern Ireland department without the consent of a Northern Ireland department, unless the guidance relates to procurement under –
- (a) a reserved procurement arrangement, or
  - (b) a devolved Welsh procurement arrangement.
- (6) Subsections (1) and (4) do not apply in relation to a power under –
- (a) sections 59 to 66 (debarment);
  - (b) section 89 (treaty state suppliers);
  - (c) section 91 (non-discrimination in Scotland);
  - (d) section 92 (trade disputes);
  - (e) section 125 (power to make consequential, etc, provision);
  - (f) section 127 (commencement).

### 114 Definitions relating to procurement arrangements

- (1) In this Act, a reference to a procurement under a procurement arrangement is a reference to a procurement as part of which the contract is awarded –
- (a) in accordance with a framework or similar arrangement,
  - (b) by reference to a dynamic market or similar arrangement, or
  - (c) following a procedure or other selection process carried out –
    - (i) jointly by two or more authorities, or
    - (ii) by a centralised procurement authority or equivalent body.

- (2) A procurement arrangement is a devolved Welsh procurement arrangement if—
  - (a) the framework was awarded by a devolved Welsh authority,
  - (b) the dynamic market was established by a devolved Welsh authority,
  - (c) the centralised procurement authority is a devolved Welsh authority, or
  - (d) a devolved Welsh authority is designated the lead authority in the tender or transparency notice.
- (3) A procurement arrangement is a transferred Northern Ireland procurement arrangement if—
  - (a) the framework was awarded by a transferred Northern Ireland authority,
  - (b) the dynamic market was established by a transferred Northern Ireland authority,
  - (c) the centralised procurement authority is a transferred Northern Ireland authority, or
  - (d) a transferred Northern Ireland authority is designated the lead authority in the tender or transparency notice.
- (4) A procurement arrangement is a devolved Scottish procurement arrangement if—
  - (a) the framework or similar arrangement was awarded by a devolved Scottish authority,
  - (b) the dynamic market or similar arrangement was established by a devolved Scottish authority,
  - (c) the centralised procurement authority or equivalent body is a devolved Scottish authority, or
  - (d) a devolved Scottish authority was designated the lead authority in respect of the procedure or selection process.
- (5) A procurement arrangement is a reserved procurement arrangement if it is not—
  - (a) a devolved Welsh procurement arrangement,
  - (b) a transferred Northern Ireland procurement arrangement, or
  - (c) a devolved Scottish procurement arrangement.
- (6) In this section—
  - “equivalent body” means, in relation to a centralised procurement authority, a body carrying out functions of a kind described in section 1(4) (centralised procurement authorities);
  - “framework” includes a framework agreement within the meaning given in Scottish procurement legislation;
  - “similar arrangement” includes, in relation to a dynamic market, a dynamic purchasing or qualification system.

## 115 Powers relating to procurement arrangements

- (1) A Minister of the Crown may by regulations make provision, including provision amending this Act, for the purpose of regulating devolved Scottish authorities carrying out procurement under—
  - (a) reserved procurement arrangements,

- (b) devolved Welsh procurement arrangements, or
  - (c) transferred Northern Ireland procurement arrangements.
- (2) A Minister of the Crown may by regulations amend this Act for the purpose of disapplying provision so far as it relates to procurement under devolved Scottish procurement arrangements.
- (3) The Scottish Ministers may by regulations amend Scottish procurement legislation for the purpose of –
- (a) applying it in relation to procurement carried out by contracting authorities under devolved Scottish procurement arrangements;
  - (b) disapplying it in relation to procurement carried out by devolved Scottish authorities under –
    - (i) reserved procurement arrangements,
    - (ii) devolved Welsh procurement arrangements, or
    - (iii) transferred Northern Ireland procurement arrangements.
- (4) In this Act, “Scottish procurement legislation” means –
- (a) the Procurement Reform (Scotland) Act 2014 (asp 12),
  - (b) the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446),
  - (c) the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49),
  - (d) the Concession Contracts (Scotland) Regulations 2016 (S.S.I. 2016/65), and
  - (e) any legislation which modifies or replaces that legislation (including an Act of the Scottish Parliament).

## PART 12

### AMENDMENTS AND REPEALS

#### 116 Disapplication of duty in section 17 of the Local Government Act 1988

- (1) In section 17 of the Local Government Act 1988 (exclusion of non-commercial considerations), in subsection (11), after “imposed on it by” insert “the Procurement Act 2023 or”.
- (2) A Minister of the Crown or the Welsh Ministers may by regulations make provision disapplying the duty under section 17(1) of the Local Government Act 1988 (“the 1988 Act”) as it relates to a relevant authority.
- (3) The regulations may disapply the duty as it relates to –
- (a) all relevant authorities or those that are specified;
  - (b) all functions that are regulated by section 17 of the 1988 Act (see subsection (4) of that section) or those that are specified;
  - (c) contracts of all types mentioned in section 17(1) of the 1988 Act, or of those types that are specified;
  - (d) all non-commercial matters (see section 17(5) of the 1988 Act) or those that are specified.
- (4) In this section –
- “relevant authority” means an authority to which section 17 of the 1988 Act applies other than a devolved Scottish authority;
  - “specified” means specified, or of a description specified, in regulations under this section.

### **117 Single source defence contracts**

Schedule 10 makes amendments to Part 2 of the Defence Reform Act 2014 (single source contracts).

### **118 Concurrent powers and the Government of Wales Act 2006**

In Schedule 7B to the Government of Wales Act 2006 (general restrictions on devolved competence) –

- (a) at the end of paragraph 9(8)(b)(vi), omit “or”,
- (b) in paragraph 9(8)(b)(vii), at the end insert “or  
(viii) the Procurement Act 2023.”,
- (c) at the end of paragraph 11(6)(b)(ix), omit “or”, and
- (d) in paragraph 11(6)(b)(ix), at the end insert “or  
(x) the Procurement Act 2023.”

### **119 Repeals etc**

- (1) The enactments set out in Schedule 11 are repealed or revoked.
- (2) The following regulations apply only in relation to devolved Scottish authorities –
  - (a) the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446);
  - (b) the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49);
  - (c) the Concession Contracts (Scotland) Regulations 2016 (S.S.I. 2016/65).

## **PART 13**

### **GENERAL**

### **120 Power to disapply this Act in relation to procurement by NHS in England**

- (1) A Minister of the Crown may by regulations make provision for the purpose of disapplying any provision of this Act in relation to regulated health procurement.
- (2) In this section –
  - “regulated health procurement” means the procurement of goods or services by a relevant authority that is subject to provision made under section 12ZB of the National Health Service Act 2006 (procurement of healthcare services etc for the health service in England), whether or not that provision is in force;
  - “relevant authority” has the meaning given in that section.

### **121 Power to amend this Act in relation to private utilities**

- (1) An appropriate authority may by regulations amend this Act for the purpose of reducing the regulation of private utilities under this Act.
- (2) The regulations may, for example, make provision –
  - (a) disapplying requirements under this Act in relation to private utilities;
  - (b) modifying requirements under this Act as they apply in relation to private utilities so as to reduce any burden, or the overall burdens, for private utilities resulting directly or indirectly from this Act.

- (3) Before making regulations under this section an appropriate authority must consult—
  - (a) persons appearing to the authority to represent the views of private utilities, and
  - (b) such other persons as the authority considers appropriate.
- (4) In this section “burden” includes—
  - (a) a financial cost;
  - (b) an administrative inconvenience;
  - (c) an obstacle to efficiency, productivity or profitability.

## 122 Regulations

- (1) Any power to make regulations under this Act—
  - (a) so far as exercisable by a Minister of the Crown or the Welsh Ministers is exercisable by statutory instrument;
  - (b) so far as exercisable by a Northern Ireland department, is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (2) For regulations made under this Act by the Scottish Ministers, see also section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (Scottish statutory instruments).
- (3) Regulations under this Act may—
  - (a) make different provision for different purposes or areas;
  - (b) make provision generally or only in relation to specified cases;
  - (c) make incidental, supplementary or consequential provision;
  - (d) make transitional, transitory or saving provision.
- (4) A statutory instrument containing (whether alone or with other provision) regulations made by a Minister of the Crown under any of the following provisions may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament—
  - (a) section 6 (utilities contracts);
  - (b) section 7 (defence and security contracts);
  - (c) section 9 (light touch contracts);
  - (d) section 33 (reserving contracts to public service mutuals);
  - (e) section 52 (key performance indicators);
  - (f) section 53 (publication of contracts);
  - (g) section 69 (payment compliance notices);
  - (h) section 70(3)(a) (information about payments: financial thresholds);
  - (i) section 75 (contract change notices and publication of modifications);
  - (j) section 87 (regulated below-threshold contracts: notices);
  - (k) section 89 (treaty state suppliers: international agreements);
  - (l) section 91 (treaty state suppliers: non-discrimination in Scotland);
  - (m) section 92 (trade disputes);
  - (n) section 93 (pipeline notices);
  - (o) section 95 (notices, documents and information);
  - (p) section 97 (information relating to a procurement);
  - (q) section 115 (powers relating to procurement arrangements);



- (r) section 116 (disapplication of section 17 of Local Government Act 1988);
  - (s) section 120 (disapplication of Act: NHS procurement in England);
  - (t) section 121 (amendment of Act in relation to private utilities);
  - (u) section 123 (interpretation);
  - (v) section 125 (power to make consequential, etc, provision), if the regulations made under it modify primary legislation;
  - (w) section 127(6) (exclusion of devolved Welsh authorities);
  - (x) paragraph 3 or 5 of Schedule 1 (threshold amounts);
  - (y) Schedule 2 (exempted contracts);
  - (z) Schedule 4 (utility activities).
- (5) A statutory instrument containing regulations made by a Minister of the Crown under section 42 (direct award to protect life, etc) must be laid before Parliament after being made.
- (6) Any other statutory instrument containing regulations made by a Minister of the Crown under any provision of this Act, except section 127 (commencement), is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Regulations contained in a statutory instrument laid before Parliament under subsection (5) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (8) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—
- (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than four days.
- (9) If regulations cease to have effect as a result of subsection (7), that does not—
- (a) affect the validity of anything previously done under the regulations, or
  - (b) prevent the making of new regulations.
- (10) A statutory instrument containing (whether alone or with other provision) regulations made by the Welsh Ministers under any of the following provisions may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru—
- (a) section 6 (utilities contracts);
  - (b) section 9 (light touch contracts);
  - (c) section 33 (reserving contracts to public service mutuals);
  - (d) section 52 (key performance indicators);
  - (e) section 69 (payment compliance notices);
  - (f) section 70(3)(a) (information about payments: financial thresholds);
  - (g) section 75 (contract change notices and publication of modifications);
  - (h) section 87 (regulated below-threshold contracts: notices);
  - (i) section 89 (treaty state suppliers: international agreements);
  - (j) section 92 (trade disputes);
  - (k) section 93 (pipeline notices);
  - (l) section 95 (notices, documents and information);
  - (m) section 97 (information relating to a procurement);
  - (n) section 116 (disapplication of section 17 of Local Government Act 1988);

- (o) section 121 (amendment of Act in relation to private utilities);
  - (p) section 123 (interpretation);
  - (q) section 125 (power to make consequential, etc, provision), if the regulations made under it modify primary legislation;
  - (r) paragraph 3 or 5 of Schedule 1 (threshold amounts);
  - (s) Schedule 2 (exempted contracts);
  - (t) Schedule 4 (utility activities).
- (11) Any other statutory instrument containing regulations made by the Welsh Ministers under this Act is subject to annulment in pursuance of a resolution of Senedd Cymru.
- (12) Regulations of a Northern Ireland department under any of the following provisions (whether alone or with other provision) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly –
- (a) section 6 (utilities contracts);
  - (b) section 9 (light touch contracts);
  - (c) section 33 (reserving contracts to public service mutuals);
  - (d) section 52 (key performance indicators);
  - (e) section 89 (treaty state suppliers: international agreements);
  - (f) section 92 (trade disputes);
  - (g) section 95 (notices, documents and information);
  - (h) section 97 (information relating to a procurement);
  - (i) section 121 (amendment of Act in relation to private utilities);
  - (j) section 123 (interpretation);
  - (k) section 125 (power to make consequential, etc, provision), if the regulations made under it modify primary legislation;
  - (l) paragraph 3 or 5 of Schedule 1 (threshold amounts);
  - (m) Schedule 2 (exempted contracts);
  - (n) Schedule 4 (utility activities).
- (13) Any other regulations of a Northern Ireland department under this Act are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.
- (14) Regulations of the Scottish Ministers under any of the following provisions are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010) –
- (a) section 90 (treaty state suppliers: non-discrimination);
  - (b) section 92 (trade disputes);
  - (c) section 115 (powers relating to procurement arrangements).

## 123 Interpretation

- (1) In this Act –
- “appropriate authority” means –
- (a) a Minister of the Crown,
  - (b) the Welsh Ministers, or
  - (c) a Northern Ireland department;

“enactment” includes primary legislation and legislation made under primary legislation;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“modify”, in relation to enactments, includes amend, repeal or revoke;

“Northern Ireland legislation” has the meaning given in section 24(5) of the Interpretation Act 1978;

“primary legislation” means –

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) an Act or Measure of Senedd Cymru, or
- (d) Northern Ireland legislation;

“pupil referral unit” means –

- (a) in England, a pupil referral unit within the meaning given by section 19 of the Education Act 1996;
- (b) in Wales, a pupil referral unit within the meaning given by section 19A of the Education Act 1996;

“school” means –

- (a) the governing body of a maintained school (see section 19(1) of the Education Act 2002);
- (b) the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of an Academy within the meaning given by that section;
- (c) the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of a school that has been approved under section 342 of that Act;
- (d) the governing body, within the meaning given by section 90 of the Further and Higher Education Act 1992, of an institution within the further education sector within the meaning given by section 91 of that Act;
- (e) the Board of Governors of a grant-aided school within the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3));

“small and medium-sized enterprises” means suppliers that –

- (a) have fewer than 250 staff, and
- (b) have a turnover of an amount less than or equal to £44 million, or a balance sheet total of an amount less than or equal to £38 million;

“VAT” means value added tax;

“working day” means a day other than –

- (a) a Saturday or Sunday, or
- (b) a day which is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971.

(2) In this Act, a reference to an amount payable or paid, receivable or received, or to be paid or received, under a contract includes a reference to any amount referable to VAT.

(3) In this Act, a reference to a contract awarded by a school includes a reference to a contract awarded wholly for the purposes of supplying goods, services or works to a pupil referral unit.

- (4) An appropriate authority may by regulations change the definition of “small and medium-sized enterprises”.
- (5) Regulations under subsection (4) may amend this section.

#### 124 Index of defined expressions

In this Act the expressions listed in the left-hand column of the table have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision</i>
appropriate authority	section 123
associated person	section 26
associated tender document	section 21
award criteria	section 23
below-threshold contract	section 5
central government authority	Schedule 1
centralised procurement authority	section 1
competitive flexible procedure	section 20
competitive tendering procedure	section 20
concession contract	section 8
condition of participation	section 22
connected person	Schedule 6
contract award notice	section 50
contract change notice	section 75
contract details notice	section 53
contracting authority	section 2
convertible contract	section 74
covered procurement	section 1
debarment list	section 57
defence and security contract	section 7
defence authority contract	section 7
devolved Scottish authority	section 2
devolved Scottish procurement arrangement	section 114

<i>Expression</i>	<i>Provision</i>
devolved Welsh authority	section 111
devolved Welsh procurement arrangement	section 114
discretionary exclusion ground	Schedule 7
dynamic market	section 34
enactment	section 123
estimated value	section 4
excludable supplier	section 57
excluded supplier	section 57
exempted contract	Schedule 2
framework	section 45
light touch contract	section 9
mandatory exclusion ground	Schedule 6
Minister of the Crown	section 123
modify	section 123
open framework	section 49
primary legislation	section 123
private utility	section 2
procurement	section 1
public contract	section 3
public undertaking	section 2
publication of a tender notice	section 40
requirements	section 19
reserved procurement arrangement	section 114
school	section 123
Scottish procurement legislation	section 115
small and medium-sized enterprises	section 123
tender notice	section 21
threshold amount	Schedule 1

<i>Expression</i>	<i>Provision</i>
transferred Northern Ireland authority	section 112
transferred Northern Ireland procurement arrangement	section 114
transparency notice	section 44
treaty state supplier	section 89
United Kingdom supplier	section 90
utilities contract	section 6
utilities dynamic market	section 35
utility	section 35
utility activity	section 6
VAT	section 123
working day	section 123
works	Schedule 1
works contract	Schedule 1

### 125 Power to make consequential, etc, provision

- (1) An appropriate authority may by regulations make supplementary, incidental or consequential provision in connection with any provision of this Act.
- (2) Regulations under subsection (1) may modify primary legislation.

### 126 Extent

This Act extends to England and Wales, Scotland and Northern Ireland.

### 127 Commencement

- (1) This Part comes into force on the day on which this Act is passed.
- (2) The remaining provisions of this Act come into force on such day as a Minister of the Crown may by regulations appoint; and different days may be appointed for different purposes.
- (3) A Minister of the Crown may not make specified regulations under subsection (2) without the consent of the Welsh Ministers.
- (4) In this section, “specified regulations” means regulations to bring into force provisions regulating procurement by a devolved Welsh authority other than procurement under—
  - (a) a reserved procurement arrangement, or
  - (b) a transferred Northern Ireland procurement arrangement,

but “specified regulations” does not include regulations to bring into force provisions in Part 7 (implementation of international obligations).

- (5) In this section, “devolved Welsh authority” has the meaning given in section 157A of the Government of Wales Act 2006.
- (6) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate for the purpose of ensuring that—
  - (a) Parts 1 to 6 and 8 to 13, or particular provisions in those Parts, so far as not already brought into force under subsection (2) do not regulate procurement by a devolved Welsh authority other than procurement under—
    - (i) a reserved procurement arrangement, or
    - (ii) a transferred Northern Ireland procurement arrangement;
  - (b) existing legislation continues to regulate procurement by devolved Welsh authorities and procurement under devolved Welsh procurement arrangements.
- (7) Regulations under subsection (6) may modify this Act.
- (8) In this section—

“existing legislation” means any enactment, other than this Act or regulations made under this Act, that is passed or made before section 11 (covered procurement only in accordance with this Act) comes into force;

a reference to a provision regulating procurement includes a reference to a provision conferring a function exercisable in relation to procurement.

## 128 Short title

This Act may be cited as the Procurement Act 2023.

## SCHEDULES

## SCHEDULE 1

Section 3

## THRESHOLD AMOUNTS

- 1 (1) The threshold amount for a contract of a type referred to in the second column of the table below is as set out in the corresponding row of the third column.

	<i>Type of contract</i>	<i>Threshold amount</i>
1	Defence and security contract that is a works contract	£5,336,937
2	Defence and security contract that is a concession contract	£5,336,937
3	Defence and security contract not within row 1, 2 or 8	£426,955
4	Utilities contract that is a works contract	£5,336,937
5	Utilities contract that is a light touch contract	£884,720
6	Utilities contract not within row 3, 4 or 5	£426,955
7	Light touch contract that is a concession contract	£5,336,937
8	Light touch contract not within row 5 or 7	£663,540
9	Concession contract not within row 2, 6 or 7	£5,336,937
10	Works contract not within row 1, 4 or 9	£5,336,937



	<i>Type of contract</i>	<i>Threshold amount</i>
11	Contract for the supply of goods, services or works to a central government authority not within any other row	£138,760
12	Contract for the supply of goods, services or works to a sub-central government authority not within any other row	£213,477

- (2) See section 7(3) in relation to the application of the thresholds in the table to certain contracts concerning defence and security.
- 2 An appropriate authority may by regulations amend this Schedule for the purpose of amending the threshold amount for –
- (a) a type of contract in any of rows 4, 6 or 9 to 12 of the table in order to reflect an amendment to the corresponding threshold for contracts of that type in the United Kingdom’s Coverage Schedule to the GPA;
  - (b) the type of contract in row 1 in order to reflect an amendment to the threshold amount for the type of contract in row 10;
  - (c) the type of contract in row 2, in order to reflect an amendment to the threshold amount for the type of contract in row 9;
  - (d) the type of contract in row 3, in order to reflect an amendment to the threshold amount for the type of contract in row 6.
- 3 An appropriate authority may by regulations amend this Schedule for the purpose of amending the threshold amount for –
- (a) any type of light touch contract in row 5, 7 or 8 of the table;
  - (b) any type of defence and security contract in rows 1 to 3 where the amendment is not within paragraph 2.
- 4 A contract is a “works contract” if its main purpose is –
- (a) the carrying out of works under the contract (whether or not resulting in a complete work), or
  - (b) to facilitate the carrying out of works otherwise than under the contract, where those works are intended to result in a complete work that complies with specifications set out in, or determined under, the contract.
- 5 (1) In this Schedule –
- “central government authority” means a contracting authority specified, or of a description specified, in regulations made by an appropriate authority;
- “complete work” means a functioning structure that results from the carrying out of works;
- the “GPA” means the Agreement on Government Procurement signed at Marrakesh on 15 April 1994, as amended from time to time;
- “sub-central government authority” means a contracting authority that is not –
- (a) a central government authority, or
  - (b) a private utility or a public undertaking;
- “works” has the meaning given by regulations made by an appropriate authority.

- (2) In this Schedule –
- (a) a reference to a contract for the supply of goods, services or works to a particular kind of authority includes a reference to a framework for the future award of such contracts;
  - (b) a reference to a works contract includes a reference to a framework for the future award of works contracts.

## SCHEDULE 2

Section 3

## EXEMPTED CONTRACTS

## PART 1

## COUNTERPARTY EXEMPTED CONTRACTS

*General*

- 1 A contract is an exempted contract if it is a contract of a kind listed in this Part of this Schedule.

*Vertical arrangements*

- 2 (1) A contract between a contracting authority and a person that is controlled by –
- (a) the contracting authority,
  - (b) the contracting authority acting jointly with one or more other contracting authorities,
  - (c) another contracting authority, where that authority also controls the contracting authority referred to in paragraph (a), or
  - (d) another contracting authority acting jointly with one or more other contracting authorities, where the authorities acting jointly also control the contracting authority referred to in paragraph (a).
- (2) A contracting authority, or a contracting authority acting jointly with one or more other contracting authorities, controls a person if –
- (a) the contracting authority is a parent undertaking, or the contracting authorities are parent undertakings, in relation to the person,
  - (b) no person other than the authority, or authorities, exerts a decisive influence on the activities of the person (either directly or indirectly),
  - (c) more than 80 per cent of the activities carried out by the person are carried out for or on behalf of –
    - (i) the contracting authority or authorities, or
    - (ii) another person that is, or other persons that are, controlled by the authority or the authorities acting jointly, and
  - (d) in the case of joint control –
    - (i) each of the contracting authorities is represented on the person’s board, or equivalent decision-making body, and
    - (ii) the person does not carry out any activities that are contrary to the interests of one or more of the contracting authorities.

- (3) A person is not to be regarded as controlled by a contracting authority, or a contracting authority acting jointly with other contracting authorities, if any person that is not a public authority holds shares in the person.
- (4) In sub-paragraph (2)(a) –
  - “parent undertaking” has the meaning given in section 1162 of the Companies Act 2006, save that an “undertaking” includes any person;
  - “parent undertakings” means two or more contracting authorities acting jointly that would, if they were a single undertaking, be a parent undertaking.
- (5) For the purposes of sub-paragraph (2)(b), a person does not exercise a decisive influence on the activities of a person only by reason of being a director, officer or manager of the person acting in that capacity.
- (6) An appropriate authority may by regulations make provision about how a calculation as to the percentage of activities carried out by a person is to be made for the purposes of sub-paragraph (2)(c).
- (7) For the purposes of sub-paragraph (2)(d)(i), one representative may represent more than one contracting authority.
- (8) In this paragraph, references to a contracting authority do not include references to a public undertaking or a private utility.

#### *Horizontal arrangements*

- 3 (1) A contract between contracting authorities only that relates to a horizontal arrangement between those authorities.
- (2) A “horizontal arrangement” means an arrangement –
  - (a) entered into –
    - (i) with the aim of achieving objectives the authorities have in common in connection with the exercise of their public functions;
    - (ii) solely in the public interest;
  - (b) in which no more than 20 per cent of the activities contemplated by the arrangement are intended to be carried out other than for the purposes of the authorities’ public functions.
- (3) An appropriate authority may by regulations make provision about how a calculation as to the percentage of activities carried out by a person is to be made for the purposes of sub-paragraph (2)(b).
- (4) In this paragraph, references to a contracting authority do not include references to a public undertaking or a private utility.

#### *Defence and security contracts*

- 4 (1) A defence and security contract where the supplier is the government of another state or territory.
- (2) In this Schedule “government” includes –
  - (a) any governing authority;
  - (b) the government of a region or locality within a state or territory.

*Utilities contracts*

- 5 (1) A utilities contract between a utility and a relevant joint venture to which that utility is party, where—
- (a) the joint venture was formed for the purpose of carrying out a utility activity for at least three years, and
  - (b) the parties to the joint venture are committed, by way of a written agreement, to continue to be parties to the joint venture for a period of three years following the date of that agreement.
- (2) In this Schedule, “relevant joint venture” means a joint venture—
- (a) formed for the purpose of carrying out a utility activity;
  - (b) where each party to the joint venture is a utility.
- 6 (1) A utilities contract awarded for the supply of goods, services or works—
- (a) by a utility to a person affiliated with the utility, or
  - (b) where the utility in question is a relevant joint venture, by the utility to a person affiliated with any member of the joint venture,
- but only if the turnover test is met by the affiliated person in relation to goods, services or (as the case may be) works.
- (2) A person is “affiliated” with another if the person is in the position of a group undertaking of the other person, within the meaning given in section 1161(5) of the Companies Act 2006, whether or not either of them is an undertaking within the meaning given in section 1161(1) of that Act.
- (3) The “turnover test” is met in relation to goods, services or works if the affiliated person’s turnover deriving from the supply of goods, services or (as the case may be) works to the utility and other persons affiliated with the utility (their “affiliated turnover amount”) exceeds 80 per cent of their total turnover amount deriving from the supply of goods, services or works.
- (4) An appropriate authority may by regulations make provision about how to calculate a person’s affiliated turnover amount and total turnover amount for the purposes of sub-paragraph (3).
- (5) The regulations may, in particular, make provision—
- (a) for those amounts to be calculated by reference to—
    - (i) an average amount for a period specified in the regulations;
    - (ii) another reasonable method so specified;
  - (b) to secure that, in calculating those amounts in relation to a person (“A”), turnover of a person who is an affiliated person in relation to A is to be treated as part of A’s turnover.

PART 2

SUBJECT-MATTER EXEMPTED CONTRACTS

*General*

- 7 (1) A contract is an exempted contract if it is—
- (a) a contract of a kind listed in this Part of this Schedule;
  - (b) a framework for the future award of contracts only of a kind listed in this Part of this Schedule.

- (2) But a Part 2-only contract is not an exempted contract if, on award of the contract, a contracting authority considers that—
  - (a) the goods, services or works representing the main purpose of the contract could reasonably be supplied under a separate contract, and
  - (b) that contract would not be a contract of a kind listed in this Part of this Schedule.
- (3) In considering whether goods, services or works could reasonably be supplied under a separate contract, a contracting authority may, for example, have regard to the practical and financial consequences of awarding more than one contract.
- (4) In this paragraph “Part 2-only contract” means a contract of a kind listed in this Part of this Schedule that is not of a kind listed in Part 1 of this Schedule.

#### *Land and buildings etc*

- 8 (1) A contract—
  - (a) for the acquisition, by whatever means, of land, buildings or any other complete work, or of an interest in or right over any of them, or
  - (b) which concerns an interest in or right over any of them.
- (2) In this paragraph “complete work” has the meaning given in Schedule 1.

#### *Broadcasting*

- 9 A contract for the acquisition, development, production or co-production of material intended for broadcast (by any means) by a contracting authority to the general public.
- 10 A contract for the broadcast (by any means) by a contracting authority to the general public of material (including, for example, a programme or an advertisement) supplied by the supplier.

#### *Electronic communications services*

- 11 A contract the main purpose of which is facilitating the provision by a contracting authority to the general public of an electronic communications service (within the meaning given in section 32 of the Communications Act 2003).
- 12 A contract the main purpose of which is permitting a contracting authority to provide, maintain or use a public electronic communications network (within the meaning given in section 151 of the Communications Act 2003).

#### *Alternative dispute resolution*

- 13 A contract for the provision to a contracting authority of arbitration, mediation or conciliation services, or of any other similar services.

#### *Legal services*

- 14 (1) A contract for the provision of exempt legal services to a contracting authority.
- (2) The following services are “exempt legal services”—

- (a) legal representation by a lawyer in judicial proceedings or other dispute resolution proceedings, whether in or outside the United Kingdom;
  - (b) the giving of legal advice by a lawyer in connection with, or in contemplation of, any such proceedings;
  - (c) document certification or authentication services provided by a notary in circumstances where the certification or authentication is required under an enactment or other rule of law to be performed by a notary;
  - (d) legal services provided by a person required to provide them under an enactment or an order of a court or tribunal.
- (3) In this paragraph –
- “judicial proceedings” includes proceedings before a court, tribunal or public authority;
  - “lawyer” means –
    - (a) a person who is an authorised person or an exempt person in relation to a reserved legal activity for the purposes of the Legal Services Act 2007 (see sections 18 and 19 of that Act);
    - (b) a solicitor or advocate in Scotland;
    - (c) a solicitor or barrister in Northern Ireland;
    - (d) a person who is a member, and entitled to practise as such, of a legal profession regulated in a jurisdiction outside the United Kingdom;
  - “other dispute resolution proceedings” includes arbitration, mediation and conciliation.

#### *Financial services*

- 15 A contract for the lending of money in any currency to a contracting authority.
- 16 (1) A contract for the provision or carrying out of an investment service or activity, or of an ancillary service, in relation to a financial instrument by an investment firm or a qualifying credit institution.
- (2) In this paragraph –
- “ancillary service” means a service listed as such in Part 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);
  - “financial instrument”, “investment firm” and “qualifying credit institution” have the meanings given in Article 3 of that Order;
  - “investment service or activity” means a service or activity listed as such in Part 3 of Schedule 2 to that Order.
- 17 A contract for the provision of services by the Bank of England.

#### *Employment*

- 18 (1) A contract of employment or a worker’s contract.
- (2) In this paragraph, the expressions “contract of employment” and “worker’s contract” –

- (a) in the case of a contract awarded by a transferred Northern Ireland contracting authority or awarded as part of a procurement under a transferred Northern Ireland procurement arrangement, have the meanings given in Article 3 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16));
  - (b) in any other case, have the meanings given in section 230 of the Employment Rights Act 1996.
- 19 Any other contract between a contracting authority and an individual for the remuneration or compensation of that individual where they are appointed to a public office by the contracting authority, including as a—
  - (a) non-executive director of a public authority, or
  - (b) member of a public inquiry.

*Emergency services*

- 20 A contract for the provision by an organisation or association not run for profit of one or more of the following services—
  - (a) services relating to the promotion of fire safety;
  - (b) fire extinguishing services;
  - (c) services for the protection of life and property in the event of fires;
  - (d) search and rescue services;
  - (e) civil defence services;
  - (f) nuclear safety services;
  - (g) ambulance services provided in respect of medical emergencies.

*Public passenger transport services*

- 21 (1) A contract that is required to be awarded in accordance with the public service obligations regulations.
- (2) In this paragraph, “the public service obligations regulations” has the meaning given by section 136(11) of the Railways Act 1993.

*Research and development services*

- 22 (1) A contract for the provision of research and development services to a contracting authority, where—
  - (a) the services are intended by the authority to be for, or to result in, benefit to the public, and
  - (b) the contract does not also provide for the provision of goods or works.
- (2) In this paragraph, “research and development services” means services that consist of one or more of the following activities—
  - (a) research to acquire new scientific or technical knowledge without any particular application or use in view;
  - (b) research directed mainly at generating scientific or technical knowledge for the purposes of a particular objective;
  - (c) development which uses existing knowledge to initiate the manufacture of new materials or products, establish new processes, systems or services, or to achieve a substantial improvement in existing materials, products, processes, systems or services;

- (d) the manufacture and testing of prototypes.
- (3) But services are not “research and development services” if they include –
  - (a) the production of tools for manufacture, or
  - (b) the development of industrial processes to manufacture goods or works arising from research or development.

*International agreements and organisations*

- 23 A contract awarded under a procedure specified in an international agreement of which the United Kingdom is a signatory relating to –
  - (a) the stationing of military personnel, or
  - (b) the implementation of a joint project between the signatories to that agreement.
- 24 A contract awarded under a procedure –
  - (a) adopted by an international organisation of which the United Kingdom is a member, and
  - (b) that is inconsistent in any material respect with the procedure for the award of the contract in accordance with this Act.

But this paragraph does not apply to a defence and security contract (as to which, see paragraph 29).

*National security*

- 25 A contract that the contracting authority determines should not, in the interests of national security, be subject to this Act or a part of this Act.

*Intelligence activities*

- 26 A contract for the purposes of carrying out, facilitating or supporting intelligence activities.

*Defence and security contracts*

- 27 A defence and security contract where –
  - (a) the supplier is located in an area outside the United Kingdom in which the armed forces are deployed, and
  - (b) the operational needs of the armed forces require the contract to be awarded to that supplier.
- 28 A defence and security contract where –
  - (a) the supplier is located in a state or territory outside the United Kingdom in which the armed forces maintain a military presence,
  - (b) that state or territory requires, in connection with that presence, that the supplier supplies the goods, services or works to which the contract relates.
- 29 A defence and security contract awarded under a procedure adopted by an international organisation of which the United Kingdom is a member.
- 30 A defence and security contract awarded under an arrangement between the United Kingdom and one or more other states or territories, where the purpose of that arrangement is, or is in connection with –



- (a) the joint development of a new product by or on behalf of the parties to the arrangement, or
- (b) the exploitation of that product once developed.

*Utilities contracts*

- 31 A utilities contract for the supply of goods, services or works to a utility other than one acting as a centralised procurement authority, where—
- (a) the purpose of the contract is to allow the further sale or lease of those goods, services or works to a third party,
  - (b) the utility does not have a special or exclusive right, within the meaning given by section 6(3), to sell or lease those goods, services or works, and
  - (c) other persons may sell or lease those goods, services or works under the same conditions as the utility.
- 32 A utilities contract for the supply of water to a utility carrying out a utility activity referred to in paragraph 3(1)(a) or (b) of Schedule 4.
- 33 A utilities contract for the supply of energy, or fuel for the production of energy, to a utility carrying out a utility activity referred to in paragraph 1, 2 or 6 of Schedule 4.
- 34 A contract for the supply of goods, services or works wholly or mainly for the purpose of an activity that would be a utility activity if it were not specified in Part 2 of Schedule 4.

*Concession contracts*

- 35 A concession contract for the carrying out of a utility activity within paragraph 3(1) or (2) of Schedule 4 (water services), ignoring for this purpose the effect of paragraph 3(4) of that Schedule.
- 36 (1) A concession contract that—
- (a) confers an exclusive right to operate a relevant scheduled air service for a period of four years or a series of periods falling within a period of four years, and
  - (b) imposes minimum service requirements in respect of that service during those periods.
- (2) In this paragraph—
- “air service” means a flight, or a series of flights, carrying passengers or cargo (including mail);
  - “airport” means any area especially adapted for air services;
  - “relevant scheduled air service” means an air service that—
- (a) operates between two airports within the United Kingdom or within the United Kingdom and Gibraltar, and
  - (b) the Secretary of State considers to be necessary in order to maintain sufficient transport links between the areas served by the airports.
- 37 A concession contract for the provision of public passenger transport services.

*Commercial contracts of the City of London*

- 38 A contract for the supply of goods, services or works to the Common Council of the City of London other than for the purposes of its functions as a local authority, police authority or port health authority.

SCHEDULE 3

Section 4

ESTIMATING THE VALUE OF A CONTRACT

*General rule*

- 1 (1) A contracting authority must estimate the value of a contract as the maximum amount it could expect to pay under the contract including, where applicable, amounts already paid.
- (2) The amount a contracting authority could expect to pay includes the following—
- (a) the value of any goods, services or works provided by the contracting authority under the contract other than for payment;
  - (b) amounts that would be payable if an option in the contract to supply additional goods, services or works were exercised;
  - (c) amounts that would be payable if an option in the contract to extend or renew the term of the contract were exercised;
  - (d) amounts representing premiums, fees, commissions or interest that could be payable under the contract;
  - (e) amounts representing prizes or payments that could be payable to participants in the procurement.
- (3) In estimating the value of a contract, a contracting authority must take into account all of the facts which are material to the estimate and available to the authority at the time it makes the estimate.
- (4) This paragraph is subject to the rest of this Schedule.

*Frameworks*

- 2 (1) A contracting authority must estimate the value of a framework as the sum of the estimated values of all the contracts that have or may be awarded in accordance with that framework.
- (2) In the case of a framework awarded under an open framework, the value of the framework is to be treated as including the value of all frameworks awarded, or to be awarded, under the open framework.
- (3) In this Schedule, “framework” has the meaning given in section 45(2).

*Concession contracts*

- 3 (1) Paragraph 1 does not apply to the estimation of the value of a concession contract.
- (2) A contracting authority must estimate the value of a concession contract as the maximum amount the supplier could expect to receive under or in

connection with the contract including, where applicable, amounts already received.

- (3) The amount a supplier could expect to receive includes the following –
- (a) amounts representing revenue (whether monetary or non-monetary) receivable pursuant to the exploitation of the works or services to which the contract relates (whether from the contracting authority or otherwise);
  - (b) the value of any goods, services or works provided by the contracting authority under the contract other than for payment;
  - (c) amounts that would be receivable if an option in the contract to supply additional services or works were exercised;
  - (d) amounts that would be receivable if an option in the contract to extend or renew the term of the contract were exercised;
  - (e) amounts representing premiums, fees, commissions or interest that could be receivable under the contract;
  - (f) amounts received on the sale of assets held by the supplier under the contract.

*Anti-avoidance*

- 4 (1) Sub-paragraph (2) applies where –
- (a) a contracting authority estimates the value of two or more contracts, and
  - (b) the goods, services or works to be supplied under the contracts could reasonably be supplied under a single contract.
- (2) The contracting authority must estimate the value of each of the contracts as including the value of all of the contracts, unless the authority has good reasons not to do so.

*Cases where estimate not possible*

- 5 If a contracting authority is unable to estimate the value of a contract in accordance with this Schedule (for example because the duration of the contract is unknown), the authority is to be treated as having estimated the value of the contract as an amount of more than the threshold amount for the type of contract.

SCHEDULE 4

Section 6

UTILITY ACTIVITIES

PART 1

ACTIVITIES THAT ARE UTILITY ACTIVITIES

*Gas and heat*

- 1 (1) The following are utility activities –

- (a) the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of gas or heat;
  - (b) the supply of gas or heat to such a network.
- (2) But the supply of gas or heat to a network is not a utility activity if –
- (a) the person supplying it (the “operator”) is a private utility or a public undertaking,
  - (b) the production of gas or heat by the operator is a necessary consequence of carrying out an activity other than a specified activity, and
  - (c) the amount of gas or heat supplied to the network represents not more than 20 per cent of the operator’s turnover amount.
- (3) An appropriate authority may by regulations make provision about how to calculate an amount referred to in sub-paragraph (2)(c).
- (4) The regulations may, in particular, make provision for such an amount to be calculated by reference to –
- (a) an average amount for a period specified in the regulations;
  - (b) another reasonable method so specified.

### *Electricity*

- 2 (1) The following are utility activities –
- (a) the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of electricity;
  - (b) the supply of electricity to such a network.
- (2) But the supply of electricity to a network is not a utility activity if –
- (a) the person supplying it (the “operator”) is a private utility or a public undertaking,
  - (b) the operator produces electricity because it needs electricity to carry out an activity other than a specified activity,
  - (c) the supply consists only of electricity that was produced by the operator as mentioned in paragraph (b) but which it has not consumed, and
  - (d) the amount of electricity supplied represents not more than 30 per cent of the amount of energy produced by the operator.
- (3) An appropriate authority may by regulations make provision about how to calculate an amount referred to in sub-paragraph (2).
- (4) The regulations may, in particular, make provision for such an amount to be calculated by reference to –
- (a) an average amount for a period specified in the regulations;
  - (b) another reasonable method so specified.

### *Water*

- 3 (1) The following are utility activities –
- (a) the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of drinking water;

- (b) the supply of drinking water to such a network.
- (2) The following are utility activities to the extent that they are carried out by a person who also carries out activities within sub-paragraph (1) –
  - (a) any activity connected with a hydraulic engineering project, irrigation or land drainage in circumstances where the condition in sub-paragraph (3) is met;
  - (b) any activity connected with the disposal or treatment of sewage.
- (3) The condition is that a person carrying out the activity would reasonably expect that more than 20 per cent of the water made available by the project, irrigation or land drainage is to be supplied as drinking water to a network within sub-paragraph (1)(a).
- (4) The supply of drinking water as mentioned in sub-paragraph (1)(b) is not a utility activity if –
  - (a) the person supplying it (the “operator”) is a private utility or a public undertaking,
  - (b) the operator produces drinking water because it needs drinking water to carry out an activity that is not a specified activity,
  - (c) the supply consists only of drinking water that was produced by the operator as mentioned in paragraph (b) but which it has not consumed, and
  - (d) the amount of drinking water supplied represents not more than 30 per cent of the amount of drinking water produced by the operator.
- (5) An appropriate authority may by regulations make provision about how to calculate an amount referred to in sub-paragraph (4).
- (6) The regulations may, in particular, make provision for such an amount to be calculated by reference to –
  - (a) an average amount for a period specified in the regulations;
  - (b) another reasonable method so specified.

#### *Transport*

- 4 An activity is a utility activity if it relates to the provision or operation of a network for the provision of a service to the general public for transport, whether by rail, tram, bus or other means.

#### *Ports and airports*

- 5 (1) An activity relating to the exploitation of a geographical area for the following purposes is a utility activity –
  - (a) the provision of an airport to carriers of passengers or goods by air;
  - (b) the provision of a port or other terminal facilities to carriers of passengers or goods by sea or inland waterway.
- (2) In this paragraph “airport” has the same meaning as in Part 1 of the Civil Aviation Act 2012 (see section 66 of that Act).

#### *Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels*

- 6 An activity relating to the exploitation of a geographical area for the following purposes is a utility activity –

- (a) extracting oil or gas;
- (b) searching for or extracting coal or other solid fuels.

*Interpretation of Schedule*

- 7 In this Part of this Schedule—
- “specified activity” means an activity specified in paragraph 1(1), 2(1), 3(1) or 4;
  - “supply” includes—
    - (a) production, but not the production of gas in the form of extraction (as to which, see paragraph 6), and
    - (b) generation and wholesale or retail sale.

PART 2

ACTIVITIES THAT ARE NOT UTILITY ACTIVITIES

- 8 Generation of electricity in England, Scotland or Wales.
- 9 Production of electricity in England, Scotland or Wales.
- 10 Wholesale or retail sale of electricity in England, Scotland or Wales.
- 11 Wholesale or retail sale of gas in England, Scotland or Wales.
- 12 Exploration for oil in England, Scotland or Wales.
- 13 Exploration for natural gas in England, Scotland or Wales.
- 14 Production of oil in England, Scotland or Wales.
- 15 Production of natural gas in England, Scotland or Wales.
- 16 Development of infrastructure for production of oil in England, Scotland or Wales.
- 17 Development of infrastructure for production of natural gas in England, Scotland or Wales.

SCHEDULE 5

Section 41

DIRECT AWARD JUSTIFICATIONS

- 1 This Schedule contains the direct award justifications.

*Prototypes and development*

- 2 The public contract concerns the production of a prototype, or supply of other novel goods or services, for the purpose of—
  - (a) testing the suitability of the goods or services,
  - (b) researching the viability of producing or supplying the goods or services at scale and developing them for that purpose, or
  - (c) other research, experiment, study or development.

- 3 In paragraph 2, “novel goods or services” means goods or services designed or developed at the request of the contracting authority.

*Single suppliers*

- 4 The public contract concerns the creation or acquisition of a unique work of art or artistic performance.
- 5 The following conditions are met in relation to the public contract –
- (a) due to a particular supplier having intellectual property rights or other exclusive rights, only that supplier can supply the goods, services or works required, and
  - (b) there are no reasonable alternatives to those goods, services or works.
- 6 The following conditions are met in relation to the public contract –
- (a) due to an absence of competition for technical reasons, only a particular supplier can supply the goods, services or works required, and
  - (b) there are no reasonable alternatives to those goods, services or works.

*Additional or repeat goods, services or works*

- 7 The public contract concerns the supply of goods, services or works by the existing supplier which are intended as an extension to, or partial replacement of, existing goods, services or works in circumstances where –
- (a) a change in supplier would result in the contracting authority receiving goods, services or works that are different from, or incompatible with, the existing goods, services or works, and
  - (b) the difference or incompatibility would result in disproportionate technical difficulties in operation or maintenance.
- 8 The public contract concerns the supply of goods, services or works by the existing supplier that are similar to existing goods, services or works where –
- (a) the existing goods, services or works were supplied under a public contract that was awarded in accordance with a competitive tendering procedure within the period of five years ending with the day on which the transparency notice is published, and
  - (b) the tender notice or any tender document in respect of that earlier contract set out –
    - (i) the contracting authority’s intention to carry out a subsequent procurement of similar goods, services or works in reliance on this direct award justification, and
    - (ii) any other information specified in regulations under section 95.
- 9 In paragraphs 7 and 8 –
- “existing goods, services or works” means goods, services or works already supplied, or contracted to be supplied, to the contracting authority;
  - “existing supplier” means the supplier that has already supplied, or contracted to supply, the existing goods, services or works.

*Commodities*

- 10 The public contract concerns goods purchased on a commodity market.

*Advantageous terms on insolvency*

- 11 The award of the public contract to a particular supplier will ensure terms particularly advantageous to the contracting authority due to the fact that a supplier, whether or not the one to whom the contract is to be awarded, is undergoing insolvency proceedings.
- 12 A supplier is “undergoing insolvency proceedings” if it has –
- (a) become bankrupt or, in Scotland, the estate of the supplier has been sequestrated,
  - (b) become subject to insolvency or winding-up proceedings,
  - (c) had its assets subject to administration or receivership, including by a liquidator or court,
  - (d) entered into an arrangement with its creditors,
  - (e) become subject to a petition or application for any such procedures or arrangements, or
  - (f) in any jurisdiction, been subject to a procedure or an application that corresponds to any procedure or application mentioned in paragraphs (a) to (e).

*Urgency*

- 13 Where –
- (a) the goods, services or works to be supplied under the public contract are strictly necessary for reasons of extreme and unavoidable urgency, and
  - (b) as a result the public contract cannot be awarded on the basis of a competitive tendering procedure.
- 14 For the purpose of paragraph 13, urgency is unavoidable if it –
- (a) is not attributable to any act or omission of the contracting authority, and
  - (b) could not have been foreseen by the contracting authority.

*User choice contracts*

- 15 The public contract is a contract for the supply of user choice services and the conditions in paragraph 17 are met.
- 16 In paragraph 15, “user choice services” means services –
- (a) that are of a kind specified in regulations under section 9 (light touch contracts),
  - (b) that are supplied for the benefit of a particular individual, and
  - (c) in respect of which a contracting authority would, in awarding a contract for their supply, be required under an enactment to have regard to the views of the individual, or a person providing care to the individual (their “carer”), in relation to who should supply the services.
- 17 The conditions are that –



- (a) the individual to whom the services are to be supplied or their carer has expressed a preference as to who should supply the services, or the nature of the services to be supplied is such that only one supplier is capable of providing them, and
- (b) the contracting authority considers that it is not in the best interests of the individual to award the contract under section 19.

*Defence and security*

- 18 The following conditions are met in relation to the public contract –
- (a) the contract is a defence and security contract,
  - (b) the contract relates to the supply of air or maritime transport services to the armed forces or the security services –
    - (i) while they are deployed outside the United Kingdom, or
    - (ii) in order for them to be so deployed, and
  - (c) the nature of the services is such that no reasonable supplier would be able to guarantee that all of the terms that would be contained in a tender submitted for the supply of those services by such a supplier would remain in effect for the period of 10 days beginning with the day of submission.
- 19 (1) The following conditions are met in relation to the public contract (the “new contract”) –
- (a) there is another contract between the contracting authority and the supplier (the “existing contract”),
  - (b) either of the conditions in sub-paragraphs (2) and (3) is met in relation to the new contract, and
  - (c) the new contract would, if awarded directly, be a “qualifying defence contract” under section 14(2) of the Defence Reform Act 2014 (regulations relating to qualifying defence contracts).
- (2) The condition in this sub-paragraph is met if, treating the new contract as a modification of the existing contract, the new contract would not be a substantial modification of the existing contract within the meaning given in section 74(3).
- (3) The condition in this sub-paragraph is met if, treating the new contract as a modification of the existing contract, the new contract would be a modification of the existing contract of a kind described in –
- (a) paragraph 4 of Schedule 8 (unforeseeable circumstances), or
  - (b) paragraph 8 of that Schedule (additional goods, services or works).
- 20 The following conditions are met in relation to the public contract –
- (a) the contract is a defence authority contract,
  - (b) the contract is not a defence and security contract only by virtue of section 7(1)(g) (or, in the case of a framework, section 7(1)(g) and (2)), and
  - (c) it is necessary for the contract to be awarded directly in order to enhance or maintain the operational capability, effectiveness, readiness for action, safety or security of the armed forces.

## SCHEDULE 6

Section 57

## MANDATORY EXCLUSION GROUNDS

## PART 1

## OFFENCES

- 1 A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been convicted of an offence referred to in this Part of this Schedule.

*Corporate manslaughter or corporate homicide*

- 2 An offence under section 1 of the Corporate Manslaughter and Corporate Homicide Act 2007 (corporate manslaughter or corporate homicide).

*Terrorism*

- 3 An offence listed in section 41 or 42 of the Counter-Terrorism Act 2008 (terrorism offences, and offences having a terrorist connection, in respect of which the notification requirements under Part 4 of that Act apply), other than an offence under section 54 of that Act.

*Theft, fraud, bribery etc*

- 4 An offence at common law in Scotland of theft, fraud, extortion, robbery, theft by housebreaking, housebreaking with intent to steal, uttering, embezzlement, or reset.
- 5 An offence at common law of conspiracy to defraud.
- 6 An offence under any of the following sections of the Theft Act 1968 –
- (a) sections 1 to 13 (theft, robbery, burglary, etc);
  - (b) sections 17 to 21 (fraud and blackmail);
  - (c) sections 22 and 23 (offences relating to stolen goods);
  - (d) section 24A (dishonestly retaining a wrongful credit);
  - (e) section 25 (going equipped for stealing etc).
- 7 An offence under any of the following sections of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) –
- (a) sections 1 to 13 (theft, robbery, burglary, etc);
  - (b) sections 17 to 20 (fraud and blackmail);
  - (c) sections 21 and 22 (offences relating to stolen goods);
  - (d) section 23A (dishonestly retaining a wrongful credit);
  - (e) section 24 (going equipped for stealing etc).
- 8 An offence under section 3 of the Theft Act 1978 (making off without payment).
- 9 An offence under section 5 of the Theft (Northern Ireland) Order 1978 (S.I. 1978/1407 (N.I. 23)) (making off without payment).
- 10 An offence under Article 172 or 172A of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)) (taking vehicle without authority etc).

- 11 An offence under section 58 of the Civic Government (Scotland) Act 1982 (convicted thief in possession).
- 12 An offence under section 113 of the Representation of the People Act 1983 (bribery of electors).
- 13 An offence under section 178 of the Road Traffic Act 1988 (taking motor vehicle without authority etc).
- 14 An offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002 (money laundering offences).
- 15 An offence under section 2, 3, 4, 6 or 7 of the Fraud Act 2006 (fraud offences).
- 16 An offence under section 993 of the Companies Act 2006 (fraudulent trading).
- 17 An offence under section 1, 2 or 6 of the Bribery Act 2010 (bribery offences).
- 18 An offence under section 49 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (offences relating to articles for use in fraud).

*Labour market, slavery and human trafficking offences*

- 19 An offence under the Employment Agencies Act 1973 (offences relating to employment agencies) other than an offence under section 9(4)(b) of that Act.
- 20 An offence under the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (S.I. 1981/839) (N.I. 20) (offences relating to employment agencies) other than an offence under Article 7B(11) of that Order.
- 21 An offence under section 31(1) of the National Minimum Wage Act 1998 (refusal or wilful neglect to pay the national minimum wage).
- 22 An offence under the Gangmasters (Licensing) Act 2004 (offences relating to gangmasters).
- 23 An offence under section 1, 2, 4 or 30 of the Modern Slavery Act 2015 (slavery and human trafficking offences).
- 24 An offence under section 1, 4 or 32 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) (slavery and human trafficking offences).
- 25 An offence under section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2) (N.I.), or paragraph 16 of Schedule 3 to that Act (slavery and human trafficking offences).
- 26 An offence under section 27 of the Immigration Act 2016 (failure to comply with labour market enforcement order).

*Organised crime*

- 27 An offence under section 28 of the Criminal Justice and Licensing (Scotland) Act 2010 (agreeing to become involved in serious organised crime).

- 28 An offence under section 45 of the Serious Crime Act 2015 (participating in activities of organised crime group).

*Tax offences*

- 29 An offence at common law of cheating the public revenue.
- 30 (1) An offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.
- (2) In this paragraph, “tax” means a tax imposed under the law of any part of the United Kingdom, including national insurance contributions under –
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992, or
  - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- 31 An offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent facilitation of tax evasion).

*Cartel offence*

- 32 An offence under section 188 of the Enterprise Act 2002 (cartel offence).

*Ancillary offences*

- 33 In relation to an offence otherwise referred to in this Part, any of the following offences –
- (a) aiding, abetting, counselling or procuring the commission of the offence;
  - (b) in Scotland, being art and part in the commission of the offence;
  - (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence;
  - (d) inciting a person to commit the offence;
  - (e) attempting or conspiring to commit the offence.

*Offences committed outside the United Kingdom*

- 34 (1) An offence under the law of a country or territory outside the United Kingdom which would be an offence otherwise referred to in this Part of this Schedule if the conduct constituting that offence was carried out in any part of the United Kingdom.
- (2) For the purposes of this paragraph, an act punishable under the law of a country or territory outside the United Kingdom constitutes an offence under that law, however it is described in that law.

PART 2

OTHER MANDATORY EXCLUSION GROUNDS

*National security*

- 35 (1) A mandatory exclusion ground applies to a supplier in relation to contracts of a particular description if an appropriate authority determines that the supplier or a connected person –
- (a) poses a threat to the national security of the United Kingdom, and
  - (b) would pose such a threat in relation to public contracts of that description.
- (2) In sub-paragraph (1) –
- (a) the reference to an appropriate authority is a reference to the appropriate authority that is considering whether the exclusion ground applies;
  - (b) the reference to a particular description includes, for example, a description by reference to –
    - (i) the goods, services or works being supplied;
    - (ii) the location of the supply;
    - (iii) the contracting authority concerned.
- (3) Sub-paragraph (1) applies only for the purpose of an appropriate authority’s functions under sections 59 to 66 (debarment), and cannot otherwise be relied on by a contracting authority when considering whether a supplier is an excluded supplier under section 57(1)(a).

*Misconduct in relation to tax*

- 36 (1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been liable to a penalty under –
- (a) section 69C of the Value Added Tax Act 1994 (transactions connected with VAT fraud) except where the penalty is reduced under section 70 of that Act, or
  - (b) section 25 of the Finance Act 2003 (evasion of tax or duty).
- (2) The supplier or connected person is not to be treated as having been liable to such a penalty unless HMRC has assessed the amount of the penalty and the time for any appeal or further appeal relating to the penalty has expired or, if later, any appeal or final appeal relating to it has been finally determined.
- 37 (1) A mandatory exclusion ground applies to a supplier if a penalty has been payable by the supplier or a connected person under –
- (a) Schedule 24 to the Finance Act 2007 (errors in tax documentation), or
  - (b) Schedule 41 to the Finance Act 2008 (failure to notify and certain VAT and excise wrongdoing),
- but only where the conduct giving rise to that penalty was deliberate.
- (2) Such a penalty is not to be treated as having been payable unless –
- (a) if the penalty has been assessed, the time for any appeal or further appeal relating to the penalty has expired or, if later, any appeal or final appeal relating to it has been finally determined, or

- (b) a contract has been made between HMRC and the supplier or connected person, under which HMRC undertook not to assess the penalty or (if it was assessed) not to take proceedings to recover it.
- 38 (1) A mandatory exclusion ground applies to a supplier if –
- (a) the supplier or a connected person has entered into or carried out tax arrangements that are abusive (within the meaning given in section 207 of the Finance Act 2013), and
  - (b) adjustments have accordingly been made under section 209 of that Act (countering tax advantages), including as it applies under section 10 of the National Insurance Contributions Act 2014.
- (2) Adjustments are not to be treated as having been made until they can no longer be challenged, whether on appeal or otherwise.
- 39 (1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been found by HMRC, in exercise of its powers in respect of VAT, to have engaged in an abusive practice.
- (2) The supplier or connected person is not to be treated as having been found by HMRC to have engaged in those arrangements or practices until the finding can no longer be challenged, whether on appeal or otherwise.
- 40 (1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has incurred a defeat in respect of notifiable tax arrangements they have entered into.
- (2) In this paragraph –
- “defeat” means that –
- (a) Condition A in paragraph 5 of Schedule 16 to the Finance (No. 2) Act 2017, or
  - (b) Condition B in paragraph 6 of that Schedule,
- is met in respect of the arrangements (where “T” in those paragraphs is taken to mean the supplier or connected person entering into the arrangements);
- “notifiable tax arrangements” means tax arrangements in respect of which a reference number –
- (a) has been notified to the supplier or connected person under section 311A, 312 or 312ZA of the Finance Act 2004 (disclosure of tax avoidance schemes) or paragraph 22A, 23 or 23A of Schedule 17 to the Finance (No. 2) Act 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes), and
  - (b) has not been withdrawn;
- “tax arrangements” has the meaning given in paragraph 3(1) of Schedule 16 to the Finance (No. 2) Act 2017.

#### *Competition law infringements*

- 41 (1) A mandatory exclusion ground applies to a supplier if the CMA has made a decision under the Competition Act 1998 that the Chapter I prohibition (within the meaning given by section 2 of that Act) has been infringed by an agreement or concerted practice –
- (a) to which the supplier or a connected person was party, and

- (b) which was a cartel (within the meaning given by paragraph 4(1) of Schedule 8A to that Act).
- (2) Sub-paragraph (1) does not apply if the CMA did not impose a penalty on the supplier or connected person in respect of the infringement because the supplier or connected person was an immunity recipient (within the meaning given by paragraph 14 of Schedule 8A to the Competition Act 1998).
- (3) In this paragraph, references to the CMA include references to a regulator referred to in section 54(1) of the Competition Act 1998 in circumstances where it exercises functions concurrently with the CMA in accordance with that Act.

#### *Equivalents outside the United Kingdom*

- 42 A mandatory exclusion ground applies to a supplier if the supplier or a connected person –
- (a) has been subject to a penalty or a decision by a regulator, court or other authority outside the United Kingdom, where the conduct giving rise to that penalty or decision is conduct that would give rise to a penalty or decision referred to in any of paragraphs 36 to 41 if committed in the United Kingdom, in circumstances where the penalty or decision would be a mandatory exclusion ground, or
  - (b) has had a tax advantage counteracted outside the United Kingdom, in circumstances where the supplier or connected person would have incurred a defeat of the kind referred to in paragraph 40 had the tax advantage arisen in respect of tax payable in the United Kingdom.

#### *Failure to cooperate with investigation*

- 43 A mandatory exclusion ground applies to a supplier if –
- (a) an appropriate authority has given the supplier or a connected person notice under section 60(6) (requests for documents or other assistance in connection with investigation),
  - (b) the supplier or connected person has failed to comply with the notice to the satisfaction of the authority before the end of the period specified in the notice, and
  - (c) a Minister of the Crown has made a determination that the failure to do so was sufficiently serious so as to warrant constituting a mandatory exclusion ground.

### PART 3

### GENERAL

#### *Excluded matters*

- 44 (1) In determining whether a mandatory exclusion ground applies to a supplier, the decision-maker must ignore any event that occurred before the five-year period ending with the date on which the determination is made. This is subject to sub-paragraphs (2) to (4).

- (2) In determining whether a mandatory exclusion ground listed in any of the following paragraphs applies to a supplier, sub-paragraph (1) applies whether the event occurred before or after the coming into force of this Schedule—
- (a) paragraph 3 (terrorism offences);
  - (b) paragraph 12 or 17 (bribery);
  - (c) paragraph 14 (money laundering offences);
  - (d) paragraph 23, where the ground in that paragraph applies by virtue of an offence under section 1, 2 or 4 of the Modern Slavery Act 2015 (slavery and trafficking offences);
  - (e) paragraph 24, where the ground in that paragraph applies by virtue of an offence under section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (slavery and trafficking offences);
  - (f) paragraph 25, where the ground in that paragraph applies by virtue of an offence under section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (slavery and trafficking offences);
  - (g) paragraph 27 or 28 (organised crime);
  - (h) paragraph 33 or 34, so far as relating to any offence that constitutes a mandatory exclusion ground listed in any of the paragraphs within paragraph (a) to (g) above (inchoate offences and corresponding offences outside the United Kingdom).
- (3) In determining whether a mandatory exclusion ground listed in any of the following paragraphs applies to a supplier, the decision-maker must also ignore any event that occurred before the coming into force of this Schedule—
- (a) paragraph 2 (corporate manslaughter or homicide);
  - (b) paragraph 4, 5, 6(a) or (c) to (e), 7(a) or (c) to (e), 8 to 11 or 13 (theft, robbery, burglary etc);
  - (c) paragraph 33 or 34, so far as relating to any offence that constitutes a mandatory exclusion ground listed in any of the paragraphs within paragraph (a) and (b) above (inchoate offences and corresponding offences outside the United Kingdom);
  - (d) paragraph 35 (threat to national security).
- (4) In determining whether a mandatory exclusion ground listed in any of the following paragraphs applies to a supplier, the decision-maker must also ignore any event that occurred before the three-year period ending with the coming into force of this Schedule—
- (a) paragraph 6(b) or 7(b) (blackmail);
  - (b) paragraph 15, 16 or 18 (fraud and fraudulent trading);
  - (c) paragraphs 19 to 22 (labour market offences);
  - (d) paragraph 23, where the ground in that paragraph applies by virtue of an offence under section 30 of the Modern Slavery Act 2015 (breach of orders under that Act);
  - (e) paragraph 24, where the ground in that paragraph applies by virtue of an offence under section 32 of the Human Trafficking and Exploitation (Scotland) Act 2015 (breach of orders under that Act);
  - (f) paragraph 25, where the ground in that paragraph applies by virtue of an offence under paragraph 16 of Schedule 3 to the Human Trafficking and Exploitation (Criminal Justice and Support for



- Victims) Act (Northern Ireland) 2015 (breach of orders under that Act);
- (g) paragraph 26 (breach of labour market enforcement order);
  - (h) paragraphs 29 to 31 (tax offences);
  - (i) paragraph 32 (cartel offence);
  - (j) paragraph 33 or 34, so far as relating to any offence that constitutes a mandatory exclusion ground listed in any of the paragraphs within paragraphs (a) to (i) above;
  - (k) paragraphs 36 to 40 (tax misconduct);
  - (l) paragraph 41 (competition law infringements);
  - (m) paragraph 42 (equivalents to tax misconduct and competition law infringements outside the United Kingdom).

### Definitions

45 In this Schedule –

the “CMA” means the Competition and Markets Authority;

“conduct” includes acts and omissions;

“connected person”, in relation to a supplier, means any of the following –

- (a) a person with “significant control” over the supplier (within the meaning given by section 790C(2) of the Companies Act 2006 (“CA 2006”));
- (b) a director or shadow director of the supplier;
- (c) a parent undertaking or a subsidiary undertaking of the supplier;
- (d) a predecessor company;
- (e) any other person who it can reasonably be considered stands in an equivalent position in relation to the supplier as a person within paragraph (a) to (d);
- (f) any person with the right to exercise, or who actually exercises, significant influence or control over the supplier;
- (g) any person over which the supplier has the right to exercise, or actually exercises, significant influence or control;

“court” includes a tribunal;

“decision-maker”, in relation to a supplier, means a contracting authority or an appropriate authority that is considering whether a mandatory exclusion ground applies to the supplier;

“director” has the meaning given in section 250 of CA 2006;

“event” means a conviction, decision, ruling, failure or other event by virtue of which a mandatory exclusion ground would apply to a supplier;

“HMRC” means His Majesty’s Revenue and Customs;

“parent undertaking” and “subsidiary undertaking” have the meanings given in section 1162 of CA 2006;

“predecessor company” means a company which –

- (a) became insolvent and ceased to trade,
- (b) before it ceased to trade, carried on the same or substantially the same business as the supplier,
- (c) has transferred all or substantially all of its assets to the supplier, and

- (d) had at least one director or shadow director who is or has been a director or shadow director of the supplier;  
“shadow director” has the meaning given in section 251 of CA 2006.

## SCHEDULE 7

Section 57

## DISCRETIONARY EXCLUSION GROUNDS

*Labour market misconduct*

- 1 A discretionary exclusion ground applies to a supplier if any of the following orders has been made against the supplier or a connected person –
- (a) a slavery and trafficking prevention order, an interim slavery and trafficking prevention order, a slavery and trafficking risk order or an interim slavery and trafficking risk order under Part 2 of the Modern Slavery Act 2015;
  - (b) a trafficking and exploitation prevention order, an interim trafficking and exploitation prevention order, a trafficking and exploitation risk order or an interim trafficking and exploitation risk order under Part 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12);
  - (c) a slavery and trafficking prevention order or an interim slavery and trafficking prevention order under Schedule 3 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c.2 (N.I.));
  - (d) a labour market enforcement order under section 18 of the Immigration Act 2016.
- 2 A discretionary exclusion ground applies to a supplier if the supplier or a connected person has engaged in conduct outside the United Kingdom that the decision-maker considers could result in any such order being made if the conduct occurred in the United Kingdom.
- 3 A discretionary exclusion ground applies to a supplier if the decision-maker considers that there is sufficient evidence that the supplier or a connected person has engaged in conduct (whether in or outside the United Kingdom) constituting (or that would, if it occurred in the United Kingdom, constitute) an offence referred to in –
- (a) section 1, 2, 4 or 30 of the Modern Slavery Act 2015,
  - (b) section 1, 4 or 32 of the Human Trafficking and Exploitation (Scotland) Act 2015, or
  - (c) section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, or paragraph 16 of Schedule 3 to that Act.

*Environmental misconduct*

- 4 A discretionary exclusion ground applies to a supplier if –
- (a) the supplier or a connected person has been convicted of an offence (whether in or outside the United Kingdom), and

- (b) the conduct constituting the offence caused, or had the potential to cause, significant harm to the environment, including the life and health of plants and animals.

*Insolvency, bankruptcy, etc*

- 5 A discretionary exclusion ground applies to a supplier if the supplier or a connected person has –
- (a) become bankrupt (or, in Scotland, its estate has been sequestrated),
  - (b) become subject to insolvency or winding-up proceedings,
  - (c) had its assets subject to administration or receivership, including by a liquidator or court,
  - (d) entered into an arrangement with its creditors,
  - (e) become subject to a petition or application for any such procedures or arrangements, or
  - (f) in any jurisdiction, been subject to a procedure or an application the decision-maker considers to correspond to any procedure or application mentioned in paragraphs (a) to (e).
- 6 A discretionary exclusion ground applies to a supplier if the supplier or a connected person has suspended or ceased carrying on all or a substantial part of its business.

*Potential competition infringements*

- 7 (1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that an agreement or concerted practice to which the supplier or a connected person is party has infringed –
- (a) the Chapter I prohibition (within the meaning given by section 2 of the Competition Act 1998), or
  - (b) any substantially similar prohibition applicable in a jurisdiction outside the United Kingdom.
- (2) Sub-paragraph (1) does not apply where –
- (a) the supplier or connected person is an immunity recipient (within the meaning given by paragraph 14 of Schedule 8A to that Act), or
  - (b) a regulator or other authority outside the United Kingdom has granted the supplier or connected person immunity from penalties in respect of the infringement.
- 8 A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has infringed –
- (a) the Chapter II prohibition (within the meaning given by section 18 of the Competition Act 1998), or
  - (b) any substantially similar prohibition applicable in a jurisdiction outside the United Kingdom.
- 9 (1) A discretionary exclusion ground applies to a supplier if –
- (a) the CMA has made a decision under the Competition Act 1998 that the supplier or a connected person has infringed the Chapter II prohibition, or
  - (b) a regulator or other authority outside the United Kingdom has made a decision that the supplier or a connected person has infringed any substantially similar prohibition.

- (2) In this paragraph the reference to the CMA includes a reference to a regulator referred to in section 54(1) of the Competition Act 1998 in circumstances where it exercises functions concurrently with the CMA in accordance with that Act.
- 10 (1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has engaged in conduct constituting –
- (a) an offence under section 188 of the Enterprise Act 2002 (cartel offence), or
  - (b) a substantially similar offence under the law of a country or territory outside the United Kingdom.
- (2) Sub-paragraph (1) does not apply if –
- (a) the CMA has given written notice to the supplier or connected person under section 190(4) of the Enterprise Act 2002 (immunity from prosecution for cartel offences) in connection with the conduct, or
  - (b) a regulator or other authority outside the United Kingdom has determined that the supplier or connected person is immune from prosecution in respect of the conduct.

*Professional misconduct*

- 11 (1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has engaged in professional misconduct which brings into question the supplier's integrity.
- (2) A discretionary exclusion ground applies to a supplier if a court, regulator or other authority has ruled that the supplier or connected person has engaged in such professional misconduct.
- (3) "Professional misconduct" includes conduct involving –
- (a) dishonesty;
  - (b) impropriety;
  - (c) a serious breach of ethical or professional standards applicable to the supplier (whether those standards are mandatory or not).

*Breach of contract and poor performance*

- 12 (1) A discretionary exclusion ground applies to a supplier if –
- (a) the supplier has breached a relevant contract, and
  - (b) the breach was sufficiently serious.
- (2) A discretionary exclusion ground applies to a supplier if –
- (a) a court has ruled that the supplier breached a relevant contract, and
  - (b) the breach was sufficiently serious.
- (3) A discretionary exclusion ground applies to a supplier if the supplier –
- (a) has not performed a relevant contract to the regulated authority's satisfaction,
  - (b) was given proper opportunity to improve performance, and
  - (c) failed to do so.

- (4) A discretionary exclusion ground applies to a supplier if a contracting authority has published information under section 71(5) in respect of the supplier (information concerning either breach or poor performance).
- (5) For the purposes of this paragraph, a breach of a contract is “sufficiently serious” if it results in—
  - (a) termination (or partial termination) of the contract,
  - (b) the award of damages,
  - (c) a settlement agreement between the supplier and the regulated authority.
- (6) In this paragraph—
  - “regulated authority” means—
    - (a) a contracting authority,
    - (b) another public authority, or
    - (c) an authority outside the United Kingdom that the decision-maker considers to be equivalent;
  - “relevant contract” means a contract to which a regulated authority is party.

*Acting improperly in procurement*

- 13 (1) A discretionary exclusion ground applies to a supplier if a decision-maker considers that—
- (a) the supplier has acted improperly in relation to any procurement, and
  - (b) in so doing, the supplier put itself at an unfair advantage in relation to the award of a public contract.
- (2) A supplier might act improperly in relation to a procurement by—
- (a) failing to provide information requested by the contracting authority;
  - (b) providing information that is incomplete, inaccurate or misleading;
  - (c) accessing confidential information;
  - (d) unduly influencing the contracting authority’s decision-making.

*National security*

- 14 A discretionary exclusion ground applies to a supplier if a decision-maker determines that the supplier or a connected person poses a threat to the national security of the United Kingdom.

*Excluded matters*

- 15 (1) For the purpose of determining whether a discretionary exclusion ground applies to a supplier, the decision-maker must ignore any event that—
- (a) the decision-maker was aware of before the five-year period ending with the date on which the determination is made, or
  - (b) a reasonably well-informed decision-maker in their position would have been aware of before that period.
- This is subject to sub-paragraphs (2) and (4).

- (2) In determining whether a discretionary exclusion ground within subparagraph (3) applies to a supplier, the decision-maker must also ignore any event that –
- (a) the decision-maker was aware of before the three-year period ending with the date on which the determination is made, or
  - (b) a reasonably well-informed decision-maker in their position would have been aware of before that period.
- (3) The grounds are those listed in –
- (a) paragraphs 5 and 6 (insolvency, bankruptcy etc);
  - (b) paragraphs 7 to 10 (potential competition infringements);
  - (c) paragraph 11 (professional misconduct);
  - (d) paragraph 12(1) or (2) (breach of contract);
  - (e) paragraph 12(4) (adverse information about supplier published by contracting authority), where the information is published in relation to a breach of contract;
  - (f) paragraph 13 (acting improperly in a procurement).
- (4) In determining whether a discretionary exclusion ground listed in any of the following paragraphs applies to a supplier, the decision-maker must also ignore any event that occurred before the coming into force of this Schedule –
- (a) paragraphs 1 to 3 (labour market misconduct);
  - (b) paragraph 4 (environmental misconduct);
  - (c) paragraph 12(3) (poor performance);
  - (d) paragraph 12(4) (adverse information about supplier published by contracting authority), where the information is not published in relation to a breach of contract;
  - (e) paragraph 14 (national security).

### Definitions

- 16 In this Schedule –
- “decision-maker”, in relation to a supplier, means a contracting authority or an appropriate authority that is considering whether a discretionary exclusion ground applies to the supplier;
  - “event” means a conviction, decision, ruling, failure or other event by virtue of which a discretionary exclusion ground would apply to a supplier;
  - “information” includes evidence verifying that information.
- 17 Other terms used in this Schedule and defined in Schedule 6 have the meanings given in that Schedule.

## SCHEDULE 8

Section 74

### PERMITTED CONTRACT MODIFICATIONS

#### *Provided for in the contract*

- 1 A modification is a permitted modification if –

- (a) the possibility of the modification is unambiguously provided for in—
  - (i) the contract as awarded, and
  - (ii) the tender or transparency notice for the award of that contract, and
- (b) the modification would not change the overall nature of the contract.

*Urgency and the protection of life, etc*

- 2 A modification is a permitted modification if—
  - (a) its purpose could otherwise be achieved by the direct award of a contract under section 41, and
  - (b) such an award could be made by reference to—
    - (i) paragraph 13 of Schedule 5 (extreme and unavoidable urgency), or
    - (ii) regulations under section 42 (direct award to protect life, etc).
- 3 Assume, for the purposes of paragraph 2, that the contract would be a public contract as defined in section 3.

*Unforeseeable circumstances*

- 4 (1) A modification is a permitted modification if—
  - (a) the circumstances giving rise to the modification could not reasonably have been foreseen by the contracting authority before the award of the contract,
  - (b) the modification would not change the overall nature of the contract, and
  - (c) the modification would not increase the estimated value of the contract by more than 50 per cent.
- (2) Sub-paragraph (1)(c) does not apply if the contract being modified is a utilities contract.

*Materialisation of a known risk*

- 5 (1) A modification is a permitted modification if—
  - (a) the contracting authority considers that—
    - (i) a known risk has materialised otherwise than as a result of any act or omission of the contracting authority or the supplier,
    - (ii) because of that fact, the contract cannot be performed to the satisfaction of the contracting authority,
    - (iii) the modification goes no further than necessary to remedy that fact, and
    - (iv) awarding a further contract under Part 3 (instead of modifying the contract) would not be in the public interest in the circumstances, and
  - (b) the modification would not increase the estimated value of the contract by more than 50 per cent ignoring, for the purpose of estimating the value of the contract, the fact that the risk has materialised.

- (2) Sub-paragraph (1)(b) does not apply if the contract being modified is a utilities contract.
- 6 In paragraph 5, a “known risk” means a risk that –
- (a) the contracting authority considered –
    - (i) could jeopardise the satisfactory performance of the contract, but
    - (ii) because of its nature, could not be addressed in the contract as awarded, and
  - (b) was identified in the tender or transparency notice for award of the contract, including by reference to –
    - (i) it meeting the description in paragraph (a), and
    - (ii) the possibility of modification under paragraph 5.
- 7 In considering whether awarding a new contract would be in the public interest for the purposes of paragraph 5, a contracting authority –
- (a) must consider whether a new contract could provide more value for money, and
  - (b) may consider technical and operational matters.

*Additional goods, services or works*

- 8 (1) A modification is a permitted modification if –
- (a) the modification provides for the supply of goods, services or works in addition to the goods, services or works already provided for in the contract,
  - (b) using a different supplier would result in the supply of goods, services or works that are different from, or incompatible with, those already provided for in the contract,
  - (c) the contracting authority considers that the difference or incompatibility would result in –
    - (i) disproportionate technical difficulties in operation or maintenance or other significant inconvenience, and
    - (ii) the substantial duplication of costs for the authority, and
  - (d) the modification would not increase the estimated value of the contract by more than 50 per cent.
- (2) Sub-paragraph (1)(d) does not apply if the contract being modified is a utilities contract.

*Transfer on corporate restructuring*

- 9 A novation or assignment (or in Scotland, assignation) of a public contract to a supplier that is not an excluded supplier is a permitted modification if it is required following a corporate restructuring or similar circumstance.

*Defence authority contracts*

- 10 A modification of a defence authority contract is a permitted modification where it is necessary to enable the contracting authority to –
- (a) take advantage of developments in technology, or
  - (b) prevent or mitigate any adverse effect of those developments.



- 11 A modification of a defence authority contract is a permitted modification where –
- (a) the continuous supply of the goods, services or works supplied under the contract is necessary to ensure the ability of the Armed Forces to maintain their operational capabilities, effectiveness, readiness for action, safety, security, or logistical capabilities, and
  - (b) the modification is necessary to ensure there is continuous supply of those goods, services or works.

## SCHEDULE 9

Section 89

### TREATY STATE SUPPLIERS (SPECIFIED INTERNATIONAL AGREEMENTS)

- 1 The Agreement on Government Procurement signed at Marrakesh on 15 April 1994, as amended on or before the day on which this Schedule comes into force.
- 2 Agreement establishing an Association between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile, signed at Santiago on 30 January 2019.
- 3 Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation, signed at Bern on 11 February 2019.
- 4 Trade and Partnership Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the State of Israel, signed at Tel Aviv on 18 February 2019.
- 5 Economic Partnership Agreement between the CARIFORUM States, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, signed at Castries, Saint Lucia on 22 March 2019.
- 6 Trade Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Colombia, the Republic of Ecuador and the Republic of Peru, of the other part, signed at Quito on 15 May 2019.
- 7 Agreement Establishing an Association between the United Kingdom of Great Britain and Northern Ireland and Central America, signed at Managua on 18 July 2019.
- 8 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Korea, of the other part, signed at London on 22 August 2019.
- 9 Strategic Partnership and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and Georgia, signed at London on 21 October 2019.
- 10 Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Kosovo, signed at Pristina on 3 December 2019.

- 
- 11 Political, Free Trade and Strategic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine, signed at London on 8 October 2020.
  - 12 Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership, signed at Tokyo on 23 October 2020.
  - 13 Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of North Macedonia, signed at Skopje on 3 December 2020.
  - 14 Agreement on Trade Continuity between the United Kingdom of Great Britain and Northern Ireland and Canada, signed at Ottawa on 9 December 2020.
  - 15 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Singapore, signed at Singapore on 10 December 2020.
  - 16 Trade Continuity Agreement between the United Kingdom of Great Britain and Northern Ireland and the United Mexican States, signed at Mexico City on 15 December 2020.
  - 17 Strategic Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Moldova, signed at Chisinau on 24 December 2020.
  - 18 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Socialist Republic of Viet Nam, signed at London on 29 December 2020.
  - 19 Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part, signed at Brussels and London on 30 December 2020.
  - 20 Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Albania, signed at Tirana on 5 February 2021.
  - 21 Partnership, Trade and Cooperation Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Serbia, signed at Belgrade on 16 April 2021.
  - 22 Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, signed at London on 8 July 2021.
  - 23 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, signed at London on 16 December 2021 and at Adelaide on 17 December 2021.
  - 24 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand signed at London on 28 February 2022.

SCHEDULE 10

Section 117

SINGLE SOURCE DEFENCE CONTRACTS

1 The Defence Reform Act 2014 is amended as follows.

*Definition of qualifying defence contract*

- 2 (1) Section 14 (regulations relating to qualifying defence contracts) is amended as follows.
- (2) In subsection (2)(a), after “goods, works or services” insert “wholly or substantially”.
- (3) After subsection (5) insert –
- “(5A) Single source contract regulations may specify circumstances in which a contract entered into by the Secretary of State with a primary contractor is or is not to be treated as amending an existing contract between those parties for the purposes of this section.”
- (4) After subsection (8) insert –
- “(8A) The regulations may also specify when a contract is to be treated as substantially for defence purposes.”

*Pricing of qualifying defence contracts*

- 3 (1) Section 15 (pricing of qualifying defence contracts) is amended as follows.
- (2) In subsection (1), after “qualifying defence contract” insert “, and, where the contract is divided into components, each component of that contract,”.
- (3) For subsection (2) substitute –
- “(2) The regulations must provide for the price payable under the contract, or any component, to be determined –
- (a) in accordance with the formula in subsection (4), or
- (b) in such circumstances as may be specified in the regulations, in accordance with another method.
- (2A) The regulations must only specify circumstances for the purposes of subsection (2)(b) if the Secretary of State is satisfied that the factors referred to in section 13(2) may be ensured in those circumstances if another method is used.
- (2B) The regulations may also make provision requiring a particular method specified in the regulations to be used in certain of the circumstances specified for the purposes of subsection (2)(b).”
- (4) In subsection (3)(a) –
- (a) after “contract” insert “or each amended component of that contract,”;
- (b) for “the formula in subsection (4)” substitute “the method applicable by virtue of subsection (2)”.
- (5) In subsection (3)(b) for “formula” substitute “method”.
- (6) In subsection (4) –

- 
- (a) after “for the contract” insert “or component”;
    - (b) after “under the contract” insert “or component”.
  - (7) In subsection (5), after “contract” insert “or component”.
  - (8) After subsection (5) insert –
    - “(6) In this Part, “component”, in relation to a contract, means a part of the contract that is to be treated distinctly from other such parts in determining the price payable under the contract.
    - (7) For the purposes of subsection (6), a part of a contract is to be treated distinctly if –
      - (a) single source contract regulations contain provision to that effect, or
      - (b) the parties to the contract agree that it should.
    - (8) Single source contract regulations may make provision about when parts of a qualifying defence contract are or are not to be treated distinctly from other parts of the same contract.”
- 4
- (1) Section 16 (pricing of contracts: supplementary) is amended as follows.
  - (2) In subsection (1)(b)(i), after “contract” insert “or, where relevant, a component of that contract”.
  - (3) After subsection (3) insert –
    - “(4) Single source contract regulations may provide that the SSRO –
      - (a) must, on an application by a person within subsection (5), determine whether the method used to determine the price payable under a qualifying defence contract or a component of that contract was appropriate;
      - (b) may, in consequence of a determination under paragraph (a), determine that the price payable under the contract is to be adjusted by an amount specified by the SSRO.
    - (5) The following persons are within this subsection –
      - (a) the Secretary of State,
      - (b) an authorised person, and
      - (c) the primary contractor.”
- 5
- After section 21(2) (final price adjustment) insert –
- “(2A) Provision made under subsection (2) may include provision dealing with how, in the case of a qualifying defence contract divided into components, the components are to be taken into account in determining the amount of any adjustments to the total price payable under such a contract.”
- 6
- In section 22(1)(a) (recovery of unpaid amounts), after “section” insert “16(4),”.
- 7
- (1) Section 42 (single source contract regulations: general) is amended as follows.
  - (2) In subsection (4)(b), omit the second “or”.
  - (3) After subsection (4)(b) insert –

“(ba) provision made by virtue of section 15(2)(b) (pricing of contracts), whether alone or with other provision, or”.

- 8 In section 43 (interpretation etc), at the appropriate place insert –  
““component” has the meaning given by section 15(6).”

*Contract profit rate*

- 9 (1) Section 17 (contract profit rate) is amended as follows.
- (2) In subsection (1) at the end insert “, or, where the contract is divided into components, any component of that contract”.
- (3) In subsection (2) –
- (a) in step 2, for the words from “the risk” to “estimated allowable costs” substitute “the financial risks to the primary contractor of entering into the contract or component, taking into account the particular type of activities to be carried out by the primary contractor under that contract or component.”;
  - (b) omit steps 3 and 4 (and, accordingly, renumber steps 5 and 6 as steps 3 and 4);
  - (c) in new step 3, for “4” substitute “2”;
  - (d) in new step 3, after “contract” insert “or component”;
  - (e) in new step 3, before “Any increase” insert “In specifying provisions of the contract or component, the Secretary of State must comply with any requirements imposed by the regulations, and”;
  - (f) in new step 4, for “5” substitute “3”;
  - (g) in new step 4, after “contract”, in both places it occurs, insert “or component”.
- (4) In subsection (3) for “6”, in both places it occurs, substitute “4”.
- (5) In subsection (4)(b), for “6” substitute “4”.
- 10 (1) Section 18 (contract profit rate: supplementary) is amended as follows.
- (2) In subsection (2)(a) –
- (a) for “6” substitute “4”;
  - (b) after “paragraph” insert “, or a component of such a contract”.
- (3) In subsection (2)(b), after “contract” insert “or component”.
- (4) In subsection (2)(c), after “those contracts” insert “or components of those contracts”.
- (5) For subsection (3)(a) substitute –
- “(a) may, on an application by a person within subsection (4), determine whether –
    - (i) the baseline profit rate identified under step 1 in section 17(2) is correct in relation to a qualifying defence contract or a component of such a contract;
    - (ii) an adjustment agreed under any of steps 2 to 4 in section 17(2) is appropriate;
    - (iii) an adjustment agreed under step 3 in section 17(2) is in accordance with the regulations.”

- 11 (1) Section 19 (rates etc relevant to determining contract profit rate) is amended as follows.
- (2) In subsection (1) omit “the SSRO funding adjustment”.
- (3) In subsection (2) –
- (a) omit “and the SSRO funding adjustment”;
  - (b) omit “or funding adjustment”.
- (4) In subsection (4) omit “, and the SSRO funding adjustment for that year,”.
- (5) In subsection (5) –
- (a) omit “or the SSRO funding adjustment”;
  - (b) omit “or funding adjustment” in both places it occurs.
- (6) In subsection (6) omit “or the funding adjustment”.

*Allowable costs*

- 12 (1) Section 20 (allowable costs) is amended as follows.
- (2) In subsection (2) –
- (a) after “qualifying defence contract” insert “, or, where the contract is divided into components, a component of that contract”;
  - (b) in paragraph (b), after “contract” insert “or component”.
- (3) After subsection (2) insert –
- “(2A) Single source contract regulations may provide that the requirements set out in subsection (2)(a) to (c) are not met in relation to a cost where the cost arises from profits made by a person connected with the primary contractor.
- (2B) The regulations may specify the circumstances in which a person is connected with the primary contractor.”
- (4) In subsection (4) after “contract” insert “, or where the contract is divided into components, a component of that contract.”.
- (5) For subsection (5) substitute –
- “(5) Where a person within subsection (5A) applies to the SSRO for such a determination, the SSRO must determine –
- (a) the extent to which a cost is or would be an allowable cost under a qualifying defence contract or a component of such a contract, or
  - (b) the extent to which a method which is used or may be used to determine a cost under a qualifying defence contract or a component of such a contract would result in that cost being an allowable cost under such a contract or component.
- (5A) The following persons are within this subsection –
- (a) the Secretary of State;
  - (b) an authorised person;
  - (c) a primary contractor under a qualifying defence contract;
  - (d) a potential primary contractor.”

- (6) In subsection (6), for “the contract”, in the first place it occurs, substitute “a qualifying defence contract”.

### *Reports*

- 13 (1) Section 25 (reports on overheads and forward planning etc) is amended as follows.
- (2) For subsection (3)(a) substitute –
- “(a) where P is associated with one or more other persons –
    - (i) the ultimate parent undertaking in relation to P and those other persons, or
    - (ii) where permitted under the regulations in relation to a report mentioned in subsection (2), another person associated with P which that undertaking and the Secretary of State have agreed is to be a designated person in relation to that report, and”.
- (3) After subsection (8) insert –
- “(8A) In this section, “financial year” means a year beginning with 1 April or a year beginning with such other date as may be agreed between the Secretary of State and a designated person.”
- 14 In section 43 (interpretation etc), in the definition of “financial year”, at the end insert “(but see section 25(8A) for the different meaning of “financial year” in that section)”.

### *Qualifying sub-contracts*

- 15 (1) Section 29 (determining whether a contract is a qualifying sub-contract) is amended as follows.
- (2) After subsection (2)(b) insert –
- “(c) where the assessment is that the proposed contract would not be a qualifying sub-contract if it were entered into, to give notice in writing of that fact, and of reasons for the assessment, to the Secretary of State, an authorised person and the prospective sub-contractor.”
- (3) After subsection (4)(b) insert –
- “(c) where the assessment is that the proposed sub-contract would not be a qualifying sub-contract if it were entered into, to give notice in writing of that fact, and of reasons for the assessment, to the Secretary of State, an authorised person and the prospective sub-contractor.”
- (4) In subsection (5), in each of paragraphs (a) and (b), after “would”, insert “or would not”.
- 16 In section 30(4)(a) (application of single source contracts regime to qualifying sub-contracts) –
- (a) after “for the” insert “primary contractor or”;
  - (b) for “the sub-contractor’s opinion” substitute “their opinion”.
- 17 In section 31(3) (compliance notices) –
- (a) in paragraph (e), omit “, or”;

- (b) in paragraph (f), at the end insert “, or
- (g) in circumstances where P is required to give the notice mentioned in section 29(2)(c) or (4)(c) in respect of a proposed contract, P fails to give such a notice.”

*Powers of the Single Source Regulations Office (“SSRO”)*

- 18 (1) Section 35 (opinions and determinations by the SSRO) is amended as follows.
- (2) In subsection (1)(a), omit “qualifying defence” in both places it occurs.
  - (3) For subsection (2)(c) substitute –
    - “(c) a person who has entered into a contract with the Secretary of State (a “contractor”);”.
  - (4) In subsection (2)(d) –
    - (a) for “the”, in the first place it occurs, substitute “a”;
    - (b) omit “(in the case of a proposed contract)”.
  - (5) For subsection (3) substitute –
    - “(3) The SSRO may, on a reference made to it by a person mentioned in subsection (2), give an opinion on any other matter relating to the application or interpretation of this Part or single source contract regulations.”.
  - (6) In subsection (4)(a), omit “qualifying defence”.
  - (7) In subsection (5), omit “primary” in both places it occurs.

- 19 After section 35 insert –

**“35A Guidance**

The SSRO may issue such guidance as it considers appropriate in relation to the application or interpretation of this Part or single source contract regulations.”

- 20 In paragraph 10(3) of Schedule 4 (procedure of the SSRO), after “16(2)(b)” insert “or (4)”.

SCHEDULE 11

Section 119

REPEALS AND REVOCATIONS

*Primary legislation*

- 1 Paragraphs 9(9)(d) and 11(6)(b)(ix) of Schedule 7B to the Government of Wales Act 2006 (as inserted by the Trade (Australia and New Zealand) Act 2023).
- 2 Sections 39 and 40 of the Small Business, Enterprise and Employment Act 2015.
- 3 The Trade (Australia and New Zealand) Act 2023.



*Subordinate legislation*

- 4 The Defence and Security Public Contracts Regulations 2011 (S.I. 2011/1848).
  - 5 The Public Contracts Regulations 2015 (S.I. 2015/102).
  - 6 The Concession Contracts Regulations 2016 (S.I. 2016/273).
  - 7 The Utilities Contracts Regulations 2016 (S.I. 2016/274).
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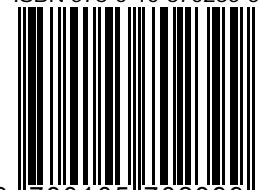
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## 3 THE PROCUREMENT REGULATIONS 2024

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*Draft Regulations laid before Parliament under section 122(4) of the Procurement Act 2023 (c. 54), for approval by resolution of each House of Parliament.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2024 No.**

**PUBLIC PROCUREMENT**

**The Procurement Regulations 2024**

*Made - - - -*

*Coming into force in accordance with regulation 1*

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## SCHEDULES

- Schedule 1 — Light touch services
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The Minister for the Cabinet Office makes these Regulations in exercise of the powers conferred by sections 9(2), 33(8), 69(4), 95(1), (2) and (3), 97(1) and (2), 113(1), 115(1), 120(1), 121(1) and (2), 122(3) and 125(1) and (2) of, and paragraph 5(1) of Schedule 1 to, the Procurement Act 2023<sup>(a)</sup>.

These Regulations are made with the consent of the Department of Finance for Northern Ireland in accordance with section 113(4) of the Procurement Act 2023.

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(a) 2023 c. 54. See section 123(1) of the Procurement Act 2023 for the definitions of “appropriate authority” and “Minister of the Crown”.

The Minister for the Cabinet Office has consulted the following persons on the provision contained in regulation 48 in accordance with section 121(3) of the Procurement Act 2023—

- (a) persons appearing to the Minister to represent the views of private utilities, and
- (b) such other persons as the Minister considers appropriate.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 122(4) of the Procurement Act 2023.

## PART 1

### Introductory

#### **Citation and commencement**

- 1.—(1) These Regulations may be cited as the Procurement Regulations 2024.
- (2) These Regulations, except regulation 48, come into force at the same time at which section 11 of the Procurement Act 2023 comes into force for any purpose(a).
- (3) Regulation 48 comes into force on the day after the day on which these Regulations are made.

#### **Extent and application**

- 2.—(1) These Regulations extend to England and Wales, Scotland and Northern Ireland, subject to paragraph (2).
- (2) Regulation 43 extends to England and Wales only.
- (3) Part 5 makes provision about how Parts 2 and 3 apply in relation to Wales and Scotland.

#### **Interpretation**

3. In these Regulations(b)—

“CA 2006” means the Companies Act 2006(c);

“CPV code” means a code used in the Common Procurement Vocabulary as adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary(d).

“PA 2023” means the Procurement Act 2023.

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(a) Section 11 comes into force on such day as a Minister of the Crown may by regulations appoint; and different days may be appointed for different purposes. See section 127 of the Procurement Act 2023.

(b) Also see section 123 of the Procurement Act 2023 for an index of defined definitions in that Act.

(c) 2006 c. 46.

(d) EUR 2195/2002, as amended by S.I. 2020/1319; this is a reference to the retained version of Regulation (EC) 2195/2002. That retained version is available online at <https://www.legislation.gov.uk/eur/2002/2195/contents>.

## PART 2

### Transparency of procurements under the Procurement Act 2023

#### Interpretation of Part 2

4. In this Part—

“alternative online system” has the meaning given by regulation 5(10);

“central digital platform” has the meaning given by regulation 5(2);

the “Comprehensive and Progressive Agreement for Trans-Pacific Partnership” means the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Santiago on 8 March 2018, including the Accession Protocol of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Auckland and Bandar Seri Begawan on 16 July 2023(a), as amended from time to time;

“contract subject-matter” has the meaning given by regulation 14;

“contracting authority information” has the meaning given by regulation 13;

“core supplier information” has the meaning given by regulation 6(9);

“geographical classification” has the meaning given by regulation 14(2);

the “GPA” means Agreement on Government Procurement signed at Marrakesh on 15 April 1994(b), as amended from time to time;

“PSC register” means the register that a company is required to keep under section 790M of the CA 2006 (register of people with significant control over a company);

“unique identifier” has the meaning given by regulation 8.

#### Publication of notices etc on central digital platform

5.—(1) A notice, document or information which is published or given in accordance with a provision of the PA 2023 listed in paragraph (3) must be published or given by publishing it on the central digital platform.

(2) The “central digital platform” is the online system established by the Minister for the Cabinet Office and which may be accessed on [www.gov.uk](http://www.gov.uk)(c).

(3) The provisions are—

- (a) section 15(1) (planned procurement notices)(d),
- (b) section 17(1)(a) (preliminary market engagement notices),
- (c) section 21(1) (tender notices),
- (d) section 24(4) (refining award criteria), in respect of republishing tender notices only,

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(a) The Agreement can be seen here: <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources/>

(b) The Agreement can be seen here: [https://www.wto.org/english/tratop\\_e/gproc\\_e/gpa\\_1994\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gpa_1994_e.htm)

(c) See here: <https://www.gov.uk/find-tender>

(d) Planned procurement notices include qualifying planned procurement notices by virtue of section 15(3) of the Procurement Act 2023.

- (e) section 31(5) (modifying a section 19 procurement), in respect of republishing tender notices only,
- (f) section 39(2) (dynamic market notices: intention to establish a dynamic market)(a),
- (g) section 39(3) (dynamic market notices: establishment of a dynamic market),
- (h) section 39(4) (dynamic market notices: modifications to a dynamic market),
- (i) section 39(5) (dynamic market notices: cessation of a dynamic market),
- (j) section 44(1) (transparency notices),
- (k) section 50(1) (contract award notices),
- (l) section 52(3) (key performance indicators),
- (m) section 53(1) (contract details notices),
- (n) section 53(3) (copies of contracts),
- (o) section 55(2) (procurement termination notices),
- (p) section 69(1) (payments compliance notices),
- (q) section 71(2)(b) (contract performance: information relating to the assessment of performance against key performance indicators),
- (r) section 71(5) (contract performance: breach of public contract or failure to perform),
- (s) section 75(1) (contract change notices),
- (t) section 75(5) (contract change notices: modifications taken together),
- (u) section 77(1) (contract modifications),
- (v) section 80(1) (contract termination notices),
- (w) section 87(1) (below-threshold tender notices),
- (x) section 87(3) (contract details notices following notifiable below-threshold contracts),
- (y) section 93(2) (pipeline notices), and
- (z) section 94(3) (information being withheld).

(4) The requirement in paragraph (1) to publish or give a notice, document or information by publication on the central digital platform is met where the contracting authority has submitted the notice, document or information to the platform and—

- (a) the Minister for the Cabinet Office has informed the contracting authority that the notice, document or information has successfully been submitted to the platform, or
- (b) the notice, document or information is capable of being accessed by suppliers and members of the public on the platform.

(5) If all of the conditions in paragraph (6) are met the contracting authority may publish or give the notice, document or information by publishing the notice, document or information on an alternative online system and in doing so the authority is to be treated as meeting for the time being the requirement in paragraph (1).

(6) The conditions are that—

- (a) in the case of a notice mentioned in paragraph (7), no less than 4 hours have passed since the notice was submitted to the central digital platform,
- (b) in the case of any other notice, document or information, no less than 48 hours have passed since the notice, document or information was submitted to the platform,

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(a) Dynamic market notices under section 39(2) include qualifying utilities dynamic market notices by virtue of section 40(6) of the Procurement Act 2023.



- (c) the contracting authority has not received confirmation from the Minister for the Cabinet Office that the notice, document or information has successfully been published on the platform, and
  - (d) the notice, document or information is not capable of being accessed by members of the public on the platform.
- (7) The notice is a transparency notice<sup>(a)</sup>, contract award notice or contract details notice relating to—
- (a) the direct award of a public contract pursuant to regulations made under section 42 of the PA 2023 (direct award to protect life, etc), or
  - (b) the direct award of a public contract pursuant to paragraphs 13 and 14 of Schedule 5 to the PA 2023 (urgency).
- (8) The contracting authority is no longer to be treated as meeting for the time being the requirement in paragraph (1) if the Minister for the Cabinet Office informs the contracting authority that the submission of the notice, document or information to the central digital platform has been rejected.
- (9) A contracting authority which uses an alternative online system in accordance with paragraph (5) must cooperate with the Minister for the Cabinet Office to ensure that the notice, document or information in question is subsequently—
- (a) published on the central digital platform, and
  - (b) capable of being accessed by members of the public on the platform.
- (10) An “alternative online system” is an online system for publishing procurement information which is—
- (a) free of charge and capable of being accessed by suppliers and members of the public,
  - (b) accessible to people with disabilities, and
  - (c) not the central digital platform.
- (11) Nothing in this regulation prevents a contracting authority from publishing the notice, document or information other than on the central digital platform or an alternative online system but the authority must not do so before publishing the notice, document or information on that platform or system.

### **Sharing core supplier information through central digital platform**

**6.—**(1) This regulation applies to a contracting authority where a supplier gives core supplier information to the authority during a procedure listed in paragraph (2) with a view to the award of a public contract.

- (2) The procedures are—
- (a) an open procedure<sup>(b)</sup>,
  - (b) a competitive flexible procedure,
  - (c) a direct award under section 41 or 43 of the PA 2023, or
  - (d) a competitive selection process for frameworks under section 46 of the PA 2023.

(3) If the core supplier information is given during an open procedure or a competitive flexible procedure, the contracting authority must obtain confirmation from the supplier that the supplier has taken the steps set out in paragraph (5) before the end of the tendering period.

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<sup>(a)</sup> For an index of defined expressions related to expressions used in the Procurement Act 2023, certain of which, for example “transparency notice”, are also used in these Regulations, see section 124 of that Act.

<sup>(b)</sup> For the meaning of “open procedure” see section 20 of the Procurement Act 2023.

(4) If the core supplier information is given before a direct award under section 41 or 43 of the PA 2023, or during a competitive selection process for frameworks under section 46 of that Act, the contracting authority must obtain confirmation from the supplier that the supplier has taken the steps set out in paragraph (5) before the award of the public contract.

(5) The steps are—

- (a) the supplier has registered on the central digital platform,
- (b) the supplier has submitted its up-to-date core supplier information to that platform, and
- (c) the supplier has given that up-to-date core supplier information to the contracting authority by means of a facility provided on that platform for the purpose of sharing core supplier information.

(6) Paragraph (7) applies where—

- (a) a supplier has given up-to-date core supplier information to a contracting authority during a procedure listed in paragraph (2), and
- (b) the supplier's core supplier information subsequently changes and the supplier gives updated or corrected core supplier information to the contracting authority before the award of the public contract.

(7) The contracting authority must obtain a further confirmation from the supplier that the supplier has taken the steps set out in paragraph (8) before the award of the public contract.

(8) The steps are—

- (a) the supplier has submitted the updated or corrected core supplier information to the central digital platform, and
- (b) the supplier has given the updated or corrected core supplier information to the contracting authority by means of a facility provided on that platform for the purpose of sharing core supplier information.

(9) In these Regulations “core supplier information” means—

- (a) the supplier's basic information set out in regulation 9,
- (b) the supplier's economic and financial standing information set out in regulation 10,
- (c) the supplier's connected person information set out in regulation 11, and
- (d) the supplier's exclusion grounds information set out in regulation 12.

(10) In this regulation “tendering period” has the meaning given by section 54(5) of the PA 2023.

(11) In this regulation a reference to a facility provided on the central digital platform includes a reference to a facility to download information to be forwarded on to a contracting authority by a supplier.

(12) This regulation is subject to regulation 7.

#### **Core supplier information: platform not working, urgency, private utilities**

7.—(1) Where, in respect of core supplier information given during an open procedure or a competitive flexible procedure, a contracting authority cannot obtain confirmation from the supplier that the supplier has taken the steps in regulation 6(5) before the end of the tendering period due to the reason in paragraph (2), paragraph (3) applies.

(2) The reason is that the supplier could not reasonably register on, submit information to, or use a facility for giving information through, the central digital platform because that platform was not working properly during any period before the end of the tendering period.

(3) The contracting authority must obtain confirmation from the supplier that the supplier has taken the steps set out in regulation 6(5) as soon as practicable and in any event before the award of the contract.

(4) In the case of a direct award of a public contract pursuant to paragraphs 13 and 14 of Schedule 5 to the PA 2023 (urgency), regulation 6 is to be read as if—

- (a) the reference in paragraph (4) to the contracting authority obtaining confirmation before the award of the public contract were a reference to the authority obtaining confirmation as soon as practicable and in any event before the date when the contract details notice is published, and
- (b) paragraphs (6) to (8) were omitted.

(5) Regulation 6 does not apply to a private utility in the case of a direct award of a public contract pursuant to paragraphs 13 and 14 of Schedule 5 to the PA 2023 (urgency).

### **Unique identifiers and exemption from publishing them on alternative online system**

**8.—**(1) In these Regulations, “unique identifier” means—

- (a) in the case of a procurement, the unique code allocated by the central digital platform when the first notice relating to the procurement is published on that platform, other than in the circumstances set out in paragraph (b),
- (b) in the case of a procurement where there has been a switch to a direct award in accordance with section 43 of the PA 2023, the unique code allocated by the central digital platform when the transparency notice relating to the contract is published on that platform,
- (c) in the case of a contract, the unique code which enables a reader of a notice referring to the contract to distinguish the contract from other contracts awarded under the same procurement procedure,
- (d) in the case of a dynamic market, the unique code allocated by the central digital platform when the first of the following notices is published on that platform in relation to the dynamic market—
  - (i) any pipeline notice,
  - (ii) any preliminary market engagement notice, or
  - (iii) the first dynamic market notice, and
- (e) in the case of—
  - (i) a supplier,
  - (ii) a contracting authority,
  - (iii) a person carrying out a procurement, or part of a procurement, on behalf of a contracting authority, or
  - (iv) a person other than a contracting authority who is establishing a dynamic market in accordance with section 35(3) of the PA 2023,

the unique code which is submitted to the central digital platform and is recognised by that platform or, where no such code is submitted and recognised, is the unique code which is allocated by that platform when the person registers on that platform.

(2) Paragraph (3) applies where a contracting authority publishes a notice, document or information mentioned in regulation 5(3) on an alternative online system under regulation 5(5).

(3) The contracting authority is not required to publish any unique identifier in accordance with this Part until that notice, document or information is subsequently published on the central digital platform under regulation 5(9).

## Supplier's basic information

- 9.—(1) This regulation sets out the supplier's basic information.
- (2) Where the supplier is an individual, the information is—
- (a) the supplier's name,
  - (b) the unique identifier for the supplier,
  - (c) the supplier's contact postal address and email address,
  - (d) where the supplier has a website, the website address,
  - (e) the supplier's VAT registration number (within the meaning of section 5A of the Value Added Tax Act 1994<sup>(a)</sup>), if applicable, and
  - (f) details of any relevant qualification or trade assurance held by the individual, including—
    - (i) in the case of a qualification, the name of the person or body which awarded the qualification, the name of the qualification and the date it was awarded, and
    - (ii) in the case of a trade assurance, the name of the person or body which awarded the assurance, the assurance reference number and the date the assurance was given.
- (3) Where the supplier is not an individual, the information is—
- (a) the supplier's name,
  - (b) the unique identifier for the supplier,
  - (c) the supplier's registered or principal office address,
  - (d) the supplier's contact postal address and email address,
  - (e) where the supplier markets its goods, services or works online, the relevant website address,
  - (f) the supplier's legal form and the law by which it is governed,
  - (g) where the supplier is a company registered under the CA 2006<sup>(b)</sup>, the date when the supplier was registered under that Act,
  - (h) where the supplier is not a company registered under the CA 2006—
    - (i) any equivalent date to that mentioned in sub-paragraph (g), or
    - (ii) where there is no equivalent date, the date the supplier began trading,
  - (i) the supplier's VAT registration number (within the meaning of section 5A of the Value Added Tax Act 1994), if applicable,
  - (j) details of any relevant qualification or trade assurance held by the supplier, including—
    - (i) in the case of a qualification, the name of the person or body which awarded the qualification, the name of the qualification and the date it was awarded, or
    - (ii) in the case of a trade assurance, the name of the person or body which awarded the registration, the assurance reference number and the date the assurance was given, and
  - (k) whether the supplier is—
    - (i) a small and medium-sized enterprise<sup>(c)</sup>,
    - (ii) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
    - (iii) a supported employment provider, or

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(a) 1994 c. 23. Section 5A was inserted by the Taxation (Post-transition Period) Act 2020 (c. 26).

(b) 2006 c. 46.

(c) For the meaning of "small and medium-sized enterprises" see section 123 of the Procurement Act 2023.

- (iv) a public service mutual.

### **Supplier's economic and financial standing information**

**10.**—(1) This regulation sets out the supplier's economic and financial standing information.

(2) The information is—

- (a) in the case of a supplier whose accounts were required to be audited for both of the supplier's most recent two financial years in accordance with Part 16 of the CA 2006, a copy of those accounts,
- (b) in the case of a supplier whose accounts were required to be audited for the supplier's most recent financial year in accordance with Part 16 of the CA 2006, but not the financial year immediately preceding that, a copy of those accounts,
- (c) in the case of a supplier whose accounts were required to be audited for both of the supplier's most recent two financial years in accordance with an overseas equivalent to Part 16 of the CA 2006, a copy of those accounts,
- (d) in the case of a supplier whose accounts were required to be audited for the supplier's most recent financial year in accordance with an overseas equivalent to Part 16 of the CA 2006, but not the financial year immediately preceding that, a copy of those accounts, or
- (e) in the case of any other supplier—
  - (i) if the supplier was in business for both of the supplier's most recent financial years, accounts or other information for both of those years, or
  - (ii) if the supplier was in business for the supplier's most recent financial year but not the financial year immediately preceding that, accounts or other information for the supplier's most recent financial year,

which is equivalent to information contained in accounts audited in accordance with Part 16 of the CA 2006, so far as those accounts or that other information can reasonably be given.

(3) In paragraph (2)(a) and (b) "financial year" has the same meaning as in section 390 of the CA 2006.

### **Supplier's connected person information**

**11.**—(1) This regulation sets out the supplier's connected person information.

(2) The information is the information in this regulation for each connected person of the supplier.

(3) Paragraph (4) sets out the information where—

- (a) the supplier is a company registered under the CA 2006,
- (b) the connected person is a person with significant control<sup>(a)</sup> over the supplier, and
- (c) the connected person is registrable.

(4) The information is—

- (a) the connected person's name, date of birth and nationality,
- (b) the connected person's service address,
- (c) which of the specified conditions in Part 1 of Schedule 1A to the CA 2006 applies,

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<sup>(a)</sup> For the meanings of "significant control" as well as the following terms used in this regulation, see paragraph 45 of Schedule 6 to the Procurement Act 2023. The terms are "director", "event", "parent undertaking", "subsidiary undertaking", "predecessor company" and "shadow director".

- (d) the date when the connected person became registrable as a person with significant control, if applicable, and
  - (e) the name of the PSC register on which the connected person is registered as a person with significant control, if applicable.
- (5) Paragraph (6) sets out the information where—
- (a) the supplier is a company registered under the CA 2006,
  - (b) the connected person is a relevant legal entity, and
  - (c) the connected person is registrable.
- (6) The information is—
- (a) the connected person’s name,
  - (b) the connected person’s registered or principal office address,
  - (c) the connected person’s service address,
  - (d) the connected person’s legal form and the law by which it is governed,
  - (e) which of the specified conditions in Part 1 of Schedule 1A to the CA 2006 applies,
  - (f) the date when the connected person became registrable as a relevant legal entity, if applicable, and
  - (g) the name of the PSC register on which the connected person is registered as a relevant legal entity, if applicable.
- (7) Paragraph (8) sets out the information where—
- (a) the supplier is a company registered under the CA 2006, and
  - (b) the connected person is—
    - (i) a director or shadow director of the supplier, and
    - (ii) an individual.
- (8) The information is—
- (a) the connected person’s name, date of birth and nationality,
  - (b) the connected person’s service address, and
  - (c) the country or state (or part of the United Kingdom) in which the connected person is usually resident.
- (9) Paragraph (10) sets out the information where—
- (a) the supplier is a company registered under the CA 2006, and
  - (b) the connected person is—
    - (i) a director or shadow director of the supplier, and
    - (ii) not an individual.
- (10) The information is—
- (a) the connected person’s name,
  - (b) the connected person’s registered or principal office address,
  - (c) the connected person’s service address,
  - (d) the connected person’s legal form and the law by which it is governed, and
  - (e) where the connected person is a company registered under the CA 2006, the person’s registration number given under that Act.
- (11) Paragraph (12) sets out the information where—
- (a) the supplier is a company registered under the CA 2006, and

- (b) the connected person is a parent undertaking or a subsidiary undertaking of the supplier.
- (12) The information is—
- (a) the name of the connected person,
  - (b) the connected person’s registered or principal office address,
  - (c) the connected person’s service address, and
  - (d) where the connected person is a company registered under the CA 2006, the registration number given under that Act.
- (13) Paragraph (14) sets out the information where—
- (a) the supplier is a company registered under the CA 2006, and
  - (b) the connected person is a predecessor company of the supplier.
- (14) The information is—
- (a) the name of the connected person,
  - (b) the connected person’s last registered or principal office address,
  - (c) where the connected person is a company registered under the CA 2006, the registration number given under that Act, and
  - (d) the date when the connected person became insolvent and ceased to trade.
- (15) Paragraph (16) sets out the information where—
- (a) the supplier is not a company registered under the CA 2006, and
  - (b) the connected person can reasonably be considered to stand in an equivalent position in relation to the supplier as the connected person described in paragraph (3), (5), (7), (9), (11) or (13).
- (16) The information is information which can reasonably be considered to be equivalent to that referred to in paragraph (4), (6), (8), (10), (12) or (14) (as the case may be).
- (17) Paragraph (18) sets out the information for a connected person to whom none of paragraphs (3), (5), (7), (9), (11), (13) or (15) apply—
- (a) with the right to exercise, or who actually exercises, significant influence or control over the supplier, or
  - (b) over which the supplier has the right to exercise, or actually exercises, significant influence or control.
- (18) The information is—
- (a) the connected person’s name,
  - (b) the connected person’s registered or principal office address,
  - (c) the connected person’s service address,
  - (d) the connected person’s legal form and the law by which it is governed,
  - (e) where the connected person is a company registered under the CA 2006, the registration number given under that Act,
  - (f) where the connected person is an overseas equivalent to a company registered under the CA 2006, the equivalent to a registration number issued under the CA 2006,
  - (g) which of the specified conditions in Part 1 of Schedule 1A to the CA 2006 applies, and
  - (h) the date when the connected person became registrable as a person with significant control, if applicable.
- (19) In this regulation—
- “registrable”—

(a) in respect of a person with significant control, has the meaning given by section 790C(4) of the CA 2006;

(b) in respect of a relevant legal entity, has the meaning given by 790C(8) of the CA 2006;

“relevant legal entity” has the meaning given by section 790C(6) of the CA 2006;

“service address” has the meaning given by section 1141 of the Companies Act 2006.

### **Supplier’s exclusion grounds information**

**12.—**(1) Paragraphs (2) to (13) set out the supplier’s exclusion grounds information.

(2) Whether the supplier or a connected person has been convicted of an offence referred to in the following paragraphs of Schedule 6 to the PA 2023—

- (a) paragraph 2 (corporate manslaughter or corporate homicide);
- (b) paragraph 3 (terrorism);
- (c) paragraphs 4 to 18 (theft, fraud, bribery etc);
- (d) paragraphs 19 to 26 (labour market, slavery and human trafficking offences);
- (e) paragraphs 27 to 28 (organised crime);
- (f) paragraphs 29 to 31 (tax offences);
- (g) paragraph 32 (cartel offence);
- (h) paragraph 33 (ancillary offences);
- (i) paragraph 34 (offences committed outside the United Kingdom).

(3) Whether the supplier or a connected person has been the subject of an event referred to in the following paragraphs of Schedule 6 to the PA 2023—

- (a) paragraph 36 (penalties for transactions connected with VAT fraud and evasion of tax or duty);
- (b) paragraph 37 (penalties payable for errors in tax documentation and failure to notify and certain VAT and excise wrongdoing);
- (c) paragraph 38 (adjustments for tax arrangements that are abusive);
- (d) paragraph 39 (finding by HMRC, in exercise of its powers in respect of VAT, of abusive practice);
- (e) paragraph 40 (defeat in respect of notifiable tax arrangements);
- (f) paragraph 41 (competition law infringements);
- (g) paragraph 42 (equivalents outside the United Kingdom).

(4) Whether, in respect of paragraph 43 of Schedule 6 to the PA 2023 (failure to cooperate with investigation)—

- (a) an appropriate authority has given the supplier or a connected person notice under section 60(6) of the PA 2023, and
- (b) the supplier or connected person has failed to comply with the notice before the end of the period specified in the notice.

(5) Whether the supplier or a connected person has been the subject of an event referred to in the following paragraphs of Schedule 7 to the PA 2023—

- (a) paragraph 1 (orders relating to labour market misconduct);
- (b) paragraph 4 (offence relating to environmental misconduct);
- (c) paragraph 5 (insolvency bankruptcy etc);



- (d) paragraph 6 (suspension or ceasing to carry on all or a substantial part of business);
  - (e) paragraph 9 (infringement of Competition Act 1998, Chapter II prohibition or equivalent outside United Kingdom);
  - (f) paragraph 11(2) (court etc ruling of professional misconduct);
  - (g) paragraph 12 (breach of contract and poor performance).
- (6) Whether, in respect of paragraph 2 of Schedule 7 to the PA 2023 (labour market misconduct), the supplier or a connected person—
- (a) has been, or is being, investigated for conduct outside the United Kingdom that could result in an order mentioned in paragraph 1 of Schedule 7 to the PA 2023 being made if the conduct occurred in the United Kingdom, or
  - (b) has engaged in such conduct.
- (7) Whether, in respect of paragraph 3 of Schedule 7 to the PA 2023 (labour market misconduct), the supplier or a connected person—
- (a) has been, or is being, investigated for conduct (whether in or outside the United Kingdom) constituting (or that would, if it occurred in the United Kingdom, constitute) an offence referred to in—
    - (i) section 1, 2, 4 or 30 of the Modern Slavery Act 2015(a),
    - (ii) section 1, 4 or 32 of the Human Trafficking and Exploitation (Scotland) Act 2015(b), or
    - (iii) section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015(c), or paragraph 16 of Schedule 3 to that Act, or
  - (b) has engaged in such conduct.
- (8) Whether, in respect of paragraph 7 of Schedule 7 to the PA 2023 (potential competition infringements)—
- (a) the supplier or a connected person has been, or is being, investigated over whether an agreement or concerted practice to which the supplier or a connected person is party has infringed—
    - (i) the Chapter I prohibition (within the meaning given by section 2 of the Competition Act 1998(d)), or
    - (ii) any substantially similar prohibition applicable in a jurisdiction outside the United Kingdom, or
  - (b) an agreement or concerted practice to which the supplier or a connected person is party has infringed such prohibitions,
- except in the circumstances mentioned in sub-paragraph (2) of paragraph 7.
- (9) Whether, in respect of paragraph 8 of Schedule 7 to the PA 2023 (potential competition infringements), the supplier or a connected person—
- (a) has been, or is being, investigated over whether the supplier or a connected person has infringed—
    - (i) the Chapter II prohibition (within the meaning given by section 18 of the Competition Act 1998), or

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(a) 2015 c. 30.  
 (b) 2015 asp 12.  
 (c) 2015 c. 2 (N.I.).  
 (d) 1998 c. 41.

- (ii) any substantially similar prohibition applicable in a jurisdiction outside the United Kingdom, or
  - (b) has infringed such prohibitions.
- (10) Whether, in respect of paragraph 10 of Schedule 7 to the PA 2023 (potential competition law infringements), the supplier or a connected person—
- (a) has been, or is being, investigated for conduct constituting—
    - (i) an offence under section 188 of the Enterprise Act 2002 (cartel offence)(a), or
    - (ii) a substantially similar offence under the law of a country or territory outside the United Kingdom, or
  - (b) has engaged in such conduct,
- except in the circumstances mentioned in sub-paragraph (2) of paragraph 10.
- (11) Whether, in respect of paragraph 11 of Schedule 7 to the PA 2023 (professional misconduct), the supplier or a connected person—
- (a) has been, or is being, investigated for professional misconduct which brings into question the supplier’s integrity, or
  - (b) has engaged in such misconduct.
- (12) Whether, in respect of paragraph 13 of Schedule 7 to the PA 2023, the supplier or a connected person—
- (a) has been, or is being, investigated over whether the supplier acted improperly in relation to any procurement, and in so doing, put itself at an unfair advantage in relation to the award of a public contract, or
  - (b) has acted improperly in that way.
- (13) If the supplier or one or more connected persons has been the subject of an event mentioned in paragraphs (2) to (12), the following information in respect of each person who has been the subject of an event—
- (a) a short description of the event,
  - (b) the name of the person who is the subject of the event,
  - (c) the person’s name, contact postal address and email address,
  - (d) in the case of a conviction or other event where there is a recorded decision of a public authority which is the authoritative basis for the conviction or other event—
    - (i) a link to the web page where the decision can be accessed, or
    - (ii) a copy of the decision,
  - (e) any evidence that the person who is the subject of the event—
    - (i) took the event seriously, for example by paying any fine or compensation,
    - (ii) took steps to prevent the event occurring again, for example by changing staff or management, or putting procedures or training in place, and
    - (iii) committed to taking further preventative steps, where appropriate, and
  - (f) if the circumstances which led to the event have ended, the date when they ended.
- (14) For the meaning of “event”—
- (a) in relation to a provision of Schedule 6 to the PA 2023, see paragraph 45 of that Schedule;

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(a) 2002 c. 40.

- (b) in relation to a provision of Schedule 7 to the PA 2023, see paragraph 16 of that Schedule.

### **Contracting authority information**

- 13.** In these Regulations, “contracting authority information” means—
- (a) where there is one contracting authority for a procurement, the name of the contracting authority,
  - (b) where there are two or more contracting authorities acting jointly for a procurement—
    - (i) the name of the contracting authority that the contracting authorities acting jointly determine is the lead authority for the procurement, and
    - (ii) the name of each of the other contracting authorities,
  - (c) a contact postal address and email address for the contracting authority or for each contracting authority acting jointly,
  - (d) the unique identifier for the contracting authority or for each contracting authority acting jointly,
  - (e) for any person carrying out the procurement, or part of the procurement, on behalf of the contracting authority or one or more of the contracting authorities acting jointly—
    - (i) the person’s name,
    - (ii) the person’s contact postal address and email address,
    - (iii) the person’s unique identifier, and
    - (iv) a summary of the person’s role, and
  - (f) in respect of a notice published by the contracting authority, the name, contact postal address and email address of the person who should be contacted in the event of an enquiry about the notice.

### **Contract subject-matter**

- 14.—(1)** In these Regulations, “contract subject-matter” means the following information, so far as it is known to the contracting authority when the information is published—
- (a) whether the contract is mainly for the supply of goods, services or works,
  - (b) a description of the kinds of goods, services or works which will be supplied,
  - (c) a summary of how those goods, services or works will be supplied,
  - (d) the estimated date when, or period over which, the goods, services or works will be supplied,
  - (e) the estimated amount of goods, services or works which will be supplied,
  - (f) the relevant CPV codes, and
  - (g) the geographical classification, where it is possible to describe this.
- (2)** In these Regulations, “geographical classification” means—
- (a) the area where the goods, services or works are to be supplied in the United Kingdom, by reference to the relevant ITL 1, ITL 2, and ITL 3 areas listed on the webpage entitled “International Geographies” on the website for the Office for National Statistics<sup>(a)</sup> as amended from time to time, or

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(a) Here is a link to this webpage: <https://www.ons.gov.uk/methodology/geography/ukgeographies/eurostat>

- (b) where the goods, services or works are to be supplied outside the United Kingdom, the name of the country and, where appropriate, the region where they are to be supplied.

### **Pipeline notices**

**15.—**(1) This regulation sets out what information must be included in a pipeline notice published under section 93(2) of the PA 2023.

(2) The information is, for each procurement set out in the pipeline notice—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) the contract subject-matter, and
- (e) the estimated date when the following will be published—
  - (i) the tender notice for the public contract, or
  - (ii) the transparency notice for the public contract.

(3) Nothing in this regulation prevents a contracting authority from publishing other relevant information in the notice.

### **Planned procurement notices**

**16.—**(1) This regulation sets out other information which must be included in a planned procurement notice published under section 15(1) of the PA 2023.

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) the contract subject-matter,
- (e) the estimated date when the tender notice for the public contract will be published,
- (f) the estimated date by when suppliers will be asked to submit requests to participate in any tender procedure or tenders,
- (g) which of the following procedures is expected to be used—
  - (i) an open procedure, or
  - (ii) a competitive flexible procedure,
- (h) whether the public contract will be awarded by reference to suppliers' membership of a dynamic market,
- (i) the estimated date when the public contract will be awarded,
- (j) how documents relating to the procurement may be obtained,
- (k) a statement explaining how and when an interest in the contract may be expressed, and
- (l) as much of the information relating to tender notices which is referred to in regulation 18(2), 19(2), 20(2), 21(2) or 22(2) (as the case may be) that is available to the contracting authority at the time of publishing the planned procurement notice.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in a planned procurement notice.

### **Preliminary market engagement notices**

**17.**—(1) This regulation sets out other information which must be included in a preliminary market engagement notice published under section 17(1)(a) of the PA 2023.

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) the contract subject-matter,
- (e) either—
  - (i) the date when the contracting authority intends to close the preliminary market engagement, or
  - (ii) the date when the preliminary market engagement closed, and
- (f) a description of the process by which the contracting authority proposes to engage, or has engaged, with suppliers during the preliminary market engagement, for example—
  - (i) the location, date and time of events, and
  - (ii) any periods for the submission of expressions of interest and information by suppliers.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

### **Tender notices: open procedure**

**18.**—(1) This regulation sets out other information which must be included in a tender notice for the award of a public contract through an open procedure published under section 21(1) of the PA 2023.

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) a statement that the tender notice is for the award of a public contract through an open procedure in accordance with section 20(1) and (2)(a) of the PA 2023,
- (e) whether the tender notice relates to a special regime contract<sup>(a)</sup> and, if so, whether that contract is—
  - (i) a concession contract,
  - (ii) a defence and security contract,
  - (iii) a light touch contract, or
  - (iv) a utilities contract,
- (f) the contract subject-matter,
- (g) the estimated value of the public contract,
- (h) where the public contract is for goods, services or works which the contracting authority expects will be needed after the expiry of the contract—

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(a) For the meaning of “special regime contract”, see section 10(6) of the Procurement Act 2023.

- (i) whether the contracting authority intends to carry out a subsequent procurement of similar goods, services or works in reliance on the direct award justification in paragraph 8 of Schedule 5 to the PA 2023, or
- (ii) an estimate, if possible, of the date when any subsequent tender notice will be published,
- (i) whether an electronic auction will be used and, if so, the technical details of how suppliers may participate in the electronic auction,
- (j) how tenders may be submitted and the date by when they must be submitted,
- (k) the award criteria, or a summary of the award criteria, for the public contract,
- (l) the languages in which tenders or enquiries in connection with the tendering procedure may be submitted,
- (m) whether the public contract is a contract for which the United Kingdom has obligations under the GPA,
- (n) from the date when the Comprehensive and Progressive Agreement for Trans-Pacific Partnership enters into force for the United Kingdom, whether the public contract is a contract for which the United Kingdom has obligations under that Agreement,
- (o) whether the public contract is awarded by reference to lots and, if so, for each lot—
  - (i) the title of the lot,
  - (ii) the distinct number given to the lot by the contracting authority,
  - (iii) the following information, so far as it is known to the contracting authority when the tender notice is published—
    - (aa) a description of the kinds of goods, services or works which will be supplied,
    - (bb) a summary of how those goods, services or works will be supplied,
    - (cc) the estimated date when, or period over which, the goods, services or works will be supplied,
    - (dd) the estimated amount of goods, services or works which will be supplied,
    - (ee) the estimated value of the lot,
    - (ff) the relevant CPV codes,
    - (gg) the relevant award criteria in relation to the lot,
    - (hh) any option in relation to the lot, and
    - (ii) the geographical classification, where it is possible to describe this,
- (p) Where the public contract is awarded by reference to lots—
  - (i) whether a supplier may only submit a tender for a maximum number of lots and, if so, the maximum number,
  - (ii) whether a supplier may only be awarded a maximum number of lots and, if so, the maximum number, and
  - (iii) whether the authority will award multiple lots to the same supplier in accordance with criteria and, if so, a summary of the criteria,
- (q) where the contracting authority considers under section 18(2) of the PA 2023 that the public contract could be awarded by reference to lots but it is not, the reasons for this, except in the case of a utilities contract or a light touch contract,
- (r) a description of any option which will be included in the public contract—
  - (i) to supply additional goods, services or works, or

- (ii) to extend or renew the term of the contract,
- (s) whether the contracting authority proposes to set the shortest minimum tendering period by reference to one of the following entries in the table in section 54(4) of the PA 2023 and, if so, which entry—
  - (i) entry 2 (certain contracts awarded by a contract authority which is not a central government authority subject to a negotiated tender period);
  - (ii) entry 3 (certain contracts awarded by a contracting authority which is not a central government authority where tenders may be submitted only by preselected suppliers);
  - (iii) entry 4 (a qualifying planned procurement notice has been issued);
  - (iv) entry 5 (state of urgency),
- (t) whether the contracting authority considers that the public contract or any lot forming part of the contract may be particularly suitable to be awarded—
  - (i) to a small and medium-sized enterprise, or
  - (ii) to a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- (u) whether associated tender documents are being provided in accordance with the tender notice at the same time that the notice is published and, if so—
  - (i) the title of each associated tender document,
  - (ii) whether each associated tender document is attached to the tender notice, and
  - (iii) if an associated tender document is not attached to the tender notice, a link to the web page where it is provided,
- (v) whether an associated tender document is being, or may be, provided in accordance with the tender notice after the date when that notice is published and, if so, a link to the web page where it will be provided, or an explanation of how the document will be provided,
- (w) a description of any technical specifications which are expected to be met or a cross reference to where they can be accessed,
- (x) a description of any conditions of participation under section 22 of the PA 2023,
- (y) any payment terms (in addition to those mentioned in section 68 of the PA 2023),
- (z) a description identifying any risk that—
  - (i) the contracting authority considers could jeopardise the satisfactory performance of the public contract, but because of its nature, may not be addressed in the public contract as awarded, and
  - (ii) may require a subsequent modification to the public contract under paragraph 5 of Schedule 8 to the PA 2023 (modification of contract following materialisation of a known risk), and
- (z1) the estimated date when the public contract will be awarded.

(3) In paragraph (2), “electronic auction” means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders.

(4) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(5) This regulation does not apply to a tender notice for the award of a framework through an open procedure (see instead regulation 20).

### **Tender notices: competitive flexible procedure**

**19.—(1)** This regulation sets out other information which must be included in a tender notice for the award of a public contract through a competitive flexible procedure published in accordance with section 21(1) of the PA 2023.

(2) The information is—

- (a) the same information referred to in regulation 18(2) except sub-paragraphs (d) and (j),
- (b) a statement that the tender notice is for the award of a public contract through a competitive flexible procedure in accordance with section 20(1) and (2)(b) of the PA 2023,
- (c) a description of the process to be followed during the procedure, including—
  - (i) whether the procedure may include negotiation at any stage,
  - (ii) if the contracting authority proposes to rely on section 24 of the PA 2023 (refining award criteria), a summary of how it will rely on that section,
- (d) where the number of suppliers is, or may be, no more than an intended maximum number of suppliers, generally or in respect of particular tendering rounds or other selection processes, the maximum number of suppliers and the criteria used to select the limited number of suppliers,
- (e) where the number of suppliers is, or may be, no less than an intended minimum number of suppliers, generally or in respect of particular tendering rounds or other selection processes, the intended minimum number of suppliers,
- (f) where the tender notice is being used for the purpose of inviting suppliers to submit a request to participate, how requests to participate may be submitted and the date by when they must be submitted,
- (g) where the tender notice is being used for the purpose of inviting suppliers to submit their first, or only, tender, how tenders may be submitted and the date by when they must be submitted, and
- (h) whether the tender notice is being used—
  - (i) to reserve a contract to supported employment providers in accordance with section 32 of the PA 2023, or
  - (ii) to reserve a contract to public service mutuals in accordance with section 33 of the PA 2023.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(4) This regulation does not apply to—

- (a) a tender notice for the award of a framework through a competitive flexible procedure (see instead regulation 20), or
- (b) a tender notice for the award of a public contract by reference to suppliers' membership of a dynamic market (see instead regulation 21).

### **Tender notices: frameworks**

**20.—(1)** This regulation sets out other information which must be included in a tender notice for the award of a framework published under section 21(1) of the PA 2023.

(2) The information is—

- (a) where the open procedure is being used, the same information referred to in regulation 18(2),



- (b) where the competitive flexible procedure is being used, the same information referred to in regulation 19(2),
- (c) details of the selection process to be applied on the award of contracts,
- (d) the term of the framework,
- (e) the contracting authorities entitled to award contracts in accordance with the framework (whether by listing the names of those authorities or by describing categories of authorities),
- (f) whether the framework is being awarded under an open framework,
- (g) where the framework is being awarded under an open framework, the unique identifier for the procurement of the last framework awarded under the open framework (unless no framework has previously been awarded under the open framework),
- (h) where the framework is being awarded under an open framework, the estimated end date of the open framework,
- (i) whether the intention is to award the framework to—
  - (i) a single supplier,
  - (ii) a maximum number of suppliers, or
  - (iii) an unlimited number of suppliers,
- (j) where the intention is to award the framework to a maximum number of suppliers, the maximum number of suppliers,
- (k) whether the framework provides for the charging of fees in accordance with section 45(7) of the PA 2023, and, if so, the fixed percentage of the estimated value of any contract awarded to the supplier in accordance with the framework and any other information needed in order to enable suppliers to understand how fees will be charged, and
- (l) where the framework is being awarded by reference to suppliers' membership of a dynamic market—
  - (i) the unique identifier for the dynamic market against which the public contract is being awarded,
  - (ii) a statement that the tender notice is for the award of a public contract which is to be awarded by reference to suppliers' membership of a dynamic market, and
  - (iii) where the public contract is being awarded under an appropriate part of a dynamic market—
    - (aa) the title of the part, and
    - (bb) the distinct number given to the part by the person who established the dynamic market.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

**Tender notices: dynamic markets except qualifying utilities dynamic markets**

**21.—**(1) This regulation sets out other information which must be included in a tender notice for the award of a public contract by reference to suppliers' membership of a dynamic market published under sections 21(1)(b) and 34(1) of the PA 2023.

(2) The information is—

- (a) the same information referred to in regulation 19(2),

- (b) the unique identifier for the dynamic market against which the public contract is being awarded,
- (c) a statement that the tender notice is for the award of a public contract which is to be awarded by reference to suppliers' membership of a dynamic market, and
- (d) where the public contract is being awarded to suppliers that are members of an appropriate part of a dynamic market—
  - (i) the title of the part, and
  - (ii) the distinct number given to the part by the person who established the dynamic market.

(3) Nothing in this regulation prevents a contracting authority from providing other information that relates to the same procurement in the notice.

(4) This regulation does not apply to a tender notice for the award of a framework by reference to suppliers' membership of a dynamic market (see instead regulation 20).

(5) This regulation does not apply to a tender notice of the type mentioned in regulation 22(1).

### **Tender notices: qualifying utilities dynamic market notices**

**22.—**(1) This regulation sets out other information which must be included in a tender notice for the award of a public contract by reference to a utilities dynamic market established under a qualifying utilities dynamic market notice provided under section 40(2) or (3) of the PA 2023.

(2) The information is—

- (a) the contracting authority information,
- (b) the unique identifier for the dynamic market against which the public contract is being awarded,
- (c) the contract subject-matter,
- (d) where the public contract is for goods, services or works which the contracting authority expects will be needed after the expiry of the contract, an estimate, if possible, of the date when any subsequent tender notice will be provided,
- (e) a description of any option which will be included in the public contract—
  - (i) to supply additional goods, services or works, or
  - (ii) to extend or renew the term of the contract,
- (f) whether an electronic auction will be used,
- (g) how requests to participate may be submitted and the date by when they must be submitted,
- (h) how tenders may be submitted and the date by when they must be submitted,
- (i) whether the contracting authority proposes to rely on one of the following minimum tendering periods mentioned in the table in section 54(4) of the PA 2023 and, if so, which one—
  - (i) entry 1 (contract being awarded is a light touch contract);
  - (ii) entry 2 (utilities contracts or contracts awarded by a contract authority which is not a central government authority subject to a negotiated tender period);
  - (iii) entry 3 (certain contracts awarded by a contracting authority which is not a central government authority where tenders may be submitted only by preselected suppliers);
  - (iv) entry 5 (state of urgency),
- (j) a description of the kinds of goods, services or works which will be supplied, and

(k) the estimated amount of goods, services or works which will be supplied.

(3) Where a contracting authority has already published information mentioned in paragraph (2) in the qualifying utilities dynamic market notice to which the tender notice relates in accordance with regulation 25(2)(i)(ii), the contracting authority is not required to provide that information in the tender notice.

(4) In paragraph (2), “electronic auction” has the meaning given by regulation 18(3).

(5) Nothing in this regulation prevents a contracting authority from providing other information in the notice.

#### **Associated tender documents**

**23.—**(1) This regulation sets out what information may be included in an associated tender document provided under section 21(3) of the PA 2023 in accordance with a tender notice.

(2) The document may include any information supplementing the tender notice including, where appropriate, information duplicating the information mentioned in—

- (a) regulation 18(2),
- (b) regulation 19(2),
- (c) regulation 20(2),
- (d) regulation 21(2), or
- (e) regulation 22(2),

(as the case may be).

#### **Below-threshold tender notices**

**24.—**(1) This regulation sets out other information which must be included in a below-threshold tender notice published under section 87(1) of the PA 2023.

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) the contract subject-matter,
- (e) the estimated value of the contract,
- (f) how tenders may be submitted and the date by when they must be submitted,
- (g) whether the notice is being used to invite tenders for a special regime contract and, if so, whether that contract is a defence and security contract or a light touch contract,
- (h) whether the contracting authority considers that the contract or any lot forming part of the contract may be particularly suitable to be awarded—
  - (i) to a small and medium-sized enterprise, or
  - (ii) to a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- (i) an explanation of the criteria against which the award of the contract will be assessed, and
- (j) a description of any conditions of participation in relation to the award of the contract.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

## **Dynamic market notices (including qualifying utilities dynamic market notices)**

**25.**—(1) Paragraph (2) sets out other information which must be included in a dynamic market notice published under section 39(2) of the PA 2023 (dynamic market notices: intention to establish a dynamic market).

(2) The information is—

- (a) the name of the person establishing the dynamic market,
- (b) where there are two or more persons who are jointly establishing the dynamic market—
  - (i) the name of the lead person, and
  - (ii) the name of each of the other persons,
- (c) a contact postal address and email address for the person establishing the dynamic market or where there are two or more persons jointly establishing the market that information for each such person,
- (d) the unique identifier for the person establishing the dynamic market or where there are two or more persons jointly establishing the market the unique identifier for each such person,
- (e) the name of any person (“A”) establishing the dynamic market on behalf of another person and—
  - (i) A’s contact postal address and email address,
  - (ii) A’s unique identifier, and
  - (iii) a summary of A’s role in relation to the dynamic market,
- (f) the name, contact postal address and email address of any person who can be contacted in the event of an enquiry about the dynamic market,
- (g) the title of the dynamic market,
- (h) the unique identifier for the dynamic market,
- (i) in the case of a qualifying utilities dynamic market notice—
  - (i) a statement that only members of the market, or part of the market, will be notified of a future intention to award a contract by reference to suppliers’ membership of the market, or part of the market, and provided with a tender notice in accordance with section 40(1) and (2) of the PA 2023, and
  - (ii) as much of the information as would be published in any tender notice published in accordance with regulation 21(2) that is available when the qualifying utilities dynamic market notice is published,
- (j) how documents relating to the dynamic market may be obtained,
- (k) how an application to join the dynamic market may be made,
- (l) whether the dynamic market is mainly for the supply of goods, services or works,
- (m) a description of the kinds of goods, services or works to which the dynamic market relates, given in such detail that a reader of the dynamic market notice can determine if they wish to apply to join the dynamic market, or appropriate part of the market,
- (n) the relevant CPV codes,
- (o) the conditions for membership of the dynamic market, or part of the market, set in accordance with section 36 of the PA 2023,
- (p) a description of the methods that will be used to verify whether a supplier meets those conditions, including any different conditions for different kinds of goods, services or works,

- (q) whether the dynamic market may be used to award a public contract for which the United Kingdom has obligations under the GPA,
- (r) from the date when the Comprehensive and Progressive Agreement for Trans-Pacific Partnership enters into force for the United Kingdom, whether the dynamic market is one for which the United Kingdom has obligations under that Agreement,
- (s) whether the dynamic market may be used to award a special regime contract and, if so, whether that contract is—
  - (i) a concession contract,
  - (ii) a defence and security contract,,
  - (iii) a light touch contract, or
  - (iv) a utilities contract,
- (t) where the dynamic market is divided into appropriate parts for the purpose of excluding suppliers that are not members of an appropriate part—
  - (i) the title of each part,
  - (ii) a description of each part including any relevant CPV codes, and
  - (iii) the distinct number given to each part by the person establishing the dynamic market,
- (u) information enabling a reader to identify which contracting authorities will, or may apply to, use the dynamic market (either by reference to a list of authorities or a list describing categories of authorities),
- (v) the geographical classification, where it is possible to describe this,
- (w) in the case of a dynamic market with an estimated date when it will cease to operate—
  - (i) the estimated date when the dynamic market will be established, and
  - (ii) the estimated date when the dynamic market will cease to operate,
- (x) in the case of a dynamic market without an estimated date when it will cease to operate—
  - (i) the estimated date when the dynamic market will be established, and
  - (ii) a statement that the dynamic market is an open-ended market,
- (y) in the case of a dynamic market which is not a utilities dynamic market, whether the dynamic market provides for the charging of fees in accordance with section 38(1) of the PA 2023 and if so—
  - (i) the fixed percentage to be applied to the estimated value of any public contract awarded to a supplier by reference to the dynamic market, and
  - (ii) any other information needed in order to enable suppliers to understand how fees will be charged, and
- (z) in the case of a utilities dynamic market—
  - (i) whether the utilities dynamic market provides for the charging of fees in accordance with section 38(3) of the PA 2023, and
  - (ii) if so, information needed in order to enable suppliers to understand how fees will be charged.

(3) Paragraph (4) sets out other information which must be included in a dynamic market notice published under section 39(3) of the PA 2023 (establishment of a dynamic market).

- (4) The information is—
  - (a) the same information referred to in paragraph (2)(a) to (h),
  - (b) the date on which the dynamic market was established,

- (c) for each supplier that is a member of the dynamic market—
  - (i) the supplier’s name,
  - (ii) the supplier’s contact postal address and email address,
  - (iii) the unique identifier for the supplier, and
  - (iv) whether the supplier is—
    - (aa) a small and medium-sized enterprise, or
    - (bb) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives, and
- (d) where the dynamic market is divided into parts, the part of which each of those suppliers is a member.

(5) Paragraph (6) sets out other information which must be included in a dynamic market notice published under section 39(4) of the PA 2023 (modifications to a dynamic market).

- (6) The information is—
  - (a) the same information referred to in paragraph (2)(a) to (h),
  - (b) the date from when the modification has effect,
  - (c) if a supplier is being admitted to the market, a statement to that effect and—
    - (i) their name, contact postal address, email address and unique identifier, and
    - (ii) where the dynamic market is divided into parts, the part of which the supplier is a member,
  - (d) whether the supplier is—
    - (i) a small and medium-sized enterprise, or
    - (ii) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
  - (e) if a supplier is being removed from the market, a statement to that effect and—
    - (i) their name, contact postal address, email address and unique identifier, and
    - (ii) where the dynamic market is divided into parts, the part of which the supplier is a member, and
  - (f) a summary of any other modification being made.

(7) Paragraph (8) sets out other information which must be included in a dynamic market notice published under section 39(5) of the PA 2023 (cessation of a dynamic market).

- (8) The information is—
  - (a) the same information referred to in paragraph (2)(a) to (h), and
  - (b) the date when the dynamic market ceased to operate.

(9) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in a dynamic market notice.

### **Transparency notices**

**26.—**(1) This regulation sets out other information which must be included in a transparency notice published under section 44(1) of the PA 2023.

- (2) The information is—
  - (a) the contracting authority information,
  - (b) the title of the procurement,

- (c) the unique identifier for the procurement,
- (d) in the case of a procurement where there has been a switch to a direct award in accordance with section 43 of the PA 2023, the unique identifier allocated to the procurement before the switch to direct award,
- (e) the unique identifier for the contract, if this is known when the transparency notice is published,
- (f) the contract subject-matter,
- (g) whether the contract is a special regime contract and, if so, whether it is—
  - (i) a concession contract,
  - (ii) a defence and security contract,
  - (iii) a light touch contract, or
  - (iv) a utilities contract,
- (h) whether the contract is being awarded directly to a supplier that is not an excluded supplier because a direct award justification applies in accordance with section 41(1)(a) of the PA 2023,
- (i) if sub-paragraph (h) applies, the direct award justification in Schedule 5 to the PA 2023 which applies and an explanation of why the contracting authority considers that it applies,
- (j) whether the contract is being awarded directly to a supplier that is an excluded supplier because the contracting authority considers that there is an overriding public interest in awarding the contract to that supplier in accordance with section 41(2) to (5) of the PA 2023,
- (k) if sub-paragraph (j) applies—
  - (i) the offence or other event mentioned in Schedule 6 to the PA 2023 by virtue of which the supplier is an excluded supplier, and
  - (ii) which ground in section 41(5) of the PA 2023 applies and an explanation of why the contracting authority considers that it applies,
- (l) whether the contract is being awarded directly to a supplier pursuant to regulations made under section 42 of the PA 2023 (direct award to protect life, etc),
- (m) if sub-paragraph (l) applies, the title and registration number of the statutory instrument containing those regulations,
- (n) whether the contract is being awarded directly to a supplier that is not an excluded supplier by virtue of section 43 of the PA 2023 (switching to direct award),
- (o) if sub-paragraph (n) applies, the reason the contracting authority considers there were no suitable tenders or requests to participate by reference to section 43(2) of the PA 2023 and why it considers that an award under section 19 of that Act is not possible in the circumstances,
- (p) whether the contract is being awarded by reference to lots and, if so—
  - (i) the title of each lot, and
  - (ii) the distinct number given to each lot by the contracting authority,
- (q) the estimated value of the contract,
- (r) whether the contracting authority considers that the contract or any lot forming part of the contract may be particularly suitable to be awarded—
  - (i) to a small and medium-sized enterprise, or

- (ii) to a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- (s) a description identifying any risk that—
  - (i) the contracting authority considers—
    - (aa) could jeopardise the satisfactory performance of the contract, but
    - (bb) because of its nature, may not be addressed in the contract as awarded, and
  - (ii) may require a subsequent modification to the contract under paragraph 5 of Schedule 8 to the PA 2023 (modification of contract following materialisation of a known risk),
- (t) whether suppliers have been selected for the award of the contract,
- (u) if suppliers have been selected for the award of the contract, for each supplier selected—
  - (i) the supplier’s name,
  - (ii) the—
    - (aa) unique identifier for the supplier, or
    - (bb) in the case of a direct award of a public contract pursuant to paragraphs 13 and 14 of Schedule 5 to the PA 2023 (urgency) where the supplier has not been allocated a unique identifier when the transparency notice is published but can instead provide unique information (for example a company registration number given under the CA 2006) which can be recognised by the central digital platform as the basis for a unique identifier allocated by that platform, that unique information, and
  - (iii) the supplier’s contact postal address and email address,
- (v) the estimated date when the contract will be entered into, and
- (w) where the contract is a framework—
  - (i) the term of the framework,
  - (ii) whether the framework provides for fees to be charged to a supplier in accordance with the framework and, if so, details of the fixed percentage by which they will be charged in accordance with section 45(7) of the PA 2023, and
  - (iii) the contracting authorities entitled to award contracts in accordance with the framework (whether by listing the names of those authorities or by describing categories of authorities).

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

**Contract award notices except those published by private utilities**

**27.—**(1) This regulation sets out other information which must be included in a contract award notice published by a contracting authority under section 50(1) of the PA 2023.

- (2) The information is—
  - (a) the contracting authority information,
  - (b) the title of the procurement,
  - (c) the unique identifier for—
    - (i) the procurement,
    - (ii) the public contract,



- (iii) where the public contract is being awarded in accordance with a framework, the procurement of the framework in accordance with which the public contract is being awarded, and
  - (iv) where the public contract is being awarded by reference to a suppliers' membership of a dynamic market, the dynamic market,
- (d) the contract subject-matter,
- (e) for each supplier awarded the public contract—
  - (i) the supplier's name,
  - (ii) the supplier's contact postal address and email address,
  - (iii) the—
    - (aa) unique identifier for the supplier, or
    - (bb) in the case of a direct award of a public contract pursuant to paragraphs 13 and 14 of Schedule 5 to the PA 2023 (urgency) where the supplier has not been allocated a unique identifier when the contract award notice is published but can instead provide unique information (for example a company registration number given under the CA 2006) which can be recognised by the central digital platform as the basis for a unique identifier allocated by that platform, that unique information,
  - (iv) whether the supplier is an association of companies or other consortium,
  - (v) whether the supplier is—
    - (aa) a small and medium-sized enterprise,
    - (bb) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
    - (cc) a supported employment provider<sup>(a)</sup>, or
    - (dd) a public service mutual,
  - (vi) for each associated person of the supplier, the person's name and contact postal address, and
  - (vii) the supplier's connected person information in accordance with regulation 11, but reading paragraphs (4)(a) and (8)(a) of that regulation as if each reference to date of birth were a reference to month and year of birth, subject to paragraph (4),
- (f) the date when the contracting authority decided to award the public contract,
- (g) if the public contract is being awarded by reference to lots, for each lot—
  - (i) the name of the supplier that is being awarded the lot,
  - (ii) the title of the lot,
  - (iii) the distinct number given to the lot by the contracting authority,
  - (iv) a description of the kinds of goods, services or works which will be supplied,
  - (v) a summary of how those goods, services or works will be supplied,
  - (vi) the estimated date when, or period over which, the goods, services or works will be supplied,
  - (vii) the estimated amount of goods, services or works which will be supplied,
  - (viii) the estimated value of the lot,

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(a) For the meaning of "supported employment provider" see section 32 of the Procurement Act 2023.

- (ix) the relevant CPV codes, and
- (x) the geographical classification, where it is possible to describe this,
- (h) where the public contract is being awarded in accordance with a framework, details of which of the following procedures was used—
  - (i) a competitive selection process for frameworks under section 46 of the PA 2023, or
  - (ii) an award without further competition under section 45(4) of the PA 2023,
- (i) where the public contract is a framework that is being awarded under an open framework, the unique identifier for the procurement of the last framework awarded under the open framework (unless no framework has previously been awarded under the open framework),
- (j) where the public contract is being awarded under an appropriate part of a dynamic market, the distinct number given to that part by the person who established the dynamic market,
- (k) whether the public contract is a special regime contract and, if so, whether it is—
  - (i) a concession contract,
  - (ii) a defence and security contract,
  - (iii) a light touch contract, or
  - (iv) a utilities contract,
- (l) whether the contracting authority has provided an assessment summary to each supplier that submitted an assessed tender in accordance with section 50(3) of the PA 2023 and, if so, the date when those assessment summaries were provided,
- (m) the estimated value of the public contract,
- (n) in respect of public contracts with an estimated value of £5 million or less—
  - (i) the total number of tenders submitted by the contracting authority's deadline for submitting tenders (discounting tenders submitted but subsequently withdrawn),
  - (ii) the total number of tenders assessed by the contracting authority, and
  - (iii) the total number of tenders assessed by the contracting authority which were submitted by—
    - (aa) a small and medium-sized enterprise, and
    - (bb) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- except in the case of a direct award under section 41 or 43 of the PA 2023,
- (o) in respect of public contracts with an estimated value of more than £5 million—
  - (i) the total number of tenders submitted by the contracting authority's deadline for submitting tenders (discounting tenders submitted but subsequently withdrawn),
  - (ii) the name of each supplier that—
    - (aa) submitted a tender which was assessed for the purposes of determining the most advantageous tender under section 19(1) of the PA 2023, and
    - (bb) was not awarded the public contract,
  - (“unsuccessful supplier”), and
  - (iii) for each unsuccessful supplier—

- (aa) the unique identifier for the supplier or other unique information referred to in sub-paragraph (e)(iii)(bb),
  - (bb) the supplier's postal address,
  - (cc) whether the supplier is a small and medium-sized enterprise, and
  - (dd) whether the supplier is a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- except in the case of a direct award under section 41 or 43 of the PA 2023,
- (p) where the public contract is a framework or awarded other than in accordance with a framework, details of which of the following procedures was used—
    - (i) an open procedure,
    - (ii) a competitive flexible procedure, or
    - (iii) a direct award under section 41 or 43 of the PA 2023,
  - (q) whether a tender notice was used to reserve the contract to supported employment providers in accordance with section 32 of the PA 2023, and whether the contract was awarded to such a supplier,
  - (r) whether a tender notice was used to reserve the contract to public service mutuals in accordance with section 33 of the PA 2023, and whether the contract was awarded to such a supplier,
  - (s) the end date of any standstill period under section 51 of the PA 2023 or, if no standstill period applies, any date before which the contracting authority has determined not to enter into the contract,
  - (t) the estimated date when the contract will be entered into,
  - (u) where the public contract is being awarded directly under section 41 or 43 of the PA 2023, the same information referred to in 26(2)(h) to (o),
  - (v) where the public contract is being awarded in accordance with a framework which is arranged by reference to lots, the distinct number given by the contracting authority to the lot under which the contract is being awarded, and
  - (w) where—
    - (i) the public contract is being awarded by reference to lots, and
    - (ii) the contracting authority is using the contract award notice to give notice that it is ceasing to procure all of the goods, services and works set out in one or more of those lots or any lots under future contracts under the arrangement under section 18(2)(a) of the PA 2023,
 the ceased lot information.
- (3) “Ceased lot information” is—
- (a) the following information for each ceased lot—
    - (i) the title of the lot,
    - (ii) the distinct number given to the lot by the contracting authority,
    - (iii) the relevant CPV codes, and
    - (iv) a description of the kinds of goods, services or works which were to have been supplied under the lot, and
  - (b) the date when the contracting authority decided to cease the procurement under the lot.

(4) A contracting authority is not required to publish, in accordance with paragraph (2)(e)(vii), connected person information which is secured information in relation to—

- (a) a connected person who is an individual who meets the description in regulation 11(3)(b) and (c), or
- (b) a connected person who is an individual who meets the description in regulation 11(15)(b).

(5) “Secured information” is information which—

- (a) in relation to an individual mentioned in paragraph (4)(a) or (b), is for the time being omitted from a PSC register in accordance with regulation 33(1) of the Register of People with Significant Control Regulations 2016(a), or
- (b) in relation to an individual mentioned in paragraph (4)(b), is information regarding which the individual—
  - (i) is reasonably of the view set out in paragraph (6), and
  - (ii) has confirmed that view in writing to the contracting authority.

(6) The view is that if the information is published—

- (a) the activities of the company, or
- (b) one or more characteristics or personal attributes of the applicant when associated with that company,

will put the applicant or a person living with the applicant at serious risk of being subjected to violence or intimidation.

(7) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(8) This regulation does not apply to a contracting authority which is a private utility.

### **Contract award notices published by private utilities**

**28.—**(1) This regulation sets out other information which must be included in a contract award notice published by a private utility under section 50(1) of the PA 2023.

(2) The information is—

- (a) the same information referred to in regulation 27(2)(a) to (r), except sub-paragraphs (h), (n) and (o),
- (b) the estimated date when the contract will be entered into, and
- (c) a description of any option in the public contract—
  - (i) to supply additional goods, services or works, or
  - (ii) to extend or renew the term of the contract.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement (including information that relates to other contracts awarded under the same procurement) in the notice.

(4) This regulation does not apply to—

- (a) the direct award of a public contract under section 41 or 43 of the PA 2023 (see instead regulation 29), or
- (b) the award of a public contract in accordance with a framework (see instead regulation 30).

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(a) S.I. 2016/339.

### **Contract award notices published by private utilities: direct awards**

**29.—**(1) This regulation sets out other information which must be included in a contract award notice published by a private utility under section 50(1) of the PA 2023 where the contract was awarded directly in accordance with section 41 or 43 of the PA 2023.

(2) The information is—

- (a) the same information referred to in regulation 27(2)(a) to (r), except sub-paragraphs (c)(iii) and (iv), (h) to (j), (l), (n) and (o),
- (b) the estimated date when the contract will be entered into,
- (c) a description of any option in the public contract—
  - (i) to supply additional goods, services or works, or
  - (ii) to extend or renew the term of the contract,
- (d) whether the contract is being awarded directly to a supplier that is not an excluded supplier because a direct award justification applies in accordance with section 41(1)(a) of the PA 2023,
- (e) if sub-paragraph (d) applies, the direct award justification in Schedule 5 which applies and an explanation of why the contracting authority considers that it applies,
- (f) whether the contract is being awarded directly to a supplier that is an excluded supplier because the contracting authority considers that there is an overriding public interest in awarding the contract to that supplier in accordance with section 41(2) to (5) of the PA 2023,
- (g) if sub-paragraph (f) applies—
  - (i) the offence or other event mentioned in Schedule 6 to the PA 2023 by virtue of which the supplier is an excluded supplier, and
  - (ii) which ground in section 41(5) of the PA 2023 applies and an explanation of why the contracting authority considers that it applies,
- (h) whether the contract is being awarded directly to a supplier pursuant to regulations made under section 42 of the PA 2023 (direct award to protect life, etc),
- (i) if sub-paragraph (h) applies, the title and registration number of the statutory instrument containing those regulations,
- (j) whether the contract is being awarded directly to a supplier that is not an excluded supplier by virtue of section 43 of the PA 2023 (switching to direct award), and
- (k) if sub-paragraph (j) applies, the reason the contracting authority considers there were no suitable tenders or requests to participate by reference to section 43(2) of the PA 2023 and why it considers that an award under section 19 is not possible in the circumstances.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

### **Contract award notices published by private utilities: frameworks**

**30.—**(1) This regulation sets out other information which must be included in a contract award notice published by a private utility under section 50(1) of the PA 2023 where the contract is being awarded in accordance with a framework.

(2) The information is—

- (a) the same information referred to in regulation 27(2)(a) to (r), except sub-paragraphs (c)(iv), (i), (j), (n), (o) and (p),
- (b) the estimated date when the contract will be entered into,

- (c) a description of any option in the public contract—
    - (i) to supply additional goods, services or works, or
    - (ii) to extend or renew the term of the contract,
  - (d) where the framework is arranged by reference to lots, the distinct number given by the contracting authority to the lot under which the contract is being awarded,
  - (e) details of which of the following procedures was used to award the public contract—
    - (i) a competitive selection process for frameworks under section 46 of the PA 2023, or
    - (ii) an award without further competition under section 45(4) of the PA 2023, and
  - (f) if sub-paragraph (e)(ii) applies, an explanation of why the contracting authority considered that it applies by reference to section 45(4) of the PA 2023.
- (3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

### **Assessment summaries**

**31.—**(1) This regulation sets out what information must be included in an assessment summary provided to a supplier under section 50(3) of the PA 2023.

- (2) In the case of the most advantageous tender, the information is—
  - (a) the name of the supplier,
  - (b) a contact postal address and email address for the supplier,
  - (c) the unique identifier for the supplier,
  - (d) in respect of the award criteria for the public contract—
    - (i) the award criteria, including the assessment methodology, set out in full, or a summary of the award criteria including—
      - (aa) the title of each criterion,
      - (bb) the relative importance of each criterion, and
      - (cc) how each criterion was to have been assessed by reference to scored and what scored were to have been available for each criterion, and
    - (ii) if the award criteria, including the assessment methodology, are not set out in full in the assessment summary, an indication of where the full version can be accessed, and
  - (e) how the tender was assessed against the award criteria by reference to scores including—
    - (i) the score determined for each award criterion and—
      - (aa) an explanation for that score by reference to relevant information in the tender, and
      - (bb) where an award criterion includes sub-criteria for assessment, an explanation of how the tender was assessed by reference to each sub-criterion, and
    - (ii) the total score and any sub-total scores.
- (3) In the case of any other assessed tender, the information is—
  - (a) the information referred to in paragraph (2)(a) to (d) in respect of the tender,
  - (b) the information as referred to in paragraph (2)(e) in respect of the tender, but only to the extent that the tender was assessed against the award criteria,

- (c) any further explanation of why the public contract is not being awarded to the supplier including, where the tender was disqualified under the assessment methodology under section 23(3) of the PA 2023, the reasons for that disqualification
- (d) the information referred to in paragraph (2)(e) in respect of the most advantageous tender.

(4) All assessment summaries in respect of a public contract which are provided by a contracting authority to suppliers in accordance with section 50(3) of the PA 2023 must be provided to each supplier at the same time.

(5) Nothing in this regulation prevents a contracting authority from providing other information that relates to the same procurement in an assessment summary.

### **Contract details notices: open or competitive flexible procedure**

**32.—**(1) This regulation sets out other information which must be included in a contract details notice published under section 53(1) of the PA 2023 where the public contract was entered into following—

- (a) an open procedure, or
- (b) a competitive flexible procedure (including by reference to a dynamic market).

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) the unique identifier for the public contract,
- (e) where the public contract was awarded by reference to suppliers' membership of a dynamic market, the unique identifier for that dynamic market,
- (f) the contract subject-matter,
- (g) for each supplier party to the public contract—
  - (i) the supplier's name,
  - (ii) the supplier's contact postal address and email address,
  - (iii) the unique identifier for the supplier, and
  - (iv) whether the supplier is—
    - (aa) a small and medium-sized enterprise,
    - (bb) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
    - (cc) a supported employment provider, or
    - (dd) a public service mutual,
- (h) whether the public contract was awarded following—
  - (i) an open procedure, or
  - (ii) a competitive flexible procedure,
- (i) whether the contract was reserved—
  - (i) to supported employment providers in accordance with section 32 of the PA 2023, or
  - (ii) to public service mutuals in accordance with section 33 of the PA 2023,

- (j) if the public contract was awarded by reference to a lot—
  - (i) the title of the lot,
  - (ii) the distinct number given to the lot by the contracting authority,
  - (iii) a description of the kinds of goods, services or works which will be supplied,
  - (iv) a summary of how those goods, services or works will be supplied,
  - (v) the estimated date when, or period over which, the goods, services or works will be supplied,
  - (vi) the estimated amount of goods, services or works which will be supplied,
  - (vii) the estimated value of the lot, and
  - (viii) the relevant CPV codes,
- (k) the estimated value of the public contract,
- (l) the date when the public contract was entered into,
- (m) a description of any option in the public contract—
  - (i) to supply additional goods, services or works, or
  - (ii) to extend or renew the term of the contract,
- (n) where the public contract was awarded under an appropriate part of a dynamic market, the distinct number given to that part by the person who established the dynamic market,
- (o) whether the public contract is a special regime contract and, if so, whether it is—
  - (i) a concession contract,
  - (ii) a defence and security contract,
  - (iii) a light touch contract, or
  - (iv) a utilities contract,
- (p) whether the public contract is a contract for which the United Kingdom has obligations under the GPA,
- (q) from the date when the Comprehensive and Progressive Agreement for Trans-Pacific Partnership enters into force for the United Kingdom, whether the public contract is a contract for which the United Kingdom has obligations under that Agreement,
- (r) where key performance indicators were set in accordance with section 52(1) of the PA 2023—
  - (i) a description of each key performance indicator, and
  - (ii) how often the contracting authority will assess performance against the key performance indicators in accordance with section 71(2) of the PA 2023, and
- (s) where key performance indicators were not set by virtue of section 52(2) of the PA 2023, an explanation of why the contracting authority considers that the supplier's performance under the contract could not appropriately be assessed by reference to key performance indicators.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(4) This regulation does not apply to a contract details notice where the public contract is a framework (see instead regulation 33).



### **Contract details notices: frameworks**

**33.—**(1) This regulation sets out other information which must be included in a contract details notice published under section 53(1) of the PA 2023 where the public contract is a framework.

(2) The information is—

- (a) the same information referred to in regulation 32(2)(a) to (q), except sub-paragraph (h),
- (b) the contracting authorities entitled to award public contracts in accordance with the framework (whether by listing the names of those authorities or by describing categories of authorities),
- (c) the term of the framework,
- (d) whether the framework is awarded under an open framework,
- (e) where the framework was awarded under an open framework, the unique identifier for the procurement of the last framework awarded under the open framework (unless no framework has previously been awarded under the open framework),
- (f) where the framework was awarded under an open framework, the estimated end date of the open framework,
- (g) whether the public contract was awarded—
  - (i) following an open procedure,
  - (ii) following a competitive flexible procedure, or
  - (iii) directly, in accordance with section 41 or 43 of the PA 2023,
- (h) whether the framework provides for fees to be charged to a supplier in accordance with the framework and, if so, details of the fixed percentage by which they will be charged in accordance with section 45(7) of the PA 2023,
- (i) the price payable, or mechanism for determining the price payable, under a public contract awarded in accordance with the framework, and
- (j) details of the selection process to be applied on the award of a contract in accordance with the framework.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

### **Contract details notices: public contracts awarded in accordance with frameworks**

**34.—**(1) This regulation sets out other information which must be included in a contract details notice published under section 53(1) of the PA 2023 where the public contract was awarded in accordance with a framework.

(2) The information is—

- (a) the same information referred to in regulation 32(2), except sub-paragraphs (e), (h), (n), (p) and (q),
- (b) the unique identifier for the procurement of the framework in accordance with which the public contract is being awarded,
- (c) whether the framework is a defence and security framework within the meaning given by section 47(4)(a) of the PA 2023,
- (d) where the framework is arranged by reference to lots, the distinct number given by the contracting authority to the lot under which the contract is being awarded,
- (e) details of which of the following procedures was used to award the public contract—

- (i) a competitive selection process for frameworks under section 46 of the PA 2023,  
or
- (ii) an award without further competition under section 45(4) of the PA 2023, and
- (f) if sub-paragraph (e)(ii) applies, an explanation of why the contracting authority considered that it applies by reference to section 45(4) of the PA 2023.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

#### **Contract details notices: direct award**

**35.—**(1) This regulation sets out other information which must be included in a contract details notice published under section 53(1) of the PA 2023 where the public contract was awarded directly in accordance with section 41 or 43 of the PA 2023.

(2) The information is—

- (a) the same information referred to in regulation 32(2), except sub-paragraphs (e), (h) and (n),
- (b) whether the contract was awarded directly to a supplier that is not an excluded supplier because a direct award justification applies in accordance with section 41(1)(a) of the PA 2023,
- (c) if sub-paragraph (b) applies, the direct award justification in Schedule 5 which applies and an explanation of why the contracting authority considers that it applies,
- (d) whether the contract was awarded directly to a supplier that is an excluded supplier because the contracting authority considered that there was an overriding public interest in awarding the contract to that supplier in accordance with section 41(2) to (5) of the PA 2023,
- (e) if sub-paragraph (d) applies, which ground in section 41(5) of the PA 2023 applies and an explanation of why the contracting authority considers that it applies,
- (f) whether the contract was awarded directly to a supplier pursuant to regulations made under section 42 of the PA 2023 (direct award to protect life, etc),
- (g) if sub-paragraph (f) applies, the title and registration number of the statutory instrument containing those regulations,
- (h) whether the contract was awarded directly to a supplier that is not an excluded supplier by virtue of section 43 of the PA 2023 (switching to direct award),
- (i) if sub-paragraph (h) applies, the reason the contracting authority considers there were no suitable tenders or requests to participate by reference to section 43(2) of the PA 2023 and why it considers that an award under section 19 of that Act is not possible in the circumstances,
- (j) whether the contract was awarded to a supplier that is an excluded supplier by virtue of section 41(2) of the PA 2023, and
- (k) if sub-paragraph (j) applies, the offence or other event mentioned in Schedule 6 to the PA 2023 in question.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(4) This regulation does not apply to a contract details notice where the public contract is a framework (see instead regulation 33).

### **Contract details notices: below-threshold contracts**

**36.**—(1) This regulation sets out other information which must be included in a contract details notice published under section 87(3) of the PA 2023.

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) the unique identifier for the contract,
- (e) for each supplier party to the contract—
  - (i) the supplier’s name,
  - (ii) the supplier’s contact postal address and email address,
  - (iii) the unique identifier for the supplier, except where the supplier has not obtained one, and
  - (iv) whether the supplier is—
    - (aa) a small and medium-sized enterprise, or
    - (bb) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- (f) the contract subject-matter,
- (g) whether the contract was awarded by reference to lots and, if so—
  - (i) the title of each lot under the contract, and
  - (ii) the distinct number given to each lot by the contracting authority,
- (h) whether the contract is a defence and security contract or a light touch contract,
- (i) the estimated value of the contract,
- (j) the date when the contract was entered into, and
- (k) a description of any option in the contract—
  - (i) to supply additional goods, services or works, or
  - (ii) to extend or renew the term of the contract.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

### **Procurement termination notices**

**37.**—(1) This regulation sets out what information must be included in a procurement termination notice published under section 55(2) of the PA 2023.

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) a statement to the effect that, following the publication of a tender or transparency notice in respect of a contract, the contracting authority has decided not to award the contract, and
- (e) the date when the contracting authority decided not to award the public contract.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in a procurement termination notice.

### **Payments compliance notices**

**38.**—(1) This regulation sets out what information must be included in a payments compliance notice published under section 69(1) of the PA 2023.

(2) The information is—

- (a) the contracting authority information,
- (b) the dates of the first and the last days of the reporting period to which the payments compliance notice relates,
- (c) in respect of sums paid by the contracting authority under public contracts during the reporting period—
  - (i) the average number of days taken to make those payments, where day 1 is the first day after the invoice day;
  - (ii) the percentage of those payments which were made, where day 1 is the first day after the invoice day—
    - (aa) within the period beginning on day 1 and ending with day 30;
    - (bb) within the period beginning on day 31 and ending with day 60;
    - (cc) on or after day 61,
- (d) in respect of sums which became payable under public contracts during the reporting period, the percentage of those payments which were not made within the reporting period, and
- (e) a statement of the director or similar officer of the contracting authority who is responsible for the contracting authority's finances setting out that they approve the payments compliance notice and that person's name and job title.

(3) In paragraph (2)—

“average” means the arithmetic mean;

“invoice day” means the day on which a contracting authority receives an invoice.

(4) For the purposes of paragraph (2), a payment is made—

- (a) when it is received by the supplier;
- (b) if there is any delay in the sum being received for which the contracting authority is not responsible, when it would have been received without that delay.

(5) In paragraph (3) the reference to a contracting authority receiving an invoice is to the invoice being delivered to an address, or through an electronic invoicing system, as specified in the contract in question for that purpose.

(6) Nothing in this regulation prevents a contracting authority from publishing other relevant information in the notice.

### **Contract performance notices except in relation to full termination**

**39.**—(1) This regulation makes provision about information published under either of the following provisions—

- (a) section 71(2)(b) of the PA 2023 (assessment of performance against key performance indicators);
- (b) section 71(5) of that Act (breach of public contract or failure to perform).

(2) The information must be published in the form of a notice called a “Contract Performance Notice”.

(3) Where the information is being published under section 71(2)(b) of the PA 2023, the notice must include the information set out in paragraph (4).

(4) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for—
  - (i) the procurement, and
  - (ii) the public contract,
- (d) the key performance indicators set in accordance with section 52(1) of the PA 2023,
- (e) a statement that the notice is being used to set out the contracting authority’s assessment of performance against the key performance indicators,
- (f) for each supplier whose performance has been assessed against the key performance indicators—
  - (i) the supplier’s name,
  - (ii) the supplier’s contact postal address and email address, and
  - (iii) the unique identifier for the supplier,
- (g) the contracting authority’s assessment of performance against the indicators in accordance with the ratings set out in paragraph (5), and
- (h) the time period to which the contracting authority’s assessment applies.

(5) The ratings are—

<i>Rating</i>	<i>Description</i>
Good	Performance is meeting or exceeding the key performance indicators
Approaching target	Performance is close to meeting the key performance indicators
Requires improvement	Performance is below the key performance indicators
Inadequate	Performance is significantly below the key performance indicators
Other	Performance cannot be described as good, approaching target, requires improvement or inadequate

(6) Where the information is being published under section 71(5) of the PA 2023, the notice must include the information set out in paragraph (7).

(7) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for—
  - (i) the procurement, and
  - (ii) the public contract,
- (d) for each supplier that has committed the breach or failure to perform set out in the notice—

- (i) the supplier's name,
  - (ii) the supplier's contact postal address and email address, and
  - (iii) the unique identifier for the supplier,
- (e) the information referred to in—
  - (i) section 71(5)(a) of the PA 2023 (that section 71(5) of that Act applies), and
  - (ii) section 71(5)(b) of the PA 2023 (the circumstances giving rise to the application of section 71(5) of that Act),
- (f) a statement that the information is being published because—
  - (i) the supplier has breached the public contract and the breach resulted in one of the events referred to in section 71(3)(b), or
  - (ii) the supplier is not performing a public contract to the contracting authority's satisfaction,
- (g) where the supplier has breached the public contract, which of the following resulted from the breach—
  - (i) partial termination of the public contract;
  - (ii) the award of damages;
  - (iii) a settlement agreement between the supplier and the contracting authority,
- (h) where the supplier has breached the public contract, the date of any—
  - (i) partial termination of the public contract,
  - (ii) award of damages, or
  - (iii) settlement,
 (as the case may be),
- (i) where the supplier is not performing the public contract to the contracting authority's satisfaction, the date when the contracting authority considered that the supplier had failed to improve its performance in accordance with section 71(4)(c),
- (j) an explanation of the nature of the contractual obligation which has been breached or is not being performed to the contracting authority's satisfaction,
- (k) an explanation of the nature of the breach or failure to perform including—
  - (i) an explanation of the impact or consequences of the breach or failure to perform,
  - (ii) the duration of the breach or failure to perform and whether it is ongoing,
  - (iii) an explanation of any steps taken by the supplier to mitigate the impact or consequences of the breach or failure to perform,
  - (iv) any steps that the contracting authority has taken to notify the supplier of the breach or failure to perform and encourage them to improve the situation, including—
    - (aa) any warning notices given under the public contract, or
    - (bb) any opportunity to improve performance,
  - (v) what steps, if any, were taken by the supplier to improve the situation and why these were not sufficient,
- (l) where the breach has resulted in partial termination of the public contract, a description of which part of, or to what extent, the contract has been partially terminated, and
- (m) where there has been an award of damages or payment of other monies following the breach or failure to perform—
  - (i) confirmation that this is the case,

- (ii) the amount of damages or other monies,
- (iii) the basis on which any damages were awarded or other monies paid, for example—
  - (aa) in the case of damages, in accordance with the public contract,
  - (bb) in the case of damages, in accordance with a decision of a court or tribunal, or
  - (cc) in the case of other monies, in accordance with a negotiated settlement, and
- (iv) where there is a recorded decision of a court or tribunal finding that there was a breach, a link to the web page where the decision can be accessed or a copy of the decision.

(8) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(9) This regulation does not apply to information required to be published in accordance with section 71(5) of the PA 2023 where a breach resulted in the full termination of a public contract (see instead regulation 41).

### **Contract change notices**

**40.—**(1) This regulation sets out other information which must be included in a contract change notice published under section 75(1) or (5) of the PA 2023(a).

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) the unique identifier for the contract,
- (e) for each supplier party to the public contract or convertible contract—
  - (i) the supplier’s name,
  - (ii) the supplier’s contact postal address and email address, and
  - (iii) the unique identifier for the supplier,
- (f) whether the contracting authority is permitted to make the modification to the public contract or convertible contract because the modification is, by virtue of section 74(1)(a) of the PA 2023, one which is described—
  - (i) in paragraphs 2 and 3 of Schedule 8 to that Act (urgency and the protection of life, etc),
  - (ii) in paragraph 4 of Schedule 8 to that Act (unforeseeable circumstances),
  - (iii) in paragraphs 5 to 7 of Schedule 8 to that Act (materialisation of a known risk),
  - (iv) in paragraph 8 of Schedule 8 to that Act (additional goods, services or works), or
  - (v) in paragraph 9 of Schedule 8 to that Act (transfer on corporate restructuring),
 (where the modification is permitted under one of those provisions),
- (g) an explanation of why the modification falls within one of the types of modifications mentioned in sub-paragraph (f),
- (h) details of any change as a result of the modification—

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(a) For provision which requires contracting authorities to publish contracts as modified or modifications in certain cases, see section 77 of the PA 2023.

- (i) to the estimated value of the public contract or convertible contract immediately prior to the modification, or
    - (ii) to the term of the public contract or convertible contract,
  - (i) where the modification is one which is described in paragraph 9 of Schedule 8 to that Act (transfer on corporate restructuring)—
    - (i) for each new supplier that is party to the public contract or convertible contract—
      - (aa) the supplier’s name,
      - (bb) the supplier’s contact postal address and email address, and
      - (cc) the unique identifier for the supplier, and
    - (ii) for each supplier that will no longer be party to the public contract or convertible contract, the same information referred to in sub-paragraph (i)(aa) to (cc),
  - (j) the estimated date when—
    - (i) the public contract or convertible contract will be modified, and
    - (ii) the modification will have effect, and
  - (k) whether a voluntary standstill period applies in accordance with section 76(1) of the PA 2023 and, if so, the duration of that period.
- (3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

**Contract termination notices**

**41.—**(1) This regulation sets out other information which must be included in a contract termination notice published under section 80(1) of the PA 2023.

- (2) The information is—
- (a) the contracting authority information,
  - (b) the title of the procurement,
  - (c) the unique identifier for—
    - (i) the procurement,
    - (ii) the public contract,
  - (d) for each supplier party to the public contract—
    - (i) the supplier’s name,
    - (ii) the supplier’s contact postal address and email address, and
    - (iii) the unique identifier for the supplier,
  - (e) the reasons why the public contract has been terminated (including any reason mentioned in section 80(3) of the PA 2023),
  - (f) the date when the public contract was terminated,
  - (g) the estimated value of the public contract,
  - (h) where the termination of the public contract was the result of the supplier breaching the contract—
    - (i) a statement that section 71(5) of the PA 2023 applies because the supplier breached the public contract,
    - (ii) whether the breach resulted in—
      - (aa) the award of damages;



- (bb) a settlement agreement between the supplier and the contracting authority,
- (iii) the date of—
  - (aa) any award of any damages, or
  - (bb) any settlement,
- (iv) where the supplier did not perform the public contract to the contracting authority’s satisfaction, the date when the contracting authority considered that the supplier had failed to improve its performance in accordance with section 71(4)(c),
- (v) an explanation of the nature of the contractual obligation which was breached or was not performed to the contracting authority’s satisfaction,
- (vi) an explanation of the nature of the breach or failure to perform including—
  - (aa) an explanation of the impact or consequences of the breach or failure to perform,
  - (bb) the duration of the breach or failure to perform,
  - (cc) an explanation of any steps taken by the supplier to mitigate the impact or consequences of the breach or failure to perform,
  - (dd) any steps that the contracting authority took to notify the supplier of the breach or failure to perform and encourage them to improve the situation, including any warning notices given under the public contract or other proper opportunity to improve performance pursuant to section 71(4)(b) of the PA 2023,
  - (ee) what steps, if any, were taken by the supplier to improve the situation and why these were not sufficient, and
- (vii) where there was an award of damages or other monies paid following the breach or failure to perform—
  - (aa) confirmation that this is the case,
  - (bb) the amount of damages or other monies paid,
  - (cc) the basis on which the damages were awarded or other monies paid, for example in accordance with the public contract, a decision of a court or tribunal or a negotiated settlement, and
  - (dd) where there is a recorded decision of a court or tribunal finding that there was a breach, a link to the web page where the decision can be accessed or a copy of the decision.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

## PART 3

### Other provisions supplementing the Procurement Act 2023

#### **Specification of light touch and reservable light touch services**

**42.—**(1) For the purposes of section 9(1) of the PA 2023 (light touch contracts) the services which are covered by the CPV codes set out in column (1) of Table 1 in Schedule 1 and described in column (2) of that Table are specified as light touch services for the purposes of section 9(1) of the PA 2023.

(2) For the purposes of section 33(7) of the PA 2023 (reserving contracts to public service mutuels), a service specified in columns (1) and (2) of Table 1 in Schedule 1 is specified as a reservable light touch service where in the entry corresponding to that service in column (3) the letter “R” appears.

(3) The services which are covered by the CPV codes set out in Table 2 of Schedule 1 are specified as light touch services for the purposes of section 9(1) of the PA 2023, but only where those services are supplied under a contract for the supply of any thing listed in section 7(1)(a) to (f) of the PA 2023 (defence and security contracts).

### **Disapplication in relation to regulated health procurement**

**43.** The PA 2023 does not apply in relation to regulated health procurement(a).

### **Central government authorities**

**44.—**(1) The Crown, but not His Majesty in his private capacity, and each of the entities listed in columns 1 or 2 of the Table in Schedule 2 to these Regulations (whether or not they perform their functions on behalf of the Crown) are specified for the purposes of the definition of “central government authority” in paragraph 5(1) of Schedule 1 to the PA 2023 (threshold amounts).

(2) Where an entity listed in Schedule 2 is or has been succeeded by another entity, which is itself a contracting authority, the successor entity shall be deemed to be included in Schedule 2.

### **Meaning of “works” in paragraph 5(1) of Schedule 1 to the Procurement Act 2023**

**45.** For the purposes of the definition of “works” in paragraph 5(1) of Schedule 1 to the PA 2023, “works” means any of the activities coming within a CPV code listed in Schedule 3.

### **Defence authorities**

**46.** For the purposes of section 7(5) of the PA 2023, each of the following contracting authorities is a defence authority—

- (a) the Secretary of State for Defence;
- (b) AWE PLC(b);
- (c) the National Crime Agency(c);
- (d) the Oil and Pipelines Agency(d).

## **PART 4**

### **Amendment of the Procurement Act 2023**

#### **Regulation of procurement by devolved Scottish authorities**

**47.—**(1) The PA 2023 is amended as follows.

(2) In section 2(5)(a) (contracting authorities), after “authority” insert “, except where a devolved Scottish authority carries out procurement falling within section 115A”.

(3) After section 115, insert—

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(a) See section 120(2) of the PA 2023 for the definition of “regulated health procurement”.

(b) Company registration no. 02763902.

(c) The National Crime Agency was established by section 1 of the Crime and Courts Act 2013 (c. 22).

(d) The Oil and Pipelines Agency was established by section 1 of the Oil and Pipelines Act 1985 (c. 62).

**“115A Application of this Act where a devolved Scottish authority carries out procurement under a reserved procurement arrangement etc.**

- (1) This Act applies, without modification, where a devolved Scottish authority carries out procurement under a reserved procurement arrangement, a devolved Welsh procurement arrangement or a transferred Northern Ireland procurement arrangement, and as part of that procurement arrangement a contract is to be awarded following a procedure or other selection process carried out—
    - (a) jointly by that authority and one or more contracting authority which is not a devolved Scottish authority, or
    - (b) by a centralised procurement authority or equivalent body.
  - (2) In respect of procurement not falling within subsection (1) but to which subsection (3) applies—
    - (a) the provisions of this Act specified in column (1) of the Table in Schedule 9A apply in relation to that procurement, and
    - (b) where there is a modification specified in column (2) in respect of a provision specified in column (1), that provision applies subject to that modification.
  - (3) This subsection applies in relation to procurement carried out by a devolved Scottish authority under a reserved procurement arrangement, a devolved Welsh arrangement or a transferred Northern Ireland procurement, and as part of that procurement arrangement a contract is to be awarded—
    - (a) in accordance with a framework or similar arrangement, or
    - (b) by reference to a dynamic market, a utilities dynamic market or similar arrangement.
  - (4) This section applies only to a devolved Scottish authority which is—
    - (a) a contracting authority within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015(a), or
    - (b) a utility within the meaning of regulation 4 of the Utilities Contracts (Scotland) Regulations 2016(b).”.
- (4) After Schedule 9, insert—

“SCHEDULE 9A

Section 115A

PROCUREMENT BY DEVOLVED SCOTTISH AUTHORITIES

Provision of the PA 2023 <i>(1)</i>	Modification <i>(2)</i>
Section 1 (procurement and covered procurement)	
Section 2 (contracting authorities)	
Section 3 (public contracts)	
Section 4 (valuation of contracts)	

(a) S.S.I. 2015/446, as amended by paragraph 17(2) of Schedule 3 of the Advanced Research and Invention Agency Act 2022 c. 4. There are other amendments which are not relevant.  
 (b) S.S.I. 2016/49, to which there are amendments, none of which are relevant.

Provision of the PA 2023 (1)	Modification (2)
Section 5 (mixed procurement: above and below threshold)	
Section 6 (utilities contracts)	Subsections (5) and (6) do not apply
Section 7 (defence and security contracts)	
Section 8 (concession contracts)	
Section 9 (light touch contracts)	Subsections (2) to (4) do not apply
Section 10 (mixed procurement: special regime contracts)	
Section 11 (covered procurement only in accordance with this Act)	
Section 19 (award of public contracts following a competitive tendering procedure)	Subsection (9) does not apply
Section 20 (competitive tendering procedure)	Subsection (9) does not apply
Section 21 (tender notices and associated tender documents)	
Section 22 (conditions of participation)	
Section 23 (award criteria)	
Section 24 (refining award criteria)	
Section 26 (excluding suppliers from a competitive award)	
Section 27 (excluding suppliers from a competitive flexible procedure)	
Section 28 (excluding suppliers by reference to sub-contractors)	
Section 29 (excluding a supplier that is a threat to national security)	
Section 30 (excluding suppliers for improper behaviour)	
Section 31 (modifying a section 19 procurement)	
Section 34 (competitive award by reference to dynamic markets)	
Section 35 (dynamic markets: establishment)	Subsection (3) does not apply

Provision of the PA 2023 (1)	Modification (2)
Section 40 (qualifying utilities dynamic market notices: no duty to publish a tender notice)	
Section 45 (frameworks)	Only subsections (1), (2) and (8) apply
Section 46 (frameworks: competitive selection process)	
Section 50 (contract award notices and assessment summaries)	Subsection (6)(b) does not apply
Section 51 (standstill periods on the award of contracts)	Subsections 3(a) to (c) do not apply
Section 53 (contract details notices)	Subsections (3) to (5) and (6)(b) do not apply
Section 54 (time limits)	The fourth entry in the table at subsection (4) (qualifying planned procurement notice) and the definition of “qualifying planned procurement notice” do not apply
Section 55 (procurement termination notices)	
Section 56 (technical specifications)	
Section 57 (meaning of excluded and excludable supplier)	
Section 58 (considering whether a supplier is excluded or excludable)	
Section 59 (notification of exclusion of supplier)	Subsections (1)(a)(iv) and (v) do not apply.  In respect of a procurement carried out by a devolved Scottish authority, the “relevant appropriate authority” is the Scottish Ministers, as defined by section 44(2) of the Scotland Act 1998(a)
Section 62(3) (debarment list: definition of debarment list)	
Section 67 (electronic invoicing: implied term)	

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(a) 1998 c. 46.

Provision of the PA 2023	Modification
<i>(1)</i>	<i>(2)</i>
Section 78 (implied right to terminate public contracts)	
Section 79 (terminating public contracts: national security)	
Section 80 (contract termination notices)	
Section 81 (conflicts of interest: duty to identify)	Applies as though the definition of Minister in subsection (4) includes “the Scottish Ministers, as defined by section 44(2) of the Scotland Act 1998”
Section 82 (conflicts of interest: duty to mitigate)	
Section 83 (conflicts assessment)	
Section 89 (treaty state suppliers)	Subsection (3) does not apply
Section 90 (treaty state suppliers: non-discrimination)	
Section 91 (treaty state suppliers: non-discrimination in Scotland)	
Section 92 (trade disputes)	
Section 94 (general exemptions from duties to publish or disclose information)	
Section 96 (electronic communications)	
Section 98 (record-keeping)	
Section 99 (data protection)	
Section 100 (duties under this Act enforceable in civil proceedings)	Applies as though: (a) in subsection (1), the reference to Parts of the PA 2023 were replaced by the provisions of that Act specified to apply by section 115A and this Schedule; and (b) subsection (5) were omitted
Section 101 (automatic suspension of the entry into or modification of contracts)	Applies in relation to entry into a public contract only, and as though, in subsection (5), the reference to section 76 were omitted

Provision of the PA 2023 (1)	Modification (2)
Section 102 (interim remedies)	Applies as though, in subsection (3), the reference to section 76 were omitted
Section 103 (pre-contractual remedies)	
Section 104 (post-contractual remedies)	
Section 105 (post-contractual remedies: set aside conditions)	Applies as though, in subsection (1)(b), the reference to section 76 were omitted, and subsection (3) were omitted.
Section 106 (time limits on claims)	
Section 107 (Part 9 proceedings and closed material procedure)	
Part 11 (appropriate authorities and cross-border procurement)	
Section 123 (interpretation)	Subsection (4) does not apply
Section 126 (extent)	
Section 128 (short title)	
Schedule 1 (threshold amounts)	
Schedule 2 (exempted contracts)	
Schedule 3 (estimating the value of a contract)	
Schedule 4 (utility activities)	
Schedule 6 (mandatory exclusion grounds)	
Schedule 7 (discretionary exclusion grounds)	
Schedule 9 (treaty state suppliers)	
Schedule 9A (procurement by devolved Scottish authorities)	
Schedule 10 (single source defence contracts)	
Schedule 11 (repeals and revocations)".	

### **Preliminary market engagement in relation to private utilities**

48.—(1) The PA 2023 is amended as follows.

(2) In section 17 (preliminary market engagement), after subsection (2), insert—

- “(3) This section does not apply to a private utility, other than to a private utility which is a devolved Welsh authority that is not carrying out procurement under a reserved procurement arrangement or a transferred Northern Ireland procurement arrangement.”.

## PART 5

### Application of Parts 2 and 3: devolved Welsh and Scottish authorities

#### **Application of Parts 2 and 3 in relation to devolved Welsh authorities**

**49.**—(1) Parts 2 and 3 apply to a contracting authority that is a devolved Welsh authority in relation to a procurement under—

- (a) a reserved procurement arrangement, and
- (b) a transferred Northern Ireland procurement arrangement.

(2) Parts 2 and 3 do not apply to a contracting authority in relation to a procurement under a devolved Welsh procurement arrangement.

#### **Application of Parts 2 and 3 in relation to devolved Scottish authorities**

**50.** Parts 2 and 3 apply to a contracting authority that is a devolved Scottish authority in relation to a procurement which is regulated in accordance with section 115A of, and Schedule 9 to, the PA 2023.

*Name*  
Parliamentary Secretary  
Cabinet Office



# SCHEDULES

## SCHEDULE 1

Regulation 42

### Light touch services

Table 1

**Light touch services**

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Health, social and related services</i>		
75231200	Services related to the detention or rehabilitation of criminals	
75231240	Probation services	
79611000	Job search services	
79622000	Supply services of domestic help personnel	R
79624000	Supply services of nursing personnel	R
79625000	Supply services of medical personnel	R
85000000	Health and social work services	R
85100000	Health services	R
85110000	Hospital and related services	R
85111000	Hospital services	R
85111100	Surgical hospital services	R
85111200	Medical hospital services	R
85111300	Gynaecological hospital services	R
85111310	In vitro fertilisation services	R
85111320	Obstetrical hospital services	R
85111400	Rehabilitation hospital services	R
85111500	Psychiatric hospital services	R
85111600	Orthotic services	R
85111700	Oxygen-therapy services	R
85111800	Pathology services	R
85111810	Blood analysis services	R

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
85111820	Bacteriological analysis services	R
85111900	Hospital dialysis services	R
85112000	Hospital support services	R
85112100	Hospital-bedding services	R
85112200	Outpatient care services	R
85120000	Medical practice and related services	R
85121000	Medical practice services	R
85121100	General-practitioner services	R
85121200	Medical specialist services	R
85121210	Gynaecologic or obstetric services	R
85121220	Nephrology or nervous system specialist services	R
85121230	Cardiology services or pulmonary specialists services	R
85121231	Cardiology services	R
85121232	Pulmonary specialists services	R
85121240	ENT or audiologist services	R
85121250	Gastroenterologist and geriatric services	R
85121251	Gastroenterologist services	R
85121252	Geriatric services	R
85121270	Psychiatrist or psychologist services	R
85121271	Home for the psychologically disturbed services	R
85121280	Ophthalmologist, dermatology or orthopedics services	R
85121281	Ophthalmologist services	R
85121282	Dermatology services	R
85121283	Orthopaedic services	R
85121290	Paediatric or urologist services	R
85121291	Paediatric services	R
85121292	Urologist services	R
85121300	Surgical specialist services	R
85130000	Dental practice and related services	R

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
85131000	Dental-practice services	R
85131100	Orthodontic services	R
85131110	Orthodontic-surgery services	R
85140000	Miscellaneous health services	R
85141000	Services provided by medical personnel	R
85141100	Services provided by midwives	R
85141200	Services provided by nurses	R
85141210	Home medical treatment services	R
85141211	Dialysis home medical treatment services	R
85141220	Advisory services provided by nurses	R
85142000	Paramedical services	R
85142100	Physiotherapy services	R
85142200	Homeopathic services	R
85142300	Hygiene services	R
85142400	Home delivery of incontinence products	R
85143000	Ambulance services	R
85144000	Residential health facilities services	R
85144100	Residential nursing care services	R
85145000	Services provided by medical laboratories	R
85146000	Services provided by blood banks	R
85146100	Services provided by sperm banks	R
85146200	Services provided by transplant organ banks	R
85147000	Company health services	R
85148000	Medical analysis services	R
85149000	Pharmacy services	R
85150000	Medical imaging services	R
85160000	Optician services	R
85170000	Acupuncture and chiropractor services	R
85171000	Acupuncture services	R
85172000	Chiropractor services	R

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
85200000	Veterinary services	R
85210000	Domestic animal nurseries	R
85300000	Social work and related services	R
85310000	Social work services	R
85311000	Social work services with accommodation	R
85311100	Welfare services for the elderly	R
85311200	Welfare services for disabled people	R
85311300	Welfare services for children and young people	R
85312000	Social work services without accommodation	R
85312100	Daycare services	R
85312110	Child daycare services	R
85312120	Daycare services for disabled children and young people	R
85312200	Home delivery of provisions	R
85312300	Guidance and counselling services	R
85312310	Guidance services	R
85312320	Counselling services	R
85312330	Family-planning services	R
85312400	Welfare services not delivered through residential institutions	R
85312500	Rehabilitation services	R
85312510	Vocational rehabilitation services	R
85320000	Social services	R
85321000	Administrative social services	R
85322000	Community action programme	R
85323000	Community health services	R
98133000	Services furnished by social membership organisations	R
98133100	Civic betterment and community facility support services	R
98200000	Equal opportunities consultancy services	
98500000	Private households with employed persons	

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
98513000	Manpower services for households	
98513100	Agency staff services for households	
98513200	Clerical staff services for households	
98513300	Temporary staff for households	
98513310	Home-help services	
98514000	Domestic services	
<i>Administrative social, educational, healthcare and cultural services</i>		
75000000	Administration, defence and social security services	
75121000	Administrative educational services	R
75122000	Administrative healthcare services	R
75124000	Administrative recreational, cultural and religious services	
79950000	Exhibition, fair and congress organisation services	
79951000	Seminar organisation services	
79952000	Event services	
79952100	Cultural event organisation services	
79953000	Festival organisation services	
79954000	Party organisation services	
79955000	Fashion shows organisation services	
79956000	Fair and exhibition organisation services	
79995000	Library management services	
79995100	Archiving services	
79995200	Cataloguing services	
80000000	Education and training services	
80100000	Primary education services	
80110000	Pre-school education services	R
80200000	Secondary education services	
80210000	Technical and vocational secondary education services	
80211000	Technical secondary education services	

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
80212000	Vocational secondary education services	
80300000	Higher education services	R
80310000	Youth education services	R
80320000	Medical education services	R
80330000	Safety education services	R
80340000	Special education services	R
80400000	Adult and other education services	
80410000	Various school services	
80411000	Driving-school services	
80411100	Driving-test services	
80411200	Driving lessons	
80412000	Flying-school services	
80413000	Sailing-school services	
80414000	Diving-school services	
80415000	Ski-training services	
80420000	E-learning services	R
80430000	Adult-education services at university level	R
80490000	Operation of an educational centre	
80500000	Training services	
80510000	Specialist training services	
80511000	Staff training services	R
80512000	Dog training services	
80513000	Horse riding school services	
80520000	Training facilities	R
80521000	Training programme services	R
80522000	Training seminars	R
80530000	Vocational training services	
80531000	Industrial and technical training services	
80531100	Industrial training services	
80531200	Technical training services	

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
80532000	Management training services	
80533000	Computer-user familiarisation and training services	
80533100	Computer training services	
80533200	Computer courses	
80540000	Environmental training services	
80550000	Safety training services	
80560000	Health and first-aid training services	
80561000	Health training services	
80562000	First-aid training services	
80570000	Personal development training services	
80580000	Provision of language courses	
80590000	Tutorial services	R
80600000	Training services in defence and security materials	
80610000	Training and simulation in security equipment	
80620000	Training and simulation in firearms and ammunition	
80630000	Training and simulation in military vehicles	
80640000	Training and simulation in warships	
80650000	Training and simulation in aircrafts, missiles and spacecrafts	
80660000	Training and simulation in military electronic systems	
92000000	Recreational, cultural and sporting services	
92100000	Motion picture and video services	
92110000	Motion picture and video tape production and related services	
92111000	Motion picture and video production services	
92111100	Training-film and video-tape production	
92111200	Advertising, propaganda and information film and video-tape production	
92111210	Advertising film production	
92111220	Advertising video-tape production	

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
92111230	Propaganda film production	
92111240	Propaganda video-tape production	
92111250	Information film production	
92111260	Information video-tape production	
92111300	Entertainment film and video-tape production	
92111310	Entertainment film production	
92111320	Entertainment video-tape production	
92112000	Services in connection with motion-picture and video-tape production	
92120000	Motion-picture or video-tape distribution services	
92121000	Video-tape distribution services	
92122000	Motion picture distribution services	
92130000	Motion picture projection services	
92140000	Video-tape projection services	
92200000	Radio and television services	
92210000	Radio services	
92211000	Radio production services	
92213000	Small scale radio systems services	
92214000	Radio studio or equipment services	
92215000	General Mobile Radio Services (GMRS)	
92220000	Television services	
92221000	Television production services	
92222000	Closed circuit television services	
92224000	Digital television	
92225000	Interactive television	
92225100	Film-on-demand television	
92226000	Teleprogramming	
92230000	Radio and television cable services	
92231000	International bilateral services and international private leased lines	
92232000	Cable TV	



<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
92300000	Entertainment services	
92310000	Artistic and literary creation and interpretation services	
92311000	Works of art	
92312000	Artistic services	
92312100	Theatrical producers', singer groups', bands' and orchestras' entertainment services	
92312110	Theatrical producer entertainment services	
92312120	Singer group entertainment services	
92312130	Band entertainment services	
92312140	Orchestral entertainment services	
92312200	Services provided by authors, composers, sculptors, entertainers and other individual artists	
92312210	Services provided by authors	
92312211	Writing agency services	
92312212	Services related to the preparation of training manuals	
92312213	Technical author services	
92312220	Services provided by composers	
92312230	Services provided by sculptors	
92312240	Services provided by entertainers	
92312250	Services provided by individual artists	
92312251	Disk-jockey services	
92320000	Arts-facility operation services	
92330000	Recreational-area services	
92331000	Fair and amusement park services	
92331100	Fair services	
92331200	Amusement park services	
92331210	Children animation services	
92332000	Beach services	
92340000	Dance and performance entertainment services	
92341000	Circus services	

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
92342000	Dance-instruction services	
92342100	Ballroom dance-instruction services	
92342200	Discotheque dance-instruction services	
92350000	Gambling and betting services	
92351000	Gambling services	
92351100	Lottery operating services	
92351200	Casino operating services	
92352000	Betting services	
92352100	Totalisator operating services	
92352200	Bookmaking services	
92360000	Pyrotechnic services	
92370000	Sound technician	
92400000	News-agency services	
92500000	Library, archives, museums and other cultural services	R
92510000	Library and archive services	R
92511000	Library services	R
92512000	Archive services	R
92512100	Archive destruction services	R
92520000	Museum services and preservation services of historical sites and buildings	R
92521000	Museum services	R
92521100	Museum-exhibition services	R
92521200	Preservation services of exhibits and specimens	R
92521210	Preservation services of exhibits	R
92521220	Preservation services of specimens	R
92522000	Preservation services of historical sites and buildings	R
92522100	Preservation services of historical sites	R
92522200	Preservation services of historical buildings	R
92530000	Botanical and zoological garden services and nature reserve services	R

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
92531000	Botanical garden services	R
92532000	Zoological garden services	R
92533000	Nature reserve services	R
92534000	Wildlife preservation services	R
92600000	Sporting services	R
92610000	Sports facilities operation services	R
92620000	Sport-related services	R
92621000	Sports-event promotion services	R
92622000	Sports-event organisation services	R
92700000	Cybercafé services	
<i>Compulsory social security services</i>		
75300000	Compulsory social security services	
<i>Benefit services</i>		
75310000	Benefit services	
75311000	Sickness benefits	
75312000	Maternity benefits	
75313000	Disability benefits	
75313100	Temporary disablement benefits	
75314000	Unemployment compensation benefits	
75320000	Government employee pension schemes	
75330000	Family allowances	
75340000	Child allowances	
<i>Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisations services</i>		
98000000	Other community, social and personal services	
98120000	Services furnished by trade unions	
98130000	Miscellaneous membership organisations services	
98132000	Services furnished by political organisations	
98133110	Services provided by youth associations	R
<i>Religious services</i>		
98131000	Religious services	

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>Hotel and restaurant services</i>		
55100000	Hotel services	
55110000	Hotel accommodation services	
55120000	Hotel meeting and conference services	
55130000	Other hotel services	
55200000	Camping sites and other non-hotel accommodation	
55210000	Youth hostel services	
55220000	Camping-site services	
55221000	Caravan-site services	
55240000	Holiday centre and holiday home services	
55241000	Holiday centre services	
55242000	Holiday home services	
55243000	Children's holiday-camp services	
55250000	Letting services of short-stay furnished accommodation	
55260000	Sleeping-car services	
55270000	Services provided by bed and breakfast establishments	
55300000	Restaurant and food-serving services	
55310000	Restaurant waiter services	
55311000	Restricted-clientele restaurant waiter services	
55312000	Unrestricted-clientele restaurant waiter services	
55320000	Meal-serving services	
55321000	Meal-preparation services	
55322000	Meal-cooking services	
55330000	Cafeteria services	
55400000	Beverage-serving services	
55410000	Bar management services	
55510000	Canteen services	
55511000	Canteen and other restricted-clientele cafeteria services	

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
55512000	Canteen management services	
55520000	Catering services	
55521000	Catering services for private households	
55521100	Meals-on-wheels services	
55521200	Meal delivery service	
55522000	Catering services for transport enterprises	
55523000	Catering services for other enterprises or other institutions	
55523100	School-meal services	
55524000	School catering services	
<i>Legal services, to the extent not included by paragraph 14 of Schedule 2 to the Procurement Act 2023</i>		
75231100	Law-courts-related administrative services	
79100000	Legal services	
79110000	Legal advisory and representation services	
79111000	Legal advisory services	
79112000	Legal representation services	
79112100	Stakeholders representation services	
79120000	Patent and copyright consultancy services	
79121000	Copyright consultancy services	
79121100	Software copyright consultancy services	
79130000	Legal documentation and certification services	
79131000	Documentation services	
79132000	Certification services	
79132100	Electronic signature certification services	
79140000	Legal advisory and information services	
<i>Other administrative services and government services</i>		
75100000	Administration services	
75110000	General public services	
75111000	Executive and legislative services	
75111100	Executive services	

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
75111200	Legislative services	
75112000	Administrative services for business operations	
75112100	Administrative development project services	
75120000	Administrative services of agencies	
75123000	Administrative housing services	R
75125000	Administrative services related to tourism affairs	
75130000	Supporting services for the government	
75131000	Government services	
<i>Provision of services to the community</i>		
75200000	Provision of services to the community	
75210000	Foreign affairs and other services	
75211000	Foreign-affairs services	
75211100	Diplomatic services	
75211110	Consular services	
75211200	Foreign economic-aid-related services	
75211300	Foreign military-aid-related services	
75220000	Defence services	
75221000	Military defence services	
75222000	Civil defence services	
75230000	Justice services	
75231000	Judicial services	
<i>Prison related services, public security and rescue services to the extent not excluded by paragraph 20 of Schedule 2 to the Procurement Act 2023</i>		
75231210	Imprisonment services	
75231220	Prisoner-escort services	
75231230	Prison services	
75240000	Public security, law and order services	
75241000	Public security services	
75241100	Police services	
75242000	Public law and order services	
75242100	Public-order services	

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
75242110	Bailiff services	
75250000	Fire-brigade and rescue services	
75251000	Fire-brigade services	
75251100	Firefighting services	
75251110	Fire-prevention services	
75251120	Forest-firefighting services	
75252000	Rescue services	
79430000	Crisis management services	
98113100	Nuclear safety services	
<i>Investigation and security services</i>		
79700000	Investigation and security services	
79710000	Security services	
79711000	Alarm-monitoring services	
79713000	Guard services	
79714000	Surveillance services	
79714100	Tracing system services	
79714110	Absconder-tracing services	
79715000	Patrol services	
79716000	Identification badge release services	
79720000	Investigation services	
79721000	Detective agency services	
79722000	Graphology services	
79723000	Waste analysis services	
<i>International services</i>		
98900000	Services provided by extra-territorial organisations and bodies	
98910000	Services specific to international organisations and bodies	
<i>Postal services</i>		
64000000	Postal and telecommunications services	
64100000	Post and courier services	

<b>CPV code</b>	<b>Service</b>	<b>Reservable</b>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
64110000	Postal services	
64111000	Postal services related to newspapers and periodicals	
64112000	Postal services related to letters	
64113000	Postal services related to parcels	
64114000	Post office counter services	
64115000	Mailbox rental	
64116000	Post-restante services	
64122000	Internal office mail and messenger services	
<i>Miscellaneous services</i>		
50116510	Tyre-remoulding services	
71550000	Blacksmith services	

Table 2

**Additional light touch services for certain defence and security contracts**

<b>Service</b>	
<i>Hotel and restaurant services</i>	
98340000	Accommodation and office services
98341000	Accommodation services
98341100	Accommodation management services
<i>Support and auxiliary transport services</i>	
63000000	Supporting and auxiliary transport services; travel agencies services
63100000	Cargo handling and storage services
63110000	Cargo handling services
63111000	Container handling services
63112000	Baggage handling services
63112100	Passenger baggage handling services
63112110	Baggage collection services
63120000	Storage and warehousing services
63121000	Storage and retrieval services



## Service

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63121100	Storage services
63121110	Gas storage services
63122000	Warehousing services
63500000	Travel agency, tour operator and tourist assistance services
63510000	Travel agency and similar services
63511000	Organisation of package tours
63512000	Sale of travel tickets and package tours services
63513000	Tourist information services
63514000	Tourist guide services
63515000	Travel services
63516000	Travel management services
63520000	Transport agency services
63521000	Freight transport agency services
63522000	Ship brokerage services
63523000	Port and forwarding agency services
63524000	Transport document preparation services
63700000	Support services for land, water and air transport
63710000	Support services for land transport
63711000	Support services for railway transport
63711100	Train monitoring services
63712000	Support services for road transport
63712100	Bus station services
63712200	Highway operation services
63712210	Highway toll services
63712300	Bridge and tunnel operation services
63712310	Bridge operating services
63712311	Bridge toll services
63712320	Tunnel operation services
63712321	Tunnel toll services
63712400	Parking services
63712500	Weighbridge services

## Service

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63712600	Vehicle refuelling services
63720000	Support services for water transport
63721000	Port and waterway operation services and associated services
63721100	Bunkering services
63721200	Port operation services
63721300	Waterway operation services
63721400	Ship refuelling services
63721500	Passenger terminal operation services
63722000	Ship-piloting services
63723000	Berthing services
63724000	Navigation services
63724100	Offshore positioning services
63724110	Lightship positioning services
63724200	Lightship services
63724300	Buoy positioning services
63724310	Buoy marking services
63724400	Lighthouse services
63725000	Salvage and refloating services
63725100	Vessel-salvaging services
63725200	Standby vessel services
63725300	Vessel refloating services
63726000	Miscellaneous water transport support services
63726100	Vessel registration services
63726200	Ice-breaking services
63726300	Vessel storage services
63726400	Ship chartering services
63726500	Vessel laying-up services
63726600	Ship-operating services
63726610	Ship-launching services
63726620	ROV services
63726700	Fishing-vessel services

	<b>Service</b>
63726800	Research vessel services
63726900	Anchor handling services
63727000	Towing and pushing services of ships
63727100	Towing services
63727200	Pushing services
63730000	Support services for air transport
63731000	Airport operation services
63731100	Airport slot coordination services
63732000	Air-traffic control services
63733000	Aircraft refuelling services
63734000	Hangar services
98361000	Aquatic marine services
<i>Personal placement and supply services but not employment contracts</i>	
79600000	Recruitment services
79610000	Placement services of personnel
79612000	Placement services of office-support personnel
79613000	Employee relocation services
79620000	Supply services of personnel including temporary staff
79621000	Supply services of office personnel
79623000	Supply services of commercial or industrial workers
79630000	Personnel services except placement and supply services
79631000	Personnel and payroll services
79634000	Career guidance services
79635000	Assessment centre services for recruitment
98510000	Services of commercial and industrial workers
98511000	Services of commercial workers
98512000	Services of industrial workers

## SCHEDULE 2

Regulation 44

### Central government authorities

Central government authorities

Lead authority (1)	Related authority (2)
Agri-Food and Biosciences Institute	
Armagh Observatory	
Armagh Planetarium	
Arts Council of Northern Ireland	
Attorney General's Office	Government Legal Department
Belfast Health and Social Care Trust	
Belfast Metropolitan College	
Cabinet Office	Office of the Parliamentary Counsel Boundary Commission for England Crown Commercial Service
Charity Commission	
The Charity Commission for Northern Ireland	
Chief Inspector of Criminal Justice	
Comhairle na Gaelscolaíochta	
Commissioner for Children and Young People for Northern Ireland	
Commissioner for Older People for Northern Ireland	
Commissioner for Public Appointments for Northern Ireland	
Commissioner for Victims and Survivors	
Community Relations Council	
Construction Industry Training Board – Construction Skills NI	
Corporate Officer of the House of Commons	
Corporate Officer of the House of Lords	
Council for Catholic Maintained Schools	
Council for the Curriculum, Examinations and Assessment	
Crown Estate – Vote Expenditure Only	
Crown Prosecution Service	
Department for Business, Energy and Industrial Strategy	Competition Appeal Tribunal

Lead authority (1)	Related authority (2)
	Competition and Markets Authority Competition Service Intellectual Property Office Nuclear Decommissioning Authority Meteorological Office (known as “Met Office”) Office of Manpower Economics Oil and Gas Authority UK Research and Innovation
Department for Digital, Culture, Media and Sport	Arts Council England British Library British Museum The Gambling Commission Historic Buildings and Monuments Commission for England (known as “Historic England”) Imperial War Museum National Gallery National Maritime Museum National Portrait Gallery Natural History Museum Board of Trustees of the Science Museum (known as “Science Museum Group”) Tate Gallery Victoria and Albert Museum Wallace Collection
Department for Education	Office for Students
Department for Environment, Food and Rural Affairs	Natural England Plant Variety Rights Office Royal Botanic Gardens, Kew
Department for International Trade	

Lead authority (1)	Related authority (2)
Department for Transport	Maritime and Coastguard Agency Highways England Company Ltd (known as "Highways England")
Department for Work and Pensions	Office of Nuclear Regulation Social Security Advisory Committee Pensions Regulator
Department of Health and Social Care	NHS Business Services Authority NHS Commissioning Board (known as "NHS England") NHS Trusts NHS Foundation Trusts
Education and Library Boards	
Education Authority	
Equality Commission for Northern Ireland	
Exceptional Circumstances Body	
Export Credits Guarantee Department (known as "UK Export Finance")	
Foreign, Commonwealth and Development Office	Wilton Park
General Teaching Council for Northern Ireland	
Government Actuary's Department	
Health and Safety Executive for Northern Ireland	
Health and Social Care Regulation and Quality Improvement Authority	
Home Office	HM Inspectorate of Constabulary and Fire & Rescue Services
ILEX Urban Regeneration Company Limited	
Invest Northern Ireland	
Labour Relations Agency	
Lay Observer for Northern Ireland	
Livestock and Meat Commission for Northern Ireland	
Local Government Staff Commission	

Lead authority (1)	Related authority (2)
Maze Long Kesh Development Corporation	
Middletown Centre for Autism	
Ministry of Defence	Defence Equipment & Support
Ministry of Housing, Communities and Local Government	
Ministry of Justice	Court of Appeal (England and Wales)
	Employment Appeals Tribunal
	Employment Tribunals
	First-tier Tribunal
	Her Majesty's Courts and Tribunals Service
	Law Commission
	Legal Aid Agency – England and Wales
	Office of the Official Solicitor to the Senior Courts and the Public Trustee
	Office of the Public Guardian
	Parole Board
	UK Supreme Court
	Upper Tribunal
The National Archives	
National Audit Office	
National Museums Northern Ireland	
National Savings and Investments	
North West Regional College	
Northern Health and Social Care Trust	
Northern Ireland Ambulance Service Trust	
Northern Ireland Assembly Commission	
Northern Ireland Blood Transfusion Service	
Northern Ireland Building Regulations Advisory Committee	
Northern Ireland Council for Integrated Education	
Northern Ireland Environment Agency	

Lead authority (1)	Related authority (2)
Northern Ireland Fire and Rescue Service	
Northern Ireland Fishery Harbour Authority	
Northern Ireland Guardian Ad Litem Agency	
Northern Ireland Housing Executive	
Northern Ireland Judicial Appointments Commission	
Northern Ireland Law Commission	
Northern Ireland Legal Services Commission	
Northern Ireland Library Authority	
Northern Ireland Local Government Officers' Superannuation Committee	
Northern Ireland Medical and Dental Training Agency	
Northern Ireland Ministers	<p data-bbox="813 996 1276 1064">Agricultural Wages Board for Northern Ireland</p> <p data-bbox="813 1086 1260 1120">Attorney General for Northern Ireland</p> <p data-bbox="813 1142 1292 1209">Department of Agriculture, Environment and Rural Affairs</p> <p data-bbox="813 1232 1157 1265">Department for Communities</p> <p data-bbox="813 1288 1157 1321">Department for the Economy</p> <p data-bbox="813 1344 1316 1523">Consumer Council Northern Ireland (with respect only to the functions transferred from the National Consumer Council which were themselves transferred from the Gas and Electricity Consumer Council)</p> <p data-bbox="813 1545 1109 1579">Department of Education</p> <p data-bbox="813 1601 1085 1635">Department of Finance</p> <p data-bbox="813 1657 1069 1691">Department of Health</p> <p data-bbox="813 1713 1157 1747">Department for Infrastructure</p> <p data-bbox="813 1769 1069 1803">Department of Justice</p> <p data-bbox="813 1825 1013 1859">Coroners Service</p> <p data-bbox="813 1881 981 1915">County Courts</p> <p data-bbox="813 1937 1316 2004">Court of Appeal and High Court of Justice in Northern Ireland</p>



Lead authority (1)	Related authority (2)
	Crown Court
	Enforcement of Judgements Office
	Forensic Science Northern Ireland
	Legal Service Agency Northern Ireland
	Magistrates' Courts
	Pensions Appeals Tribunals (Northern Ireland)
	Police Service of Northern Ireland
	Probation Board for Northern Ireland
	Office of the Social Security Commissioners and Child Support Commissioners (Northern Ireland)
	State Pathologist's Department
Executive Office	
Northern Ireland Museums Council	
Northern Ireland Office	Office of the Chief Electoral Officer for Northern Ireland
	Public Prosecution Service for Northern Ireland
Northern Ireland Policing Board	
Northern Ireland Policing Fund	
Northern Ireland Practice and Education Council for Nursing and Midwifery	
Northern Ireland Prisoner Ombudsman	
Northern Ireland Screen	
Northern Ireland Social Care Council	
Northern Ireland Tourist Board	
Northern Ireland, Department for Social Development	
Northern Regional College	
Office for National Statistics	National Health Service Central Register
Parliamentary and Health Service Ombudsman	
Patient and Client Council	

Lead authority (1)	Related authority (2)
Planning and Water Appeals Commission	
Police Ombudsman Northern Ireland	
Police Retraining and Rehabilitation Trust	
Privy Council Office	
Public Service Commission for Northern Ireland	
Regional Agency for Public Health and Social Well Being	
Regional Business Services Organisation	
Restoration and Renewal Delivery Authority Ltd	
HM Revenue and Customs	
Revenue Scotland	
Royal Hospital, Chelsea	
Royal Mint	
RUC George Cross Foundation	
Rural Payments Agency	
The Scotland Office	
Scotland, Auditor-General	
Scotland, Crown Office and Procurator Fiscal Service	
Scotland, National Records of Scotland	
Scotland, Queen's and Lord Treasurer's Remembrancer	
Scotland, Registers of Scotland	
The Scottish Ministers	Architecture and Design Scotland
	Crofting Commission
	Lands Tribunal for Scotland
	National Galleries of Scotland
	National Library of Scotland
	National Museums of Scotland
	Royal Botanic Garden, Edinburgh
	Scottish Courts and Tribunals Service

Lead authority (1)	Related authority (2)
	Scottish Further and Higher Education Funding Council
	Scottish Law Commission
	Special Health Boards
	Health Boards
	The Office of the Accountant of Court
	High Court of Justiciary
	Court of Session
	HM Inspectorate of Constabulary
	Parole Board for Scotland
	Pensions Appeal Tribunals (Scotland)
	Scottish Land Court
	Sheriff Courts
	Scottish Natural Heritage
	Scottish Police Authority
	First-tier Tribunal for Scotland
	Upper Tribunal for Scotland
	Historic Environment Scotland
The Scottish Parliamentary Corporate Body	
South Eastern Health and Social Care Trust	
South Eastern Regional College	
South West College	
Southern Health and Social Care Trust	
Southern Regional College	
Sport NI	
Staff Commission for Education and Library Boards	
Statistics Advisory Committee	
Stranmillis University College	
Strategic Investment Board	
HM Treasury	United Kingdom Debt Management Office

Lead authority (1)	Related authority (2)
Ulster Supported Employment Limited	
Victims and Survivors Service Ltd	
The Wales Office – Office of the Secretary of State for Wales	
Western Health and Social Care Trust	
Youth Council for Northern Ireland	

### SCHEDULE 3

Regulation 45

#### Works activities

CPV code	Activity
45000000	Construction work
45100000	Site preparation work
45110000	Building demolition and wrecking work and earthmoving work
45111000	Demolition, site preparation and clearance work
45111100	Demolition work
45111200	Site preparation and clearance work
45111210	Blasting and associated rock-removal work
45111211	Blasting work
45111212	Rock-removal work
45111213	Site-clearance work
45111214	Blast-clearing work
45111220	Scrub-removal work
45111230	Ground-stabilisation work
45111240	Ground-drainage work
45111250	Ground investigation work
45111260	Site-preparation work for mining
45111290	Primary works for services
45111291	Site-development work
45111300	Dismantling works

<b>CPV code</b>	<b>Activity</b>
45111310	Dismantling works for military installations
45111320	Dismantling works for security installations
45112000	Excavating and earth moving work
45112100	Trench-digging work
45112200	Soil-stripping work
45112210	Topsoil-stripping work
45112300	Infill and land-reclamation work
45112310	Infill work
45112320	Land-reclamation work
45112330	Site-reclamation work
45112340	Soil-decontamination work
45112350	Reclamation of wasteland
45112360	Land rehabilitation work
45112400	Excavating work
45112410	Grave-digging work
45112420	Basement excavation work
45112440	Terracing of hillsides
45112441	Terracing work
45112450	Excavation work at archaeological sites
45112500	Earthmoving work
45112600	Cut and fill
45112700	Landscaping work
45112710	Landscaping work for green areas
45112711	Landscaping work for parks
45112712	Landscaping work for gardens
45112713	Landscaping work for roof gardens
45112714	Landscaping work for cemeteries
45112720	Landscaping work for sports grounds and recreational areas
45112721	Landscaping work for golf courses
45112722	Landscaping work for riding areas
45112723	Landscaping work for playgrounds

<b>CPV code</b>	<b>Activity</b>
45112730	Landscaping work for roads and motorways
45112740	Landscaping work for airports
45113000	Siteworks
45120000	Test drilling and boring work
45121000	Test drilling work
45122000	Test boring work
45200000	"Works for complete or part construction and civil engineering work"
45210000	Building construction work
45211000	Construction work for multi-dwelling buildings and individual houses
45211100	Construction work for houses
45211200	Sheltered housing construction work
45211300	Houses construction work
45211310	Bathrooms construction work
45211320	Porches construction work
45211340	Multi-dwelling buildings construction work
45211341	Flats construction work
45211350	Multi-functional buildings construction work
45211360	Urban development construction work
45211370	Construction works for saunas
45212000	Construction work for buildings relating to leisure, sports, culture, lodging and restaurants
45212100	Construction work of leisure facilities
45212110	Leisure centre construction work
45212120	Theme park construction work
45212130	Amusement park construction work
45212140	Recreation installation
45212150	Cinema construction work
45212160	Casino construction work
45212170	Entertainment building construction work
45212171	Entertainment centre construction work

<b>CPV code</b>	<b>Activity</b>
45212172	Recreation centre construction work
45212180	Ticket offices construction work
45212190	Sun-protection works
45212200	Construction work for sports facilities
45212210	Single-purpose sports facilities construction work
45212211	Ice rink construction work
45212212	Construction work for swimming pool
45212213	Sport markings works
45212220	Multi-purpose sports facilities construction work
45212221	Construction work in connection with structures for sports ground
45212222	Gymnasium construction work
45212223	Winter-sports facilities construction work
45212224	Stadium construction work
45212225	Sports hall construction work
45212230	Installation of changing rooms
45212290	Repair and maintenance work in connection with sports facilities
45212300	Construction work for art and cultural buildings
45212310	Construction work for buildings relating to exhibitions
45212311	Art gallery construction work
45212312	Exhibition centre construction work
45212313	Museum construction work
45212314	Historical monument or memorial construction work
45212320	Construction work for buildings relating to artistic performances
45212321	Auditorium construction work
45212322	Theatre construction work
45212330	Library construction work
45212331	Multimedia library construction work
45212340	Lecture hall construction work
45212350	Buildings of particular historical or architectural interest

<b>CPV code</b>	<b>Activity</b>
45212351	Prehistoric monument construction work
45212352	Industrial monument construction work
45212353	Palace construction work
45212354	Castle construction work
45212360	Religious buildings construction work
45212361	Church construction work
45212400	Accommodation and restaurant buildings
45212410	Construction work for lodging buildings
45212411	Hotel construction work
45212412	Hostel construction work
45212413	Short-stay accommodation construction work
45212420	Construction work for restaurants and similar facilities
45212421	Restaurant construction work
45212422	Canteen construction work
45212423	Cafeteria construction work
45212500	Kitchen or restaurant conversion
45212600	Pavilion construction work
45213000	Construction work for commercial buildings, warehouses and industrial buildings, buildings relating to transport
45213100	Construction work for commercial buildings
45213110	Shop buildings construction work
45213111	Shopping centre construction work
45213112	Shop units construction work
45213120	Post office construction work
45213130	Bank construction work
45213140	Market construction work
45213141	Covered market construction work
45213142	Open-air market construction work
45213150	Office block construction work
45213200	Construction work for warehouses and industrial buildings
45213210	Cold-storage installations
45213220	Construction work for warehouses



<b>CPV code</b>	<b>Activity</b>
45213221	Warehouse stores construction work
45213230	Abattoir construction work
45213240	Agricultural buildings construction work
45213241	Barn construction work
45213242	Cowsheds construction work
45213250	Construction work for industrial buildings
45213251	Industrial units construction work
45213252	Workshops construction work
45213260	Stores depot construction work
45213270	Construction works for recycling station
45213280	Construction works for compost facility
45213300	Buildings associated with transport
45213310	Construction work for buildings relating to road transport
45213311	Bus station construction work
45213312	Car park building construction work
45213313	Service-area building construction work
45213314	Bus garage construction work
45213315	Bus-stop shelter construction work
45213316	Installation works of walkways
45213320	Construction work for buildings relating to railway transport
45213321	Railway station construction work
45213322	Rail terminal building construction work
45213330	Construction work for buildings relating to air transport
45213331	Airport buildings construction work
45213332	Airport control tower construction work
45213333	Installation works of airport check-in counters
45213340	Construction work for buildings relating to water transport
45213341	Ferry terminal building construction work
45213342	Ro-ro terminal construction work
45213350	Construction work for buildings relating to various means of transport
45213351	Maintenance hangar construction work

<b>CPV code</b>	<b>Activity</b>
45213352	Service depot construction work
45213353	Installation works of passenger boarding bridges
45213400	Installation of staffrooms
45214000	Construction work for buildings relating to education and research
45214100	Construction work for kindergarten buildings
45214200	Construction work for school buildings
45214210	Primary school construction work
45214220	Secondary school construction work
45214230	Special school construction work
45214300	Construction work for college buildings
45214310	Vocational college construction work
45214320	Technical college construction work
45214400	Construction work for university buildings
45214410	Polytechnic construction work
45214420	Lecture theatre construction work
45214430	Language laboratory construction work
45214500	Construction work for buildings of further education
45214600	Construction work for research buildings
45214610	Laboratory building construction work
45214620	Research and testing facilities construction work
45214630	Scientific installations
45214631	Installation works of cleanrooms
45214640	Meteorological stations construction work
45214700	Construction work for halls of residence
45214710	Entrance hall construction work
45214800	Training facilities building
45215000	Construction work for buildings relating to health and social services, for crematoriums and public conveniences
45215100	Construction work for buildings relating to health
45215110	Spa construction work
45215120	Special medical building construction work

<b>CPV code</b>	<b>Activity</b>
45215130	Clinic construction work
45215140	Hospital facilities construction work
45215141	Operating theatre construction work
45215142	Intensive-care unit construction work
45215143	Diagnostic screening room construction work
45215144	Screening rooms construction work
45215145	Fluoroscopy room construction work
45215146	Pathology room construction work
45215147	Forensic room construction work
45215148	Catheter room construction work
45215200	Construction work for social services buildings
45215210	Construction work for subsidised residential accommodation
45215212	Retirement home construction work
45215213	Nursing home construction work
45215214	Residential homes construction work
45215215	Children's home construction work
45215220	Construction work for social facilities other than subsidised residential accommodation
45215221	Daycare centre construction work
45215222	Civic centre construction work
45215300	Construction work for crematoriums
45215400	Cemetery works
45215500	Public conveniences
45216000	Construction work for buildings relating to law and order or emergency services and for military buildings
45216100	Construction work for buildings relating to law and order or emergency services
45216110	Construction work for buildings relating to law and order
45216111	Police station construction work
45216112	Court building construction work
45216113	Prison building construction work
45216114	Parliament and public assembly buildings

<b>CPV code</b>	<b>Activity</b>
45216120	Construction work for buildings relating to emergency services
45216121	Fire station construction work
45216122	Ambulance station construction work
45216123	Mountain-rescue building construction work
45216124	Lifeboat station construction work
45216125	Emergency-services building construction work
45216126	Coastguard building construction work
45216127	Rescue-service station construction work
45216128	Lighthouse construction work
45216129	Protective shelters
45216200	Construction work for military buildings and installations
45216220	Military bunker construction work
45216230	Military shelter construction work
45216250	Trench defences construction work
45217000	Inflatable buildings construction work
45220000	Engineering works and construction works
45221000	Construction work for bridges and tunnels, shafts and subways
45221100	Construction work for bridges
45221110	Bridge construction work
45221111	Road bridge construction work
45221112	Railway bridge construction work
45221113	Footbridge construction work
45221114	Construction work for iron bridges
45221115	Construction work for steel bridges
45221117	Weighbridge construction work
45221118	Pipeline-carrying bridge construction work
45221119	Bridge renewal construction work
45221120	Viaduct construction work
45221121	Road viaduct construction work
45221122	Railway viaduct construction work

<b>CPV code</b>	<b>Activity</b>
45221200	Construction work for tunnels, shafts and subways
45221210	Covered or partially-covered excavations
45221211	Underpass
45221213	Covered or partially-covered railway excavations
45221214	Covered or partially-covered road excavations
45221220	Culverts
45221230	Shafts
45221240	Construction work for tunnels
45221241	Road tunnel construction work
45221242	Railway tunnel construction work
45221243	Pedestrian tunnel construction work
45221244	Canal tunnel construction work
45221245	Under-river tunnel construction work
45221246	Undersea tunnel construction work
45221247	Tunnelling works
45221248	Tunnel linings construction work
45221250	Underground work other than tunnels, shafts and subways
45222000	Construction work for engineering works except bridges, tunnels, shafts and subways
45222100	Waste-treatment plant construction work
45222110	Waste disposal site construction work
45222200	Engineering work for military installations
45222300	Engineering work for security installations
45223000	Structures construction work
45223100	Assembly of metal structures
45223110	Installation of metal structures
45223200	Structural works
45223210	Structural steelworks
45223220	Structural shell work
45223300	Parking lot construction work
45223310	Underground car park construction work
45223320	Park-and-ride facility construction work

<b>CPV code</b>	<b>Activity</b>
45223400	Radar station construction work
45223500	Reinforced-concrete structures
45223600	Dog kennels construction work
45223700	Service area construction work
45223710	Motorway service area construction work
45223720	Petrol/gas stations construction work
45223800	Assembly and erection of prefabricated structures
45223810	Prefabricated constructions
45223820	Prefabricated units and components
45223821	Prefabricated units
45223822	Prefabricated components
45230000	Construction work for pipelines, communication and power lines, for highways, roads, airfields and railways; flatwork
45231000	Construction work for pipelines, communication and power lines
45231100	General construction work for pipelines
45231110	Pipelaying construction work
45231111	Pipeline lifting and relaying
45231112	Installation of pipe system
45231113	Pipeline relaying works
45231200	Construction work for oil and gas pipelines
45231210	Construction work for oil pipelines
45231220	Construction work for gas pipelines
45231221	Gas supply mains construction work
45231222	Gasholder works
45231223	Gas distribution ancillary work
45231300	Construction work for water and sewage pipelines
45231400	Construction work for electricity powerlines
45231500	Compressed-air pipeline work
45231510	Compressed-air pipeline work for mailing system
45231600	Construction work for communication lines
45232000	Ancillary works for pipelines and cables

<b>CPV code</b>	<b>Activity</b>
45232100	Ancillary works for water pipelines
45232120	Irrigation works
45232121	Irrigation piping construction work
45232130	Storm-water piping construction work
45232140	District-heating mains construction work
45232141	Heating works
45232142	Heat-transfer station construction work
45232150	Works related to water-distribution pipelines
45232151	Water-main refurbishment construction work
45232152	Pumping station construction work
45232153	Construction work for water towers
45232154	Construction work of elevated tanks for drinking water
45232200	Ancillary works for electricity powerlines
45232210	Overhead line construction
45232220	Substation construction work
45232221	Transformer substation
45232300	Construction and ancillary works for telephone and communication lines
45232310	Construction work for telephone lines
45232311	Roadside emergency telephone lines
45232320	Cable broadcasting lines
45232330	Erection of aerials
45232331	Ancillary works for broadcasting
45232332	Ancillary works for telecommunications
45232340	Mobile-telephone base-stations construction work
45232400	Sewer construction work
45232410	Sewerage work
45232411	Foul-water piping construction work
45232420	Sewage work
45232421	Sewage treatment works
45232422	Sludge-treatment works
45232423	Sewage pumping stations construction work

<b>CPV code</b>	<b>Activity</b>
45232424	Sewage outfall construction work
45232430	Water-treatment work
45232431	Wastewater pumping station
45232440	Construction work for sewage pipes
45232450	Drainage construction works
45232451	Drainage and surface works
45232452	Drainage works
45232453	Drains construction work
45232454	Rain-water basin construction work
45232460	Sanitary works
45232470	Waste transfer station
45233000	Construction, foundation and surface works for highways, roads
45233100	Construction work for highways, roads
45233110	Motorway construction works
45233120	Road construction works
45233121	Main road construction works
45233122	Ring road construction work
45233123	Secondary road construction work
45233124	Trunk road construction work
45233125	Road junction construction work
45233126	Grade-separated junction construction work
45233127	T-junction construction work
45233128	Roundabout construction work
45233129	Crossroad construction work
45233130	Construction work for highways
45233131	Construction work for elevated highways
45233139	Highway maintenance work
45233140	Roadworks
45233141	Road-maintenance works
45233142	Road-repair works
45233144	Overpass construction work



<b>CPV code</b>	<b>Activity</b>
45233150	Traffic-calming works
45233160	Paths and other metalled surfaces
45233161	Footpath construction work
45233162	Cycle path construction work
45233200	Various surface works
45233210	Surface work for highways
45233220	Surface work for roads
45233221	Road-surface painting work
45233222	Paving and asphaltting works
45233223	Carriageway resurfacing works
45233224	Dual carriageway construction work
45233225	Single carriageway construction work
45233226	Access road construction work
45233227	Slip road construction work
45233228	Surface coating construction work
45233229	Verge maintenance work
45233250	Surfacing work except for roads
45233251	Resurfacing works
45233252	Surface work for streets
45233253	Surface work for footpaths
45233260	Pedestrian ways construction work
45233261	Pedestrian overpass construction work
45233262	Pedestrian zone construction work
45233270	Parking-lot-surface painting work
45233280	Erection of road-barriers
45233290	Installation of road signs
45233291	Installation of bollards
45233292	Installation of safety equipment
45233293	Installation of street furniture
45233294	Installation of road signals
45233300	Foundation work for highways, roads, streets and footpaths

<b>CPV code</b>	<b>Activity</b>
45233310	Foundation work for highways
45233320	Foundation work for roads
45233330	Foundation work for streets
45233340	Foundation work for footpaths
45234000	Construction work for railways and cable transport systems
45234100	Railway construction works
45234110	Intercity railway works
45234111	City railway construction work
45234112	Railway depot construction work
45234113	Demolition of tracks
45234114	Railway embankment construction work
45234115	Railway signalling works
45234116	Track construction works
45234120	Urban railway works
45234121	Tramway works
45234122	Underground railway works
45234123	Partially underground railway works
45234124	Underground passenger railway transport
45234125	Underground railway station
45234126	Tramline construction works
45234127	Tramway depot construction work
45234128	Tramway platforms construction work
45234129	Urban railway track construction works
45234130	Ballast construction works
45234140	Level crossing construction works
45234160	Catenary's construction works
45234170	Locomotive-substations construction works
45234180	Construction work for railways workshop
45234181	Construction work for rail track sectioning cabins
45234200	Cable-supported transport systems
45234210	Cable-supported transport systems with cabins

<b>CPV code</b>	<b>Activity</b>
45234220	Construction work for ski lifts
45234230	Construction work for chair lifts
45234240	Funicular railway system
45234250	Teleferic construction work
45235000	Construction work for airfields, runways and manoeuvring surfaces
45235100	Construction work for airports
45235110	Construction work for air fields
45235111	Airfield pavement construction work
45235200	Runway construction works
45235210	Runway resurfacing
45235300	Construction work for aircraft-manoevring surfaces
45235310	Taxiway construction work
45235311	Taxiway pavement construction work
45235320	Construction work for aircraft aprons
45236000	Flatwork
45236100	Flatwork for miscellaneous sports installations
45236110	Flatwork for sports fields
45236111	Flatwork for golf course
45236112	Flatwork for tennis court
45236113	Flatwork for racecourse
45236114	Flatwork for running tracks
45236119	Repair work on sports fields
45236200	Flatwork for recreation installations
45236210	Flatwork for children's play area
45236220	Flatwork for zoo
45236230	Flatwork for gardens
45236250	Flatwork for parks
45236290	Repair work on recreational areas
45236300	Flatwork for cemeteries
45237000	Stage construction works
45240000	Construction work for water projects

<b>CPV code</b>	<b>Activity</b>
45241000	Harbour construction works
45241100	Quay construction work
45241200	Offshore terminal in situ construction work
45241300	Pier construction work
45241400	Dock construction work
45241500	Wharf construction work
45241600	Installation of port lighting equipment
45242000	Waterside leisure facilities construction work
45242100	Water-sports facilities construction work
45242110	Launchway construction work
45242200	Marina construction work
45242210	Yacht harbour construction work
45243000	Coastal-defence works
45243100	Cliff-protection works
45243110	Cliff-stabilisation works
45243200	Breakwater construction work
45243300	Sea wall construction work
45243400	Beach-consolidation works
45243500	Sea defences construction work
45243510	Embankment works
45243600	Quay wall construction work
45244000	Marine construction works
45244100	Marine installations
45244200	Jetties
45245000	Dredging and pumping works for water treatment plant installations
45246000	River regulation and flood control works
45246100	River-wall construction
45246200	Riverbank protection works
45246400	Flood-prevention works
45246410	Flood-defences maintenance works
45246500	Promenade construction work

<b>CPV code</b>	<b>Activity</b>
45246510	Boardwalk construction work
45247000	Construction work for dams, canals, irrigation channels and aqueducts
45247100	Construction work for waterways
45247110	Canal construction
45247111	Irrigation channel construction work
45247112	Drainage canal construction work
45247120	Waterways except canals
45247130	Aqueduct construction work
45247200	Construction work for dams and similar fixed structures
45247210	Dam construction work
45247211	Dam wall construction work
45247212	Dam-reinforcement works
45247220	Weir construction work
45247230	Dyke construction work
45247240	Static barrage construction work
45247270	Reservoir construction works
45248000	Construction work for hydro-mechanical structures
45248100	Canal locks construction work
45248200	Dry docks construction work
45248300	Construction work for floating docks
45248400	Landing stages construction work
45248500	Movable barrages construction work
45250000	Construction works for plants, mining and manufacturing and for buildings relating to the oil and gas industry
45251000	Construction works for power plants and heating plants
45251100	Construction work for power plant
45251110	Nuclear-power station construction work
45251111	Construction work for nuclear reactors
45251120	Hydro-electric plant construction work
45251140	Thermal power plant construction work
45251141	Geothermal power station construction work

<b>CPV code</b>	<b>Activity</b>
45251142	Wood-fired power station construction work
45251143	Compressed-air generating plant construction work
45251150	Construction work for cooling towers
45251160	Wind-power installation works
45251200	Heating plant construction work
45251220	Cogeneration plant construction work
45251230	Steam-generation plant construction work
45251240	Landfill-gas electricity generating plant construction work
45251250	District-heating plant construction work
45252000	Construction works for sewage treatment plants, purification plants and refuse incineration plants
45252100	Sewage-treatment plant construction work
45252110	Mobile plant construction work
45252120	Water-treatment plant construction work
45252121	Sedimentation installations
45252122	Sewage digesters
45252123	Screening installations
45252124	Dredging and pumping works
45252125	Rock-dumping work
45252126	Drinking-water treatment plant construction work
45252127	Wastewater treatment plant construction work
45252130	Sewage plant equipment
45252140	Sludge-dewatering plant construction work
45252150	Coal-handling plant construction work
45252200	Purification plant equipment
45252210	Water purification plant construction work
45252300	Refuse-incineration plant construction work
45253000	Construction work for chemical-processing plant
45253100	Demineralisation plant construction work
45253200	Desulphurisation plant construction work
45253300	Distilling or rectifying plant construction work
45253310	Water-distillation plants construction work

<b>CPV code</b>	<b>Activity</b>
45253320	Alcohol-distillation plants construction work
45253400	Construction work for petrochemical plant
45253500	Construction work for pharmaceutical plant
45253600	Deionisation plant construction work
45253700	Digestion plant construction work
45253800	Composting plant construction work
45254000	Construction work for mining and manufacturing
45254100	Construction work for mining
45254110	Pithead construction work
45254200	Construction work for manufacturing plant
45255000	Construction work for the oil and gas industry
45255100	Construction work for production platforms
45255110	Wells construction work
45255120	Platforms facilities construction work
45255121	Topside facilities construction work
45255200	Oil refinery construction work
45255210	Oil terminal construction work
45255300	Gas terminal construction work
45255400	Fabrication work
45255410	Offshore fabrication work
45255420	Onshore fabrication work
45255430	Demolition of oil platforms
45255500	Drilling and exploration work
45255600	Coiled-tubing well work
45255700	Coal-gasification plant construction work
45255800	Gas-production plant construction work
45259000	Repair and maintenance of plant
45259100	Wastewater-plant repair and maintenance work
45259200	Purification-plant repair and maintenance work
45259300	Heating-plant repair and maintenance work
45259900	Plant upgrade work

<b>CPV code</b>	<b>Activity</b>
45260000	Roof works and other special trade construction works
45261000	Erection and related works of roof frames and coverings
45261100	Roof-framing work
45261200	Roof-covering and roof-painting work
45261210	Roof-covering work
45261211	Roof-tiling work
45261212	Roof-slating work
45261213	Metal roof-covering work
45261214	Bituminous roof-covering work
45261215	Solar panel roof-covering work
45261220	Roof-painting and other coating work
45261221	Roof-painting work
45261222	Cement roof-coating work
45261300	Flashing and guttering work
45261310	Flashing work
45261320	Guttering work
45261400	Sheeting work
45261410	Roof insulation work
45261420	Waterproofing work
45261900	Roof repair and maintenance work
45261910	Roof repair
45261920	Roof maintenance work
45262000	Special trade construction works other than roof works
45262100	Scaffolding work
45262110	Scaffolding dismantling work
45262120	Scaffolding erection work
45262200	Foundation work and water-well drilling
45262210	Foundation work
45262211	Pile driving
45262212	Trench sheeting work
45262213	Diaphragm wall technique



<b>CPV code</b>	<b>Activity</b>
45262220	Water-well drilling
45262300	Concrete work
45262310	Reinforced-concrete work
45262311	Concrete carcassing work
45262320	Screed works
45262321	Floor-screed works
45262330	Concrete repair work
45262340	Grouting work
45262350	Unreinforced-concrete work
45262360	Cementing work
45262370	Concrete-coating work
45262400	Structural steel erection work
45262410	Structural steel erection work for buildings
45262420	Structural steel erection work for structures
45262421	Offshore mooring work
45262422	Subsea drilling work
45262423	Deck-fabrication work
45262424	Offshore-module fabrication work
45262425	Jacket-fabrication work
45262426	Pile-fabrication work
45262500	Masonry and bricklaying work
45262510	Stonework
45262511	Stone carving
45262512	Dressed stonework
45262520	Bricklaying work
45262521	Facing brickwork
45262522	Masonry work
45262600	Miscellaneous special-trade construction work
45262610	Industrial chimneys
45262620	Supporting walls
45262630	Construction of furnaces

<b>CPV code</b>	<b>Activity</b>
45262640	Environmental improvement works
45262650	Cladding works
45262660	Asbestos-removal work
45262670	Metalworking
45262680	Welding
45262690	Refurbishment of run-down buildings
45262700	Building alteration work
45262710	Fresco maintenance work
45262800	Building extension work
45262900	Balcony work
45300000	Building installation work
45310000	Electrical installation work
45311000	Electrical wiring and fitting work
45311100	Electrical wiring work
45311200	Electrical fitting work
45312000	Alarm system and antenna installation work
45312100	Fire-alarm system installation work
45312200	Burglar-alarm system installation work
45312300	Antenna installation work
45312310	Lightning-protection works
45312311	Lightning-conductor installation work
45312320	Television aerial installation work
45312330	Radio aerial installation work
45313000	Lift and escalator installation work
45313100	Lift installation work
45313200	Escalator installation work
45313210	Travelator installation work
45314000	Installation of telecommunications equipment
45314100	Installation of telephone exchanges
45314120	Installation of switchboards
45314200	Installation of telephone lines

<b>CPV code</b>	<b>Activity</b>
45314300	Installation of cable infrastructure
45314310	Installation of cable laying
45314320	Installation of computer cabling
45315000	Electrical installation work of heating and other electrical building-equipment
45315100	Electrical engineering installation works
45315200	Turbine works
45315300	Electricity supply installations
45315400	High voltage installation work
45315500	Medium-voltage installation work
45315600	Low-voltage installation work
45315700	Switching station installation work
45316000	Installation work of illumination and signalling systems
45316100	Installation of outdoor illumination equipment
45316110	Installation of road lighting equipment
45316200	Installation of signalling equipment
45316210	Installation of traffic monitoring equipment
45316211	Installation of illuminated road signs
45316212	Installation of traffic lights
45316213	Installation of traffic guidance equipment
45316220	Installation of airport signalling equipment
45316230	Installation of port signalling equipment
45317000	Other electrical installation work
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45317200	Electrical installation work of transformers
45317300	Electrical installation work of electrical distribution apparatus
45317400	Electrical installation work of filtration equipment
45320000	Insulation work
45321000	Thermal insulation work
45323000	Sound insulation work
45324000	Plasterboard works
45330000	Plumbing and sanitary works

<b>CPV code</b>	<b>Activity</b>
45331000	Heating, ventilation and air-conditioning installation work
45331100	Central-heating installation work
45331110	Boiler installation work
45331200	Ventilation and air-conditioning installation work
45331210	Ventilation installation work
45331211	Outdoor ventilation installation work
45331220	Air-conditioning installation work
45331221	Partial air-conditioning installation work
45331230	Installation work of cooling equipment
45331231	Installation work of refrigeration equipment
45332000	Plumbing and drain-laying work
45332200	Water plumbing work
45332300	Drain-laying work
45332400	Sanitary fixture installation work
45333000	Gas-fitting installation work
45333100	Gas regulation equipment installation work
45333200	Gas meter installation work
45340000	Fencing, railing and safety equipment installation work
45341000	Erection of railings
45342000	Erection of fencing
45343000	Fire-prevention installation works
45343100	Fireproofing work
45343200	Firefighting equipment installation work
45343210	CO2 fire-extinguishing equipment installation work
45343220	Fire-extinguishers installation work
45343230	Sprinkler systems installation work
45350000	Mechanical installations
45351000	Mechanical engineering installation works
45400000	Building completion work
45410000	Plastering work
45420000	Joinery and carpentry installation work

<b>CPV code</b>	<b>Activity</b>
45421000	Joinery work
45421100	Installation of doors and windows and related components
45421110	Installation of door and window frames
45421111	Installation of door frames
45421112	Installation of window frames
45421120	Installation of thresholds
45421130	Installation of doors and windows
45421131	Installation of doors
45421132	Installation of windows
45421140	Installation of metal joinery except doors and windows
45421141	Installation of partitioning
45421142	Installation of shutters
45421143	Installation work of blinds
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45421151	Installation of fitted kitchens
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45421160	Ironmongery work
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45430000	Floor and wall covering work
45431000	Tiling work
45431100	Floor-tiling work
45431200	Wall-tiling work
45432000	Floor-laying and covering, wall-covering and wall-papering work
45432100	Floor laying and covering work

<b>CPV code</b>	<b>Activity</b>
45432110	Floor-laying work
45432111	Laying work of flexible floor coverings
45432112	Laying of paving
45432113	Parquet flooring
45432114	Wood flooring work
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45432121	Computer floors
45432130	Floor-covering work
45432200	Wall-covering and wall-papering work
45432210	Wall-covering work
45432220	Wall-papering work
45440000	Painting and glazing work
45441000	Glazing work
45442000	Application work of protective coatings
45442100	Painting work
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45443000	Façade work
45450000	Other building completion work
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<b>CPV code</b>	<b>Activity</b>
45453000	Overhaul and refurbishment work
45453100	Refurbishment work
45454000	Restructuring work
45454100	Restoration work
45500000	Hire of construction and civil engineering machinery and equipment with operator
45510000	Hire of cranes with operator
45520000	Hire of earth moving equipment with operator

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations supplement the Procurement Act 2023 (c. 54) (“PA 2023”).

Part 2 makes provision about the transparency of procurements carried out by contracting authorities under the PA 2023. Regulation 5 provides that certain notices, documents or information must be published or given by publishing them on the central digital platform which is an online system provided by the Minister for the Cabinet Office at the following website address: <https://www.gov.uk/find-tender>.

Regulations 6 and 7 make provision about how core supplier information (such as information about a supplier’s connected persons) is given to a contracting authority with a view to the award of a public contract. They provide that the authority must obtain confirmation that the supplier has shared that information through the central digital platform before a deadline. Regulations 9 to 12 set out what information is core supplier information.

Regulation 13 to 41 make provision about what information must be included in notices, documents or information which must be published under the PA 2023. In some cases, a provision sets out what other information must be included in addition to information which must be included in accordance with the PA 2023 itself. For example, regulation 17 sets out other information which must be included in a preliminary market engagement notice, in addition to the information which must be included in accordance with section 17(2)(a) of the PA 2023.

Part 3 makes provision which supplements the PA 2023 otherwise than in relation to transparency measures.

Regulation 42 and Schedule 1 specify the categories of services that qualify as “light touch” services for the purposes of sections 9 and 33 of the PA 2023. If a service is “light touch” it may be procured according to different rules from those that apply to the other types of contract whose procurement is covered by the PA 2023. These provisions also set out which of those services may be reserved such that a contracting authority may provide that only a qualifying public service mutual, as defined by the PA 2023, can bid for a contract for those services.

Regulation 43 disapplies the PA 2023 in respect of procurement by the NHS in England. The Health Care Services (Provider Selection Regime) Regulations 2023 (S.I. 2023/1348) instead apply in this area.

Regulations 44 and 45 and Schedules 2 and 3 define the terms “central government authority” and “works” as they are used in the PA 2023. In Schedule 2, the entities defined as central government authorities are listed under the headings “lead authority” and “related authority” in order to provide consistency with the way the UK authorities covered by the WTO’s Agreement on Government Procurement are set out in the annexes to that agreement. As a result, entities may not always appear in alphabetical order. Regulation 46 defines the term “defence authority” as used in the PA 2023.

Part 4 of these Regulations contains amendments to the PA 2023. The amendments at regulation 47 insert into the PA 2023 new provisions which set out how that Act applies where a contracting authority which is a devolved Scottish authority wishes either to participate in a joint procurement or similar arrangement which is governed by the PA 2023, or to make use of a framework or dynamic market established under that Act.



Regulation 48 amends section 17 of the PA 2023 to disapply the requirement to publish a preliminary market engagement notice in respect of reserved and transferred Northern Ireland procurement by private utilities.

Part 5 makes provision about how these Regulations apply in relation to devolved Welsh authorities and devolved Scottish authorities.

An impact assessment in relation to the PA 2023 and associated reforms was published in May 2022 and can be found at <https://bills.parliament.uk/publications/46429/documents/1767> or may be obtained by writing to the Cabinet Office, 70 Whitehall, London, SW1A 2AS, United Kingdom.

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## 4 THE PROCUREMENT (WALES) REGULATIONS 2024

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OFFERYNNAU STATUDOL  
CYMRU

WELSH STATUTORY  
INSTRUMENTS

2024 Rhif 782 (Cy. 121)

2024 No. 782 (W. 121)

CAFFAEL CYHOEDDUS,  
CYMRU

PUBLIC PROCUREMENT,  
WALES

Rheoliadau Caffael (Cymru) 2024

The Procurement (Wales)  
Regulations 2024

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn ychwanegu at Ddeddf Caffael 2023 (p. 54) ("Deddf 2023").

Mae Rhan 1 o'r Rheoliadau hyn yn cynnwys darpariaethau rhagarweiniol, gan gynnwys y rhai sy'n nodi cymhwysiad y Rheoliadau a diffiniadau a ddefnyddir yn y Rheoliadau.

Mae Rhan 2 yn gwneud darpariaeth ynghylch tryloywder caffaeliadau a gyflawnir gan awdurdodau contractio, sy'n awdurdodau Cymreig datganoledig, neu sydd i'w trin fel awdurdod Cymreig datganoledig o dan Ddeddf 2023. Mae rheoliad 5(1) yn darparu bod rhaid yn gyntaf gyhoeddi hysbysiadau neu ddogfennau penodol neu wybodaeth benodol, neu fod rhaid eu rhoi drwy eu cyhoeddi, ar y plattform digidol canolog sy'n system ar-lein a ddarperir gan Swyddfa Cabinet Llywodraeth y DU ("Swyddfa'r Cabinet") yn y cyfeiriad gwefan canlynol: <https://www.gov.uk/find-tender>.

Mae rheoliad 5(2) yn darparu y cydymffurfir â rheoliad 5(1) pan fo'r hysbysiad, y ddogfen neu'r wybodaeth wedi ei gyflwyno neu wedi ei chyflwyno i'r plattform digidol Cymreig, a phan fo Swyddfa'r Cabinet wedi rhoi gwybod i'r awdurdod contractio y cyflwynwyd yr hysbysiad, y ddogfen neu'r wybodaeth yn llwyddiannus neu ei fod neu ei bod yn hygyrch i gyflenwyr ac i aelodau o'r cyhoedd. Y plattform digidol Cymreig yw'r system ar-lein a ddarperir gan Lywodraeth Cymru i'w defnyddio gan awdurdodau contractio y mae rheoliad 2 yn gymwys iddynt. Gellir dod o hyd i'r plattform hwn ar y wefan a ganlyn: <https://www.gwerthwchigymru.llyw.cymru>.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement the Procurement Act 2023 (c. 54) ("the 2023 Act").

Part 1 of these Regulations contains introductory provisions, including those which set out the application of the Regulations and definitions that are used across the Regulations.

Part 2 makes provision about the transparency of procurements carried out by contracting authorities that are devolved Welsh authorities, or are to be treated as a devolved Welsh authority under the 2023 Act. Regulation 5(1) provides that certain notices, documents or information must first be published, or given, by publishing them on the central digital platform which is an online system provided by the UK government Cabinet Office ("the Cabinet Office") at the following website address: <https://www.gov.uk/find-tender>.

Regulation 5(2) provides that regulation 5(1) is complied with by the notice, document or information being submitted to the Welsh digital platform and the Cabinet Office has informed the contracting authority of successful submission of the notice, document or information or that it is accessible to suppliers and members of the public. The Welsh digital platform is the online system provided by the Welsh Government for use by contracting authorities to whom regulation 2 applies. This platform can be found at the following website address: <https://www.sell2wales.gov.wales>.

Mae rheoliadau 6 i 8 yn gwneud darpariaeth ynghylch y modd y mae gwybodaeth graidd y cyflenwr (megis gwybodaeth personau cysylltiedig cyflenwr) yn cael ei rhannu ag awdurdod contractio gyda golwg ar ddyfarnu contract cyhoeddus neu gontract hysbysadwy sydd o dan y trothwy. Maent yn darparu bod rhaid i'r awdurdod gael cadarnhad bod y cyflenwr wedi rhannu'r wybodaeth honno drwy'r plattform digidol canolog, neu ei fod wedi cofrestru ar y plattform hwnnw cyn dyddiad cau. Mae rheoliadau 10 i 13 yn nodi pa wybodaeth sy'n wybodaeth graidd y cyflenwr.

Mae rheoliadau 14 i 42 yn gwneud darpariaeth ynghylch pa wybodaeth y mae rhaid ei chynnwys mewn hysbysiadau neu ddogfennau y mae rhaid eu cyhoeddi, neu wybodaeth y mae rhaid ei chyhoeddi, o dan Ddeddf 2023. Mewn rhai achosion, mae darpariaeth yn pennu gwybodaeth ychwanegol i'r wybodaeth sy'n ofynnol gan Ddeddf 2023 ei hun yn unol â'r pwerau i wneud rheoliadau a ddarperir gan y Ddeddf honno. Er enghraifft, mae rheoliad 18 yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad ymgysylltu rhagarweiniol â'r farchnad, yn ogystal â'r wybodaeth y mae rhaid ei chynnwys yn unol ag adran 17(2)(a) o Ddeddf 2023 fel y'i caniateir yn benodol gan adran 17(2)(b) o'r Ddeddf honno.

Mae Rhan 3 yn gwneud darpariaeth sy'n ychwanegu at Ddeddf 2023 heblaw mewn perthynas â mesurau tryloywder.

Mae rheoliad 43 ac Atodlen 1 yn pennu'r categorïau o wasanaethau sy'n cymhwyso fel "gwasanaethau cyffyrddiad ysgafn" at ddiben adran 9 o Ddeddf 2023. Os yw gwasanaeth yn wasanaeth "cyffyrddiad ysgafn", caniateir ei gaffael yn unol â rheolau sy'n wahanol i'r rhai sy'n gymwys i'r mathau eraill o gontract, y mae eu caffael wedi ei gwmpasu gan Ddeddf 2023. Mae'r darpariaethau hyn hefyd yn nodi pa un neu ragor o'r gwasanaethau hynny sy'n "gwasanaethau cyffyrddiad ysgafn neilltuadwy" at ddiben adran 33 o Ddeddf 2023, fel y caiff awdurdod contractio ddarparu mai dim ond cwmni cydfuddiannol gwasanaethau cyhoeddus cymhwysol, fel y'i diffinnir yn adran 33(5) o Ddeddf 2023, a all wneud cais am gontract ar gyfer y gwasanaethau hynny.

Mae rheoliadau 44 a 45 ac Atodlenni 2 a 3 yn diffinio'r termau "central government authority" ("*awdurdod llywodraeth ganolog*") a "works" ("*gweithiau*") fel y'u defnyddir yn Neddf 2023. Yn Atodlen 2, mae'r endidau a ddiffinnir fel awdurdodau llywodraeth ganolog wedi eu rhestru o dan y penawdau "awdurdod arweiniol" ac "awdurdod perthynol" er mwyn darparu cysondeb â'r ffordd y mae'r awdurdodau Cymreig wedi eu cwmpasu gan Gytundeb Sefydliad Masnach y Byd ar Gaffael gan Lywodraethau, fel y'u nodir yn yr atodiadau i'r Cytundeb hwnnw.

Regulations 6 to 8 make provision about how core supplier information (such as information about a supplier's connected persons) is shared with a contracting authority with a view to the award of a public contract or a notifiable below-threshold contract. They provide that the authority must obtain confirmation that the supplier has shared that information through the central digital platform, or registered on that platform before a deadline. Regulations 10 to 13 set out what information is core supplier information.

Regulations 14 to 42 make provision about what information must be included in notices, documents or information which must be published under the 2023 Act. In some cases, a provision specifies additional information to that required by the 2023 Act itself in accordance with the regulation making powers provided by that Act. For example, regulation 18 sets out other information which must be included in a preliminary market engagement notice, in addition to the information which must be included in accordance with section 17(2)(a) of the 2023 Act, as expressly permitted by section 17(2)(b) of that Act.

Part 3 makes provision which supplements the 2023 Act otherwise than in relation to transparency measures.

Regulation 43 and Schedule 1 specify the categories of services that qualify as "light touch services" for the purpose of section 9 of the 2023 Act. If a service is "light touch" it may be procured according to different rules from those that apply to the other types of contract, whose procurement is covered by the 2023 Act. These provisions also set out which of those services are "reservable light touch services" for the purpose of section 33 of the 2023 Act, such that a contracting authority may provide that only a qualifying public service mutual, as defined in section 33(5) of the 2023 Act, can bid for a contract for those services.

Regulations 44 and 45 and Schedules 2 and 3 define the terms "central government authority" and "works" as they are used in the 2023 Act. In Schedule 2, the entities defined as central government authorities are listed under the headings "lead authority" and "related authority" in order to provide consistency with the way the Welsh authorities are covered by the World Trade Organisation's Agreement on Government Procurement, as set out in the annexes to that Agreement.

Mae Rhan 4 o'r Rheoliadau hyn yn cynnwys diwygiadau canlyniadol i ddeddfwriaeth sylfaenol, gan gynnwys Deddf 2023, ac i is-ddeddfwriaeth.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, lluniwyd asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn a gellir cael copi oddi wrth: Y Gyfarwyddiaeth Caffael a Masnachol, Llywodraeth Cymru, Parc Cathays, Caerdydd, CF10 3NQ.

Part 4 of these Regulations contains consequential amendments to primary legislation, including the 2023 Act, and secondary legislation.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations has been prepared and a copy can be obtained from The Commercial and Procurement Directorate, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

**2024 Rhif 782 (Cy. 121)**

**2024 No. 782 (W. 121)**

**CAFFAEL CYHOEDDUS,  
CYMRU**

**PUBLIC PROCUREMENT,  
WALES**

**Rheoliadau Caffael (Cymru) 2024**

**The Procurement (Wales)  
Regulations 2024**

*Gwnaed* 3 Gorffennaf 2024  
*Yn dod i rym yn unol â rheoliad 1(2) a (3)*

*Made* 3 July 2024  
*Coming into force in accordance with  
regulation 1(2) and (3)*

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- ATODLEN 2 — Awdurdodau  
llywodraeth ganolog
- ATODLEN 3 — Gweithgareddau  
gweithiau

Mae Gweinidogion Cymru<sup>(1)</sup> yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddir iddynt gan adrannau 9(2), 33(8), 69(4), 87(7), 95(1), (2) a (3), 97(1) a (2), 121(1) a (2), 122(3) a 125 o Ddeddf Caffael 2023<sup>(2)</sup>, a pharagraff 5(1) o Atodlen 1 iddi.

Yn unol ag adran 121(3) o'r Ddeddf honno, mae Gweinidogion Cymru wedi ymgynghori ag unrhyw bersonau y mae'n ymddangos iddynt eu bod yn cynrychioli barn cyfleustodau preifat, yn ogystal ag unrhyw bersonau eraill y maent yn ystyried eu bod yn briodol.

Yn unol ag adran 122(10)(b), (c), (e), (h), (l), (m), (o), (q) ac (r) o'r Ddeddf honno, gosodwyd drafft o'r Rheoliadau hyn gerbron Senedd Cymru ac fe'i cymeradwywyd ganddi drwy benderfyniad.

## RHAN 1

### Cyflwyniad

#### Enwi a dod i rym

**1.**—(1) Enw'r Rheoliadau hyn yw Rheoliadau Caffael (Cymru) 2024.

(2) Daw'r Rheoliadau hyn, ac eithrio Rhan 1 a rheoliad 47(1) a (2), i rym yr un pryd ag y daw adran 11 o Ddeddf Caffael 2023 i rym at unrhyw ddiben<sup>(3)</sup>.

(3) Daw Rhan 1 a rheoliad 47(1) a (2) i rym drannoeth y diwrnod y gwneir y Rheoliadau hyn.

## SCHEDULES

- SCHEDULE 1 — Light touch services
- SCHEDULE 2 — Central government  
authorities
- SCHEDULE 3 — Works activities

The Welsh Ministers<sup>(1)</sup> make the following Regulations, in exercise of the powers conferred on them by sections 9(2), 33(8), 69(4), 87(7), 95(1), (2) and (3), 97(1) and (2), 121(1) and (2), 122(3) and 125, and paragraph 5(1) of Schedule 1 to the Procurement Act 2023<sup>(2)</sup>.

In accordance with section 121(3) of that Act, the Welsh Ministers have consulted with such persons as appear to them to represent the views of private utilities, as well as such other persons as they consider appropriate.

In accordance with section 122(10)(b), (c), (e), (h), (l), (m), (o), (q) and (r), of that Act, a draft of these Regulations has been laid before, and approved by a resolution of, Senedd Cymru.

## PART 1

### Introductory

#### Title and coming into force

**1.**—(1) The title of these Regulations is the Procurement (Wales) Regulations 2024.

(2) These Regulations, except for Part 1 and regulation 47(1) and (2), come into force at the same time at which section 11 of the Procurement Act 2023 comes into force for any purpose<sup>(3)</sup>.

(3) Part 1 and regulation 47(1) and (2) come into force on the day after the day on which these Regulations are made.

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(1) Gweinidogion Cymru yw'r "awdurdod priodol" fel y diffinnir "appropriate authority" yn adran 123(1) o Ddeddf Caffael 2023, yn ddarostyngedig i'r cyfyngiadau a nodir yn adran 111(1) o'r Ddeddf honno.

(2) 2023 p. 54.

(3) Daw adran 11 i rym ar ddiwrnod a bennir gan un o Weiniogion y Goron drwy reoliadau; a chaniateir i ddiwrnodau gwahanol gael eu pennu at ddibenion gwahanol. Gweler adran 127(2) o Ddeddf Caffael 2023.

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(1) The Welsh Ministers are the "appropriate authority" as defined in section 123(1) of the Procurement Act 2023, subject to the restrictions set out in section 111(1) of that Act.

(2) 2023 c. 54.

(3) Section 11 comes into force on such day as a Minister of the Crown may by regulations appoint; and different days may be appointed for different purposes. See section 127(2) of the Procurement Act 2023.

## Cymhwys

- 2.—(1) Mae'r Rheoliadau hyn yn gymwys i—
- (a) awdurdod contractio sy'n awdurdod Cymreig datganoledig, gan gynnwys mewn perthynas â chaffaeliad o dan drefniant caffael Cymreig datganoledig, a
  - (b) awdurdod contractio sydd i'w drin fel awdurdod Cymreig datganoledig o dan adran 111 o Ddeddf Caffael 2023.
- (2) Yn y rheoliad hwn—
- mae i “awdurdod Cymreig datganoledig” yr ystyr a roddir i “devolved Welsh authority” gan adran 157A o Ddeddf Llywodraeth Cymru 2006(1);
- mae i “trefniant caffael Cymreig datganoledig” yr ystyr a roddir i “devolved Welsh procurement arrangement” yn adran 114(2) o Ddeddf Caffael 2023.

## Dehongli

3. Yn y Rheoliadau hyn—
- mae i “awdurdod contractio” yr ystyr a roddir i “contracting authority” gan adran 2(1) o Ddeddf 2023;
- ystyr “Deddf 2023” (“*the 2023 Act*”) yw Deddf Caffael 2023;
- ystyr “GGG” (“*CPV*”) yw'r Eirfa Gaffael Gyffredin fel y'i mabwysiadwyd gan Reoliad (EC) Rhif 2195/2002 Senedd Ewrop a'r Cyngor dyddiedig 5 Tachwedd 2002 ar yr Eirfa Gaffael Gyffredin (2).

## RHAN 2

### Tryloywder

## Dehongli Rhan 2

4. Yn y Rhan hon—
- mae i “amcangyfrif o werth” yr ystyr a roddir i “estimated value” gan adran 4 o Ddeddf 2023;

## Application

- 2.—(1) These Regulations apply to—
- (a) a contracting authority that is a devolved Welsh authority, including in relation to a procurement under a devolved Welsh procurement arrangement, and
  - (b) a contracting authority that is to be treated as a devolved Welsh authority under section 111 of the Procurement Act 2023.
- (2) In this regulation—
- “devolved Welsh authority” (“*awdurdod Cymreig datganoledig*”) has the meaning given by section 157A of the Government of Wales Act 2006(1);
- “devolved Welsh procurement arrangement” (“*trefniant caffael Cymreig datganoledig*”) has the meaning given in section 114(2) of the Procurement Act 2023.

## Interpretation

3. In these Regulations—
- “the 2023 Act” (“*Deddf 2023*”) means the Procurement Act 2023;
- “contracting authority” (“*awdurdod contractio*”) has the meaning given by section 2(1) of the 2023 Act;
- “CPV” (“*GGG*”) means the Common Procurement Vocabulary as adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary(2).

## PART 2

### Transparency

## Interpretation of Part 2

4. In this Part—
- “CA 2006” (“*Deddf 2006*”) means the Companies Act 2006(3);

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(1) 2006 p. 32. Mewnosodwyd adran 157A gan Ddeddf Cymru 2017 (p. 4), Rhan 1, adran 4(1) ac wedyn fe'i diwygiwyd gan Ddeddf Senedd ac Etholiadau (Cymru) 2020 (dccc 1), Atodlen 1, paragraff 2(19) a Deddf Pysgodfeydd 2020 (p. 22), adran 45(3).

(2) EUR 2195/2002, fel y'i diwygiwyd gan O.S. 2020/1319; mae hwn yn gyfeiriad at y fersiwn a ddargadwyd o Reoliad (EC) 2195/2002. Mae'r fersiwn honno a ddargadwyd ar gael ar-lein yn <https://www.legislation.gov.uk/eur/2002/2195/contents>.

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(1) 2006 c. 32. Section 157A was inserted by the Wales Act 2017 (c. 4) Pt 1 s.4(1), then amended by Senedd and Elections (Wales) Act 2020 (anaw 1) Schedule 1 paragraph 2(19), and the Fisheries Act 2020 (c. 22) s.45(3).

(2) EUR 2195/2002, as amended by S.I. 2020/1319; this is a reference to the retained version of Regulation (EC) 2195/2002. That retained version is available online at <https://www.legislation.gov.uk/eur/2002/2195/contents>.

(3) 2006 c. 46.

mae i “awdurdod priodol” yr ystyr a roddir i “appropriate authority” gan adran 123 o Ddeddf 2023;

mae i “caffaeliad” yr ystyr a roddir i “procurement” gan adran 1(1) o Ddeddf 2023;

mae i “cod adnabod unigryw” (“*unique identifier*”) yr ystyr a roddir gan reoliad 9;

ystyr “cofrestr pobl â rheolaeth sylweddol” (“*PSC register*”) yw’r gofrestr y mae’n ofynnol i gwmni ei chadw o dan adran 790M o DC 2006 (dyletswydd i gadw cofrestr)(1);

mae i “contract consesiwn” yr ystyr a roddir i “concession contract” gan adran 8 o Ddeddf 2023;

mae i “contract cyfleustodau” yr ystyr a roddir i “utilities contract” gan adran 6 o Ddeddf 2023;

mae i “contract cyfundrefn arbennig” yr ystyr a roddir i “special regime contract” gan adran 10(6) o Ddeddf 2023;

mae i “contract cyffyrddiad ysgafn” yr ystyr a roddir i “light touch contract” gan adran 9 o Ddeddf 2023;

mae i “contract cyhoeddus” yr ystyr a roddir i “public contract” gan adran 3 o Ddeddf 2023;

mae i “contract trosadwy” yr ystyr a roddir i “convertible contract” gan adran 74(1) o Ddeddf 2023;

mae i “cwmni cydfuddiannol gwasanaethau cyhoeddus” yr ystyr a roddir i “public service mutual” gan adran 33(6) o Ddeddf 2023;

mae i “cyflenwr gwaharddedig” yr ystyr a roddir i “excluded supplier” gan adran 57(1) o Ddeddf 2023;

mae i “cyfleustod” yr ystyr a roddir i “utility” gan adran 35(4) o Ddeddf 2023;

mae i “cyfleustod preifat” yr ystyr a roddir i “private utility” gan adran 2(2) o Ddeddf 2023;

mae i “cyfnod tendro” yr ystyr a roddir i “tendering period” gan adran 54(5) o Ddeddf 2023;

ystyr “Cytundeb ar Gaffael gan Lywodraethau” (“*GPA*”) yw’r Cytundeb ar Gaffael gan Lywodraethau a lofnodwyd ym Marrakesh ar 15 Ebrill 1994(2), fel y’i diwygir o bryd i’w gilydd;

ystyr “Cytundeb Cynhwysfawr a Blaengar ar gyfer Partneriaeth y Môr Tawel” (“*Comprehensive and Progressive Agreement for Trans-Pacific Partnership*”) yw’r Cytundeb Cynhwysfawr a

“alternative online system” (“*system ar-lein arall*”) has the meaning given by regulation 5(11);

“appropriate authority” (“*awdurdod priodol*”) has the meaning given by section 123 of the 2023 Act; “associated tender document” (“*dogfen dendro gysylltiedig*”) has the meaning given by section 21(4) of the 2023 Act;

“award criteria” (“*meini prawf dyfarnu*”) has the meaning given by section 23(1) of the 2023 Act;

“Cabinet Office” (“*Swyddfa’r Cabinet*”) means the UK government department with responsibility for supporting the prime minister and Cabinet of the United Kingdom acting on behalf of the Minister for the Cabinet Office;

“central digital platform” (“*plattform digidol canolog*”) means the online system established by the Minister for the Cabinet Office(1);

“competitive flexible procedure” (“*gweithdrefn hyblyg gystadleuol*”) has the meaning given by section 20(2)(b) of the 2023 Act;

“competitive selection process” (“*proses ddethol gystadleuol*”) has the meaning given by section 46(10) of the 2023 Act;

the “Comprehensive and Progressive Agreement for Trans-Pacific Partnership” (“*Cytundeb Cynhwysfawr a Blaengar ar gyfer Partneriaeth y Môr Tawel*”) means the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Santiago on 8 March 2018, including the Accession Protocol of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Auckland and Bandar Seri Begawan on 16 July 2023(2), as amended from time to time;

“concession contract” (“*contract consesiwn*”) has the meaning given by section 8 of the 2023 Act;

“connected person” (“*person cysylltiedig*”) has the meaning given by paragraph 45 of Schedule 6 to the 2023 Act;

“contract award notice” (“*hysbysiad dyfarnu contract*”) has the meaning given by section 50(2) of the 2023 Act;

“contract details notice” (“*hysbysiad manylion contract*”) has the meaning given by section 53(2) of the 2023 Act;

(1) Diwygiwyd gan Ddeddf Busnesau Bach, Menter a Chyflogaeth 2015 (p. 26), Atodlen 3(1), paragraff 1 ac O.S. 2017/693.

(2) Gellir gweld y Cytundeb yma: [https://www.wto.org/english/tratop\\_e/gproc\\_e/gpa\\_1994\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gpa_1994_e.htm)

(1) The central digital platform which may be accessed at <https://www.gov.uk/find-tender>.

(2) The Agreement can be found online at: <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources/>

Blaengar ar gyfer Partneriaeth y Môr Tawel, a lofnodwyd yn Santiago ar 8 Mawrth 2018, gan gynnwys Protocol Derbyn Teyrnas Unedig Prydain Fawr a Gogledd Iwerddon i'r Cytundeb Cynhwysfawr a Blaengar ar gyfer Partneriaeth y Môr Tawel, a lofnodwyd yn Auckland a Bandar Seri Begawan ar 16 Gorffennaf 2023<sup>(1)</sup>, fel y'i diwygir o bryd i'w gilydd;

mae i “dangosyddion perfformiad allweddol” yr ystyr a roddir i “key performance indicators” gan adran 52(4) o Ddeddf 2023;

mae i “darparwr cyflogaeth â chymorth” yr ystyr a roddir i “supported employment provider” gan adran 32(4) o Ddeddf 2023;

ystyr “DC 2006” (“CA 2006”) yw Deddf Cwmnïau 2006<sup>(2)</sup>;

mae i “dogfen dendro gysylltiedig” yr ystyr a roddir i “associated tender document” gan adran 21(4) o Ddeddf 2023;

mae i “dosbarthiad daearyddol” (“geographical classification”) yr ystyr a roddir gan reoliad 15(2);

mae i “fframwaith” yr ystyr a roddir i “framework” gan adran 45(2) o Ddeddf 2023;

mae i “fframwaith agored” yr ystyr a roddir i “open framework” gan adran 49(1) o Ddeddf 2023;

mae i “gweithdrefn agored” yr ystyr a roddir i “open procedure” gan adran 20(2)(a) o Ddeddf 2023;

mae i “gweithdrefn hyblyg gystadleuol” yr ystyr a roddir i “competitive flexible procedure” gan adran 20(2)(b) o Ddeddf 2023;

mae i “gweithiau” (“works”) yr ystyr a roddir gan reoliad 45;

mae i “gwybodaeth yr awdurdod contractio” (“contracting authority information”) yr ystyr a roddir gan reoliad 14;

mae i “gwybodaeth graidd y cyflenwr” (“core supplier information”) yr ystyr a roddir gan reoliad 6(9);

ystyr “heb fod ar gael” (“unavailable”) yw bod y platform digidol Cymreig heb fod yn weithredol am ddim llai na 4 awr;

mae i “hysbysiad caffael arfaethedig” yr ystyr a roddir i “planned procurement notice” gan adran 15(2) o Ddeddf 2023;

“contract subject-matter” (“*pwnc y contract*”) has the meaning given by regulation 15;

“contracting authority information” (“*gwybodaeth yr awdurdod contractio*”) has the meaning given by regulation 14;

“convertible contract” (“*contract trosadwy*”) has the meaning given by section 74(1) of the 2023 Act;

“core supplier information” (“*gwybodaeth graidd y cyflenwr*”) has the meaning given by regulation 6(9);

“dynamic market” (“*marchnad ddynamig*”) has the meaning given by section 34(8) of the 2023 Act;

“dynamic market notice” (“*hysbysiad marchnad ddynamig*”) has the meaning given by section 39 of the 2023 Act;

“estimated value” (“*amcangyfrif o werth*”) has the meaning given by section 4 of the 2023 Act;

“excluded supplier” (“*cyflenwr gwaharddedig*”) has the meaning given by section 57(1) of the 2023 Act;

“framework” (“*fframwaith*”) has the meaning given by section 45(2) of the 2023 Act;

“geographical classification” (“*dosbarthiad daearyddol*”) has the meaning given by regulation 15(2);

the “GPA” (“*Cytundeb ar Gaffael gan Lywodraethau*”) means Agreement on Government Procurement signed at Marrakesh on 15 April 1994<sup>(1)</sup>, as amended from time to time;

“key performance indicators” (“*dangosyddion perfformiad allweddol*”) has the meaning given by section 52(4) of the 2023 Act;

“light touch contract” (“*contract cyffyrddiad ysgafn*”) has the meaning given by section 9 of the 2023 Act;

“open framework” (“*fframwaith agored*”) has the meaning given by section 49(1) of the 2023 Act;

“open procedure” (“*gweithdrefn agored*”) has the meaning given by section 20(2)(a) of the 2023 Act;

“pipeline notice” (“*hysbysiad piblinell*”) has the meaning given by section 93(3) of the 2023 Act;

“planned procurement notice” (“*hysbysiad caffael arfaethedig*”) has the meaning given by section 15(2) of the 2023 Act;

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(1) Gellir dod o hyd i'r Cytundeb ar-lein yn: <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources/>

(2) 2006 p. 46.

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(1) The Agreement can be seen here: [https://www.wto.org/english/tratop\\_e/gproc\\_e/gpa\\_1994\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gpa_1994_e.htm)

mae i “hysbysiad dyfarnu contract” yr ystyr a roddir i “contract award notice” gan adran 50(2) o Ddeddf 2023;

mae i “hysbysiad manylion contract” yr ystyr a roddir i “contract details notice” gan adran 53(2) o Ddeddf 2023;

mae i “hysbysiad marchnad ddynamig” yr ystyr a roddir i “dynamic market notice” gan adran 39 o Ddeddf 2023;

mae i “hysbysiad marchnad ddynamig cyfleustodau cymhwysol” yr ystyr a roddir i “qualifying utilities dynamic market notice” gan adran 40(6) o Ddeddf 2023;

mae i “hysbysiad piblinell” yr ystyr a roddir i “pipeline notice” gan adran 93(3) o Ddeddf 2023;

mae i “hysbysiad tendro” yr ystyr a roddir i “tender notice” gan adran 21(2) o Ddeddf 2023;

mae i “hysbysiad tryloywder” yr ystyr a roddir i “transparency notice” gan adran 44(2) o Ddeddf 2023;

mae i “hysbysiad ymgysylltu rhagarweiniol â'r farchnad” yr ystyr a roddir i “preliminary market engagement notice” gan adran 17(2) o Ddeddf 2023;

mae i “marchnad ddynamig” yr ystyr a roddir i “dynamic market” gan adran 34(8) o Ddeddf 2023;

mae i “meini prawf dyfarnu” yr ystyr a roddir i “award criteria” gan adran 23(1) o Ddeddf 2023;

mae i “menter fach a chanolig ei maint” (“*small and medium-sized enterprise*”) yr ystyr a roddir gan adran 123(1) o Ddeddf 2023;

mae i “person cysylltiedig” yr ystyr a roddir i “connected person” gan baragraff 45 o Atodlen 6 i Ddeddf 2023;

ystyr “plattfform digidol canolog” (“*central digital platform*”) yw'r system ar-lein a sefydlwyd gan y Gweinidog dros Swyddfa'r Cabinet(1);

ystyr “plattfform digidol Cymreig” (“*Welsh digital platform*”) yw'r system ar-lein a ddarperir gan Lywodraeth Cymru i'w defnyddio gan awdurdodau contractio y mae rheoliad 2 yn gymwys iddynt;

mae i “proses ddethol gystadleuol” yr ystyr a roddir i “competitive selection process” gan adran 46(10) o Ddeddf 2023;

mae i “pwnc y contract” (“*contract subject-matter*”) yr ystyr a roddir gan reoliad 15;

“preliminary market engagement notice” (“*hysbysiad ymgysylltu rhagarweiniol â'r farchnad*”) has the meaning given by section 17(2) of the 2023 Act;

“private utility” (“*cyfleustod preifat*”) has the meaning given by section 2(2) of the 2023 Act;

“procurement” (“*caffaeliad*”) has the meaning given by section 1(1) of the 2023 Act;

“PSC register” (“*cofrestr pobl â rheolaeth sylweddol*”) means the register that a company is required to keep under section 790M of the CA 2006 (duty to keep register)(1);

“public contract” (“*contract cyhoeddus*”) has the meaning given by section 3 of the 2023 Act;

“public service mutual” (“*cwmni cydfuddiannol gwasanaethau cyhoeddus*”) has the meaning given by section 33(6) of the 2023 Act;

“qualifying utilities dynamic market notice” (“*hysbysiad marchnad ddynamig cyfleustodau cymhwysol*”) has the meaning given by section 40(6) of the 2023 Act;

“significant control” (“*rheolaeth sylweddol*”) has the meaning given by section 790C(2) of the CA 2006(2);

“small and medium-sized enterprise” (“*menter fach a chanolig ei maint*”) has the meaning given by section 123(1) of the 2023 Act;

“special regime contract” (“*contract cyfundrefn arbennig*”) has the meaning given by section 10(6) of the 2023 Act;

“supported employment provider” (“*darparwr cyflogaeth â chymorth*”) has the meaning given by section 32(4) of the 2023 Act;

“tender notice” (“*hysbysiad tendro*”) has the meaning given by section 21(2) of the 2023 Act;

“tendering period” (“*cyfnod tendro*”) has the meaning given by section 54(5) of the 2023 Act;

“transparency notice” (“*hysbysiad tryloywder*”) has the meaning given by section 44(2) of the 2023 Act;

“unavailable” (“*heb fod ar gael*”) means that the Welsh digital platform has not been operational for not less than 4 hours;

“unique identifier” (“*cod adnabod unigryw*”) has the meaning given by regulation 9;

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(1) Gellir cyrchu'r plattfform digidol canolog yn: <https://www.gov.uk/find-tender>.

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(1) Amended by the Small Business, Enterprise and Employment Act 2015 (c. 26) Schedule 3(1) paragraph 1; and S.I. 2017/693.

(2) Inserted by the Small Business, Enterprise and Employment Act 2015 (c. 26) Schedule 3(1) paragraph 1.

mae i “rheolaeth sylweddol” yr ystyr a roddir i “significant control” gan adran 790C(2) o DC 2006(1);

ystyr “Swyddfa'r Cabinet” (“*Cabinet Office*”) yw adran Llywodraeth y DU sy'n gyfrifol am gefnogi prif weinidog a Chabinet y Deyrnas Unedig, gan weithredu ar ran y Gweinidog dros Swyddfa'r Cabinet;

mae i “system ar-lein arall” (“*alternative online system*”) yr ystyr a roddir gan reoliad 5(11).

## Cyhoeddi hysbysiadau ar y plattfform digidol canolog

5.—(1) Rhaid cyhoeddi neu roi hysbysiad, dogfen neu wybodaeth a gyhoeddir neu a roddir o dan ddarpariaeth o Ddeddf 2023 a restrir ym mharagraff (5) drwy gyhoeddi'r hysbysiad, y ddogfen neu'r wybodaeth gan yr awdurdod contractio ar y plattfform digidol canolog yn gyntaf.

(2) Oni bai bod paragraff (3) neu baragraff (6) yn gymwys, mae'r gofyniad ym mharagraff (1) i'r awdurdod contractio gyhoeddi neu roi hysbysiad, dogfen neu wybodaeth ar y plattfform digidol canolog yn gyntaf wedi ei fodloni pan fo'r awdurdod contractio wedi cyflwyno'r hysbysiad, y ddogfen neu'r wybodaeth i'r plattfform digidol Cymreig ac—

- (a) bo'r Gweinidog dros Swyddfa'r Cabinet wedi rhoi gwybod i'r awdurdod contractio fod yr hysbysiad wedi ei gyflwyno'n llwyddiannus ar gyfer ei gyhoeddi i'r plattfform digidol canolog, neu fod y ddogfen neu'r wybodaeth wedi ei chyflwyno'n llwyddiannus ar gyfer ei chyhoeddi iddo, neu
- (b) bo modd i gyflenwyr ac aelodau o'r cyhoedd gyrchu'r hysbysiad, y ddogfen neu'r wybodaeth ar y plattfform digidol canolog.

(3) Os yw'r plattfform digidol Cymreig heb fod ar gael fel na ellir bodloni'r gofyniad ym mharagraff (2), caniateir i awdurdod contractio gyhoeddi hysbysiad, dogfen neu wybodaeth—

- (a) ar y plattfform digidol canolog, neu
- (b) ar y plattfform digidol canolog drwy ddefnyddio system ar-lein arall.

“utilities contract” (“*contract cyfleustodau*”) has the meaning given by section 6 of the 2023 Act;

“utility” (“*cyfleustod*”) has the meaning given by section 35(4) of the 2023 Act; “Welsh digital platform” (“*plattfform digidol Cymreig*”) means the online system provided by the Welsh Government for use by contracting authorities to whom regulation 2 applies;

“works” (“*gweithiau*”) has the meaning given by regulation 45.

## Publication of notices on central digital platform

5.—(1) A notice, document or information which is published or given under a provision of the 2023 Act listed in paragraph (5) must first be published or given, by the contracting authority publishing it on the central digital platform.

(2) Unless paragraph (3) or paragraph (6) apply, the requirement in paragraph (1) for the contracting authority to first publish or give a notice, document or information on the central digital platform is met where the contracting authority has submitted the notice, document or information to the Welsh digital platform and—

- (a) the Minister for the Cabinet Office has informed the contracting authority that the notice, document or information has successfully been submitted for publication to the central digital platform, or
- (b) the notice, document or information is capable of being accessed by suppliers and members of the public on the central digital platform.

(3) If the Welsh digital platform is unavailable so that the requirement in paragraph (2) cannot be met, a contracting authority may publish a notice, document or information—

- (a) on the central digital platform, or
- (b) on the central digital platform by using an alternative online system.

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(1) Mewnosodwyd gan Ddeddf Busnesau Bach, Menter a Chyflogaeth 2015 (p. 26), Atodlen 3(1), paragraff 1.



(4) Pan fo paragraff (3) yn gymwys bydd y gofyniad ym mharagraff (1) wedi ei fodloni—

- (a) pan fo'r Gweinidog dros Swyddfa'r Cabinet wedi rhoi gwybod i'r awdurdod contractio fod yr hysbysiad wedi ei gyflwyno'n llwyddiannus ar gyfer ei gyhoeddi i'r plattform, neu fod y ddogfen neu'r wybodaeth wedi ei chyflwyno'n llwyddiannus ar gyfer ei chyhoeddi iddo, neu
- (b) pan fo modd i gyflenwyr ac aelodau o'r cyhoedd gyrchu'r hysbysiad, y ddogfen neu'r wybodaeth ar y plattform digidol canolog.

(5) Y darpariaethau perthnasol o Ddeddf 2023 yw—

- (a) adran 15(1) (hysbysiadu caffael arfaethedig)(1),
- (b) adran 17(1)(a) (hysbysiadu ymgysylltu rhagarweiniol â'r farchnad),
- (c) adran 21(1) (hysbysiadu tendro),
- (d) adran 24(4) (mireinio meini prawf dyfarnu), mewn cysylltiad ag ailgyhoeddi hysbysiadu tendro yn unig,
- (e) adran 31(5) (addasu caffaeliad adran 19), mewn cysylltiad ag ailgyhoeddi hysbysiadu tendro yn unig,
- (f) adran 39(2) (hysbysiadu marchnad ddynamig: bwriad i sefydlu marchnad ddynamig)(2),
- (g) adran 39(3) (hysbysiadu marchnad ddynamig: sefydlu marchnad ddynamig),
- (h) adran 39(4) (hysbysiadu marchnad ddynamig: addasiadau i farchnad ddynamig),
- (i) adran 39(5) (hysbysiadu marchnad ddynamig: diwedd marchnad ddynamig),
- (j) adran 44(1) (hysbysiadu tryloywder),
- (k) adran 50(1) (hysbysiadu dyfarnu contract),
- (l) adran 52(3) (dangosyddion perfformiad allweddol),
- (m) adran 53(1) (hysbysiadu manylion contract),
- (n) adran 53(3) (copïau o gontractau),
- (o) adran 55(2) (hysbysiadu terfynu caffaeliad),
- (p) adran 69(1) (hysbysiadu cydymffurfedd taliadau),

(4) Where paragraph (3) applies the requirement in paragraph (1) will be met where—

- (a) the Minister for the Cabinet Office has informed the contracting authority that the notice, document or information has successfully been submitted for publication to the central digital platform, or
- (b) the notice, document or information is capable of being accessed by suppliers and members of the public on the central digital platform.

(5) The relevant provisions of the 2023 Act are—

- (a) section 15(1) (planned procurement notices)(1),
- (b) section 17(1)(a) (preliminary market engagement notices),
- (c) section 21(1) (tender notices),
- (d) section 24(4) (refining award criteria), in respect of republishing tender notices only,
- (e) section 31(5) (modifying a section 19 procurement), in respect of republishing tender notices only,
- (f) section 39(2) (dynamic market notices: intention to establish a dynamic market)(2),
- (g) section 39(3) (dynamic market notices: establishment of a dynamic market),
- (h) section 39(4) (dynamic market notices: modifications to a dynamic market),
- (i) section 39(5) (dynamic market notices: cessation of a dynamic market),
- (j) section 44(1) (transparency notices),
- (k) section 50(1) (contract award notices),
- (l) section 52(3) (key performance indicators),
- (m) section 53(1) (contract details notices),
- (n) section 53(3) (copies of contracts),
- (o) section 55(2) (procurement termination notices),
- (p) section 69(1) (payments compliance notices),

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(1) Mae hysbysiadu caffael arfaethedig yn cynnwys hysbysiadu caffael arfaethedig cymhwysol (gweler adran 15(3) o Ddeddf 2023).

(2) Mae hysbysiadu marchnad ddynamig o dan adran 39(2) yn cynnwys hysbysiadu marchnad ddynamig cyfleustodau cymhwysol (gweler adran 40(6) o Ddeddf 2023).

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(1) Planned procurement notices include qualifying planned procurement notices (see section 15(3) of the 2023 Act).

(2) Dynamic market notices under section 39(2) include qualifying utilities dynamic market notices (see section 40(6) of the 2023 Act.).

- (q) adran 71(2)(b) (cyflawni contract: asesu perfformiad yn erbyn dangosyddion perfformiad allweddol),
- (r) adran 71(5) (cyflawni contract: torri contract cyhoeddus neu fethu â chyflawni),
- (s) adran 75(1) (hysbysiadau newid contract),
- (t) adran 75(5) (hysbysiadau newid contract: addasiadau a wneir ar y cyd),
- (u) adran 77(1) (cyhoeddi addasiadau),
- (v) adran 80(1) (hysbysiadau terfynu contract),
- (w) adran 87(1) (hysbysiadau tendro ar gyfer contractau sydd o dan y trothwy),
- (x) adran 87(3) (hysbysiadau manylion contract yn dilyn contractau hysbysadwy sydd o dan y trothwy),
- (y) adran 93(2) (hysbysiadau piblinell), a
- (z) adran 94(3) (esemptiadau cyffredinol rhag dyletswyddau i gyhoeddi neu ddatgelu gwybodaeth: gwybodaeth yn cael ei chadw yn ôl).

(6) Os yw'r holl amodau sy'n gymwys ym mharagraff (7) wedi eu bodloni, caiff yr awdurdod contractio gyhoeddi neu roi'r hysbysiad, y ddogfen neu'r wybodaeth ar y platfform digidol Cymreig neu, os nad yw ar gael, ar system ar-lein arall ac wrth wneud hynny mae'r awdurdod i'w drin fel pe bai am y tro yn bodloni'r gofyniad ym mharagraff (1).

(7) Yr amodau yw—

- (a) yn achos hysbysiad a grybwyllir ym mharagraff (8), nad oes llai na 4 awr wedi mynd heibio ers cyflwyno'r hysbysiad ar gyfer ei gyhoeddi i'r platfform digidol canolog,
- (b) yn achos unrhyw hysbysiad arall, unrhyw ddogfen arall neu unrhyw wybodaeth arall, nad oes llai nag 48 awr wedi mynd heibio ers cyflwyno'r hysbysiad, y ddogfen neu'r wybodaeth ar gyfer ei gyhoeddi neu ei chyhoeddi i'r platfform digidol canolog,
- (c) nad yw'r awdurdod contractio wedi cael cadarnhad gan y Gweinidog dros Swyddfa'r Cabinet fod yr hysbysiad wedi ei gyhoeddi ar y platfform digidol canolog yn llwyddiannus, neu fod y ddogfen neu'r wybodaeth wedi ei chyhoeddi arno'n llwyddiannus, a
- (d) nad oes modd i aelodau o'r cyhoedd gyrchu'r hysbysiad, y ddogfen neu'r wybodaeth ar y platfform digidol canolog.

- (q) section 71(2)(b) (contract performance: assessment of performance against key performance indicators),
- (r) section 71(5) (contract performance: breach of public contract or failure to perform),
- (s) section 75(1) (contract change notices),
- (t) section 75(5) (contract change notices: modifications taken together),
- (u) section 77(1) (publication of modifications),
- (v) section 80(1) (contract termination notices),
- (w) section 87(1) (below-threshold tender notices),
- (x) section 87(3) (contract details notices following notifiable below-threshold contracts),
- (y) section 93(2) (pipeline notices), and
- (z) section 94(3) (general exemptions from duties to publish or disclose information: information being withheld).

(6) If all of the conditions that apply in paragraph (7) are met the contracting authority may publish or give the notice, document or information on the Welsh digital platform or, if unavailable, on an alternative online system and in doing so the authority is to be treated as meeting for the time being the requirement in paragraph (1).

(7) The conditions are that—

- (a) in the case of a notice mentioned in paragraph (8), no less than 4 hours have passed since the notice was submitted for publication to the central digital platform,
- (b) in the case of any other notice, or a document or information, no less than 48 hours have passed since the notice, document or information was submitted for publication to the central digital platform,
- (c) the contracting authority has not received confirmation from the Minister for the Cabinet Office that the notice, document or information has successfully been published on the central digital platform, and
- (d) the notice, document or information is not capable of being accessed by members of the public on the central digital platform.

(8) Yr hysbysiadau yw hysbysiad tryloywder, hysbysiad dyfarnu contract neu hysbysiad manylion contract sy'n ymwneud ag—

- (a) dyfarnu contract cyhoeddus yn uniongyrchol o dan baragraffau 13 a 14 o Atodlen 5 i Ddeddf 2023 (sefyllfa frys), neu
- (b) dyfarnu contract cyhoeddus yn uniongyrchol o dan adran 42 o Ddeddf 2023 (dyfarniad uniongyrchol er mwyn gwarchod bywyd, etc.).

(9) Ond nid yw'r awdurdod contractio i gael ei drin mwyach fel pe bai am y tro yn bodloni'r gofyniad ym mharagraff (1) os yw'r Gweinidog dros Swyddfa'r Cabinet yn rhoi gwybod i'r awdurdod contractio fod cyflwyno'r hysbysiad, y ddogfen neu'r wybodaeth i'r platfform digidol canolog wedi ei wrthod.

(10) Rhaid i awdurdod contractio sy'n defnyddio'r platfform digidol Cymreig neu system ar-lein arall yn unol â pharagraff (6) gydweithredu â'r Gweinidog dros Swyddfa'r Cabinet er mwyn sicrhau bod yr hysbysiad, y ddogfen neu'r wybodaeth o dan sylw wedi hynny—

- (a) yn cael ei gyhoeddi neu ei chyhoeddi ar y platfform digidol canolog, a
- (b) yn gallu cael ei gyrchu neu ei chyrru gan aelodau o'r cyhoedd ar y system honno.

(11) Ystyr "system ar-lein arall" yw system ar-lein ar gyfer cyhoeddi gwybodaeth am gaffael—

- (a) sy'n system rad ac am ddim ac ar gael yn rhwydd i gyflenwyr ac aelodau o'r cyhoedd,
- (b) sy'n system hygyrch i bobl anabl, ac
- (c) nad y platfform digidol canolog na'r platfform digidol Cymreig mohoni.

(12) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi'r hysbysiad, y ddogfen neu'r wybodaeth yn rhywle heblaw ar y platfform digidol canolog, y platfform digidol Cymreig neu system ar-lein arall, ond ni chaiff yr awdurdod wneud hynny cyn cydymffurfio â gofynion paragraff (1) neu (6).

### **Rhannu gwybodaeth graidd y cyflenwr drwy'r platfform digidol canolog**

6.—(1) Mae'r rheoliad hwn yn gymwys i awdurdod contractio pan fo cyflenwr yn rhannu gwybodaeth graidd y cyflenwr â'r awdurdod yn ystod gweithdrefn a restrir ym mharagraff (2) gyda golwg ar ddyfarnu contract cyhoeddus.

- (2) Y gweithdrefnau yw—
  - (a) gweithdrefn agored,
  - (b) gweithdrefn hyblyg gystadleuol,

(8) The notices are a transparency notice, contract award notice or contract details notice relating to—

- (a) the direct award of a public contract under paragraphs 13 and 14 of Schedule 5 to the 2023 Act (urgency), or
- (b) the direct award of a public contract under section 42 of the 2023 Act (direct award to protect life, etc.).

(9) But the contracting authority is no longer to be treated as meeting for the time being the requirement in paragraph (1) if the Minister for the Cabinet Office informs the contracting authority that the submission of the notice, document or information to the central digital platform has been rejected.

(10) A contracting authority which uses the Welsh digital platform or an alternative online system in accordance with paragraph (6) must cooperate with the Minister for the Cabinet Office to ensure that the notice, document or information in question is subsequently—

- (a) published on the central digital platform, and
- (b) capable of being accessed by members of the public on that system.

(11) An "alternative online system" is an online system for publishing procurement information which is—

- (a) free of charge and readily accessible to suppliers and members of the public,
- (b) accessible to disabled people, and
- (c) not the central digital platform or the Welsh digital platform.

(12) Nothing in this regulation prevents a contracting authority from publishing the notice, document or information somewhere other than on the central digital platform, the Welsh digital platform or alternative online system but the authority must not do so before complying with the requirements of paragraph (1) or (6).

### **Sharing core supplier information through central digital platform**

6.—(1) This regulation applies to a contracting authority where a supplier shares core supplier information with the authority during a procedure listed in paragraph (2) with a view to the award of a public contract.

- (2) The procedures are—
  - (a) an open procedure,
  - (b) a competitive flexible procedure,

- (c) dyfarniad uniongyrchol o dan adran 41 neu 43 o Ddeddf 2023, neu
- (d) proses ddethol gystadleuol ar gyfer fframweithiau o dan adran 46 o Ddeddf 2023.

(3) Os rhennir gwybodaeth graidd y cyflenwr—

- (a) yn ystod gweithdrefn agored, neu
- (b) yn ystod gweithdrefn hyblyg gystadleuol,

rhaid i'r awdurdod contractio gael cadarnhad gan y cyflenwr ynghylch y materion ym mharagraff (5) cyn diwedd y cyfnod tendro.

(4) Os rhennir gwybodaeth graidd y cyflenwr—

- (a) cyn dyfarniad uniongyrchol o dan adran 41 neu 43 o Ddeddf 2023, neu
- (b) yn ystod proses ddethol gystadleuol ar gyfer fframweithiau o dan adran 46 o'r Ddeddf honno,

rhaid i'r awdurdod contractio gael cadarnhad gan y cyflenwr ynghylch y materion ym mharagraff (5) cyn dyfarnu'r contract cyhoeddus.

(5) Y materion yw bod y cyflenwr—

- (a) wedi cofrestru ar y plattform digidol canolog,
- (b) wedi cyflwyno gwybodaeth graidd ddiweddaraf y cyflenwr i'r plattform hwnnw, ac
- (c) wedi rhannu'r wybodaeth graidd ddiweddaraf honno am y cyflenwr â'r awdurdod contractio drwy gyfleuster sydd wedi ei ddarparu ar y plattform hwnnw at ddiben rhannu gwybodaeth graidd cyflenwyr.

(6) Mae paragraff (7) yn gymwys—

- (a) pan fo cyflenwr wedi rhannu gwybodaeth graidd ddiweddaraf y cyflenwr ag awdurdod contractio yn ystod gweithdrefn a restrir ym mharagraff (2), a
- (b) pan fo gwybodaeth graidd y cyflenwr yn newid wedi hynny, a bo'r cyflenwr yn rhannu â'r awdurdod contractio, cyn i'r contract cyhoeddus gael ei ddyfarnu, wybodaeth graidd y cyflenwr sydd wedi ei diweddarau neu wedi ei chywiro.

(7) Rhaid i'r awdurdod contractio gael cadarnhad pellach gan y cyflenwr ynghylch y materion ym mharagraff (8) cyn dyfarnu'r contract cyhoeddus.

(8) Y materion yw bod y cyflenwr—

- (a) wedi cyflwyno i'r plattform digidol canolog wybodaeth graidd y cyflenwr sydd wedi ei diweddarau neu ei chywiro, a

(c) a direct award under section 41 or 43 of the 2023 Act, or

(d) a competitive selection process for frameworks under section 46 of the 2023 Act.

(3) If the core supplier information is shared—

- (a) during an open procedure, or
- (b) a competitive flexible procedure,

the contracting authority must obtain confirmation from the supplier of the matters in paragraph (5) before the end of the tendering period.

(4) If the core supplier information is shared—

- (a) before a direct award under section 41 or 43 of the 2023 Act, or
- (b) during a competitive selection process for frameworks under section 46 of that Act,

the contracting authority must obtain confirmation from the supplier of the matters in paragraph (5) before the award of the public contract.

(5) The matters are that the supplier—

- (a) has registered on the central digital platform,
- (b) has submitted its up-to-date core supplier information to that platform, and
- (c) has shared that up-to-date core supplier information with the contracting authority by means of a facility provided on that platform for the purpose of sharing core supplier information.

(6) Paragraph (7) applies where—

- (a) a supplier has shared up-to-date core supplier information with a contracting authority during a procedure listed in paragraph (2), and
- (b) the supplier's core supplier information subsequently changes, and the supplier shares updated or corrected core supplier information with the contracting authority before the award of the public contract.

(7) The contracting authority must obtain a further confirmation from the supplier of the matters in paragraph (8) before the award of the public contract.

(8) The matters are that the supplier—

- (a) has submitted the updated or corrected core supplier information to the central digital platform, and

- (b) wedi rhannu'r wybodaeth graidd y cyflenwr sydd wedi ei diweddarau neu ei chywiro â'r awdurdod contractio drwy gyfleuster a ddarperir ar y plattform hwnnw at ddiben rhannu gwybodaeth graidd cyflenwyr.

(9) Yn yRhan hon, ystyr “gwybodaeth graidd y cyflenwr” yw—

- (a) gwybodaeth sylfaenol y cyflenwr, a nodir yn rheoliad 10,
- (b) gwybodaeth y cyflenwr o ran ei sefyllfa ariannol ac economaidd, a nodir yn rheoliad 11,
- (c) gwybodaeth y cyflenwr o ran ei bersonau cysylltiedig, a nodir yn rheoliad 12, a
- (d) gwybodaeth y cyflenwr o ran seiliau dros wahardd, a nodir yn rheoliad 13.

(10) Yn y rheoliad hwn, mae cyfeiriad at gyfleuster a ddarperir ar y plattform digidol canolog yn cynnwys cyfeiriad at gyfleuster i lawrlwytho gwybodaeth sydd i'w hanfon ymlaen at awdurdod contractio gan gyflenwr.

(11) Mae'r rheoliad hwn yn ddarostyngedig i reoliad 8.

### **Gwybodaeth y cyflenwr ar gyfer contractau hysbysadwy sydd o dan y trothwy**

7.—(1) Cyn i gyflenwr gymryd rhan mewn caffaeliad hysbysadwy sydd o dan y trothwy ac a gyflawnir gan awdurdod contractio, rhaid i'r awdurdod sicrhau bod y cyflenwr wedi cofrestru ar y plattform digidol canolog.

(2) Rhaid i'r awdurdod contractio gael cadarnhad cofrestru gan y cyflenwr cyn dyfarnu'r contract hysbysadwy sydd o dan y trothwy.

(3) Yn y rheoliad hwn—

ystyr “caffaeliad hysbysadwy sydd o dan y trothwy” (“*notifiable below-threshold procurement*”) yw dyfarnu contract hysbysadwy sydd o dan y trothwy, ymrwymo iddo a'i reoli;

mae i “contract hysbysadwy sydd o dan y trothwy” yr ystyr a roddir i “notifiable below-threshold contract” gan adran 87(4) o Ddeddf 2023.

- (b) has shared the updated or corrected core supplier information with the contracting authority by means of a facility provided on that platform for the purpose of sharing core supplier information.

(9) In this Part, “core supplier information” means—

- (a) the supplier’s basic information set out in regulation 10,
- (b) the supplier’s economic and financial standing information set out in regulation 11,
- (c) the supplier’s connected person information set out in regulation 12, and
- (d) the supplier’s exclusion grounds information set out in regulation 13.

(10) In this regulation a reference to a facility provided on the central digital platform includes a reference to a facility to download information to be forwarded on to a contracting authority by a supplier.

(11) This regulation is subject to regulation 8.

### **Supplier information for notifiable below-threshold contracts**

7.—(1) Before a supplier participates in a notifiable below-threshold procurement carried out by a contracting authority, the authority must ensure that the supplier has registered on the central digital platform.

(2) The contracting authority must obtain confirmation of registration from the supplier before the award of the notifiable below-threshold contract.

(3) In this regulation—

“notifiable below-threshold contract” (“*contract hysbysadwy sydd o dan y trothwy*”) has the meaning given by section 87(4) of the 2023 Act;

“notifiable below-threshold procurement” (“*caffaeliad hysbysadwy sydd o dan y trothwy*”) means the award, entry into and management of a notifiable below-threshold contract.

**Gwybodaeth graidd y cyflenwr: platfform ddim yn gweithio, sefyllfa frys, cyfleustodau preifat**

8.—(1) Pan na fo modd i awdurdod contractio, mewn cysylltiad â gwybodaeth graidd y cyflenwr a rennir yn ystod gweithdrefn agored neu weithdrefn hyblyg gystadleuol, gael cadarnhad gan y cyflenwr ynghylch y materion yn rheoliad 6(5) cyn diwedd y cyfnod tendro oherwydd y rheswm ym mharagraff (2), mae paragraff (3) yn gymwys.

(2) Y rheswm yw nad oedd modd i'r cyflenwr gofrestru'n rhesymol ar y platfform digidol canolog, cyflwyno gwybodaeth iddo, neu ddefnyddio cyfleuster ar gyfer rhannu gwybodaeth drwyddo, oherwydd nad oedd y platfform hwnnw yn gweithio'n briodol yn ystod unrhyw gyfnod cyn diwedd y cyfnod tendro.

(3) Rhaid i'r awdurdod contractio gael cadarnhad gan y cyflenwr ynghylch y materion yn rheoliad 6(5) cyn gynted ag y bo'n ymarferol a pha un bynnag cyn dyfarnu'r contract.

(4) Mae rheoliad 6 yn gymwys yn achos dyfarnu contract cyhoeddus yn uniongyrchol yn unol â pharagraffau 13 a 14 o Atodlen 5 i Ddeddf 2023 (sefyllfa frys), ond gan ddarllen rheoliad 6—

(a) fel pe bai'r cyfeiriad ym mharagraff (4) at yr awdurdod contractio yn cael cadarnhad cyn dyfarnu'r contract cyhoeddus yn gyfeiriad at yr awdurdod yn cael cadarnhad cyn gynted ag y bo'n ymarferol a pha un bynnag cyn dyddiad cyhoeddi'r hysbysiad manylion contract, a

(b) fel pe bai paragraffau (6) i (8) wedi eu hepgor.

(5) Nid yw rheoliad 6 yn gymwys i gyfleustod preifat yn achos dyfarnu contract cyhoeddus yn uniongyrchol yn unol â pharagraffau 13 a 14 o Atodlen 5 i Ddeddf 2023 (sefyllfa frys).

**Codau adnabod unigryw ac esemptiad rhag eu cyhoeddi ar y platfform digidol Cymreig neu system ar-lein arall**

9.—(1) Yn y Rhan hon, ystyr “cod adnabod unigryw”—

(a) yn achos caffaeliad, yw'r cod unigryw a ddyrennir gan y platfform digidol canolog pan gyhoeddir yr hysbysiad cyntaf sy'n ymwneud â'r caffaeliad ar y platfform hwnnw, heblaw o dan yr amgylchiadau a nodir yn is-baragraff (b),

**Core supplier information: platform not working, urgency, private utilities**

8.—(1) Where, in respect of core supplier information shared during an open procedure or a competitive flexible procedure, a contracting authority cannot obtain confirmation from the supplier of the matters in regulation 6(5) before the end of the tendering period due to the reason in paragraph (2), paragraph (3) applies.

(2) The reason is that the supplier could not reasonably register on, submit information to, or use a facility for sharing information through, the central digital platform because that platform was not working properly during any period before the end of the tendering period.

(3) The contracting authority must obtain confirmation from the supplier of the matters in regulation 6(5) as soon as practicable and in any event before the award of the contract.

(4) Regulation 6 applies in the case of a direct award of a public contract pursuant to paragraphs 13 and 14 of Schedule 5 to the 2023 Act (urgency), but reading regulation 6 as if—

(a) the reference in paragraph (4) to the contracting authority obtaining confirmation before the award of the public contract were a reference to the authority obtaining confirmation as soon as practicable and in any event before the date when the contract details notice is published, and

(b) paragraphs (6) to (8) were omitted.

(5) Regulation 6 does not apply to a private utility in the case of a direct award of a public contract pursuant to paragraphs 13 and 14 of Schedule 5 to the 2023 Act (urgency).

**Unique identifiers and exemption from publishing them on the Welsh digital platform or alternative online system**

9.—(1) In this Part, “unique identifier” means—

(a) in the case of a procurement, the unique code allocated by the central digital platform when the first notice relating to the procurement is published on that platform, other than in the circumstances set out in sub-paragraph (b),

- (b) yn achos caffaeliad pan fo newid wedi bod i ddyfarniad uniongyrchol yn unol ag adran 43 o Ddeddf 2023, yw'r cod unigryw a ddyrennir gan y platfform digidol canolog pan gyhoeddir yr hysbysiad tryloywder sy'n ymwneud â'r contract ar y platfform hwnnw,
  - (c) yn achos contract, y cod unigryw sy'n galluogi'r sawl a fo'n darllen hysbysiad sy'n cyfeirio at y contract i wahaniaethu rhwng y contract hwnnw a chontractau eraill sydd wedi eu dyfarnu o dan yr un broses gaffael,
  - (d) yn achos marchnad ddynamig, y cod unigryw a ddyrennir gan y platfform digidol canolog pan gyhoeddir y cyntaf o'r hysbysiadau a ganlyn ar y platfform hwnnw mewn perthynas â'r farchnad ddynamig—
    - (i) unrhyw hysbysiad piblinell,
    - (ii) unrhyw hysbysiad ymgysylltu rhagarweiniol â'r farchnad, neu
    - (iii) yr hysbysiad marchnad ddynamig cyntaf, ac
  - (e) yn achos—
    - (i) cyflenwr,
    - (ii) awdurdod contractio,
    - (iii) person sy'n cyflawni caffaeliad, neu ran o gaffaeliad, ar ran awdurdod contractio, neu
    - (iv) person heblaw awdurdod contractio sy'n sefydlu marchnad ddynamig yn unol ag adran 35(3) o Ddeddf 2023,
- (b) in the case of a procurement where there has been a switch to a direct award in accordance with section 43 of the 2023 Act, the unique code allocated by the central digital platform when the transparency notice relating to the contract is published on that platform,
  - (c) in the case of a contract, the unique code which enables a reader of a notice referring to the contract to distinguish the contract from other contracts awarded under the same procurement process,
  - (d) in the case of a dynamic market, the unique code allocated by the central digital platform when the first of the following notices is published on that platform in relation to the dynamic market—
    - (i) any pipeline notice,
    - (ii) any preliminary market engagement notice, or
    - (iii) the first dynamic market notice, and
  - (e) in the case of—
    - (i) a supplier,
    - (ii) a contracting authority,
    - (iii) a person carrying out a procurement, or part of a procurement, on behalf of a contracting authority, or
    - (iv) a person other than a contracting authority who is establishing a dynamic market in accordance with section 35(3) of the 2023 Act,

y cod unigryw a gyflwynir i'r platfform digidol canolog ac a gydnabyddir gan y platfform hwnnw neu, pan na chyflwynir ac na chydabyddir cod o'r fath, y cod unigryw a ddyrennir gan y platfform hwnnw pan yw'r person yn cofrestru ar y platfform hwnnw.

(2) Mae paragraff (3) yn gymwys pan fo awdurdod contractio yn cyhoeddi hysbysiad, dogfen neu wybodaeth a grybwyllir yn rheoliad 5(5) ar y platfform digidol Cymreig neu, os nad yw ar gael, ar system ar-lein arall o dan reoliad 5(6).

(3) Nid yw'n ofynnol i'r awdurdod contractio gyhoeddi unrhyw god adnabod unigryw yn unol â'r Rhan hon hyd nes y cyhoeddir yr hysbysiad hwnnw, y ddogfen honno neu'r wybodaeth honno wedi hynny ar y platfform digidol canolog o dan reoliad 5(10).

the unique code which is submitted to the central digital platform and is recognised by that platform or, where no such code is submitted and recognised, the unique code which is allocated by that platform when the person registers on that platform.

(2) Paragraph (3) applies where a contracting authority publishes a notice, document or information mentioned in regulation 5(5) on the Welsh digital platform or, if unavailable, on an alternative online system under regulation 5(6).

(3) The contracting authority is not required to publish any unique identifier in accordance with this Part until that notice, document or information is subsequently published on the central digital platform under regulation 5(10).

## Gwybodaeth sylfaenol y cyflenwr

**10.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth sylfaenol y cyflenwr.

(2) Pan fo cyflenwr yn unigolyn, yr wybodaeth yw—

- (a) enw'r cyflenwr,
- (b) y cod adnabod unigryw ar gyfer y cyflenwr,
- (c) cyfeiriad post cyswllt a chyfeiriad e-bost y cyflenwr,
- (d) pan fo gan y cyflenwr wefan, cyfeiriad y wefan,
- (e) rhif cofrestru TAW y cyflenwr (o fewn yr ystyr a roddir i "VAT registration number" yn adran 5A(6) o Ddeddf Treth ar Werth 1994(1)), os yw'n gymwys, ac
- (f) manylion unrhyw gymhwyster perthnasol neu unrhyw sicrwydd masnach perthnasol a ddelir gan yr unigolyn, gan gynnwys—
  - (i) yn achos cymhwyster, enw'r person neu'r corff a ddyfarnodd y cymhwyster, enw'r cymhwyster a'r dyddiad y cafodd ei ddyfarnu, neu
  - (ii) yn achos sicrwydd masnach, enw'r person neu'r corff a ddyfarnodd y cofrestriad, rhif cyfeirnod y sicrwydd a'r dyddiad y rhoddwyd y sicrwydd.

(3) Pan na fo'r cyflenwr yn unigolyn, yr wybodaeth yw—

- (a) enw'r cyflenwr,
- (b) y cod adnabod unigryw ar gyfer y cyflenwr,
- (c) cyfeiriad cofrestredig y cyflenwr neu gyfeiriad ei brif swyddfa,
- (d) cyfeiriad post cyswllt a chyfeiriad e-bost y cyflenwr,
- (e) pan fo'r cyflenwr yn marchnata ei nwyddau, ei wasanaethau neu ei weithiau ar-lein, cyfeiriad y wefan berthnasol,
- (f) ffurf gyfreithiol y cyflenwr a'r gyfraith y'i llywodraethir odani,
- (g) pan fo'r cyflenwr yn gwmni sydd wedi ei gofrestru o dan DC 2006, y dyddiad y cofrestrodd y cyflenwr o dan y Ddeddf honno,

## Supplier's basic information

**10.**—(1) This regulation sets out the supplier's basic information.

(2) Where the supplier is an individual, the information is—

- (a) the supplier's name,
- (b) the unique identifier for the supplier,
- (c) the supplier's contact postal address and email address,
- (d) where the supplier has a website, the website address,
- (e) the supplier's VAT registration number (within the meaning of section 5A(6) of the Value Added Tax Act 1994(1)), if applicable, and
- (f) details of any relevant qualification or trade assurance held by the individual, including—
  - (i) in the case of a qualification, the name of the person or body which awarded the qualification, the name of the qualification and the date it was awarded, or
  - (ii) in the case of a trade assurance, the name of the person or body which awarded the registration, the assurance reference number and the date the assurance was given.

(3) Where the supplier is not an individual, the information is—

- (a) the supplier's name,
- (b) the unique identifier for the supplier,
- (c) the supplier's registered or principal office address,
- (d) the supplier's contact postal address and email address,
- (e) where the supplier markets its goods, services or works online, the relevant website address,
- (f) the supplier's legal form and the law by which it is governed,
- (g) where the supplier is a company registered under the CA 2006, the date when the supplier registered under that Act,

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(1) 1994 p. 23. Mewn nosodwyd adran 5A gan Ddeddf Trethi (Ar ôl y Cyfnod Pontio) 2020 (p. 26), Atodlen 3(1), paragraff 2.

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(1) 1994 c. 23. Section 5A was inserted by the Taxation (Post-transition Period) Act 2020 (c. 26) Schedule 3(1) paragraph 2.



- (h) pan na fo'r cyflenwr yn gwmni sydd wedi ei gofrestru o dan DC 2006—
    - (i) unrhyw ddyddiad cyfwerth â'r dyddiad a grybwyllir yn is-baragraff (g), neu
    - (ii) pan na fo dyddiad cyfwerth, y dyddiad y dechreuodd y cyflenwr fasnachu,
  - (i) rhif cofrestru TAW y cyflenwr (o fewn yr ystyr a roddir i "VAT registration number" yn adran 5A(6) o Ddeddf Treth ar Werth 1994), os yw'n gymwys,
  - (j) manylion unrhyw gymhwyster perthnasol neu unrhyw sicrwydd masnach perthnasol a ddelir gan y cyflenwr, gan gynnwys—
    - (i) yn achos cymhwyster, enw'r person neu'r corff a ddyfarnodd y cymhwyster, enw'r cymhwyster a'r dyddiad y cafodd ei ddyfarnu, neu
    - (ii) yn achos sicrwydd masnach, enw'r person neu'r corff a ddyfarnodd y cofrestrriad, rhif cyfeirnod y sicrwydd a'r dyddiad y rhoddwyd y sicrwydd, a
  - (k) a yw'r cyflenwr—
    - (i) yn fenter fach a chanolig ei maint,
    - (ii) yn gorff anllywodraethol â gwerthoedd yn ei lywio ac sy'n ailfuddsoddi ei wargedion yn bennaf er mwyn hybu amcanion cymdeithasol, amgylcheddol neu ddiwylliannol,
    - (iii) yn ddarparwr cyflogaeth â chymorth, neu
    - (iv) yn gwmni cydfuddiannol gwasanaethau cyhoeddus.
- (h) where the supplier is not a company registered under the CA 2006—
    - (i) any equivalent date to that mentioned in sub-paragraph (g), or
    - (ii) where there is no equivalent date, the date the supplier began trading,
  - (i) the supplier's VAT registration number (within the meaning of section 5A(6) of the Value Added Tax Act 1994), if applicable,
  - (j) details of any relevant qualification or trade assurance held by the supplier, including—
    - (i) in the case of a qualification, the name of the person or body which awarded the qualification, the name of the qualification and the date it was awarded, or
    - (ii) in the case of a trade assurance, the name of the person or body which awarded the registration, the assurance reference number and the date the assurance was given, and
  - (k) whether the supplier is—
    - (i) a small and medium-sized enterprise,
    - (ii) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
    - (iii) a supported employment provider, or
    - (iv) a public service mutual.

### **Gwybodaeth y cyflenwr o ran ei sefyllfa economaidd ac ariannol**

**11.—(1)** Mae'r rheoliad hwn yn nodi gwybodaeth y cyflenwr o ran ei sefyllfa economaidd ac ariannol.

(2) Yr wybodaeth yw—

- (a) yn achos cyflenwr yr oedd yn ofynnol i'w gyfrifon gael eu harchwilio ar gyfer dwy flwyddyn ariannol ddiweddaraf y cyflenwr yn unol â Rhan 16 o DC 2006, copi o'r cyfrifon hynny,
- (b) yn achos cyflenwr yr oedd yn ofynnol i'w gyfrifon gael eu harchwilio ar gyfer blwyddyn ariannol ddiweddaraf y cyflenwr yn unol â Rhan 16 o DC 2006, ond nid y flwyddyn ariannol yn union cyn honno, copi o'r cyfrifon hynny,

### **Supplier's economic and financial standing information**

**11.—(1)** This regulation sets out the supplier's economic and financial standing information.

(2) The information is—

- (a) in the case of a supplier whose accounts were required to be audited for both of the supplier's most recent two financial years in accordance with Part 16 of the CA 2006, a copy of those accounts,
- (b) in the case of a supplier whose accounts were required to be audited for the supplier's most recent financial year in accordance with Part 16 of the CA 2006, but not the financial year immediately preceding that, a copy of those accounts,

- (c) yn achos cyflenwr yr oedd yn ofynnol i'w gyfrifon gael eu harchwilio ar gyfer dwy flwyddyn ariannol ddiweddaraf y cyflenwr yn unol â gofyniad tramor cyfwerth â Rhan 16 o DC 2006, copi o'r cyfrifon hynny,
- (d) yn achos cyflenwr yr oedd yn ofynnol i'w gyfrifon gael eu harchwilio ar gyfer blwyddyn ariannol ddiweddaraf y cyflenwr yn unol â gofyniad tramor cyfwerth â Rhan 16 o DC 2006, ond nid y flwyddyn ariannol yn union cyn honno, copi o'r cyfrifon hynny, neu
- (e) yn achos unrhyw gyflenwr arall—
  - (i) os oedd y cyflenwr mewn busnes am y ddwy o flynyddoedd ariannol mwyaf diweddar y cyflenwr, cyfrifon neu wybodaeth arall am y ddwy flynedd hynny, neu
  - (ii) os oedd y cyflenwr mewn busnes am flwyddyn ariannol ddiweddaraf y cyflenwr ond nid y flwyddyn ariannol yn union cyn hynny, cyfrifon neu wybodaeth arall ar gyfer blwyddyn ariannol ddiweddaraf y cyflenwr,

sy'n gyfwerth â gwybodaeth a gynhwysir mewn cyfrifon a archwilir yn unol â Rhan 16 o DC 2006, i'r graddau y gellir rhoi'r cyfrifon hynny neu'r wybodaeth arall honno yn rhesymol.

(3) Ym mharagraff (2)(a) a (b) mae i "blwyddyn ariannol" yr un ystyr â "financial year" yn adran 390 o DC 2006.

### Gwybodaeth y cyflenwr o ran ei bersonau cysylltiedig

12.—(1) Mae'r rheoliad hwn yn nodi gwybodaeth y cyflenwr o ran ei bersonau cysylltiedig.

(2) Yr wybodaeth yw'r wybodaeth yn y rheoliad hwn ar gyfer pob person cysylltiedig i'r cyflenwr.

(3) Mae paragraff (4) yn nodi'r wybodaeth—

- (a) pan fo'r cyflenwr yn gwmni sydd wedi ei gofrestru o dan DC 2006,
- (b) pan fo'r person cysylltiedig yn berson â rheolaeth sylweddol dros y cyflenwr, ac
- (c) pan fo'r person cysylltiedig yn gofrestradwy.

(4) Yr wybodaeth yw—

- (a) enw, dyddiad geni a chenedligrwydd y person cysylltiedig,
- (b) cyfeiriad cyflwyno'r person cysylltiedig,
- (c) pa un neu ragor o'r amodau penodedig yn Rhan 1 o Atodlen 1A i DC 2006 sy'n gymwys,

- (c) in the case of a supplier whose accounts were required to be audited for both of the supplier's most recent two financial years in accordance with an overseas equivalent to Part 16 of the CA 2006, a copy of those accounts,
- (d) in the case of a supplier whose accounts were required to be audited for the supplier's most recent financial year in accordance with an overseas equivalent to Part 16 of the CA 2006, but not the financial year immediately preceding that, a copy of those accounts, or
- (e) in the case of any other supplier—
  - (i) if the supplier was in business for both of the supplier's most recent financial years, accounts or other information for both of those years, or
  - (ii) if the supplier was in business for the supplier's most recent financial year but not the financial year immediately preceding that, accounts or other information for the supplier's most recent financial year,

which is equivalent to information contained in accounts audited in accordance with Part 16 of the CA 2006, so far as those accounts or that other information can reasonably be given.

(3) In paragraph (2)(a) and (b) "financial year" has the same meaning as in section 390 of the CA 2006.

### Supplier's connected person information

12.—(1) This regulation sets out the supplier's connected person information.

(2) The information is the information in this regulation for each connected person of the supplier.

(3) Paragraph (4) sets out the information where—

- (a) the supplier is a company registered under the CA 2006,
- (b) the connected person is a person with significant control over the supplier, and
- (c) the connected person is registrable.

(4) The information is—

- (a) the connected person's name, date of birth and nationality,
- (b) the connected person's service address,
- (c) which of the specified conditions in Part 1 of Schedule 1A to the CA 2006 applies,

- (d) y dyddiad pan ddaeth y person cysylltiedig yn gofrestradwy fel person â rheolaeth sylweddol, os yw'n gymwys, ac
- (e) enw'r gofrestr pobl â rheolaeth sylweddol y mae'r person cysylltiedig wedi ei gofrestru arni fel person â rheolaeth sylweddol, os yw'n gymwys.
- (5) Mae paragraff (6) yn nodi'r wybodaeth—
- (a) pan fo'r cyflenwr yn gwmni sydd wedi ei gofrestru o dan DC 2006,
- (b) pan fo'r person cysylltiedig yn endid cyfreithiol perthnasol, ac
- (c) pan fo'r person cysylltiedig yn gofrestradwy.
- (6) Yr wybodaeth yw—
- (a) enw'r person cysylltiedig,
- (b) cyfeiriad cofrestredig y person cysylltiedig neu gyfeiriad ei brif swyddfa,
- (c) cyfeiriad cyflwyno'r person cysylltiedig,
- (d) ffurf gyfreithiol y person cysylltiedig a'r gyfraith y'i llywodraethir odani,
- (e) pa un neu ragor o'r amodau penodedig yn Rhan 1 o Atodlen 1A i DC 2006 sy'n gymwys,
- (f) y dyddiad pan ddaeth y person cysylltiedig yn gofrestradwy fel endid cyfreithiol perthnasol, os yw'n gymwys, ac
- (g) enw'r gofrestr pobl â rheolaeth sylweddol y mae'r person cysylltiedig wedi ei gofrestru arni fel endid cyfreithiol perthnasol, os yw'n gymwys.
- (7) Mae paragraff (8) yn nodi'r wybodaeth—
- (a) pan fo'r cyflenwr yn gwmni sydd wedi ei gofrestru o dan DC 2006, a
- (b) pan fo'r person cysylltiedig—
- (i) yn gyfarwyddwr neu'n gyfarwyddwr cysgodol i'r cyflenwr, a
- (ii) yn unigolyn.
- (8) Yr wybodaeth yw—
- (a) enw, dyddiad geni a chenedligrwydd y person cysylltiedig,
- (b) cyfeiriad cyflwyno'r person cysylltiedig, ac
- (c) y wlad neu'r wladwriaeth (neu'r rhan o'r Deyrnas Unedig) y mae'r person cysylltiedig yn preswyllo ynddi fel arfer.
- (9) Mae paragraff (10) yn nodi'r wybodaeth—
- (a) pan fo'r cyflenwr yn gwmni sydd wedi ei gofrestru o dan DC 2006, a
- (d) the date when the connected person became registrable as a person with significant control, if applicable, and
- (e) the name of the PSC register on which the connected person is registered as a person with significant control, if applicable.
- (5) Paragraph (6) sets out the information where—
- (a) the supplier is a company registered under the CA 2006,
- (b) the connected person is a relevant legal entity, and
- (c) the connected person is registrable.
- (6) The information is—
- (a) the connected person's name,
- (b) the connected person's registered or principal office address,
- (c) the connected person's service address,
- (d) the connected person's legal form and the law by which it is governed,
- (e) which of the specified conditions in Part 1 of Schedule 1A to the CA 2006 applies,
- (f) the date when the connected person became registrable as a relevant legal entity, if applicable, and
- (g) the name of the PSC register on which the connected person is registered as a relevant legal entity, if applicable.
- (7) Paragraph (8) sets out the information where—
- (a) the supplier is a company registered under the CA 2006, and
- (b) the connected person is—
- (i) a director or shadow director of the supplier, and
- (ii) an individual.
- (8) The information is—
- (a) the connected person's name, date of birth and nationality,
- (b) the connected person's service address, and
- (c) the country or state (or part of the United Kingdom) in which the connected person is usually resident.
- (9) Paragraph (10) sets out the information where—
- (a) the supplier is a company registered under the CA 2006, and

- (b) o ran y person cysylltiedig—
- (i) pan fo'n gyfarwyddwr neu'n gyfarwyddwr cysgodol i'r cyflenwr, a
  - (ii) pan na fo'n unigolyn.
- (10) Yr wybodaeth yw—
- (a) enw'r person cysylltiedig;
  - (b) cyfeiriad cofrestredig y person cysylltiedig neu gyfeiriad ei brif swyddfa,
  - (c) cyfeiriad cyflwyno'r person cysylltiedig,
  - (d) ffurf gyfreithiol y person cysylltiedig a'r gyfraith y'i llywodraethir odani, ac
  - (e) pan fo'r person cysylltiedig yn gwmni sydd wedi ei gofrestru o dan DC 2006, rhif cofrestru'r person a roddwyd o dan y Ddeddf honno.
- (11) Mae paragraff (12) yn nodi'r wybodaeth—
- (a) pan fo'r cyflenwr yn gwmni sydd wedi ei gofrestru o dan DC 2006, a
  - (b) pan fo'r person cysylltiedig yn rhiant-ymgymeriad neu'n is-ymgymeriad i'r cyflenwr.
- (12) Yr wybodaeth yw—
- (a) enw'r person cysylltiedig,
  - (b) cyfeiriad cofrestredig y person cysylltiedig neu gyfeiriad ei brif swyddfa,
  - (c) cyfeiriad cyflwyno'r person cysylltiedig, a
  - (d) pan fo'r person cysylltiedig yn gwmni sydd wedi ei gofrestru o dan DC 2006, y rhif cofrestru a roddwyd o dan y Ddeddf honno.
- (13) Mae paragraff (14) yn nodi'r wybodaeth—
- (a) pan fo'r cyflenwr yn gwmni sydd wedi ei gofrestru o dan DC 2006, a
  - (b) pan fo'r person cysylltiedig yn gwmni rhagflaenol i'r cyflenwr.
- (14) Yr wybodaeth yw—
- (a) enw'r person cysylltiedig,
  - (b) cyfeiriad cofrestredig olaf y person cysylltiedig neu gyfeiriad ei brif swyddfa olaf,
  - (c) pan fo'r person cysylltiedig yn gwmni sydd wedi ei gofrestru o dan DC 2006, y rhif cofrestru a roddwyd o dan y Ddeddf honno, a
  - (d) y dyddiad pan aeth y person cysylltiedig yn ansolfent ac y peidiodd â masnachu.
- (b) the connected person is—
- (i) a director or shadow director of the supplier, and
  - (ii) not an individual.
- (10) The information is—
- (a) the connected person's name,
  - (b) the connected person's registered or principal office address,
  - (c) the connected person's service address,
  - (d) the connected person's legal form and the law by which it is governed, and
  - (e) where the connected person is a company registered under the CA 2006, the person's registration number given under that Act.
- (11) Paragraph (12) sets out the information where—
- (a) the supplier is a company registered under the CA 2006, and
  - (b) the connected person is a parent undertaking or a subsidiary undertaking of the supplier.
- (12) The information is—
- (a) the name of the connected person,
  - (b) the connected person's registered or principal office address,
  - (c) the connected person's service address, and
  - (d) where the connected person is a company registered under the CA 2006, the registration number given under that Act.
- (13) Paragraph (14) sets out the information where—
- (a) the supplier is a company registered under the CA 2006, and
  - (b) the connected person is a predecessor company of the supplier.
- (14) The information is—
- (a) the name of the connected person,
  - (b) the connected person's last registered or principal office address,
  - (c) where the connected person is a company registered under the CA 2006, the registration number given under that Act, and
  - (d) the date when the connected person became insolvent and ceased to trade.

(15) Mae paragraff (16) yn nodi'r wybodaeth—

- (a) pan na fo'r cyflenwr yn gwmni sydd wedi ei gofrestru o dan DC 2006, a
- (b) pan ellir ystyried yn rhesymol fod y person cysylltiedig mewn sefyllfa gyfwerth, mewn perthynas â'r cyflenwr, â'r person cysylltiedig a ddisgrifir ym mharagraff (3), (5), (7), (9), (11) neu (13).

(16) Mae'r wybodaeth yn wybodaeth y gellir ystyried yn rhesymol ei bod yn gyfwerth â'r hyn y cyfeirir ato ym mharagraff (4), (6), (8), (10), (12) neu (14) (yn ôl y digwydd).

(17) Mae paragraff (18) yn nodi'r wybodaeth ar gyfer person cysylltiedig nad yw unrhyw un o baragraffau (3), (5), (7), (9), (11), (13) na (15) yn gymwys iddo—

- (a) sydd â'r hawl i arfer, neu sy'n arfer mewn gwirionedd, ddylanwad sylweddol neu reolaeth sylweddol dros y cyflenwr, neu
- (b) y mae gan y cyflenwr yr hawl i arfer, neu ei fod yn arfer mewn gwirionedd, ddylanwad sylweddol neu reolaeth sylweddol drosto.

(18) Yr wybodaeth yw—

- (a) enw'r person cysylltiedig,
- (b) cyfeiriad cofrestredig y person cysylltiedig neu gyfeiriad ei brif swyddfa,
- (c) cyfeiriad cyflwyno'r person cysylltiedig,
- (d) ffurf gyfreithiol y person cysylltiedig a'r gyfraith y'i llywodraethir odani,
- (e) pan fo'r person cysylltiedig yn gwmni sydd wedi ei gofrestru o dan DC 2006, y rhif cofrestru a roddwyd o dan y Ddeddf honno,
- (f) pan fo'r person cysylltiedig yn gyfwerth tramor â chwmni sydd wedi ei gofrestru o dan DC 2006, y rhif cofrestru sy'n gyfwerth â'r rhai sydd wedi eu dyroddi o dan DC 2006,
- (g) pa un neu ragor o'r amodau penodedig yn Rhan 1 o Atodlen 1A i DC 2006 sy'n gymwys, ac
- (h) y dyddiad pan ddaeth y person cysylltiedig yn gofrestradwy fel person â rheolaeth sylweddol, os yw'n gymwys.

(19) Yn y rheoliad hwn—

mae i "cofrestradwy"—

- (a) mewn cysylltiad â pherson â rheolaeth sylweddol, yr ystyr a roddir i "registrable" gan adran 790C(4) o DC 2006;
- (b) mewn cysylltiad ag endid cyfreithiol perthnasol, yr ystyr a roddir i "registrable" gan adran 790C(8) o DC 2006;

(15) Paragraph (16) sets out the information where—

- (a) the supplier is not a company registered under the CA 2006, and
- (b) the connected person can reasonably be considered to stand in an equivalent position in relation to the supplier as the connected person described in paragraph (3), (5), (7), (9), (11) or (13).

(16) The information is information which can reasonably be considered to be equivalent to that referred to in paragraph (4), (6), (8), (10), (12) or (14) (as the case may be).

(17) Paragraph (18) sets out the information for a connected person to whom none of paragraphs (3), (5), (7), (9), (11), (13) or (15) apply—

- (a) with the right to exercise, or who actually exercises, significant influence or control over the supplier, or
- (b) over which the supplier has the right to exercise, or actually exercises, significant influence or control.

(18) The information is—

- (a) the connected person's name,
- (b) the connected person's registered or principal office address,
- (c) the connected person's service address,
- (d) the connected person's legal form and the law by which it is governed,
- (e) where the connected person is a company registered under the CA 2006, the registration number given under that Act,
- (f) where the connected person is an overseas equivalent to a company registered under the CA 2006, the registration number which is equivalent to those issued under the CA 2006,
- (g) which of the specified conditions in Part 1 of Schedule 1A to the CA 2006 applies, and
- (h) the date when the connected person became registrable as a person with significant control, if applicable.

(19) In this regulation—

"registrable" ("cofrestradwy")—

- (a) in respect of a person with significant control, has the meaning given by section 790C(4) of the CA 2006;
- (b) in respect of a relevant legal entity, has the meaning given by section 790C(8) of the CA 2006;

mae i “cyfeiriad cyflwyno” yr ystyr a roddir i “service address” gan adran 1141 o DC 2006;

mae i “endid cyfreithiol perthnasol” yr ystyr a roddir i “relevant legal entity” gan adran 790C(6) o DC 2006; mae i’r termau “cyfarwyddwr”, “rhiant-ymgymeriad”, “is-ymgymeriad”, “cwmni rhagflaenol” a “cyfarwyddwr cysgodol” yr un ystyr ag a roddir i “director”, “parent undertaking”, “subsidiary undertaking”, “predecessor company” a “shadow director” yn y drefn honno gan baragraff 45 o Atodlen 6 i Ddeddf 2023.

“relevant legal entity” (“*endid cyfreithiol perthnasol*”) has the meaning given by section 790C(6) of the CA 2006;

“service address” (“*cyfeiriad cyflwyno*”) has the meaning given by section 1141 of the CA 2006;

the terms “director” (“*cyfarwyddwr*”), “parent undertaking” (“*rhiant-ymgymeriad*”), “subsidiary undertaking” (“*is-ymgymeriad*”), “predecessor company” (“*cwmni rhagflaenol*”) and “shadow director” (“*cyfarwyddwr cysgodol*”) have the same meaning given by paragraph 45 of Schedule 6 to the 2023 Act.

## Gwybodaeth y cyflenwr o ran seiliau dros wahardd

13.—(1) Mae paragraffau (2) i (13) yn nodi gwybodaeth y cyflenwr o ran seiliau dros wahardd.

(2) A yw’r cyflenwr neu berson cysylltiedig wedi ei euogfarnu o drosedd y cyfeirir ati yn y paragraffau a ganlyn o Atodlen 6 i Ddeddf 2023—

- (a) paragraff 2 (dynladdiad corfforaethol neu laddiad corfforaethol);
- (b) paragraff 3 (terfysgaeth);
- (c) paragraffau 4 i 18 (dwyn, twyll, llwgrwobrwyo etc.);
- (d) paragraffau 19 i 26 (troseddau marchnad lafur, caethwasiaeth a masnachu pobl);
- (e) paragraffau 27 ac 28 (troseddau cyfundrefnol);
- (f) paragraffau 29 i 31 (troseddau treth);
- (g) paragraff 32 (trosedd cartel);
- (h) paragraff 33 (troseddau ategol);
- (i) paragraff 34 (troseddau a gyflawnwyd y tu allan i’r Deyrnas Unedig).

(3) A yw’r cyflenwr neu berson cysylltiedig wedi bod yn destun digwyddiad y cyfeirir ato yn y paragraffau a ganlyn o Atodlen 6 i Ddeddf 2023—

- (a) paragraff 36 (cosbau am drafodiadau sy’n gysylltiedig â thwyll TAW ac efadu trethi neu dollau);
- (b) paragraff 37 (cosbau sy’n daladwy am wallau mewn dogfennaeth dreth a methiant i hysbysu a mathau penodol o ddrygioni o ran TAW a thollau cartref);
- (c) paragraff 38 (addasiadau ar gyfer trefniadau treth camddefnyddiol);
- (d) paragraff 39 (canfyddiad gan CThEF, wrth arfer ei bwerau mewn cysylltiad â TAW, o arfer camddefnyddiol);
- (e) paragraff 40 (trechu mewn cysylltiad â threfniadau treth hysbysadwy);
- (f) paragraff 41 (torri cyfraith cystadleuaeth);

## Supplier’s exclusion grounds information

13.—(1) Paragraphs (2) to (13) set out the supplier’s exclusion grounds information.

(2) Whether the supplier or a connected person has been convicted of an offence referred to in the following paragraphs of Schedule 6 to the 2023 Act—

- (a) paragraph 2 (corporate manslaughter or corporate homicide);
- (b) paragraph 3 (terrorism);
- (c) paragraphs 4 to 18 (theft, fraud, bribery etc.);
- (d) paragraphs 19 to 26 (labour market, slavery and human trafficking offences);
- (e) paragraphs 27 and 28 (organised crime);
- (f) paragraphs 29 to 31 (tax offences);
- (g) paragraph 32 (cartel offence);
- (h) paragraph 33 (ancillary offences);
- (i) paragraph 34 (offences committed outside the United Kingdom).

(3) Whether the supplier or a connected person has been the subject of an event referred to in the following paragraphs of Schedule 6 to the 2023 Act—

- (a) paragraph 36 (penalties for transactions connected with VAT fraud and evasion of tax or duty);
- (b) paragraph 37 (penalties payable for errors in tax documentation and failure to notify and certain VAT and excise wrongdoing);
- (c) paragraph 38 (adjustments for tax arrangements that are abusive);
- (d) paragraph 39 (finding by HMRC, in exercise of its powers in respect of VAT, of abusive practice);
- (e) paragraph 40 (defeat in respect of notifiable tax arrangements);
- (f) paragraph 41 (competition law infringements);

(g) paragraff 42 (materion cyfwerth y tu allan i'r Deyrnas Unedig).

(4) Mewn cysylltiad â pharagraff 43 o Atodlen 6 i Ddeddf 2023 (methiant i gydweithredu ag ymchwiliad)—

- (a) a yw awdurdod priodol wedi rhoi hysbysiad i'r cyflenwr neu berson cysylltiedig o dan adran 60(6) o Ddeddf 2023, a
- (b) a yw'r cyflenwr neu'r person cysylltiedig wedi methu â chydymffurfio â'r hysbysiad cyn diwedd y cyfnod a bennir yn yr hysbysiad.

(5) A yw'r cyflenwr neu berson cysylltiedig wedi bod yn destun digwyddiad y cyfeirir ato yn y paragraffau canlynol o Atodlen 7 i Ddeddf 2023—

- (a) paragraff 1 (gorchymynion sy'n ymwneud â chamymddwyn yn y farchnad lafur);
- (b) paragraff 4 (trosedd sy'n ymwneud â chamymddwyn amgylcheddol);
- (c) paragraff 5 (ansolfedd, methdaliad, etc.);
- (d) paragraff 6 (atal neu roi'r gorau i gynnal y cyfan neu ran sylweddol o fusnes);
- (e) paragraff 9 (torri Deddf Cystadleuaeth 1998, gwaharddiad Pennod 2 neu gyfwerth y tu allan i'r Deyrnas Unedig);
- (f) paragraff 11(2) (dyfarniad llys etc. o gamymddwyn proffesiynol);
- (g) paragraff 12 (torri contract a pherfformiad gwael).

(6) Mewn cysylltiad â pharagraff 2 o Atodlen 7 i Ddeddf 2023 (camymddwyn o ran y farchnad lafur), a yw'r cyflenwr neu berson cysylltiedig—

- (a) wedi bod yn destun ymchwiliad, neu yn destun ymchwiliad ar hyn o bryd, ynghylch ymddygiad y tu allan i'r Deyrnas Unedig a allai arwain at wneud gorchymyn a grybwyllir ym mharagraff 1 o Atodlen 7 i Ddeddf 2023 pe bai'r ymddygiad yn digwydd yn y Deyrnas Unedig, neu
- (b) wedi cymryd rhan mewn ymddygiad o'r fath.

(g) paragraph 42 (equivalents outside the United Kingdom).

(4) Whether, in respect of paragraph 43 of Schedule 6 to the 2023 Act (failure to cooperate with investigation)—

- (a) an appropriate authority has given the supplier or a connected person notice under section 60(6) of the 2023 Act, and
- (b) the supplier or connected person has failed to comply with the notice before the end of the period specified in the notice.

(5) Whether the supplier or a connected person has been the subject of an event referred to in the following paragraphs of Schedule 7 to the 2023 Act—

- (a) paragraph 1 (orders relating to labour market misconduct);
- (b) paragraph 4 (offence relating to environmental misconduct);
- (c) paragraph 5 (insolvency, bankruptcy, etc.);
- (d) paragraph 6 (suspension or ceasing to carry on all or a substantial part of business);
- (e) paragraph 9 (infringement of Competition Act 1998, Chapter 2 prohibition or equivalent outside United Kingdom);
- (f) paragraph 11(2) (court etc. ruling of professional misconduct);
- (g) paragraph 12 (breach of contract and poor performance).

(6) Whether, in respect of paragraph 2 of Schedule 7 to the 2023 Act (labour market misconduct), the supplier or a connected person—

- (a) has been, or is being, investigated for conduct outside the United Kingdom that could result in an order mentioned in paragraph 1 of Schedule 7 to the 2023 Act being made if the conduct occurred in the United Kingdom, or
- (b) has engaged in such conduct.

(7) Mewn cysylltiad â pharagraff 3 o Atodlen 7 i Ddeddf 2023 (camymddwyn o ran y farchnad lafur), a yw'r cyflenwr neu berson cysylltiedig—

- (a) wedi bod yn destun ymchwiliad, neu yn destun ymchwiliad ar hyn o bryd, ynghylch ymddygiad (pa un ai yn y Deyrnas Unedig neu y tu allan iddi) sydd (neu a fyddai, pe bai'n digwydd yn y Deyrnas Unedig) yn drosedd y cyfeirir ati—
  - (i) yn adran 1, 2, 4 neu 30 o Ddeddf Caethwasiaeth Fodern 2015(1),
  - (ii) yn adran 1, 4 neu 32 o Ddeddf Masnachu Pobl a Chamfanteisio ar Bobl (Yr Alban) 2015(2), neu
  - (iii) yn adran 1, 2 neu 4 o Ddeddf Masnachu Pobl a Chamfanteisio ar Bobl (Cyfiawnder Troseddol a Chymorth i Ddiodefwyr) (Gogledd Iwerddon) 2015(3), neu baragraff 16 o Atodlen 3 i'r Ddeddf honno, neu

(b) wedi cymryd rhan mewn ymddygiad o'r fath.

(8) Mewn cysylltiad â pharagraff 7 o Atodlen 7 i Ddeddf 2023 (achosion posibl o dorri cyfraith cystadleuaeth)—

- (a) a yw'r cyflenwr neu berson cysylltiedig wedi bod yn destun ymchwiliad, neu yn destun ymchwiliad ar hyn o bryd, ynghylch a yw cytundeb neu arfer ar y cyd y mae'r cyflenwr neu berson cysylltiedig yn barti iddo wedi torri—
  - (i) y gwaharddiad Pennod 1 (o fewn yr ystyr a roddir i "the Chapter 1 prohibition" gan adran 2 o Ddeddf Cystadleuaeth 1998(4)),
  - (ii) unrhyw waharddiad sylweddol debyg sy'n gymwys mewn awdurdodaeth y tu allan i'r Deyrnas Unedig, neu
- (b) a yw cytundeb neu arfer ar y cyd y mae'r cyflenwr neu berson cysylltiedig yn barti iddo wedi torri gwaharddiadau o'r fath,

ac eithrio o dan yr amgylchiadau a grybwyllir yn is-baragraff (2) o baragraff 7.

(7) Whether, in respect of paragraph 3 of Schedule 7 to the 2023 Act (labour market misconduct), the supplier or a connected person—

- (a) has been, or is being, investigated for conduct (whether in or outside the United Kingdom) constituting (or that would, if it occurred in the United Kingdom, constitute) an offence referred to in—
  - (i) section 1, 2, 4 or 30 of the Modern Slavery Act 2015(1),
  - (ii) section 1, 4 or 32 of the Human Trafficking and Exploitation (Scotland) Act 2015(2), or
  - (iii) section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015(3), or paragraph 16 of Schedule 3 to that Act, or
- (b) has engaged in such conduct.

(8) Whether, in respect of paragraph 7 of Schedule 7 to the 2023 Act (potential competition infringements)—

- (a) the supplier or a connected person has been, or is being, investigated over whether an agreement or concerted practice to which the supplier or a connected person is party has infringed—
  - (i) the Chapter 1 prohibition (within the meaning given by section 2 of the Competition Act 1998(4)),
  - (ii) any substantially similar prohibition applicable in a jurisdiction outside the United Kingdom, or
- (b) an agreement or concerted practice to which the supplier or a connected person is party has infringed such prohibitions,

except in the circumstances mentioned in sub-paragraph (2) of paragraph 7.

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(1) 2015 p. 30.  
(2) 2015 dsa 12.  
(3) 2015 p. 2 (G.I.).  
(4) 1998 p. 41.

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(1) 2015 c. 30.  
(2) 2015 asp 12.  
(3) 2015 c. 2 (N.I.).  
(4) 1998 c. 41.



(9) Mewn cysylltiad â pharagraff 8 o Atodlen 7 i Ddeddf 2023 (achosion posibl o dorri cyfraith cystadleuaeth), a yw'r cyflenwr neu berson cysylltiedig—

(a) wedi bod yn destun ymchwiliad, neu yn destun ymchwiliad ar hyn o bryd, ynghylch a yw'r cyflenwr neu berson cysylltiedig wedi torri—

(i) y gwaharddiad Pennod 2 (o fewn yr ystyr a roddir i “the Chapter 2 prohibition” gan adran 18 o Ddeddf Cystadleuaeth 1998), neu

(ii) unrhyw waharddiad sylweddol debyg sy'n gymwys mewn awdurdodaeth y tu allan i'r Deyrnas Unedig, neu

(b) wedi torri gwaharddiadau o'r fath.

(10) Mewn cysylltiad â pharagraff 10 o Atodlen 7 i Ddeddf 2023 (achosion posibl o dorri cyfraith cystadleuaeth), a yw'r cyflenwr neu berson cysylltiedig—

(a) wedi bod yn destun ymchwiliad, neu yn destun ymchwiliad ar hyn o bryd, ynghylch ymddygiad sydd—

(i) yn drosedd o dan adran 188 o Ddeddf Menter 2002(1) (trosedd cartel), neu

(ii) yn drosedd sylweddol debyg o dan gyfraith gwlad neu diriogaeth y tu allan i'r Deyrnas Unedig, neu

(b) wedi cymryd rhan mewn ymddygiad o'r fath, ac eithrio o dan yr amgylchiadau a grybwyllir yn is-baragraff (2) o baragraff 10 o Atodlen 7 i Ddeddf 2023.

(11) Mewn cysylltiad â pharagraff 11 o Atodlen 7 i Ddeddf 2023 (camymddwyn proffesiynol), a yw'r cyflenwr neu berson cysylltiedig—

(a) wedi bod yn destun ymchwiliad, neu yn destun ymchwiliad ar hyn o bryd, ynghylch camymddwyn proffesiynol sy'n codi amheuan ynghylch uniondeb y cyflenwr, neu

(b) wedi cymryd rhan mewn camymddwyn o'r fath.

(9) Whether, in respect of paragraph 8 of Schedule 7 to the 2023 Act (potential competition infringements), the supplier or a connected person—

(a) has been, or is being, investigated over whether the supplier or a connected person has infringed—

(i) the Chapter 2 prohibition (within the meaning given by section 18 of the Competition Act 1998), or

(ii) any substantially similar prohibition applicable in a jurisdiction outside the United Kingdom, or

(b) has infringed such prohibitions.

(10) Whether, in respect of paragraph 10 of Schedule 7 to the 2023 Act (potential competition law infringements), the supplier or a connected person—

(a) has been, or is being, investigated for conduct constituting—

(i) an offence under section 188 of the Enterprise Act 2002(1) (cartel offence), or

(ii) a substantially similar offence under the law of a country or territory outside the United Kingdom, or

(b) has engaged in such conduct,

except in the circumstances mentioned in subparagraph (2) of paragraph 10 of Schedule 7 to the 2023 Act.

(11) Whether, in respect of paragraph 11 of Schedule 7 to the 2023 Act (professional misconduct), the supplier or a connected person—

(a) has been, or is being, investigated for professional misconduct which brings into question the supplier's integrity, or

(b) has engaged in such misconduct.

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(1) 2002 p. 40.

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(1) 2002 c. 40.

(12) Mewn cysylltiad â pharagraff 13 o Atodlen 7 i Ddeddf 2023 (gweithredu mewn ffordd amhriodol wrth gaffael), a yw'r cyflenwr neu berson cysylltiedig—

- (a) wedi bod yn destun ymchwiliad, neu yn destun ymchwiliad ar hyn o bryd, ynghylch a weithredodd y cyflenwr yn amhriodol mewn perthynas ag unrhyw gaffaeliad ac, wrth wneud hynny, ei fod wedi rhoi mantais annheg iddo ei hun mewn perthynas â dyfarnu contract cyhoeddus, neu
- (b) wedi ymddwyn yn amhriodol yn y ffordd honno.

(13) Os yw'r cyflenwr neu berson cysylltiedig wedi bod yn destun digwyddiad a grybwyllir ym mharagraffau (2) i (12), yr wybodaeth a ganlyn mewn cysylltiad â phob person sydd wedi bod yn destun digwyddiad—

- (a) disgrifiad byr o'r digwyddiad,
- (b) enw'r person sy'n destun y digwyddiad,
- (c) enw, cyfeiriad post cyswllt a chyfeiriad e-bost y person,
- (d) yn achos euogfam neu ddigwyddiad arall pan fo cofnod wedi ei wneud o benderfyniad awdurdod cyhoeddus, sef y sail awdurdodol ar gyfer yr euogfam neu'r digwyddiad arall—
  - (i) dolen i'r dudalen we lle y gellir cyrchu'r penderfyniad, neu
  - (ii) copi o'r penderfyniad,
- (e) unrhyw dystiolaeth bod y person sy'n destun y digwyddiad—
  - (i) wedi cymryd y digwyddiad o ddifrif, er enghraifft drwy dalu unrhyw ddirwy neu iawndal,
  - (ii) wedi cymryd camau i atal y digwyddiad rhag digwydd eto, er enghraifft drwy newid staff neu reolwyr, neu roi gweithdrefnau neu hyfforddiant ar waith, a
  - (iii) wedi ymrwymo i gymryd camau ataliol pellach, pan fo hynny'n briodol, ac
- (f) os yw'r amgylchiadau a arweiniodd at y digwyddiad wedi dod i ben, y dyddiad y daethant i ben.

(14) Yn y rheoliad hwn, ystyr "digwyddiad"—

- (a) mewn perthynas â darpariaeth yn Atodlen 6 i Ddeddf 2023, yw'r ystyr a roddir i "event" ym mharagraff 45 o'r Atodlen honno;
- (b) mewn perthynas â darpariaeth yn Atodlen 7 i Ddeddf 2023, yw'r ystyr a roddir i "event" ym mharagraff 16 o'r Atodlen honno.

(12) Whether, in respect of paragraph 13 of Schedule 7 to the 2023 Act (acting improperly in procurement), the supplier or a connected person—

- (a) has been, or is being, investigated over whether the supplier acted improperly in relation to any procurement, and in so doing, put itself at an unfair advantage in relation to the award of a public contract, or
- (b) has acted improperly in that way.

(13) If the supplier or a connected person has been the subject of an event mentioned in paragraphs (2) to (12), the following information in respect of each person who has been the subject of an event—

- (a) a short description of the event,
- (b) the name of the person who is the subject of the event,
- (c) the person's name, contact postal address and email address,
- (d) in the case of a conviction or other event where there is a recorded decision of a public authority which is the authoritative basis for the conviction or other event—
  - (i) a link to the web page where the decision can be accessed, or
  - (ii) a copy of the decision,
- (e) any evidence that the person who is the subject of the event—
  - (i) took the event seriously, for example by paying any fine or compensation,
  - (ii) took steps to prevent the event occurring again, for example by changing staff or management, or putting procedures or training in place, and
  - (iii) committed to taking further preventative steps, where appropriate, and
- (f) if the circumstances which led to the event have ended, the date when they ended.

(14) In this regulation the meaning of "event"—

- (a) in relation to a provision of Schedule 6 to the 2023 Act, is in paragraph 45 of that Schedule;
- (b) in relation to a provision of Schedule 7 to the 2023 Act, is in paragraph 16 of that Schedule.

(15) Yn y rheoliad hwn, mae i “camymddwyn proffesiynol” yr ystyr a roddir i “professional misconduct” gan baragraff 11(3) o Atodlen 7 i Ddeddf 2023.

### Gwybodaeth yr awdurdod contractio

14. Yn y Rhan hon, ystyr “gwybodaeth yr awdurdod contractio” yw—

- (a) pan fo un awdurdod contractio ar gyfer caffaeliad, enw'r awdurdod contractio,
- (b) pan fo dau neu ragor o awdurdodau contractio yn gweithredu ar y cyd ar gyfer caffaeliad—
  - (i) enw'r awdurdod contractio y mae'r awdurdodau contractio sy'n gweithredu ar y cyd yn ei bennu'n awdurdod arweiniol ar gyfer y caffaeliad, a
  - (ii) enw pob un o'r awdurdodau contractio eraill,
- (c) cyfeiriad post cyswllt a chyfeiriad e-bost ar gyfer pob awdurdod contractio,
- (d) y cod adnabod unigryw ar gyfer pob awdurdod contractio, neu ar gyfer pob awdurdod contractio sy'n gweithredu ar y cyd,
- (e) ar gyfer unrhyw berson sy'n cyflawni'r caffaeliad, neu ran o'r caffaeliad, ar ran awdurdod contractio, neu ar ran un neu ragor o'r awdurdodau contractio sy'n gweithredu ar y cyd—
  - (i) enw'r person,
  - (ii) cyfeiriad post cyswllt a chyfeiriad e-bost y person,
  - (iii) cod adnabod unigryw y person, a
  - (iv) crynodeb o rôl y person, ac
- (f) mewn cysylltiad â hysbysiad a gyhoeddir gan yr awdurdod contractio, enw, cyfeiriad post cyswllt a chyfeiriad e-bost y person y dylid cysylltu ag ef os bydd ymholiad ynghylch yr hysbysiad.

### Pwnc y contract

15.—(1) Yn y Rhan hon, ystyr “pwnc y contract” yw'r wybodaeth a ganlyn, i'r graddau y mae'n hysbys i'r awdurdod contractio pan gyhoeddir yr wybodaeth—

- (a) a yw'r contract yn bennaf ar gyfer cyflenwi nwyddau, gwasanaeth neu weithiau,
- (b) disgrifiad o'r mathau o nwyddau, gwasanaethau neu weithiau a fydd yn cael eu cyflenwi,

(15) In this regulation, “professional misconduct” has the meaning given by paragraph 11(3) of Schedule 7 to the 2023 Act.

### Contracting authority information

14. In this Part, “contracting authority information” means—

- (a) where there is one contracting authority for a procurement, the name of the contracting authority,
- (b) where there are two or more contracting authorities acting jointly for a procurement—
  - (i) the name of the contracting authority that the contracting authorities acting jointly determine is the lead authority for the procurement, and
  - (ii) the name of each of the other contracting authorities,
- (c) a contact postal address and email address for each contracting authority,
- (d) the unique identifier for each contracting authority, or for each contracting authority acting jointly,
- (e) for any person carrying out the procurement, or part of the procurement, on behalf of a contracting authority, or one or more of the contracting authorities acting jointly—
  - (i) the person's name,
  - (ii) the person's contact postal address and email address,
  - (iii) the person's unique identifier, and
  - (iv) a summary of the person's role, and
- (f) in respect of a notice published by the contracting authority, the name, contact postal address and email address of the person who should be contacted in the event of an enquiry about the notice.

### Contract subject-matter

15.—(1) In this Part, “contract subject-matter” means the following information, so far as it is known to the contracting authority when the information is published—

- (a) whether the contract is mainly for the supply of goods, services or works,
- (b) a description of the kinds of goods, services or works which will be supplied,

- (c) crynodeb o'r modd y bydd y nwyddau, y gwasanaethau neu'r gweithiau hynny yn cael eu cyflenwi,
- (d) amcangyfrif o'r dyddiad y bydd y nwyddau, y gwasanaethau neu'r gweithiau yn cael eu cyflenwi neu amcangyfrif o'r cyfnod y byddant yn cael eu cyflenwi drosto,
- (e) amcangyfrif o swm nwyddau, gwasanaethau neu weithiau a fydd yn cael eu cyflenwi,
- (f) y codau GGG perthnasol, ac
- (g) y dosbarthiad daearyddol, pan fo'n bosibl disgrifio hyn.

(2) Yn y Rhan hon, ystyr “dosbarthiad daearyddol” yw—

- (a) yr ardal y mae'r nwyddau, y gwasanaethau neu'r gweithiau i gael eu cyflenwi ynddi yn y Deyrnas Unedig, drwy gyfeirio at yr ardaloedd ITL 1, ITL 2 ac ITL 3 perthnasol a restrir ar y wefan â'r pennawd “International Geographies” ar wefan y Swyddfa Ystadegau Gwladol<sup>(1)</sup> fel y'i diwygir o bryd i'w gilydd, neu
- (b) pan fo'r nwyddau, y gwasanaethau neu'r gweithiau i gael eu cyflenwi y tu allan i'r Deyrnas Unedig, enw'r wlad a, pan fo'n briodol, y rhanbarth y maent i gael eu cyflenwi ynddo.

## Hysbysiadau piblinell

**16.**—(1) Mae'r rheoliad hwn yn nodi pa wybodaeth y mae rhaid ei chynnwys mewn hysbysiad piblinell a gyhoeddir o dan adran 93(2) o Ddeddf 2023.

(2) Yr wybodaeth yw—

- (a) gwybodaeth yr awdurdod contractio,
- (b) enw'r caffaeliad,
- (c) y cod adnabod unigryw ar gyfer y caffaeliad,
- (d) pwnc y contract, ac
- (e) amcangyfrif o'r dyddiad y bydd y canlynol yn cael eu cyhoeddi—
  - (i) yr hysbysiad tendro ar gyfer y contract cyhoeddus, neu
  - (ii) yr hysbysiad tryloywder ar gyfer y contract cyhoeddus.

- (c) a summary of how those goods, services or works will be supplied,
- (d) the estimated date when, or period over which, the goods, services or works will be supplied,
- (e) the estimated amount of goods, services or works which will be supplied,
- (f) the relevant CPV codes, and
- (g) the geographical classification, where it is possible to describe this.

(2) In this Part, “geographical classification” means—

- (a) the area where the goods, services or works are to be supplied in the United Kingdom, by reference to the relevant ITL 1, ITL 2, and ITL 3 areas listed on the webpage entitled “International Geographies” on the website for the Office of National Statistics<sup>(1)</sup> as amended from time to time, or
- (b) where the goods, services or works are to be supplied outside the United Kingdom, the name of the country and, where appropriate, the region where they are to be supplied.

## Pipeline notices

**16.**—(1) This regulation sets out what information must be included in a pipeline notice published under section 93(2) of the 2023 Act.

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) the contract subject-matter, and
- (e) the estimated date when the following will be published—
  - (i) the tender notice for the public contract, or
  - (ii) the transparency notice for the public contract.

<sup>(1)</sup> Gellir dod o hyd i'r wefan yn: [https://cy.ons.gov.uk/methodology/geography/ukgeographies/eurostat/?\\_gl=1\\*\\_wm87j9\\*\\_ga\\*OTIzMTMzNzIzLjE2NTUzNjkyMjM.\\*\\_g\\_a\\_W804VY6YKS\\*MTcxNjk5MjE5NC4xNi4wLjE3MTY5OTIxMjQuNjAuMC4w](https://cy.ons.gov.uk/methodology/geography/ukgeographies/eurostat/?_gl=1*_wm87j9*_ga*OTIzMTMzNzIzLjE2NTUzNjkyMjM.*_g_a_W804VY6YKS*MTcxNjk5MjE5NC4xNi4wLjE3MTY5OTIxMjQuNjAuMC4w)

<sup>(1)</sup> The website can be found at: [https://www.ons.gov.uk/methodology/geography/ukgeographies/eurostat/#:~:text=East,The%20International%20Territorial%20Levels%20\(ITLs\)%20is%20a%20hierarchical%20classification%20of,Bedfordshire%20and%20Hertfordshire%2C%20and%20Essex](https://www.ons.gov.uk/methodology/geography/ukgeographies/eurostat/#:~:text=East,The%20International%20Territorial%20Levels%20(ITLs)%20is%20a%20hierarchical%20classification%20of,Bedfordshire%20and%20Hertfordshire%2C%20and%20Essex)

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth berthnasol arall yn yr hysbysiad.

### **Hysbysiadau caffael arfaethedig**

**17.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad caffael arfaethedig a gyhoeddir o dan adran 15(1) o Ddeddf 2023.

(2) Yr wybodaeth yw—

- (a) gwybodaeth yr awdurdod contractio,
- (b) enw'r caffaeliad,
- (c) y cod adnabod unigryw ar gyfer y caffaeliad,
- (d) pwnc y contract,
- (e) amcangyfrif o'r dyddiad y bydd yr hysbysiad tendro ar gyfer y contract cyhoeddus yn cael ei gyhoeddi,
- (f) amcangyfrif o'r dyddiad erbyn pryd y gofynnir i gyflenwyr gyflwyno ceisiadau i gymryd rhan mewn unrhyw broses dendro neu dendrau,
- (g) pa un o'r gweithdrefnau canlynol y disgwylir ei defnyddio—
  - (i) gweithdrefn agored, neu
  - (ii) gweithdrefn hyblyg gystadleuol,
- (h) a fydd y contract cyhoeddus yn cael ei ddyfarnu drwy gyfeirio at aelodaeth cyflenwyr o farchnad ddynamig,
- (i) amcangyfrif o'r dyddiad y bydd y contract cyhoeddus yn cael ei ddyfarnu,
- (j) sut y gellir cael gafael ar ddogfennau sy'n ymwneud â'r caffaeliad,
- (k) datganiad sy'n esbonio sut a phryd y caniateir mynegi diddordeb yn y contract, ac
- (l) cymaint o'r wybodaeth yn ymwneud â hysbysiadau tendro, y cyfeirir ati yn rheoliad 19(2), 20(2), 21(2), 22(2) neu 23(2), ag sydd ar gael i'r awdurdod contractio ar adeg cyhoeddi'r hysbysiad caffael arfaethedig.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad mewn hysbysiad caffael arfaethedig.

### **Hysbysiadau ymgysylltu rhagarweiniol â'r farchnad**

**18.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad ymgysylltu rhagarweiniol â'r farchnad a gyhoeddir o dan adran 17(1)(a) o Ddeddf 2023.

(3) Nothing in this regulation prevents a contracting authority from publishing other relevant information in the notice.

### **Planned procurement notices**

**17.**—(1) This regulation sets out other information which must be included in a planned procurement notice published under section 15(1) of the 2023 Act.

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) the contract subject-matter,
- (e) the estimated date when the tender notice for the public contract will be published,
- (f) the estimated date by when suppliers will be asked to submit requests to participate in any tender procedure or tenders,
- (g) which of the following procedures is expected to be used—
  - (i) an open procedure, or
  - (ii) a competitive flexible procedure,
- (h) whether the public contract will be awarded by reference to suppliers' membership of a dynamic market,
- (i) the estimated date when the public contract will be awarded,
- (j) how documents relating to the procurement may be obtained,
- (k) a statement explaining how and when an interest in the contract may be expressed, and
- (l) as much of the information relating to tender notices which is referred to in regulation 19(2), 20(2), 21(2), 22(2) or 23(2) as is available to the contracting authority at the time of publishing the planned procurement notice.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in a planned procurement notice.

### **Preliminary market engagement notices**

**18.**—(1) This regulation sets out other information which must be included in a preliminary market engagement notice published under section 17(1)(a) of the 2023 Act.

- (2) Yr wybodaeth yw—
- (a) gwybodaeth yr awdurdod contractio,
  - (b) enw'r caffaeliad,
  - (c) y cod adnabod unigryw ar gyfer y caffaeliad,
  - (d) pwnc y contract,
  - (e) naill ai—
    - (i) y dyddiad y mae'r awdurdod contractio yn bwriadu dod â'r ymgysylltu rhagarweiniol â'r farchnad i ben, neu
    - (ii) y dyddiad y daeth yr ymgysylltu rhagarweiniol â'r farchnad i ben, ac
  - (f) disgrifiad o'r broses y mae'r awdurdod contractio yn bwriadu ymgysylltu, neu wedi ymgysylltu, â chyflenwyr drwyddi yn ystod yr ymgysylltu rhagarweiniol â'r farchnad, er enghraifft—
    - (i) lleoliad, dyddiad ac amser digwyddiadau, a
    - (ii) unrhyw gyfnodau ar gyfer cyflwyno datganiadau o ddiddordeb a gwybodaeth gan gyflenwyr.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

### Hysbysiadau tendro: gweithdrefn agored

**19.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad tendro ar gyfer dyfarnu contract cyhoeddus drwy weithdrefn agored, a gyhoeddir o dan adran 21(1)(a) o Ddeddf 2023.

- (2) Yr wybodaeth yw—
- (a) gwybodaeth yr awdurdod contractio,
  - (b) enw'r caffaeliad,
  - (c) y cod adnabod unigryw ar gyfer y caffaeliad,
  - (d) datganiad bod yr hysbysiad tendro ar gyfer dyfarnu contract cyhoeddus drwy weithdrefn agored yn unol ag adran 20(1) a (2)(a) o Ddeddf 2023,
  - (e) a yw'r hysbysiad tendro yn ymwneud â chontract cyfundrefn arbennig ac, os felly, a yw'r contract hwnnw—
    - (i) yn gontract consesiwn,
    - (ii) yn gontract cyffyrddiad ysgafn, neu
    - (iii) yn gontract cyfleustodau,
  - (f) pwnc y contract,
  - (g) amcangyfrif o werth y contract cyhoeddus,

- (2) The information is—
- (a) the contracting authority information,
  - (b) the title of the procurement,
  - (c) the unique identifier for the procurement,
  - (d) the contract subject-matter,
  - (e) either—
    - (i) the date when the contracting authority intends to close the preliminary market engagement, or
    - (ii) the date when the preliminary market engagement closed, and
  - (f) a description of the process by which the contracting authority proposes to engage, or engaged, with suppliers during the preliminary market engagement, for example—
    - (i) the location, date and time of events, and
    - (ii) any periods for the submission of expressions of interest and information by suppliers.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

### Tender notices: open procedure

**19.**—(1) This regulation sets out other information which must be included in a tender notice for the award of a public contract through an open procedure published under section 21(1)(a) of the 2023 Act.

- (2) The information is—
- (a) the contracting authority information,
  - (b) the title of the procurement,
  - (c) the unique identifier for the procurement,
  - (d) a statement that the tender notice is for the award of a public contract through an open procedure in accordance with section 20(1) and (2)(a) of the 2023 Act,
  - (e) whether the tender notice relates to a special regime contract and, if so, whether that contract is—
    - (i) a concession contract,
    - (ii) a light touch contract, or
    - (iii) a utilities contract,
  - (f) the contract subject-matter,
  - (g) the estimated value of the public contract,

- (h) pan fo'r contract cyhoeddus ar gyfer nwyddau, gwasanaethau neu weithiau y mae'r awdurdod contractio yn disgwyl y bydd eu hangen ar ôl i'r contract ddod i ben—
- (i) a yw'r awdurdod contractio yn bwriadu caffael nwyddau, gwasanaethau neu weithiau tebyg wedi hynny drwy ddibynnu ar y cyfiawnhad dros ddyfarnu'n uniongyrchol ym mharagraff 8 o Atodlen 5 i Ddeddf 2023, neu
- (ii) amcangyfrif, os yw'n bosibl, o'r dyddiad y bydd unrhyw hysbysiad tendro dilynol yn cael ei gyhoeddi,
- (i) a fydd arwerthiant electronig yn cael ei ddefnyddio ac, os felly, fanylion technegol ynghylch y modd y gall cyflenwyr gymryd rhan yn yr arwerthiant electronig,
- (j) sut y caniateir cyflwyno tendrau a'r dyddiad erbyn pryd y mae rhaid eu cyflwyno,
- (k) y meini prawf dyfarnu, neu grynodedb o'r meini prawf dyfarnu, ar gyfer y contract cyhoeddus,
- (l) yr ieithoedd y caniateir cyflwyno tendrau neu ymholiadau mewn cysylltiad â'r weithdrefn dendro ynddynt,
- (m) a yw'r contract cyhoeddus yn gcontract y mae gan y Deyrnas Unedig rwymedigaethau ar ei gyfer o dan y Cytundeb ar Gaffael gan Lywodraethau,
- (n) o'r dyddiad y daw'r Cytundeb Cynhwysfawr a Blaengar ar gyfer Partneriaeth y Môr Tawel i rym ar gyfer y Deyrnas Unedig, a yw'r contract cyhoeddus yn gcontract y mae gan y Deyrnas Unedig rwymedigaethau ar ei gyfer o dan y Cytundeb hwnnw,
- (o) a yw'r contract cyhoeddus wedi ei ddyfarnu drwy gyfeirio at lotiau ac, os felly, ar gyfer pob lot—
- (i) enw'r lot,
- (ii) y rhif neilltuol a roddwyd i'r lot gan yr awdurdod contractio,
- (iii) yr wybodaeth a ganlyn, i'r graddau y mae'n hysbys i'r awdurdod contractio pan gyhoeddir yr hysbysiad tendro—
- (aa) disgrifiad o'r mathau o nwyddau, gwasanaethau neu weithiau a fydd yn cael eu cyflenwi,
- (bb) crynodedb o'r modd y bydd y nwyddau, y gwasanaethau neu'r gweithiau hynny yn cael eu cyflenwi,
- (h) where the public contract is for goods, services or works which the contracting authority expects will be needed after the expiry of the contract—
- (i) whether the contracting authority intends to carry out a subsequent procurement of similar goods, services or works in reliance on the direct award justification in paragraph 8 of Schedule 5 to the 2023 Act, or
- (ii) an estimate, if possible, of the date when any subsequent tender notice will be published,
- (i) whether an electronic auction will be used and, if so, the technical details of how suppliers may participate in the electronic auction,
- (j) how tenders may be submitted and the date by when they must be submitted,
- (k) the award criteria, or a summary of the award criteria, for the public contract,
- (l) the languages in which tenders or enquiries in connection with the tendering procedure may be submitted,
- (m) whether the public contract is a contract for which the United Kingdom has obligations under the GPA,
- (n) from the date when the Comprehensive and Progressive Agreement for Trans-Pacific Partnership enters into force for the United Kingdom, whether the public contract is a contract for which the United Kingdom has obligations under that Agreement,
- (o) whether the public contract is awarded by reference to lots and, if so, for each lot—
- (i) the title of the lot,
- (ii) the distinct number given to the lot by the contracting authority,
- (iii) the following information, so far as it is known to the contracting authority when the tender notice is published—
- (aa) a description of the kinds of goods, services or works which will be supplied,
- (bb) a summary of how those goods, services or works will be supplied,

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>(cc) amcangyfrif o'r dyddiad y bydd y nwyddau, y gwasanaethau neu'r gweithiau yn cael eu cyflenwi neu amcangyfrif o'r cyfnod y byddant yn cael eu cyflenwi drosto,</li> <li>(dd) amcangyfrif o swm nwyddau, gwasanaethau neu weithiau a fydd yn cael eu cyflenwi,</li> <li>(ee) amcangyfrif o werth y lot,</li> <li>(ff) y codau GGG perthnasol,</li> <li>(gg) y meini prawf dyfarnu perthnasol mewn perthynas â'r lot,</li> <li>(hh) unrhyw opsiwn mewn perthynas â'r lot, ac</li> <li>(ii) y dosbarthiad daearyddol, pan fo'n bosibl ei ddisgrifio,</li> </ul> | <ul style="list-style-type: none"> <li>(cc) the estimated date when, or period over which, the goods, services or works will be supplied,</li> <li>(dd) the estimated amount of goods, services or works which will be supplied,</li> <li>(ee) the estimated value of the lot,</li> <li>(ff) the relevant CPV codes,</li> <li>(gg) the relevant award criteria in relation to the lot,</li> <li>(hh) any option in relation to the lot, and</li> <li>(ii) the geographical classification, where it is possible to describe this,</li> </ul>                        |
| <ul style="list-style-type: none"> <li>(p) pan fo'r contract cyhoeddus wedi ei ddyfarnu drwy gyfeirio at lotiau— <ul style="list-style-type: none"> <li>(i) a ganiateir i gyflenwr gyflwyno tendr ar gyfer uchafswm o lotiau yn unig ac, os felly, yr uchafswm,</li> <li>(ii) a ganiateir dyfarnu uchafswm o lotiau yn unig i gyflenwr ac, os felly, yr uchafswm, a</li> <li>(iii) a fydd yr awdurdod contractio yn dyfarnu lotiau lluosog i'r un cyflenwr yn unol â meini prawf ac, os felly, grynodedeb o'r meini prawf,</li> </ul> </li> </ul>   | <ul style="list-style-type: none"> <li>(p) where the public contract is awarded by reference to lots— <ul style="list-style-type: none"> <li>(i) whether a supplier may only submit a tender for a maximum number of lots and, if so the maximum number,</li> <li>(ii) whether a supplier may only be awarded a maximum number of lots and, if so, the maximum number, and</li> <li>(iii) whether the contracting authority will award multiple lots to the same supplier in accordance with criteria and, if so, a summary of the criteria,</li> </ul> </li> </ul> |
| <ul style="list-style-type: none"> <li>(q) pan fo'r awdurdod contractio yn ystyried o dan adran 18(2) o Ddeddf 2023 y gellid dyfarnu'r contract cyhoeddus drwy gyfeirio at lotiau ond nad yw hynny'n digwydd, y rhesymau dros hyn, ac eithrio yn achos contract cyfleustodau neu gontract cyffyrddiad ysgafn,</li> </ul>  | <ul style="list-style-type: none"> <li>(q) where the contracting authority considers under section 18(2) of the 2023 Act that the public contract could be awarded by reference to lots but it is not, the reasons for this, except in the case of a utilities contract or a light touch contract,</li> </ul>   |
| <ul style="list-style-type: none"> <li>(r) disgrifiad o unrhyw opsiwn a fydd yn cael ei gynnwys yn y contract cyhoeddus— <ul style="list-style-type: none"> <li>(i) i gyflenwi nwyddau, gwasanaethau neu weithiau ychwanegol, neu</li> <li>(ii) i ymestyn neu adnewyddu cyfnod y contract,</li> </ul> </li> </ul>   | <ul style="list-style-type: none"> <li>(r) a description of any option which will be included in the public contract— <ul style="list-style-type: none"> <li>(i) to supply additional goods, services or works, or</li> <li>(ii) to extend or renew the term of the contract,</li> </ul> </li> </ul>  |
| <ul style="list-style-type: none"> <li>(s) a yw'r awdurdod contractio yn bwriadu gosod y cyfnod tendro lleiaf byrraf drwy gyfeirio at un o'r cofnodion a ganlyn yn y tabl yn adran 54(4) o Ddeddf 2023 ac, os felly, pa gofnod— <ul style="list-style-type: none"> <li>(i) yr ail gofnod (contractau cyfleustodau neu gontractau a ddyfernir gan awdurdod contractio nad yw'n awdurdod llywodraeth ganolog, sy'n ddarostyngedig i gyfnod tendro a negodwyd; dim cyfnod lleiaf),</li> </ul> </li> </ul>  | <ul style="list-style-type: none"> <li>(s) whether the contracting authority proposes to set the shortest minimum tendering period by reference to one of the following entries in the table in section 54(4) of the 2023 Act and, if so, which entry— <ul style="list-style-type: none"> <li>(i) second entry (utilities contracts or contracts awarded by a contracting authority which is not a central government authority subject to a negotiated tender period; no minimum period),</li> </ul> </li> </ul>   |



- (ii) y trydydd cofnod (contractau cyfleustodau neu contractau penodol a ddyfernir gan awdurdod contractio nad yw'n awdurdod llywodraeth ganolog, pan ganiateir cyflwyno tendrau gan gyflenwyr a ddetholwyd ymlaen llaw yn unig; 10 niwrnod),
- (iii) y pedwerydd cofnod (mae hysbysiad caffael arfaethedig cymhwysol wedi ei gyhoeddi; 10 niwrnod), neu
- (iv) y pumed cofnod (sefyllfa frys; 10 niwrnod),
- (t) a yw'r awdurdod contractio yn ystyried y gall y contract cyhoeddus neu unrhyw lot sy'n ffurfio rhan o'r contract fod yn arbennig o addas i'w ddyfarnu—
  - (i) i fenter fach a chanolig ei maint, neu
  - (ii) i gorff anllywodraethol â gwerthoedd yn ei lywio sy'n ailfuddsoddi ei wargedion yn bennaf er mwyn hybu amcanion cymdeithasol, amgylcheddol neu ddiwylliannol,
- (u) a yw dogfennau tendro cysylltiedig yn cael eu darparu yn unol â'r hysbysiad tendro ar yr un pryd ag y mae'r hysbysiad yn cael ei gyhoeddi ac, os felly—
  - (i) enw pob dogfen dendro gysylltiedig,
  - (ii) a yw pob dogfen dendro gysylltiedig ynghlwm wrth yr hysbysiad tendro, a
  - (iii) os nad yw dogfen dendro gysylltiedig ynghlwm wrth yr hysbysiad tendro, dolen i'r dudalen we lle y mae wedi ei darparu,
- (v) a yw dogfen dendro gysylltiedig yn cael ei darparu, neu y gall gael ei darparu, yn unol â'r hysbysiad tendro ar ôl y dyddiad y bydd yr hysbysiad hwnnw yn cael ei gyhoeddi ac, os felly, dolen i'r dudalen we lle y bydd yn cael ei darparu, neu esboniad ynghylch sut y bydd y ddogfen yn cael ei darparu,
- (w) disgrifiad o unrhyw fanylebau technegol y disgwylir eu bodloni neu groesgyfeiriad i'r lle y gellir eu cyrchu,
- (x) disgrifiad o unrhyw amodau cymryd rhan o dan adran 22 o Ddeddf 2023,
- (y) unrhyw delerau talu (yn ogystal â'r rhai a nodir yn adran 68 o Ddeddf 2023),
- (ii) third entry (utilities contracts or certain contracts awarded by a contracting authority which is not a central government authority, where tenders may be submitted only by preselected suppliers; 10 days),
- (iii) fourth entry (a qualifying planned procurement notice has been issued; 10 days), or
- (iv) fifth entry (state of urgency; 10 days),
- (t) whether the contracting authority considers that the public contract or any lot forming part of the contract may be particularly suitable to be awarded—
  - (i) to a small and medium-sized enterprise, or
  - (ii) to a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- (u) whether associated tender documents are being provided in accordance with the tender notice at the same time that the notice is published and, if so—
  - (i) the title of each associated tender document,
  - (ii) whether each associated tender document is attached to the tender notice, and
  - (iii) if an associated tender document is not attached to the tender notice, a link to the web page where it is provided,
- (v) whether an associated tender document is being, or may be, provided in accordance with the tender notice after the date when that notice is published and, if so, a link to the web page where it will be provided, or an explanation of how the document will be provided,
- (w) a description of any technical specifications which are expected to be met or a cross reference to where they can be accessed,
- (x) a description of any conditions of participation under section 22 of the 2023 Act,
- (y) any payment terms (in addition to those set out in section 68 of the 2023 Act),

- (z) disgrifiad yn nodi unrhyw risg—
  - (i) y mae'r awdurdod contractio yn ystyried y gallai beri i'r contract cyhoeddus beidio â chael ei gyflawni'n foddhaol ond, oherwydd ei natur, y mae'n bosibl na fydd yn cael sylw yn y contract cyhoeddus fel y'i dyfernir, a
  - (ii) a all ei gwneud yn ofynnol addasu'r contract cyhoeddus yn ddiweddarach o dan baragraff 5 o Atodlen 8 i Ddeddf 2023 (addasu contract yn dilyn gwireddiad risg hysbys), ac

(z1) amcangyfrif o'r dyddiad y bydd y contract cyhoeddus yn cael ei ddyfarnu.

(3) Ym mharagraff (2), ystyr "arwerthiant electronig" yw proses ailadroddol sy'n cynnwys defnyddio dulliau electronig er mwyn i gyflenwyr gyflwyno naill ai brisiau newydd, neu werthoedd newydd ar gyfer elfennau o'r tendr y mae modd eu meintioli nad ydynt yn ymwneud â phrisiau ac sy'n gysylltiedig â'r meini prawf gwerthuso, neu'r ddau, gan arwain at bennu safleoedd tendrau neu aildrefnu safleoedd tendrau mewn rhestr drefnol.

(4) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

(5) Nid yw'r rheoliad hwn yn gymwys i hysbysiad tendro ar gyfer dyfarnu fframwaith drwy weithdrefn agored (gweler yn hytrach reoliad 21).

### **Hysbysiadau tendro: gweithdrefn hyblyg gystadleuol**

**20.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad tendro ar gyfer dyfarnu contract cyhoeddus drwy weithdrefn hyblyg gystadleuol a gyhoeddir yn unol ag adran 21(1)(b) o Ddeddf 2023.

- (2) Yr wybodaeth yw—
  - (a) yr un wybodaeth â'r wybodaeth y cyfeirir ati yn rheoliad 19(2) ac eithrio is-baragraffau (d) a (j),
  - (b) datganiad bod yr hysbysiad tendro ar gyfer dyfarnu contract cyhoeddus drwy weithdrefn hyblyg gystadleuol yn unol ag adran 20(1) a (2)(b) o Ddeddf 2023,
  - (c) disgrifiad o'r broses sydd i'w dilyn yn ystod y weithdrefn, gan gynnwys—
    - (i) a all y weithdrefn gynnwys negodi ar unrhyw adeg, a

- (z) a description identifying any risk that—
  - (i) the contracting authority considers could jeopardise the satisfactory performance of the public contract, but because of its nature, may not be addressed in the public contract as awarded, and
  - (ii) may require a subsequent modification to the public contract under paragraph 5 of Schedule 8 to the 2023 Act (modification of contract following materialisation of a known risk), and

(z1) the estimated date when the public contract will be awarded.

(3) In paragraph (2), "electronic auction" means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders.

(4) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(5) This regulation does not apply to a tender notice for the award of a framework through an open procedure (see instead regulation 21).

### **Tender notices: competitive flexible procedure**

**20.**—(1) This regulation sets out other information which must be included in a tender notice for the award of a public contract through a competitive flexible procedure published in accordance with section 21(1)(b) of the 2023 Act.

- (2) The information is—
  - (a) the same information referred to in regulation 19(2) except sub-paragraphs (d) and (j),
  - (b) a statement that the tender notice is for the award of a public contract through a competitive flexible procedure in accordance with section 20(1) and (2)(b) of the 2023 Act,
  - (c) a description of the process to be followed during the procedure, including—
    - (i) whether the procedure may include negotiation at any stage, and

- (ii) os yw'r awdurdod contractio yn bwriadu dibynnu ar adran 24 o Ddeddf 2023 (mireinio meini prawf), crynodeb o'r modd y bydd yn dibynnu ar yr adran honno,
  - (d) pan fo nifer y cyflenwyr, neu y gall y bo nifer y cyflenwyr, yn ddim mwy nag uchafswm o gyflenwyr, yn gyffredinol neu mewn cysylltiad â rowndiau tendro penodol neu brosesau dethol eraill, yr uchafswm o gyflenwyr a'r meini prawf a ddefnyddir i dethol y nifer cyfyngedig o gyflenwyr,
  - (e) pan fo nifer y cyflenwyr, neu y gall y bo nifer y cyflenwyr, yn ddim llai nag isafswm bwriadedig o gyflenwyr, yn gyffredinol neu mewn cysylltiad â rowndiau tendro penodol neu brosesau dethol eraill, yr isafswm bwriadedig o gyflenwyr,
  - (f) pan fo'r hysbysiad tendro yn cael ei ddefnyddio at ddiben gwahodd cyflenwyr i gyflwyno cais i gymryd rhan, sut y caniateir cyflwyno ceisiadau i gymryd rhan a'r dyddiad erbyn pryd y mae rhaid eu cyflwyno,
  - (g) pan fo'r hysbysiad tendro yn cael ei ddefnyddio at ddiben gwahodd cyflenwyr i gyflwyno eu tendr cyntaf neu eu hunig dendr, sut y caniateir cyflwyno tendrau a'r dyddiad erbyn pryd y mae rhaid eu cyflwyno, ac
  - (h) a yw'r hysbysiad tendro yn cael ei ddefnyddio—
    - (i) i neilltuo contract i ddarparwyr cyflogaeth â chymorth yn unol ag adran 32 o Ddeddf 2023, neu
    - (ii) i neilltuo contract i gwmnïau cydfuddiannol gwasanaethau cyhoeddus yn unol ag adran 33 o Ddeddf 2023.
- (3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.
- (4) Nid yw'r rheoliad hwn yn gymwys—
- (a) i hysbysiad tendro ar gyfer dyfarnu fframwaith drwy weithdrefn hyblyg gystadleuol (gweler yn hytrach reoliad 21), na
  - (b) i hysbysiad tendro ar gyfer dyfarnu contract cyhoeddus drwy gyfeirio at aelodaeth cyflenwyr o farchnad ddynamig (gweler yn hytrach reoliad 22).
- (ii) if the contracting authority proposes to rely on section 24 of the 2023 Act (refining award criteria), a summary of how it will rely on that section,
  - (d) where the number of suppliers is, or may be, no more than a maximum number of suppliers, generally or in respect of particular tendering rounds or other selection processes, the maximum number of suppliers and the criteria used to select the limited number of suppliers,
  - (e) where the number of suppliers is, or may be, no less than an intended minimum number of suppliers, generally or in respect of particular tendering rounds or other selection processes, the intended minimum number of suppliers,
  - (f) where the tender notice is being used for the purpose of inviting suppliers to submit a request to participate, how requests to participate may be submitted and the date by when they must be submitted,
  - (g) where the tender notice is being used for the purpose of inviting suppliers to submit their first, or only, tender, how tenders may be submitted and the date by when they must be submitted, and
  - (h) whether the tender notice is being used—
    - (i) to reserve a contract to supported employment providers in accordance with section 32 of the 2023 Act, or
    - (ii) to reserve a contract to public service mutuals in accordance with section 33 of the 2023 Act.
- (3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.
- (4) This regulation does not apply to—
- (a) a tender notice for the award of a framework through a competitive flexible procedure (see instead regulation 21), or
  - (b) a tender notice for the award of a public contract by reference to suppliers' membership of a dynamic market (see instead regulation 22).

## Hysbysiadau tendro: fframweithiau

**21.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad tendro ar gyfer dyfarnu fframwaith, a gyhoeddir yn unol ag adran 21(1) o Ddeddf 2023.

(2) Yr wybodaeth yw—

- (a) pan fo'r weithdrefn agored yn cael ei defnyddio, yr un wybodaeth â'r wybodaeth y cyfeirir ati yn rheoliad 19(2),
- (b) pan fo'r weithdrefn hyblyg gystadleuol yn cael ei defnyddio, yr un wybodaeth â'r wybodaeth y cyfeirir ati yn rheoliad 20(2),
- (c) manylion y broses ddethol sydd i'w chymhwyso wrth ddyfarnu contractau,
- (d) cyfnod y fframwaith,
- (e) yr awdurdodau contractio a chanddynt hawlogoeth i ddyfarnu contractau yn unol â'r fframwaith (pa un ai drwy restru enwau'r awdurdodau hynny neu drwy ddisgrifio categorïau o awdurdodau),
- (f) a yw'r fframwaith wedi ei ddyfarnu o dan fframwaith agored,
- (g) pan fo'r fframwaith yn cael ei ddyfarnu o dan fframwaith agored, y cod adnabod unigryw ar gyfer caffaeliad y fframwaith olaf a ddyfarnwyd o dan y fframwaith agored (oni bai nad oes fframwaith wedi ei ddyfarnu o dan y fframwaith agored yn flaenorol),
- (h) pan fo'r fframwaith yn cael ei ddyfarnu o dan fframwaith agored, amcangyfrif o ddyddiad dod i ben y fframwaith agored,
- (i) pa un ai'r bwriad yw dyfarnu'r fframwaith—
  - (i) i gyflenwr unigol,
  - (ii) i uchafswm o gyflenwyr, neu
  - (iii) i nifer diderfyn o gyflenwyr,
- (j) pan mai'r bwriad yw dyfarnu'r fframwaith i uchafswm o gyflenwyr, yr uchafswm o gyflenwyr,
- (k) a yw'r fframwaith yn darparu ar gyfer codi ffioedd yn unol ag adran 45(7) o Ddeddf 2023 ac, os felly, y ganran sefydlog o werth amcangyfrifedig unrhyw gontract a ddyfernir i'r cyflenwr yn unol â'r fframwaith ac unrhyw wybodaeth angenrheidiol arall er mwyn deall sut y caiff ffioedd eu codi, ac

## Tender notices: frameworks

**21.**—(1) This regulation sets out other information which must be included in a tender notice for the award of a framework published under section 21(1) of the 2023 Act.

(2) The information is—

- (a) where the open procedure is being used, the same information referred to in regulation 19(2),
- (b) where the competitive flexible procedure is being used, the same information referred to in regulation 20(2),
- (c) details of the selection process to be applied on the award of contracts,
- (d) the term of the framework,
- (e) the contracting authorities entitled to award contracts in accordance with the framework (whether by listing the names of those authorities or by describing categories of authorities),
- (f) whether the framework is being awarded under an open framework,
- (g) where the framework is being awarded under an open framework, the unique identifier for the procurement of the last framework awarded under the open framework (unless no framework has previously been awarded under the open framework),
- (h) where the framework is being awarded under an open framework, the estimated end date of the open framework,
- (i) whether the intention is to award the framework to—
  - (i) a single supplier,
  - (ii) a maximum number of suppliers, or
  - (iii) an unlimited number of suppliers,
- (j) where the intention is to award the framework to a maximum number of suppliers, the maximum number of suppliers,
- (k) whether the framework provides for the charging of fees in accordance with section 45(7) of the 2023 Act, and, if so, the fixed percentage of the estimated value of any contract awarded to the supplier in accordance with the framework and any other information needed in order to understand how fees will be charged, and

- (l) pan fo'r fframwaith yn cael ei ddyfarnu drwy gyfeirio at aelodaeth cyflenwyr o farchnad ddynamig—
  - (i) y cod adnabod unigryw ar gyfer y farchnad ddynamig y mae'r contract cyhoeddus yn cael ei ddyfarnu yn ei herbyn,
  - (ii) datganiad bod yr hysbysiad tendro ar gyfer dyfarnu contract cyhoeddus sydd i'w ddyfarnu drwy gyfeirio at aelodaeth cyflenwyr o farchnad ddynamig, a
  - (iii) pan fo'r contract cyhoeddus yn cael ei ddyfarnu o dan ran briodol o farchnad ddynamig—
    - (aa) enw'r rhan, a
    - (bb) y rhif neilltuol a roddwyd i'r rhan gan y person a sefydlodd y farchnad ddynamig.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

**Hysbysiadau tendro: marchnadoedd dynamig ac eithrio marchnadoedd dynamig cyfleustodau cymhwysol**

22.—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad tendro ar gyfer dyfarnu contract cyhoeddus drwy gyfeirio at aelodaeth cyflenwyr o farchnad ddynamig, a gyhoeddir o dan adrannau 21(1)(b) a 34(1) o Ddeddf 2023.

- (2) Yr wybodaeth yw—
  - (a) yr un wybodaeth â'r wybodaeth y cyfeirir ati yn rheoliad 20(2),
  - (b) y cod adnabod unigryw ar gyfer y farchnad ddynamig y mae'r contract cyhoeddus yn cael ei ddyfarnu yn ei herbyn,
  - (c) datganiad bod yr hysbysiad tendro ar gyfer dyfarnu contract cyhoeddus sydd i'w ddyfarnu drwy gyfeirio at aelodaeth cyflenwyr o farchnad ddynamig, a
  - (d) pan fo'r contract cyhoeddus yn cael ei ddyfarnu o dan ran briodol o farchnad ddynamig—
    - (i) enw'r rhan, a
    - (ii) y rhif neilltuol a roddwyd i'r rhan gan yr awdurdod priodol.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

(4) Nid yw'r rheoliad hwn yn gymwys i hysbysiad tendro o'r math a grybwyllir yn rheoliad 23(1).

- (l) where the framework is being awarded by reference to suppliers' membership of a dynamic market—
  - (i) the unique identifier for the dynamic market against which the public contract is being awarded,
  - (ii) a statement that the tender notice is for the award of a public contract which is to be awarded by reference to suppliers' membership of a dynamic market, and
  - (iii) where the public contract is being awarded under an appropriate part of a dynamic market—
    - (aa) the title of the part, and
    - (bb) the distinct number given to the part by the person who established the dynamic market.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

**Tender notices: dynamic markets except qualifying utilities dynamic markets**

22.—(1) This regulation sets out other information which must be included in a tender notice for the award of a public contract by reference to suppliers' membership of a dynamic market published under sections 21(1)(b) and 34(1) of the 2023 Act.

- (2) The information is—
  - (a) the same information referred to in regulation 20(2),
  - (b) the unique identifier for the dynamic market against which the public contract is being awarded,
  - (c) a statement that the tender notice is for the award of a public contract which is to be awarded by reference to suppliers' membership of a dynamic market, and
  - (d) where the public contract is being awarded under an appropriate part of a dynamic market—
    - (i) the title of the part, and
    - (ii) the distinct number given to the part by the appropriate authority.

(3) Nothing in this regulation prevents a contracting authority from providing other information that relates to the same procurement in the notice.

(4) This regulation does not apply to a tender notice of the type mentioned in regulation 23(1).

## Hysbysiadau tendro: hysbysiadau marchnad ddynamig cyfleustodau cymhwysol

23.—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad tendro ar gyfer dyfarnu contract cyhoeddus, drwy gyfeirio at farchnad ddynamig cyfleustodau a sefydlir o dan hysbysiad marchnad ddynamig cyfleustodau cymhwysol, a ddarperir o dan adran 40(2) neu (3) o Ddeddf 2023.

(2) Yr wybodaeth yw—

- (a) gwybodaeth yr awdurdod contractio,
- (b) y cod adnabod unigryw ar gyfer y farchnad ddynamig y mae'r contract cyhoeddus yn cael ei ddyfarnu yn ei herbyn,
- (c) pwnc y contract,
- (d) pan fo'r contract cyhoeddus ar gyfer nwyddau, gwasanaethau neu weithiau y mae'r awdurdod contractio yn disgwyl y bydd eu hangen ar ôl i'r contract ddod i ben, amcangyfrif o'r dyddiad, os yw'n bosibl, y bydd unrhyw hysbysiad tendro dilynol yn cael ei ddarparu,
- (e) disgrifiad o unrhyw opsiwn a fydd yn cael ei gynnwys yn y contract cyhoeddus—
  - (i) i gyflenwi nwyddau, gwasanaethau neu weithiau ychwanegol, neu
  - (ii) i estyn neu adnewyddu cyfnod y contract,
- (f) a fydd arwerthiant electronig yn cael ei ddefnyddio,
- (g) sut y caniateir cyflwyno ceisiadau i gymryd rhan a'r dyddiad erbyn pryd y mae rhaid eu cyflwyno,
- (h) sut y caniateir cyflwyno tendrau a'r dyddiad erbyn pryd y mae rhaid eu cyflwyno,
- (i) a yw'r awdurdod contractio yn bwriadu dibynnu ar un o'r cyfnodau tendro lleiaf canlynol a grybwyllir yn y tabl yn adran 54(4) o Ddeddf 2023 ac, os felly, pa gofnod—
  - (i) y cofnod cyntaf (mae'r contract sy'n cael ei ddyfarnu yn gontract cyffyrddiad ysgafn; dim cyfnod lleiaf),
  - (ii) yr ail gofnod (contractau cyfleustodau neu gontractau a ddyfernir gan awdurdod contractio nad yw'n awdurdod llywodraeth ganolog, sy'n ddarostyngedig i gyfnod tendro a negodwyd; dim cyfnod lleiaf);

## Tender notices: qualifying utilities dynamic market notices

23.—(1) This regulation sets out other information which must be included in a tender notice for the award of a public contract by reference to a utilities dynamic market established under a qualifying utilities dynamic market notice provided under section 40(2) or (3) of the 2023 Act.

(2) The information is—

- (a) the contracting authority information,
- (b) the unique identifier for the dynamic market against which the public contract is being awarded,
- (c) the contract subject-matter,
- (d) where the public contract is for goods, services or works which the contracting authority expects will be needed after the expiry of the contract, an estimate, if possible, of the date when any subsequent tender notice will be provided,
- (e) a description of any option which will be included in the public contract—
  - (i) to supply additional goods, services or works, or
  - (ii) to extend or renew the term of the contract,
- (f) whether an electronic auction will be used,
- (g) how requests to participate may be submitted and the date by when they must be submitted,
- (h) how tenders may be submitted and the date by when they must be submitted,
- (i) whether the contracting authority proposes to rely on one of the following minimum tendering periods mentioned in the table in section 54(4) of the 2023 Act and, if so, which entry—
  - (i) first entry (contract being awarded is a light touch contract; no minimum period),
  - (ii) second entry (utilities contracts or contracts awarded by a contracting authority which is not a central government authority subject to a negotiated tender period; no minimum period),

(iii) y trydydd cofnod (contractau cyfleustodau neu gontractau a ddyfernir gan awdurdod contractio nad yw'n awdurdod llywodraeth ganolog, pan ganiateir cyflwyno tendrau gan gyflenwyr a ddetholwyd ymlaen llaw yn unig; 10 niwrnod), neu

(iv) y pumed cofnod (sefyllfa frys; 10 niwrnod),

(j) disgrifiad o'r mathau o nwyddau, gwasanaethau neu weithiau a fydd yn cael eu cyflenwi, a

(k) amcangyfrif o swm nwyddau, gwasanaethau neu weithiau a fydd yn cael eu cyflenwi.

(3) Pan fo awdurdod contractio eisoes wedi cyhoeddi gwybodaeth a grybwyllir ym mharagraff (2) yn yr hysbysiad marchnad ddynamig cyfleustodau cymhwysol y mae'r hysbysiad yn ymwneud ag ef yn unol â rheoliad 26(2)(i)(ii), nid yw'n ofynnol i'r awdurdod contractio ddarparu'r wybodaeth honno yn yr hysbysiad.

(4) Ym mharagraff (2), mae i "arwerthiant electronig" yr ystyr a roddir gan reoliad 19(3).

(5) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag darparu gwybodaeth arall yn yr hysbysiad.

### Dogfennau tendro cysylltiedig

24.—(1) Mae'r rheoliad hwn yn nodi pa wybodaeth y caniateir ei chynnwys mewn dogfen dendro gysylltiedig a ddarperir o dan adran 21(3) o Ddeddf 2023 yn unol â hysbysiad tendro.

(2) Caiff y ddogfen gynnwys unrhyw wybodaeth sy'n ategu'r hysbysiad tendro gan gynnwys, pan fo'n briodol, wybodaeth sy'n dyblygu'r wybodaeth a grybwyllir—

- (a) yn rheoliad 19(2),
- (b) yn rheoliad 20(2),
- (c) yn rheoliad 21(2),
- (d) yn rheoliad 22(2), neu
- (e) yn rheoliad 23(2).

### Hysbysiadau tendro ar gyfer contractau sydd o dan y trothwy

25.—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad tendro ar gyfer contractau sydd o dan y trothwy, a gyhoeddir o dan adran 87(1) o Ddeddf 2023.

(iii) third entry (utilities contracts or contracts awarded by a contracting authority which is not a central government authority where tenders may be submitted only by preselected suppliers; 10 days), or

(iv) fifth entry (state of urgency; 10 days),

(j) a description of the kinds of goods, services or works which will be supplied, and

(k) the estimated amount of goods, services or works which will be supplied.

(3) Where a contracting authority has already published information mentioned in paragraph (2) in the qualifying utilities dynamic market notice to which the notice relates in accordance with regulation 26(2)(i)(ii), the contracting authority is not required to provide that information in the notice.

(4) In paragraph (2), "electronic auction" has the meaning given by regulation 19(3).

(5) Nothing in this regulation prevents a contracting authority from providing other information in the notice.

### Associated tender documents

24.—(1) This regulation sets out what information may be included in an associated tender document provided under section 21(3) of the 2023 Act in accordance with a tender notice.

(2) The document may include any information supplementing the tender notice including, where appropriate, information duplicating the information mentioned in—

- (a) regulation 19(2),
- (b) regulation 20(2),
- (c) regulation 21(2),
- (d) regulation 22(2), or
- (e) regulation 23(2).

### Below-threshold tender notices

25.—(1) This regulation sets out other information which must be included in a below-threshold tender notice published under section 87(1) of the 2023 Act.

(2) Yr wybodaeth yw—

- (a) gwybodaeth yr awdurdod contractio,
- (b) enw'r caffaeliad,
- (c) y cod adnabod unigryw ar gyfer y caffaeliad,
- (d) pan fo'r contract yn cael ei ddyfarnu drwy gyfeirio at farchnad ddynamig, y cod adnabod unigryw ar gyfer y farchnad ddynamig honno,
- (e) pan fo'r contract i gael ei ddyfarnu o dan ran briodol o farchnad ddynamig, y rhif neilltuol a roddwyd i'r rhan honno gan yr awdurdod contractio,
- (f) pwnc y contract,
- (g) amcangyfrif o werth y contract,
- (h) sut y caniateir cyflwyno tendrau a'r dyddiad erbyn pryd y mae rhaid eu cyflwyno,
- (i) a yw'r hysbysiad yn cael ei ddefnyddio i wahodd tendrau ar gyfer contract cyfundrefn arbennig ac, os felly, a yw'r contract hwnnw yn gcontract cyffyrddiad ysgafn,
- (j) a yw'r awdurdod contractio yn ystyried y gall y contract neu unrhyw lot sy'n ffurfio rhan o'r contract fod yn arbennig o addas i'w ddyfarnu—
  - (i) i fenter fach a chanolig ei maint, neu
  - (ii) i gorff anllywodraethol â gwerthoedd yn ei lywio sy'n ailfuddsoddi ei wargedion yn bennaf er mwyn hybu amcanion cymdeithasol, amgylcheddol neu ddiwylliannol,
- (k) esboniad o'r meini prawf y bydd dyfarnu'r contract yn cael ei asesu yn eu herbyn, ac
- (l) disgrifiad o unrhyw amodau cymryd rhan mewn perthynas â dyfarnu'r contract.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

(4) Yn y rheoliad hwn, mae i "hysbysiad tendro ar gyfer contractau sydd o dan y trothwy" yr ystyr a roddir i "below-threshold tender notice" gan adran 87(5) o Ddeddf 2023.

### **Hysbysiadau marchnad ddynamig (gan gynnwys hysbysiadau marchnad ddynamig cyfleustodau cymhwysol)**

**26.**—(1) Mae paragraff (2) yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad marchnad ddynamig a gyhoeddir o dan adran 39(2) o Ddeddf 2023 (hysbysiadau marchnad ddynamig: bwriad i sefydlu marchnad ddynamig).

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) where the contract is being awarded by reference to a dynamic market, the unique identifier for that dynamic market,
- (e) where the contract will be awarded under an appropriate part of a dynamic market, the distinct number given to that part by the contracting authority,
- (f) the contract subject-matter,
- (g) the estimated value of the contract,
- (h) how tenders may be submitted and the date by when they must be submitted,
- (i) whether the notice is being used to invite tenders for a special regime contract and, if so, whether that contract is a light touch contract,
- (j) whether the contracting authority considers that the contract or any lot forming part of the contract may be particularly suitable to be awarded—
  - (i) to a small and medium-sized enterprise, or
  - (ii) to a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- (k) an explanation of the criteria against which the award of the contract will be assessed, and
- (l) a description of any conditions of participation in relation to the award of the contract.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(4) In this regulation "below-threshold tender notice" has the meaning given by section 87(5) of the 2023 Act.

### **Dynamic market notices (including qualifying utilities dynamic market notices)**

**26.**—(1) Paragraph (2) sets out other information which must be included in a dynamic market notice published under section 39(2) of the 2023 Act (dynamic market notices: intention to establish a dynamic market).



(2) Yr wybodaeth yw—

- (a) enw'r person sy'n sefydlu'r farchnad ddynamig,
- (b) pan fo dau berson neu ragor yn sefydlu'r farchnad ddynamig ar y cyd—
  - (i) enw'r person arweiniol, a
  - (ii) enw pob un o'r personau eraill,
- (c) cyfeiriad post cyswllt a chyfeiriad e-bost ar gyfer pob person a grybwyllir yn is-baragraff (a) neu (b),
- (d) y cod adnabod unigryw ar gyfer pob person a grybwyllir yn is-baragraff (a) neu (b),
- (e) enw unrhyw berson ("A") sy'n sefydlu'r farchnad ddynamig ar ran person arall ac—
  - (i) cyfeiriad post cyswllt a chyfeiriad e-bost A,
  - (ii) cod adnabod unigryw A, a
  - (iii) crynodeb o rôl A mewn perthynas â'r farchnad ddynamig,
- (f) enw, cyfeiriad post cyswllt a chyfeiriad e-bost unrhyw berson y gellir cysylltu ag ef os bydd ymholiad ynghylch y farchnad ddynamig,
- (g) enw'r farchnad ddynamig,
- (h) y cod adnabod unigryw ar gyfer y farchnad ddynamig,
- (i) yn achos hysbysiad marchnad ddynamig cyfleustodau cymhwysol—
  - (i) datganiad mai dim ond aelodau o'r farchnad, neu o ran o'r farchnad, fydd yn cael eu hysbysu am fwriad yn y dyfodol i ddyfarnu contract drwy gyfeirio at aelodaeth cyflenwyr o'r farchnad, neu o ran o'r farchnad, ac yn cael hysbysiad tendro yn unol ag adran 40(1) a (2) o Ddeddf 2023, a
  - (ii) cymaint o'r wybodaeth a fyddai'n cael ei chyhoeddi mewn unrhyw hysbysiad tendro a gyhoeddir yn unol â rheoliad 23(2) ag sydd ar gael pan gyhoeddir yr hysbysiad marchnad ddynamig cyfleustodau cymhwysol,
- (j) sut y gellir cael gafael ar ddogfennau sy'n ymwneud â'r farchnad ddynamig,
- (k) sut y caniateir gwneud cais i ymuno â'r farchnad ddynamig,
- (l) a yw'r farchnad ddynamig yn bennaf ar gyfer cyflenwi nwyddau, gwasanaethau neu weithiau,

(2) The information is—

- (a) the name of the person establishing the dynamic market,
- (b) where there are two or more persons who are jointly establishing the dynamic market—
  - (i) the name of the lead person, and
  - (ii) the name of each of the other persons,
- (c) a contact postal address and email address for each person mentioned in sub-paragraph (a) or (b),
- (d) the unique identifier for each person mentioned in sub-paragraph (a) or (b),
- (e) the name of any person ("A") establishing the dynamic market on behalf of another person and—
  - (i) A's contact postal address and email address,
  - (ii) A's unique identifier, and
  - (iii) a summary of A's role in relation to the dynamic market,
- (f) the name, contact postal address and email address of any person who can be contacted in the event of an enquiry about the dynamic market,
- (g) the title of the dynamic market,
- (h) the unique identifier for the dynamic market,
- (i) in the case of a qualifying utilities dynamic market notice—
  - (i) a statement that only members of the market, or part of the market, will be notified of a future intention to award a contract by reference to suppliers' membership of the market, or part of the market, and provided with a tender notice in accordance with section 40(1) and (2) of the 2023 Act, and
  - (ii) as much of the information as would be published in any tender notice published in accordance with regulation 23(2) that is available when the qualifying utilities dynamic market notice is published,
- (j) how documents relating to the dynamic market may be obtained,
- (k) how an application to join the dynamic market may be made,
- (l) whether the dynamic market is mainly for the supply of goods, services or works,

- (m) disgrifiad o'r mathau o nwyddau, gwasanaethau neu weithiau y mae'r farchnad ddynamig yn ymwneud â hwy, wedi ei roi yn y fath fanylder fel y gall darllynydd yr hysbysiad marchnad ddynamig benderfynu a yw'n dymuno gwneud cais i ymuno â'r farchnad ddynamig, neu ran briodol o'r farchnad,
  - (n) y codau GGG perthnasol,
  - (o) yr amodau ar gyfer aelodaeth o'r farchnad ddynamig, neu ran o'r farchnad, wedi eu gosod yn unol ag adran 36 o Ddeddf 2023,
  - (p) disgrifiad o'r dulliau a fydd yn cael eu defnyddio i ddilysu a yw cyflenwr yn bodloni'r amodau hynny, gan gynnwys unrhyw amodau gwahanol ar gyfer mathau gwahanol o nwyddau, gwasanaethau neu weithiau,
  - (q) a ganiateir i'r farchnad ddynamig gael ei defnyddio i ddyfarnu contract cyhoeddus y mae gan y Deyrnas Unedig rwymedigaethau ar ei gyfer o dan y Cytundeb ar Gaffael gan Lywodraethau,
  - (r) o'r dyddiad y daw'r Cytundeb Cynhwysfawr a Blaengar ar gyfer Partneriaeth y Môr Tawel i rym ar gyfer y Deyrnas Unedig, a yw'r farchnad ddynamig yn farchnad y mae gan y Deyrnas Unedig rwymedigaethau ar ei chyfer o dan y Cytundeb hwnnw,
  - (s) a ganiateir i'r farchnad ddynamig gael ei defnyddio i ddyfarnu contract cyfundrefn arbennig ac, os felly, a yw'r contract hwnnw—
    - (i) yn gontract consesiwn,
    - (ii) yn gontract cyffyrddiad ysgafn, neu
    - (iii) yn gontract cyfleustodau,
  - (t) pan fo'r farchnad ddynamig wedi ei rhannu'n rhannau priodol at ddiben gwahardd cyflenwyr nad ydynt yn aelodau o ran briodol—
    - (i) enw pob rhan,
    - (ii) disgrifiad o bob rhan gan gynnwys unrhyw godau GGG perthnasol, a
    - (iii) y rhif neilltuol a roddir i bob rhan gan y person sy'n sefydlu'r farchnad ddynamig,
  - (u) gwybodaeth sy'n galluogi darllynydd i nodi pa awdurdodau contractio fydd yn gwneud cais, neu y caniateir iddynt wneud cais, i ddefnyddio'r farchnad ddynamig (naill ai drwy gyfeirio at restr o awdurdodau neu restr sy'n disgrifio categorïau o awdurdodau),
- (m) a description of the kinds of goods, services or works to which the dynamic market relates, given in such detail that a reader of the dynamic market notice can determine if they wish to apply to join the dynamic market, or appropriate part of the market,
  - (n) the relevant CPV codes,
  - (o) the conditions for membership of the dynamic market, or part of the market, set in accordance with section 36 of the 2023 Act,
  - (p) a description of the methods that will be used to verify whether a supplier meets those conditions, including any different conditions for different kinds of goods, services or works,
  - (q) whether the dynamic market may be used to award a public contract for which the United Kingdom has obligations under the GPA,
  - (r) from the date when the Comprehensive and Progressive Agreement for Trans-Pacific Partnership enters into force for the United Kingdom, whether the dynamic market is one for which the United Kingdom has obligations under that Agreement,
  - (s) whether the dynamic market may be used to award a special regime contract and, if so, whether that contract is—
    - (i) a concession contract,
    - (ii) a light touch contract, or
    - (iii) a utilities contract,
  - (t) where the dynamic market is divided into appropriate parts for the purpose of excluding suppliers that are not members of an appropriate part—
    - (i) the title of each part,
    - (ii) a description of each part including any relevant CPV codes, and
    - (iii) the distinct number given to each part by the person establishing the dynamic market,
  - (u) information enabling a reader to identify which contracting authorities will, or may apply to, use the dynamic market (either by reference to a list of authorities or a list describing categories of authorities),

- (v) y dosbarthiad daearyddol, pan fo'n bosibl ei ddisgrifio,
- (w) yn achos marchnad ddynamig, y mae amcangyfrif o'r dyddiad y bydd yn peidio â gweithredu yn hysbys ar ei chyfer—
  - (i) amcangyfrif o'r dyddiad y bydd y farchnad ddynamig yn cael ei sefydlu, a
  - (ii) amcangyfrif o'r dyddiad y bydd y farchnad ddynamig yn peidio â gweithredu,
- (x) yn achos marchnad ddynamig nad oes amcangyfrif o'r dyddiad y bydd yn peidio â gweithredu yn hysbys ar ei chyfer—
  - (i) amcangyfrif o'r dyddiad y bydd y farchnad ddynamig yn cael ei sefydlu, a
  - (ii) datganiad bod y farchnad ddynamig yn farchnad benagored,
- (y) yn achos marchnad ddynamig nad yw'r farchnad ddynamig cyfleustodau, a yw'r farchnad ddynamig yn darparu ar gyfer codi ffioedd yn unol ag adran 38(1) o Ddeddf 2023 ac, os felly—
  - (i) y ganran sefydlog i'w chymhwyso i werth amcangyfrifedig unrhyw gontract cyhoeddus a ddyfernir i gyflenwr drwy gyfeirio at y farchnad ddynamig, a
  - (ii) unrhyw wybodaeth angenrheidiol arall er mwyn galluogi cyflenwyr i ddeall sut y bydd ffioedd yn cael eu codi, a
- (z) yn achos marchnad ddynamig cyfleustodau—
  - (i) a yw'r farchnad ddynamig cyfleustodau yn darparu ar gyfer codi ffioedd yn unol ag adran 38(3) o Ddeddf 2023, a
  - (ii) os felly, unrhyw wybodaeth angenrheidiol arall er mwyn galluogi cyflenwyr i ddeall sut y bydd ffioedd yn cael eu codi.

(3) Mae paragraff (4) yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad marchnad ddynamig a gyhoeddir o dan adran 39(3) o Ddeddf 2023 (sefydlu marchnad ddynamig).

(4) Yr wybodaeth yw—

- (a) yr un wybodaeth â'r wybodaeth y cyfeirir ati ym mharagraff (2)(a) i (h),
- (b) y dyddiad y cafodd y farchnad ddynamig ei sefydlu,
- (c) ar gyfer pob cyflenwr sy'n aelod o'r farchnad ddynamig—
  - (i) enw'r cyflenwr,
  - (ii) cyfeiriad post cyswllt a chyfeiriad e-bost y cyflenwr,

(3) Paragraph (4) sets out other information which must be included in a dynamic market notice published under section 39(3) of the 2023 Act (establishment of a dynamic market).

(4) The information is—

- (a) the same information referred to in paragraph (2)(a) to (h),
- (b) the date on which the dynamic market was established,
- (c) for each supplier that is a member of the dynamic market—
  - (i) the supplier's name,
  - (ii) the supplier's contact postal address and email address,

- (iii) y cod adnabod unigryw ar gyfer y cyflenwr, a
- (iv) a yw'r cyflenwr—
  - (aa) yn fenter fach a chanolig ei maint, neu
  - (bb) yn gorff anllywodraethol â gwerthoedd yn ei lywio ac sy'n ailfuddsoddi ei wargedion yn bennaf er mwyn hybu amcanion cymdeithasol, amgylcheddol neu ddiwylliannol, a
- (d) pan fo'r farchnad ddynamig wedi ei rhannu'n rhannau, y rhan y mae pob un o'r cyflenwyr hynny yn aelod ohoni.

(5) Mae paragraff (6) yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad marchnad ddynamig a gyhoeddir o dan adran 39(4) o Ddeddf 2023 (addasiadau i farchnad ddynamig).

- (6) Yr wybodaeth yw—
  - (a) yr un wybodaeth â'r wybodaeth y cyfeirir ati ym mharagraff (2)(a) i (h),
  - (b) y dyddiad y mae'r addasiad yn cael effaith ohono,
  - (c) os yw cyflenwr yn cael ei dderbyn i'r farchnad, datganiad i'r perwyl hwnnw ac—
    - (i) ei enw, ei gyfeiriad post cyswllt, ei gyfeiriad e-bost a'i god adnabod unigryw, a
    - (ii) pan fo'r farchnad ddynamig wedi ei rhannu'n rhannau, y rhan y mae'r cyflenwr yn aelod ohoni,
  - (d) a yw'r cyflenwr—
    - (i) yn fenter fach a chanolig ei maint, neu
    - (ii) yn gorff anllywodraethol â gwerthoedd yn ei lywio ac sy'n ailfuddsoddi ei wargedion yn bennaf er mwyn hybu amcanion cymdeithasol, amgylcheddol neu ddiwylliannol,
  - (e) os yw cyflenwr yn cael ei dynnu oddi wrth y farchnad, datganiad i'r perwyl hwnnw ac—
    - (i) ei enw, ei gyfeiriad post cyswllt, ei gyfeiriad e-bost a'i god adnabod unigryw, a
    - (ii) pan fo'r farchnad ddynamig wedi ei rhannu'n rhannau, y rhan y mae'r cyflenwr yn aelod ohoni,
  - (f) crynodeb o unrhyw addasiad arall sy'n cael ei wneud, ac
  - (g) cadarnhad y cafodd asesiad gwrthdaro ei baratoi a'i ddiwygio yn unol ag adran 83 o Ddeddf 2023.

- (iii) the unique identifier for the supplier, and
- (iv) whether the supplier is—
  - (aa) a small and medium-sized enterprise, or
  - (bb) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives, and
- (d) where the dynamic market is divided into parts, the part of which each of those suppliers is a member.

(5) Paragraph (6) sets out other information which must be included in a dynamic market notice published under section 39(4) of the 2023 Act (modifications to a dynamic market).

- (6) The information is—
  - (a) the same information referred to in paragraph (2)(a) to (h),
  - (b) the date from when the modification has effect,
  - (c) if a supplier is being admitted to the market, a statement to that effect and—
    - (i) their name, contact postal address, email address and unique identifier, and
    - (ii) where the dynamic market is divided into parts, the part of which the supplier is a member,
  - (d) whether the supplier is—
    - (i) a small and medium-sized enterprise, or
    - (ii) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
  - (e) if a supplier is being removed from the market, a statement to that effect and—
    - (i) their name, contact postal address, email address and unique identifier, and
    - (ii) where the dynamic market is divided into parts, the part of which the supplier is a member,
  - (f) a summary of any other modification being made, and
  - (g) confirmation that a conflicts assessment was prepared and revised in accordance with section 83 of the 2023 Act.

(7) Mae paragraff (8) yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad marchnad ddynamig a gyhoeddir o dan adran 39(5) o Ddeddf 2023 (diwedd marchnad ddynamig).

(8) Yr wybodaeth yw—

- (a) yr un wybodaeth â'r wybodaeth y cyfeirir ati ym mharagraff (2)(a) i (h), a
- (b) y dyddiad y peidiodd y farchnad â gweithredu.

(9) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad mewn hysbysiad marchnad ddynamig.

### Hysbysiadau tryloywder

27.—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad tryloywder a gyhoeddir o dan adran 44(1) o Ddeddf 2023.

(2) Yr wybodaeth yw—

- (a) gwybodaeth yr awdurdod contractio,
- (b) enw'r caffaeliad,
- (c) y cod adnabod unigryw ar gyfer y caffaeliad,
- (d) yn achos caffaeliad pan fo newid wedi bod i ddyfarniad uniongyrchol yn unol ag adran 43 o Ddeddf 2023, y cod adnabod unigryw a ddyrannwyd i'r caffaeliad cyn y newid i ddyfarniad uniongyrchol,
- (e) y cod adnabod unigryw ar gyfer y contract, os yw hyn yn hysbys pan gyhoeddir yr hysbysiad tryloywder,
- (f) pwnc y contract,
- (g) a yw'r contract cyhoeddus yn gontract cyfundrefn arbennig ac, os felly, a yw—
  - (i) yn gontract consesiwn,
  - (ii) yn gontract cyffyrddiad ysgafn, neu
  - (iii) yn gontract cyfleustodau,
- (h) a yw'r contract yn cael ei ddyfarnu yn uniongyrchol i gyflenwr nad yw'n gyflenwr gwaharddedig oherwydd bod cyfiawnhad dros ddyfarnu yn uniongyrchol yn gymwys yn unol ag adran 41(1)(a) o Ddeddf 2023,
- (i) os yw is-baragraff (h) yn gymwys, y cyfiawnhad dros ddyfarnu yn uniongyrchol yn Atodlen 5 i Ddeddf 2023 sy'n gymwys, ac esboniad ynghylch pam y mae'r awdurdod contractio yn ystyried ei fod yn gymwys,

(7) Paragraph (8) sets out other information which must be included in a dynamic market notice published under section 39(5) of the 2023 Act (cessation of a dynamic market).

(8) The information is—

- (a) the same information referred to in paragraph (2)(a) to (h), and
- (b) the date when the dynamic market ceased to operate.

(9) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in a dynamic market notice.

### Transparency notices

27.—(1) This regulation sets out other information which must be included in a transparency notice published under section 44(1) of the 2023 Act.

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) in the case of a procurement where there has been a switch to a direct award in accordance with section 43 of the 2023 Act, the unique identifier allocated to the procurement before the switch to direct award,
- (e) the unique identifier for the contract, if this is known when the transparency notice is published,
- (f) the contract subject-matter,
- (g) whether the contract is a special regime contract and, if so, whether it is—
  - (i) a concession contract,
  - (ii) a light touch contract, or
  - (iii) a utilities contract,
- (h) whether the contract is being awarded directly to a supplier that is not an excluded supplier because a direct award justification applies in accordance with section 41(1)(a) of the 2023 Act,
- (i) if sub-paragraph (h) applies, the direct award justification in Schedule 5 to the 2023 Act which applies and an explanation of why the contracting authority considers that it applies,

- (j) a yw'r contract yn cael ei ddyfarnu yn uniongyrchol i gyflenwr sy'n gyflenwr gwaharddedig oherwydd bod yr awdurdod contractio yn ystyried mai'r hyn sydd o'r budd mwyaf i'r cyhoedd yw dyfarnu'r contract i'r cyflenwr hwnnw yn unol ag adran 41(2) i (5) o Ddeddf 2023,
- (k) os yw is-baragraff (j) yn gymwys—
  - (i) y drosedd, neu ddigwyddiad arall a grybwyllir yn Atodlen 6 i Ddeddf 2023, y mae'r cyflenwr yn gyflenwr gwaharddedig yn rhinwedd y drosedd honno neu'r digwyddiad hwnnw, a
  - (ii) pa sail yn adran 41(5) o Ddeddf 2023 sy'n gymwys, ac esboniad ynghylch pam y mae'r awdurdod contractio yn ystyried ei bod yn gymwys,
- (l) a yw'r contract yn cael ei ddyfarnu yn uniongyrchol i gyflenwr yn unol â rheoliadau sydd wedi eu gwneud o dan adran 42 o Ddeddf 2023 (dyfarniad uniongyrchol er mwyn gwarchod bywyd, etc.),
- (m) os yw is-baragraff (l) yn gymwys, enw a rhif cofrestru'r offeryn statudol sy'n cynnwys y rheoliadau hynny,
- (n) a yw'r contract yn cael ei ddyfarnu yn uniongyrchol i gyflenwr nad yw'n gyflenwr gwaharddedig yn rhinwedd adran 43 o Ddeddf 2023 (newid i ddyfarniad uniongyrchol),
- (o) os yw is-baragraff (n) yn gymwys, y rheswm pam, ym marn yr awdurdod contractio, na fu unrhyw dendrau addas nac unrhyw geisiadau i gymryd rhan drwy gyfeirio at adran 43(2) o Ddeddf 2023, a pham y mae'n ystyried nad yw dyfarniad o dan adran 19 o'r Ddeddf honno yn bosibl o dan yr amgylchiadau,
- (p) a yw'r contract yn cael ei ddyfarnu drwy gyfeirio at lotiau ac, os felly—
  - (i) enw pob lot, a
  - (ii) y rhif neilltuol a roddwyd i bob lot gan yr awdurdod contractio,
- (q) amcangyfrif o werth y contract,
- (r) a yw'r awdurdod contractio yn ystyried y gall y contract neu unrhyw lot sy'n ffurfio rhan o'r contract fod yn arbennig o addas i'w ddyfarnu—
  - (i) i fenter fach a chanolig ei maint, neu
- (j) whether the contract is being awarded directly to a supplier that is an excluded supplier because the contracting authority considers that there is an overriding public interest in awarding the contract to that supplier in accordance with section 41(2) to (5) of the 2023 Act,
- (k) if sub-paragraph (j) applies—
  - (i) the offence or other event mentioned in Schedule 6 to the 2023 Act by virtue of which the supplier is an excluded supplier, and
  - (ii) which ground in section 41(5) of the 2023 Act applies and an explanation of why the contracting authority considers that it applies,
- (l) whether the contract is being awarded directly to a supplier pursuant to regulations made under section 42 of the 2023 Act (direct award to protect life, etc.),
- (m) if sub-paragraph (l) applies, the title and registration number of the statutory instrument containing those regulations,
- (n) whether the contract is being awarded directly to a supplier that is not an excluded supplier by virtue of section 43 of the 2023 Act (switching to direct award),
- (o) if sub-paragraph (n) applies, the reason the contracting authority considers there were no suitable tenders or requests to participate by reference to section 43(2) of the 2023 Act and why it considers that an award under section 19 of that Act is not possible in the circumstances,
- (p) whether the contract is being awarded by reference to lots and, if so—
  - (i) the title of each lot, and
  - (ii) the distinct number given to each lot by the contracting authority,
- (q) the estimated value of the contract,
- (r) whether the contracting authority considers that the contract or any lot forming part of the contract may be particularly suitable to be awarded—
  - (i) to a small and medium-sized enterprise, or

- (ii) i gorff anllywodraethol â gwerthoedd yn ei lywio sy'n ailfuddsoddi ei wargedion yn bennaf er mwyn hybu amcanion cymdeithasol, amgylcheddol neu ddiwylliannol,
- (s) disgrifiad yn nodi unrhyw risg—
  - (i) y mae'r awdurdod contractio yn ystyried y gallai beri i'r contract beidio â chael ei gyflawni'n foddhaol ond, oherwydd ei natur, y mae'n bosibl na fydd yn cael sylw yn y contract fel y'i dyfernir, a
  - (ii) a all ei gwneud yn ofynnol addasu'r contract yn ddiweddarach o dan baragraff 5 o Atodlen 8 i Ddeddf 2023 (addasu contract yn dilyn gwireddiad risg hysbys),
- (t) a yw cyflenwyr wedi eu dethol ar gyfer dyfarnu'r contract,
- (u) os yw cyflenwyr wedi eu dethol ar gyfer dyfarnu'r contract, ar gyfer pob cyflenwr a ddetholwyd—
  - (i) enw'r cyflenwr,
  - (ii) naill ai—
    - (aa) y cod adnabod unigryw ar gyfer y cyflenwr, neu
    - (bb) yn achos contract cyhoeddus sydd wedi ei ddyfarnu yn uniongyrchol yn unol â pharagraffau 13 a 14 o Atodlen 5 i Ddeddf 2023 (sefyllfa frys) pan na fo cod adnabod unigryw wedi ei ddyrannu i'r cyflenwr pan gyhoeddwyd yr hysbysiad tryloywder ond bo'r cyflenwr yn gallu darparu gwybodaeth unigryw yn lle hynny (er enghraifft, rhif cofrestru cwmni a roddwyd o dan DC 2006) y gellir ei chydnabod gan y platfform digidol canolog yn sail ar gyfer cod adnabod unigryw a ddyrennir gan y platfform hwnnw, yr wybodaeth unigryw honno, a
  - (iii) cyfeiriad post cyswllt a chyfeiriad e-bost y cyflenwr,
- (v) amcangyfrif o'r dyddiad yr ymrwymir i'r contract, ac
- (w) pan fo'r contract yn fframwaith—
  - (i) cyfnod y fframwaith,
- (ii) to a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- (s) a description identifying any risk that—
  - (i) the contracting authority considers could jeopardise the satisfactory performance of the contract, but because of its nature, may not be addressed in the contract as awarded, and
  - (ii) may require a subsequent modification to the contract under paragraph 5 of Schedule 8 to the 2023 Act (modification of contract following materialisation of a known risk),
- (t) whether suppliers have been selected for the award of the contract,
- (u) if suppliers have been selected for the award of the contract, for each supplier selected—
  - (i) the supplier's name,
  - (ii) either—
    - (aa) the unique identifier for the supplier, or
    - (bb) in the case of a direct award of a public contract pursuant to paragraphs 13 and 14 of Schedule 5 to the 2023 Act (urgency) where the supplier has not been allocated a unique identifier when the transparency notice is published but can instead provide unique information (for example a company registration number given under the CA 2006) which can be recognised by the central digital platform as the basis for a unique identifier allocated by that platform, that unique information, and
  - (iii) the supplier's contact postal address and email address,
- (v) the estimated date when the contract will be entered into, and
- (w) where the contract is a framework—
  - (i) the term of the framework,

- (ii) a yw'r fframwaith yn darparu ar gyfer codi ffioedd ar gyflenwr yn unol â'r fframwaith ac, os felly, fanylion y ganran sefydlog a ddefnyddir i godi'r ffi arno yn unol ag adran 45(7) o Ddeddf 2023, a
- (iii) yr awdurdodau contractio a chanddynt hawlogaeth i ddyfarnu contractau yn unol â'r fframwaith (pa un ai drwy restru enwau'r awdurdodau hynny neu drwy ddisgrifio categorïau o awdurdodau).

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

### **Hysbysiadau dyfarnu contract ac eithrio'r rhai a gyhoeddir gan gyfleustodau preifat**

**28.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad dyfarnu contract a gyhoeddir gan awdurdod contractio o dan adran 50(1) o Ddeddf 2023.

(2) Yr wybodaeth yw—

- (a) gwybodaeth yr awdurdod contractio,
- (b) enw'r caffaeliad,
- (c) y cod adnabod unigryw ar gyfer—
  - (i) y caffaeliad,
  - (ii) y contract cyhoeddus,
  - (iii) pan fo'r contract cyhoeddus yn cael ei ddyfarnu yn unol â fframwaith, caffaeliad y fframwaith y mae'r contract cyhoeddus yn cael ei ddyfarnu yn unol ag ef, a
  - (iv) pan fo'r contract cyhoeddus yn cael ei ddyfarnu drwy gyfeirio at aelodaeth cyflenwyr o farchnad ddynamig, y farchnad ddynamig,
- (d) pwnc y contract,
- (e) ar gyfer pob cyflenwr y dyfernir y contract cyhoeddus iddo—
  - (i) enw'r cyflenwr,
  - (ii) cyfeiriad post cyswllt a chyfeiriad e-bost y cyflenwr,
  - (iii) naill ai—
    - (aa) y cod adnabod unigryw ar gyfer y cyflenwr, neu

- (ii) whether the framework provides for fees to be charged to a supplier in accordance with the framework and, if so, details of the fixed percentage by which they will be charged in accordance with section 45(7) of the 2023 Act, and
- (iii) the contracting authorities entitled to award contracts in accordance with the framework (whether by listing the names of those authorities or by describing categories of authorities).

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

### **Contract award notices except those published by private utilities**

**28.**—(1) This regulation sets out other information which must be included in a contract award notice published by a contracting authority under section 50(1) of the 2023 Act.

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for—
  - (i) the procurement,
  - (ii) the public contract,
  - (iii) where the public contract is being awarded in accordance with a framework, the procurement of the framework in accordance with which the public contract is being awarded, and
  - (iv) where the public contract is being awarded by reference to a suppliers' membership of a dynamic market, the dynamic market,
- (d) the contract subject-matter,
- (e) for each supplier awarded the public contract—
  - (i) the supplier's name,
  - (ii) the supplier's contact postal address and email address,
  - (iii) either —
    - (aa) the unique identifier for the supplier, or



- (bb) yn achos contract cyhoeddus sydd wedi ei ddyfarnu yn uniongyrchol yn unol â pharagraffau 13 a 14 o Atodlen 5 i Ddeddf 2023 (sefyllfa frys) pan na fo cod adnabod unigryw wedi ei ddyrannu i'r cyflenwr pan gyhoeddwyd yr hysbysiad dyfarnu contract ond bo'r cyflenwr yn gallu darparu gwybodaeth unigryw yn lle hynny (er enghraifft, rhif cofrestru cwmni a roddwyd o dan DC 2006) y gellir ei chydabod gan y platfform digidol canolog yn sail ar gyfer cod adnabod unigryw a ddyrennir gan y platfform hwnnw, yr wybodaeth unigryw honno,
- (iv) a yw'r cyflenwr yn gymdeithas o gwmnïau neu'n gonsortiw arall,
- (v) a yw'r cyflenwr—
- (aa) yn fenter fach a chanolig ei maint,
- (bb) yn gorff anllywodraethol â gwerthoedd yn ei lywio ac sy'n ailfuddsoddi ei wargedion yn bennaf er mwyn hybu amcanion cymdeithasol, amgylcheddol neu ddiwylliannol,
- (cc) yn ddarparwr cyflogaeth â chymorth, neu
- (dd) yn gwmni cydfuddiannol gwasanaethau cyhoeddus,
- (vi) ar gyfer pob person â chyswllt â'r cyflenwr, enw a chyfeiriad post cyswllt y person (mae i "person â chyswllt" yr ystyr a roddir i "associated person" gan adran 26(4) o Ddeddf 2023), a
- (vii) gwybodaeth y cyflenwr o ran ei bersonau cysylltiedig yn unol â rheoliad 12, ond gan ddarllen paragraffau (4)(a) ac (8)(a) o'r rheoliad hwnnw fel pe bai pob cyfeiriad at ddyddiad geni yn gyfeiriad at fis a blwyddyn geni, yn ddarostyngedig i baragraff (4) o'r rheoliad hwn,
- (f) y dyddiad y penderfynodd yr awdurdod contractio ddyfarnu'r contract cyhoeddus,
- (g) os yw'r contract cyhoeddus yn cael ei ddyfarnu drwy gyfeirio at lotiau, ar gyfer pob lot—
- (i) enw'r cyflenwr y mae'r lot yn cael ei ddyfarnu iddo,
- (ii) enw'r lot,
- (bb) in the case of a direct award of a public contract pursuant to paragraphs 13 and 14 of Schedule 5 to the 2023 Act (urgency) where the supplier has not been allocated a unique identifier when the contract award notice is published but can instead provide unique information (for example a company registration number given under the CA 2006) which can be recognised by the central digital platform as the basis for a unique identifier allocated by that platform, that unique information,
- (iv) whether the supplier is an association of companies or other consortium,
- (v) whether the supplier is—
- (aa) a small and medium-sized enterprise,
- (bb) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- (cc) a supported employment provider, or
- (dd) a public service mutual,
- (vi) for each associated person of the supplier, the person's name and contact postal address ("associated person" ("*person â chyswllt*") has the meaning given by section 26(4) of the 2023 Act), and
- (vii) the supplier's connected person information in accordance with regulation 12, but reading paragraphs (4)(a) and (8)(a) of that regulation as if each reference to date of birth were a reference to month and year of birth, subject to paragraph (4) of this regulation,
- (f) the date when the contracting authority decided to award the public contract,
- (g) if the public contract is being awarded by reference to lots, for each lot—
- (i) the name of the supplier that is being awarded the lot,
- (ii) the title of the lot,

- (iii) y rhif neilltuol a roddwyd i'r lot gan yr awdurdod contractio,
  - (iv) disgrifiad o'r mathau o nwyddau, gwasanaethau neu weithiau a fydd yn cael eu cyflenwi,
  - (v) crynodeb o'r modd y bydd y nwyddau, y gwasanaethau neu'r gweithiau hynny yn cael eu cyflenwi,
  - (vi) amcangyfrif o'r dyddiad y bydd y nwyddau, y gwasanaethau neu'r gweithiau yn cael eu cyflenwi neu amcangyfrif o'r cyfnod y byddant yn cael eu cyflenwi drosto,
  - (vii) amcangyfrif o swm nwyddau, gwasanaethau neu weithiau a fydd yn cael eu cyflenwi,
  - (viii) amcangyfrif o werth y lot,
  - (ix) y codau GGG perthnasol, a
  - (x) y dosbarthiad daearyddol, pan fo'n bosibl ei ddisgrifio,
- (h) pan fo'r contract cyhoeddus yn cael ei ddyfarnu yn unol â fframwaith, manylion ynghylch pa un o'r gweithdrefnau canlynol a ddefnyddiwyd—
- (i) proses ddethol gystadleuol ar gyfer fframweithiau o dan adran 46 o Ddeddf 2023, neu
  - (ii) dyfarniad heb gystadleuaeth bellach o dan adran 45(4) o Ddeddf 2023,
- (i) pan fo'r contract cyhoeddus yn fframwaith sy'n cael ei ddyfarnu o dan fframwaith agored, y cod adnabod unigryw ar gyfer caffaeliad y fframwaith olaf a ddyfarnwyd o dan y fframwaith agored (oni bai nad oes fframwaith wedi ei ddyfarnu o dan y fframwaith agored yn flaenorol),
- (j) pan fo'r contract cyhoeddus yn cael ei ddyfarnu o dan ran briodol o farchnad ddynamig, y rhif neilltuol a roddwyd i'r rhan honno gan y person a sefydlodd y farchnad ddynamig,
- (k) a yw'r contract cyhoeddus yn gontract cyfundrefn arbennig ac, os felly, a yw—
- (i) yn gontract consesiwn,
  - (ii) yn gontract cyffyrddiad ysgafn, neu
  - (iii) yn gontract cyfleustodau,
- (l) a yw'r awdurdod contractio wedi darparu crynodeb asesu i bob cyflenwr a gyflwynodd dendr a aseswyd, yn unol ag adran 50(3) o Ddeddf 2023 ac, os felly, y dyddiad y cafodd y crynodebau asesu hynny eu darparu,
- (m) amcangyfrif o werth y contract cyhoeddus,
- (iii) the distinct number given to the lot by the contracting authority,
  - (iv) a description of the kinds of goods, services or works which will be supplied,
  - (v) a summary of how those goods, services or works will be supplied,
  - (vi) the estimated date when, or period over which, the goods, services or works will be supplied,
  - (vii) the estimated amount of goods, services or works which will be supplied,
  - (viii) the estimated value of the lot,
  - (ix) the relevant CPV codes, and
  - (x) the geographical classification, where it is possible to describe this,
- (h) where the public contract is being awarded in accordance with a framework, details of which of the following procedures was used—
- (i) a competitive selection process for frameworks under section 46 of the 2023 Act, or
  - (ii) an award without further competition under section 45(4) of the 2023 Act,
- (i) where the public contract is a framework that is being awarded under an open framework, the unique identifier for the procurement of the last framework awarded under the open framework (unless no framework has previously been awarded under the open framework),
- (j) where the public contract is being awarded under an appropriate part of a dynamic market, the distinct number given to that part by the person who established the dynamic market,
- (k) whether the public contract is a special regime contract and, if so, whether it is—
- (i) a concession contract,
  - (ii) a light touch contract, or
  - (iii) a utilities contract,
- (l) whether the contracting authority has provided an assessment summary to each supplier that submitted an assessed tender in accordance with section 50(3) of the 2023 Act and, if so, the date when those assessment summaries were provided,
- (m) the estimated value of the public contract,

- (n) mewn cysylltiad â phob contract cyhoeddus—
- (i) cyfanswm y tendrau a gyflwynwyd erbyn dyddiad cau'r awdurdod contractio ar gyfer cyflwyno tendrau (gan ddiystyru tendrau a gyflwynwyd ond a dynnwyd yn ôl wedyn),
  - (ii) cyfanswm y tendrau a aseswyd gan yr awdurdod contractio, a
  - (iii) cyfanswm y tendrau aflwyddiannus a aseswyd gan yr awdurdod contractio ac a gyflwynwyd gan—
    - (aa) menter fach a chanolig ei maint, a
    - (bb) corff anllywodraethol â gwerthoedd yn ei lywio sy'n ailfuddsoddi ei wargedion yn bennaf er mwyn hybu amcanion cymdeithasol, amgylcheddol neu ddiwylliannol,
- ac eithrio yn achos dyfarniad uniongyrchol o dan adran 41 neu 43 o Ddeddf 2023,
- (o) pan fo'r contract cyhoeddus yn fframwaith neu y bo wedi ei ddyfarnu mewn ffordd arall nad yw'n unol â fframwaith, manylion ynghylch pa un o'r gweithdrefnau canlynol a ddefnyddiwyd—
- (i) gweithdrefn agored,
  - (ii) gweithdrefn hyblyg gystadleuol, neu
  - (iii) dyfarniad uniongyrchol o dan adran 41 neu 43 o Ddeddf 2023,
- (p) a ddefnyddiwyd hysbysiad tendro i neilltuo'r contract i ddarparwyr cyflogaeth â chymorth yn unol ag adran 32 o Ddeddf 2023, a pha un a ddyfarnwyd y contract i gyflenwr o'r fath,
- (q) a ddefnyddiwyd hysbysiad tendro i neilltuo'r contract i gwmnïau cydfuddiannol gwasanaethau cyhoeddus yn unol ag adran 33 o Ddeddf 2023, ac a ddyfarnwyd y contract i gyflenwr o'r fath,
- (r) y dyddiad dod i ben ar gyfer unrhyw gyfnod segur o dan adran 51 o Ddeddf 2023 neu, os nad oes unrhyw gyfnod segur yn gymwys, unrhyw ddyddiad cyn pryd y mae'r awdurdod contractio wedi penderfynu yn erbyn ymrwymo i'r contract,
- (s) amcangyfrif o'r dyddiad yr ymrwymir i'r contract,
- (t) pan fo'r contract cyhoeddus yn cael ei ddyfarnu yn uniongyrchol o dan adran 41 neu 43 o Ddeddf 2023, yr un wybodaeth â'r wybodaeth y cyfeirir ati yn rheoliad 27(2)(h) i (o),
- (n) in respect of all public contracts—
- (i) the total number of tenders submitted by the contracting authority's deadline for submitting tenders (discounting tenders submitted but subsequently withdrawn),
  - (ii) the total number of tenders assessed by the contracting authority, and
  - (iii) the total number of unsuccessful tenders assessed by the contracting authority which were submitted by—
    - (aa) a small and medium-sized enterprise, and
    - (bb) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- except in the case of a direct award under section 41 or 43 of the 2023 Act,
- (o) where the public contract is a framework or awarded other than in accordance with a framework, details of which of the following procedures was used—
- (i) an open procedure,
  - (ii) a competitive flexible procedure, or
  - (iii) a direct award under section 41 or 43 of the 2023 Act,
- (p) whether a tender notice was used to reserve the contract to supported employment providers in accordance with section 32 of the 2023 Act, and whether the contract was awarded to such a supplier,
- (q) whether a tender notice was used to reserve the contract to public service mutuals in accordance with section 33 of the 2023 Act, and whether the contract was awarded to such a supplier,
- (r) the end date of any standstill period under section 51 of the 2023 Act or, if no standstill period applies, any date before which the contracting authority has determined not to enter into the contract,
- (s) the estimated date when the contract will be entered into,
- (t) where the public contract is being awarded directly under section 41 or 43 of the 2023 Act, the same information referred to in regulation 27(2)(h) to (o),

- (u) pan fo'r contract cyhoeddus yn cael ei ddyfarnu yn unol â fframwaith sy'n cael ei drefnu drwy gyfeirio at lotiau, y rhif neilltuol a roddwyd gan yr awdurdod contractio i'r lot y mae'r contract yn cael ei ddyfarnu odani, a
- (v) pan fo—
  - (i) y contract cyhoeddus yn cael ei ddyfarnu drwy gyfeirio at lotiau, a
  - (ii) yr awdurdod contractio yn defnyddio'r hysbysiad dyfarnu contract i roi hysbysiad ei fod yn rhoi'r gorau i gaffael yr holl nwyddau, gwasanaethau a gweithiau a nodir yn un neu ragor o'r lotiau hynny neu mewn unrhyw lotiau o dan gontractau yn y dyfodol o dan y trefniant o dan adran 18(2)(a) o Ddeddf 2023,

gwybodaeth y lot sy'n dod i ben.

(3) Yn y rheoliad hwn, ystyr “gwybodaeth y lot sy'n dod i ben” yw—

- (a) yr wybodaeth ganlynol ar gyfer pob lot sy'n dod i ben—
  - (i) enw'r lot,
  - (ii) y rhif neilltuol a roddwyd i'r lot gan yr awdurdod contractio,
  - (iii) y codau GGG perthnasol, a
  - (iv) disgrifiad o'r mathau o nwyddau, gwasanaethau neu weithiau a oedd i'w cyflenwi o dan y lot, a
- (b) y dyddiad y penderfynodd yr awdurdod contractio roi'r gorau i'r caffaeliad o dan y lot.

(4) Nid yw'n ofynnol i awdurdod contractio gyhoeddi, yn unol â pharagraff (2)(e)(vii), wybodaeth personau cysylltiedig sy'n wybodaeth sydd wedi ei diogelu mewn perthynas—

- (a) â pherson cysylltiedig sy'n unigolyn sy'n bodloni'r disgrifiad yn rheoliad 12(3)(b) ac (c), neu
- (b) â pherson cysylltiedig sy'n unigolyn sy'n bodloni'r disgrifiad yn rheoliad 12(15)(b).

(5) Yn y rheoliad hwn, ystyr “gwybodaeth sydd wedi ei diogelu” yw gwybodaeth—

- (a) mewn perthynas ag unigolyn a grybyllir ym mharagraff (4)(a) neu (b), sydd am y tro wedi ei hepgor o gofrestr pobl â rheolaeth sylweddol yn unol â rheoliad 33(1) o Reoliadau Cofrestrau Pobl â Rheolaeth Sylweddol 2016(1), neu

- (u) where the public contract is being awarded in accordance with a framework which is arranged by reference to lots, the distinct number given by the contracting authority to the lot under which the contract is being awarded, and

- (v) where—
  - (i) the public contract is being awarded by reference to lots, and
  - (ii) the contracting authority is using the contract award notice to give notice that it is ceasing to procure all of the goods, services and works set out in one or more of those lots or any lots under future contracts under the arrangement under section 18(2)(a) of the 2023 Act,

the ceased lot information.

(3) In this regulation “ceased lot information” is—

- (a) the following information for each ceased lot—
  - (i) the title of the lot,
  - (ii) the distinct number given to the lot by the contracting authority,
  - (iii) the relevant CPV codes, and
  - (iv) a description of the kinds of goods, services or works which were to have been supplied under the lot, and
- (b) the date when the contracting authority decided to cease the procurement under the lot.

(4) A contracting authority is not required to publish, in accordance with paragraph (2)(e)(vii), connected person information which is secured information in relation to—

- (a) a connected person who is an individual who meets the description in regulation 12(3)(b) and (c), or
- (b) a connected person who is an individual who meets the description in regulation 12(15)(b).

(5) In this regulation “Secured information” is information which—

- (a) in relation to an individual mentioned in paragraph (4)(a) or (b), is for the time being omitted from a PSC register in accordance with regulation 33(1) of the Register of People with Significant Control Regulations 2016(1), or

(b) mewn perthynas ag unigolyn a grybwyllir ym mharagraff (4)(b), yw gwybodaeth y mae'r unigolyn—

- (i) yn rhesymol o'r farn a nodir ym mharagraff (6) yn ei chylch, a
- (ii) wedi cadarnhau'r farn honno yn ysgrifenedig i'r awdurdod contractio.

(6) Y farn yw, os bydd yr wybodaeth yn cael ei chyhoeddi—

- (a) y bydd gweithgareddau'r cwmni, neu
- (b) y bydd un neu ragor o nodweddion neu briodoleddau personol yr ymgeisydd pan fydd wedi ei gysylltu â'r cwmni hwnnw,

yn rhoi'r ymgeisydd neu berson sy'n byw gyda'r ymgeisydd mewn perygl difrifol o ddiodef trais neu fygythiad.

(7) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

(8) Nid yw'r rheoliad hwn yn gymwys i awdurdod contractio sy'n gyfleustod preifat.

### **Hysbysiadau dyfarnu contract a gyhoeddir gan gyfleustodau preifat**

**29.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad dyfarnu contract a gyhoeddir gan gyfleustod preifat o dan adran 50(1) o Ddeddf 2023.

(2) Yr wybodaeth yw—

- (a) yr un wybodaeth â'r wybodaeth y cyfeirir ati yn rheoliad 28(2)(a) i (q), ac eithrio is-baragraffau (h) ac (n),
- (b) amcangyfrif o'r dyddiad yr ymrwymir i'r contract, ac
- (c) disgrifiad o unrhyw opsiwn yn y contract cyhoeddus—
  - (i) i gyflenwi nwyddau, gwasanaethau neu weithiau ychwanegol, neu
  - (ii) i estyn neu adnewyddu cyfnod y contract.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad (gan gynnwys gwybodaeth sy'n ymwneud â chontractau eraill sydd wedi eu dyfarnu o dan yr un caffaeliad) yn yr hysbysiad.

(4) Nid yw'r rheoliad hwn yn gymwys—

- (a) i ddyfarnu contract cyhoeddus yn uniongyrchol o dan adran 41 neu 43 o Ddeddf 2023 (gweler yn hytrach reoliad 30), neu
- (b) i ddyfarnu contract cyhoeddus yn unol â fframwaith (gweler yn hytrach reoliad 31).

(b) in relation to an individual mentioned in paragraph (4)(b), is information regarding which the individual—

- (i) is reasonably of the view set out in paragraph (6), and
- (ii) has confirmed that view in writing to the contracting authority.

(6) The view is that if the information is published—

- (a) the activities of the company, or
- (b) one or more characteristics or personal attributes of the applicant when associated with that company,

will put the applicant or a person living with the applicant at serious risk of being subjected to violence or intimidation.

(7) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(8) This regulation does not apply to a contracting authority that is a private utility.

### **Contract award notices published by private utilities**

**29.**—(1) This regulation sets out other information which must be included in a contract award notice published by a private utility under section 50(1) of the 2023 Act.

(2) The information is—

- (a) the same information referred to in regulation 28(2)(a) to (q), except sub-paragraphs (h) and (n),
- (b) the estimated date when the contract will be entered into, and
- (c) a description of any option in the public contract—
  - (i) to supply additional goods, services or works, or
  - (ii) to extend or renew the term of the contract.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement (including information that relates to other contracts awarded under the same procurement) in the notice.

(4) This regulation does not apply to—

- (a) the direct award of a public contract under section 41 or 43 of the 2023 Act (see instead regulation 30), or
- (b) the award of a public contract in accordance with a framework (see instead regulation 31).

## Hysbysiadau dyfarnu contract a gyhoeddir gan gyfleustodau preifat: dyfarniadau uniongyrchol

**30.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad dyfarnu contract a gyhoeddir gan gyfleustod preifat o dan adran 50(1) o Ddeddf 2023 pan gafodd y contract ei ddyfarnu yn uniongyrchol yn unol ag adran 41 neu 43 o Ddeddf 2023.

(2) Yr wybodaeth yw—

- (a) yr un wybodaeth â'r wybodaeth y cyfeirir ati yn rheoliad 28(2)(a) i (q), ac eithrio is-baragraffau (c)(iii), (c)(iv), (h) i (j), (l) ac (n),
- (b) amcangyfrif o'r dyddiad yr ymrwymir i'r contract,
- (c) disgrifiad o unrhyw opsiwn yn y contract cyhoeddus—
  - (i) i gyflenwi nwyddau, gwasanaethau neu weithiau ychwanegol, neu
  - (ii) i estyn neu adnewyddu cyfnod y contract,
- (d) a yw'r contract yn cael ei ddyfarnu yn uniongyrchol i gyflenwr nad yw'n gyflenwr gwaharddedig oherwydd bod cyfiawnhad dros ddyfarnu yn uniongyrchol yn gymwys yn unol ag adran 41(1)(a) o Ddeddf 2023,
- (e) os yw is-baragraff (d) yn gymwys, y cyfiawnhad dros ddyfarnu yn uniongyrchol yn Atodlen 5 i Ddeddf 2023 sy'n gymwys, ac esboniad ynghylch pam y mae'r awdurdod contractio yn ystyried ei fod yn gymwys,
- (f) a yw'r contract yn cael ei ddyfarnu yn uniongyrchol i gyflenwr sy'n gyflenwr gwaharddedig oherwydd bod yr awdurdod contractio yn ystyried mai'r hyn sydd o'r budd mwyaf i'r cyhoedd yw dyfarnu'r contract i'r cyflenwr hwnnw yn unol ag adran 41(2) i (5) o Ddeddf 2023,
- (g) os yw is-baragraff (f) yn gymwys—
  - (i) y drosedd, neu ddigwyddiad arall a grybwyllir yn Atodlen 6 i Ddeddf 2023, y mae'r cyflenwr yn gyflenwr gwaharddedig yn rhinwedd y drosedd honno neu'r digwyddiad hwnnw, a
  - (ii) pa sail yn adran 41(5) o Ddeddf 2023 sy'n gymwys, ac esboniad ynghylch pam y mae'r awdurdod contractio yn ystyried ei bod yn gymwys,
- (h) a yw'r contract yn cael ei ddyfarnu yn uniongyrchol i gyflenwr yn unol â rheoliadau a wneir o dan adran 42 o Ddeddf 2023 (dyfarniad uniongyrchol er mwyn gwarchod bywyd, etc.),

## Contract award notices published by private utilities: direct awards

**30.**—(1) This regulation sets out other information which must be included in a contract award notice published by a private utility under section 50(1) of the 2023 Act where the contract was awarded directly in accordance with section 41 or 43 of the 2023 Act.

(2) The information is—

- (a) the same information referred to in regulation 28(2)(a) to (q), except sub-paragraphs (c)(iii), (c)(iv), (h) to (j), (l) and (n),
- (b) the estimated date when the contract will be entered into,
- (c) a description of any option in the public contract—
  - (i) to supply additional goods, services or works, or
  - (ii) to extend or renew the term of the contract,
- (d) whether the contract is being awarded directly to a supplier that is not an excluded supplier because a direct award justification applies in accordance with section 41(1)(a) of the 2023 Act,
- (e) if sub-paragraph (d) applies, the direct award justification in Schedule 5 to the 2023 Act which applies and an explanation of why the contracting authority considers that it applies,
- (f) whether the contract is being awarded directly to a supplier that is an excluded supplier because the contracting authority considers that there is an overriding public interest in awarding the contract to that supplier in accordance with section 41(2) to (5) of the 2023 Act,
- (g) if sub-paragraph (f) applies—
  - (i) the offence or other event mentioned in Schedule 6 to the 2023 Act by virtue of which the supplier is an excluded supplier, and
  - (ii) which ground in section 41(5) of the 2023 Act applies and an explanation of why the contracting authority considers that it applies,
- (h) whether the contract is being awarded directly to a supplier pursuant to regulations made under section 42 of the 2023 Act (direct award to protect life, etc.),

- (i) os yw is-baragraff (h) yn gymwys, enw a rhif cofrestru'r offeryn statudol sy'n cynnwys y rheoliadau hynny,
- (j) a yw'r contract yn cael ei ddyfarnu yn uniongyrchol i gyflenwr nad yw'n gyflenwr gwaharddedig yn rhinwedd adran 43 o Ddeddf 2023 (newid i ddyfarniad uniongyrchol), a
- (k) os yw is-baragraff (j) yn gymwys, y rheswm pam, ym marn yr awdurdod contractio, na fu unrhyw dendrau addas nac unrhyw geisiadau i gymryd rhan drwy gyfeirio at adran 43(2) o Ddeddf 2023, a pham y mae'n ystyried nad yw dyfarniad o dan adran 19 o'r Ddeddf honno yn bosibl o dan yr amgylchiadau.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

### **Hysbysiadau dyfarnu contract a gyhoeddir gan gyfleustodau preifat: fframweithiau**

**31.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad dyfarnu contract a gyhoeddir gan gyfleustod preifat o dan adran 50(1) o Ddeddf 2023 pan fo'r contract yn cael ei ddyfarnu yn unol â fframwaith.

(2) Yr wybodaeth yw—

- (a) yr un wybodaeth â'r wybodaeth y cyfeirir ati yn rheoliad 28(2)(a) i (q), ac eithrio is-baragraffau (c)(iv), (i), (j), (n) ac (o),
- (b) amcangyfrif o'r dyddiad yr ymrwymir i'r contract,
- (c) disgrifiad o unrhyw opsiwn yn y contract cyhoeddus—
  - (i) i gyflenwi nwyddau, gwasanaethau neu weithiau ychwanegol, neu
  - (ii) i estyn neu adnewyddu cyfnod y contract,
- (d) pan fo'r fframwaith wedi ei drefnu drwy gyfeirio at lotiau, y rhif neilltuol a roddwyd gan yr awdurdod contractio i'r lot y mae'r contract yn cael ei ddyfarnu odani,
- (e) manylion ynghylch pa un o'r gweithdrefnau canlynol a ddefnyddiwyd i ddyfarnu'r contract cyhoeddus—
  - (i) proses ddethol gystadleuol ar gyfer fframweithiau o dan adran 46 o Ddeddf 2023, neu
  - (ii) dyfarniad heb gystadleuaeth bellach o dan adran 45(4) o Ddeddf 2023, ac

- (i) if sub-paragraph (h) applies, the title and registration number of the statutory instrument containing those regulations,
- (j) whether the contract is being awarded directly to a supplier that is not an excluded supplier by virtue of section 43 of the 2023 Act (switching to direct award), and
- (k) if sub-paragraph (j) applies, the reason the contracting authority considers there were no suitable tenders or requests to participate by reference to section 43(2) of the 2023 Act and why it considers that an award under section 19 of that Act is not possible in the circumstances.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

### **Contract award notices published by private utilities: frameworks**

**31.**—(1) This Regulation sets out other information which must be included in a contract award notice published by a private utility under section 50(1) of the 2023 Act where the contract is being awarded in accordance with a framework.

(2) The information is—

- (a) the same information referred to in regulation 28(2)(a) to (q), except sub-paragraphs, (c)(iv), (i), (j), (n) and (o),
- (b) the estimated date when the contract will be entered into,
- (c) a description of any option in the public contract—
  - (i) to supply additional goods, services or works, or
  - (ii) to extend or renew the term of the contract,
- (d) where the framework is arranged by reference to lots, the distinct number given by the contracting authority to the lot under which the contract is being awarded,
- (e) details of which of the following procedures was used to award the public contract—
  - (i) a competitive selection process for frameworks under section 46 of the 2023 Act, or
  - (ii) an award without further competition under section 45(4) of the 2023 Act, and

- (f) os yw is-baragraff (e)(ii) yn gymwys, esboniad ynghylch pam y mae'r awdurdod contractio wedi ystyried ei fod yn gymwys drwy gyfeirio at adran 45(4) o Ddeddf 2023.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

### Crynodebau asesu

**32.**—(1) Mae'r rheoliad hwn yn nodi pa wybodaeth y mae rhaid ei chynnwys mewn crynodeb asesu a ddarperir i gyflenwr o dan adran 50(3) o Ddeddf 2023.

(2) Yn achos y tendr mwyaf manteisiol, yr wybodaeth yw—

- (a) enw'r cyflenwr,
- (b) cyfeiriad post cyswllt a chyfeiriad e-bost ar gyfer y cyflenwr,
- (c) y cod adnabod unigryw ar gyfer y cyflenwr,
- (d) mewn cysylltiad â'r meini prawf dyfarnu ar gyfer y contract cyhoeddus—
  - (i) y meini prawf dyfarnu, gan gynnwys y fethodoleg asesu, wedi eu nodi'n llawn, neu grynoded o'r meini prawf dyfarnu, gan gynnwys—
    - (aa) enw pob maen prawf,
    - (bb) pwysigrwydd cymharol pob maen prawf, a
    - (cc) sut yr oedd pob maen prawf i gael ei asesu drwy gyfeirio at sgoriau a pha sgoriau oedd i fod ar gael ar gyfer pob maen prawf, a
  - (ii) os nad yw'r meini prawf dyfarnu, gan gynnwys y fethodoleg asesu, wedi eu nodi'n llawn yn y crynodeb asesu, arwydd o ble y gellir cyrchu'r fersiwn llawn, ac
- (e) sut y cafodd y tendr ei asesu yn erbyn y meini prawf dyfarnu drwy gyfeirio at sgoriau, gan gynnwys—
  - (i) y sgôr a benderfynwyd ar gyfer pob maen prawf dyfarnu ac—
    - (aa) esboniad ynghylch y sgôr honno drwy gyfeirio at wybodaeth berthnasol yn y tendr, a
    - (bb) pan fo maen prawf dyfarnu yn cynnwys is-feini prawf asesu, esboniad ynghylch sut y cafodd y tendr ei asesu drwy gyfeirio at bob is-maen prawf, a
  - (ii) cyfanswm y sgôr ac unrhyw sgoriau is-gyfanswm.

- (f) if sub-paragraph (e)(ii) applies, an explanation of why the contracting authority considered that it applies by reference to section 45(4) of the 2023 Act.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

### Assessment summaries

**32.**—(1) This regulation sets out what information must be included in an assessment summary provided to a supplier under section 50(3) of the 2023 Act.

(2) In the case of the most advantageous tender, the information is—

- (a) the name of the supplier,
- (b) a contact postal address and email address for the supplier,
- (c) the unique identifier for the supplier,
- (d) in respect of the award criteria for the public contract—
  - (i) the award criteria, including the assessment methodology, set out in full, or a summary of the award criteria including—
    - (aa) the title of each criterion,
    - (bb) the relative importance of each criterion, and
    - (cc) how each criterion was to have been assessed by reference to scores and what scores were to have been available for each criterion, and
  - (ii) if the award criteria, including the assessment methodology, are not set out in full in the assessment summary, an indication of where the full version can be accessed, and
- (e) how the tender was assessed against the award criteria by reference to scores including—
  - (i) the score determined for each award criterion and—
    - (aa) an explanation for that score by reference to relevant information in the tender, and
    - (bb) where an award criterion includes sub-criteria for assessment, an explanation of how the tender was assessed by reference to each sub-criterion, and
  - (ii) the total score and any sub-total scores.



(3) Yn achos unrhyw dendr arall a aseswyd, yr wybodaeth yw—

- (a) yr un wybodaeth â'r wybodaeth y cyfeirir ati ym mharagraff (2)(a) i (d),
- (b) yr un wybodaeth â'r wybodaeth y cyfeirir ati ym mharagraff (2)(e), ond dim ond i'r graddau y cafodd y tendr ei asesu yn erbyn y meini prawf dyfarnu,
- (c) unrhyw esboniad pellach ynghylch pam nad yw'r contract cyhoeddus yn cael ei ddyfarnu i'r cyflenwr gan gynnwys, pan fo'r tendr wedi ei ddatgymhwyso o dan y fethodoleg asesu o dan adran 23(3) o Ddeddf 2023, y rhesymau dros y datgymhwyso hwnnw, a
- (d) yr un wybodaeth â'r wybodaeth y cyfeirir ati ym mharagraff (2)(e) mewn cysylltiad â'r tendr mwyaf manteisiol.

(4) Rhaid i'r holl grynodebau asesu mewn cysylltiad â contract cyhoeddus a ddarperir gan awdurdod contractio i gyflenwyr yn unol ag adran 50(3) o Ddeddf 2023 gael eu darparu ar yr un pryd.

(5) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag darparu gwybodaeth arall sy'n ymwneud â'r un caffaeliad mewn crynodeb asesu.

#### **Hysbysiadau manylion contract: gweithdrefn agored neu weithdrefn hyblyg gystadleuol**

**33.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad manylion contract a gyhoeddir o dan adran 53(1) o Ddeddf 2023 pan ymrwymwyd i'r contract cyhoeddus yn dilyn—

- (a) gweithdrefn agored, neu
  - (b) gweithdrefn hyblyg gystadleuol (gan gynnwys drwy gyfeirio at farchnad ddynamig).
- (2) Yr wybodaeth yw—
- (a) gwybodaeth yr awdurdod contractio,
  - (b) enw'r caffaeliad,
  - (c) y cod adnabod unigryw ar gyfer y caffaeliad,
  - (d) y cod adnabod unigryw ar gyfer y contract cyhoeddus,
  - (e) pan gafodd y contract cyhoeddus ei ddyfarnu drwy gyfeirio at aelodaeth cyflenwyr o farchnad ddynamig, y cod adnabod unigryw ar gyfer y farchnad ddynamig honno,
  - (f) pwnc y contract,

(3) In the case of any other assessed tender, the information is—

- (a) the same information as that referred to in paragraph (2)(a) to (d),
- (b) the same information as that referred to in paragraph (2)(e), but only to the extent that the tender was assessed against the award criteria,
- (c) any further explanation of why the public contract is not being awarded to the supplier including, where the tender was disqualified under the assessment methodology under section 23(3) of the 2023 Act, the reasons for that disqualification, and
- (d) the same information referred to in paragraph (2)(e) in respect of the most advantageous tender.

(4) All assessment summaries in respect of a public contract which are provided by a contracting authority to suppliers in accordance with section 50(3) of the 2023 Act must be provided at the same time.

(5) Nothing in this regulation prevents a contracting authority from providing other information that relates to the same procurement in an assessment summary.

#### **Contract details notices: open or competitive flexible procedure**

**33.**—(1) This regulation sets out other information which must be included in a contract details notice published under section 53(1) of the 2023 Act where the public contract was entered into following—

- (a) an open procedure, or
  - (b) a competitive flexible procedure (including by reference to a dynamic market).
- (2) The information is—
- (a) the contracting authority information,
  - (b) the title of the procurement,
  - (c) the unique identifier for the procurement,
  - (d) the unique identifier for the public contract,
  - (e) where the public contract was awarded by reference to suppliers' membership of a dynamic market, the unique identifier for that dynamic market,
  - (f) the contract subject-matter,

- (g) ar gyfer pob cyflenwr sy'n barti i'r contract cyhoeddus—
- (i) enw'r cyflenwr,
  - (ii) cyfeiriad post cyswllt a chyfeiriad e-bost y cyflenwr,
  - (iii) y cod adnabod unigryw ar gyfer y cyflenwr, a
  - (iv) a yw'r cyflenwr—
    - (aa) yn fenter fach a chanolig ei maint,
    - (bb) yn gorff anllywodraethol â gwerthoedd yn ei lywio ac sy'n ailfuddsoddi ei wargedion yn bennaf er mwyn hybu amcanion cymdeithasol, amgylcheddol neu ddiwylliannol,
    - (cc) yn ddarparwr cyflogaeth â chymorth, neu
    - (dd) yn gwmni cydfuddiannol gwasanaethau cyhoeddus,
- (h) a ddyfarnwyd y contract cyhoeddus yn dilyn—
- (i) gweithdrefn agored, neu
  - (ii) gweithdrefn hyblyg gystadleuol,
- (i) a oedd y contract wedi ei neilltuo—
- (i) i ddarparwyr cyflogaeth â chymorth yn unol ag adran 32 o Ddeddf 2023, neu
  - (ii) i gwmnïau cydfuddiannol gwasanaethau cyhoeddus yn unol ag adran 33 o Ddeddf 2023,
- (j) os cafodd y contract cyhoeddus ei ddyfarnu drwy gyfeirio at lot—
- (i) enw'r lot,
  - (ii) y rhif neilltuo a roddwyd i'r lot gan yr awdurdod contractio,
  - (iii) disgrifiad o'r mathau o nwyddau, gwasanaethau neu weithiau a fydd yn cael eu cyflenwi,
  - (iv) crynodeb o sut y bydd y nwyddau, y gwasanaethau neu'r gweithiau hynny yn cael eu cyflenwi,
  - (v) amcangyfrif o'r dyddiad y bydd y nwyddau, y gwasanaethau neu'r gweithiau yn cael eu cyflenwi neu amcangyfrif o'r cyfnod y byddant yn cael eu cyflenwi drosto,
  - (vi) amcangyfrif o swm nwyddau, gwasanaethau neu weithiau a fydd yn cael eu cyflenwi,
  - (vii) amcangyfrif o werth y lot, a
- (g) for each supplier party to the public contract—
- (i) the supplier's name,
  - (ii) the supplier's contact postal address and email address,
  - (iii) the unique identifier for the supplier, and
  - (iv) whether the supplier is—
    - (aa) a small and medium-sized enterprise,
    - (bb) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
    - (cc) a supported employment provider, or
    - (dd) a public service mutual,
- (h) whether the public contract was awarded following—
- (i) an open procedure, or
  - (ii) a competitive flexible procedure,
- (i) whether the contract was reserved—
- (i) to supported employment providers in accordance with section 32 of the 2023 Act, or
  - (ii) to public service mutuals in accordance with section 33 of the 2023 Act,
- (j) if the public contract was awarded by reference to a lot—
- (i) the title of the lot,
  - (ii) the distinct number given to the lot by the contracting authority,
  - (iii) a description of the kinds of goods, services or works which will be supplied,
  - (iv) a summary of how those goods, services or works will be supplied,
  - (v) the estimated date when, or period over which, the goods, services or works will be supplied,
  - (vi) the estimated amount of goods, services or works which will be supplied,
  - (vii) the estimated value of the lot, and

- (viii) y codau GGG perthnasol,
- (k) amcangyfrif o werth y contract cyhoeddus,
- (l) y dyddiad yr ymrwymwyd i'r contract cyhoeddus,
- (m) disgrifiad o unrhyw opsiwn yn y contract cyhoeddus—
  - (i) i gyflenwi nwyddau, gwasanaethau neu weithiau ychwanegol, neu
  - (ii) i estyn neu adnewyddu cyfnod y contract,
- (n) pan gafodd y contract cyhoeddus ei ddyfarnu o dan ran briodol o farchnad ddynamig, y rhif neilltuol a roddwyd i'r rhan honno gan y person a sefydlodd y farchnad ddynamig,
- (o) a yw'r contract cyhoeddus yn gontract cyfundrefn arbennig ac, os felly, a yw—
  - (i) yn gontract consesiwn,
  - (ii) yn gontract cyffyrddiad ysgafn, neu
  - (iii) yn gontract cyfleustodau,
- (p) a yw'r contract cyhoeddus yn gontract y mae gan y Deyrnas Unedig rwymedigaethau ar ei gyfer o dan y Cytundeb ar Gaffael gan Lywodraethau,
- (q) o'r dyddiad y daw'r Cytundeb Cynhwysfawr a Blaengar ar gyfer Partneriaeth y Môr Tawel i rym ar gyfer y Deyrnas Unedig, a yw'r contract cyhoeddus yn gontract y mae gan y Deyrnas Unedig rwymedigaethau ar ei gyfer o dan y Cytundeb hwnnw,
- (r) pan gafodd y dangosyddion perfformiad allweddol eu gosod yn unol ag adran 52(1) o Ddeddf 2023—
  - (i) disgrifiad o bob dangosydd perfformiad allweddol, a
  - (ii) pa mor aml y bydd yr awdurdod contractio yn asesu perfformiad yn erbyn y dangosyddion perfformiad allweddol yn unol ag adran 71(2) o Ddeddf 2023, ac
- (s) pan na chafodd dangosyddion perfformiad allweddol eu gosod yn rhinwedd adran 52(2) o Ddeddf 2023, esboniad ynghylch pam y mae'r awdurdod contractio yn ystyried na ellid asesu perfformiad y cyflenwr o dan y contract yn briodol drwy gyfeirio at ddangosyddion perfformiad allweddol.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

(4) Nid yw'r rheoliad hwn yn gymwys i hysbysiad manylion contract pan fo'r contract cyhoeddus yn fframwaith (gweler yn hytrach reoliad 34).

- (viii) the relevant CPV codes,
- (k) the estimated value of the public contract,
- (l) the date when the public contract was entered into,
- (m) a description of any option in the public contract—
  - (i) to supply additional goods, services or works, or
  - (ii) to extend or renew the term of the contract,
- (n) where the public contract was awarded under an appropriate part of a dynamic market, the distinct number given to that part by the person who established the dynamic market,
- (o) whether the public contract is a special regime contract and, if so, whether it is—
  - (i) a concession contract,
  - (ii) a light touch contract, or
  - (iii) a utilities contract,
- (p) whether the public contract is a contract for which the United Kingdom has obligations under the GPA,
- (q) from the date when the Comprehensive and Progressive Agreement for Trans-Pacific Partnership enters into force for the United Kingdom, whether the public contract is a contract for which the United Kingdom has obligations under that Agreement,
- (r) where the key performance indicators were set in accordance with section 52(1) of the 2023 Act—
  - (i) a description of each key performance indicator, and
  - (ii) how often the contracting authority will assess performance against the key performance indicators in accordance with section 71(2) of the 2023 Act, and
- (s) where key performance indicators were not set by virtue of section 52(2) of the 2023 Act, an explanation of why the contracting authority considers that the supplier's performance under the contract could not appropriately be assessed by reference to key performance indicators.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(4) This regulation does not apply to a contract details notice where the public contract is a framework (see instead regulation 34).

## Hysbysiadau manylion contract: fframweithiau

**34.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad manylion contract a gyhoeddir o dan adran 53(1) o Ddeddf 2023 pan fo'r contract cyhoeddus yn fframwaith.

(2) Yr wybodaeth yw—

- (a) yr un wybodaeth â'r wybodaeth y cyfeirir ati yn rheoliad 33(2)(a) i (q), ac eithrio is-baragraff (h),
- (b) yr awdurdodau contractio a chanddynt hawlogaeth i ddyfarnu contractau cyhoeddus yn unol â'r fframwaith (pa un ai drwy restru enwau'r awdurdodau hynny neu drwy ddisgrifio categorïau o awdurdodau),
- (c) cyfnod y fframwaith,
- (d) a yw'r fframwaith wedi ei ddyfarnu o dan fframwaith agored,
- (e) pan gafodd y fframwaith ei ddyfarnu o dan fframwaith agored, y cod adnabod unigryw ar gyfer caffaeliad y fframwaith olaf a ddyfarnwyd o dan y fframwaith agored (oni bai nad oes fframwaith wedi ei ddyfarnu o dan y fframwaith agored yn flaenorol),
- (f) pan gafodd y fframwaith ei ddyfarnu o dan fframwaith agored, amcangyfrif o ddyddiad dod i ben y fframwaith agored,
- (g) a ddyfarnwyd y contract cyhoeddus yn dilyn—
  - (i) gweithdrefn agored,
  - (ii) gweithdrefn hyblyg gystadleuol, neu
  - (iii) yn uniongyrchol yn unol ag adran 41 neu 43 o Ddeddf 2023,
- (h) a yw'r fframwaith yn darparu ar gyfer codi ffioedd ar gyflenwr yn unol â'r fframwaith ac, os felly, fanylion y ganran sefydlog a ddefnyddir i godi'r ffi arno yn unol ag adran 45(7) o Ddeddf 2023,
- (i) y pris sy'n daladwy, neu'r mecanwaith ar gyfer pennu'r pris sy'n daladwy, o dan contract cyhoeddus sydd wedi ei ddyfarnu yn unol â'r fframwaith, a
- (j) manylion y broses ddethol sydd i'w chymhwyso wrth ddyfarnu contract cyhoeddus yn unol â'r fframwaith.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

## Contract details notices: frameworks

**34.**—(1) This regulation sets out other information which must be included in a contract details notice published under section 53(1) of the 2023 Act where the public contract is a framework.

(2) The information is—

- (a) the same information referred to in regulation 33(2)(a) to (q), except sub-paragraph (h),
- (b) the contracting authorities entitled to award public contracts in accordance with the framework (whether by listing the names of those authorities or by describing categories of authorities),
- (c) the term of the framework,
- (d) whether the framework is awarded under an open framework,
- (e) where the framework was awarded under an open framework, the unique identifier for the procurement of the last framework awarded under the open framework (unless no framework has previously been awarded under the open framework),
- (f) where the framework was awarded under an open framework, the estimated end date of the open framework,
- (g) whether the public contract was awarded following—
  - (i) an open procedure,
  - (ii) a competitive flexible procedure, or
  - (iii) directly, in accordance with section 41 or 43 of the 2023 Act,
- (h) whether the framework provides for fees to be charged to a supplier in accordance with the framework and, if so, details of the fixed percentage by which they will be charged in accordance with section 45(7) of the 2023 Act,
- (i) the price payable, or mechanism for determining the price payable, under a public contract awarded in accordance with the framework, and
- (j) details of the selection process to be applied on the award of a public contract in accordance with the framework.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

### **Hysbysiadau manylion contract: contractau cyhoeddus a ddyfernir yn unol â fframweithiau**

**35.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad manylion contract a gyhoeddir o dan adran 53(1) o Ddeddf 2023 pan gafodd y contract cyhoeddus ei ddyfarnu yn unol â fframwaith.

(2) Yr wybodaeth yw—

- (a) yr un wybodaeth â'r wybodaeth y cyfeirir ati yn rheoliad 33(2), ac eithrio is-baragraffau (e), (h), (n), (p) a (q),
- (b) y cod adnabod unigryw ar gyfer caffaeliad y fframwaith y mae'r contract cyhoeddus yn cael ei ddyfarnu yn unol ag ef,
- (c) pan fo'r fframwaith wedi ei drefnu drwy gyfeirio at lotiau, y rhif neilltuol a roddwyd gan yr awdurdod contractio i'r lot y mae'r contract yn cael ei ddyfarnu odani,
- (d) manylion ynghylch pa un o'r gweithdrefnau a ganlyn a ddefnyddiwyd i ddyfarnu'r contract cyhoeddus—
  - (i) proses ddethol gystadleuol ar gyfer fframweithiau o dan adran 46 o Ddeddf 2023, neu
  - (ii) dyfarniad heb gystadleuaeth bellach o dan adran 45(4) o Ddeddf 2023, ac
- (e) os yw is-baragraff (d)(ii) yn gymwys, esboniad ynghylch pam y mae'r awdurdod contractio wedi ystyried ei fod yn gymwys drwy gyfeirio at adran 45(4) o Ddeddf 2023.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

### **Hysbysiadau manylion contract: dyfarniad uniongyrchol**

**36.**—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad manylion contract a gyhoeddir o dan adran 53(1) o Ddeddf 2023 pan fo'r contract cyhoeddus wedi ei ddyfarnu yn uniongyrchol yn unol ag adran 41 neu 43 o Ddeddf 2023.

(2) Yr wybodaeth yw—

- (a) yr un wybodaeth â'r wybodaeth y cyfeirir ati yn rheoliad 33(2), ac eithrio is-baragraffau (e), (h) ac (n),
- (b) a gafodd y contract ei ddyfarnu yn uniongyrchol i gyflenwr nad yw'n gyflenwr gwaharddedig oherwydd bod cyfiawnhad dros ddyfarnu yn uniongyrchol yn gymwys yn unol ag adran 41(1)(a) o Ddeddf 2023,

### **Contract details notices: public contracts awarded in accordance with frameworks**

**35.**—(1) This regulation sets out other information which must be included in a contract details notice published under section 53(1) of the 2023 Act where the public contract was awarded in accordance with a framework.

(2) The information is—

- (a) the same information referred to in regulation 33(2), except sub-paragraphs (e), (h), (n), (p) and (q),
- (b) the unique identifier for the procurement of the framework in accordance with which the public contract is being awarded,
- (c) where the framework is arranged by reference to lots, the distinct number given by the contracting authority to the lot under which the contract is being awarded,
- (d) details of which of the following procedures was used to award the public contract—
  - (i) a competitive selection process for frameworks under section 46 of the 2023 Act, or
  - (ii) an award without further competition under section 45(4) of the 2023 Act, and
- (e) if sub-paragraph (d)(ii) applies, an explanation of why the contracting authority considered that it applies by reference to section 45(4) of the 2023 Act.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

### **Contract details notices: direct award**

**36.**—(1) This regulation sets out other information which must be included in a contract details notice published under section 53(1) of the 2023 Act where the public contract was awarded directly in accordance with section 41 or 43 of the 2023 Act.

(2) The information is—

- (a) the same information referred to in regulation 33(2), except sub-paragraphs (e), (h) and (n),
- (b) whether the contract was awarded directly to a supplier that is not an excluded supplier because a direct award justification applies in accordance with section 41(1)(a) of the 2023 Act,

- (c) os yw is-baragraff (b) yn gymwys, y cyfiawnhad dros ddyfarnu yn uniongyrchol yn Atodlen 5 i Ddeddf 2023 sy'n gymwys, ac esboniad ynghylch pam y mae'r awdurdod contractio yn ystyried ei fod yn gymwys,
- (d) a gafodd y contract ei ddyfarnu yn uniongyrchol i gyflenwr sy'n gyflenwr gwaharddedig oherwydd bod yr awdurdod contractio wedi ystyried mai'r hyn sydd o'r budd mwyaf i'r cyhoedd yw dyfarnu'r contract i'r cyflenwr hwnnw yn unol ag adran 41(2) i (5) o Ddeddf 2023,
- (e) os yw is-baragraff (d) yn gymwys, pa sail yn adran 41(5) o Ddeddf 2023 sy'n gymwys, ac esboniad ynghylch pam y mae'r awdurdod contractio yn ystyried ei bod yn gymwys,
- (f) a gafodd y contract ei ddyfarnu yn uniongyrchol i gyflenwr yn unol â rheoliadau a wneir o dan adran 42 o Ddeddf 2023 (dyfarnu'n uniongyrchol er mwyn gwarchod bywyd, etc.),
- (g) os yw is-baragraff (f) yn gymwys, enw a rhif cofrestru'r offeryn statudol sy'n cynnwys y rheoliadau hynny,
- (h) a gafodd y contract ei ddyfarnu yn uniongyrchol i gyflenwr nad yw'n gyflenwr gwaharddedig yn rhinwedd adran 43 o Ddeddf 2023 (newid i ddyfarniad uniongyrchol),
- (i) os yw is-baragraff (h) yn gymwys, esboniad, ym marn yr awdurdod contractio, ynghylch pam na fu unrhyw dendrau addas nac unrhyw geisiadau i gymryd rhan drwy gyfeirio at adran 43(2) o Ddeddf 2023 a pham y mae'n ystyried nad yw dyfarniad o dan adran 19 o'r Ddeddf honno yn bosibl o dan yr amgylchiadau,
- (j) a gafodd y contract ei ddyfarnu i gyflenwr sy'n gyflenwr gwaharddedig yn rhinwedd adran 41(2) o Ddeddf 2023, a
- (k) os yw is-baragraff (j) yn gymwys, y drosedd, neu'r digwyddiad arall a grybwyllir yn Atodlen 6 i Ddeddf 2023, sydd o dan sylw.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

(4) Nid yw'r rheoliad hwn yn gymwys i hysbysiad manylion contract pan fo'r contract cyhoeddus yn fframwaith (gweler yn hytrach reoliad 34).

- (c) if sub-paragraph (b) applies, the direct award justification in Schedule 5 to the 2023 Act which applies and an explanation of why the contracting authority considers that it applies,
- (d) whether the contract was awarded directly to a supplier that is an excluded supplier because the contracting authority considered that there was an overriding public interest in awarding the contract to that supplier in accordance with section 41(2) to (5) of the 2023 Act,
- (e) if sub-paragraph (d) applies, which ground in section 41(5) of the 2023 Act applies and an explanation of why the contracting authority considers that it applies,
- (f) whether the contract was awarded directly to a supplier pursuant to regulations made under section 42 of the 2023 Act (direct award to protect life, etc.),
- (g) if sub-paragraph (f) applies, the title and registration number of the statutory instrument containing those regulations,
- (h) whether the contract was awarded directly to a supplier that is not an excluded supplier by virtue of section 43 of the 2023 Act (switching to direct award),
- (i) if sub-paragraph (h) applies, an explanation of why the contracting authority considers there were no suitable tenders or requests to participate by reference to section 43(2) of the 2023 Act and why it considers that an award under section 19 of that Act is not possible in the circumstances,
- (j) whether the contract was awarded to a supplier that is an excluded supplier by virtue of section 41(2) of the 2023 Act, and
- (k) if sub-paragraph (j) applies, the offence or other event mentioned in Schedule 6 to the 2023 Act in question.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(4) This regulation does not apply to a contract details notice where the public contract is a framework (see instead regulation 34).

## Hysbysiadau manylion contract: contractau sydd o dan y trothwy

37.—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad manylion contract a gyhoeddir o dan adran 87(3) o Ddeddf 2023.

(2) Yr wybodaeth yw—

- (a) gwybodaeth yr awdurdod contractio,
- (b) enw'r caffaeliad,
- (c) y cod adnabod unigryw ar gyfer y caffaeliad,
- (d) y cod adnabod unigryw ar gyfer y contract,
- (e) ar gyfer pob cyflenwr sy'n barti i'r contract—
  - (i) enw'r cyflenwr,
  - (ii) cyfeiriad post cyswllt a chyfeiriad e-bost y cyflenwr,
  - (iii) y cod adnabod unigryw ar gyfer y cyflenwr, a
  - (iv) a yw'r cyflenwr—
    - (aa) yn fenter fach a chanolig ei maint, neu
    - (bb) yn gorff anllywodraethol â gwerthoedd yn ei lywio ac sy'n ailfuddsoddi ei wargedion yn bennaf er mwyn hybu amcanion cymdeithasol, amgylcheddol neu ddiwylliannol,
- (f) pwnc y contract,
- (g) a gafodd y contract ei ddyfarnu drwy gyfeirio at lotiau ac, os felly—
  - (i) enw pob lot o dan y contract,
  - (ii) y rhif neilltuol a roddwyd i bob lot gan yr awdurdod contractio,
- (h) a yw'r contract yn gontract cyffyrddiad ysgafn,
- (i) a gafodd y contract ei ddyfarnu drwy gyfeirio at aelodaeth cyflenwyr o farchnad ddynamig ac, os felly—
  - (i) y cod adnabod unigryw ar gyfer y farchnad ddynamig, a
  - (ii) pan gafodd y contract cyhoeddus ei ddyfarnu o dan ran briodol o farchnad ddynamig (gweler adran 34(1) a (6) o Ddeddf 2023), y rhif neilltuol a roddwyd i'r rhan honno gan yr awdurdod contractio,
- (j) amcangyfrif o werth y contract,
- (k) y dyddiad yr ymrwymwyd i'r contract, ac

## Contract details notices: below-threshold contracts

37.—(1) This regulation sets out other information which must be included in a contract details notice published under section 87(3) of the 2023 Act.

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) the unique identifier for the contract,
- (e) for each supplier party to the contract—
  - (i) the supplier's name,
  - (ii) the supplier's contact postal address and email address,
  - (iii) the unique identifier for the supplier, and
  - (iv) whether the supplier is—
    - (aa) a small and medium-sized enterprise, or
    - (bb) a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,
- (f) the contract subject-matter,
- (g) whether the contract was awarded by reference to lots and, if so—
  - (i) the title of each lot under the contract,
  - (ii) the distinct number given to each lot by the contracting authority,
- (h) whether the contract is a light touch contract,
- (i) whether the contract was awarded by reference to the suppliers' membership of a dynamic market and, if so—
  - (i) the unique identifier for the dynamic market, and
  - (ii) where the public contract was awarded under an appropriate part of a dynamic market (see section 34(1) and (6) of the 2023 Act), the distinct number given to that part by the contracting authority,
- (j) the estimated value of the contract,
- (k) the date when the contract was entered into, and

- (l) disgrifiad o unrhyw opsiwn yn y contract—
  - (i) i gyflenwi nwyddau, gwasanaethau neu weithiau ychwanegol, neu
  - (ii) i estyn neu adnewyddu cyfnod y contract,

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

### Hysbysiadau terfynu caffaeliad

**38.**—(1) Mae'r rheoliad hwn yn nodi pa wybodaeth y mae rhaid ei chynnwys mewn hysbysiad terfynu caffaeliad a gyhoeddir o dan adran 55(2) o Ddeddf 2023.

- (2) Yr wybodaeth yw—
  - (a) gwybodaeth yr awdurdod contractio,
  - (b) enw'r caffaeliad,
  - (c) y cod adnabod unigryw ar gyfer y caffaeliad,
  - (d) datganiad i'r perwyl bod yr awdurdod contractio, yn dilyn cyhoeddi hysbysiad tendr neu hysbysiad tryloywder mewn cysylltiad â contract, wedi penderfynu peidio â dyfarnu'r contract, ac
  - (e) y dyddiad y penderfynodd yr awdurdod contractio beidio â dyfarnu'r contract cyhoeddus.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad mewn hysbysiad terfynu caffael.

### Hysbysiadau cydymffurfedd taliadau

**39.**—(1) Mae'r rheoliad hwn yn nodi pa wybodaeth y mae rhaid ei chynnwys mewn hysbysiad cydymffurfedd taliadau a gyhoeddir o dan adran 69(1) o Ddeddf 2023.

- (2) Yr wybodaeth yw—
  - (a) gwybodaeth yr awdurdod contractio,
  - (b) dyddiadau diwrnodau cyntaf ac olaf y cyfnod adrodd y mae'r hysbysiad cydymffurfedd taliadau yn ymwneud ag ef,
  - (c) mewn cysylltiad â symiau a dalwyd gan yr awdurdod contractio o dan gontractau cyhoeddus yn ystod y cyfnod adrodd—
    - (i) nifer cyfartalog y diwrnodau a gymerwyd i wneud y taliadau hynny, lle diwrnod 1 yw'r diwrnod cyntaf ar ôl y diwrnod anfonebu;

- (l) a description of any option in the contract—
  - (i) to supply additional goods, services or works, or
  - (ii) to extend or renew the term of the contract.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

### Procurement termination notices

**38.**—(1) This regulation sets out what information must be included in a procurement termination notice published under section 55(2) of the 2023 Act.

- (2) The information is—
  - (a) the contracting authority information,
  - (b) the title of the procurement,
  - (c) the unique identifier for the procurement,
  - (d) a statement to the effect that, following the publication of a tender or transparency notice in respect of a contract, the contracting authority has decided not to award the contract, and
  - (e) the date when the contracting authority decided not to award the public contract.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in a procurement termination notice.

### Payments compliance notices

**39.**—(1) This regulation sets out what information must be included in a payments compliance notice published under section 69(1) of the 2023 Act.

- (2) The information is—
  - (a) the contracting authority information,
  - (b) the dates of the first and the last days of the reporting period to which the payments compliance notice relates,
  - (c) in respect of sums paid by the contracting authority under public contracts during the reporting period—
    - (i) the average number of days taken to make those payments, where day 1 is the first day after the invoice day;



(ii) y ganran o'r taliadau hynny a gafodd eu gwneud, lle diwrnod 1 yw'r diwrnod cyntaf ar ôl y diwrnod anfonebu—

(aa) o fewn y cyfnod sy'n dechrau ar ddiwrnod 1 ac yn gorffen â diwrnod 30;

(bb) o fewn y cyfnod sy'n dechrau ar ddiwrnod 31 ac yn gorffen â diwrnod 60;

(cc) ar neu ar ôl diwrnod 61,

(d) mewn cysylltiad â symiau a ddaeth yn daladwy o dan contractau cyhoeddus yn ystod y cyfnod adrodd, y ganran o'r taliadau hynny na chawsant eu gwneud o fewn y cyfnod adrodd, ac

(e) datganiad gan y cyfarwyddwr, neu swyddog tebyg o'r awdurdod contractio sy'n gyfrifol am gyllid yr awdurdod contractio, yn nodi bod y person yn cymeradwyo'r hysbysiad cydymffurfedd taliadau, ac yn nodi enw a theitl swydd y person hwnnw.

(3) Ym mharagraff (2)—

ystyr "cyfartalog" ("*average*") yw'r cymedr rhifyddol;

ystyr "diwrnod anfonebu" ("*invoice day*") yw'r dyddiad y mae anfoneb yn dod i law awdurdod contractio.

(4) At ddibenion paragraff (2), gwneir taliad—

(a) pan fydd yn dod i law'r cyflenwr, neu

(b) os oes unrhyw oedi cyn i'r taliad ddod i law nad yw'r awdurdod contractio yn gyfrifol amdano, pan fyddai wedi dod i law heb yr oedi hwnnw.

(5) Ym mharagraff (3) mae'r cyfeiriad at anfoneb sy'n dod i law awdurdod contractio yn gyfeiriad at yr anfoneb yn cael ei danfon i gyfeiriad, neu drwy system anfonebu electronig, sydd wedi ei bennu neu ei phennu yn y contract at y diben.

(6) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth berthnasol arall yn yr hysbysiad.

(7) Yn y rheoliad hwn, mae i "cyfnod adrodd" a "hysbysiad cydymffurfedd taliadau" yr ystyron ag a roddir i "reporting period" a "payments compliance notice" gan adran 69 o Ddeddf 2023.

(ii) the percentage of those payments which were made, where day 1 is the first day after the invoice day—

(aa) within the period beginning on day 1 and ending with day 30;

(bb) within the period beginning on day 31 and ending with day 60;

(cc) on or after day 61,

(d) in respect of sums which became payable under public contracts during the reporting period, the percentage of those payments which were not made within the reporting period, and

(e) a statement of the director or similar officer of the contracting authority who is responsible for the contracting authority's finances setting out that the person approves the payments compliance notice and that person's name and job title.

(3) In paragraph (2)—

"average" ("*cyfartalog*") means the arithmetic mean;

"invoice day" ("*diwrnod anfonebu*") means the day on which a contracting authority receives an invoice.

(4) For the purposes of paragraph (2), a payment is made—

(a) when it is received by the supplier, or

(b) if there is any delay in the sum being received for which the contracting authority is not responsible, when it would have been received without that delay.

(5) In paragraph (3) the reference to a contracting authority receiving an invoice is to the invoice being delivered to an address, or through an electronic invoicing system, specified in the contract for the purpose.

(6) Nothing in this regulation prevents a contracting authority from publishing other relevant information in the notice.

(7) In this regulation "payments compliance notice" ("*hysbysiad cydymffurfedd taliadau*") and "reporting period" ("*cyfnod adrodd*") have the meaning given by section 69 of the 2023 Act.

## Hysbysiadau cyflawni contract ac eithrio mewn perthynas â therfynu'n llawn

**40.**—(1) Mae'r rheoliad hwn yn gwneud darpariaeth ynghylch gwybodaeth sydd wedi ei chyhoeddi o dan y naill neu'r llall o'r darpariaethau canlynol—

- (a) adran 71(2)(b) o Ddeddf 2023 (asesu perfformiad yn erbyn dangosyddion perfformiad allweddol);
- (b) adran 71(5) o'r Ddeddf honno (torri contract cyhoeddus neu fethu â chyflawni).

(2) Rhaid cyhoeddi'r wybodaeth ar ffurf hysbysiad o'r enw "Hysbysiad Cyflawni Contract".

(3) Pan fo'r wybodaeth yn cael ei chyhoeddi o dan adran 71(2)(b) o Ddeddf 2023, rhaid i'r hysbysiad gynnwys yr wybodaeth a nodir ym mharagraff (4).

(4) Yr wybodaeth yw—

- (a) gwybodaeth yr awdurdod contractio,
- (b) enw'r caffaeliad,
- (c) y cod adnabod unigryw ar gyfer—
  - (i) y caffaeliad, a
  - (ii) y contract cyhoeddus,
- (d) y dangosyddion perfformiad allweddol sydd wedi eu gosod yn unol ag adran 52(1) o Ddeddf 2023,
- (e) datganiad bod yr hysbysiad yn cael ei ddefnyddio i nodi asesiad yr awdurdod contractio o berfformiad yn erbyn y dangosyddion perfformiad allweddol,
- (f) ar gyfer pob cyflenwr y mae ei berfformiad wedi ei asesu yn erbyn y dangosyddion perfformiad allweddol—
  - (i) enw'r cyflenwr,
  - (ii) cyfeiriad post cyswllt a chyfeiriad e-bost y cyflenwr, a
  - (iii) y cod adnabod unigryw ar gyfer y cyflenwr,
- (g) asesiad yr awdurdod contractio o berfformiad yn erbyn y dangosyddion yn unol â'r sgoriau a nodir ym mharagraff (5), ac
- (h) y cyfnod amser y mae asesiad yr awdurdod contractio yn gymwys iddo.

## Contract performance notices except in relation to full termination

**40.**—(1) This regulation makes provision about information published under either of the following provisions—

- (a) section 71(2)(b) of the 2023 Act (assessment of performance against key performance indicators);
- (b) section 71(5) of that Act (breach of public contract or failure to perform).

(2) The information must be published in the form of a notice called a "Contract Performance Notice".

(3) Where the information is being published under section 71(2)(b) of the 2023 Act, the notice must include the information set out in paragraph (4).

(4) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for—
  - (i) the procurement, and
  - (ii) the public contract,
- (d) the key performance indicators set in accordance with section 52(1) of the 2023 Act,
- (e) a statement that the notice is being used to set out the contracting authority's assessment of performance against the key performance indicators,
- (f) for each supplier whose performance has been assessed against the key performance indicators—
  - (i) the supplier's name,
  - (ii) the supplier's contact postal address and email address, and
  - (iii) the unique identifier for the supplier,
- (g) the contracting authority's assessment of performance against the indicators in accordance with the ratings set out in paragraph (5), and
- (h) the time period to which the contracting authority's assessment applies.

(5) Mae'r sgoriau fel a ganlyn—

<i>Sgôr</i>	<i>Disgrifiad</i>
Da	Mae'r perfformiad yn bodloni neu'n rhagori ar y dangosyddion perfformiad allweddol
Nesáu at y targed	Mae'r perfformiad yn nesáu at fodloni'r dangosyddion perfformiad allweddol
Angen gwella	Mae'r perfformiad islaw'r dangosyddion perfformiad allweddol
Annigonol	Mae'r perfformiad yn sylweddol islaw'r dangosyddion perfformiad allweddol
Arall	Ni ellir disgrifio'r perfformiad fel un sy'n dda, yn nesáu at y targed, angen ei wella, nac yn annigonol

(6) Pan fo'r wybodaeth yn cael ei chyhoeddi o dan adran 71(5) o Ddeddf 2023, rhaid i'r hysbysiad gynnwys yr wybodaeth a nodir ym mharagraff (7).

(7) Yr wybodaeth yw—

- (a) gwybodaeth yr awdurdod contractio,
- (b) enw'r caffaeliad,
- (c) y cod adnabod unigryw ar gyfer—
  - (i) y caffaeliad, a
  - (ii) y contract cyhoeddus,
- (d) ar gyfer pob cyflenwr sydd wedi cyflawni'r torri neu'r methiant i gyflawni a nodir yn yr hysbysiad—
  - (i) enw'r cyflenwr,
  - (ii) cyfeiriad post cyswllt a chyfeiriad e-bost y cyflenwr, a
  - (iii) y cod adnabod unigryw ar gyfer y cyflenwr,
- (e) yr wybodaeth y cyfeirir ati—
  - (i) yn adran 71(5)(a) o Ddeddf 2023 (bod adran 71(5) o'r Ddeddf honno yn gymwys), a
  - (ii) yn adran 71(5)(b) o Ddeddf 2023 (yr amgylchiadau sy'n arwain at gymhwyso adran 71(5) o'r Ddeddf honno),

(5) The ratings are—

<i>Rating</i>	<i>Description</i>
Good	Performance is meeting or exceeding the key performance indicators
Approaching target	Performance is close to meeting the key performance indicators
Requires improvement	Performance is below the key performance indicators
Inadequate	Performance is significantly below the key performance indicators
Other	Performance cannot be described as good, approaching target, requires improvement or inadequate

(6) Where the information is being published under section 71(5) of the 2023 Act, the notice must include the information set out in paragraph (7).

(7) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for—
  - (i) the procurement, and
  - (ii) the public contract,
- (d) for each supplier that has committed the breach or failure to perform set out in the notice—
  - (i) the supplier's name,
  - (ii) the supplier's contact postal address and email address, and
  - (iii) the unique identifier for the supplier,
- (e) the information referred to in—
  - (i) section 71(5)(a) of the 2023 Act (that section 71(5) of that Act applies), and
  - (ii) section 71(5)(b) of the 2023 Act (the circumstances giving rise to the application of section 71(5) of that Act),

- (f) datganiad bod yr wybodaeth yn cael ei chyhoeddi oherwydd—
    - (i) bod y cyflenwr wedi torri'r contract cyhoeddus a bod y torri wedi arwain at un o'r digwyddiadau y cyfeirir atynt yn adran 71(3)(b), neu
    - (ii) nad yw'r cyflenwr yn cyflawni contract cyhoeddus er boddhad yr awdurdod contractio,
  - (g) pan fo'r cyflenwr wedi torri'r contract cyhoeddus, pa un neu ragor o'r canlynol a ddigwyddodd o ganlyniad i'r torri—
    - (i) terfynu'r contract cyhoeddus yn rhannol;
    - (ii) dyfarndalu iawndal;
    - (iii) dod i gytundeb setlo rhwng y cyflenwr a'r awdurdod contractio,
  - (h) pan fo'r cyflenwr wedi torri'r contract cyhoeddus, dyddiad—
    - (i) unrhyw derfyniad rhannol o'r contract cyhoeddus,
    - (ii) unrhyw ddyfarndaliad iawndal, neu
    - (iii) unrhyw setliad,
  - (i) pan na fo'r cyflenwr yn cyflawni'r contract cyhoeddus er boddhad yr awdurdod contractio, y dyddiad yr ystyriodd yr awdurdod contractio fod y cyflenwr wedi methu â gwella ei berfformiad yn unol ag adran 71(4)(c),
  - (j) esboniad ynghylch natur y rhwymedigaeth contractiol sydd wedi ei thorri neu nad yw'n cael ei chyflawni er boddhad yr awdurdod contractio,
  - (k) esboniad ynghylch natur y torri neu'r methiant i gyflawni, gan gynnwys—
    - (i) esboniad ynghylch effaith neu ganlyniadau'r torri neu'r methiant i gyflawni,
    - (ii) am ba hyd y mae'r torriad neu'r methiant i gyflawni wedi digwydd ac a yw'n parhau,
    - (iii) esboniad ynghylch unrhyw gamau a gymerwyd gan y cyflenwr i liniaru effaith neu ganlyniadau'r torriad neu'r methiant i gyflawni,
- (f) a statement that the information is being published because—
    - (i) the supplier has breached the public contract and the breach resulted in one of the events referred to in section 71(3)(b), or
    - (ii) the supplier is not performing a public contract to the contracting authority's satisfaction,
  - (g) where the supplier has breached the public contract, which of the following resulted from the breach—
    - (i) partial termination of the public contract;
    - (ii) the award of damages;
    - (iii) a settlement agreement between the supplier and the contracting authority,
  - (h) where the supplier has breached the public contract, the date of any—
    - (i) partial termination of the public contract,
    - (ii) award of damages, or
    - (iii) settlement,
  - (i) where the supplier is not performing the public contract to the contracting authority's satisfaction, the date when the contracting authority considered that the supplier had failed to improve its performance in accordance with section 71(4)(c),
  - (j) an explanation of the nature of the contractual obligation which has been breached or is not being performed to the contracting authority's satisfaction,
  - (k) an explanation of the nature of the breach or failure to perform including—
    - (i) an explanation of the impact or consequences of the breach or failure to perform,
    - (ii) the duration of the breach or failure to perform and whether it is ongoing,
    - (iii) an explanation of any steps taken by the supplier to mitigate the impact or consequences of the breach or failure to perform,

- (iv) unrhyw gamau y mae'r awdurdod contractio wedi eu cymryd i hysbysu'r cyflenwr am y torri neu'r methiant i gyflawni a'i annog i wella'r sefyllfa, gan gynnwys—
  - (aa) unrhyw hysbysiadau rhybuddio a roddwyd o dan y contract cyhoeddus, neu
  - (bb) unrhyw gyfle i wella perfformiad, a
- (v) pa gamau, os o gwbl, a gymerwyd gan y cyflenwr i wella'r sefyllfa a pham nad oedd y rhain yn ddigon,
- (l) pan fo'r toriad wedi arwain at derfynu'r contract cyhoeddus yn rhannol, disgrifiad o ba ran o'r contract sydd wedi ei therfynu'n rhannol, neu i ba raddau y mae'r contract wedi ei derfynu'n rhannol, ac
- (m) pan fo iawndal wedi ei ddyfarndalu neu pan fo arian arall wedi ei dalu yn dilyn toriad neu fethiant i gyflawni—
  - (i) cadarnhad mai dyna'r sefyllfa,
  - (ii) swm yr iawndal neu arian arall,
  - (iii) y sail y cafodd unrhyw iawndal ei ddyfarndalu neu y cafodd unrhyw arian arall ei dalu arni, er enghraifft—
    - (aa) yn achos iawndal, yn unol â'r contract cyhoeddus,
    - (bb) yn achos iawndal, yn unol â phenderfyniad llys neu dribiwnlys, neu
    - (cc) yn achos arian arall, yn unol â setliad wedi ei negodi, a
- (iv) pan fo cofnod wedi ei wneud o benderfyniad llys neu dribiwnlys ynghylch ei ganfyddiad bod toriad wedi digwydd—
  - (aa) dolen i'r dudalen we lle y gellir cyrchu'r penderfyniad, neu
  - (bb) copi o'r penderfyniad.

(8) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

(9) Nid yw'r rheoliad hwn yn gymwys i wybodaeth y mae'n ofynnol ei chyhoeddi yn unol ag adran 71(5) o Ddeddf 2023 pan fo toriad wedi arwain at derfynu contract cyhoeddus yn llawn (gweler yn hytrach reoliad 42).

- (iv) any steps that the contracting authority has taken to notify the supplier of the breach or failure to perform and encourage them to improve the situation, including—
  - (aa) any warning notices given under the public contract, or
  - (bb) any opportunity to improve performance, and
- (v) what steps, if any, were taken by the supplier to improve the situation and why these were not sufficient,
- (l) where the breach has resulted in partial termination of the public contract, a description of which part of, or to what extent, the contract has been partially terminated, and
- (m) where there has been an award of damages or payment of other monies following the breach or failure to perform—
  - (i) confirmation that this is the case,
  - (ii) the amount of damages or other monies,
  - (iii) the basis on which any damages were awarded or other monies paid, for example—
    - (aa) in the case of damages, in accordance with the public contract,
    - (bb) in the case of damages, in accordance with a decision of a court or tribunal, or
    - (cc) in the case of other monies, in accordance with a negotiated settlement, and
- (iv) where there has been a recorded decision of a court or tribunal finding a breach—
  - (aa) a link to the web page where the decision can be accessed, or
  - (bb) a copy of the decision.

(8) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(9) This regulation does not apply to information required to be published in accordance with section 71(5) of the 2023 Act where a breach resulted in the full termination of a public contract (see instead regulation 42).

## Hysbysiadau newid contract

41.—(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad newid contract a gyhoeddir o dan adran 75(1) neu (5) o Ddeddf 2023.

(2) Yr wybodaeth yw—

- (a) gwybodaeth yr awdurdod contractio,
- (b) enw'r caffaeliad,
- (c) y cod adnabod unigryw ar gyfer y caffaeliad,
- (d) y cod adnabod unigryw ar gyfer y contract,
- (e) ar gyfer pob cyflenwr sy'n barti i'r contract cyhoeddus neu'r contract trosadwy—
  - (i) enw'r cyflenwr,
  - (ii) cyfeiriad post cyswllt a chyfeiriad e-bost y cyflenwr, a
  - (iii) y cod adnabod unigryw ar gyfer y cyflenwr,
- (f) a oes gan yr awdurdod contractio ganiatâd i wneud yr addasiad i'r contract cyhoeddus neu'r contract trosadwy oherwydd bod yr addasiad, yn rhinwedd adran 74(1)(a) o Ddeddf 2023, yn addasiad a ddisgrifir—
  - (i) ym mharagraffau 2 a 3 o Atodlen 8 i'r Ddeddf honno (sefyllfa frys a gwarchod bywyd, etc.),
  - (ii) ym mharagraff 4 o Atodlen 8 i'r Ddeddf honno (amgylchiadau nad ydynt yn rhagweladwy),
  - (iii) ym mharagraffau 5 i 7 o Atodlen 8 i'r Ddeddf honno (gwireddiad risg hysbys),
  - (iv) ym mharagraff 8 o Atodlen 8 i'r Ddeddf honno (nwyddau, gwasanaethau neu weithiau ychwanegol), neu
  - (v) ym mharagraff 9 o Atodlen 8 i'r Ddeddf honno (trosglwyddo ar adeg ailstrwythuro corfforaethol),(pan fo'r addasiad wedi ei ganiatáu o dan un o'r darpariaethau hynny),
- (g) esboniad ynghylch pam y mae'r addasiad yn dod o fewn un o'r mathau o addasiadau a grybwyllir yn is-baragraff (f),
- (h) manylion ynghylch unrhyw newid o ganlyniad i'r addasiad—
  - (i) i werth amcangyfrifedig y contract cyhoeddus neu'r contract trosadwy yn union cyn yr addasiad, neu
  - (ii) i gyfnod y contract cyhoeddus neu'r contract trosadwy,

## Contract change notices

41.—(1) This regulation sets out other information which must be included in a contract change notice published under section 75(1) or (5) of the 2023 Act.

(2) The information is—

- (a) the contracting authority information,
- (b) the title of the procurement,
- (c) the unique identifier for the procurement,
- (d) the unique identifier for the contract,
- (e) for each supplier party to the public contract or convertible contract—
  - (i) the supplier's name,
  - (ii) the supplier's contact postal address and email address, and
  - (iii) the unique identifier for the supplier,
- (f) whether the contracting authority is permitted to make the modification to the public contract or convertible contract because the modification is, by virtue of section 74(1)(a) of the 2023 Act, one which is described—
  - (i) in paragraphs 2 and 3 of Schedule 8 to that Act (urgency and the protection of life, etc.),
  - (ii) in paragraph 4 of Schedule 8 to that Act (unforeseeable circumstances),
  - (iii) in paragraphs 5 to 7 of Schedule 8 to that Act (materialisation of a known risk),
  - (iv) in paragraph 8 of Schedule 8 to that Act (additional goods, services or works), or
  - (v) in paragraph 9 of Schedule 8 to that Act (transfer on corporate restructuring),(where the modification is permitted under one of those provisions),
- (g) an explanation of why the modification falls within one of the types of modifications mentioned in sub-paragraph (f),
- (h) details of any change as a result of the modification—
  - (i) to the estimated value of the public contract or convertible contract immediately prior to the modification, or
  - (ii) to the term of the public contract or convertible contract,

- (i) pan fo'r addasiad yn addasiad a ddisgrifir ym mharagraff 9 o Atodlen 8 i'r Ddeddf honno (trosglwyddo ar adeg ailstrwythuro corfforaethol)—
  - (i) ar gyfer pob cyflenwr newydd sy'n barti i'r contract cyhoeddus neu'r contract trosadwy—
    - (aa) enw'r cyflenwr,
    - (bb) cyfeiriad post cyswllt a chyfeiriad e-bost y cyflenwr, ac
    - (cc) y cod adnabod unigryw ar gyfer y cyflenwr, a
  - (ii) ar gyfer pob cyflenwr na fydd yn barti i'r contract cyhoeddus neu'r contract trosadwy mwyach, yr un wybodaeth â'r wybodaeth y cyfeirir ati ym mharagraff (i)(aa) i (cc),
- (j) amcangyfrif o'r dyddiad—
  - (i) pan fydd y contract cyhoeddus neu'r contract trosadwy yn cael ei addasu, a
  - (ii) pan fydd yr addasiad yn cael effaith, a
- (k) a yw cyfnod segur gwirfoddol yn gymwys yn unol ag adran 76(1) o Ddeddf 2023 ac, os felly, hyd y cyfnod hwnnw.

(3) Ar gyfer darpariaeth sy'n ei gwneud yn ofynnol i awdurdodau contractio gyhoeddi contractau fel y'u haddasir neu gyhoeddi addasiadau mewn achosion penodol, gweler adran 77 o Ddeddf 2023.

(4) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

(5) Yn y rheoliad hwn, mae i "hysbysiad newid contract" yr ystyr a roddir i "contract change notice" gan adran 75(3) o Ddeddf 2023.

### Hysbysiadau terfynu contract

**42.—**(1) Mae'r rheoliad hwn yn nodi gwybodaeth arall y mae rhaid ei chynnwys mewn hysbysiad terfynu contract a gyhoeddir o dan adran 80(1) o Ddeddf 2023.

- (2) Yr wybodaeth yw—
  - (a) gwybodaeth yr awdurdod contractio,
  - (b) enw'r caffaeliad,
  - (c) y cod adnabod unigryw ar gyfer—
    - (i) y caffaeliad, a
    - (ii) y contract cyhoeddus,

- (i) where the modification is one which is described in paragraph 9 of Schedule 8 to that Act (transfer on corporate restructuring)—
  - (i) for each new supplier party to the public contract or convertible contract—
    - (aa) the supplier's name,
    - (bb) the supplier's contact postal address and email address, and
    - (cc) the unique identifier for the supplier, and
  - (ii) for each supplier that will no longer be party to the public contract or convertible contract, the same information referred to in paragraph (i)(aa) to (cc),
- (j) the estimated date when—
  - (i) the public contract or convertible contract will be modified, and
  - (ii) the modification will have effect, and
- (k) whether a voluntary standstill period applies in accordance with section 76(1) of the 2023 Act, and, if so, the duration of that period.

(3) For provision which requires contracting authorities to publish contracts as modified or modifications in certain cases, see section 77 of the 2023 Act.

(4) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(5) In this regulation "contract change notice" ("*hysbysiad newid contract*") has the meaning given by section 75(3) of the 2023 Act.

### Contract termination notices

**42.—**(1) This regulation sets out other information which must be included in a contract termination notice published under section 80(1) of the 2023 Act.

- (2) The information is—
  - (a) the contracting authority information,
  - (b) the title of the procurement,
  - (c) the unique identifier for—
    - (i) the procurement, and
    - (ii) the public contract,

- (d) ar gyfer pob cyflenwr sy'n barti i'r contract cyhoeddus—
- (i) enw'r cyflenwr,
  - (ii) cyfeiriad post cyswllt a chyfeiriad e-bost y cyflenwr, a
  - (iii) y cod adnabod unigryw ar gyfer y cyflenwr,
- (e) y rhesymau dros derfynu'r contract cyhoeddus (gan gynnwys unrhyw reswm a grybwyllir yn adran 80(3) o Ddeddf 2023),
- (f) y dyddiad y cafodd y contract cyhoeddus ei derfynu,
- (g) amcangyfrif o werth y contract cyhoeddus,
- (h) pan fo'r contract cyhoeddus wedi ei derfynu o ganlyniad i dorri'r contract gan y cyflenwr—
- (i) datganiad bod adran 71(5) o Ddeddf 2023 yn gymwys oherwydd bod y cyflenwr wedi torri'r contract,
  - (ii) a arweiniodd y torri at—
    - (aa) dyfarndalu iawndal, neu
    - (bb) dod i gytundeb setlo rhwng y cyflenwr a'r awdurdod contractio,
  - (iii) dyddiad—
    - (aa) unrhyw ddyfarndaliad o unrhyw iawndal, neu
    - (bb) unrhyw setliad,
  - (iv) pan na chyflawnodd y cyflenwr y contract cyhoeddus er boddhad yr awdurdod contractio, y dyddiad yr ystyriodd yr awdurdod contractio fod y cyflenwr wedi methu â gwella ei berfformiad yn unol ag adran 71(4)(c),
  - (v) esboniad ynghylch natur y rhwymedigaeth contractiol a gafodd ei thorri neu nad oedd yn cael ei chyflawni er boddhad yr awdurdod contractio,
  - (vi) esboniad ynghylch natur y torri neu'r methiant i gyflawni, gan gynnwys—
    - (aa) esboniad ynghylch effaith neu ganlyniadau'r toriad neu'r methiant i gyflawni,
    - (bb) am ba hyd yr oedd y toriad neu'r methiant i gyflawni wedi digwydd,
    - (cc) esboniad ynghylch unrhyw gamau a gymerwyd gan y cyflenwr i liniaru effaith neu ganlyniadau'r toriad neu'r methiant i gyflawni,
- (d) for each supplier party to the public contract—
- (i) the supplier's name,
  - (ii) the supplier's contact postal address and email address, and
  - (iii) the unique identifier for the supplier,
- (e) the reasons for terminating the public contract (including any reason mentioned in section 80(3) of the 2023 Act),
- (f) the date when the public contract was terminated,
- (g) the estimated value of the public contract,
- (h) where the termination of the public contract was the result of the supplier breaching the contract—
- (i) a statement that section 71(5) of the 2023 Act applies because the supplier breached the contract,
  - (ii) whether the breach resulted in—
    - (aa) the award of damages, or
    - (bb) a settlement agreement between the supplier and the contracting authority,
  - (iii) the date of—
    - (aa) any award of any damages, or
    - (bb) any settlement,
  - (iv) where the supplier did not perform the public contract to the contracting authority's satisfaction, the date when the contracting authority considered that the supplier had failed to improve its performance in accordance with section 71(4)(c),
  - (v) an explanation of the nature of the contractual obligation which was breached or was not being performed to the contracting authority's satisfaction,
  - (vi) an explanation of the nature of the breach or failure to perform including—
    - (aa) an explanation of the impact or consequences of the breach or failure to perform,
    - (bb) the duration of the breach or failure to perform,
    - (cc) an explanation of any steps taken by the supplier to mitigate the impact or consequences of the breach or failure to perform,



- (dd) unrhyw gamau a gymerwyd gan yr awdurdod contractio i hysbysu'r cyflenwr am y toriad neu'r methiant i gyflawni a'i annog i wella'r sefyllfa, gan gynnwys unrhyw hysbysiadau rhybuddio a roddwyd o dan y contract cyhoeddus neu unrhyw gyfle priodol arall i wella'r perfformiad yn unol ag adran 71(4)(b) o Ddeddf 2023,
- (ee) pa gamau, os o gwbl, a gymerwyd gan y cyflenwr i wella'r sefyllfa a pham nad oedd y rhain yn ddigon, a
- (vii) pan fo iawndal wedi ei ddyfardalu neu pan fo arian arall wedi ei dalu yn dilyn y toriad neu'r methiant i gyflawni—
  - (aa) cadarnhad bod hyn wedi digwydd,
  - (bb) swm yr iawndal neu'r arian arall a dalwyd,
  - (cc) y sail y dyfardalwyd yr iawndal neu y talwyd yr arian arall arni, er enghraifft yn unol â'r contract cyhoeddus, penderfyniad llys neu dribiwnlys neu setliad wedi ei negodi, a
  - (dd) pan fo cofnod wedi ei wneud o benderfyniad llys neu dribiwnlys ynghylch ei ganfyddiad bod toriad wedi digwydd, dolen i'r dudalen we lle gellir cyrchu'r penderfyniad neu gopi o'r penderfyniad.

(3) Nid oes dim yn y rheoliad hwn yn atal awdurdod contractio rhag cyhoeddi gwybodaeth arall sy'n ymwneud â'r un caffaeliad yn yr hysbysiad.

(4) Yn y rheoliad hwn, mae i "hysbysiad terfynu contract" yr ystyr a roddir i "contract termination notice" gan adran 80(2) o Ddeddf 2023.

### RHAN 3

#### Darpariaethau eraill sy'n ychwanegu at Ddeddf 2023

##### **Pennu gwasanaethau cyffyrddiad ysgafn a gwasanaethau cyffyrddiad ysgafn neilltuadwy**

**43.**—(1) At ddibenion adran 9(1) o Ddeddf 2023 (contractau cyffyrddiad ysgafn) mae'r gwasanaethau a gwmpesir gan y codau GGG a nodir yng ngholofn (1) o'r Tabl yn Atodlen 1 i'r Rheoliadau hyn ac a ddisgrifir yng ngholofn (2) o'r Tabl hwnnw wedi eu pennu yn wasanaethau cyffyrddiad ysgafn.

- (dd) any steps that the contracting authority took to notify the supplier of the breach or failure to perform and encourage them to improve the situation, including any warning notices given under the public contract or other proper opportunity to improve performance pursuant to section 71(4)(b) of the 2023 Act,

- (ee) what steps, if any, were taken by the supplier to improve the situation and why these were not sufficient, and

- (vii) where there has been an award of damages or other monies paid following the breach or failure to perform—
  - (aa) confirmation that this is the case,
  - (bb) the amount of damages or other monies paid,
  - (cc) the basis on which the damages were awarded or other monies paid, for example in accordance with the public contract, a decision of a court or tribunal or a negotiated settlement, and
  - (dd) where there is a recorded decision of a court or tribunal finding that there was a breach, a link to the web page where the decision can be accessed or a copy of the decision.

(3) Nothing in this regulation prevents a contracting authority from publishing other information that relates to the same procurement in the notice.

(4) In this regulation "contract termination notice" ("*hysbysiad terfynu contract*") has the meaning given by section 80(2) of the 2023 Act.

### PART 3

#### Other provisions supplementing the 2023 Act

##### **Specification of light touch and reservable light touch services**

**43.**—(1) For the purposes of section 9(1) of the 2023 Act (light touch contracts) the services which are covered by the CPV codes set out in column (1) of the Table in Schedule 1 to these Regulations and described in column (2) of that Table are specified as light touch services.

(2) At ddibenion adran 33(7) o Ddeddf 2023 (neilltuo contractau i gwmnïau cydfuddiannol gwasanaethau cyhoeddus), mae gwasanaeth a bennir yng ngholofnau (1) a (2) o'r Tabl yn Atodlen 1 i'r Rheoliadau hyn wedi ei bennu yn wasanaeth cyffyrddiad ysgafn neilltuadwy pan fo'r llythyren "N" yn ymddangos yn y cofnod sy'n cyfateb i'r gwasanaeth hwnnw yng ngholofn (3).

#### **Awdurdodau llywodraeth ganolog**

**44.**—(1) Mae'r holl endidau a restrir yng ngholofn (1) neu (2) o'r Tabl yn Atodlen 2 i'r Rheoliadau hyn wedi eu pennu at ddibenion y diffiniad o "central government authority" ym mharagraff 5(1) o Atodlen 1 i Ddeddf 2023.

(2) Pan fo endid a restrir yn Atodlen 2 i'r Rheoliadau hyn yn cael ei olynu gan endid arall, sydd ei hun yn awdurdod contractio, bernir bod yr endid olynol wedi ei gynnwys yn yr Atodlen.

#### **Ystyr "works" ym mharagraff 5(1) o Atodlen 1 i Ddeddf 2023**

**45.** At ddibenion y diffiniad o "works" ym mharagraff 5(1) o Atodlen 1 i Ddeddf 2023, ystyr "gweithiau" yw unrhyw un neu ragor o'r gweithgareddau sy'n dod o fewn cod GGG sydd wedi ei restru yn Atodlen 3 i'r Rheoliadau hyn.

(2) For the purposes of section 33(7) of the 2023 Act (reserving contracts to public service mutuals), a service specified in columns (1) and (2) of the Table in Schedule 1 to these Regulations is specified as a reservable light touch service where in the entry corresponding to that service in column (3), the letter "R" appears.

#### **Central government authorities**

**44.**—(1) All the entities listed in column (1) or (2) of the Table in Schedule 2 to these Regulations are specified for the purposes of the definition of "central government authority" in paragraph 5(1) of Schedule 1 to the 2023 Act.

(2) Where an entity listed in Schedule 2 to these Regulations is succeeded by another entity, which is itself a contracting authority, the successor entity is deemed to be included in the Schedule.

#### **Meaning of "works" in paragraph 5(1) of Schedule 1 to the 2023 Act**

**45.** For the purposes of the definition of "works" in paragraph 5(1) of Schedule 1 to the 2023 Act, "works" means any of the activities coming within a CPV code listed in Schedule 3 to these Regulations.

## **RHAN 4**

### **Diwygiadau canlyniadol**

#### **Diwygio Deddf Partneriaeth Gymdeithasol a Chaffael Cyhoeddus (Cymru) 2023**

**46.**—(1) Mae Deddf Partneriaeth Gymdeithasol a Chaffael Cyhoeddus (Cymru) 2023(1) wedi ei diwygio fel a ganlyn.

(2) Yn adran 25 (dyletswydd caffael cymdeithasol gyfrifol: contractau adeiladu mawr), yn is-adran (2), yn lle'r geiriau o "sydd", yn y lle cyntaf y mae'n digwydd, hyd at y diwedd rhodder—

"sy'n gontract gweithiau sydd â gwerth amcangyfrifedig o £2,000,000 neu fwy."

## **PART 4**

### **Consequential amendments**

#### **Amendments to the Social Partnership and Public Procurement (Wales) Act 2023**

**46.**—(1) The Social Partnership and Public Procurement (Wales) Act 2023(1) is amended as follows.

(2) In section 25 (socially responsible procurement duty: major construction contracts), in subsection (2), for "with" to the end substitute—

"that is a works contract with an estimated value equal to or greater than £2,000,000."

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(1) 2023 dsc 1.

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(1) 2023 asc 1.

(3) Yn adran 45 (dehongli Rhan 3), yn is-adran (1)—

- (a) hepgorer y diffiniadau o—
  - (i) “y Rheoliadau Contractau Consesiwn”,
  - (ii) “y Rheoliadau Contractau Cyhoeddus”,
  - (iii) “contract gweithiau cyhoeddus”,
  - (iv) “y Rheoliadau Contractau Cyfleustodau”,  
a
  - (v) “contract consesiwn gweithiau”;
- (b) yn y diffiniad o “gweithiau”, yn lle’r geiriau o “yr ystyr a roddir” hyd at y diwedd, rhodder (“*works*”) yr ystyr a roddir gan reoliad 45 o Reoliadau Caffael (Cymru) 2024 ac Atodlen 3 iddynt(1)”;
- (c) yn y diffiniad o “contract gweithiau”, yn lle’r geiriau o “yr ystyr a roddir” hyd at y diwedd, rhodder “yr ystyr a roddir i “works contract” gan baragraff 4 o Atodlen 1 i Ddeddf Caffael 2023 (p. 54);”.

(4) Yn adran 45 (dehongli Rhan 3), yn is-adran (2), yn lle “â rheoliad 6(1) o’r Rheoliadau Contractau Cyhoeddus” rhodder “ag adran 4 o Ddeddf Caffael 2023”.

#### Diwygio Deddf 2023

47.—(1) Mae Deddf 2023 wedi ei diwygio fel a ganlyn.

(2) Yn adran 17 (hysbysiadau ymgysylltu rhagarweiniol â’r farchnad), yn is-adran (3) hepgorer y geiriau a ganlyn “other than to a private utility which is a devolved Welsh authority that is not carrying out procurement under a reserved procurement arrangement or a transferred Northern Ireland procurement arrangement.”

(3) Yn adran 87 (contractau rheoleiddiedig sydd o dan y trothwy: hysbysiadau), yn lle is-adran (4)(a) rhodder—

- “(a) in the case of a contract to be awarded by—
  - (i) a central government authority that is not a devolved Welsh authority, not less than £12,000;
  - (ii) a central government authority that is a devolved Welsh authority, not less than £30,000, or”.

(3) In section 45 (interpretation of Part 3), in subsection (1)—

- (a) omit the definitions of—
  - (i) “the Concession Contracts Regulations”,
  - (ii) “the Public Contracts Regulations”,
  - (iii) “public works contract”,
  - (iv) “the Utilities Contracts Regulations”, and
  - (v) “works concession contract”;
- (b) in the definition of “works” (“*gweithiau*”), for “paragraph 2 of regulation 2(1) of the Public Contracts Regulations” substitute “regulation 45 of and Schedule 3 to the Procurement (Wales) Regulations 2024(1)”;
- (c) in the definition of “works contract” (“*contract gweithiau*”), for “regulation 2(1) of the Utilities Contracts Regulations” substitute “paragraph 4 of Schedule 1 to the Procurement Act 2023 (c. 54)”.

(4) In section 45 (interpretation of Part 3), in subsection (2), for “regulation 6(1) of the Public Contracts Regulations” substitute “section 4 of the Procurement Act 2023”.

#### Amendments to the 2023 Act

47.—(1) The 2023 Act is amended as follows.

(2) In section 17 (preliminary market engagement notices), in subsection (3) omit the following words “other than to a private utility which is a devolved Welsh authority that is not carrying out procurement under a reserved procurement arrangement or a transferred Northern Ireland procurement arrangement.”

(3) In section 87 (regulated below-threshold contracts: notices), for subsection (4)(a) substitute—

- “(a) in the case of a contract to be awarded by—
  - (i) a central government authority that is not a devolved Welsh authority, not less than £12,000;
  - (ii) a central government authority that is a devolved Welsh authority, not less than £30,000, or”.

### **Diwygio Rheoliadau Fforymau Ysgolion (Cymru) 2003**

48. Yn Rheoliadau Fforymau Ysgolion (Cymru) 2003(1), yn rheoliad 9(1) (ymgyngori ynghylch contractau), yn lle'r geiriau o "os" hyd at y diwedd rhodder "pan na fo gwerth amcangyfrifedig y contract arfaethedig yn llai na'r trothwy sy'n gymwys i'r awdurdod perthnasol ar gyfer y contract arfaethedig hwnnw yn unol ag adran 3 o Ddeddf Caffael 2023".

### **Diwygio Rheoliadau Taliadau Gwasanaeth (Gofynion Ymgynghori) (Cymru) 2004**

49. Yn Rheoliadau Taliadau Gwasanaeth (Gofynion Ymgynghori) (Cymru) 2004(2), yn rheoliad 2(1) (dehongli), yn y diffiniad o "hysbysiad cyhoeddus", yn lle "hysbysiad a gyhoeddir, yn unol â Rheoliadau Contractau Cyhoeddus 2015, ar wasanaeth e-hysbysu'r DU (fel y'i diffinnir gan y Rheoliadau hynny)" rhodder "unrhyw hysbysiad a gyhoeddir yn unol â Deddf Caffael 2023 sy'n ymwneud â chontract cyhoeddus (o fewn yr ystyr a roddir i "public contract" gan adran 3 o'r Ddeddf honno)".

### **Diwygio Rheoliadau Deddf Cydraddoldeb 2010 (Dyletswyddau Statudol) (Cymru) 2011**

50.—(1) Mae Rheoliadau Deddf Cydraddoldeb 2010 (Dyletswyddau Statudol) (Cymru) 2011(3) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 18 (caffael cyhoeddus)—

- (a) ym mharagraff (1), yn lle "gwneud cytundeb perthnasol ar sail y cynnig mwyaf manteisiol yn economaidd" rhodder "dyfarnu contract cyhoeddus yn dilyn gweithdrefn dendro gystadleuol";
- (b) ym mharagraff (2), yn lle "cytundeb perthnasol" rhodder "contract cyhoeddus";
- (c) yn lle paragraff (3) rhodder—

"(3) Yn y rheoliad hwn, mae i "meini prawf", "gweithdrefn dendro gystadleuol", "awdurdod contractio" a "contract cyhoeddus" yr un ystyr ag a roddir i "award criteria", "competitive tendering procedure", "contracting authority" a "public contract" yn y drefn honno yn Neddf Caffael 2023."

### **Amendment to the Schools Forums (Wales) Regulations 2003**

48. In the Schools Forums (Wales) Regulations 2003(1), in regulation 9(1) (consultation on contracts), for "regulation 5 of the Public Contracts Regulations 2015" substitute "section 3 of the Procurement Act 2023".

### **Amendment to the Service Charges (Consultation Requirements) (Wales) Regulations 2004**

49. In the Service Charges (Consultation Requirements) (Wales) Regulations 2004(2), in regulation 2(1) (interpretation), in the definition of "public notice" ("*hysbysiad cyhoeddus*"), for "means notice published pursuant to the Public Contracts Regulations 2015, on the UK e-notification service (as defined by those Regulations)" substitute "means any notice published, pursuant to the Procurement Act 2023 which relates to a public contract (within the meaning of section 3 of that Act)".

### **Amendments to the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011**

50.—(1) The Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011(3) are amended as follows.

(2) In regulation 18 (public procurement)—

- (a) in paragraph (1), for "enter into a relevant agreement on the basis of an offer which is the most economically advantageous" substitute "award a public contract following a competitive tendering procedure";
- (b) in paragraph (2), for "relevant agreement" substitute "public contract";
- (c) for paragraph (3) substitute—

"(3) In this regulation, "award criteria" ("*meini prawf*"), "competitive tendering procedure" ("*gweithdrefn dendro gystadleuol*"), "contracting authority" ("*awdurdod contractio*"), and "public contract" ("*contract cyhoeddus*") have the same meaning as in the Procurement Act 2023."

(1) O.S. 2003/2909 (Cy. 275). Diwygiwyd rheoliad 9(1) gan O.S. 2006/5, Atodlen 7(1), paragraff 4 ac O.S. 2015/102, Atodlen 6(2), paragraff 13.

(2) O.S. 2004/684 (Cy. 72). Diwygiwyd rheoliad 2(1) gan O.S. 2006/5, Atodlen 7(1), paragraff 5 ac O.S. 2019/116, rheoliad 2.

(3) O.S. 2011/1064 (Cy. 155). Diwygiwyd rheoliad 18 gan O.S. 2019/120, rheoliad 2.

(1) S.I. 2003/2909 (W. 275). Regulation 9(1) was amended by S.I. 2006/5 Schedule 7(1) paragraph 4; and S.I. 2015/102 Schedule 6(2) paragraph 13.

(2) S.I. 2004/684 (W. 72). Regulation 2(1) was amended by S.I. 2006/5 Schedule 7(1) paragraph 5; and S.I. 2019/116 regulation 2;

(3) S.I. 2011/1064 (W. 155). Regulation 18 was amended by S.I. 2019/120 regulation 2.

**Diwygio Rheoliadau Deddf Casglu a Rheoli Trethi (Cymru) 2016 (Darpariaethau Canlyniadol ac Atodol) 2018**

**51.** Yn Rheoliadau Deddf Casglu a Rheoli Trethi (Cymru) 2016 (Darpariaethau Canlyniadol ac Atodol) 2018(1), hepgorer rheoliad 2.

**Diwygio Rheoliadau Cymorth Amaethyddol (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2021**

**52.** Yn Rheoliadau Cymorth Amaethyddol (Diwygiadau Amrywiol) (Cymru) (Ymadael â'r UE) 2021(2), yn rheoliad 6, hepgorer paragraff (27)(ii).

**Diwygio Rheoliadau Caffael Cyhoeddus (Cytundebau Masnach Ryngwladol) (Diwygio) (Cymru) (Rhif 2) 2023**

**53.** Yn Rheoliadau Caffael Cyhoeddus (Cytundebau Masnach Ryngwladol) (Diwygio) (Cymru) (Rhif 2) 2023(3), hepgorer rheoliadau 2 i 5.

**Diwygio Rheoliad (EU) Rhif 1303/2013 Senedd Ewrop a'r Cyngor dyddiedig 17 Rhagfyr 2013**

**54.** Yn Rheoliad (EU) Rhif 1303/2013 Senedd Ewrop a'r Cyngor dyddiedig 17 Rhagfyr 2013(4), yn Erthygl 68a(1), yn lle “the threshold set out in regulation 5 of the Public Contracts Regulations 2015” rhodder “the relevant threshold amount set out in Schedule 1 to the Procurement Act 2023”.

**Amendment to the Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018**

**51.** In the Tax Collection and Management (Wales) Act 2016 (Consequential and Supplemental Provisions) Regulations 2018(1), omit regulation 2.

**Amendment to the Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021**

**52.** In the Agricultural Support (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021(2), in regulation 6, omit paragraph (27)(ii).

**Amendments to the Public Procurement (International Trade Agreements) (Amendment) (Wales) (No. 2) Regulations 2023**

**53.** In the Public Procurement (International Trade Agreements) (Amendment) (Wales) (No. 2) Regulations 2023(3), omit regulations 2 to 5.

**Amendment to Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013**

**54.** In Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013(4), in Article 68a(1), for “the threshold set out in regulation 5 of the Public Contracts Regulations 2015” substitute “the relevant threshold amount set out in Schedule 1 to the Procurement Act 2023”.

*Rebecca Evans*

Ysgrifennydd y Cabinet dros Gyllid, y Cyfansoddiad a Swyddfa'r Cabinet, un o Weinidogion Cymru  
3 Gorffennaf 2024

The Cabinet Secretary for Finance, Constitution, and Cabinet Office, one of the Welsh Ministers  
3 July 2024

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(1) O.S. 2018/285 (Cy. 54).

(2) O.S. 2021/400 (Cy. 129).

(3) O.S. 2023/567 (Cy. 88).

(4) Rheoliad (EU) Rhif 1303/2013 Senedd Ewrop a'r Cyngor dyddiedig 17 Rhagfyr 2013.

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(1) S.I. 2018/285 (W. 54).

(2) S.I. 2021/400 (W. 129).

(3) S.I. 2023/567 (W. 88).

(4) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013.

# YR ATODLENNI

## ATODLEN 1 Rheoliad 43

### Gwasanaethau cyffyrddiad ysgafn

Cod GGG (1)	Gwasanaeth (2)	Neilltuadwy (3)
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#### Gwasanaethau iechyd, gwasanaethau cymdeithasol a gwasanaethau cysylltiedig

75231200	Gwasanaethau sy'n gysylltiedig â chadw neu adsefydlu troseddwr	
75231240	Gwasanaethau prawf	
79611000	Gwasanaethau chwilio am swydd	
79622000	Gwasanaethau cyflenwi personél cymorth domestig	N
79624000	Gwasanaethau cyflenwi personél nrysio	N
79625000	Gwasanaethau cyflenwi personél meddygol	N
85000000	Gwasanaethau iechyd a gwaith cymdeithasol	N
85100000	Gwasanaethau iechyd	N
85110000	Gwasanaethau ysbyty a gwasanaethau cysylltiedig	N
85111000	Gwasanaethau ysbyty	N
85111100	Gwasanaethau ysbyty llawfeddygol	N
85111200	Gwasanaethau ysbyty meddygol	N
85111300	Gwasanaethau ysbyty gynaeolegol	N
85111310	Gwasanaethau ffrwythloni in vitro	N
85111320	Gwasanaethau ysbyty obstetrig	N
85111400	Gwasanaethau ysbyty adsefydlu	N
85111500	Gwasanaethau ysbyty seiciatrig	N
85111600	Gwasanaethau orthoteg	N
85111700	Gwasanaethau therapi ocsigen	N

85111800	Gwasanaethau patholeg	N
85111810	Gwasanaethau dadansoddi gwaed	N
85111820	Gwasanaethau dadansoddi bacteriolegol	N
85111900	Gwasanaethau dialysis ysbyty	N
85112000	Gwasanaethau cymorth ysbyty	N
85112100	Gwasanaethau gwelyau ysbyty	N
85112200	Gwasanaethau gofal i gleifion allanol	N
85120000	Gwasanaethau ymarfer meddygol a gwasanaethau cysylltiedig	N
85121000	Gwasanaethau ymarfer meddygol	N
85121100	Gwasanaethau ymarfer cyffredinol	N
85121200	Gwasanaethau arbenigol meddygol	N
85121210	Gwasanaethau gynaeoleg neu obstetreg	N
85121220	Gwasanaethau arbenigol arenneg neu'r system nerfol	N
85121230	Gwasanaethau cardioleg neu wasanaethau arbenigol yr ysgyfaint	N
85121231	Gwasanaethau cardioleg	N
85121232	Gwasanaethau arbenigol yr ysgyfaint	N
85121240	Gwasanaethau'r glust, y trwyn a'r gwddf neu wasanaethau awdiolegydd	N
85121250	Gwasanaethau gastroenteroleg a geriatreg	N
85121251	Gwasanaethau gastroenteroleg	N
85121252	Gwasanaethau geriatreg	N
85121270	Gwasanaethau seiciatreg neu seicoleg	N
85121271	Gwasanaethau cartref ar gyfer pobl â phroblemau seicolegol	N
85121280	Gwasanaethau offthalmoleg, dermatoleg neu orthopaedeg	N
85121281	Gwasanaethau offthalmoleg	N
85121282	Gwasanaethau dermatoleg	N
85121283	Gwasanaethau orthopaedeg	N
85121290	Gwasanaethau paediatreg neu wroleg	N

85121291	Gwasanaethau paediatreg	N
85121292	Gwasanaethau wroleg	N
85121300	Gwasanaethau arbenigol llawfeddygol	N
85130000	Gwasanaethau ymarfer deintyddol a gwasanaethau cysylltiedig	N
85131000	Gwasanaethau ymarfer deintyddol	N
85131100	Gwasanaethau orthodonteg	N
85131110	Gwasanaethau llawfeddygaeth orthodontig	N
85140000	Gwasanaethau iechyd amrywiol	N
85141000	Gwasanaethau a ddarperir gan bersonél meddygol	N
85141100	Gwasanaethau a ddarperir gan fydwragedd	N
85141200	Gwasanaethau a ddarperir gan nyrsys	N
85141210	Gwasanaethau triniaeth feddygol yn y cartref	N
85141211	Gwasanaethau triniaeth feddygol dialysis yn y cartref	N
85141220	Gwasanaethau cynghori a ddarperir gan nyrsys	N
85142000	Gwasanaethau parafeddygol	N
85142100	Gwasanaethau ffisiotherapi	N
85142200	Gwasanaethau homeopathi	N
85142300	Gwasanaethau hylendid	N
85142400	Danfôn cynhyrchion anymataliaeth i'r cartref	N
85143000	Gwasanaethau ambiwlans	N
85144000	Gwasanaethau cyfleusterau iechyd preswyl	N
85144100	Gwasanaethau gofal nyrsio preswyl	N
85145000	Gwasanaethau a ddarperir gan labordai meddygol	N
85146000	Gwasanaethau a ddarperir gan fanciau gwaed	N
85146100	Gwasanaethau a ddarperir gan fanciau sberm	N
85146200	Gwasanaethau a ddarperir gan fanciau organau trawsblannu	N
85147000	Gwasanaethau iechyd cwmni	N



85148000	Gwasanaethau dadansoddi meddygol	N
85149000	Gwasanaethau fferylliaeth	N
85150000	Gwasanaethau delweddu meddygol	N
85160000	Gwasanaethau optegydd	N
85170000	Gwasanaethau aciwbigo a chiropracteg	N
85171000	Gwasanaethau aciwbigo	N
85172000	Gwasanaethau ciropracteg	N
85200000	Gwasanaethau milfeddygaeth	N
85210000	Meithrinfeydd anifeiliaid domestig	N
85300000	Gwasanaethau gwaith cymdeithasol a gwasanaethau cysylltiedig	N
85310000	Gwasanaethau gwaith cymdeithasol	N
85311000	Gwasanaethau gwaith cymdeithasol gyda llety	N
85311100	Gwasanaethau lles ar gyfer yr henoed	N
85311200	Gwasanaethau lles ar gyfer pobl anabl	N
85311300	Gwasanaethau lles ar gyfer plant a phobl ifanc	N
85312000	Gwasanaethau gwaith cymdeithasol heb lety	N
85312100	Gwasanaethau gofal dydd	N
85312110	Gwasanaethau gofal dydd i blant	N
85312120	Gwasanaethau gofal dydd ar gyfer plant a phobl ifanc anabl	N
85312200	Danfôn cyflenwadau i'r cartref	N
85312300	Gwasanaethau arweiniad a chwnsela	N
85312310	Gwasanaethau arweiniad	N
85312320	Gwasanaethau cwnsela	N
85312330	Gwasanaethau cynllunio teulu	N
85312400	Gwasanaethau lles na chânt eu darparu drwy sefydliadau preswyl	N
85312500	Gwasanaethau adsefydlu	N
85312510	Gwasanaethau adsefydlu galwedigaethol	N

85320000	Gwasanaethau cymdeithasol	N
85321000	Gwasanaethau cymdeithasol gweinyddol	N
85322000	Rhaglen gweithredu cymunedol	N
85323000	Gwasanaethau iechyd cymunedol	N
98133000	Gwasanaethau a ddarperir gan sefydliadau aelodaeth gymdeithasol	N
98133100	Gwasanaethau cymorth cyfleusterau cymunedol a gwelliant dinesig	N
98200000	Gwasanaethau ymgynghori ar gyfleoedd cyfartal	
98500000	Aelwydydd preifat â phersonau cyflogedig	
98513000	Gwasanaethau llafurlu ar gyfer aelwydydd	
98513100	Gwasanaethau staff asiantaeth ar gyfer aelwydydd	
98513200	Gwasanaethau staff clercol ar gyfer aelwydydd	
98513300	Staff dros dro ar gyfer aelwydydd	
98513310	Gwasanaethau cymorth cartref	
98514000	Gwasanaethau domestig	
<i>Gwasanaethau cymdeithasol, addysgol, gofal iechyd a diwylliannol gweinyddol</i>		
75000000	Gwasanaethau gweinyddu, amddiffyn a nawdd cymdeithasol	
75121000	Gwasanaethau addysgol gweinyddol	N
75122000	Gwasanaethau gofal iechyd gweinyddol	N
75124000	Gwasanaethau hamdden, diwylliant a chrefydd gweinyddol	
79950000	Gwasanaethau trefnu arddangosfeydd, ffeiriau a chynadleddau	
79951000	Gwasanaethau trefnu seminarau	
79952000	Gwasanaethau digwyddiadau	
79952100	Gwasanaethau trefnu digwyddiadau diwylliannol	
79953000	Gwasanaethau trefnu gwyliau	

79954000	Gwasanaethau trefnu partiön	
79955000	Gwasanaethau trefnu sioeau ffasiwn	
79956000	Gwasanaethau trefnu ffeiriau ac arddangosfeydd	
79995000	Gwasanaethau rheoli llyfrgelloedd	
79995100	Gwasanaethau archifo	
79995200	Gwasanaethau catalogio	
80000000	Gwasanaethau addysg a hyfforddiant	
80100000	Gwasanaethau addysg gynradd	
80110000	Gwasanaethau addysg gyn ysgol	N
80200000	Gwasanaethau addysg uwchradd	
80210000	Gwasanaethau addysg uwchradd dechnegol a galwedigaethol	
80211000	Gwasanaethau addysg uwchradd dechnegol	
80212000	Gwasanaethau addysg uwchradd alwedigaethol	
80300000	Gwasanaethau addysg uwch	N
80310000	Gwasanaethau addysg ieuenctid	N
80320000	Gwasanaethau addysg feddygol	N
80330000	Gwasanaethau addysg diogelwch	N
80340000	Gwasanaethau addysg arbennig	N
80400000	Gwasanaethau addysg oedolion a gwasanaethau addysg eraill	
80410000	Gwasanaethau ysgol amrywiol	
80411000	Gwasanaethau ysgol yrru	
80411100	Gwasanaethau prawf gyrru	
80411200	Gwersi gyrru	
80412000	Gwasanaethau ysgol hedfan	
80413000	Gwasanaethau ysgol hwylio	
80414000	Gwasanaethau ysgol blymio	
80415000	Gwasanaethau hyfforddiant sgïo	
80420000	Gwasanaethau e-ddysgu	N
80430000	Gwasanaethau addysg oedolion ar lefel prifysgol	N

80490000	Gweithredu canolfan addysgol	
80500000	Gwasanaethau hyfforddi	
80510000	Gwasanaethau hyfforddi arbenigol	
80511000	Gwasanaethau hyfforddi staff	N
80512000	Gwasanaethau hyfforddi cŵn	
80513000	Gwasanaethau ysgol farchogaeth	
80520000	Cyfleusterau hyfforddi	N
80521000	Gwasanaethau rhaglenni hyfforddi	N
80522000	Seminarau hyfforddi	N
80530000	Gwasanaethau hyfforddiant galwedigaethol	
80531000	Gwasanaethau hyfforddiant diwydiannol a thechnegol	
80531100	Gwasanaethau hyfforddiant diwydiannol	
80531200	Gwasanaethau hyfforddiant technegol	
80532000	Gwasanaethau hyfforddiant rheoli	
80533000	Gwasanaethau ymgylchedd a hyfforddi defnyddwyr cyfrifiaduron	
80533100	Gwasanaethau hyfforddiant cyfrifiadurol	
80533200	Cyrsiau cyfrifiadur	
80540000	Gwasanaethau hyfforddiant amgylcheddol	
80550000	Gwasanaethau hyfforddiant diogelwch	
80560000	Gwasanaethau hyfforddiant iechyd a chymorth cyntaf	
80561000	Gwasanaethau hyfforddiant iechyd	
80562000	Gwasanaethau hyfforddiant cymorth cyntaf	
80570000	Gwasanaethau hyfforddiant datblygiad personol	
80580000	Darparu cyrsiau iaith	
80590000	Gwasanaethau tiwtora	N
80610000	Hyfforddi ac efelychu ar gyfer cyfarpar diogelwch	
80620000	Hyfforddi ac efelychu ar gyfer arfau tanio a bwledi a chetris	

92000000	Gwasanaethau hamdden, diwylliant a chwaraeon
92100000	Gwasanaethau ffilm a fideo
92110000	Gwasanaethau cynhyrchu ffilmiau a thapiau fideo a gwasanaethau perthynol
92111000	Gwasanaethau cynhyrchu ffilmiau a fideos
92111100	Cynhyrchu ffilmiau a thapiau fideo hyfforddi
92111200	Cynhyrchu ffilmiau a thapiau fideo hysbysebu, propaganda a gwybodaeth
92111210	Cynhyrchu ffilmiau hysbysebu
92111220	Cynhyrchu tapiau fideo hysbysebu
92111230	Cynhyrchu ffilmiau propaganda
92111240	Cynhyrchu tapiau fideo propaganda
92111250	Cynhyrchu ffilmiau gwybodaeth
92111260	Cynhyrchu tapiau fideo gwybodaeth
92111300	Cynhyrchu ffilmiau a thapiau fideo adloniant
92111310	Cynhyrchu ffilmiau adloniant
92111320	Cynhyrchu tapiau fideo adloniant
92112000	Gwasanaethau mewn cysylltiad â chynhyrchu ffilmiau a thapiau fideo
92120000	Gwasanaethau dosbarthu ffilmiau neu dapiau fideo
92121000	Gwasanaethau dosbarthu tapiau fideo
92122000	Gwasanaethau dosbarthu ffilmiau
92130000	Gwasanaethau taflunio ffilmiau
92140000	Gwasanaethau taflunio tapiau fideo
92200000	Gwasanaethau radio a theledu
92210000	Gwasanaethau radio
92211000	Gwasanaethau cynhyrchu radio
92213000	Gwasanaethau systemau radio ar raddfa fach
92214000	Gwasanaethau stiwdio neu gyfarpar radio

92215000	Gwasanaethau Radio Symudol Cyffredinol (GMRS)
92220000	Gwasanaethau teledu
92221000	Gwasanaethau cynhyrchu teledu
92222000	Gwasanaethau teledu cylch cyfyng
92224000	Teledu digidol
92225000	Teledu rhyngweithiol
92225100	Teledu ffilm ar alw
92226000	Teleraglennu
92230000	Gwasanaethau cebl radio a theledu
92231000	Gwasanaethau dwyochrog rhyngwladol a llinellau ar log preifat rhyngwladol
92232000	Teledu cebl
92300000	Gwasanaethau adloniant
92310000	Gwasanaethau creu a dehongli artistig a llenyddol
92311000	Gweithiau celfyddyd
92312000	Gwasanaethau artistig
92312100	Gwasanaethau adloniant cynhyrchwyr theatr, grwpiau cantorion, bandiau a cherddorfeydd
92312110	Gwasanaethau adloniant cynhyrchwyr theatr
92312120	Gwasanaethau adloniant grwpiau cantorion
92312130	Gwasanaethau adloniant bandiau
92312140	Gwasanaethau adloniant cerddorfeydd
92312200	Gwasanaethau a ddarperir gan awduron, cyfansoddwyr, cerflunwyr, diddanwyr ac artistiaid unigol eraill
92312210	Gwasanaethau a ddarperir gan awduron
92312211	Gwasanaethau asiantaeth ysgrifennu
92312212	Gwasanaethau sy'n gysylltiedig â pharatoi llawlyfrau hyfforddi
92312213	Gwasanaethau awduron technegol

92312220	Gwasanaethau a ddarperir gan gyfansoddwyr	
92312230	Gwasanaethau a ddarperir gan gerflunwyr	
92312240	Gwasanaethau a ddarperir gan ddiddanwyr	
92312250	Gwasanaethau a ddarperir gan artistiaid unigol	
92312251	Gwasanaethau troellwyr disgiau	
92320000	Gwasanaethau gweithredu cyfleusterau celf	
92330000	Gwasanaethau ardaloedd hamdden	
92331000	Gwasanaethau ffeiriau a pharciau diddanu	
92331100	Gwasanaethau ffeiriau	
92331200	Gwasanaethau parciau diddanu	
92331210	Gwasanaethau animeiddio i blant	
92332000	Gwasanaethau glan môr	
92340000	Gwasanaethau dawnzio ac adloniant perfformio	
92341000	Gwasanaethau syrcas	
92342000	Gwasanaethau gwersi dawnzio	
92342100	Gwasanaethau gwersi dawnzio neuadd	
92342200	Gwasanaethau gwersi dawnzio disgo	
92350000	Gwasanaethau gamblo a betio	
92351000	Gwasanaethau gamblo	
92351100	Gwasanaethau gweithredu loteri	
92351200	Gwasanaethau gweithredu casinos	
92352000	Gwasanaethau betio	
92352100	Gwasanaethau gweithredu cyfansymwyr	
92352200	Gwasanaethau bwci	
92360000	Gwasanaethau tân gwyllt	
92370000	Technegydd sain	
92400000	Gwasanaethau asiantaeth newyddion	
92500000	Gwasanaethau llyfrgelloedd, archifau ac amgueddfeydd a gwasanaethau diwylliannol eraill	N

92510000	Gwasanaethau llyfrgelloedd ac archifau	N
92511000	Gwasanaethau llyfrgelloedd	N
92512000	Gwasanaethau archifau	N
92512100	Gwasanaethau dinistrio archifau	N
92520000	Gwasanaethau amgueddfeydd a gwasanaethau diogelu safleoedd ac adeiladau hanesyddol	N
92521000	Gwasanaethau amgueddfeydd	N
92521100	Gwasanaethau arddangosfeydd amgueddfa	N
92521200	Gwasanaethau diogelu arddangosion a sbesimenau	N
92521210	Gwasanaethau diogelu arddangosion	N
92521220	Gwasanaethau diogelu sbesimenau	N
92522000	Gwasanaethau diogelu safleoedd ac adeiladau hanesyddol	N
92522100	Gwasanaethau diogelu safleoedd hanesyddol	N
92522200	Gwasanaethau diogelu adeiladau hanesyddol	N
92530000	Gwasanaethau gerddi botaneg a swoleg a gwasanaethau gwarchodfeydd natur	N
92531000	Gwasanaethau gerddi botaneg	N
92532000	Gwasanaethau gerddi swoleg	N
92533000	Gwasanaethau gwarchodfeydd natur	N
92534000	Gwasanaethau gwarchod bywyd gwyllt	N
92600000	Gwasanaethau chwaraeon	N
92610000	Gwasanaethau gweithredu cyfleusterau chwaraeon	N
92620000	Gwasanaethau sy'n gysylltiedig â chwaraeon	N
92621000	Gwasanaethau hyrwyddo digwyddiadau chwaraeon	N
92622000	Gwasanaethau trefnu digwyddiadau chwaraeon	N
92700000	Gwasanaethau gwe gaffis	



## Gwasanaethau nawdd cymdeithasol gorfodol

75300000	Gwasanaethau nawdd cymdeithasol gorfodol
<i>Gwasanaethau budd-daliadau</i>	
75310000	Gwasanaethau budd-daliadau
75311000	Budd-daliadau salwch
75312000	Budd-daliadau mamolaeth
75313000	Budd-daliadau anabledd
75313100	Budd-daliadau anabledd dros dro
75314000	Budd-daliadau iawndal diweithdra
75320000	Cynlluniau pensiwn cyflogeion y Llywodraeth
75330000	Lwfansau teulu
75340000	Lwfansau plant

## Gwasanaethau cymunedol, cymdeithasol a phersonol eraill gan gynnwys gwasanaethau a ddarperir gan undebau llafur, sefydliadau gwleidyddol, cymdeithasau ieuenctid a gwasanaethau sefydliadau aelodaeth eraill

98000000	Gwasanaethau cymunedol, cymdeithasol a phersonol eraill	
98120000	Gwasanaethau a ddarperir gan undebau llafur	
98130000	Gwasanaethau sefydliadau aelodaeth amrywiol	
98132000	Gwasanaethau a ddarperir gan sefydliadau gwleidyddol	
98133110	Gwasanaethau a ddarperir gan gymdeithasau ieuenctid	N
<i>Gwasanaethau crefyddol</i>		
98131000	Gwasanaethau crefyddol	

## Gwasanaethau gwesty a bwyty

55100000	Gwasanaethau gwesty	
55110000	Gwasanaethau llety gwesty	
55120000	Gwasanaethau cyfarfodydd a chynadleddau gwesty	

55130000	Mathau eraill o wasanaethau gwesty	
55200000	Meysydd gweryslla a llety arall nad yw'n westy	
55210000	Gwasanaethau hostel ieuenctid	
55220000	Gwasanaethau maes gweryslla	
55221000	Gwasanaethau safle carafannau	
55240000	Gwasanaethau canolfan wyliau a chartref gwyliau	
55241000	Gwasanaethau canolfan wyliau	
55242000	Gwasanaethau cartref gwyliau	
55243000	Gwasanaethau gwerysll gwyliau i blant	
55250000	Gwasanaethau gosod llety wedi'i ddodrefnu am gyfnod byr	
55260000	Gwasanaethau cerbydau cysgu	
55270000	Gwasanaethau a ddarperir gan sefydliadau gwely a brechwast	
55300000	Gwasanaethau bwyty a gweini bwyd	
55310000	Gwasanaethau gweinydd bwyty	
55311000	Gwasanaethau gweinydd bwyty i gwsmeriaid cyfyngedig	
55312000	Gwasanaethau gweinydd bwyty i gwsmeriaid anghyfyngedig	

55320000	Gwasanaethau gweini prydau	
55321000	Gwasanaethau paratoi prydau	
55322000	Gwasanaethau coginio prydau	
55330000	Gwasanaethau caffeteria	
55400000	Gwasanaethau gweini diodydd	
55410000	Gwasanaethau rheoli bar	
55510000	Gwasanaethau ffreutur	
55511000	Gwasanaethau ffreutur a gwasanaethau caffeteria eraill i gwsmeriaid cyfyngedig	
55512000	Gwasanaethau rheoli ffreutur	
55520000	Gwasanaethau arlwyio	
55521000	Gwasanaethau arlwyio ar gyfer aelwydydd preifat	
55521100	Gwasanaethau pryd ar glud	
55521200	Gwasanaethau danfon prydau	
55522000	Gwasanaethau arlwyio ar gyfer mentrau trafnidiaeth	
55523000	Gwasanaethau arlwyio ar gyfer mentrau neu sefydliadau eraill	
55523100	Gwasanaethau prydau ysgol	
55524000	Gwasanaethau arlwyio ysgolion	

**Gwasanaethau cyfreithiol, i'r graddau nad ydynt wedi eu cynnwys gan baragraff 14 o Atodlen 2 i Ddeddf 2023**

75231100	Gwasanaethau gweinyddol sy'n gysylltiedig â llysoedd barn	
79100000	Gwasanaethau cyfreithiol	

79110000	Gwasanaethau cyngor cyfreithiol a chynrychiolaeth gyfreithiol
79111000	Gwasanaethau cyngor cyfreithiol
79112000	Gwasanaethau cynrychiolaeth gyfreithiol
79112100	Gwasanaethau cynrychioli rhanddeiliaid
79120000	Gwasanaethau ymgynghori ar batentau a hawlfraint
79121000	Gwasanaethau ymgynghori ar hawlfraint
79121100	Gwasanaethau ymgynghori ar hawlfraint meddalwedd
79130000	Gwasanaethau dogfennu ac ardystio cyfreithiol
79131000	Gwasanaethau dogfennu
79132000	Gwasanaethau ardystio
79132100	Gwasanaethau ardystio llofnodion electronig
79140000	Gwasanaethau cyngor cyfreithiol a gwybodaeth gyfreithiol

**Gwasanaethau gweinyddu eraill a gwasanaethau'r llywodraeth**

75100000	Gwasanaethau gweinyddu
75110000	Gwasanaethau cyhoeddus cyffredinol
75111000	Gwasanaethau gweithredol a deddfwriaethol
75111100	Gwasanaethau gweithredol
75111200	Gwasanaethau deddfwriaethol
75112000	Gwasanaethau gweinyddol ar gyfer gweithrediadau busnes
75112100	Gwasanaethau prosiectau datblygu gweinyddol
75120000	Gwasanaethau gweinyddol asiantaethau

75123000	Gwasanaethau tai gweinyddol	N
75125000	Gwasanaethau gweinyddol sy'n gysylltiedig â materion twristiaeth	
75130000	Gwasanaethau ategol ar gyfer y llywodraeth	
75131000	Gwasanaethau'r llywodraeth	

#### **Darparu gwasanaethau i'r gymuned**

75200000	Darparu gwasanaethau i'r gymuned
75210000	Gwasanaethau materion tramor a gwasanaethau eraill
75211000	Gwasanaethau materion tramor
75211100	Gwasanaethau diplomyddol
75211110	Gwasanaethau consylaidd
75211200	Gwasanaethau sy'n gysylltiedig â chymorth economaidd tramor
75222000	Gwasanaethau amddiffyn sifil
75230000	Gwasanaethau cyfiawnder
75231000	Gwasanaethau barnwrol

#### **Gwasanaethau sy'n gysylltiedig â charchardai, gwasanaethau diogelwch y cyhoedd a gwasanaethau achub i'r graddau nad ydynt wedi eu gwahardd gan baragraff 20 o Atodlen 2 i Ddeddf 2023**

75231210	Gwasanaethau carcharu
75231220	Gwasanaethau hebrwng carcharorion
75231230	Gwasanaethau carchar
75240000	Gwasanaethau diogelwch y cyhoedd, cyfraith a threfn
75241000	Gwasanaethau diogelwch y cyhoedd
75241100	Gwasanaethau'r heddlu
75242000	Gwasanaethau cyfraith a threfn gyhoeddus
75242100	Gwasanaethau trefn gyhoeddus
75242110	Gwasanaethau beili
75250000	Gwasanaethau'r frigâd dân a gwasanaethau achub
75251000	Gwasanaethau'r frigâd dân
75251100	Gwasanaethau diffodd tân
75251110	Gwasanaethau atal tân
75251120	Gwasanaethau diffodd tanau coedwig

75252000	Gwasanaethau achub
79430000	Gwasanaethau rheoli argyfwng
98113100	Gwasanaethau diogelwch niwclear

### **Gwasanaethau ymchwilio a diogelwch**

79700000	Gwasanaethau ymchwilio a diogelwch
79710000	Gwasanaethau diogelwch
79711000	Gwasanaethau monitro larwm
79713000	Gwasanaethau giard
79714000	Gwasanaethau gwylidwriaeth
79714100	Gwasanaethau systemau olrhain
79714110	Gwasanaethau olrhain dihangwyr
79715000	Gwasanaethau patrol
79716000	Gwasanaethau rhyddhau bathodynau adnabod
79720000	Gwasanaethau ymchwilio
79721000	Gwasanaethau asiantaeth dditectif
79722000	Gwasanaethau graffoleg
79723000	Gwasanaethau dadansoddi gwastraff

### *Gwasanaethau rhyngwladol*

98900000	Gwasanaethau a ddarperir gan sefydliadau a chyrrff alldiriogaethol
98910000	Gwasanaethau sy'n ymwneud yn benodol â sefydliadau a chyrrff rhyngwladol

### *Gwasanaethau post*

64000000	Gwasanaethau post a thelathrebu
64100000	Gwasanaethau post a negesydd
64110000	Gwasanaethau post
64111000	Gwasanaethau post sy'n gysylltiedig â phapurau newydd a chyfnodolion
64112000	Gwasanaethau post sy'n gysylltiedig â llythyrau
64113000	Gwasanaethau post sy'n gysylltiedig â pharseli
64114000	Gwasanaethau cownter swyddfa bost
64115000	Llogi blychau post
64116000	Gwasanaethau poste restante
64122000	Gwasanaethau post a negesydd swyddfa mewnlol

*Gwasanaethau amrywiol*

50116510 Gwasanaethau ailfowldio teiars

71550000 Gwasanaethau gof

**ATODLEN 2** Rheoliad 44  
**Awdurdodau llywodraeth ganolog**

**Awdurdodau llywodraeth ganolog**

<b>Awdurdod arweiniol (1)</b>	<b>Awdurdod perthynol (2)</b>
Gweinidogion Cymru	Pwyllgorau Cyngori Tai Anedd Amaethyddol (Cymru) Tribiwnlys Tir Amaethyddol Cymru Cyngor Cyllido Addysg Uwch Cymru Comisiwn Ffiniau a Democratiaeth Leol Cymru Y Pwyllgor Asesu Rhenti (Cymru) Comisiwn Brenhinol Henebion Cymru. Tribiwnlys Prisio Cymru Ymddiriedolaethau Gwasanaeth Iechyd Gwladol Cymru a Byrddau Iechyd Lleol Cymru Cyrff GIG Cymru
Cyngor Celfyddydau Cymru Cyngor Gofal Cymru Llyfrgell Genedlaethol Cymru Amgueddfa Cymru Cyfoeth Naturiol Cymru Chwaraeon Cymru Comisiwn Cynulliad Cenedlaethol Cymru Awdurdod Cyllid Cymru Comisiynydd y Gymraeg	

ATODLEN 3 Rheoliad 45  
Gweithgareddau gweithiau

<b>Cod GGG</b>	<b>Gweithgaredd</b>
45000000	Gwaith adeiladu
45100000	Gwaith paratoi safleoedd
45110000	Gwaith dymchwel a dinistrio adeiladau a gwaith symud pridd
45111000	Gwaith dymchwel a gwaith paratoi a chlririo safleoedd
45111100	Gwaith dymchwel
45111200	Gwaith paratoi a chlririo safleoedd
45111210	Gwaith ffrwydro a gwaith symud creigiau cysylltiedig
45111211	Gwaith ffrwydro
45111212	Gwaith symud creigiau
45111213	Gwaith clirio safleoedd
45111214	Gwaith clirio â ffrwydron
45111220	Gwaith tynnu prysgwydd
45111230	Gwaith sefydlogi'r tir
45111240	Gwaith draenio'r tir
45111250	Gwaith ymchwilio tir
45111260	Gwaith paratoi safleoedd ar gyfer mwyngloddio
45111290	Gwaith sylfaenol ar gyfer gwasanaethau

45111291	Gwaith datblygu safleoedd
45111300	Gwaith datgymalu
45111320	Gwaith datgymalu gosodiadau diogelwch
45112000	Gwaith cloddio a symud pridd
45112100	Gwaith cloddio ffosydd
45112200	Gwaith stripio pridd
45112210	Gwaith stripio uwchbridd
45112300	Gwaith mewnlenni ac adfer tir
45112310	Gwaith mewnlenni
45112320	Gwaith adfer tir
45112330	Gwaith adfer safleoedd
45112340	Gwaith dihalogi pridd
45112350	Adfer tir gwastraff
45112360	Gwaith adsefydlu tir
45112400	Gwaith cloddio
45112410	Gwaith torri beddau



45112420	Gwaith cloddio isloriau
45112440	Terasu llechweddau
45112441	Gwaith terasu
45112450	Gwaith cloddio ar safleoedd archaeolegol
45112500	Gwaith symud pridd
45112600	Torri a llenwi
45112700	Gwaith tirlunio
45112710	Gwaith tirlunio ar gyfer manau gwyrdd
45112711	Gwaith tirlunio ar gyfer parciau
45112712	Gwaith tirlunio ar gyfer gerddi
45112713	Gwaith tirlunio ar gyfer gerddi to
45112714	Gwaith tirlunio ar gyfer mynwentydd
45112720	Gwaith tirlunio ar gyfer meysydd chwaraeon ac ardaloedd hamdden
45112721	Gwaith tirlunio ar gyfer cyrsiau golff
45112722	Gwaith tirlunio ar gyfer ardaloedd marchogaeth
45112723	Gwaith tirlunio ar gyfer meysydd chwarae
45112730	Gwaith tirlunio ar gyfer ffyrdd a thraffyrdd
45112740	Gwaith tirlunio ar gyfer meysydd awyr
45113000	Gwaith safle
45120000	Gwaith drilio a thurio ar gyfer profion
45121000	Gwaith drilio ar gyfer profion
45122000	Gwaith turio ar gyfer profion
45200000	Gwaith ar gyfer gwaith adeiladu cyflawn neu rannol a gwaith peirianeg sifil
45210000	Gwaith adeiladu adeiladau
45211000	Gwaith adeiladu ar gyfer adeiladau amlannedd a thai unigol
45211100	Gwaith adeiladu ar gyfer tai
45211200	Gwaith adeiladu tai gwarchod
45211300	Gwaith adeiladu tai
45211310	Gwaith adeiladu ystafelloedd ymolchi
45211320	Gwaith adeiladu portshys
45211340	Gwaith adeiladu adeiladau aml-annedd

45211341	Gwaith adeiladau fflatiau
45211350	Gwaith adeiladu adeiladau amlswyddogaethol
45211360	Gwaith adeiladu datblygu trefol
45211370	Gwaith adeiladu ar gyfer saunas
45212000	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig â hamdden, chwaraeon, diwylliant, tai llety a bwytai
45212100	Gwaith adeiladu cyfleusterau hamdden
45212110	Gwaith adeiladu canolfannau hamdden
45212120	Gwaith adeiladu parciau thema
45212130	Gwaith adeiladu parciau diddanu
45212140	Gosodiadau hamdden
45212150	Gwaith adeiladu sinemâu
45212160	Gwaith adeiladu casinos
45212170	Gwaith adeiladu adeiladau adloniant
45212171	Gwaith adeiladu canolfannau adloniant
45212172	Gwaith adeiladu canolfannau gweithgareddau hamdden
45212180	Gwaith adeiladu swyddfeydd tocynnau
45212190	Gwaith diogelu rhag yr haul
45212200	Gwaith adeiladu ar gyfer cyfleusterau chwaraeon
45212210	Gwaith adeiladu cyfleusterau chwaraeon un pwrpas
45212211	Gwaith adeiladu canolfannau sglefrio
45212212	Gwaith adeiladu ar gyfer pyllau nofio
45212213	Gwaith gwneud marciau ar gyfer chwaraeon
45212220	Gwaith adeiladu cyfleusterau chwaraeon amlbwrpas
45212221	Gwaith adeiladu sy'n gysylltiedig â strwythurau ar gyfer meysydd chwaraeon
45212222	Gwaith adeiladu campfeydd
45212223	Gwaith adeiladu cyfleusterau chwaraeon gaeaf
45212224	Gwaith adeiladu stadiymau
45212225	Gwaith adeiladu neuaddau chwaraeon
45212230	Gwaith gosod ystafelloedd newid
45212290	Gwaith atgyweirio a chynnal a chadw mewn cysylltiad â chyfleusterau chwaraeon

45212300	Gwaith adeiladu ar gyfer adeiladau celfyddydol a diwylliannol
45212310	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig ag arddangosfeydd
45212311	Gwaith adeiladu orielau celf
45212312	Gwaith adeiladu canolfannau arddangos
45212313	Gwaith adeiladu amgueddfeydd
45212314	Gwaith adeiladu sy'n ymwneud â henebion neu gofebion
45212320	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig â pherfformiadau artistig
45212321	Gwaith adeiladu awditoria
45212322	Gwaith adeiladu theatrau
45212330	Gwaith adeiladu llyfrgelloedd
45212331	Gwaith adeiladu llyfrgelloedd amlgyfrwng
45212340	Gwaith adeiladu darlithfeydd
45212350	Adeiladau o ddiddordeb hanesyddol neu bensaernïol arbennig
45212351	Gwaith adeiladu sy'n ymwneud â henebion cynhanesyddol
45212352	Gwaith adeiladu sy'n ymwneud â chofadeiliau diwydiannol
45212353	Gwaith adeiladu sy'n ymwneud â phalasaau
45212354	Gwaith adeiladu sy'n ymwneud â chestyll
45212360	Gwaith adeiladu sy'n ymwneud ag adeiladau crefyddol
45212361	Gwaith adeiladu sy'n ymwneud ag eglwysi
45212400	Adeiladau llety a bwytai
45212410	Gwaith adeiladu ar gyfer adeiladau tai llety
45212411	Gwaith adeiladu gwestai
45212412	Gwaith adeiladu hosteli
45212413	Gwaith adeiladu llety arhosiad byr
45212420	Gwaith adeiladu ar gyfer bwytai a chyfleusterau tebyg
45212421	Gwaith adeiladu bwytai
45212422	Gwaith adeiladu ffreuturau
45212423	Gwaith adeiladu caffeterias

45212500	Addasu cegin neu fwyty
45212600	Gwaith adeiladu pafiliynau
45213000	Gwaith adeiladu ar gyfer adeiladau masnachol, warysau ac adeiladau diwydiannol, ac adeiladau sy'n gysylltiedig â thrafnidiaeth
45213100	Gwaith adeiladu ar gyfer adeiladau masnachol
45213110	Gwaith adeiladu adeiladau siopau
45213111	Gwaith adeiladu canolfannau siopa
45213112	Gwaith adeiladu unedau siopau
45213120	Gwaith adeiladu swyddfeydd post
45213130	Gwaith adeiladu banciau
45213140	Gwaith adeiladu marchnadoedd
45213141	Gwaith adeiladu marchnadoedd dan do
45213142	Gwaith adeiladu marchnadoedd awyr agored
45213150	Gwaith adeiladu blociau o swyddfeydd
45213200	Gwaith adeiladu ar gyfer warysau ac adeiladau diwydiannol
45213210	Storfeydd oer
45213220	Gwaith adeiladu ar gyfer warysau
45213221	Gwaith adeiladu storfeydd warws
45213230	Gwaith adeiladu lladd-dai
45213240	Gwaith adeiladu adeiladau amaethyddol
45213241	Gwaith adeiladu ysguboriau
45213242	Gwaith adeiladu beudai
45213250	Gwaith adeiladu ar gyfer adeiladau diwydiannol
45213251	Gwaith adeiladu unedau diwydiannol
45213252	Gwaith adeiladu gweithdai
45213260	Gwaith adeiladu depos storau
45213270	Gwaith adeiladu ar gyfer gorsafoedd ailgylchu
45213280	Gwaith adeiladu ar gyfer cyfleusterau compostio
45213300	Adeiladau sy'n gysylltiedig â thrafnidiaeth
45213310	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig â thrafnidiaeth ffyrdd
45213311	Gwaith adeiladu gorsafoedd bysiau

45213312	Gwaith adeiladu adeiladau maes parcio
45213313	Gwaith adeiladu adeiladau ardal wasanaethu
45213314	Gwaith adeiladu garejys bysiau
45213315	Gwaith adeiladu llochesau safle bws
45213316	Gwaith gosod llwybrau
45213320	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig â thrafnidiaeth reilffordd
45213321	Gwaith adeiladu gorsafoedd trenau
45213322	Gwaith adeiladu adeiladau terfynfa reilffordd
45213330	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig â thrafnidiaeth awyr
45213331	Gwaith adeiladu adeiladau maes awyr
45213332	Gwaith adeiladu tyrau rheoli maes awyr
45213333	Gwaith gosod cownteri mewngofnodi maes awyr
45213340	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig â thrafnidiaeth dros ddŵr
45213341	Gwaith adeiladu adeiladau terfynfa fferi
45213342	Gwaith adeiladu terfynfeydd ro-ro
45213350	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig â gwahanol fathau o drafnidiaeth
45213351	Gwaith adeiladu awyrendai cynnal a chadw
45213352	Gwaith adeiladu depos gwasanaethau
45213353	Gwaith gosod pontydd byrddio i deithwyr
45213400	Gwaith gosod ystafelloedd staff
45214000	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig ag addysg ac ymchwil
45214100	Gwaith adeiladu ar gyfer adeiladau ysgol feithrin
45214200	Gwaith adeiladu ar gyfer adeiladau ysgol
45214210	Gwaith adeiladu ysgolion cynradd
45214220	Gwaith adeiladu ysgolion uwchradd
45214230	Gwaith adeiladu ysgolion arbennig
45214300	Gwaith adeiladu ar gyfer adeiladau coleg
45214310	Gwaith adeiladu colegau galwedigaethol
45214320	Gwaith adeiladu colegau technegol
45214400	Gwaith adeiladu ar gyfer adeiladau prifysgol

45214410	Gwaith adeiladu colegau polytechnig
45214420	Gwaith adeiladu darlithfeydd
45214430	Gwaith adeiladu labordai iaith
45214500	Gwaith adeiladu ar gyfer adeiladau addysg bellach
45214600	Gwaith adeiladu ar gyfer adeiladau ymchwil
45214610	Gwaith adeiladu adeiladau labordy
45214620	Gwaith adeiladu cyfleusterau ymchwil a phrofi
45214630	Gosodiadau gwyddonol
45214631	Gwaith gosod ystafelloedd glân
45214640	Gwaith adeiladu gorsafodd meteorolegol
45214700	Gwaith adeiladu ar gyfer neuaddau preswyl
45214710	Gwaith adeiladu cynteddau
45214800	Gwaith adeiladu cyfleusterau hyfforddi
45215000	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig ag iechyd a gwasanaethau cymdeithasol, ar gyfer amlogfeydd a chyfleusterau cyhoeddus
45215100	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig ag iechyd
45215110	Gwaith adeiladu sba
45215120	Gwaith adeiladu adeiladau meddygol arbennig
45215130	Gwaith adeiladu clinigau
45215140	Gwaith adeiladu cyfleusterau ysbyty
45215141	Gwaith adeiladu ystafelloedd llawdriniaeth
45215142	Gwaith adeiladu unedau gofal dwys
45215143	Gwaith adeiladu ystafelloedd sgrinio diagnostig
45215144	Gwaith adeiladu ystafelloedd sgrinio
45215145	Gwaith adeiladu ystafelloedd fflworosgopeg
45215146	Gwaith adeiladu ystafelloedd patholeg
45215147	Gwaith adeiladu ystafelloedd fforensig
45215148	Gwaith adeiladu ystafelloedd cathetr
45215200	Gwaith adeiladu ar gyfer adeiladau gwasanaethau cymdeithasol
45215210	Gwaith adeiladu ar gyfer llety preswyl â chymhorthdal
45215212	Gwaith adeiladu cartrefi ymddeol

45215213	Gwaith adeiladu cartrefi nyrsio
45215214	Gwaith adeiladu cartrefi preswyl
45215215	Gwaith adeiladu cartrefi plant
45215220	Gwaith adeiladu ar gyfer cyfleusterau cymdeithasol heblaw llety preswyl â chymhorthdal
45215221	Gwaith adeiladu canolfannau gofal dydd
45215222	Gwaith adeiladau canolfannau dinesig
45215300	Gwaith adeiladu ar gyfer amlogsfeydd
45215400	Gwaith mynwent
45215500	Cyfleusterau cyhoeddus
45216000	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig â chyfraith a threfn neu wasanaethau brys ac ar gyfer adeiladau milwrol
45216100	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig â chyfraith a threfn neu wasanaethau brys
45216110	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig â chyfraith a threfn
45216111	Gwaith adeiladu gorsafoedd heddlu
45216112	Gwaith adeiladu adeiladau llys
45216113	Gwaith adeiladu adeiladau carchardai
45216114	Adeiladau senedd a chynulliad cyhoeddus
45216120	Gwaith adeiladu ar gyfer adeiladau sy'n gysylltiedig â gwasanaethau brys
45216121	Gwaith adeiladu gorsafoedd tân
45216122	Gwaith adeiladu gorsafoedd ambiwlans
45216123	Gwaith adeiladu adeiladau achub ar fynydd
45216124	Gwaith adeiladu gorsafoedd badau achub
45216125	Gwaith adeiladu adeiladau gwasanaethau brys
45216126	Gwaith adeiladu adeiladau gwylwyr y glannau
45216127	Gwaith adeiladu gorsafoedd gwasanaethau achub
45216128	Gwaith adeiladu goleudai
45216129	Llochesau amddiffynnol
45217000	Gwaith adeiladu adeiladau wedi eu llenwi ag aer
45220000	Gwaith peirianeg a gwaith adeiladu

45221000	Gwaith adeiladu ar gyfer pontydd a thwnelau, siafftau a thanlwybrau
45221100	Gwaith adeiladu ar gyfer pontydd
45221110	Gwaith adeiladu pontydd
45221111	Gwaith adeiladu pontydd ffordd
45221112	Gwaith adeiladu pontydd rheilffordd
45221113	Gwaith adeiladu pontydd troed
45221114	Gwaith adeiladu ar gyfer pontydd haearn
45221115	Gwaith adeiladu ar gyfer pontydd dur
45221117	Gwaith adeiladu pontydd pwyso
45221118	Gwaith adeiladu pontydd ar gyfer piblinellau
45221119	Gwaith adeiladu i adnewyddu pontydd
45221120	Gwaith adeiladu traphontydd
45221121	Gwaith adeiladu traphontydd ffordd
45221122	Gwaith adeiladu traphontydd rheilffordd
45221200	Gwaith adeiladu ar gyfer twnelau, siafftau a thanlwybrau
45221210	Gwaith cloddio o dan orchudd neu o dan orchudd yn rhannol
45221211	Tanffordd
45221213	Gwaith cloddio rheilffyrdd o dan orchudd neu o dan orchudd yn rhannol
45221214	Gwaith cloddio ffyrdd o dan orchudd neu o dan orchudd yn rhannol
45221220	Cwlfertau
45221230	Siafftau
45221240	Gwaith adeiladu ar gyfer twnelau
45221241	Gwaith adeiladu twnelau ffordd
45221242	Gwaith adeiladu twnelau rheilffordd
45221243	Gwaith adeiladu twnelau i gerddwyr
45221244	Gwaith adeiladu twnelau camlas
45221245	Gwaith adeiladu twnelau o dan afonydd
45221246	Gwaith adeiladu twnelau tanfor
45221247	Gwaith twnelu
45221248	Gwaith adeiladu leininau twnelau



45221250	Gwaith dan ddaear heblaw twnelau, siafftau a thanlwybrau
45222000	Gwaith adeiladu ar gyfer gwaith peirianeg heblaw pontydd, twnelau, siafftau a thanlwybrau
45222100	Gwaith adeiladu gweithfeydd trin gwastraff
45222110	Gwaith adeiladu safleoedd gwaredu gwastraff
45222300	Gwaith peirianeg ar gyfer gosodiadau diogelwch
45223000	Gwaith adeiladu strwythurau
45223100	Cydosod strwythurau metel
45223110	Gwaith gosod strwythurau metel
45223200	Gwaith strwythurol
45223210	Gwaith dur strwythurol
45223220	Gwaith cragen strwythurol
45223300	Gwaith adeiladu meysydd parcio
45223310	Gwaith adeiladu meysydd parcio o dan ddaear
45223320	Gwaith adeiladu cyfleusterau parcio a theithio
45223400	Gwaith adeiladu gorsafoedd radar
45223500	Strwythurau concrit cyfnerth
45223600	Gwaith adeiladu llety cŵn
45223700	Gwaith adeiladu ardaloedd gwasanaethu
45223710	Gwaith adeiladu ardaloedd gwasanaethu ar draffyrdd
45223720	Gwaith adeiladu gorsafoedd petrol/tanwydd
45223800	Cydosod a chodi strwythurau parod
45223810	Adeiladau parod
45223820	Unedau a chydrannau parod
45223821	Unedau parod
45223822	Cydrannau parod
45230000	Gwaith adeiladu ar gyfer piblinellau, llinellau cyfathrebu a llinellau pŵer, ar gyfer priffyrdd, ffyrdd, meysydd glanio a rheilffyrdd; gwaith ar y gwastad
45231000	Gwaith adeiladu ar gyfer piblinellau, llinellau cyfathrebu a llinellau pŵer
45231100	Gwaith adeiladu cyffredinol ar gyfer piblinellau
45231110	Gwaith adeiladu ar gyfer gosod pibellau

45231111	Codi ac ailosod piblinellau
45231112	Gwaith gosod systemau pibellau
45231113	Gwaith ailosod piblinellau
45231200	Gwaith adeiladu ar gyfer piblinellau olew a nwy
45231210	Gwaith adeiladu ar gyfer piblinellau olew
45231220	Gwaith adeiladu ar gyfer piblinellau nwy
45231221	Gwaith adeiladu'r prif gyflenwad nwy
45231222	Gwaith adeiladu tanciau nwy
45231223	Gwaith ategol ar gyfer dosbarthu nwy
45231300	Gwaith adeiladu ar gyfer piblinellau dŵr a charthion
45231400	Gwaith adeiladu ar gyfer llinellau pŵer trydan
45231500	Gwaith ar biblinellau aer cywasgedig
45231510	Gwaith ar biblinellau aer cywasgedig ar gyfer system bost
45231600	Gwaith adeiladu ar gyfer llinellau cyfathrebu
45232000	Gwaith ategol ar gyfer piblinellau a cheblau
45232100	Gwaith ategol ar gyfer piblinellau dŵr
45232120	Gwaith dyfrhau
45232121	Gwaith adeiladu pibellau dyfrhau
45232130	Gwaith adeiladu pibellau dŵr storm
45232140	Gwaith adeiladu ar gyfer prif gyflenwad gwresogi ardal
45232141	Gwaith gwresogi
45232142	Gwaith adeiladu gorsafoedd trosglwyddo gwres
45232150	Gwaith sy'n gysylltiedig â phiblinellau dosbarthu dŵr
45232151	Gwaith adeiladu ar gyfer adnewyddu'r prif gyflenwad dŵr
45232152	Gwaith adeiladu gorsafoedd pwmpio
45232153	Gwaith adeiladu ar gyfer tyrau dŵr
45232154	Gwaith adeiladu tanciau uchel ar gyfer dŵr yfed
45232200	Gwaith ategol ar gyfer llinellau pŵer trydan
45232210	Adeiladu llinellau uwchben
45232220	Gwaith adeiladu is-orsafoedd

45232221	Is-orsafoedd newidydd
45232300	Gwaith adeiladu a gwaith ategol ar gyfer llinellau ffôn a chyfathrebu
45232310	Gwaith adeiladu ar gyfer llinellau ffôn
45232311	Llinellau ffôn argyfwng ymyl ffordd
45232320	Llinellau darlledu dros gebl
45232330	Codi erialau
45232331	Gwaith ategol ar gyfer darlledu
45232332	Gwaith ategol ar gyfer telathrebu
45232340	Gwaith adeiladu gorsafoedd ffôn symudol
45232400	Gwaith adeiladu carthffosydd
45232410	Gwaith carthffosiaeth
45232411	Gwaith adeiladu pibellau dŵr budr
45232420	Gwaith carthion
45232421	Gwaith trin carthion
45232422	Gwaith trin slwtsh
45232423	Gwaith adeiladu gorsafoedd pwmpio carthion
45232424	Gwaith adeiladu arllwysfeydd carthion
45232430	Gwaith trin dŵr
45232431	Gorsaf pwmpio dŵr gwastraff
45232440	Gwaith adeiladu ar gyfer pibellau carthion
45232450	Gwaith adeiladu systemau draenio
45232451	Gwaith draenio a gwaith arwyneb
45232452	Gwaith draenio
45232453	Gwaith adeiladu draeniau
45232454	Gwaith adeiladu basnau dŵr glaw
45232460	Gwaith glanweithdra
45232470	Gorsaf trosglwyddo gwastraff
45233000	Gwaith adeiladu, gwaith sylfeini a gwaith arwyneb ar gyfer priffyrdd, ffyrdd
45233100	Gwaith adeiladu ar gyfer priffyrdd, ffyrdd
45233110	Gwaith adeiladu traffyrdd
45233120	Gwaith adeiladu ffyrdd

45233121	Gwaith adeiladau priffyrdd
45233122	Gwaith adeiladu cylchffyrdd
45233123	Gwaith adeiladu ffyrdd eilaidd
45233124	Gwaith adeiladu cefnffyrdd
45233125	Gwaith adeiladu cyffyrdd
45233126	Gwaith adeiladu cyffyrdd aml-lefel
45233127	Gwaith adeiladu cyffyrdd T
45233128	Gwaith adeiladu cylchfannau
45233129	Gwaith adeiladu croesffyrdd
45233130	Gwaith adeiladu ar gyfer priffyrdd
45233131	Gwaith adeiladu ar gyfer priffyrdd uchel
45233139	Gwaith cynnal a chadw priffyrdd
45233140	Gwaith ffordd
45233141	Gwaith cynnal a chadw ffyrdd
45233142	Gwaith atgyweirio ffyrdd
45233144	Gwaith adeiladu trosffyrdd
45233150	Gwaith gostegu traffig
45233160	Llwybrau ac arwynebau metlin eraill
45233161	Gwaith adeiladu llwybrau troed
45233162	Gwaith adeiladu llwybrau beicio
45233200	Amrywiol waith ar yr arwyneb
45233210	Gwaith arwyneb ar gyfer priffyrdd
45233220	Gwaith arwyneb ar gyfer ffyrdd
45233221	Gwaith paentio arwyneb ffyrdd
45233222	Gwaith gosod cerrig palmant ac asffalt
45233223	Gwaith ailwynebu lonydd cerbydau
45233224	Gwaith adeiladu ffyrdd deuol
45233225	Gwaith adeiladu ffyrdd unffrwd
45233226	Gwaith adeiladu ffyrdd mynediad
45233227	Gwaith adeiladu ffyrdd ymadael a ffyrdd ymuno
45233228	Gwaith adeiladu araenau arwyneb
45233229	Gwaith cynnal a chadw ymylon ffyrdd

45233250	Gwaith arwynebu ac eithrio ffyrdd
45233251	Gwaith ailwynebu
45233252	Gwaith arwyneb ar gyfer strydoedd
45233253	Gwaith arwyneb ar gyfer llwybrau troed
45233260	Gwaith adeiladu ffyrdd i gerddwyr
45233261	Gwaith adeiladu trosffyrdd i gerddwyr
45233262	Gwaith adeiladu parthau cerddwyr
45233270	Gwaith paentio arwynebau meysydd parcio
45233280	Codi rhwystrau ffordd
45233290	Gwaith gosod arwyddion ffordd
45233291	Gwaith gosod bolardiau
45233292	Gwaith gosod cyfarpar diogelwch
45233293	Gwaith gosod dodrefn stryd
45233294	Gwaith gosod signalau ffordd
45233300	Gwaith sylfeini ar gyfer priffyrdd, ffyrdd, strydoedd a llwybrau troed
45233310	Gwaith sylfeini ar gyfer priffyrdd
45233320	Gwaith sylfeini ar gyfer ffyrdd
45233330	Gwaith sylfeini ar gyfer strydoedd
45233340	Gwaith sylfeini ar gyfer llwybrau troed
45234000	Gwaith adeiladu ar gyfer rheilffyrdd a systemau trafnidiaeth â cheblau
45234100	Gwaith adeiladu rheilffyrdd
45234110	Gwaith rheilffyrdd rhyngddinesig
45234111	Gwaith adeiladu rheilffyrdd dinesig
45234112	Gwaith adeiladu depos rheilffordd
45234113	Dymchwel traciau
45234114	Gwaith adeiladu argloddiau rheilffordd
45234115	Gwaith ar signalau rheilffordd
45234116	Gwaith adeiladu traciau
45234120	Gwaith rheilffyrdd trefol
45234121	Gwaith tramffyrdd
45234122	Gwaith rheilffyrdd tanddaearol

45234123	Gwaith rheilffyrdd rhannol danddaearol
45234124	Trafnidiaeth rheilffyrdd tanddaearol i deithwyr
45234125	Gorsaf drenau danddaearol
45234126	Gwaith adeiladu rheiliau tramffordd
45234127	Gwaith adeiladu depos tramffordd
45234128	Gwaith adeiladu platfformau tramffordd
45234129	Gwaith adeiladu traciau rheilffordd drefol
45234130	Gwaith adeiladu â balast
45234140	Gwaith adeiladu croesfannau rheilffordd
45234160	Gwaith adeiladu catenâu
45234170	Gwaith adeiladu is-orsafoedd locomotif
45234180	Gwaith adeiladu ar gyfer gweithdai rheilffordd
45234181	Gwaith adeiladu ar gyfer cabanau adrannu traciau rheilffordd
45234200	Systemau trafndiaeth a grogir wrth geblau
45234210	Systemau trafndiaeth a grogir wrth geblau gyda chabanau
45234220	Gwaith adeiladu ar gyfer lifftiau sgïo
45234230	Gwaith adeiladu ar gyfer lifftiau cadair
45234240	Systemau rheilffordd halio
45234250	Gwaith adeiladu telefferig
45235000	Gwaith adeiladu ar gyfer meysydd glanio, rhedfeydd ac arwynebau manwfro
45235100	Gwaith adeiladu ar gyfer meysydd awyr
45235110	Gwaith adeiladu ar gyfer meysydd glanio
45235111	Gwaith adeiladu palmentydd maes glanio
45235200	Gwaith adeiladu rhedfeydd
45235210	Ailwynebu rhedfeydd
45235300	Gwaith adeiladu ar gyfer arwynebau manwfro cerbydau awyr
45235310	Gwaith adeiladu atredfeydd
45235311	Gwaith adeiladu palmentydd atredfeydd
45235320	Gwaith adeiladu ar gyfer lleiniau cerbydau awyr
45236000	Gwaith ar y gwastad

45236100	Gwaith ar y gwastad ar gyfer gosodiadau chwaraeon amrywiol
45236110	Gwaith ar y gwastad ar gyfer meysydd chwaraeon
45236111	Gwaith ar y gwastad ar gyfer cyrsiau golff
45236112	Gwaith ar y gwastad ar gyfer cyrtiau tennis
45236113	Gwaith ar y gwastad ar gyfer caeau rasys
45236114	Gwaith ar y gwastad ar gyfer traciau rhedeg
45236119	Gwaith atgyweirio ar feysydd chwaraeon
45236200	Gwaith ar y gwastad ar gyfer gosodiadau hamdden
45236210	Gwaith ar y gwastad ar gyfer ardaloedd chwarae plant
45236220	Gwaith ar y gwastad ar gyfer sŵau
45236230	Gwaith ar y gwastad ar gyfer gerddi
45236250	Gwaith ar y gwastad ar gyfer parciau
45236290	Gwaith atgyweirio ar ardaloedd hamdden
45236300	Gwaith ar y gwastad ar gyfer mynwentydd
45237000	Gwaith adeiladu llwyfannau
45240000	Gwaith adeiladu ar gyfer prosiectau dŵr
45241000	Gwaith adeiladu harbyrau
45241100	Gwaith adeiladu ceiau
45241200	Gwaith adeiladu terfynfeydd alltraeth yn y fan a'r lle
45241300	Gwaith adeiladu pierau
45241400	Gwaith adeiladu dociau
45241500	Gwaith adeiladu glanfeydd
45241600	Gwaith gosod cyfarpar goleuo porthladdoedd
45242000	Gwaith adeiladu cyfleusterau hamdden glan y dŵr
45242100	Gwaith adeiladu cyfleusterau chwaraeon dŵr
45242110	Gwaith adeiladu ffyrdd lansio
45242200	Gwaith adeiladu marinas
45242210	Gwaith adeiladu harbyrau cychod hwylio
45243000	Gwaith amddiffyn yr arfordir
45243100	Gwaith diogelu clogwyni
45243110	Gwaith sefydlogi clogwyni

45243200	Gwaith adeiladu morgloddiau
45243300	Gwaith adeiladu waliau môr
45243400	Gwaith cyfnerthu traethau
45243500	Gwaith adeiladu amddiffynfeydd morol
45243510	Gwaith argloddiau
45243600	Gwaith adeiladu waliau cei
45244000	Gwaith adeiladu morol
45244100	Gosodiadau morol
45244200	Glanfeydd
45245000	Gwaith carthu a phwmpio ar gyfer gweithfeydd trin dŵr
45246000	Gwaith rheoli afonydd a llifogydd
45246100	Adeiladu waliau afonydd
45246200	Gwaith diogelu glannau afonydd
45246400	Gwaith atal llifogydd
45246410	Gwaith cynnal a chadw amddiffynfeydd rhag llifogydd
45246500	Gwaith adeiladu promenadau
45246510	Gwaith adeiladu llwybrau estyllod
45247000	Gwaith adeiladu ar gyfer argaeau, camlesi, sianeli dyfrhau a thraphontydd dŵr
45247100	Gwaith adeiladu ar gyfer dyfrffyrdd
45247110	Gwaith adeiladu camlesi
45247111	Gwaith adeiladu sianeli dyfrhau
45247112	Gwaith adeiladu camlesi draenio
45247120	Dyfrffyrdd ac eithrio camlesi
45247130	Gwaith adeiladu traphontydd dŵr
45247200	Gwaith adeiladu ar gyfer argaeau a strwythurau sefydlog tebyg
45247210	Gwaith adeiladu argaeau
45247211	Gwaith adeiladu waliau argae
45247212	Gwaith atgyfnerthu argaeau
45247220	Gwaith adeiladu coredau
45247230	Gwaith adeiladu cloddiau



45247240	Gwaith adeiladu baredau sefydlog
45247270	Gwaith adeiladu cronfeydd dŵr
45248000	Gwaith adeiladu ar gyfer strwythurau hydrofecanyddol
45248100	Gwaith adeiladu lociau camlas
45248200	Gwaith adeiladu dociau sych
45248300	Gwaith adeiladu ar gyfer dociau nofiol
45248400	Gwaith adeiladu pontydd glanio
45248500	Gwaith adeiladu baredau symudol
45250000	Gwaith adeiladu ar gyfer gweithfeydd, mwyngloddio a gweithgynhyrchu ac ar gyfer adeiladau sy'n gysylltiedig â'r diwydiant olew a nwy
45251000	Gwaith adeiladu ar gyfer gweithfeydd pŵer a gweithfeydd gwres
45251100	Gwaith adeiladu ar gyfer gweithfeydd pŵer
45251110	Gwaith adeiladu gorsafoedd ynni niwclear
45251111	Gwaith adeiladu ar gyfer adweithyddion niwclear
45251120	Gwaith adeiladu gweithfeydd ynni trydan dŵr
45251140	Gwaith adeiladu gorsafoedd ynni thermol
45251141	Gwaith adeiladu gorsafoedd ynni geothermol
45251142	Gwaith adeiladu gorsafoedd ynni sy'n llosgi coed
45251143	Gwaith adeiladu gweithfeydd cynhyrchu aer cywasgedig
45251150	Gwaith adeiladu ar gyfer tyrau oeri
45251160	Gwaith gosod ynni gwynt
45251200	Gwaith adeiladu gweithfeydd gwresogi
45251220	Gwaith adeiladu gweithfeydd cydgynhyrchu
45251230	Gwaith adeiladu gweithfeydd cynhyrchu stêm
45251240	Gwaith adeiladu gweithfeydd cynhyrchu trydan o nwy tirlenwi
45251250	Gwaith adeiladu gweithfeydd gwresogi ardal
45252000	Gwaith adeiladu ar gyfer gweithfeydd trin carthion, gweithfeydd puro a gweithfeydd llosgi sbwriel
45252100	Gwaith adeiladu gweithfeydd trin carthion
45252110	Gwaith adeiladu gweithfeydd symudol
45252120	Gwaith adeiladu gweithfeydd trin dŵr

45252121	Gosodiadau gwaddodi
45252122	Treulwyr carthion
45252123	Gosodiadau sgrinio
45252124	Gwaith carthu a phwmpio
45252125	Gwaith dympio creigiau
45252126	Gwaith adeiladu gweithfeydd trin dŵr yfed
45252127	Gwaith adeiladu gweithfeydd trin dŵr gwastraff
45252130	Cyfarpar gweithfeydd trin carthion
45252140	Gwaith adeiladu gweithfeydd dad-ddyfrio slwtsh
45252150	Gwaith adeiladu gweithfeydd trin glo
45252200	Cyfarpar gweithfeydd puro
45252210	Gwaith adeiladu gweithfeydd puro dŵr
45252300	Gwaith adeiladu gweithfeydd llosgi sbwriel
45253000	Gwaith adeiladu ar gyfer gweithfeydd prosesu cemegion
45253100	Gwaith adeiladu gweithfeydd dadfwyneiddio
45253200	Gwaith adeiladu gweithfeydd dadsylffwreiddio
45253300	Gwaith adeiladu gweithfeydd distyllu neu goethi
45253310	Gwaith adeiladu gweithfeydd distyllu dŵr
45253320	Gwaith adeiladu gweithfeydd distyllu alcohol
45253400	Gwaith adeiladu ar gyfer gweithfeydd petrocemegol
45253500	Gwaith adeiladu ar gyfer gweithfeydd fferyllol
45253600	Gwaith adeiladu gweithfeydd dadïoneiddio
45253700	Gwaith adeiladu gweithfeydd treulio
45253800	Gwaith adeiladu gweithfeydd compostio
45254000	Gwaith adeiladu ar gyfer mwynloddio a gweithgynhyrchu
45254100	Gwaith adeiladu ar gyfer mwynloddio
45254110	Gwaith adeiladu pennau pyllau
45254200	Gwaith adeiladu ar gyfer gweithfeydd gweithgynhyrchu
45255000	Gwaith adeiladu ar gyfer y diwydiant olew a nwy
45255100	Gwaith adeiladu ar gyfer llwyfannau cynhyrchu
45255110	Gwaith adeiladu ffynhonnau

45255120	Gwaith adeiladu cyfleusterau llwyfan
45255121	Gwaith adeiladu cyfleusterau ochr uchaf
45255200	Gwaith adeiladu purfeydd olew
45255210	Gwaith adeiladu terfynellau olew
45255300	Gwaith adeiladu terfynellau nwy
45255400	Gwaith ffabrigo
45255410	Gwaith ffabrigo ar y môr
45255420	Gwaith ffabrigo ar y tir
45255430	Dymchwel llwyfannau olew
45255500	Gwaith drilio a fforio
45255600	Gwaith ffynhonnau â thiwbin torchog
45255700	Gwaith adeiladu gweithfeydd nweiddio glo
45255800	Gwaith adeiladu gweithfeydd cynhyrchu nwy
45259000	Gwaith atgyweirio a chynnal a chadw gweithfeydd
45259100	Gwaith atgyweirio a chynnal a chadw gweithfeydd dŵr gwastraff
45259200	Gwaith atgyweirio a chynnal a chadw gweithfeydd puro
45259300	Gwaith atgyweirio a chynnal a chadw gweithfeydd gwresogi
45259900	Gwaith uwchraddio gweithfeydd
45260000	Gwaith toeau a chrefftau adeiladu arbennig eraill
45261000	Gwaith codi fframiau a gorchuddion to a gwaith cysylltiedig
45261100	Gwaith fframio toeau
45261200	Gwaith gorchuddio a phaentio toeau
45261210	Gwaith gorchuddio toeau
45261211	Gwaith teilsio toeau
45261212	Gwaith gosod llechi ar doeau
45261213	Gwaith gorchuddio toeau â metel
45261214	Gwaith gorchuddio toeau â bitwmen
45261215	Gwaith gosod paneli solar ar doeau
45261220	Gwaith paentio toeau a gwaith araenu arall
45261221	Gwaith paentio toeau

45261222	Gwaith gosod araen sment ar doeau
45261300	Gwaith plygiadau plwm a landeri
45261310	Gwaith plygiadau plwm
45261320	Gwaith landeri
45261400	Gwaith gosod dalennau
45261410	Gwaith inswleiddio toeau
45261420	Gwaith diddosi
45261900	Gwaith atgyweirio a chynnal a chadw toeau
45261910	Gwaith atgyweirio toeau
45261920	Gwaith cynnal a chadw toeau
45262000	Gwaith crefftau adeiladu arbennig heblaw gwaith toeau
45262100	Gwaith sgaffaldio
45262110	Gwaith datgymalu sgaffaldiau
45262120	Gwaith codi sgaffaldiau
45262200	Gwaith sylfeini a drilio ffynhonnau dŵr
45262210	Gwaith sylfeini
45262211	Gosod seilbyst
45262212	Gwaith gosod dalennau mewn ffosydd
45262213	Techneg wal diaffram
45262220	Drilio ffynhonnau dŵr
45262300	Gwaith concrit
45262310	Gwaith concrit cyfnerth
45262311	Gwaith carcasau concrit
45262320	Gwaith lefelu
45262321	Gwaith lefelu lloriau
45262330	Gwaith atgyweirio concrit
45262340	Gwaith growtio
45262350	Gwaith concrit anghyfnerth
45262360	Gwaith smentio
45262370	Gwaith gosod araen concrit
45262400	Gwaith codi dur strwythurol
45262410	Gwaith codi dur strwythurol ar gyfer adeiladau

45262420	Gwaith codi dur strwythurol ar gyfer strwythurau
45262421	Gwaith angori ar y môr
45262422	Gwaith drilio tanfor
45262423	Gwaith ffabrigo deciau
45262424	Gwaith ffabrigo modiwlau ar y môr
45262425	Gwaith ffabrigo siacedi
45262426	Gwaith ffabrigo seilbyst
45262500	Gwaith seiri meini a gwaith gosod brics
45262510	Gwaith cerrig
45262511	Cerfio cerrig
45262512	Gwaith cerrig nadd
45262520	Gwaith gosod brics
45262521	Gwaith gosod brics arwyneb
45262522	Gwaith seiri meini
45262600	Gwaith crefftau adeiladu arbennig amrywiol
45262610	Simneiau diwydiannol
45262620	Waliau cynnal
45262630	Adeiladu ffwrneisi
45262640	Gwaith gwella amgylcheddol
45262650	Gwaith gosod cladin
45262660	Gwaith tynnu asbestos
45262670	Gweithio metel
45262680	Weldio
45262690	Adnewyddu adeiladau sydd wedi mynd â'u pennau iddynt
45262700	Gwaith addasu adeiladau
45262710	Gwaith cynnal a chadw ffresgos
45262800	Gwaith estyn adeiladau
45262900	Gwaith balconïau
45300000	Gwaith gosod ar gyfer adeiladau
45310000	Gwaith gosod trydanol
45311000	Gwaith gwifro a ffitio trydanol
45311100	Gwaith gwifro trydanol

45311200	Gwaith ffitio trydanol
45312000	Gwaith gosod systemau larwm ac antenâu
45312100	Gwaith gosod systemau larwm tân
45312200	Gwaith gosod systemau larwm lladron
45312300	Gwaith gosod antenâu
45312310	Gwaith diogelu rhag mellt
45312311	Gwaith gosod dargludyddion mellt
45312320	Gwaith gosod erialau teledu
45312330	Gwaith gosod erialau radio
45313000	Gwaith gosod lifftiau ac esgaladuron
45313100	Gwaith gosod lifftiau
45313200	Gwaith gosod esgaladuron
45313210	Gwaith gosod llwybrau symudol
45314000	Gwaith gosod cyfarpar telathrebu
45314100	Gwaith gosod cyfnewidfeydd ffôn
45314120	Gwaith gosod switsfyrddau
45314200	Gwaith gosod llinellau ffôn
45314300	Gwaith gosod seilwaith ceblau
45314310	Gwaith gosod ceblau
45314320	Gwaith gosod ceblau cyfrifiadurol
45315000	Gwaith gosod trydanol ar gyfer cyfarpar gwresogi a chyfarpar adeiladu trydanol eraill
45315100	Gwaith gosod peirianeg drydanol
45315200	Gwaith tyrbinau
45315300	Gosodiadau cyflenwadau trydan
45315400	Gwaith gosod foltedd uchel
45315500	Gwaith gosod foltedd canolig
45315600	Gwaith gosod foltedd isel
45315700	Gwaith gosod gorsafoedd switsio
45316000	Gwaith gosod systemau goleuo ac arwyddo
45316100	Gwaith gosod cyfarpar goleuo awyr agored
45316110	Gwaith gosod cyfarpar goleuo ffyrdd
45316200	Gwaith gosod cyfarpar arwyddo

45316210	Gwaith gosod cyfarpar monitro traffig
45316211	Gwaith gosod arwyddion ffordd wedi'u goleuo
45316212	Gwaith gosod goleuadau traffig
45316213	Gwaith gosod cyfarpar cyfarwyddo traffig
45316220	Gwaith gosod cyfarpar arwyddo mewn meysydd awyr
45316230	Gwaith gosod cyfarpar arwyddo mewn porthladdoedd
45317000	Math arall o waith gosod trydanol
45317100	Gwaith gosod trydanol ar gyfer cyfarpar pwmpio
45317200	Gwaith gosod trydanol ar gyfer newidyddion
45317300	Gwaith gosod trydanol ar gyfer cyfarpar dosbarthu trydanol
45317400	Gwaith gosod trydanol ar gyfer cyfarpar hidlo
45320000	Gwaith inswleiddio
45321000	Gwaith inswleiddio thermol
45323000	Gwaith ynysu rhag sŵn
45324000	Gwaith plastrfwrdd
45330000	Plymwaith a gwaith glanweithiol
45331000	Gwaith gosod systemau gwresogi, awyru ac aerdymheru
45331100	Gwaith gosod systemau gwres canolog
45331110	Gwaith gosod boeleri
45331200	Gwaith gosod systemau awyru ac aerdymheru
45331210	Gwaith gosod systemau awyru
45331211	Gwaith gosod systemau awyru awyr agored
45331220	Gwaith gosod systemau aerdymheru
45331221	Gwaith gosod systemau aerdymheru rhannol
45331230	Gwaith gosod cyfarpar oeri
45331231	Gwaith gosod cyfarpar oereiddio
45332000	Plymwaith a gwaith gosod draeniau
45332200	Plymwaith dŵr
45332300	Gwaith gosod draeniau
45332400	Gwaith gosod gosodion glanweithiol

45333000	Gwaith gosod ffitiadau nwy
45333100	Gwaith gosod cyfarpar rheoleiddio nwy
45333200	Gwaith gosod mesuryddion nwy
45340000	Gwaith gosod ffensys, rheiliau a chyfarpar diogelwch
45341000	Codi rheiliau
45342000	Codi ffensys
45343000	Gwaith gosod mesurau atal tân
45343100	Gwaith diogelu rhag tân
45343200	Gwaith gosod cyfarpar diffodd tân
45343210	Gwaith gosod cyfarpar diffodd tân â CO <sub>2</sub>
45343220	Gwaith gosod diffoddwyr tân
45343230	Gwaith gosod systemau taenellu
45350000	Gosodiadau mecanyddol
45351000	Gwaith gosod peirianeg fecanyddol
45400000	Gwaith cwblhau adeiladau
45410000	Gwaith plastro
45420000	Gwaith gosod gwaith asiedydd a saer coed
45421000	Gwaith asiedydd
45421100	Gwaith gosod drysau a ffenestri a chydannau cysylltiedig
45421110	Gwaith gosod fframiau drysau a ffenestri
45421111	Gwaith gosod fframiau drysau
45421112	Gwaith gosod fframiau ffenestri
45421120	Gwaith gosod trothwyon
45421130	Gwaith gosod drysau a ffenestri
45421131	Gwaith gosod drysau
45421132	Gwaith gosod ffenestri
45421140	Gwaith gosod gwaith asiedydd metel ac eithrio drysau a ffenestri
45421141	Gwaith gosod parwydydd
45421142	Gwaith gosod caedau ffenestri
45421143	Gwaith gosod bleinds
45421144	Gwaith gosod adlenni



45421145	Gwaith gosod bleinds rholer
45421146	Gwaith gosod nenfydau crog
45421147	Gwaith gosod rhwyllau
45421148	Gwaith gosod gataiau
45421150	Gwaith gosod gwaith asiedydd nad yw'n ymwneud â metelau
45421151	Gwaith gosod ceginau gosod
45421152	Gwaith gosod parwydydd
45421153	Gwaith gosod dodrefn gosodedig
45421160	Gwaith nwyddau haearn
45422000	Gwaith gosod gwaith saer coed
45422100	Gwaith coed
45430000	Gwaith gorchuddio lloriau a waliau
45431000	Gwaith teilsio
45431100	Gwaith teilsio lloriau
45431200	Gwaith teilsio waliau
45432000	Gwaith gosod a gorchuddio lloriau, gorchuddio waliau a phapuro waliau
45432100	Gwaith gosod a gorchuddio lloriau
45432110	Gwaith gosod lloriau
45432111	Gwaith gosod gorchuddion lloriau hyblyg
45432112	Gwaith gosod cerrig palmant
45432113	Gwaith gosod lloriau parquet
45432114	Gwaith gosod lloriau pren
45432120	Gwaith gosod lloriau ffug
45432121	Lloriau cyfrifiadur
45432130	Gwaith gorchuddio lloriau
45432200	Gwaith gorchuddio a phapuro waliau
45432210	Gwaith gorchuddio waliau
45432220	Gwaith papuro waliau
45440000	Gwaith paentio a gwydro
45441000	Gwaith gwydro
45442000	Gwaith taenu araenau amddiffynnol

45442100	Gwaith paentio
45442110	Gwaith paentio adeiladau
45442120	Gwaith paentio strwythurau a gosod araen amddiffynnol arnynt
45442121	Gwaith paentio strwythurau
45442180	Gwaith ailbaentio
45442190	Gwaith tynnu paent
45442200	Gwaith taenu araeau gwrthgyrydu
45442210	Gwaith galfanu
45442300	Gwaith diogelu arwynebau
45443000	Gwaith ffasâd
45450000	Math arall o waith cwblhau adeiladau
45451000	Gwaith addurno
45451100	Gwaith ffitio addurniadau
45451200	Gwaith gosod paneli
45451300	Gerddi mewnol
45452000	Gwaith glanhau allanol ar gyfer adeiladau
45452100	Gwaith chwyth-lanhau ar gyfer tu allan adeiladau
45453000	Gwaith atgyweirio ac ailwampio
45453100	Gwaith ailwampio
45454000	Gwaith ailstrwythuro
45454100	Gwaith adfer
45500000	Llogi peiriannau a chyfarpar adeiladu a pheirianneg sifil gyda gweithredwr
45510000	Llogi craeniau gyda gweithredwr
45520000	Llogi cyfarpar symud pridd gyda gweithredwr

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Argraffwyd a chyhoeddwyd yn y DU gan Y Llyfrfa Cyf dan awdurdod a goruchwyliaeth Jeff James, Rheolwr Llyfrfa Ei Fawrhydi ac Argraffydd Deddfau Senedd y Brenin.

# SCHEDULES

## SCHEDULE 1 Regulation 43

### Light touch services

CPV code (1)	Service (2)	Reservable (3)
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#### Health, social and related services

75231200	Services related to the detention or rehabilitation of criminals	
75231240	Probation services	
79611000	Job search services	
79622000	Supply services of domestic help personnel	R
79624000	Supply services of nursing personnel	R
79625000	Supply services of medical personnel	R
85000000	Health and social work services	R
85100000	Health services	R
85110000	Hospital and related services	R
85111000	Hospital services	R
85111100	Surgical hospital services	R
85111200	Medical hospital services	R
85111300	Gynaecological hospital services	R
85111310	In vitro fertilisation services	R
85111320	Obstetrical hospital services	R
85111400	Rehabilitation hospital services	R
85111500	Psychiatric hospital services	R
85111600	Orthotic services	R
85111700	Oxygen-therapy services	R
85111800	Pathology services	R

85111810	Blood analysis services	R
85111820	Bacteriological analysis services	R
85111900	Hospital dialysis services	R
85112000	Hospital support services	R
85112100	Hospital-bedding services	R
85112200	Outpatient care services	R
85120000	Medical practice and related services	R
85121000	Medical practice services	R
85121100	General-practitioner services	R
85121200	Medical specialist services	R
85121210	Gynaecological or obstetric services	R
85121220	Nephrology or nervous system specialist services	R
85121230	Cardiology services or pulmonary specialists services	R
85121231	Cardiology services	R
85121232	Pulmonary specialists services	R
85121240	ENT or audiologist services	R
85121250	Gastroenterologist and geriatric services	R
85121251	Gastroenterologist services	R
85121252	Geriatric services	R
85121270	Psychiatrist or psychologist services	R
85121271	Home for the psychologically disturbed services	R
85121280	Ophthalmologist, dermatology or orthopedics services	R
85121281	Ophthalmologist services	R
85121282	Dermatology services	R
85121283	Orthopaedic services	R
85121290	Paediatric or urologist services	R
85121291	Paediatric services	R
85121292	Urologist services	R
85121300	Surgical specialist services	R

85130000	Dental practice and related services	R
85131000	Dental-practice services	R
85131100	Orthodontic services	R
85131110	Orthodontic-surgery services	R
85140000	Miscellaneous health services	R
85141000	Services provided by medical personnel	R
85141100	Services provided by midwives	R
85141200	Services provided by nurses	R
85141210	Home medical treatment services	R
85141211	Dialysis home medical treatment services	R
85141220	Advisory services provided by nurses	R
85142000	Paramedical services	R
85142100	Physiotherapy services	R
85142200	Homeopathic services	R
85142300	Hygiene services	R
85142400	Home delivery of incontinence products	R
85143000	Ambulance services	R
85144000	Residential health facilities services	R
85144100	Residential nursing care services	R
85145000	Services provided by medical laboratories	R
85146000	Services provided by blood banks	R
85146100	Services provided by sperm banks	R
85146200	Services provided by transplant organ banks	R
85147000	Company health services	R
85148000	Medical analysis services	R
85149000	Pharmacy services	R
85150000	Medical imaging services	R
85160000	Optician services	R
85170000	Acupuncture and chiropractor services	R

85171000	Acupuncture services	R
85172000	Chiropractor services	R
85200000	Veterinary services	R
85210000	Domestic animal nurseries	R
85300000	Social work and related services	R
85310000	Social work services	R
85311000	Social work services with accommodation	R
85311100	Welfare services for the elderly	R
85311200	Welfare services for disabled people	R
85311300	Welfare services for children and young people	R
85312000	Social work services without accommodation	R
85312100	Daycare services	R
85312110	Child daycare services	R
85312120	Daycare services for disabled children and young people	R
85312200	Home delivery of provisions	R
85312300	Guidance and counselling services	R
85312310	Guidance services	R
85312320	Counselling services	R
85312330	Family-planning services	R
85312400	Welfare services not delivered through residential institutions	R
85312500	Rehabilitation services	R
85312510	Vocational rehabilitation services	R
85320000	Social services	R
85321000	Administrative social services	R
85322000	Community action programme	R
85323000	Community health services	R
98133000	Services furnished by social membership organisations	R
98133100	Civic betterment and community facility support services	R

98200000	Equal opportunities consultancy services	
98500000	Private households with employed persons	
98513000	Manpower services for households	
98513100	Agency staff services for households	
98513200	Clerical staff services for households	
98513300	Temporary staff for households	
98513310	Home-help services	
98514000	Domestic services	
<i>Administrative social, educational, healthcare and cultural services</i>		
75000000	Administration, defence and social security services	
75121000	Administrative educational services	R
75122000	Administrative healthcare services	R
75124000	Administrative recreational, cultural and religious services	
79950000	Exhibition, fair and congress organisation services	
79951000	Seminar organisation services	
79952000	Event services	
79952100	Cultural event organisation services	
79953000	Festival organisation services	
79954000	Party organisation services	
79955000	Fashion shows organisation services	
79956000	Fair and exhibition organisation services	
79995000	Library management services	
79995100	Archiving services	
79995200	Cataloguing services	
80000000	Education and training services	
80100000	Primary education services	
80110000	Pre-school education services	R

80200000	Secondary education services	
80210000	Technical and vocational secondary education services	
80211000	Technical secondary education services	
80212000	Vocational secondary education services	
80300000	Higher education services	R
80310000	Youth education services	R
80320000	Medical education services	R
80330000	Safety education services	R
80340000	Special education services	R
80400000	Adult and other education services	
80410000	Various school services	
80411000	Driving-school services	
80411100	Driving-test services	
80411200	Driving lessons	
80412000	Flying-school services	
80413000	Sailing-school services	
80414000	Diving-school services	
80415000	Ski-training services	
80420000	E-learning services	R
80430000	Adult-education services at university level	R
80490000	Operation of an educational centre	
80500000	Training services	
80510000	Specialist training services	
80511000	Staff training services	R
80512000	Dog training services	
80513000	Horse riding school services	
80520000	Training facilities	R
80521000	Training programme services	R
80522000	Training seminars	R
80530000	Vocational training services	



80531000	Industrial and technical training services	
80531100	Industrial training services	
80531200	Technical training services	
80532000	Management training services	
80533000	Computer-user familiarisation and training services	
80533100	Computer training services	
80533200	Computer courses	
80540000	Environmental training services	
80550000	Safety training services	
80560000	Health and first-aid training services	
80561000	Health training services	
80562000	First-aid training services	
80570000	Personal development training services	
80580000	Provision of language courses	
80590000	Tutorial services	R
80610000	Training and simulation in security equipment	
80620000	Training and simulation in firearms and ammunition	
92000000	Recreational, cultural and sporting services	
92100000	Motion picture and video services	
92110000	Motion picture and video tape production and related services	
92111000	Motion picture and video production services	
92111100	Training-film and video-tape production	
92111200	Advertising, propaganda and information film and video-tape production	
92111210	Advertising film production	
92111220	Advertising video-tape production	
92111230	Propaganda film production	
92111240	Propaganda video-tape production	
92111250	Information film production	

92111260	Information video-tape production
92111300	Entertainment film and video-tape production
92111310	Entertainment film production
92111320	Entertainment video-tape production
92112000	Services in connection with motion-picture and video-tape production
92120000	Motion-picture or video-tape distribution services
92121000	Video-tape distribution services
92122000	Motion picture distribution services
92130000	Motion picture projection services
92140000	Video-tape projection services
92200000	Radio and television services
92210000	Radio services
92211000	Radio production services
92213000	Small scale radio systems services
92214000	Radio studio or equipment services
92215000	General Mobile Radio Services (GMRS)
92220000	Television services
92221000	Television production services
92222000	Closed circuit television services
92224000	Digital television
92225000	Interactive television
92225100	Film-on-demand television
92226000	Teleprogramming
92230000	Radio and television cable services
92231000	International bilateral services and international private leased lines
92232000	Cable TV
92300000	Entertainment services
92310000	Artistic and literary creation and interpretation services

92311000	Works of art
92312000	Artistic services
92312100	Theatrical producers', singer groups', bands' and orchestras' entertainment services
92312110	Theatrical producer entertainment services
92312120	Singer group entertainment services
92312130	Band entertainment services
92312140	Orchestral entertainment services
92312200	Services provided by authors, composers, sculptors, entertainers and other individual artists
92312210	Services provided by authors
92312211	Writing agency services
92312212	Services related to the preparation of training manuals
92312213	Technical author services
92312220	Services provided by composers
92312230	Services provided by sculptors
92312240	Services provided by entertainers
92312250	Services provided by individual artists
92312251	Disk-jockey services
92320000	Arts-facility operation services
92330000	Recreational-area services
92331000	Fair and amusement park services
92331100	Fair services
92331200	Amusement park services
92331210	Children animation services
92332000	Beach services
92340000	Dance and performance entertainment services
92341000	Circus services
92342000	Dance-instruction services
92342100	Ballroom dance-instruction services

92342200	Discotheque dance-instruction services	
92350000	Gambling and betting services	
92351000	Gambling services	
92351100	Lottery operating services	
92351200	Casino operating services	
92352000	Betting services	
92352100	Totalisator operating services	
92352200	Bookmaking services	
92360000	Pyrotechnic services	
92370000	Sound technician	
92400000	News-agency services	
92500000	Library, archives, museums and other cultural services	R
92510000	Library and archive services	R
92511000	Library services	R
92512000	Archive services	R
92512100	Archive destruction services	R
92520000	Museum services and preservation services of historical sites and buildings	R
92521000	Museum services	R
92521100	Museum-exhibition services	R
92521200	Preservation services of exhibits and specimens	R
92521210	Preservation services of exhibits	R
92521220	Preservation services of specimens	R
92522000	Preservation services of historical sites and buildings	R
92522100	Preservation services of historical sites	R
92522200	Preservation services of historical buildings	R
92530000	Botanical and zoological garden services and nature reserve services	R
92531000	Botanical garden services	R

92532000	Zoological garden services	R
92533000	Nature reserve services	R
92534000	Wildlife preservation services	R
92600000	Sporting services	R
92610000	Sports facilities operation services	R
92620000	Sport-related services	R
92621000	Sports-event promotion services	R
92622000	Sports-event organisation services	R
92700000	Cybercafé services	

### **Compulsory social security services**

75300000	Compulsory social security services
	<i>Benefit services</i>
75310000	Benefit services
75311000	Sickness benefits
75312000	Maternity benefits
75313000	Disability benefits
75313100	Temporary disablement benefits
75314000	Unemployment compensation benefits
75320000	Government employee pension schemes
75330000	Family allowances
75340000	Child allowances

### **Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisations services**

98000000	Other community, social and personal services	
98120000	Services furnished by trade unions	
98130000	Miscellaneous membership organisations services	
98132000	Services furnished by political organisations	
98133110	Services provided by youth associations	R
	<i>Religious services</i>	
98131000	Religious services	

**Hotel and restaurant services**

55100000	Hotel services	
55110000	Hotel accommodation services	
55120000	Hotel meeting and conference services	
55130000	Other hotel services	
55200000	Camping sites and other non-hotel accommodation	
55210000	Youth hostel services	
55220000	Camping-site services	
55221000	Caravan-site services	
55240000	Holiday centre and holiday home services	
55241000	Holiday centre services	
55242000	Holiday home services	
55243000	Children's holiday-camp services	
55250000	Letting services of short stay-stay furnished accommodation	
55260000	Sleeping-car services	
55270000	Services provided by bed and breakfast establishments	

55300000	Restaurant and food-serving services	
55310000	Restaurant waiter services	
55311000	Restricted-clientele restaurant waiter services	
55312000	Unrestricted-clientele restaurant waiter services	
55320000	Meal-serving services	
55321000	Meal-preparation services	
55322000	Meal-cooking services	
55330000	Cafeteria services	
55400000	Beverage-serving services	
55410000	Bar management services	
55510000	Canteen services	
55511000	Canteen and other restricted-clientele cafeteria services	
55512000	Canteen management services	
55520000	Catering services	
55521000	Catering services for private households	
55521100	Meals-on-wheels services	
55521200	Meal delivery service	
55522000	Catering services for transport enterprises	

55523000	Catering services for other enterprises or other institutions	
55523100	School-meal services	
55524000	School catering services	

**Legal services, to the extent not included by paragraph 14 of Schedule 2 to the 2023 Act**

75231100	Law-courts-related administrative services	
79100000	Legal services	

79110000	Legal advisory and representation services
79111000	Legal advisory services
79112000	Legal representation services
79112100	Stakeholders representation services
79120000	Patent and copyright consultancy services
79121000	Copyright consultancy services
79121100	Software copyright consultancy services
79130000	Legal documentation and certification services
79131000	Documentation services
79132000	Certification services
79132100	Electronic signature certification services
79140000	Legal advisory and information services

**Other administrative services and government services**

75100000	Administration services
75110000	General public services
75111000	Executive and legislative services
75111100	Executive services
75111200	Legislative services
75112000	Administrative services for business operations
75112100	Administrative development project services



75120000	Administrative services of agencies	
75123000	Administrative housing services	R
75125000	Administrative services related to tourism affairs	
75130000	Supporting services for the government	
75131000	Government services	

**Provision of services to the community**

75200000	Provision of services to the community	
75210000	Foreign affairs and other services	
75211000	Foreign-affairs services	
75211100	Diplomatic services	
75211110	Consular services	
75211200	Foreign economic-aid-related services	
75222000	Civil defence services	
75230000	Justice services	
75231000	Judicial services	

**Prison related services, public security and rescue services to the extent not excluded by paragraph 20 of Schedule 2 to the 2023 Act**

75231210	Imprisonment services	
75231220	Prisoner-escort services	
75231230	Prison services	
75240000	Public security, law and order services	
75241000	Public security services	
75241100	Police services	
75242000	Public law and order services	
75242100	Public-order services	
75242110	Bailiff services	
75250000	Fire-brigade and rescue services	
75251000	Fire-brigade services	
75251100	Firefighting services	
75251110	Fire-prevention services	

75251120	Forest-firefighting services
75252000	Rescue services
79430000	Crisis management services
98113100	Nuclear safety services

### **Investigation and security services**

79700000	Investigation and security services
79710000	Security services
79711000	Alarm-monitoring services
79713000	Guard services
79714000	Surveillance services
79714100	Tracing system services
79714110	Absconder-tracing services
79715000	Patrol services
79716000	Identification badge release services
79720000	Investigation services
79721000	Detective agency services
79722000	Graphology services
79723000	Waste analysis services

### *International services*

98900000	Services provided by extra-territorial organisations and bodies
98910000	Services specific to international organisations and bodies

### *Postal services*

64000000	Postal and telecommunications services
64100000	Post and courier services
64110000	Postal services
64111000	Postal services related to newspapers and periodicals
64112000	Postal services related to letters
64113000	Postal services related to parcels
64114000	Post office counter services
64115000	Mailbox rental
64116000	Post restante services

64122000 Internal office mail and messenger services

*Miscellaneous services*

50116510 Tyre-remoulding services

71550000 Blacksmith services

**SCHEDULE 2** Regulation 44  
Central government authorities

**Central government authorities**

<b>Lead authority (1)</b>	<b>Related authority (2)</b>
The Welsh Ministers	Agricultural Dwelling House Advisory Committees (Wales) Agricultural Land Tribunal for Wales Higher Education Funding Council for Wales Local Democracy and Boundary Commission for Wales Rent Assessment Committee (Wales) The Royal Commission on the Ancient and Historical Monuments of Wales Valuation Tribunal for Wales Welsh National Health Service Trusts and Local Health Boards Welsh NHS Bodies
Arts Council of Wales Care Council for Wales National Library of Wales National Museum Wales Natural Resources Wales Sport Wales The National Assembly for Wales Commission The Welsh Revenue Authority Welsh Language Commissioner	

## SCHEDULE 3 Regulation 45

### Works activities

CPV code	Activity
45000000	Construction work
45100000	Site preparation work
45110000	Building demolition and wrecking work and earthmoving work
45111000	Demolition, site preparation and clearance work
45111100	Demolition work
45111200	Site preparation and clearance work
45111210	Blasting and associated rock-removal work
45111211	Blasting work
45111212	Rock-removal work
45111213	Site-clearance work
45111214	Blast-clearing work
45111220	Scrub-removal work
45111230	Ground-stabilisation work
45111240	Ground-drainage work
45111250	Ground investigation work
45111260	Site-preparation work for mining
45111290	Primary works for services
45111291	Site-development work
45111300	Dismantling works
45111320	Dismantling works for security installations
45112000	Excavating and earth moving work
45112100	Trench-digging work
45112200	Soil-stripping work
45112210	Topsoil-stripping work
45112300	Infill and land-reclamation work
45112310	Infill work
45112320	Land-reclamation work
45112330	Site-reclamation work
45112340	Soil-decontamination work
45112350	Reclamation of wasteland
45112360	Land rehabilitation work
45112400	Excavating work
45112410	Grave-digging work
45112420	Basement excavation work

45112440	Terracing of hillsides
45112441	Terracing work
45112450	Excavation work at archaeological sites
45112500	Earthmoving work
45112600	Cut and fill
45112700	Landscaping work
45112710	Landscaping work for green areas
45112711	Landscaping work for parks
45112712	Landscaping work for gardens
45112713	Landscaping work for roof gardens
45112714	Landscaping work for cemeteries
45112720	Landscaping work for sports grounds and recreational areas
45112721	Landscaping work for golf courses
45112722	Landscaping work for riding areas
45112723	Landscaping work for playgrounds
45112730	Landscaping work for roads and motorways
45112740	Landscaping work for airports
45113000	Siteworks
45120000	Test drilling and boring work
45121000	Test drilling work
45122000	Test boring work
45200000	Works for complete or part construction and civil engineering work
45210000	Building construction work
45211000	Construction work for multi-dwelling buildings and individual houses
45211100	Construction work for houses
45211200	Sheltered housing construction work
45211300	Houses construction work
45211310	Bathrooms construction work
45211320	Porches construction work
45211340	Multi-dwelling buildings construction work
45211341	Flats construction work

45211350	Multi-functional buildings construction work
45211360	Urban development construction work
45211370	Construction works for saunas
45212000	Construction work for buildings relating to leisure, sports, culture, lodging and restaurants
45212100	Construction work of leisure facilities
45212110	Leisure centre construction work
45212120	Theme park construction work
45212130	Amusement park construction work
45212140	Recreation installation
45212150	Cinema construction work
45212160	Casino construction work
45212170	Entertainment building construction work
45212171	Entertainment centre construction work
45212172	Recreation centre construction work
45212180	Ticket offices construction work
45212190	Sun-protection works
45212200	Construction work for sports facilities
45212210	Single-purpose sports facilities construction work
45212211	Ice rink construction work
45212212	Construction work for swimming pool
45212213	Sport markings works
45212220	Multi-purpose sports facilities construction work
45212221	Construction work in connection with structures for sports ground
45212222	Gymnasium construction work
45212223	Winter-sports facilities construction work
45212224	Stadium construction work
45212225	Sports hall construction work
45212230	Installation of changing rooms
45212290	Repair and maintenance work in connection with sports facilities
45212300	Construction work for art and cultural buildings

45212310	Construction work for buildings relating to exhibitions
45212311	Art gallery construction work
45212312	Exhibition centre construction work
45212313	Museum construction work
45212314	Historical monument or memorial construction work
45212320	Construction work for buildings relating to artistic performances
45212321	Auditorium construction work
45212322	Theatre construction work
45212330	Library construction work
45212331	Multimedia library construction work
45212340	Lecture hall construction work
45212350	Buildings of particular historical or architectural interest
45212351	Prehistoric monument construction work
45212352	Industrial monument construction work
45212353	Palace construction work
45212354	Castle construction work
45212360	Religious buildings construction work
45212361	Church construction work
45212400	Accommodation and restaurant buildings
45212410	Construction work for lodging buildings
45212411	Hotel construction work
45212412	Hostel construction work
45212413	Short-stay accommodation construction work
45212420	Construction work for restaurants and similar facilities
45212421	Restaurant construction work
45212422	Canteen construction work
45212423	Cafeteria construction work
45212500	Kitchen or restaurant conversion
45212600	Pavilion construction work

45213000	Construction work for commercial buildings, warehouses and industrial buildings, buildings relating to transport
45213100	Construction work for commercial buildings
45213110	Shop buildings construction work
45213111	Shopping centre construction work
45213112	Shop units construction work
45213120	Post office construction work
45213130	Bank construction work
45213140	Market construction work
45213141	Covered market construction work
45213142	Open-air market construction work
45213150	Office block construction work
45213200	Construction work for warehouses and industrial buildings
45213210	Cold-storage installations
45213220	Construction work for warehouses
45213221	Warehouse stores construction work
45213230	Abattoir construction work
45213240	Agricultural buildings construction work
45213241	Barn construction work
45213242	Cowsheds construction work
45213250	Construction work for industrial buildings
45213251	Industrial units construction work
45213252	Workshops construction work
45213260	Stores depot construction work
45213270	Construction works for recycling station
45213280	Construction works for compost facility
45213300	Buildings associated with transport
45213310	Construction work for buildings relating to road transport
45213311	Bus station construction work
45213312	Car park building construction work
45213313	Service-area building construction work



45213314	Bus garage construction work
45213315	Bus-stop shelter construction work
45213316	Installation works of walkways
45213320	Construction work for buildings relating to railway transport
45213321	Railway station construction work
45213322	Rail terminal building construction work
45213330	Construction work for buildings relating to air transport
45213331	Airport buildings construction work
45213332	Airport control tower construction work
45213333	Installation works of airport check-in counters
45213340	Construction work for buildings relating to water transport
45213341	Ferry terminal building construction work
45213342	Ro-ro terminal construction work
45213350	Construction work for buildings relating to various means of transport
45213351	Maintenance hangar construction work
45213352	Service depot construction work
45213353	Installation works of passenger boarding bridges
45213400	Installation of staffrooms
45214000	Construction work for buildings relating to education and research
45214100	Construction work for kindergarten buildings
45214200	Construction work for school buildings
45214210	Primary school construction work
45214220	Secondary school construction work
45214230	Special school construction work
45214300	Construction work for college buildings
45214310	Vocational college construction work
45214320	Technical college construction work
45214400	Construction work for university buildings
45214410	Polytechnic construction work
45214420	Lecture theatre construction work

45214430	Language laboratory construction work
45214500	Construction work for buildings of further education
45214600	Construction work for research buildings
45214610	Laboratory building construction work
45214620	Research and testing facilities construction work
45214630	Scientific installations
45214631	Installation works of cleanrooms
45214640	Meteorological stations construction work
45214700	Construction work for halls of residence
45214710	Entrance hall construction work
45214800	Training facilities building
45215000	Construction work for buildings relating to health and social services, for crematoriums and public conveniences
45215100	Construction work for buildings relating to health
45215110	Spa construction work
45215120	Special medical building construction work
45215130	Clinic construction work
45215140	Hospital facilities construction work
45215141	Operating theatre construction work
45215142	Intensive-care unit construction work
45215143	Diagnostic screening room construction work
45215144	Screening rooms construction work
45215145	Fluoroscopy room construction work
45215146	Pathology room construction work
45215147	Forensic room construction work
45215148	Catheter room construction work
45215200	Construction work for social services buildings
45215210	Construction work for subsidised residential accommodation
45215212	Retirement home construction work
45215213	Nursing home construction work
45215214	Residential homes construction work
45215215	Children's home construction work

45215220	Construction work for social facilities other than subsidised residential accommodation
45215221	Daycare centre construction work
45215222	Civic centre construction work
45215300	Construction work for crematoriums
45215400	Cemetery works
45215500	Public conveniences
45216000	Construction work for buildings relating to law and order or emergency services and for military buildings
45216100	Construction work for buildings relating to law and order or emergency services
45216110	Construction work for buildings relating to law and order
45216111	Police station construction work
45216112	Court building construction work
45216113	Prison building construction work
45216114	Parliament and public assembly buildings
45216120	Construction work for buildings relating to emergency services
45216121	Fire station construction work
45216122	Ambulance station construction work
45216123	Mountain-rescue building construction work
45216124	Lifeboat station construction work
45216125	Emergency-services building construction work
45216126	Coastguard building construction work
45216127	Rescue-service station construction work
45216128	Lighthouse construction work
45216129	Protective shelters
45217000	Inflatable buildings construction work
45220000	Engineering works and construction works
45221000	Construction work for bridges and tunnels, shafts and subways
45221100	Construction work for bridges
45221110	Bridge construction work

45221111	Road bridge construction work
45221112	Railway bridge construction work
45221113	Footbridge construction work
45221114	Construction work for iron bridges
45221115	Construction work for steel bridges
45221117	Weighbridge construction work
45221118	Pipeline-carrying bridge construction work
45221119	Bridge renewal construction work
45221120	Viaduct construction work
45221121	Road viaduct construction work
45221122	Railway viaduct construction work
45221200	Construction work for tunnels, shafts and subways
45221210	Covered or partially-covered excavations
45221211	Underpass
45221213	Covered or partially-covered railway excavations
45221214	Covered or partially-covered road excavations
45221220	Culverts
45221230	Shafts
45221240	Construction work for tunnels
45221241	Road tunnel construction work
45221242	Railway tunnel construction work
45221243	Pedestrian tunnel construction work
45221244	Canal tunnel construction work
45221245	Under-river tunnel construction work
45221246	Undersea tunnel construction work
45221247	Tunnelling works
45221248	Tunnel linings construction work
45221250	Underground work other than tunnels, shafts and subways
45222000	Construction work for engineering works except bridges, tunnels, shafts and subways
45222100	Waste-treatment plant construction work
45222110	Waste disposal site construction work

45222300	Engineering work for security installations
45223000	Structures construction work
45223100	Assembly of metal structures
45223110	Installation of metal structures
45223200	Structural works
45223210	Structural steelworks
45223220	Structural shell work
45223300	Parking lot construction work
45223310	Underground car park construction work
45223320	Park-and-ride facility construction work
45223400	Radar station construction work
45223500	Reinforced-concrete structures
45223600	Dog kennels construction work
45223700	Service area construction work
45223710	Motorway service area construction work
45223720	Petrol/gas stations construction work
45223800	Assembly and erection of prefabricated structures
45223810	Prefabricated constructions
45223820	Prefabricated units and components
45223821	Prefabricated units
45223822	Prefabricated components
45230000	Construction work for pipelines, communication and power lines, for highways, roads, airfields and railways; flatwork
45231000	Construction work for pipelines, communication and power lines
45231100	General construction work for pipelines
45231110	Pipelaying construction work
45231111	Pipeline lifting and relaying
45231112	Installation of pipe system
45231113	Pipeline relaying works
45231200	Construction work for oil and gas pipelines
45231210	Construction work for oil pipelines
45231220	Construction work for gas pipelines

45231221	Gas supply mains construction work
45231222	Gasholder works
45231223	Gas distribution ancillary work
45231300	Construction work for water and sewage pipelines
45231400	Construction work for electricity powerlines
45231500	Compressed-air pipeline work
45231510	Compressed-air pipeline work for mailing system
45231600	Construction work for communication lines
45232000	Ancillary works for pipelines and cables
45232100	Ancillary works for water pipelines
45232120	Irrigation works
45232121	Irrigation piping construction work
45232130	Storm-water piping construction work
45232140	District-heating mains construction work
45232141	Heating works
45232142	Heat-transfer station construction work
45232150	Works related to water-distribution pipelines
45232151	Water-main refurbishment construction work
45232152	Pumping station construction work
45232153	Construction work for water towers
45232154	Construction work of elevated tanks for drinking water
45232200	Ancillary works for electricity powerlines
45232210	Overhead line construction
45232220	Substation construction work
45232221	Transformer substation
45232300	Construction and ancillary works for telephone and communication lines
45232310	Construction work for telephone lines
45232311	Roadside emergency telephone lines
45232320	Cable broadcasting lines
45232330	Erection of aerials
45232331	Ancillary works for broadcasting

45232332	Ancillary works for telecommunications
45232340	Mobile-telephone base-stations construction work
45232400	Sewer construction work
45232410	Sewerage work
45232411	Foul-water piping construction work
45232420	Sewage work
45232421	Sewage treatment works
45232422	Sludge-treatment works
45232423	Sewage pumping stations construction work
45232424	Sewage outfall construction work
45232430	Water-treatment work
45232431	Wastewater pumping station
45232440	Construction work for sewage pipes
45232450	Drainage construction works
45232451	Drainage and surface works
45232452	Drainage works
45232453	Drains construction work
45232454	Rain-water basin construction work
45232460	Sanitary works
45232470	Waste transfer station
45233000	Construction, foundation and surface works for highways, roads
45233100	Construction work for highways, roads
45233110	Motorway construction works
45233120	Road construction works
45233121	Main road construction works
45233122	Ring road construction work
45233123	Secondary road construction work
45233124	Trunk road construction work
45233125	Road junction construction work
45233126	Grade-separated junction construction work
45233127	T-junction construction work
45233128	Roundabout construction work

45233129	Crossroad construction work
45233130	Construction work for highways
45233131	Construction work for elevated highways
45233139	Highway maintenance work
45233140	Roadworks
45233141	Road-maintenance works
45233142	Road-repair works
45233144	Overpass construction work
45233150	Traffic-calming works
45233160	Paths and other metalled surfaces
45233161	Footpath construction work
45233162	Cycle path construction work
45233200	Various surface works
45233210	Surface work for highways
45233220	Surface work for roads
45233221	Road-surface painting work
45233222	Paving and asphaltting works
45233223	Carriageway resurfacing works
45233224	Dual carriageway construction work
45233225	Single carriageway construction work
45233226	Access road construction work
45233227	Slip road construction work
45233228	Surface coating construction work
45233229	Verge maintenance work
45233250	Surfacing work except for roads
45233251	Resurfacing works
45233252	Surface work for streets
45233253	Surface work for footpaths
45233260	Pedestrian ways construction work
45233261	Pedestrian overpass construction work
45233262	Pedestrian zone construction work
45233270	Parking-lot-surface painting work



45233280	Erection of road-barriers
45233290	Installation of road signs
45233291	Installation of bollards
45233292	Installation of safety equipment
45233293	Installation of street furniture
45233294	Installation of road signals
45233300	Foundation work for highways, roads, streets and footpaths
45233310	Foundation work for highways
45233320	Foundation work for roads
45233330	Foundation work for streets
45233340	Foundation work for footpaths
45234000	Construction work for railways and cable transport systems
45234100	Railway construction works
45234110	Intercity railway works
45234111	City railway construction work
45234112	Railway depot construction work
45234113	Demolition of tracks
45234114	Railway embankment construction work
45234115	Railway signalling works
45234116	Track construction works
45234120	Urban railway works
45234121	Tramway works
45234122	Underground railway works
45234123	Partially underground railway works
45234124	Underground passenger railway transport
45234125	Underground railway station
45234126	Tramline construction works
45234127	Tramway depot construction work
45234128	Tramway platforms construction work
45234129	Urban railway track construction works
45234130	Ballast construction works

45234140	Level crossing construction works
45234160	Catenary's construction works
45234170	Locomotive-substations construction works
45234180	Construction work for railways workshop
45234181	Construction work for rail track sectioning cabins
45234200	Cable-supported transport systems
45234210	Cable-supported transport systems with cabins
45234220	Construction work for ski lifts
45234230	Construction work for chair lifts
45234240	Funicular railway system
45234250	Teleferic construction work
45235000	Construction work for airfields, runways and manoeuvring surfaces
45235100	Construction work for airports
45235110	Construction work for air fields
45235111	Airfield pavement construction work
45235200	Runway construction works
45235210	Runway resurfacing
45235300	Construction work for aircraft-manoevring surfaces
45235310	Taxiway construction work
45235311	Taxiway pavement construction work
45235320	Construction work for aircraft aprons
45236000	Flatwork
45236100	Flatwork for miscellaneous sports installations
45236110	Flatwork for sports fields
45236111	Flatwork for golf course
45236112	Flatwork for tennis court
45236113	Flatwork for racecourse
45236114	Flatwork for running tracks
45236119	Repair work on sports fields
45236200	Flatwork for recreation installations
45236210	Flatwork for children's play area
45236220	Flatwork for zoo

45236230	Flatwork for gardens
45236250	Flatwork for parks
45236290	Repair work on recreational areas
45236300	Flatwork for cemeteries
45237000	Stage construction works
45240000	Construction work for water projects
45241000	Harbour construction works
45241100	Quay construction work
45241200	Offshore terminal in situ construction work
45241300	Pier construction work
45241400	Dock construction work
45241500	Wharf construction work
45241600	Installation of port lighting equipment
45242000	Waterside leisure facilities construction work
45242100	Water-sports facilities construction work
45242110	Launchway construction work
45242200	Marina construction work
45242210	Yacht harbour construction work
45243000	Coastal-defence works
45243100	Cliff-protection works
45243110	Cliff-stabilisation works
45243200	Breakwater construction work
45243300	Sea wall construction work
45243400	Beach-consolidation works
45243500	Sea defences construction work
45243510	Embankment works
45243600	Quay wall construction work
45244000	Marine construction works
45244100	Marine installations
45244200	Jetties
45245000	Dredging and pumping works for water treatment plant installations
45246000	River regulation and flood control works

45246100	River-wall construction
45246200	Riverbank protection works
45246400	Flood-prevention works
45246410	Flood-defences maintenance works
45246500	Promenade construction work
45246510	Boardwalk construction work
45247000	Construction work for dams, canals, irrigation channels and aqueducts
45247100	Construction work for waterways
45247110	Canal construction
45247111	Irrigation channel construction work
45247112	Drainage canal construction work
45247120	Waterways except canals
45247130	Aqueduct construction work
45247200	Construction work for dams and similar fixed structures
45247210	Dam construction work
45247211	Dam wall construction work
45247212	Dam-reinforcement works
45247220	Weir construction work
45247230	Dyke construction work
45247240	Static barrage construction work
45247270	Reservoir construction works
45248000	Construction work for hydro-mechanical structures
45248100	Canal locks construction work
45248200	Dry docks construction work
45248300	Construction work for floating docks
45248400	Landing stages construction work
45248500	Movable barrages construction work
45250000	Construction works for plants, mining and manufacturing and for buildings relating to the oil and gas industry
45251000	Construction works for power plants and heating plants
45251100	Construction work for power plant

45251110	Nuclear-power station construction work
45251111	Construction work for nuclear reactors
45251120	Hydro-electric plant construction work
45251140	Thermal power plant construction work
45251141	Geothermal power station construction work
45251142	Wood-fired power station construction work
45251143	Compressed-air generating plant construction work
45251150	Construction work for cooling towers
45251160	Wind-power installation works
45251200	Heating plant construction work
45251220	Cogeneration plant construction work
45251230	Steam-generation plant construction work
45251240	Landfill-gas electricity generating plant construction work
45251250	District-heating plant construction work
45252000	Construction works for sewage treatment plants, purification plants and refuse incineration plants
45252100	Sewage-treatment plant construction work
45252110	Mobile plant construction work
45252120	Water-treatment plant construction work
45252121	Sedimentation installations
45252122	Sewage digesters
45252123	Screening installations
45252124	Dredging and pumping works
45252125	Rock-dumping work
45252126	Drinking-water treatment plant construction work
45252127	Wastewater treatment plant construction work
45252130	Sewage plant equipment
45252140	Sludge-dewatering plant construction work
45252150	Coal-handling plant construction work
45252200	Purification plant equipment
45252210	Water purification plant construction work
45252300	Refuse-incineration plant construction work

45253000	Construction work for chemical-processing plant
45253100	Demineralisation plant construction work
45253200	Desulphurisation plant construction work
45253300	Distilling or rectifying plant construction work
45253310	Water-distillation plants construction work
45253320	Alcohol-distillation plants construction work
45253400	Construction work for petrochemical plant
45253500	Construction work for pharmaceutical plant
45253600	Deionisation plant construction work
45253700	Digestion plant construction work
45253800	Composting plant construction work
45254000	Construction work for mining and manufacturing
45254100	Construction work for mining
45254110	Pithead construction work
45254200	Construction work for manufacturing plant
45255000	Construction work for the oil and gas industry
45255100	Construction work for production platforms
45255110	Wells construction work
45255120	Platforms facilities construction work
45255121	Topside facilities construction work
45255200	Oil refinery construction work
45255210	Oil terminal construction work
45255300	Gas terminal construction work
45255400	Fabrication work
45255410	Offshore fabrication work
45255420	Onshore fabrication work
45255430	Demolition of oil platforms
45255500	Drilling and exploration work
45255600	Coiled-tubing well work
45255700	Coal-gasification plant construction work
45255800	Gas-production plant construction work
45259000	Repair and maintenance of plant

45259100	Wastewater-plant repair and maintenance work
45259200	Purification-plant repair and maintenance work
45259300	Heating-plant repair and maintenance work
45259900	Plant upgrade work
45260000	Roof works and other special trade construction works
45261000	Erection and related works of roof frames and coverings
45261100	Roof-framing work
45261200	Roof-covering and roof-painting work
45261210	Roof-covering work
45261211	Roof-tiling work
45261212	Roof-slating work
45261213	Metal roof-covering work
45261214	Bituminous roof-covering work
45261215	Solar panel roof-covering work
45261220	Roof-painting and other coating work
45261221	Roof-painting work
45261222	Cement roof-coating work
45261300	Flashing and guttering work
45261310	Flashing work
45261320	Guttering work
45261400	Sheeting work
45261410	Roof insulation work
45261420	Waterproofing work
45261900	Roof repair and maintenance work
45261910	Roof repair
45261920	Roof maintenance work
45262000	Special trade construction works other than roof works
45262100	Scaffolding work
45262110	Scaffolding dismantling work
45262120	Scaffolding erection work
45262200	Foundation work and water-well drilling

45262210	Foundation work
45262211	Pile driving
45262212	Trench sheeting work
45262213	Diaphragm wall technique
45262220	Water-well drilling
45262300	Concrete work
45262310	Reinforced-concrete work
45262311	Concrete carcassing work
45262320	Screed works
45262321	Floor-screed works
45262330	Concrete repair work
45262340	Grouting work
45262350	Unreinforced-concrete work
45262360	Cementing work
45262370	Concrete-coating work
45262400	Structural steel erection work
45262410	Structural steel erection work for buildings
45262420	Structural steel erection work for structures
45262421	Offshore mooring work
45262422	Subsea drilling work
45262423	Deck-fabrication work
45262424	Offshore-module fabrication work
45262425	Jacket-fabrication work
45262426	Pile-fabrication work
45262500	Masonry and bricklaying work
45262510	Stonework
45262511	Stone carving
45262512	Dressed stonework
45262520	Bricklaying work
45262521	Facing brickwork
45262522	Masonry work
45262600	Miscellaneous special-trade construction work



45262610	Industrial chimneys
45262620	Supporting walls
45262630	Construction of furnaces
45262640	Environmental improvement works
45262650	Cladding works
45262660	Asbestos-removal work
45262670	Metalworking
45262680	Welding
45262690	Refurbishment of run-down buildings
45262700	Building alteration work
45262710	Fresco maintenance work
45262800	Building extension work
45262900	Balcony work
45300000	Building installation work
45310000	Electrical installation work
45311000	Electrical wiring and fitting work
45311100	Electrical wiring work
45311200	Electrical fitting work
45312000	Alarm system and antenna installation work
45312100	Fire-alarm system installation work
45312200	Burglar-alarm system installation work
45312300	Antenna installation work
45312310	Lightning-protection works
45312311	Lightning-conductor installation work
45312320	Television aerial installation work
45312330	Radio aerial installation work
45313000	Lift and escalator installation work
45313100	Lift installation work
45313200	Escalator installation work
45313210	Travelator installation work
45314000	Installation of telecommunications equipment
45314100	Installation of telephone exchanges

45314120	Installation of switchboards
45314200	Installation of telephone lines
45314300	Installation of cable infrastructure
45314310	Installation of cable laying
45314320	Installation of computer cabling
45315000	Electrical installation work of heating and other electrical building-equipment
45315100	Electrical engineering installation works
45315200	Turbine works
45315300	Electricity supply installations
45315400	High voltage installation work
45315500	Medium-voltage installation work
45315600	Low-voltage installation work
45315700	Switching station installation work
45316000	Installation work of illumination and signalling systems
45316100	Installation of outdoor illumination equipment
45316110	Installation of road lighting equipment
45316200	Installation of signalling equipment
45316210	Installation of traffic monitoring equipment
45316211	Installation of illuminated road signs
45316212	Installation of traffic lights
45316213	Installation of traffic guidance equipment
45316220	Installation of airport signalling equipment
45316230	Installation of port signalling equipment
45317000	Other electrical installation work
45317100	Electrical installation work of pumping equipment
45317200	Electrical installation work of transformers
45317300	Electrical installation work of electrical distribution apparatus
45317400	Electrical installation work of filtration equipment
45320000	Insulation work
45321000	Thermal insulation work
45323000	Sound insulation work

45324000	Plasterboard works
45330000	Plumbing and sanitary works
45331000	Heating, ventilation and air-conditioning installation work
45331100	Central-heating installation work
45331110	Boiler installation work
45331200	Ventilation and air-conditioning installation work
45331210	Ventilation installation work
45331211	Outdoor ventilation installation work
45331220	Air-conditioning installation work
45331221	Partial air-conditioning installation work
45331230	Installation work of cooling equipment
45331231	Installation work of refrigeration equipment
45332000	Plumbing and drain-laying work
45332200	Water plumbing work
45332300	Drain-laying work
45332400	Sanitary fixture installation work
45333000	Gas-fitting installation work
45333100	Gas regulation equipment installation work
45333200	Gas meter installation work
45340000	Fencing, railing and safety equipment installation work
45341000	Erection of railings
45342000	Erection of fencing
45343000	Fire-prevention installation works
45343100	Fireproofing work
45343200	Firefighting equipment installation work
45343210	CO <sub>2</sub> fire-extinguishing equipment installation work
45343220	Fire-extinguishers installation work
45343230	Sprinkler systems installation work
45350000	Mechanical installations
45351000	Mechanical engineering installation works

45400000	Building completion work
45410000	Plastering work
45420000	Joinery and carpentry installation work
45421000	Joinery work
45421100	Installation of doors and windows and related components
45421110	Installation of door and window frames
45421111	Installation of door frames
45421112	Installation of window frames
45421120	Installation of thresholds
45421130	Installation of doors and windows
45421131	Installation of doors
45421132	Installation of windows
45421140	Installation of metal joinery except doors and windows
45421141	Installation of partitioning
45421142	Installation of shutters
45421143	Installation work of blinds
45421144	Installation work of awnings
45421145	Installation work of roller blinds
45421146	Installation of suspended ceilings
45421147	Installation of grilles
45421148	Installation of gates
45421150	Non-metal joinery installation work
45421151	Installation of fitted kitchens
45421152	Installation of partition walls
45421153	Installation of built-in furniture
45421160	Ironmongery work
45422000	Carpentry installation work
45422100	Woodwork
45430000	Floor and wall covering work
45431000	Tiling work
45431100	Floor-tiling work

45431200	Wall-tiling work
45432000	Floor-laying and covering, wall-covering and wall-papering work
45432100	Floor laying and covering work
45432110	Floor-laying work
45432111	Laying work of flexible floor coverings
45432112	Laying of paving
45432113	Parquet flooring
45432114	Wood flooring work
45432120	False floor installation work
45432121	Computer floors
45432130	Floor-covering work
45432200	Wall-covering and wall-papering work
45432210	Wall-covering work
45432220	Wall-papering work
45440000	Painting and glazing work
45441000	Glazing work
45442000	Application work of protective coatings
45442100	Painting work
45442110	Painting work of buildings
45442120	Painting and protective-coating work of structures
45442121	Painting work of structures
45442180	Repainting work
45442190	Paint-stripping work
45442200	Application work of anti-corrosive coatings
45442210	Galvanizing works
45442300	Surface-protection work
45443000	Façade work
45450000	Other building completion work
45451000	Decoration work
45451100	Ornamentation fitting work
45451200	Panelling work

45451300	Interior gardens
45452000	Exterior cleaning work for buildings
45452100	Blast cleaning work for building exteriors
45453000	Overhaul and refurbishment work
45453100	Refurbishment work
45454000	Restructuring work
45454100	Restoration work
45500000	Hire of construction and civil engineering machinery and equipment with operator
45510000	Hire of cranes with operator
45520000	Hire of earth moving equipment with operator

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## 5 THE PROCUREMENT ACT 2023 (COMMENCEMENT NO. 1 AND SAVING PROVISION) REGULATIONS 2024

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**2024 No. 61 (C. 5)**

**PUBLIC PROCUREMENT**

**The Procurement Act 2023 (Commencement No. 1 and Saving Provision) Regulations 2024**

*Made* - - - -

*16th January 2024*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 122(3)(d) and 127(2) of the Procurement Act 2023(a).

**Citation and extent**

1.—(1) These Regulations may be cited as the Procurement Act 2023 (Commencement No. 1 and Saving Provision) Regulations 2024.

(2) In these Regulations “the Act” means the Procurement Act 2023.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

**Commencement of section 117 of, and Schedule 10 to, the Act**

2.—(1) The following provisions of the Act come into force on 19th January 2024—

- (a) section 117 to the extent that it relates to the provisions listed in sub-paragraph (b);
- (b) in Schedule 10—
  - (i) paragraph 1 to the extent that it relates to the provisions listed in this sub-paragraph;
  - (ii) paragraph 2 (definition of qualifying defence contract);
  - (iii) paragraphs 3 to 8 (pricing of qualifying defence contracts);
  - (iv) paragraphs 9 to 11 (contract profit rate for qualifying defence contracts);
  - (v) paragraph 12 (allowable costs for qualifying defence contracts);
  - (vi) paragraphs 13(1) and (2) (reports relating to qualifying defence contracts);
  - (vii) paragraphs 15 to 17 (qualifying sub-contracts); and
  - (viii) paragraph 20 (procedure of the Single Source Regulations Office).

(2) The following provisions of the Act come into force on 1st April 2024—

- (a) section 117 to the extent that it relates to the provisions listed in sub-paragraph (b);
- (b) in Schedule 10—
  - (i) paragraph 1 to the extent that it relates to the provisions listed in this sub-paragraph;



- (ii) paragraph 18 (opinions and determinations made by the Single Source Regulations Office); and
- (iii) paragraph 19 (guidance issued by the Single Source Regulations Office).

### **Saving provision**

3. The Single Source Contract Regulations 2014<sup>(a)</sup> remain in force and have effect as they did immediately before 19th January 2024 until they are amended or revoked, notwithstanding the coming into force of the provisions referred to in regulation 2(1) which amend the powers under which those regulations are made.

16th January 2024

*James Cartlidge*  
Minister of State  
Ministry of Defence

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations bring section 117 and provisions in Schedule 10 to the Procurement Act 2023 (“the Act”) into force in part on 19th January 2024 and in part on 1st April 2024.

Section 117 of, and Schedule 10 to, the Act amend Part 2 of the Defence Reform Act 2014 which regulates single source contracts (contracts for goods, works or services for defence purposes awarded other than through competition).

Regulation 3 provides for the Single Source Contract Regulations 2014 (S.I. 2014/3337) to remain in force as they were immediately before the coming into force of amendments to the provisions under which they were made and notwithstanding those amendments, until they are amended or revoked.

These are the first commencement regulations made under the Act.

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(a) S.I. 2014/3337, amended by S.I. 2018/917, S.I. 2018/1350 and S.I. 2019/1106.

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## 6 THE PROCUREMENT ACT 2023 (COMMENCEMENT NO.2) REGULATIONS 2024

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**2024 No. 361 (C. 18)**

**PUBLIC PROCUREMENT**

**The Procurement Act 2023 (Commencement No. 2) Regulations  
2024**

*Made* - - - -

*11th March 2024*

The Minister for the Cabinet Office makes these Regulations in exercise of the powers conferred by section 127(2) of the Procurement Act 2023<sup>(a)</sup>. These Regulations are made with the consent of the Welsh Ministers in accordance with section 127(3) of the Procurement Act 2023.

**Citation and extent**

1.—(1) These Regulations may be cited as the Procurement Act 2023 (Commencement No. 2) Regulations 2024.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

**Provisions coming into force**

2. The following provisions of the Procurement Act 2023 come into force the day after the day on which these Regulations are made—

- (a) in section 3 (public contracts), subsections (1), (5) and (6);
- (b) section 6 (utilities contracts);
- (c) section 9 (light touch contracts);
- (d) section 13 (the national procurement policy statement);
- (e) section 14 (the Wales procurement policy statement);
- (f) in section 33 (reserving contracts to public service mutuals), subsections (7) and (8);
- (g) in section 69 (payments compliance notices), subsection (4)
- (h) in section 87 (regulated below-threshold contracts: notices), subsection (7);
- (i) in section 89 (treaty state suppliers), subsections (1), (3) and (4);
- (j) section 91 (treaty state suppliers: non-discrimination in Scotland);
- (k) in section 95 (notices, documents and information: regulations and online system), subsections (1), (2) and (3);
- (l) section 97 (information relating to a procurement);

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(a) 2023 c. 54. Section 127(2) confers on a Minister of the Crown the power to appoint, by regulations, the day on which provisions of the Act come into force (other than provisions that come into force on the day on which the Act is passed). For the meaning of "Minister of the Crown", see section 123(1) and the definition in the Ministers of the Crown Act 1975 (c. 26) to which that provision cross-refers.

- (m) section 111 (Welsh Ministers: restrictions on the exercise of powers);
- (n) section 113 (Minister of the Crown: restrictions on the exercise of powers);
- (o) section 114 (definitions relating to procurement arrangements);
- (p) in section 115 (powers relating to procurement arrangements), subsection (1);
- (q) in section 116 (disapplication of duty in section 17 of the Local Government Act 1988), subsections (2), (3) and (4);
- (r) Schedule 1 (threshold amounts);
- (s) in Schedule 2 (exempted contracts), paragraphs 2(6), 3(3) and 6(4) and (5);
- (t) in Schedule 4 (utility activities), paragraphs 1(3) and (4), 2(3) and (4) and 3(5) and (6);
- (u) Schedule 9 (treaty state suppliers (specified international agreements)).

*Alex Burghart*  
Parliamentary Secretary  
Cabinet Office

11th March 2024

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations bring into force provisions of the Procurement Act 2023 ("the Act"). The powers being commenced confer powers to make regulations, including regulations which may amend the Procurement Act 2023, and place certain devolution-related restrictions on those powers.

The regulations also commence the ability of a Minister of the Crown and Welsh Ministers to publish procurement policy statements.

These are the second commencement regulations under the Act.

### NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

*(This note is not part of the Regulations)*

The following provisions of the Procurement Act 2023 have been, or will be, brought into force by commencement Regulations made before the date of these Regulations.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 117 (partially)	19.1.2024	2024/61
Section 117 (partially)	1.4.2024	2024/61
Schedule 10 (partially)	19.1.2024	2024/61
Schedule 10 (partially)	1.4.2024	2024/61

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## **7 THE PROCUREMENT ACT 2023 (COMMENCEMENT NO.3 AND TRANSITIONAL AND SAVING PROVISIONS) REGULATIONS 2024**

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**2024 No. 716 (C. 47)**

**PUBLIC PROCUREMENT**

**The Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024**

*Made* - - - -

*22nd May 2024*

The Minister for the Cabinet Office makes these Regulations in exercise of the powers conferred by sections 122(3)(c) and (d) and 127(2) of the Procurement Act 2023(a).

These Regulations are made with the consent of the Welsh Ministers in accordance with section 127(3) of that Act.

**Citation, extent and interpretation**

1.—(1) These Regulations may be cited as the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024.

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(3) In these Regulations—

“the Act” means the Procurement Act 2023;

“the 2011 Regulations” means the Defence and Security Public Contracts Regulations 2011(b);

“the 2015 Regulations” means the Public Contracts Regulations 2015(c);

“the 2016 CC Regulations” means the Concession Contract Regulations 2016(d);

“the 2016 UC Regulations” means the Utilities Contracts Regulations 2016(e).

**Provisions coming into force**

2.—(1) Subsections (2), (3) and (4) of section 115 of the Act come into force the day after the day on which these Regulations are made.

- 
- (a) 2023 c. 54. For the meaning of “Minister of the Crown”, see section 123(1) and the definition in the Ministers of the Crown Act 1975 (c. 26) to which that provision cross-refers.
- (b) S.I. 2011/1848, amended by S.I. 2011/2053, 2013/1431, 2015/102, 2016/275, 696, 2017/692, 2019/624, 697, 2020/1450, 2021/1221 and by S.S.I. 2012/88, 89, 2015/446.
- (c) S.I. 2015/102, amended by S.I. 2015/1472, 2016/274, 275, 696, 2017/701, 2018/285 (W. 54), 2019/489, 624, 2020/1319, 2021/573, 787, 872, 1221, 1300, 2022/766, 1360, 1390, 2023/484, 567 (W. 88), 1071, 1117, 1169 and 1348. S.I. 2015/102 was also amended by paragraph 17(1) of Schedule 3 to the Advanced Research and Invention Agency Act 2022 (c. 4).
- (d) S.I. 2016/273, amended by S.I. 2019/489, 624, 2020/1319, 2021/573, 787, 872, 1221, 1300, 2022/766, 2023/484, 1117, 1169 and by S.I. 2023/567 (W. 88).
- (e) S.I. 2016/274, amended by S.I. 2016/696, 2019/489, 624, 2020/1319, 2021/573, 787, 872, 1221, 1300, 2022/766, 2023/484, 567 (W. 88), 1117 and 1169.

(2) The provisions of the Act set out in the Schedule come into force on 28th October 2024.

### **Saving provisions relating to the 2011 Regulations**

3.—(1) Despite the revocation of the 2011 Regulations by section 119(1) of, and paragraph 4 of Schedule 11 to, the Act, those Regulations continue to apply in respect of procurement procedures, contracts and framework agreements in any of the circumstances described in paragraph (2).

(2) The circumstances are that, with reference to the 2011 Regulations, before 28th October 2024—

- (a) a contracting authority has awarded the contract or concluded the framework agreement;
- (b) a contracting authority has sought offers in relation to a proposed Part B services contract or a framework agreement in respect of which only Part B services contracts can be based or awarded, other than one excluded by virtue of regulation 7 or 9, for any services referred to in sub-paragraph (c), (d) or (e) of regulation 6(1);
- (c) a contracting authority has contacted an economic operator in order to commence the negotiated procedure without prior publication of a contract notice in accordance with regulations 16(1) and 18(1), (2), (9) and (10);
- (d) a contracting authority using the restricted procedure has submitted a contract notice inviting requests to be selected to tender in accordance with regulation 17(2);
- (e) a contracting authority using the negotiated procedure has submitted a contract notice inviting requests to be selected to negotiate in accordance with regulation 18(3);
- (f) a contracting authority using the competitive dialogue procedure has submitted a contract notice inviting requests to participate in accordance with regulation 19(4).

(3) Where the 2011 Regulations continue to apply in accordance with paragraph (1), the Act does not apply.

(4) Terms used in this regulation have the same meaning as in the 2011 Regulations<sup>(a)</sup> as they had effect immediately before 28th October 2024.

### **Transitional provisions relating to repeat services or works under a contract awarded under the 2011 Regulations**

4.—(1) This regulation applies for the purposes of determining whether a contracting authority may award a public contract directly under section 41 of the Act (direct award in special cases) in a case where—

- (a) the public contract concerns the supply of services or works by the existing supplier that are a repetition of existing services or works, and
- (b) the existing services or works were supplied under a contract or framework agreement that was awarded in accordance with the 2011 Regulations.

(2) The direct award justification in paragraph 8 of Schedule 5 to the Act (direct award justifications) has effect as if—

- (a) in the words before paragraph (a), “goods,” in each place it occurs, were omitted,
- (b) in paragraph (a)—
  - (i) “goods,” and “public” were omitted, and

---

<sup>(a)</sup> For the meaning of “competitive dialogue procedure”, “contract notice”, “framework agreement”, “negotiated procedure”, “Part B services contract” and “restricted procedure”, see regulation 3(1) to (3), for the meaning of “contracting authority”, see regulation 4, and for the meaning of “economic operator”, see regulation 5(1) of the 2011 Regulations.

- (ii) for “in accordance with a competitive tendering procedure” there were substituted “otherwise than in accordance with regulation 16 of the Defence and Security Public Contracts Regulations 2011”,
- (c) for paragraph (b) there were substituted—
  - “(b) a contract notice in respect of that earlier contract or framework agreement contained a statement complying with the requirements of regulation 16(6)(a) of the Defence and Security Public Contracts Regulations 2011.”, and
- (d) in paragraph 9 of that Schedule—
  - (i) for “paragraphs 7 and” there were substituted “paragraph”, and
  - (ii) “goods,” in each place it occurs in the first definition, and where it occurs in the second definition, were omitted.
- (3) In paragraph (1)—
  - “existing services or works” means services or works already supplied, or contracted to be supplied, to the contracting authority;
  - “existing supplier” means the supplier that has already supplied, or contracted to supply, the existing services or works.

### **Saving provisions relating to the 2015 Regulations**

5.—(1) Despite the revocation of the 2015 Regulations by section 119(1) of, and paragraph 5 of Schedule 11 to, the Act, those Regulations continue to apply, as modified by paragraph (4)(b) and (c), in respect of procurement procedures, contracts, framework agreements and dynamic purchasing systems in any of the circumstances described in paragraphs (2) and (3).

(2) The circumstances in this paragraph are that, with reference to the 2015 Regulations, before 26th May 2023, a sub-central contracting authority submitted for publication in accordance with regulation 51 (publication on the UK e-notification service) a prior information notice as a call for competition in accordance with regulation 26(9).

(3) The circumstances in this paragraph are that, with reference to the 2015 Regulations, before 28th October 2024—

- (a) a contracting authority has awarded the contract, concluded the framework agreement or established the dynamic purchasing system;
- (b) a contracting authority has contacted an economic operator in order to commence the negotiated procedure without prior publication in any of the specific cases and circumstances set out in regulation 32;
- (c) either—
  - (i) a contract notice required by regulation 26(8) or 75(1)(a) (publication of notices: public contracts for social and other specific services), or
  - (ii) a contest notice required by regulation 79 (notices)
 has been submitted for publication in accordance with regulation 51;
- (d) a contracting authority has had published on the UK e-notification service a voluntary transparency notice expressing its intention to enter into a contract in accordance with regulation 99(3)(b) (grounds for ineffectiveness: one of the conditions for the non-application of the first ground);
- (e) a contracting authority has published information about a contract award opportunity on Contracts Finder in accordance with regulation 110(2) (publication of contract award opportunities on Contracts Finder).



- (4) Where the 2015 Regulations continue to apply in accordance with paragraph (1)—
- (a) the Act does not apply;
  - (b) the period of validity of a dynamic purchasing system under regulation 34 of those Regulations—
    - (i) may not be changed after 27th October 2025, and
    - (ii) expires (if it has not already done so) at the end of 27th October 2028;
  - (c) regulation 113 of those Regulations (payment of undisputed invoices within 30 days by contracting authorities, contractors and subcontractors) is to be read as if—
    - (i) in paragraph (7), in the words before sub-paragraph (a)—
      - (aa) for “Every financial year” there were substituted “In every period, the first being the period beginning with 28th October 2024 and ending with 31st March 2025 and subsequent periods being each subsequent successive period of six months”, and
      - (bb) after “preceding”, for “financial year” there were substituted “period”,
    - (ii) in paragraph (8)(b), for “financial year” there were substituted “period”, and
    - (iii) in paragraph (11), the definition of “financial year” were omitted.
- (5) Terms used in this regulation have the same meaning as in the 2015 Regulations<sup>(a)</sup> as they had effect immediately before 28th October 2024.

**Transitional provisions relating to repeat services or works supplied under a contract awarded under the 2015 Regulations**

6.—(1) This regulation applies for the purposes of determining whether a contracting authority may award a public contract directly under section 41 of the Act (direct award in special cases) in a case where—

- (a) the public contract concerns the supply of services or works by the existing supplier that are similar to existing services or works, and
- (b) the existing services or works were supplied under a public contract or framework agreement that was awarded in accordance with the 2015 Regulations.

(2) The direct award justification in paragraph 8 of Schedule 5 to the Act (direct award justifications) has effect as if—

- (a) in the words before paragraph (a), “goods,” in each place it occurs, were omitted,
- (b) in paragraph (a)—
  - (i) “goods,” were omitted, and
  - (ii) for “a competitive tendering procedure” there were substituted “regulation 26(1) and (2) of the Public Contracts Regulations 2015”,
- (c) for paragraph (b) there were substituted—
  - “(b) there was a disclosure as soon as that earlier contract was put up for tender that met the requirements of regulation 32(11) of the Public Contracts Regulations 2015.”, and
- (d) in paragraph 9 of that Schedule—

---

(a) For the meaning of “call for competition”, “contest notice”, “contract notice”, “contracting authority”, “Contracts Finder”, “dynamic purchasing system”, “economic operator”, “framework agreement”, “negotiated procedure” and “sub-central contracting authority”, see regulation 2(1) of the 2015 Regulations. For the meaning of “contract award opportunity”, “the UK e-notification service” and “voluntary transparency notice”, see, respectively, regulations 110(6), 51(5) and 99(4) (as amended by S.I. 2020/1319), of those Regulations.

- (i) for “paragraphs 7 and” there were substituted “paragraph”, and
  - (ii) “goods,” in each place it occurs in the first definition, and where it occurs in the second definition were omitted.
- (3) In paragraph (1)—
- “existing services or works” means services or works already supplied, or contracted to be supplied, to the contracting authority;
- “existing supplier” means the supplier that has already supplied, or contracted to supply, the existing services or works.

### **Saving provisions relating to the 2016 CC Regulations**

7.—(1) Despite the revocation of the 2016 CC Regulations by section 119(1) of, and paragraph 6 of Schedule 11 to, the Act, those Regulations continue to apply in respect of procurement procedures and contracts where, with reference to those Regulations, before 28th October 2024, a contracting authority has—

- (a) awarded the contract, or
- (b) submitted—
  - (i) a concession notice required by regulation 31(1), or
  - (ii) a prior information notice required by regulation 31(3),
 for publication in accordance with regulation 33(1) (form and manner of publication of notices).

(2) Where the 2016 CC Regulations continue to apply in accordance with paragraph (1), the Act does not apply.

(3) Terms used in paragraph (1) have the same meaning as in the 2016 CC Regulations<sup>(a)</sup> as they had effect immediately before 28th October 2024.

### **Saving provisions relating to the 2016 UC Regulations**

8.—(1) Despite the revocation of the 2016 UC Regulations by section 119(1) of, and paragraph 7 of Schedule 11 to, the Act, those Regulations continue to apply in respect of procurement procedures, contracts, framework agreements and dynamic purchasing systems in any of the circumstances described in paragraphs (2) and (3).

(2) The circumstances in this paragraph are that, with reference to the 2016 UC Regulations, before 26th May 2023, a utility submitted for publication in accordance with regulation 71 (publication on the UK e-notification service) a periodic indicative notice as a call for competition in accordance with regulation 44(4)(a)(b).

(3) The circumstances in this paragraph are that, with reference to the 2016 UC Regulations, before 28th October 2024—

- (a) a utility has awarded the contract, concluded the framework agreement or established the dynamic purchasing system;
- (b) a utility has contacted an economic operator in respect of a proposed contract to which regulation 33 (contracts subject to special arrangements) applies;

---

(a) For the meaning of “prior information notice”, see regulation 2(1) of the 2016 CC Regulations. For the meaning of “concession notice” and “contracting authority” see, respectively, regulations 6 and 4 of those Regulations.

(b) Regulation 44(4)(a) was revoked by S.I. 2023/484 and by S.I. 2023/567 (W. 88). For transitional provisions, see regulation 5 of each S.I.

- (c) a utility has contacted an economic operator to commence the negotiated procedure without prior call for competition in any of the cases set out in regulation 50 (use of the negotiated procedure without prior call for competition);
  - (d) one of the following notices has been submitted for publication in accordance with regulation 71(1) (publication on the UK e-notification service)—
    - (i) a notice on the existence of a qualification system required by regulation 68;
    - (ii) a contract notice required by regulation 69;
    - (iii) a contest notice required by regulation 95.
- (4) Where the 2016 UC Regulations continue to apply in accordance with paragraph (1)—
- (a) the Act does not apply;
  - (b) the period of validity of a dynamic purchasing system under regulation 52 of the 2016 UC Regulations—
    - (i) may not be changed after 27th October 2025, and
    - (ii) expires (if it has not already done so) at the end of 27th October 2028;
  - (c) the period of validity of a qualification system under regulation 68 of the 2016 UC Regulations—
    - (i) may not be changed after 27th October 2025, and
    - (ii) expires (if it has not already done so) at the end of 27th October 2028.
- (5) Terms used in this regulation have the same meaning as in the 2016 UC Regulations(a) as they had effect immediately before 28th October 2024.

**Transitional provisions relating to repeat services or works previously supplied under a contract awarded under the 2016 UC Regulations**

9.—(1) This regulation applies for the purposes of determining whether a contracting authority may award a public contract directly under section 41 of the Act (direct award in special cases) in a case where—

- (a) the public contract concerns the supply of services or works by the existing supplier that are similar to existing services or works, and
- (b) the existing services or works were supplied under a public contract of framework agreement that was awarded in accordance with the 2016 UC Regulations.

(2) The direct award justification in paragraph 8 of Schedule 5 to the Act (direct award justifications) has effect as if—

- (a) in the words before paragraph (a), “goods,” in each place it occurs, were omitted,
- (b) in paragraph (a)—
  - (i) “goods,” were omitted;
  - (ii) for “a competitive tendering procedure” there were substituted “regulation 44(1) and (2) of the Utilities Contracts Regulations 2016”,
- (c) for paragraph (b) there were substituted—

---

(a) For the meaning of “call for competition”, “contest notice”, “contract notice”, “dynamic purchasing system”, “economic operator”, “framework agreement”, “periodic indicative notice” and “utilities”, see regulation 2(1) of the 2016 UC Regulations. For the meaning of “UK e-notification service”, see regulation 71(6) of those Regulations and regulation 51(5) of the 2015 Regulations. For the meaning of “negotiated procedure” and “qualification system”, see regulation 2(2) of the 2016 Regulations.

- “(b) there was a disclosure as soon as that earlier contract was put up for tender that met the requirements of regulation 50(4)(b) of the Utilities Contracts Regulations 2016.”, and
- (d) in paragraph 9 of that Schedule—
- (i) for “paragraphs 7 and” there were substituted “paragraph”, and
  - (ii) “goods,”, in each place it occurs in the first definition, and where it occurs in the second definition, were omitted.
- (3) In paragraph (1)—
- “existing services or works” means services or works already supplied, or contracted to be supplied, to the utility;
- “existing supplier” means the supplier that has already supplied, or contracted to supply, the existing services or works.

22nd May 2024

*Alex Burghart*  
Parliamentary Secretary  
Cabinet Office

## SCHEDULE

Regulation 2(2)

### Provisions of the Procurement Act 2023 coming into force on 28th October 2024

- Section 1 (procurement and covered procurement).
- Section 2 (contracting authorities).
- In section 3 (public contracts), subsections (2), (3) and (4).
- Section 4 (valuation of contracts).
- Section 5 (mixed procurement: above and below threshold).
- Section 7 (defence and security contracts)
- Section 8 (concession contracts).
- Section 10 (mixed procurement: special regime contracts).
- Section 11 (covered procurement only in accordance with this Act).
- Section 12 (covered procurement: objectives).
- Section 15 (planned procurement notices).
- Section 16 (preliminary market engagement).
- Section 17 (preliminary market engagement notices).
- Section 18 (duty to consider lots).
- Section 19 (award of public contracts following a competitive tendering procedure).
- Section 20 (competitive tendering procedures).
- Section 21 (tender notices and associated tender documents).
- Section 22 (conditions of participation).
- Section 23 (award criteria).
- Section 24 (refining award criteria).
- Section 25 (sub-contracting specifications).
- Section 26 (excluding suppliers from a competitive award).
- Section 27 (excluding suppliers from a competitive flexible procedure).
- Section 28 (excluding suppliers by reference to sub-contractors).
- Section 29 (excluding a supplier that is a threat to national security).
- Section 30 (excluding suppliers for improper behaviour).
- Section 31 (modifying a section 19 procurement).
- Section 32 (reserving contracts to supported employment providers).
- In section 33 (reserving contracts to public service mutuals), subsections (1) to (6).
- Section 34 (competitive award by reference to dynamic markets).

- Section 35 (dynamic markets: establishment).
- Section 36 (dynamic markets: membership).
- Section 37 (dynamic markets: removing members from the market).
- Section 38 (dynamic markets: fees).
- Section 39 (dynamic market notices).
- Section 40 (qualifying utilities dynamic market notices: no duty to publish a tender notice).
- Section 41 (direct award in special cases).
- Section 42 (direct award to protect life, etc.).
- Section 43 (switching to direct award).
- Section 44 (transparency notices).
- Section 45 (frameworks).
- Section 46 (frameworks: competitive selection process).
- Section 47 (frameworks: maximum term).
- Section 48 (frameworks: implied terms).
- Section 49 (open frameworks).
- Section 50 (contract award notices and assessment summaries).
- Section 51 (standstill periods on the award of contracts).
- Section 52 (key performance indicators).
- Section 53 (contract details notices and publication of contracts).
- Section 54 (time limits).
- Section 55 (procurement termination notices).
- Section 56 (technical specifications).
- Section 57 (meaning of excluded and excludable supplier).
- Section 58 (considering whether a supplier is excluded or excludable).
- Section 59 (notification of exclusion of supplier).
- Section 60 (investigations of supplier: exclusion grounds).
- Section 61 (investigations under section 60: reports).
- Section 62 (debarment list).
- Section 63 (debarment decisions: interim relief).
- Section 64 (debarment list: application for removal).
- Section 65 (debarment decisions: appeals).
- Section 66 (debarment proceedings and closed material procedure).
- Section 67 (electronic invoicing: implied term).
- Section 68 (implied payment terms in public contracts).
- Section 72 (sub-contracting: directions).
- Section 73 (implied payment terms in sub-contracts).

- Section 74 (modifying a public contract).
- Section 75 (contract change notices).
- Section 76 (voluntary standstill period on the modification of contracts).
- Section 77 (publication of modifications).
- Section 78 (implied right to terminate public contracts).
- Section 79 (terminating public contracts: national security).
- Section 80 (contract termination notices).
- Section 81 (conflicts of interest: duty to identify).
- Section 82 (conflicts of interest: duty to mitigate).
- Section 83 (conflicts assessments).
- Section 84 (regulated below-threshold contracts).
- Section 85 (regulated below-threshold contracts: procedure).
- Section 86 (regulated below-threshold contracts: duty to consider small and medium-sized enterprises).
- In section 87 (regulated below-threshold contracts: notices), subsections (1) to (6).
- Section 88 (regulated below-threshold contracts: implied payment terms).
- In section 89 (treaty state suppliers), subsections (2), (5) and (6).
- Section 90 (treaty state suppliers: non-discrimination).
- Section 92 (trade disputes).
- Section 94 (general exemptions from duties to publish or disclose information).
- In section 95 (notices, documents and information: regulations and online system), subsections (4) and (5).
- Section 96 (electronic communications).
- Section 98 (record-keeping).
- Section 99 (data protection).
- Section 100 (duties under this Act enforceable in civil proceedings).
- Section 101 (automatic suspension of the entry into or modification of contracts).
- Section 102 (interim remedies).
- Section 103 (pre-contractual remedies).
- Section 104 (post-contractual remedies).
- Section 105 (post-contractual remedies: set aside conditions).
- Section 106 (time limits on claims).
- Section 107 (Part 9 proceedings and closed material procedure).
- Section 108 (procurement investigations).
- Section 109 (recommendations following procurement investigations).
- Section 111 (guidance following procurement investigations).
- Section 112 (Northern Ireland department: restrictions on the exercise of powers).

- In section 116 (disapplication of duty in section 17 of the Local Government Act 1988), subsection (1).
- Section 118 (concurrent powers and the Government of Wales Act 2006).
- Section 119 (repeals etc.).
- Schedule 2, to the extent that it is not already in force.
- Schedule 3.
- Schedule 4, to the extent that it is not already in force.
- Schedule 5.
- Schedule 6.
- Schedule 7.
- Schedule 8.
- Schedule 11.



## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Regulation 2 commences provisions of the Procurement Act 2023 (“the 2023 Act”). Regulation 2(1) commences, the day after the day on which these Regulations are made, subsections (2), (3) and (4) section 115 of the Act. These provisions allow the Scottish Ministers to apply devolved Scottish procurement legislation to contracting authorities regulated by the Act in certain circumstances. They will also allow the Scottish Ministers to disapply the same legislation where a devolved Scottish contracting authority falls to be regulated by the 2023 Act, following forthcoming amendment of the 2023 Act under section 115(1). The same provisions also allow a Minister of the Crown to amend the application of the 2023 Act in order to facilitate intra-UK procurements governed by devolved Scottish procurement arrangements. Regulation 2(2) brings into force almost all provisions of the 2023 Act not previously commenced, with the effect that, from 28th October 2024, those who fall within the scope of the 2023 Act will be regulated under the new regime. A number of provisions of the 2023 Act were commenced in order to make secondary legislation by S.I.s 2024/61 and 2024/361, as set out in the table below.

Regulation 3 is a saving provision which sets out when the Defence and Security Public Contracts Regulations 2011 (“the 2011 Regulations”) will continue to apply despite those Regulations being revoked by paragraph 4 of Schedule 11 to the 2023 Act (commenced by this instrument). Regulation 4 is a transitional provision in respect of the direct award in special cases of public contracts under section 41 of the 2023 Act where the contract is a repetition of an existing contract procured under the 2011 Regulations.

Regulation 5 is a saving provision which sets out when the Public Contracts Regulations 2015 (“the 2015 Regulations”) will continue to apply despite those Regulations being revoked by paragraph 5 of Schedule 11 to the 2023 Act (commenced by this instrument). Regulation 5 also includes a transitional provision, where the 2015 Regulations continue to apply, in respect of the period of validity of dynamic purchasing systems (established under regulation 34 of the 2015 Regulations) and the publication of payment information statistics in accordance with regulation 113(7) of the 2015 Regulations.

Regulation 6 is a transitional provision in respect of the direct award in special cases of public contracts under section 41 of the 2023 Act where the contract is a repetition of an existing contract procured under the 2015 Regulations.

Regulation 7 is a saving provision which sets out when the Concession Contracts Regulations 2016 will continue to apply despite those Regulations being revoked by paragraph 6 of Schedule 11 to the 2023 Act (commenced by this instrument).

Regulation 8 is a saving provision which sets out when the Utilities Contracts Regulations 2016 (“the 2016 UC Regulations”) will continue to apply despite those Regulations being revoked by paragraph 7 of Schedule 11 to the 2023 Act (commenced by this instrument). Regulation 8 also provides a transitional provision, where the 2016 UC Regulations continue to apply, in respect of the periods of validity of dynamic purchasing systems (established under regulation 52 of the 2016 UC Regulations) and qualification systems (established under regulation 68 of the 2016 UC Regulations). Regulation 9 is a transitional provision in respect of the direct award in special cases of public contracts under section 41 of the 2023 Act where the contract is a repetition of an existing contract procured under the 2016 UC Regulations.

## NOTE AS TO EARLIER COMMENCEMENT REGULATIONS

*(This note is not part of the Regulations)*

The following provisions of the Procurement Act 2023 have been brought into force by commencement Regulations made before the date of these Regulations.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 3 (partially)	11.3.2024	2024/361
Section 6	11.3.2024	2024/361
Section 9	11.3.2024	2024/361
Section 13	11.3.2024	2024/361
Section 14	11.3.2024	2024/361
Section 33 (partially)	11.3.2024	2024/361
Section 69 (partially)	11.3.2024	2024/361
Section 87 (partially)	11.3.2024	2024/361
Section 89 (partially)	11.3.2024	2024/361
Section 91	11.3.2024	2024/361
Section 95 (partially)	11.3.2024	2024/361
Section 97	11.3.2024	2024/361
Section 111	11.3.2024	2024/361
Section 113	11.3.2024	2024/361
Section 114	11.3.2024	2024/361
Section 115 (partially)	11.3.2024	2024/361
Section 116 (partially)	11.3.2024	2024/361
Section 117 (partially)	19.1.2024	2024/61
Section 117 (partially)	01.4.2024	2024/61
Schedule 1	11.3.2024	2024/361
Schedule 2 (partially)	11.3.2024	2024/361
Schedule 4 (partially)	11.3.2024	2024/361
Schedule 9	11.3.2024	2024/361
Schedule 10 (partially)	19.1.2024	2024/61
Schedule 10 (partially)	01.4.2024	2024/61

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## **8 THE PROCUREMENT ACT 2023 (COMMENCEMENT NO.3 AND TRANSITIONAL AND SAVING PROVISIONS) (AMENDMENT) REGULATIONS 2024**

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**2024 No. 959 (C. 61)**

**PUBLIC PROCUREMENT**

**The Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) (Amendment) Regulations 2024**

*Made* - - - - - *16th September 2024*

*Coming into force* - - - - - *17th September 2024*

The Minister for the Cabinet Office makes these Regulations in exercise of the powers conferred by sections 122(3)(c) and (d) and 127(2) of the Procurement Act 2023(a).

These Regulations are made with the consent of the Welsh Ministers in accordance with section 127(3) of that Act.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) (Amendment) Regulations 2024.

(2) These Regulations come into force on 17th September 2024.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

**Amendment of the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024**

2.—(1) The Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024(b) are amended as follows.

(2) In regulation 2(2) (provisions coming into force), for “28th October 2024” substitute “24th February 2025”.

(3) In regulation 3 (saving provisions relating to the 2011 Regulations) for “28th October 2024”, in both places those words occur, substitute “24th February 2025”.

(4) In regulation 5 (saving provisions relating to the 2015 Regulations)—

(a) for “28th October 2024”, in each place those words occur, substitute “24th February 2025”;

(b) in paragraph (4)(b)(i), for “27th October 2025” substitute “23rd February 2026”;

(c) in paragraph (4)(b)(ii), for “27th October 2028” substitute “23rd February 2029”;

(d) in paragraph (4)(c)(i)(aa), for “31st March 2025” substitute “30th September 2025”.

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(a) 2023 c. 54. For the meaning of “Minister of the Crown”, see section 123(1) and the definition in the Ministers of the Crown Act 1975 (c. 26) to which that provision cross-refers.

(b) S.I. 2024/716 (C. 47).

(5) In regulation 7 (saving provisions relating to the 2016 CC Regulations), for “28th October 2024”, in both places those words occur, substitute “24th February 2025”.

(6) In regulation 8 (saving provisions relating to the 2016 UC Regulations)—

- (a) for “28th October 2024”, in both places those words occur, substitute “24th February 2025”;
- (b) for “27th October 2025”, in both places those words occur, substitute “23rd February 2026”;
- (c) for “27th October 2028”, in both places those words occur, substitute “23rd February 2029”.

(7) In the Schedule—

- (a) in the header, for “28th October 2024” substitute “24th February 2025”;
- (b) after the entry relating to section 92, insert—
  - “• Section 93 (pipeline notices).”;
- (c) in the entry relating to section 111, for “111” substitute “110”.

*Georgia Gould*  
Parliamentary Secretary  
Cabinet Office

16th September 2024

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the coming into force date of the substantive provisions of the Procurement Act 2023 set out in the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024. This follows the Written Ministerial Statement made by Parliamentary Secretary Georgia Gould MP on 12th September 2024.

They also amend those Regulations to provide that section 93 of the Procurement Act 2023 will come into force on 24th February 2025.

They also correct a typographical error in the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024.

#### **NOTE AS TO EARLIER COMMENCEMENT REGULATIONS**

*(This note is not part of the Regulations)*

The following provisions of the Procurement Act 2023 have been brought into force by commencement Regulations made before the date of these Regulations.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 3 (partially)	11.3.2024	2024/361
Section 6	11.3.2024	2024/361
Section 9	11.3.2024	2024/361
Section 13	11.3.2024	2024/361
Section 14	11.3.2024	2024/361
Section 33 (partially)	11.3.2024	2024/361
Section 69 (partially)	11.3.2024	2024/361
Section 87 (partially)	11.3.2024	2024/361



Section 89 (partially)	11.3.2024	2024/361
Section 91	11.3.2024	2024/361
Section 95 (partially)	11.3.2024	2024/361
Section 97	11.3.2024	2024/361
Section 111	11.3.2024	2024/361
Section 113	11.3.2024	2024/361
Section 114	11.3.2024	2024/361
Section 115 (partially)	11.3.2024	2024/361
Section 116 (partially)	11.3.2024	2024/361
Section 117 (partially)	19.1.2024	2024/61
Section 117 (partially)	01.4.2024	2024/61
Schedule 1	11.3.2024	2024/361
Schedule 2 (partially)	11.3.2024	2024/361
Schedule 4 (partially)	11.3.2024	2024/361
Schedule 9	11.3.2024	2024/361
Schedule 10 (partially)	19.1.2024	2024/61
Schedule 10 (partially)	01.4.2024	2024/61

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## 9 THE PROCUREMENT ACT 2023 (CONSEQUENTIAL AND OTHER AMENDMENTS) REGULATIONS 2025

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*Draft Regulations laid before Parliament under section 122(4)(k), (o), (r), (v), (x), (y) and (z) of the Procurement Act 2023 (c. 54), for approval by resolution of each House of Parliament.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2025 No.**

**PUBLIC PROCUREMENT**

**The Procurement Act 2023 (Consequential and Other Amendments)  
Regulations 2025**

*Made*   -   -   -   -   -   **\*\*\***

*Coming into force in accordance with regulation 1*

The Minister for the Cabinet Office makes these Regulations in exercise of the powers conferred by sections 89(3), 95(1), (2) and (3), 113(1), 116(2), 122(3), 125(1) and (2) of, and paragraphs 2, 3(a) and 5(1) of Schedule 1, paragraphs 2(6), 3(3) and 6(4) and (5) of Schedule 2 and paragraphs 1(3), 2(3), 2(4) and 3(5) and (6) of Schedule 4 to, the Procurement Act 2023(a).

In accordance with section 122(4)(k), (o), (r), (v), (x), (y) and (z) of the Procurement Act 2023, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

These Regulations are made with the consent of the Department of Finance for Northern Ireland in accordance with section 113(4) of the Procurement Act 2023.

**PART 1**

**Introductory**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Procurement Act 2023 (Consequential and Other Amendments) Regulations 2025.

(2) These Regulations, except for regulations 3 and 8, come into force on the 24th February 2025.

(3) Regulations 3 and 8 come into force on the 23rd February 2025.

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(a) 2023 c. 54. See section 123(1) of the Procurement Act 2023 for the definitions of “appropriate authority” and “Minister of the Crown”.

## Extent and application

2.—(1) The amendments made by these Regulations have the same extent as the provisions to which they relate.

(2) Regulation 8 applies to a contracting authority that is a devolved Welsh authority<sup>(a)</sup> only in relation to a procurement under—

- (a) a reserved procurement arrangement<sup>(b)</sup>, or
- (b) a transferred Northern Ireland procurement arrangement<sup>(c)</sup>.

(3) Regulation 8 does not apply to a contracting authority in relation to a procurement under a devolved Welsh procurement arrangement<sup>(d)</sup>.

(4) Regulations 33 and 34 extend to England and Wales and apply in relation to England only.

## PART 2

### Amendment of primary legislation

#### Chapter 1

#### Amendments to the Procurement Act 2023

### Amendment of the Procurement Act 2023

3.—(1) The Procurement Act 2023 is amended as follows.

(2) In Schedule 1 (threshold amounts), in paragraph 1—

(a) in sub-paragraph (1), for the words before the table substitute—

“The threshold amount for a contract of a type referred to in the second column of the table below is—

- (a) if the contract is regulated by the Welsh Ministers, the threshold set out in the corresponding row of the third column, and
- (b) in any other case, the threshold set out in the corresponding row of the fourth column.”;

(b) in sub-paragraph (1), in the table—

- (i) in the heading of the third column, at the end insert “: contract regulated by Welsh Ministers”;
- (ii) insert a fourth column as follows—

*“Threshold amount: any other contract*

---

£5,372,609

£5,372,609

£429,809

£5,372,609

£884,720

---

(a) See section 111 of the Procurement Act 2023 for the definition of “devolved Welsh authority”.

(b) See section 114 of the Procurement Act 2023 for the definition of “reserved procurement arrangement”.

(c) See section 114 of the Procurement Act 2023 for the definition of “transferred Northern Ireland procurement arrangement”.

(d) See section 114 of the Procurement Act 2023 for the definition of “devolved Welsh procurement arrangement”.

*“Threshold amount: any other contract*

---

£429,809

£5,372,609

£663,540

£5,372,609

£5,372,609

£139,688

£214,904”;

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(c) after sub-paragraph (1), insert—

“(1A) For the purposes of sub-paragraph (1) a contract is regulated by the Welsh Ministers if it is—

- (a) a contract awarded by a contracting authority that is a devolved Welsh authority, other than such a contract awarded as part of a procurement under a reserved procurement arrangement or a transferred Northern Ireland procurement arrangement, or
- (b) a contract which is awarded as part of a procurement under a devolved Welsh procurement arrangement.”.

(3) In Schedule 9 (treaty state suppliers)—

(a) before paragraph 1 insert—

*“Interpretation*

A1 For the purposes of this Schedule a procurement is “a procurement regulated by the Welsh Ministers” if—

- (a) the contracting authority concerned is a devolved Welsh authority, unless it is a procurement under a reserved procurement arrangement or a transferred Northern Ireland procurement arrangement, or
- (b) it is a procurement under a devolved Welsh procurement arrangement.

*The Agreements”;*

(b) for paragraph 9 substitute—

“9 In—

- (a) the case of a procurement regulated by the Welsh Ministers, the Strategic Partnership and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and Georgia, signed at London on 21 October 2019;
- (b) any other case, the Strategic Partnership and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and Georgia, signed at London on 21 October 2019, as amended by Amending Agreement No. 2 between the United Kingdom of Great Britain and Northern Ireland and Georgia Amending the Strategic Partnership and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and Georgia, signed at Tbilisi on 2 and 14 December 2022.”;

(c) for paragraph 10 substitute—

“10 In—

- (a) the case of a procurement regulated by the Welsh Ministers, the Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Kosovo, signed at Pristina on 3 December 2019;
- (b) any other case, the Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Kosovo, signed at Pristina on 3 December 2019, as amended by Amending Agreement No. 1 between the United Kingdom of Great Britain and Northern Ireland and the Republic of Kosovo to amend the Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Kosovo, signed at Pristina on 19 September 2023.”;

(d) for paragraph 11 substitute—

“11 In—

- (a) the case of a procurement regulated by the Welsh Ministers, the Political, Free Trade and Strategic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine, signed at London on 8 October 2020;
- (b) any other case, the Political, Free Trade and Strategic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine, signed at London on 8 October 2020, as amended by Agreement No. 2 in the form of an Exchange of Letters between the United Kingdom of Great Britain and Northern Ireland and Ukraine amending the Political, Free Trade and Strategic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine, signed at Kyiv on 18 August 2022.”;

(e) for paragraph 13 substitute—

“13 In—

- (a) the case of a procurement regulated by the Welsh Ministers, the Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of North Macedonia, signed at Skopje on 3 December 2020;
- (b) any other case, the Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of North Macedonia, signed at Skopje on 3 December 2020, as amended by the Agreement in the form of an Exchange of letters between the United Kingdom of Great Britain and Northern Ireland and the Republic of North Macedonia amending the Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of North Macedonia, signed at Skopje on 10 December 2021.”;

(f) for paragraph 17 substitute—

“17 In—

- (a) the case of a procurement regulated by the Welsh Ministers, the Strategic Partnership, Trade and Cooperation Agreement between the

United Kingdom of Great Britain and Northern Ireland and the Republic of Moldova, signed at Chisinau on 24 December 2020;

- (b) any other case, the Strategic Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Moldova, signed at Chisinau on 24 December 2020, as amended by Amending Agreement No. 2 between the United Kingdom of Great Britain and Northern Ireland and the Republic of Moldova to amend the Strategic Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Moldova, signed at Chisinau on 25 May 2023.”;

(g) for paragraph 20 substitute—

“20 In—

- (a) the case of a procurement regulated by the Welsh Ministers, the Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Albania, signed at Tirana on 5 February 2021;
- (b) any other case, the Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Albania, signed at Tirana on 5 February 2021, as amended by the Exchange of Letters to amend the Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Albania, signed at Tirana on 12 January and 12 June 2023.”.

## Chapter 2

Amendments consequential to the coming into force of the Procurement Act 2023

### **Amendment of the Late Payment of Commercial Debts (Interest) Act 1998**

4.—(1) The Late Payment of Commercial Debts (Interest) Act 1998<sup>(a)</sup> is amended as follows.

(2) In section 4<sup>(b)</sup> (period for which statutory interest runs), in subsection (8), for the definition of “public authority”, as it extends to England and Wales and Northern Ireland, substitute—

““public authority” means a public authority within the meaning of the Procurement Act 2023 (see section 2 of that Act) that is not—

- (a) an excluded authority within the meaning of section 2(5)(a), (c) or (d) of that Act, but as if in section 2(5)(d)(ii) the reference to paragraph (b) were omitted, or
- (b) the Common Council of the City of London other than for the purposes of its functions as a local authority, police authority or port health authority.”.

### **Amendment of the Greater London Authority Act 1999**

5.—(1) The Greater London Authority Act 1999<sup>(c)</sup> is amended as follows.

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(a) 1998 c. 20.

(b) Section 4(8) was amended by S.I. 2013/395, 2015/102, S.S.I. 2013/77 and 2015/446.

(c) 1999 c. 29.



- (2) In section 355(a) (duties of waste collection authorities etc.), in subsection (8)—
- (a) in paragraph (a), for “Public Procurement Regulations” substitute “Procurement Act 2023”;
  - (b) for paragraph (b) (but not the “and” after it) substitute—
 

“(b) in compliance with that Act the authority publishes or provides(b) the tender notice relating to the awarding of that contract.”;
  - (c) in paragraph (c), for “submits” substitute “publishes or provides”.
- (3) In section 356(c) (directions by the Mayor), in subsection (3A)—
- (a) in paragraph (a), for “Public Procurement Regulations” substitute “Procurement Act 2023”;
  - (b) for paragraph (b) substitute—
 

“(b) in compliance with that Act the authority publishes or provides the tender notice relating to the awarding of that contract.”.
- (4) In section 358(d) (information about new waste contracts)—
- (a) for subsection (1ZA) substitute—
 

“(1ZA) Subsection (1A) applies if, in the awarding of a waste contract, a waste authority in compliance with the Procurement Act 2023 decides to publish a planned procurement notice relating to the awarding of the contract.”;
  - (b) in subsection (1A), in the words before paragraph (a) and in paragraph (a), omit “submit or”;
  - (c) for subsection (1BA) substitute—
 

“(1BA) Subsection (1C) applies if, in the awarding of a waste contract, a waste authority in compliance with the Procurement Act 2023—

    - (a) has decided not to publish a planned procurement notice relating to the awarding of the contract, but
    - (b) decides to publish or provide a tender notice relating to the awarding of the contract.”;
  - (d) in subsection (1C), in the words before paragraph (a) and in paragraph (a), for “submit” substitute “publish or provide”;
  - (e) in subsection (2), for “Public Procurement Regulations” substitute “Procurement Act 2023”.
- (5) In section 359(e) (confidential information about waste contracts), in subsection (1)—
- (a) at the end of paragraph (b), insert “(“confidentiality requirements”);”;
  - (b) for paragraph (c) (but not the “and” after it) substitute—
 

“(c) the waste authority is, by virtue of provision contained in section 94 of the Procurement Act 2023 or in regulations made under that Act, not required

---

(a) Section 355(8) was inserted by S.I. 2015/102 and amended by S.I. 2016/275 and 2020/1319.  
 (b) See 40 of the Procurement Act 2023 for circumstances when a contracting authority may provide, rather than publish, a tender notice.  
 (c) Section 356(3A) was inserted by S.I. 2015/102 and amended by S.I. 2016/275 and 2020/1319.  
 (d) Subsections (1ZA) and (1BA) of section 358 were inserted by S.I. 2015/102 and amended by S.I. 2016/275 and 2020/1319; subsection (1A) and (1C) of section 358 were inserted by the Greater London Authority Act 2007 (c. 24), sections 39(1) to (3) and amended by S.I. 2015/102 and 2020/1319.  
 (e) Section 359(1)(c) was amended by S.I. 2015/102 and 2016/275.

to comply with an obligation that, apart from that provision, would otherwise apply to publish or disclose the information under that Act,”;

- (c) in paragraph (d), for “that duty” substitute “the confidentiality requirements”.
- (6) In section 360(a) (interpretation of sections 353 to 359), in subsection (2)—
- (a) omit the definition of—
    - (i) “buyer profile”;
    - (ii) “concession notice”;
    - (iii) “contract notice”;
    - (iv) “periodic indicative notice”;
    - (v) “prior information notice”;
    - (vi) “the Public Procurement Regulations”;
    - (vii) “qualification system notice”;
    - (viii) “the UK e-notification service”;
  - (b) after the definition of “the national waste management plan”, insert—

““planned procurement notice” has the same meaning as in section 15(2) of the Procurement Act 2023,”;
  - (c) after the definition of “recovery”, insert—

““tender notice” has the same meaning as in section 21(2) of the Procurement Act 2023,”.

#### **Amendment of the Equality Act 2010**

- 6.**—(1) The Equality Act 2010(b) is amended as follows.
- (2) In section 155(c) (power to impose specific duties: supplementary)—
- (a) in subsection (2), for “Public Contracts Regulations” substitute “public procurement legislation”;
  - (b) for subsection (3), substitute—

“(3) In this section—

    - “concession contract” has the same meaning as in the Procurement Act 2023 (see section 8 of that Act);
    - “covered procurement” has the same meaning as in the Procurement Act 2023 (see section 1 of that Act);
    - “defence and security contract” has the same meaning as in the Procurement Act 2023 (see section 7 of that Act);
    - “devolved Scottish authority” has the same meaning as in the Procurement Act 2023 (see section 2 of that Act);
    - “public procurement functions” means—
      - (a) functions related to covered procurement, other than the procurement of a utilities contract, defence and security contract or concession contract, the

---

(a) Section 360(2) was amended by the Greater London Authority Act 2007 (c. 24), section 39(7), S.I. 2015/102, 2016/275 and 2020/1319; there are other amending instruments but none is relevant.

(b) 2010 c. 15.

(c) Section 155(2) and (3) was amended by S.I. 2020/1319.

exercise of which is regulated by the Procurement Act 2023, as amended from time to time, or

- (b) functions the exercise of which is regulated by the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), as amended from time to time;

“public procurement legislation” means the Procurement Act 2023 or, in respect of a public authority that is a devolved Scottish authority, the Public Contracts (Scotland) Regulations 2015, as amended from time to time;

“utilities contract” has the same meaning as in the Procurement Act 2023 (see section 6 of that Act).”.

### **Amendment of the Public Services (Social Value) Act 2012**

7.—(1) The Public Services (Social Value) Act 2012(a) is amended as follows.

(2) In section 1(b) (contracts of relevant authorities)—

(a) in subsection (1)—

(i) in paragraph (a), for “framework agreement” substitute “framework”;

(ii) in paragraph (b)—

(aa) for “framework agreement” substitute “framework”;

(bb) for “the agreement” substitute “the framework”;

(b) in subsection (2)—

(i) in paragraph (a)—

(aa) for “submitting a notice to the UK e-notification service” substitute “publishing a notice under the Procurement Act 2023”;

(bb) for “framework agreement” substitute “framework”;

(ii) in paragraphs (b), (c), (d) and (e), for “framework agreement” substitute “framework”;

(c) in subsection (4), for “framework agreement” substitute “framework”;

(d) in subsection (10), for “Regulations” substitute “Procurement Act 2023”;

(e) in subsection (15)—

(i) in the definition of “central government authority”, for “Regulations (even though the Regulations do not apply)” substitute “Procurement Act 2023 (see Schedule 1 to that Act) (even though the Act does not apply)”;

(ii) after the definition of “central government authority”, insert—

““concession contract” has the same meaning as in the Procurement Act 2023 (see section 8 of that Act);

“defence and security contract” has the same meaning as in the Procurement Act 2023 (see section 7 of that Act);

“exempted contract” is a contract that would be considered an exempted contract for the purposes of Schedule 2 (exempted contracts) to the Procurement Act 2023 (even though that Act does not apply);

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(a) 2012 c. 3.

(b) Section 1(2) was amended by S.I. 2020/1319; section 1(15) was amended by S.I. 2015/102; the definitions of “central government authority” and “sub-central contracting authority” were inserted by S.I. 2016/275; the definition of “UK e-notification service” was inserted by S.I. 2020/1319 and section 1(16) was substituted by S.I. 2016/275.

“framework” has the same meaning as in the Procurement Act 2023 (see section 45 of that Act) (whether or not the Act applies), and a reference to a contract based on a framework is a reference to a contract entered into on terms established by such an arrangement;

“light touch contract” has the same meaning as in the Procurement Act 2023 (see section 9 of that Act) (even though the Act does not apply);

“public contract” has the same meaning as in the Procurement Act 2023 (see section 3 of that Act);”;

(iii) in the definition of “relevant authority”, for “Regulations (whether or not the Regulations apply)” substitute “Procurement Act 2023 (see section 2 of that Act) (whether or not the Act applies)”;

(iv) after the definition of “relevant authority”, insert—

““sub-central government authority” has the same meaning as in the Procurement Act 2023 (see Schedule 1 to that Act) (even though the Act does not apply);

“utilities contract” has the same meaning as in the Procurement Act 2023 (see section 6 of that Act)”;

(v) omit the definition of—

(aa) “framework agreement”;

(bb) “the Regulations”;

(cc) “sub-central contracting authority”;

(dd) “the UK e-notification service”;

(f) for subsection (16), substitute—

“(16) For the purposes of this section references to a public services contract are to—

(a) a public contract for the supply of services to which the Procurement Act 2023 applies (or which is treated as such a contract by that Act), other than a utilities contract, defence and security contract or concession contract;

(b) a contract, not being a contract within paragraph (a), which—

(i) is a light touch contract,

(ii) is not an exempted contract, a utilities contract, a defence and security contract or a concession contract, and

(iii) falls within subsection (17).

(17) A contract falls within this subsection if—

(a) it is awarded by a central government authority and is estimated to be of a value equal to or greater than the threshold amount mentioned in row 11 of the table in paragraph 1(1) of Schedule 1 to the Procurement Act 2023, or

(b) it is awarded by a sub-central government authority and is estimated to be of a value equal to or greater than the threshold amount mentioned in row 12 of that table.”.

**PART 3**  
**Amendment of secondary legislation**

**Chapter 1**

**Amendment of the Procurement Regulations 2024**

**Amendment of the Procurement Regulations 2024**

- 8.—**(1) The Procurement Regulations 2024(a) are amended as follows.
- (2) In regulation 11 (supplier’s connected person information)—
- (a) omit the “and” after paragraph (6)(f);
  - (b) after sub-paragraph (g), insert—
    - “, and
    - (h) where the connected person is a company registered under the CA 2006, the person’s registration number given under that Act”.
- (3) In regulation 12 (supplier’s exclusion grounds information)—
- (a) in paragraph (1), for “(13)” substitute “(13A)”;
  - (b) insert “and” after paragraph (13)(d)(ii);
  - (c) omit paragraph (13)(e) and the “and” after it;
  - (d) after paragraph (13), insert—
    - “(13A) If the supplier or one or more connected persons has been the subject of an event mentioned in paragraphs (2) to (12), any evidence that the supplier or connected person—
    - (a) took the event seriously, for example by paying any fine or compensation,
    - (b) took steps to prevent the event occurring again, for example by changing staff or management, or putting procedures or training in place, and
    - (c) committed to taking further preventative steps, where appropriate.”.
- (4) In regulation 18 (tender notices: open procedure), omit sub-paragraph (2)(v).
- (5) In regulation 19(2) (tender notices: competitive flexible procedure)—
- (a) omit the “and” after sub-paragraph (g);
  - (b) after sub-paragraph (h), insert—
    - “, and
    - (i) whether an associated tender document is being, or may be, provided in accordance with the tender notice after the date when that notice is published and, if so, a link to the web page where it will be provided, or an explanation of how the document will be provided”.
- (6) In regulation 26(2) (transparency notices)—
- (a) after sub-paragraph (d), insert—
    - “(da) in the case of a procurement where the direct award justification at paragraph 8 of Schedule 5 to the PA 2023 applies, the unique identifiers of the earlier competitive tendering procedure (that is the procurement identifier) and contract referred to in paragraph 8(a) of Schedule 5;”;

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(a) S.I. 2024/692.

(b) omit the “and” after sub-paragraph (k)(i);

(c) after sub-paragraph (k)(ii), insert—

“, and

(iii) the direct award justification in Schedule 5 to the PA 2023 which applies and an explanation of why the contracting authority considers that it applies”;

(d) after sub-paragraph (p), insert—

“(pa) a description of any option which will be included in the contract—

(i) to supply additional goods, services or works, or

(ii) to extend or renew the term of the contract,”.

(7) In regulation 29(2) (contract award notices published by private utilities: direct award), in sub-paragraph (g)—

(a) omit the “and” after paragraph (i);

(b) after paragraph (ii), insert—

“, and

(iii) the direct award justification in Schedule 5 to the PA 2023 which applies and an explanation of why the contracting authority considers that it applies”.

(8) In regulation 32(2) (contract details notices: open or competitive flexible procedure), for sub-paragraph (r) (but not the “and” after it) substitute—

“(r) where key performance indicators were set in accordance with section 52(1) of the PA 2023, a description of the three key performance indicators which the contracting authority regards, at the time the contract details notice is published, as most material to performance of the contract obligations,”.

(9) In regulation 35(2) (contract details notice: direct award), for sub-paragraph (e) substitute—

“(e) if sub-paragraph (d) applies—

(i) the direct award justification in Schedule 5 to the PA 2023 which applies and an explanation of why the contracting authority considers that it applies,

(ii) the offence or other event mentioned in Schedule 6 to the PA 2023 by virtue of which the supplier is an excluded supplier, and

(iii) which ground in section 41(5) of the PA 2023 applies and an explanation of why the contracting authority considers that it applies,”.

(10) In regulation 38 (payments compliance notices)—

(a) in paragraph (2), after sub-paragraph (c), insert—

“(ca) the proportion of invoices paid in accordance with the term in section 68(2) of the PA 2023 during the reporting period, expressed as a percentage of the total number of invoices that were, or should have been, paid in accordance with that term within the reporting period,”;

(b) in paragraph (5), for “is to” substitute “includes”.

(11) In regulation 39(4) (contract performance notices except in relation to full termination)—

(a) for sub-paragraphs (d) and (e) substitute—

“(d) a description of the three key performance indicators set in accordance with section 52(1) which the contracting authority regards, at the time the contract

performance notice is published, as most material to performance of the contract obligations,

- (e) a statement that the notice is being used to set out the contracting authority's assessment of performance against key performance indicators selected in accordance with sub-paragraph (d),”;

(b) in sub-paragraphs (f) and (g), after “against the” insert “selected”.

(12) After regulation 42, insert—

#### **“Exempt contracts: vertical arrangements’ calculations**

**42A.**—(1) For the purposes of paragraph 2(2)(c) of Schedule 2 to the PA 2023 (exempted contracts), the calculation of the percentage of activities carried out by a person is to be made in accordance with this regulation.

(2) Subject to paragraph (8), the percentage of activities carried out by a person for or on behalf of the contracting authorities or other persons described in sub-paragraph (ii) of paragraph 2(2)(c) is to be calculated by taking that person's attributable turnover as a percentage of their total turnover, over the relevant period.

(3) A person's attributable turnover is their turnover deriving from activities carried out on behalf of the contracting authorities or other persons described in sub-paragraph (ii) of paragraph 2(2)(c).

(4) Where a person's attributable turnover or total turnover is not available for the entirety of the relevant period because the person was created or commenced their activities following the beginning of the relevant period, the attributable turnover and total turnover is to be calculated in accordance with paragraph (5).

(5) A person's attributable turnover and total turnover is to be calculated—

- (a) where there has been no turnover at all during the relevant period, using credible business projections for a period of three years beginning with the date of contract award;
- (b) in any other case, using—
  - (i) any attributable turnover or total turnover, as the case may be, generated during the relevant period, and
  - (ii) credible business projections, for a period beginning with the date of contract award,

which, when combined, provide turnover information and projections for the entirety of the period of three years beginning with the date any turnover was first generated during the relevant period.

(6) Where a person's attributable turnover or total turnover for the entirety of the relevant period is, as at the date of contract award, no longer representative of the person's activities because the activities changed as a result of a reorganisation of the person which occurred following the beginning of the relevant period, the attributable turnover and total turnover is to be calculated in accordance with paragraph (7).

(7) A person's attributable turnover and total turnover is to be calculated—

- (a) where there has been no turnover at all generated after reorganisation, using credible business projections for a period of three years beginning with the date of contract award;
- (b) in any other case, using—

- (i) any attributable turnover or total turnover, as the case may be, generated after reorganisation, and
- (ii) credible business projections, for a period beginning with the date of contract award,

which, when combined, provide turnover information and projections for the entirety of the period of three years beginning with the date any turnover was first generated after reorganisation.

(8) Where the percentage of activities carried out by a person calculated in accordance with paragraphs (2) to (7) does not satisfy the requirement in paragraph 2(2)(c) of Schedule 2 to the PA 2023, the percentage of activities may be calculated by taking, over the relevant period, any of the following that does satisfy that requirement—

- (a) costs incurred by the person on activities carried out for or on behalf of the authorities or other persons, as a percentage of their total costs;
- (b) time spent by the person on activities carried out for or on behalf of the authorities or other persons, as a percentage of their total time;
- (c) the value of goods, services or works supplied by the person to the authorities or other persons, as a percentage of the total value of goods, services or works supplied by the person;
- (d) the value of goods, services or works supplied to the person by the authorities or other persons, as a percentage of the total value of goods, services or works supplied to the person.

(9) In this regulation—

“accounting period” means a period in respect of which accounts are prepared in relation to the person;

“date of contract award” means the date when the contracting authority decided to award the contract;

“relevant period” means—

- (a) the period of three years ending with the date of contract award, or
- (b) where, due to the timing of the preparation of the person’s accounts, information relating to turnover for the period in sub-paragraph (a) is not available as at the date of contract award, a period of three years ending with the date the last accounting period before the date of contract award for which such information is available ends;

“reorganisation” means a change, other than a minimal or incidental change, to a person’s structure, operations, funding or ownership.

### **Exempt contracts: horizontal arrangements’ calculations**

**42B.**—(1) For the purposes of paragraph 3(2)(b) of Schedule 2 to the PA 2023 (exempted contracts), the calculation of the percentage of activities contemplated by the horizontal arrangement is to be made in accordance with this regulation.

(2) Subject to paragraph (8), the percentage of activities intended to be carried out other than for the purposes of the contracting authorities’ public functions is to be calculated by taking the non-attributable turnover generated by the horizontal arrangement’s activities as a percentage of the total turnover generated by the horizontal arrangement’s activities, over the relevant period.



(3) A horizontal arrangement's non-attributable turnover is turnover generated by the horizontal arrangement's activities that is attributable to purposes other than the contracting authorities' public functions.

(4) Where the non-attributable turnover or total turnover generated by a horizontal arrangement's activities is not available for the entirety of the relevant period because the arrangement was created, or the activities commenced, after the beginning of the relevant period, the non-attributable turnover and total turnover is to be calculated in accordance with paragraph (5).

(5) Non-attributable turnover and total turnover generated by a horizontal arrangement's activities is to be calculated—

- (a) where there has been no turnover at all during the relevant period, using credible business projections for a period of three years beginning with the date of contract award;
- (b) in any other case, using—
  - (i) any non-attributable turnover or total turnover, as the case may be, generated during the relevant period, and
  - (ii) credible business projections, for a period beginning with the date of contract award,

where, when combined, provide turnover information and projections for the entirety of the period of three years beginning with the date any turnover was first generated during the relevant period.

(6) Where the non-attributable turnover or the total turnover generated by a horizontal arrangement's activities for the entirety of the relevant period is, as at the date of contract award, no longer representative of the horizontal arrangement's activities because the activities changed as a result of a reorganisation of the horizontal arrangement which occurred following the beginning of the relevant period, the non-attributable turnover and total turnover is to be calculated in accordance with paragraph (7).

(7) Non-attributable turnover and total turnover generated by a horizontal arrangement's activities is to be calculated—

- (a) where there has been no turnover generated after reorganisation or the change in activities, using credible business projections for a period of three years beginning with the date of contract award;
- (b) in any other case, using—
  - (i) any non-attributable turnover or total turnover, as the case may be, generated after reorganisation or the change in activities, and
  - (ii) credible business projections, for a period beginning with the date of contract award,

where, when combined, provide turnover information and projections for the entirety of the period of three years beginning with the date any turnover was first generated after reorganisation or the change in activities.

(8) Where the percentage of activities intended to be carried out other than for the purposes of the contracting authorities' public functions, calculated in accordance with paragraphs (2) to (7), does not satisfy the requirement in paragraph 3(2)(b) of Schedule 2 to the PA 2023, the percentage of activities may be calculated by taking, over the relevant period, any of the following that does satisfy that requirement—

- (a) costs incurred in respect of the horizontal arrangement's activities for purposes other than the authorities' public functions as a percentage of its total costs;

- (b) time spent in respect of the horizontal arrangement’s activities for purposes other than the authorities’ public functions as a percentage of its total time;
- (c) the value of goods, services or works supplied in respect of the horizontal arrangement’s activities for purposes other than the authorities’ public functions as a percentage of the total value of goods, services or works supplied in respect of the activities.

(9) In this regulation—

“accounting period” means a period in respect of which accounts are prepared in relation to the horizontal arrangement’s activities;

“date of contract award” means the date when the contracting authority decided to award the contract;

“horizontal arrangement’s activities” means the activities contemplated by, or undertaken in pursuance of, a horizontal arrangement;

“relevant period” means—

- (a) the period of three years ending with the date of contract award, or
- (b) where, due to the timing of the preparation of accounts related to the horizontal arrangement’s activities, information relating to turnover for the period in sub-paragraph (a) is not available as at the date of contract award, a period of three years ending with the date the last accounting period before the date of contract award for which such information is available ends;

“reorganisation” means a change, other than a minimal or incidental change, to any terms of the horizontal arrangement in respect of—

- (a) the horizontal arrangement’s activities, or
- (b) where the arrangement establishes a person to undertake those activities, the structure, operations, funding or ownership of that person.

### **Exempt contracts: affiliated persons’ calculations**

**42C.**—(1) For the purposes of the turnover test in paragraph 6(3) of Schedule 2 to the PA 2023, an affiliated person’s—

- (a) affiliated turnover amount<sup>(a)</sup> is to be calculated using their entire affiliated turnover amount generated over the relevant period, and
- (b) total turnover amount is to be calculated using their entire total turnover amount generated over the relevant period.

(2) Where an affiliated person’s affiliated turnover amount or total turnover amount is not available for the entirety of the relevant period because the affiliated person<sup>(b)</sup> was created or commenced their activities following the beginning of the relevant period, the affiliated turnover amount and total turnover amount is to be calculated in accordance with paragraph (3).

(3) An affiliated person’s affiliated turnover amount and total turnover amount is to be calculated—

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(a) See paragraph 6(3) of Schedule 2 to the PA 2023 for the definition of “affiliated turnover amount”.

(b) See paragraph 6(2) of Schedule 2 to the PA 2023 for the meaning of “affiliated person”.

- (a) where there has been no turnover at all during the relevant period, using credible business projections for a period of three years beginning with the date of contract award;
- (b) in any other case, using—
  - (i) any affiliated turnover or total turnover, as the case may be, generated during the relevant period, and
  - (ii) credible business projections, for a period beginning with the date of contract award,

which, when combined, provide turnover information and projections for the entirety of the period of three years beginning with the date any turnover was first generated during the relevant period.

(4) In calculating the affiliated turnover amount and total turnover amount in relation to a person (“A”), equivalent turnover of a person who is an affiliated person in relation to A, but is not the utility<sup>(a)</sup>, is to be treated as part of A’s turnover.

(5) In this regulation—

“accounting period” means a period in respect of which accounts are prepared in relation to the affiliated person;

“date of contract award” means the date when the contracting authority decided to award the contract;

“equivalent turnover” means—

- (a) where the turnover test is being applied in respect of goods—
  - (i) in respect of the affiliated turnover amount, turnover deriving from the supply of goods to the utility or other persons affiliated with the utility;
  - (ii) in respect of the total turnover amount, the total turnover deriving from the supply of goods,

where, for the purposes of paragraph (i), those goods are the same or similar to the goods A supplies to the utility or other persons affiliated with the utility and are supplied over the relevant period or, where A’s turnover has been calculated in accordance with paragraph (3), a corresponding three-year period;

- (b) where the turnover test is being applied in respect of services—
  - (i) in respect of the affiliated turnover amount, turnover deriving from the supply of services to the utility or other persons affiliated with the utility;
  - (ii) in respect of the total turnover amount, the total turnover deriving from the supply of services,

where, for the purposes of paragraph (i), those services are the same or similar to the services A supplies to the utility or other persons affiliated with the utility and are supplied over the relevant period or, where A’s turnover has been calculated in accordance with paragraph (3), a corresponding three-year period;

- (c) where the turnover test is being applied in respect of works—

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<sup>(a)</sup> See section 35(4) of the PA 2023 for the definition of “utility”.

- (i) in respect of the affiliated turnover amount, turnover deriving from the supply of works to the utility or other persons affiliated with the utility;
- (ii) in respect of the total turnover amount, the total turnover deriving from the supply of works,

where, for the purposes of paragraph (i), those works are the same or similar to the works A supplies to the utility or other persons affiliated with the utility and are supplied over the relevant period or, where A's turnover has been calculated in accordance with paragraph (3), a corresponding three-year period;

“relevant period” means—

- (a) the period of three years ending with the date of contract award, or
- (b) where, due to the timing of the preparation of the affiliated person's accounts, information relating to turnover for the period in sub-paragraph (a) is not available as at the date of contract award, a period of three years ending with the date the last accounting period before the date of contract award for which such information is available ends.

#### **Gas or heat operator calculations**

**42D.**—(1) For the purposes of paragraph 1(2)(c) of Schedule 4 to the PA 2023—

- (a) the amount of gas or heat supplied to the network is to be calculated using the total turnover generated by the supply of gas or heat by the operator to the network (“network turnover”) during the relevant period, and
- (b) the operator's turnover amount is to be calculated using the operator's total turnover during the relevant period.

(2) Where an operator's network turnover or total turnover is not available for the entirety of the relevant period because the operator was created or commenced their activities after the beginning of the relevant period, turnover is to be calculated in accordance with paragraph (3).

(3) An operator's network turnover and total turnover is to be calculated—

- (a) where there has been no turnover at all during the relevant period, using credible business projections for a period of three years beginning with the date of contract award;
- (b) in any other case, using—
  - (i) any network turnover or total turnover, as the case may be, generated during the relevant period, and
  - (ii) credible business projections, for a period beginning with the date of contract award,

where, when combined, provide turnover information and projections for the entirety of the period of three years beginning with the date any turnover was first generated during the relevant period.

(4) In this regulation—

“accounting period” means a period in respect of which accounts are prepared in relation to the operator;

“date of contract award” means the date when the contracting authority decided to award the contract;

“quarter” means a period of three months beginning with 1st January, 1st April, 1st July or 1st October in any given year;

“relevant period” means—

- (a) the period of three years ending with the date of contract award, or
- (b) where, due to the timing of the preparation of the operator’s accounts, turnover information for the period in sub-paragraph (a) is not available as at the date of contract award, a period of three years corresponding with the accounting periods of the operator ending with the date the last quarter before the date of contract award for which such information is available ends.

### **Electricity operator calculations**

**42E.**—(1) For the purposes of paragraph 2(2)(d) of Schedule 4 to the PA 2023—

- (a) the amount of electricity supplied to the network is to be calculated using the total amount of electricity supplied by the operator to the network during the relevant period, and
- (b) the amount of energy produced by the operator is to be calculated using the total amount of energy produced by the operator during the relevant period.

(2) Where the amount of electricity supplied by the operator to the network or the amount of energy produced by the operator is not available for the entirety of the relevant period because the operator was created or commenced their activities after the beginning of the relevant period, electricity supplied and energy produced is to be calculated in accordance with paragraph (3).

(3) The amount of electricity supplied by the operator to the network and energy produced by the operator is to be calculated—

- (a) where there has been no energy produced during the relevant period, using credible business projections for a period of three years beginning with the date of contract award;
- (b) in any other case, using—
  - (i) any electricity supplied to the network or energy produced, as the case may be, during the relevant period, and
  - (ii) credible business projections, for a period beginning with the date of contract award,

which, when combined, provide information in respect of electricity supplied or energy produced, as the case may be, and projections for the entirety of the period of three years beginning with the date that energy was first produced during the relevant period.

(4) In this regulation—

“accounting period” means a period in respect of which accounts are prepared in relation to the operator;

“date of contract award” means the date when the contracting authority decided to award the contract;

“quarter” means a period of three months beginning with 1st January, 1st April, 1st July or 1st October in any given year;

“relevant period” means either—

- (a) the period of three years ending with the date of contract award, or
- (b) where, due to the timing of the preparation of the operator's accounts, information relating to electricity supplied or energy produced for the period in sub-paragraph (a) is not available as at the date of contract award, a three-year period corresponding with the accounting periods of the operator ending with the date the last quarter before the date of contract award for which such information is available ends.

### **Water operator calculations**

**42F.**—(1) For the purposes of paragraph 3(4)(d) of Schedule 4 to the PA 2023—

- (a) the amount of drinking water supplied to the network is to be calculated using the total amount of drinking water supplied by the operator to the network during the relevant period, and
- (b) the amount of drinking water produced by the operator is to be calculated using the total amount of drinking water produced by the operator during the relevant period.

(2) Where the amount of drinking water supplied by the operator to the network or the amount of drinking water produced by the operator is not available for the entirety of the relevant period because the operator was created or commenced their activities after the beginning of the relevant period, the amount of drinking water supplied and produced is to be calculated in accordance with paragraph (3).

(3) The amount of drinking water supplied by the operator to the network and the amount of drinking water produced by the operator is to be calculated—

- (a) where there has been no drinking water produced during the relevant period, using credible business projections for a period of three years beginning with the date of contract award;
- (b) in any other case, using—
  - (i) any drinking water supplied to the network or drinking water produced, as the case may be, during the relevant period, and
  - (ii) credible business projections, for a period beginning with the date of contract award,

which, when combined, provide information relating to drinking water supplied or produced, as the case may be, and projections for the entirety of the three year period beginning with the date that drinking water was first produced during the relevant period.

(4) In this regulation—

“accounting period” means a period in respect of which accounts are prepared in relation to the operator;

“date of contract award” means the date when the contracting authority decided to award the contract;

“quarter” means a period of three months beginning with 1st January, 1st April, 1st July or 1st October in any given year;

“relevant period” means—

- (a) the period of three years ending with the date of contract award, or
- (b) where, due to the timing of the preparation of the operator's accounts, information relating to drinking water supplied or produced for the period

in sub-paragraph (a) is not available as at the date of contract award, a three-year period corresponding with the accounting periods of the operator ending with the date the last quarter before the date of contract award for which such information is available ends.”.

(13) In the table in Schedule 2 (central government authorities)—

(a) for the entry relating to “Department for Business, Energy and Industrial Strategy” substitute—

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“Department for Business and Trade	Competition Appeal Tribunal
	Competition and Markets Authority
	Competition Service
	Office of Manpower Economics”;

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(b) for “Department for Digital, Culture, Media and Sport” substitute “Department for Culture, Media and Sport”;

(c) after the entry for “Department for Education” insert—

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“Department for Energy Security and Net Zero	Nuclear Decommissioning Authority
	Oil and Gas Authority (known as “North Sea Transition Authority”);

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(d) omit “Department for International Trade”;

(e) after the entry for “Department for Environment, Food and Rural Affairs” insert—

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“Department for Science, Innovation and Technology	Intellectual Property Office
	Meteorological Office (known as “Met Office”)
	UK Research and Innovation”;

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(f) in the entry for “Ministry of Justice”, for “Her Majesty’s Courts and Tribunals Service” substitute “His Majesty’s Courts and Tribunals Service”.

## Chapter 2

Amendments consequential to the coming into force of the Procurement Act 2023

### **Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996**

**9.—(1)** The Occupational Pension Schemes (Scheme Administration) Regulations 1996<sup>(a)</sup> are amended as follows.

(2) In the Schedule (duties of trustees of relevant trust schemes in connection with provision of FM services)—

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<sup>(a)</sup> S.I. 1996/1715, the Schedule was inserted by S.I. 2022/825; there are other amending instruments but none is relevant.

- (a) in paragraph 2 (general interpretation), in the definition of “relevant tender process”—
  - (i) omit the “or” after sub-paragraph (c);
  - (ii) after sub-paragraph (d), insert—
    - “; or
    - (e) where the trustees are a contracting authority for the purposes of the Procurement Act 2023, a procurement carried out in accordance with that Act”;
- (b) in paragraph 7 (duty of trustees to carry out a qualifying tender process in connection with continued use of continuing in-scope FM providers), after sub-paragraph (2)(b)(iv), insert—
  - “;
  - (v) where the trustees are a contracting authority for the purposes of the Procurement Act 2023, any arrangements made with an FM provider who was appointed as a result of a procurement carried out in accordance with that Act”;
- (c) in paragraph 8 (duty of trustees of a relevant scheme to carry out a qualifying tender process in connection with appointment, or change to the mandate, of an in-scope FM provider)—
  - (i) in sub-paragraph (3)(b), after “purposes of” insert “the Procurement Act 2023 (“the Procurement Act”),”;
  - (ii) in sub-paragraphs (4)(a), (4)(b) and (4)(c)(ii), before “the PC Regulations” insert “the Procurement Act,”.

**Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997**

**10.—(1)** The Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997<sup>(a)</sup> are amended as follows.

(2) In the Schedule (duties of trustees of relevant trust schemes in connection with provision of FM services)—

- (a) in paragraph 2 (general interpretation), in the definition of “relevant tender process”—
  - (i) omit the “or” after paragraph (b);
  - (ii) after paragraph (c) insert—
    - “; or
    - (d) where the trustees are a contracting authority for the purposes of the Procurement Act 2023, a procurement carried out in accordance with that Act”;
- (b) in paragraph 7 (duty of trustees to carry out a qualifying tender process in connection with continued use of continuing in-scope FM providers), after sub-paragraph (2)(b)(iii) insert—
  - “;
  - (iv) where the trustees are a contracting authority for the purposes of the Procurement Act 2023, any arrangements made with an FM provider who was appointed as a result of a procurement carried out in accordance with that Act”;

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<sup>(a)</sup> S.R. 1997 No. 94, the Schedule was inserted by S.R. 2024 No. 74.



- (c) in paragraph 8 (duty of trustees of a relevant scheme to carry out a qualifying tender process in connection with appointment, or change to the mandate, of an in-scope FM provider)—
  - (i) in sub-paragraph (3)(b), after “purposes of” insert “the Procurement Act 2023 (“the Procurement Act”) or”;
  - (ii) in sub-paragraph (4)(a), after “purposes of” insert “the Procurement Act or”;
  - (iii) in sub-paragraphs (4)(b) and (4)(c)(ii), after “accordance with” insert “the Procurement Act or, as the case may be,”.

### **Amendment of the Service Charges (Consultation Requirements) (England) Regulations 2003**

**11.—**(1) The Service Charges (Consultation Requirements) (England) Regulations 2003(a) are amended as follows.

(2) In regulation 2 (interpretation), in the definition of “public notice”, for the words from “, pursuant to” to the end substitute “pursuant to the Procurement Act 2023”.

### **Amendment of the Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) Regulations 2009**

**12.—**(1) The Heavy Goods Vehicles (Charging for the Use of Certain Infrastructure on the Trans-European Road Network) Regulations 2009(b) are amended as follows.

(2) In regulation 18 (information requirements where a concession toll is involved), in paragraph (2)(b), for “concession notice within the meaning of regulation 6 of the Concession Contracts Regulations 2016” substitute “tender notice published under section 21(1) of the Procurement Act 2023”.

### **Amendment of the Quality Contracts Schemes (Tendering Requirements) (England) Regulations 2009**

**13.—**(1) The Quality Contracts Schemes (Tendering Requirements) (England) Regulations 2009(c) are amended as follows.

(2) In regulation 9 (European procurement regulations)—

- (a) for the heading substitute “The Procurement Act 2023”;
- (b) for the words from “Utilities Contracts” to the end substitute “Procurement Act 2023”.

### **Amendment of the Cleaner Road Transport Vehicles Regulations 2011**

**14.—**(1) The Cleaner Road Transport Vehicles Regulations 2011(d) are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) for the definitions of “concession notice”, “contract documents”, “contracting authority”, “contract notice” and “declaration of ineffectiveness”, substitute—

““associated tender documents” has the same meaning as in section 21(4) of the Procurement Act 2023;

“contract documents” means any tender notice or associated tender documents;

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- (a) S.I. 2003/1987, as amended by S.I. 2006/5 and 2020/1319; there are other amending instruments but none is relevant.
  - (b) S.I. 2009/1914, as amended by S.I. 2014/2437, 2016/275 and 2018/1352, there are other amending instruments but none is relevant.
  - (c) S.I. 2009/3244, as amended by S.I. 2015/102 and 2016/275.
  - (d) S.I. 2011/1631, as amended by S.I. 2015/102, 2016/275 and 2020/964.

“contract notice” means a notice which is a contract notice within the meaning of Part 2 of the Public Contracts Regulations 2015 or the Utilities Contracts Regulations 2016 (as applicable);

“contracting authority” has the same meaning as in section 2 of the Procurement Act 2023, but as if section 2(5)(b), and the reference to paragraph (b) in section 2(5)(d)(ii), were omitted;”;

(b) after the definition of “road transport vehicle”, insert—

““supplier” means—

- (a) a person or public entity or group of such persons and entities, including any temporary association of undertakings, which offers the execution of works or a work, the supply of products or the provision of services on the market;
- (b) a person who—
  - (i) offers on the market road transport vehicles for purchase or leasing,
  - (ii) sought, seeks or would have wished, to be the person with whom an operator enters into a contract for the purchase or leasing of road transport vehicles, and
  - (iii) is a national of, and established in, the United Kingdom or Gibraltar;

“tender notice” has the same meaning as in section 21(2) of the Procurement Act 2023;”;

(c) omit the definition of “utility”;

(d) after the definition of “type approval appointment”, insert—

““work” means the outcome of a building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function.”.

(3) In regulation 3 (scope of the Regulations)—

(a) in paragraph (1), omit “, utilities”;

(b) in paragraph (3)—

(i) for sub-paragraph (a), substitute—

“(a) the Procurement Act 2023 applies in respect of that contract; or”;

(ii) omit sub-paragraphs (b) and (c) and the “or” after sub-paragraph (c);

(c) in paragraph (4)—

(i) in sub-paragraph (a), for “Public Contracts Regulations 2015 by regulation 5 (threshold amounts) of those regulations (whether or not it would also be so excluded for any other reason); and” substitute “Procurement Act 2023 by section 3 (public contracts) of that Act (whether or not it would also be so excluded for any other reason).”;

(ii) omit sub-paragraphs (b), and (c).

(4) In regulation 4 (purchase and leasing of clean and energy-efficient road transport vehicles)—

(a) in paragraph (1), omit “, utility”;

(b) in paragraph (3), omit “, utilities”;

(c) in paragraph (4), omit “, utility”;

(d) for paragraph (7), substitute—

“(7) Where a contracting authority or operator applies the option set out in paragraph (6), and employs—

- (a) a competitive tendering procedure or a direct award within the meaning of Part 3 of the Procurement Act 2023, or
- (b) any other procedure by means of which they advertise for, and consider offers, in relation to a proposed contract,

that contracting authority or operator must use the energy and environmental impacts as award criteria.

(8) Where a contracting authority or operator applies the option set out in paragraph (6) and operational lifetime costs are attributed to the energy and environmental impacts, that contracting authority or operator must comply with regulation 5.”.

(5) In regulation 6 (enforcement of duties)—

- (a) in paragraph (1)—
  - (i) omit “, utility”;
  - (ii) for “an economic operator” substitute “a supplier”;
- (b) in paragraph (2)—
  - (i) in the words before sub-paragraph (a), for “Part 3 of the Public Contracts Regulations 2015” substitute “Part 9 of the Procurement Act 2023”;
  - (ii) in sub-paragraph (a), for “regulation 89 of those Regulations” substitute “section 100 of that Act”;
  - (iii) in sub-paragraph (c), in each place it occurs, for “an economic operator” substitute “a supplier”;
- (c) omit paragraphs (3) and (3A);
- (d) in paragraph (4)—
  - (i) for the words before sub-paragraph (a) substitute—

“(4) Where Part 9 of the Procurement Act 2023 has effect in relation to a supplier by virtue of paragraph (2)(b)—”;

  - (ii) in sub-paragraph (b), for “a declaration of ineffectiveness,” substitute “an order setting aside the contract or modification,”.

### **Amendment of the Elected Local Policing Bodies (Specified Information) Order 2011**

**15.—**(1) The Elected Local Policing Bodies (Specified Information) Order 2011(a) is amended as follows.

(2) In article 2 (specified information), in paragraph (2)—

- (a) omit the “or” after sub-paragraph (c);
- (b) after sub-paragraph (d), insert—
  - “; or
  - (e) is required under the Procurement Act 2023”.

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(a) S.I. 2011/3050, as amended by S.I. 2021/547; there are other amending instruments but none is relevant.

## **Amendment of the Schools Forums (England) Regulations 2012**

16.—(1) The Schools Forums (England) Regulations 2012(a) are amended as follows.

(2) In regulation 9 (consultation on contracts), for “regulation 5 of the Public Contracts Regulations 2015” substitute “section 3 of, and Schedule 1 to, the Procurement Act 2023”.

## **Amendment of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013**

17.—(1) The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013(b) are amended as follows.

(2) In regulation 6 (tender requirements and procedure)—

(a) for paragraph (2), substitute—

“(2) Subject to paragraphs (3) and (4), where in relation to the specified infrastructure project—

(a) the Procurement Act 2023 does not apply,

(b) the incumbent undertaker relies on an exemption under the Procurement Act 2023,  
or

(c) the incumbent undertaker awards a contract directly under sections 41 or 43 of the Procurement Act 2023,

the provisions of the Procurement Act 2023 mentioned in the first column of the table in Part 1 of Schedule 2 (application of the Procurement Act 2023) apply in relation to that project.”;

(b) in paragraph (3)—

(i) in the words before sub-paragraph (a), for “Utilities Contracts Regulations 2016” substitute “Procurement Act 2023”;

(ii) in sub-paragraph (b)(i), for “utility” substitute “contracting authority”;

(iii) after sub-paragraph (b)(i), insert—

“(ia) references to a “public contract” were references to a “contract”.”;

(iv) omit sub-paragraph (b)(ii);

(c) after paragraph (3), insert—

“(3A) Where the Procurement Regulations 2024 apply by virtue of the application of the Procurement Act 2023 in accordance with Schedule 2, references to a “public contract” are to be read as if they were references to a “contract”.”;

(d) in paragraph (4), in the words before sub-paragraph (a), for “and (3)” substitute “, (3) and (3A)”;

(e) in paragraph (8)—

(i) in the words before sub-paragraph (a), for “and (3)” substitute “, (3) and (3A)”;

(ii) in sub-paragraph (b), for “regulations 42 and 98 of the Utilities Contracts Regulations 2016” substitute “sections 81 to 83 and 98 of the Procurement Act 2023”.

(3) In Schedule 2—

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(a) S.I. 2012/2261, as amended by S.I. 2015/102; there are other amending instruments but none is relevant.

(b) S.I. 2013/1582, as amended by S.I. 2015/102, 2016/275 and 2020/1319; there are other amending instruments but none is relevant.

- (a) for the heading substitute “Application of the Procurement Act 2023”;
- (b) in Part 1, for the table substitute—

<i>Provision applied</i>	<i>Modification</i>
Section 1	Subsection (1)(b) does not apply, and the remaining provisions apply as if references to “covered procurement” were omitted
Section 2	
Section 4	
Section 6	Subsections (5) and (6) do not apply
Section 12	
Section 15	
Section 16	
Section 18	
Section 19	Subsection (9) does not apply
Section 20	Subsection (9) does not apply
Section 21	
Section 22	
Section 23	Subsection (6) does not apply
Section 24	
Section 25	
Section 26	
Section 27	
Section 28	
Section 30	
Section 31	
Section 34	Subsection (7) does not apply
Section 35	Subsection (3) does not apply
Section 40	
Section 43	
Section 44	
Section 45	Subsection (9) does not apply
Section 46	Subsection (11) does not apply
Section 47	Subsection (5)(c) does not apply

<i>Provision applied</i>	<i>Modification</i>
Section 48	
Section 49	
Section 50	
Section 51	In subsection (3), only paragraphs (c), (d) and (e) apply, and paragraph (c) applies as though it referred only to section 43 (switching to direct award)
Section 54	Entries relating to light touch contracts do not apply
Section 56	
Section 57	
Section 58	
Section 59	Subsection (1)(a)(iv) and (v) do not apply
Section 62	Only subsections (3) and (4) apply
Section 74	Subsection (1) applies as though the reference to a “convertible contract” were omitted; subsection (2) does not apply
Section 78	
Section 79	
Section 81	Applies as though the word “covered” were omitted every time it appears
Section 82	Applies as though the word “covered” were omitted
Section 83	Applies as though the word “covered” were omitted
Section 89	
Section 90	
Section 94	
Section 96	Applies as though the word “covered” were omitted both times it appears
Section 98	Applies as though for the words “this Act” were substituted “the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013”, and as though, for subsection (4)(a) were substituted “the day on which the contracting authority decides not to award the contract”. Subsection (5) does not apply.
Section 99	
Section 100	Subsection (6) does not apply

<i>Provision applied</i>	<i>Modification</i>
Section 101	Subsection (1) applies as if the words “or a convertible contract” were omitted; subsection (4) does not apply
Section 102	
Section 103	
Section 104	
Section 105	
Section 110	
Section 123	Subsections (4) and (5) do not apply
Schedule 1	Only paragraphs 4 and 5 apply
Schedule 3	Paragraph 3 does not apply
Schedule 4	
Schedule 6	
Schedule 7	
Schedule 8	Paragraphs 2, 3, 10 and 11 do not apply
Schedule 9	

(c) omit Part 2.

#### **Amendment of the Energy Savings Opportunity Scheme Regulations 2014**

**18.**—(1) The Energy Savings Opportunity Scheme Regulations 2014(a) are amended as follows.

(2) In regulation 16 (excluded undertakings), for paragraph (2)(b), substitute—

“(b) “public body” means—

(i) a public authority within the meaning of the Procurement Act 2023 (see section 2 of that Act) that is not an excluded authority within the meaning of section 2(5)(a), (c) or (d) of that Act, but as if in section 2(5)(d)(ii) the reference to paragraph (b) were omitted, or

(ii) in respect of a devolved Scottish authority, a contracting authority as defined in regulation 2(1) of the Public Contracts (Scotland) Regulations 2015;

(c) “devolved Scottish authority” has the same meaning as in section 2(6) of the Procurement Act 2023.”.

#### **Amendment of the Public Contracts (Scotland) Regulations 2015**

**19.**—(1) The Public Contracts (Scotland) Regulations 2015(b) are amended as follows.

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(a) S.I. 2014/1643, as amended by S.I. 2015/102 and S.S.I. 2015/446; there are other amending instruments but none is relevant.

(b) S.S.I. 2015/446, as amended by S.S.I. 2020/468; there are other amending instruments but none is relevant.

- (2) In regulation 2 (interpretation)—
- (a) omit the definition of “Defence and Security Regulations”;
  - (b) after the definition of “CPV”, insert—
 

““defence and security contract” has the meaning given in section 7 of the Procurement Act 2023;”.
- (3) In regulation 3(5) (subject matter and application of these regulations), omit “as that list is to be treated for the purpose of Part 2 of the Public Contracts Regulations 2015”.
- (4) In regulation 4(1) (mixed procurement), for “the Defence and Security Regulations” substitute “would, if awarded as a separate contract, be considered a defence and security contract”.
- (5) In regulation 16(1) (specific situations: defence and security)—
- (a) in the words before sub-paragraph (a), omit “or design contests”;
  - (b) in sub-paragraph (a), for “Defence and Security Regulations apply”, substitute “Procurement Act 2023 applies”;
  - (c) for sub-paragraph (b), substitute—
 

“(b) to which that Act does not apply pursuant to section 3 of that Act.”.
- (6) In regulation 17 (mixed procurement involving defence or security aspects)—
- (a) in paragraph (1), for “the Defence and Security Regulations” substitute “would be considered a defence and security contract”;
  - (b) in paragraph (3), for “Defence and Security Regulations” substitute “Procurement Act 2023”;
  - (c) in paragraph (5)(b), for “is covered by the Defence and Security Regulations, the procurement may be undertaken in accordance with those Regulations” substitute “would, if awarded as a separate contract, be considered a defence and security contract, the procurement may be undertaken in accordance with the Procurement Act 2023”;
  - (d) in paragraph (7), for “Defence and Security Regulations” substitute “Procurement Act 2023”.
- (7) In Schedule 6 (consequential and miscellaneous amendments), omit paragraph 6.

### **Amendment of the Concession Contracts (Scotland) Regulations 2016**

- 20.—**(1) The Concession Contracts (Scotland) Regulations 2016(a) are amended as follows.
- (2) In regulation 2(1) (interpretation)—
- (a) after the definition of “CPV”, insert—
 

““defence and security contract” has the same meaning as in section 7 of the Procurement Act 2023;”;
  - (b) omit the definition of “Defence and Security Regulations”.
- (3) In regulation 5(3) (meaning of “utility”)—
- (a) in sub-paragraph (a), for “, the Utilities Contracts (Scotland) Regulations 2016 or the Defence and Security Regulations” substitute “or the Utilities Contracts (Scotland) Regulations 2016”;
  - (b) after sub-paragraph (a), insert—
 

“(aa) procedures in accordance with section 19 of the Procurement Act 2023;”.

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(a) S.S.I. 2016/65, as amended by S.S.I. 2016/125 and 2020/468; there are other amending instruments but none is relevant.



(4) In regulation 10(3) (exclusions: concession contracts awarded pursuant to international rules), for “involving defence or security as referred to in the Defence and Security Regulations” substitute “which is a defence and security contract”.

(5) In regulation 11(1)—

- (a) in the words before sub-paragraph (a), for “in the fields of defence and security as referred to in the Defence and Security Regulations” substitute “which is a defence and security contract”;
- (b) in paragraphs (a), (b) and (c), for “which are” substitute “which is”;
- (c) in sub-paragraph (e), for “regulation 7(1)(c) of the Defence and Security Regulations” substitute “paragraph 30 of Schedule 2 to the Procurement Act 2023”.

(6) In regulation 22(5) (mixed procurement), for “the Defence and Security Regulations” substitute “would, if awarded as a separate contract, be considered a defence and security contract”.

(7) In regulation 23 (mixed procurement involving defence or security aspects)—

- (a) in paragraph (1), for “the Defence and Security Regulations” substitute “would be considered a defence and security contract”;
- (b) in paragraph (2), for “the Defence and Security Regulations” substitute “being the supply of anything within section 7(1) of the Procurement Act 2023”;
- (c) in paragraph (4), for “Defence and Security Regulations” substitute “Procurement Act 2023”;
- (d) in paragraph (6)(b), for “is covered by the Defence and Security Regulations, the procurement may be undertaken in accordance with those Regulations” substitute “would, if awarded as a separate contract, be considered a defence and security contract, the procurement may be undertaken in accordance with the Procurement Act 2023”;
- (e) in paragraph (8), for “Defence and Security Regulations” substitute “Procurement Act 2023”.

(8) In regulation 25 (contracts covering both activities listed in Schedule 2 and activities involving defence or security aspects)—

- (a) in paragraph (1), for “the Defence and Security Regulations” substitute “being the supply of anything within section 7(1) of the Procurement Act 2023”;
- (b) in paragraph (3), for “Defence and Security Regulations” substitute “Procurement Act 2023”.

(9) In regulation 40 (exclusion grounds), in paragraph (9)(i), for “in the fields of defence and security as referred to in the Defence and Security Regulations” substitute “which is a defence and security contract”.

#### **Amendment of the Utilities Contracts (Scotland) Regulations 2016**

**21.—**(1) The Utilities Contracts (Scotland) Regulations 2016<sup>(a)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “CPV”, insert—

““defence and security contract” has the same meaning as in section 7 of the Procurement Act 2023;”;

(b) omit the definition of “Defence and Security Regulations”.

(3) In regulation 4(6) (utilities)—

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(a) S.S.I. 2016/49, as amended by S.S.I. 2019/173 and 2020/468; there are other amending instruments but none is relevant.

- (a) insert “or” after sub-paragraph (a)(ii);
- (b) omit the “or” after sub-paragraph (a)(iii);
- (c) omit sub-paragraph (a)(iv) and the “and” after it;
- (d) after sub-paragraph (a), insert—

“(aa) procedures in accordance with section 19 of the Procurement Act 2023; and”.

(4) In regulation 5(1) (mixed procurement covering the same activity), for “the Defence and Security Regulations” substitute “is the supply of anything within section 7(1) of the Procurement Act 2023”.

(5) In regulation 6(1) (procurement covering several activities), for “the Defence and Security Regulations” substitute “is the supply of anything within section 7(1) of the Procurement Act 2023”.

(6) In regulation 23(1) (defence and security)—

- (a) in paragraph (1) omit “or design contests”;
- (b) in sub-paragraph (a), for “Defence and Security Regulations apply” substitute “Procurement Act 2023 applies”;
- (c) in sub-paragraph (b), for “those Regulations do not apply pursuant to regulations 7 or 9 of those Regulations” substitute “the Procurement Act 2023 does not apply pursuant to section 3 of that Act”.

(7) In regulation 24 (mixed procurement covering the same activity and involving defence and security aspects)—

- (a) in paragraph (1), for “the Defence and Security Regulations” substitute “is the supply of anything within section 7(1) of the Procurement Act 2023”;
- (b) in paragraph (3), for “Defence and Security Regulations” substitute “Procurement Act 2023”;
- (c) in paragraph (5)(b), for “is covered by the Defence and Security Regulations, the procurement may be undertaken in accordance with those Regulations” substitute “would, if awarded as a separate contract, be considered a defence and security contract, the procurement may be undertaken in accordance with the Procurement Act 2023”;
- (d) in paragraph (7), for “Defence and Security Regulations” substitute “Procurement Act 2023”.

(8) In regulation 25 (procurement covering several activities and involving defence and security aspects)—

- (a) in paragraph (1), for “the Defence and Security Regulations” substitute “are the supply of anything within section 7(1) of the Procurement Act 2023”;
- (b) in paragraph (3), for “Defence and Security Regulations” substitute “Procurement Act 2023”;
- (c) in paragraph (5)(b), for “is intended to cover an activity which is covered by the Defence and Security Regulations, the procurement may be undertaken in accordance with those Regulations” substitute “would, if it were awarded as a separate contract, be considered a defence and security contract, the procurement may be undertaken in accordance with the Procurement Act 2023”;
- (d) in paragraph (7), for “Defence and Security Regulations” substitute “Procurement Act 2023”.

(9) In Schedule 3, omit paragraph 2.

### **Amendment of the National Health Service Commissioning Board (Additional Functions) Regulations 2017**

**22.**—(1) The National Health Service Commissioning Board (Additional Functions) Regulations 2017(a) are amended as follows.

(2) In regulation 4(3)(a) (power to conclude and manage framework agreements), for “economic operator (within the meaning of regulation 2 (definitions) of the Public Contracts Regulations 2015)” substitute “supplier”.

### **Amendment of the Branded Health Service Medicines (Costs) Regulations 2018**

**23.**—(1) The Branded Health Service Medicines (Costs) Regulations 2018(b) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) in the definition of “contracting authority”, after “has the meaning given to it by” insert “section 2(1)(a) of the Procurement Act 2023 (but as if section 2(5)(b), and the reference to paragraph (b) in section 2(5)(d)(ii), were omitted),”;

(b) for the definition of “framework agreement”, substitute—

““framework agreement” means—

(a) a framework as defined in section 45(2) of the Procurement Act 2023, where the framework was awarded under that Act;

(b) a framework agreement as defined in—

(i) regulation 2 of the Public Contracts Regulations 2006,

(ii) regulation 2 of the Public Contracts (Scotland) Regulations 2012,

(iii) regulation 33(2) of the Public Contracts Regulations 2015, or

(iv) regulation 2 of the Public Contracts (Scotland) Regulations 2015,

where the relevant agreement was concluded under those regulations;”;

(c) for the definition of “public contract”, substitute—

““public contract” means—

(a) a contract of a kind specified in section 3(2) of the Procurement Act 2023, where the contract was awarded under that Act;

(b) a public contract as defined in—

(i) regulation 2 of the Public Contracts Regulations 2006,

(ii) regulation 2 of the Public Contracts (Scotland) Regulations 2012,

(iii) regulation 2 of the Public Contracts Regulations 2015, or

(iv) regulation 2 of the Public Contracts (Scotland) Regulations 2015,

where the relevant contract was awarded under those regulations;”.

### **Amendment of the Health Service Products (Provision and Disclosure of Information) Regulations 2018**

**24.**—(1) The Health Service Products (Provision and Disclosure of Information) Regulations 2018(c) are amended as follows.

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(a) S.I. 2017/212, as amended by S.I. 2023/1071.

(b) S.I. 2018/345.

(c) S.I. 2018/677, to which there are amendments none of which is relevant.

(2) In Schedule 1, paragraph 5 (meaning of “NHS framework contract”)—

(a) before sub-paragraph (1)(a), insert—

“(za) a public contract awarded in accordance with a framework under the Procurement Act 2023,

(zb) a public contract awarded under the Procurement Act 2023,”;

(b) in sub-paragraph (2), for the definition of “contracting authority”, substitute—

““contracting authority”—

(a) in relation to a contract awarded in accordance with a framework, where the framework was awarded under the Procurement Act 2023, means a public authority within the meaning of the Procurement Act 2023 (see section 2 of that Act) that is not an excluded authority within the meaning of section 2(5)(a), (c) or (d) of that Act, but as if in section 2(5)(d)(ii) the reference to paragraph (b) were omitted;

(b) in relation to a contract based on a framework agreement—

(i) where the framework agreement was concluded under the 2006 Regulations, has the meaning given in regulation 3 of those Regulations;

(ii) where the framework agreement was concluded under the 2012 Scotland Regulations, has the meaning given in regulation 3 of those Regulations;

(iii) where the framework agreement was concluded under the 2015 Regulations, has the meaning given in regulation 2 of those Regulations;

(iv) where the framework agreement was concluded under the 2015 Scotland Regulations, has the meaning given in regulation 2 of those Regulations.”.

#### **Amendment of the National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021**

**25.**—(1) The National Security and Investment Act 2021 (Notifiable Acquisition) (Specification of Qualifying Entities) Regulations 2021(a) are amended as follows.

(2) In Schedule 7 (critical suppliers to government), in paragraph 1 (interpretation), for the definition of “government” substitute—

““government” has the same meaning as “contracting authority” in section 2 of the Procurement Act 2023, but—

(a) as if section 2(5)(b), and the reference to paragraph (b) in section 2(5)(d)(ii), were omitted, and

(b) does not include the Common Council of the City of London other than for the purposes of its functions as a local authority, police authority or port health authority;”.

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(a) S.I. 2021/1264, to which there are amendments none of which is relevant.

## **Amendment of the Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022**

**26.**—(1) The Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022(a) is amended as follows.

(2) In article 8 (hardcore restrictions), in paragraph (7)—

(a) after the definition of “active sales”, insert—

““devolved Scottish authority” has the same meaning as in section 2 of the Procurement Act 2023;”;

(b) in the definition of “passive sales”, in sub-paragraph (c), for paragraphs (i) and (ii) substitute—

“(i) the Procurement Act 2023, or

(ii) in respect of a public authority that is a devolved Scottish authority, the Public Contracts (Scotland) Regulations 2015, the Concession Contracts (Scotland) Regulations 2016 or the Utilities Contracts (Scotland) Regulations 2016;”;

(c) after the definition of “passive sales”, insert—

““public authority” has the same meaning as in section 2(2) of the Procurement Act 2023;”.

## **Amendment of the Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022**

**27.**—(1) The Competition Act 1998 (Research and Development Agreements Block Exemption) Order 2022(b) is amended as follows.

(2) in article 10 (hardcore restrictions), in paragraph (5), in the definition of “passive sales”, for sub-paragraph (c) substitute—

“(c) participating in a public procurement exercise undertaken in accordance with the Procurement Act 2023.”.

## **Amendment of the Health Care Services (Provider Selection Regime) Regulations 2023**

**28.**—(1) The Health Care Services (Provider Selection Regime) Regulations 2023(c) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1)—

(a) after the definition of “basic selection criteria”, insert—

““central digital platform” is the online system established by the Minister for the Cabinet Office and which may be accessed on [www.gov.uk](https://www.gov.uk)(d);”;

(b) after the definition of “CPV”, insert—

““debarment list” means the list kept under section 62 (debarment list) of the Procurement Act 2023;”;

(c) after the definition of “Direct Award Process C”, insert—

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(a) S.I. 2022/516.

(b) S.I. 2022/1271, to which there are amendments none of which is relevant.

(c) S.I. 2023/1348.

(d) See here: <https://www.gov.uk/find-tender>.

““excludable supplier” means a provider that would be an excludable supplier in accordance with sections 57 (meaning of excluded and excludable supplier) and 58 (considering whether a supplier is excluded or excludable) of the Procurement Act 2023, were the relevant authority the contracting authority, and the provider a supplier, under that Act and any references to an associated person omitted(a);

“excluded supplier” means a provider that would be an excluded supplier in accordance with sections 57 and 58 of the Procurement Act 2023, were the relevant authority the contracting authority. and the provider a supplier, under that Act and any reference to an associated person omitted”;

(d) omit the definition of “UK e-notification system”.

(3) In regulations 7(1)(b) (Direct Award Process A), 8(1)(b) (Direct Award Process B), 9(3) and (10) (Direct Award Process C), 10(2), (7) and (14) (the Most Suitable Provider Process), 11(3), (9) and (16) (the Competitive Process), 12(2) (the standstill period), 13(4) (modification of contracts and framework agreements during their term), 14(4) (urgent award or modification), 15(4) (abandonment of, or repetition of steps in, a procurement) and 18(5) (contracts based on a framework agreement), for “UK e-notification service” substitute “central digital platform”.

(4) In regulation 20 (exclusions)—

(a) for paragraphs (1) to (5), substitute—

“(1) Subject to paragraph (1A), a relevant authority must not award a contract to an excluded provider, or select an excluded provider to be party to a framework agreement, and must exclude an excluded provider from a procurement process under these Regulations.

(1A) The relevant authority may award a contract to a provider that is an excluded provider, or select an excluded provider to be party to a framework agreement, on an exceptional basis, if the relevant authority considers that there are overriding reasons relating to the public interest, including public health.

(2) The relevant authority may exclude an excludable provider from a procurement process under these Regulations.”;

(b) in paragraph (6), for “such evidence” substitute “evidence in accordance with section 58 of the Procurement Act 2023,”.

(5) After regulation 20, insert—

#### **“Exclusions: sub-contractors**

**20A.**—(1) A relevant authority must as part of a procurement process under these Regulations—

(a) request information about whether a provider intends to sub-contract the performance of all or part of the contract, and

(b) seek to determine whether any intended sub-contractor is on the debarment list.

(2) A relevant authority may, as part of a procurement process under these Regulations, request information for the purpose of determining whether any intended sub-contractor is an excluded or excludable provider.

(3) Subject to paragraph (4), if after requesting information under paragraph (1) or (2) a relevant authority considers that a provider intends to sub-contract to a provider that is

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(a) In accordance with the Procurement Act 2023, an “associated person” means a person that the supplier is relying on in order to satisfy the conditions of participation (see section 22(8)), but not a person who is to act as guarantor as described in section 22(9). The Health Care Services (Provider Selection Regime) Regulations 2023 do not have the concept of an “associated person”. Providers do not have to satisfy “conditions of participation” and there is no provision for providers to rely on someone else to meet the basic selection criteria or any other requirements of the contract.

an excluded provider, the relevant authority must exclude the provider from the procurement process.

(4) A relevant authority may award a contract to a provider that would otherwise be excluded from the procurement process under paragraph (3) if the relevant authority considers that there are overriding reasons relating to the public interest, including public health.

(5) If, after requesting information under paragraph (1) or (2), a relevant authority considers that a provider intends to sub-contract to a provider that is an excludable provider, the relevant authority may exclude the provider from the procurement process.

(6) Before excluding a provider under paragraph (3) or (5), a relevant authority must—

- (a) notify the provider of its intention, and
- (b) give the provider reasonable opportunity to find an alternative provider with which to sub-contract.

### **Excluding a provider that is a threat to national security**

**20B.**—(1) Paragraph (2) applies if the relevant authority intends to exclude a provider under regulation 20 or 20A because it considers the provider, or an intended sub-contractor, is an excludable provider on the basis of the discretionary exclusion ground in paragraph 14 of Schedule 7 (threat to national security) to the Procurement Act 2023.

(2) The relevant authority may not exclude the provider or notify the provider of its intention unless—

- (a) the authority has notified a Minister of the Crown of its intention, and
- (b) the Minister of the Crown considers that—
  - (i) the provider or an intended sub-contractor is an excludable supplier by reference to paragraph 14 of Schedule 7, and
  - (ii) the provider should be excluded.

(3) The reference in paragraph (2) to a relevant authority notifying a provider of its intention is a reference to notification in accordance with regulation 20A(6)(a).

### **Notification of exclusion of provider**

**20C.**—(1) This regulation applies where—

- (a) a relevant authority—
  - (i) has excluded an excluded or excludable provider from a procurement process under regulation 20 or 20A, or
  - (ii) is aware of a sub-contractor having been replaced under regulation 20A, and
- (b) the provider, or an intended sub-contractor, was an excluded or excludable provider because they would have been an excluded or excludable supplier—
  - (i) under section 57(1)(a) or (2)(a) of the Procurement Act 2023 by virtue of a relevant exclusion ground, or
  - (ii) on the basis of being on the debarment list by virtue of paragraph 35 of Schedule 6 (national security) of the Procurement Act 2023.

(2) The relevant authority must, before the end of the period of 30 days beginning with the date on which the provider was excluded or replaced, give notice of that fact to a Minister of the Crown.

(3) A notice under paragraph (2) must set out any relevant exclusion ground that the authority considers applies to the provider.

(4) If the relevant authority receives representations in accordance with regulation 12(3), or is aware of any review proceedings, in respect of the exclusion or replacement, it must give notice to the Minister of the Crown of—

- (a) the receipt of those representations or commencement of those proceedings or any appeal proceedings;
- (b) the outcome of the regulation 12 process or of any proceedings within sub-paragraph (2).

(5) Notice under—

- (a) paragraph (4)(a) must be given before the end of the period of 30 days beginning with the day the representations concerned are made or the proceedings concerned are commenced;
- (b) paragraph (4)(b) must be given before the end of the period of 30 days beginning with the day the regulation 12 process is concluded or the proceedings concerned are determined.

(6) In this regulation—

“exclusion ground” means a mandatory exclusion ground as set out in Schedule 6 to the Procurement Act 2023, or a discretionary exclusion ground as set out in Schedule 7 to the Procurement Act 2023;

“relevant exclusion ground” means any exclusion ground except the one listed in paragraph 43 of Schedule 6 (failure to cooperate with investigation) to the Procurement Act 2023.

## **Debarment**

**20D.**—(1) A Minister of the Crown may carry out an investigation under section 60 of the Procurement Act 2023 for the purpose of considering whether an entry could be added to the debarment list in respect of a provider, but as if references to—

- (a) “supplier” were to “provider”;
- (b) “excluded supplier” were to “excluded supplier” as defined in regulation 2 of these Regulations;
- (c) “excludable supplier” were to “excludable supplier” as defined in regulation 2 of these Regulations;
- (d) “contracting authority” were to “relevant authority”.

(2) Sections 61 to 66 of the Procurement Act 2023 apply in respect of any investigation carried out in accordance with paragraph (1), but as if references to—

- (a) “supplier” were to “provider”;
- (b) “excluded supplier” were to “excluded supplier” as defined in regulation 2 of these Regulations;
- (c) “excludable supplier” were to “excludable supplier” as defined in regulation 2 of these Regulations;
- (d) “contracting authority” were to “relevant authority”.

(6) In regulation 22 (termination of contracts), in paragraph (1)—

- (a) in sub-paragraph (b), after “regulation 20(1)” insert “or 20A(3)”;;



(b) at the end of sub-paragraph (b) insert—

“;

- (c) a provider has, since the award of the contract, become an excluded provider or excludable provider;
- (d) a provider to which the provider is sub-contracting the performance of all or part of the public contract is an excluded or excludable provider”.

(7) Omit regulations 27 (amendment of the Public Contracts Regulations 2015 consequential on the coming into force of these Regulations) and 28 (amendment of the Public Contracts Regulations 2015 consequential on the revocation of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013).

## PART 4

### Amendment of assimilated law

#### **Amendment of Regulation (EC) No 1370/2007 of the European Parliament and of the Council**

**29.**—(1) Regulation (EC) No 1370/2007(a) of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70 is amended as follows.

(2) For paragraph 3 of Article 1 (purpose and scope) substitute—

“3. This Regulation shall not apply to “concession contracts” as defined by section 8(1) of the Procurement Act 2023.”.

(3) For paragraph 1 of Article 5 (award of public service contracts), substitute—

“1. Subject to paragraph 1A, public service contracts shall be awarded in accordance with the rules laid down in this Regulation.

**1A.** In respect of a contract to which paragraph 1B applies—

- (a) the contract shall be awarded in accordance with the Procurement Act 2023; and
- (b) paragraphs 2 to 6 of this Article do not apply.

**1B.** This paragraph applies to a contract—

- (a) for public passenger transport services by bus or tram to which the Procurement Act 2023 applies; and
- (b) which is not a concession contract as defined by section 8 of that Act.”.

(4) For paragraph 1 of Article 8 (transition), substitute—

“1. Subject to paragraph 1A, public service contracts shall be awarded in accordance with the rules laid down in this Regulation.

**1A.** In respect of a contract to which paragraph 1B applies—

- (a) the contract shall be awarded in accordance with the Procurement Act 2023; and
- (b) paragraphs 2 to 6 of this Article do not apply.

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(a) EUR 1370/2007, as amended by S.R. 2020 No. 252, S.I. 2020/504, S.R. 2021 No. 337, there are other amending instruments but none is relevant. This is a reference to the assimilated version of Regulation (EC) 1370/2007, which was revoked in respect of England and Wales and Scotland by S.I. 2023/1369.

**1B.** This paragraph applies to a contract—

- (a) for public passenger transport services by bus or tram to which the Procurement Act 2023 applies; and
- (b) which is not a concession contract as defined by section 8 of that Act.”.

**Amendment of Regulation (EU) No 910/2014 of the European Parliament and of the Council**

**30.**—(1) Regulation (EU) No 910/2014(a) of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC is amended as follows.

(2) In Article 3 (definitions), for paragraphs (7) and (8), substitute—

- “(7) ‘public sector body’ means a public authority, or a private entity mandated by a public authority to provide public services, when acting under such a mandate;
- (8) ‘public authority’ means:
  - (a) a public authority within the meaning of the Procurement Act 2023 (see section 2(2) of that Act) that is not an excluded authority within the meaning of section 2(5)(a) or (d)(i);
  - (b) in respect of a devolved Scottish authority within the meaning of section 2(6) of the Procurement Act 2023, a contracting authority as defined in regulation 2(1) of the Public Contracts (Scotland) Regulations 2015;”.

**Amendment of Regulation (EU) No 1144/2014 of the European Parliament and of the Council**

**31.**—(1) Regulation (EU) No 1144/2014(b) of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008 is amended as follows.

(2) In Article 20 (procurement with regard to measures implemented on the initiative of the Commission), for “the Public Contracts Regulations 2015”, substitute “the Procurement Act 2023”.

## PART 5

### Repeals and revocations

**Repeals etc.**

**32.** The enactments listed in the Schedule are repealed and revoked to the extent specified.

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(a) EUR 910/2014, as amended by S.I. 2019/89. This is a reference to the assimilated version of EUR 910/2014.  
(b) EUR 1144/2014, as amended by S.I. 2019/821, there are other amending instruments but none is relevant. This is a reference to the assimilated version of EUR 1144/2014. EUR 1144/2014 was revoked in respect of England and Wales by the Retained EU Law (Revocation and Reform) Act 2023 c. 28, the effect of which was disappplied in relation to Northern Ireland by S.I. 2023/1143.

## PART 6

### Transitional Provisions

#### **Transitional provision in respect of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013**

**33.**—(1) Nothing in regulation 17 (amendment of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013) affects—

- (a) any contract award procedure commenced, but not yet awarded, before 24th February 2025;
  - (b) any contract awarded in accordance with the Utilities Contracts Regulations 2016 (“the 2016 Regulations”), as modified by the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (“the 2013 Regulations”)—
    - (i) before 24th February 2025, or
    - (ii) on or after that date but where the award itself was not, by virtue of sub-paragraph (a), affected by these Regulations;
  - (c) the conclusion of any framework agreement where the procurement process commenced, but where the framework agreement was not concluded, before 24th February 2025;
  - (d) any framework agreement concluded in accordance with the 2016 Regulations, as modified by the 2013 Regulations—
    - (i) before 24th February 2025, or
    - (ii) on or after that date but where the conclusion of the framework agreement was not, by virtue of sub-paragraph (c), affected by these Regulations.
- (2) For the purposes of paragraph (1)—
- (a) a contract award procedure has been commenced before 24th February 2025 if, before that date, in accordance with regulation 6 (tender requirements and procedure) of the 2013 Regulations—
    - (i) an incumbent undertaker has contacted an economic operator to commence the negotiated procedure without prior call for competition in accordance with regulation 50(1)(a) (use of the negotiated procedure without prior call for competition) of the 2016 Regulations;
    - (ii) a notice on the existence of a qualification system required by regulation 68 (notices on the existence of a qualification system) of the 2016 Regulations has been submitted for publication in accordance with regulation 71 (publication on the UK e-notification service) of the 2016 Regulations, as modified by the 2013 Regulations;
    - (iii) a contract notice required by regulation 69 (contract notices) of the 2016 Regulations has been submitted for publication in accordance with regulation 71 of the 2016 Regulations, as modified by the 2013 Regulations;
  - (b) the procurement process for a framework agreement has been commenced before the 24th February 2025 if, before that date a contract notice required by regulation 69 of the 2016 Regulations has been submitted for publication in accordance with regulation 71 of the 2016 Regulations, as modified by the 2013 Regulations.
- (3) In this regulation—
- (a) “an incumbent undertaker” has the same meaning as in the 2013 Regulations, and

- (b) any other terms have the same meaning as in the 2016 Regulations as they had effect immediately before 24th February 2025.

**Transitional provision in respect of the Health Care Services (Provider Selection Regime) Regulations 2023**

34.—(1) Nothing in regulation 28 (amendment of the Health Care Services (Provider Selection Regime) Regulations 2023) affects—

- (a) any contract award procedure commenced, but not yet awarded, before 24th February 2025;
- (b) any contract awarded in accordance with the Health Care Services (Provider Selection Regime) Regulations 2023 (“the 2023 Regulations”) before—
  - (i) 24th February 2025, or
  - (ii) on or after that date but where the award itself was not, by virtue of sub-paragraph (a), affected by these Regulations;
- (c) the conclusion of any framework agreement where the procurement process commenced, but where the framework agreement was not concluded, before 24th February 2025;
- (d) any framework agreement concluded in accordance with the 2023 Regulations—
  - (i) before 24th February 2025, or
  - (ii) on or after that date but where the conclusion of the framework agreement was not, by virtue of sub-paragraph (c), affected by these Regulations.

(2) For the purposes of paragraph (1)—

- (a) a contract award procedure has been commenced before 24th February 2025 if, before that date—
  - (i) a relevant authority has contacted a provider in order to commence Direct Award Process A or Direct Award Process B;
  - (ii) notice of intention to make an award under Direct Award Process C has been submitted to the UK e-notification service for publication in accordance with regulation 9 (Direct Award Process C) of the 2023 Regulations;
  - (iii) notice of intention to follow the Most Suitable Provider Process has been submitted to the UK e-notification service for publication in accordance with regulation 10 (the Most Suitable Provider Process) of the 2023 Regulations;
  - (iv) notice inviting offers in accordance with the Competitive Process has been submitted to the UK e-notification service for publication in accordance with regulation 11 (the Competitive Process) of the 2023 Regulations;
- (b) the procurement process for a framework agreement has been commenced before the 24th February 2025 if, before that date, notice inviting offers in accordance with the Competitive Process has been submitted to the UK e-notification service for publication in accordance with regulation 11 of the 2023 Regulations.

(3) In this regulation—

- (a) the following have the same meaning as in the 2023 Regulations—
  - (i) Competitive Process;
  - (ii) Direct Award Process A;
  - (iii) Direct Award Process B;
  - (iv) Direct Award Process C;
  - (v) framework agreement;

- (vi) Most Suitable Provider Process;
  - (vii) provider;
  - (viii) UK e-notification service;
- (b) “relevant authority” has the same meaning as in section 12ZB(7) of the National Health Service Act 2006<sup>(a)</sup>.

Date

*Name*  
Parliamentary Secretary  
Cabinet Office

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(a) 2006 c. 41, section 12ZB was inserted by section 79 of the Health and Care Act 2022 (c. 31) and amended by paragraph 164 of Schedule 4 to the Levelling-Up and Regeneration Act 2023 (c. 55).

## SCHEDULE

Regulation 32

### REPEALS AND REVOCATIONS

#### PART 1

#### REPEALS

The enactments listed in column (1) are repealed to the extent listed in column (2).

<i>(1) Short title</i>	<i>(2) Extent of repeal</i>
Advanced Research and Invention Agency Act 2022 <b>(a)</b>	<b>1.</b> In Schedule 3, paragraph 17(1).

#### PART 2

#### REVOCATIONS

The enactments listed in column (1) are revoked to the extent listed in column (2).

<i>(1) Enactment</i>	<i>(2) Extent of revocation</i>
Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 <b>(b)</b>	<b>1.</b> In article 2(1), the definitions of— <div style="margin-left: 40px;">(a) contracting authority, and                      (b) utility.  <b>2.</b> Article 3(1)(j).</div>
Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 <b>(c)</b>	<b>3.</b> In article 1(2), the definitions of— <div style="margin-left: 40px;">(a) contracting authority, and                      (b) utility.  <b>4.</b> Article 2(g).</div>
Provision of Services Regulations 2009 <b>(d)</b>	<b>5.</b> Regulation 31(5)(g).
Public Procurement (Miscellaneous Amendments) Regulations 2011 <b>(e)</b>	<b>6.</b> Regulations 2(3) and 26 to 28.

**(a)** 2022 c. 4, to which there are amendments, none of which is relevant.

**(b)** S.I. 1975/1023, as amended by S.I. 1986/2268, 2006/2143, 2013/1198, 2015/102 and 2016/275; there are other amending instruments but none is relevant.

**(c)** S.R. (NI) 1979 No 195, as amended by S.R. (NI) 2009 No 173 and S.I. 2016/275; there are other amending instruments but none is relevant.

**(d)** S.I. 2009/2999, as amended by S.I. 2015/102, 2015/2059, 2018/1329, 2020/1319 and 2023/1286; there are other amending instruments but none is relevant.

**(e)** S.I. 2011/2053, to which there are amendments none of which is relevant.

<i>(1) Enactment</i>	<i>(2) Extent of revocation</i>
Public Contracts and Defence and Security Public Contracts (Croatia Accession Amendment) Regulations 2013 <b>(a)</b>	<b>7.</b> Regulation 3.
Modern Slavery Act 2015 (Consequential Amendments) Regulations 2015 <b>(b)</b>	<b>8.</b> Regulations 18 and 19.
Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 <b>(c)</b>	<b>9.</b> In Schedule 3, paragraphs 7, 17 and 20.
Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 <b>(d)</b>	<b>10.</b> In Schedule 7, paragraph 27.
Financial Service and Markets Act 2000 (Markets in Financial and Instruments) Regulations 2017 <b>(e)</b>	<b>11.</b> In Schedule 5, paragraph 23.
UK Statistics (Amendment etc.) (EU Exit) Regulations 2019 <b>(f)</b>	<b>12.</b> Regulations 4, 6 and 7.
Public Procurement (Electronic Invoices etc.) Regulations 2019 <b>(g)</b>	<b>13.</b> The whole Regulations.
Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019 <b>(h)</b>	<b>14.</b> The whole Regulations.
Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 <b>(i)</b>	<b>15.</b> Regulations 6 to 11.
Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2020 <b>(j)</b>	<b>16.</b> The whole Regulations.
Public Procurement (Agreement on Government Procurement) (Amendment) Regulations 2021 <b>(k)</b>	<b>17.</b> Regulations 2 to 4.
Public Procurement (International Trade Agreements) (Amendment) Regulations 2021 <b>(l)</b>	<b>18.</b> Regulations 2 to 4.
Public Procurement (Agreement on Government Procurement) (Amendment) (No. 2) Regulations 2021 <b>(m)</b>	<b>19.</b> Regulations 2 to 4.
Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2021 <b>(n)</b>	<b>20.</b> The whole Regulations.

**(a)** S.I. 2013/1431.

**(b)** S.I. 2015/1472.

**(c)** S.I. 2016/696, to which there are amendments none of which is relevant.

**(d)** S.I. 2017/692, to which there are amendments none of which is relevant.

**(e)** S.I. 2017/701, to which there are amendments none of which is relevant.

**(f)** S.I. 2019/489.

**(g)** S.I. 2019/624.

**(h)** S.I. 2019/697, as amended by S.I. 2020/1450 and 2024/80.

**(i)** S.I. 2020/1319, as amended by S.I. 2024/80.

**(j)** S.I. 2020/1450.

**(k)** S.I. 2021/573.

**(l)** S.I. 2021/787.

**(m)** S.I. 2021/872.

**(n)** S.I. 2021/1221.

<i>(1) Enactment</i>	<i>(2) Extent of revocation</i>
UK Statistics (Amendment etc.) (EU Exit) Regulations 2021 <b>(a)</b>	<b>21.</b> Regulations 3, 5 and 6.
Public Procurement (International Trade Agreements) (Amendment) Regulations 2022 <b>(b)</b>	<b>22.</b> Regulations 2 to 4.
Parliamentary Works Sponsor Body (Abolition) Regulations 2022 <b>(c)</b>	<b>23.</b> Regulation 10(3).
Public Contracts (Amendment) Regulations 2022 <b>(d)</b>	<b>24.</b> The whole Regulations.
Public Procurement (International Trade Agreements) (Amendment) Regulations 2023 <b>(e)</b>	<b>25.</b> The whole Regulations.
Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 <b>(f)</b>	<b>26.</b> Regulation 78.
Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2023 <b>(g)</b>	<b>27.</b> The whole Regulations.
Public Procurement (Agreement on Government Procurement) (Amendment) Regulations 2023 <b>(h)</b>	<b>28.</b> The whole Regulations.

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- (a)** S.I. 2021/1300.  
**(b)** S.I. 2022/766.  
**(c)** S.I. 2022/1360.  
**(d)** S.I. 2022/1390.  
**(e)** S.I. 2023/484.  
**(f)** S.I. 2023/1071.  
**(g)** S.I. 2023/1117.  
**(h)** S.I. 2023/1169.



## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make substantive amendments to the Procurement Act 2023 (c. 54) (“PA 2023”) and the Procurement Regulations 2024 (S.I. 2024/692) (“PR 2024”), as well as consequential amendments arising from the coming into force of the PA 2023.

Chapter 1 of Part 2 contains amendments to the PA 2023. Regulation 3(2) makes updates to the threshold amounts set out in Schedule 1 to that Act. Those thresholds determine the value above which contracts of different types fall to be regulated by the substantive regime. The threshold amounts amended here are set under the World Trade Organisation Agreement on Government Procurement. The PA 2023 was enacted with the threshold amounts applicable at the time; these were updated in January 2024 and regulation 3(2) ensures that the threshold amounts will be appropriately updated ahead of the PA 2023 coming into force.

Regulation 3(3) amends Schedule 9 to the PA 2023 in order to reflect additions and amendments to the UK’s international obligations in respect of procurement.

Chapter 2 of Part 2 contains consequential amendments to primary legislation rendered necessary by the coming into force of the PA 2023.

Chapter 1 of Part 3 contains amendments to the PR 2024. These amendments are being made prior to the coming into force of those Regulations and address a small number of matters for which provision was not made in those Regulations.

Chapter 2 of Part 3 and Part 4 contain consequential amendments to secondary legislation and assimilated law respectively, rendered necessary by the coming into force of the PA 2023.

Part 5 and the Schedule contain repeals and revocations rendered necessary by the coming into force of the PA 2023.

Part 6 contains transitional provisions which set out the circumstances in which the amendments made to the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (via regulation 17) and the Health Care Services (Provider Selection Regime) Regulations 2023 (via regulation 28) will not have affect.

An impact assessment in relation to the PA 2023 and associated reforms was published in May 2022 and can be found at <https://bills.parliament.uk/publications/46429/documents/1767> or may be obtained by writing to the Cabinet Office, 70 Whitehall, London, SW1A 2AS, United Kingdom.

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# 10 THE PROCUREMENT ACT 2023 (MISCELLANEOUS AMENDMENTS)(WALES) REGULATIONS 2025

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*Draft Regulations laid before Senedd Cymru under section 122(10)(e), (i), (l), (q), (r), (s) and (t) of the Procurement Act 2023, for approval by resolution of Senedd Cymru.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2025 No. (W.)**

**PUBLIC PROCUREMENT,  
WALES**

**The Procurement (Miscellaneous  
Amendments) (Wales) Regulations  
2025**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make substantive amendments to the Procurement Act 2023 (“the 2023 Act”) and to the Procurement (Wales) Regulations 2024 (“the 2024 Regulations”), as well as other amendments arising from the coming into force of the 2023 Act.

The purpose of the 2023 Act is to reform the United Kingdom’s public procurement regime following its exit from the European Union (EU), creating a simpler and more transparent system not based on transposed EU Directives. The 2024 Regulations supplement the 2023 Act.

Part 2 of these Regulations amends Schedules 1 and 9 to the 2023 Act. These amendments will apply to contracting authorities that are devolved Welsh authorities or are treated as such. Regulation 3(2) and (3) amends Schedule 1, which contains threshold amounts. Those thresholds determine the value above which contracts of different types fall to be regulated by the substantive regime. The thresholds are set under the World Trade Organisation’s Agreement on Government Procurement. The 2023 Act was enacted with the threshold values applicable at the time; these were updated in January 2024 and regulation 3(2) ensures that the threshold figures will be appropriately updated ahead of the 2023 Act fully coming into force. Regulation 3(4) makes amendments to Schedule 9 to reflect additions and amendments to the UK’s international obligations in respect of procurement.

Part 3 of these Regulations makes various amendments to the 2024 Regulations. These amendments are being made prior to the coming into force of the 2024 Regulations and address a small number of matters which were overlooked in those Regulations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. It was determined that the Regulatory Impact Assessment which was carried out for the 2024 Regulations is also applicable to these Regulations and as such no further assessment is required.

*Draft Regulations laid before Senedd Cymru under section 122(10)(e), (i), (l), (q), (r), (s) and (t) of the Procurement Act 2023, for approval by resolution of Senedd Cymru.*

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DRAFT WELSH STATUTORY  
INSTRUMENTS

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**2025 No. (W.)**

**PUBLIC PROCUREMENT,  
WALES**

**The Procurement (Miscellaneous  
Amendments) (Wales) Regulations  
2025**

*Made*

\*\*\*

*Coming into force*

*24 February 2025*

The Welsh Ministers<sup>(1)</sup> make the following Regulations in exercise of the powers conferred on them by sections 69(4), 89(3), 95(1), (2) and (3), 122(3) and 125 of, and paragraphs 2, 3(a) and 5(1) of Schedule 1, paragraph 6(4) of Schedule 2, and paragraphs 1(3), 2(3) and 3(5) of Schedule 4, to the Procurement Act 2023<sup>(2)</sup>.

In accordance with sections 122(10)(e), (i), (l), (q), (r), (s) and (t) of that Act, a draft of these Regulations has been laid before, and approved by a resolution of, Senedd Cymru<sup>(3)</sup>.

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(1) The Welsh Ministers are the “appropriate authority” as defined in section 123(1) of the Procurement Act 2023, subject to the restrictions set out in section 111(1) of that Act.

(2) 2023 c. 54.

(3) See also section 40 of the Legislation (Wales) Act 2019 (anaw 4) for provision about the procedure that applies to this instrument.

# PART 1

## Introductory

### **Title and coming into force**

**1.**—(1) The title of these Regulations is the Procurement (Miscellaneous Amendments) (Wales) Regulations 2025.

(2) These Regulations come into force on 24 February 2025.

### **Interpretation**

**2.** In these Regulations—

“the 2023 Act” (“*Deddf 2023*”) means the Procurement Act 2023<sup>(1)</sup>;

“the 2024 Regulations” (“*Rheoliadau 2024*”) means the Procurement (Wales) Regulations 2024<sup>(2)</sup>.

# PART 2

## Amendments to the 2023 Act

### **Amendments to Schedules 1 and 9 to the 2023 Act**

**3.**—(1) The 2023 Act is amended as follows.

(2) In Schedule 1 (threshold amounts), in paragraph 1(1)—

(a) in the words before the table—

(i) after “the table below is” insert “the threshold set out in the corresponding row of the third column.”;

(ii) omit paragraphs (a) and (b) and the “and” between those paragraphs;

(b) in the table—

(i) omit the third column (so that the fourth column becomes the third column);

(ii) in the heading of the new third column, omit “: any other contract”.

(3) Omit paragraph 1(1A) of Schedule 1.

(4) In Schedule 9 (treaty state suppliers)—

(a) omit paragraph A1 and the italic headings before and after it;

(b) in paragraph 9—

(i) omit paragraph (a) and the “In—” before it;

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(1) 2023 c. 54.

(2) S.I. 2024/782 (W. 121).



- (ii) at the beginning of paragraph (b), omit “(b) any other case, the”;
- (c) in paragraph 10—
  - (i) omit paragraph (a) and the “In—” before it;
  - (ii) at the beginning of paragraph (b), omit “(b) any other case, the”;
- (d) in paragraph 11—
  - (i) omit paragraph (a) and the “In—” before it;
  - (ii) at the beginning of paragraph (b), omit “(b) any other case, the”;
- (e) in paragraph 13—
  - (i) omit paragraph (a) and the “In—” before it;
  - (ii) at the beginning of paragraph (b), omit “(b) any other case, the”;
- (f) in paragraph 17—
  - (i) omit paragraph (a) and the “In—” before it;
  - (ii) at the beginning of paragraph (b), omit “(b) any other case, the”;
- (g) in paragraph 20—
  - (i) omit paragraph (a) and the “In—” before it;
  - (ii) at the beginning of paragraph (b), omit “(b) any other case, the”.

## PART 3

### Amendments to the 2024 Regulations

#### **Amendment to Part 1 of the 2024 Regulations**

4.—(1) Part 1 of the 2024 Regulations is amended as follows.

(2) In regulation 3 (interpretation), at the appropriate place insert—

““utilities contract” (“*contract cyfleustodau*”) has the meaning given by section 6 of the 2023 Act;”.

#### **Amendments to Part 2 of the 2024 Regulations**

5.—(1) Part 2 of the 2024 Regulations is amended as follows.

(2) In regulation 4 (interpretation of Part 2)—

- (a) in the English text, for “(“*Deddf 2006*”)” substitute “(“*DC 2006*”)”,
- (b) omit the definition of “utilities contract”,

(c) in the English text in the definition of “utility”, omit—

““Welsh digital platform” (*“platform digidol Cymreig”*) means the online system provided by the Welsh Government for use by contracting authorities to whom regulation 2 applies;”, and

(d) in the appropriate place in the English text insert—

““Welsh digital platform” (*“platform digidol Cymreig”*) means the online system provided by the Welsh Government for use by contracting authorities to whom regulation 2 applies;”.

(3) In regulation 12 (supplier’s connected person information)—

(a) at the end of paragraph (6)(f), omit “and”, and

(b) in paragraph (6)(g) omit the full stop, and then after paragraph (6)(g) insert—

“, and

(h) where the connected person is a company registered under the CA 2006, the person’s registration number given under that Act.”

(4) In regulation 13 (supplier’s exclusion grounds information)—

(a) in paragraph (1), for “(13)” substitute “(13A)”,

(b) at the end of paragraph (8)(a)(i), insert “or”,

(c) at the end of paragraph (13)(d)(ii), insert “and”,

(d) omit paragraph (13)(e) and the “and” after it, and

(e) after paragraph (13), insert—

“(13A) If the supplier or one or more connected persons has been the subject of an event mentioned in paragraphs (2) to (12), any evidence that the supplier or connected person—

(a) took the event seriously, for example by paying any fine or compensation,

(b) took steps to prevent the event occurring again, for example by changing staff or management, or putting procedures or training in place, and

(c) committed to taking further preventative steps, where appropriate.”

(5) In regulation 19(2) (tender notices: open procedure), omit sub-paragraph (v).

(6) In regulation 20(2) (tender notices: competitive flexible procedure)—

- (a) omit the “and” after sub-paragraph (g), and
- (b) in sub-paragraph (h) omit the full stop, and then after sub-paragraph (h) insert—

“, and

- (i) whether an associated tender document is being, or may be, provided in accordance with the tender notice after the date when that notice is published and, if so, a link to the web page where it will be provided, or an explanation of how the document will be provided.”

(7) In regulation 27 (transparency notices)—

- (a) after paragraph (2)(d), insert—

“(da) in the case of a procurement where the direct award justification at paragraph 8 of Schedule 5 to the 2023 Act applies, the unique identifiers of the earlier competitive tendering procedure (that is the procurement identifier) and the earlier contract referred to in paragraph 8(a) of Schedule 5,”;

- (b) after paragraph (2)(k)(i), omit “and”;

- (c) after paragraph (2)(k)(ii), insert—

“and

- (iii) the direct award justification in Schedule 5 to the 2023 Act which applies and an explanation of why the contracting authority considers that it applies,”;

- (d) after paragraph (2)(p), insert—

“(pa) a description of any option which will be included in the contract—

- (i) to supply additional goods, services or works, or
- (ii) to extend or renew the term of the contract,”.

(8) In regulation 28 (contract award notices except those published by private utilities)—

- (a) in paragraph (2)(e)(vi), omit “(“associated person” (*“person â chyswllt”*) has the meaning given by section 26(4) of the 2023 Act)”, and

- (b) after paragraph (8), insert—

“(9) In this regulation “associated person” has the meaning given by section 26(4) of the 2023 Act.”

(9) In regulation 30 (contract award notices published by private utilities: direct awards)—

- (a) after paragraph (2)(g)(i), omit “and”, and
- (b) after paragraph (2)(g)(ii), insert—

“and

- (iii) the direct award justification in Schedule 5 to the 2023 Act which applies and an explanation of why the contracting authority considers that it applies,”.

(10) In regulation 36 (contract details notices: direct award), for paragraph (2)(e), substitute—

“(e) if sub-paragraph (d) applies—

- (i) the direct award justification in Schedule 5 to the 2023 Act which applies and an explanation of why the contracting authority considers that it applies,
- (ii) the offence or other event mentioned in Schedule 6 to the 2023 Act by virtue of which the supplier is an excluded supplier, and
- (iii) which ground in section 41(5) of the 2023 Act applies and an explanation of why the contracting authority considers that it applies,”

(11) In regulation 39(2) (payments compliance notices)—

- (a) after sub-paragraph (c), insert—

“(ca) the proportion of invoices paid in accordance with the term in section 68(2) of the 2023 Act during the reporting period, expressed as a percentage of the total number of invoices that were, or should have been, paid in accordance with that term within the reporting period,”;

- (b) in paragraph (5), for “is to” substitute “includes”.

### **Amendments to Part 3 of the 2024 Regulations**

6. After regulation 45 (meaning of “works” in paragraph 5(1) of Schedule 1 to the 2023 Act), insert—

**“Exempt contracts: affiliated persons’ calculations**

**45A.—(1)** For the purposes of the turnover test in paragraph 6(3) of Schedule 2 to the 2023 Act, an affiliated person’s—

- (a) affiliated turnover amount<sup>(1)</sup> is to be calculated using their entire affiliated turnover amount generated over the relevant period, and
- (b) total turnover amount is to be calculated using their entire total turnover amount generated over the relevant period.

(2) Where an affiliated person’s affiliated turnover amount or total turnover amount is not available for the entirety of the relevant period because the affiliated person<sup>(2)</sup> was created or commenced their activities following the beginning of the relevant period, the affiliated turnover amount and total turnover amount is to be calculated in accordance with paragraph (3).

(3) An affiliated person’s affiliated turnover amount and total turnover amount is to be calculated—

- (a) where there has been no turnover during the relevant period, using credible business projections for a three-year period, starting from the date of contract award;
- (b) in any other case, using—
  - (i) any affiliated turnover or total turnover, as the case may be, generated during the relevant period, and
  - (ii) credible business projections, starting from the date of contract award, for such part of the three-year period as are not covered by paragraph (i).

(4) In calculating the affiliated turnover amount and total turnover amount in relation to a person (“A”), the equivalent turnover of a person who is an affiliated person in relation to A, but is not the utility<sup>(3)</sup>, is to be treated as part of A’s turnover.

(5) In this regulation—

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(1) See paragraph 6(3) of Schedule 2 to the 2023 Act for the definition of “affiliated turnover amount”.

(2) See paragraph 6(2) of Schedule 2 to the 2023 Act for the definition of “affiliated person”.

(3) See section 35(4) of the 2023 Act for the definition of “utility”.

“equivalent turnover” (“*trosiant cyfwerth*”) means—

- (a) where the turnover test is being applied in respect of a utilities contract for the supply of goods, in respect of—
  - (i) the affiliated turnover amount, turnover deriving from the supply of goods to the utility or other persons affiliated with the utility;
  - (ii) the total turnover amount, the total turnover deriving from the supply of goods,

where, for the purposes of paragraph (i), those goods are the same or similar to the goods A supplies to the utility or other persons affiliated with the utility and are supplied over the relevant period or, where A’s turnover has been calculated in accordance with paragraph (3), a corresponding three-year period;

- (b) where the turnover test is being applied in respect of a utilities contract for the supply of services, in respect of—
  - (i) the affiliated turnover amount, turnover deriving from the supply of services to the utility or other persons affiliated with the utility;
  - (ii) the total turnover amount, the total turnover deriving from the supply of services,

where, for the purposes of paragraph (i), those services are the same or similar to the services A supplies to the utility or other persons affiliated with the utility and are supplied over the relevant period or, where A’s turnover has been calculated in accordance with paragraph (3), a corresponding three-year period;

- (c) where the turnover test is being applied in respect of a utilities contract for the supply of works, in respect of—
  - (i) the affiliated turnover amount, turnover deriving from the supply of works to the utility or other persons affiliated with the utility;
  - (ii) the total turnover amount, the total turnover deriving from the supply of works,

where, for the purposes of paragraph (i), those works are the same or similar to the works A supplies to the utility or other persons affiliated with the utility and are supplied over the relevant period or, where

A's turnover has been calculated in accordance with paragraph (3), a corresponding three-year period;

"relevant period" (*"cyfnod perthnasol"*) means either—

- (a) the period of three years ending with the date of contract award, or
- (b) where information relating to turnover for the period in sub-paragraph (a) is not available, a three-year period corresponding with the accounting periods of the affiliated person, ending not earlier than one year before the date of contract award.

### **Gas or heat operator calculations**

**45B.**—(1) For the purposes of paragraph 1(2)(c) of Schedule 4 to the 2023 Act—

- (a) the amount of gas or heat supplied to the network is to be calculated using the total turnover generated by the supply of gas or heat by the operator to the network ("network turnover") during the relevant period, and
- (b) the operator's turnover amount is to be calculated using the operator's total turnover during the relevant period.

(2) Where an operator's network turnover or total turnover is not available for the entirety of the relevant period because the operator was created or commenced their activities after the beginning of the relevant period, turnover is to be calculated in accordance with paragraph (3).

(3) An operator's network turnover and total turnover is to be calculated—

- (a) where there has been no turnover during the relevant period, using credible business projections for a three-year period starting from the date of contract award;
- (b) in any other case, using—
  - (i) any network turnover or total turnover, as the case may be, generated during the relevant period, and
  - (ii) credible business projections, starting from the date of contract award, for such part of the three-year period as are not covered by paragraph (i).

(4) In this regulation—

“quarter” (“*chwarter*”) means a period of three months beginning with 1 January, 1 April, 1 July or 1 October in any given year; “relevant period” (“*cyfnod perthnasol*”) means either—

- (a) the period of three years ending with the date of contract award, or
- (b) where information relating to gas and heat supplied to the network or turnover for the period in subparagraph (a) is not available, a three-year period corresponding with the accounting periods of the operator, ending with the last quarter before the date of contract award for which the operator has such information available.

### **Electricity operator calculations**

**45C.—(1)** For the purposes of paragraph 2(2)(d) of Schedule 4 to the 2023 Act—

- (a) the amount of electricity supplied to the network is to be calculated using the total amount of electricity supplied by the operator to the network during the relevant period, and
- (b) the amount of energy produced by the operator is to be calculated using the total amount of energy produced by the operator during the relevant period.

(2) Where the amount of electricity supplied by the operator to the network, or the amount of energy produced by the operator, is not available for the entirety of the relevant period because the operator was created or commenced their activities after the beginning of the relevant period, the amount of electricity supplied by the operator to the network and the amount of energy produced by the operator is to be calculated in accordance with paragraph (3).

(3) The amount of electricity supplied by the operator to the network and the amount of energy produced by the operator is to be calculated—

- (a) where there has been no electricity supplied or energy produced during the relevant period, using credible business projections for a three-year period starting from the date of contract award;
- (b) in any other case, using—
  - (i) any electricity supplied to the network or energy produced, as



the case may be, during the relevant period, and

- (ii) credible business projections, starting from the date of contract award, for such part of the three-year period as are not covered by paragraph (i).

(4) In this regulation—

“quarter” (“*chwarter*”) means a period of three months beginning with 1 January, 1 April, 1 July or 1 October in any given year; “relevant period” (“*cyfnod perthnasol*”) means either—

- (a) the period of three years ending with the date of contract award, or
- (b) where information relating to electricity supplied or energy produced for the period in sub-paragraph (a) is not available, a three-year period corresponding with the accounting periods of the operator, ending with the last quarter before the date of contract award for which the operator has such information available.

#### **Water operator calculations**

**45D.—(1)** For the purposes of paragraph 3(4)(d) of Schedule 4 to the 2023 Act—

- (a) the amount of drinking water supplied to the network is to be calculated using the total amount of drinking water supplied by the operator to the network during the relevant period, and
- (b) the amount of drinking water produced by the operator is to be calculated using the total amount of drinking water produced by the operator during the relevant period.

(2) Where the amount of drinking water supplied by the operator to the network or the amount of drinking water produced by the operator is not available for the entirety of the relevant period because the operator was created or commenced their activities after the beginning of the relevant period, the amount of drinking water supplied and the amount of drinking water produced is to be calculated in accordance with paragraph (3).

(3) The amount of drinking water supplied by the operator to the network and the amount of drinking water produced by the operator is to be calculated—

- (a) where there has been no drinking water supplied or produced during the relevant period, using credible business projections for a three-year period starting from the date of contract award;
- (b) in any other case, using—
  - (i) any drinking water supplied to the network or drinking water produced, as the case may be, during the relevant period, and
  - (ii) credible business projections, starting from the date of contract award, for such part of the three-year period as are not covered by paragraph (i).

(4) In this regulation—

“quarter” (“*chwarter*”) means a period of three months beginning with 1 January, 1 April, 1 July or 1 October in any given year; “relevant period” (“*cyfnod perthnasol*”) means either—

- (a) the period of three years ending with the date of contract award, or
- (b) where information relating to drinking water supplied or produced for the period in sub-paragraph (a) is not available, a three-year period corresponding with the accounting periods of the operator, ending with the last quarter before the date of contract award for which the operator has such information available.”

#### **Amendments to Part 4 of the 2024 Regulations**

7.—(1) Part 4 of the 2024 Regulations is amended as follows.

(2) In regulation 46(3)—

- (a) in the English text, in sub-paragraph (b) omit “(“*gweithiau*”)", and
- (b) in the English text, in sub-paragraph (c) omit “(“*contract gweithiau*”)"

(3) In regulation 49, in the English text, omit “(“*hysbysiad cyhoeddus*”)"

#### **Amendments to Schedule 2 to the 2024 Regulations**

8.—(1) The Table in Schedule 2 to the 2024 Regulations (central government authorities) is amended as follows.

(2) In the left hand column (lead authority (1))—

- (a) for “The National Assembly for Wales Commission” substitute “Senedd Commission”,
  - (b) for “Care Council for Wales” substitute “Social Care Wales”, and
  - (c) for “Sport Wales” substitute “The Sports Council for Wales, known as “Sport Wales””.
- (3) In the right hand column (related authority (2))—
- (a) for “Higher Education Funding Council for Wales” substitute “The Commission for Tertiary Education and Research”,
  - (b) for “Welsh National Health Service Trusts and Local Health Boards” and “Welsh NHS Bodies”, substitute—

*“National Health Service*

A Local Health Board established under section 11 of the National Health Service (Wales) Act 2006

An NHS Trust established under section 18 of that Act

A Special Health Authority established under section 22 of that Act.”

*Name*

The Cabinet Secretary for Finance and Welsh Language, one of the Welsh Ministers

Date

## 11 UK GOVERNMENT GUIDANCE

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Please note that only some of the guidance below has been published up to 2<sup>nd</sup> September 2024 and further guidance remains to be published.

Please visit <https://www.gov.uk/government/collections/procurement-act-2023-guidance-documents> for up-to-date guidance. .

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## 11.1

### **Plan**

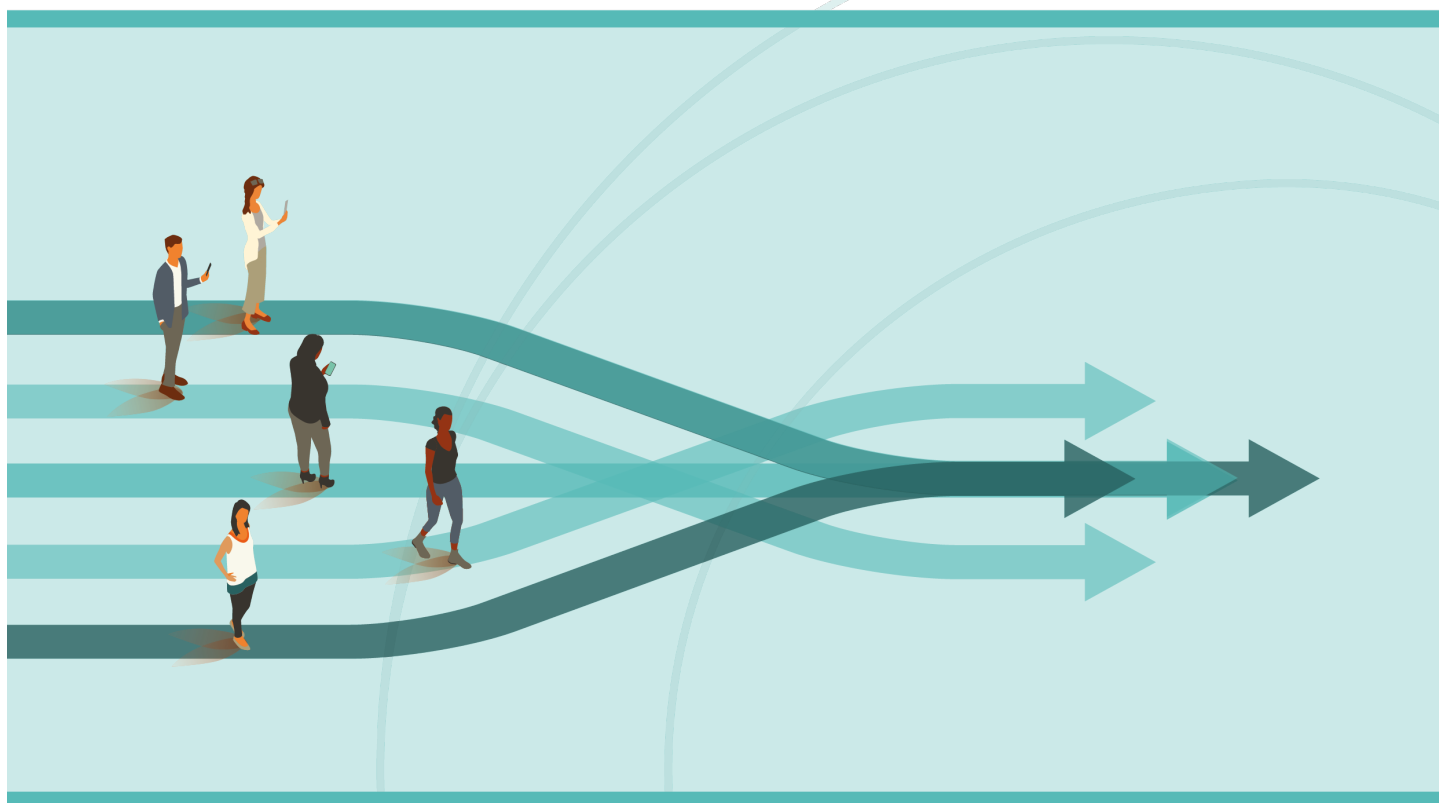
- 11.1.1 Transitionals (Published)
- 11.1.2 Contracting Authority Definition (Published)
- 11.1.3 Covered Procurement (Published)
- 11.1.4 Exempted Contracts (Published)
- 11.1.5 Devolved Contracting Authorities (published)
- 11.1.6 Covered Procurement Objectives (published)
- 11.1.7 NPPS (Published)
- 11.1.8 Utilities Contracts (Published)
- 11.1.9 Defence and Security Contracts (Published)
- 11.1.10 Concessions Contracts (Published)
- 11.1.11 Light Touch Contracts (Published)
- 11.1.12 Reserved Contracts for Supported Employment Providers (Published)
- 11.1.13 Intra-UK Procurement (Published)
- 11.1.14 Pipeline Notices (Published)



Government  
Commercial  
Function

Procurement Act 2023

# Guidance: Transitional and Saving Arrangements



November 2024

## **Guidance on transitional and saving arrangements**

### **What are transitional and saving arrangements?**

1. Transitional and saving arrangements are set out in the regulations which determine how the changeover from the previous legislation to the Procurement Act 2023 (Act) is managed and effected by contracting authorities. They determine how procurements which straddle the implementation date of the Act are to be carried out and which legislation applies. The intent is that the implementation of the Act will cause as little disruption as possible for procurements which are already underway, and contracts which have already been awarded, when the Act comes into force.

### **What is the legal framework that governs the transitional and saving arrangements?**

2. The transitional and saving arrangements will be set out in regulations made under the powers set out in sections 122(3)(d) and 127(2) of the Act.
3. These regulations, the Procurement Act (Commencement No. 3 and Transitional and Saving) Regulations 2024, and the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) (Amendment) Regulations 2024 set out the rules for which legislation applies to ongoing procurements and contracts awarded under the previous legislation, which determine how those procurements and contracts are to be managed.

### **Key points and policy intent**

4. The fundamental principle is that procurements that commence after the entry into force of the Act must be conducted by reference to the Act only, whilst those that were commenced under the previous legislation (the Public Contracts Regulations 2015 (PCR), the Utilities Contracts Regulations 2016 (UCR), the Concession Regulations 2016 (CCR) and the Defence and Security Public Contracts Regulations 2011 (DSPCR)) (see paragraphs 8 and 9 below) must continue to be procured and managed under that legislation.
5. Any contracts awarded under the previous legislation will continue to be managed under that legislation until such a time as the contract, or commercial tool (see paragraph 18 below), ceases to exist. This means that in respect of modifications, for example, contracting authorities can only modify contracts awarded under the previous legislation using provisions set out at regulation 72 of the PCR, regulation 88 of the UCR and regulation 43 of the CCR as appropriate. Contract management includes only using the noticing pertaining to the previous legislation. For example, after the Act comes into force and a contract awarded under the PCRs is modified in accordance with regulation 72 of the PCR, a notice in accordance with regulations 51 and 72 of the PCR must be published (on find a tender service, contracts finder or the tenders electronic daily (TED) portal as required) and not a contract change notice (under section 75 of the Act).

6. Procurements, including those that would result in a below-threshold contract, that have been commenced under the previous legislation will continue to be procured, and any resulting contracts or contracts already awarded will continue to be managed (which includes modified and terminated) under the previous legislation until:
  - a. the end of the contract (for whatever reason) that is awarded under the previous legislation (including contracts that have had valid extensions);
  - b. where no contract is awarded, the procurement process ends (i.e. where the procurement does not result in the award of a contract - for example, because the contracting authority has discontinued the procurement);
  - c. where it is a framework agreement, the end (for whatever reason) of the last contract awarded under the framework agreement during the term of the framework arrangement;
  - d. where it is a dynamic purchasing system, the end (for whatever reason) of the last contract awarded under the dynamic purchasing system during the term of the dynamic purchasing system; or
  - e. where it is a qualification system, the end (for whatever reason) of the last contract awarded under the qualification system within the term of the qualification system, or where it has an unlimited duration, the end (for whatever reason) of the last contract awarded before the termination of the qualification system.
  
7. In respect of qualification system, the organisations that set up the qualification system are encouraged to terminate it as follows (although no later than 23rd February 2029, when all qualification system must end):
  - a. where the qualification system is used for the procurement of a specific programme or project (e.g. building and operating a nuclear reactor), the qualification system should be terminated when the programme or project comes to a natural end; or
  - b. where the qualification system is currently used for general utilities procurement, the qualification system should be terminated after a fair and reasonable period.



### Competitive procurements commenced under the previous legislation

8. For the purposes of the previous legislation, a competitive procurement is 'commenced' when:
- a. before 26th May 2023 a PIN was used as a call for competition by a sub-central contracting authority; or
  - b. a contract notice<sup>1</sup> has been submitted to be published under the previous legislation; or
  - c. a below-threshold contract opportunity is published under the PCR (see regulation 110); or
  - d. a utilities notice on the existence of a qualification system that acts as a call for competition is published under the UCR (see regulations 44(4)(b), 68 and 77); or
  - e. a sub-contract notice has been submitted to be published under the DSPCR (see regulation 42(1)).

### Negotiated procedure without prior publication ('direct award') procurements commenced under the previous legislation

9. Where a contracting authority has contacted a supplier with the intention of entering into a contract with it under any of the following provisions, the procurement is deemed to have been commenced for the purposes of the transitional and saving provisions and the relevant previous legislation will continue to apply:
- a. regulation 32 of the PCR;
  - b. regulation 50 of the UCR; or
  - c. regulation 16 of the DSPCR.
10. This means if a contracting authority signalled its intent to enter into a contract with a supplier without prior publication of a contract notice, then it can continue to negotiate that contract under the previous legislation that was in place when the intention to award the contract was given. Prior publication of a voluntary transparency notice would be a clear and public signal of intent in this respect, but it is not the only means by which this intent may have been communicated. This is consistent with the position on competitive procurements.

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<sup>1</sup> 'Contract notice' in this document includes 'Contract notice' (regulation 49 PCR and 69 UCR), 'Contract notice for contracts in the field of defence and security' (regulations 17-19 DSPCR), 'Concession notice' (regulation 31 CCR), 'Design contest notice' (regulation 79 PCR).

## Pipeline notices

11. A pipeline notice sets out the forthcoming procurements of a contracting authority. While best practice (and a policy requirement for central government), there is no obligation in the previous legislation for contracting authorities to publish a pipeline notice. The Act includes an obligation (in section 93) on contracting authorities who anticipate spending more than £100 million under 'relevant contracts'<sup>2</sup> in the coming financial year to publish a pipeline notice. That notice must list all public contracts with an estimated value of more than £2 million for which the contracting authority anticipates publishing a tender notice or transparency notice in the coming 18 months starting with the first day of the financial year.
12. Where a public contract has been included on a 'non-statutory' pipeline notice before section 93 comes into force, but as at the date the Act comes into force the procurement for that public contract has not yet 'commenced' as described in this guidance, the procurement must be carried out under the Act. It should also be noted that a contracting authority's statutory obligation to publish a pipeline notice will only arise from the 1st April which follows section 93 coming into force (i.e. from 1st April 2025), and will need to include all forthcoming procurements which fall within the requirements of section 93 irrespective of whether the procurement was included in a previous non-statutory pipeline notice or not.

## Prior information notice/periodic indicative notice

13. Under the previous legislation, contracting authorities could publish their potential forthcoming procurements via the use of a prior information notice (under the PCR, DSPCR or CCR) or a periodic indicative notice (under the UCRs), collectively referred to as 'PINs'. PINs have also been used for the purposes of preliminary market engagement.
14. Unless used as a call for competition by a sub-central contracting authority prior to 26th May 2023, the publication of a PIN under the previous legislation, whether used for preliminary market engagement or not, is not one of the commencement trigger notices referred to at paragraph 8 above. This means that where a PIN has been published before the Act comes into force, but none of the other circumstances in paragraph 8 apply, the procurement must be carried out under the Act and not the previous legislation.

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<sup>2</sup> 'relevant contracts' are defined in section 93(4) as 'any contracts for the supply of goods, services or works to the contracting authority other than exempted contracts'.

15. However, where a PIN has been used for preliminary market engagement, this engagement and the PIN can be relied on as part of a procurement under the Act and a preliminary market engagement notice would not have to be published under section 17 of the Act. Under section 17 of the Act, where preliminary market engagement has been carried out a contracting authority is required to publish a preliminary market engagement notice before publishing a tender notice, or provide reasons for not doing so. The fact that the preliminary market engagement was carried out via a PIN under the previous legislation can be used as the reason to justify why a preliminary market engagement notice has not been published under section 17, even though preliminary market engagement has been carried out.
16. This would require the contracting authority to state when publishing a tender notice that a preliminary market engagement notice was not published because the preliminary market engagement was undertaken, and notice of it provided in a PIN, prior to the Act coming into force.
17. If a contracting authority wishes to shorten the tendering period (as permitted by section 54 of the Act) then a planned procurement notice will need to be published enough time in advance of the tender notice to become a qualifying planned procurement notice (see guidance on the planned procurement notice for more information), regardless of whether or not a PIN was issued under the previous legislation.

#### Commercial Tools

18. Any contracts awarded through a framework agreement, dynamic purchasing system or qualification system (referred to as 'commercial tools') under the previous legislation will continue to be managed in accordance with that legislation. For example, a call-off contract awarded under a framework agreement set up under the PCR will continue to require publication of the relevant notices for that framework under the PCR until the call-off contract is terminated (for whatever reason), even if the framework itself has ended.
19. The transitional and saving regulations set out that any dynamic purchasing system and qualification system established under the previous legislation must come to an end as set out when they were established, or by 23rd February 2029 (four years after the new regime comes into effect), whichever is earlier. Any contract awarded under such an arrangement will continue until it comes to an end and be managed by the previous legislation (even if the dynamic purchasing system or qualification system has terminated prior to that point).
20. The regulations restrict the ability to extend a dynamic purchasing system or qualification system awarded under the previous legislation (see, for example, as might arise under PCR regulation 34(28)) by providing that any dynamic purchasing system or qualification system extended after the Act comes into force can only be extended in the first twelve months after the Act comes into force and cannot be extended beyond 23rd February 2029.

21. There will be a transition period during which contracting authorities may be able to award contracts under commercial tools set up under both regimes. Therefore contracting authorities should also ensure that any decision on which commercial tool is to be used and the associated rationale is fully documented before commencing the procurement.

#### Payments compliance notice

22. The obligations in the Act in relation to the payments compliance notice only apply to contracts awarded under the Act.

23. Where the PCRs apply to a contract, contracting authorities' publishing requirements under regulation 113(7) PCR continue to apply as they do currently, except that the reporting period will transition to every six months under the transitional and saving provisions.

#### Key Performance Indicators (KPIs)

24. The obligations in the Act relating to KPIs only apply to contracts awarded under the Act. Contracting authorities are not required by the Act to set or publish KPIs for contracts that were awarded under the previous legislation, even where those contracts are above the threshold set out in section 52 of the Act.

#### Direct award for additional works and services relating to contracts awarded under the previous legislation

25. The transitional and saving regulations make provision for the use of the direct award ground set out in Schedule 5, paragraph 8 of the Act for contracts awarded under the previous legislation in very specific circumstances. Schedule 5, paragraph 8 allows for the direct award of a contract for additional works and services from a supplier with whom the contracting authority already has a contract (provided it was awarded under a competitive tendering procedure) provided that intention was set out in the tender notice or tender documentation for the original contract.

26. This ground broadly replicates a similar ground in the previous legislation (at PCR regulation 32(9-12), DSPCR regulation 16(1)(d)(ii) and 16(6), and UCR regulation 50(1)(f) and 50(4)). In order to preserve the expectation when these contracts were awarded under one of the competitive procedures in the previous legislation that such additional works and services could be procured at a later date through direct award, the transitional and saving regulations permit contracting authorities to use the ground at Schedule 5, paragraph 8 where they can demonstrate compliance with the relevant requirements of the previous legislation, including that the contracting authority has set out its intention to rely on the right to make a direct award in this way before it entered into the original contract.

## Awards under the Act

27. Once the Act comes into force, contracting authorities wishing to carry out a 'covered procurement' (see section 1 and guidance on covered procurement) or a procurement for a regulated below-threshold contract in accordance with Part 6 of the Act (see guidance on below-threshold contracts), and have not yet 'commenced' the procurement in accordance with the transitional and saving provisions must conduct the procurement in accordance with the Act.
  
28. Any contracting authority intending to carry out a procurement soon after the Act comes into force will need to consider the provisions in the Act when planning that procurement, even though the Act may not be in force during the planning process. For example, this would mean ensuring that the procurement is in compliance with all obligations contained in the Act in relation to, for example, obligations with regard to the national priorities in the NPPS, procurement objectives, conflicts of interest, record-keeping, KPIs etc., even if this requires the contracting authority to take steps prior to the Act coming into force to ensure compliance.

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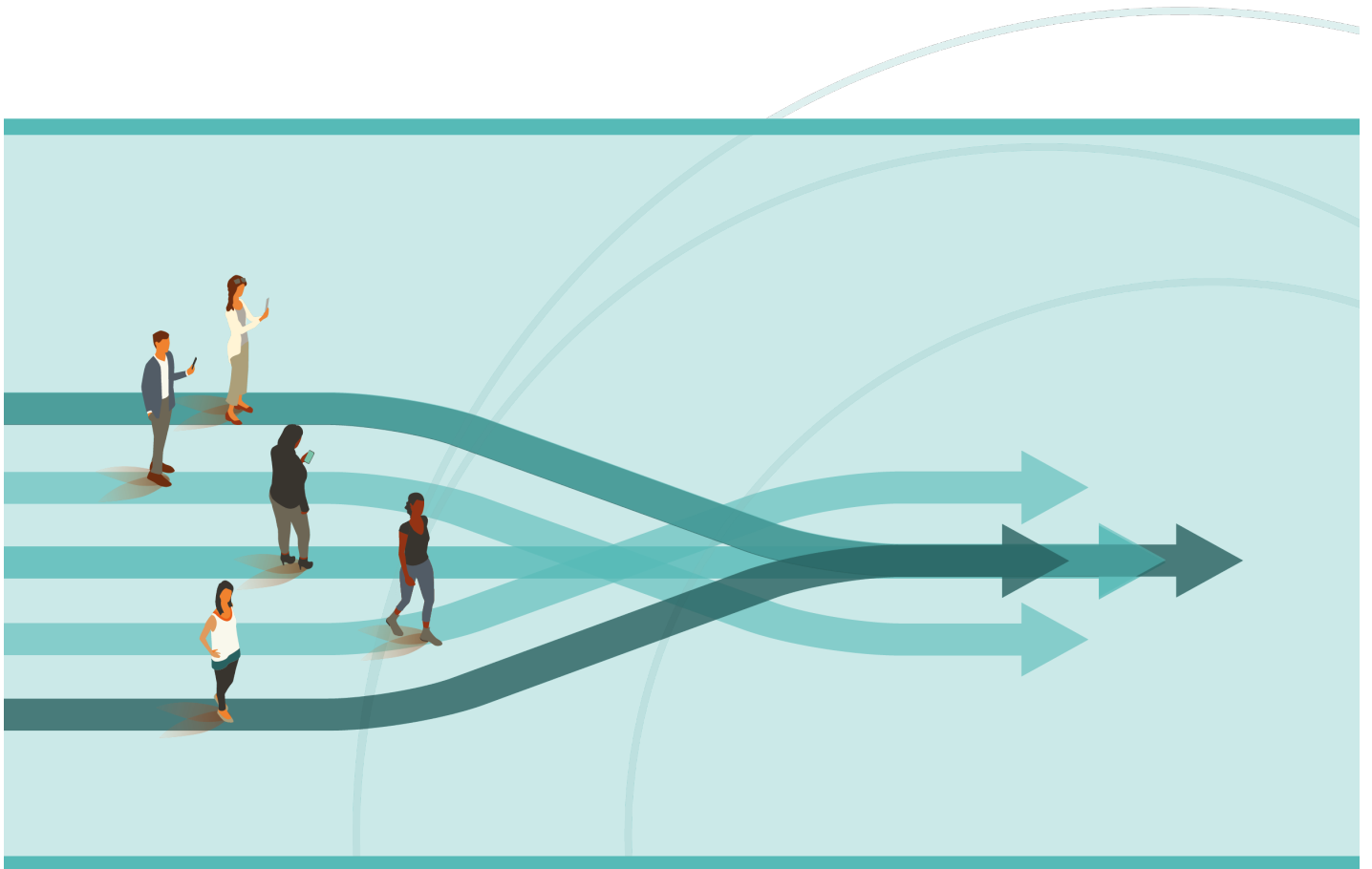
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# Guidance: Contracting Authority Definition



## **Guidance on Contracting Authority Definition**

### **What are contracting authorities?**

1. 'Contracting authority' is the term used to refer to an entity (referred to as a 'person' in the Procurement Act 2023 (Act) to ensure it applies to a variety of circumstances) that is subject to the Act. A legal definition of contracting authorities is therefore essential in order for entities to determine whether they are in scope of the rules, or not.

### **What is the legal framework that governs contracting authorities?**

2. Section 2 of the Act defines a contracting authority. It sets out the criteria to determine whether entities are covered and specifically sets out which entities are excluded ('excluded authorities').
3. Section 2 brings the definition of a 'utility' into the definition of a contracting authority, consolidating the separate definitions in the previous legislation. Note that this guidance deals only with contracting authorities that are not utilities. Utilities<sup>1</sup> are dealt with in separate guidance.
4. Section 2(5) specifically defines entities that are excluded authorities i.e.those that are not covered by the Act.
5. Section 2(10) prevents contracting authorities from avoiding the application of the Act when they award contracts to commercial entities they control in reliance on the vertical arrangement exemption in Schedule 2, paragraph 2.

### **What has changed?**

6. The features of a contracting authority are the same as those in the previous legislation, with adjustments made purely for the purposes of UK law.
7. The definition covers what was referred to in the previous legislation as the state, regional or local authorities and bodies governed by public law (and associations of such authorities or bodies) and includes central government authorities (defined in regulation 50 and Schedule 2 of the Procurement Regulations 2024). There is no intended or implied change in the scope of entities covered. Indeed, since the definition forms the basis of the UK's international obligations on public procurement, it is important that the scope of entities covered is not changed.
8. Entities that were contracting authorities under the previous legislation should still be contracting authorities (unless their status has changed, for example because their funding has changed from mainly public to mainly private sector or they are now operating commercially, whereas previously they were not). Similarly, entities that were not caught by the definition in the previous legislation should not be caught by the new definition, unless

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<sup>1</sup> Utilities are public authorities or public undertakings that carry out a utility activity and private utilities (section 35(4)).



their circumstances have changed. There is no intention to try and catch new entities, or to exclude entities that were covered previously – the aim is for a consistent effect, ensuring a smooth transition from the previous legislation to the new.

9. The features of funding, control and non-commercial nature are intended to capture the same contracting authorities as were previously covered.

### **Key points and policy intent**

#### Contracting authorities

10. Contracting authorities are comprised of public authorities and, in the case of a utilities contract, public authorities, public undertakings and private utilities. They do not include excluded authorities, which are listed. Since this guidance does not cover utilities, it only considers the definition of a public authority.
11. The definition of a contracting authority does not list individual entities or categories of entities explicitly. This would be impracticable as there are simply too many entities to list and any list would only be a snapshot in time as entities can change their structure or disappear and new entities emerge. Rather, the definition uses a number of tests to determine whether an entity is covered or not.

#### Public authorities

12. In considering whether an entity is a public authority, there are three elements to consider. Two key elements of the test are:
  - a) Public funding (section 2(2)(a)) - whether the entity's funding is derived entirely or mainly from public funds; or
  - b) Public authority oversight (section 2(2)(b)) – whether the entity is under the management or control of one or more public authorities, or of a board with more than half of its membership appointed by one or more public authorities (section 2(3)).
13. The third element of the test is that, in each case, the entity does not operate on a commercial basis (section 2(2)). To assist, section 2(4) sets out examples of factors that may be relevant when determining whether an entity operates on a commercial basis - this is not an exhaustive list and there may be other factors to be taken into account in different cases. For example, it may also be relevant to consider the intended purpose of the entity. Contracting authorities may need to consider questions such as if the entity was established with, or has a substantial purpose of providing a service in the public interest e.g. to provide social housing, even though it may have a commercial side too. If so, this could mean that the entity is not operating on a commercial basis in the true sense of the term. Conversely, entities established or operating for a commercial purpose, such as local authority trading companies established under section 95 of the Local Government Act 2003, are likely to be competing on the open market in all areas of their business and therefore are likely to fall within the meaning of operating commercially under the Act.

14. Public funding may be from a variety of sources, for example, funding may be provided:
  - a. in the case of local authorities, from the revenue support grant, council tax and non-domestic rates;
  - b. in the case of museums and galleries, from the Arts Council;
  - c. in the case of arm's length entities, from the sponsoring department; or
  - d. in the case of local authority companies, from the local authority itself.
15. Section 2(3) sets out what it means to be subject to public authority oversight, which is that the entity is subject to the management or control of:
  - a. one or more public authorities; or
  - b. a board with more than half of members appointed by one or more public authorities.
16. Entities will need to consider their own structure, oversight, funding and commercial circumstances to determine whether they meet the test for a public authority, but the examples and explanations in the Act and this guidance should assist.

#### Centralised procurement authorities

17. Centralised procurement authorities are contracting authorities that are in the business of carrying out procurement for the benefit of other contracting authorities. These are considered further in the guidance on frameworks.

#### Exempted contracts

18. The authorities that are specifically excluded from the scope of the Act are named in section 2(5).
19. The Common Council of the Corporation of London is expressly included as a public authority, although this only applies to its public functions and it is otherwise excluded at Schedule 2, paragraph 38.
20. Schedule 2, paragraph 2 exempts contracts (referred to here as 'relevant contracts') awarded by public authorities to commercial entities that they control, such as local authority trading companies. Section 2(10) serves as an anti-avoidance mechanism to ensure that where a public authority awards a relevant contract to a controlled commercial entity, the obligation to comply with the Act is flowed down from the public authority to the controlled entity when it is delivering the contract.

#### **What other guidance is of particular relevance to this topic area?**

Guidance on exempt contracts (for information relating to vertical arrangements)

Guidance on utilities

## **Related questions:**

### **Does the definition of contracting authority include housing associations?**

The Act's definition of a contracting authority ensures consistency with the UK's international obligations regarding commitments in relation to registered providers of social housing. Under the previous legislation it was considered that the Regulator of Social Housing exerts sufficient control to meet the threshold for the oversight test, and that position remains the same. In considering whether an entity operates commercially, section 2(4) of the Act provides examples of factors to be taken into account. Section 2(4) is not exhaustive and in the context of housing providers, for example, it may be relevant to consider other factors, such as the original purpose of the entity (e.g. to provide social housing) and whether that purpose is continuing, meaning that the entity is not fully commercial. The Act does not change the position of the previous legislation.

### **Will being regulated by a regulator be enough to meet the contracting authority oversight requirement?**

Not necessarily. The intention here is not that regulators will always be classed as having the required oversight. Section 2(3) defines public authority oversight as meaning subject to the management or control of a public authority (or authorities) or of a board where more than half of the members are elected by a public authority (or authorities). The role of a regulator is not to be generally regarded as managing or controlling an entity in the sense of section 2(3). However, there may be circumstances where the management and control of the regulator is such to meet the oversight requirement. The level of control and management provided by the Regulator of Social Housing over registered social housing providers is one such example (see above).

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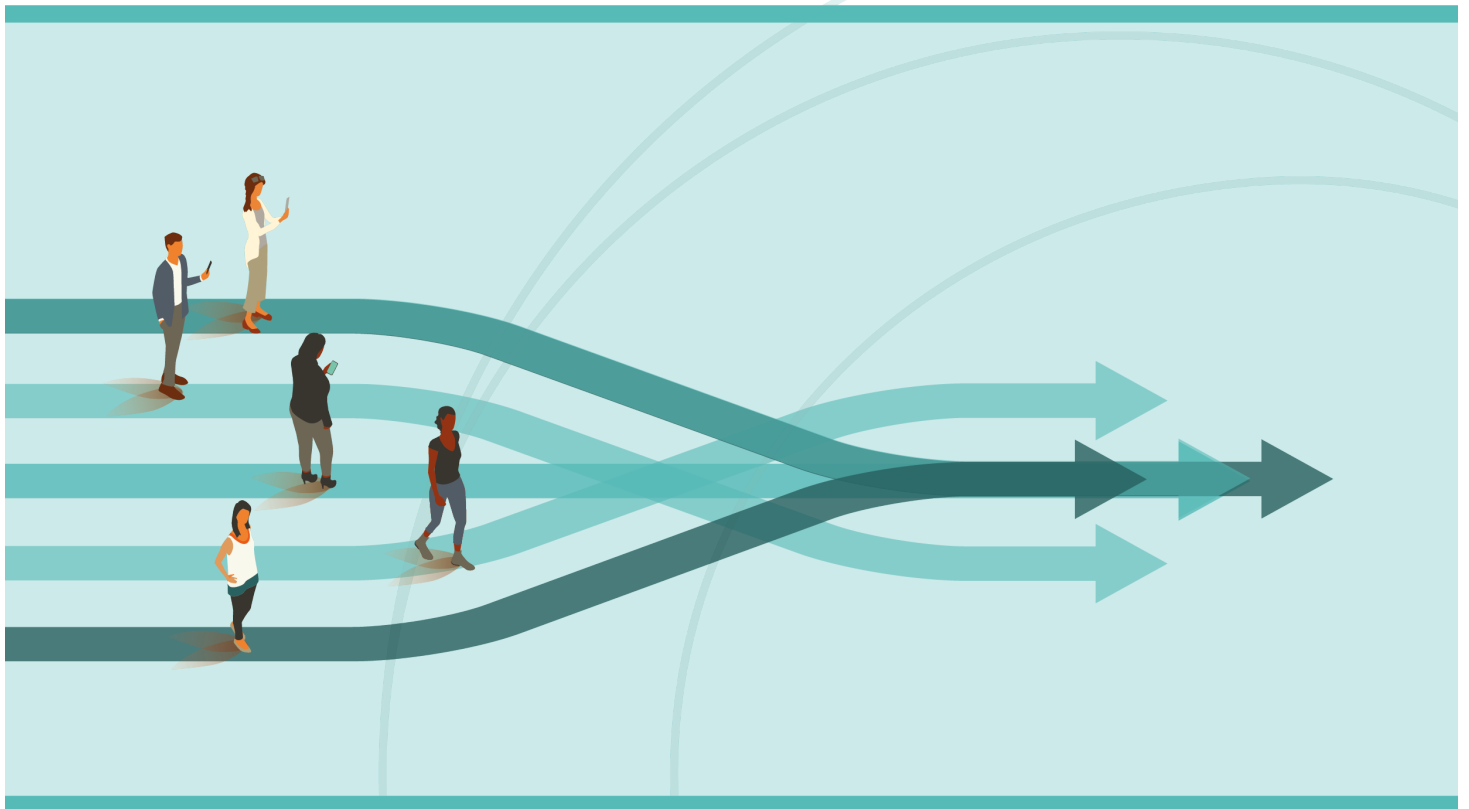
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Procurement Act 2023

# Guidance: Covered Procurement



March 2024

## **Guidance on Covered Procurement**

### **What is covered procurement?**

1. Covered procurement means the award, entry into and management of a public contract. A public contract is a contract entered into by a contracting authority with a value above the relevant threshold that is not exempted by Schedule 2 of the Procurement Act 2023 (Act).
2. Having a defined term helps contracting authorities understand exactly what provisions apply to above threshold, non-exempted procurement. The Act also includes a wider definition of 'procurement', which means the award, entry into and management of a contract (i.e. public contracts and below-threshold and exempted contracts). That allows the Act to make some separate and limited provisions in relation to matters such as:
  - a. particular requirements for certain below-threshold procurements;
  - b. non-discrimination obligations with respect to treaty state suppliers to satisfy international obligations on public procurement that apply to below-threshold or exempted procurement; and
  - c. the duty to have regard to the national procurement policy statement at section 13.

### **What is the legal framework that governs the definition of covered procurement?**

3. Section 1(1) defines 'procurement' and 'covered procurement'; concepts which are referred to extensively in other sections of the Act.
4. Section 1(2) makes clear that the term 'procurement' and by extension 'covered procurement' includes all steps taken in the contract award, and the management of a contract, up to and including expiry or termination of the contract.
5. Sections 1(3) and (4) clarify that those concepts also apply to joint procurement and procurement by a centralised procurement authority.
6. Section 11(1) sets out that a covered procurement must be carried out in accordance with the Act.
7. Section 11(2) sets out the different methods by which a contracting authority may award a public contract.

### **Key points and policy intent**

8. The term 'covered procurement' is defined in section 1 as “the entry into and management of a public contract” and 'public contract' is defined in section 3.

Contracting authorities will need to refer to that section for a complete definition but in summary it covers contracts for the supply, for pecuniary interest, of goods, services and works, frameworks and concession contracts that have a value above the relevant threshold and are not exempted. Frameworks and concession contracts are defined elsewhere in the Act.

9. The term 'pecuniary interest' has a more precise meaning than 'consideration' which could take any form. This is intended to capture contracts made with profit in mind. The Act does not intend to capture purely compensatory or supportive arrangements, such as grants or sponsorship arrangements as doing so might remove the flexibility for the Government to support schemes which are purely compensatory in nature or provide non-pecuniary support which helps foster the development of British businesses.
10. The Act allows contracting authorities to carry out procurements jointly with other contracting authorities and also to procure on behalf of themselves and other contracting authorities. It also provides for certain contracting authorities to act as 'centralised procurement authorities'.
11. The term 'centralised procurement authority' is defined as a contracting authority that is in the business of carrying out procurement for or on behalf of other contracting authorities or for the purpose of the supply of goods, services or works to other contracting authorities. It could apply to any type of contracting authority, whether that be central government, local authorities or other types of contracting authority, as long as they are in the business of undertaking procurement or purchasing for other contracting authorities. It could be a single contracting authority or a consortium of contracting authorities acting as a centralised procurement authority.
12. 'In the business of' ensures that only contracting authorities that specialise in this activity rather than on an ad hoc basis can be centralised procurement authorities. This is important because contracting authorities can only lawfully delegate responsibility (and liability) for procurement to a centralised procurement authority. If two contracting authorities do a joint procurement, they are both responsible (and liable) for any contracts they award, whereas if a contracting authority procures via a centralised procurement authority, it delegates liability for the award of contracts by the centralised procurement authority, e.g. establishment of frameworks, but not for awards it makes itself under such an arrangement, e.g. call off contracts.
13. Examples of centralised procurement authorities include the Crown Commercial Service and Yorkshire Purchasing Organisation, both of which specialise in setting up frameworks and procuring products and services for the public sector. The Crown Commercial Service is an executive agency of the Cabinet Office while the Yorkshire Purchasing Organisation is owned by thirteen local authorities and both have a large range of frameworks available to the wider public sector.
14. Section 11 obliges contracting authorities to carry out covered procurement solely in accordance with this Act. Specifically, contracting authorities must use the procedures in the Act for the award of public contracts, namely competitive tendering

(including under a dynamic market), direct award and award under frameworks. This will ensure contracting authorities properly engage with the market where appropriate and achieve value for money.

15. The Act requires contracting authorities to use a competitive tendering procedure for covered procurement - except in the limited circumstances where direct award is permitted or for awards under frameworks - which provides suppliers with the chance to bid for public contracts on a level playing field. The rules on how to write the technical specification for what the authority wishes to purchase, what information has to be published, how it will assess tenders and how it will award contracts are essential to maintaining this level playing field.
16. Section 11 will allow a supplier to hold a contracting authority conducting covered procurement to account, with remedies under Part 9 available where it can be demonstrated that a contracting authority failed to comply with one or more of the requirements in the Act (for example, direct award without proper justification, discriminatory technical specifications), and the supplier has consequently suffered, or is at risk of suffering, loss or damage.

**What other guidance is of particular relevance to this topic area?**

Guidance on exempted contracts  
Guidance on thresholds  
Guidance on contracting authorities



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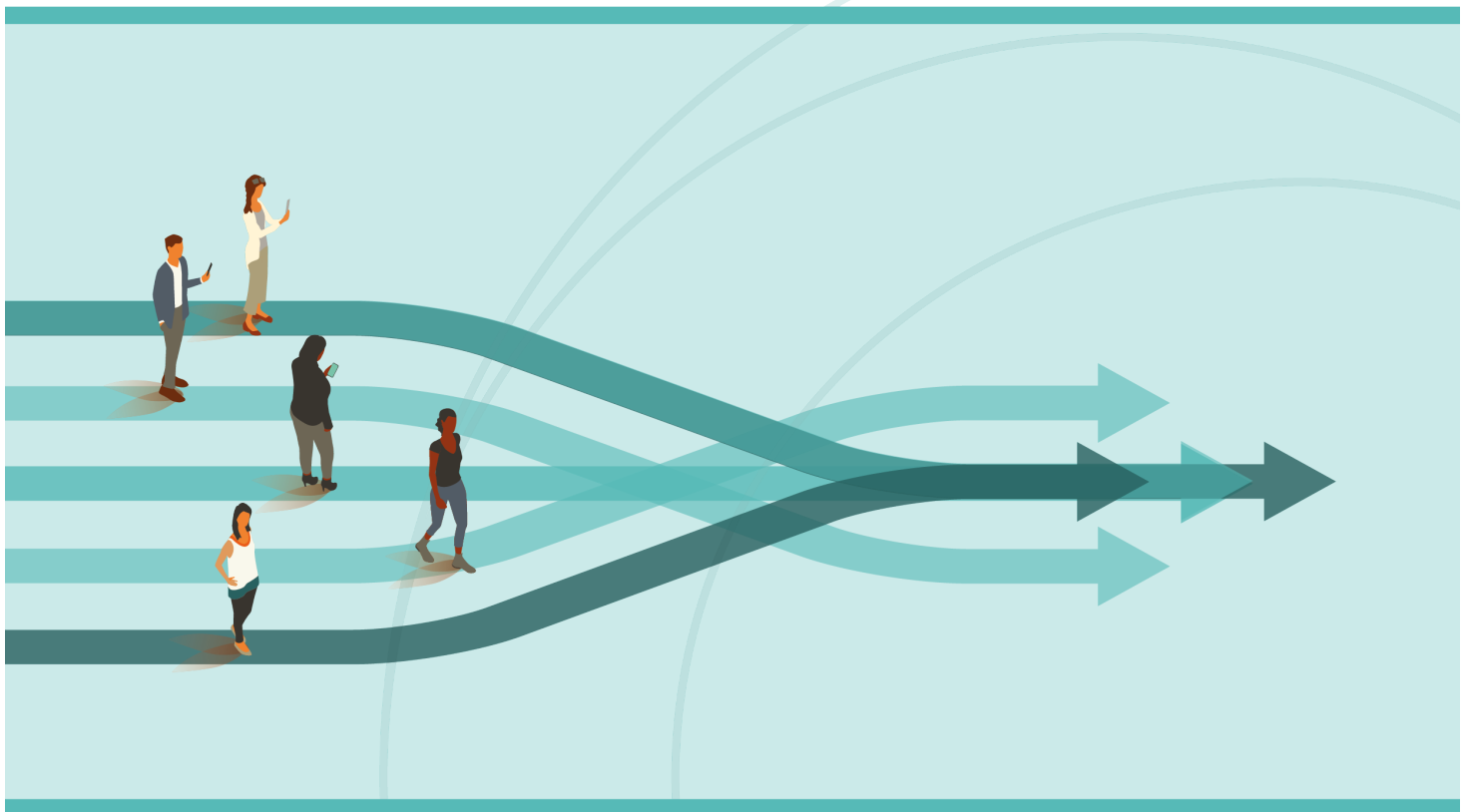




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Procurement Act 2023

# Guidance: Exempted Contracts



March 2024

## **Guidance on Exempted Contracts**

### **What is an exempted contract?**

1. An exempted contract is a type of contract listed in Schedule 2 to which the rules on covered procurement in the Procurement Act 2023 (Act) do not apply.
2. The exemptions ensure that contracting authorities have the freedom to carry out the most appropriate procurement where the rules in the Act would otherwise be inappropriate or unsuitable.

### **What is the legal framework that governs exempted contracts?**

3. Section 3 sets out the three types of contracts that are public contracts. These are contracts for the supply of: goods, services or works; frameworks; and concession contracts that have an estimated value above the applicable financial threshold and are not exempted contracts.
4. Schedule 2 sets out the types of exempted contracts. It is split into two parts. Part 1 establishes which contracts are always exempted due to the nature of the relationship between the contracting authority and the other party to the contract, and Part 2 determines which contracts are exempted because of the nature of the subject matter of the contract.
5. Exempted contracts are not required to be procured in line with the provisions of the Act that relate to covered procurement. Exempted contracts are, however, bound by the provisions of the Act that relate to 'procurement'; for example in relation to the national procurement policy statement (NPPS) at section 13 (which may or may not apply, depending on the requirements of the NPPS itself). In this guidance, references to contracts being exempted from the Act mean the general provisions of the Act i.e. those which relate to covered procurement.

### **What has changed?**

6. The Act maintains the exemptions available in previous legislation (with a minor change to remove the political campaign services exemption that was relevant when the UK was a member of the EU where, in some states, political parties are contracting authorities, which is not the case in the UK), simplifies how those exemptions are framed and ensures the terminology used is more appropriate for domestic law.

### **Key points and policy intent**

#### Part 1: Counterparty exempted contracts

7. Part 1 describes the contracts that are exempted from the Act due to the nature of the relationship between the contracting parties. These are referred to as counterparty exempted contracts and are set out below.

Vertical arrangements

8. The vertical arrangement exemption applies only to contracting authorities that are public authorities; it does not apply to public undertakings or private utilities. The exemption is available where a contracting authority (or two or more contracting authorities acting together) (referred to in this guidance as the 'contracting authority owner') contracts with a person (referred to in this guidance as the 'controlled person') over which the contracting authority owner has the form of control set out in the Act. One example of a controlled person is a local authority trading company that the contracting authority owner has set up, either on its own or with other contracting authorities, to provide services.
9. Schedule 2, paragraph 2(2) sets out the criteria that determine whether the person is 'controlled', all of which must be met in order for the exemption to apply. These are:
  - a. The contracting authority owner is a parent undertaking, as defined in paragraph 2(4) (which refers to the definition in Section 1162 Companies Act 2006). See Annex A for examples of the different types of relationships covered by this exemption;
  - b. No other person exercises (directly or indirectly) a decisive influence over the activities of the controlled person;
  - c. The controlled person carries out more than 80% of its activities for, or on behalf of, the contracting authority owner, or for or on behalf of other persons controlled by the contracting authority owner; and
  - d. Where there is joint control by more than one contracting authority owner, each contracting authority owner is represented on the controlled person's board or equivalent decision-making body, and the controlled person does not carry out activities which are contrary to the interests of one or more of the contracting authority owners.
10. A person is not 'controlled' if another person who is not a public authority holds shares in that person.
11. This exemption applies to contracts awarded by the contracting authority owner to the controlled person and to contracts awarded by the controlled person to its contracting authority owner.

#### Horizontal arrangements

12. Paragraph 3 sets out the exemption that applies only to contracts between contracting authorities (referred to in this guidance as the co-operating contracting authorities) and only where both of the co-operating contracting authorities are public authorities - it does not apply to public undertakings or private utilities.
13. A horizontal arrangement exists between co-operating contracting authorities when:
  - a. the arrangement is intended to achieve common goals in connection with the exercise of their public functions;
  - b. the arrangement is solely in the public interest;

- c. no more than 20% of the activities envisaged by the arrangement are intended to be carried out for reasons other than for the purposes of their public functions.

14. Public functions are activities contracting authorities carry out as a public authority - for example, local authorities are responsible for the disposal of household waste. Activities carried out for the purpose of a waste disposal function could be, for example, recycling or disposing of waste in landfill. Contracting authorities may also carry out activities that are not for the purpose of their public function, for example, local authorities disposing of commercial waste to create a profit.

#### Calculation of activities for vertical and horizontal arrangements

*In order to adequately address all comments received on improving the clarity of the SI provisions on calculations and provide sufficient time to draft and review the revisions, we have decided to remove the calculation provisions from the Procurement Regulations 2024. Instead we will incorporate these provisions into our next statutory instrument which we plan to lay in June or July and revise the guidance below. This guidance will be updated when these calculation provisions are finalised.*

#### Defence and security contracts

15. Paragraph 4 sets out an exemption for defence and security contracts between a contracting authority and the government of another state or territory. Further details can be found in the guidance on defence and security provisions.

#### Utilities contracts

16. Paragraphs 5 and 6 set exemptions for utilities contracts. Paragraph 5 exempts a contract between a utility and relevant joint venture to which the utility is a party. Paragraph 6 exempts a contract awarded by a utility to a person affiliated with the utility or by a relevant joint venture to a person affiliated with any member of the joint venture. Further details can be found in the guidance on utilities procurement.

#### Part 2: Subject matter exempted contracts

17. Paragraph 7(1) explains that exempted contracts are contracts of a kind listed in Part 2 and frameworks for the future award of contracts only of a kind listed in Part 2. If a framework also provides for the award of contracts of a kind not listed in Part 2, the exemption is not available. The exemptions in Part 2 are not mutually exclusive and a contract may be an exempted contract because it falls into more than one kind of exemption.

18. Where an exemption applies only to part of a contract, a reasonableness test applies (see paragraph 7(2)) to prevent the contract from being an exempted contract if the goods, services or works to be provided for the main purpose of the contract could reasonably be separated and supplied under a different contract, and that separate contract would not fall under one of the exemptions in Part 2.

19. Paragraph 7(3) provides that when considering whether it is reasonable to supply the goods, services or works under a separate contract, contracting authorities may take

into account the practical and financial consequences of awarding more than one contract. This is not a finite list and other factors may be taken into account.

#### Land and buildings etc.

20. Paragraph 8 exempts a contract for the acquisition (by whatever means) (or the acquisition of an interest in or right over) of land, buildings or any other complete work<sup>1</sup> or a contract concerning an interest or right over any such things. This would include, for example, contracts for the purchase or rental of parks or buildings.
21. The exemption allows contracting authorities to consider particular buildings or sites that meet their requirements, taking into account a range of factors - for example the need for a jobcentre, library or office accommodation to be in a particular location, of a particular design, and with particular facilities. In this example, it would be inappropriate for a contracting authority to be required to comply with the Act for the purchase of a specific, existing building or site; since only the owner of the building or site would be in position to respond to the tender.

#### Broadcasting

22. There are two exemptions for contracts relating to broadcasting. The exemption at paragraph 9 exempts contracts entered into by contracting authorities (e.g. the BBC) for broadcast content. This would allow, for example, broadcasters to stimulate creativity by setting limits, within the legal framework they operate, on who can tender in order to increase competition between internal and external suppliers.
23. The exemption at paragraph 10 exempts contracts for the right to broadcast (by any means) to the general public, material supplied by the supplier - this material would include, for example, a programme or advertisement supplied by the supplier.
24. These exemptions do not apply to the supply of technical equipment or services necessary for the production, co-production and broadcasting of such programmes, for example, camera, lighting, props.

#### Electronic communications services

25. Paragraph 11 exempts contracts whose main purpose is to facilitate the provision by a contracting authority of an 'electronic communications service'<sup>2</sup> to the public. Paragraph 12 exempts contracts whose main purpose is to permit a contracting authority to provide, maintain or use a 'public electronic communications network'<sup>3</sup>.

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<sup>1</sup> Defined by reference to Schedule 1 as a functioning structure that results from the carrying out of works.

<sup>2</sup> An 'electronic communications service' is defined in section 32 of the Communications Act as: "a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except insofar as it is a content service."

<sup>3</sup> A 'public electronic communications network' is defined in section 151 of the Communications Act as: "an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public".

26. These contracts are exempted as contracting authorities participating in these areas are operating in a competitive market that is sufficient to ensure they achieve value for money without the need for regulation.

#### Alternative dispute resolution

27. Paragraph 13 exempts contracts for the purchase of arbitration, mediation or conciliation services and other similar services. This is because such services are provided by bodies or individuals with particular expertise or reputation and are subject to agreement between the parties involved.

#### Legal services

28. Not all contracts for legal services are exempted under Paragraph 14. The types of legal services that are exempted are those relating to judicial or other dispute resolution proceedings, notary services and services that must be carried out by a particular person under an order of a court or tribunal or enactment, e.g. legal services provided by appointed guardians. It would be inappropriate to open these contracts up to competition. Other legal services (i.e. those not listed in Paragraph 14) are not exempted, but instead will be subject to the special rules for light-touch services<sup>4</sup> in the Act.

#### Financial services

29. The exemption for financial services contracts recognises that it would be inappropriate for contracting authorities to obtain loans or financial services by carrying out a procurement under the Act. The primary sources of finance for contracting authorities would be unlikely to respond to tender notices so the authority would be unlikely to acquire the best deal. Furthermore, the timescales and many of the other rules are unsuitable.
30. The exemption at paragraph 15 allows contracting authorities to obtain loans from, for example, the Public Works Loan Board, when they require funding, for example, for capital projects such as new roads or school buildings.
31. Paragraph 16 excludes contracts for an 'investment service or activity', or for an 'ancillary service' in relation to a 'financial instrument' where the service or activity is provided by an investment firm or a qualifying credit institution. These terms are defined in separate legislation (see paragraph 16(2)).
32. The exemption at paragraph 17 makes it clear that contracts for services provided by the Bank of England fall outside the scope of the Act. The Bank of England supports the economic policies of the Government. It provides the Government with near risk-free wholesale sterling facilities, acts as execution agent for foreign exchange transactions, supports sterling as a global reserve currency and the reciprocal reserve management requirements of central banks and manages foreign currency reserves

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<sup>4</sup> Light touch services are set out in Schedule 1 of The Procurement Regulations 2024 and include legal services not covered by this exemption.



as agent for HM Treasury. As such, contracts with the Bank of England are not appropriate for procuring under the Act.

#### Employment

33. Paragraphs 18 and 19 exempt employment contracts (which are defined by reference to relevant employment legislation at paragraph 18(2)) and other contracts with individuals appointed to a public office (which may include the appointment of non-executive directors of a public authority or members of a public enquiry).
34. The exemption for employment and other contracts does not cover service contracts for personnel placement, where, under the contract with the supplier, the supplier places personnel with the contracting authority.

#### Emergency services

35. Paragraph 20 exempts contracts for emergency services, but only in relation to those services listed and only where the supplier appointed is a non-profit organisation or association. Contracts, for example, for non-emergency ambulance services (e.g. ambulance services to pick up patients at home and take them to routine appointments) are not covered by this exemption.

#### Public passenger transport services

36. Paragraph 21 exempts contracts for certain public passenger transport services that are awarded under separate legislation specified at section 136(11) of the Railways Act 1993. (See paragraph 76 below which discusses Schedule 2, paragraph 37 which also exempts concession contracts for public passenger transport services.)
37. The practical effect of this exemption is that the award of contracts for rail and metro, and bus and tram concessions, are exempt from the Act whilst contracts for tram and bus that are not concessions are not exempt and are therefore procured under the Act.

#### Research and development services

38. The exemption for contracts for research and development (R&D) services at paragraph 22 applies where the services are intended to be for or result in a public benefit and provided the contract does not include goods or works.
39. The R&D services to be provided must comprise at least one of the following activities:
  - a. 'fundamental' research to acquire new scientific or technical knowledge without any particular application or use in view;
  - b. 'applied' research directed primarily at generating scientific or technical knowledge for a specific objective;
  - c. 'experimental' development which draws on existing knowledge to initiate the manufacture of new materials or products, establish new processes, systems or services; or to achieve a substantial improvement in existing materials, products, processes, systems and services;

- d. the manufacture and testing of prototypes.
40. The scope of R&D services exemption is limited so it falls short of the commercial industrialisation of the goods and/or services. The exemption does not therefore apply if the contract includes:
- a. the production of tools for manufacture; or
  - b. the development of industrial processes to manufacture goods or works arising from R&D, which would include, for example:
    - i. the making and qualification of pre-production prototypes used to develop the manufacturing processes; and
    - ii. industrial engineering, industrial design or manufacture.
41. The Act allows contracting authorities to choose how they conduct R&D and procure R&D services. The R&D services exemption gives contracting authorities the freedom to design R&D programs that could seek to develop products or technology for the benefit of the market as a whole, and for which the authority itself has no requirements. For example, government contracts for research by public research institutions, universities or the private sector.
42. In addition to the exemption for R&D contracts, contracting authorities are able to directly award a contract where the direct award justification in Schedule 5, paragraph 2 (Prototypes and development) applies. The grounds for direct award have a wider scope for R&D than this exemption; see guidance on direct award for further information.
43. Contracting authorities are also able to procure R&D under a competitive flexible procedure if, for example, the intention is to build an R&D phase into a procurement in order to be able to also purchase the resulting product.

#### International agreements and organisations

44. Paragraphs 23 and 24 exempt contracts which the contracting authority is obliged to award in accordance with the procurement rules of an international agreement<sup>5</sup> to which the UK is a party or an international organisation<sup>6</sup> of which the UK is a member.
45. The exemption at paragraph 23 applies only where an international agreement sets out a procurement procedure that the contracting authority must follow and only to contracts relating to:
- a. the stationing of troops; or
  - b. the implementation of a joint project by the signatory countries.

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<sup>5</sup> An international agreement may be, for example, a convention, treaty or other arrangement such as a memorandum of understanding between states.

<sup>6</sup> An international organisation may be, for example, a permanent international institution with separate legal personality, set up by a treaty between states or intergovernmental organisations.

46. The exemption at paragraph 24 applies only when:

- a. it is a requirement of an international organisation of which the UK is a member that the UK (and therefore contracting authorities) awards a contract in accordance with the procedure adopted by the organisation; and
- b. that procedure is inconsistent in any material way with the procedure to be followed in the Act.

47. Paragraph 24 does not apply to defence and security contracts (separate exemptions apply to defence and security contracts).

#### National security

48. The exemption at paragraph 25 applies to contracts that a contracting authority considers, in the interests of national security, should not be subject to all or part of the Act.

49. National security is not defined in the Act to ensure that it is sufficiently flexible to protect the UK's national security interests. Neither does this guidance define national security. However, contracting authorities should recognise the concept of national security has evolved beyond sovereignty, national defence, intelligence and counterintelligence. It may include dimensions such as countering terrorism and organised crime, cyber security, maintenance of public order, economic security, foreign relations, and environmental security.

50. A decision to apply the exemption can only be made in the interests of national security. Other interests are irrelevant. For example, a contracting authority cannot use the exemption to secure economic benefits for itself. That does not mean national security does not have an important economic dimension, as it can be understood as the protection of infrastructure and activities that are critical for the functioning or stability of the economy or financial system (including payment systems) or to the safety and soundness of financial institutions. So, the national security exemption may be necessary to protect such economic infrastructure and activities but not to secure an economic advantage for the authority.

51. For illustration only, the scenarios where the national security exemption could be used for critical economic and financial infrastructure, provided they are properly justified by the contracting authority, include but are not limited to:

- a. where the performance of the contract requires access to highly sensitive sites, e.g. access to sites used for confidential activities relating to Bank of England banknotes;
- b. where the information required to be able to bid for and perform the contract requirement is highly classified, e.g. information related to sensitive aspects of banknote design and security features;
- c. where confidentiality of the contract or identity of the provider is critical for the functioning or stability of the national economy or financial system (including payment systems) or to the safety and soundness of financial institutions, e.g.:

- i. opening of accounts for, and/or maintaining of banking services by, the Bank of England; and
- ii. legal or professional advice or appointments relating to market interventions, pre-resolution work, potential failure of a financial institution(s) or gilt operations.

52. The national security exemption is available to all contracting authorities. Contracting authorities know their own business best, including how national security risks are identified and managed to support their own operations and services and may wish to issue local guidance on how to address specific national security risks which are highly sensitive in nature, including who is the decision maker or needs to be consulted, and what factors must be considered.

53. Contracting authorities are strongly advised to keep a written record of their rationale for using this exemption. The contracting authority should, in broad terms, explain and justify what those national security risks are and the actions taken to mitigate the risks. This explanation needs to be a record of what was decided when the decision was made.

#### National security exceptions in international agreements

54. Where a contracting authority is seeking to rely on the national security exemption to award a contract that is covered by an international agreement that the UK has entered into with another country, the contracting authority should satisfy itself that an exception in the international agreement applies in relation to the award.

55. The question of whether a contract is covered by an international agreement will depend on whether the works, services or goods to be provided are included in the UK's coverage schedules to the agreement. For example, the UK's coverage schedules to the WTO's Government Procurement Agreement (GPA) are set out in 7 Annexes.

56. The procurement chapters of most international agreements that the UK is party to contain a national security exception on the same or similar terms to that in Article III.1 of the GPA which states:

*"Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes."*

57. A contracting authority seeking to rely on this exception must be satisfied that the requirements of the exception are met. The GPA exception permits contracting authorities "taking any action" or "not disclosing any information" where necessary to protect the UK's essential security interests. The application of the GPA exception is, however, significantly limited in that it can only be relied on in relation to three categories of procurement:

- a. procurement of arms, munitions or war material;

- b. procurement indispensable for national security; or
- c. procurement for national defence purposes.

58. For all other procurements, a contracting authority would need to consider other exceptions in the international agreement. For example, Article III.2 of the GPA provides an exception that:

*“Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures:*

*(a) necessary to protect public morals, order or safety;*

*(b) necessary to protect human, animal or plant life or health;*

*(c) necessary to protect intellectual property; or*

*(d) relating to goods or services of persons with disabilities, philanthropic institutions or prison labour.”*

Again, contracting authorities wishing to rely on this exception must demonstrate that the requirements of the exemption are met. Article III.2(a) and (b) are potentially relevant to national security. The award of the contract must not constitute a means of arbitrary or unjustifiable discrimination between parties to the international agreement, nor a disguised restriction on international trade. In other words, contracting authorities cannot rely on this exception in order to favour UK suppliers or UK-made products in a manner that is arbitrary or unjustified or in order to limit international trade. The award must also be connected to and address a particular interest specified in (a) or (b), e.g. public order and must be ‘necessary’ to protect that interest, e.g. countering large-scale public disorder such as arson and looting.

59. Where the national security exemption at paragraph 25 applies, it is likely that an exception in an international agreement can also be invoked, but this requires separate and particular analysis on a case by case basis. Further details on the international agreements at Schedule 9 can be found in the guidance on treaty trade suppliers.

#### Intelligence activities

- 60. Paragraph 26 exempts contracts for the purposes of carrying out, facilitating, or supporting intelligence activities. The Act does not define intelligence activities, and it is for individual contracting authorities to determine whether it applies to their contractual requirement
- 61. Section 2(5)(b) sets out that the Security Service (MI5), the Secret Intelligence Service (MI6) and the Government Communications Headquarters (GCHQ) are excluded authorities and therefore are not covered by the definition of a contracting authority,

which means that they are not covered by the Act, and therefore this exemption is not relevant. However, it may be relevant for other contracting authorities whose principal function is not intelligence, e.g. the Home Office, that enter into contracts which relate to intelligence activities.

#### Defence and security contracts

62. Paragraphs 27-30 exempt defence and security contracts where:

- a. (paragraph 27) the supplier is located in an area outside of the UK where armed forces are deployed and operational needs require the contract to be awarded to that supplier.
- b. (paragraph 28) the supplier is located in a state or territory outside the UK in which the armed forces maintain a military presence and the state or host nation requires that the supplier delivers the goods, services or work to which the contract relates.
- c. (paragraph 29) contracts are awarded under a procedure adopted by an international organisation of which the UK is a member.
- d. (paragraph 30) contracts are awarded under international arrangements to jointly develop new products or for the exploitation of those projects following development.

63. Further details can be found in the guidance on the defence and security provisions.

#### Utilities contracts

64. Paragraphs 31-34 exempt utility contracts as follows:

- a. (paragraph 31) contracts awarded for the purpose of further sale or lease to third parties of the goods, works or services supplied under those contracts (except where the utility is a centralised purchasing authority).
- b. (paragraphs 32 and 33) contracts for the purchase of water or energy, or fuel for the production of energy, by utilities carrying out a relevant utility activity.
- c. (paragraph 34) contracts for the activities set out in Part 2 of Schedule 4, which are exempted from the Act as they are exposed to competitive forces in an unrestricted market.

65. Further details can be found in the guidance on utilities procurement.

#### Concession contracts

66. Paragraphs 35-37 exempt concession contracts as follows:

- a. (paragraph 35) for the carrying out of a utility activity for certain water services.
- b. (paragraph 36) contracts giving an exclusive right to operate a relevant scheduled air service.

c. (paragraph 37) contracts for public passenger transport services.

67. Further details can be found in the guidance on concessions procurement.

City of London

68. Paragraph 38 exempts contracts entered into by the Common Council of the City of London Corporation other than for the purposes of its public functions. This allows the City of London to conduct procurements relating to its commercial trading activities without applying the Act and is necessary due to the unique structure of the City of London.

**What other guidance is of particular relevance to this topic area?**

Guidance on covered procurement

**Family Analogy Examples of Vertical Arrangements (Schedule 2, paragraph 2)**

The examples below illustrate how Schedule 2, paragraph 2(1) and 2(2) may be applied and assume that the requirements of Schedule 2, paragraphs 2(2)(b), (c), (d) and (3) are met in all scenarios.

Examples <sup>1</sup>	Diagram showing contractual relationship
<p>1. Parent - Subsidiary Award (1)</p> <p>A contract between a contracting authority or a group of contracting authorities ('parent undertaking'), and a person ('subsidiary undertaking') controlled by the parent undertaking, applying:</p> <ul style="list-style-type: none"> <li>• Schedule 2, paragraphs 2(1)(a)/(b) and 2(2)(a); and</li> <li>• Schedule 2, paragraph 2(4), and Section 1162(2) of the Companies Act 2006.</li> </ul>	

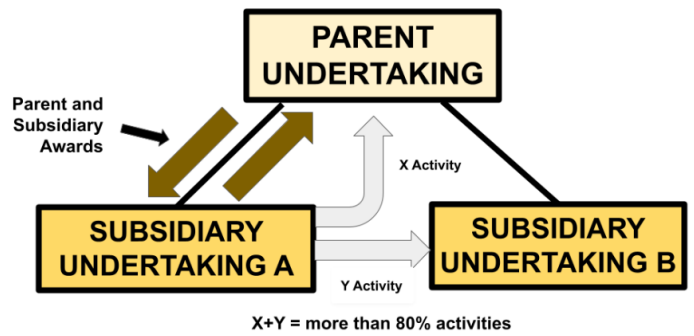
<sup>1</sup> Defined terms are the same throughout these examples (e.g. 'parent undertaking' is as defined in example 1)



2. Parent - Subsidiary Award (2)

A contract between a parent undertaking and subsidiary undertaking A where subsidiary undertaking A carries out some activities for another person ('subsidiary undertaking B') controlled by the same parent undertaking, applying:

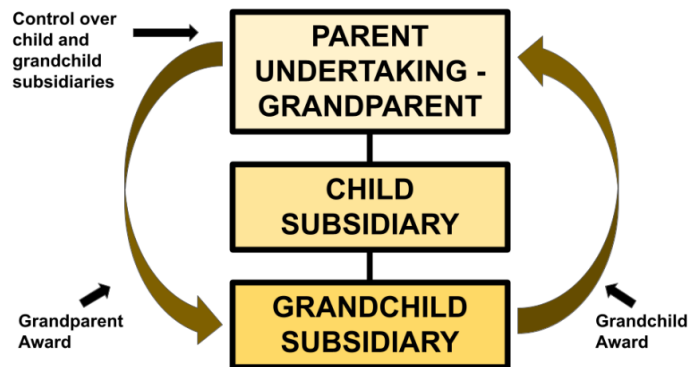
- Schedule 2, paragraphs 2(1)(a)/(b), 2(2)(a) and 2(2)(c);
- Schedule 2, paragraph 2(4); and
- Section 1162(2) of the Companies Act 2006.



3. Grandparent - Grandchild Award

A contract between a person ('grandchild subsidiary') controlled by a contracting authority that is a subsidiary undertaking ('child subsidiary') and the parent undertaking ('grandparent') of that child subsidiary, applying:

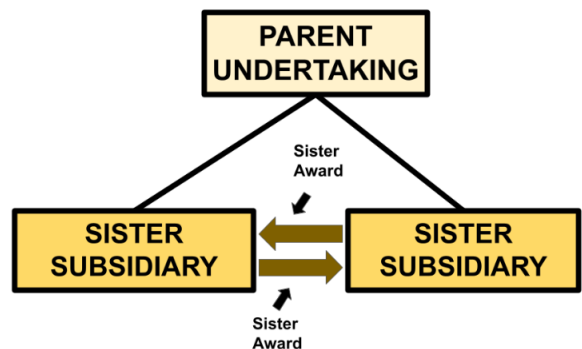
- Schedule 2, paragraphs 2(1)(a)/(b) and 2(2)(a);
- Schedule 2, paragraph 2(4); and
- Sections 1162(2) and 1162(5) of the Companies Act 2006.



4. Sister - Sister Award

A contract between subsidiaries undertakings of the same parent undertaking ('sister subsidiaries'), applying:

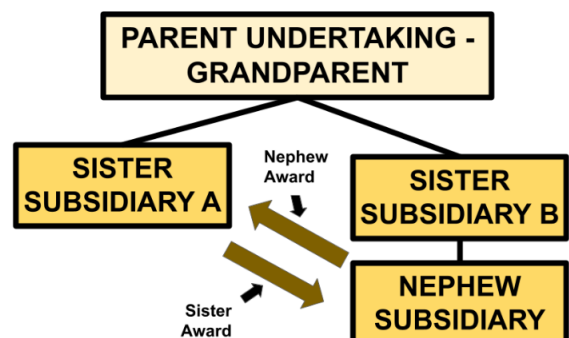
- Schedule 2, paragraphs 2(1)(c)/(d) and 2(2)(a);
- Schedule 2, paragraph 2(4); and
- Section 1162(2) of the Companies Act 2006.



5. Sister - Nephew Award

A contract between a sister subsidiary ('sister subsidiary A') and a person ('nephew subsidiary') controlled by sister subsidiary B, applying:

- Schedule 2, paragraphs 2(2)(1)(c)/(d) and 2(2)(2)(a);
- Schedule 2, paragraph 2(4); and
- Sections 1162(2) (sister controlled by parent) and Section 1162(5) (nephew controlled by grandparent) of the Companies Act 2006.



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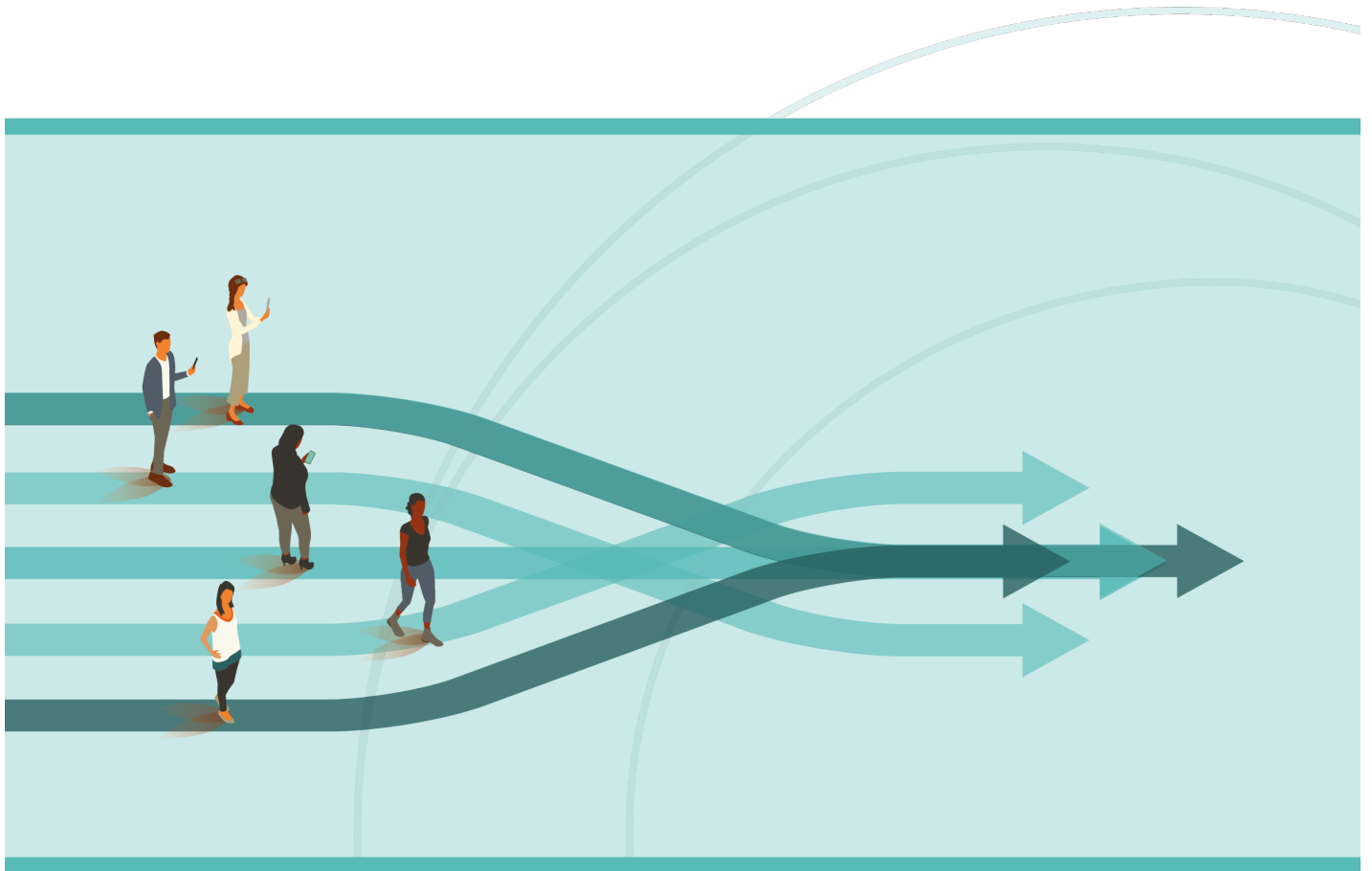
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# Guidance: National Procurement Policy Statement



# Guidance on the National Procurement Policy Statement (NPPS)

## What is the NPPS?

1. The NPPS is a statutory statement which allows the Government to set and communicate the wider policy objectives to which it expects public procurement to contribute. This might include, for example, objectives to increase skills or jobs in a certain industry or area, or to align with the pledge to achieve net zero by 2050. In 2021/2022 public procurement made up about a third of public sector spending; it can therefore have a large impact on the achievement of these wider objectives.

## What is the legal framework that governs the NPPS?

2. The NPPS is provided for at section 13 of the Procurement Act 2023 (Act). Contracting authorities are required to have regard to the policy objectives contained within the NPPS that is current at the time they are carrying out a procurement.
3. Section 13(10) sets out that the statutory duty to have regard to the NPPS does not apply to:
  - a. private utilities;
  - b. contracts awarded under a framework;
  - c. contracts awarded under a dynamic market;
  - d. procurements under devolved Welsh or transferred Northern Irish procurement arrangements; or
  - e. devolved Welsh authorities or transferred Northern Irish authorities.<sup>1</sup>
4. Section 14 establishes that the Welsh Government has the power to issue its own Welsh procurement policy statement (the WPPS) which is generally relevant to devolved Welsh authorities or procurements under a devolved Welsh procurement arrangement. Welsh contracting authorities should refer to the Welsh-specific guidance.

## What has changed?

5. There was no such statutory statement in the previous legislation. The first NPPS was released as PPN 06/21 and required, as a matter of policy, that contracting authorities take account of its specified priorities. The Act changes this so that contracting authorities are now under a statutory duty to have regard to the NPPS. The Act also specifies how the NPPS should be drafted, consulted upon and considered by Parliament.

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<sup>1</sup> Except in relation to procurements under a reserved procurement arrangement.

## **Key points and policy intent**

6. The NPPS places a statutory obligation on contracting authorities to have regard to its policy priorities and determine how procurements can contribute to the delivery of these wider policy objectives. This means that a contracting authority must consider whether the procurement can contribute to achieving one or more of the policy objectives stated in the NPPS in a manner that is appropriate, proportionate and relevant; and take steps to address this where possible. This could include, for example, changes to the way the procurement is structured or the process is carried out, the specification of the goods, services or works to be purchased, or the award criteria which will determine the most advantageous tender.
7. While contracting authorities have a duty to consider whether and how to address the policies, there is no absolute obligation to do so. There may be cases where the priorities are irrelevant to a specific procurement or it would be disproportionate to introduce measures to address them. This decision not to address one or more of the policies will be procurement-specific as will the means by which any policies to be considered are incorporated into a procurement.
8. As the Act places a statutory duty on contracting authorities to have regard to the NPPS, contracting authorities should document their thinking on which NPPS policies an individual procurement can contribute to and how this will be addressed, as well as note why any disregarded policies are irrelevant or inappropriate or would be disproportionate to consider.
9. The policy objectives established in the NPPS are separate from the procurement objectives at section 12 of the Act. Those objectives go to the heart of the purpose of public procurement regulation rather than linking to wider governmental policies to which public procurement can contribute. Contracting authorities must ensure that any attempts to address NPPS priorities do not conflict with the procurement objectives at section 12, for example by treating suppliers (unjustifiably) differently or failing to consider barriers to small and medium-sized enterprises.
10. A breach of this statutory duty is not actionable under Part 9 of the Act (Remedies for breach of statutory duty) but a contracting authority can be held to account for non-compliance through the judicial review process and systemic breaches of this nature could be grounds for a procurement investigation under part 10 of the Act.
11. The NPPS is kept under review by the responsible Minister and policy priorities can therefore change.

## **What notices are linked to this aspect of the new regime?**

12. There are no notices linked to the NPPS. However, contracting authorities should consider their record-keeping obligations under section 98 of the Act where the NPPS impacts a 'material decision made for the purpose of awarding or entering into a public contract'. In any case, it is good practice for contracting authorities to

document their decision-making process with respect to consideration of the NPPS so that they can demonstrate that their statutory duty has been fulfilled if required.

**What other guidance is of particular relevance to this topic area?**

Guidance on covered procurement objectives

Guidance on awarding competitive contracts

**Where can I go for more information or training?**

The [social value model guide](#) provides information on incorporating wider social value considerations into public procurement.

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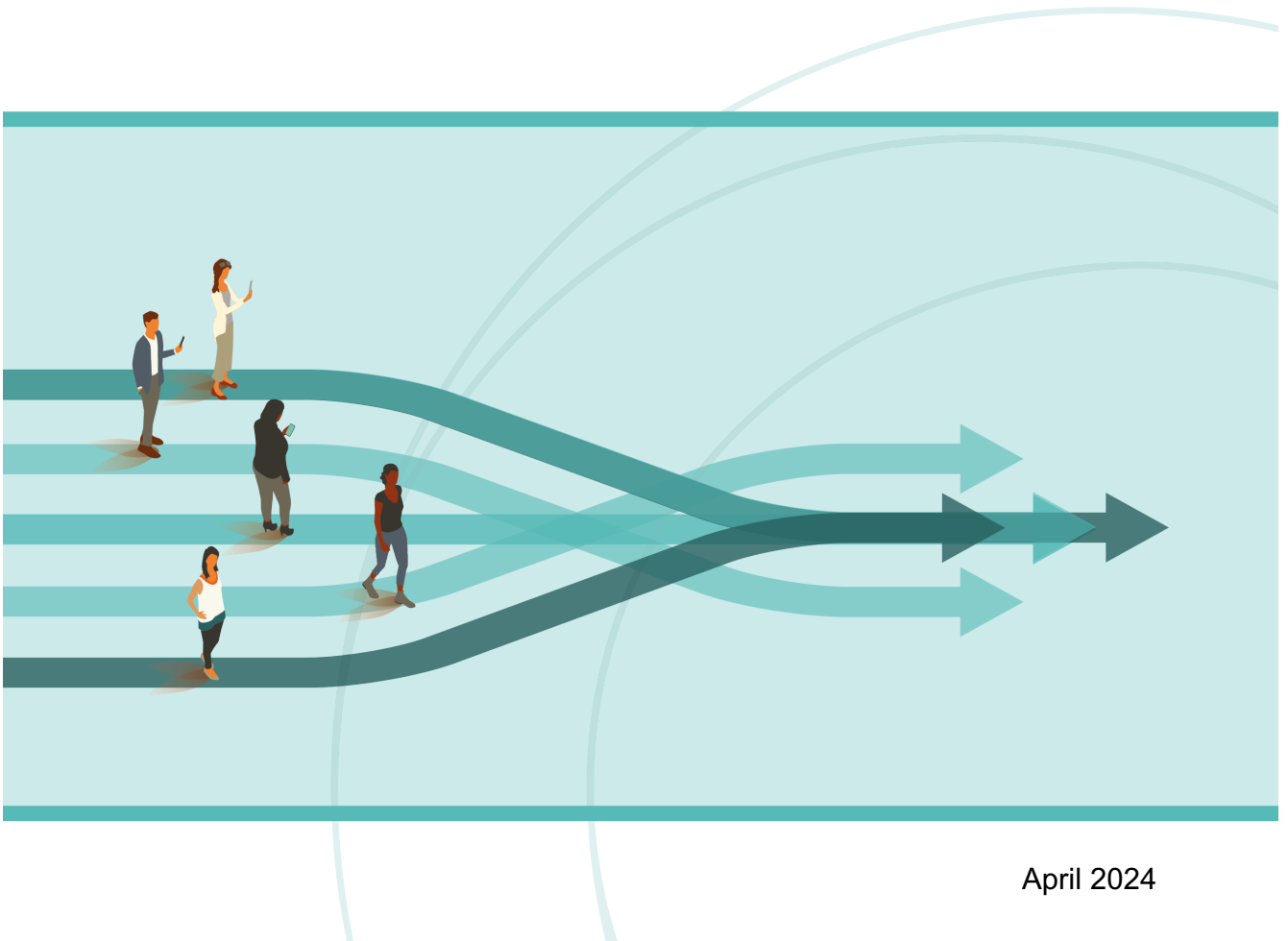
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# Guidance: Pipeline Notice





## Guidance on the pipeline notice

### What is a pipeline notice?

1. One of the most important things contracting authorities can do is to provide the market with information about current and future public contract opportunities by publishing a forward-looking procurement pipeline. The Procurement Act 2023 (Act) achieves this by requiring the publication of pipeline notices in certain circumstances. This is of particular benefit to small and medium-sized enterprises (SMEs) and voluntary, community and social enterprises as it provides them with time to plan for future work, ensuring a competitive and diverse market.
2. A pipeline notice is “a notice setting out specified information about any public contract with an estimated value of more than £2 million in respect of which the contracting authority intends to publish a tender notice or transparency notice during the reporting period”. In other words, it is the collection of individual procurements that make up a contracting authority’s procurement pipeline over the next reporting period. The ‘reporting period’ is 18 months, commencing on the first day of the financial year in which the notice is published.
3. Private utilities and transferred Northern Ireland authorities are not required to publish a pipeline notice.

### What is the legal framework that governs pipeline notices?

4. The relevant provisions are section 93 and regulation 15.

### What has changed?

5. The Act makes publication of a pipeline notice on the central digital platform a legal requirement in the circumstances set out in the Act. In central government, there is additional policy within the Playbook series pertaining to the publication of [commercial pipelines](#). Central government authorities are still required to comply with Playbook requirements in relation to pipeline publication and should note that the Playbook requirements can be met through the publication (and updating) of the pipeline notice on the central digital platform.
6. The pipeline notice may form a subset of a contracting authority’s wider commercial pipeline which is used for internal planning. The new legal requirement to publish a pipeline notice does not replace any internal reporting requirements.

## Key points and policy intent

7. A contracting authority is required to publish a pipeline notice on the central digital platform where it considers that it will, in the coming financial year, pay more than £100 million under relevant contracts.
8. For the purpose of calculating whether a contracting authority will exceed the £100 million threshold, the calculation must include all payments that will be made under contracts for the supply of goods, services or works other than exempted contracts ('relevant contracts'). This includes below-threshold contracts and frameworks. The calculation will comprise payments due in the coming financial year under existing and future contracts. In the case of a framework, whilst a framework is a contract, the value of the framework itself is not taken into account. This is because payments will not be made under the framework itself, but instead will be made under each relevant contract awarded under the framework. Relevant contracts also include contracts awarded under frameworks and dynamic markets.
9. Whilst not required to do so under the Act, a central purchasing body that is planning to establish a framework for use by other contracting authorities that is valued over £2 million (based on the total value of the contracts to be awarded under the framework) should publish a pipeline notice in order to provide visibility to the market.
10. Note that the planned establishment of a dynamic market is not taken into account in calculating anticipated expenditure in the coming financial year for the purpose of determining whether a pipeline notice must be published (because a dynamic market is not a contract). However, a contracting authority establishing a dynamic market or intending to use one will need to include its planned spend *under* the dynamic market in the calculation. This spend includes only the contracting authority's own planned spend through dynamic markets, not the potential spend of any other users of the relevant dynamic markets. So, for example, if a contracting authority established a dynamic market for cross-government use and anticipated that it (alone) would pay £10 million under relevant contracts awarded under the dynamic market in the coming financial year, whilst other users of the dynamic market might pay a further £50 million under contracts awarded under the dynamic market, the contracting authority establishing the dynamic market would only take into account the £10 million when calculating whether the £100 million threshold is met. Other contracting authorities awarding contracts under the dynamic market would include their share of that £50 million expenditure in their own calculations of spend.
11. The pipeline notice must be published within 56 days of the first day of the relevant financial year. Section 93(4) sets out that 'financial year' means:
  - (a) the period of twelve months beginning with the 1 April following the day on which this section comes into force; and

(b) each successive period of 12 months.

12. What this means is that the first procurement pipeline notice will need to be published within 56 days of April 1 2025, i.e by 26th May 2025 and by 26th May in subsequent years.

#### Content of a pipeline notice

13. Regulation 15 sets out the minimum information that must be published for each procurement contained in the pipeline notice.
14. The pipeline notice is a single notice providing details of all relevant contracts that an authority intends to award during the reporting period. Digitally, though, details will be entered in relation to each individual procurement so that subsequent notices about that procurement can be linked to those details. This information will be collated and presented as a cohesive pipeline notice view for that contracting authority, enabling the viewer to easily see all the procurements making up the authority's pipeline notice.
15. Exactly how the pipeline information will be published will depend on how the authority publishes on the central digital platform and some e-procurement system providers may offer a bulk upload or batching feature to make this process easier. Contracting authorities should refer to their e-procurement system provider if using one.
16. If publishing directly onto the central digital platform, an authority will need to complete and publish details individually for each proposed public contract over the £2 million threshold. Regardless of the publication method used, all of the contracting authority's procurements forming the pipeline will still be presented together in a pipeline notice view on the system.
17. When completing the information, particularly the contract subject-matter, not all information is likely to be known at the point of publication of a pipeline notice and the expectation is that this information would be less detailed than any subsequent tender or transparency notice. Further information about what to consider when publishing pipeline information is included in the guidance on the central digital platform and publication of information.
18. While the Act requires the pipeline notice to be published within 56 days of the first day of the relevant financial year, there are likely to be circumstances where a contracting authority will identify additional requirements during the financial year. Whilst not a requirement of the legislation, contracting authorities are encouraged to review and update their pipeline notices throughout the year, adding new procurements above the £2 million threshold. These additional procurements will be collated and presented in the pipeline notice view with the rest of the contracting authority's upcoming procurements that have already been published in its pipeline notice.

19. Where an additional procurement above the £2 million threshold for inclusion in a pipeline notice is identified and the contracting authority considers that there is not enough time to publish an additional entry in their pipeline notice before commencing that new procurement, then the contracting authority is not required to include that procurement in its pipeline notice.
20. Contracting authorities are encouraged to go further than required by the Act by including in their pipeline notice:
  - a. works contracts above £2 million but below the works threshold at the time of publication where the contracting authority intends to carry out a competitive tendering process;
  - b. contracts above £2 million where publication of a tender or transparency notice is not required, for example to alert the market where a contracting authority intends to award a call-off contract under a third party's framework through a competitive selection process and contracts awarded under certain types of utilities dynamic markets;
  - c. contracts below £2 million where the contracting authority is intending to advertise the opportunity as this can be particularly beneficial to SMEs;
  - d. relevant contracts to be awarded over a period that is longer than 18 months.
21. Contracting authorities who are uncertain as to whether the £100 million threshold will be reached in a given financial year are also encouraged to publish a pipeline notice. This could arise, for example, because a contracting authority may receive funding for several years and be unsure how that will be divided between the current and subsequent financial years.
22. Additionally, contracting authorities who are exempt from publishing pipeline notices may publish them voluntarily.
23. While a pipeline notice is intended to provide suppliers with an indication of a contracting authority's plans and expenditure for the following 18 months, contracting authorities are not bound by the information in the notice, which could change over time as plans for the procurements become clearer. Contracting authorities are not under any legal obligation to proceed with any procurement that has been specified in a pipeline notice. While there is no legal obligation to indicate that the procurement will not proceed, it would be good practice to provide visibility of such changes using the procurement termination notice on a voluntary basis.

#### **What are the primary notices linked to pipeline notices?**

24. When it is published, a pipeline notice will usually be the first notice in the sequence, containing information about individual procurements in a contracting authority's pipeline.

25. The next notice in the sequence after the pipeline notice will be one of the following:
- a. preliminary market engagement notice: can be used to consult the market about an upcoming procurement included in a pipeline notice;
  - b. planned procurement notice: to provide advance notice of the procurement and potentially take advantage of reduced tendering periods;
  - c. tender notice: to advertise the procurement;
  - d. transparency notice: for use when a procurement identified in a pipeline notice is to be awarded under the direct award provisions;
  - e. contract award notice: may be the next notice if the procurement identified in the pipeline results in an award in accordance with a framework;
  - f. procurement termination notice: can be used voluntarily to indicate that a particular procurement set out in a pipeline notice will not be progressed.
26. Contracting authorities must ensure that when publishing the next notice in the sequence that they refer back to the originating pipeline notice. This should be a function of system providers and contracting authorities should check local procedures for further information on publishing notices.

**What other guidance is of particular relevance to this topic area?**

Guidance on the central digital platform and publication of information  
Guidance on valuation of contracts

**Where can I go for more information or training?**

Platform guidance/local e-procurement system provider guidance

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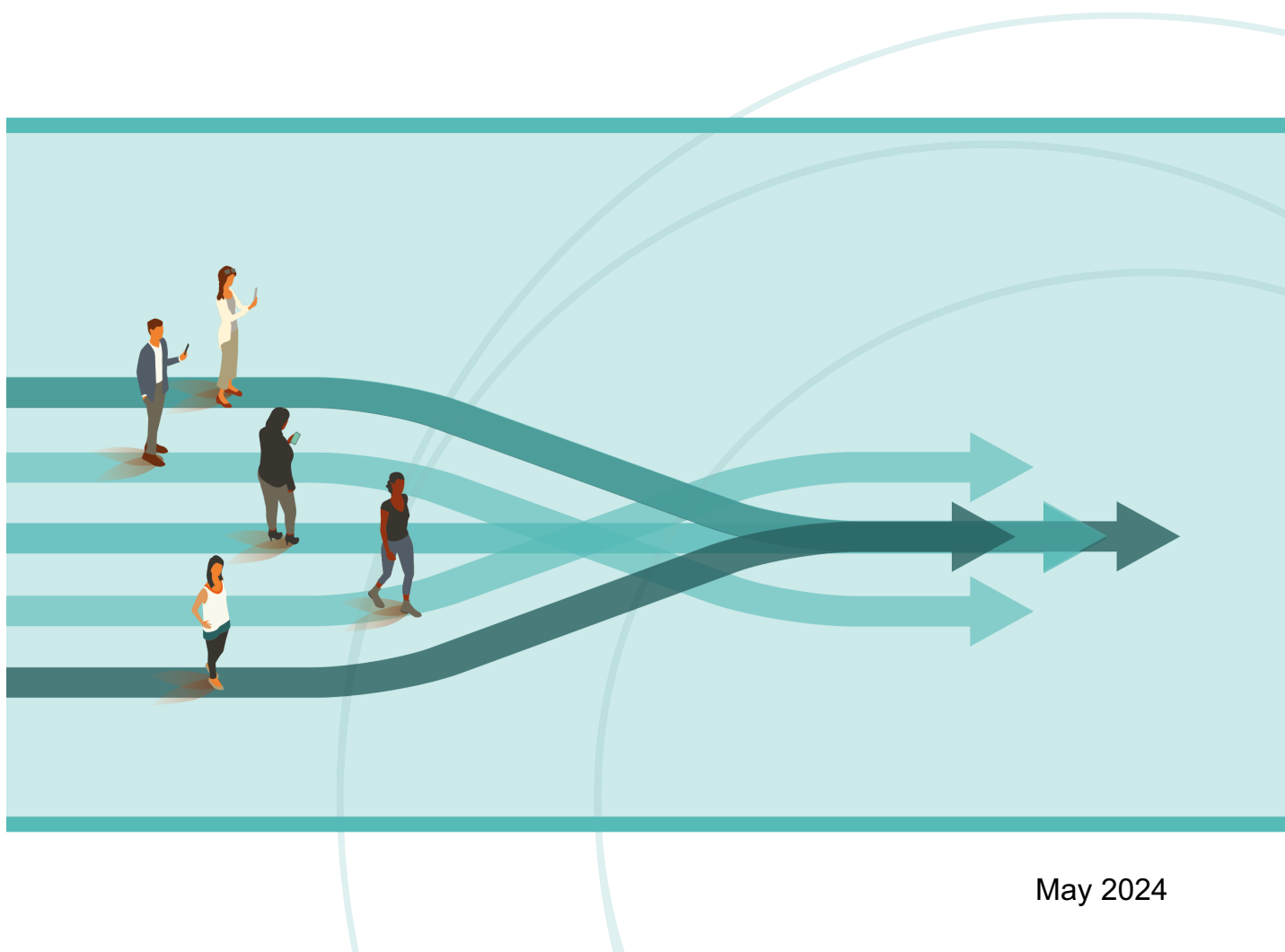
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Procurement Act 2023

# Guidance: Utilities Contracts



May 2024

## **Guidance on Utilities Contracts**

### **What are utilities and utilities contracts?**

1. Utilities are public authorities, public undertakings or other entities ('private utilities') that carry out 'utility activities' in the energy, water and transport sectors. They are regulated by the Procurement Act 2023 (Act) when carrying out utility activities as they are not exposed to competitive forces in the market (but see section 6(5) and 6(6) of the Act and further below) and the UK is required by various international agreements to allow 'treaty state suppliers' with certain rights under relevant international agreements to participate in procurements for 'utilities contracts'.

### **What is the legal framework that governs utilities contracts?**

2. The rules governing utilities procurement in the UK are contained in the Act and replace the repealed Utilities Contracts Regulations 2016 (UCR). Utility activities and utilities contracts are defined at section 6, and utilities at section 35 of the Act.
3. Contracting authorities awarding utilities contracts are generally governed by the provisions in the Act, just like any other contracting authority. This guidance provides an overview of the specific provisions in the Act that relate to utilities, and should be read alongside other guidance on the Act that applies to all contracting authorities and that will, unless otherwise set out, apply to utilities.
4. The general rule is that the Act will apply to utilities in the same way as it applies to other contracting authorities. However, there are exceptions to the general rule and some specific provisions provide additional flexibility for utilities. In some cases, these provisions apply to all utilities and in others they only apply to particular types of utilities, e.g. private utilities. These are set out at Annex A.
5. Some mixed contracts will contain elements which, if procured separately, would be subject to special rules, such as those applicable to utilities contracts. Section 10 provides for when those contracts are to be treated according to the rules that reflect the special nature of one element (i.e. when they are to be treated as a 'special regime contract' as defined in section 10), or when they are to be treated as subject to the standard rules in the Act.

### **What has changed?**

6. Whereas utilities contracts were previously regulated separately (under the UCR), the Act regulates utilities contracts and other types of contracts. This consolidation serves to reduce the overall volume of procurement legislation and simplifies the rules for contracting authorities.
7. Schedule 4 sets out the utility activities covered by the Act and aligns with the scope of utility activities covered by the previous legislation, with the exception of postal services which are not regulated under the Act. The exemptions at Part 2 of Schedule 4 reflect the exemptions set out in three EU Commission Decisions (2006/211/EC, 2007/141/EC and 2010/192/EU). The specific utility provisions provide flexibility for utilities that reflect their commercial nature. In particular, a utilities dynamic market established under a qualifying utilities dynamic market notice will replace qualification systems in the UCR to speed up utilities procurement.



8. Utilities are the same types of bodies under the Act as were covered under the UCR. Regarding the definition of a public undertaking, the express commercial operating requirement at section 2(2)(b) is a change from the UCRs where there is a control (dominant influence) requirement, but there is no express requirement that the entity operates commercially, although many do so. The addition of this commercial operating requirement may mean some bodies classed as public undertakings in the UCRs may be classed as public authorities under the Act. There is generally no practical impact of this re-categorisation as the rules for public authorities and public undertakings in the Act are similar. The differences are highlighted at Annex A.

## Key points and policy intent

### Application

9. The utilities provisions in the Act apply to utilities contracts that are public contracts. A utilities contract is a public contract where:
  - a. the estimated value of the contract exceeds the relevant thresholds; and
  - b. the contract is not an exempted contract.

### What is a utility (section 35(4))?

10. The Act regulates utilities procurement carried out by public authorities, public undertakings and private utilities, referred to as utilities in the definition at section 35(4).
11. It will be for utilities to determine whether they are a public authority, public undertaking or private utility, applying the definitions in section 2(2) of the Act, as it is not appropriate or possible to have a definitive list of entities as structures can be complex and change over time and entities leave and enter the sector. Utilities can range from, for example, private companies that operate electricity transmission networks to local authorities that own district heating networks.
12. Public authorities and undertakings Public authorities are funded wholly or mainly out of public funds or are subject to public authority oversight, and (in each case) do not operate on a commercial basis. Public undertakings are subject to public authority oversight although, unlike public authorities, they do operate commercially. Taking public authority oversight and operating commercially in turn:
  - a. Public authority oversight - public authority oversight applies equally to public authorities and public undertakings. The Act defines public authority oversight at section 2(3) as being subject to the management or control of one or more public authorities or a board of which more than half of the members are appointed by one or more public authorities. The principle of management and control is well established and understood in procurement law and analogous within existing UK company law. The Act does not change this interpretation.

Utility regulators, such as OFGEM and OFWAT, in performing their statutory duties, are not considered to manage or control a utility. Being subject to utility regulators is therefore, by itself, not sufficient to satisfy section 2(2)(a) for public undertakings. If a

utility meets the definition of a private utility (see below) then it is a private utility covered by the Act.

- b. Operating commercially - public undertakings operate on a commercial basis. Section 2(4) sets out examples of the factors to be taken into account in determining whether an entity operates on a commercial basis (this is not a definitive list and there may be other factors in the circumstances).
13. Private utilities Private utilities are other entities (i.e. not public authorities or public undertakings) that carry out a utility activity (section 2(2)). Private utilities only carry out utility activities that are regulated under the Act where they have been granted a special or exclusive right to do so (see section 6(2)(d)).
  14. Section 6(3) provides that carrying out a utility activity pursuant to a special or exclusive right means that the person does so pursuant to a right granted by a statutory, regulatory or administrative provision that has the effect of substantially limiting other entities (who have not been granted such a right) from carrying out those activities. Private utilities which enjoy special or exclusive rights are, to an extent, in a monopoly position and therefore could, however unlikely it is, without regulation, engage in preferential treatment that, for example, favours their own affiliates or strategic partners and discriminates against other suppliers bidding for their contracts.
  15. Section 6(4) provides that rights are not special or exclusive when they are granted following a competitive tendering procedure under the Act or where the opportunity was adequately publicised and the rights were granted on the basis of objective, non-discriminatory criteria. However, section 6(4) does not apply if an incumbent has an existing special or exclusive right that is renewed or replaced in a manner that does not comply with the section; in this case, the new grant or replacement of the right will mean that section 6(3) applies and the supplier is a private utility under the Act.
  16. Similarly, where a contract is awarded following a procedure that complies with section 6(4) (whether before or after the entry into force of the Act), but the incumbent is subsequently directly awarded a new or replacement contract, that will also amount to the grant of a special or exclusive right. An example of this is where a direct award is made to an incumbent under the public service obligations regulations (as defined at Schedule 2, paragraph 21(2)) where the original contract had been awarded following a competitive process.

#### What is a utilities contract?

17. A utilities contract is a contract for the supply of goods, services or works wholly or mainly for the purpose of a 'utility activity' (section 6(1)).

#### What are utility activities?

18. Utility activities are defined in section 6(2) and are activities that are:
  - a. specified in Part 1 of Schedule 4;
  - b. not specified in Part 2 of Schedule 4;

- c. not carried out wholly outside of the UK; and
- d. in the case of private utilities, are carried out pursuant to a special or exclusive right (as explained above).

19. Schedule 4 sets out the scope of utilities activities, and is made up of 2 parts. Part 1 sets out the activities that are utility activities (and therefore covered by the Act), and Part 2 sets out the activities that are not utility activities (and are therefore not covered by the Act). In summary, utility activities are activities connected with the:

- a. provision or operation of gas and heat, electricity and water networks and the supply to those networks;
- b. provision or operation of public transport networks, ports and airports; or
- c. extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels.

20. Paragraphs 1(2)(c), 2(2)(d) and 3(4)(d) provide that in certain circumstances the supply of gas or heat, electricity and drinking water (respectively) is not a utility activity. In order for this to be the case, conditions apply that require a calculation of the percentage of gas or heat, electricity and drinking water supplied. In each case, the Act provides that an 'appropriate authority' (a Minister of the Crown, Welsh Ministers or a Northern Ireland department) may make regulations about how to calculate the relevant percentage. Following consultation, these regulations have not been included in the Procurement Regulations 2024 (Regulations) and will instead be included in another statutory instrument, expected to be laid in June or July. This guidance will be updated to incorporate the relevant regulations.

21. The utility activities set out in Part 2 of Schedule 4 are summarised in Annex B. An appropriate authority may specify activities to be included in Part 2 of Schedule 4 if they are exposed to competition in open markets (see sections 6(5) and 6(6)). The effect of this is that those specified activities will not be utility activities and therefore will not be regulated by the Act. Any such activities will be set out in regulations and be added to Part 2.

What are the financial thresholds for utility contracts?

22. The threshold amounts are set out in Schedule 1. The table below sets out the thresholds for utilities contracts that have applied since 1 January 2024. The thresholds in the Act reflect those in place at the time of Royal Assent and will be updated by secondary legislation prior to the Act coming into force.

<b>Utilities contract</b>	<b>Threshold</b>
Goods	£429,809
Services	£429,809
Works	£5,372,609
Light touch	£884,720

23. The thresholds reflect the thresholds in our international agreements and are revised on the first of January of every even year to reflect currency fluctuations and inflation.
24. The rules on estimating the contract value are set out in Schedule 3. The overriding principle is that the estimate must reflect the total likely amount the contracting authority could expect to pay under the contract (inclusive of VAT (see section 123(2))). Schedule 3 sets out a non-exhaustive list of what could be relevant when estimating the amount expected to be paid.

#### What exemptions are available to utilities?

25. Exempted Contracts Schedule 2 sets out the types of contracts ('exempted contracts') to which the rules on covered procurement do not apply. Provided the relevant conditions are met, they can all be used by utilities unless stated otherwise. The exemptions that apply specifically to utilities are summarised below; for other exemptions see guidance on exempted contracts.
26. Schedule 2, paragraph 5 exempts utilities contracts awarded by a 'relevant joint venture' to one of the joint venture members, and by a joint venture member to the relevant joint venture. A relevant joint venture is a joint venture formed for the purpose of carrying out a utility activity and comprised only of members that are utilities. Utilities may come together to form a relevant joint venture to deliver a particular utility activity, for example, operation of an integrated transport system, where different utilities bring different expertise or resources, for example, financial, technical, marketing or employee. This provision would exempt, for example, a contract under which a member utility provides specialised works to the relevant joint venture in order to deliver the contract. This ensures that these arrangements remain attractive and viable, which may not be the case if utilities are required to carry out the procurements under the Act.
27. Schedule 2, paragraph 6 exempts utilities contracts awarded by a utility to a person 'affiliated' with the utility and by a utility that is a relevant joint venture to a person affiliated with any member of that joint venture. Utilities may be part of a group where it or a company at the top of the structure (the parent company) owns (either directly or indirectly) one or more subsidiaries beneath it.
28. Schedule 2, paragraph 6 provides that a person is affiliated with another if the person falls within the definition of a 'group undertaking' of the other person, as that term is defined in section 1161(5) of the Companies Act 2006. This is the case regardless of whether either of them is an 'undertaking' as defined in section 1161(1) of that Act. In summary, a relationship between affiliates arises where, in relation to an undertaking ('undertaking (A)'), another undertaking is:
  - a. a parent undertaking or a subsidiary undertaking of undertaking (A); or
  - b. a subsidiary undertaking of any parent undertaking of undertaking (A).
29. The terms 'subsidiary undertaking' and 'parent undertaking' are defined in section 1162 of the Companies Act 2006. By applying those terms when considering what is meant by a group undertaking under section 1161(5) of that Act, the affiliates exemption would be available (provided all of the relevant requirements are met), for example, to utilities contracts awarded by:

- a. a utility to its subsidiary;
  - b. a utility that is itself a subsidiary, to a fellow subsidiary controlled by the same parent (sometimes referred to as a 'sister' subsidiary); and
  - c. a utility ('utility A') to a subsidiary controlled by utility A's subsidiary (sometimes referred to as a 'grandchild' subsidiary).
30. The exemption applies only where the 'turnover test' at Schedule 2, paragraph 6(3) is met. The turnover test ensures that the exemption cannot be abused by providing that it applies only when the provision of goods, services or works to the utility and others affiliated with the utility is a substantial part of the affiliated person's business.
31. The turnover test requires a calculation of the percentage of the relevant turnovers comprising the 'affiliated turnover amount' as a percentage of their total turnover amount. The Act provides that an appropriate authority may make regulations about how to calculate a person's affiliated turnover amount and total turnover amount. Following consultation, these provisions have not been included in the Regulations and will instead be included in another statutory instrument, expected to be laid in June or July. This guidance will be updated to incorporate the relevant regulations.
32. Schedule 2, paragraph 21 exempts contracts for public passenger transport services that are awarded under separate legislation; the legislation is specified at section 136(11) of the Railways Act 1993. The practical effect of this exemption is that the rules on covered procurement do not apply to the award of contracts for rail and metro, and rail and metro concessions, although they do apply to contracts for bus and tram that are not concessions.
33. Schedule 2, paragraph 37 exempts concession contracts for public passenger transport services.
34. Schedule 2, paragraph 31 exempts utilities contracts awarded for the purpose of further sale or lease to third parties, provided the utility does not have a special or exclusive right to sell or lease the goods, services or works purchased and the market is open. The reason for this exemption is that the purpose of acquiring the goods, services or works is not for the utility to carry out a utility activity itself. This exemption is not available where the utility awarding the contract is acting as a central purchasing authority.
35. Schedule 2, paragraph 32 exempts utilities contracts for the purchase of water awarded by utilities carrying out a utility activity in Schedule 4, paragraph 3(1) (provision or operation of a fixed network or the supply of drinking water to such a fixed network).
36. Paragraph 33 exempts utilities contracts for purchases of energy, or fuel for the production of energy, awarded by utilities carrying out a utility activity in Schedule 4, paragraphs 1, 2 or 6 (gas and heat, electricity and extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels). The exemption applies only to purchases of energy or fuel for the production of energy, and not to purchases made for other reasons, e.g. purchases of fuel for transport purposes unrelated to the utility activity.
37. Paragraph 34 exempts contracts for the purpose of the activities set out in Part 2 of Schedule 4, that would be utility activities if they were not set out in Part 2.

## Carrying out utilities procurement, including under utilities dynamic markets

38. Excluding suppliers from a competitive tendering procedure With the exception of private utilities, the provisions in the Act relating to excluded and excludable suppliers apply to procurements carried out by utilities in the same way as they apply to other contracting authorities. For private utilities, any reference in the Act to excluded suppliers is treated as a reference to excludable suppliers and any reference to excludable suppliers is treated as including excluded suppliers (section 57(4)). This means that private utilities can treat suppliers subject to a mandatory exclusion ground as being subject to a discretionary exclusion ground.
39. Competitive tendering procedures Generally, contracting authorities awarding utilities contracts must use the same procurement procedures as are used by other contracting authorities. Section 20 sets out the provisions relating to competitive tendering procedures. Please see the guidance on competitive tendering procedures for more information.
40. Direct award Section 41 permits a contracting authority to award a contract directly, without first running a competitive tendering procedure when a direct award justification (set out in Schedule 5) applies. Please see the guidance on direct award for more information.
41. Utilities dynamic markets (see also guidance on dynamic markets) Sections 34 and 35 provide that dynamic markets, including utilities dynamic markets, may be established and contracts may be awarded to suppliers on dynamic markets following a competitive flexible procedure. Dynamic markets are essentially up to date lists of suppliers that have met the conditions necessary to participate in procurements for the award of the types of contracts covered by the market. Suppliers must be able to apply at any time to be admitted to the market and if successful, be admitted as soon as reasonably practicable (section 36(6)(a) and (c)).
42. A utilities dynamic market is a dynamic market established solely for the award of utilities contracts by utilities (section 35(2)). This means that any reference in the Act to a dynamic market includes a utilities dynamic market, unless it is stated not to (but references to utilities dynamic markets do not include other dynamic markets). Section 35(3) allows utilities to award utilities contracts under a utilities dynamic market established by any person (which would include a person that is not a contracting authority under the Act, e.g. a private company who provides qualification services), provided the market has been established in accordance with the rules in the Act applicable to utilities dynamic markets established by private utilities.
43. Section 36 sets out how suppliers can become members of dynamic markets. Section 36(1) allows contracting authorities to set conditions of membership that suppliers must meet in order to be admitted to a dynamic market. The conditions of membership must be a proportionate way of assessing suppliers' legal and financial capacity and technical ability to deliver contracts that might be awarded under the market.
44. Section 38 allows contracting authorities to charge fees to suppliers. For utilities dynamic markets, fees can only be charged in connection with obtaining and maintaining membership of the market. (For other dynamic markets, fees can only be charged to suppliers that are awarded a contract under a dynamic market and not for membership.)

45. Section 39 deals with various dynamic market notices. These apply to all contracting authorities, including utilities, except in the case of the notice required under section 39(5) relating to the market ceasing to operate. In this instance, private utilities are not required to publish a notice (section 39(6)).
46. Qualifying utilities dynamic market notice A utilities dynamic market established under a qualifying utilities dynamic market notice permits utilities to limit participation in competitive flexible procedures to suppliers that are registered on the market. Suppliers are able to apply to be admitted to the market at any time.
47. Section 40 has the effect of speeding up procurements and reducing the burden for utilities procuring under a utilities dynamic market that has been established using a qualifying utilities dynamic market notice. Where this notice is used, utilities are required to provide tender notices for upcoming procurements to suppliers already on the utilities dynamic market, or appropriate part of the utilities dynamic market, instead of publishing the notice (which is the case for other dynamic markets). In practice, that means utilities can, for example, provide the tender notice to suppliers on the utilities dynamic market as part of the associated tender documents as each procurement under the utilities dynamic markets is commenced.
48. In order to take advantage of this flexibility, the qualifying utilities dynamic market notice must specify that only members of the utilities dynamic market will be provided with tender notices (section 40(6)(b)(i)) and meet minimum information requirements, which are set out in the Regulations. New members joining the utilities dynamic market are entitled to receive future tender notices.
49. Shorter time periods for procurements carried out by utilities (see section 54(4) and (5)) The Act allows shorter time periods for submission of tenders in procurements carried out by utilities where the suppliers are 'pre-selected suppliers'. Suppliers are pre-selected suppliers where they are invited to submit a tender after previously satisfying conditions of participation as part of a competitive tendering procedure or where they are on a utilities dynamic market and invited to submit a tender for a procurement under the utilities dynamic market. Under section 54, utilities can agree a suitable time period with all pre-selected suppliers (in which case there is no minimum time period) or, in the absence of agreement, set a time period that must be at least 10 days.
50. Frameworks Section 47 sets out the maximum term for frameworks. It provides that the maximum term for a 'utilities framework' awarded by a public authority or public undertaking (or for a defence and security framework) is eight years (section 47(1)(a)). There is no maximum term for frameworks awarded by private utilities (section 47(5)(b)). Section 47(4)(b) defines a utilities framework as a framework that provides for the future award of public contracts that are utilities contracts and no other public contracts. The maximum term for frameworks that are not utilities frameworks (or defence and security frameworks) is four years. The longer term reflects the complexities of the defence and utilities markets, where longer terms are more appropriate. (In all cases, the maximum term may be longer if the contracting authority considers the nature of the goods, services or works to be supplied under contracts awarded under the framework means a longer term is required.)
51. Standstill Section 50 requires contracting authorities to publish a contract award notice before entering into a public contract. The notice will include details about the outcome of the procurement, alert the market to the fact that a contract is to be entered into and, where

there is one, start the relevant standstill period. The standstill period is a mandatory pause before the contracting authority can enter into the contract, but it is not required in all cases (section 51(3)).

52. Section 51 deals with the standstill period. The standstill period commences on the day the contract award notice is published and the minimum period (the 'mandatory standstill period') is eight working days (section 51(2)); the standstill period may be longer if a longer period is set out in the contract award notice (section 51(1)).
53. A standstill period is not required in the circumstances set out in section 51(3), which includes where a direct award is made by a private utility. Private utilities may, in these circumstances, choose to apply a voluntary standstill period by setting this out in the contract award notice. Where a voluntary standstill period is implemented, it must be fully observed, and the contract not entered into before the expiry of the period (section 51(4)). The voluntary standstill period is the same as the mandatory standstill period (not less than eight working days beginning on the day the contract award notice is published) (section 51(5)).

### **What are the primary notices linked to this aspect of the Act?**

54. Utilities procurement is generally governed by the same notice requirements as other procurement under the Act including, for example, the publication of a contract award notice for contracts awarded under a utilities framework.
55. Particular rules apply when a utilities dynamic market is established by reference to a qualifying utilities dynamic market notice. There are further exemptions from certain provisions or publication requirements for utilities or private utilities which are set out below.

#### Tender notice

56. Utilities dynamic markets may be established using a:
- a. dynamic market notice, in the usual way (see section 39); or
  - b. qualifying utilities dynamic market notice (section 40).
57. Section 40(2) provides an exception to the duty to publish a tender notice (as part of an open procedure or competitive flexible procedure) under section 21(7) when contracts are procured under a utilities dynamic market established by reference to a qualifying utilities dynamic market notice. Section 40(2) provides that the tender notice must instead be provided to all suppliers that are members of the dynamic market, or relevant part of the market, and provides discretion to provide a tender notice to suppliers that are still being considered for membership of the utilities dynamic market or part of the market.
58. The effect of section 40(4) is that in the case of a utilities dynamic market established by reference to a qualifying utilities dynamic market notice, the tender notice provided to suppliers, associated tender documents or qualifying utilities dynamic market notice must contain the level of sufficiency of information required by section 21(5) in order to invite suppliers to submit a tender.
59. Section 40(5) provides that, for a dynamic market that has been established by reference to a qualifying utilities dynamic market notice, there is no obligation for contracting authorities



to consider new applications for membership of a utilities dynamic market, or part of a market, before excluding suppliers or disregarding tenders because the supplier is not a member of the market.

60. SAs set out in section 40(7) provides that, references elsewhere in the Act to 'publication' of a tender notice' include the provision of a tender notice to suppliers on, or applying to be admitted to, a utilities dynamic market.

#### Qualifying utilities dynamic market notice

61. Section 40(6) provides that in the case of a qualifying utilities dynamic market notice, the notice must include a statement that only members of the market will be notified of a future intention to award a contract under the utilities dynamic market (because a tender notice is not published).

62. Regulation 25(2)(i) requires that the notice must include as much of the information as would be published in any tender notice under regulation 21(2), to the extent that this is available at the time the qualifying utilities dynamic market notice is published.

63. When providing a tender notice to the members of the dynamic market, only information that has not already been provided in the qualifying utilities dynamic market notice will need to be included in the tender notice.

#### Exemptions to publish notices for private utilities

64. Private utilities are not required to publish the following:

- a. preliminary market engagement notices (section 17 will be amended by the Procurement Regulations 2024 to disapply this section for private utilities);
- b. a notice specifying that a dynamic market has ceased to operate (section 39(6));
- c. key performance indicators: section 52(6)(b) provides that the requirement to set and publish key performance indicators does not apply to utilities contracts awarded by a private utility;
- d. contract details notices or contracts (section 53(6)(a));
- e. procurement termination notices (section 55(3));
- f. payments compliance notices (section 69(6)(b));
- g. information about payments under public contracts (section 70(4)(a));
- h. contract change notices: section 75(6)(c) provides that the requirement to publish a contract change notice prior to modifying a public contract or a 'convertible contract' (see section 74(1)) does not apply to a private utility;
- i. a copy of a modified contract or the relevant modification (only 'qualifying modifications' must be published and modifications to contracts awarded by private

utilities do not fall within this definition because there is no requirement to publish a contract change notice) (section 77);

j. contract termination notices (section 80(4)(a)); and

k. pipeline notices (section 93(6)).

#### Procurement Regulations 2024

65. The Regulations include provisions on the contents of the different procurement notices established under the Act. There are some differences in the notice contents for utilities contracts (and also private utilities). Details of these can be found in Annex A.

#### **What other guidance is of particular relevance to this topic area?**

Utilities will need to understand the whole of the Act, as, save for minor differences in the provisions, it applies equally to utilities and utility contracts as to contracting authorities awarding other types of contract.

## Annex A

### Summary of specific utility provisions in the Procurement Act 2023 (Act)

Legislative reference	Specific utilities provisions	Applicable utility
Section 2: Contracting authority	<p>Section 2(1) sets out that a 'contracting authority' is a 'public authority'; or in relation to a utilities contract, a public authority, 'public undertaking' or 'private utility', other than (in each case) an excluded authority.</p> <p>Section 2(2) describes:</p> <p>'Public authority' as a person that is:</p> <ul style="list-style-type: none"> <li>• wholly or mainly publicly-funded; or</li> <li>• subject to public authority oversight;</li> </ul> <p>and does not operate on a commercial basis (but see subsections (9) and (10));</p> <p>'Public undertaking' is a person that is subject to public authority oversight and operates on a commercial basis; and</p> <p>'Private utility' as a person that is not a public authority or public undertaking and carries out a 'utility activity'.</p> <p>Section 2(7) provides that public undertakings and private utilities are to be treated as devolved Scottish authorities if they operate only in or as regards Scotland, and where:</p> <ul style="list-style-type: none"> <li>• none of its activities relate to reserved matters; or</li> <li>• some of its activities relate to reserved matters and some do not.</li> </ul>	<p>All utilities</p> <p>Public authorities</p> <p>Public undertakings</p> <p>Private utilities</p> <p>Public undertakings and private utilities</p>
Section 6: Utilities contracts	<p>Section 6(1) sets out the definition of a 'utilities contract', being a contract for the supply of goods, services or works wholly or mainly for the purpose of a 'utility activity'.</p> <p>Section 6(2) defines a 'utility activity' as follows:</p> <p>Section 6(2)(a) and (b) - an activity listed in Part 1 but not Part 2 of Schedule 4 (utility activities);</p> <p>Section 6(2)(c) - an activity carried out wholly outside of the UK (e.g. not involving the use of a network or geographical area within the UK); and</p> <p>Section 6(2)(d) - for private utilities, any activity for which the utility has been granted a special or exclusive right (i.e. a procurement for which a private utility has not been granted such a right would not be covered by the Act).</p> <p>Section 6(3) provides that a person carries out a utility activity based on a 'special or exclusive right' if the right to carry out the activity has been granted by statutory, regulatory or administrative provision and the provision also substantially limits the ability of other persons not granted the right to carry out the activity.</p> <p>Section 6(4) provides that a right is not a 'special or exclusive right' if it has been granted following a competitive tendering procedure under section 19 of the Act or where the opportunity was adequately publicised and the grant of the right was based on non-discriminatory criteria.</p> <p>Section 6(5-6) work together and provide that an appropriate authority may amend Part 2 of Schedule 4, which sets out</p>	<p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>Private utilities</p> <p>Private utilities</p> <p>Private utilities</p> <p>All utilities</p>

	<p>activities that are not utility activities, to specify or remove activities from that Part. An appropriate authority may only specify an activity in Part 2 where it is satisfied that the test at section 6(6) has been met: i.e. that the market for the activity specified is subject to fair and effective competition and entry to that market is unrestricted.</p> <p>Section 6(7) makes clear that a reference to a utilities contract includes a reference to a framework agreement where that framework is for the future award of utilities contracts.</p>	All utilities
Section 10: Mixed procurement: special regime contracts	Section 10(6) provides that utilities contracts are a type of special regime contract subject to the rules in this section.	All utilities
Section 13: The national procurement policy statement:	Section 13(10) provides that the obligation in section 13(9) to have regard to the national procurement policy statement does not apply to private utilities.	Private utilities
Section 14: The Wales procurement policy statement	Section 14(9) provides that the obligation in section 14(8) to have regard to the Wales national procurement policy statement does not apply to private utilities.	Private utilities
Section 17: Preliminary market engagement notices	Section 17 does not apply to private utilities: section 17 will be amended by the Procurement Regulations 2024 to disapply this section for private utilities	Private utilities
Section 21: Tender notices and associated tender documents	Section 21(7) refers to section 40 (Qualifying utilities dynamic market notices: no duty to publish a tender notice) which provides an exception to the duty to publish a tender notice (as part of an open procedure or competitive flexible procedure) when contracts are awarded under a utilities dynamic market established by reference to a qualifying utilities dynamic market notice. (Section 40 provides that the tender notice must instead be provided to all suppliers that are members of the dynamic market, or relevant part of the market.)	All utilities
Section 34: Competitive award by reference to dynamic markets	Section 34(7) means that concession contracts which are also utilities contracts can be procured under dynamic markets (but otherwise cannot).	All utilities
Section 35: Dynamic markets: establishment	<p>Section 35(2) defines a utilities dynamic market as a dynamic market set up only for the purpose of the award of utilities contracts by utilities.</p> <p>Section 35(3) provides that, if 'any person<sup>1</sup>' sets up a utilities dynamic market which complies with the provisions of the Act applicable to utilities dynamic markets established by private utilities, that is to be treated as a utilities dynamic market established by a private utility and utilities can use them to award public contracts that are utilities contracts.</p> <p>Section 35(4) defines a 'utility' for the purpose of the Act as a public authority, or public undertaking, that carries out a utility activity; or a private utility.</p>	<p>All utilities</p> <p>N/A, provision relates to any person</p> <p>All utilities</p>

<sup>1</sup> "Any person" in this table means a person who is not a utility, and has set up and operates a utilities dynamic market.



	Section 40(7) provides that any references to 'publication of a tender notice' elsewhere in the Act include references to provision of a tender notice as described in section 40(2) and (3).	All utilities
Section 47: Frameworks: Maximum term	<p>Section 47(1) states the maximum term for a utilities framework is 8 years.</p> <p>Section 47(2) provides that the restriction does not apply if the contracting authority considers that a longer term is required. Section 47(3) provides that the contracting authority must set out its reasons in the tender or transparency notice for the framework.</p> <p>Section 47(4)(b) defines 'a utilities framework' as a framework which does not provide for the future award of public contracts other than utilities contracts.</p> <p>Section 47(5)(b) provides that the maximum terms for frameworks set out at section 47(1) do not apply to private utilities.</p>	<p>Public authorities and public undertakings</p> <p>Public authorities and public undertakings</p> <p>All utilities</p> <p>Private utilities</p>
Section 51: Standstill periods on award of contracts	Section 51(3)(c) provides that the prohibition on entering into a contract before the end of a standstill period does not apply to private utilities when the award is made under sections 41 or 43 (direct award and switching to direct award, respectively).	Private utilities
Section 52: Key performance indicators	Section 52(6)(b) provides that the requirement to set and publish key performance indicators does not apply to utilities contracts awarded by a private utility.	Private utilities
Section 53: Contract details notices and publication of contracts	Section 53(6)(a) provides that the requirement to publish a contract details notice following the award of a contract and, where relevant, a copy of the contract does not apply to private utilities (although details of the contract to be awarded must be included in the contract award notice under section 50 prior to entry into the contract).	Private utilities
Section 54: Time limits	<p>Section 54(4) sets out in tables the minimum 'tendering periods' in different circumstances. For utilities, the following flexibilities apply:</p> <ul style="list-style-type: none"> <li>• there is no minimum tendering period if the contract being awarded is a utilities contract that is subject to a 'negotiated tendering period'; and</li> <li>• the minimum tendering period is 10 days if the contract being awarded is a utilities contract and tenders may be submitted only by 'pre-selected suppliers'</li> </ul> <p>The effect of these two provisions is that where the contract to be awarded is a utilities contract and tenders may only be submitted by pre-selected suppliers, the contracting authority and the suppliers may agree the time period or, in the absence of agreement, the minimum time period is 10 days. (Tendering period, negotiated tendering period and pre-selected supplier' are defined in section 54(5)).</p>	All utilities
Section 55: Procurement termination notices	Section 55(3) provides that the requirement to publish a procurement termination notice if it terminates the procedure does not apply to private utilities.	Private utilities

Section 57: Meaning of excluded and excludable supplier	Section 57(4) provides that for private utilities, any reference to excluded suppliers is to be regarded as excludable suppliers and that any reference in the Act to an excludable supplier includes an excluded supplier.	Private utilities
Section 68: Implied payment terms in public contracts	Section 68(1) provides that the implied payment terms set out in this section do not apply to utilities contracts awarded by private utilities.	Private utilities
Section 69: Payment compliance notices	Section 69(6)(b) provides that payments compliance notices do not apply to private utilities.	Private utilities
Section 70 : Information about payments under public contracts	Section 70(4)(a) provides that the requirement to publish specified information on payments over £30,000 under public contracts does not apply to a public contract that is a utilities contract awarded by a private utility.	Private utilities
Section 71: Assessment of contract performance	Section 71(7) makes it clear that the requirement for contracting authorities to assess contract performance against key performance indicators set under section 52(1) and publish certain information is not applicable to private utilities.	Private utilities
Section 73: Implied payment terms in sub-contracts	Section 73(6)(b) provides that the implied payment terms (relating to 'public sub-contracts') set out in this section do not apply to a public sub-contract that is for the purpose of performing (or contributing to the performance of) all or part of a utilities contract awarded by a private utility.	Private utilities
Section 75: Contract change notices	Section 75(6)(c) provides that the requirement to publish a contract change notice prior to modifying a public contract or a 'convertible contract' (see section 74(1)) does not apply to a private utility.	Private utilities
Section 77: Publication of modifications	Section 77(2)(a) and the definition of 'qualifying modification' means the requirement to publish a copy of a modified contract or the relevant modification does not apply to private utilities (because private utilities are not required to publish a contract change notice under section 75).	Private utilities
Section 80: Contract termination notices	Section 80(4)(a) provides that the requirement to publish a contract termination notice when a contract is terminated does not apply to private utilities.	Private utilities
Section 83: Conflicts assessments	Section 83(7) does not exempt private utilities from the section but does modify some terms when applying those terms to private utilities, otherwise the section would contain references that do not apply to private utilities. For example, section 83(7)(b) provides that a reference to a termination notice being published is a reference to the contract being terminated.	Private utilities
Section 93: Pipeline notices	Section 93(6) provides that private utilities are not required to publish pipeline notices.	Private utilities
Section 96: Electronic communications	Section 96(3)(b) provides that the requirement to use electronic communications systems as far as is practicable does not apply to procurements carried out under a utilities dynamic market.	All utilities
Section 108: Procurement investigations	Section 108(5) provides that a private utility is not considered a 'relevant contracting authority' for the purposes of this section and as a result is not subject to procurement investigations under this section. (Private utilities are subject to any guidance published by an appropriate authority	Private utilities

	following a procurement investigation as provided for in section 110, subject to the recommendation itself.)	
Section 111: Welsh Ministers: restrictions on the exercise of powers	Section 111(2) provides that contracting authorities that are public undertakings or private utilities operating wholly or mainly in relation to Wales, and whose activities are wholly or mainly activities that do not relate to reserved matters, are to be treated as devolved Welsh authorities.	Public undertakings and private utilities
Section 112: Northern Ireland department: restrictions on the exercise of powers	Section 112(3) provides that contracting authorities that are public undertakings or private utilities operating only in or as regards Northern Ireland and whose activities are wholly or mainly activities that do not relate to excepted or reserved matters are to be treated as transferred Northern Ireland authorities.	Public undertakings and private utilities
Section 115: Powers relating to procurement arrangements	Section 115(4)(c) provides that the meaning of 'Scottish procurement legislation' in the Act includes the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49).	All utilities
Section 119: Repeals etc	Section 119(2)(b) provides that the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49) applies only in relation to devolved Scottish authorities.	All utilities
Section 121: Power to amend this Act in relation to private utilities	<p>Section 121(1) provides a power for an appropriate authority to make regulations to reduce the regulation of private utilities under the Act.</p> <p>Section 121(2) provides a non-exhaustive list of what the regulations may do, for example disapply requirements; or modify requirements so as to reduce a particular burden or the overall burden.</p> <p>Section 121(3) provides that an appropriate authority must consult with certain persons before making regulations.</p> <p>Section 121(4) sets out a non-exhaustive list of provisions that might be considered to be a 'burden', such as those that result in financial cost, administrative inconvenience or obstacles to profitability, productivity or efficiency. This is not an exhaustive list.</p>	<p>Private utilities</p> <p>Private utilities</p> <p>Private utilities</p> <p>Private utilities</p>
Section 124: Index of defined expressions	This section provides a table which cross-references expressions used elsewhere in the Act to the relevant provisions where they are defined, including the terms private utility, public undertaking, utilities contract, utilities dynamic market, utility and utility activity.	All utilities
Schedule 1, paragraph 1: Threshold amounts (as amended by the Procurement Regulations 2024)	<p>Thresholds for utilities are:</p> <p>Utilities contract that is a goods or service contract (Row 6): £429,809;</p> <p>Utilities contract that is a works contract (Row 4): £5,372,609;</p> <p>Utilities contract that is a light touch contract (Row 5): £884,720.</p>	All utilities
Schedule 1, paragraph 5: Threshold amounts	Schedule 1, paragraph 5(1)(b) exempts private utilities or public undertakings from the definition of 'sub-central government authority'.	All utilities



Schedule 2, paragraphs 2-3: Exempted contracts	<u>Vertical arrangements</u> Paragraph 2(8) provides that the vertical arrangements exemption in this paragraph does not apply to public undertakings or private utilities. A public undertaking or private utility may instead use the exemption at paragraph 6 of this Schedule, where relevant (which applies to all utilities).	Public authorities
	<u>Horizontal arrangements</u> Paragraph 3(4) provides that the horizontal arrangements exemption does not apply to public undertakings or private utilities. A public undertaking or private utility may instead use the exemption at paragraph 6 of this Schedule, where relevant (which applies to all utilities).	Public authorities
Schedule 2, paragraph 5-6: Exempted contracts	<u>Utilities contracts (counterparty exempted contracts)</u> Paragraph 5(1) exempts utilities contracts awarded by a 'relevant joint venture' to one of the joint venture members, and by a joint venture member to the relevant joint venture. A relevant joint venture is formed for the purpose of carrying out a utility activity and is committed to doing so for a period of at least three years. In addition, the utilities forming the joint venture must remain members of the joint venture for a minimum of three years after the date of the agreement.	All utilities
	Paragraph 5(2) defines a 'relevant joint venture', which is used in paragraphs 5(1) and (2) and 6(1) of this Schedule. A relevant joint venture is a joint venture that was formed for the purpose of carrying out a utility activity and is comprised only of utilities.	All utilities
	Paragraph 6(1) exempts utilities contracts awarded: <ul style="list-style-type: none"> <li>• by a utility to a person affiliated with the utility; and</li> <li>• by a utility that is a relevant joint venture to a person affiliated with any member of the joint venture,</li> </ul> provided the turnover test is met when considering the affiliated person.	All utilities
	Paragraph 6(2) explains, by reference to the Companies Act 2006, what it means if a person is 'affiliated' with another. A person is affiliated with another if the person is in a 'group undertaking', as defined in section 1161(5) of that Act, with that person. Paragraph 6(2) provides that this would be the case even where one of them is not an 'undertaking' as defined in section 1161(1) of that Act: for example, where one is not a limited company.	All utilities
	Paragraphs 6(3) and (5) provide that in order for the exemption to apply, the 'turnover test' must be met, with further details to be set out in regulations.	All utilities
Schedule 2, paragraph 21: Exempted contracts	<u>Public passenger transport services (subject-matter exempted contract)</u> Paragraph 21 exempts contracts that are awarded under the 'public service obligations regulations' which are defined in section 136(11) of the Railways Act 1993. This provision operates to exempt from the Act certain public passenger transport services.	All utilities
Schedule 2, paragraphs 31-34: Exempted contracts	<u>Utilities contracts (subject-matter exempted contracts)</u> Paragraph 31 exempts utilities contracts awarded for the purpose of further sale or lease to third parties, provided the utility does not have a special or exclusive right (as defined in section 6(3)) to sell or lease the goods, services or works purchased and the market is open. This exemption is not	All utilities

	<p>available where the utility awarding the contract is acting as a centralised purchasing authority.</p> <p>Paragraph 32 exempts utilities contracts for the purchase of water awarded by utilities carrying out a utility activity in Schedule 4, paragraph 3(1)(a) or (b).</p> <p>Paragraph 33 exempts utilities contracts for purchases of energy, or fuel for the production of energy, awarded by utilities carrying out a utility activity in Schedule 4, paragraphs 1, 2 or 6 (gas and heat, electricity and extraction oil and gas and exploration for, or extraction, of coal or other solid fuels). The exemption applies only to purchases of energy or fuel for the production of energy, and not to purchases made for other reasons, e.g. purchases of fuel for transport purposes unrelated to the utility activity.</p> <p>Paragraph 34 exempts contracts for the purpose of the activities set out in Part 2 of Schedule 4, that would be utility activities if they were not set out in Part 2.</p>	<p>All utilities</p> <p>All utilities</p> <p>All utilities</p>
Schedule 2, paragraph 35-37: Exempted contracts	<p><u>Concession contracts (subject matter exempted contracts)</u></p> <p>Paragraph 35 exempts concession contracts for utility activities relating to water services described in Schedule 4 Paragraph 3(1) or (2).</p> <p>Paragraph 36 exempts concession contracts for scheduled air services for specified periods within the UK or the UK and Gibraltar and which are operated under an exclusive licence and subject to minimum service requirements. These contracts are known as restricted public service obligations (PSOs) and are separately regulated by Regulation 1008/2008. Under this regulation, the Secretary of State for Transport (SoS) can impose a PSO in respect of scheduled air services between an airport in the UK and an airport serving a peripheral or development region of the UK or on a route which is considered to be vital for the economic and social development of the region. When a PSO has been imposed, any qualifying air carrier is allowed to commence scheduled air services meeting all the requirements of the PSO. This is known as an 'open' PSO and does not involve the award of a contract. If no qualifying air carrier has commenced or can demonstrate that it is about to commence sustainable scheduled air services on a route in question in accordance with the PSO then the SoS can limit access to the scheduled air services to only one qualifying air carrier for a period of up to four years. This is known as a 'restricted' PSO. The right to offer the services for a restricted PSO must be offered by public tender under Regulation 1008/2008. The exemption in paragraph 36 covers concession contracts for restricted PSOs.</p> <p>Paragraph 37 exempts concession contracts for the provision of public passenger transport services.</p>	<p>All utilities</p> <p>All utilities</p> <p>All utilities</p>
Schedule 4 , paragraph 1: Utility activities: gas and heat	<p>Paragraph 1 sets out when activities associated with gas and heat are utilities activities.</p> <p>Paragraph 1(1) provides that the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat and the supply of gas or heat to such networks are utility activities.</p> <p>Paragraph 1(2) sets out circumstances where the supply of gas and heat to a network is not considered a utility activity, all of which must be met for the exemption to apply. These are: that the operator (i.e. the supplier of gas or heat) is a private utility or public undertaking; that the operator</p>	<p>All utilities</p> <p>All utilities</p> <p>Public undertakings and private utilities</p>

	<p>produces the gas or heat as an unavoidable by-product when carrying out an activity that is not a 'specified activity'; and the amount of gas or heat supplied to the network represents not more than 20% of the operator's turnover amount. The definition of specified activities (which are referred to in this paragraph and paragraphs 2 and 3) are set out in paragraph 7 of this Schedule.</p> <p>Paragraph 1(3) and (4) provide that an appropriate authority may make regulations setting out how to calculate the amount referred to in paragraph 1(2)(c) and set out a non-exhaustive list of provisions that may be included in those regulations.</p>	N/A
Schedule 4, paragraph 2: Utility activities: electricity	<p>Paragraph 2 sets out when activities associated with electricity are utility activities.</p> <p>Paragraph 2(1) provides that the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity and the supply of electricity to such networks are utility activities.</p> <p>Paragraph 2(2) sets out circumstances where the supply of electricity to a network is not considered a utility activity, all of which must be met for the exemption to apply. These are: that the operator (i.e. the supplier of electricity) is a private utility or public undertaking; the operator produces electricity because it needs the electricity to do something other than a specified activity; the electricity supplied is only the excess from such production that the operator has not used itself; and the electricity supplied represents not more than 30% of all the energy produced by the operator.</p> <p>Paragraph 2(3) and (4) provide that an appropriate authority may make regulations setting out how to calculate the amount referred to in paragraph 2(2)(d) and sets out a non-exhaustive list of provisions that may be included in those regulations.</p>	<p>All utilities</p> <p>All utilities</p> <p>Public undertakings and private utility</p> <p>N/A</p>
Schedule 4, paragraph 3: Utility activities: water	<p>Paragraph 3 sets out when activities associated with water are utility activities.</p> <p>Paragraph 3(1) provides that the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water and the supply of drinking water to such networks are utility activities.</p> <p>Paragraph 3(2) sets out further activities which, to the extent that they are carried out by a person that also carries out the activities referred to in paragraph 3(1), are also utility activities. These are: any activity connected with a hydraulic engineering project, irrigation or land drainage, provided the condition in paragraph 3(3) is met; and any activity connected with the disposal or treatment of sewage.</p> <p>Paragraph 3(3) sets out the condition referred to in paragraph 3(2), which is that a person carrying out the activity must reasonably expect that more than 20% of the total water made available under paragraph 3(2) is to be supplied as drinking water to a network within paragraph 3(1).</p> <p>Paragraph 3(4) sets out circumstances where the supply of drinking water is not considered a utility activity, all of which must be met in order for the exemption to apply. These are: that the operator (i.e. the supplier of drinking water) is a private utility or public undertaking; the operator produces drinking water because it needs the drinking water to do something other than a specified activity; the drinking water</p>	<p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>All utilities</p> <p>Public undertakings and private utilities</p>

	<p>supplied is only the excess from such production that the operator has not used itself; and the drinking water supplied represents not more than 30% of all the drinking water produced by the operator.</p> <p>Paragraphs (5) and (6) provide that an appropriate authority may make regulations setting out how to calculate the amount referred to in paragraph 4(d) and set out a non-exhaustive list of provisions that may be included in those regulations</p>	N/A
Schedule 4, paragraph 4: Utility activities: Transport	Paragraph 4 sets out when activities associated with transport are utility activities and provides that the provision or operation of a network providing a service to the general public for transport is a utility activity. Such a network may be provided by any means, such as by rail, tram or bus.	All utilities
Schedule 4, paragraph 5: Utility activities: Ports and airports	<p>Paragraph 5 sets out when activities associated with ports and airports are utility activities.</p> <p>Paragraph 5(1) specifies that an activity relating to the exploitation of a geographic area for particular purposes is a utility activity associated with ports and airports. Those purposes are: to provide an airport to carriers of passengers or goods by air; and to provide a port or other terminal facilities to carriers of passengers or goods by sea or inland waterway.</p> <p>Paragraph 5(2) defines 'airport' by reference to section 66 of the Civil Aviation Act 2012.</p>	All utilities
Schedule 4, paragraph 6: Utility activities: Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels	Paragraph 6 provides that an activity relating to the exploitation of a geographic area for the extraction of oil or gas and exploration for, or extraction of, coal or other solid fuels are utility activities.	All utilities
Schedule 4, paragraph 7: Utility activities: interpretation of Schedule	Paragraph 7 sets out the definitions of 'specified activity' and 'supply' which are used in this part of the Schedule	All utilities
Schedule 4, paragraphs 8-17: Utility activities: Activities that are not utility activities	Part 2 of this Schedule specifies the activities which are not utility activities and therefore not covered by the Act. These exemptions reflect the exemptions set out in three EU Commission Decisions (2006/211/EC, 2007/141/EC and 2010/192/EU). The power in section 6(5) of the Act allows an appropriate authority to make regulations to amend Part 2.	All utilities
Schedule 8, paragraph 4: Permitted contract modification	<p><u>Unforeseeable circumstances</u></p> <p>Paragraph 4(2) provides that the 50% threshold for modifying contracts where the unforeseeable circumstances permitted modification ground applies does not apply to utilities contracts.</p>	All utilities
Schedule 8, paragraph 5: Permitted contract modification	<p><u>Materialisation of a known risk</u></p> <p>Paragraph 5(2) provides that the 50% threshold for modifying contracts where the materialisation of a known risk permitted modification ground applies does not apply to utilities contracts.</p>	All utilities
Schedule 8, paragraph 8: Permitted contract modification	<p><u>Additional goods, services or works</u></p> <p>Paragraph 8(2) provides that the 50% threshold where the modifying contracts for additional goods, services or works permitted modification ground applies does not apply to utilities contracts.</p>	All utilities

Schedule 11, Paragraph 7: repeals and revocations	Paragraph 7 repeals The Utilities Contracts Regulations 2016 (S.I. 2016/274).	N/A
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## Appendix to Annex A

Regulation	Specific utilities rules in the Procurement Regulations 2024	Applicable utility types
Regulation 5: Publication of notices etc on central digital platform	Regulation 5 sets out when a notice must be published on the central digital platform. The list of provisions referred to where notices must be published on the platform includes notices under section 39(2) (dynamic market notices: intention to establish a dynamic market), which includes qualifying utilities dynamic market notices (by virtue of section 40(6) of the Act).	All utilities
Regulation 7: Core supplier information: platform not working, urgency, private utilities	Regulation 7 sets out an exemption to regulation 6 (Sharing core supplier information through central digital platform) for private utilities in the case of a directly awarded public contract pursuant to paragraphs 13 and 14 of Schedule 5 of the Act (urgency).	Private utilities
Regulation 18: Tender notices: open procedure  Regulation 19: Tender notices: competitive flexible procedure  Regulation 20: Tender notices: frameworks  Regulation 21: Tender notices: dynamic markets except qualifying utilities dynamic markets	Regulation 18 to 21 sets out the contents of the tender notices for the open procedure, competitive flexible procedure, frameworks, and dynamic markets (except qualifying utilities dynamic markets).  Regulation 18 includes special provisions for utilities as follows: <ul style="list-style-type: none"> <li>• regulation 18(2)(e): requirement to identify the contract as a utilities contract in the tender notice; and</li> <li>• regulation 18(2)(q): exemption for utilities having to provide a reason for not dividing the contract into lots.</li> </ul> Regulations 19 to 21, by cascading the requirements to include the information in regulation 18(2), in effect create similar provisions that also apply to tender notices for the competitive flexible procedure, frameworks, and dynamic markets (except qualifying utilities dynamic markets).	All utilities
Regulation 22: Tender notices: qualifying utilities dynamic market notices	Regulation 22 sets out the contents of the tender notices where they relate to procurements carried out under a utilities dynamic market established by way of a qualifying utilities dynamic markets notice - i.e. where tender notices are provided to members of the market, rather than published.  This notice must include the information required to be included in the qualifying utilities dynamic market notice to which the tender notice relates where this has not been included (as permitted by regulation 25(2)(ii)) in that notice. Together a qualifying utilities dynamic market notice and the relevant tender notice and associated tender documents must provide all the information required for suppliers to be able to prepare a tender (sections 21(5) and 40(4)).	All utilities

Regulation 25: Dynamic market notices (including qualifying utilities dynamic market notices)	Regulation 25 sets out the details that the notice establishing a utilities dynamic market, including a qualifying utilities dynamic market, must contain, including the additional information that the notice must contain if it is a qualifying utilities dynamic market notice (see regulation 25(2)(ii)).	All utilities, and third persons
Regulation 26: Transparency notices	Regulation 26 sets out the details that the transparency notice, which a contracting authority is generally required to publish before directly awarding a contract under sections 41 or 43, must contain. Regulation 26(2)(g) sets out a requirement to identify the contract as a utilities contract in the transparency notice.	All utilities
Regulation 27: Contract award notices except those published by private utilities	Regulation 27 sets out the information required in the contract award notice, published prior to a contracting authority entering into a contract with a specified supplier or suppliers. Regulation 26(2)(k) sets out a requirement to identify the contract as a utilities contract in the contract award notice.  Regulation 27(8) sets out that regulation 27 does not apply to a utilities contract awarded by a private utility.	Public authorities and public undertakings  Private utilities
Regulation 28: Contract award notices published by private utilities  Regulation 29: Contract award notices published by private utilities: direct awards  Regulation 30: Contract award notices published by private utilities: frameworks	Regulations 28 to 30 set out the content of the contract award notices published by private utilities, reflecting the desire to minimise burdens on private utilities. As private utilities are not required to publish a contract details notice after a contract has been awarded, the contract award notice is used to capture certain information relating to the contract to be awarded.	Private utilities
Regulation 32: Contract details notices: open or competitive flexible procedure  Regulation 33: Contract details notices: frameworks  Regulation 34: Contract details notices: public contracts awarded in accordance with frameworks  Regulation 35: Contract details notices: direct award	Regulations 32 to 35 set out the information required in the contract details notice, published after a contracting authority has entered into a contract.  Regulation 32(2)(o) sets out a requirement to identify the contract as a utilities contract in the contract details notice for an open or competitive flexible procedure. Regulations 33 to 35, by cascading references to the relevant parts of regulation 32(2), extend this requirement to contract detail notices for frameworks, public contracts awarded in accordance with frameworks, and directly awarded contracts.	Public authorities and public undertakings
Regulation 47: Regulation of procurement by devolved Scottish authorities	Regulation 47 amends the Act by adding section 115A which extends the application of the Act. The effect of this is that if a devolved Scottish authority participates in a joint procurement led by a reserved or transferred Northern Ireland contracting authority, uses a reserved or transferred Northern Ireland centralised procurement authority or uses a framework or dynamic market established by a reserved or transferred Northern Ireland contracting authority, it must follow the Act	All utilities

	<p>to the extent set out in new Schedule 9A. This includes where a contract is to be awarded by reference to a utilities dynamic market in any of these circumstances. In the utility context, it only applies to a devolved Scottish authority which is a utility within the meaning of regulation 4 of the Utilities Contracts (Scotland) Regulations 2016(32).</p>	
<p>Regulation 48: Preliminary market engagement in relation to private utilities</p>	<p>Regulation 48 provides, in exercise of the power in section 121 of the Act, that the requirement in section 17 of the Act to publish a preliminary market engagement notice does not apply to private utilities, other than to a private utility which is a devolved Welsh authority that is not carrying out procurement under a reserved procurement arrangement or a transferred Northern Ireland procurement arrangement. The Procurement (Wales) Regulations 2024 will make an amendment to exempt devolved Welsh contracting authorities from section 17 (see regulation 47 of those regulations). The effect of the amendments in both sets of regulations is that section 17 will not apply to any private utilities.</p>	<p>Private utilities</p>

**Summary of utilities activities**

<b>Sector</b>	<b>Schedule 4 Utility activities</b>	<b>Schedule 4 (Part 2) Excluded activities or Schedule 2 Exempted contracts</b>
Gas and heat	Schedule 4, paragraph 1 - the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of gas or heat, and the supply of gas or heat to such a network. This is likely to be relevant to gas and heat transmission and distribution network businesses that provide a service to the public	Schedule 4, paragraph 1(2) - Supplies of gas or heat to a network that are not utility activities  Schedule 4, paragraph 11 - Wholesale or retail sale of gas in England, Scotland or Wales  Schedule 2, paragraph 33 - Utilities contracts for the supply of energy or fuel for production of energy
Electricity	Schedule 4, paragraph 2 - the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such a network. This is likely to be relevant to electricity transmission and distribution network businesses that provide a service to the public	Schedule 4, paragraph 2(2) - Supplies of electricity to a network that are not utility activities  Schedule 4, paragraphs 8 and 9 - Generation and production of electricity in England, Scotland or Wales  Schedule 4, paragraph 10- Wholesale or retail sale of electricity in England, Scotland or Wales  Schedule 2, paragraph 33 - Utilities contracts for the supply of energy or fuel for production of energy
Water	Schedule 4, paragraph 3 - Provision or operation of a fixed network to provide a service to the public in connection with the production, transport or distribution of drinking water. This is likely to be relevant to regulated water and sewerage companies and regulated water companies]	Schedule 2, paragraph 32 - Utilities contracts for the supply of water  Schedule 2, paragraph 35 - Concession contracts for the carrying out of water services
Transport	Schedule 4, paragraph 4 - Activities relating to the provision or operation of networks providing a service to the public in the field of transport by (i) railway; (ii) automated systems; (iii) tramway; (iv) trolley bus; (v) bus; or (vi) cable.	Schedule 2, paragraph 21 - Rail and metro regulated by DfT legislation  Schedule 2, paragraph 36 - Concession contracts for air services  Schedule 2, paragraph 37 - Concession contracts for public passenger transport services
Ports and airports	Schedule 4, paragraph 5 - Activities relating to the provision of airports to carriers of passengers or goods by air or of ports (which would include maritime or inland ports) or other terminal facilities to carriers by sea or inland waterway	
Oil and gas	Schedule 4, paragraph 6 - Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels	Schedule 4, paragraphs 12 and 13 - Exploration for oil and natural gas in England, Scotland or Wales  Schedule 4, paragraphs 14 and 15 - Production of oil and natural gas in England, Scotland or Wales  Schedule 4, paragraphs 16 and 17 - Development of infrastructure for production of oil and natural gas in England, Scotland or Wales  Schedule 2, paragraph 33 - Utilities contracts for the supply of energy or fuel for production of energy



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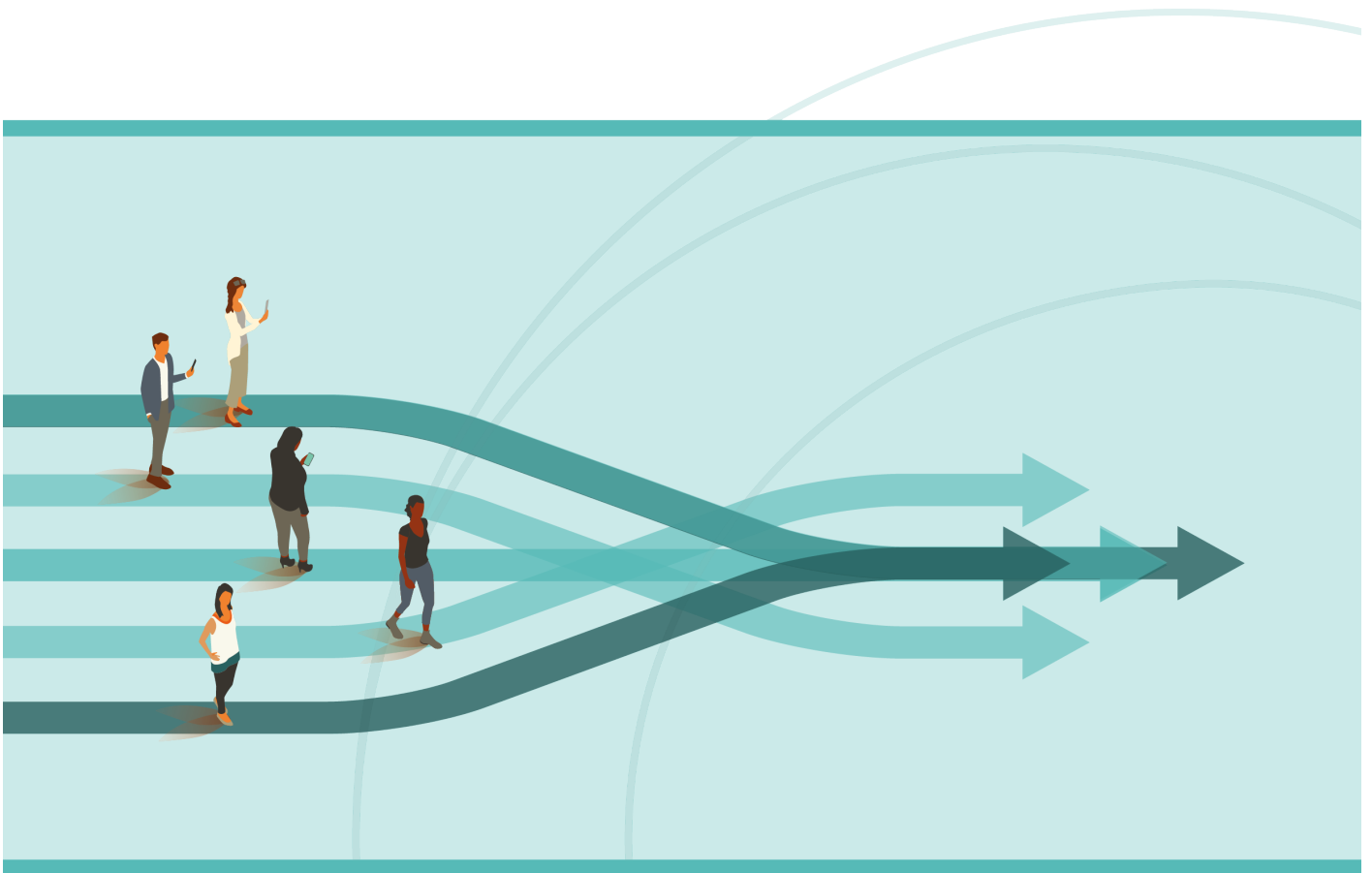
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Procurement Act 2023

# Guidance: Defence and Security Contracts



May 2024

## **Guidance on Defence and Security Contracts**

### **Are defence and security contracts treated differently from other contracts in the Procurement Act 2023?**

1. The specific defence and security provisions in the Procurement Act 2023 (Act), listed at Annex A to this guidance, provide derogations and flexibility to cater for the limited differences in the way that contracting authorities awarding defence and security contracts need to operate compared to those awarding other contracts.
2. Some of the provisions in the Act relating to equal treatment of suppliers and greater openness in the conduct of procurement procedures might not be practical where the nature of the defence market limits the scope for competition. Others may put at risk the UK's defence and security interests, such as maintaining security of supply for critical defence supplies.
3. To deal with and alleviate such practicalities and risks, the Act includes specific defence and security provisions that allow:
  - a. contracting authorities to derogate from certain provisions in the Act; or
  - b. additional flexibilities which are not available to contracting authorities procuring other contracts.
4. This guidance deals only with the specific provisions that apply to defence and security contracts. Where there are no specific provisions, there is no difference for defence and security contracts and reference should be made to relevant other guidance on various aspects of the Act.

### **What is the legal framework that governs defence and security contracts?**

5. The rules governing defence and security procurement in the UK are contained in the Act and replace the repealed Defence and Security Public Contracts Regulations 2011 (DSPCR). Defence and security contracts are defined at section 7 of the Act.
6. Contracting authorities awarding defence and security contracts are generally governed by the provisions in the Act, just like any other contracting authority. There are some exceptions and this guidance provides an overview of the specific defence and security provisions that apply.
7. Some mixed contracts will contain elements which, if procured separately, would be subject to special rules, such as those applicable to defence and security contracts. Section 10 provides for when those contracts are to be treated according to the rules that reflect the special nature of one element (i.e. when they are to be treated as a 'special regime contract', as defined in section 10), or when they are to be treated as subject to the standard rules in the Act.

## What has changed?

8. Whereas defence and security contracts were previously regulated separately (under the DSPCR), the Act regulates defence and security contracts and other types of contracts. This consolidation serves to reduce the overall volume of procurement legislation and simplifies the rules for contracting authorities.
9. The scope of what falls within a defence and security contract in the Act is wider than the previous legislation in that the Act covers goods, services or works that are otherwise relevant to the operational capability, effectiveness, readiness for action, safety or security of the armed forces.
10. The Act also provides additional flexibility for direct awards and permitted modifications that will allow defence authorities to take advantage of technical developments, mitigate any adverse effects and maintain continuity of supply.

## Key points and policy intent

### Application

11. The defence and security provisions in the Act apply to 'defence and security contracts' that are public contracts. A defence and security contract is a public contract where:
  - a. the estimated value of the contract exceeds the threshold for defence and security contracts; and
  - b. the contract is not an exempted contract (section 3).
12. In order to rely upon the provisions at Schedule 5, paragraph 20 (Direct award justifications) and Schedule 8, paragraphs 10-11 (Permitted contract modifications) the procurement must, in addition to the requirements set out in paragraph 10 above, be undertaken by a 'defence authority' (see paragraph 24 below).

### What is a defence and security contract?

13. Section 7(1) defines a 'defence and security contract' as a contract for the supply of:
  - a. military equipment, which includes any parts, components or subassemblies of military equipment (see section 7(7));
  - b. sensitive equipment;
  - c. goods, services or works necessary for the development, production, maintenance or decommissioning of military equipment or sensitive equipment;
  - d. logistics services relating to military equipment or sensitive equipment;

- e. goods, services or works for wholly military purposes<sup>1</sup>;
  - f. sensitive services or sensitive works;
  - g. goods, services or works that are otherwise relevant to the operational capability, effectiveness, readiness for action, safety or security of the armed forces.
14. These terms are further defined in section 7(7) and contracting authorities should check whether a procurement falls within the definition in the Act. Military equipment is equipment specifically designed or adapted for military purposes. Sensitive equipment, works and services cover procurements for security purposes which involve dealing with 'classified information'. Classified information means information or other material which requires protection from unauthorised access, distribution, or destruction, or from other compromise in the interests of national security and is protected by law (such as the Official Secrets Act).
15. The definition of a defence and security contract at section 7(1) primarily covers contracts currently within the scope of the DSPCR but it also includes other contracts of the type set out in section 7(1)(g), where the defence and security provisions in the Act are to apply. Section 7(1)(g) could include, for example, a drone designed for the civil market, but which is being put to military use and where the defence and security provisions in the Act, such as the modification ground for technical refresh, should apply in order to ensure operational advantage is maintained.
16. A defence and security contract includes a defence and security framework, which is a framework under which only defence and security contracts will be awarded (see paragraphs 35-37 below).

#### What are the financial thresholds for defence and security contracts?

17. Schedule 1, paragraph 1, of the Act sets out the various thresholds applicable to the different categories of contracts. Whether the estimated value of a contract (that is not an exempted contract) is above or below the relevant threshold determines whether it is 'covered procurement' under the Act - that is, whether generally it is subject to the rules applicable to public contracts or (if relevant) to the below-threshold regime in Part 6. The table below sets out the thresholds for defence and security contracts that have applied since 1 January 2024. The thresholds in the Act currently reflect those in place at the time of Royal Assent and will be updated by secondary legislation prior to the Act coming into force.

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<sup>1</sup> 'wholly military purposes' include:

- (a) the transportation of military personnel or military equipment;
- (b) the training of military personnel;
- (c) the training of other personnel to use military equipment; and
- (d) the construction of military facilities, including military airfields, military storage facilities or facilities for the maintenance of military equipment.

Type of defence and security contract	Threshold
Goods	£429,809
Services	£429,809
Works	£5,372,609
Concession	£5,372,609

What exemptions are available to contracting authorities?

18. Schedule 2 sets out the types of contracts to which the rules on covered procurement do not apply ('exempted contracts'). With the exception of the exemptions applicable only to utilities, all of the exemptions could be applicable when contracting authorities award defence and security contracts.
19. In addition to the exemptions specifically relevant in defence and security procurement, set out below are the types of exempted contracts that may be particularly relevant to defence and security contracts, although other types of exempted contracts may also be relevant. Please refer to the guidance on exempted contracts for further information.
20. Defence and security contracts (counterparty). Schedule 2, paragraph 4 exempts government-to-government defence and security contracts where a contracting authority procures directly from the government of another state or territory, which would include the governing authority of the state or territory and a regional or local government within a state or territory.
21. Research and development services (subject-matter). Schedule 2, paragraph 22 exempts contracts for research and development services (R&D). There is a degree of overlap with the direct award ground for prototypes and development. The grounds for direct award have a wider scope for R&D than this exemption and may be suitable where the R&D also involves goods as well as services.
22. International agreements and organisations (subject-matter). Schedule 2, paragraph 23(a) (stationing of military personnel) exempts contracts relating to the stationing of military personnel which a contracting authority is obliged to award in accordance with the procurement rules of an international agreement.
23. National security (subject-matter). Schedule 2, paragraph 25 exempts contracts where the contracting authority determines that doing so is in the interests of national security.

This exemption is available to all contracting authorities, not just those procuring defence and security contracts. National security interests can include, provided they are properly justified, procurements that are too sensitive to advertise, or where the UK's national security requires the contract to be delivered by a UK supplier. National security is not defined in the Act, in order to ensure that it is sufficiently flexible to protect the UK's national security interests, but must be properly justified.

24. Defence and security (subject-matter). The Act provides a number of exemptions for defence and security contracts where the application of the Act to either the contracting authority or the supplier is not appropriate:
- a. Schedule 2, paragraph 27 exempts a defence and security contract awarded to a supplier outside of the UK where operational needs require the contract to be concluded with a supplier who is located in the area of operations where the armed forces are deployed. Operational requirements mean that contracts need to be placed with local suppliers or a specific supplier for speed of acquisition. That often makes it impractical and inefficient to place contracts with suppliers outside of the state in which the armed forces are deployed;
  - b. Schedule 2, paragraph 28 exempts a defence and security contract awarded to a supplier located in another state or territory where the armed forces maintain a military presence, and the relevant state or territory requires a local supplier to be awarded the contract as part of the conditions for the presence of the armed forces;
  - c. Schedule 2, paragraph 29 exempts a defence and security contract awarded under a procedure of an international organisation of which the UK is a member, such as NATO or OCCAR;
  - d. Schedule 2, paragraph 30 exempts a defence and security contract awarded under an international arrangement, such as a memorandum of understanding, where the purpose of that arrangement is for the UK and one or more other states or territories to jointly develop or exploit a new product.

#### What is a defence authority?

25. Certain provisions in the Act relating to defence and security contracts only apply to contracts awarded by defence authorities. A defence authority' is defined in section 7(5) of the Act as a contracting authority specified in regulations made by a Minister of the Crown.
26. Currently, the Secretary of State for Defence, the Atomic Weapons Establishment, the National Crime Agency and the Oil and Pipelines Agency satisfy the statutory requirements of the Act and are specified as defence authorities in regulations under the Act.

27. The defence and security provisions that are applicable only to defence authorities are as follows:

- a. Schedule 5, paragraph 20, which permits direct award of defence and security contracts where necessary to enhance or maintain the operational capability, effectiveness, readiness for action, safety, or security of the armed forces; and
- b. Schedule 8, paragraphs 10-11 which permit modifications of defence and security contracts:
  - i. to take advantage in developments in technology; or
  - ii. to mitigate the adverse effects of developments in technology; or
  - iii. where the continuous supply of goods, works or services supplied under a contract are necessary to ensure the ability of the armed forces to maintain their operational capabilities, effectiveness, readiness for action, safety, security or logistical capabilities and the modification is necessary to ensure there is a continuous supply of those goods, works or services.

#### International agreements

28. Part 7 of the Act uses the term 'treaty state suppliers' to identify suppliers from countries that are entitled to benefit from one of the international agreements listed in Schedule 9. It ensures that treaty state suppliers have the right to no less favourable treatment than domestic suppliers when participating in a procurement under the Act, to the extent covered by their relevant agreement, including, where provided for in the agreement, the right to seek remedies under the Act.

29. Defence and security contracts listed at section 7(1)(a-f) are not included in any of the international agreements in Schedule 9, so a contracting authority's duty to comply with Parts 1 to 5, 7 and 8 of the Act, as referred to in section 100, for the procurement of those contracts is only owed to suppliers from the UK, Crown Dependencies and British Overseas Territories.

30. Contracting authorities carrying out procurements for such defence and security contracts therefore have the discretion to exclude suppliers, and sub-contractors of any supplier, from outside the UK, Crown Dependencies and British Overseas Territories from these procurements. They are, of course, permitted to include suppliers outside of the UK, Crown Dependencies and British Overseas Territories in their procurements.

31. For defence and security contracts listed at Section 7(1)(g), contracting authorities considering excluding non-UK, Crown Dependencies and British Overseas Territories suppliers will need to check the coverage of the international agreements listed in Schedule 9 as some treaty state suppliers may have a right to participate in these procurements.



32. Contracting authorities should note that the Economic Activity of Public Bodies (Overseas Matters) Bill, if passed and commenced, would ban public bodies from implementing their own boycotts or divestment campaigns against foreign countries and territories, where they are inconsistent with formal governmental legal sanctions, embargoes, and restrictions. It is the intention for defence authority contracts to be excluded from the scope of this legislation but other defence and security contracts may be within scope; further detail is contained in the guidance on treaty state suppliers.

#### Specific provisions applicable to carrying out a defence and security procurement

33. Competitive tendering procedure. Generally, contracting authorities awarding defence and security contracts must use the same procurement procedures as are used by other contracting authorities. Section 20 sets out the provisions relating to competitive tendering procedures. Please see the guidance on competitive tendering procedures for more information.

34. Direct award. Section 41 permits a contracting authority to award a contract directly, without first running a competitive tendering procedure when a direct award justification (set out in Schedule 5) applies. Whilst all of the direct award justifications are available, there are three specific provisions for directly awarding defence and security contracts:

- a. Schedule 5, paragraph 18 allows contracting authorities to directly award contracts for the supply of air or maritime transport services to the armed forces or security services while they are deployed outside the UK or in order for them to be deployed outside the UK. For example, this would allow the contracting authority to employ a broker to find a suitable aircraft or vessel to provide the transport;
- b. Schedule 5, paragraph 19 allows contracting authorities to directly award a contract instead of modifying an existing contract where, had the existing contract been modified, the modification would not have been substantial or the permitted modification grounds in Schedule 8, paragraphs 4 and 8 would have applied. This justification can only be used where the new contract would be a 'qualifying defence contract' under section 14(2) of the Defence Reform Act 2014 (Defence Reform Act). This provision ensures that the new contract falls under the pricing arrangements in the Single Source Contract Regulations 2014;
- c. Schedule 5, paragraph 20 allows defence authorities (see paragraphs 24-26 above) to directly award defence and security contracts listed at section 7(1)(a-f) where the direct award is necessary to enhance or maintain the operational capability, effectiveness, readiness for action, safety or security of the armed forces. Cabinet Office and Ministry of Defence have agreed a threshold of £20 million above which the Ministry of Defence would need to seek Cabinet Office approval in order to use the direct award ground at Schedule 5, paragraph 20, which also applies to Defence Equipment and Support.

35. Whenever directly awarding a contract, the contracting authority must be able to demonstrate the necessity of direct award, which must be set out in the transparency notice required by section 44(1). Please refer to the guidance on direct award for further information on these and other justifications and the transparency notice.
36. Defence and security frameworks. Section 47 sets out the maximum term for frameworks. It provides that the maximum term for a defence and security framework (and a utilities framework) is eight years. For all other frameworks, the maximum term is four years. Section 47(4) defines a defence and security framework as a framework that provides for the future award of only public contracts (referred to here as 'call-off contracts') that are defence and security contracts. The longer term reflects the complexities of the defence and security markets.
37. Contracting authorities should consider the terms of frameworks on a case by case basis bearing in mind that utilising the maximum permitted duration in developing or volatile markets might effectively stifle competition and innovation leading to poor value for money.
38. A longer term than eight years is permitted under section 47(2) if the contracting authority considers that this is required due to the nature of goods, services or works to be supplied. For example, a longer term may be necessary where investment is required by suppliers to deliver the call-off contracts under the framework that will take longer than eight years to recoup, or where call-off contracts have a long lead time prior to award and therefore cannot be awarded prior to expiry of the framework. Where a contracting authority relies on section 47(2) to provide for a longer term, section 47(3) requires the contracting authority to publish the rationale for this in the tender or transparency notice for the framework.
39. Contract award notices. Section 50(6)(a) exempts contracting authorities from the requirement to publish a contract award notice before entering into a call-off contract awarded under a defence and security framework.
40. Contract Modifications. Section 74 and Schedule 8 apply to the award of defence and security contracts in the same way as for other contracts. In addition, defence authorities may make use of two specific additional permitted modification grounds set out in Schedule 8 to modify their defence and security contracts (i.e. defence authority contracts):
- a. Schedule 8, paragraph 10 permits a defence authority contract to be modified to take advantage of technological developments, or to minimise potential adverse impacts. This allows defence authorities to adapt contracts, for example, to maintain an operational advantage over adversaries, better respond to threats and improve operational capabilities;
  - b. Schedule 8, paragraph 11 permits a defence authority contract to be modified to ensure there are no gaps in the delivery of the contract where this is necessary to ensure that the armed forces are able to maintain their operational capability, effectiveness, readiness for action, safety, security or logistical capabilities. This

to ensure that lack of continuous supply does not expose the armed forces to unnecessary risk.

41. Modifications to defence and security contracts are exempted from the requirement to publish contract change notices (section 75(6)). Neither is there a requirement to publish the modified contract (because the contracting authority has not made a 'qualifying modification' as defined in section 75(2)).
42. Implied terms. Section 67(6)(b) allows defence authorities to require suppliers to send electronic invoices (in the required electronic form) for processing to specified electronic systems that require the payment of fees by the supplier.

#### Single Source Contract Regulations 2014

43. Section 117 provides that amendments are made in Schedule 10 to the Defence Reform Act to enable reforms to the Single Source Contract Regulations 2014. These regulations strike a balance between ensuring value for money for the taxpayer and a fair price for suppliers for un-competed 'qualifying defence contracts'. These reforms were set out in a Command Paper published in 2022<sup>2</sup> and are designed to ensure that the single source procurement regime can continue to deliver in traditional defence contracts and be applied effectively across the breadth of single source defence work in the future.
44. Schedule 10, paragraph 2(2-4) provides a power to clarify that some cross-government single source contracts with a substantial defence element will come under the Defence Reform Act regime. That will provide assurance on value for money for a greater proportion of single source defence expenditure.
45. Schedule 10, paragraphs 3(2) and 3(8) allow a contract to be split into different components (with, for example, different profit rates or pricing methods) where it makes commercial sense to do so. Further flexibility in the regime is provided by a power in paragraph 3(3) to specify circumstances under which a fair price for all or part of a contract can be demonstrated in ways other than by reference to the pricing formula in the Defence Reform Act. Circumstances for using such an approach will be set out in regulations to the Defence Reform Act and will include, for example when an item has previously been sold in an open market or where a price is regulated by another law.
46. The contract negotiation process within the Single Source Contract Regulations 2014 is simplified by amendments in Schedule 10:
  - c. paragraph 9(3)(a) will ensure that the contract better reflects the financial risks involved;

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<sup>2</sup> [Defence and Security Industrial Strategy: Reforms to the Single Source Contract Regulations, April 2022](#)

- d. paragraph 9(3)(e) provides a power that will clarify how the incentive adjustment should be applied. The current six-step profit-setting process is being amended to remove two steps.
  - e. paragraph 11(3) will abolish the funding adjustment for the Single Source Regulations Office (SSRO) and remove the adjustment that ensures that profit can be taken on a contract only once. That issue is dealt with through allowable costs by virtue of paragraph 12(3).
47. Schedule 10, paragraph 13 simplifies some reporting requirements to reflect concerns expressed by suppliers and to make compliance with the regulations more straightforward. The amendments in paragraphs 18 and 19 enhance the power of the SSRO to issue guidance, and clarify and expand the range of issues on which it can adjudicate. That will empower the SSRO to play a greater role in speeding up the contract negotiation process.

**What are the primary notices linked to this aspect of the Act?**

48. Defence and security procurement is generally governed by the same transparency and noticing requirements as all other procurement under the Act. The exceptions are set out above and are as follows:
- f. there is no requirement to publish a contract award notice for a call-off contract under a defence and security framework;
  - g. there is no obligation to publish a contract change notice when a defence and security contract is being modified;
  - h. when a defence and security contract has been modified, there is no obligation to publish the modified contract.

**What other guidance is of particular relevance to this topic area?**

Contracting authorities awarding defence and security contracts will need to understand the whole of the Act, as the same provisions (for example, relating to competitive tendering procedures, conditions of participation and award criteria) as apply to contracting authorities awarding other contracts apply. The only exceptions and flexibilities are set out in this guidance. The suite of guidance published on the Act is therefore relevant, although the following guidance is of particular relevance.

Guidance on mixed procurement  
Guidance on valuation of contracts  
Guidance on exempted contracts  
Guidance on thresholds

## Annex A

### Summary of specific defence and security provisions in the Procurement Act 2023

Legislative reference	Specific defence and security provisions
Section 7 - Defence and security contracts	<p>Section 7(1) defines a 'defence and security contract' for the purposes of the Act.</p> <p>Section 7(2) provides that a framework will be a defence and security contract where it only permits the award of contracts which are defence and security contracts.</p> <p>Section 7(3) ensures the thresholds in Schedule 1 specific to defence and security contracts are applied only in respect of procurements falling within Section 7(1) (a) to (f).</p> <p>Section 7(4) defines a 'defence authority contract'. This is a subset of a defence and security contract and are contracting authorities that are permitted to use the direct award justification in Schedule 5, paragraph 20 and the permitted modification grounds in Schedule 8, paragraphs 10 and 11.</p> <p>Section 7(5) provides a power for a Minister of the Crown to specify contracting authorities which are defence authorities for the purposes of the Act (and in particular for the definition of 'defence authority contract').</p> <p>Section 7(6) places a restriction on the Minister to specify in regulations under subsection (5) only those contracting authorities whose function is wholly or mainly for the purposes of defence or national security.</p> <p>Section 7(7) provides further definitions for terms used in section 7(1).</p>
Section 41 - Direct award in special cases	<p>Section 41(2) provides that a contract may be directly awarded to an excluded supplier where there is an overriding public interest in doing so.</p> <p>Section 41(5) provides that there is an overriding public interest in directly awarding a contract to an excluded supplier in the following circumstances:</p> <ul style="list-style-type: none"> <li>• where the procurement is essential for the construction or maintenance of critical national infrastructure. This may be, for example, as defined in the Government's National Cyber Security Strategy;</li> <li>• where the procurement is necessary to ensure the proper functioning of a sector on which the defence, security or economic stability of the UK relies;</li> <li>• where not awarding to the supplier would prejudice the conduct of military or security operations of the armed forces or intelligence services; and</li> <li>• where the justification for direct award is extreme and unavoidable urgency and the contract cannot be awarded, or performed by, a supplier that is not an excluded supplier within the time frame.</li> </ul>
Section 47 - Frameworks: maximum term	<p>Section 47(1) limits the maximum term for a defence and security framework to 8 years.</p> <p>Section 47(4) provides the definition of a 'defence and security framework.'</p>

<p>Section 50 - Contract award notices and assessment summaries</p>	<p>Section 50(6) removes the requirement to publish contract award notices for defence and security contracts awarded under defence and security frameworks. It should be noted that a contract award notice may still be published in relation to contracts awarded under defence and security frameworks; this would trigger a voluntary standstill period (see section 51).</p>
<p>Section 67 - Electronic invoicing: implied term</p>	<p>Section 67(6)(b) allows defence authorities to require suppliers to send electronic invoices (in the required electronic form) for processing to specified electronic systems that require the payment of fees by the supplier.</p>
<p>Section 75 - Contract change notices</p>	<p>Section 75(6) sets out exceptions to the requirement to publish a contract change notice for defence and security contracts.</p>
<p>Section 117 - Single source defence contracts</p>	<p>Section 117 provides that Schedule 10 makes amendments to the Defence Reform Act 2014.</p>
<p>Section 124 - Index of defined expressions</p>	<p>This section cross-references terms used in the Act to the relevant provisions where they are defined, including the terms defence and security contract and defence authority contract.</p>
<p>Schedule 1 - Threshold amounts</p>	<p>Paragraph 1 sets out the thresholds for defence and security contracts. These will be updated by regulations prior to the Act coming into force to reflect changes in force since 1st January 2024, which are:</p> <ul style="list-style-type: none"> <li>• defence and security contract that is a goods or service contract - £429, 809</li> <li>• defence and security contract that is a works contract - £5,372,609</li> <li>• defence and security contract that is a concession contract - £5,372,609</li> </ul> <p>Paragraph 3 provides a separate power to update defence and security thresholds..</p>
<p>Schedule 2, paragraph 4: Exempted contracts</p>	<p><u>Defence and security contracts (counterparty)</u></p> <p>Paragraph 4 exempts defence and security contracts where the supplier is another government.</p>

<p>Schedule 2, paragraph 23: Exempted contracts</p>	<p><u>International agreements and organisations (subject-matter)</u></p> <p>Paragraph 23 exempts contracts where the contracting authority is obliged to follow a procedure prescribed by an international agreement (of which the UK is a signatory) relating to the stationing of military personnel or the implementation of a joint project between the signatories to that international agreement.</p>
<p>Schedule 2, paragraphs 27-30:- Exempted contracts</p>	<p><u>Defence and security contracts (subject-matter)</u></p> <p>Paragraph 27 exempts defence and security contracts awarded to suppliers located outside of the UK where the armed forces are deployed and the operational needs of the armed forces require the contract to be placed with such a supplier.</p> <p>Paragraph 28 exempts a defence and security contract awarded to a supplier located outside of the UK where the armed forces have a military presence and where the state or territory in which they are located requires a contract to be placed with a particular supplier.</p> <p>Paragraph 29 exempts defence and security contracts which are awarded under a procedure of an international organisation of which the UK is a member.</p> <p>Paragraph 30 exempts defence and security contracts awarded under an arrangement between the UK and another state or territory where the purpose of the arrangement is for the joint development of a new product or the exploitation of that product once developed.</p>
<p>Schedule 5, paragraphs 18-20: Direct award justifications</p>	<p><u>Defence and security</u></p> <p>Paragraph 18 provides for direct awards for defence and security contracts relating to the supply of air or maritime transport services to the armed forces or security services deployed, or to be deployed, outside the UK where the nature of the services is such that no reasonable supplier can guarantee that the terms of any tender would remain in effect for 10 days from the date of tender submission.</p> <p>Paragraph 19 permits contracting authorities which can rely on the permitted modification grounds referred to in sub paragraphs (2) and (3) to modify a contract, to instead directly award a new contract to the supplier covering the same matters as a modification would. This only applies where the new contract would be a 'qualifying defence contract' within the meaning of section 14(2) of the Defence Reform Act 2014.</p> <p>Paragraph 20 permits the direct award of defence authority contracts falling within the categories of contract within section 7(1)(a-f) where it is necessary for the contract to be awarded directly in order to enhance or maintain the operational capability, effectiveness, readiness for action, safety or security of the armed forces.</p>

<p>Schedule 8, paragraphs 10-11: Permitted contract modifications</p>	<p>Paragraph 10 permits defence authority contracts to be modified where it is necessary to enable the contracting authority to take advantage of developments in technology or prevent or mitigate any adverse effect of such developments.</p> <p>Paragraph 11 permits a defence authority contract to be modified where the modification is necessary to ensure the continuous provision of goods, services or works where that is necessary to ensure the armed forces are able to maintain their operational capabilities, effectiveness, readiness, safety, security or logistical capabilities.</p>
<p>Schedule 10, Single source defence contracts</p>	<p>Schedule 10 of the Act amends Part 2 of the Defence Reform Act. Part 2 of the Defence and Reform Act creates a framework for regulating single source contracts, with the detail being set out in the Single Source Contract Regulations made under that Act.</p>
<p>Schedule 11, paragraph 4: Repeals and revocations</p>	<p>Paragraph 4 repeals DSPCR (S.I. 2011/1848).</p>



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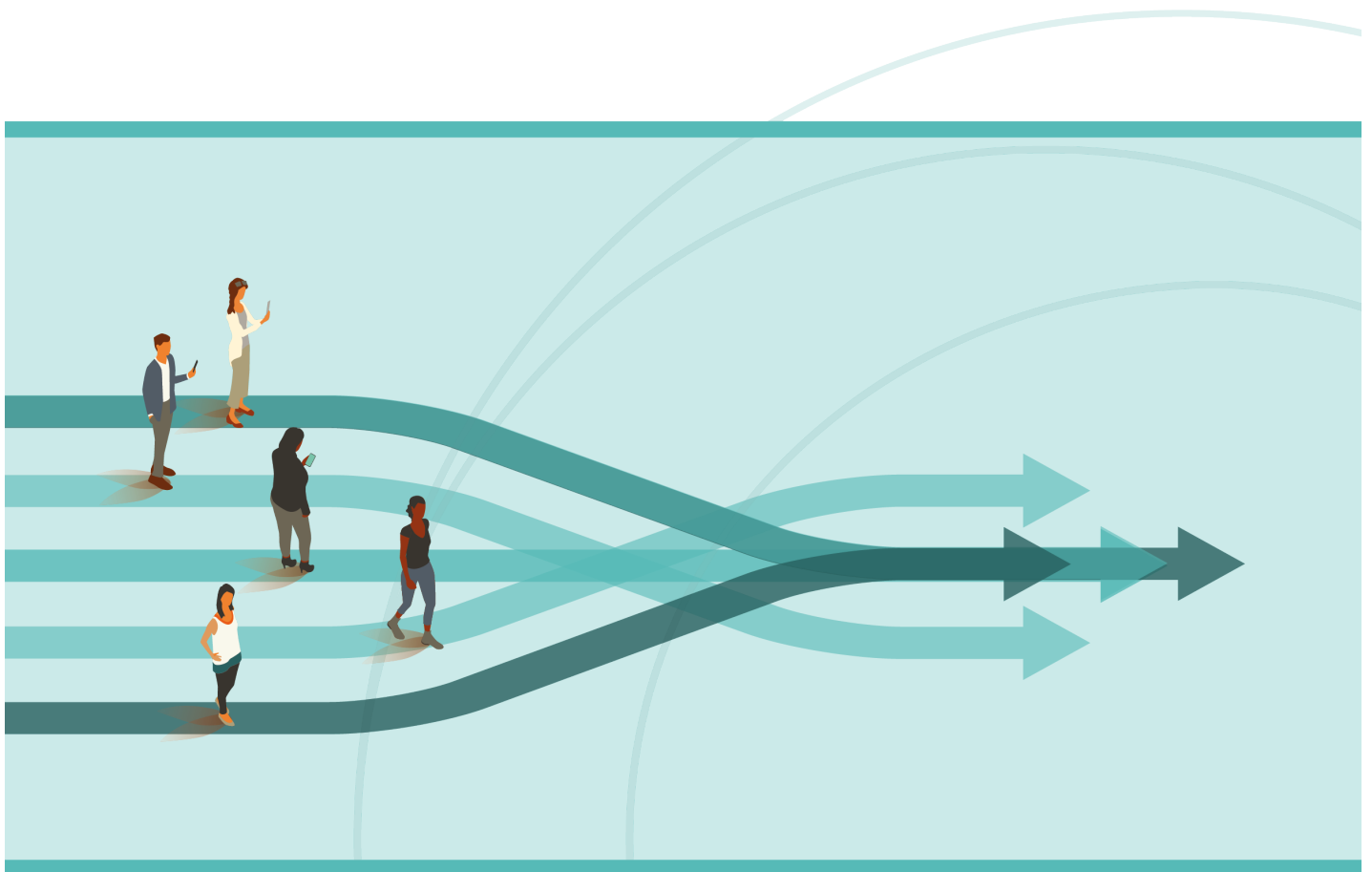
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Procurement Act 2023

# Guidance: Concession Contracts



May 2024

## **Guidance on Concession Contracts**

### **What are concession contracts?**

1. Under a concession contract, the supplier receives at least part of their remuneration from users of the works or services they are providing. As such, suppliers are exposed to a potential loss on their investment due to demand fluctuations.
2. There are two different types of concession contracts:
  - a. a concession contract for the supply of works; for example for the construction and operation of a toll road where the supplier would receive income directly from users of the toll road; and
  - b. a concession contract for the supply of services; for example a contract to operate a leisure centre where the supplier would receive income directly from customers using the centre.
3. This guidance deals only with the specific provisions that apply to concession contracts. Where there are no specific provisions, there is no difference for concession contracts and reference should be made to relevant other guidance on various aspects of the Procurement Act 2023 (Act).

### **What is the legal framework that governs concession contracts?**

4. The procurement rules governing concession contracts in the UK are contained in the Act, which replaces the repealed Concession Contracts Regulations 2016. Concession contracts are defined at section 8 of the Act.
5. The general rule is that the Act will apply to concessions in the same way as it applies to other procurement. However, there are exceptions to the general rule and in some instances specific provisions provide additional flexibility for concessions. These are set out at Annex A.
6. Section 10 provides for situations where a mixed procurement contains concession and non-concession elements which, if procured separately, would be subject to different thresholds and rules. It provides for when those contracts are to be treated according to the rules that reflect the special nature of one element (i.e. when they are to be treated as a 'special regime contract' as defined in section 10), or when they are to be treated as subject to the standard rules in the Act.

### **What has changed?**

7. Whereas concession contracts were previously regulated separately, the Act amalgamates the concession contracts regime into the same set of common rules covering other types of contracts. This consolidation serves to reduce the overall volume of procurement legislation and simplifies the rules for contracting authorities.

## Key points and policy intent

### Application

8. Concession contracts are often of high value and deliver essential infrastructure or services. It is therefore appropriate that they are open to competition in the same way as other types of public contracts for the supply of works or services to ensure best value for money.
  - a. The specific rules on concession contracts apply to concession contracts that are public contracts. A concession contract is public contract where:
  - b. the estimated value of the contract exceeds the threshold value for concession contracts; and
  - c. the contract is not an exempted contract as defined in the Act (see guidance on exempted contracts).
9. The provisions in Part 6 relating to 'regulated below-threshold contracts' do not apply to concessions contracts.

### What is a concession contract?

10. Concession contracts are defined in section 8 of the Act. This guidance relates to concessions contracts that are public contracts.
11. As with other types of public contracts, a concession contract must be for pecuniary interest, which can encompass monetary and non-monetary consideration. However, the definition of concession contract has a number of specific features:
  - a. a concession contract must only be for the supply of works or services to a contracting authority. The definition does not include contracts for the supply of goods;
  - b. at least part of the consideration must be the right to exploit the works or services. For example, the supplier may be entitled to receive income from public users rather than solely payment from the contracting authority. The supplier can still receive some payment from the contracting authority but must also be entitled to exploit the works or services as part of the consideration;
  - c. under the contract, the supplier must be exposed to a real operating risk. The risk must be 'real', i.e. it should not be hypothetical or nominal. An operating risk is defined as a risk that the supplier will not be able to recover its costs in connection with the contract. In other words, there must be a risk that the supplier may not break even on the contract. The factors giving rise to the operating risk must:

- i. be reasonably foreseeable at the time the contract was awarded; and
- ii. arise from matters that are outside of the control of the contracting authority and the supplier. For example, it cannot arise from factors such as poor performance or contract breaches.

For example, a concession contract to run a canteen might carry the risk that turnover would be insufficient to cover expenses and expose the supplier to the risk of not making a return on the investments made and costs incurred.

#### What are the financial thresholds for concession contracts?

12. The award, entry into and management of a concession contract with an estimated value exceeding the relevant threshold that is not an exempted contract (i.e. that is a public contract) will be 'covered procurement' under the Act. The thresholds in Schedule 1 of the Act reflect those in place at the time the Act received Royal Assent and will be updated prior to the Act coming into force. The threshold figure for concession contracts, defence and security contracts that are a concession contract and light touch contracts that are a concession contract that has applied since 1 January 2024 is £5,372,609.
13. There is no difference in the threshold for a concession contract for the supply of works and a concession contract for the supply of services.
14. The thresholds reflect the thresholds in our international obligations and are adjusted on the first of January of every even year to reflect currency fluctuations and inflation.
15. Section 10 sets out the rules for mixed procurements for 'special regime contracts', which are relevant when a concession contract is combined with an element of goods or non-concession services, or works or procured with another special regime contract such as a light-touch services or utilities contract. Please see the guidance and related flowcharts on mixed procurement for further information on how to apply these rules.

#### What exemptions are available to contracting authorities?

16. The exemptions, where the rules relating to covered procurement in the Act do not apply, for all public contracts, including concession contracts, are set out in Schedule 2. Three exemptions are specific to concession contracts as set out below, although other types of exempted contracts may also be relevant. Please refer to the guidance on exempted contracts for further information.
17. Water services Schedule 2, paragraph 35 exempts concession contracts for the carrying out of certain water services. This is to ensure that the exemptions for a utilities contract for such water services also apply where the contract is a concession contract;

18. Scheduled air services (restricted public service obligations) Schedule 2, paragraph 36 makes provision for an exemption for concession contracts for scheduled air services for specified periods within the UK or the UK and Gibraltar and which are operated under an exclusive licence and subject to minimum service requirements. These types of contracts are known as restricted public service obligations (PSOs) and are separately regulated by Regulation 1008/2008. Under this regulation, the Secretary of State for Transport (SoS) can impose a PSO in respect of scheduled air services between an airport in the UK and an airport serving a peripheral or development region of the UK or on a route which is considered to be vital for the economic and social development of the region. When a PSO has been imposed, any qualifying air carrier is allowed to commence scheduled air services meeting all the requirements of the PSO. This is known as an 'open' PSO and does not involve the award of a contract. If no qualifying air carrier has commenced or can demonstrate that it is about to commence sustainable scheduled air services on a route in question in accordance with the PSO then the SoS can limit access to the scheduled air services to only one qualifying air carrier for a period of up to four years. This is known as a 'restricted' PSO. The right to offer the services for a restricted PSO must be offered by public tender under Regulation 1008/2008. The exemption in paragraph 36 covers concession contracts for restricted PSOs.
19. Public passenger transport services Schedule 2, paragraph 37 sets out this exemption.

#### Valuation of a concession contract

20. In addition to any payments to the supplier from the contracting authority, a concession contract must also include the right to exploit the works or services during the contract period. Therefore, the value calculation for a concession contract must take into account the full range of potential consideration to be received by the supplier over the length of the contract, including any renewals or extensions.
21. The estimated value must be based on the expected maximum value and calculated in accordance with Schedule 3, paragraph 3, which lists amounts the supplier may expect to receive under a concession contract. For example, the contracting authority must include the total revenue likely to be received, including income receivable from the contracting authority or from the exploitation of the services or works, such as charges levied on users. Revenue is not estimated profit and should not be reduced by factoring in costs expected to be incurred by the supplier. Other remuneration such as premiums, fees, commissions, receipt of assets, sale of assets must also be incorporated into the valuation.
22. The list in Schedule 3, paragraph 3 is non-exhaustive but instructive in interpreting the other forms of amounts receivable that must be taken into account when estimating the value of a concession contract.
23. In the same way as all public contracts, the estimated value should be calculated inclusive of value added tax (VAT) and follow the rules in Schedule 3 on anti-avoidance and cases where an estimate is not possible.

### **What are the primary notices linked to this aspect of the Act?**

24. Concession procurement is governed by the same transparency and noticing requirements as standard procurement under the Act with the following exceptions:
- a. section 70(4)(b) provides that the obligation to publish information about payments under public contracts does not apply to concession contracts;
  - b. section 69(6)(d) provides that the obligation to publish payments compliance notices does not apply to concession contracts; and
  - c. section 52(6)(c) sets out that the obligation to set and publish key performance indicators does not apply in relation to concession contracts and therefore the obligation to publish related performance information in the contract performance notice also does not apply.

### **What other guidance is of particular relevance to this topic area?**

Contracting authorities awarding concession contracts will need to understand the whole of the Act, as the same provisions (for example, relating to competitive tendering procedures, conditions of participation and award criteria) as apply to contracting authorities awarding other contracts apply. The only exceptions and flexibilities are set out in this guidance. The suite of guidance published on the Act is therefore relevant, although the following guidance is of particular relevance to concession contracts:

Guidance on mixed procurement  
Guidance on valuation of contracts  
Guidance on exempted contracts  
Guidance on thresholds

## Annex A

### Summary of specific concessions contract provisions in the Procurement Act 2023

<b>Legislative reference</b>	<b>Concessions-specific provision</b>
<b>Section 3: Public contracts</b>	Section 3(4) provides that a concession contract is a public contract for the purpose of the Act provided it is not an exempted contract and has an estimated value above the applicable threshold set out in Schedule 1 (as it is amended).
<b>Section 5: Mixed procurement: above and below threshold</b>	Section 5(5) makes clear that concession contracts with an estimated value below the application threshold are below-threshold contracts.
<b>Section 8: Concession contracts</b>	<p>Section 8(1) defines a concession contract as a contract for the supply, for pecuniary interest, of works or services where at least part of the consideration for that supply is a right for the supplier to exploit the works or services that are the subject of the contract and where, under the contract, the supplier is exposed to a real operating risk. A contract for the provision of goods is not a concession contract.</p> <p>Section 8(2) defines an 'operating risk' for the purpose of section 8(1). An operating risk is the risk that the supplier is not able to recover its costs relating to the supply and operation of the works or services during the contract period, and the factors creating the risks were reasonably foreseeable at the time of award and arise from issues outside the control of the contracting authority and the supplier.</p>
<b>Section 10: Mixed procurement: special regime contracts</b>	Section 10(6) explains that concession contracts are a type of special regime contract for the purpose of the Act. Section 10(3) provides that a contract is not to be treated as a special regime contract if some of the goods, services or works could reasonably be supplied under a separate contract which would not be a special regime contract and would have an estimated value of not less than the relevant threshold for that type of contract.
<b>Section 34: Competitive award by reference to dynamic markets</b>	Section 34(7) provides that concession contracts, other than those which are also utilities contracts, cannot be awarded under dynamic markets.
<b>Section 45: Frameworks</b>	Section 45(8)(a) provides that concession contracts cannot be awarded under a framework.
<b>Section 52: Key performance indicators</b>	Section 52(6)(c) sets out that the obligation to set and publish key performance indicators under this section does not apply in relation to concession contracts.
<b>Section 68: Implied payment terms in public contracts</b>	Section 68(1) provides that payment terms implied into contracts by this section are not implied into concession contracts.
<b>Section 69: Payments compliance notices</b>	Section 69(6)(d) provides that the obligation to publish payments compliance notices does not apply to concession contracts.
<b>Section 70: Information about payments under public contracts</b>	Section 70(4)(b) provides that the obligation to publish information about payments under public contracts does not apply to concession contracts.



<b>Section 73: Implied payment terms in sub-contracts</b>	Section 73(6)(a) provides that terms implied into sub-contracts are not implied into sub-contracts that are for the purpose of carrying out all or any part of a concession contract.
<b>Section 84: Regulated below-threshold contracts</b>	Section 84(1)(b) defines a regulated below-threshold contract as not including a below-threshold contract that is a concession contract.
<b>Schedule 1: Threshold amounts</b>	The thresholds in Schedule 1 of the Act reflect those in place at the time the Act received Royal Assent and will be updated prior to the Act coming into force. The threshold figure for concession contracts, defence and security contracts that are a concession contract and light touch contracts that are a concession contract that has applied since 1 January 2024 is £5,372,609.
<b>Schedule 2: Exempted contracts</b>	<p>Paragraph 35 provides that concession contracts for utility activities relating to water services described in Schedule 4, paragraph 3(1) or (2) are exempted contracts.</p> <p>Paragraph 36 provides that concession contracts for scheduled air services for specified periods within the UK or the UK and Gibraltar and which are operated under an exclusive licence and subject to minimum service requirements are exempted contracts. These types of contracts are known as restricted public service obligations (PSOs) and are separately regulated by Regulation 1008/2008. Under this Regulation, the Secretary of State for Transport (SoS) can impose a PSO in respect of scheduled air services between an airport in the UK and an airport serving a peripheral or development region of the UK or on a route which is considered to be vital for the economic and social development of the region. When a PSO has been imposed, any qualifying air carrier is allowed to commence scheduled air services meeting all the requirements of the PSO. This is known as an 'open' PSO and does not involve the award of a contract. If no qualifying air carrier has commenced or can demonstrate that it is about to commence sustainable scheduled air services on a route in question in accordance with the PSO then the SoS can limit access to the scheduled air services to only one qualifying air carrier for a period of up to four years. This is known as a 'restricted' PSO. The right to offer the services for a restricted PSO must be offered by public tender under Regulation 1008/2008. The exemption in paragraph 36 covers concession contracts for restricted PSOs.</p> <p>Paragraph 37 provides that concession contracts for the provision of public passenger transport services are exempted contracts.</p>
<b>Schedule 3: Estimating the value of a contract</b>	<p>Paragraph 3(1) makes it clear that the valuation rules in paragraph 1 do not apply to the valuation of a concession contract.</p> <p>Paragraph 3(2) obliges the contracting authority to estimate the value of a concession contract as the maximum amount the supplier could expect to receive as a result of the contract, reflecting the requirement that some revenues must be estimated to come from sources other than payments by the contracting authority.</p> <p>Paragraph 3(3) sets out a list of the types of consideration a supplier could expect to receive, which must be taken into account in estimating the value of a concession contract. This includes amounts received from users of the works or services and could be monetary or non-monetary. The value of any goods, services or works provided by the contracting authority under the contract must also be included in the valuation. VAT payable on the supply of services or works, the value of any options included in the contract for additional services or works or for extension or renewal of the contract are all to be valued, plus any premiums, fees, commission or interest that the supplier could receive in delivering the contract and amounts received on the sale of assets held by the supplier. The list in paragraph 3(3) is not exhaustive and amounts may be received from other sources or take other forms.</p>

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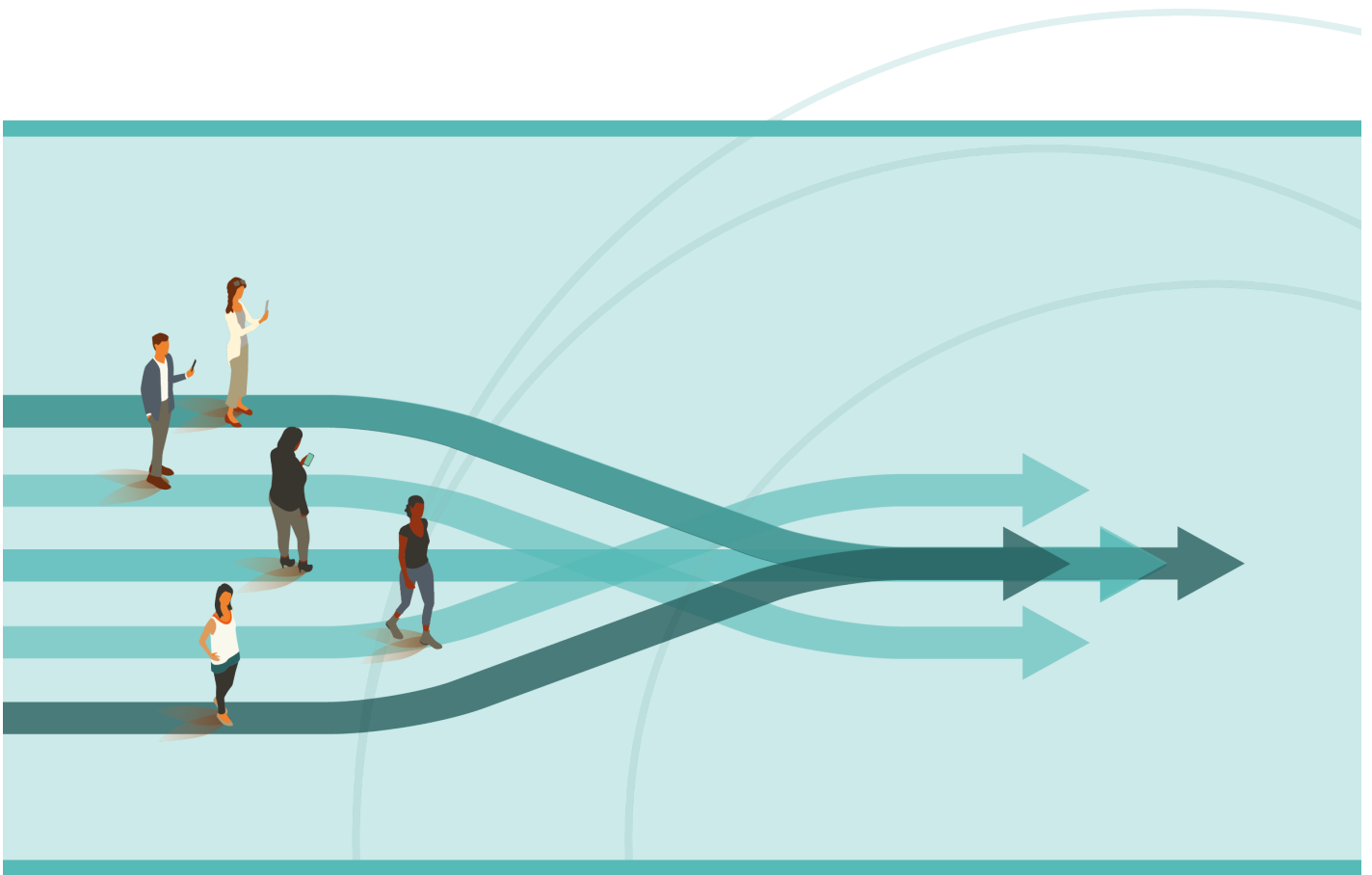
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# Guidance: Light Touch Contracts



## **Guidance on Light Touch Contracts**

### **What are light touch contracts?**

1. Light touch contracts are contracts for certain social, health, education and other public services and are subject to more flexible procurement rules. One thing these services have in common is that they are services provided directly to individuals or groups of people and therefore warrant special treatment and greater flexibility.
2. This guidance deals only with the specific provisions that apply to light touch contracts. Where there are no specific provisions, there is no difference for light touch contracts and reference should be made to relevant other guidance on various aspects of the Procurement Act 2023 (Act).

### **What is the legal framework that governs light touch contracts?**

3. Section 9 (Light touch contracts) of the Act defines a 'light touch contract' and provides for regulations to specify which services (referred to in the regulations as 'light touch services') can be procured under a light touch contract.
4. Schedule 1 to the Procurement Regulations 2024 (the Regulations) specifies which services are light touch services by description and reference to corresponding Common Procurement Vocabulary (CPV) codes. Light touch contracts (that are not exempted contracts) are public contracts if they are above the relevant threshold in Schedule 1 of the Act for the type of contract.
5. The Act contains special rules and exemptions for light touch contracts that are summarised in the table at Annex A of this guidance.
6. Section 33 (Reserving contracts to public service mutuals) permits certain light touch contracts to be reserved for public service mutuals, as long as the contract term is for 5 years or less.

### **What has changed?**

7. The Act specifies which contracts are light touch contracts in broadly the same manner as the previous legislation - by identifying specific services which can be procured under light touch contracts. While there are no longer separate rules, there are exceptions and special provisions in the Act that result in more flexibility and fewer rules regulating how procurement is carried out for light touch contracts.
8. Schedule 5, paragraphs 15 to 17 (Direct award justifications) set out a new direct award justification for 'user choice contracts', which, if satisfied, means the contracting authority does not need to carry out a competitive tendering procedure prior to awarding a contract. Broadly, this direct award justification applies where separate legislation or statutory guidance imposes a legal obligation on the contracting authority, when procuring such services, to have regard to the views of

the user of the services, or their carer, with regard to which supplier should provide the services.

## **Key points and policy intent**

### Application

9. A light touch contract is a contract wholly or mainly for the supply of services, as stated above, of a kind specified in Schedule 1 to the Regulations.
10. The specific light touch provisions in the Act apply in procurements where:
  - a. the light touch contract is a public contract; and
  - b. the procurement is not a regulated health procurement as defined in regulations made under the National Health Service Act 2006.
11. A light touch contract is a public contract where:
  - a. the estimated value of the contract exceeds the relevant financial threshold; and
  - b. the contract is not an exempted contract as defined in the Act (see guidance on exempted contracts).

### What is regulated health procurement?

12. Regulated health procurement is the procurement of specified goods or services by a 'relevant authority' that are subject to separate procurement provisions made under the National Health Services Act 2006. These separate provisions are currently the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR regulations), and have applied to the procurement of certain healthcare services by relevant authorities in England since 1 January 2024. 'Relevant authority' is defined in section 12ZB of the National Health Services Act 2006 and includes NHS bodies and local authorities. The effect of the PSR regulations is that relevant commissioners of health care services in the NHS and local government must follow the PSR regulations, rather than the Act, when procuring health care services covered by the PSR regulations.
13. In order to enable regulated health procurement to be governed by the PSR, rather than the Act, regulation 43 (in reliance on the power in section 120 (Power to disapply this Act in relation to procurement by NHS in England) of the Act), disapplies the Act in relation to regulated health procurement. Further information is provided in the guidance on mixed procurement and at NHS England's website<sup>1</sup>.

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<sup>1</sup> <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/>

What are the financial thresholds for light touch contracts?

14. Schedule 1 of the Act sets out the various thresholds applicable to the different categories of contracts. Whether the estimated value of a contract (that is not an exempted contract) is above or below the relevant threshold determines whether it is a public contract under the Act, that is, whether generally it is subject to the rules for public contracts, or (if relevant) to the below-threshold provisions in Part 6.
15. The current financial thresholds at or above which light touch contracts are public contracts are set out below and have applied since 1 January 2024. The thresholds in the Act currently reflect those in place at the time of royal assent and will be updated by secondary legislation prior to the Act coming into force .

<b>Light touch contracts</b>	<b>Threshold</b>
Utilities contract that is a light touch contract	£884,720
Concession contract that is a light touch contract	£5,372,609
All other light touch contracts	£663,540

16. The rules on calculating estimated contract value are set out in Schedule 3 (Estimating the value of a contract). The overriding principle is that the estimate must reflect the total likely amount the contracting authority could expect to pay under the contract (inclusive of VAT) and the method of calculation must not be intended to avoid having to comply with the Act. See guidance on valuation of contracts for more information.

Procurement of light touch contracts

17. The Act integrates light touch contracts into the broader procurement regime, and includes special rules and exemptions where greater flexibility is justified. This makes it clear how such procurements should be carried out, and ensures that probity and transparency are built into the process, while respecting these contracts' unique characteristics.

18. Light touch contracts must be advertised using a tender notice unless a direct award justification applies. Contracting authorities are required to determine whether suppliers are excluded or excludable suppliers and consider conflicts of interest before awarding the contract. Transparency will be maintained through publication requirements, including requirements for a contract award notice, a contract details notice and, when the contract is over £5 million, publication of the contract.
19. Procurement of a light touch contract that is a public contract is covered procurement and therefore will be subject to the procurement objectives in section 12 (Covered procurement: objectives). Namely, a contracting authority must have regard to:
- a. the importance of delivering value for money;
  - b. the importance of maximising public benefit;
  - c. the importance of sharing information for the purpose of allowing suppliers and others to understand the contracting authority's procurement policies and decisions; and
  - d. the importance of acting, and being seen to act, with integrity.
20. Section 12 also provides that, when carrying out covered procurement, contracting authorities must:
- a. treat suppliers the same unless a different treatment is justified; and
  - b. have regard to the fact that small and medium-sized enterprises may face barriers to participation and consider whether such barriers can be removed or reduced.
21. These procurement objectives provide overall parameters within which the contracting authority has freedom to design the procedure for light touch contracts. See the guidance on covered procurement objectives for more information.

#### Reserving contracts for light touch services to public service mutuals

22. Section 33 of the Act permits contracting authorities to reserve certain types of contracts for public sector mutuals. This ability complements the social value agenda and can help contracting authorities to deliver on social value commitments by awarding contracts to suppliers that have such priorities at the heart of their organisation. Whilst reserving contracts is encouraged, doing so must be considered in the wider context of value for money.
23. Public service mutuals are organisations that:
- a. operate for the purpose of delivering public services and mainly for the purpose of delivering one or more 'reservable light touch services' (see paragraph 23 below);

- b. are not for profit, or provide for the distribution of profits only to its members; and
  - c. are under the management and control of their employees.
24. In order to be awarded a 'reserved contract', a public service mutual must be a 'qualifying public service mutual', which means that it must not have entered into a reserved contract for the same kind of light touch services with the same contracting authority in the preceding three years.
25. The types of light touch contracts that can be reserved under section 33 are those for the supply of 'reservable light touch services', which are identified by an "R" next to the description of the service in Schedule 1 to the Regulations.
26. Where a contract is being reserved to a public service mutual, section 33(2) requires contracting authorities to use the competitive flexible procedure as, unlike the open procedure, it allows for the exclusion of suppliers who do not meet this requirement.
27. Section 33(4) requires contracting authorities to disregard any tenders from suppliers that are not qualifying public service mutuals in assessing tenders under section 19 when carrying out such a procedure. This can be done at the participation stage or as part of the assessment of tenders, depending on how the procedure is structured. More information can be found in the guidance on reserved contracts.

#### Lots

28. Section 18 (Duty to consider lots) applies to light touch contracts and requires a contracting authority to consider whether the requirement could be broken into lots and the services supplied under more than one contract. For light touch contracts regulation 18(2)(q) provides that there is no requirement to provide a justification in the tender notice if not dividing the contract into lots. See the guidance on lots for more information.

#### Competitive tendering procedures

29. Contracting authorities awarding light touch contracts are subject to the same provisions relating to competitive tendering procedures as apply when awarding other types of contracts. The provisions relating to competitive tendering procedures are set out in section 20 (Competitive tendering procedures). See the guidance on competitive tendering procedures for more information.
30. The participation and tendering periods for light touch contracts are not mandated by section 54 (Time limits) of the Act, allowing for light touch services to be procured more swiftly. However, contracting authorities must ensure that timescales are reasonable, for example, having regard to the nature of the requirement and the complexity of the contract being awarded (see section 54(1)).



## Changes to competitive procedures prior to submission of final tenders

31. Section 31(2)(b) (Modifying a section 19 procurement) allows modifications to a competitive flexible procedure, even if they are considered to be substantial, to be made before the deadline for submission of final tenders where the procurement is for a light touch contract.
32. When making such modifications contracting authorities must:
  - a. ensure such modifications are in line with the procurement objectives at section 12 of the Act;
  - b. consider revising any applicable timescales as a result of such modification;
  - c. notify the participating suppliers of such changes, where a participation period applies.

## Direct award

33. Section 41 (Direct award in special cases) permits a contracting authority to award a contract without first running a competitive tendering procedure when a direct award justification (set out in Schedule 5) applies. Whilst other justifications may be relevant, there is a specific justification for contracts for 'user choice services' and those set out below may be particularly relevant.
34. Schedule 5, paragraph 6 (Single suppliers) permits a contracting authority to award a contract directly where technical reasons mean only a particular supplier can supply the goods, services or works required, and there are no reasonable alternatives to those goods, services or works. In the context of light touch contracts, this could arise when the application of a particular legislative regime means that a contract can be awarded only to one specific provider. For example, the Children and Families Act 2014 may require special educational needs provision to be delivered by a particular supplier. In some cases a decision may be made by an independent tribunal that a particular provider must provide education services, and compliance with that judicial decision would satisfy the direct award ground for technical reasons.
35. Schedule 5, paragraphs 15 to 17 (User choice contracts) permit a contracting authority to directly award a user choice contract. The contract must be for user choice services and the contracting authority must be under a legal obligation (for example, as required under the Care Act 2014) to have regard to the views of the individual receiving the services, or their carer, when selecting the supplier to be awarded the contract. This makes it clear that there is no requirement under the Act to carry out a competitive tendering procedure in a scenario where the individual, or their carer, has a legal right to choose a particular supplier and paragraphs 15 to 17 apply.

36. Paragraph 16 defines user choice services as services that:

- a. are of a kind specified in regulations under section 9 (Light touch contracts);
- b. are supplied for the benefit of a particular individual; and
- c. in respect of which a contracting authority would, in awarding a contract for their supply, be required under an enactment to have regard to the views of the individual, or a person providing care to the individual (their carer), in relation to whom should supply the services.

37. The contract must comply with the conditions in:

- a. paragraph 17(a), that the individual or carer has expressed a preference as to who should supply the services, or the nature of the services to be supplied is such that only one supplier is capable of providing them; and
- b. paragraph 17(b), that the contracting authority considers it is not in the best interests of the individual for a competitive tendering procedure to apply.

38. Contracting authorities have the flexibility to reflect the specific needs of different categories of users (including the need to involve and empower disadvantaged and vulnerable groups) in the award criteria for light touch contracts.

39. Contracting authorities must generally publish a transparency notice before directly awarding a light touch contract. The notice is not required for user choice contracts awarded under paragraphs 15 to 17 of Schedule 5.

40. Please refer to the guidance on direct award for further information on these justifications.

### Frameworks

41. The definition of a light touch contract under the Act includes a 'light touch framework', which is a contract that provides for the future award of contracts that are wholly or mainly for light touch services.

42. This means that light touch frameworks are generally subject to the Act, for example the provisions in section 45 (Frameworks) relating to frameworks generally apply. However, there are exceptions and section 45(9) provides greater flexibility in that there is no requirement for a competitive selection process (and therefore section 46 does not apply) or for specific information to be included in the framework. Section 47(5)(c) provides that there is no maximum term for a light touch framework.

43. Where a framework that is not a light touch contract is being used for the award of contracts for light touch services, the Act applies in full, including, for example, the competitive selection process set out in the framework.

### Award criteria

44. Section 23(6) (Award criteria) allows additional factors to be taken into account in award criteria for light touch contracts, such as to reflect that a service recipient may have the right to exercise their choice, or that proximity of the supplier and service user may be important for the effective and efficient supply of services (i.e. not having numerous care providers criss-crossing a county).

### Standstill

45. Section 51(3)(f) (Standstill periods on the award of contracts) provides that there is no mandatory standstill period for light touch contracts, although contracting authorities are encouraged to apply a voluntary standstill period to reduce the risk of the contract being set aside under section 105 (Post-contractual remedies: set aside conditions). See guidance on the contract award notice and standstill for more information.

### Key performance indicators

46. Section 52(6) (Key performance indicators) exempts light touch contracts from the requirement for contracting authorities to set and publish at least three key performance indicators in respect of contracts with a value of more than £5 million.

### Contract modifications

47. Section 74(2) (Modifying a public contract) allows the modification of light touch contracts, without having to apply the other provisions of the section. In addition, in accordance with section 75(6) (Contract change notices), modification of a light touch contract does not require the publication of a contract change notice. Again, this reflects the overall intent to maintain less onerous light touch rules.
48. Light touch contracts may therefore be modified under the Act in any circumstances, provided contracting authorities have regard to the procurement objectives in section 12.

### **What are the primary notices linked to this aspect of the Act?**

49. Procurement of light touch contracts under the Act is generally governed by the same transparency and noticing requirements as apply to other contracts. The exceptions are set out in more detail above and are as follows:
- a. there is no obligation for light touch contracts to justify not awarding a contract by reference to lots within a tender notice;
  - b. light touch contracts are not subject to a mandatory standstill and there is therefore no obligation to set out the standstill period in the contract award

notice (voluntary standstill information must be included where such a period is to be observed);

- c. publication of the contract details notice for light touch contracts is required to take place within 120 days after the contracting authority has entered into the contract and publication of the contract (when required) within 180 days;
- d. the Act does not require light touch contracts to set or publish key performance indicators and therefore the obligation to publish related performance information in the contract performance notice does not apply; and
- e. there is no requirement for contracting authorities modifying a light touch contract to publish a contract change notice.

### **What other guidance is of particular relevance to this topic area?**

Contracting authorities awarding light touch contracts will need to understand the whole of the Act, as the same provisions (for example, relating to competitive tendering procedures, conditions of participation and award criteria) as apply to contracting authorities awarding other contracts apply. However, the following guidance is of particular relevance in determining whether a contract will be governed by the provisions in the Act for light touch contracts:

Guidance on thresholds

Guidance on exempted contracts

Guidance on mixed procurement

**Summary of specific light touch provisions in the Act**

<b>Legislative reference</b>	<b>Specific Light Touch Rules</b>
Section 9 - Light touch contracts	<p>Section 9(1) defines a 'light touch contract' as a contract wholly or mainly for the supply of certain services which will be identified by regulations made under section 9(2).</p> <p>Section 9(2) provides that an appropriate authority (defined in section 123(1)) may by regulations specify which services are light touch services.</p> <p>Section 9(3-4) limits the power at 9(2) by requiring an appropriate authority to have regard to the nature of the services and consider whether it is appropriate for them to be light touch contracts.</p> <p>Section 9(5) makes clear that a reference to a light touch contract includes a reference to a framework for the award of light touch contracts.</p>
Section 10 - Mixed procurement: special regime contracts	<p>Section 10(6) lists light touch contracts among the different types of special regime contracts.</p> <p>Some mixed contracts will contain elements which, if procured separately, would be subject to special rules, such as light touch contracts. When awarding a mixed contract containing one or more elements that would, if procured separately, be subject to a 'special regime', together with other above-threshold elements that would not be subject to that special regime, section 10(3) provides that a contracting authority cannot take advantage of such special regime rules where it would be reasonable to split out the requirement.</p>
Section 23 - Award criteria	<p>Section 23(6) provides an additional (non-exhaustive) list of what may constitute the 'subject matter of a contract' for light touch contracts. This includes the views of an individual or their carer and the varied needs of different service recipients. It may also include where proximity of the supplier and service recipients is important for the effective and efficient supply of the services. This additional flexibility recognises the special nature of these contracts.</p>
Section 31 - Modifying a section 19 procurement	<p>Section 31(2)(b) allows the modification of the terms of a competitive flexible procedure for the procurement of a light touch contract before the deadline for submitting tenders or final tenders, as relevant.</p>
Section 33 - Reserving contracts to public service mutuals	<p>Section 33(1) provides that a contract for 'reservable light touch services' with a maximum term of five years or less may be reserved for 'qualifying public service mutuals' under this section.</p>

	<p>Section 33(2-4) requires that the procurement must be carried out under a competitive flexible procedure and that the contracting authority must disregard any tender from a supplier that is not a qualifying public service mutual.</p> <p>Section 33(8) allows an appropriate authority to, by regulations, specify which of the light touch services (that have been specified as such via regulations made under section 9 (light touch contracts)) are 'reservable light touch services', and so reservable under this section.</p>
Section 45 - Frameworks	<p>Section 45(9) provides that section 45(3-5) does not apply when a framework is a light touch contract (i.e. it is a framework wholly or mainly for the future award of light touch contracts).</p> <p>Section 45(3-5) contains rules about the selection processes for the award of contracts and what information must be included in the framework.</p>
Section 46 - Frameworks: competitive selection process	<p>Section 46(11) states that this section does not apply where the framework is a light touch contract.</p>
Section 47 - Frameworks: maximum term	<p>Section 47(5)(c) states this section (and therefore the maximum term) does not apply to frameworks which are light touch contracts.</p>
Section 51 - Standstill periods on the award of contracts	<p>Section 51(3) explains that certain types of contract do not require a mandatory standstill period, which includes light touch contracts. This means light touch contracts can be entered into immediately following publication of the contract award notice.</p> <p>Section 51(4) permits contracting authorities awarding light touch contracts to voluntarily specify a standstill period in the contract award notice and states that if such a standstill is provided for, it must be complied with.</p> <p>Section 51(5) states that a voluntary standstill period must be a period of at least 8 working days.</p>
Section 52 - Key performance indicators	<p>Section 52(6) states that this section does not apply to light touch contracts.</p>
Section 53 - Contract details notices and publication of contracts	<p>Section 53(1)(a) requires that once a contracting authority has entered into a light touch contract, it must publish a contract details notice in relation to that contract within a 120 day time period after the contract is entered into.</p> <p>Section 53(3)(a) requires a contracting authority to publish a copy of a light touch contract within a 180 day time period of the date that it is entered into, if the estimated value exceeds £5 million.</p>

<p>Section 54 - Time limits</p>	<p>Section 54(3) states there is no minimum 'participation period' for light touch contracts. This refers to the period beginning with the day following the day on which a contracting authority invites the submission of requests to participate in a competitive flexible procedure and ending with the day by which those requests must be submitted.</p> <p>Section 54(4) states there is no minimum tendering period for light touch contracts. This refers to the period beginning with the day following the day on which a contracting authority invites the submission of tenders as part of a competitive tendering procedure and ending with the day by which tenders must be submitted.</p>
<p>Section 71 - Assessment of contract performance</p>	<p>Section 71(6) exempts light touch contracts from the publication obligations in section 71(5) with regard to a particular breach or failure to perform.</p>
<p>Section 74 - Modifying a public contract</p>	<p>Section 74(2) sets out that a contracting authority may modify a public contract or a convertible contract if the contract is a light touch contract.</p>
<p>Section 75 - Contract change notices</p>	<p>Section 75(6)(b) provides that the requirement to publish a contract change notice does not apply to light touch contracts</p>
<p>Section 120 - Power to disapply this Act in relation to procurement by NHS in England</p>	<p>Section 120 provides a power for a Minister of the Crown to make regulations disapplying any provision of the Act in relation to regulated health procurement, which are procurements subject to provision made under section 122B of the National Health Service Act 2006</p>
<p>Section 124 - Index of defined expressions</p>	<p>Section 124 cross-references terms used in the Act to the relevant provisions where they are defined and includes the term light touch contract.</p>
<p>Schedule 1 - Threshold Amounts</p>	<p>Paragraph 1 sets out the thresholds for light touch contracts. These will be updated by regulations prior to the Act coming into force to reflect changes in force since 1st January 2024, which are:</p> <ul style="list-style-type: none"> <li>● Utilities contract that is a light touch contract - £884,720</li> <li>● Concession contract that is a light touch contract - £5,336,937</li> <li>● Other light touch contracts - £663,540</li> </ul> <p>Paragraph 3 provides a separate power to update light touch contract thresholds</p>

Schedule 5,  
paragraphs 15 to 17 -  
Direct award  
justifications

This direct award justification applies where a contract is not suitable for a competitive tendering procedure due to a legal requirement for a contracting authority to take account of the needs or preferences of a specific user.

Paragraph 15 provides that public contracts for the supply of 'user choice services' may be awarded directly, provided the conditions of paragraph 17 are met.

Paragraph 16 defines 'user choice services' as 'light touch services' (specified under regulations in section 9) which are supplied for the benefit of a particular individual and where (by another enactment, i.e. another legislative means such as the Care Act 2014) the contracting authority must take into account the view of the individual or their carer as to who should supply the service.

Paragraph 17 requires that the individual or their carer must have expressed a preference as to who should provide the service or the nature of the service to be provided means only one supplier can provide it. In addition, the contracting authority must consider that it is in the best interest of the individual that the contract is not awarded under a competitive tendering procedure.



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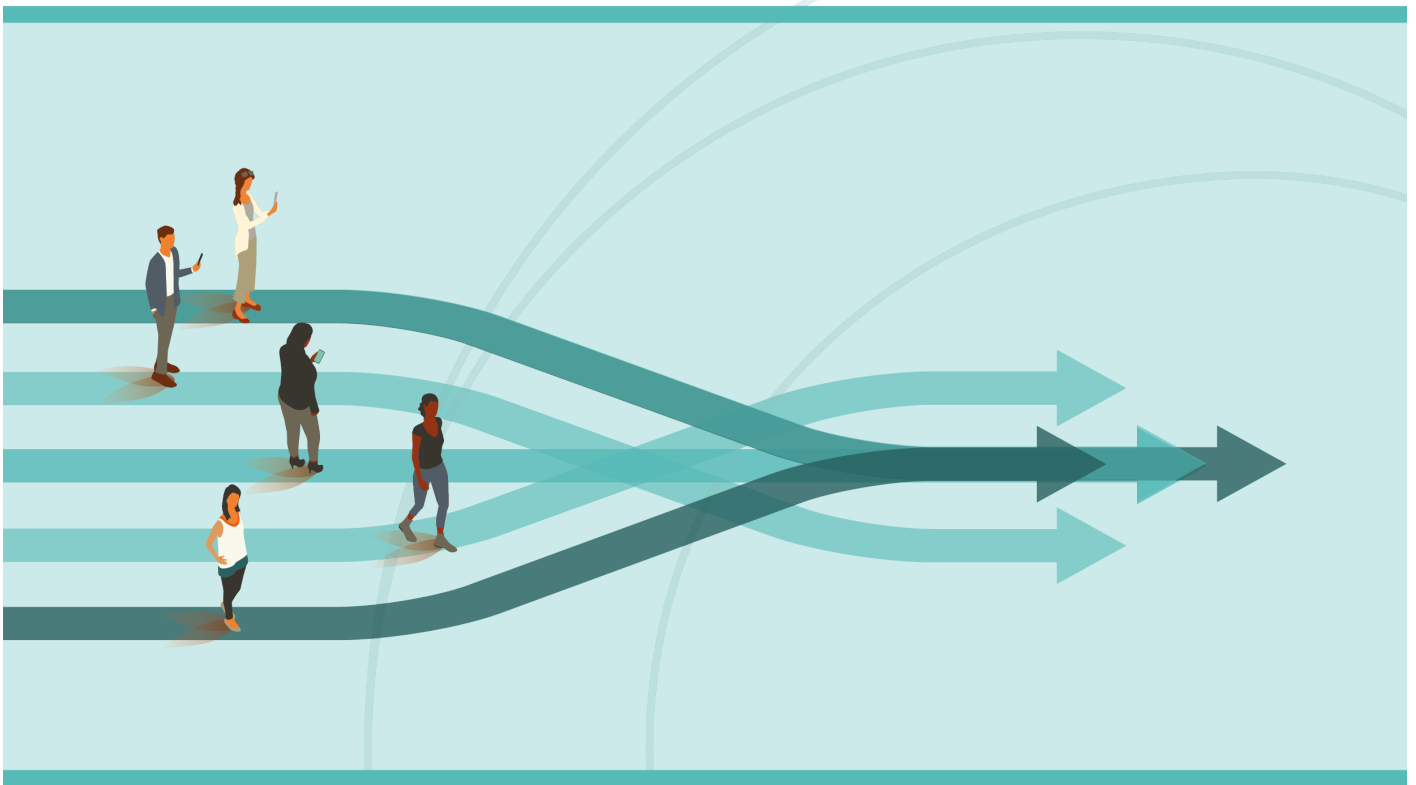
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# Guidance: Reserving Contracts for Supported Employment Providers



## **Guidance on Reserving Contracts for Supported Employment Providers**

### **What does it mean to reserve a contract?**

1. A contract is reserved if only certain types of suppliers can participate in the procurement for the contract. This guidance focuses on reserving a contract for 'supported employment providers', which are organisations that employ or provide employment related support to disabled or disadvantaged people.
2. Contracting authorities can also reserve a light touch contract for public sector mutuals, which is dealt with in the guidance on light touch contracts.

### **What is the legal framework that governs reserving contracts for supported employment providers?**

3. Section 32 of the Procurement Act 2023 (Act) provides for reserving contracts to supported employment providers.

### **What has changed?**

4. While the provisions in the Act that relate to reserving contracts for supported employment providers look different from those in the previous legislation, this is due to changes in terminology to remove EU-derived phraseology. There is no change in the policy intent.

### **Key points and policy intent**

5. Reserving contracts to supported employment providers enables public procurement to be used in such a way as to improve employment prospects for people who may face barriers to finding employment. To maximise the potential to do this, contracts for any type of goods, services or works can be reserved under section 32.
6. Section 32(4) of the Act requires that the supported employment provider must provide employment, or employment-related support, to disabled or disadvantaged people. The Equality Act 2010 defines a disabled person as someone with a physical or mental impairment that has a substantial and long-term negative effect on their ability to do normal daily activities. There isn't a definition of disadvantaged people in other legislation and the Act hasn't introduced a definition. This is to enable the provision to work with evolving social policy and recognise the breadth of people that may benefit from the support of a supported employment provider. For example, single parents, carers, and people that have been unemployed for some time can all experience barriers to employment.

7. Although there are no restrictions on the type of contract contracting authorities can reserve, the viability of a restricted competition should be considered. Contracting authorities should use market knowledge to consider whether a reserved procurement will attract sufficient interest from supported employment providers and deliver value for money. Contracting authorities may choose to undertake some preliminary market engagement to inform their procurement strategy.
8. A supported employment provider is an organisation that operates wholly or partly for the purpose of providing employment, or employment-related support, to disabled or disadvantaged people where at least 30% of the employees of the organisation (or the part of the organisation that will perform the relevant contract) are disabled or disadvantaged (see section 32(4)). A supplier must demonstrate to the contracting authority's satisfaction that it meets both parts of the definition i.e. the organisation's purpose and the 30% workforce requirement.
9. The Act provides some flexibility to allow the criteria to be met in various ways, depending on the organisation and the organisational arrangement that will deliver the contract. For example, if a supplier with 50 employees tenders for the contract, it must demonstrate:
  - a. that the organisation operates wholly or partly for the purpose of providing employment or employment related support to disabled or disadvantaged people; and
  - b. at least 15 (i.e. 30%) of its employees are disabled or disadvantaged (to meet section 32(4)(a)).
10. If a large organisation tenders for the contract and a single division (a part) is going to deliver the contract, it must demonstrate:
  - a. that the organisation operates wholly or partly for the purpose of providing employment or employment related support to disabled or disadvantaged people (which could be met even if only the division operates wholly or partly for that purpose); and
  - b. that 30% of the workforce in that division are disabled or disadvantaged (to meet section 32(4)(b)).
11. In more complex arrangements, where multiple organisations may be collaborating together (to form what is often referred to as an employment programme), the programme must operate wholly or partly for the purpose of providing employment, or employment related support to disabled or disadvantaged people. In this scenario, the contract may be delivered by several distinct parts of the collaborating organisations and the 30% requirement applies to the combined workforce from across the various parts of the organisations that will deliver the contract (to meet section 32(4)(c)). For example, if a tender is submitted by a collaboration between three organisations where the contract will be delivered by several departments within those organisations and:

- a. organisation 1 will contribute a department of 10 people to the delivery;
- b. organisation 2 will contribute two departments of 20 people each to the delivery; and
- c. organisation 3 will contribute a department of 40 people to the delivery,

the collaborating organisations must demonstrate that at least 27 workers from across the relevant departments in the organisations are disabled or disadvantaged (27 is 30% of the total workforce of 90 engaged on the delivery of the contract). The Act does not prescribe any particular distribution across the organisations, so in this example organisation 3 could employ all 27 people and the threshold would still be met.

- 12. The definition also caters for the various ways in which an organisation can help disabled or disadvantaged people with regard to employment. This can include direct employment (sometimes known as sheltered employment) such as a manufacturing company which predominantly employs disabled people, or the provision of employment-related support, such as helping people to improve their interview skills, or to find appropriate positions in other organisations. The Act isn't prescriptive about what counts as 'providing employment-related support' to enable the contracting authority to use its own judgement.
- 13. Contracting authorities must use the competitive flexible procedure when carrying out a procurement in which they reserve the contract to a supported employment provider.
- 14. The competitive flexible procedure must provide for the exclusion of suppliers that do not meet the definition of a supported employment provider. Contracting authorities are able to apply the test as a condition of participation, or as part of the assessment of tenders, depending on how the procedure is structured.
- 15. A contracting authority that intends to reserve a contract to supported employment providers is required to identify this in the tender notice, contract award notice and contract details notice.

### **What other guidance is of particular relevance to this topic area?**

Guidance on preliminary market engagement  
Guidance on conditions of participation  
Guidance on competitive procurement procedures  
Guidance on awarding competitive contracts

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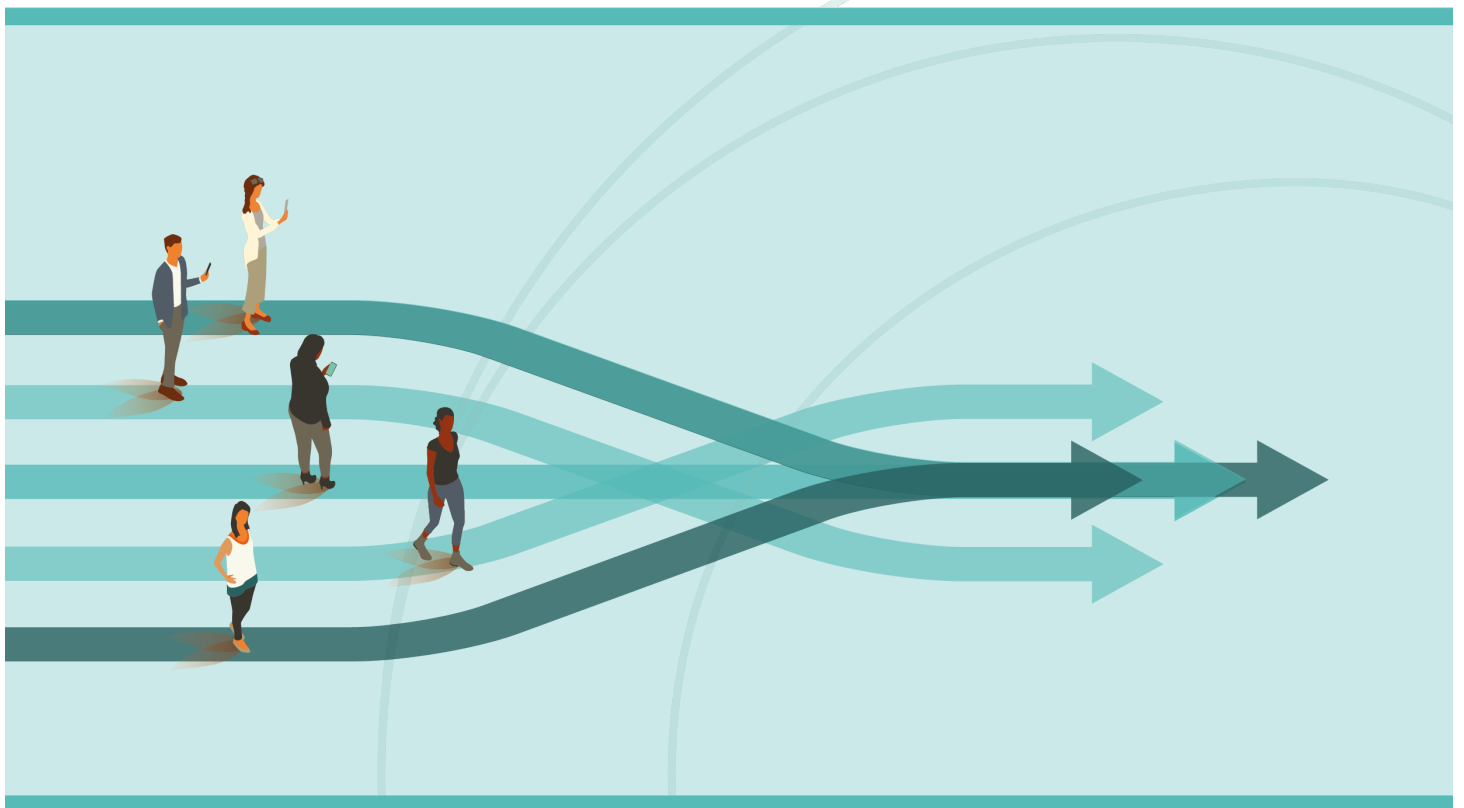
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Procurement Act 2023

# Guidance: Devolved Contracting Authorities



October 2024

## Guidance on Devolved Contracting Authorities

### What are devolved contracting authorities?

1. Procurement is largely a devolved matter in Wales and Scotland and a transferred matter in Northern Ireland which means that the Welsh Government, Scottish Government and Northern Ireland Executive (respectively) have the power to determine the rules by which certain procurements are conducted and contracts managed. The relevant provisions in the Procurement Act 2023 (Act) set out to what extent the Act applies to reserved, devolved and transferred procurement in England, Wales, Northern Ireland and Scotland.
2. 'Reserved matters' are those areas over which the UK government retains sole responsibility, as set out in the legislation governing the devolution settlements, and generally are areas which have cross-UK impact, such as defence.
3. An authority is a 'devolved Welsh authority' if it is a devolved Welsh authority within the meaning given by section 157A of the Government of Wales Act 2006.
4. Contracting authorities which are not devolved authorities under section 157A of the Government of Wales Act 2006 may also be treated as a devolved Welsh authority for the purposes of the Act as follows:
  - a. section 111(2) provides that a contracting authority that is a public undertaking or private utility (see section 2(2)) is to be treated as a devolved Welsh authority for the purposes of the Act if it operates wholly or mainly<sup>1</sup> in relation to Wales and its activities are wholly or mainly ones which do not relate to 'reserved matters' (see paragraph 2 above); and
  - b. section 111(3) provides that other contracting authorities are to be treated as devolved Welsh authorities for the purposes of the Act if their functions are wholly or mainly exercisable in relation to Wales and are wholly or mainly ones which do not relate to reserved Welsh matters.
5. An authority which is not a public undertaking or private utility is a 'transferred Northern Ireland authority' if its functions are exercisable only in or as regards Northern Ireland and are wholly or mainly functions that do not relate to reserved or excepted matters<sup>2</sup> (within the meaning given by the Northern Ireland Act 1998) (section 112(2)).
6. A contracting authority that is a public undertaking or private utility (see section 2(2)) is to be treated as a transferred Northern Ireland authority for the purposes of the Act if it operates only in or as regards Northern Ireland and its activities do not wholly or mainly relate to reserved or excepted matters (section 112(3)).

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<sup>1</sup> In the context of the Act and this guidance, 'wholly or mainly' can be interpreted as meaning 50% or more.

<sup>2</sup> Under the Northern Ireland devolution settlement, reserved matters can be legislated for by the Northern Ireland Assembly with the consent of the Secretary of State for Northern Ireland and excepted matters can only be legislated for by the UK Government.



7. An authority is a 'devolved Scottish authority' if its functions are exercisable only in or as regards Scotland, and either none of its functions relate to reserved matters, or some do and some do not (section 2(6)).
8. A contracting authority that is a public undertaking or private utility is to be treated as a 'devolved Scottish authority', for the purposes of the Act, if it operates only in or as regards Scotland, and either none of its activities relate to reserved matters or some of its activities relate to reserved matters and some do not (section 2(7)).
9. If a contracting authority is neither a devolved Welsh authority, a transferred Northern Ireland authority nor a devolved Scottish authority, it will be referred to in this guidance as a reserved authority. Contracting authorities unclear as to their devolution status under the Act should seek legal advice.
10. A 'devolved Welsh procurement arrangement' is a procurement arrangement in which:
  - a. if the arrangement is a framework, the framework was awarded by a devolved Welsh authority;
  - b. if the arrangement is a dynamic market, the dynamic market was established by a devolved Welsh authority;
  - c. if the procurement is being carried out by a centralised procurement authority, that centralised procurement authority is a devolved Welsh authority; or
  - d. if the procurement is a joint procurement, a devolved Welsh authority is designated the lead authority in the tender or transparency notice (section 114(2)).
11. A 'transferred Northern Ireland procurement arrangement' is a procurement arrangement in which:
  - a. if the arrangement is a framework, the framework was awarded by a transferred Northern Ireland authority;
  - b. if the arrangement is a dynamic market, the dynamic market was established by a transferred Northern Ireland authority;
  - c. if the procurement is being carried out by a centralised procurement authority, that centralised procurement body is a transferred Northern Ireland authority; or
  - d. if the procurement is a joint procurement, a transferred Northern Ireland authority is designated the lead authority in the tender or transparency notice (section 114(3)).
12. A 'devolved Scottish procurement arrangement' is a procurement arrangement in which:
  - a. if the arrangement is a framework, the framework was awarded by a devolved Scottish authority;

- b. if the arrangement is a dynamic market, the dynamic market was established by a devolved Scottish authority;
  - c. if the procurement is being carried out by a centralised procurement authority or equivalent, that centralised procurement body is a devolved Scottish authority; or
  - d. if the procurement is a joint procurement, a devolved Scottish authority is designated the lead authority in the tender or transparency notice (section 114(4)).
13. A procurement arrangement is reserved if it is neither a devolved Welsh procurement arrangement, a transferred Northern Ireland procurement arrangement nor a devolved Scottish procurement arrangement (section 114(5)).
14. 'Scottish procurement legislation' is:
- a. the Procurement Reform (Scotland) Act 2014;
  - b. the Public Contracts (Scotland) Regulations 2015;
  - c. the Utilities Contracts (Scotland) Regulations 2016;
  - d. the Concession Contracts (Scotland) Regulations 2015; and
  - e. any legislation which modifies or replaces that legislation (section 115(4)).

**What is the legal framework that governs devolved authorities' application of the Act?**

15. The Act extends to England and Wales, Scotland and Northern Ireland (section 126). Section 2(5)(a) provides that 'devolved Scottish authorities' are included in the list of 'excluded authorities' to which the Act does not apply.
16. While the Welsh Government and Northern Ireland Executive have agreed (respectively) that 'devolved Welsh authorities' (as defined in section 111) and 'transferred Northern Ireland authorities' (as defined in section 112) should be regulated by the Act, there are some differences in the rules that apply, which are set out in the Act. The Welsh Government has also made its own procurement regulations resulting in some differences in that respect also; for example, there are differences in the content that must be included in notices published under the Act. The Welsh Government produces its own guidance on the Act and devolved Welsh authorities should refer to that guidance for further information.
17. Contracting authorities carrying out a procurement under a devolved or transferred procurement arrangement are bound by the rules that apply to the contracting authority establishing the procurement arrangement. For example, a contracting authority based in Sheffield that is named as a contracting authority permitted to use a framework established by Cardiff Council must comply with regulations made by the Welsh Ministers and any devolved Welsh provisions in the Act when awarding call-off contracts under that framework.

## What has changed?

18. Procurement in England, Wales, Northern Ireland and Scotland that was of a type regulated by the previous legislation is regulated by the Act for all procurements that commence after entry into force of the Act (see guidance on transitional and saving arrangements). Scottish procurement legislation (see paragraph 14 above) will continue to apply to procurement by devolved Scottish authorities.

## Key points and policy intent

### Welsh devolved authorities and procurement arrangements

19. For devolved Welsh authorities and procurements carried out under a devolved Welsh procurement arrangement (defined in section 114(2)), there are certain exemptions or differences from the general rules in the Act. For example, the national procurement policy statement (NPPS) (see section 13) does not apply to a procurement carried out under a devolved Welsh procurement arrangement or by a devolved Welsh authority, except in relation to a procurement under a reserved procurement arrangement. Instead, the Wales procurement policy statement (see section 14) applies to devolved Welsh authorities (except in relation to procurement under a reserved procurement arrangement or transferred Northern Ireland procurement arrangement) and a procurement carried out under a devolved Welsh procurement arrangement.
20. Some examples of “reserved matters” in relation to Wales would include prisons and offender management, job search and support, and certain health, safety and medicine matters. Further information regarding reserved matters in relation to Wales is provided in Schedule 7A (Reserved Matters) to the Government of Wales Act 2006. The Welsh Parliament also published a helpful summary in September 2020, which can be accessed using the following link: <https://senedd.wales/how-we-work/our-role/powers/>.
21. Reserved authorities in England, Wales, Scotland and Northern Ireland and transferred authorities in Northern Ireland will be required to follow the rules applicable to Welsh devolved authorities if they participate in a devolved Welsh procurement arrangement.

### Transferred Northern Ireland authorities and procurement arrangements

22. For transferred Northern Ireland authorities and procurements carried out under a transferred Northern Ireland procurement arrangement (defined in section 114(3)) there are certain exemptions or differences from the general rules in the Act. For example, the NPPS does not apply to a procurement carried out under a transferred Northern Ireland procurement arrangement or by a transferred Northern Ireland authority (except in relation to a procurement under a reserved procurement arrangement).
23. Reserved authorities in England, Wales, Scotland and Northern Ireland and devolved authorities in Wales will be required to follow the rules applicable to transferred Northern Ireland authorities if they participate in a transferred Northern Ireland procurement arrangement.

## Devolved Scottish authorities

24. Devolved Scottish authorities are generally excluded from the application of the Act. However, sections 2(5) and 115A, which are amended or inserted into the Act by regulation 47 of the Procurement Regulations 2024 (the regulations), provide that some provisions of the Act may apply to devolved Scottish authorities. Where a devolved Scottish authority awards a contract jointly with a contracting authority which is regulated by the Act (that is to say, a reserved contracting authority, a devolved Welsh authority or a transferred Northern Ireland authority), the Act applies in its entirety. Where devolved Scottish authority acting on its own or in conjunction with one or more other devolved Scottish authorities awards a contract under a framework, dynamic market (or similar arrangements) awarded or established by a reserved, devolved Welsh or transferred Northern Ireland contracting authority, Schedule 9A (which is also inserted into the Act by regulation 47) lists those sections of the Act that apply.
25. These provisions ensure that contracting authorities subject to Scottish procurement legislation can continue to take advantage of commercial arrangements put in place by (and with) contracting authorities subject to the Act. There is a shared interest in ensuring that collaboration can continue, as it did under the previous legislation, for the purposes of cooperation and achieving value for money; and that access to such commercial arrangements is not restricted by which regime the contracting authority is subject to.
26. The Scottish Government intends to make its own regulations to disapply, where appropriate, Scottish procurement legislation in order to permit devolved Scottish authorities to procure under the Act. It also intends to legislate to ensure that contracting authorities that are not devolved Scottish authorities can access commercial arrangements established under Scottish procurement legislation.

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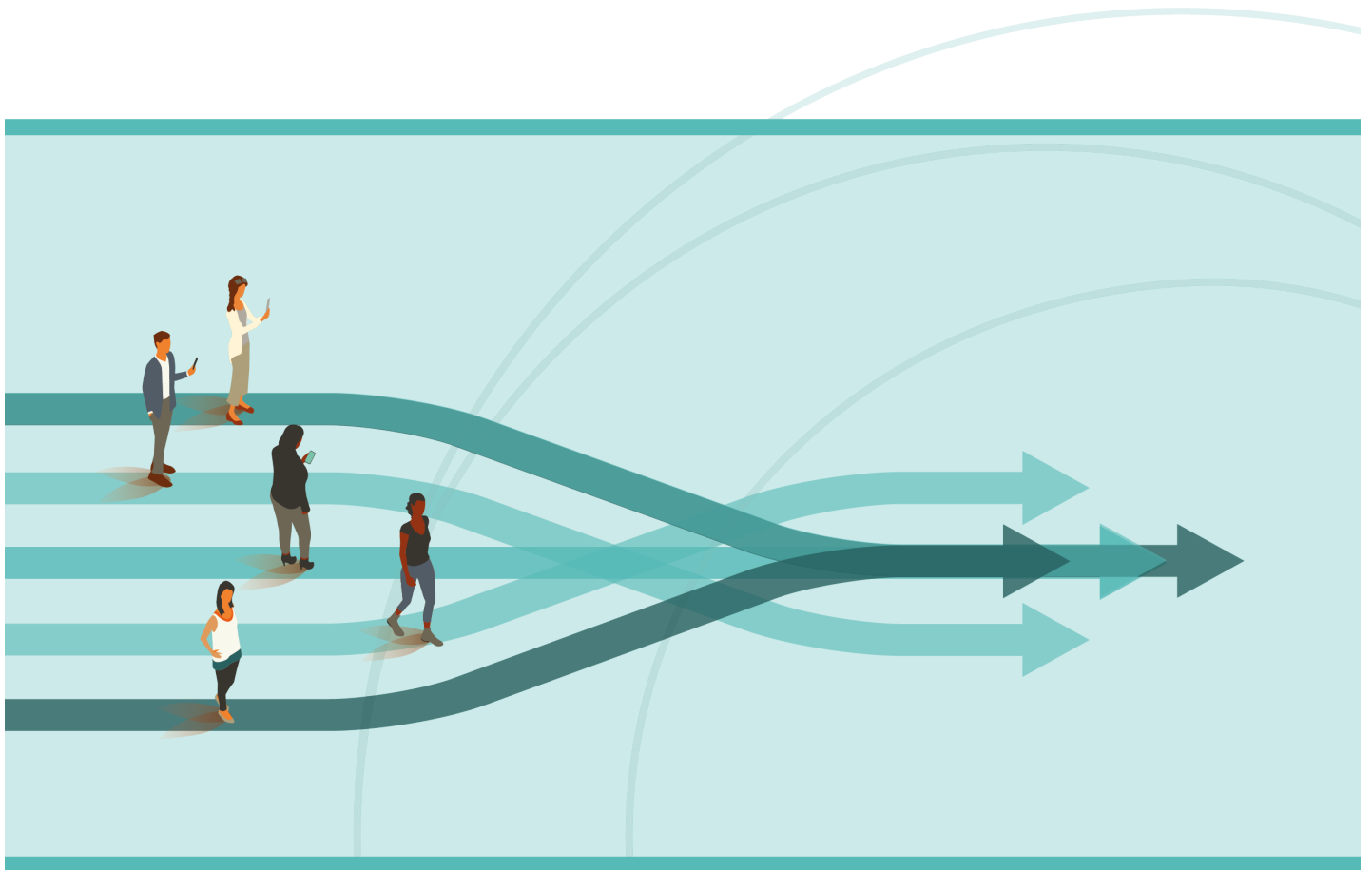
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# Guidance: Covered Procurement Objectives



## Guidance on Covered Procurement Objectives

### What are covered procurement objectives?

1. The covered procurement objectives at section 12 of the Procurement Act 2023 (Act) guide contracting authorities' decision-making, assisting in the undertaking of effective and efficient public procurement with high standards of integrity, whilst at the same time recognising the importance of value for money and the need for contracting authorities to obtain the best value from procured goods, services and works.

### What has changed?

2. Public procurement under the previous legislation was subject to principles derived from the Treaty on the Functioning of the European Union that sought to create a single public procurement market in the EU and maximise cross-border procurement.
3. The Act does replicate some significant aspects of those principles, namely those that ensure fairness, but it does so by introducing revised objectives for covered procurement at section 12 that better meet the UK's domestic needs. These objectives set out the matters contracting authorities must give proper consideration to in the course of carrying out a procurement (value for money, maximising public benefit, transparency and integrity) (see paragraph 10 below).
4. With respect to equal treatment and non-discrimination, which were features of the previous regime, the Act provides, at sections 12(2) and (3), that contracting authorities must treat suppliers the same unless a difference between suppliers justifies different treatment (equal treatment) and, at sections 90 and 91 that 'treaty state suppliers' must not be discriminated against (see guidance on [treaty state suppliers](#)).
5. Ensuring value for money in procurement is key to ensuring the optimum utilisation of limited public resources. What is new in the Act is the explicit recognition (at section 12(1)(a)) that value for money is a key objective of public procurement.
6. Section 12(4) requires contracting authorities to have regard to the difficulties faced by small and medium-sized enterprises (SMEs) who wish to participate in public procurements, and consider whether these can be mitigated. The definition of SMEs is found in section 123(1).
7. The objectives in section 12 provide signifiers as to what contracting authorities must do, and have regard to, in order to carry out fair procurements in a proportionate manner; but a noticeable difference from the previous legislation is that there is no underlying principle of proportionality in the Act. That is not to say that proportionality is not an important principle. Under the Act, where proportionality must be considered, this is expressly set out in the relevant sections.

## **What is the legal framework that governs covered procurement objectives?**

8. The covered procurement objectives are set out in section 12 and only apply when carrying out a 'covered procurement', which is the award, entry into and management of a public contract (a public contract is defined in section 3). A reference in section 12 to 'covered procurement' (see sections 1(1) and 1(2)), includes:
  - a. any step taken for the purpose of awarding, entry into and management of a public contract;
  - b. a part of a covered procurement; and
  - c. termination of a covered procurement before award.
9. Section 12 includes direct requirements on contracting authorities (see paragraphs 38-43 equal treatment below) in addition to matters that contracting authorities must consider ('have regard to') when carrying out a procurement (see paragraph 10 and 33-37 below).

## **Key points and policy intent**

### 'Have regard to' objectives

10. When carrying out a procurement, contracting authorities must have regard to the importance of the following objectives set out at 12(1) and 12(4):
  - a. delivering value for money;
  - b. maximising public benefit;
  - c. sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions;
  - d. acting, and being seen to act, with integrity; and
  - e. removing or reducing the barriers faced by SMEs.
11. The requirement to have regard to the objectives at sections 12(1) and 12(4) means that contracting authorities must, throughout the procurement, give genuine attention and thought to each objective, considering its relevance and importance, if any, to the procurement.
12. Whilst the objectives set out in section 12(1) are free-standing, there are at times interactions between them and other objectives in section 12. For example, the requirement to have regard to the importance of information-sharing (at section 12(1)(c)) and the equal treatment objective (at section 12(2)) combine to ensure that information is published swiftly and in a manner that does not favour any one supplier over another.
13. Each of the objectives set out in section 12(1) has its own merit, and the significance given to each objective when carrying out a procurement must be considered independently.



14. It is not the intention of the Act that any of the objectives, for example value for money, disapply, override or take precedence over the obligation on contracting authorities to have regard to the other objectives in section 12(1) or (4).
15. Sections 12(1) and 12(4) are designed to influence contracting authorities' actions and decisions during a procurement by requiring that they actively consider these objectives throughout the procurement process.

#### Value for money

16. Public procurement should be focused on achieving the best value for money for the taxpayer, which is a well understood concept. Competition is a key enabler of value for money. It helps the contracting authority to secure the goods, services or works it requires at the right price and quality, and ensures integrity in the award of public contracts.
17. Section 12(1) does not define 'value for money' in order to leave a degree of flexibility for different types of contracting authorities, with different drivers, to place a different emphasis on the concept. For central government contracting authorities, the concept of value for money is refined by HM Treasury (HMT) from time to time in publications on gov.uk such as HMT's Green Book. Local authorities and arms-length bodies may publish further guidance related to implementing value for money decisions in their own area which are specific to their needs.
18. The guidance on assessing competitive tenders provides more detail on what value for money means in the context of an evaluation of bids by contracting authorities. For example, that guidance requires authorities to identify the 'most advantageous tender' (see definition at section 19(2)).

#### Maximising public benefit

19. The public benefit objective in the Act requires contracting authorities to consider the extent to which their contracts can maximise broader public benefit.
20. Section 12(1) does not define 'public benefit' in order to leave a degree of flexibility in how this is interpreted. As such, the public benefit objective allows for a range of, for example, social, environmental and labour factors to be considered where these factors are appropriate and relevant to the public contract being awarded.
21. Contracting authorities are required to consider whether their contracts can deliver broader public benefits such as, for example, equitable outcomes for groups such as armed forces veterans or particularly in the case of light touch contracts supporting specialist service providers that understand the particular needs of the communities they serve.
22. The public benefit objective has its own merit, and must be considered independently from the objective to deliver value for money. The public benefit objective in subsection (1)(b) requires contracting authorities to think about the extent to which public money spent on their contracts can deliver greater benefit than it otherwise would. Contracting authorities are

therefore still able to structure their procurements so as to give more weight to bids that address such broader public benefits. Contributing to socio-economic development in this way is absolutely in line with the objective of achieving value for money.

23. If a contracting authority identifies the extent to which their contracts can deliver greater benefit (for example socio-economic development), it must ensure, in the context of its procurement, that:
- a. the factors to be considered are appropriate and relevant to the contract; a requirement which could be satisfied if the factors are related to the goods, services or works, or the way in which they are produced, maintained or delivered; and
  - b. the application of the factors complies with the contracting authority's obligations on:
    - i. equal treatment at sections 12(2) and (3); and
    - ii. non-discrimination at section 90 that prohibits the use of factors which discriminate against treaty state suppliers.
24. By way of an example of maximising public benefit, in procuring taxi services for vulnerable children to get to school, the contracting authority could consider whether those services might be delivered to some degree by electric vehicles. The public benefit objective means the contracting authority should consider whether the contract can achieve more than the primary contractual aims and in doing so align with or contribute to the objectives of other contracting authorities or local or government policy.

#### Information-sharing

25. The Act creates an environment of 'transparency by default' by imposing procedural transparency obligations at each stage of the procurement so that contracting authorities are clear about exactly what they are required to publish. The Act therefore focuses the transparency obligations in a more effective manner than a broad-based transparency principle would allow.
26. The information-sharing objective at section 12(1)(c) complements these procedural transparency obligations by introducing an overarching, general requirement for contracting authorities to have regard to the importance of sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions.
27. This duty does allow the contracting authority some discretion in deciding what to share beyond the specific procedural transparency requirements although the purpose of the objective in its own right must be borne in mind. However, section 94(1) limits this obligation in specific circumstances by setting out that when contracting authorities are obliged by the Act to publish or disclose information, they may withhold information from publication or other disclosure:
- a. for the purpose of safeguarding national security; or

- b. where the information concerned is sensitive commercial information and there is an overriding public interest in it being withheld.

## Integrity

28. The integrity objective in section 12(1)(d) requires that contracting authorities have regard to the importance of acting, and being seen to act, with integrity. This is key to strengthening trust and combating corruption. Integrity refers to the objective propriety of the procurement: in other words, an absence of fraud, corruption or misfeasance in the process.
29. Contracting authorities must consider how to prevent fraud, corruption and misfeasance through good management, prevention of misconduct and control. Contracting authorities should periodically review their approach to the propriety of their procurements, including the identification and mitigation of risks<sup>1</sup>, evaluation of staff training, internal controls and audit.
30. The integrity objective does not just require contracting authorities to have regard to the importance of acting with integrity, but also requires them to consider the importance of being seen to do so and to demonstrate that proper process is taking place. Being seen to act with integrity may require, for example, being transparent about the reasons for the design of a competitive tendering procedure or providing meaningful and timely feedback to unsuccessful suppliers.
31. The integrity objective perhaps has the greatest interaction with the other objectives in section 12(1). Integrity refers to the propriety of the procurement process and having regard to the objectives of delivering value for money and maximising public benefit can help to demonstrate a regard for acting with integrity. Sharing information to allow suppliers and others to understand the contracting authority's policies and decisions supports being seen to act with integrity. Indeed, a benchmark for being seen to act with integrity is whether there is sufficient information published on the award procedure to assure suppliers and the public about the probity of the procedure.
32. Contracting authorities are also required to comply with the provisions in the Act on conflicts of interests and the exclusion of suppliers (see guidance on conflicts of interest, exclusions and debarment for more information), preventing contracts from being awarded to inappropriate suppliers. That provides further opportunities to directly address anti-corruption issues within the context of a procurement.

## Barriers to SME participation and their removal or reduction

33. SMEs not only play a key role in communities by providing local services and employment, but can also offer innovative solutions to public service delivery. By opening up public procurement opportunities to more SMEs and voluntary, community or social enterprises

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<sup>1</sup> Risks to the objective propriety of procurement include price fixing, market sharing, bid-rigging, manipulation of technical specifications or procurement procedure to favour a supplier, bribery, conflict of interest, overcharging, duplicate payments, false invoices, claims or performance reporting, substandard materials and misappropriation of assets.

(VCSEs), contracting authorities help to create a thriving, competitive marketplace with sustainable levels of growth.

34. Section 12(4) requires contracting authorities to have regard to barriers to participation that may be faced by SMEs and consider whether such barriers can be removed or reduced to help level the playing field for SME access to public procurement opportunities.
35. There are specific obligations set out in the Act which support opening up public procurement to SMEs (for example, considering whether the contract should be broken down into lots to facilitate access for SMEs, and ensuring the conditions for participation are limited to those necessary to ensure a supplier has the technical capacity to perform the contract or not requiring insurance to be in place before the contract is awarded ). Further actions which could help contracting authorities to meet this objective might include:
  - a. Ensuring that they publish a comprehensive pipeline notice so that suppliers know the opportunities that are coming up and can plan accordingly;
  - b. when conducting preliminary market engagement, running an event tailored for those new to working with the public sector;
  - c. considering the format of preliminary market engagement to save cost and time for suppliers, for example hosting digital webinars;
  - d. avoiding short timescales for bidders to submit requests or tenders (taking account of holiday periods), which may be a disadvantage for smaller suppliers with less capacity;
  - e. providing good quality feedback to unsuccessful bidders that enables them to improve their tenders for future procurements.

An example of some of the barriers faced by SMEs is at Annex A.

36. When considering whether a supplier is an SME, it is important to consider not just the definition in section 123(1) (i.e. whether the entity has fewer than 250 employees, less than or equal to £44m in annual turnover or a balance sheet total lower than or equal to £38m), but also the supplier's relationships with other entities. For example, a supplier that is a legal entity that meets the core threshold requirements but is wholly controlled by a large organisation is unlikely to be an SME. Please see separate supplementary guidance on SME definition available on [gov.uk](https://www.gov.uk) .
37. Section 12(4) applies only to covered procurement but a similar duty in section 86 of the Act applies to 'regulated below-threshold contracts'. See guidance on below-threshold contracts for more information.

#### Direct requirements: Equal treatment

38. Contracting authorities are required to do the following to ensure equal treatment during a procurement:

- a. to treat suppliers the same, unless differences between the suppliers justify different treatment (section 12(2)); and
  - b. where different treatment of suppliers is justified, to take all reasonable steps to make sure the different treatment does not put a supplier at an unfair advantage or disadvantage (section 12(3)).
39. Sections 12(2) and (3) seek to draw a distinction between those circumstances under which different treatment is unacceptable and can form no part of the procurement regime, and those where it is a necessary part of delivering improved tenders through legitimate competition. Contracting authorities must offer the same opportunities to suppliers on the same terms. This means ensuring that all suppliers have access to the same information, are subject to the same deadlines, and compete based on the same conditions of participation and assessment criteria.
40. For example, if a supplier is a new entrant to the market and does not have the necessary certification in relation to a required standard, the contracting authority could allow it to progress on the basis that certification is achieved and demonstrated by the time of contract award (provided this is set out in the tender documents). Even if different treatment is justified, contracting authorities must do what they can to make sure it is not unfair. In this example, it would be an unfair advantage to exempt the supplier from the requirement to achieve the certification.
41. Another supplier might only be able to communicate remotely whereas all other suppliers can take part in face-to-face presentations. The remote supplier is being treated differently, but the contracting authority must take all reasonable steps to ensure it is not being put at an unfair advantage or disadvantage by, for example, ensuring that all suppliers receive the same information and that the face-to-face suppliers do not have informal access to the contracting authority outside of the presentations that would not be available to the remote supplier.
42. Considerations of equal treatment often arise in the context of an incumbent supplier that is participating in a competitive procurement. The contracting authority already has a relationship with the incumbent in order to ensure the continued delivery of the existing contract and therefore has more contact with the contracting authority in a manner that it is not reasonably possible to mitigate against. Contracting authorities need to consider how to minimise any incumbent supplier's advantage to create a level playing field when re-procuring a contract, for example by providing as much information as possible to the other suppliers in the competition. However, there is not automatically unequal treatment if a supplier has acquired an advantage through performance of the contract.
43. The equal treatment rule does not limit the ability of a contracting authority to, for example:
- a. apply conditions of participation that relate to past performance: but, in the context of excluding suppliers for poor performance, the contracting authority must apply the same test to all suppliers seeking to participate in the procurement as set out in the tender documents;

- b. allow suppliers, during any financial assessment under section 22, to provide different types of evidence but the contracting authority must apply the same standards to all suppliers when analysing their financial position and determining the level of risk that it would represent to the contracting authority and delivery of the contract;
- c. determine award criteria and their weightings, but the contracting authority must apply the same criteria and weightings to all tenders received from the suppliers, as set out in the tender documents.

### Proportionality

44. Proportionality is a key concept in the Act, although it is not a separate objective in section 12. Instead, the Act has specific obligations that require contracting authorities to act proportionately that include:
- a. ensuring that the procurement procedure is proportionate to the cost, nature and complexity of the contract (section 20(3));
  - b. ensuring that the conditions of participation in a procurement procedure (including to establish or call off under a dynamic market or framework) must be proportionate (sections 22(1), 36(1) and 46(1));
  - c. being satisfied that the award criteria are a proportionate means of assessing tenders, having regard to the nature, cost and complexity of the contract (section 23(2)(d)); and
  - d. when considering whether a supplier is excluded or excludable, only requiring particular evidence or information where it is proportionate to do so (section 58(3)).
45. What is meant by proportionality is that any action taken must be appropriate to achieve its aim, but be no more burdensome than necessary to either the contracting authority or supplier(s).

## Feedback from SMEs highlighting barriers to public procurement access



### Lack of market engagement

*"really hard to understand what buyers want without engaging with them."*



### Not aware of opportunities

*"I need to see what opportunities are available to bid for, to prepare my teams and my workload."*



### Complex procurement process

*"bid bidding really time consuming. It can be difficult to navigate and confusing."*



### Unconscious bias

*"I've had some really bad experience with unnecessary criteria, small businesses like mine are being excluded."*



### Too specific or too vague requirements

*"I don't like the tender was written specifically for the incumbent to win, it's not worth the effort."*



### Unachievable financial thresholds

*"The thresholds are too high to me. It doesn't feel proportionate to what I'm bidding for. We're going to cost too much."*



### Short tender timescales

*"can't mobilise a team that quickly. The timescales are unachievable for me bid and prepare everything they are asking for"*



### Resource heavy

*"I've had to pull my whole team in to help prepare this bid. It's costing me too much. I've not got a big bid team like these big firms."*



### Lacks innovation

*"this specification is too prescriptive, we could offer some really innovative solutions, but there is no way to offer this in the bidding process"*



### Unnecessary risk allocation

*"I've been asked to obtain DV security clearance, but the work is only for offsite construction. That doesn't seem proportionate."*



### Complex Terms and Conditions

*"I've not got the time or resource to read through this contract. It's out of my depth and I'd have to get a lawyer to review it if I was to bid."*



### Lack of constructive feedback

*"I've never receive any feedback about our bid, what's the point in bidding?"*

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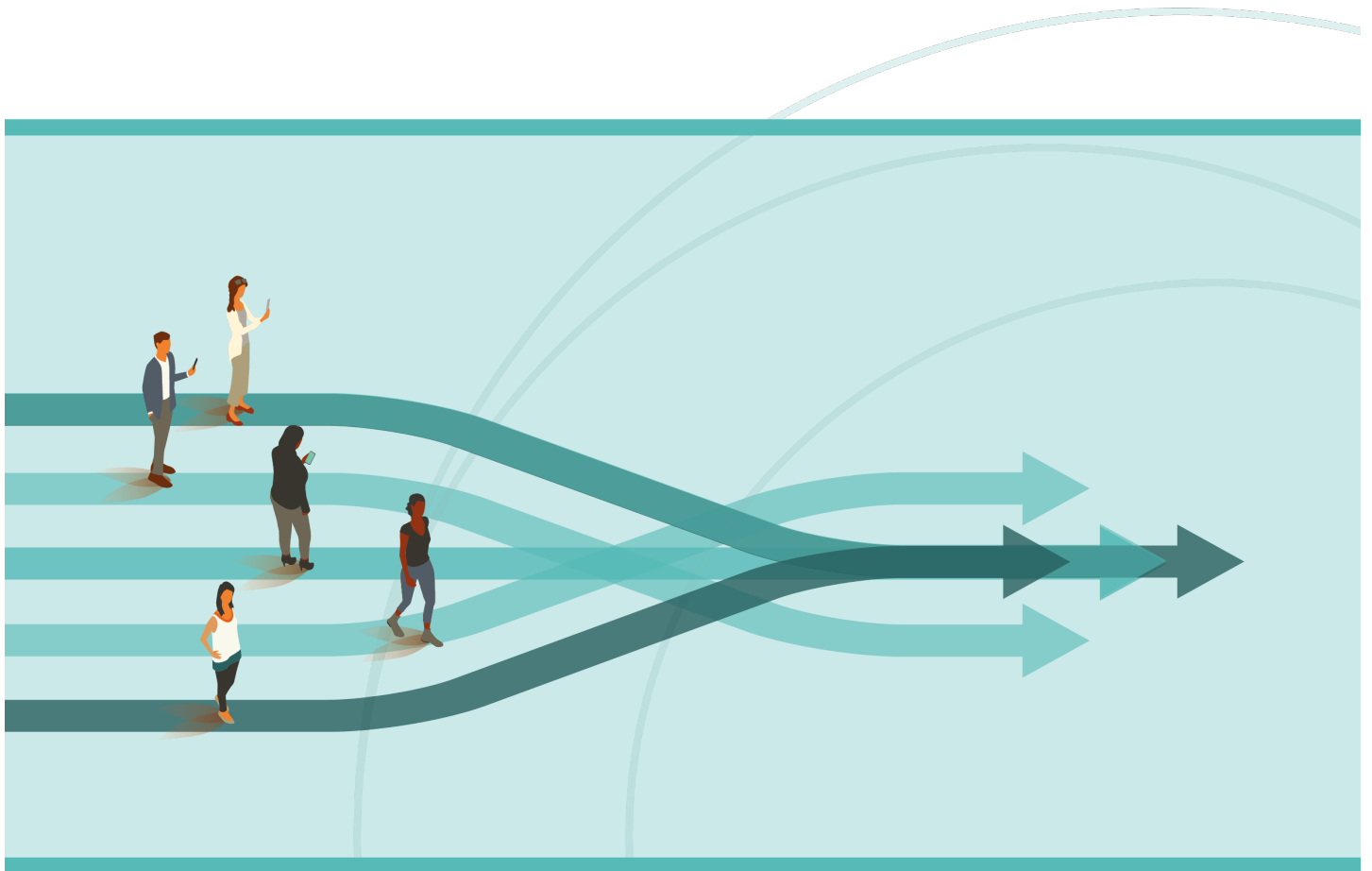


## 11.2 **Define**

- 11.2.1 Valuation of Contracts (Published)
- 11.2.2 Thresholds (Published)
- 11.2.3 Below-Threshold Contracts (Published)
- 11.2.4 Mixed Procurement (Published)
- 11.2.5 Planned Procurement Notices (Published)
- 11.2.6 Preliminary Market Engagement (Published)
- 11.2.7 Technical Specifications (Published)
- 11.2.8 Treaty State Suppliers (Published)
- 11.2.9 Competitive Tendering Procedures (Published)
- 11.2.10 Direct Award (Published)
- 11.2.11 Dynamic Markets (Published)
- 11.2.12 Frameworks (Published)
- 11.2.13 Lots (Published)
- 11.2.14 Conflicts of Interest (Published)



# Guidance: Valuation of Contracts



## **Guidance on Valuation of Contracts**

### **What is valuation?**

1. Rules on estimating contract values are necessary as a result of there being different thresholds (and consequently different obligations on contracting authorities) for different types of contract. These rules provide a simple methodology for contracting authorities to estimate the financial value of their contract. This guidance focuses on valuing contracts in order to determine whether a contract is above or below the relevant threshold.

### **What is the legal framework that governs valuation of contracts?**

2. Section 4 and Schedule 3 collectively provide the relevant rules on valuation of contracts.
3. Section 4 of the Procurement Act 2023 (Act) requires contracting authorities to estimate the value of contracts, in accordance with a methodology set out in Schedule 3, and restricts manipulation of the estimated value of a contract in order to avoid the requirements in this legislation. The effect is that authorities will have an estimated value for their contract and thus be able to determine whether they are above or below the relevant threshold and in turn determine which rules have to be followed.
4. Schedule 3 provides a methodology that contracting authorities must use when estimating contract value in order to discharge obligations under section 4. The provision also prevents contracting authorities from artificially subdividing contracts for the purposes of evading any of the requirements of the Act.
5. Schedule 3 also sets out how contracting authorities must estimate the value of a contract for the purposes of determining whether it is subject to the general rules regime for above-threshold contracts or the below-threshold regime.

### **What has changed?**

6. As is the case with certain other basic definitions and concepts, the policy on valuation of contracts has not been substantively reformed. Many of the rules imposed by the Act are therefore similar in intention and effect to the rules on estimating contract values set out in the previous legislation. The valuation methodology in Schedule 3 is in most cases deliberately similar to that set out in the previous legislation.
7. There are some differences in the way these rules are set out in the Act. For example, the previous legislation did not address situations where an estimate was not possible. This modification was necessary in order to achieve and to be able to demonstrate full compliance with international agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), but should not cause any significant changes in practice.
8. The concept of Separate Operational Units, which is an undefined term from the European Directives, has not been included in the Act. It is recognised that some contracting

authorities will operate in highly delegated structures and some business units will need to act independently. This flexibility has been preserved using a simple anti-avoidance mechanism at Schedule 3, paragraph 4 which mirrors the analogous provision in the previous legislation and requires contracting authorities to aggregate requirements that can reasonably be aggregated for the purposes of their estimation, unless there are good reasons for not doing so. Clearly, disaggregating for the purposes of reaching a below-threshold value would not be a good reason, but otherwise the rules are flexible in this respect. The drafting leaves a wide discretion for contracting authorities not to aggregate when they have cause not to.

9. For certain types of public contracts, the supplier may receive additional amounts as a result of, or in connection with, the contract in addition to amounts the contracting authority expects to pay, as all or part of the consideration for the contract may lie in the value of amounts receivable from third parties. For example, a public contract for the development or regeneration of a town centre or brownfield site may provide for payment by the local authority of amounts in return for provision of community facilities (such as a health centre or public park) but may also include the opportunity to generate additional income from the sale of private housing to be built on the site. In many cases this type of contract will be a concession contract, which must be valued in accordance with the different methodology set out in paragraph 16 below. However, where such a contract does not fall within the definition of a concession contract, in order to take account of the true value of the contract to the supplier, it is recommended that contracting authorities should also take into account other amounts that the supplier could expect to receive as a result of, or in connection with, the contract. For these purposes, the amount a supplier could expect to receive includes the amounts listed in paragraph 3(3) of Schedule 3 in respect of concession contracts.

### **Key points and policy intent**

10. Section 4 provides the essential obligation on contracting authorities to apply the methodology at Schedule 3 when estimating the value of a contract, in order to determine whether the contract is above or below threshold and consequently the relevant rules that must be followed. Section 4 also includes an anti-avoidance mechanism that makes it unlawful to exercise any discretion in valuing a contract with a view to avoiding the requirements of the Act.
11. Schedule 3 sets out the valuation methodology. The 'general rule' requires contracting authorities to estimate the maximum value payable under the contract, taking account of any potential variables such as options to supply additional goods/services/works or options to extend or renew the contract, and sets out a non-exhaustive list of matters that could be relevant to this estimation.
12. When calculating the estimated value of the contract, the contract value estimation should be inclusive of VAT. This change in practice has been in place since 1 January 2021 and is a result of the UK's independent membership of the WTO Government Procurement Agreement (GPA). Whilst the UK was a member of the EU, the value of contracts was calculated exclusive of VAT. The EU's GPA thresholds were reduced in comparison to

other GPA members to take this into account. The UK is now subject to the standard GPA thresholds and shares the common GPA practice of valuing contracts inclusive of VAT.

13. The estimated value of the contract must include the value of any goods, services or works “provided by the contracting authority under the contract other than for payment” (Schedule 3, paragraph 1(2)(a)). This obligation may only be relevant to the calculation in a limited number of procurements but recognises that in some cases the contracting authority provides items for the contractor to use in delivering the contract and it is the value of these items which should be included in the estimation of the contract value. For example, in a motorways programme, the electronic equipment for the gantries may be supplied by the contracting authority to the contractor to ensure consistent equipment is deployed across the network. In this example, the value of the electronic equipment provided would be included when calculating the estimated value of the contract.

#### Frameworks and concession contracts

14. There are provisions reflecting the slight differences in approach needed when estimating the values of frameworks and concession contracts.
15. Frameworks must follow the general rule in Schedule 3 in terms of how to estimate the value of the contract, but must also follow the particular valuation method set out for frameworks, which requires that the estimate of the framework is the value of all contracts that could be awarded under the framework. Open frameworks, which are schemes of successive frameworks on substantially the same terms, must be valued by including the value of all frameworks that could be awarded under the open framework (and therefore the value of all contracts that could be awarded under each of the frameworks in the scheme).
16. Concession contracts are not valued according to the general rule in the Act but must follow the particular valuation method set out for concession contracts. This involves estimating the maximum amount the supplier could expect to receive, taking account of a similar non-exhaustive list of variables in the general rule, with certain modifications more pertinent to concession contracts, such as amounts received on the sale of assets held by the supplier under the contract.
17. The reason for concession contracts being valued differently is because at least part of the value in concession contracts is in the right to exploit the works or services. As such, in addition to any amounts received as payment from the contracting authority, the contract valuation should include amounts a supplier expects to receive in the exploitation of the works or services. This might include, for example, anticipated revenue from users of a toll bridge

#### Anti-avoidance

18. The anti-avoidance mechanism at Schedule 3, paragraph 4 is designed to ensure contracting authorities do not artificially subdivide procurements in order to evade the rules. This involves a basic rule that contracting authorities should where possible seek to aggregate for the purposes of valuation, but this should not be a blunt instrument and so

it permits exceptions where there are good reasons. For example, just because a contracting authority buys printers from a particular supplier, it does not mean they should necessarily buy all of their toner, paper and servicing from that same supplier if they believe they can get a better deal elsewhere.

19. The rules do not need to be prescriptive on this as the anti-avoidance measure works on the basis that rule-avoidance would never be a good reason. An example of a good reason for not aggregating could be:

- where a business unit within a large contracting authority has a delegated budget and procures only for the purposes of that business unit;
- where there are many business units with their own needs that cannot feasibly be expected to know every procurement requirement of other business units within the wider organisation;
- where not aggregating would lead to better value outcomes.

#### Where estimation is not possible

20. The policy intention behind Schedule 3, paragraph 5, which provides that contracts whose value cannot be estimated are deemed above-threshold, arises from the need to ensure full compliance with international obligations on public procurement. In practice the situation is unlikely to arise and in general terms it is recommended that contracting authorities simply undertake the best valuation with the information available, following the detailed rules set out in Schedule 3.

#### **What other guidance is of particular relevance to this area?**

Guidance on thresholds

Guidance on mixed procurement



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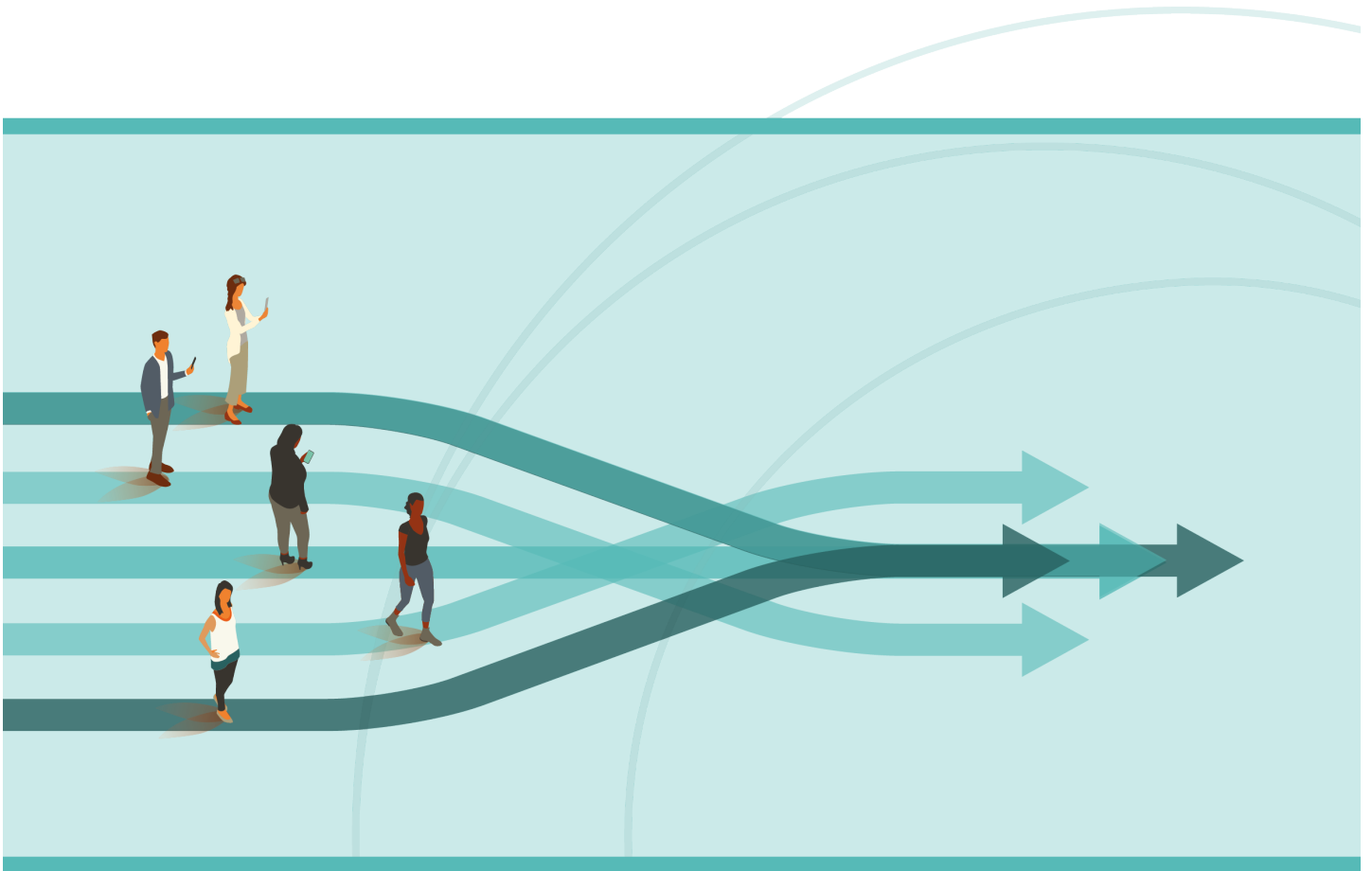
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# Guidance: Thresholds



## Guidance on Thresholds

### What are thresholds?

1. The majority of the provisions in the Procurement Act 2023 (Act) only apply to a public contract (as defined in section 3). A contract is only a public contract where it is not exempted (as set out in Schedule 2) and has an estimated value (including VAT)<sup>1</sup> of not less than the threshold amounts set out in Schedule 1. These thresholds are therefore critical in ensuring that contracting authorities understand when they need to comply with the standard provisions in the Act.
2. Certain contracts less than the threshold amounts in Schedule 1 are subject to the below-threshold provisions in Part 6. For further information, please see the guidance on below-threshold contracts.

### What is the legal framework that governs thresholds?

3. The applicable thresholds are set out in Schedule 1 and can be grouped into three main categories:
  - a. those aligned to international agreements;
  - b. defence and security contracts; and
  - c. light touch contracts.
4. As explained in more detail at paragraph 9 below, the thresholds in the Act have since been updated to align with the UK's international obligations on public procurement. The revised thresholds were set out in Procurement Policy Note 11/23 and are replicated below. The Act will be updated when it comes into force to ensure that the revised thresholds are reflected.

### Key points and policy intent

#### International agreements

5. The UK has a duty to give access to its public procurement markets to suppliers from states which it has a relevant trade agreement with.<sup>2</sup> These trade agreements are listed in Schedule 9 of the Act.
6. The UK's thresholds in its relevant trade agreements either align with or are higher than the thresholds in the UK schedules to the WTO Government Procurement Agreement

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<sup>1</sup> Section 123 of the Act, 'Interpretation', explains that a reference to an amount payable or paid, receivable or received, or to be paid or received, under a contract includes a reference to any amount referable to VAT (the terms receivable and received are used to reflect the different way in which concession contracts are valued).

<sup>2</sup> This duty is only to the extent of the terms agreed within the trade agreement.

(GPA). Accordingly, the UK remains compliant with its international obligations by aligning relevant thresholds in the Act to the UK GPA thresholds.

7. The UK GPA thresholds are in Special Drawing Rights (SDRs). Every two years, the UK is obliged to provide the GPA with the sterling equivalent of its SDR thresholds. The revised threshold then takes effect from 1 January of every even year. This is to adjust for currency fluctuations.
8. To ensure the Act remains aligned to the sterling UK GPA thresholds, Schedule 1 contains a power for an appropriate authority (a Minister of the Crown, the Welsh Ministers or a Northern Ireland department) to update relevant thresholds in the Act by statutory instrument. A Procurement Policy Note is issued every two years to confirm the new sterling thresholds.
9. The thresholds listed in rows 4, 6 and 9 to 12 in Schedule 1, paragraph 1(1) correspond to the UK GPA sterling thresholds for the period 1 January 2022 to 31 December 2023. These thresholds were in place when the Act received Royal Assent on 26 October 2023. These thresholds will be updated when the Act comes into force to remain aligned with the GPA thresholds which were updated on 1 January 2024. For reference the updated thresholds are set out in the table below:

Type of contract	Thresholds (including VAT): 1 January 2024 to 31 December 2025
Utility works contract	£5,372,609
Utility contract that is not a works contract, a defence and security contract or a light touch contract	£429,809
Concession works and services contract	£5,372,609
Works contract	£5,372,609
Contract for the supply of goods or services (which may be mixed contracts that contain some works elements) to a central government authority not within any other row	£139,688
Contract for the supply of goods or services (which may be mixed contracts that contain some works elements) to a sub-central government authority not within any other row	£214,904

### Defence and security contracts

10. It has been standard practice to update the defence and security thresholds to keep pace with the GPA thresholds (although there is no international obligation to do so). These thresholds will be updated when the Act comes into force to remain aligned with the GPA thresholds. The updated thresholds are set out in the table below:

Type of contract	Thresholds (including VAT): 1 January 2024 to 31 December 2025
Defence and security contract that is a works contract	£5,372,609
Defence and security contract that is a concession contract	£5,372,609
Defence and security contract that is not a works contract, a concession contract or a light touch contract (i.e. goods and services)	£429,809

### Light touch contracts

11. Schedule 1 provides a power to update the thresholds for light touch contracts. These thresholds are not determined by the GPA and as such are not subject to change every two years.

12. Schedule 1 does, however, allow the light touch contracts' thresholds to be updated for different purposes, for example to allow for inflation or reflect changing priorities for this category of contract.

13. Where a light touch contract is also a concession contract, the higher threshold used for concession contracts applies. This threshold continues to align with the UK GPA threshold for construction services which is SDR 5,000,000 (currently £5,372,609) and is updated every two years.

Type of contract	Threshold (including VAT)
Light touch utilities contract	£884,720
Light touch concession contract	£5,372,609 (1 January 2024 to 31 December 2025)
All other light touch contracts	£663,540

### Definition of terms

14. Schedule 1 defines the following expressions used in Schedule 1 and throughout the Act:

Term	Definition
Central government authority	<p>The Crown and each of the entities (and their successors) listed in columns 1 or 2 of the Table in Schedule 2 to the Procurement Regulations 2024.</p> <p>(Schedule 1 contains a regulation making power permitting an appropriate authority to list those contracting authorities that are “central government authorities”.)</p>
Complete work	A functioning structure that results from the carrying out of works.
GPA	The Agreement on Government Procurement signed at Marrakesh on 15 April 1994, as amended from time to time.
Sub-central government authority	A contracting authority which is neither (i) a central government authority, nor (ii) a private utility or a public undertaking.
Works	<p>The activities which fall within the CPV codes listed in Schedule 3 to the Procurement Regulations 2024.</p> <p>(Schedule 1 contains a regulation making power permitting an appropriate authority to list those categories of activity that are to count as “works” for the purposes of defining a “works contract”.)</p>
Works contract	A contract whose main purpose is either (i) the carrying out of “works” (see definition below) under that contract (whether or not resulting in a complete work), or (ii) to facilitate the carrying out of works under a separate arrangement, where those works are intended to result in a complete work that complies with specifications set out in that contract.

**What other guidance is of particular relevance to this topic area?**

Guidance on covered procurement

Guidance on exempted contracts

**Where can I go for more information or training?**

PPN 11/23: New Thresholds

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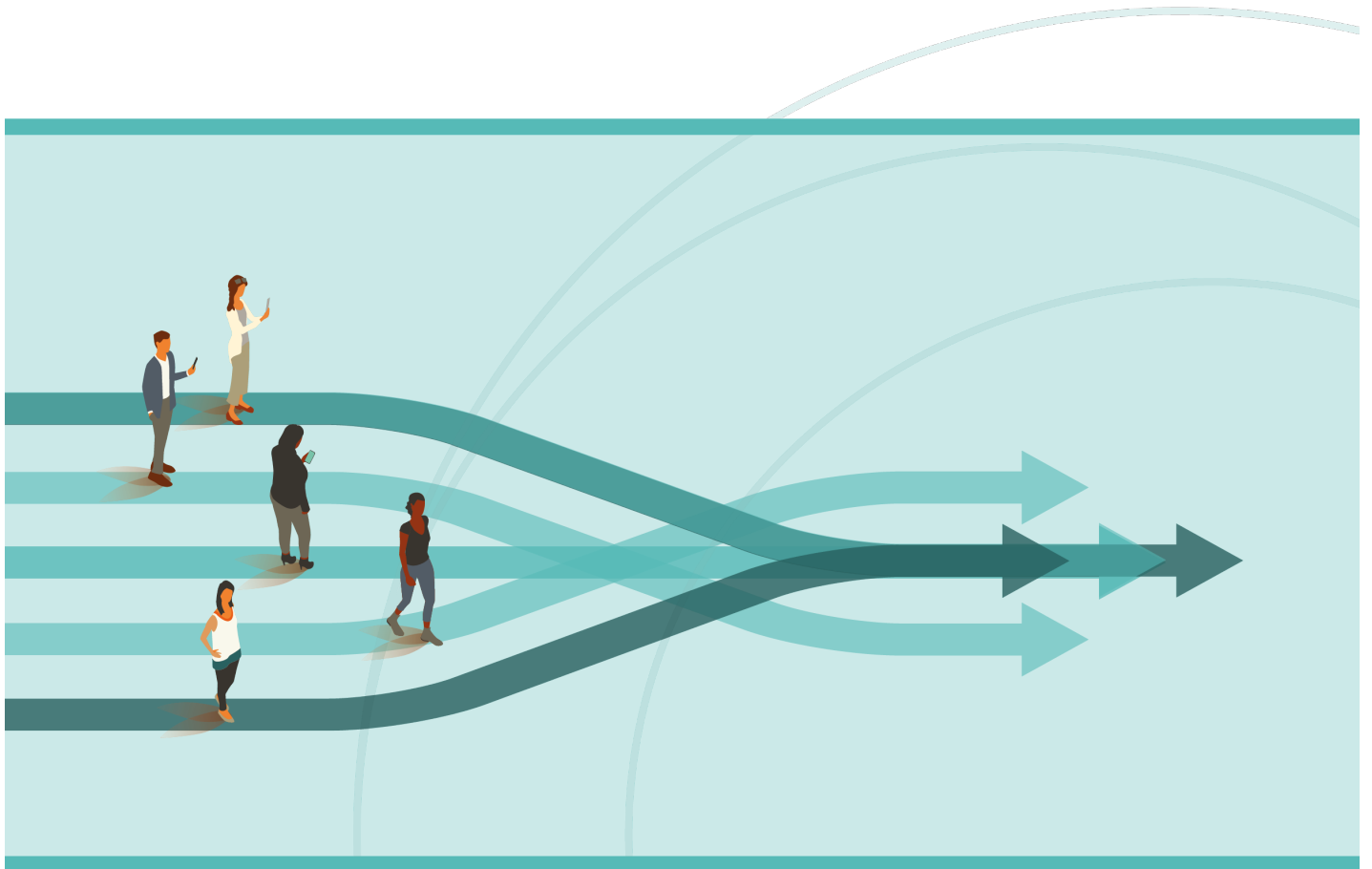
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# Guidance: Mixed Procurement





## **Guidance on Mixed Procurement**

### **What is mixed procurement?**

1. Contracting authorities need to be able to award contracts that are not always 100% goods, 100% services or 100% works. Contracts can therefore comprise a mixture of two or more different categories. Contracting authorities may also need to award contracts of either one type (such as a concession contract, or a light-touch contract), or of a mixture of different types (for example a concession contract for services that are for military purposes).
2. Contracts involving different categories or types will become public contracts above different value threshold levels. Contracts of different types (such as concessions, light touch contracts, defence and security, and utilities contracts - which are categorised as 'special regime' contracts) are also subject to different applications of the rules in the Procurement Act 2023 (Act).
3. It is therefore important that contracting authorities know how to designate any contracts they wish to award that might comprise a mixture of different categories or types.

### **What is the legal framework that governs mixed procurement?**

#### Section 5

4. Section 5 of the Act sets out the rules on determining when a mixed contract will become a public contract. This is because a mixed contract may comprise two or more elements that, if procured separately, would have different applicable thresholds (over which they will be designated as a public contract). Section 5 provides clarity on applying the rules on thresholds to situations where a contract contains mixed elements, where at least one is above and one is below the relevant thresholds. Consequently authorities have the necessary flexibility to procure mixed contracts where appropriate but are prevented from exploiting that mixture to avoid the application of the more detailed rules in the Act.
5. These provisions must be understood in conjunction with Schedule 1, paragraph 4, which sets out that a contract the main purpose of which is works will be deemed a works contract.

#### Section 10

6. Section 10 of the Act sets out how the rules in the Act will apply to contracts of more than one type, where at least one of which is a 'special regime' contract (defined as concession contracts, light touch contracts, defence and security contracts, and utilities contracts). It regulates circumstances where contracting authorities mix special regime contracts that benefit from certain flexibilities (such as higher thresholds or lighter process obligations) with either other contracts that should be subject to the general rules (which would not normally involve such flexibilities) or other special regime contracts. It provides a clear set of rules that contracting authorities can follow when determining whether to mix or split out contracts which include at least one element

covered by a special rules regime. This means that authorities have the necessary flexibility to mix contracts involving special regime elements where appropriate, but are prevented from exploiting that flexibility (and taking advantage of the lighter rules of a particular special regime) where it is reasonable to split out a mixed contract. The position is different in relation to mixed contracts involving defence and security where there is more latitude not to split out the different elements (see paragraph 23).

### **What has changed?**

7. As is the case with certain other basic definitions and concepts, the policy on mixed procurement has not been substantively reformed. However, the opportunity has been taken to significantly streamline these rules while preserving a similar intention and effect to the former rules on mixed procurement in the previous legislation.
8. However, there are some inevitable differences in the way these rules are set out in the Act. For example, the previous legislation on mixed contracts involved navigating the interplay between combinations of procurements involving multiple regulatory schemes. In contrast, the Act addresses mixed procurement within a single scheme. There is therefore no longer a need for authorities to run a series of tests to determine which regulatory scheme will apply to their procurement. The 'subject-matter test' of the previous legislation has been replaced by a 'main purpose' test to reflect this change although both have a similar effect.

### **Key points and policy intent**

#### Section 5

9. Thresholds determine whether or not a contract is a public contract; the procurement of which is regulated by the Act. Different thresholds apply to goods, works or services contracts. These are set out in Schedule 1. Where a contract contains a mixture of these elements (a mixed contract), contracting authorities will need to determine which threshold to apply and whether a mixed contract should have those elements separated into different contracts. If the contract is separated out, thresholds can be calculated separately for each separate contract (each of which will only fall within one such type).
10. Section 5 sets out the test to be applied to ensure that authorities do not mix above and below threshold elements purely for the purposes of avoiding the rules. This is important because, without any rules on mixed procurement, the different thresholds could provide a loophole to rule-avoidance. For example, a goods contract for £200k (i.e. above-threshold) must be awarded in accordance with the full rules, but the loophole would allow the possibility of adding in an unrelated element of works (say £1m, below the works threshold), and then advertising the whole package as a below-threshold works contract thereby avoiding the proper procurement rules for the goods element. The mixed contracts rules close this loophole whilst providing the necessary flexibility for contracting authorities to mix contracts where appropriate. There are two thresholds relevant in this context: the goods/services threshold, and the works threshold. Contracts involving a mixture of elements involving the 'special regime' thresholds are dealt with separately in section 10.

11. If a mixed contract can reasonably be separated out, but a contracting authority chooses not to do so, the mixed contract will, where one element is above its corresponding threshold, be treated as above-threshold (and therefore, unless an exemption applies, a public contract to which the Act applies). This is provided for in section 5(3), which requires mixed contracts to be treated as above-threshold where the conditions in section 5(1) are met.
12. Section 5(2) provides that a similar test applies when the contract awarded is a below-threshold framework that provides for the procurement of a mixed contract under it. If a mixed contract to be awarded under the framework contains above and below-threshold elements that could reasonably be separated out, and the above-threshold element can be awarded outside of the below-threshold framework, but a contracting authority chooses not to separate, the framework must be treated as an above-threshold contract (and therefore, unless an exemption applies, a public contract to which the Act applies). In addition, section 45 will apply to all mixed contracts awarded under that framework where an element of the mixed contract is above-threshold. This is regardless of whether the contract could reasonably be separated and section 5(6) provides that the test is not reapplied when contracts are awarded under the framework.
13. There are a number of factors contracting authorities may consider when determining whether elements of a mixed contract can reasonably be procured separately. These may include (but are not limited to) the practical and financial consequences of splitting out the requirement.
14. Contracting authorities need flexibility given the wide range of public procurement: separate elements can always be procured separately, and mixed contracts whose elements are inseparable are permitted by the Act. Indeed, many contracts will contain elements of different categories. But the basic safeguard remains that if separation is reasonably possible, but a contracting authority chooses not to separate, a mixed contract containing both above and below threshold elements must be treated as above-threshold and therefore in-scope of the legislation. When determining whether or not separation is reasonably possible, factors such as the practical and financial consequences of awarding more than one contract can be taken into consideration. The Act does not specify or give examples of these matters; this is at the discretion of the contracting authority, as such considerations will vary from one procurement to another. Conceivably such considerations might involve, for example, the extra resources required to run multiple procurements rather than one aggregated procurement, or the potential for increased value for money or potential SME-access benefits from separating the procurements, but the Act does not set any particular boundaries or limits on contracting authorities' discretion here.
15. Looking at the potential combinations of contracts that will be caught by the provisions in section 5, clearly if both/all elements are below-threshold then the whole contract will be below-threshold, whereas if all elements are above-threshold then the whole contract will be above-threshold. The rules on mixed procurement in section 5 are only therefore relevant in situations where an element for goods/services is combined with an element for works, and only one element is above-threshold. In such a situation, the contracting authority can either split the elements out and procure them separately, or combine the

elements into a mixed contract and follow the rules set out in section 5 to determine which threshold applies.

16. Having decided to pursue a mixed procurement approach, the contracting authority must then apply the test of 'reasonable separability'.
17. For example, if the elements of the contract are not reasonably separable (e.g. because procuring them separately would compromise value for money) then the contracting authority would need to consider whether the main purpose of the contract is works. Schedule 1, paragraph 4 is relevant here, as it sets out that a contract the main purpose of which is works will be a works contract. If the main purpose is indeed works, then it is a works contract and will be treated according to the value of the works element. And if the main purpose is not works, then it is clear that the goods/services threshold is the relevant one.
18. If, however, the works and goods or services elements are reasonably separable, the whole mixed contract must be treated as above-threshold. This prevents authorities from mixing entirely unrelated contracts for the purposes of avoiding the rules.
19. Schedule 2, paragraph 1 provides that a contract is only an exempt contract where the goods, services or works that form its main purpose are exempt. An element of exempt services in a mixed contract will not, for example, mean the entire contract is exempt if that element does not comprise the main purpose of the contract.

## Section 10

20. Section 10, which should be considered alongside the closely related section 5, addresses mixed contracts that involve (at least) one element to be procured under the 'special rules regime'. As 'special regime' contracts normally involve lighter touch rules and higher thresholds, it is necessary to consider how they can be mixed with contracts subject to the general rules regime. Similarly, not all special regimes have the same thresholds or application of lighter touch rules, so a decision needs to be made as to which special regime will apply where more than one special regime could be applied to the mixed contract.
21. In a similar vein to section 5, it is important to recognise and provide for the inevitable possibility that the need for such mixed contracts will arise, whilst safeguarding against possible exploitation of exemptions and the lighter touch rules in situations where the full rules regime would be more appropriate. This is achieved in a similar way to the safeguard at section 5, through introducing a test of separability.
22. When placing a mixed contract containing one or more elements that would, if procured separately, be subject to 'special regime' provisions in the Act, together with other above-threshold elements that would not be subject to that special regime, section 10(3) provides that a contracting authority cannot take advantage of such special regime rules where it would be reasonable to split out the requirement. This rule applies whether or not the contract being placed is one directly for works/goods/services or whether it is for a framework under which contracts will be let for works/goods/services (see section 10(2) for application to frameworks).

23. In addition, Schedule 2, paragraph 1 provides that a contract is only an exempt contract where the goods, services or works that form its main purpose are exempt. An element of exempt services in a mixed contract will not, for example, mean the entire contract is exempt if that element does not comprise the main purpose of the contract.
24. There is an exception for mixed special regime contracts that are defence and security contracts in recognition of the sensitivities of defence procurement. These can be treated as a special regime contract even where the conditions in sections 10(1) or 10(2) apply, if there are good reasons for procuring the elements together.
25. If separation of the general rules regime and special rules regime elements is possible, but a contracting authority chooses not to separate out the contract, then that mixed contract must be awarded in accordance with the general rules – it will not qualify for the special rules regime if the elements could reasonably be procured separately. When determining whether elements of a mixed contract can reasonably be procured separately or not, a contracting authority can consider factors such as the practical and financial consequences of awarding more than one contract.
26. Whether or not the mixed contract can be treated as a special regime contract, the contract is still to be treated as a public contract subject to the Act.
27. As with section 5, contracting authorities should not run the analysis again for contracts awarded under a framework; the test would have been applied prior to the procurement for the framework by considering the goods, services or works to be supplied under potential call-off agreements to be awarded under the framework (see section 10(2)).
28. Section 10 also acknowledges and provides for the possibility where a mixed contract involves two or more different 'special regime' elements. Although these cases may be rare, a test of reasonable separability will also be used to guide decisions on which rules to apply. The main purpose special regime will only apply where the two elements cannot be reasonably separated. If the elements can be reasonably separated but are not, the mixed procurement will be subject to the normal rules regime, not the special rules regime. In this situation the contracting authority would have the choice as to procure two separate special regime contracts (and enjoy the flexibility of the correct respective regime in each procurement), or pursue a mixed contract under the full rules regime.
29. As noted earlier this position is qualified in relation to mixed special regime contracts involving defence and security. Such contracts can still be treated as a special regime contract even where the elements can reasonably be separated, where there are good reasons for not awarding separate contracts in recognition of the sensitivities of defence procurement. This qualification grants more discretion to contracting authorities awarding defence and security contracts where there is no need to consider whether or not the elements could reasonably be split out, only to have a good reason for procuring the elements together.

## **What other guidance is of particular relevance to this topic area?**

Guidance on thresholds

Guidance on valuation of contracts

Guidance on the special regimes (concessions, utilities, light touch, defence and security)

## **Related questions**

### **MIXED CONTRACTS INVOLVING AN ELEMENT COVERED BY THE PSR**

#### **What is the ‘Provider Selection Regime’?**

The Provider Selection Regime (PSR) is a new set of bespoke procurement regulations which commissioners of healthcare services in the NHS and Local Government will follow when procuring or otherwise arranging certain healthcare services in their area. This intends to address the idiosyncrasies of the health and care system and fulfil the Health and Care Act’s intention to deliver greater collaboration and integration in the arrangement of healthcare services. The PSR regulations came into force on 1 January 2024; further information is available at: <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/>

#### **How does the PSR interact with the reforms in the Procurement Act?**

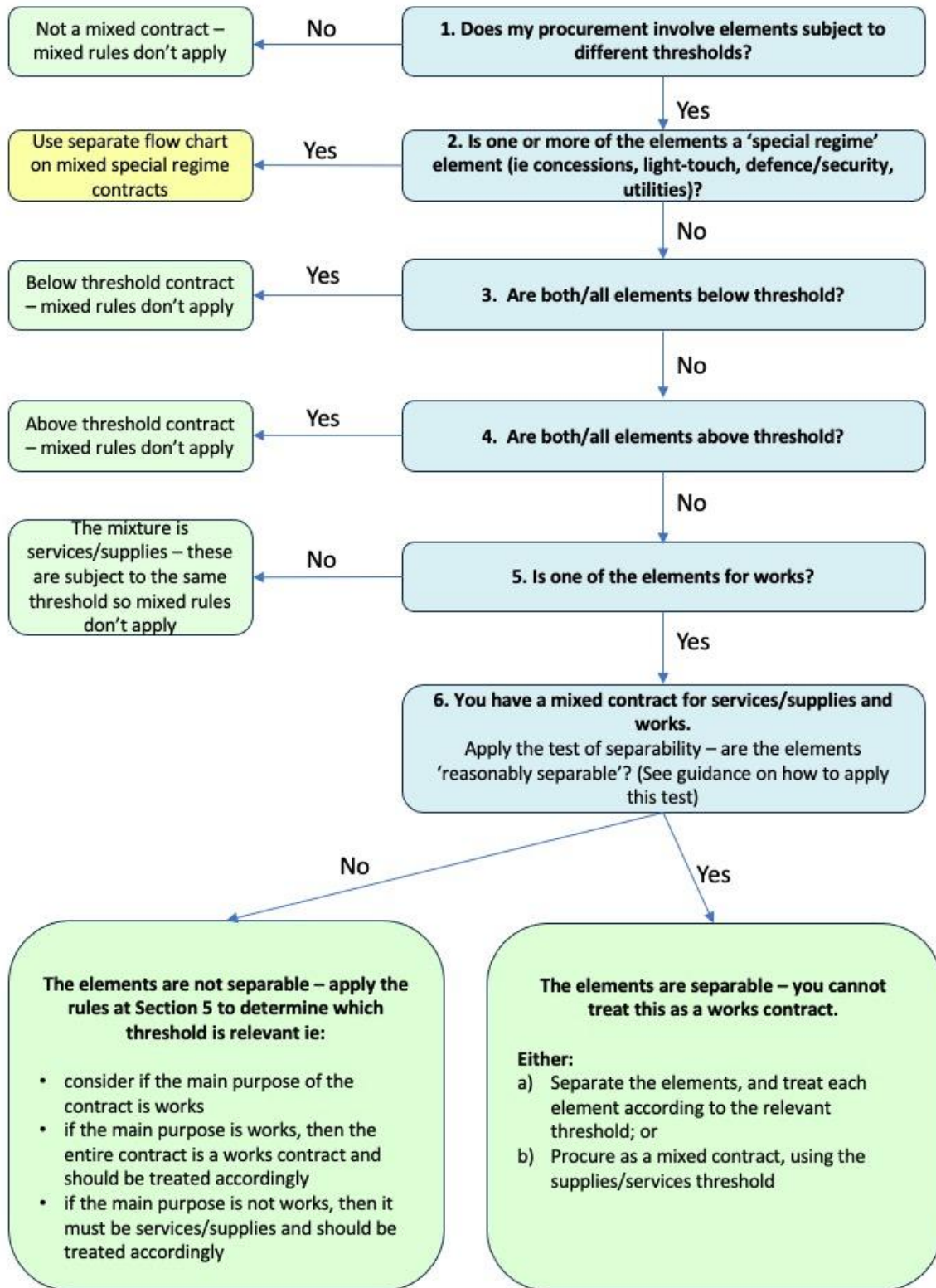
The PSR covers only the procurement of healthcare services which are delivered to patients and service users – and only when they are arranged by relevant healthcare authorities including NHS bodies and local authorities. The PSR has a very tightly defined scope of services and bodies caught, the details of which are set out in the PSR regulations.

The Procurement Act will be disapplied to procurements in scope of the PSR, using the relevant regulation-making power at section 120. The Procurement Act will cover all other goods, services, and works purchased by contracting authorities including such procurement by NHS bodies and Local Authorities.

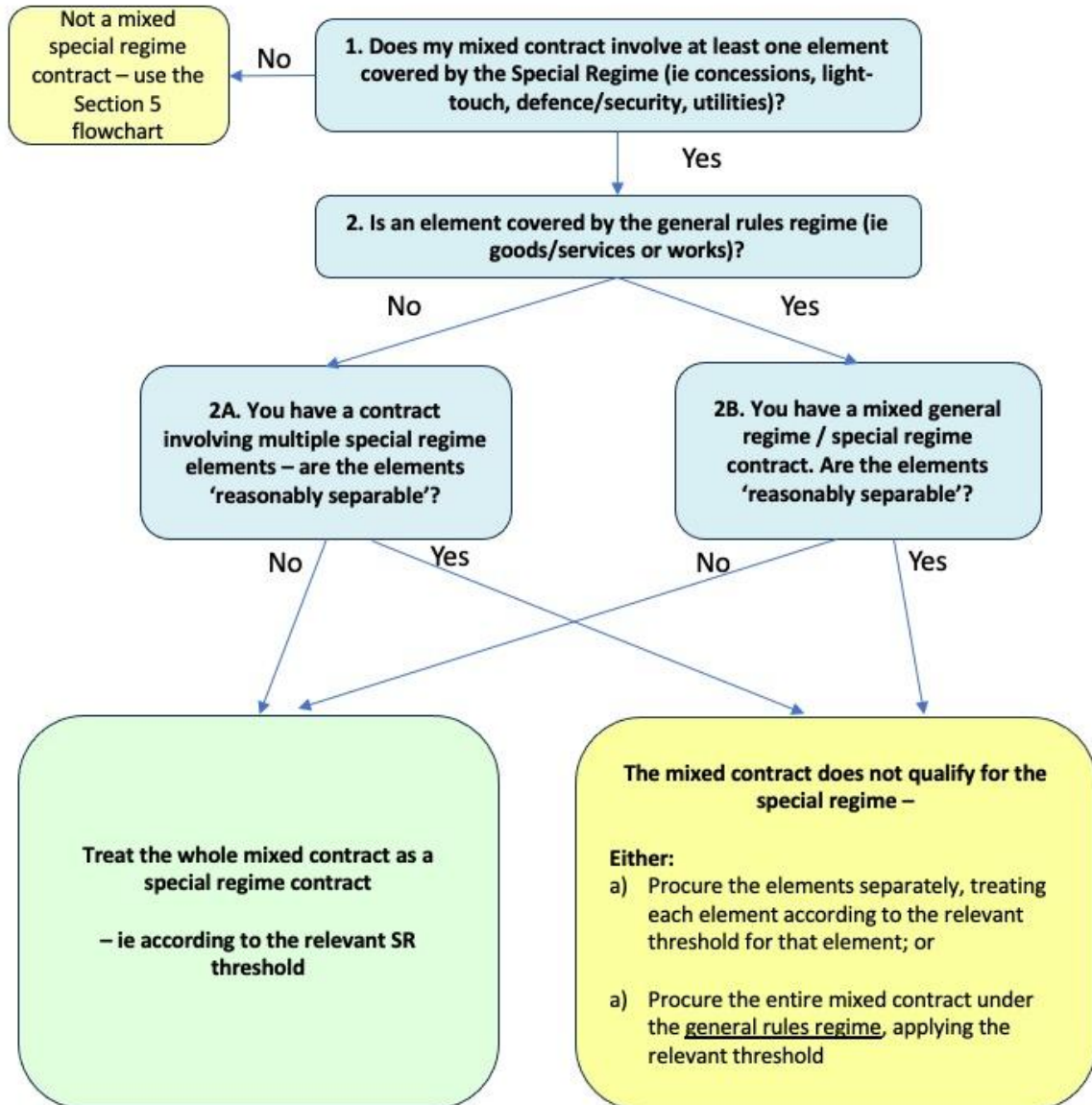
#### **How will mixed contracts involving healthcare and other goods/services be different when the Procurement Act comes into force?**

The Procurement Act will apply to mixed contracts that involve a healthcare and non-healthcare element if those elements could reasonably be supplied under separate contracts, and if they could not be supplied under separate contracts, then the applicable scheme would be determined according to the highest value element.

Annex A - Mixed Procurement – Above and Below Threshold (Section5)



Annex B - Mixed Procurement – Special Regime (Section 10)





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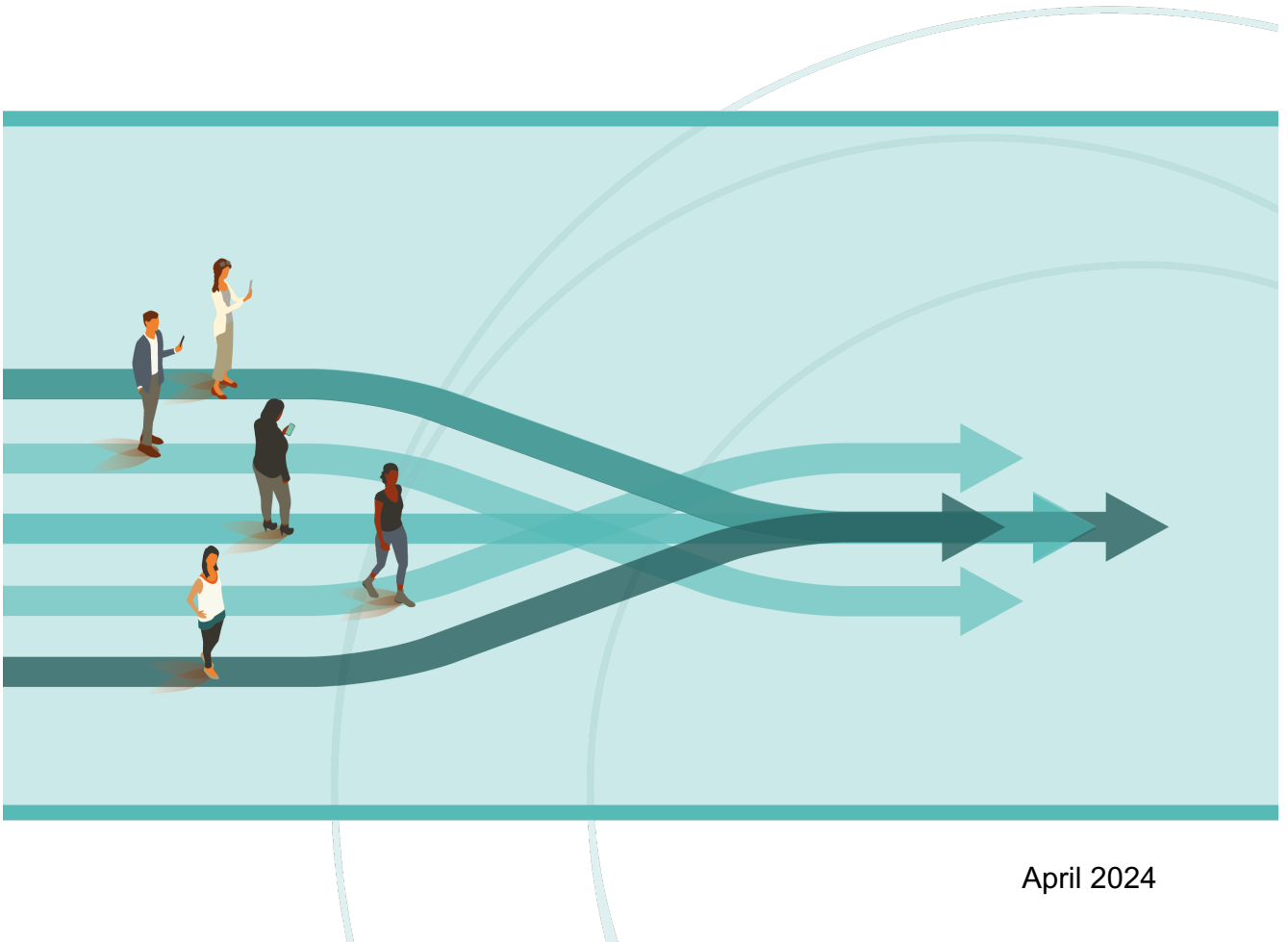
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Procurement Act 2023

# Guidance: Planned Procurement Notice



April 2024

## **Guidance on the planned procurement notice**

### **What is a planned procurement notice?**

1. The planned procurement notice is an optional notice under the Procurement Act 2023 (Act) which is published at the pre-procurement stage. The planned procurement notice is similar to a pipeline notice in that it provides advance notice of an upcoming procurement. It goes further than a pipeline notice and is designed to give as much advance information to the market as possible to enable potentially interested suppliers to determine if the upcoming procurement is something that they wish to bid for, and to provide maximum time for preparation. It is the only type of notice that, when used correctly, can provide a reduction in the minimum time periods between submission of the tender notice and the deadline for submission of tenders in competitive tendering procedures.

### **What is the legal framework that governs the planned procurement notice?**

2. The legal framework that governs the planned procurement notice is as follows:  
Section 15: planned procurement notices  
Regulation 16: planned procurement notices  
Regulation 18 (and as incorporated into regulations 19 - 22): tender notices (see guidance on competitive tendering procedures and time periods for more information).

### **What has changed?**

3. The planned procurement notice fulfils a similar function to a prior information notice and a periodic indicative notice (both referred to here as PIN), as relevant, in the previous legislation.<sup>1</sup>
4. The planned procurement notice replaces both PINs and when used, must be published on the central digital platform (previously PINs published under the Public Contracts Regulations, Defence and Security Public Contracts Regulations and Utilities Contract Regulations could be published on a buyer profile). Unlike the Utilities Contract Regulations and Concession Contracts Regulations PINs, a planned procurement notice cannot be used as a call for competition. As with a PIN, if it publishes a planned procurement notice, a contracting authority can reduce the time period for submission of tenders (tendering period) in certain circumstances.

### **Key points and policy intent**

5. All contracting authorities are able to take advantage of the reduced tendering period provided by publishing a qualifying planned procurement notice. Publication may take place at any time before publication of the tender notice. It may be the first notice

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<sup>1</sup> See [Public Contracts Regulations 2015](#) regulation 48, [Concession Contracts Regulations 2016](#) regulation 31, [Defence and Security Public Contracts Regulations 2011](#) regulation 14, and periodic indicative notices, used in [Utilities Contracts Regulations 2016](#) regulation 67

published about an upcoming procurement or it may follow a pipeline or a preliminary market engagement notice.

6. A planned procurement notice sets out that a contracting authority intends to publish a tender notice. A planned procurement notice is therefore not used when:
  - a. establishing a dynamic market;
  - b. awarding in accordance with a framework; or
  - c. making a direct award.
7. Section 15 of the Act sets out that if the notice is published at least 40 days and no longer than one year before publication of the tender notice then the notice is a 'qualifying' planned procurement notice. This means that the contracting authority may, if it chooses to, reduce the tendering period to a period of ten days or more. However, in setting the tendering period, the contracting authority must have regard to the covered procurement objectives in section 12 (such as the need to remove or reduce barriers to participation that small and medium-sized enterprises (SMEs) face and to ensure that tendering periods are sufficient to allow bidders to understand the contracting authority's procurement policies and decisions).

#### Content of a planned procurement notice

8. A planned procurement notice must contain the information set out in regulation 16. This includes much of the information required in the tender notice for the procedure that the contracting authority intends to use (to the extent this information is known at the time of publication). A contracting authority can supplement the information required for the notice with additional information and documentation.

#### Timing of publication

9. As above, contracting authorities are required to provide as much information relating to the tender notice as is available at the time of publishing the planned procurement notice. So contracting authorities will wish to consider the best time to publish their planned procurement notice i.e. there may be little benefit to suppliers in publishing a planned procurement notice 12 months in advance if the contracting authority can only provide limited detail about the opportunity.
10. Contracting authorities can, if they wish, revise their planned procurement notice to make further information available. Provided this is published within the timescales set out in paragraph 7 above, this would meet the requirements of a qualifying planned procurement notice.

#### Qualifying planned procurement notice: reducing timescales

11. If a contracting authority publishes a qualifying planned procurement notice, it may, if it chooses to, reduce the tendering period to a minimum of ten days. The Act sets out that

a qualifying planned procurement notice means a planned procurement notice published at least 40 days but not more than 12 months before the day on which the tender notice is published.

12. It is possible for a contracting authority to have published a planned procurement notice, undertaken a competitive tendering procedure and reduced the tendering period, but then to have subsequently switched to direct award using the section 43 provisions.
13. A planned procurement notice may be published prior to publishing a tender notice where an authority plans to award the contract under a dynamic market. However, as the minimum tendering period in this case is already 10 days, there is no reduction in the minimum period.
14. Contracting authorities may also voluntarily publish a planned procurement notice for contracts below the applicable threshold, to provide advance notice to suppliers, especially SMEs, although in these circumstances this will not result in a reduction in the tendering period as there is no minimum tendering period for below-threshold procurements.
15. Having published a qualifying planned procurement notice, a contracting authority does not have to take advantage of a reduced tendering period. In fact, contracting authorities should think carefully about applying any time reduction at the tender stage. In deciding whether to do so, contracting authorities should consider whether their qualifying planned procurement notice together with the tender notice have provided enough information to enable suppliers to effectively bid for the procurement during any reduced tendering period.
16. A contracting authority might determine that its procurement at the tender stage no longer reflects what it set out in its qualifying planned procurement notice and it is therefore not appropriate to reduce the tendering period. This may be because requirements have been refined to the extent that the types of suppliers who had been attracted to the planned procurement notice would be different from the types of suppliers who would likely now tender for the contract, for example, where the quantity of goods set out in a planned procurement notice is vastly different to that set out in the tender notice.
17. In these circumstances, the contracting authority could either terminate the current procurement (and (voluntarily) publish a procurement termination notice if it wished) and then publish a new planned procurement notice or proceed to publish a tender notice and continue with the procurement in accordance with the standard tendering period, forgoing any reduced tendering period. In considering whether to choose the latter option, contracting authorities should think about whether suppliers who might have seen the planned procurement notice and been following the procurement may have disregarded the opportunity due to different information being contained in the planned procurement notice in which case it would be advisable to restart the procurement.
18. A qualifying planned procurement notice cannot be used to reduce the tendering period where the procurement has changed substantially, such as where the notice expressed

an intention to buy photocopiers but the tender notice relates to the purchase of computers. In such cases, a contracting authority must restart the procurement and publish a fresh planned procurement notice (which will not be a qualifying planned procurement notice until it meets the requirements of section 15(3)) or proceed to publish a tender notice, without relying on the original planned procurement notice to reduce the tendering period.

19. Information set out in the planned procurement notice relating to any timing of publication of the subsequent tender notice may also have a bearing on whether the contracting authority should reduce the tendering period. For example, if a planned procurement notice provided that the tender notice would be issued in six months' time, but it is actually issued in two months' time then suppliers might not be ready to bid. In these circumstances the contracting authority should not rely on the planned procurement notice to justify reducing the tendering period.
20. It would be good practice, although not a requirement under the Act, to publish a procurement termination notice if the contracting authority subsequently decides not to proceed with a procurement following publication of a planned procurement notice.
21. A qualifying planned procurement notice could contain a number of named contracting authorities who are cooperating in a procurement. For example, several local authorities might decide to enter into a joint contract for waste disposal services. If one of the contracting authorities who is named in the planned procurement notice decides, at the tender stage, not to participate in the joint procurement, the participating contracting authorities should consider whether it is still appropriate to rely on the qualifying planned procurement notice. In this case, it would very much depend on the circumstances, such as the impact of the contracting authority not participating and whether such a scenario had been envisioned in the content of the planned procurement notice. In some circumstances, it may not be advisable to reduce the tendering period.
22. Similarly, if a number of contracting authorities intend to procure individual waste services, and each publishes a planned procurement notice to this effect, and then it is subsequently considered appropriate to aggregate their requirements into a single procurement/contract they might not attract the same suppliers because of the difference in scale of the requirement. In this scenario the contracting authorities should consider whether it is appropriate to reduce the tendering periods in reliance on the individual qualifying planned procurement notices, or if they should publish a new planned procurement notice (or proceed in reliance on a single tender notice and the standard tendering period).

**What are the primary notices linked to this aspect of the Act?**

23. The planned procurement notice may be published before or after a pipeline notice or a preliminary market engagement notice.
24. The next notice in the sequence will be one of the following:

- a. pipeline notice: to publish the individual upcoming procurements for the coming reporting period;
  - b. preliminary market engagement notice: can be used to engage with the market about an upcoming procurement;
  - c. tender notice: to advertise the procurement;
  - d. transparency notice: it is possible, though unlikely, except where section 43 (switching to direct award) applies, that contracting authorities could publish a planned procurement notice but subsequently determine that there are grounds to directly award the contract and therefore publish a transparency notice;
  - e. procurement termination notice: can be used voluntarily to indicate that a procurement set out in a planned procurement notice will not be progressed.
25. Contracting authorities must ensure that when publishing the next notice in the sequence that they refer back to the originating notice if one exists. This should be a function of system providers and contracting authorities should check local procedures for further information on publishing notices.

**What other guidance is of particular relevance to this topic area?**

Guidance on competitive tendering procedures

Guidance on the central digital platform and publication of information

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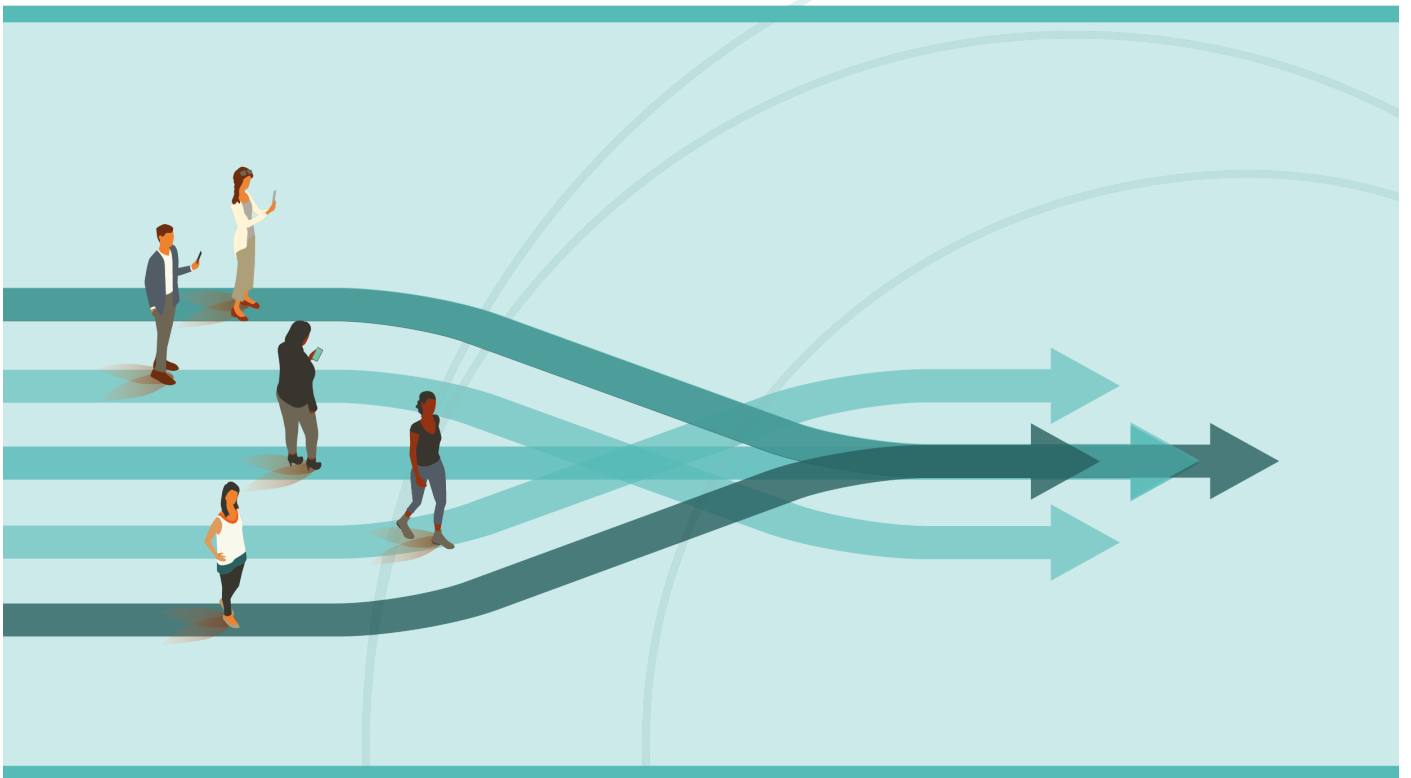
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# Guidance: Preliminary Market Engagement



# Guidance on Preliminary Market Engagement

## What is preliminary market engagement?

1. Preliminary market engagement under the Procurement Act 2023 (Act) takes place before the publication of a tender or transparency notice and helps contracting authorities and the market prepare for the procurement. This engagement is of particular importance under the Act, where contracting authorities have significant flexibility to design and tailor their competitive procurement procedures. However, this engagement must be conducted in a way that does not give a supplier an unfair advantage or distort competition.
2. The Act also includes a provision for contracting authorities to publish a preliminary market engagement notice. The notice is used to invite suppliers to participate in preliminary market engagement or to notify the market that engagement has taken place. Notices can help to ensure a level playing field and also serve to attract new entrants.

## What is the legal framework that governs preliminary market engagement?

3. The main provisions on preliminary market engagement are included in section 16 and section 17 of the Act.
4. There are also various overarching provisions under the Act, for example, the procurement objectives, non-discrimination requirements and conflicts of interest obligations which are relevant to preliminary market engagement.

## What has changed?

5. These sections are similar to the provisions in the Public Contracts Regulations 2015 (PCR) (see regulations 40 and 41). A key difference is the addition of obligations regarding a preliminary market engagement notice.
6. In addition, unlike the PCR (see regulation 41(2)) which sets out some examples of measures that an authority could take to ensure competition is not distorted, there are no specific examples given in sections 16 and 17 of the Act. However, measures such as the sharing of relevant information that has been gathered or exchanged with suppliers and fixing adequate time limits for the receipt of tenders would also be measures that could be adopted under the Act to prevent unfair advantage and ensure competition is not distorted.

## Section 16 - Preliminary market engagement

7. Section 16 permits contracting authorities to engage with the market, lists the permitted purposes of such engagement, and requires that contracting authorities take steps to ensure that participating suppliers are not unfairly advantaged.

## Section 17 - Preliminary market engagement notices

8. Contracting authorities are not required by the Act to conduct preliminary market engagement. However, section 17 requires that if a contracting authority carries out preliminary market engagement it must either:
  - a. publish a preliminary market engagement notice before it publishes a tender notice; or
  - b. explain, in the tender notice, why it did not publish a preliminary market engagement notice.
9. Following amendments in the Procurement Regulations 2024 and the Procurement (Wales) Regulations 2024, this section will not apply to private utilities.

### **Key points and policy intent**

10. The policy objective is to encourage contracting authorities to speak with the market before commencing a procurement. Whilst this is not mandatory, the information gathered during this stage can be invaluable for the contracting authority as it clarifies its requirements, assesses the market's capacity and develops its procurement strategy.

## Determining what might be considered preliminary market engagement

11. Section 16(1) lists the permitted purposes of engagement. The list is deliberately broad to give contracting authorities confidence to engage with the market about relevant and reasonable commercial considerations prior to commencing a procurement. The permitted purposes are:
  - a. developing the authority's requirements and approach to the procurement;
  - b. designing a procedure, conditions of participation or award criteria;
  - c. preparing the tender notice and associated tender documents;
  - d. identifying suppliers that may be able to supply the goods, services or works required;
  - e. identifying likely contractual terms; and
  - f. building capacity among suppliers in relation to the contract being awarded.
12. Contracting authorities should note that what constitutes preliminary market engagement in section 16(1) is the purpose and subject of the engagement and not the form of engagement. This means that whether or not the contracting authority considers the engagement to be 'formal' or 'informal', if its purpose is listed in 16(1) it

should be seen as preliminary market engagement and handled as such. It should, however, be noted that not every engagement involving contracting authorities and suppliers and other persons will be for the purpose of 16(1) and therefore preliminary market engagement to which section 16 applies.

13. Preliminary market engagement is a particularly important tool for the achievement of value for money. It allows contracting authorities, for example, to recognise divergence between suppliers which enables the identification of suitable areas for negotiation, dialogue or testing/demonstration as part of a competitive flexible procedure. Contracting authorities should, where relevant, also use preliminary market engagement to increase the understanding of how requirements ought to be set in such a way as to reduce whole lifecycle costs rather than focus on the initial purchase price of the contract.

#### Preparing to conduct preliminary market engagement

14. Contracting authorities will need to consider the purpose and format of their preliminary market engagement. The engagement is likely to be more effective if contracting authorities know the purpose and intended outcomes of the engagement and clearly articulate these to suppliers. The format could include various types or combinations of engagement such as face to face presentations or webinars, workshops, site visits, one to one meetings or a simple invitation to prospective suppliers to get in touch. It is important that contracting authorities consider the market's resources and the time and cost of engagement. For example, the requirement in the procurement objectives to have regard to the barriers small and medium-sized enterprises (SMEs) may face and to consider whether such barriers can be removed or reduced might affect how preliminary market engagement is carried out. As well as in-person events, hosting digital webinars or recording sessions can help make the engagement more accessible. The details of the format of the event must be included in the preliminary market engagement notice, which may also include the purpose (or other information).
15. Contracting authorities can use preliminary market engagement to increase competition and the diversity of suppliers in procurement. For example, hosting events where suppliers can understand the bidding process and what the contracting authority is looking for in a tender can be helpful to new suppliers and SMEs. Indeed, engaging with a broad range of suppliers should improve the procurement. It is also important that preliminary market engagement is not used as a means of tailoring a procurement to a particular supplier.
16. Contracting authorities can engage with everyone who expresses an interest in a preliminary market engagement. However, it is also possible for a contracting authority to state in the preliminary market engagement notice how numbers will be reduced; for example if there are too many respondents. Nevertheless, contracting authorities will still need to comply with their obligations in section 16 and the overarching duties under the Act, including those in section 12.
17. The conflicts of interest obligations in Part 5 of the Act are relevant when considering preliminary market engagement. This includes the requirement that contracting

authorities must take all reasonable steps to identify and mitigate any conflicts of interest or potential conflicts of interest. In addition, before publishing a tender or transparency notice the contracting authority must also prepare a conflicts assessment in relation to the procurement. See guidance on conflicts of interest for more information.

Steps to ensure a supplier is not put at an unfair advantage and/or to avoid competition being distorted

18. The Act requires contracting authorities to take steps to ensure that suppliers participating in the preliminary market engagement are not put at an unfair advantage and that competition in relation to the award of the contract is not otherwise distorted. Contracting authorities should consider their approach to meeting this requirement before they begin their preliminary market engagement. If a contracting authority considers that a supplier's participation in the preliminary market engagement has put a supplier at an unfair advantage in relation to the award of the contract and that advantage cannot be avoided, the supplier must be excluded from the procurement.
19. A contracting authority should keep a record of the information it has shared and received as part of the preliminary market engagement. This can help to ensure that the information gathered is taken into account in the procurement. The information can also be shared with other parties and used to help ensure that participating suppliers are not unfairly advantaged. Depending on the nature of the information shared and received, it would be best practice for any such information and/or outcomes of the engagement to be included in the tender notice or tender documentation. To help with this, contracting authorities should consider in advance how they will handle any confidential information including intellectual property. This could include information relating to the contracting authority, an incumbent supplier or organisations involved in the engagement.
20. Contracting authorities may be able to use preliminary market engagement to help comply with their duty to consider whether any particular barriers to participation faced by SMEs can be removed or reduced (this is one of the procurement objectives in section 12 of the Act). Preliminary market engagement sessions focused on SMEs and new entrants are permitted, provided this does not put those particular suppliers at an unfair advantage or distort competition. Such engagement must also comply with other procurement objectives such as sharing information and acting with integrity.
21. Contracting authorities who undertake preliminary market engagement are not obliged to proceed with the procurement to which it relates and if no tender or transparency notice has been published, a procurement termination notice is not required. However, even though no such notice is required it is best practice to record the reasons for a decision not to proceed with a procurement and a procurement termination notice can be used voluntarily to indicate that a particular procurement set out in a preliminary market engagement notice will not be progressed.

## Publishing a preliminary market engagement notice

22. In most circumstances it will be beneficial for the contracting authority to publish a preliminary market engagement notice to invite suppliers to participate and this should be standard practice. The decision to carry out market engagement without using a preliminary market engagement notice will need to be justified in the tender notice and contracting authorities will also need to bear in mind the objectives in section 12, non-discrimination requirements and conflicts of interest obligations. This means there is not complete freedom to decide not to use a preliminary market engagement notice for a covered procurement.
23. If the contracting authority has not conducted any preliminary market engagement, there is no requirement under the Act to publish the reason for not doing so in the tender notice.
24. Regulation 17 sets out the content that needs to be included in a preliminary market engagement notice. There is no set timeline for publishing the preliminary market engagement notice. However, if a notice is used to invite suppliers to attend a preliminary market engagement event, given the duties under section 12, it is advisable to allow a sufficient time period for those who may want to take part to prepare, proportionate to the nature of the preliminary market engagement intended to be undertaken. The time period can vary, for example, depending on the complexity of the market and the type of engagement planned. For example, some preliminary market engagements may require time for participants to read background documents and prepare questions/feedback. Other engagements may simply require attendance at a meeting to discuss the contracting authority's proposals (with no preparation required).
25. Contracting authorities can also use a preliminary market engagement notice to declare that preliminary market engagement has already taken place (for example with a selected group of suppliers) and provide details of the process by which it was undertaken. In this scenario, the notice can be used to share engagement outputs and ensure a wider audience is kept informed about the contracting authority's emerging thinking, therefore supporting the objectives of section 12 and ensuring all suppliers have access to the same information. The notice can also flag additional upcoming engagement opportunities.
26. During this stage of the process, when a contracting authority is completing the 'contract subject-matter' field in the notice, it may only be able to describe this in broad terms or provide high level estimates. The requirements in subsequent notices related to the procurement do not have to match precisely the information/estimates in the preliminary market engagement notice. Considering the purpose of this engagement is to help the contracting authority develop its requirements, these might be adjusted depending on the outcomes of the preliminary engagement.

## Joint Preliminary Market Engagement

27. Contracting authorities can jointly undertake preliminary market engagement exercises. In this case, a 'lead authority' can publish a preliminary market engagement notice on behalf of all of the contracting authorities and all of their procurements can be included in a single notice. When the contracting authorities are publishing their tender notices, they will be able to state in their notices that they are relying on the lead contracting authority's preliminary market engagement notice as justification for not having published their own preliminary market engagement notice.

## Engagement without publishing a preliminary market engagement notice

28. The Act does allow a contracting authority to carry out preliminary market engagement without a notice, provided it gives its reasons for not doing so in the tender notice. Contracting authorities will also still be required to comply with the provisions section 16 concerning *how* to conduct preliminary market engagement; for example the obligation to take steps to prevent unfair advantage and distortion of competition. A contracting authority must also consider the Act's overarching duties (such as those in section 12) when making this decision not to publish.
29. The option to allow non-publication of a preliminary market engagement notice, provided a contracting authority provides reasons in its tender notice, has been made to capture what is anticipated will be a limited number of circumstances. Whilst it will always be fact-specific, examples of situations where this might arise are where it was necessary to keep the engagement secret for national security purposes, or where there are extenuating circumstances, for example because there is a high risk of a critical service failure if the procurement does not progress quickly.
30. As the reasons for not publishing a preliminary market engagement notice will be published in the tender notice, any interested parties will be able to raise any concerns with the contracting authority or Procurement Review Unit.

## Preliminary market engagement for covered procurements which do not require a tender notice

31. Although the obligations set out in section 16 are linked to publication of a tender notice, section 16 does not prevent a contracting authority from engaging with suppliers as appropriate before commencing a procurement which does not require a tender notice. For example, in respect of contracts awarded under frameworks or direct awards. Similarly, a contracting authority establishing a dynamic market is not prevented from engaging with the market before publishing a dynamic market notice.
32. However, these will not be preliminary market engagements as defined in section 16(1) and some of the purposes set out in section 16(1) will not be relevant, such as in the case of frameworks, where, for example, the award criteria will have been set out in the framework.

33. If contracting authorities do engage with the market in these circumstances, other relevant requirements in Act, such as the procurement objectives in section 12, must be complied with.

34. In these circumstances, a contracting authority may also choose to notify the market of an engagement, which it can do using a preliminary market engagement notice, but, again, there is no requirement to do so under the Act.

#### Below-threshold contracts

35. The obligations in sections 16 and 17 do not apply to below-threshold contracts. Again, contracting authorities can, but are not required to, publish a preliminary market engagement notice for below-threshold contracts. There is also no requirement to explain non-publication of a preliminary market engagement notice in a below-threshold tender notice.

#### Private utilities

36. Private utilities are encouraged to publish a preliminary market engagement notice, but where they choose not to do so, they are not required to explain this in the tender notice.

#### **What notices are linked to this aspect of the regime?**

37. The nature of the preliminary market engagement notice means that it is published early on in the sequence of notices provided for under the Act. It will usually be preceded by the pipeline notice but it could also be published as the first notice in the sequence (if the procurement is not published in a contracting authority's pipeline notice or if preliminary market engagement occurs prior to the contracting authority making a decision to proceed with the procurement and publish a pipeline notice). It could also follow the planned procurement notice.

38. The next notice in the sequence after the preliminary market engagement notice will be one of the following:

- a. pipeline notice - to publish the individual procurements making up a pipeline..
- b. planned procurement notice - to provide advance notice of the procurement and potentially take advantage of reduced timescales.
- c. tender notice - to advertise the opportunity to tender. As set out above, if preliminary market engagement is conducted but no preliminary market engagement notice is published, there is a requirement to explain this non-publication in the tender notice.
- d. transparency notice - for use when a direct award is being made.



- e. procurement termination notice - can be used voluntarily to indicate that a particular procurement set out in a preliminary market engagement notice will not be progressed.

39. Contracting authorities must ensure that when publishing the next notice in the sequence that they refer back to the originating pipeline notice. This should be a function of system providers and contracting authorities should check local procedures for further information on publishing notices.

**What other guidance is of particular relevance to this topic?**

Guidance on covered procurement objectives

Guidance on competitive tendering

Guidance on direct award

Guidance on conflicts of interest

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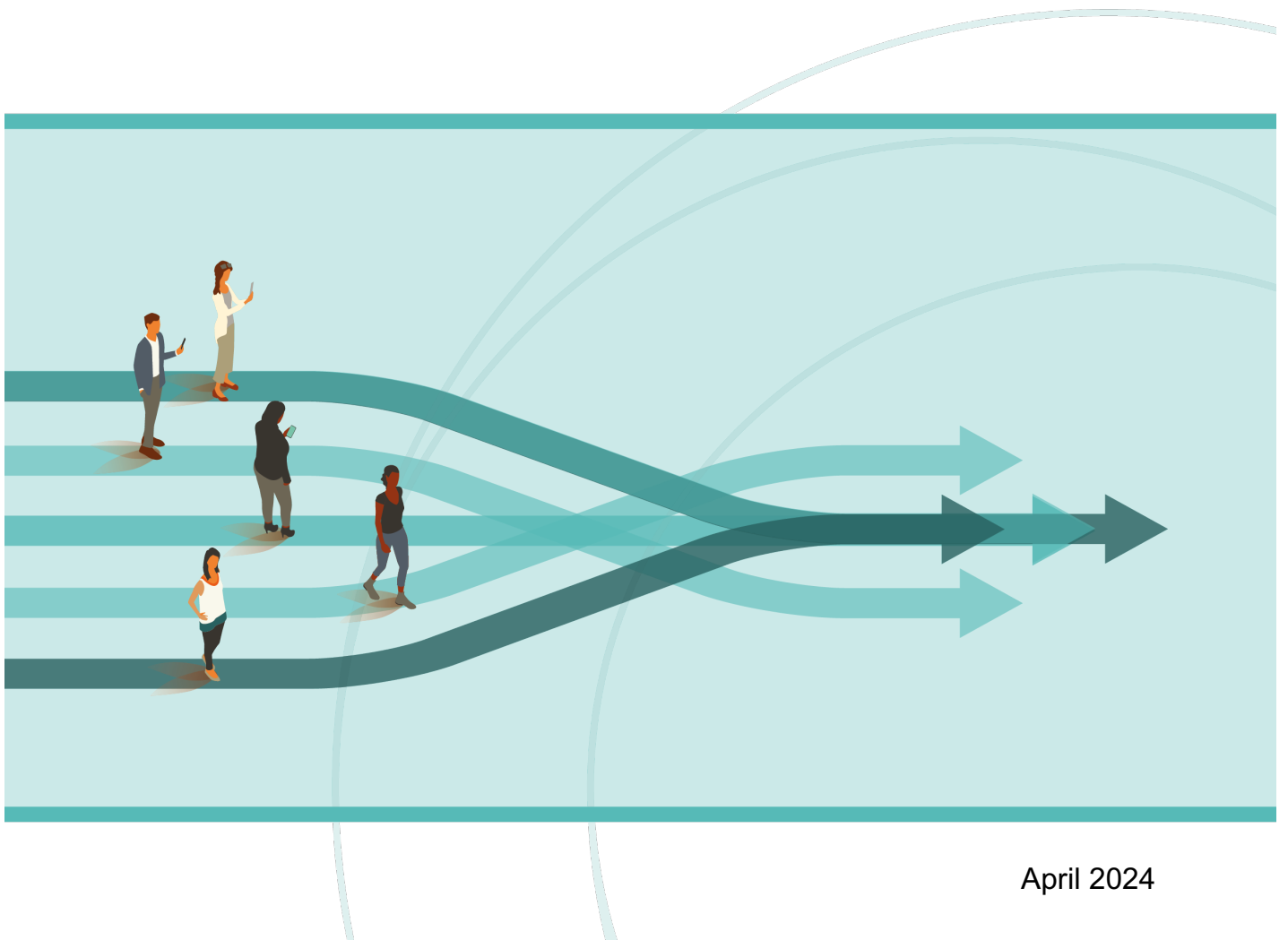
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# Guidance: Technical Specifications



April 2024

## **Guidance on technical specifications**

### **What are technical specifications?**

1. Technical specifications set out the technical requirements for the goods, works, or services that a contracting authority is purchasing.
2. Technical specifications can form part of the:
  - a. contracting authority's requirements, which set out the details of the goods, services or works required;
  - b. conditions of participation under section 22, which assess the supplier's legal and financial capacity and their technical ability to perform the contract;
  - c. conditions of participation used in a competitive selection process when awarding public contracts in accordance with frameworks;
  - d. conditions for membership of a dynamic market; or
  - e. award criteria, which are the criteria used to assess tenders.
3. The characteristics set out in technical specifications could relate to, for example, quality, performance, safety, dimensions, the process and methods of the production, packaging, marking and labelling. Technical specifications are included, where relevant, in the procurement documents to provide suppliers with a full description of the contracting authority's requirements. This enables suppliers to consider whether to participate in a procurement and to prepare and submit their tender, request or application. They also help to ensure that contracting authorities and suppliers have a common understanding of the requirements.
4. Technical specifications can play a key role in driving up quality. This includes through the use of recognised standards, and, where appropriate, by requiring evidence that standards are met, for example through certification, conformity assessment and accreditation. They can also help to ensure that what is procured complies with wider legislative requirements, such as the public sector equality duty, and aligns with industry best practice. Technical specifications can also be critical in ensuring value for money when requirements are set in such a way as to take whole-lifecycle cost and other considerations into account.

### **What is the legal framework that governs technical specifications?**

5. Section 56 sets out the main provisions on technical specifications and is intended to ensure that the procurement documents (which are defined in section 56(9)) do not unnecessarily limit competition, that suppliers are treated equally and treaty state suppliers are not discriminated against.

6. Alongside section 56, other sections in the Act highlight where the technical specifications provisions must be adhered to. If, in a procurement, technical specifications are part of the scope of the matters under these other sections, then the rules in these sections must also be applied. For example, technical specifications included as part of the award criteria must, in addition to complying with section 56, be related to the subject matter of the contract (as required by section 22(2)(a)). Where technical specifications are included in any of the following aspects of the procurement, the contracting authority must be satisfied that they do not break the rules set out in section 56:
  - a. the authority's requirements - section 21 (tender notices and associated tender documents);
  - b. conditions of participation relating to suppliers' technical ability, including qualifications and experience - section 22 (conditions of participation);
  - c. conditions of participation in a competitive selection process for the award of a public contract in accordance with a framework, relating to suppliers' technical ability, including qualifications and experience - section 46 (frameworks: competitive selection process);
  - d. conditions for membership of a dynamic market or part of a dynamic market, relating to suppliers' technical ability, including qualifications and experience - section 36 (dynamic markets: membership); and
  - e. award criteria - section 23 (award criteria);

#### Wider Legislative Obligations

7. Other legal obligations (outside of the Act) may apply when drawing up technical specifications. These can include various health and safety, environmental and industry-specific regulatory requirements relevant to the goods, services or works. For example, technical specifications will need to be drawn up to take account of the needs of people with disabilities, with disability accessibility and broader considerations covered by the public sector equality duty under section 149 of the Equality Act 2010. Indeed, the Equality Act covers a range of protected characteristics and applies to the whole commercial lifecycle, not just technical specifications.

## What has changed?

8. The Procurement Act 2023 (Act), unlike the previous legislation<sup>1</sup>, does not include a permissive list of items which could be incorporated into technical specifications, though these, and others, can of course be included. Instead, it sets out the requirements for how technical specifications are formulated and applied, which are similar to the obligations contained in the previous legislation. Also similar to the previous legislation, the Act allows contracting authorities to request certification or other evidence in relation to any standards they require.

## Key Points and policy intent

9. The Act includes specific provisions to ensure that:
  - a. technical specifications do not unnecessarily narrow the competitive pool of suppliers and suppliers are treated equally. Even with the use of a competitive tendering procedure, it is important that contracting authorities do not design their requirements in such a way that they narrow the number of suppliers capable of meeting their needs or give an unfair advantage to particular suppliers.
  - b. contracting authorities do not discriminate against treaty state suppliers (i.e. suppliers from countries with whom the UK has entered into an international agreement specified in Schedule 9). These international agreements prohibit discrimination against treaty state suppliers and, in many cases, include specific provisions on technical specifications to support this, which are reflected in the Act.
10. In order to prepare effective technical specifications, contracting authorities should (where they are relevant) have an understanding of what standards are applicable to the goods, services and works they are procuring and ways of assuring these standards are met, such as the use of accredited conformity assessment. This includes (if it exists) where this is a legal or, policy requirement or industry best practice.
11. Some of the ways contracting authorities can do this is to make sure commercial and technical experts are involved throughout the procurement lifecycle (such as when drafting requirements, assessing tenders and during ongoing monitoring), incorporate lessons from previous procurements and conduct preliminary market engagement (both with suppliers and other persons).
12. Section 56 is applicable when contracting authorities are developing their requirements for:

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<sup>1</sup> Section 56 of the Act replaces various provisions which were included in the Public Contracts Regulations 2015, including: regulations 42 (technical specifications), 43 (labels) and 44 (test reports, certificates and other means of proof). It also replaces similar provisions in regulations 60, 61 and 62 in the Utilities Contracts Regulations 2016, regulation 36 in the Concession Contracts Regulations 2016 and regulation 12 of the Defence and Security Public Contracts Regulations 2011.

- a. a competitive tendering procedure (including to award a framework);
- b. a competitive selection process for the award of public contracts in accordance with a framework;
- c. a process to establish a dynamic market.

#### Performance and functional requirements

13. The procurement documents must refer to performance or functional requirements (and not design, a particular licensing model or descriptive characteristics), unless it is not appropriate to do so. Functional requirements describe what the goods, services or works must do and performance requirements describe how well they must perform. For example:

- a. requirements for fire-resistant doors could require that the doors (in addition to passing all the necessary tests on fire resistance and meeting the necessary standards) must be fire resistant with a 30-minute burn through time, rather than, unless there are good reasons to do so, specifying how they must be made;
- b. requirements for software might include requirements relating to efficiencies, such as speed of response, or that the software is interoperable with existing software rather than prescribing a particular operating model when others could also suitably meet the requirement.

14. The Act does allow technical specifications to refer to a design, a particular licensing model or descriptive characteristics but only where performance or functional requirements cannot be appropriately referred to instead. This might be, for example, where it is necessary to detail a specific mechanical component for a customised vehicle or an exact colour of paint to match corporate branding.

15. Therefore, the tender documents might appropriately include a mixture of performance/functional requirements and design, model or descriptive requirements.

#### Referring to standards

16. Where standards are considered appropriate, the procurement documents must refer to international standards or UK standards that adopt international equivalent standards. Only when these do not exist can the documents refer to other UK standards.

17. International standards are standards such as those set by the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). International standards that have been adopted as UK standards include, for example, standards adopted by the British Standards Institution (BSI) as BS ISO or BS IEC standards. Only where these do not exist can other UK standards be specified and contracting authorities must accept equivalent overseas standards.

18. It should be noted that a standard published by a multinational organisation should not be assumed to be internationally or nationally recognised. Contracting authorities should check to see whether standards are set or adopted internationally or nationally as relevant. If contracting authorities wish to use a standard which is not internationally or nationally recognised, whilst this is permissible in certain circumstances under section 56, they should ensure that the standard genuinely delivers their requirement, for example ensuring it has been appropriately developed by a competent organisation.
19. Where a contracting authority has not referred to a standard and instead, so long as it is appropriate (see section 56(2)), requested certain characteristics as requirements, they could rely upon standards a supplier has obtained and verified as evidence of meeting these characteristics.

#### UK standard equivalents

20. If referring to UK standards, contracting authorities must make it clear in the procurement documents that if they consider equivalent standards from overseas have been satisfied, this will be treated as having satisfied the UK standard. This does not mean that any standard that a supplier proposes to be equivalent must be accepted, without verification or without due diligence. The contracting authority may ask the supplier to demonstrate that their standard is truly equivalent and seek clarification (see paragraph 22 below). The contracting authority is only required to accept a standard as satisfying the UK standard if it is content that such a standard is a true equivalent.
21. A contracting authority may consider its purpose in requiring the standard when judging whether another standard is equivalent to a UK standard. For example, there may be legislative product safety requirements that specify that an exact UK standard must be adhered to and therefore other standards may not be considered as equivalent.

#### Requiring certification or evidence

22. Contracting authorities who require a particular standard (which may be at an organisational level or in relation to the goods, services or works to be provided), or an equivalent, to be met should satisfy themselves that this is met. Section 59(6) provides that this can be done by requiring certification or other evidence. The different types of certification or other evidence and when to request this can be set by the contracting authority and should be set out in the procurement documents. For example, in a multi-stage procurement, depending on the circumstances, it may be appropriate to request evidence earlier to avoid suppliers that do not meet the required standards progressing to later stages. Alternatively, it may instead be appropriate to progress tenders based on self-certification and then verify the standards have been met before contract award. This could save suppliers, who are ultimately unsuccessful in the final stage of the procurement, time and resources conducting verification activities. When



considering the most appropriate time to request and verify evidence, contracting authorities could, for example, look at factors such as:

- a. the nature of the goods, services and works;
- b. the type of industry, the level of risk attached to the procurement; and
- c. the resources that both the contracting authority and the supplier will need to devote to carrying out the procurement.

23. Whilst there is discretion for contracting authorities to set, request and verify evidence, they must be aware of their obligations elsewhere in the Act. In particular, the procurement objectives include a duty to have regard to the barriers facing small and medium-sized enterprises and whether such barriers can be removed or reduced and there are proportionality requirements relating to competitive tendering procedures, conditions of participation and award criteria.

24. The evidence requested may also include verification by third parties. This evidence may include certification or reports following testing, inspection, calibration, verification and/or validation by a conformity assessment body (including by an accredited conformity assessment body). Conformity assessment is the demonstration that what is being supplied actually meets the requirements specified or claimed. It is defined in the international standard for conformity assessment vocabulary and general principles ISO/IEC 17000 as, *“the process demonstrating whether specified requirements relating to a product, process, service, system, person or body have been fulfilled”*.<sup>2</sup> The organisations that carry out these assessments are called conformity assessment bodies. For example, a contracting authority may require the implementation of international standards that demonstrate a supplier’s business performance, such as through systems relating to quality management, health and safety, environmental management etc., which is evidenced by accredited certification against those standards.

25. Where conformity assessment is the preferred method of evidence, contracting authorities are recommended to require this is provided by accredited conformity assessment bodies. Accreditation is the recommended means of demonstrating a conformity assessment body’s technical competence, independence and impartiality. The United Kingdom Accreditation Service (UKAS) is the body appointed under the Accreditation Regulations 2009 as the UK’s sole National Accreditation Body for undertaking accreditation of conformity assessment bodies in the UK, both when accreditation is required by law and otherwise (e.g when it is considered best practice or preferred in an industry). This means that accredited UK-based conformity assessment bodies must be accredited by UKAS. Similarly, accredited conformity assessment bodies based in other countries must be accredited by their equivalent National Accreditation Body.

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<sup>2</sup> Conformity assessment and accreditation policy in the UK can be found [online](#).

26. If a supplier provides evidence from a conformity assessment body accredited by an organisation equivalent to UKAS, it is recommended that the contracting authority considers whether the accreditation body is truly equivalent by checking whether such an organisation:
- a. is a recognised National Accreditation Body;
  - b. has been assessed by comparable peer reviews; and
  - c. is a signatory to international multilateral recognition agreements alongside UKAS<sup>3</sup>.

Referring to trademarks, trade names, etc. and providing for equivalents

27. Unless it is necessary to make its requirements understood, the procurement documents must not refer to trademarks, trade names, patents, designs or types, places of origin, or producers or suppliers. Where these are referred to, the procurement documents must provide that alternatives which demonstrate equivalence will not be disadvantaged.

Defined terms in this section

28. Section 56(9) defines the terms used in section 56.
29. Contracting authorities should be mindful that the definition of 'procurement documents' means that the technical specifications provisions apply more broadly than just, for example, to the technical annexes in the tender documents.
30. This subsection also defines the term 'United Kingdom standard' to add clarity for contracting authorities. Standards are documents which set out certain rules, guidelines and/or characteristics that a supplier, goods, services or works must meet or comply with.
31. If contracting authorities require specific labels as a way of indicating or demonstrating that suppliers, goods, services or works conform to particular standards, for example, in relation to environmental, social or other characteristics, these requirements like in standards generally, must comply with the provisions for technical specifications and the wider legal framework. For example, if a contracting authority wanted to require an environmental label as part of an environmental services contract, it would need to consider whether:

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<sup>3</sup> UKAS, together with many other National Accreditation Bodies, is a signatory to the International Accreditation Forum (IAF) and the International Laboratory Accreditation Cooperation (ILAC) multilateral agreements. These agreements are based on the peer assessment of National Accreditation Bodies and mean that the accreditations of signatories are considered technically equivalent. Contracting authorities should be wary of accepting accreditation by any organisations that are not signatories of these agreements (or any replacement or successor agreements having the same effect and to which UKAS is a signatory).

- a. the label is internationally recognised (if not, equivalents must be accepted);
- b. if this is part of the award criteria, it complies with section 23. For example, whether it relates to the subject-matter of the contract and is a proportionate means of assessing tenders, etc.;
- c. it fulfils the non-discrimination obligations in section 90 relating to treaty state suppliers;
- d. the requirements are clear in the procurement documents.

### **What other guidance is of particular relevance to this topic area?**

Guidance on conditions of participation  
Guidance on awarding competitive contracts  
Guidance on competitive procedures  
Guidance on frameworks  
Guidance on dynamic markets

### **Where can I go for more information or training?**

The [Government Commercial Function](#) (GCF): the GCF is a cross-government network that procures or supports the procurement of goods and services for the government. The GCF has published a series of Playbooks to help drive best commercial practice.

The [Office for Product Safety & Standards](#) (OPSS): the OPSS is part of the Department for Business and Trade (DBT) and leads standards and accreditation policy across Government.

The [British Standards Institution](#) (BSI): the BSI is the UK's National Standards Body. It is responsible for producing national and international standards under a Memorandum of Understanding with DBT.

The [United Kingdom Accreditation Service](#) (UKAS): UKAS is the UK's National Accreditation Body. UKAS accreditation assures the competence, impartiality and integrity of conformity assessment bodies that deliver services such as testing, calibration, inspection and certification. UKAS operates within the terms of a Memorandum of Understanding with DBT. Internal department/organisational guidance or policies: depending on the organisation, a contracting authority might have its own toolkit, checklist or policies with regards to specifications.

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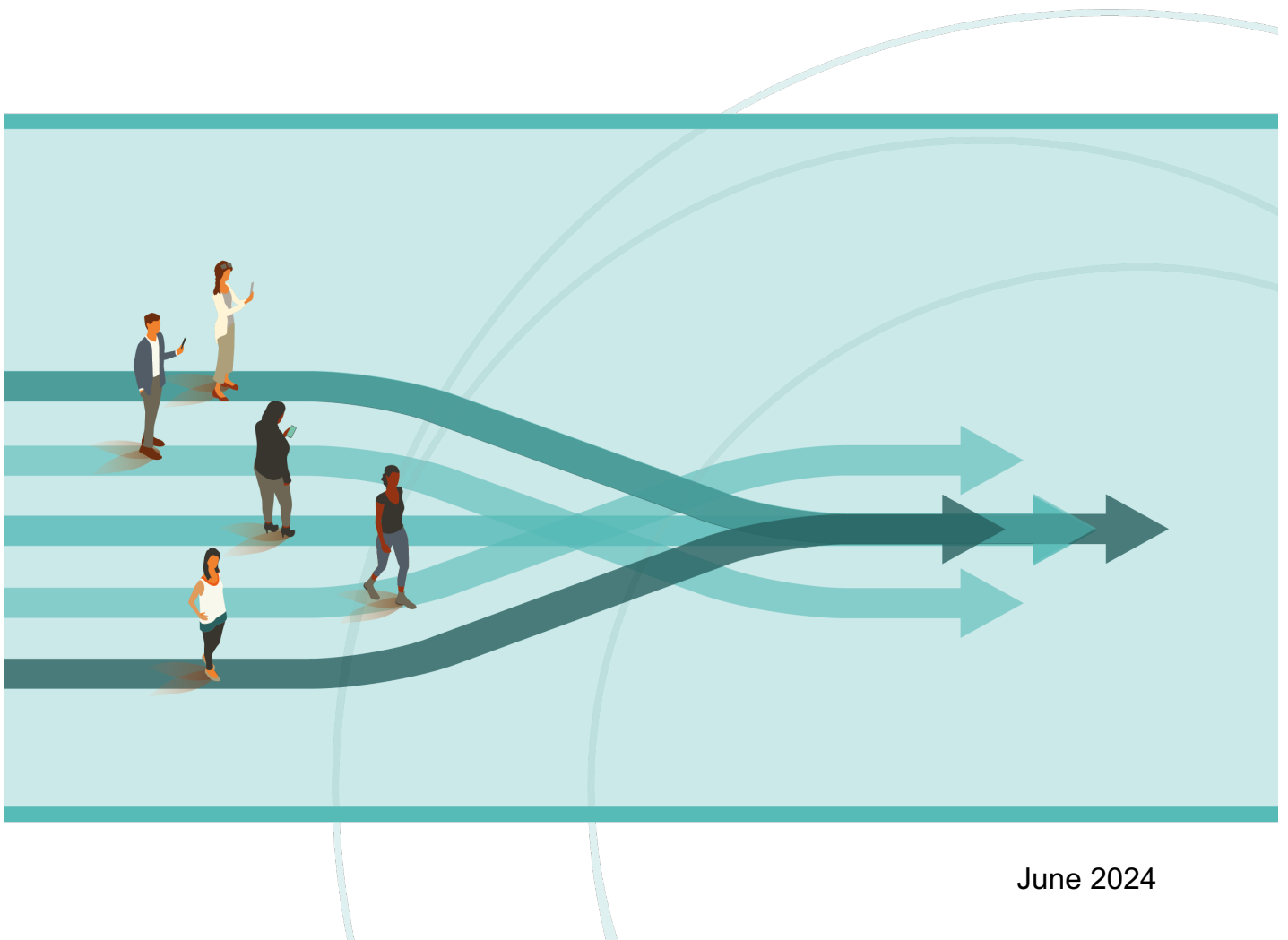
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Procurement Act 2023

# Guidance: Direct Award



June 2024

## **Guidance on Direct Award**

### **What is direct award?**

1. Direct award is when a public contract is awarded without a competitive tendering procedure and the public contract is placed directly with the supplier of the contracting authority's choosing.
2. Under the Procurement Act 2023 (Act), a transparency notice must be published before a contract is directly awarded. The function of the transparency notice is to inform stakeholders that a contracting authority intends to directly award a contract and ensure that there is transparency relating to this decision. It provides an opportunity for interested parties to consider the justification for direct award.

### **What is the legal framework that governs direct award?**

3. A competitive tendering procedure is the default for most public procurements. A contracting authority may only directly award a public contract when section 41 (and one or more of the justifications in Schedule 5), section 42 or section 43 apply.
4. Section 25 sets out the circumstances in which a contracting authority may require a supplier to directly award a contract to a particular subcontractor.
5. Section 44 sets out obligations in relation to publishing a transparency notice when making a direct award. The content of the transparency notice is included in regulation 26 of the Procurement Regulations 2024 (Regulations).
6. The non-discrimination obligation at section 90 is also relevant to direct award and contracting authorities must ensure that in making a direct award they do not discriminate against treaty state suppliers. For example, in setting their requirements, the requirements of section 56 on technical specifications should be considered, which are designed (in part) to ensure technical specifications do not make it more difficult for treaty state suppliers than UK suppliers to meet the requirement.

### **What has changed?**

7. There is now greater transparency of direct awards than under the previous legislation and new justifications related to defence and security and user choice. The other justifications remain largely unchanged. The key changes to direct award made by the Act are:
  - a. the transparency notice, unlike the voluntary transparency notice under the previous legislation, is mandatory (except in the case of direct award under Schedule 5, paragraphs 15-17 (user choice contracts));
  - b. a mandatory 8 day standstill (following publication of the contract award notice) is required in most cases (see paragraphs 74-76 below);

- c. new direct award justifications apply for user choice contracts and for certain defence and security contracts; and
  - d. section 42 gives Ministers a power to make regulations when it is necessary to directly award contracts to protect human, animal or plant life or health or to protect public order or safety.
8. The ground referred to as 'switching to direct award' in section 43 is not a new ground, but is separated from the direct award justifications in Schedule 5 because a direct award can only be made under section 43 after the contracting authority has run a competitive tendering procedure but is unable to award a contract

### **Key points and policy intent**

9. There are limited circumstances in which a contracting authority is permitted to award a public contract to a supplier without first running a competitive tendering procedure. These are provided for in section 41 and referred to as 'direct award justifications'. Schedule 5 sets out the direct award justifications.
10. Section 41 provides that a direct award must not be made to an excluded supplier (as defined in section 57(1)) unless there is an overriding public interest in awarding the contract to the supplier. An overriding public interest arises where:
- a. the award is necessary for the construction, maintenance or operation of critical national infrastructure<sup>1</sup>;
  - b. the award is necessary to ensure the proper functioning of a sector on which the defence, security or economic stability of the UK relies;
  - c. not awarding the contract to the supplier would prejudice the conduct of military or security operations or the effective operation of the armed forces or intelligence services; or
  - d. the contract is being awarded under the urgency provisions in Schedule 5, paragraph 13, and cannot be awarded to, or performed by, a supplier that is not an excluded supplier within the necessary time frame.

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<sup>1</sup> While not stated in the Act, section 41(5)(a) is intended to cover critical national infrastructure as defined in the [National Cyber Security Strategy 2016-2021](#), which provides that 'Critical National Infrastructure' is those critical elements of infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

- a. major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or
- b. significant impact on national security, national defence, or the functioning of the state.

11. Before awarding a public contract under section 41 a contracting authority must consider whether a supplier is an excludable supplier (as defined in section 57(2)). If the supplier is an excludable supplier the contracting authority will need to determine if it is appropriate for the supplier to be awarded the contract. See the guidance on exclusions for more information.
12. Section 41 allows for selection processes or other preliminary steps to be taken prior to any direct award. This is because, even if a contracting authority is permitted to directly award a contract, there may still be scope for some limited/rapid informal competition or selection process.
13. Whilst it is technically possible to directly award a framework (but not an open framework) under section 41 or section 43, it would be unusual to have a single supplier framework. See the guidance on frameworks for more information.
14. The direct award justifications set out in Schedule 5 are explained under the headings below. The examples included are to illustrate scenarios in which the various justifications could be used. They are not intended to be exhaustive and contracting authorities should consider their specific circumstances and where necessary seek legal support.

#### Schedule 5: Direct award justifications

##### Prototypes and development

15. This justification allows for direct award when procuring a prototype or other novel good or service that is designed or developed at the request of the contracting authority. For example, procuring a solution to enable data to be shared securely between different agencies.
16. The public contract must be limited to the early stages of design and development and aimed only at testing the suitability of the goods or services, understanding the viability of production or supply in quantity or other research, experiment, study or development. This means it must not include quantity production or supply beyond that necessary for these purposes, for example, to produce or supply the contracting authority with the goods or service on a commercial basis.
17. See also the guidance on exempted contracts, which includes exempted contracts for research and development services.

##### Single suppliers

18. There are three direct award justifications under this heading. The first justification is where the public contract concerns the creation or acquisition of a unique work of art or artistic performance. For example, where the identity of the artist intrinsically determines the unique character and value of the art and therefore the requirement can only be met by one artist.
19. The second justification is where a particular supplier is in possession of intellectual property or other exclusive rights and there are no reasonable alternatives, which means only the supplier with those rights can deliver the goods, services or works.



20. It could be, for example, that the original provision, such as software, was developed and provided by a particular supplier and it owns the intellectual property rights and is the only supplier able to provide security updates, patches and bug fixes.
21. Alternatively, a supplier could have exclusive distribution rights which means only that supplier can supply the goods, services or works required. This may be because the supplier owns the intellectual property rights or because it has been granted an exclusive licence by the owner of the rights.
22. Exclusive rights can include ownership of land which means that the owner of the land has a right to determine which supplier can deliver works on that land. Artists may also have an exclusive right to exploit, repair or remake their own works of art for commercial purposes.
23. When considering rights, it is important to ensure that only the supplier is in fact able to deliver the goods, services or works required. In a commercial situation, other suppliers are often able to negotiate with the rights holder (for example to obtain a licence/sub-licence or to obtain a lease of the land) to be able to deliver the goods, services or works or the contracting authority may be able to negotiate with the rights holder to procure a licence or lease for the benefit of the project.
24. The fact that a particular supplier has a right does not mean that a contracting authority can always make a direct award to it. The Act requires that the contracting authority must consider whether there are any reasonable alternative goods, works or services. For example, it may be reasonable to procure an alternative communication solution rather than rely on the owner of the rights for a particular solution.
25. The final justification is where, due to an absence of competition for technical reasons and provided there are no reasonable alternatives, only a particular supplier can supply the goods, services or works required. This justification may, for example, be used where only a particular supplier has the specific know-how or tools for the modification or retrofitting of bespoke equipment.
26. Technical reasons may also derive from specific interoperability and/or safety requirements necessary to ensure the proper functioning of the goods, services or works, for example, where they are used operationally by the armed forces or fire service.
27. Any incompatibility between existing systems/equipment and new goods, services or works could also result in time consuming and complex redesign and modification which could be unacceptable in the circumstances, for example, resulting in significant cost and/or delay to an important service.

#### Additional or repeat goods, services or works

28. There are two direct award justifications under this heading and both allow a contracting authority to award a public contract to an existing supplier. An 'existing supplier' is a supplier that supplied the original goods, services or works, including one that the contracting authority no longer has a contract with.

29. The first justification is where the contracting authority wishes to buy additional or to partly replace existing goods, services or works which are the same or compatible with existing provisions (both those already supplied or that are contracted to be supplied). In this case, a direct award may be made where a change of supplier would result in the contracting authority receiving goods, services or works that are different from, or incompatible with, the existing goods, services or works, and that difference or incompatibility would result in disproportionate technical difficulties in operation or maintenance. For example, a contracting authority may need to award a contract to an existing supplier in order to update some of its hand held communications devices for street patrol operatives to ensure that the new devices are compatible with the existing devices. Or a contracting authority operating a seaport replacing the engines in its dockyard cranes would need to choose engines that are interoperable with the existing features of the cranes.
30. The contracting authority may, as a potential alternative, want to consider the modification ground in Schedule 8, paragraph 8 (additional goods, services or works) of the Act in these circumstances. See guidance on contract modifications for more information.
31. The second direct award justification under this heading is where a contract has previously been awarded under a competitive tendering procedure and the tender notice or tender documents set out that the intention was to carry out a subsequent procurement of similar goods, services or works by direct award. Broadly speaking, the direct award must be made within 5 years of the original competitively tendered contract being awarded (see Schedule 5, paragraph 8(a) for the precise time limit).

#### Commodities

32. This justification is where goods are purchased on a commodity market. In this case the price and availability are generally driven by demand in the market which means requiring suppliers to tender in the usual manner is unnecessary, not appropriate and may not drive the best outcome for the contracting authority.
33. This could be, for example, fuel where it is bought from local agents at the port where only short term quotations are available.

#### Advantageous terms on insolvency

34. This justification is where the award of the public contract to a particular supplier will ensure terms particularly advantageous to the contracting authority due to the fact that a supplier (whether or not the one to which the contract is to be awarded) is undergoing insolvency proceedings. This allows the contracting authority, for example, to award a public contract to the supplier itself, for example to purchase goods at a favourable price as the supplier seeks to sell off stock as part of its wind-up, or to an administrator or other third party that is trying to keep the business going in order to liquidise its assets or sell it as a going concern. The public contract must be on particularly advantageous terms. 'Undergoing insolvency proceedings' is defined in Schedule 5, paragraph 12.

## Urgency

35. This justification is where the public contract cannot be awarded on the basis of a competitive tendering procedure because the goods, services or works are strictly necessary for reasons of extreme and unavoidable urgency. The urgency is unavoidable if it is not attributable to any act or omission of the contracting authority, and could not have been foreseen by the contracting authority.
36. The concept of 'unavoidable' urgency would not apply if the contracting authority had simply not allowed sufficient time to undertake a re-procurement of a contract. It may, however, apply, for example, where contamination is unexpectedly discovered on a site the contracting authority is providing to the successful supplier as part of a procurement and this needs to be removed immediately in order to prevent delay to the overall delivery.
37. The reference to being unable to award on the basis of a competitive tendering procedure means that the situation is so urgent that the contracting authority cannot comply with the timescales required for a competitive tendering procedure (even the shortened timescales permitted for urgency in section 54). The reference to the goods, services or works being 'strictly necessary' means that the contract awarded must only be used for obtaining the goods, services and works that are necessary to cope with the urgency of the situation and not for wider use or the longer term; a separate procurement should be commenced if the goods, services or works are required for the longer term.
38. Even if a competitive tendering procedure cannot be carried out, a contracting authority may want to consider undertaking some form of informal competition before awarding the contract. This could range from the contracting authority issuing a straightforward requirement to a number of suppliers of its choosing and asking the suppliers to demonstrate how they would meet it and to provide a price, on which basis the contracting authority would make its decision; or, for a commercially available good or service, it could be as straightforward as contacting a number of suppliers or checking online to see which supplier can meet the requirement in the quickest time and at the best price.
39. Carrying out any informal competition does not fetter in any way the contracting authority's discretion to rely on this direct award ground.
40. The contracting authority may also want to consider whether in these circumstances it is more expedient to modify an existing contract using the permitted modification ground at Schedule 8, paragraphs 2 and 3 (urgency and the protection of life, etc.), rather than make a direct award. See the guidance on contract modifications for more information.

## User choice contracts

41. This justification is where others have a legal right to have a say in the choice of the supplier (for example, under legislation such as the Care Act 2014 or the Children and Families Act 2014). This justification applies only where:
  - a. the services are those that would ordinarily be procured under a light touch contract;

- b. such services are supplied for the benefit of a particular individual; and
- c. a contracting authority is required by legislation to have regard to the views of the particular individual, or a person providing care to that individual (their 'carer'), concerning who should supply the services.

42. In order to rely on this justification:

- a. the individual/carer must have expressed a preference as to who should supply the services, or the nature of the services to be supplied must be such that only one supplier is capable of providing them; and
- b. the contracting authority considers it is not in the best interests of the individual to award a contract via a competitive tendering procedure.

43. This may be, for example, in relation to certain personal or social care requirements. The person's needs (including where relevant a child's needs) may be very specialised with only a limited number of suppliers able to meet the requirement. There is likely to be a significant element of choice from the individual and/or their parent or carer, for example, a preference that the supplier is located as close as possible to family members or to enable a child to continue to attend the same school, and a strong element of professional judgement by social care staff.

#### Defence and security

44. There are three justifications under this category. The first justification is where the public contract is a defence and security contract (as defined in section 7) and is for the supply of air or maritime transport services to the armed forces or security services while they are deployed outside the UK or in order for them to be deployed outside the UK. In addition, as is usual in, for example, the aircraft chartering market, the nature of the services must be such that a reasonable supplier would not be able to guarantee its offer for 10 days.
45. The second justification is where, in certain circumstances, it is more appropriate to directly award a new public contract rather than amend an existing contract. This justification can only be used where the new contract would be a 'qualifying defence contract' under section 14(2) of the Defence Reform Act 2014.
46. In this case, the contracting authority must already have an existing contract with the supplier to be awarded the new contract and if the existing contract was modified instead of a new contract being awarded, that modification would either:
- a. not be a substantial modification (under section 74(3)); or
  - b. be permitted under Schedule 8, paragraph 4 (unforeseeable circumstances) or paragraph 8 (additional goods, services or works).

47. In practice, this justification is to deal with contracts which have been competitively awarded originally but are in effect being amended using a separate contract to allow the Single Source Contract Regulations 2014 to apply to the 'amended' part of the contract.

48. The final justification is where the contract:

- a. is a defence authority contract<sup>2</sup>;
- b. is a defence and security contract because at least one of the reasons in section 7(1)(a-f) applies (i.e. not only 7(1)(g) or, in the case of a framework, not only section 7(1)(g) and 7(2)); and
- c. it is necessary for the contract to be directly awarded in order to enhance or maintain the operational capability, effectiveness, readiness for action, safety or security of the armed forces. This can include, for example, where contracts are needed to be awarded quickly to maintain the military's operational effectiveness. Above a certain threshold the Ministry of Defence (including Defence Equipment and Support) would need to seek Cabinet Office approval in order to use this justification.

#### Section 42 (Direct award to protect life, etc)

49. Section 42 (Direct award to protect life, etc) allows specified contracts to be directly awarded as though a direct award justification (under section 41) applies. In this case, the justification will only apply where secondary legislation (regulations) has been made authorising the direct award. Secondary legislation may only be made where a Minister of the Crown considers it necessary to protect human, animal or plant life or health, or to protect public order or safety.

50. The purpose of this provision is to ensure procurements can be carried out quickly and in full knowledge in emergency circumstances, even if the circumstances leading to the event are foreseeable (which would rule out the extreme urgency justification for direct award contained in Schedule 5, paragraphs 13 and 14).

51. If regulations of this kind are made, then public contracts within scope may be awarded as though a direct award justification applies (therefore the rules in section 41 will apply). Contracting authorities will only be able to directly award public contracts on this basis after secondary legislation has been made and if the legislation is applicable to the particular contract.

52. It is envisaged that direct awards by this means will be a rare occurrence, and should secondary legislation be made, contracting authorities will be alerted through a Procurement Policy Note (PPN) or other suitable means.

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<sup>2</sup> A defence authority contract is defined in section 7(4) as a defence and security contract awarded by a defence authority. A defence authority is defined in regulation 46 as (a) the Secretary of State for Defence, (b) the Atomic Weapons Establishment (AWE PLC), (c) the National Crime Agency and (d) the Oil and Pipelines Agency.

### Section 43 (Switching to direct award)

53. Section 43 (Switching to direct award) allows a contracting authority to switch from a competitive tendering procedure to the direct award of a public contract in circumstances where no or no suitable tenders or requests to participate have been received in that competitive tendering procedure and the contracting authority considers that the award of a contract using a competitive tendering procedure under section 19 is not possible in the circumstances (see section 43(1)).
54. In these circumstances, a direct award cannot be made to an excluded supplier (as defined in section 57) and the public interest test in section 41(2) does not apply. Before awarding a contract under section 43, the contracting authority must check whether the supplier is an excludable supplier and then act accordingly.
55. Section 43(2) sets out when a tender or request to participate would not be considered 'suitable'. There are four circumstances:
- a. where the supplier's tender or request would be disregarded under section 19(3)(a), (b) or (c)<sup>3</sup> (Award of public contracts following a competitive tendering procedure);
  - b. where the tender or request does not satisfy the contracting authority's requirements or award criteria;
  - c. where there is evidence of corruption or collusion; and
  - d. where the tender materially breaches a procedural requirement set out for all suppliers to comply with in the tender notice or associated tender documents.
56. Section 43 includes details about what constitutes 'materially breaching a procedural requirement', which includes breaching a procedural requirement in relation to a tender. For example, a refusal by the supplier to provide an undertaking to obtain a performance guarantee may amount to a material breach. A breach is material if ignoring it would be treating the supplier more favourably than other suppliers
57. The contracting authority must also consider whether a supplier submitted an unsuitable tender or request to participate in the competitive tendering procedure. This is because it may not be appropriate in certain circumstances for such a supplier to be directly awarded the public contract, although it is not an absolute prohibition and it would depend on the particular circumstances. For example, if the supplier's tender was unsuitable due to collusion, a direct award would be inappropriate, but if it was unsuitable due to a failure to meet certain award criteria, it may, nevertheless, be preferable to award the contract to that supplier rather than to a supplier that failed to meet any award criteria.

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<sup>3</sup>(a) the tender does not satisfy the conditions of participation; (b) the tender is from a supplier that is not a UK or treaty state supplier or intends to subcontract to a supplier that is not a UK or treaty state supplier; (c) the price is abnormally low.

58. When deciding to switch to direct award and determining whether an award is possible under section 19, the contracting authority should consider whether the reason for not receiving any suitable tenders or requests is because the documentation was not clear or there was an error, which if corrected and time still permitted, could result in a successful award.
59. If a supplier submitted an unsuitable tender prior to switching, the contracting authority is not required (under section 50) to provide an assessment summary to the supplier. This is because the submitted tender would not be an 'assessed tender' under section 50.
60. In this circumstance, the contracting authority must still, however, inform the supplier in writing that its tender is unsuitable and why, in order to evidence that it has met the objective in section 12(1)(c) of the Act. It is advisable to use the assessment summary structure to do this.
61. Section 43 provides that it is permissible to switch to directly award the contract that was the subject of a competitive tendering procedure where section 43(1) applies. Section 43(1)(a) specifically provides that the contract to be directly awarded under section 43 is the same contract that was originally subject to the competitive tendering procedure, which means that the conditions of contract cannot be significantly altered when switching to direct award.

#### Section 25 (Sub-contracting specifications)

62. In certain procurements the contracting authority may require all or part of the contract to be sub-contracted to a specified supplier. The contracting authority is only permitted to require this where a direct award justification applies in relation to particular goods, services or works, such that the contracting authority could award a contract directly to the specified supplier under section 41. For example, if the contracting authority considers that it will be necessary for any supplier to use certain software which is owned by one particular supplier, the contracting authority may require that a supplier sub-contracts the supply of the software to that particular sub-contractor. In this example, the contracting authority must consider it would be permissible to make a direct award to that sub-contractor under the direct award justification in Schedule 5, paragraph 5.
63. Where contracting authorities require a supplier to sub-contract to a specified supplier, this should be set out in the associated tender documents.

#### **What are the primary notices linked to this aspect of the Act?**

64. A procurement may have been the subject of either a pipeline notice, a preliminary market engagement notice and/or a planned procurement notice before a direct award is commenced.
65. As section 16 (preliminary market engagement) only applies in a competitive tendering procedure, the obligation to publish a preliminary market engagement notice would only, if relevant, arise if a direct award is made under section 43 (switching to direct award). However, contracting authorities can carry out some form of engagement with the market prior to making a direct award, and may wish to publish a preliminary market engagement

notice, for example to demonstrate transparency and compliance with the objectives in section 12.

### Transparency notice

66. As set out previously, the key notice in a direct award is the transparency notice. Section 44 of the Act and regulation 5 requires a contracting authority to publish a transparency notice on the central digital platform before directly awarding a contract. This requirement does not apply to user choice contracts awarded under Schedule 5, paragraph 15. Regulation 26 sets out the information that must be included in this notice. This is summarised below.
67. Supplier information. The notice should include the supplier to whom the contract is to be awarded, if known at the time of publication. This should be the case in the majority of direct award situations, even where a supplier has been identified but negotiations are still ongoing. There may be exceptions, for example, in the case of extreme urgency where the contracting authority may be publishing the notice without having yet determined to whom the contract is to be awarded. The regulations allow for the notice to be published if a supplier has not yet been selected for award.
68. The information about the supplier (if known) to be awarded a contract includes, where the contract is being directly awarded to a supplier under section 41, information about whether it is an excluded supplier including, if relevant, what exclusion ground applies. This information will normally have been provided by the supplier through the central digital platform, however, regulation 7(4) provides flexibility in the case of urgency. The regulations recognise that the contracting authority may not be able to wait for a supplier to register, complete and submit their core supplier information before awarding the contract. See the guidance on publication of information for further information on how core supplier information is provided and obtained.
69. Grounds for direct award and associated information. Contracting authorities must include in the notice:
- a. the grounds for direct award;
  - b. why the direct award is justified;
  - c. where the contract is being awarded to an excluded supplier pursuant to section 41, the exclusion ground that applies and why the contracting authority believes there is an overriding public interest to award the contract to that supplier (when awarding to more than one supplier the contracting authority will need to be clear about which supplier is excluded);
  - d. where the contract is being awarded in reliance on secondary legislation made under section 42(1), the title and registration number of the regulations made under section 42(1); and



- e. where the contracting authority has switched to direct award under section 43, the reason it considers there were no suitable tenders or requests to participate and why it considers that award under section 19 is not possible in the circumstances.

70. Known risks. If a contracting authority wishes to rely on the 'Materialisation of a known risk' ground in Schedule 8, paragraph 5 to make any future modifications to a directly awarded contract, the known risks must be identified in the transparency notice (as required by Schedule 8, paragraph 6(b)). For further information on modifications refer to the guidance on contract modifications.

#### Timing

71. It is recommended that the transparency notice is published as soon as the decision to directly award the contract is made. Publishing as early as possible will mean that, if there is a challenge to the basis of the decision to directly award the contract, it will generally be made when it is less disruptive to the procurement. This is because a supplier has only 30 days (under section 106 (Time limits on claims)) to make a claim from the point at which it knew, or ought to have known, of the circumstances of the direct award).

#### Subsequent notices

72. Except as described below, the requirements for subsequent notices are the same as for contracts awarded under section 19 of the Act.

73. The next notice after the transparency notice will be one of the following:

- a. procurement termination notice: to inform interested parties that a contracting authority has decided not to proceed with the award of a contract after having previously published the transparency notice. A procurement termination notice is mandatory in all such circumstances except when the transparency notice was published by a private utility; or
- b. contract award notice: to notify the market of the outcome of a procurement and to alert the market to the fact that a contract is about to be entered into.

74. Contract award notice The contract award notice initiates any mandatory or voluntary standstill period and must be published before the contracting authority enters into a public contract. A contract award notice is mandatory for all direct awards except when the direct award is based on the justification for user choice contracts (section 50(6)(b)). The contracting authority is not permitted to enter into the contract during any standstill period (section 51(1)).

75. A contracting authority is permitted to publish a contract award notice at any point after the transparency notice when it is directly awarding a contract under the Act (i.e. there is no requirement to wait until the contract is about to be awarded). Early publication of the contract award notice can avoid any standstill period delaying the contracting authority entering into the contract as it could be published, for example, during negotiations or while contract administration is being finalised. Contracting authorities will need to ensure that any

published contract award notice accurately reflects the contract that is to be awarded or the contract award notice will need to be re-published and a new standstill period observed (where such a period is required by the Act).

76. There are exceptions to the mandatory standstill period when a direct award is made under section 41 pursuant to Schedule 5, paragraph 13 (extreme and unavoidable urgency); under regulations made under section 42 (direct award to protect life, etc.); and under section 41, section 42 or section 43 by private utilities. Where an exception to the mandatory standstill period applies, the contracting authority may still choose to implement a voluntary standstill period. See the guidance on the contract award notice and standstill.
77. Contract details notice The next notice in the sequence after a contract award notice is a contract details notice. This notice provides interested parties with details of the contract that has been entered into and is mandatory, except where the contract has been directly awarded pursuant to Schedule 5, paragraph 15 (user choice contracts) or where it has been directly awarded by a private utility (section 53(6)(a)). (See the guidance on the contract details notice).

**What other guidance is of particular relevance to this topic area?**

Guidance on covered procurement objectives

Guidance on conflicts of interest

Guidance on exclusions

Guidance on contract award notices and standstill

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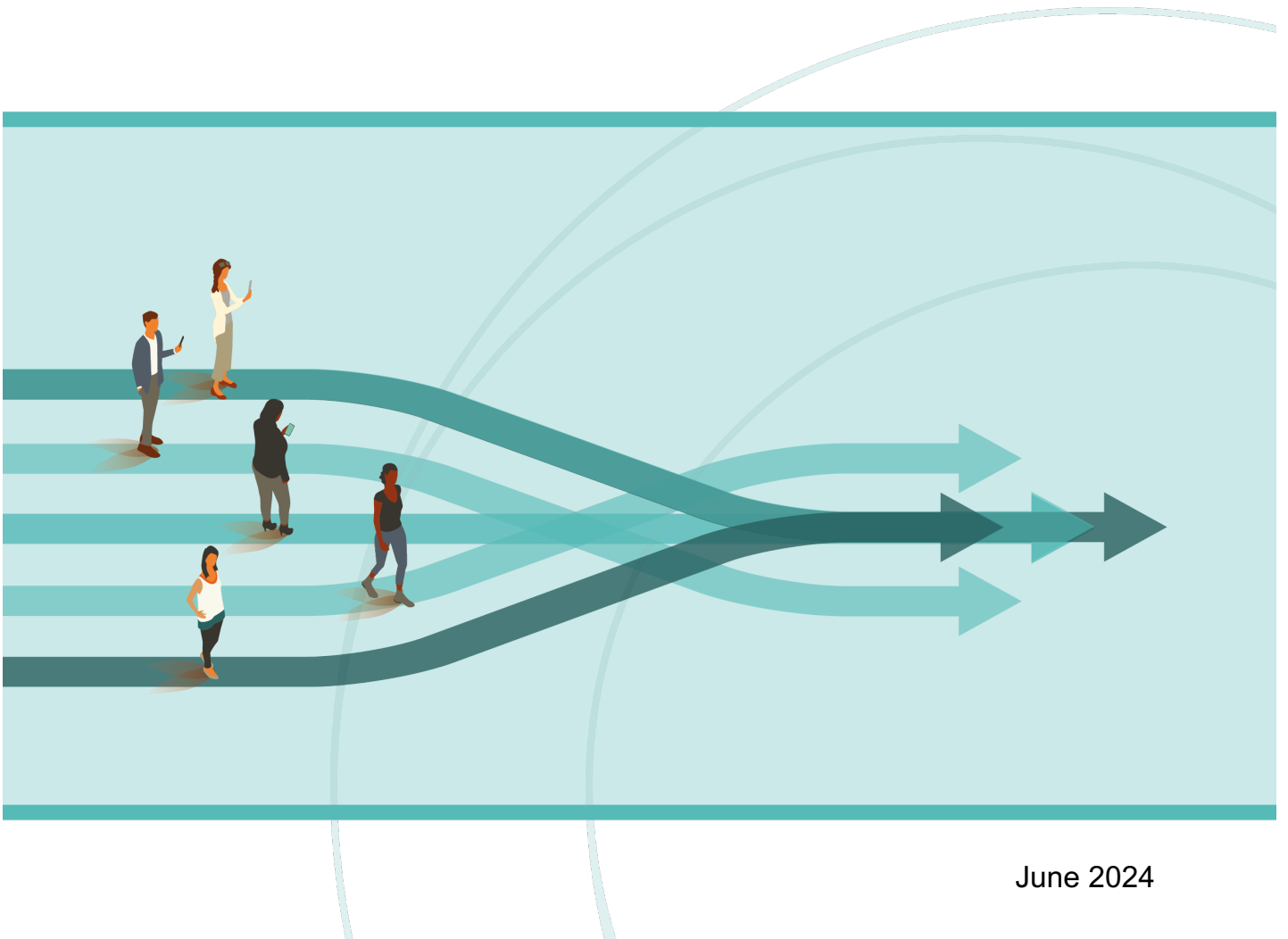
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Procurement Act 2023

# Guidance: Competitive Tendering Procedures



June 2024

# Guidance on Competitive Tendering Procedures

## What are competitive tendering procedures?

1. Effective competition and transparency are key enablers of the procurement objectives of delivering value for money and being seen to act with integrity. There are two competitive tendering procedures in the Procurement Act 2023 (Act): the open procedure and the competitive flexible procedure, and both are commenced via publication of a tender notice.
2. Subject to paragraph 3, all public contracts, including special regime contracts (defined in section 10 of the Act as concession contracts, defence and security contracts, light touch contracts and utilities contracts), will be procured using one of these competitive tendering procedures. There is separate guidance on these special regime contracts.
3. There are limited circumstances where a contracting authority is not required to use a competitive tendering procedure for a public contract:
  - a. where direct award is justified under sections 41 or 43; or
  - b. when awarding a public contract under a framework (referred to in guidance as a 'call-off' contract), as set out in section 45 (although under section 45(3), call-off contracts do generally require competition).

## What is the legal framework that governs a competitive tendering procedure?

4. The relevant provisions are:
  - a. section 19 (Award of public contracts following a competitive tendering procedure);
  - b. section 20 (Competitive tendering procedures);
  - c. section 21 (Tender notices and associated tender documents);
  - d. regulation 18 (Tender notices: open procedure);
  - e. regulation 19 (Tender notices: competitive flexible procedure);
  - f. regulation 20 (Tender notices: frameworks);
  - g. regulation 21 (Tender notices: dynamic markets except qualifying utilities dynamic markets); and
  - h. regulation 22 (Tender notices: qualifying utilities dynamic market notices).
  - i. regulation 23 (Associated tender documents)

## What has changed?

5. The Act includes an open procedure similar to that in the Public Contracts Regulations 2015 and Utilities Contracts Regulations 2016 and introduces a competitive flexible procedure.
6. The competitive flexible procedure replaces many of the previous more prescriptive procedures. It provides contracting authorities with more opportunity and flexibility to design their own competitive tendering procedure. However, in designing and carrying out their procedure, contracting authorities must have regard to the procurement objectives (section 12) and meet the procedural requirements applicable to the competitive flexible procedure, such as those relating to time limits and transparency.
7. There is no longer a restricted procedure, competitive procedure with negotiation or competitive dialogue procedure but it is possible to adopt a similar approach in practice as part of a competitive flexible procedure where that is appropriate and complies with the Act.
8. A single tender notice replaces the contract notice and, for concessions contracts, the concession notice in the previous legislation.

## Key points and policy intent

### Choice and design of the competitive tendering procedure

9. Before awarding a public contract under section 19 (Award of public contracts following a competitive tendering procedure), a contracting authority must carry out a competitive tendering procedure. As stated above, the competitive tendering procedure used can take one of two forms (as defined in section 20 of the Act):
  - a. the first is an open procedure, which is a single stage procedure whereby any interested party can submit a tender and the authority will decide whom to award the contract to on the basis of that tender;
  - b. the second is a competitive flexible procedure, which is any other competitive tendering procedure the contracting authority considers appropriate for the purpose of awarding the public contract.
10. There are some circumstances where a contracting authority can only use the competitive flexible procedure; these include:
  - a. where it wishes to limit the number of suppliers before inviting tenders (section 20(4)(a));
  - b. when procuring under a dynamic market (section 34) (see the guidance on dynamic markets and utilities (for utilities dynamic markets)); and
  - c. when reserving a public contract to supported employment providers or public service mutuals (sections 32 and 33) (see the guidance on reserved contracts and light touch contracts).

11. Frameworks can be established under either the open procedure or the competitive flexible procedure. Call-off contracts are awarded in accordance with the terms of the framework (section 45) and are not subject to the competitive tendering provisions in section 20 (see the guidance on frameworks).
12. The contracting authority must ensure that the competitive tendering procedure as designed is a proportionate means of awarding the public contract, having regard to the nature, complexity and cost of the contract. Accordingly, the procurement procedure should not be overly burdensome. Unnecessarily complex and/or time-consuming procedures are also potential barriers that could deter small and medium-sized enterprises (SMEs)<sup>1</sup> and other suppliers from participating.
13. Any competitive tendering procedure must also comply with the areas of the Act that have an impact on their application such as:
  - a. the noticing requirements (see paragraphs 83-89 below);
  - b. the procurement objectives (section 12);
  - c. preliminary steps (preliminary market engagement and lots) (sections 16-18);
  - d. excluding suppliers (sections 26-30 and 57-58);
  - e. modifying a section 19 procurement (section 31); and
  - f. time limits (section 54).
14. The procurement objectives underpin the Act and must be considered when carrying out a procurement, which would include making any decision in relation to the procurement. For example, when designing the competitive tendering procedure, choosing realistic deadlines is important. Short deadlines (particularly if combined with overly prescriptive specifications) may limit SME participation and innovation in tenders.
15. A contracting authority can design a procedure similar to one of the procedures in the previous legislation if helpful, or tailor one of those procedures as it considers appropriate, or design its own procedure entirely.
16. If the requirement for the public contract will be straightforward for suppliers to fulfil (for example, an off-the-shelf solution) then possibilities under the Act include, for example:
  - a. using the open procedure, where any supplier can tender for the contract. This is a simple, transparent process that should maximise the number of suppliers that tender; or

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<sup>1</sup>Section 123 defines 'small and medium-sized enterprises' as suppliers that (a) have fewer than 250 staff, and (b) have a turnover of an amount less than or equal to £44 million, or a balance sheet total of an amount less than or equal to £38 million.

- b. using the competitive flexible procedure to, for example, provide for a simple two-stage tendering procedure (similar to a restricted procedure under the previous legislation). The first stage could involve assessment of suppliers against conditions of participation and short-listing the suppliers in order to take those selected suppliers into the second stage where they will be invited to submit a tender.
17. If the requirement for the public contract is complex, then the Act allows contracting authorities to design a multi-stage competitive flexible procedure. Possibilities under the Act include, for example:
- a. including post-tender negotiations following a round of open tendering, where all suppliers are invited to submit a tender;
  - b. including post-tender negotiations following a round of selective tendering, where short-listed suppliers are invited to submit a tender;
  - c. including multi-staged negotiations after an initial round of tendering; or
  - d. building in a stage where there is a physical inspection or demonstration of the product, technology or software to be supplied, such as a site visit or requiring suppliers to deliver a pilot.

#### Carrying out a competitive tendering procedure

18. This section of the guidance sets out key aspects of a competitive tendering procedure that are common to open and competitive flexible procedures.
19. To commence a competitive tendering procedure, a tender notice must be published on the central digital platform. The tender notice will provide access to any associated tender documents or an explanation of how such documents are to be provided. The associated tender documents are used to supplement the information set out in the tender notice. They provide further detail about the procurement and could include, for example, the specification, the award criteria and assessment methodology for the award criteria (if not fully set out in the tender notice), and terms and conditions of the contract. The contracting authority is under no obligation to provide associated tender documents provided all the information necessary to allow suppliers to prepare a tender is contained in the tender notice. When used, associated tender documents must generally be provided free of charge and electronically (see section 96).
20. Section 54(1) provides that a contracting authority must have regard to factors such as the nature and complexity of the contract when setting the date by which tenders must be submitted. This time period must be at least the minimum tendering period set out in section 54 (see the guidance on time limits).



21. Section 21(5) provides that a contracting authority may not invite suppliers to submit tenders in a competitive tendering procedure unless it is satisfied that the tender notice or associated tender documents contain sufficient information to allow suppliers to prepare their tenders and, in particular, details of the goods, services or works required. Therefore, unless the tender notice and/or associated tender documents provide all the information required for suppliers to prepare their tenders, the contracting authority cannot set a deadline for submission of tenders and the tendering period in section 54 (Time limits) cannot commence.
22. Sections 26 and 28 require the contracting authority to consider whether any supplier (including by virtue of their connected persons, associated persons or sub-contractors) is excluded or excludable before assessing which tender best satisfies the award criteria. As a general rule these considerations should be made at the earliest point possible in the competitive tendering procedure but must be made (or confirmed) on assessment of tenders.
23. In certain circumstances, there is an obligation on contracting authorities to notify a supplier in advance of exclusion to allow it the opportunity to replace an associated person or sub-contractor. There is also an obligation for certain contracting authorities to notify and, in some cases, seek agreement from a Minister before excluding a supplier (or before allowing the supplier the opportunity to replace an associated person or sub-contractor) on national security grounds (see section 29).
24. The tender notice and any associated tender documents will set out any conditions of participation that must be met in order for a supplier to be awarded the public contract. Conditions of participation are used to assess whether a supplier can perform the contract. They must be a proportionate means of ensuring the supplier's relevant capacity or ability (see below), having regard to the nature, complexity and cost of the public contract. They are distinct from award criteria, which determine which is the most advantageous tender. Conditions of participation are a means to ensure that suppliers have:
  - a. the legal and financial capacity to perform the contract, or
  - b. the technical ability to perform the contract.
25. A contracting authority may only award a public contract in a competitive tendering procedure to the supplier that submits the most advantageous tender. Section 19(2), defines the most advantageous tender as the tender that the contracting authority considers:
  - a. satisfies the requirements; and
  - b. best satisfies the award criteria when assessed by reference to:
    - i. the assessment methodology set under section 23(3)(a); and
    - ii. if there is more than one criterion, the relative importance of the criteria under 23(3)(b).

26. It is possible for a contracting authority to award separate contracts following a competitive tendering procedure to multiple suppliers (for example, when establishing a framework) if the award criteria and assessment methodology set out in the tender notice and any associated tender documents provide that more than one tender can satisfy the contracting authority's requirements and best satisfy the award criteria and on what basis. In these circumstances, all tenders considered successful pursuant to the award criteria and assessment methodology should be considered the most advantageous tender.
27. In assessing tenders under section 19 (Award of public contracts following a competitive tendering procedure) a contracting authority:
- a. must disregard any tender from a supplier that does not satisfy the conditions of participation;
  - b. may choose to disregard a tender from a supplier who is not a UK or treaty state supplier, or from a supplier who intends to sub-contract the performance of all or part of the contract to a supplier who is not a UK or treaty state supplier. The guidance on treaty state suppliers should be consulted for more information;
  - c. may choose to disregard any tender that offers a price that it considers to be abnormally low for performance of the contract, provided it complies with the relevant provisions in the Act;
  - d. may choose to disregard any tender which breaches a procedural requirement that is set out in the tender notice or associated tender documents, such as a tender being submitted past the required deadline or being over the prescribed word count. For clarity, contracting authorities should highlight which procedural requirements set out in the tender notice or associated tender documents may result in the contracting authority disregarding a tender if breached.

For further information see guidance on exclusions, conditions of participation and, for determining the most advantageous tender, assessing competitive tenders.

28. In a competitive tendering procedure, the contracting authority must release two sets of information once the most advantageous tender has been identified:
- a. firstly, it must provide assessment summaries to suppliers;
  - b. after providing assessment summaries, it must publish a contract award notice on the central digital platform.
29. The contracting authority must not enter into a contract following a competitive tendering procedure without having first issued the assessment summaries and published the contract award notice.

30. The contracting authority must provide an assessment summary to each supplier that submitted an assessed tender. An assessment summary provides information to enable a supplier to understand why its assessed tender was either successful or unsuccessful. See the guidance on assessment summaries.
31. Under the Act, it is the publication of the contract award notice that initiates the standstill period. The mandatory standstill period is a minimum of eight working days and applies to all public contracts apart from those listed in section 51(3). A contracting authority may voluntarily apply a standstill period to those contracts listed in section 51(3). Where it does so, any voluntary standstill period must also be for a minimum of eight working days. Once the standstill period has ended, the contracting authority may enter into the contract. See the guidance on the contract award notice and standstill.
32. Once the contracting authority has entered into the contract, it must publish a contract details notice. A contract details notice tells interested parties that the contract has been entered into and is mandatory for all contracting authorities except for private utilities and in relation to a contract awarded under section 41 by reference to paragraph 15 of Schedule 5 (direct award: user choice contracts). In certain circumstances the contracting authority must also publish a copy of the contract and the key performance indicators set. See the guidance on the contract details notice and contract documents, and the guidance on key performance indicators.

#### The open procedure

33. As set out above, section 21(5) provides that the contracting authority must be satisfied, before inviting tenders, that the tender notice or associated tender documents provide sufficient information in order for tenders to be prepared.
34. In the case of the open procedure, the tender notice is the 'invitation to tender' as it invites all interested suppliers to submit a tender. Where used, any associated tender documents would also need to be provided through the central digital platform at the outset of the procurement (i.e. at the same time as the tender notice) in order to meet section 21(5) and enable the tendering period to commence. This can be achieved either by attaching the documents to the tender notice or by providing a direct link to the web page where the documents are provided.

#### Considering exclusions, conditions of participation and assessing tenders

35. In an open procedure, following receipt of tenders and before awarding a contract, the contracting authority must check whether a supplier is an excluded or excludable supplier, assess any conditions of participation and determine the most advantageous tender.
36. With regard to exclusions, the effect of section 26 and section 28 in an open procedure is that the contracting authority must check whether any suppliers who have submitted a tender are excluded or excludable (including by virtue of their connected persons, associated persons or sub-contractors) before tenders are assessed. This ensures that any tender from an excluded supplier is disregarded (and any tender from an excludable supplier can be disregarded if the contracting authority so decides) before tenders are assessed.

37. A contracting authority could then, for example, take the following approach:

- a. assess the tenders against all of the considerations set out in section 19(3), including checking whether each of the conditions of participation are satisfied, and disregard any tenders as appropriate (see para 27); and
- b. then assess the tenders which have not been disregarded under section 19(3) to determine which is the most advantageous tender.

38. Annex A includes a flowchart for how the open procedure could be carried out, based on the scenario in paragraph 37.

39. There is flexibility for when a contracting authority can assess conditions of participation in an open procedure and they can be assessed at any point following receipt of tenders and before the public contract is awarded. For example, assessment of conditions of participation could take place at the same time as assessment of the tender itself, with different evaluation teams looking at conditions of participation and tenders. As an alternative, a contracting authority could assess tenders first, and only consider the conditions of participation for the supplier that submitted the tender that is the most advantageous.

#### The competitive flexible procedure

40. In contrast to an open procedure, a competitive flexible procedure will be multi-staged and therefore contracting authorities can (under section 20(4)(a)) limit the number of suppliers participating in a procurement or progressing to the next stage. In this guidance, the process of limiting the number of suppliers (following submission of a request to participate) by assessing conditions of participation and/or any other objective criteria set out in the tender notice or associated tender documents is referred to as the 'participation stage'.

41. The competitive flexible procedure allows the contracting authority the freedom to design its own procedure. The contracting authority may choose to incorporate numerous processes into the procedure, such as negotiation, dialogue or a demonstration stage. In this guidance, 'dialogue' refers to a discussion between the contracting authority and suppliers about any aspect of the procurement. 'Negotiation' is the discussion between the contracting authority and a supplier with a view to improving the content of tenders. The [Sourcing Playbook](#) provides information on how to conduct dialogue and negotiation during a procurement procedure. Including dialogue and/or negotiation can offer benefits such as the ability to test risks and assumptions with suppliers and develop the contracting authority's requirements.

42. The contracting authority may choose to include a site visit or demonstration in a competitive flexible procedure. These can reduce risk by testing the deliverability of key aspects of tenders. A site visit may, for example, identify that a key supporting process has not been developed, that equipment has yet to be obtained or configured, or that systems and processes cannot cope with required peaks in volume.

43. The contracting authority may also require suppliers to deliver presentations during the procedure. Presentations can be helpful to confirm that the proposals or solutions are deliverable, for example, to manage the risk of proposals being incompatible with critical services provided by existing suppliers.
44. The contracting authority must ensure that any assessment of site visits, demonstrations or presentations is conducted in an objective way and in accordance with the award criteria and assessment methodology.
45. This guidance provides some examples of how a competitive flexible procedure could be designed, but it is not exhaustive and contracting authorities should not feel limited to using only those outlined in this guidance.
46. The contracting authority must set out in the tender notice how the competitive flexible procedure is to be carried out. For example, if the intention is to limit the number of suppliers generally or in respect of particular tendering rounds or other selection processes, the criteria by which those suppliers will be chosen must be in the tender notice or, if the procedure is to include negotiation, that must be stated. The contracting authority can also provide associated tender documents to supplement the tender notice, which will give more detail regarding the procurement.
47. As with the open procedure, the tender notice is the first formal step in the procedure, but in the competitive flexible procedure it can be used in two different ways:
  - a. to invite suppliers to submit a request to participate in the procedure; or
  - b. to invite suppliers to submit their first, or only, tender.
48. Section 12 of the Act requires that contracting authorities must have regard to the importance of “sharing information for the purpose of allowing suppliers and others to understand the authority’s procurement policies and decisions”. This is particularly relevant during the carrying out of a competitive flexible procedure.
49. The information provided in the tender notice and any associated tender documents at the outset of a competitive flexible procedure must be sufficiently clear and specific to enable suppliers to identify the nature and scope of the requirement, and decide whether to submit a request to participate or, where no such invitation is made, to submit a tender. If a contracting authority is relying on associated tender documents (in addition to the tender notice) in order to meet this requirement to provide sufficient information, this would mean that the contracting authority would need to provide the associated tender documents at the same time as the tender notice.
50. The contracting authority may continue to update, and provide fuller information in, the associated tender documents as the procurement progresses, particularly in circumstances where certain elements to be included in the final documents may necessarily depend on the outcomes of previous negotiations or dialogue. The key requirement to bear in mind under section 21(5) is, as stated above, that tenders cannot be invited as part of a competitive

tendering procedure unless the tender notice or associated tender documents provide sufficient information to allow suppliers to prepare their tenders.

51. Where an associated tender document is being, or may be, provided after the publication of the tender notice, the regulations allow a contracting authority to provide a link in the tender notice to the web page where that additional associated tender document will be provided, or to provide an explanation of how that document will be provided. For example, a contracting authority may set out in the tender notice that additional associated tender documents will be issued to suppliers at certain stages during the negotiation process.
52. In order to provide as much transparency of the tendering process as possible, not just to suppliers who remain in the process, but also to other interested parties, where additional information is provided after the deadline for submitting a request to participate in, or where there has been no invitation to submit such request, the deadline for submitting a first or only tender, it is advisable to update the published tender notice with any additional associated tender documents as these are released during the procedure.

#### Exclusions in a competitive flexible procedure

53. As set out above, section 26 provides that in all competitive tendering procedures, a contracting authority must consider whether a supplier is an excluded or excludable supplier before assessing which tender best satisfies the award criteria. Section 27 of the Act deals specifically with excluding suppliers in a competitive flexible procedure and requires the contracting authority to check if a supplier is an excluded or excludable supplier before permitting it to participate in a competitive flexible procedure. If the supplier is an excluded supplier, it must not be allowed to participate in the procedure. If it is an excludable supplier, a contracting authority may choose to exclude it.
54. If a supplier becomes an excluded supplier during the course of a competitive flexible procedure, a contracting authority must exclude it from progressing further in accordance with section 27. If a supplier becomes an excludable supplier during the course of a procedure, a contracting authority may exclude it from progressing further.
55. A contracting authority must therefore check exclusions at the start of the procedure and prior to assessment of final tenders. Where there are multiple stages in a competitive flexible procedure, contracting authorities should also consider exclusions (and take appropriate action) at key points such as when undertaking an 'intermediate assessment of tenders' (which is an assessment of tenders other than final tenders (see section 20(6))).

#### Limiting the number of suppliers in a competitive flexible procedure

56. In a competitive flexible procedure, references to a 'request to participate' refers to where a supplier, in response to a tender notice, registers its interest in participating in the procurement. A contracting authority will invite requests to participate when its intention is to limit the number of suppliers that are invited to submit tenders. The reasons to limit the number of suppliers that submit tenders and create a shortlist may include:

- a. to remove those not meeting the conditions of participation or only select a set number of the highest ranking suppliers, in order to keep the procurement administratively manageable and to ensure only suppliers with the relevant, or best, capacity and ability to perform the contract participate. This may be, for example, where preliminary market engagement or the contracting authority's market knowledge suggests that the number of tenders received may be high;
- b. because the requirement is complex and inappropriate for a single-staged open procedure;
- c. because the nature of the procurement means that the cost of preparing tenders or assessing all tenders submitted may be excessive for the contracting authority and/or the suppliers; or
- d. to ensure that suppliers are motivated to tender when the level of competition is extremely high and suppliers may be reluctant to tender due to the low likelihood of success.

57. It should be noted that reducing the number of suppliers participating in a procedure can act as a barrier to start-ups and new entrants, who may have a suitable solution but lack a track record because they are new to a sector. When setting the conditions of participation (or indeed in all aspects of carrying out the procedure), in order to comply with section 12, a contracting authority must have regard to the fact that SMEs may face particular barriers to participation, and consider whether such barriers can be removed or reduced. Therefore, careful consideration should be given to the conditions of participation used to limit the number of suppliers that progress in a competitive flexible procedure in order to reduce the risk of removing suppliers who may have a good solution but limited record. Preliminary market engagement will help quantify this risk.

58. If a supplier does not satisfy the conditions of participation, a contracting authority may choose to prevent them from participating or progressing in a competitive flexible procedure. However, it may be the case that whilst a supplier cannot meet the conditions of participation (or a particular condition) on initial assessment, it can demonstrate that it will be able to do so at a later stage and before the award of the contract. In this scenario a contracting authority may decide (but is not required) to allow the supplier to participate or progress in the procedure with the requirement that it will, if successful, fulfil the conditions before the award of the contract. If the contracting authority decides to allow the supplier to participate or progress in the procedure, it should be mindful of the requirement for equal treatment in section 12. If a contracting authority thinks it is likely to exercise its discretion in this way, it is recommended that this is set out in the tender notice and any associated tender documents so that suppliers are aware of this possibility when deciding whether or not to tender. A supplier must meet all of the conditions of participation to be awarded the contract.

59. If the contracting authority sets a maximum number of suppliers to participate or progress in any stage in a procedure, it must set out in the tender notice the objective criteria to be used to determine which suppliers will be invited to participate or progress.

60. If the contracting authority sets out that a minimum number of suppliers should participate or progress in any stage in a procedure and fewer than the intended minimum number of suppliers remain at that stage, the contracting authority may continue to proceed with those suppliers that do remain.
61. In all cases, the number of suppliers that participate or progress should be sufficient to ensure genuine competition. The Act does not set out a minimum number of suppliers as the minimum number appropriate to ensure genuine competition will vary based on matters such as:
- a. the nature and complexity of the contract;
  - b. the number of suppliers likely to be interested in participating or progressing; and
  - c. the length and complexity of the procedure, including whether it includes any dialogue or negotiation stage.
62. However, it is suggested that, provided sufficient suppliers have expressed an interest to participate, the contracting authority should invite at least five suppliers to progress where the procedure is straightforward with no dialogue or negotiation. Where the procedure is more complex and will include extensive dialogue or negotiation, it is suggested that at least three suppliers are invited to progress. Given the scope for numerous variances in the design of the competitive flexible procedure and in individual contracting authorities' requirements, one size does not fit all.
63. The contracting authority should ensure timely notification to suppliers as the procedure progresses, especially where it is determined that a supplier will not participate or progress further in the procedure, for example when limiting the number of suppliers following their assessment against conditions of participation or following an intermediate assessment of tenders. In the event a supplier is excluded from the procedure, or its tender disregarded, notification to the supplier should include an explanation for the decision, having regard to section 12(1)(c) and (d) of the Act.
64. When a supplier's tender is an 'assessed tender' as defined in section 50(5)<sup>2</sup>, a contracting authority is required to provide an assessment summary to the supplier. If a procedure includes numerous tendering rounds with intermediate assessments of tenders, contracting authorities should inform suppliers as soon as reasonably possible if they are not being taken forward in the procedure. Contracting authorities are advised to use the same feedback structure for intermediate rounds as will be provided for assessed tenders as the assessment summary structure has been designed to ensure suppliers receive a robust explanation for their scores, having regard to section 12(1)(c) and (d) of the Act. When preparing notifications to suppliers who have not submitted assessed tenders, contracting authorities should aim to provide the appropriate level of detail for the stage in the procedure at which the supplier was excluded.

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<sup>2</sup> An assessed tender is a tender that was assessed for the purpose of determining the most advantageous tender under section 19(1) and was not disregarded.



Examples of how a competitive flexible procedure could be structured:

*Example 1 - simple two stage competitive flexible procedure, without negotiation or dialogue*

65. A contracting authority could carry out a procedure similar to the restricted procedure under the previous legislation and limit the number of suppliers by setting conditions of participation and (if they chose to) a maximum number of suppliers to be invited to participate (as described above). This would be the first stage and would create a shortlist of suppliers. At the second stage, the contracting authority would issue an 'invitation to tender' to the shortlisted suppliers, inviting them to submit tenders. At this point, the contracting authority may provide updated associated tender documents to the participating suppliers. The procedure would not include any negotiation or dialogue with the shortlisted suppliers.
66. Following the submission of tenders, the contracting authority would assess the tenders to determine the most advantageous tender and award the public contract on the basis of that assessment.
67. See Annex B for a flowchart explaining this example in more detail.

*Example 2 - multi-stage competitive flexible procedure with limited negotiation*

68. A contracting authority could carry out a multi-stage procedure and decide to negotiate specific elements of its requirements or contract terms with the shortlisted suppliers following a participation stage before determining the most advantageous tender. In this scenario the tender notice must set out the contracting authority's intention to negotiate and the specific elements that will be open for negotiation (for example, price and delivery timings) with shortlisted suppliers.
69. In this example, the contracting authority would carry out the participation stage in the same manner as explained above in example 1, setting a maximum number of suppliers (if they chose to) to be invited to submit initial tenders. Those initial tenders would then be assessed by reference to the contracting authority's requirements and award criteria at this point in the procedure.
70. The contracting authority may remove suppliers whose initial tenders do not meet the contracting authority's requirements or award criteria that apply at this point. It must be clear in the tender notice and any associated tender documents in what circumstances suppliers could be removed, for example, which award criteria have minimum requirements and will be scored on a pass/fail basis, leading to a tender being disregarded if the minimum requirements are not met or what objective criteria will be used to select the limited number of suppliers to be taken to the next stage. For example, a contracting authority may choose to only take a specified number of the highest scoring tenders forward. As set out at paragraph 61 and 62, the contracting authority should invite sufficient suppliers to ensure genuine competition.

71. The contracting authority would then carry out negotiations with the remaining suppliers, before inviting those suppliers to submit their final tenders. Once these final tenders are received, the contracting authority would consider them in order to determine the most advantageous tender.

72. A flowchart outlining this example can be found at Annex C.

*Example 3 - awarding a contract for complex or less defined requirements*

73. A contracting authority may wish to procure a requirement for which it needs to engage with suppliers to help further define the requirement or wish to procure an innovative solution. In this instance, a staged procedure may be the best approach, which would allow, for example, dialogue with suppliers to develop the requirement further or the inclusion of a stage for design or development and testing of the solution with multiple suppliers participating.

74. Section 24 allows for the refinement of award criteria set out in the tender notice or associated tender documents to support a staged competitive flexible procedure (see guidance on assessing competitive tenders). This enables the award criteria to be refined as the procedure progresses. What constitutes a 'refinement' is not defined in the Act, but it could include, for example, adding additional detail to existing criteria, adding related sub-criteria to existing criteria, or amending criteria weightings within a published range). Adding new award criteria would not be permissible under section 24.

75. In this example, the contracting authority would carry out the participation stage in the same manner as explained above, setting a maximum number of suppliers (if they chose to) to be invited to participate. Following the participation stage, the contracting authority may invite shortlisted suppliers to submit initial tenders and discuss the requirement. As a result of this engagement, the contracting authority may gain a better understanding of what is possible and be able to add further detail or sub-criteria to the initial criteria. It may be that the contracting authority is satisfied that it has sufficient clarity at that point to invite final tenders or it could be that it invites intermediate tenders and carries out another round of dialogue before inviting final tenders. See the flowchart in Annex D which outlines this example.

76. In a scenario where requirements are complex or less defined, contracting authorities may wish to consider including a site visit or demonstration as part of the procedure, as such processes can be used to test the deliverability of proposed solutions.

77. Annex E sets out a possible procedure for procuring innovation or product development.

78. The contracting authority may choose to include a 'preferred supplier' stage in a competitive flexible procedure. This would be a stage involving only the supplier that has submitted the most advantageous tender and would be carried out prior to entering into the contract. The preferred supplier stage could involve clarifying or confirming commitments made in the tender or limited post-tender negotiation. This can be useful particularly in complex procurements, for example to ensure that there is an agreed understanding of how the

contract will operate and reduce the risk of issues arising once the contract has been entered into.

79. A preferred supplier stage should be conducted in a transparent and auditable manner. The intention to conduct a preferred supplier stage should be set out in the tender notice and any associated tender documents, and contracting authorities should ensure that the details of key points and agreed outcomes/changes are recorded and retained. Use of a preferred supplier stage must not have the effect of altering the award outcome and must follow the process as set out in the tender notice and associated tender documents.
80. If the tender (and therefore the resultant contract) is amended as a result of preferred supplier discussions, the contracting authority should consider how best to ensure there is transparency of those changes, for example by incorporating any changes in the contract award notice.

*Example 4 - A competitive flexible procedure without a separate participation stage*

81. A contracting authority is not obliged to have a separate participation stage to limit the number of suppliers that participate in a competitive flexible procedure. It may decide that inviting tenders from all interested suppliers is the best approach because, for example, preliminary market engagement has shown the field of suppliers to be quite small. If there are elements of the solution that could be improved upon after submission of an initial tender, it may be that an open procedure (which only has one stage for receiving tenders before the most advantageous tender is determined) is not appropriate as there needs to be scope for suppliers to update their solutions and submit final tenders before the most advantageous tender is determined. Therefore a contracting authority could use the initial tenders to understand what solutions the market could offer and then invite suppliers to submit final tenders that are assessed to determine the most advantageous tender.
82. A flowchart outlining this example can be found at Annex F.

**What are the primary notices linked to competitive tendering procedures?**

83. A competitive tendering procedure may have been the subject of a pipeline notice, a preliminary market engagement notice and/or a planned procurement notice before it commenced. If publication of a planned procurement notice occurred at least 40 days and no more than one year before publication of the tender notice then the notice is a 'qualifying planned procurement notice' and the contracting authority may choose to reduce the tendering period.
84. As set out previously, the key notice in a competitive tendering procedure is the tender notice, which commences the procedure. As well as being used as either an invitation to tender or as an invitation for suppliers to submit a request to participate in the procedure, it is used to notify the market of a modification to the terms of procurement.

85. The regulations specify certain information that a contracting authority must include in a tender notice. For all competitive tendering procedures, where relevant, this must include (in accordance with regulation 18):
- a. whether one of the shorter minimum tendering periods set out in the table in section 54 of the Act applies and, if so, which circumstance in the table applies (for example, if a qualifying planned procurement notice has been published, the tender notice must include the unique identifier used for that notice in order to link the tender notice to that same procurement procedure);
  - b. a description of any technical specifications which are expected to be met or a cross reference to where they may be accessed;
  - c. a description of any conditions of participation to be met. Note that for public contracts, contracting authorities will need to follow the requirements of regulation 6 in respect of core supplier information and should set out in the tender notice that suppliers will be required to submit their core supplier information through the platform at a relevant point in the procedure (for example when they submit their request to participate or their tenders). This will ensure that suppliers know where to register and complete their profiles. Refer to guidance on publication of information for further details about supplier information;
  - d. whether a contracting authority intends to use an electronic auction and, if so, a description of that process.
  - e. any payment terms that are in addition to the implied payment terms set out in section 68. The contracting authority may wish to set out in the tender notice any time period that is less than 30 days to apply to contracting authority payments to suppliers, the process for submission of invoices and the process for dealing with disputed invoices (although this level of detail is not required by the Act or regulations);
  - f. where the public contract is awarded by reference to lots, whether a supplier may only submit a tender for a maximum number of lots and, if so, the maximum number; whether a supplier may only be awarded a maximum number of lots and, if so, the maximum number; and whether the contracting authority will award multiple lots to the same supplier in accordance with certain criteria and, if so, a summary of the objective mechanism (see section 23(4) for the setting of award criteria for the assessment of tenders by reference to lots);
  - g. except in the case of a utilities contract or a light touch contract, where the contracting authority considers that the public contract could be awarded by reference to lots but it is not, the reasons for this;
  - h. the award criteria or a summary of the award criteria;
  - i. how tenders or requests to participate may be submitted and the date by when they must be submitted;

- j. if contracting authorities think it might wish to rely on the 'Materialisation of a known risk' ground in paragraph 5 of Schedule 8 to make any future modifications to a contract awarded under the competitive tendering procedure, the known risks. See the guidance on contract modifications.

86. When using the competitive flexible procedure, in addition to the information above, the tender notice must also include:

- a. where the contracting authority intends to select a limited number of suppliers during the procedure, the criteria that will be used to select them;
- b. where the contracting authority intends to select a minimum number of suppliers, the intended minimum number of suppliers;
- c. where the contracting authority is procuring under a dynamic market (and therefore restricting supplier participation to those on the relevant dynamic market or part of the dynamic market) details of the dynamic market or part of the dynamic market;
- d. a description of the process to be followed during the procedure, including whether the procedure may include negotiation at any stage, and whether the award criteria will be refined during the procedure;
- e. whether the tender notice is being used:
  - i. to reserve a contract to supported employment providers in accordance with section 32 of the Act; or
  - ii. to reserve a contract to public service mutuals in accordance with section 33 of the Act.

87. See the guidance on frameworks and dynamic markets for additional guidance on using the tender notice in those cases.

88. See the guidance on publication of information for information that needs to be included in notices generally and how to redact or withhold information that is permitted to be withheld or redacted under the Act.

89. The next notice in the sequence will be one of the following:

- a. procurement termination notice: to inform interested parties that a contracting authority has decided not to proceed with the award of a contract after having previously published a tender notice. Private utilities are not required to publish a procurement termination notice;
- b. contract award notice: to notify the market of the outcome of a competitive tendering procedure and to alert the market to the fact that a contract is about to be entered into. It is the contract award notice that initiates any mandatory or voluntary standstill period.

**What other guidance is of particular relevance to this topic area?**

- Guidance on assessing competitive tenders
- Guidance on conditions of participation
- Guidance on exclusions
- Guidance on modifying a competitive procurement
- Guidance on covered procurement objectives
- Guidance on preliminary market engagement
- Guidance on lots
- Guidance on time periods
- Guidance on contract award notices and standstill

**Where can I go for more information or training?**

The [Sourcing Playbook](#)

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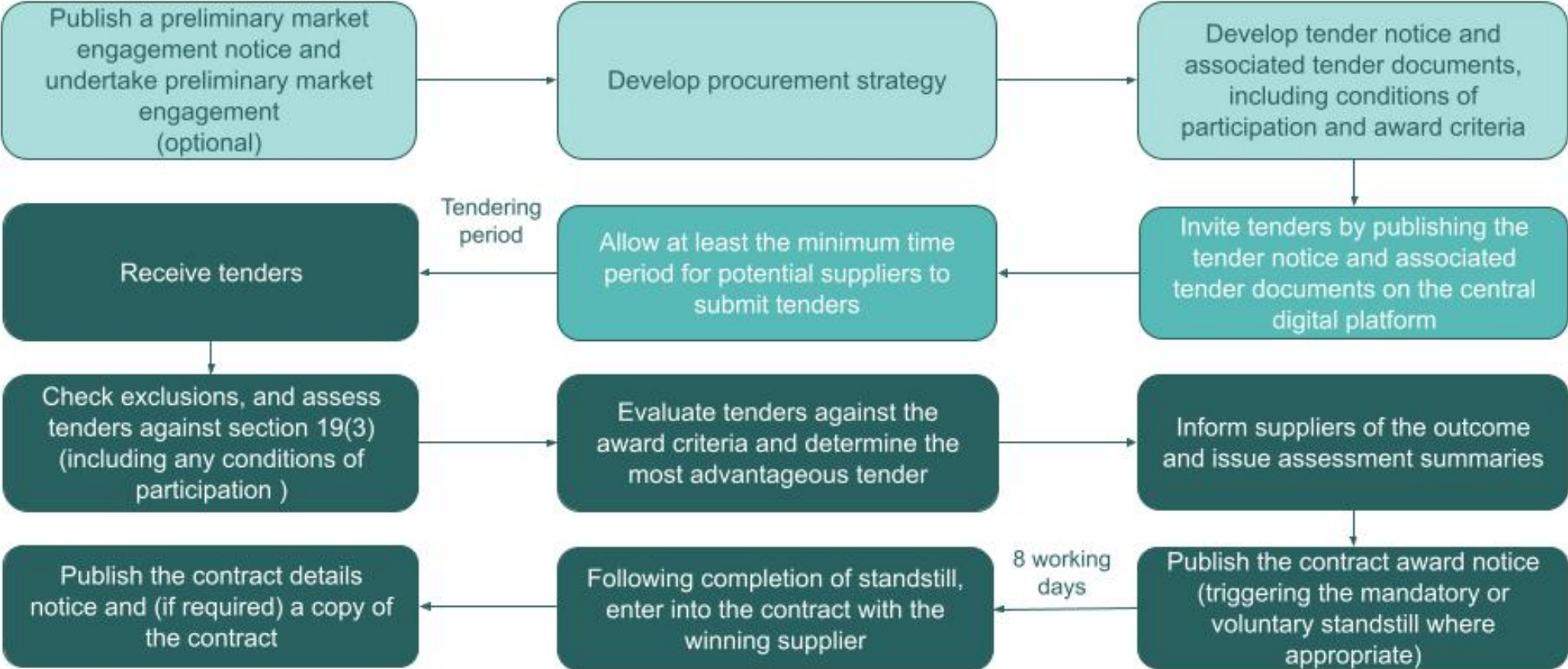
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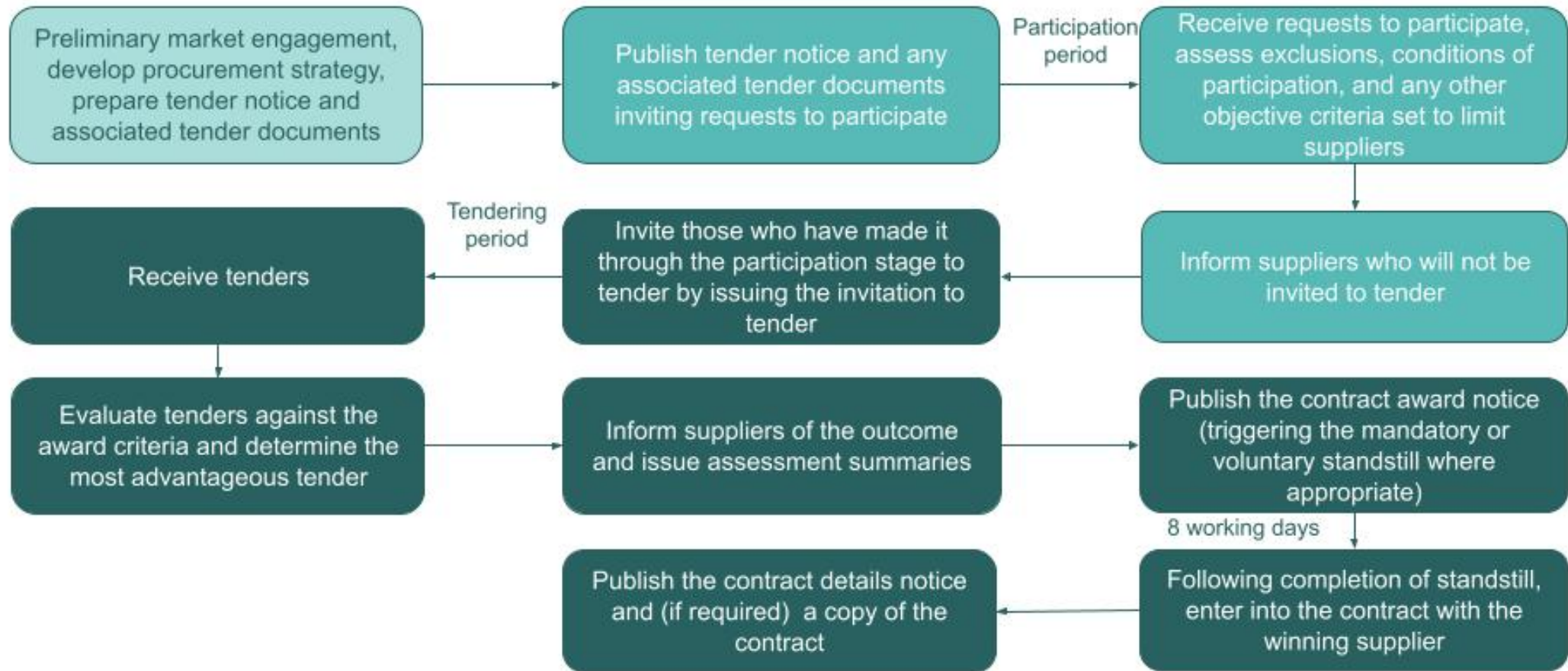
**Annex A-The open procedure<sup>3</sup>**



<sup>3</sup> The procedure set out in this diagram is provided for illustrative purposes only and does not comprehensively cover all the relevant obligations during the procurement process.

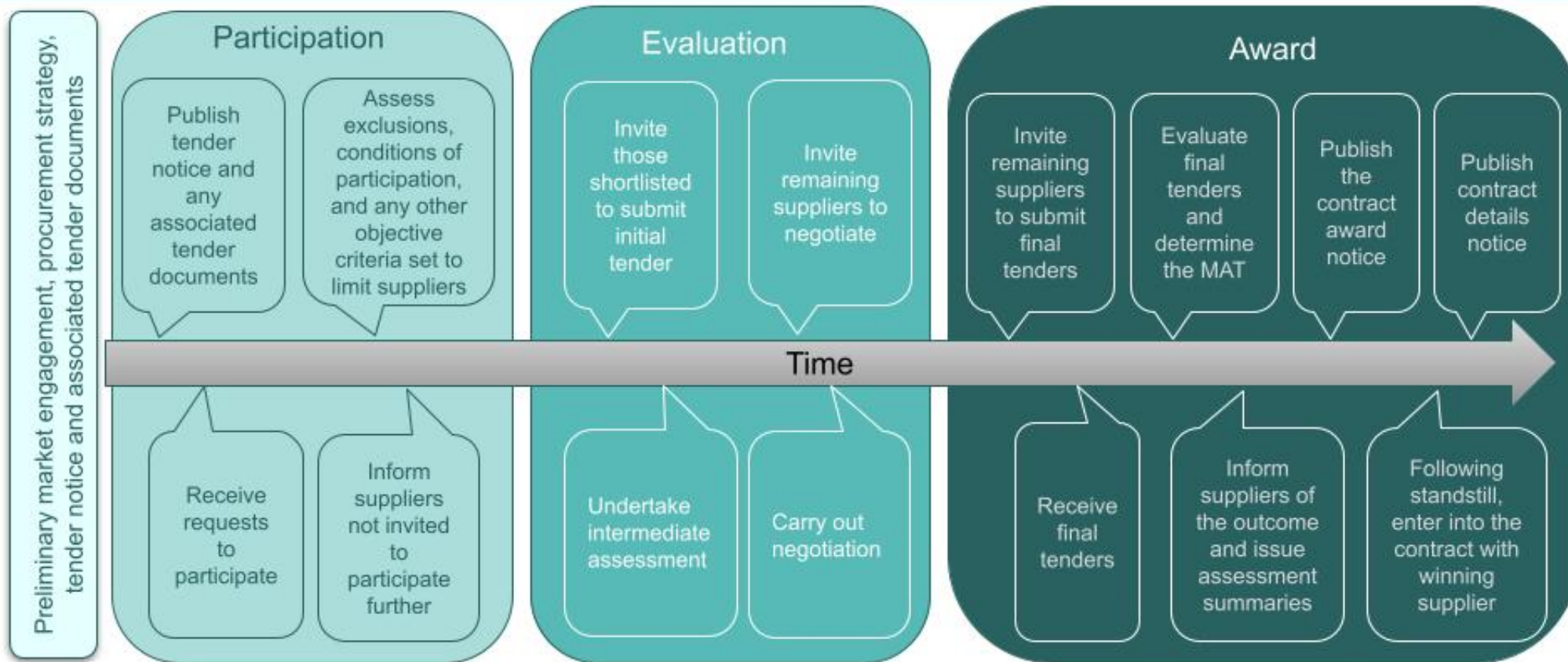


**Annex B-Simple two stage competitive flexible procedure, without negotiation or dialogue<sup>4</sup>**



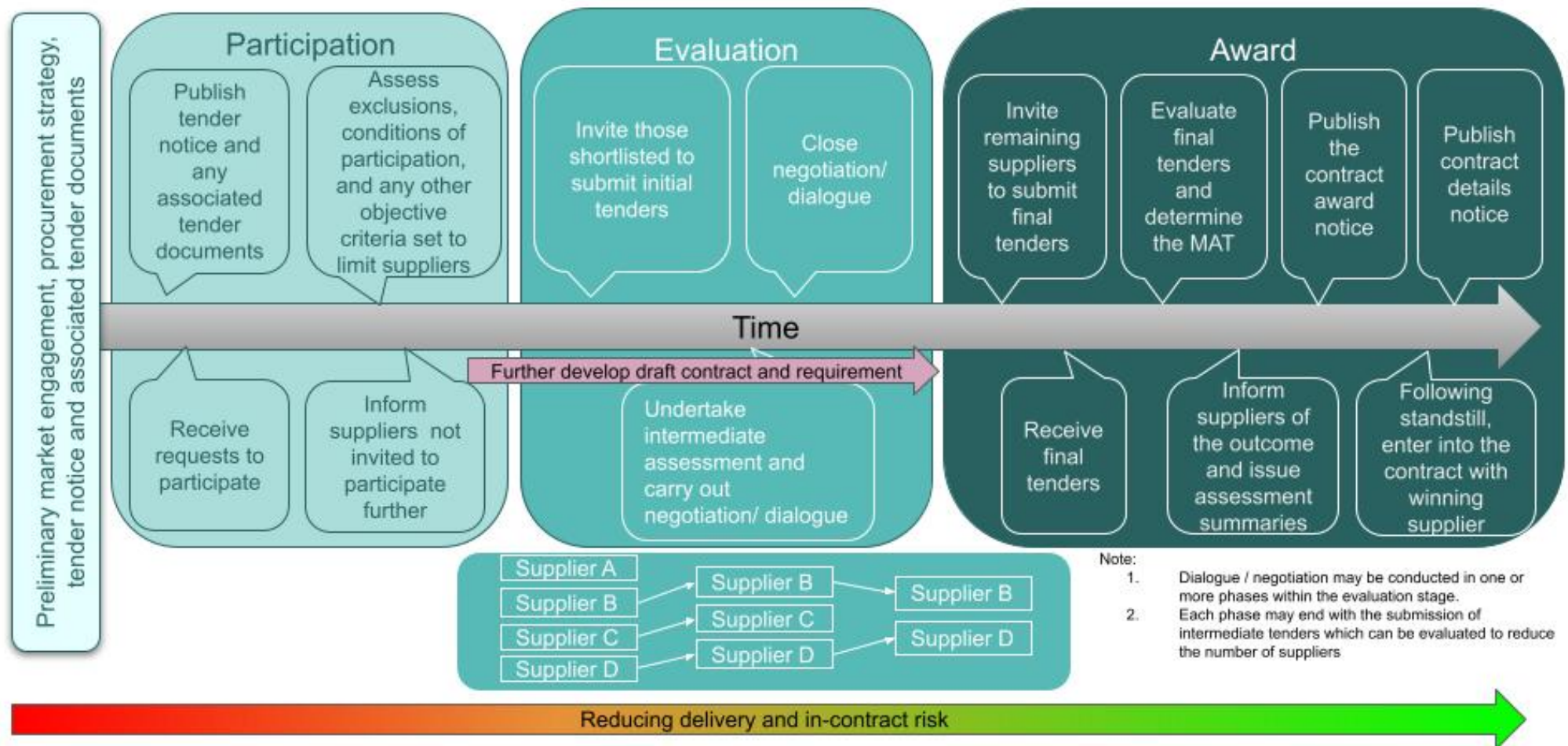
<sup>4</sup> The procedure set out in this diagram is provided for illustrative purposes only and does not comprehensively cover all the relevant obligations during the procurement process.

**Annex C- Multi-stage competitive flexible procedure with limited negotiation<sup>5</sup>**



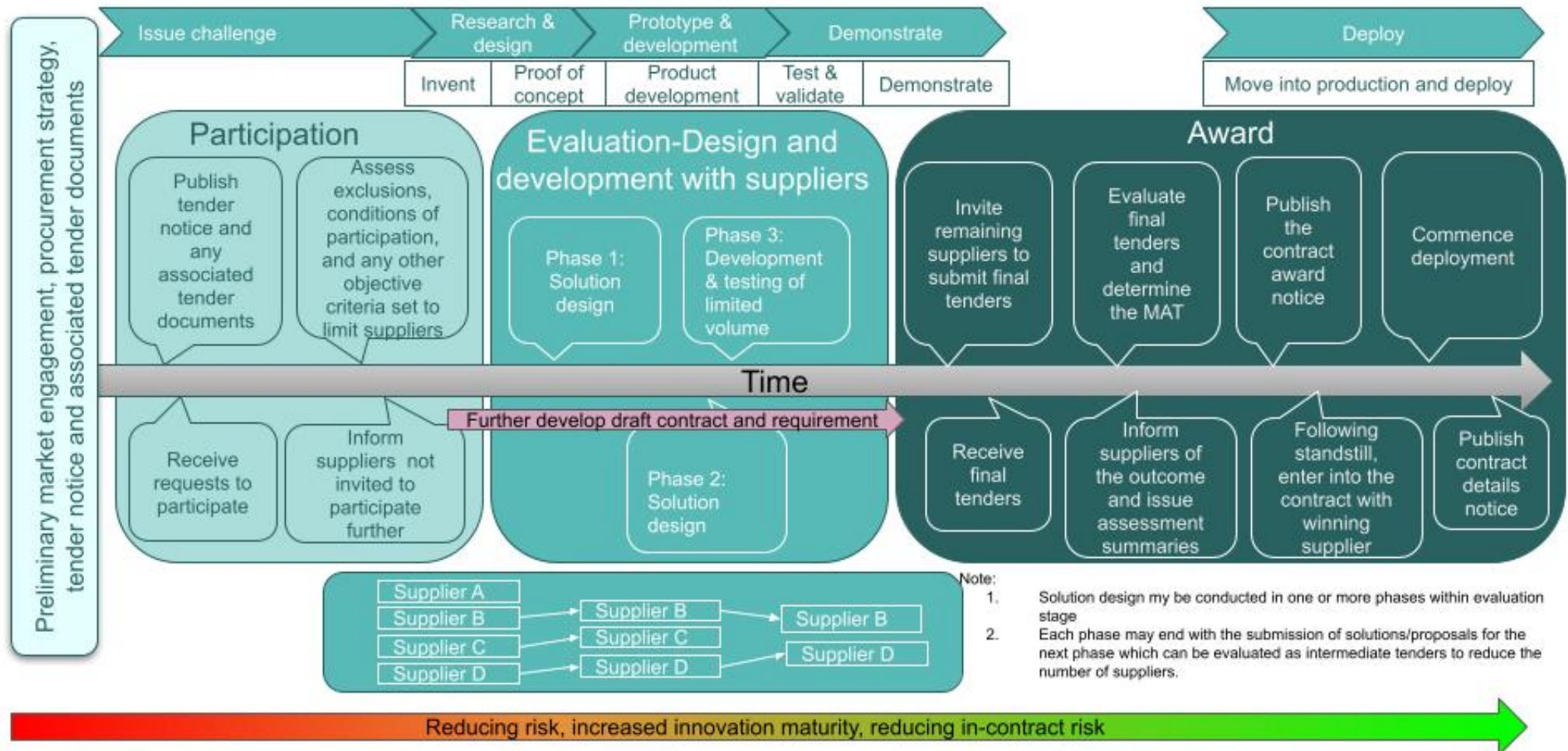
<sup>5</sup> The procedure set out in this diagram is provided for illustrative purposes only and does not comprehensively cover all the relevant obligations during the procurement process.

**Annex D-Competitive flexible procedure with dialogue and/or negotiation to further develop the requirement<sup>6</sup>**



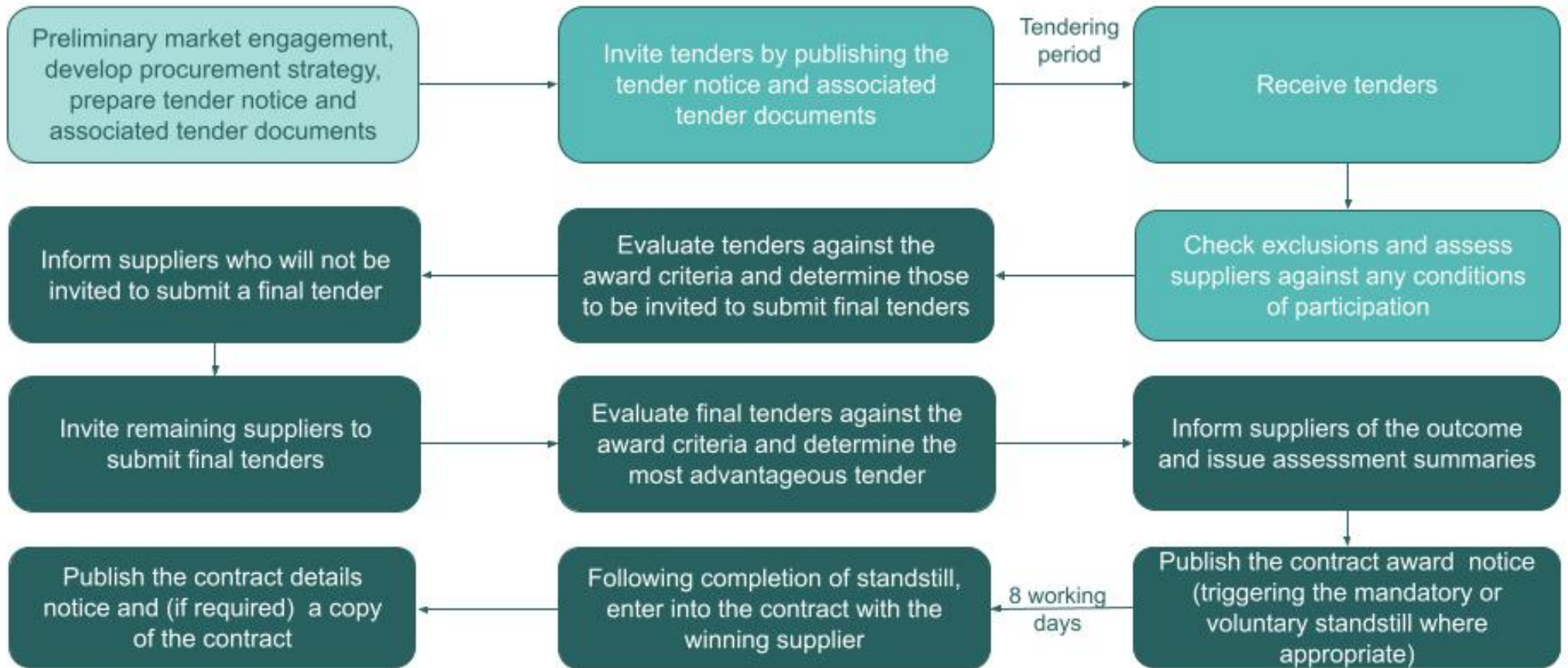
<sup>6</sup> The procedure set out in this diagram is provided for illustrative purposes only and does not comprehensively cover all the relevant obligations during the procurement process.

Annex E-Competitive flexible procedure when tendering for innovation or product development<sup>7</sup>



<sup>7</sup> The procedure set out in this diagram is provided for illustrative purposes only and does not comprehensively cover all the relevant obligations during the procurement process.

**Annex F-Competitive flexible procedure without a separate participation stage<sup>8</sup>**



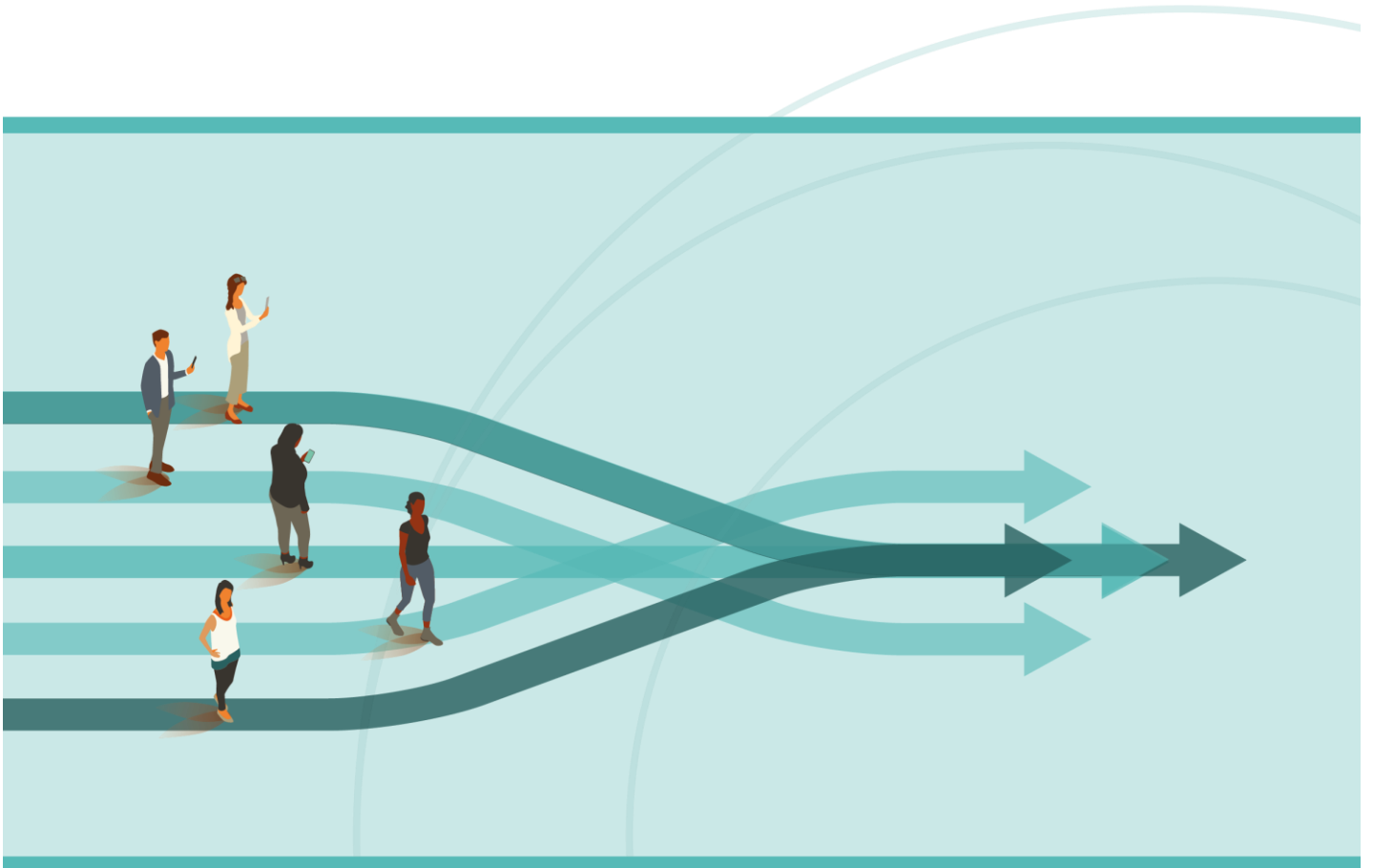
<sup>8</sup> The procedure set out in this diagram is provided for illustrative purposes only and does not comprehensively cover all the relevant obligations during the procurement process.



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Procurement Act 2023

# Guidance: Below-Threshold Contracts



July 2024

# Guidance on Below-Threshold Contracts

## What is a below-threshold contract?

1. A 'below-threshold contract' is defined in section 5 of the Procurement Act 2023 (Act) (see paragraph 2 below) and is broadly a contract of lower value (defined in relation to the thresholds set out in Schedule 1) than a 'public contract'. The award, entry into and management of a below-threshold contract is not 'covered procurement' as defined in section 1 of the Act. This means that fewer obligations in the Act apply to the procurement of below threshold contracts than apply to covered procurement. See paragraph 14 below for covered procurement and procurement.

## What is the legal framework that governs below-threshold contracts?

2. Section 5 defines a below-threshold contract as:
  - a. a contract for the supply, for pecuniary interest, of goods, services or works to a contracting authority;
  - b. a framework; or
  - c. a concession contract,that has an estimated value of less than the 'threshold amount' for the type of contract.
3. The threshold amounts are set out in Schedule 1 (as will be amended when the Act comes into force).
4. Section 84 provides that a 'regulated below-threshold contract' is a below-threshold contract that is not:
  - a. an exempted contract as defined Schedule 2;
  - b. a concession contract; or
  - c. a utilities contract.
5. Part 6 of the Act sets out the rules that apply when carrying out the procurement of below-threshold contracts. This includes provisions relating to procurement procedures, duties, notices and implied payment terms. Regulation 24 sets out the information required to be included in a 'below-threshold tender notice'.
6. Section 84 provides that the below-threshold provisions in Part 6 do not apply to procurement:
  - a. by a school (as defined in section 123); or
  - b. by transferred Northern Ireland authorities, unless the procurement takes place under a reserved procurement arrangement or a devolved Welsh procurement arrangement (such as a framework or dynamic market). This would also be the case if the transferred Northern Ireland authority participated in a joint procurement led by a reserved or

devolved Welsh authority or a reserved or devolved Welsh central purchasing authority (for information about central purchasing authorities see guidance on frameworks); or

- c. under a transferred Northern Ireland procurement arrangement, that is to say using a framework or dynamic market established by a transferred Northern Ireland authority. This is also the case where a contracting authority participates in a joint procurement led by a transferred Northern Ireland authority or a transferred Northern Ireland central purchasing authority.

## What has changed?

7. The Act replaces the provisions in Part 4, Chapter 8 of the Public Contracts Regulations 2015 (PCR), which set out the requirements for below-threshold contracts. The Utilities Contracts Regulations 2016, the Concessions Contracts Regulations 2016 and the Defence and Security Public Contracts Regulations 2011 did not include provisions on below-threshold contracts.
8. Section 85(1) sets a similar restriction on assessing suppliers' suitability as the PCR, which provided that a contracting authority may not include a pre-qualification stage in a procurement for a below-threshold contract. However, whereas under the PCR, contracting authorities were required to have regard to guidance issued by the Minister for the Cabinet Office in complying with the restriction on a pre-qualification stage, and report any deviations, the Act does not make similar provision.
9. There is no exemption for Welsh devolved authorities from publishing below-threshold notices unlike in the PCR. The Act does not change the position for Northern Ireland transferred authorities (other than procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement) or schools who remain exempt from below-threshold regulation.
10. In both the PCR and the Act, the below-threshold noticing requirements apply at different thresholds to different categories of contracting authorities. These categories have changed under the Act. Previously these were defined in regulation 109 of the PCR as follows:
  - a. central government authorities: £12,000 including VAT; and
  - b. sub-central contracting authorities, NHS Trusts and NHS Foundation Trusts: £30,000 including VAT.

The new categories at section 87(4) of the Act are:

- a. 'central government authorities': £12,000 including VAT; and
- b. all other contracting authorities': £30,000 including VAT.

The definition of a central government authority at Schedule 1 of the Act and schedule 2 of its regulations includes NHS Trusts and NHS Foundation Trusts, which means that the effect of the change to the categories is that NHS Trusts and NHS Foundation Trusts are now subject to the same (lower) threshold as other central government authorities.



11. The requirement to publish a below-threshold tender notice and contract details notice on the central digital platform replaces the requirement to publish a contract notice and contract award notice only on Contracts Finder. This means that below-threshold notices are now required to be published centrally in a single place and provides easier and greater visibility.
12. A below-threshold tender notice must be published on the central digital platform before being published elsewhere. This differs from the PCR, which allowed publication elsewhere first, with the notice required to be published on Contracts Finder within 24 hours of it appearing elsewhere.
13. A modification to the application of section 17 of the Local Government Act 1988 (LGA 1988) will be made under the power in section 116 of the Act to lift a restriction, newly permitting local government and other contracting authorities that are subject to the LGA 1988 to reserve procurements for below-threshold contracts to suppliers that are UK-based or located in a specific county or borough of the UK. There are differences for Welsh contracting authorities who should refer to the Welsh-specific guidance.

### **Key points and policy intent**

14. Section 3 of the Act establishes that a contract is not a public contract if it is less than the applicable threshold for that contract. Section 1 of the Act defines covered procurement as the award, entry into and management of a public contract. As below-threshold contracts are not public contracts, the award, entry into and management of a below-threshold contract is not covered procurement. If a provision in the Act expressly refers to covered procurement, it does not apply to below-threshold contracts. Generally, the only provisions in the Act that are relevant to the procurement of below-threshold contracts are those set out in section 6, although there are some exceptions. For example, the obligations in section 13(1) to have regard to the national procurement policy statement (NPPS) or Welsh procurement policy statement (where applicable) and in section 90(1) to not discriminate against a treaty supplier (but only to the extent that below-threshold procurements are covered by an international agreement set out in Schedule 9 of the Act) apply to any procurement, including for a below-threshold contract.
15. This gives contracting authorities undertaking a below-threshold procurement greater flexibility in designing and running a procurement and awarding and managing the resulting contract. This flexibility (which may be subject to local policies and procedures) might include, for example, the ability to choose to award a contract without competition, to request quotes from targeted known suppliers only, or to restrict the award of contracts to suppliers that are UK-based or located in a specific county or borough of the UK or to suppliers who are small and medium-sized enterprises (SMEs), or voluntary, community and social enterprises (VCSEs). The option to reserve procurements on the basis of location should not be used in relation to procurements which are of cross-border interest (i.e. which may be of potential interest to suppliers from EU Member States including the Republic of Ireland) that involve the provision of goods into Northern Ireland.
16. Section 85 provides that contracting authorities carrying out a procurement for a regulated below-threshold contract cannot restrict the submission of tenders by reference to suppliers' suitability to perform the contract. This includes an assessment of suppliers' legal status, financial capacity or technical ability, for example through use of conditions of participation. Examples of this include assessment of suppliers' experience, financial accounts, or taking into account any relevant convictions, professional misconduct or whether the supplier has been or is insolvent or bankrupt. This means that there cannot be a separate suitability stage before the submission of tenders as a way of reducing the number of suppliers who are invited to tender. This does not prevent a contracting authority asking for this information in a bid and assessing suitability at the award stage if it wishes; and it could support this assessment with data available to it on the central

digital platform (if the supplier is registered). There are differences in relation to this section for devolved Welsh authorities who should review the guidance specific to devolved Welsh procurement for more information.

17. This prohibition reflects the fact that assessment of technical capacity, legal status and financial standing can be disproportionate and resource intensive and a particular barrier for SMEs and VCSEs.
18. There is an exception at section 85(3) to the rule prohibiting a separate suitability stage in relation to a below-threshold works contract if the contract has an estimated value of:
  - a. in the case of a contract to be awarded by a central government authority, not less than £139,688; or
  - b. otherwise, not less than £214,904.
19. These are the same as the thresholds for goods and services set out in Schedule 1<sup>1</sup>. This exception is because the works threshold is much higher, and it is appropriate that contracting authorities carrying out procurements for higher value below-threshold works contracts that are still above the goods and services thresholds, are able to include a separate suitability stage before the award stage, if desired.
20. The prohibition on applying a separate suitability stage also does not apply to:
  - a. a contract awarded by devolved Welsh authorities, unless awarded under a reserved procurement arrangement;
  - b. the award of a contract under devolved Welsh procurement arrangements; and
  - c. the award of a contract under a framework.

Devolved Welsh contracting authorities and contracting authorities wishing to use devolved Welsh procurement arrangements should refer to the guidance specific to devolved Welsh procurement.

21. It should be noted that the prohibition in section 85(1) on a separate suitability stage applies only where the contracting authority invites the submission of tenders. This means that contracting authorities are able to request suitability information before awarding a contract to a supplier without competition. Following the award of the contract, the contracting authority would still be required to publish a contract details notice in accordance with section 87(3) (see paragraphs 39-42 below).
22. Section 86 imposes a duty on contracting authorities, before inviting tenders, to consider the barriers SMEs may face in competing for a contract and whether such barriers can be removed or reduced. This obligation does not apply to below-threshold contracts awarded under a framework.
23. There is no requirement to publish a below-threshold tender notice where the contracting authority invites quotes, proposals or tenders from a closed group of pre-selected suppliers, (i.e.

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<sup>1</sup> The thresholds in this guidance are the current thresholds. Schedule 1 of the Act will be updated when it comes into force to include these thresholds.

suppliers on a framework) or from one or more targeted individual suppliers, provided it does not advertise the procurement in any other way (for example in a newspaper or on a local website or portal). However, section 87 requires that if a contracting authority intends to advertise a 'notifiable below-threshold contract' it must first publish a 'below-threshold tender notice'. A notifiable below-threshold contract is a regulated below threshold contract with, if it is being awarded by a central government authority, a value of not less than £12,000 or, if it is being awarded by any other contracting authority, a value of not less than £30,000. Regulation 5 provides that this notice must be published on the central digital platform. As explained at paragraph 16 above, a contracting authority is not permitted to use a separate suitability stage to restrict the number of tenders or quotes it receives.

24. The effect of section 87(6) relating to time limits is that the contracting authority must provide a reasonable time period in the below-threshold tender notice for the submission of tenders and that this should be the same period for all suppliers.
25. Section 87(3) provides that as soon as reasonably practicable after entering into a notifiable below-threshold contract, the contracting authority must publish a contract details notice. This applies to all notifiable below-threshold contracts, and not just those which require the publication of a below-threshold tender notice. Contracting authorities should note that this includes where a contracting authority has not published a below-threshold tender notice because it has only sought a quote from a single supplier and where a below-threshold contract has been awarded under a framework.
26. Section 88 mirrors the prompt payment provisions in section 68 (implied payment terms in public contracts) and 73 (implied payment terms in sub-contracts) that apply to public contracts. Further information on these is available in guidance on electronic invoicing and payment.

#### Below-threshold frameworks

27. It would be unusual, but not impossible, to award a below-threshold contract that is a framework ('below threshold framework'). The definition of a below-threshold contract in section 5 recognises this. Section 45(2) defines a framework as a contract between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers. A below-threshold framework is one where the estimated total value of contracts to be awarded under the framework is below the applicable threshold for that type of contract (see Schedule 3 for how to estimate the value of a framework). It may be more likely that below-threshold frameworks are awarded for works contracts where the threshold is much higher than for goods and services at £5,372,609 (and therefore the estimated value of contracts to be awarded under the framework is higher). If the contracting authority considers there is a possibility that a threshold may be exceeded they should award the framework as though it is an above-threshold framework.
28. When establishing a below-threshold framework, contracting authorities are still subject to the restriction on assessing supplier suitability to perform the contract set out in section 85. However, they may still address suitability in the procedure (as long as this is not a separate, initial stage to reduce the number of suppliers). Section 85(1), however, does not apply to the award of a below-threshold contract under a framework.

### Below-threshold contracts and dynamic markets

29. In order to be admitted to a dynamic market, suppliers must satisfy conditions for membership that assess their ability to perform the contracts to be awarded under the dynamic market. For below-threshold contracts, this is inconsistent with the prohibition in section 85(1) which prevents contracting authorities from applying a separate stage that assesses suppliers' suitability to perform a contract. As set out at paragraph 18 above, this prohibition does not apply to works contracts over the thresholds set out in section 85(3) (which are set at the same level as the thresholds for goods and services).
30. The Act only regulates dynamic markets established for the future award of public contracts and the award of those contracts. This does not mean that below-threshold works contracts above the thresholds set out in section 85(3) cannot be awarded under a dynamic market, but those awards are not regulated by the Act's provisions on dynamic markets. In those cases, the contracting authority should follow this guidance for notice requirements. (If awarding a contract under a dynamic market, contracting authorities may be required to publish a below-threshold tender notice and a contracts details notice (see paragraphs 35-42 below).)

### Modifying a below-threshold contract

31. Below-threshold contracts may be modified after the contract has been entered into without the same constraints on modifications that apply to public contracts in sections 74-77 of the Act.
32. However, section 74(1) of the Act introduces the concept of a 'convertible contract', which is a contract where the value of a modification will take the value of the contract after the modification over the relevant threshold amount in Schedule 1 of the Act, such that the contract will become a public contract. A modification to a convertible contract is only permitted under section 74. Following the modification of the convertible contract, the contract is subject to the provisions in the Act that govern public contracts, rather than the provisions specific to below-threshold contracts in Part 6. See guidance on contract modifications for more information.

### Unregulated below-threshold contracts

33. Section 84 provides that Part 6 does not apply to below-threshold contracts that are:
- a. exempted contracts;
  - b. utilities or concession contracts; or
  - c. procured by a school, by a transferred Northern Ireland authority<sup>2</sup> or under a transferred Northern Ireland procurement arrangement (see section 84(2)).

However, obligations elsewhere in the Act relating to 'procurement' will apply, such as those relating to the NPPS and relevant treaty state suppliers (see paragraph 14 above)

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<sup>2</sup> Unless the transferred Northern Ireland authority is carrying out a procurement under a reserved or devolved Welsh procurement arrangement, as defined in section 114 of the Act.

## What notices are linked to this aspect of the Act?

34. Pipeline notice A pipeline notice is required if a contracting authority considers that it will, in the coming financial year, pay more than £100 million under contracts for the supply of goods, services or works other than exempted contracts ('relevant contracts'). For the purpose of calculating whether a contracting authority will exceed the £100 million threshold, the calculation must include all payments that will be made under existing and future contracts. This includes payments under below-threshold contracts. Where a contracting authority is required to publish a pipeline notice, there is no requirement under the Act to include planned future awards of below-threshold contracts in that notice (because they are below the £2 million threshold for contracts that must be included). However, a contracting authority may include below-threshold contracts in the notice if it wishes and should particularly consider whether it would be useful to give early visibility to the market of upcoming below-threshold works contracts that are over £2 million.
35. Below threshold tender notice When a contracting authority intends to advertise a notifiable below-threshold contract (see paragraph 23), it must first publish a below-threshold tender notice on the central digital platform.
36. The below-threshold tender notice is a lighter touch version of the tender notice for covered procurement (although it will be accessed on the central digital platform through the standard tender notice). It must set out that the contracting authority intends to invite the submission of tenders and contain as a minimum the information set out at regulation 24, although contracting authorities may include additional information.
37. Whilst not set out in the regulations, a contracting authority may supplement the information in the below-threshold tender notice by including additional information in tender documents. Tender documents can be made available by the contracting authority in any way, for example at a portal/website address or via email. The information in the tender documents supplements and can duplicate information provided in the below-threshold tender notice. Tender documents could include information such as the specification, assessment methodology and terms and conditions of the contract.
38. Contracting authorities will need to ensure that the tender notice (and tender documents where applicable) provide suppliers with sufficient information to allow them to prepare a tender within the timeframes provided for in the tender notice.
39. Contract details notice If the contract is a notifiable below-threshold contract (see paragraph 23), the next notice required to be published is the contract details notice for below-threshold contracts. Because there is not always a requirement to publish a below-threshold tender notice, the contract details notice may sometimes be the first and only notice published in a procurement for a below-threshold contract.
40. The information to be included in a contract details notice for a below-threshold contract is less than that required under section 53 for public contracts and is set out in regulation 36.
41. Section 87(3) requires that the contract details notice must be published as soon as reasonably practicable after entering into a notifiable below-threshold contract. What is reasonably practicable will be a judgement for the contracting authority based upon the size, complexity and nature of each procurement but will usually mean:

- a. in the case of a contract to be awarded by a central government authority, within 30 days of the contract being entered into; or
  - b. otherwise, within 90 days of the contract being entered into.
42. This timeframe does not apply in the case of a below-threshold light touch contract, in which case the notice should be published within 120 days of the contract being entered into.
43. Contract change notice As set out in paragraph 32 above, when the value of a modification will take the value of a contract over the relevant threshold amount in Schedule 1 such that it will become a public contract, it is a convertible contract. A modification which will make the contract a public contract, and any subsequent modification to a convertible contract, is only permitted under section 74 and a contract change notice must be published in accordance with section 75.
44. Additional noticing information for contracts awarded under a dynamic market A contracting authority may award a below-threshold contract under a dynamic market where section 85(1) does not apply, for example, to award a works contract that is above the thresholds set out in section 85(3) (see paragraph 29). In doing so, the contracting authority may have to publish a below-threshold tender notice in line with the requirements for below-threshold tender notices set out in section 87 and regulation 24 (see paragraphs 23 and 35-38 above).
45. Although not a requirement of the regulations, authorities should specify in any below-threshold tender notice that the contract is being awarded by reference to a dynamic market (and the relevant part of the market, if appropriate) and the unique identifier of the dynamic market. Contracting authorities may choose to give suppliers the opportunity to join a dynamic market in order to participate in a procurement and, if doing so, should allow enough time for suppliers to become members.
46. Where the contract awarded is a notifiable below-threshold contract, the contracting authority is required to publish a contract details notice in accordance with section 87(3) and regulation 36 (see paragraphs 25 and 39-43). Although not a requirement of the regulations, in the contract details notice for a below-threshold contract awarded under a dynamic market, the contracting authority should also provide the unique identifier of the dynamic market.

**What other guidance is of particular relevance to this topic area?**

Guidance on thresholds

Guidance on valuation

Guidance on the publication of information and the central digital platform

Guidance on NPPS

Guidance on treaty state suppliers

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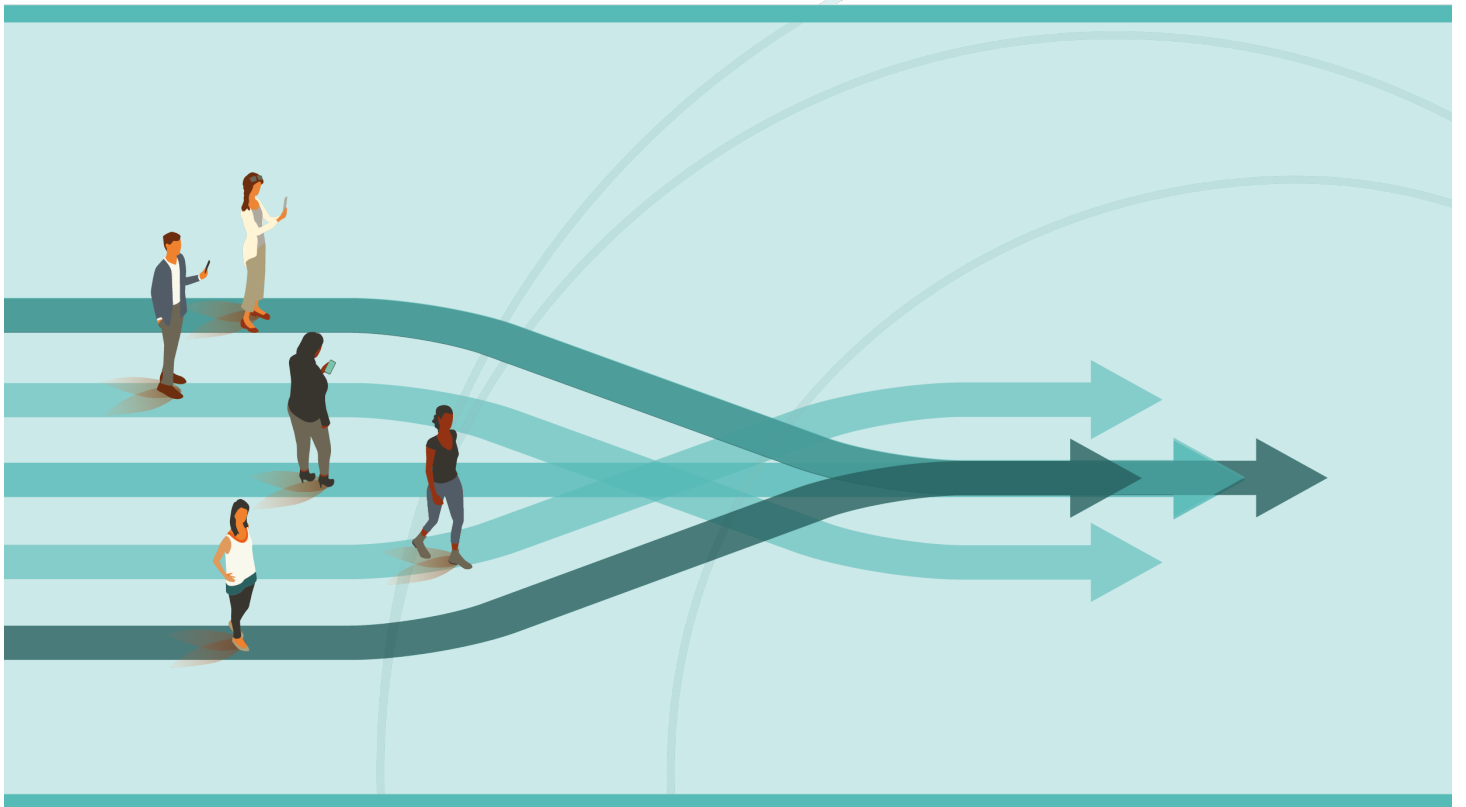




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Procurement Act 2023

# Guidance: Frameworks



November 2024

## **Guidance on Frameworks**

### **What are frameworks and open frameworks?**

1. The Procurement Act 2023 (Act) defines a framework as a: ‘contract between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers.’ (section 45(2)). This means that a framework sets out the provisions under which future contracts for the supply of goods, services and/or works are to be awarded.

The Act defines an open framework as a: ‘scheme of frameworks that provides for the award of successive frameworks on substantially the same terms’ (section 49(1)).

2. A framework that is above-threshold and not exempt is a public contract and is generally awarded following a competitive tendering procedure (see paragraph 8 below for directly awarded frameworks). Contracts awarded under a framework are referred to in this guidance as ‘call-off contracts’ and, unless otherwise stated, call-off contracts means call-off contracts that are public contracts. In most cases a framework will not commit a contracting authority to enter into a call-off contract, but it is possible that some do.

### **What is the legal framework that governs frameworks?**

3. Sections 45-49 of the Act explain what a framework is and set out the rules that govern both the framework itself and call-off contracts awarded under it. Sections 45, 46 and 48 generally apply to all frameworks; section 47 does not apply to open frameworks, frameworks awarded by private utilities and ‘light touch frameworks’ (see paragraph 69-71 for light touch frameworks); and section 49 applies only to open frameworks.

### **What has changed?**

4. The Act refers to ‘frameworks’ rather than ‘framework agreements’, as in the previous legislation, but otherwise they are generally similar. It also includes open frameworks, which did not previously exist, and which are more flexible than framework agreements under the previous legislation.
5. The Act provides that ‘conditions of participation’ can be applied as part of the process for award of a call-off contract and implies a term into every framework that a contracting authority is permitted to exclude a supplier that becomes an excluded or excludable supplier from participating in any selection process (which includes any selection process to award without further competition) for the award of a call-off contract.
6. Unlike under the previous legislation, contracting authorities must publish a contract award notice following the award of a call-off contract.

## **Key points and policy intent**

### Award of frameworks

7. Frameworks that are public contracts are most likely to be awarded following a competitive tendering procedure.
8. Contracting authorities are permitted to directly award a framework under sections 41 or 43, provided the framework is not an open framework (section 49(10)).
9. As frameworks are awarded either following a competitive tendering procedure or, where permitted, directly, the provisions in the Act relating to competitive tendering procedures and direct award generally apply to the award of a framework, for example, the requirement to publish a tender or transparency notice relating to the framework and provisions on excluded and excludable suppliers. The statutory duty at section 13(9) to have regard to any National Procurement Policy Statement (NPPS) also applies when awarding a framework.

### Third party frameworks and centralised procurement authorities

10. Contracting authorities can only award call-off contracts under a framework established by a contracting authority. This means that if, for example, a local authority wishes to use a framework established by a third party, that framework must have been set up by another contracting authority, such as a centralised procurement authority or another local authority. It is for the contracting authority to ensure that the framework under which it awards a call-off contract has been established by a contracting authority.
11. A centralised procurement authority is a contracting authority that differs from other contracting authorities in that it is in the 'business' of carrying out procurements for the benefit of other contracting authorities (section 1(4)). Contracting authorities can, in whole or part, delegate their obligation to carry out procurements to a centralised procurement authority, including where a centralised procurement authority establishes a framework for use by one or more other contracting authorities. This means that the centralised procurement authority is responsible for complying with the Act when setting up the framework. However, the contracting authority procuring under the framework will be responsible for complying with the Act when carrying out a procurement and awarding a call-off contract under the framework.
12. For example, a group of local authority contracting authorities could jointly create a special purpose vehicle (SPV) for the sole purpose of carrying out procurements for the authorities that established the SPV and other public bodies. As the SPV is in the business of carrying out procurements for the contracting authority members and other contracting authorities, it will be a centralised procurement authority. Another example of a centralised procurement authority is an organisation such as Crown Commercial Services, which is in the business of awarding large frameworks for use by a wide range of public authorities.
13. Where contracting authorities are not centralised procurement authorities and are acting on a more ad hoc basis to carry out procurements on behalf of other contracting authorities, including setting up frameworks that other contracting authorities can use, then contracting authorities cannot delegate any part of their obligation to comply with the Act and remain fully

liable for any unlawful award made by them as a consequence of the arrangement. In terms of frameworks established by a contracting authority for use by itself and other contracting authorities, this means that the contracting authority procuring under the framework must be satisfied that the framework itself complies with the Act as it will be liable both for compliance with the Act when establishing the framework and when carrying out a procurement and awarding a call-off contract under the framework.

14. The Act does not regulate entities that are not contracting authorities (for example private companies). If a contracting authority wishes to award a contract under a framework established by a person that is not a contracting authority ('third party frameworks'), the framework must have been set up in the name of a contracting authority or authorities; the non-contracting authority entity would have to be acting as the agent of the named contracting authority (or authorities) (the 'principal contracting authority') if it sets up and administers the framework.
15. In the case of a third party framework, it will be the principal contracting authority (or authorities) that is responsible for ensuring that the framework complies with the Act, as it will be acting as a centralised procurement authority. Principal contracting authorities should be aware of their liability as central procurement authorities for compliance of the framework with the Act.

#### Valuation

16. The estimated value of a framework must be included in the tender notice and the framework and must not be exceeded (but see paragraph 18 below). When estimating the value of a framework contract, Schedule 3, paragraph 2(1) requires the contracting authority to estimate the value of all call-off contracts to be awarded under the framework.
17. If a framework is divided into lots, regulation 18(2) requires a contracting authority to include the estimated values for each lot in the tender notice, if known. The contracting authority may also wish to include the estimated values for each lot in the framework itself although there is no requirement to do so. Where these are included in the tender notice or the framework, the individual lot estimates cannot be exceeded, although it may be permissible to amend the values included in a framework under section 74 (Modifying a public contract).
18. If the estimated value of the framework or, if relevant, an individual lot, is about to be exceeded the contracting authority may wish to consider whether it is possible to modify the framework to amend the estimated value under section 74.

#### Fees (section 45(7))

19. Section 45 provides that fees may be charged in respect of a framework but that they can only be charged to suppliers that have been awarded a call-off contract and must be set as a fixed percentage of the estimated value of the call-off contract awarded to the supplier. The reference to fees being a 'fixed' percentage means that the fees may not change during the lifetime of the framework.

20. It is not permissible to charge suppliers to gain access to a framework or any other fees associated with the management of the framework.
21. Fees can only be charged if the details are set out in the framework (section 45(7)) and the tender or transparency notice (regulations 20(2)(k) and 26(2)(w)).

#### Maximum framework terms

22. Except in relation to open frameworks (see paragraphs 35 and 44 below), the maximum term for a defence and security framework or a utilities framework is generally eight years and for all other frameworks four years (section 47(1)).
23. The maximum term does not apply where the contracting authority considers the nature of the goods, services, or works to be supplied under the call-off contracts to be awarded under the framework means that a longer term is required (section 47(2)).
24. An example of where it might be necessary to have a longer term than the maximum set out in section 47(1) is for large construction or infrastructure projects where a variety of call-off contracts are awarded under a framework throughout the life of a development. Contracts may need to be awarded, for example, for initial professional services, such as design, as well as for various aspects of the construction/development, which may be undertaken in phases, through to completion.
25. Another example might be if the framework required an upfront investment by a supplier to deliver the call-off contracts, for example an IT system development, and the return on that investment would require call-off contracts to be awarded over a longer term than the maximum term.
26. It may also be necessary for a framework to last longer than the maximum permitted term if the funding cycle for the project (i.e. the contracting authority's ability to pay for the project) exceeded the maximum term (assuming the development of the project to be provided under the framework was tied to the funding cycle).
27. Where a framework exceeds the maximum term, the contracting authority must publish the rationale for the longer term in the tender or transparency notice for the framework (section 47(3)).
28. The maximum terms set out in section 47(1) do not apply to a framework awarded under an open framework, a framework awarded by a private utility or a light touch framework (section 47(5)).
29. Call-off contracts may extend beyond the term of the framework.

#### Amendment to the maximum term

30. Once the framework has been awarded, it might be possible, relying on section 74, to extend the term of a framework, as with any other public contract. However, if a contracting authority amends the term so that the maximum 4/8 year term is then exceeded, section 47(2) still

applies and the extension must be justified under section 47(3). It is recommended that this justification is set out in the contract change notice.

### Open frameworks

31. Section 49(1) provides that an open framework is a scheme of successive frameworks awarded on substantially the same terms. The effect of section 49(9) is that 'substantially the same terms' requires there to be no substantial amendments to the tender or transparency notice for the successive frameworks in the scheme, this includes to the award criteria for the award of the framework. Section 49(9) refers to section 31 when considering whether the terms are substantially the same and means that the successive tender or transparency notice must allow the same suppliers to submit requests or tenders as did the original tender or transparency notice.
32. Whilst open frameworks are different from 'standard' frameworks, generally, the rules for standard frameworks apply equally to open frameworks, but there are some differences:
  - a. sections 45, 46 and 48 apply to all frameworks;
  - b. section 47 applies only to frameworks that are not open frameworks (although does not apply to frameworks awarded by private utilities and light touch frameworks); and
  - c. section 49 applies only to open frameworks.
33. Unlike a standard framework, with an open framework, new suppliers can be added when the framework is re-opened (see paragraphs 40-43 below).
34. Open frameworks will be particularly beneficial, for example, in markets where there are a large number of suppliers, to avoid some suppliers being locked out for long periods of time (as may be the case with standard frameworks), or in expanding markets where new entrants are expected.
35. Except where there is only one supplier on the open framework (see paragraph 44 below), an open framework must provide for the framework to be re-opened at least once in the first three years of its life and at least every five years thereafter, and to last 8 years in total (see section 49(2)). This means the first framework can last for a maximum of 3 years but subsequent frameworks can last for a maximum of 5 years each.
36. However, it is important to point out that this is the minimum number of times an open framework may be opened. An open framework could, for example, be re-opened annually for the whole of the 8 years.
37. The term of each framework in the scheme must be set out in each framework (section 45(5)(e)). Whilst it isn't expressly required by the Act or the regulations, it is recommended that the open framework sets out the indicative term of each framework in the scheme (i.e. when the framework is anticipated to be re-opened); this is to ensure transparency and to allow suppliers to understand how the open framework will operate, but at the same time it

gives some flexibility. Contracting authorities could also include options to extend one or more of the frameworks within the scheme if required, which would give additional flexibility.

38. For example a contracting authority could set out that it intends to re-open an open framework at the end of year 2 and at the end of year 6, but that both frameworks will include an option to extend each framework by a year. It would not be possible for the contracting authority to extend the first framework beyond the end of year 3 because of the requirement at section 49(2)(a)(i) for the framework to be opened within the first 3 years. This would mean that the first framework would be for a term of 2 years, with an option to extend to 3 years and the second framework would be for a term of 4 years, with an option to extend to 5 years. The contracting authority could decide at the time not to open the first framework at the end of year 2, as long as it did so at the end of year 3. If the option is not exercised for the first framework and the open framework is re-opened at the end of year 2, the second framework in the scheme could last 4 or 5 years, depending on whether the contracting authority exercised the option to extend the second framework. The final framework in the scheme would last 1 or 2 years, depending on whether the authority exercised the option in the second framework.
39. Section 49(2)(b) requires that an open framework must provide for the expiry of one framework on the award of the next framework in the scheme, although section 49(3) allows contracting authorities to make a provision in the open framework that any processes for the award of a call-off contract under the expired framework that have already commenced can continue following expiry of that framework. Contracting authorities should make it clear in the open framework whether this is to be the case.

#### Awarding frameworks to suppliers when re-opening the framework

40. Section 49(4) and section 49(5) set out how contracting authorities may award contracts to 'existing suppliers'. Section 49(8) provides that an existing supplier is a supplier that is party to a framework under an open framework - this reference to a framework under an open framework means the framework in existence immediately prior to the next framework in the scheme being awarded.
41. Section 49(4) provides that where a framework places no limit on the number of suppliers that can be party to the framework, an existing supplier can be appointed to the new framework based on, at its choice, one of the following:
  - a. the fact that the supplier has previously been awarded a framework in the scheme i.e. there is no requirement for the supplier to submit a new tender if it does not wish to update its offer. For this option to be available, as explained in paragraph 40, the supplier must be a party to the framework in existence immediately prior to the framework being awarded. Where the supplier chooses this option, the contracting authority does not re-assess the earlier tender and the supplier simply remains on the open framework;
  - b. the re-assessment of a tender relating to an earlier award; or
  - c. the assessment of a new tender relating to the new framework.

42. Section 49(5) provides that where the framework limits the number of suppliers that can be a party to the framework, an existing supplier can be appointed to the new framework based on, at its choice, either of the following:
  - a. the re-assessment of a tender relating to an earlier award; or
  - b. the assessment of a new tender relating to the new framework.
43. The contracting authority should set out the procedure for re-opening the open framework and awarding successive frameworks in the associated tender documents for the new framework to be awarded in the scheme. This should include the options available to and what is required of existing suppliers if they wish to participate in the award of the new framework. For example, setting out that they are required to formally declare on what basis they wish to participate, for example, based on the fact that they have previously been awarded a framework under the scheme (where relevant), whether they wish a tender relating to an earlier award to be assessed or whether they have submitted a new tender for assessment.

#### Single supplier open frameworks

44. Section 49(6) provides that if only one supplier is awarded a framework, the maximum term of the open framework is 4 years from the point at which the open framework becomes a single supplier framework, rather than 8 years from the date the first framework is awarded. This remains the case even if more than 1 supplier is awarded a subsequent framework in the scheme.
45. Set out below are two examples to show how clause 49(6) works in two different scenarios:
  - a. example 1: framework 1 awarded to a single supplier, framework 2 awarded to 3 suppliers. The open framework can only last 4 years from the date the framework is awarded to the supplier and framework 1 can last a maximum of 3 years as it is the first framework in the scheme (section 49(2)(a)(i)). If the framework is re-opened at the end of year 2 and 3 suppliers are appointed to framework 2, the open framework can still only last 4 years from the date framework 1 was awarded because it was initially awarded to a single supplier. This means the maximum time framework 2 can last is 2 years to ensure the open framework does not exceed 4 years in total;
  - b. example 2: framework 1 awarded to 3 suppliers, framework 2 awarded to a single supplier. If the framework is re-opened at the end of year 2 and only 1 supplier is awarded the framework, framework 2, and the open framework can now only last 4 years from the date framework 2 is awarded. This would mean the open framework could last a total of 6 years (the first 2 years under framework 1, plus 4 years under framework 2). Again, if more suppliers are awarded the framework if it is re-opened at a later date, the maximum term remains 6 years (i.e. 4 years from the commencement of the single supplier framework 2).



## Awarding call-off contracts

46. Section 45 expressly permits contracting authorities to award call-off contracts that are public contracts under frameworks.
47. Call-off contracts may be awarded with or without competition between suppliers on the framework. A 'competitive selection process' is used where contracting authorities carry out a competition for the award of a call-off contract (section 45(3) and section 46). The selection process for awarding call-off contracts must be set out in the framework (section 45(5)(d)). However, there is some flexibility in that whilst the selection process must be set out, the level of detail is not specified in the Act and this may be in high level or more detailed terms. For example, a contracting authority may provide that a framework allows contracting authorities using the framework to include conditions of participation (see paragraphs 56-60 below) to assess suppliers' technical ability to perform the contract as part of the competitive selection process for call-offs and leave it up to the contracting authorities to determine these, taking into account their own particular circumstances. Alternatively, the contracting authority may set out high level conditions of participation in the framework and allow contracting authorities using the framework to only add further detail to those already set out.
48. In a competitive selection process, any assessment of suppliers' proposals must be based only on some or all of the award criteria that were used to assess tenders when the framework was awarded. Section 46(9) allows for these criteria to be refined, for example, additional sub-criteria may be included or the criteria explained further.
49. Sections 45(3-4) provide that unless there is only one supplier on the framework, a contracting authority can only award a contract without competition when the framework sets out an objective mechanism for supplier selection and the core terms of the call-off contracts to be awarded. The core terms set out in the framework cannot be amended unless amended under section 74 and include, for example, deliverables (i.e. the basic requirements regarding what the supplier has to deliver under the call-off contract, such as compliance with the authority's requirements the supplier's framework tender, standards, policies and timeliness), warranties, charges and pricing mechanism, record keeping, indemnities, termination provisions, variation mechanism.
50. An objective mechanism for supplier selection may, for example, be a 'taxi-rank' system where call-off contracts are awarded on a rotational basis, or a 'highest ranking' system with a limitation on the number or value of call-off contracts to be awarded to any one supplier. Once the supplier submitting the highest ranking tender reaches the cap, the next call-off contract would be awarded to the supplier that submitted the next highest scoring tender.
51. Section 45(8) provides that a framework cannot be used to award:
  - a. another framework; or
  - b. a concession contract.
52. Section 13(10)(b)(i) provides that the statutory duty to have regard to the NPPS does not apply to contracts awarded under a framework. This does not preclude a contracting authority

from taking NPPS priorities into account when calling-off from a framework where it would be relevant and appropriate to do so.

#### What to look for when awarding call-off contracts under a third party framework

53. If a contracting authority wishes to award a call-off contract under a framework established by another contracting authority, it must ensure that the framework is suitable for the contract it intends to award. The contracting authority should in particular check that:
  - a. the framework has been established by a contracting authority (see paragraphs 10-15 above);
  - b. as relevant, a tender or transparency notice has been published;
  - c. the tender or transparency notice (where relevant) and framework:
    - i. clearly identify the contracting authority as one of those permitted to use the framework;
    - ii. include goods, services or works of a type to be awarded under the call-off contract;
    - iii. set out the other matters required by section 45(5) and regulation 20 or 26 (as relevant), such as the price payable, or mechanism for determining the price payable under the call-off contract and any selection process to be applied;
  - d. the total value of call-off contracts awarded under the framework to date does not exceed the estimated value of the framework as set out in the tender notice and framework.
54. Contracting authorities should understand the liability position for the framework, in particular where a framework has been established by another contracting authority in a manner described in paragraphs 11 and 13, or where a contracting authority is liable as principal for a third party framework as described in paragraph 15.
55. When awarding a call-off contract, the contracting authority must comply with the selection process set out in the framework, noting in particular when it is permissible to award a contract without following a competitive selection process.

#### Conditions of Participation

56. As stated above, the Act permits contracting authorities to include conditions of participation as part of a competitive selection process for the award of a call-off contract (section 46(1)).
57. A condition of participation in a competitive selection process is defined as a condition that a supplier must satisfy in order to be awarded a call-off contract (section 46(2)) and is similar to a condition of participation in a competitive tendering procedure (see section 22). For example, in a competitive selection process, there is a requirement that conditions of participation must be a proportionate means of ensuring that the suppliers on the framework have the legal and financial capacity and technical ability to perform the contract being

procured (section 46(1)), rules around what can be required to demonstrate legal and financial capacity (section 46(3)) and what proportionate means, which are similar to those in section 22. In addition, the definition of 'proportionate' in section 46(5) is the same as in section 22(5).

58. Any assessment of conditions of participation that are included as part of a competitive selection process under a framework is not legally a 'reassessment' of any conditions of participation that applied to the award of the framework. However, a condition of participation for the award of a call-off contract may include a requirement that the conditions of participation for the award of the framework must be met or may include some or all of the same conditions of participation. It may also include additional conditions that did not apply to the award of the framework, for example, bespoke insurance requirements relevant to the particular call-off contract to be awarded.
59. If the competitive selection process includes an assessment against conditions of participation, this must be set out in the framework (see section 45(5)(d)).
60. A contracting authority is not required to exclude suppliers that do not meet the conditions of participation from participating or progressing in a competitive selection process (section 46(7)), but the effect of section 46(2) is that the successful supplier must satisfy the conditions to be awarded the contract. This allows suppliers to continue in the process whilst at the same time working towards satisfying the conditions before award. Please see guidance on conditions of participation for more information.

#### Direct award

61. Direct award under sections 41 or 43 cannot be used to award a call-off contract under a framework and is unnecessary. In practice, if a direct award is permissible under the Act, the contracting authority may directly award a contract to any supplier, including to a supplier on a framework, outside of the selection process for the framework.

#### Excluding suppliers from participating in a selection process under a framework

62. Section 45(6) provides that a framework may not permit a contracting authority to award a call-off contract to an excluded supplier or prevent a contracting authority from requesting additional information from suppliers before awarding a call-off contract. This means that contracting authorities must consider whether suppliers are excluded suppliers before awarding a call-off contract, even though this will have been considered at the time the framework was awarded. Where the framework was set up by another contracting authority for use by other contracting authorities, the contracting authority awarding the call-off contract should check with the contracting authority responsible for the framework whether the supplier has become an excluded supplier since the award of the framework, although it should also consider this itself and check directly with the supplier.
63. Section 48(1) allows contracting authorities to exclude a supplier from participating in a selection process under a framework if it is an excluded supplier or becomes an excludable supplier. This is done by implying a term into every framework that the contracting authority may exclude a supplier on this basis.

64. Section 78 provides that there is an implied right in every public contract, which would include a framework that is a public contract, to terminate the contract on certain grounds (see guidance on contract termination). If a ground applies, and a framework has multiple suppliers, the contracting authority party to the framework can terminate the framework in respect of the relevant supplier only, without terminating the framework for every supplier. In this scenario, the contracting authority establishing the framework should publish a notice under section 78(2)(b) ('contract performance notice') to declare partial termination of the framework, and set out in the notice that the supplier has been removed from the framework to ensure that all contracting authorities who are permitted to use the framework are aware. (There is no requirement to publish a contract termination notice under section 80 in this scenario because the contract has not been terminated and continues for other suppliers and the contracting authority.)

#### Assessment summaries

65. Assessment summaries are not required to be provided to suppliers following the award of a call-off contract. However, contracting authorities are encouraged to provide them as a matter of best practice.

#### Below-threshold frameworks and contracts

66. The Act does not preclude the establishment of a framework for the award of only below-threshold contracts (referred to in this guidance as a 'below-threshold framework') but it would need to be considered carefully. Because of the prohibition in section 85(1) on contracting authorities restricting the submission of tenders for regulated below-threshold contracts<sup>1</sup> by reference to an assessment of a supplier's suitability to perform the contract, all tenders for the award of the below-threshold framework would have to be considered, with no ability to initially assess suppliers' suitability to perform the contracts to be awarded under the framework.
67. A contracting authority may choose to award a regulated below-threshold contract under a framework that is not a below-threshold framework. As the contract awarded under the framework is a below-threshold contract, this means that:
- a. contracting authorities are not obliged to publish any of the notices required for public contracts awarded under frameworks for the contract, though they may voluntarily do so; and
  - b. where relevant, contracting authorities will need to comply with the rules in Part 6 of the Act on below-threshold contracts (for example, section 87(3) requires a contract details notice if the contract is a notifiable below-threshold contract).

See guidance on below-threshold contracts for more information.

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<sup>1</sup> Section 84(1) provides that a regulated below-threshold contract is a below-threshold contract which is not an exempted contract, a concession contract, or a utilities contract

68. If a call-off contract is a mixed contract, where one or more elements of the contract are below-threshold, the call-off contract must be awarded in accordance with the provisions in the Act relating to frameworks and will generally be subject to the full requirements of the Act (i.e. not just those relevant to below-threshold contracts). See guidance on mixed procurement for more information.

#### Frameworks that are light touch contracts

69. Section 9(5) of the Act provides that the a reference in the Act to a light touch contract includes a framework that provides for the future award of contracts by a contracting authority to a supplier or suppliers that are either wholly or mainly for light touch services (referred to in this guidance as a 'light touch framework').
70. Generally, light touch frameworks are subject to the same rules in the Act that apply to other frameworks. For example, a light touch framework may not permit the award of a call-off contract to an excluded supplier (section 45(6)(a)). However, there are certain exceptions for light touch frameworks (see sections 45(9), 46(11) and 47(5)).
71. Where a framework that is not a light touch framework is used to award a light touch contract, no exemptions apply to the award of the light touch contract and the standard framework provisions in the Act must be followed. The sections 45(9), 46(11) and 47(5) do not apply.

#### Intra-UK considerations

72. The UK and Scottish Governments have agreed an approach to ensuring that contracting authorities in Scotland and the rest of the UK can work together. There are some instances where devolved Scottish authorities might want to award a call-off contract under a framework established under the Act and vice versa.
73. Both the UK and Scottish Governments will be laying secondary legislation to ensure that this can happen and this guidance will be updated when that occurs.

#### **What notices are linked to this aspect of the Act?**

##### Notices relevant to frameworks

74. Contracting authorities will need to comply with the Act's standard noticing provisions when setting up and managing a framework with the exceptions set out in paragraphs 75-78 below.
75. Pipeline notice A pipeline notice is required if a contracting authority considers that it will, in the coming financial year, pay more than £100 million under contracts for the supply of goods, services or works other than exempted contracts ('relevant contracts'). For the purpose of calculating whether a contracting authority will exceed the £100 million threshold, the calculation must include all payments that will be made under existing and future contracts. Whilst a framework is a contract, the value of a framework itself is not taken into account. This is because payments will not be made under the framework itself, but instead will be made under each relevant contract awarded under the framework. Where a contracting authority is required to publish a pipeline notice, there is no requirement under the Act to include planned

future awards of frameworks in the notice. However, a centralised procurement authority that is planning to establish a framework for use by other contracting authorities that is valued over £2 million should include the framework on its pipeline notice in order to provide early visibility to the market.

76. Tender notice Frameworks can be established under both the open and competitive flexible procedures. Tender notices for frameworks are generally the same as for other contracts, with some additional information. This additional information is set out in regulation 20(2), and is (in summary):
- a. details of the selection process to be applied on the award of call-off contracts;
  - b. the term (duration) of the framework and the reasons (where relevant) for awarding a framework with a term exceeding four or eight years in accordance with section 47(2) of the Act;
  - c. identification of all contracting authorities that may award call-off contracts under the framework during its term. This can be done either by listing the names of those authorities, or by describing categories of authorities, for example 'all local authorities within Norfolk', or 'all central government authorities as defined in the Procurement Act 2023', or 'all NHS Foundation Trusts';
  - d. whether the contracting authority intends to award the framework to a single supplier, a maximum number of suppliers (in which case, what the maximum number is), or an unlimited number of suppliers;
  - e. whether or not the framework provides for the charging of fees in accordance with section 45(7), and, if so, the fixed percentage of the estimated value of any contract awarded to the supplier in accordance with the framework and any other information needed in order to understand how fees will be charged;
  - f. whether the framework to be established is an open framework and if so, the estimated end date of the open framework; and
  - g. where the framework is awarded under an open framework, the unique identifier used in the procurement of the previous framework in the scheme (this is done in the same way as linking to an earlier notice in a procurement, for example, by looking up the notice in the contracting authority's systems or on the central digital platform).
77. Transparency notice This notice is generally used in place of a tender notice if a contracting authority intends to directly award a framework (it is not relevant for open frameworks as they cannot be directly awarded). The additional information required to be included in a transparency notice for the award of a framework is set out in regulation 26(2)(w) and is:
- a. the term of the framework;

- b. whether the framework will allow for fees to be charged to a supplier in accordance with the framework and, if so, details of the fixed percentage by which they will be charged in accordance with section 45(7); and
- c. the contracting authorities entitled to award contracts in accordance with the framework (whether by listing the names of those authorities or by describing categories of authorities).

78. Contract details notice This notice is required following the award of a framework. In addition to much of the information required to be included in a contract details notice for an open or competitive flexible procedure, it also requires the following additional information, which is set out in regulation 33:

- a. the contracting authorities entitled to award public contracts in accordance with the framework (whether by listing the names of those authorities or by describing categories of authorities);
- b. the term of the framework (section 47);
- c. whether the framework is awarded under an open framework, and if so, the estimated end date of the open framework;
- d. whether the framework was awarded:
  - i. following an open procedure;
  - ii. following a competitive flexible procedure; or
  - iii. directly, in accordance with section 41 or 43 of the Act;
- e. details of how the successive frameworks under an open framework will be awarded;
- f. whether the framework provides for fees to be charged to a supplier in accordance with the framework and, if so, details of the fixed percentage by which they will be charged in accordance with section 45(7);
- g. the price payable, or mechanism for determining the price payable, under a public contract awarded in accordance with the framework;
- h. details of the selection process to be applied on the award of a public contract in accordance with the framework; and
- i. where the framework is awarded under an open framework, the unique identifier used in the procurement of the previous framework in the scheme.

## Notices and other information relevant to call-off contracts

79. Contracting authorities will generally need to follow the Act's standard noticing provisions when awarding contracts under a framework. The following exceptions apply to noticing provisions for contracts awarded under a framework.
80. Pipeline notice Whilst not a requirement of the Act, contracting authorities are encouraged to include call-off contracts valued at over £2 million in their pipeline notices.
81. Preliminary market engagement notice Whilst the provisions on preliminary market engagement and preliminary market engagement notices in the Act do not apply when awarding a call-off contract, contracting authorities may, where relevant and appropriate, conduct preliminary market engagement and publish preliminary market engagement notices prior to awarding a contract in accordance with a framework.
82. Tender notice Tender notices are not published for call-off contracts.
83. Transparency notice Transparency notices are not relevant for call-off contracts.
84. Contract award notice Contract award notices are required for all call-off contracts, except for defence and security contracts awarded under a defence and security framework and direct award: user choice contracts awarded under Schedule 5, paragraph 15. The information requirements for contract award notices published by private utilities differ slightly from those required for other contracting authorities. See guidance on contract award notices and standstill for more information.
85. Assessment summaries A competitive selection process for the award of a call-off contract is not a competitive tendering procedure for the award of a contract under section 19. This means that the provisions on assessment summaries and mandatory standstill do not apply, although contracting authority may choose to provide assessment summaries and implement a voluntary standstill period.
86. Note that as the competitive selection process does not involve the assessment of tenders, (although it may require the assessment of suppliers' proposals in accordance with section 46(8)), there is no requirement to include in the contract award notice the information set out at regulation 27(2)(n) or (o) relating to unsuccessful suppliers.
87. Contract details notice Regulation 34 sets out the information to be included in a contract details notice published following the award of a call-off contract. Again, as for frameworks, much of the same information is required as is required for an open or competitive flexible procedure, plus the following additional information:
  - a. the unique identifier for the procurement of the framework in accordance with which the contract is being awarded;
  - b. whether the framework is a defence and security framework within the meaning given by section 47(4)(a) of the Act;



- c. where the framework is arranged by reference to lots, the distinct number given by the contracting authority to the lot under which the contract is being awarded;
  - d. details of which of the following procedures was used to award the public contract:
    - i. a competitive selection process for frameworks, or
    - ii. an award without further competition, and
  - e. if it is an award without further competition, an explanation of why the contracting authority considered that it applies by reference to section 45(4) of the Act.
88. Contracting authorities awarding a 'notifiable below-threshold contract' under a framework must publish a contract details notice containing the information set out in regulation 36 and, whilst not required under the Act, the notice should include information about the framework they are using.

**What other guidance is of particular relevance to this topic area?**

Guidance on conditions of participation

Guidance on competitive tendering procedures

Guidance on assessing competitive tenders

Guidance on direct award

Guidance on below-threshold contracts

Guidance on contract award notices and standstill

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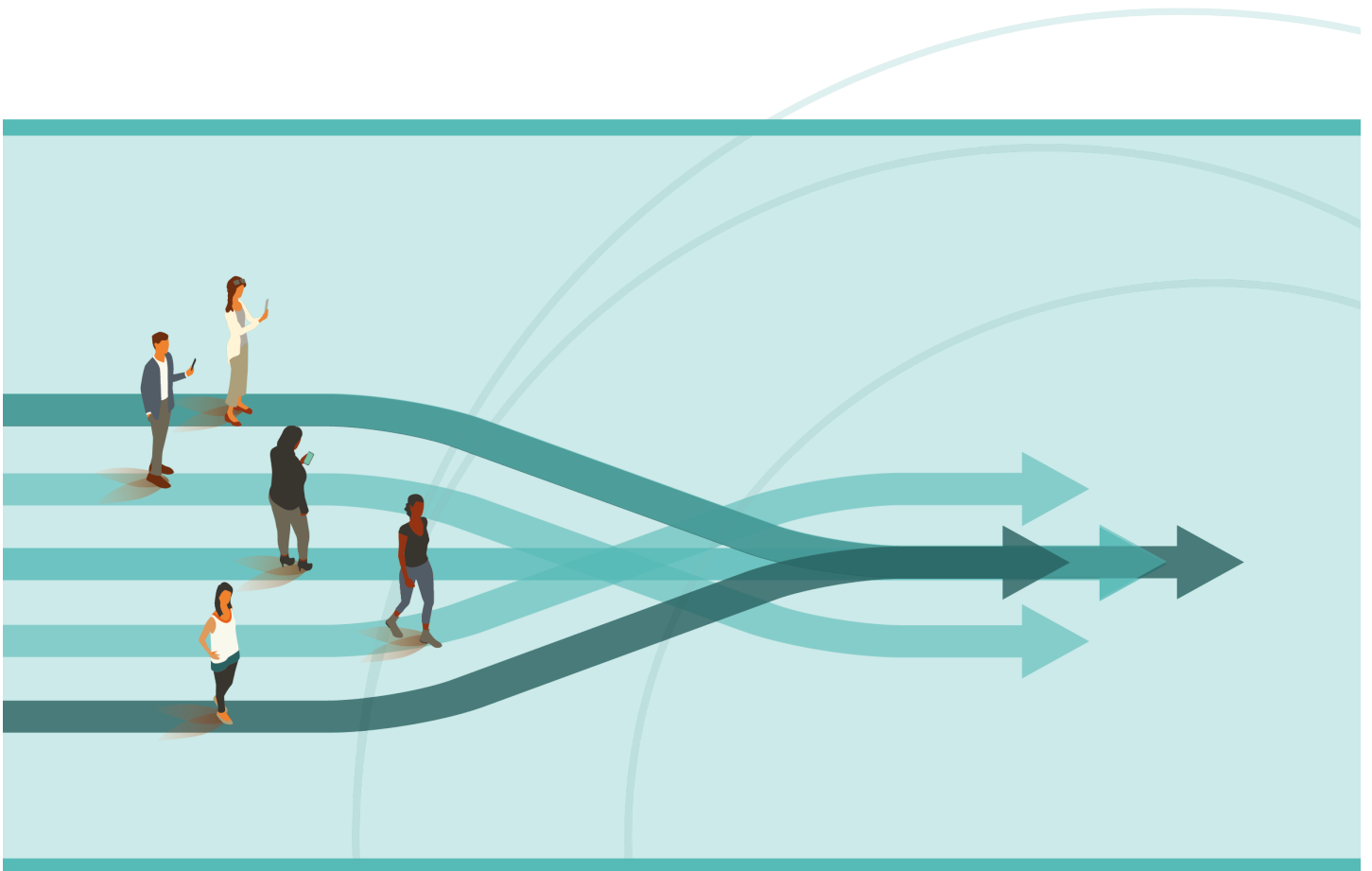
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Procurement Act 2023

# Guidance: Dynamic Markets



November 2024

## Guidance on Dynamic Markets

### What are dynamic markets?

1. A dynamic market under the Procurement Act 2023 (Act) is a list of qualified suppliers (i.e. suppliers who have met the 'conditions for membership' of the dynamic market (see paragraph 15 below)) who are eligible to participate in future procurements. A dynamic market may be split into categories (referred to as 'parts' in the Act), with suppliers only eligible to participate in the parts for which they have qualified. (In this guidance, references to a dynamic market include references to a part of a dynamic market.)
2. Dynamic markets are dynamic insofar as they must remain open to new suppliers to join at any time. Dynamic markets are available for all types of purchases of goods, services or works, other than those purchased under concession contracts unless the concession contract is also utilities contracts.
3. Dynamic markets can be established and used by all contracting authorities, and utilities can also establish and use utilities dynamic markets. Utilities dynamic markets are dynamic markets established only for the purpose of the award of utility contracts by utilities; so a public authority could not set up a utilities dynamic market for its own use if the goods, services or works to be provided under the dynamic market were not wholly or mainly for the purpose of a utility activity.
4. Aside from only being available for the award of utilities contracts and allowing for the award of concession contracts that are utilities contracts, where utilities dynamic markets differ most significantly from 'standard' dynamic markets is where they have been established under section 40 (Qualifying utilities dynamic market: no duty to publish a tender notice), by way of a qualifying utilities dynamic market notice. The differences for utilities dynamic markets established under section 40 are that:
  - a. the qualifying utilities dynamic market notice has a slightly different content requirement to notice establishing a standard dynamic market;
  - b. the tender notice inviting suppliers to tender for a procurement under a qualifying utilities dynamic market notice is also different from the tender notice under a standard dynamic market; and
  - c. when a procurement is commenced under a utilities dynamic market established by a qualifying utilities dynamic market notice, the tender notice is provided only to suppliers on the utilities dynamic market, it is not published.
5. This guidance does not fully deal with utilities dynamic markets. For more information, please see the guidance on utilities.

## **What is the legal framework that governs dynamic markets?**

6. Sections 34-40 of the Act deal with awarding contracts under dynamic markets. They set out matters such as the rules that apply when setting up a dynamic market, the procedure to be used for awarding a contract under a dynamic market and the rules governing fees relating to dynamic markets. Dynamic markets are also subject to wider provisions in the Act, such as section 12 (covered procurement: objectives) and section 13 (National Procurement Policy Statement (NPPS)). (The statutory requirement to have regard to the NPPS applies only to establishment of a dynamic market and not to contracts awarded under one, although contracting authorities using a dynamic market may choose to have regard to NPPS priorities where relevant and appropriate) Within these parameters, contracting authorities have flexibility in setting out how a dynamic market may be operated.

## **What has changed?**

7. The Act replaces dynamic purchasing systems and qualification systems with a single new 'commercial tool' called a dynamic market.
8. Dynamic markets have many of the features of the current dynamic purchasing systems and qualification systems, but have been developed to better suit the needs of contracting authorities and utilities and to add clarity.
9. The scope of what could be purchased using a dynamic purchasing system under the previous legislation has been expanded beyond commonly used purchases generally available on the market so that now contracting authorities could choose to undertake any procurement through a dynamic market.

## **Key points and policy intent**

10. Section 34 allows contracting authorities to award a contract under an 'appropriate dynamic market', provided the competitive flexible procedure is used. (An appropriate dynamic market is one which covers the goods, services or works that the contracting authority wishes to purchase.) This means that neither the open procedure nor direct award can be used to award a contract under a dynamic market, although in the case of direct award, there is no prohibition on awarding a contract to a supplier that is on a dynamic market, the contract just isn't awarded by reference to the market. Admittance to a dynamic market does not (unlike the award of a framework) amount to the award of a public contract.
11. When procuring a contract under a dynamic market, a contracting authority must exclude suppliers that are not members of the dynamic market from participating or progressing in the competitive flexible procedure and must not award a contract to a supplier that is not a member of the relevant dynamic market. However, if a supplier has submitted a request to participate or a tender in respect of a procurement under a dynamic market but it is not a member of the relevant market, it can submit an application for membership of the market. The contracting authority must consider this application before excluding the supplier or disregarding the request or tender on the basis that the supplier is not a member of the dynamic market. This allows suppliers who are not on the dynamic market at the time a

tender notice for a procurement is published to still participate in that procurement if they are successful in their application for membership of the dynamic market. The obligation to consider the application for membership does not apply if there are exceptional circumstances arising from the complexity of the particular procurement which mean that the contracting authority has insufficient time to consider the application before the relevant deadline.

12. In order to effectively manage the requirement to consider applications for membership, contracting authorities may want to state in the dynamic market notice, the documents establishing the dynamic market, the tender notice or the associated tender documents for the relevant procurement (as relevant in the circumstances), a date by which applications to join the dynamic market must be submitted to ensure that there is sufficient time to consider them before the deadline for requests or tenders.
13. Concession contracts, other than those which are also utilities contracts, cannot be awarded under dynamic markets.

#### Establishment and membership of dynamic markets

14. The documents establishing (or modifying) a dynamic market are not a contract for the purpose of the Act. This means that the rules in the Act regarding the award (or modification) of contracts do not apply when establishing (or modifying) a dynamic market, although other obligations do apply, such as those in Part 2 of the Act.
15. Conditions for membership of a dynamic market are similar to conditions for participation used in the award of a public contract (see section 22 (Conditions of participation) and guidance on conditions of participation). Like conditions of participation, conditions for membership must be a proportionate way of assessing suppliers' legal and financial capacity or technical ability to perform contracts.
16. As with conditions of participation, the Act sets out rules to apply when setting conditions for membership of a dynamic market. This is to ensure that suppliers are not put at an unfair advantage or disadvantage with respect to such matters and can, in particular, support small and medium-sized enterprises who wish to tender for public contracts.
17. In terms of legal and financial capacity, contracting authorities must not require the provision of audited annual accounts from suppliers that are not required by the Companies Act 2006, or an overseas equivalent, to have their accounts audited; or to require insurance relating to the performance of the contract to be in place before award of the contract. These provisions allow suppliers that are not required to have their accounts audited to provide alternative evidence of financial capacity and allows suppliers to commit to having insurance in place at the time of the award of the contract.
18. In terms of technical ability, contracting authorities cannot require suppliers to have been awarded a contract by a particular contracting authority, break the rules on technical specifications in section 56 (technical specifications) or require particular qualifications without allowing for equivalents.

19. In considering whether a condition for membership is proportionate, contracting authorities must take into account the nature, complexity and cost of contracts to be awarded under the dynamic market.
20. A contracting authority may require evidence that is verifiable by a third party to satisfy a condition for membership of a dynamic market, for example, certification to an ISO standard.
21. Setting conditions for membership for admittance to a dynamic market is an assessment of suitability that is prohibited by section 85(1) for the award of regulated below-threshold contracts. More information can be found in the guidance on below-threshold contracts.
22. Contracting authorities establishing a dynamic market must:
  - a. accept applications for membership at any time;
  - b. consider applications within a reasonable period of time;
  - c. admit suppliers to the dynamic market (as long as they are not excluded suppliers and they meet the conditions for membership) as soon as reasonably practicable;
  - d. consider whether to admit suppliers that are excludable suppliers and that meet the conditions for membership; and
  - e. inform suppliers of the outcome of their applications, and the reasons for the decision, as soon as reasonably practicable.
23. The number of suppliers on a dynamic market cannot be limited and the conditions for membership of a dynamic market cannot be modified during the life of the dynamic market. The conditions for membership must remain consistent throughout the life of the dynamic market to ensure fairness to all suppliers.

#### Removing members from a dynamic market

24. Contracting authorities are required to remove a supplier from a dynamic market where the supplier is an excluded supplier under section 57(1)(b). (See guidance on debarment for more information.)
25. Contracting authorities have a discretion to remove a supplier from a dynamic market where:
  - a. the supplier is an excluded supplier under section 57(1)(a) (Meaning of excluded and excludable supplier);
  - b. the supplier does not meet the conditions for membership of the dynamic market;
  - c. the supplier has become an excludable supplier since joining the dynamic market; or
  - d. the contracting authority has become aware that the supplier was an excludable supplier when it was admitted to the dynamic market and so could have been excluded at that point.
26. Before removing a supplier from a dynamic market, the contracting authority must inform the supplier that it is being removed, and the reasons for its removal.

27. The supplier can reapply for membership of the dynamic market if it can subsequently demonstrate that it now satisfies the conditions for membership or is no longer an excluded or excludable supplier.

#### Dynamic markets: fees

28. Section 38 provides that fees may be charged to suppliers on a dynamic market provided they are set out in the documents establishing the dynamic market. This applies to dynamic markets and utilities dynamic markets, although the basis of charging is different for each, as set out in the section. The regulations require that fees and information relating to the fees are set out in the tender notice, which would satisfy this requirement, although contracting authorities may want to set this out in the associated tender documents also.
29. For a dynamic market that is not a utilities dynamic market, fees can only be charged to suppliers that are awarded a contract under the dynamic market, i.e. not for membership of the dynamic market. Such fees can only be a fixed percentage of the estimated value of the contract awarded to the supplier under the dynamic market.

#### **What are the primary notices linked to this aspect of the Act?**

##### Noticing requirements for the establishment and management of a dynamic market

30. As a dynamic market is not a public contract, the usual notices do not apply when a contracting authority is establishing or modifying a dynamic market or when the market ceases to operate. Notices relating specifically to a dynamic market are called 'dynamic market notices'.
31. Section 39 provides that dynamic market notices must be published at various stages, as set out below in paragraphs 33-36. Each dynamic market notice must cover only one dynamic market. If a contracting authority is setting up more than one dynamic market, it will need to publish dynamic market notices for each dynamic market.
32. A contracting authority planning to establish a dynamic market is not required to include the dynamic market in its assessment of whether it is obliged to publish a pipeline notice, or include the dynamic market in the pipeline notice itself. However, contracting authorities are permitted to publish a preliminary market engagement notice and/or planned procurement notice in respect of the establishment of a dynamic market, should they wish to do so. For the avoidance of doubt, the use of a planned procurement notice prior to the establishment of a dynamic market does not reduce the tendering period for contracts awarded under the dynamic market.

##### Stage 1: Dynamic market intention notice

33. Regulation 25(2) sets out the information required to be included in a notice to be published under section 39(2) ('dynamic market intention notice') before a dynamic market is established. This includes:



- a. information about the goods, services or works that may be procured under the dynamic market
- b. information establishing how the dynamic market will operate and any technical requirements;
- c. conditions for membership of the dynamic market and how applications can be made to join the dynamic market;
- d. information about the charging of fees under the dynamic market; and
- e. identification of the authorities (contracting authorities or persons) who are permitted to use the dynamic market.

The information provided in this notice should be sufficient to enable suppliers to determine whether they meet the conditions for membership and can decide whether they wish to apply to join the dynamic market.

#### Stage 2: Dynamic market establishment notice

34. Regulation 25(4) sets out the information required to be included in a notice published under section 39(3) ('dynamic market establishment notice'). This notice must be published as soon as reasonably practicable after the dynamic market has been established and includes:
- a. the date the dynamic market was established;
  - b. details of the suppliers who have been admitted to the dynamic market; and
  - c. where the dynamic market has been divided into parts, the part to which each supplier has been admitted.

#### Stage 3: Dynamic market modification notice

35. Regulation 25(6) sets out the information required to be included in a notice published under section 39(4) ('dynamic market modification notice'). This notice must be published as soon as reasonably practicable after the dynamic market has been established and includes:
- a. the date from which the modification has effect;
  - b. if the list of suppliers on the dynamic market is being amended, details of any supplier being added or removed. It is important to ensure the list of members of the dynamic market is kept up to date to ensure that the information available publicly about suppliers that are on the dynamic market is available to contracting authorities considering using the dynamic market; and
  - c. a summary explaining any other modifications being made. This should be sufficiently detailed to allow interested parties to identify the nature and scope of the modification to the dynamic market that is being made. For example, whether the modification is to add a new part to the dynamic market or new specifications for goods that can be procured under the dynamic market.

#### Stage 4: Dynamic market cessation notice

36. Regulation 25(8) sets out the information to be included in a notice published under section 39(5) (dynamic market cessation notice'). This notice must be published as soon as reasonably practicable after the dynamic market ceases to operate and comprises basic administrative information and the date on which the dynamic market ceased to operate.

#### Noticing requirements for the award of public contracts under a dynamic market

37. Where contracts awarded under dynamic markets are public contracts, the provisions relating to transparency and noticing for competitive flexible procedures generally apply. This means that if a contracting authority intends to award any contracts under a dynamic market, it will need to include the expenditure it anticipates to incur on those contracts when considering if it will spend over £100 million on relevant contracts (which includes below-threshold contracts) in the coming financial year and include contracts over £2 million to be awarded under a dynamic market in the pipeline notice itself.
38. Where a contracting authority has published a planned procurement notice for a contract to be awarded under a dynamic market, the reduction in the tendering period to 10 days provided for in section 54(4) is not relevant (as the minimum tendering period is already 10 days (unless a negotiated tendering period applies)).
39. A tender notice is required to advertise a procurement under a dynamic market. Whilst regulation 21(2) requires that the tender notice includes a statement that the contract will be awarded by reference to suppliers' membership of a dynamic market, contracting authorities should also consider making it clear in the notice or associated tender documents that being a member of the dynamic market is a requirement of the procurement. This helps to ensure that suppliers are aware that they must be members of the dynamic market in order to participate in the procurement and may encourage suppliers to apply for membership.
40. Contracting authorities are not required to observe a mandatory standstill period when awarding a contract under a dynamic market but may choose to apply a voluntary standstill. See the guidance on contract award notices and standstill for more information.

#### **What other guidance is of particular relevance to this topic area?**

Guidance on conditions of participation

Guidance on competitive tendering procedures

Guidance on assessing competitive tenders

Guidance on contract award notices and standstill

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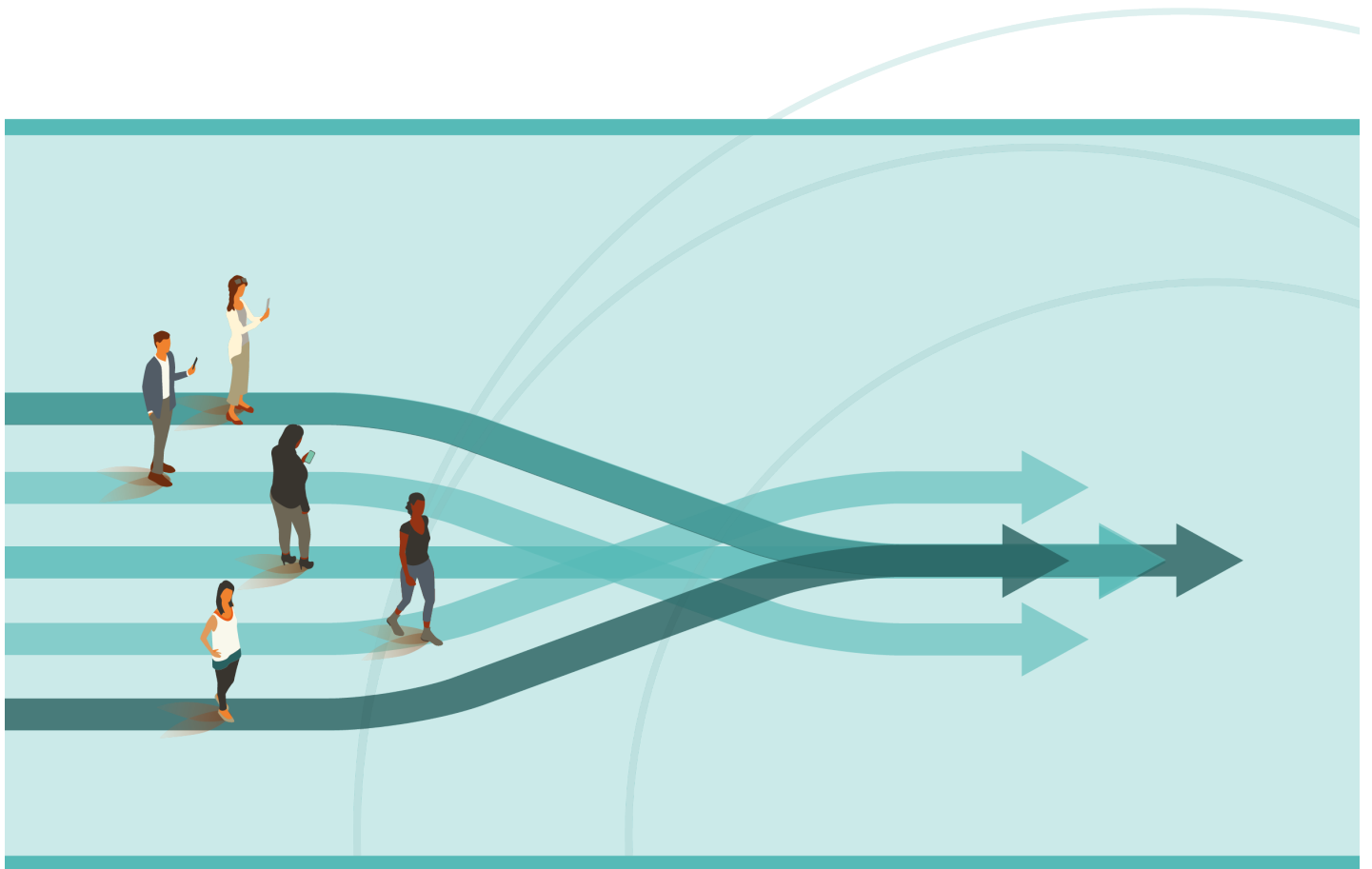
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# Guidance: Lots



## **Guidance on Lots**

### **What are lots?**

1. Lots are a way to split a larger single procurement into smaller 'chunks' which are then procured under separate contracts with different suppliers (some suppliers may be successful in more than one lot and may be awarded more than one contract). There are potentially significant benefits of doing this, including risk reduction in the supply chain (for example, by having multiple suppliers for a similar service in different geographical areas or multiple sources for a particular good or service reducing the risk of supplier failure) and maintaining the long-term viability and diversity of the supply market through the award of a higher number of contracts.
2. Additionally, using lots might encourage small and medium-sized enterprises (SMEs) to bid; for example, they may find it easier to tender for or deliver smaller contracts, or smaller parts of larger contracts. This can support innovation, value for money, economic growth and potential expansion of the supplier base for that market.

### **What is the legal framework that governs lots?**

3. The Procurement Act 2023 (Act) makes provisions in relation to lots at section 18 (Duty to consider lots), section 20 (Competitive tendering procedures) and section 23 (Award Criteria). These are supported by various provisions in the regulations.

### **What has changed?**

4. The duty to consider using lots is now also applicable to defence and security contracts, which was not the case in the Defence and Security Contract Regulations 2011.
5. The requirement to consider lots is strengthened by the specific SME duty at section 12 of the Act because, as mentioned above, the use of lots is likely to be of particular benefit to SMEs and may serve to reduce some of the barriers mentioned in section 12(4).
6. Contracting authorities are required by the Act to provide information related to the use (or otherwise) of lots as applicable in the Act's new transparency notices as set out in the regulations. This includes the tender notice, the contract award notice and the contract details notice.
7. There is no longer specific detailed provision on the valuation of contracts that are to be split into lots (such as those at regulation 6(11-15) of the Procurement Contracts Regulations 2015) but this change is not intended to have a practical effect: contracts must still be valued by aggregating the total value of all the lots, as the provisions at Schedule 3, paragraph 4 make clear.

## Key points and policy intent

8. Before publishing a tender notice for a public contract, the contracting authority is required by section 18 of the Act to consider whether the goods, works or services could reasonably be supplied under more than one contract and if these contracts could appropriately be awarded by reference to lots.
9. Lots might be particularly useful for commodity purchases or for straightforward service contracts. An example of the latter could be where a contracting authority is looking to put in place provision for cleaning services at different sites across the country. The requirements for each site are similar in nature; they all require office and window cleaning services, but there are variances for different locations, for example, enhanced security, catering cleans and additional gym cleaning for certain sites. As office cleaning is a generic service with a large number of suppliers able to deliver the service, the initial plan may be to award a single contract for all sites to a large nationwide supplier in order to benefit from economies of scale and secure value for money. However, the contracting authority may also want to consider other factors such as supporting SMEs or ensuring resilience across the supply chain to avoid over-dependency on one supplier. This may mean that choosing to divide the procurement into lots based on geographical area is a more appropriate solution, allowing smaller suppliers to better compete against larger suppliers where only one location is involved and at the same time improving resilience in the supply chain.
10. That said, section 18 provides that even if the procurement could reasonably be split into lots, it does not have to be split if the contracting authority can provide reasons for not doing so.
11. Section 18 does not prescribe a list of reasons contracting authorities could rely upon as their rationale for not using lots; any such reasons will be procurement-specific. The contracting authority must, however, have regard to the procurement objectives in section 12 when determining their reasons for not using lots. Of particular relevance are the objectives related to delivering value for money and acting and being seen to act with integrity. In addition, section 12(4) requires contracting authorities to have regard to the fact that SMEs may face barriers to participation and consider whether such barriers can be removed or reduced. Dividing a procurement into lots may be one way of reducing or removing any such barriers.
12. Possible reasons for choosing not to split the procurement into lots may include where this could increase technical risk to delivery of the requirement or where having different suppliers could undermine the contract liability and/or management or make the requirement disproportionately expensive to manage. It may be helpful to use pre-market engagement to test the market and understand the supplier base which may inform the decision on the appropriateness of dividing the contract into lots.
13. In terms of providing reasons for not splitting a procurement into lots, for contracts other than light touch contracts and utilities contracts, regulations 18(2)(q) and 19(2)(a)) require that these are set out in the tender notice. For light touch contracts and utilities contracts the reasons may be included in the tender notice or the contracting authority may keep its own record.

14. Section 20(7), allows contracting authority running a competitive tendering procedure to limit the number of lots any one supplier can tender for. If the contracting authority intends to do this they must state the maximum number in the tender notice,
15. The contracting authority will set out in the tender notice (and if applicable supplemented by the tender documents) the award criteria for each lot. Provided that the tender satisfies the contracting authority's requirements, the award criteria will determine which lots will be awarded to a supplier based on the most advantageous tender per lot.
16. The contracting authority may decide that it wants to limit the number of lots one supplier can be awarded, in which case, the maximum number of lots and the criteria by which it will be decided which of the lots a supplier will be awarded must be set out in the tender notice and/or associated tender documents. The contracting authority must state in the tender notice or associated tender documents if it wants to include options such as to combine lots into a single contract if a supplier wins multiple lots.
17. If a contracting authority does not receive any suitable requests to participate or tenders for one of the lots, it may switch to direct award for that lot (only) in accordance with section 43. It may also choose to decide not to award a contract for one or more separate lots for any reason; in which case this decision must be recorded in the 'ceased lots' field in the contract award notice. In both circumstances, other lots may be awarded competitively as intended.

#### **What notices are linked to this aspect of the Act?**

18. Tender notice This is the key notice with regard to lots; the regulations require the contracting authority to state in the notice whether or not the contract will be split into lots. If it is, the contracting authority must also provide information related to the lots to be awarded. This will include information such as: a description of each lot and whether a supplier may only submit a tender for or be awarded a maximum number of lots (and, if so, the maximum number). As stated above, for contracts other than utilities and light touch contracts, the tender notice must contain the reasons for not splitting the contract into lots where it would be reasonable and appropriate to do so
19. Contract award notice A contracting authority must publish a contract award notice before entering into a public contract, which would include a public contract awarded for a lot. Regulation 27 sets out the information that must be included in the contract award notice, which includes information about the public contract to be awarded, including information relating to any lot. The contracting authority may wish to publish a single contract award notice for a number of lots, for example if more than one lot was awarded to a single supplier or if multiple lots are being awarded at the same time.
20. If a contracting authority decides that it no longer wishes to award a lot, it must use the 'ceased lots' field in the contract award notice to let the market know that this is the case.
21. Prior to the contract award notice being published, contracting authorities must provide an assessment summary to all suppliers that submitted an assessed tender for the lot (see the guidance on assessment summaries for more information).

22. Contract details notice The contracting authority must publish a contract details notice for each public contract. Regulation 32(2)(j) includes requirements in relation to lots that must be included in that notice, where relevant, including a description of the goods, services or works which will be supplied under the lot and the estimated value of each lot.

**What other guidance is of particular relevance to this topic area?**

Guidance on covered procurement objectives

Guidance on preliminary market engagement

Guidance on valuation

Guidance on competitive tendering procedures

Guidance on assessing competitive tenders

Guidance on assessment summaries

Guidance on the contract award notice and standstill

Guidance on the contract details notice



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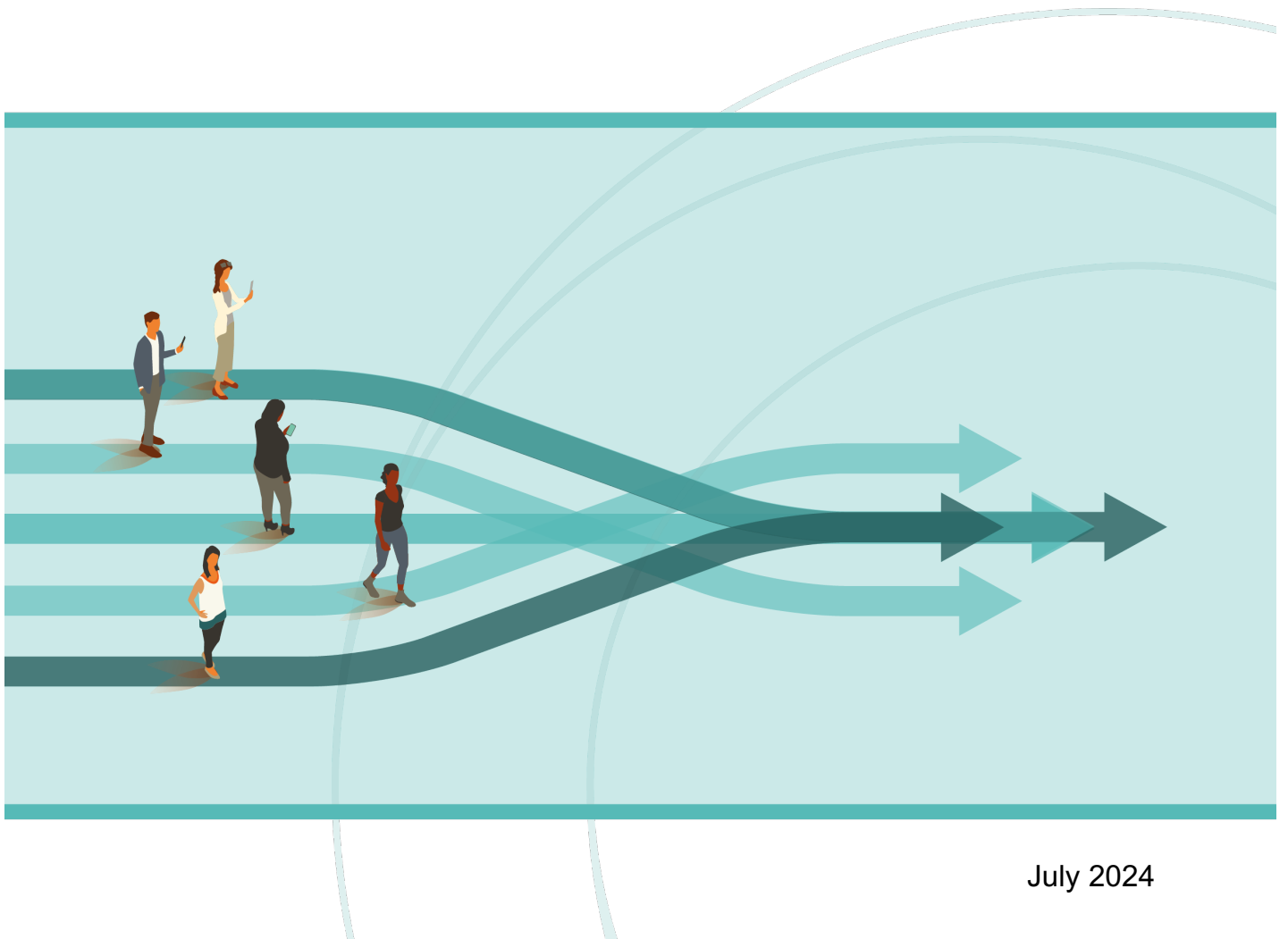
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Procurement Act 2023

# Guidance: Treaty State Suppliers



July 2024

# Guidance on Treaty State Suppliers

## What are treaty state suppliers?

1. Section 89 of the Procurement Act 2023 (Act) defines a 'treaty state supplier' as a supplier that is entitled to the benefits of an international agreement specified in Schedule 9 of the Act.
2. The benefit for treaty state suppliers is that they cannot be discriminated against by contracting authorities (section 90). Treaty state suppliers have the same rights and, under section 100, access to remedies under the Act as 'UK suppliers' (see paragraph 14 below) for procurements covered by the relevant international agreement. This non-discrimination requirement has the effect of increasing the competitive pool of suppliers interested in participating in a procurement, driving better value for money.

## What is the legal framework that governs treaty state suppliers?

3. Part 7 of the Act establishes the rights that are accorded to treaty state suppliers under the Act. This Part is generally<sup>1</sup> only relevant to the procurement of public contracts (contracts that are for pecuniary interest, above-threshold and non-exempted contracts) and does not prevent below-threshold contracts being reserved to UK-based suppliers only or UK-based suppliers in a particular region or county of the UK. (See guidance on below-threshold contracts for more information.)
4. Section 89 sets out the definition of a treaty state supplier.
5. Schedule 9 sets out the international agreements which confer treaty state supplier status.
6. Section 90 provides that, when carrying out a procurement, a contracting authority may not discriminate against a treaty state supplier and it sets out what would constitute discriminating against a treaty state supplier.
7. Section 100 (duties under this Act enforceable by civil proceedings) provides that the duties imposed on contracting authorities by Parts 1 to 5, 7 and 8 are owed to UK and treaty state suppliers (see paragraph 18 below).

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<sup>1</sup> The UK-EU Trade and Co-operation Agreement extends the non-discrimination obligation to the procurement of any contract and not just public contracts. At Article 288 it prohibits the UK from adopting a measure that would discriminate against suppliers from the EU that are established in the UK (and vice versa). There are exceptions to this for NHS clinical healthcare services (as defined), and procurements that are subject to the national security and general exceptions.

## What has changed?

8. The Act uses the term 'treaty state supplier', setting out a definition of the term and providing that contracting authorities cannot discriminate against such suppliers when carrying out a procurement. This replicates the position in the previous legislation. The Act makes it clear that contracting authorities may disregard requests or tenders submitted by suppliers that are not treaty state suppliers (i.e. suppliers from countries with which the UK does not have a relevant international agreement).

## Key points and policy intent

9. The Act implements the UK's international obligations on public procurement by reflecting those obligations in its provisions and providing that contracting authorities must not discriminate against treaty state suppliers. A contracting authority complying with the Act will automatically be compliant with those international obligations.
10. Generally, the UK operates an open procurement regime<sup>2</sup>; this means that, subject to the provisions on excluded or excludable suppliers, contracting authorities should accept requests or tenders from both UK and overseas suppliers. The Act does permit contracting authorities to decide not to award a contract to a non-treaty state supplier (section 19(3)(b)) or to exclude non-treaty state suppliers from participating in a competitive flexible procedure (section 20(5)(c) and (d)). However, in order to ensure open competition and drive value for money, contracting authorities should think carefully before doing so. Before disregarding such a tender or excluding such a supplier, a contracting authority would need to assure itself that the supplier in question is not a treaty state supplier or is not proposing to provide goods, services or works that are covered by an international agreement. A contracting authority should only need to consider whether a supplier is a treaty state supplier or not if there is a good value for money reason to do so (for example, if this might impact the supplier's effectiveness to deliver the goods, service or works).

### Treaty state suppliers: non-discrimination

11. Contracting authorities must not discriminate against treaty state suppliers. Section 90(2) provides that a contracting authority discriminates against a treaty state supplier if it treats the supplier less favourably than a UK supplier or another treaty state supplier based on the supplier's association with its treaty state or lack of association with the UK or another treaty state. Section 90(4) provides that this is also the case where the supplier supplies goods, services or works that originate in a 'treaty state', which is defined as a state, territory or organisation of states or territories that is a party to an international agreement set out in Schedule 9. This would be the case regardless of whether the supplier supplying those goods, services or works is a UK supplier, the relevant treaty state supplier or any other supplier. This applies throughout the procurement.
12. Section 90(3) provides that when considering whether a treaty state supplier is treated less favourably, the relevant comparison is between the way that treaty state supplier is treated

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<sup>2</sup> The position for defence and security procurement is covered later in the guidance.

compared to a UK or other treaty state supplier in circumstances which are not materially different.

13. A supplier is a treaty state supplier only to the extent that it is entitled to the benefits of an international agreement specified in Schedule 9 in relation to the procurement being carried out or challenged. This means that a supplier may be a treaty state supplier for some procurements and not others. A supplier is only a treaty state supplier if it comes from a country that has an international agreement with the UK that covers the contracting authority carrying out the procurement, the goods, services or works being procured and the provisions of the Act in question are within scope of that agreement.
14. Section 90(7) defines a UK supplier as a supplier established in, or controlled or mainly funded from, the UK or a British Overseas Territory or a Crown Dependency, and is not a treaty state supplier.
15. The international agreements specified in Schedule 9 have a procurement chapter. Within the chapter, in most cases, there is a market access schedule that sets out which entities (i.e. central government authorities, sub-central authorities and utilities), goods, services, works (referred to as 'construction services') and exceptions are applicable to the agreement. In terms of operation, Schedule 9 will be updated as required to reflect the removal or amendment of any international agreement or to add new agreements.
16. Contracting authorities are able to check if their procurement is covered by any of the international agreements listed in Schedule 9. These agreements are all publicly available online at this [link](#) and there are exemptions, for example, for healthcare services, research and development services and broadcasting content and time.
17. Section 100 provides that the duty to comply with section 90 is enforceable in civil proceedings under the Act. This means that a treaty state supplier will have the same access to remedies under the Act to challenge a procurement covered by the relevant international agreement as a UK supplier. UK suppliers will have reciprocal access to remedies in procurement markets of treaty states. Under section 65 of the Act, treaty state (and UK) suppliers can also appeal to the court in relation to debarment decisions of a Minister of the Crown, for example, to add the supplier's name to the debarment list.
18. A supplier that is not a UK or treaty state supplier is not able to bring civil proceedings against a contracting authority under the Act but may raise a complaint directly with the contracting authority or with the new Procurement Review Unit.
19. As set out in paragraph 10, the Act does permit contracting authorities carrying out a competitive flexible procedure to exclude non-treaty state suppliers (section 20(5)(c)) or disregard a tender from a non-treaty state supplier (section 19(3)(b)(i)) in a competitive tendering procedure. Contracting authorities carrying out a competitive flexible procedure can also exclude suppliers that intend to sub-contract the performance of all or part of the contract to a non-UK or non-treaty state supplier (section 20(5)(d)) or decide not to award a contract to such a supplier (section 19(3)(b)(ii)).

### Retaliatory measures

20. If a party to an international agreement does not comply with its obligations under that agreement, the other party may, subject to the terms of the agreement, be entitled to implement practical retaliatory measures or, if it is the party in breach, implement compensatory measures. Section 92 provides that regulations may be made where this arises as a result of a procurement-related dispute under an international agreement specified in Schedule 9. Retaliatory measures may be, for example, making regulations to remove market access to particular goods or services for treaty state suppliers from a country that is in breach. This power can only be used to make provision relating to procurement. It also requires Parliamentary approval.

### National Security Unit for Procurement

21. The contracting authority should seek advice from the National Security Unit for Procurement in the Cabinet Office if there are any national security concerns relating to a prospective supplier. For more information, please see the guidance published by the Unit which aims to support contracting authorities to effectively engage and make referrals to exclude or debar a supplier on national security grounds.

### Defence and security provisions in international agreements

22. Procurements for defence and security contracts listed at section 7(1)(a) to (f) are not covered by the international agreements in Schedule 9, so the right for suppliers to participate in these procurements under the Act is therefore only guaranteed to suppliers from the UK, Crown Dependencies and British Overseas Territories.
23. Contracting authorities awarding such defence and security contracts therefore have the discretion to disregard suppliers, including treaty state suppliers, outside the UK, Crown Dependencies and British Overseas Territories and extend this to the sub-contracting of all or part of the performance of the contract to such suppliers. They are, of course, able to include suppliers outside of the UK, Crown Dependencies and British Overseas Territories in their procurements where doing so would best meet the requirement and offer best value for money.
24. For defence and security contracts listed at Section 7(1)(g) and other contracts awarded by defence authorities, contracting authorities need to check the coverage of the international agreements listed in Schedule 9 as treaty state suppliers may have rights to participate in these procurements.

**What other guidance is of particular relevance to this topic area?**

Guidance on covered procurement objectives

Guidance on below-threshold contracts

Guidance on exclusions

Guidance on award rules

Guidance on remedies

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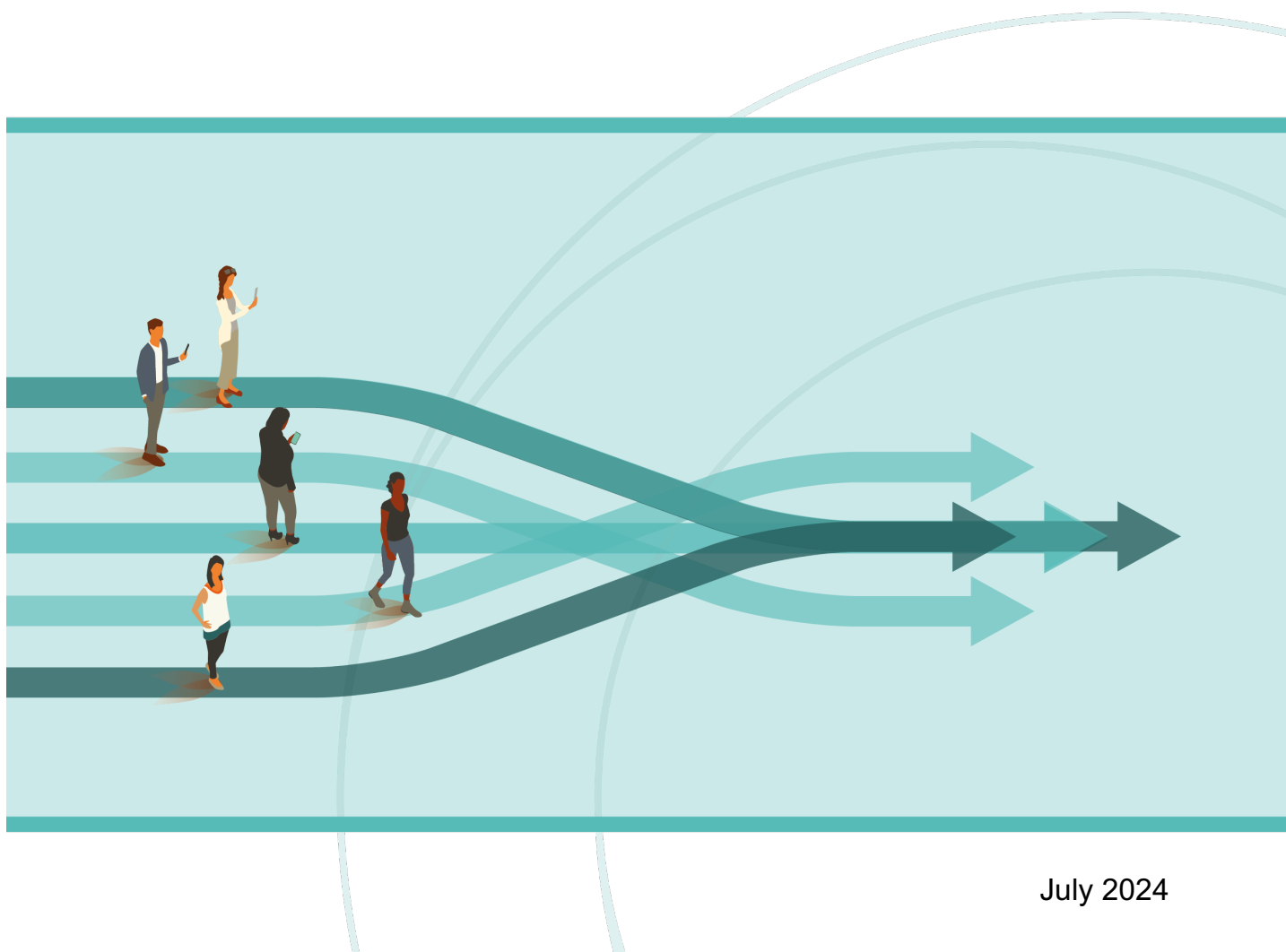




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Procurement Act 2023

# Guidance: Conflicts of Interest



July 2024

# Guidance on Conflicts of Interest

## What are conflicts of interest?

1. The Procurement Act 2023 (Act) requires contracting authorities, when carrying out a 'covered procurement', to have regard to a number of objectives, which include acting, and being seen to act, with integrity (section 12(1)(d) of the Act). The integrity of a procurement may be compromised if it is influenced by external or private interests. Alongside the procurement objectives, the Act includes specific provisions dealing with conflicts of interest when carrying out a covered procurement (Part 5 of the Act).
2. A conflict of interest arises in a procurement context where there is a conflict between the interests of a person acting in relation to a procurement and those of the procurement itself.
3. Conflicts of interest need to be managed effectively to ensure that the public can trust contracting authorities to carry out public procurement responsibly and impartially. It also helps to encourage suppliers to participate in procurements, providing confidence that they will be treated fairly and that there will be genuine competition. When conflicts of interest are not identified and effectively mitigated, there can be far-reaching consequences. It can lead to accusations of fraud, bribery and corruption, legal challenges and the undermining of public confidence in the integrity of public institutions.
4. The Act requires contracting authorities to identify and keep under review actual and potential conflicts of interest. They must also mitigate conflicts of interest and address circumstances which the contracting authority considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest ('perceived conflict of interest').
5. This guidance provides an explanation of the provisions in the Act and advice for contracting authorities on how to comply with the Act. Further guidance on managing conflicts of interest in procurements is also planned to be published, which will replace the conflicts content in the guidance accompanying Procurement Policy Note 04/21: Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing.

## What is the legal framework that governs conflicts of interest?

6. The provisions in the Act relating to conflicts of interest, and therefore this guidance, apply to any covered procurement. The main provisions on conflicts of interest are set out in sections 81-83.
7. The requirements in the Act sit alongside other considerations, such as:
  - a. prosecution for fraud, bribery, corruption through abuse of position or misconduct in public office if conflicts are not managed appropriately;
  - b. the fact that bias or apparent bias in decision making could be grounds for judicial review;

- c. public office-holders being subject to the Seven Principles of Public Life (the Nolan Principles) and various ethical codes of standards (for example, the Civil Service code, Civil Service management code, the Ministerial Code and business appointment rules); and
- d. other relevant internal business or organisational rules.

### **What has changed?**

- 8. The Act retains the basic nature of the obligations from the previous legislation<sup>1</sup>, but strengthens the requirements with some important changes. For defence and security contracts, the inclusion of provisions on conflicts of interest is new. The Act retains an approach based on principles rather than prescriptive rules, but there are some important changes:
  - a. The Act introduces a requirement for contracting authorities to formally prepare a conflicts assessment and to publicly confirm that this has been done and that it has been reviewed and revised as necessary. The Public Contracts Regulations 2015 (PCR), Utilities Contracts Regulations 2015 and Concession Contracts Regulations 2016 required contracting authorities to take appropriate steps to identify conflicts of interest and, for contracts procured under the PCR, regulation 84(1)(i) required the inclusion of any conflicts of interest detected and subsequent measures taken in the procurement report. The Act goes further in formalising this with greater transparency and record-keeping.
  - b. Under the Act it is mandatory to exclude a supplier from the procurement where a conflict of interest puts the supplier at an unfair advantage if steps cannot be taken to avoid that advantage or the supplier refuses to take any necessary steps. Regulation 57(8)(e) of the PCR included a discretionary exclusion ground when the conflict could not be effectively remedied by other, less intrusive, means, although contracting authorities may, in certain circumstances, have chosen to exclude suppliers in order to ensure compliance with equal treatment. (This was not included in other previous legislation.)
  - c. The Act clarifies that Ministers may have a conflict of interest. This is because Ministers can have an influence on procurement decisions. By specifying Ministers in the Act, it helps ensure that conflicts of interests are considered at all levels. Ministers, of course, will not be involved in every procurement.
  - d. The Act provides that suppliers may be required to take certain steps to mitigate a conflict of interest and will be excluded if they refuse to do so. This is because suppliers are expected to meet the highest standards of integrity in the supply and

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<sup>1</sup> See regulations 24 and 84 of the Public Contracts Regulations 2015 (PCR), regulation 42 of the Utilities Contracts Regulation 2015, and regulation 35 of the Concession Contracts Regulations 2016.

delivery of goods, services and works and to operate with openness and transparency.

- e. The Act makes it clear that managing conflicts of interest is required throughout the procurement lifecycle. It begins at the planning stage, prior to the publication of a tender or transparency notice, or a dynamic market notice establishing a dynamic market, and continues throughout the procurement for the contract and management of the contract or dynamic market through to the end of the contract or dynamic market.

## **Key points and policy intent**

### Identifying conflicts of interest

9. Section 81(1) of the Act provides that contracting authorities must take all reasonable steps to identify, and keep under review, in relation to a procurement, any conflicts of interest, or potential conflicts of interest. Contracting authorities must also be aware of their obligations in relation to perceived conflicts of interest (see paragraph 20 below).
10. A 'conflict of interest' arises where there is an actual conflict of interest. For example, where a person assessing tenders in a procurement owns shares in a supplier that has submitted a tender. A 'potential conflict of interest' exists where a conflict of interest will arise in future if certain circumstances occur. For example, the spouse of someone who will be assessing tenders is the CEO of a business that is in the process of acquiring ownership of another company, and that company has recently submitted a tender. Section 81(4) defines an 'interest' as including a personal, professional or financial interest that may be direct or indirect.
11. The persons in respect of whom conflicts, or potential conflicts should be considered are:
  - a. a person acting for or on behalf of the contracting authority in relation to the procurement; and,
  - b. a Minister acting in relation to the procurement.
12. A person acts 'in relation to' the procurement (and therefore should be considered) if they are in a position to influence a decision made by or on behalf of a contracting authority.
13. The following are examples of persons who may act in relation to a procurement and who may therefore be relevant when considering conflicts of interest: the senior responsible officer, the budget holder, the commercial director, members of the management board, commercial staff, people who will assess tenders, external experts, private sector secondees and consultants, non-executive board members, special advisers, private office employees and, as set out in section 81(2)(b), Ministers.
14. The Act does not set out the specific steps that contracting authorities must take to identify a conflict or potential conflict of interests and this may vary depending on the circumstances. For example, it might be appropriate to take further steps in relation to individuals closely

involved with the procurement and with a greater ability to influence its outcome. Contracting authorities may, for example:

- a. require individuals to complete a conflicts of interest declaration specific to the procurement;
- b. check pre-existing conflicts of interest declarations to see if they contain any relevant interests;
- c. check existing public declarations or registers. This could be particularly relevant for Ministers; and
- d. confirm with individuals and/or teams for the forthcoming procurement whether there are any relevant interests and if there are, requiring mitigation steps.

#### Mitigating conflicts

15. Section 82 of the Act provides that contracting authorities must take all reasonable steps to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage in relation to a procurement. If a conflict of interest puts a supplier at an unfair advantage and this cannot be avoided, or the supplier refuses to take the steps required by the contracting authority to avoid it, the supplier must, in relation to the procurement:

- a. be treated as an excluded supplier for the purpose of assessing tenders under section 19 or directly awarding a contract under sections 41<sup>2</sup> or 43; and
- b. not be allowed to participate or progress in any competitive tendering procedure.

16. Contracting authorities will need to consider what steps are reasonable to take under section 82(1) on a case by case basis, taking into account the nature of the conflict of interest, how it could impact an individual's duties and how it might impact the procurement. Examples of steps which might mitigate a conflict of interest are:

- a. reassigning individuals with a conflict or potential conflict of interest away from situations where they can influence decisions;
- b. providing for more than one person to assess tenders and carrying out and recording moderation meetings;
- c. cancelling and re-running the procurement;
- d. including an independent observer in the procurement team;

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<sup>2</sup> In exceptional circumstances, section 41 allows a contracting authority to award a public contract directly to an excluded supplier if it considers there is an overriding public interest in doing so. In this scenario a contracting authority must still take all reasonable steps to mitigate the conflict of interest and comply with section 83 in relation to a conflicts assessment.

- e. ensuring that management with appropriate oversight is aware of the conflict of interest and that they review and sign-off outputs from the individual;
  - f. monitoring the situation and having checkpoints to review whether it has led to an unfair advantage or disadvantage for a supplier; and
  - g. sharing procurement and process information with all relevant suppliers in a timely manner and at the same time.
17. Contracting authorities may employ or engage individuals with a variety of career experience, external interests and networks which can be beneficial to the contracting authority and its commercial activities. The duty to mitigate conflicts of interest does not mean that a person cannot have legitimate private interests. Instead, contracting authorities must take all reasonable steps to ensure that the legitimate private interest of the person are balanced with the need to ensure that decision making operates in the interests of the procurement rather than the private interests, for example, ensuring that a conflict of interest does not lead to a supplier having an unfair advantage or disadvantage.
18. Section 82(2) provides that the steps taken by contracting authorities to mitigate a conflict of interest can include a contracting authority requiring a supplier to take reasonable steps. For example, if a consultancy firm is advising the contracting authority on a procurement, the contracting authority could require a supplier not to use the same company to assist with its tender. It is in the interests of the supplier to comply with any requirement to take reasonable steps, otherwise the supplier must be treated as an excluded supplier and excluded from the procurement if the conflict of interest cannot otherwise be avoided (see paragraph 15 above (section 82(3) and (4)).

#### Conflicts assessments

19. Section 83(1) provides that a conflicts assessment must be prepared before publishing a tender or transparency notice or dynamic market notice relating to the establishment of a dynamic market.
20. A conflicts assessment is a record to be kept by the contracting authority which must include (as required by section 83(3)) details of the conflicts or potential conflicts of interest identified and any steps taken, or to be taken, to mitigate them. Section 83(4) requires that if a perceived conflict of interest exists, the contracting authority must also include in the conflicts assessment details of any steps that the contracting authority has taken or will take to demonstrate that a conflict or potential conflict does not exist. As set out at paragraph 4, a perceived conflict of interest is where there are circumstances which the contracting authority considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest. Contracting authorities should be mindful, in carrying out a procurement, how circumstances might appear to others, even if they consider there are no conflicts or potential conflicts of interest. Compliance with this obligation will help contracting authorities to allay any concerns that a conflict exists when it does not.
21. Conflicts assessments will need to be handled in accordance with relevant data protection legislation. Whilst the Act allows for the structure and format of the conflicts assessment to be

governed by the contracting authority, it would be good practice and would help demonstrate compliance with section 83(3) to include the following information:

- a. individuals and/or teams relevant to the procurement and their roles;
- b. how individuals/teams are relevant to the procurement;
- c. whether the required conflicts of interest information or declaration has been received;
- d. whether any actual, potential or perceived conflicts have been identified (and the details of the conflict);
- e. mitigation steps;
- f. whether, following any mitigation, a supplier remains at an unfair advantage or disadvantage; and
- g. when the conflicts assessment was last reviewed and the next planned review.

22. Sections 83(5) and 83(6) provide that until the the contracting authority has (as relevant) given notice of its decision not to award a contract or published a contract termination notice in relation to the procurement or a dynamic market notice in relation to the market ceasing to operate<sup>3</sup>, it must, in relation to the conflicts assessment:

- a. keep it under review;
- b. revise it as necessary; and
- c. when publishing any 'relevant notice', confirm that it has been prepared and revised in accordance with section 83. This does not mean that the actual conflicts assessment must be published, just confirmation that it has been prepared and revised. Section 83(8) provides that the relevant notices are:
  - i. a tender notice;
  - ii. a transparency notice;
  - iii. a dynamic market notice in relation to the establishment of a dynamic market;<sup>4</sup>
  - iv. a contract details notice relating to a public contract; or

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<sup>3</sup> For private utilities, reflecting that certain notice requirements do not apply to them, section 83(7) sets out equivalent circumstances.

<sup>4</sup> There is no obligation under the Act for contracting authorities to include confirmation that a conflicts assessment has been prepared and revised when a dynamic market is modified. However, contracting authorities establishing and operating the dynamic market must still keep any conflicts assessment under review and revise the assessment as necessary.

v. a contract change notice.

23. Whilst other notices (for example a preliminary market engagement notice or contract award notice) could be used by contracting authorities as a prompt to review their conflicts assessment, there is no requirement under the Act to confirm in such notices that the assessment has been prepared and revised.

24. It is good practice for contracting authorities to set a time to audit their conflicts assessments to confirm they are up to date. In addition to a planned review, the conflicts assessment should be updated when there are key changes in personnel or the contract (for example, where a contract is amended and a contract change notice is not required). This is particularly relevant where, after the contract is entered into, the contracting authority reassigns the responsibility for the contract from a procurement team to a contract management or operations team.

#### Below-threshold procurements

25. The conflicts of interest provisions in the Act do not apply to below-threshold procurements. However, the underlying principles are nonetheless likely to be relevant and appropriate. Contracting authorities and individuals involved in below-threshold procurements will still be liable to, for example, prosecution for fraud, bribery, corruption through abuse of position or misconduct in public office if conflicts are not managed appropriately. Relevant public service codes and internal business rules must still be upheld. A proportionate approach to conflicts of interests assessment is therefore good practice in below-threshold procurements.

#### **What other guidance is of particular relevance to this topic area?**

Guidance on covered procurement objectives

Guidance on publication of information

#### **Where can I go for more information or training?**

[Civil Service Code](#)

[Civil Service Management Code](#)

[Civil Service Business Appointment Rules](#)

[Ministerial Code](#)

[The Seven Principles of Public Life](#)



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## **11.3 Procure**

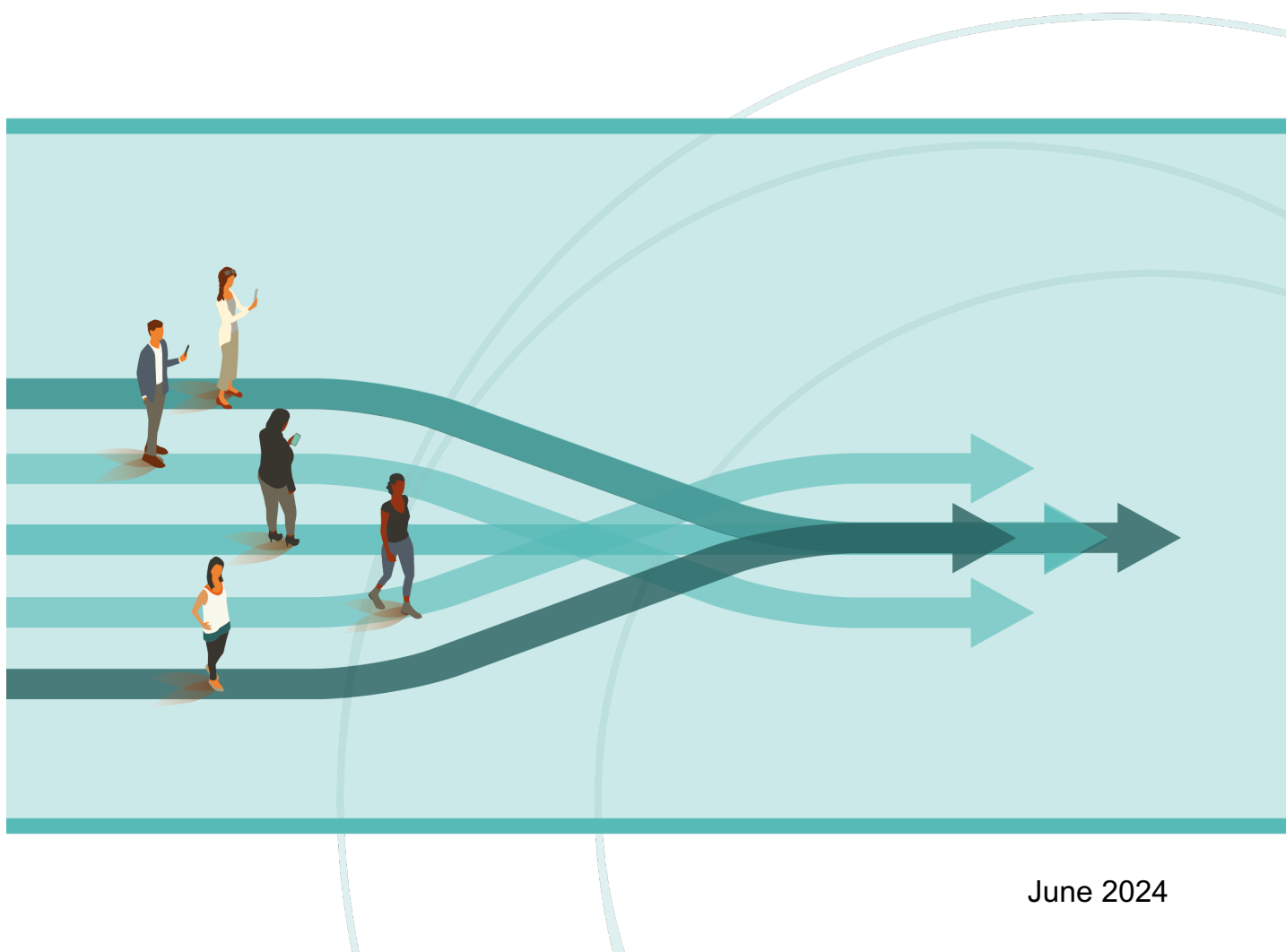
- 11.3.1 Publication of Information and the Central Digital Platform (Published)
- 11.3.2 Time Periods (Published)
- 11.3.3 Conditions of Participation (Published)
- 11.3.4 Exclusions (Published)
- 11.3.5 Debarment (Published)
- 11.3.6 Assessing Competitive Tenders (Published)
- 11.3.7 Electronic Communications (Published)
- 11.3.8 Modifying a Competitive Procurement (Published)
- 11.3.9 Procurement Termination Notices (Published)
- 11.3.10 Assessment Summaries (Published)
- 11.3.11 Contract Award Notices and Standstill (Published)
- 11.3.12 Contract Details Notices and Contract Documents (Published)
- 11.3.13 Oversight (Published)
- 11.3.14 Remedies (Published)



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Procurement Act 2023

# Guidance: Modifying a Competitive Procurement



June 2024

## Guidance on Modifying a Competitive Procurement

### What are modifications to a competitive procurement and why is it important to regulate them?

1. During the course of a competitive tendering procedure it may be necessary to make amendments or clarifications to information in the tender notice or associated tender documents to deal with circumstances that were not anticipated.
2. Modifications during a procedure may be necessary for a number of reasons. For example, it could be that a supplier has raised a clarification question which requires an amendment to the associated tender documents or something was omitted from the tender notice. Any modifications must be made in accordance with section 31.

### What is the legal framework that governs modifications during a procurement?

3. Section 31 (Modifying a section 19 procurement).
4. Section 54 (Time limits).

### What has changed?

5. The previous legislation allows suppliers to request information before submitting their tender but does not make specific provision for modifications during a procurement. The contracting authority must provide this information a set time period before tenders are to be submitted. The Act makes specific provision in section 31 which sets out when the terms of a covered procurement may be modified, the extent of those modifications and how suppliers must be notified of those changes.

### Key points and policy intent

6. Section 31 provides that a contracting authority may, provided the section is complied with, make changes to the 'terms of a covered procurement', which is defined in section 31(7) as 'anything set out in a tender notice or associated tender documents, including any requirements of a competitive tendering procedure, conditions of participation or award criteria'. Modifications may be made under section 31 in two scenarios, as set out below.

#### Modifications to a procurement prior to submission of requests to participate or first/only tenders

7. Section 31(1) sets out when a contracting authority is permitted to make any changes to the terms of a covered procurement:
  - a. in an open procedure, changes are permitted before the deadline for submitting tenders<sup>1</sup>;

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<sup>1</sup> In an open procedure, as the tender notice is the invitation to submit a tender, a modification can only be made prior to the end of the tendering period when tenders must be submitted.

- b. in a competitive flexible procedure, changes are permitted:
  - i. before the deadline for submitting a request to participate; or
  - ii. where there has been no invitation to submit such requests, the deadline for submitting the first or only tender.
- 8. This allows for changes in the early stage of the procedure when suppliers have not yet submitted a tender or request to participate. If a contracting authority wishes to modify the procurement in these circumstances, the tender notice and any associated tender documents affected by the modification must be updated and republished or provided again (section 31(5)) and the contracting authority must consider the time limits (see paragraph 15 below). This allows all interested suppliers to see the revised information and decide whether they wish to submit a request to participate or a tender in light of the modification.
- 9. The Act strikes an appropriate balance between permitting changes to the terms of a covered procurement and allowing suppliers sufficient time to consider the modification and prepare their requests/tenders.

Modifications to a procurement after submission of requests to participate or first tenders in a competitive flexible procedure

- 10. Once a competitive flexible procedure is in progress, i.e. once a contracting authority has received requests to participate or has received initial tenders, there is still scope to modify the terms of a procurement, as long as the relevant requirements out in section 31 are met. Under section 31(2), contracting authorities are permitted to make modifications prior to the deadline for submitting final tenders for assessment under section 19, but limits any changes to those that are not 'substantial' (unless the procurement relates to the award of a light touch contract: see paragraph 14 below).
- 11. A modification is 'substantial' if:
  - a. it would permit suppliers that are not 'participating suppliers' to submit a tender; or
  - b. the contracting authority considers that, had the modification been reflected in the tender notice or associated tender documents before a deadline referred in section 31(1)(b) had passed (see paragraph 7(b) above):
    - i. one or more participating suppliers would not be a participating supplier; or
    - ii. one or more suppliers that are not participating suppliers would be a participating supplier.

A participating supplier is a supplier that has submitted a request to participate in, or has submitted a tender as part of, the competitive tendering procedure, and has not been excluded.

12. As an example, a change to a condition of participation would be a substantial modification if it would have had an impact on which suppliers were invited to submit tenders and which did not progress any further in the procurement. To illustrate, a contracting authority publishes a tender notice for a two-stage competitive flexible procedure and sets a condition of participation in the tender notice that requires suppliers to meet a particular technical standard in order to progress in the procedure. Following submission of requests to participate, the contracting authority changes the condition of participation to a different technical standard. Such a change would be substantial if the contracting authority considers that other suppliers may have submitted a request to participate or suppliers that did not meet the condition would have been invited to progress had that different technical standard been set out in the original tender notice.
13. Where a non-substantial modification is made prior to the deadline in section 31(2), the contracting authority must notify each participating supplier, for example by writing to them or updating the tender notice, of the modification and the contracting authority must consider the time limits (see paragraph 15 below).

#### Modifications to a procurement for the award of a light touch contract

14. For procurements relating to the award of a light touch contract there are fewer restrictions on modifications after a contracting authority has received requests to participate or has received initial tenders. In contrast to other types of public contract, there is no requirement for a modification to not be substantial. The nature of the services for which a light touch contract may be used warrants this greater flexibility.

#### What impact does a modification have on time periods?

15. Section 31(4) requires that whenever a modification to the terms of a covered procurement is made, the contracting authority must consider whether any tender deadlines and other time limits need to be revised in order to provide additional time for suppliers to take the change into account. Any revision of the deadlines or time limits must be in accordance with section 54. In particular, section 54(1)(d) requires the contracting authority to have regard to the nature and complexity of any modification of the tender notice or any associated tender documents.

#### **What other guidance is of particular relevance to this topic area?**

Guidance on covered procurement objectives  
Guidance on competitive tendering procedures  
Guidance on time periods

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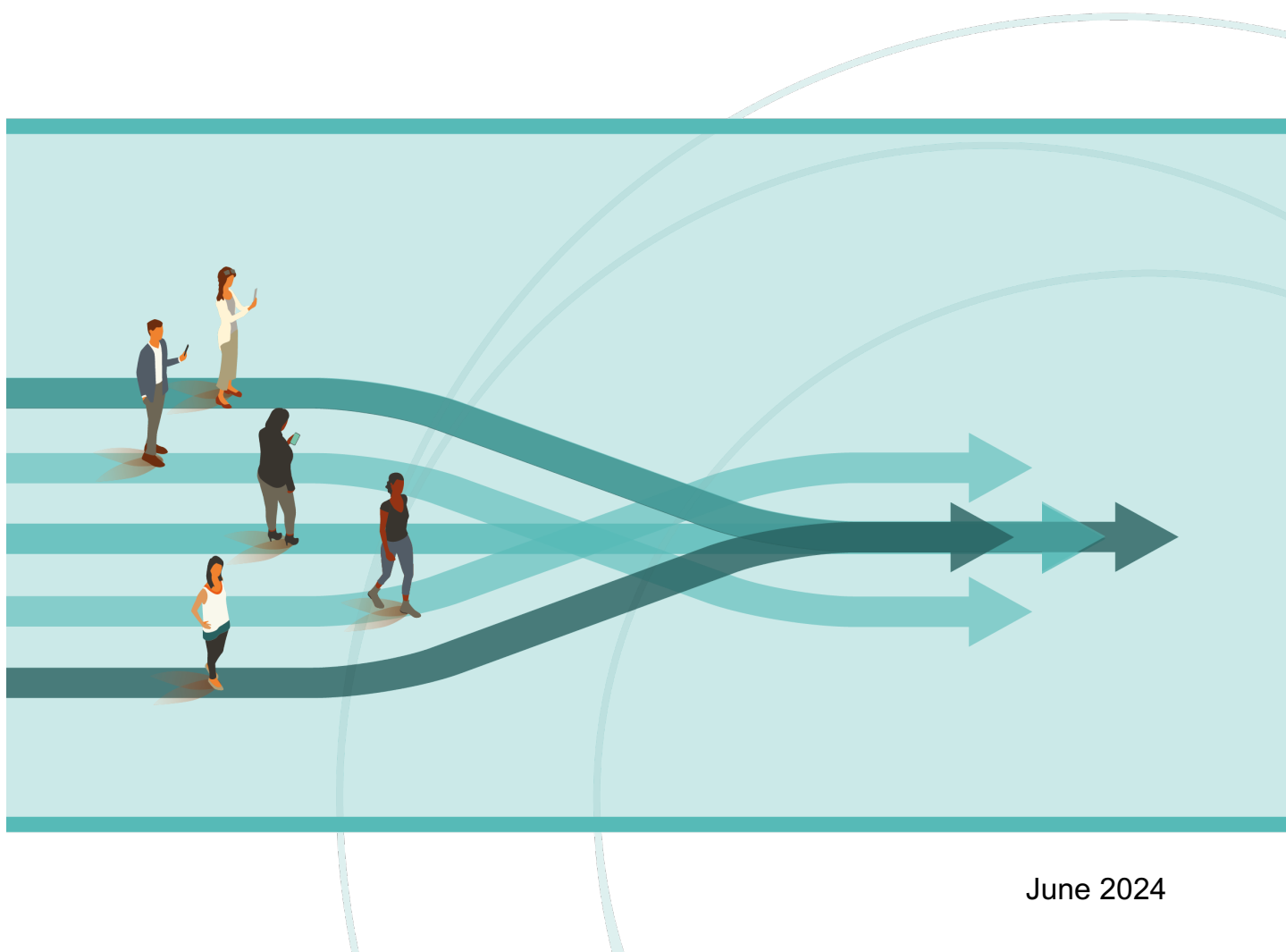
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Procurement Act 2023

# Guidance: Time Periods



June 2024



## **Guidance on Time Periods**

### **What are time periods and why is it important to regulate them?**

1. The Procurement Act 2023 (Act) specifies certain minimum time limits, which a contracting authority must comply with during a competitive tendering procedure. The Act also sets out the considerations that apply in setting time periods more generally.
2. As well as ensuring that suppliers have reasonable time to prepare, for example, for the submission of tenders, the minimum time limits set out in the Act ensure compliance with the UK's international obligations on public procurement.

### **What is the legal framework that governs time limits during a procurement?**

3. Section 54 (Time limits) provides the minimum time limits to be set by contracting authorities in different circumstances.

### **What has changed?**

4. The rules relating to 'participation periods' and 'tendering periods' are largely unchanged from the previous legislation. In the Act, they are consolidated into a single section rather than referenced in different places in the legislation.

### **Key points and policy intent**

5. There are mandatory minimum time periods that must be provided for in a competitive tendering procedure. There are no set maximum time periods. In designing the procurement timetable, a contracting authority must find an appropriate balance which gives suppliers sufficient time to prepare and takes into account, where relevant, matters such as the complexity of the contract (see paragraph 7 below).
6. The tables in section 54(3) and (4) set out the mandatory minimum time periods that apply in different circumstances. Broadly, the minimum time periods are reduced where there is a state of urgency, or if suppliers are already aware of the impending procurement via publication of a 'qualifying planned procurement notice' (see paragraph 20(d) below). Minimum periods are longer if tenders cannot be submitted electronically or if associated tender documents are not provided at the same time as the tender notice.
7. In addition to compliance with the minimum time periods for participation and tendering, there are other situations where contracting authorities have an obligation to consider setting reasonable time limits. For example, when undertaking preliminary market engagement, directly awarding a contract or making a modification to the terms of the procurement procedure. When setting any time limits for a procurement, contracting authorities must, where relevant, have regard to the factors in section 54(1):
  - a. the nature and complexity of the contract being awarded;

- b. the need for site visits, physical inspections and other practical steps;
  - c. the need for sub-contracting;
  - d. the nature and complexity of any modification of the tender notice or any associated tender documents;
  - e. the importance of avoiding unnecessary delay.
8. The factors set out in section 54(1)(a)-(c) will be particularly relevant when inviting requests to participate or inviting tenders, and contracting authorities must consider whether allowing more time for suppliers to prepare and submit their responses is necessary, taking into account the relevant factors.
  9. Section 54(1)(d) is relevant when making a modification to the tender notice or associated tender documents during the procedure, although other factors may also be relevant. Further information on modifications during a procedure can be found in the guidance on modifying a section 19 procurement.
  10. In accordance with section 54(1)(e), contracting authorities must have regard to the importance of avoiding unnecessary delay. This could, for example, mean having all the tender documents prepared as early as possible, ready to be shared with suppliers at the same time as publication of the tender notice. Or not having significant gaps in the procedure, such as between receipt of requests to participate and issuing an invitation to tender. It may also mean responding quickly to clarification questions.
  11. Any time limit set must be the same for all suppliers.
  12. The contracting authority must also have regard to the procurement objectives when setting time limits. Of particular relevance is acting and being seen to act, with integrity, and the requirement to have regard to the fact that small and medium-sized enterprises may face particular barriers to participation and whether such barriers can be removed (for example, by providing a longer time period).
  13. The participation and tendering periods can be reduced where the contracting authority considers there to be a state of urgency which means the usual minimum time period is impractical. 'State of urgency' is not a defined term in the Act and should only be used in exceptional circumstances; the decision to reduce the minimum time period must be based on an objective need for urgency and where following the usual time scales would have a genuine adverse effect. It should not be used as a way to 'catch up' following delays in the procurement.

### Participation period

14. In a competitive flexible procedure there may be a separate participation stage to limit the number of suppliers invited to participate further in the procedure (this is akin to a selection stage in the previous legislation).
15. The contracting authority will invite suppliers to submit requests to participate by publishing a tender notice, detailing the conditions of participation and any other criteria by which the number of suppliers may be limited<sup>1</sup>. The participation period starts with the day after a contracting authority invites requests to participate in a competitive flexible procedure and ending with the day by which those requests must be submitted
16. Section 54(3) provides that in most cases a participation period of at least 25 days must be allowed for suppliers to submit requests. The only exceptions are:
  - a. where the contract is a light touch contract: there is no minimum participation period;
  - b. where the contracting authority considers there to be a state of urgency meaning a 25 day participation period is impractical: the minimum participation period may be reduced to 10 days.

### Tendering period

17. All competitive tendering procedures will include at least one tendering period. This is the period during which suppliers prepare their tenders.
18. In an open procedure, there will only be one tendering period and this will start following publication of the tender notice.
19. In a competitive flexible procedure, if the contracting authority has chosen not to have a separate participation period, the tender will be submitted in response to the tender notice and therefore the tendering period will again commence following publication of the tender notice. Where there is a separate participation period or multiple tendering rounds, tenders will be submitted in response to an invitation to tender sent directly to participating suppliers. In these circumstances, the tendering period starts with the day after a contracting authority invites the submission of tenders as part of a competitive tendering procedure and ends with the day by which tenders must be submitted.
20. Section 54(4) provides that the minimum tendering period will depend on the type of contract/circumstance as set out below:
  - a. No minimum tendering period for light touch contracts.
  - b. No minimum tendering period for utilities contracts or those awarded by non-central government authorities (such as local authorities, police forces) where there is a negotiated tendering period. This will be the situation where only pre-selected

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<sup>1</sup> See regulations 18 and 19

suppliers are invited to tender and a tendering period is agreed between the contracting authority and those pre-selected suppliers. A pre-selected supplier is defined in section 54(5) as a supplier that (i) has been assessed as satisfying conditions of participation before being invited to submit a tender, or (ii) is a member of a dynamic market where the contract is being awarded under that dynamic market.

- c. 10 day minimum tendering period for utilities contracts or those awarded by non-central government authorities where only pre-selected suppliers are invited to tender (and they have not agreed to a shorter time period for submitting tenders).
  - d. 10 day minimum tendering period where a qualifying planned procurement notice has been published. A qualifying planned procurement notice is a planned procurement notice that is published at least 40 days and no more than 12 months before the tender notice. See the guidance on the planned procurement notice for more information.
  - e. 10 day minimum tendering period where the contracting authority considers there to be a state of urgency meaning any other applicable minimum tender period is impractical.
  - f. 10 day minimum tendering period if the contract is being awarded under a dynamic market.
  - g. 25 day minimum tendering period where tenders are submitted electronically and all of the associated tender documents are provided at the same time as the tender notice.
  - h. 30 day minimum tendering period where tenders are submitted electronically but not all of the associated tender documents are provided at the same time as the tender notice.
  - i. 30 day minimum tendering period where tenders are not submitted electronically but all of the associated tender documents are provided at the same time as the tender notice.
  - j. 35 day minimum tendering period where tenders are not submitted electronically and all of the associated tender documents are not provided at the same time as the tender notice.
21. Where there are multiple tendering rounds, it is expected that the minimum tendering period will apply to each tendering round, unless the contracting authority considers further tenders to simply be updates to previously submitted tenders (for example as an outcome of negotiations). In this case it is expected that a reasonable time limit is set, which is the same for all suppliers, having regard to the factors set out in section 54(1).
22. In accordance with section 96 (electronic communications), the contracting authority must, as far as practicable, communicate with suppliers electronically (and take steps to ensure

that suppliers participating in the procurement communicate electronically) (see guidance on electronic communications).

23. The requirement in section 96 extends to allowing for electronic submission of tenders unless it is not practicable. Electronic submission may not be practicable because, for example:

- a. the specialised nature of the procurement means the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications;
- b. the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority;
- c. the submission of physical or scale models is required;
- d. some or all of the tender is above the security classification that can be sent electronically.

#### **What notices are linked to this aspect of the Act?**

##### Planned procurement notice

24. Publication of the planned procurement notice may take place at any time before publication of the tender notice. If publication of this notice is a qualifying planned procurement notice (see paragraph 20(d) above), the contracting authority may reduce the minimum tendering period to ten days.

##### Tender notice

25. Publication of the tender notice formally initiates the procedure and invites suppliers either to submit requests to participate or submit a tender.

#### **What other guidance is of particular relevance to this topic area?**

Guidance on covered procurement objectives

Guidance on competitive tendering procedures

Guidance on assessing competitive tenders

Guidance on modifying a competitive procurement

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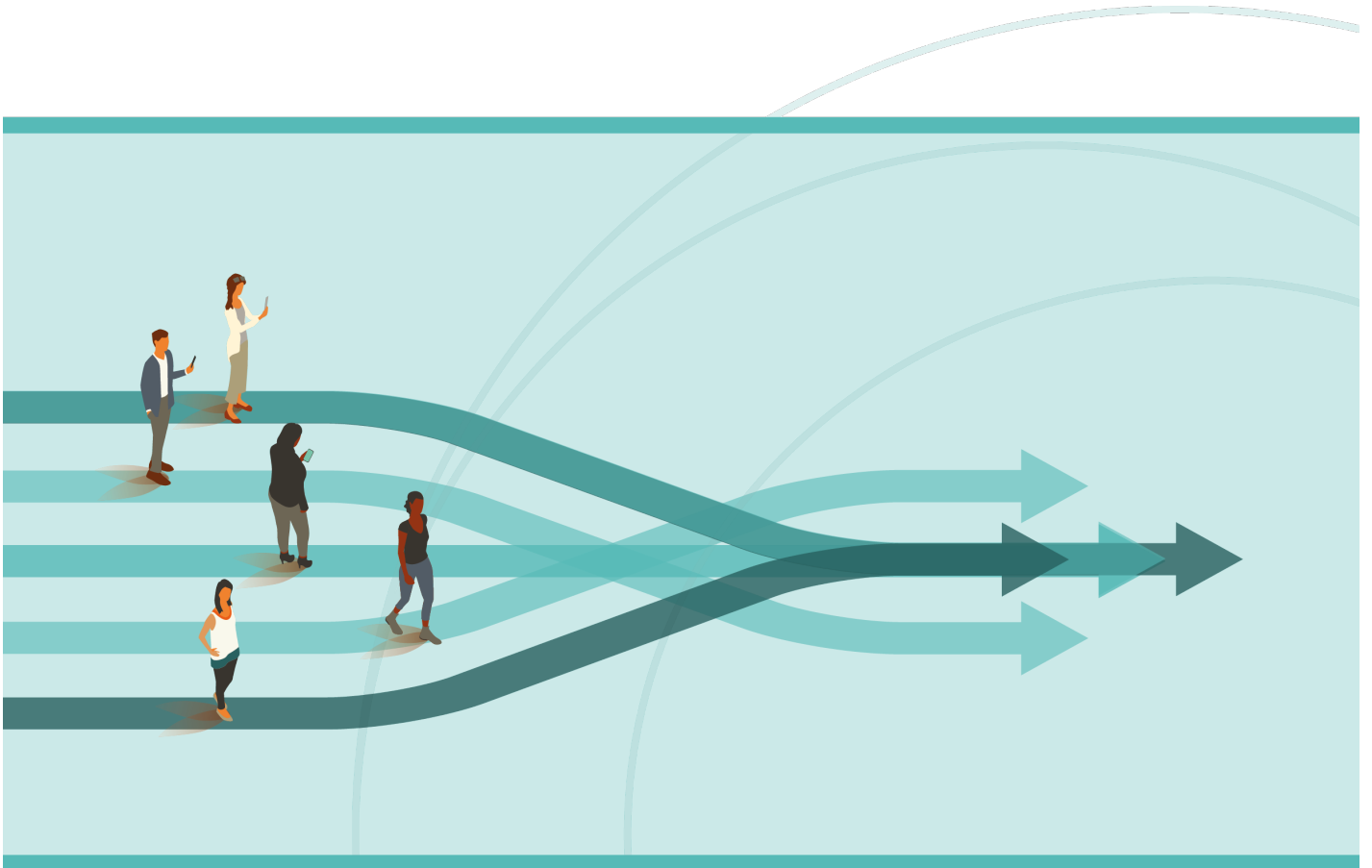
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Procurement Act 2023

# Guidance: Assessing Competitive Tenders



June 2024

## **Guidance on Assessing Competitive Tenders**

### **What are the rules on assessing tenders in a competitive tendering procedure?**

1. The process by which tenders in a competitive tendering procedure are assessed in order to determine the most advantageous tender (i.e. to identify the supplier(s) that will be awarded the contract) is key to achieving value for money and the successful delivery of public services. The Procurement Act 2023 (Act) regulates this process by making provision for rules on award criteria and assessment methodologies, addressing abnormally low tenders and refining award criteria.

### **What is the legal framework that governs the assessment of tenders submitted in a competitive tendering procedure?**

2. The legal framework is set out in the following sections of the Act:
  - a. section 19: Award of public contracts following a competitive tendering procedure;
  - b. section 23: Award criteria; and
  - c. section 24: Refining award criteria.

### **What has changed?**

3. The basis on which contracts are awarded is largely unchanged from the previous legislation, in terms of what can be assessed when evaluating tenders. The removal of the requirement that award criteria must be considered from the 'point of view of the contracting authority' that was included in the previous legislation<sup>1</sup> serves only to highlight and clarify that contracting authorities may take wider factors than price and technical quality into account when determining value for money.
4. The overall basis of award is now referred to as the 'most advantageous tender' (MAT), rather than, as in the previous legislation, the 'most economically advantageous tender' (MEAT). However, this is not a change in policy and the change is to clarify and reinforce for contracting authorities that tenders do not have to be awarded on the basis of lowest price/cost, or that price/cost must always take precedence over non price/cost factors.
5. Under the Act, a contracting authority may refine the award criteria in a competitive flexible procedure in certain circumstances. This is a new provision in the Act and was not dealt with directly under previous legislation.

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<sup>1</sup> See regulation 67(1) of the Public Contracts Regulations 2015, regulation 82(1) of the Utilities Contracts Regulation 2015, regulation 31(1)(a) of the Defence and Security Public Contracts Regulations 2011



6. Unlike (where relevant<sup>2</sup>) under the previous legislation, where in some instances<sup>3</sup> (but not all) it was mandatory, contracting authorities are not required under the Act to ask suppliers to explain their price where it appears to be abnormally low. They *are* required under the Act, however, as in the previous legislation<sup>4</sup>, to investigate an abnormally low price and provide the supplier with an opportunity to demonstrate that it will be able to perform the contract for the price proposed before disregarding a tender on that basis. Unlike in the previous legislation, the Act does not include an illustrative list of the types of explanations that suppliers may provide to explain their price (for example, the economics of the manufacturing process) but these may still be relevant and under the Act contracting authorities can seek explanations about anything related to a supplier's ability to perform the contract for the price offered.

### **Key points and policy intent**

7. Throughout the procurement, contracting authorities must have regard to the objectives set out in section 12 of the Act. Of particular relevance to the design and application of award criteria are the objectives relating to maximising public benefit, delivering value for money and the duty to have regard to the fact that small and medium-sized enterprises (SMEs) may face particular barriers to participation, and consider whether such barriers can be removed or reduced. Contracting authorities must also have regard to the national procurement policy statement (NPPS) in accordance with section 13.
8. In the context of awarding a public contract following a competitive tendering procedure, there are a number of key points arising from the requirements of sections 12 and 13 of the Act:
  - a. the objective of sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions means sharing all relevant information at the earliest opportunity and ensuring that everyone has parity of information and at the same time;
  - b. in complying with the duty to have regard to SMEs, contracting authorities should not create award criteria that are prohibitive, or set timescales in the procedure that do not give suppliers sufficient time to prepare quality tenders;
  - c. in order to achieve value for money, contracting authorities should have a comprehensive understanding of their requirements and link them to their policy priorities (which may include wider economic, social and environmental considerations where they are relevant, proportionate and non-discriminatory) and any national priorities set out in the NPPS;

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<sup>2</sup> The Concessions Contracts Regulations 2016 do not include provisions on abnormally low tenders

<sup>3</sup> See regulation 69 of the Public Contracts Regulations 2015 and regulation 84 of the Utilities Contracts Regulation 2015

<sup>4</sup> See regulation 69 of the Public Contracts Regulations 2015, regulation 84 of the Utilities Contracts Regulation 2015 and regulation 31(6)(7) of the Defence and Security Public Contracts Regulations 2011

- d. value for money is securing the optimal whole-life blend of economy, efficiency and effectiveness that achieves the intended outcomes of the procurement. In order to achieve this, a contracting authority should take life-cycle cost into account when designing specifications, award criteria and other requirements. With the exception of basic purchases such as single-use goods, it should be the life-cycle cost that is used in the assessment of tenders instead of the initial purchase price of the goods, works or services;
- e. value for money can be directly affected by the choice of assessment methodology and contracting authorities should undertake appropriate scenario-testing to understand the impact of different methodologies and criteria weightings. Contracting authorities should be particularly aware of the potential negative impacts on value for money of the use of relative scoring mechanisms (where a supplier's score against a price criterion is derived from the price of the lowest priced tender).

### Award Criteria (section 23)

- 9. The award criteria are the criteria against which tenders are assessed during a competitive tendering procedure. Award criteria, including any social, economic and environmental criteria, must relate to the subject-matter of the contract. This will mean contracting authorities focus on the particular procurement in question and properly assess each tender in respect of what is being procured. The Act gives contracting authorities a wide discretion when selecting award criteria: the fact that there is no list of criteria that can be taken into account means that any criteria can be considered, provided they meet the requirements of section 23. There is also no reference in the Act to award criteria needing to be considered solely from the 'point of view' of the contracting authority, so that it is clear that benefits of a contract to service users or other stakeholders, which may not directly flow to the contracting authority itself, may be explicitly factored in if they are relevant and meet the other requirements of award criteria.
- 10. The key requirements for award criteria are:
  - a. they must relate to the subject-matter of the contract;
  - b. they must be sufficiently clear, measurable and specific;
  - c. they must comply with the rules on technical specifications (see guidance on technical specifications for more information);
  - d. they must be a proportionate means of assessing tenders having regard to the nature, complexity and cost of the contract. For example, it is unlikely to be proportionate to include a wide range of award criteria for a low value contract for stationery.
- 11. Section 23(3)(a) refers to the 'assessment methodology', which must set out how tenders will be assessed against the award criteria. For example, this will include any scoring matrices to be used by evaluators when assessing tenders against the award criteria.

12. The process of awarding contracts must be transparent; contracting authorities must publish the award criteria and the assessment methodology, or a summary of the criteria, in the tender notice. Section 21(5) of the Act requires the contracting authority to provide information sufficient to allow suppliers to prepare tenders in the tender notice or associated tender documents before inviting suppliers to submit a tender. Therefore, if not published in full in the tender notice, further details of the award criteria and assessment methodology must be included in any associated tender documents.
13. If there is more than one criterion, the contracting authority must set out the relative importance of all the criteria. This can be through the use of weightings or ranking in order of importance or described in another way. For example, percentage figures could be applied to each criterion to explain how they are weighted. The rules provide for flexibility in terms of how the relative importance of criteria are described. Pass/fail criteria are also permitted but it must be set out in the assessment methodology if failure to meet one or more criteria would disqualify a tender.
14. Where a procurement has been divided into lots, the contracting authority can limit the number of lots an individual supplier may be awarded, as long as it applies an objective mechanism for doing so.
15. For light touch contracts, because of the special nature of these contracts, section 23(6) of the Act provides an additional list of what may be considered 'the subject-matter of the contract' to take account of service recipients. (Further information can be found in the guidance on light touch contracts.)
16. Award criteria are distinct from conditions of participation. Conditions of participation are used to determine whether a supplier is capable/suitable to perform the contract. This is distinct from award criteria, which determine the merits of the supplier's tender. Conditions of participation must only relate to the supplier's legal and financial capacity or technical ability to perform the contract.
17. In any procedure, the responses to the conditions of participation must be assessed separately from the tender, the tender (only) being assessed against the award criteria. In practice, their assessment may occur in parallel (for example, in an open procedure), but once a supplier has met the conditions of participation, their tender must, in relation to the award criteria, be assessed without consideration given to how they were assessed under the conditions of participation. (Further information can be found in the guidance on conditions of participation.)
18. Awarding on the basis of MAT includes the possibility of awarding based on lowest price/cost only, where price/cost is the sole criterion, although this is unlikely to be suitable for most contracts. Contracting authorities may assess tenders against a wide range of factors to determine the best solution. These factors may include price, quality and technical criteria in addition to wider social, economic and environmental issues and benefits (for instance, creating new jobs and skills, reducing waste and addressing net zero or carbon reduction outcomes) as long as such factors relate to the subject-matter of the contract, are sufficiently clear, comply with the rules on technical specifications in section 56 and are a proportionate means of assessing tenders.

19. When assessing tenders against the award criteria, contracting authorities must base their assessment on the published assessment methodology and the relative importance of the award criteria:
- a. if only a single award criterion is used, the assessment will be based on that criterion;
  - b. if more than one criterion is used, the MAT will be assessed across the range of criteria.
20. The Act allows for flexibility in how contracting authorities describe the relative importance of the criteria and refers to weighting criteria using percentages or ranking them in order of importance or describing relative importance in another way. There is no hierarchy in these options - contracting authorities are able to choose the most appropriate method for their particular circumstances.
21. A contracting authority must always consider its other obligations under the Act before deciding to have price as the sole award criterion, for example having regard to the section 12 duties including the requirement to maximise public benefit and to achieve value for money which is likely to be broader than cost alone in most procurements.

#### Refining award criteria (section 24)

22. Section 24 allows contracting authorities, in a competitive flexible procedure, to refine award criteria (which might involve consequential refinements to the assessment methodology). This may be useful when there is a multi-stage procedure where all of the detail is not known at the first stage. Should contracting authorities wish to refine award criteria during the procedure, they must provide for this possibility in the tender notice or associated tender documents and may only refine award criteria before inviting final tenders (i.e. prior to inviting tenders to be assessed under section 19).
23. Contracting authorities may know the overall or general award criteria at the outset of a competitive flexible procedure, but may wish to retain the opportunity to refine those criteria as the procurement progresses (e.g. after carrying out dialogue with suppliers or reviewing prototypes from suppliers who are invited to participate in response to the tender notice). The outcome of such activities undertaken in the earlier part of a competitive flexible procedure may be a better understanding of what is possible, meaning that further detail or new sub-criteria related to the initial award criteria set out in the tender notice and any associated tender documents can be added. Contracting authorities can only refine what has already been provided; they cannot add new criteria. This is a mechanism by which a contracting authority can plan to add further detail to the award criteria as the procedure progresses and only applies in a competitive flexible procedure.
24. Contracting authorities may not make a refinement that would, had the refinement been made earlier, have allowed one or more suppliers that did not progress beyond an earlier round or selection process to have done so. This is similar to the rules on wider modifications to a procurement prior to the deadline for submitting tenders or requests to participate (as relevant) under section 31 of the Act which are appropriate when unforeseen

modifications are required and which apply in any competitive tendering procedure (see guidance on modifications to a procurement).

25. Contracting authorities must modify and republish or provide again the tender notice and any associated tender documents affected by the refinements.
26. Set out below are some examples where contracting authorities are likely to be able, or likely to be unable, to refine award criteria. However, whether or not refinement will be possible in a particular scenario will always depend upon the specific facts. Refinement must comply with all the requirements of section 24 and other relevant obligations under the Act, for example the section 12 objectives.
27. Likely to be permitted:
  - a. adding sub-criteria to those set out in the tender notice/associated tender documents as long as they directly relate to the relevant existing main criteria;
  - b. adding more detail to existing main criteria set out in tender notice/associated tender documents;
  - c. adding more detail to existing sub-criteria set out in the tender notice/associated tender documents;
  - d. changing weightings within a pre-existing range that was set out in the tender notice/associated tender documents, e.g. if an award criterion relating to transition arrangements was set out at 10%-30%, a contracting authority could start with a 30% weighting and end with a 10% weighting for the final assessment if the other requirements in section 24 are met.

28. Likely to not be permitted:

- a. adding new main criteria;
- b. adding new sub-criteria not associated with the main criteria in the tender notice/associated tender documents;
- c. adding or removing pass/fail tests;
- d. reversing the answer to pass/fail tests expressed in the tender notice/associated tender documents (i.e. changing what initially constituted a 'fail' to a 'pass' instead).

#### Awarding contracts following a competitive tendering procedure (section 19)

29. Section 19 makes provision about awarding contracts following a competitive tendering procedure, including on how abnormally low tenders should be treated. The key points are:
  - a. following a competitive tendering procedure, a public contract can only be awarded to the supplier that submits the MAT; and

- b. the MAT is the tender that both satisfies the contracting authority's requirements and is the best tender when assessed against the award criteria and the assessment methodology.
30. It is possible for a contracting authority to award separate contracts following a competitive tendering procedure to multiple suppliers (for example, when establishing a framework) if the award criteria and assessment methodology set out in the tender notice and any associated tender documents provide that more than one tender can satisfy the contracting authority's requirements and best satisfy the award criteria and on what basis. In these circumstances, all tenders considered successful pursuant to the criteria and assessment methodology should be considered the most advantageous tender.
31. In an open procedure, which is a single-stage tendering procedure without restriction on who can submit tenders, all tenders submitted that are not disregarded (for example, because the tender was submitted by an excluded supplier or because the tender failed to meet a condition of participation) are assessed under section 19 for the purpose of determining the MAT. In a competitive flexible procedure that may have multiple tendering rounds, only final tenders are assessed under section 19 for the purpose of determining the MAT. The process for limiting tenders that progress in a competitive flexible procedure before the final assessment stage is set out in section 20.
32. Section 19 sets out that a tender must be disregarded where the supplier does not satisfy the conditions of participation (see guidance on conditions of participation).
33. It also provides that a tender may be disregarded where:
  - a. the supplier is not a UK or treaty state supplier (a supplier entitled to the benefits of an international agreement specified in Schedule 9 of the Act). In making a decision to exclude a non-UK or non-treaty state supplier, the contracting authority must consider its other general duties under the Act including the objectives in section 12;
  - b. the supplier intends to sub-contract the delivery of the contract or part of it to a supplier that is not a UK or treaty state supplier. Contracting authorities should be transparent about any restrictions on sub-contracting at the start of the procurement, for example by setting these out in the tender notice or any associated tender documents, and should apply these in a manner that is consistent with the equal treatment obligation in section 12(2) of the Act (further information can be found in the guidance on treaty state suppliers);
  - c. a contracting authority considers the price of the tender is abnormally low. Before disregarding a tender on this basis, a contracting authority must first notify the supplier and provide it with a reasonable opportunity to demonstrate that it will be able to perform the contract at the price offered. If the supplier demonstrates to the contracting authority's satisfaction that it will be able to perform the contract for the price offered, the tender may not be disregarded as abnormally low. If the supplier does not satisfy the contracting authority, the tender may be disregarded. Reasons for a low price might be production efficiencies or leveraging economies of scale.

Alternatively, a low price might be due to inaccuracies in cost modelling or as a result of unlawful practices or funding sources, casting doubt on the ability of the supplier to perform the contract;

- d. the supplier has breached a procedural requirement set out in the tender notice or associated tender documents (for example the tender is submitted late or the tender is over the prescribed word count).

34. In addition to the grounds on which a tender must or may be disregarded as set out expressly in section 19, the Act makes provision elsewhere for tenders to be disregarded on other grounds. There are cross references to these in sections 19(8) (referring to excluded or excludable suppliers), 19(9) (referring to reserving public contracts to supported employment providers and qualifying public service mutuals) and 19(10) (referring to disregarding tenders from suppliers that are not members of a dynamic market).

35. After the contracting authority has completed the assessment of tenders under section 19 and before publishing a contract award notice, it is required to provide an assessment summary to all suppliers who submitted an 'assessed tender'. Contracting authorities should consider the requirements of the assessment summary when developing their award criteria and assessment methodology and when carrying out the assessment of tenders. Please refer to the guidance on assessment summaries for more information.

### **What other guidance is of particular relevance to this topic area?**

Guidance on covered procurement objectives  
Guidance on the national procurement policy statement  
Guidance on preliminary market engagement  
Guidance on conditions of participation  
Guidance on competitive tendering procedures  
Guidance on light touch contracts  
Guidance on lots  
Guidance on the contract award notice and standstill  
Guidance on assessment summaries

### **Where can I go for more information or training?**

[GCF bid evaluation guidance note](#)

[The Social Value Model](#)

[Should Cost Modelling guidance note](#)

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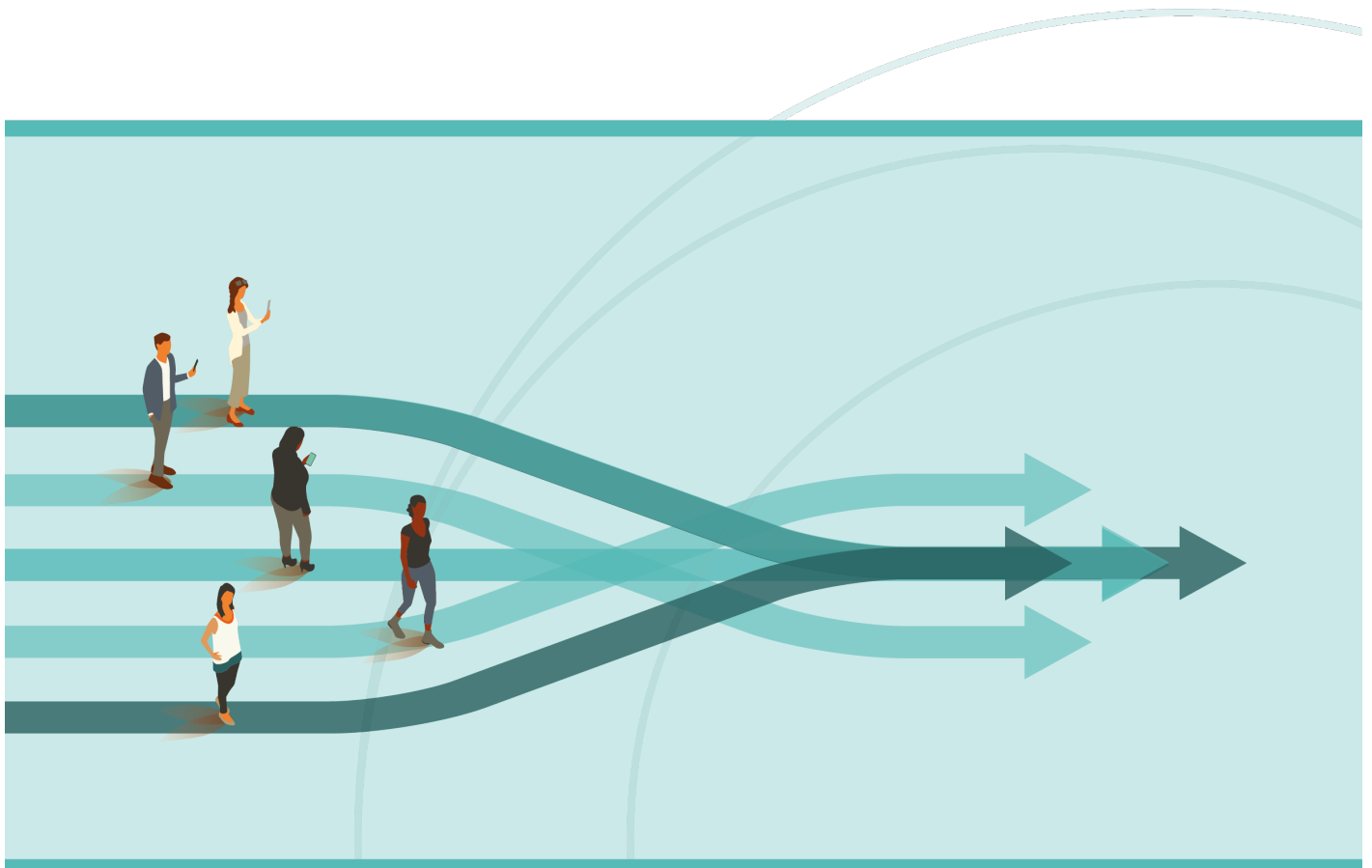




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Procurement Act 2023

# Guidance: Conditions of Participation



July 2024

## Guidance on Conditions of Participation

### What are conditions of participation?

1. The Procurement Act 2023 (Act) allows contracting authorities to set conditions of participation which a supplier must satisfy in order to be awarded a public contract following a competitive tendering procedure. The conditions must only relate to the supplier's:
  - a. legal and financial capacity; or
  - b. technical abilityto perform the contract.
2. They must be a proportionate means of ensuring the supplier's relevant capacity or ability, having regard to the nature, complexity and cost of the public contract.
3. When compared with award criteria (section 23) which are used to assess the tender, conditions of participation are used to assess the supplier. Contracting authorities must make these conditions clear in the tender notice, supplemented (where necessary) by the tender documents.
4. In a competitive flexible procedure, the conditions of participation may be used to limit the number of suppliers. The conditions may provide for the selection of suppliers in an initial participation round via a pass/fail mechanism or using objective criteria to score suppliers as set out in the tender notice. This could then lead to reducing the number of participants to a shortlist of suppliers who then progress to future tendering rounds.
5. It will be the responsibility of the contracting authority to consider and draft suitable conditions of participation and determine how these will be assessed.

### What is the legal framework that governs conditions of participation?

6. Conditions of participation are primarily covered in section 22 of the Act. This makes provision for contracting authorities to set conditions of participation which a supplier must meet in order to be awarded the contract. It establishes limitations on this practice (explained below) as well as setting parameters for the use of evidence and reliance by the supplier on third parties in meeting the conditions of participation.

### What has changed?

7. The obligation that conditions of participation must be proportionate to the procurement is a change in wording from the Public Contracts Regulations 2015 (PCR), Defence and Security Public Contracts Regulations 2011 (DSPCR) and Utilities Contracts Regulations 2016 (UCR) but is not expected to lead to any change in practice.
8. The Act does not prescribe how suppliers should demonstrate that they meet the conditions of participation, unlike regulation 59 of the PCR and regulation 80(4) of the UCR which require

the use of the Single Procurement Document (in practice the Standard Selection Questionnaire (SSQ)). Nevertheless, 'participation' templates may be used so long as these comply with the Act's requirements on conditions of participation.

9. The PCR (regulation 60), DSCPR (regulation 25) and UCR (regulation 80) set out exhaustive lists of means of proof which could be used by contracting authorities to assess standards of technical or professional ability. These provisions are not replicated in the Act. t
10. The Act also includes specific restrictions around requiring audited accounts and insurance in the conditions of participation. These have been included to remove barriers for new entrants and to facilitate increased participation from small and medium-sized enterprises (SMEs) in public procurement.

### **Key points and policy intent**

11. Section 22(1) allows contracting authorities to set conditions that ensure a supplier's legal and financial capacity and technical ability to perform the contract. Any conditions set must be a proportionate means of ensuring suppliers have this capacity or ability, having regard to the nature, cost and complexity of the contract. Therefore, it will usually be the case that conditions of participation are limited to assessing those aspects of legal and financial capacity and technical ability which are essential for the contract to be delivered.
12. A supplier must meet the set conditions of participation in order to be awarded the contract. Contracting authorities should think very carefully when setting conditions because if a supplier fails to meet one condition, even if they meet all others, then they cannot ultimately be awarded the contract (see below on the timings of satisfying the conditions of participation).
13. Section 22(4) makes it clear that:
  - a. whilst conditions can include qualifications, experience or technical ability, they cannot relate to a prior award by a particular contracting authority (so for example public sector experience may be required but experience with a specific public sector organisation cannot);
  - b. the conditions may not contravene the rules on technical specifications in section 56 (technical specifications);
  - c. a condition cannot require particular qualifications without allowing for their equivalents.
14. Contracting authorities may prevent a supplier from participating in, or progressing as part of, a competitive tendering procedure when the supplier has not satisfied a condition of participation (section 22(7)). This means that whilst a supplier must satisfy every condition of participation in order to be awarded the public contract (see section 22(2)), a contracting authority may choose the timing at which exclusion from a competitive tendering procedure takes place. For example, a contracting authority may allow suppliers to confirm they meet certain conditions at a later point in the process in a multi-stage procedure or may, under section 72, direct that the supplier sub-contracts part of the contract to another supplier to meet the conditions of participation (see paragraph 28 below).

15. It will often be good practice when excluding suppliers who are unable to meet the conditions of participation (and are therefore not capable of delivering the contract), to do so at the earliest point. This can avoid the contracting authority and supplier expending unnecessary time and resources. Providing prompt feedback could also help forestall challenges to any subsequent award decisions. However, in certain procurements, contracting authorities may decide that they will allow suppliers to progress through the procurement with a requirement that suppliers will fulfil the conditions by a later stage and before the award of the contract. For example, a contracting authority may decide not to prevent a supplier who does not satisfy a particular standard from proceeding if that supplier is undergoing the process of obtaining the standard at the point when conditions are assessed. If the contracting authority decides to allow the supplier to progress in the procurement, they should be mindful of the equal treatment provisions in section 12. If a contracting authority thinks it is likely to exercise their discretion in this way, it is strongly recommended that the discretion to do so is set out in the tender notice and any associated tender documents so suppliers are informed of this possibility when deciding whether to bid.

#### Financial and insurance information

##### Audited accounts

16. Contracting authorities are prohibited from requiring, as a condition of participation, the provision of audited annual accounts from suppliers that are not otherwise required by the Companies Act 2006 or an overseas equivalent to have their accounts audited.
17. If the supplier is not so required, alternative evidence will need to be assessed when considering their financial capacity.

##### Insurance

18. Contracting authorities are prohibited from requiring insurance relating to the performance of the contract to be in place before award. This is to prevent businesses from being expected to incur unnecessary costs for insurance when they have no guarantee of winning the business.
19. Instead, if a certain level of insurance will be required for the contract, contracting authorities are first encouraged to consider the necessity of the requirement level. If the contracting authority considers it is required, a contracting authority is able to include a condition of participation that the supplier will have the contractual levels of insurance required on contract commencement and to ask for evidence of that (providing this condition otherwise complies with the Act including the objectives in section 12). For example, the evidence could be certificates showing that the supplier already has such insurance in place or a letter from an insurance company confirming that they would offer the insurance to the supplier coupled with a commitment from the supplier that it will take out the insurance. In the latter case, the fact that the supplier has the insurance in place must be verified before it can be awarded the contract.
20. If there are legal requirements on suppliers relating to insurance which exist outside of the contract but would nevertheless be relevant to the contract (i.e. employers' liability insurance), these may also be required as part of the conditions of participation.

### Assessing the conditions of participation

21. Contracting authorities will need to consider how to evaluate supplier responses to the conditions set for the procurement, and if used, what the criteria will be for assessment. This includes setting out what is required to meet the condition.
22. Conditions of participation are separate from award criteria and in any procedure the responses to the conditions of participation must be assessed separately from the tender response and award criteria. In practice, it may happen in parallel (for example, in an open procedure) but once a supplier has met the conditions of participation, their tender must be assessed in relation to the award criteria only and not with any reference to any score or ranking determined as part of the assessment of the conditions of participation.
23. Under a competitive flexible procedure, a contracting authority may, using objective criteria which have been set out in the tender notice, use conditions of participation in order to limit the number of suppliers that progress or to create a shortlist of suppliers (section 20(4)(a)). For example, following a tender notice that invites requests to participate, all interested suppliers may submit their response to the conditions of participation and, following an assessment against the conditions of participation published in the tender notice, a limited number of suppliers could be selected to proceed to the next stage. In all cases, the number of suppliers the contracting authority intends to progress should be sufficient to ensure genuine competition.

### Verifying the conditions of participation

24. The Act is not prescriptive about the types and sources of information contracting authorities can use to verify conditions of participation. Section 22(6) allows a contracting authority to require evidence that is verifiable by a third party to satisfy a condition of participation. For example, assertions as to the financial stability of a supplier may be independently verifiable by reference to data provided by the supplier's bank (at the supplier's behest) or by reference to credit ratings by a rating agency. Nevertheless, means of proof and supporting evidence should not be overly arduous for suppliers and must meet the proportionality requirement in section 22. For example, requesting site visits, samples and audits might be appropriate in some circumstances but not all. If supporting evidence is required, contracting authorities should consider when it would be appropriate for suppliers to submit that evidence, having regard to the procurement objectives and what is required to ensure the proper conduct of the procurement.

### Relying on other suppliers to pass conditions of participation

25. In certain procurements, a supplier might not be able to fulfil all the conditions of participation alone. In these circumstances, it may meet the conditions through a relationship with another supplier, for example through the formation of a consortium, or nomination of a sub-contractor who fulfils some or all of the conditions; section 22(8-9) set out the circumstances in which a supplier may satisfy conditions of participation through such an association. For example, to deliver an integrated facilities management contract, a supplier specialising in soft services

and a supplier specialising in hard services could form a consortium to bid. Alternatively, a supplier specialising in soft services could sub-contract the hard services part of the contract.

26. Section 22(9) explains the different relationships that will be classed as meaning a supplier (the first supplier) is associated with another supplier. These are where:

- a. the suppliers are submitting a tender together, e.g. as a consortium; or
- b. the first supplier intends to sub-contract the performance of all or part of the contract to another supplier; or
- c. another supplier will guarantee the performance of all or part of the contract by the first supplier.

In the case of sub-contracting or guarantee arrangements which enable the first supplier to meet the conditions of participation, the contracting authority must be satisfied that the suppliers will enter into legally binding arrangements to the effect that the first supplier will sub-contract the performance of all or part of the contract to the other, or that the other supplier will guarantee the performance of all or part of the contract by the first supplier.

27. For the purpose of satisfying section 22(9), it is not necessary for the first supplier to be in a directly legally binding arrangement with the other supplier. For example, where a second-tier sub-contractor is being relied upon to satisfy the condition, section 22(9)(b) could be met where there are effectively back-to-back legally binding arrangements, between the first supplier and their first-tier sub-contractor and also between the first-tier sub-contractor and the second-tier sub-contractor.

28. Section 72 applies when a contracting authority either requires a supplier to sub-contract or allows a supplier to sub-contract and that sub-contractor has been relied on to meet conditions of participation. In these circumstances, a contracting authority may direct a supplier to enter into a legally binding agreement with the proposed sub-contractor. If the supplier fails to do as directed, the contracting authority can refuse to enter into the public contract with the supplier, require an alternative sub-contractor (that could have satisfied the relevant conditions of participation) or terminate the contract if already entered into.

29. If a contracting authority intends to award a contract to a supplier that has relied on other suppliers to satisfy the conditions of participation, details of these suppliers, with the exception of those acting as a guarantor (section 22(9)(b)(ii)), will need to be published in the contract award notice (see regulation 27).<sup>1</sup> Therefore a contracting authority should ensure they obtain this information during the procurement.

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<sup>1</sup>Section 26(4) defines an 'associated person', for the purpose of the Act, as a person that the supplier is relying upon in order to satisfy the conditions of participation, but not a person who is to act as a guarantor. Regulation 27 requires the name and address of each 'associated person' to be published in the contract award notice.

## Dynamic markets

30. A dynamic market is essentially a list of suppliers who have met the 'conditions for membership' of the dynamic market (or part of the dynamic market). Conditions for membership are similar to conditions of participation and are allowed as long as they are a proportionate way of assessing suppliers' legal and financial capacity or technical ability to perform contracts to be awarded by reference to the market. Sections 36(1-5) set out provisions relating to the submission of accounts, insurance, suppliers' qualifications, experience or technical ability, proportionality and evidence, which are similar to those for conditions of participation.
31. Contracting authorities may set conditions of participation, applying section 22, when awarding contracts under a dynamic market.

## Frameworks

32. Since a framework is itself a public contract (provided it is for pecuniary interest, above the relevant threshold and not an exempted contract), the Act generally applies when a framework is awarded. This means that contracting authorities may set conditions of participation, applying section 22, in the same way as for any other public contract.
33. Contracting authorities who are calling off from a framework must comply with the terms of the framework they are using and so contracting authorities establishing a framework should ensure that the framework permits the application of conditions of participation in the competitive selection process for call-off contracts.
34. Where permitted in the framework, section 46 allows a contracting authority to also set 'conditions of participation' at the stage of awarding a call-off contract based on a competitive selection process under a framework (see section 46(2)). These are similar to conditions of participation under section 22 in that they are permitted as long as they are a proportionate way of assessing suppliers' legal and financial capacity or their technical ability to perform the relevant contract to be awarded under the framework. Section 46(1-5) sets out provisions relating to the submission of accounts, insurance, suppliers' qualifications, experience or technical ability, proportionality and evidence, which are similar to those for conditions of participation under section 22.
35. A condition of participation for the award of a call-off contract may include a condition that the conditions of participation for award of the framework must be met or may include some or all of the same conditions. It may also include additional conditions that did not apply to the award of the framework, for example, bespoke insurance requirements relevant to the particular call-off contract to be awarded.

### Works contracts

36. For works contracts, including the procurement of mixed contracts that include supplies and services, contracting authorities can continue to make use of industry pre-qualification questionnaires such as the Common Assessment Standard (CAS) provided they meet the requirements of the Act (for example, the conditions are proportionate and permit the contracting authority to have regard to the procurement objectives in section 12).

### Interaction with the central digital platform

37. The central digital platform will store supplier information that may be relevant to assessing conditions of participation. (See guidance on the central digital platform.)

38. Regulation 6 requires contracting authorities to obtain confirmation from suppliers that they have submitted up-to-date 'core supplier information' on the central digital platform, and that such core supplier information has been shared. Therefore, suppliers that tender for public contracts will need to share certain information via the central digital platform in order to participate. Core supplier information covers:

- a. basic supplier information (i.e. name and address);
- b. exclusion grounds information;
- c. economic and financial standing information, such as audited accounts in certain circumstances; and
- d. connected person information.

39. Any information relating to conditions of participation required by the contracting authority which is not covered by the central digital platform will need to be obtained by the contracting authority from the supplier by other means (for example, as part of the information suppliers submit in the procurement process via the contracting authority's own electronic tendering system).

### **Which notices are linked to this aspect of the Act?**

40. The tender notice, supplemented by any tender documents, must include the conditions of participation and any criteria that might be used to limit the number of participants.

41. The contract award notice will need to include details of associated persons i.e. suppliers that the supplier has relied upon to meet the conditions of participation.



**What other guidance is of particular relevance to this topic area?**

Guidance on covered procurement objectives

Guidance on assessing competitive tenders

Guidance on competitive tendering procedures

Guidance on the central digital platform and the publication of information

Guidance technical specifications

Guidance on exclusions

Guidance on debarment

**Where can I go for more information or training?**

[The Government Commercial Function Playbooks](#)

[Assessing and Monitoring the Economic And Financial Standing Of Bidders And Suppliers](#)

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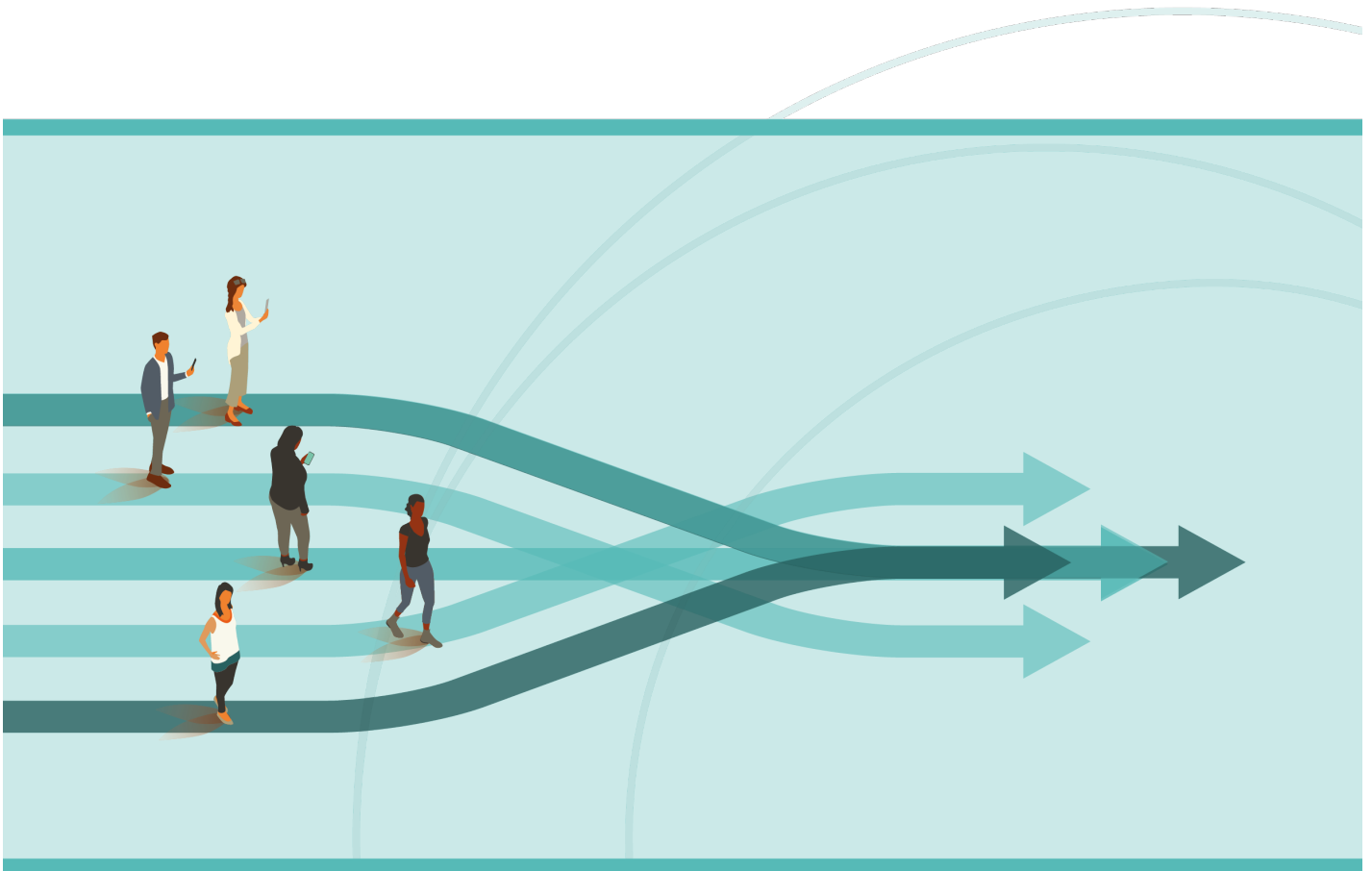
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# Guidance: Procurement Termination Notices



## **Guidance on Procurement Termination Notices**

### **What is a procurement termination notice?**

1. A procurement termination notice informs the market that a contracting authority has decided not to award a contract and to terminate the procurement. It must be published on the central digital platform.

### **What is the legal framework that governs procurement termination notices?**

2. The relevant provisions are contained in:
  - a. section 55 (Procurement termination notices) of the Procurement Act 2023 (Act), which sets out when the notice must be used; and
  - b. regulation 37 (Procurement termination notices), which sets out what information must be included in the notice.

### **What has changed?**

3. A procurement termination notice is a new concept introduced by the Act to inform suppliers and the public that the intentions of the contracting authority have changed, and the procurement is to be discontinued. In these circumstances, publication of the notice may reduce bid costs for suppliers (by allowing the release of resources they may have on standby) and provide increased market certainty.

### **Key points and policy intent**

4. If a contracting authority decides not to award a public contract after it has published a tender or transparency notice but before the contract has been entered into, the Act requires the contracting authority to publish a procurement termination notice. This requirement does not apply to private utilities.
5. Each time a tender or transparency notice is published, it creates a data record of the procurement and any resulting contract. Failing to publish a procurement termination notice will result in suppliers not being aware of the termination and there being permanently incomplete data records on the central digital platform, with the number of ongoing procurements incorrectly including terminated procurements. This is unhelpful for anyone monitoring and using this data. A procurement termination notice is therefore required to ensure that the data record is correct and a complete history of the procurement, up to its termination, is available.

6. The information required to be included in a procurement termination notice is set out in regulation 37 and includes a statement setting out that following the publication of a tender or transparency notice in respect of a contract, the contracting authority has decided not to award the contract, and the date when the contracting authority made the decision not to award the public contract.
7. There are circumstances where the Act does not require contracting authorities to publish a procurement termination notice, but contracting authorities may wish to do so. A procurement termination notice may be published voluntarily to inform the market that a below-threshold procurement or a selection process under a framework has been terminated and a contract will not be awarded, or to publicise the fact that a process to establish a dynamic market has been terminated. It may also be published prior to a tender or transparency notice being published where a procurement indicated in an earlier notice, such as a planned procurement notice, preliminary market engagement notice, or pipeline notice, is being terminated and a tender or transparency notice will not be published.
8. Where a procurement has progressed to the point of inviting tenders, either by the contracting authority publishing a tender notice or notifying selected suppliers in a multi-stage procedure, there is a reasonable expectation that suppliers will be incurring costs to prepare tenders. Contracting authorities should therefore inform suppliers directly of any decision to discontinue the procurement in addition to providing visibility of the decision through the publication of the procurement termination notice. Where a contracting authority is not yet aware of which suppliers intend to submit a tender, i.e. if first or only tenders have not yet been submitted, the procurement termination notice notifies suppliers of the termination of the procurement.
9. Where a procurement has been divided into lots and some lots progress to contract award, but some lots do not, contracting authorities should use a contract award notice, rather than a procurement termination notice, to indicate this. This is done by completing the 'ceased lot information' (see regulation 27(2)(w) and 27(3)).
10. Once the contract has been entered into, the procurement termination notice is no longer relevant. Contracting authorities are required, however, to publish a contract termination notice after a public contract has terminated (see guidance on contract termination for more information).

### Timing

11. Contracting authorities must publish a procurement termination notice as soon as reasonably practicable after making the decision to terminate the procurement. Whilst not defined specifically in the Act, timely notification is important to avoid suppliers incurring unnecessary costs in relation to the procurement. Contracting authorities should consider the covered procurement objectives in section 12(1)(c-d) of the Act which make it clear that contracting authorities must have regard to the importance of sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions and acting, and being seen to act, with integrity.

## **What are the notices linked to this aspect of the Act?**

12. If a procurement is terminated prior to publication of a tender or transparency notice and the contracting authority decides to voluntarily publish a procurement termination notice, it may follow one of the following notices:
  - a. pipeline notice;
  - b. preliminary market engagement notice;
  - c. planned procurement notice;
  - d. tender notice (below-threshold version); or
  - e. dynamic market (intention) notice.
  
13. If a procurement is terminated following publication of one of the following notices, the Act requires publication of the procurement termination notice:
  - a. tender notice;
  - b. transparency notice;
  - c. contract award notice (but prior to the contract being entered into).
  
14. Contracting authorities must ensure that when publishing the procurement termination notice they refer back to the originating notice for the procurement. This should be a function of their system provider and authorities should check local procedures for further information on publishing notices.
  
15. Where relevant, the procurement termination notice will be the last notice to be published on the central digital platform.

## **What other guidance is of particular relevance to this topic area?**

Guidance on competitive tendering procedures  
Guidance on direct award  
Guidance on frameworks  
Guidance on dynamic markets  
Guidance on the publication of information

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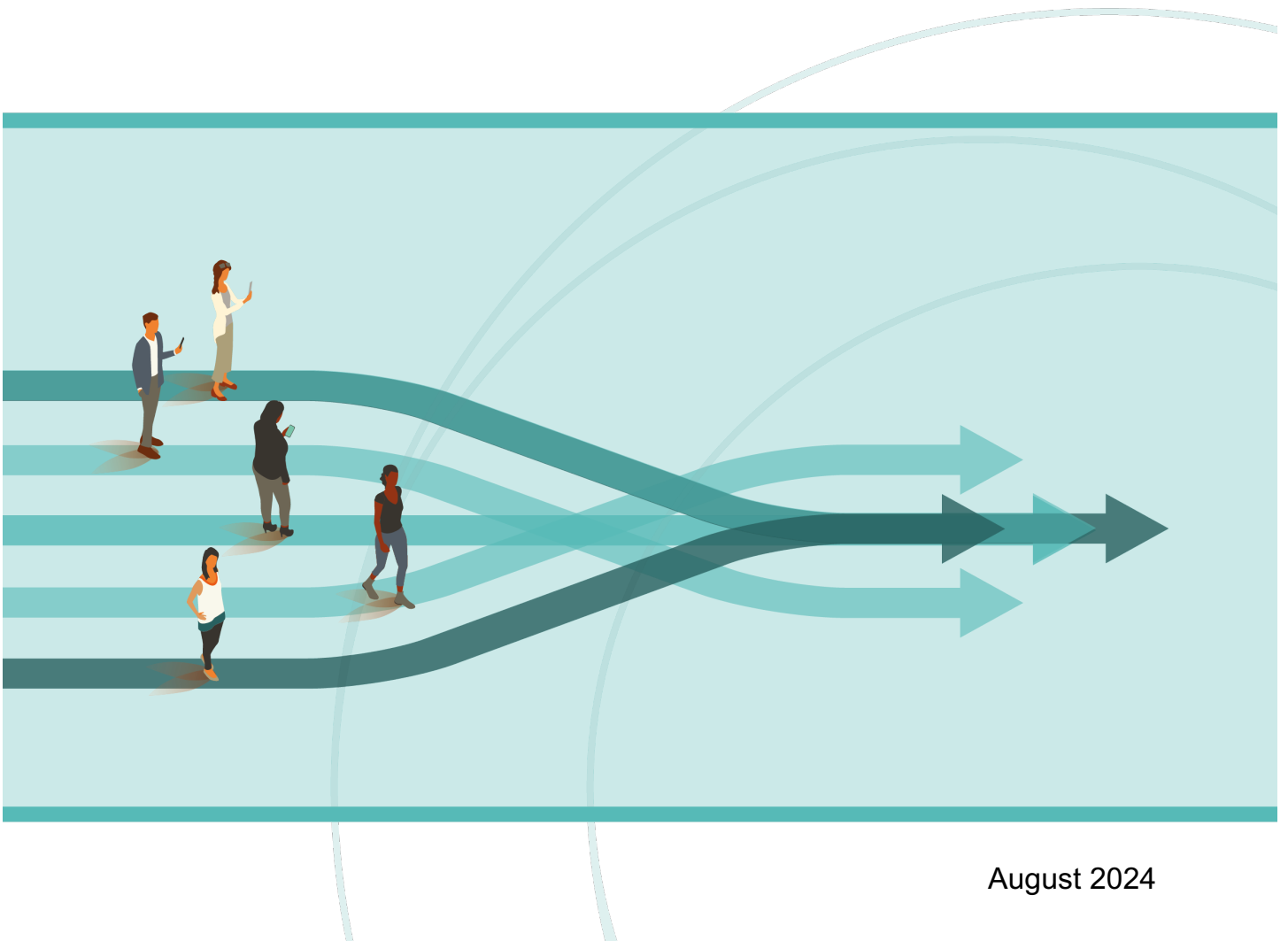
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Procurement Act 2023

# Guidance: Exclusions



August 2024



## Guidance on Exclusions

### What are exclusions?

1. Fundamental to the new procurement regime is ensuring fair and open competition and treating suppliers equally. Contracting authorities should be confident that suppliers taking part in their procurements and delivering their contracts are reliable. Contracting authorities should use conditions of participation to satisfy themselves that suppliers have the legal and financial capacity and technical ability to deliver the specific goods, works or services involved.
2. Exclusion is a broad term used in this guidance to describe a number of different circumstances where suppliers are not permitted to participate in a covered procurement, to have their tender considered or to be awarded a public contract.
3. The exclusions regime enables, and where appropriate requires, the exclusion of suppliers where they pose particular risks to public procurement. It provides a framework within which contracting authorities must consider a supplier's recent past behaviour and circumstances to determine whether it should be allowed to compete for or be awarded a public contract.
4. These risks fall into the following categories:
  - a. reliable delivery of public contracts: the risk that a supplier will fail to deliver contractual requirements, either through a breach of contract or inadequate performance. This does not relate to the supplier's ability to deliver a particular requirement but rather that there is a general risk of failure to perform;
  - b. effective competition for public contracts: the risk that a procurement, including the assessment of exclusions, cannot be undertaken in accordance with the legal regime and in particular the procurement objectives in section 12 of the Procurement Act 2023 (Act);
  - c. public confidence in the honesty, integrity and probity of suppliers in the delivery of public contracts: the risk that public confidence may be undermined due to a supplier not acting in good faith;
  - d. protection of public funds: the risk that a supplier may incur additional costs for the public sector (and therefore the taxpayer) during the delivery of public contracts; and
  - e. protection of the public, the environment, national security interests and the rights of employees: the risk that a supplier may be a risk to these aspects which are considered particularly important in relation to suppliers to the public sector.
5. The exclusions regime is not intended to be a punishment for circumstances or past misconduct. The regime is also not imposed in order to have a deterrent effect on suppliers in future, although of course all suppliers to the public sector are expected not to engage in

criminal activity or other misconduct. Exclusion is a purely risk-based approach centred on the specific risks posed by the supplier.

### **What is the legal framework that governs exclusions?**

6. The Act covers exclusions in three main ways:
  - a. Sections 26 and 27 cover how the exclusion grounds must be considered and applied in different procurement procedures. Section 28 deals with excluding suppliers by reference to sub-contractors and section 29 applies where a contracting authority intends to exclude a supplier on a discretionary basis for national security reasons.
  - b. Sections 57 and 58 define the concepts of excluded supplier and excludable supplier. They also detail matters a contracting authority may have regard to when considering whether the circumstances giving rise to an exclusion ground are continuing or likely to occur again.
  - c. The mandatory exclusion grounds are set out in Schedule 6 and discretionary exclusion grounds in Schedule 7.
7. In addition to the exclusion grounds, the Act makes provision elsewhere for tenders to be disregarded on other grounds. These are outlined and cross-referred in sections 19(3), (9) and (10) and include disregarding tenders from suppliers that are not UK or treaty state suppliers, reserving public contracts to supported employment providers and qualifying public service mutuels under sections 32 and 33, and disregarding tenders from suppliers that are not members of a dynamic market under section 34. For further information see the guidance on treaty state suppliers, reserved contracts and dynamic markets.
8. The Act also requires a supplier to be treated as an excluded supplier in circumstances outside of the mandatory exclusion grounds. This is the case where:
  - a. the nature of a supplier's involvement in preliminary market engagement means it has an unavoidable unfair advantage in the procurement under section 16;
  - b. where a supplier has acted improperly in the procurement under section 30; and
  - c. where a supplier has an unavoidable unfair advantage due to a conflict of interest in the procurement under section 82.
9. In summary, a tender from an excluded supplier or an excludable supplier must (for excluded suppliers) or may (for excludable suppliers) be disregarded in a competitive tendering procedure (see section 26). In addition, the supplier must (for excluded suppliers) or may (for excludable suppliers) be excluded from participating in, or progressing as part of a competitive flexible procedure (see section 27). 'Progressing' in the procedure could mean

being permitted to continue in the procurement beyond the submission of requests to participate, submitting initial tenders, or any subsequent stage in the procedures.

### **What has changed?**

10. The Act constitutes a significant refresh of the previous legislation and brings together a single exclusions regime replacing those currently set out in the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, the Concession Contracts Regulations 2016 and the Defence and Security Public Contracts Regulations 2011.
11. Below is a high level overview of some of the broader changes to the exclusions regime:
  - a. introducing new mandatory exclusion grounds (included in the full list of grounds outlined in Annex 1) to expand the circumstances in which contracting authorities must exclude suppliers for convictions of certain offences and other certain serious misconduct;
  - b. introducing new discretionary exclusion grounds (also included in the full list of grounds outlined in Annex 1) in areas such as poor performance, labour misconduct and national security threats, enabling contracting authorities to take tougher action on underperforming suppliers and suppliers who pose unacceptable risks;
  - c. making the exclusion grounds UK-specific but also ensuring they apply to certain events which occur overseas and equivalent non-UK offences, regulatory rulings and other decisions;
  - d. creating a clearer set of rules outlining when a supplier must or may be excluded due to an exclusion ground applying to 'connected persons' (such as beneficial owners, directors, parent and subsidiary companies) or 'associated persons' (such as certain key sub-contractors) and making it clear that these apply to both mandatory and discretionary grounds;
  - e. giving contracting authorities greater flexibility to consider a range of evidence of 'self-cleaning' by suppliers in order to assess whether the circumstances giving rise to an exclusion ground are continuing or are likely to occur again; and
  - f. extending the time limit for consideration of relevant events for discretionary exclusion grounds to 5 years to match that of mandatory exclusion grounds.

### **Key points and policy intent**

12. The Act sets out a list of mandatory and discretionary exclusion grounds and places a duty on contracting authorities to consider both sets of grounds for each procurement, as well as whether the circumstances are continuing or likely to occur again. Contracting authorities must exclude an excluded supplier and may exclude an excludable supplier.

### Meaning of 'excluded supplier' and 'excludable supplier'

13. Section 57 defines the concepts of 'excluded supplier' and 'excludable supplier'. Although the definitions in section 57 refer to exclusion grounds applying to the supplier or an associated person, it is important to remember that many of the exclusion grounds themselves also apply where an event or circumstance has been determined or applies in relation to the supplier or a connected person (see Schedules 6 and 7 and paragraphs 41-45). Section 28 separately provides for exclusion of a supplier by reference to a sub-contractor.
14. A supplier is an 'excluded supplier' where the contracting authority considers, firstly, that a mandatory exclusion ground applies to the supplier (or where relevant a connected person) or an associated person and, secondly, that the circumstances giving rise to the exclusion ground are continuing or likely to occur again. A supplier will also be an excluded supplier where a Minister of the Crown has already determined this; i.e. where the supplier or an associated person is on the debarment list because of a mandatory exclusion ground.
15. A supplier is an 'excludable supplier' where the contracting authority considers, firstly, that a discretionary exclusion ground applies to the supplier (or where relevant a connected person) or an associated person and, secondly, that the circumstances giving rise to the exclusion ground are continuing or likely to occur again. A supplier will also be an excludable supplier where a Minister of the Crown has already determined this; i.e. where the supplier or an associated person is on the debarment list because of a discretionary exclusion ground.
16. In other words, the supplier will be an excluded supplier or an excludable supplier either where the contracting authority considers this to be the case in the context of a particular procurement *or* where the supplier or associated person is already listed on the debarment list.

What is the significance of debarment?

17. Debarment is a new mechanism under which a Minister of the Crown can put a supplier on the centrally-published debarment list if the Minister is satisfied that a supplier is an excluded supplier or an excludable supplier. The list will be managed by the Procurement Review Unit (PRU) and published on gov.uk. The debarment list must always be checked by contracting authorities when undertaking covered procurement.
18. Where a supplier is on the debarment list, other than in limited cases, contracting authorities must or may exclude that supplier from the procurement, depending on whether the exclusion ground for which the supplier has been put on the debarment list is mandatory or discretionary.
19. For more detail on debarment, please refer to the guidance on debarment.

## Exceptions to the standard exclusions process

20. The general rules differ in two instances. Firstly, in covered procurements carried out by a private utility, an excluded supplier must be regarded as an excludable supplier. This means that a private utility can choose whether or not to exclude a supplier from a procurement for a ground that would result in a mandatory exclusion for all other contracting authorities, providing increased flexibility for private utilities regarding the exclusion of suppliers. For further information see the guidance on utilities contracts.
21. Secondly, for exclusions on the basis of the discretionary exclusion ground relating to national security in Schedule 7, paragraph 14, a contracting authority (other than a Minister of the Crown, government department or Corporate Officer of the House of Commons or Lords) may not exclude the supplier unless:
  - a. the contracting authority has notified a Minister of the Crown (in practice this must be a Cabinet Office minister who can be notified via the debarment gov.uk page) of its intention to do so; and
  - b. the Minister considers that the supplier is an excludable supplier on the basis of this exclusion ground and the tender should be disregarded or the supplier excluded.
22. There is also one difference in how the debarment list operates where the supplier is on the debarment list for the mandatory exclusion ground relating to national security in Schedule 6, paragraph 35. Unlike the other exclusion grounds, this entry on the debarment list may not be relevant to all covered procurements. For this ground to apply, the Minister must have determined that the supplier is a threat to national security in relation to contracts of a particular description or descriptions. Where a supplier is put on debarment list on this ground, the supplier is an excluded supplier only for procurements for those types of contracts. A type of contract might be described on the debarment list as a contract for the provision of particular types of goods, works or services, to particular types of locations, or awarded by particular types of contracting authorities. Contracting authorities must exclude suppliers listed on the debarment list in relation to this ground only for the specified type(s) of contracts.

## The exclusion grounds

23. Schedule 6 of the Act sets out the mandatory exclusion grounds, which are the most serious, high risk scenarios. The grounds in Part 1 require a conviction of specific offences in the UK. They also cover convictions for an offence outside of the UK which would be an offence if it had been committed in the UK. For example, if a supplier is convicted of a fraud offence in another country, this will be a mandatory exclusion ground if that misconduct would have been an offence in the UK had it been conducted in the UK. Part 1 also includes ancillary offences, such as aiding and abetting.
24. The grounds in Part 2 do not require a conviction for an offence and cover national security threats in relation to particular contracts and certain tax misconduct and competition law

infringements. The tax misconduct and competition law infringement grounds include misconduct and infringements that occurred outside of the UK. Part 2 also includes failure to cooperate with a debarment investigation as a mandatory exclusion ground, which only a Minister of the Crown can determine.

25. Schedule 7 of the Act sets out the discretionary exclusion grounds, which mostly do not require a conviction but represent situations which may pose unacceptable risks. These cover a broad range of situations, such as insolvency, potential competition law infringements, professional misconduct, breach of contract and poor performance, general national security threats, as well as misconduct in areas like labour and the environment. The grounds in Schedule 7 cover situations where misconduct has occurred outside of the UK. They also include a discretionary exclusion ground where the supplier has acted improperly in another procurement.

26. The full list of mandatory and discretionary exclusion grounds are set out in Annex 1.

#### Time periods

27. As the purpose of the exclusions regime is not to punish suppliers for past misconduct but rather to safeguard against unacceptable risks, Schedule 6 prevents consideration of convictions, regulatory decisions, events or conduct which occurred more than 5 years ago for the mandatory exclusion grounds. Schedule 7 prevents consideration of events which the contracting authority was aware of (or which a reasonably well-informed decision-maker in their position would have been aware of) more than 5 years ago for the discretionary exclusion grounds. In this guidance, for brevity, the term 'event occurred' is used for both. For mandatory exclusion grounds the legal test is when the conviction, decision, ruling, failure or other event occurred, whereas for discretionary exclusion grounds the test is when the contracting authority was aware of the event or a reasonably well-informed decision-maker in the contracting authority's position would have been aware of the event. Where an event occurred longer than 5 years ago, it is not considered to give rise to the risks the regime is seeking to mitigate against.

28. The 5 year period is not a time period for exclusion as such; but if the event occurred longer than 5 years ago, then the supplier is no longer at risk of exclusion in relation to that event.

29. To avoid suppliers being subject to potential exclusion action based on events which occurred prior to the relevant provisions in the Act coming into force where the exclusion grounds are new or were subject to a 3 year time period in previous legislation, Schedules 6 and 7 provide additional rules on time periods (in addition to the 5 year rule previously outlined):

- a. For exclusion grounds which are new (as outlined in Schedule 6, paragraph 44(3) and Schedule 7, paragraph 15(4)), events which occurred before the Schedules came into force cannot be considered. For example, corporate manslaughter is a new mandatory exclusion ground and serious labour misconduct is a new discretionary exclusion ground so a corporate manslaughter conviction or labour

market misconduct that occurred before the exclusions regime came into force cannot be considered.

- b. For exclusion grounds which are the same as, or substantially similar to, a discretionary exclusion ground under the previous legislation (as outlined in Schedule 6, paragraph 44(4) and Schedule 7, paragraph 15(3)), events which occurred more than 3 years before the Schedules come into force cannot be considered. For example, professional misconduct is similar to the discretionary exclusion ground of grave professional misconduct under the previous legislation with a 3 year time limit, therefore under the Act such misconduct that occurred prior to 3 years before the Act comes into effect cannot be considered.

#### Individuals and entities connected to or associated with the supplier

30. For a contracting authority to be satisfied that a supplier should be allowed to participate in a procurement and potentially awarded a contract, it should also consider whether the exclusion grounds apply to certain individuals or entities:
  - a. with significant influence or control over the supplier;
  - b. which the supplier has significant influence or control over; and
  - c. which have certain associations with the supplier.
31. The exclusion grounds indicate particular risks exist; thus, if they apply to a relevant individual or legal entity as mentioned above, it may mean that the supplier poses such risks through association or connection.
32. Significant influence or control is not limited to those who have full control or influence over the supplier or over which the supplier has full control or influence, nor is association as broad as every individual or entity associated with the supplier. The Act provides for two categories of persons which must be considered with regard to most exclusions: associated persons and connected persons. It also provides for a third category which is treated slightly differently: sub-contractors.

#### Associated persons

33. A supplier may be an excluded supplier or an excludable supplier if any exclusion ground applies to either the supplier or an associated person (see the references to 'associated person' in section 57 of the Act) and if the circumstances giving rise to the ground are continuing or likely to occur again.
34. An associated person for these purposes is defined in section 26(4) as a person the supplier is relying on in order to satisfy the conditions of participation (other than a guarantor). Guarantors are included as an associated person for the conditions of participation

provisions but not for the exclusions provisions, to avoid contracting authorities having to check entities such as banks for potential exclusion grounds.

35. Associated persons are likely to be within the first tier of sub-contractors, but may be further down the supply chain, for example in procurements of contracts with highly technical elements.
36. An example of an associated person for the purpose of exclusions is a specialist sub-contractor or a consortium member the supplier is relying on to deliver particular technical elements of the contract where the contracting authority has set demonstration of technical ability in this area as a condition of participation.
37. For example, a cleaning supplier bidding for an integrated facilities management contract which includes both soft (e.g. cleaning) and hard (e.g. buildings maintenance) services, might need to rely on a specialist buildings maintenance supplier in order to meet conditions of participation relating to that aspect of the service. The cleaning supplier could structure its bid either as a consortium, jointly bidding with the buildings maintenance supplier, or with the cleaning supplier as the prime supplier using the buildings maintenance supplier as a sub-contractor. In either case the buildings maintenance supplier would be an associated person. It is worth noting that not every sub-contractor will be an associated person. Other sub-contractors might be used to perform all or part of the public contract. If these are not relied on by the supplier to meet conditions of the participation they will not be associated persons. In the integrated facilities management example, depending on the conditions of participation set by the contracting authority, an 'other sub-contractor' might be a security services supplier that provides security staff.
38. A supplier can also be an excluded or excludable supplier by virtue of a connected person (see paragraphs 41-45 below) of an associated person. For example, a director of an associated person of the supplier.
39. If a supplier is an excluded supplier or an excludable supplier by virtue of an associated person (and the circumstances giving rise to the exclusion ground are continuing or likely to occur again), the supplier must be given the opportunity to replace the associated person before being excluded.
40. Contracting authorities may wish to include within their tender documents the process to be followed if the supplier is determined to be an excluded supplier or an excludable supplier by virtue of an associated person. A re-assessment of the tender should be done in a way that avoids any unfair disadvantage to other suppliers or any changes to the tender beyond those directly linked to the replacement of the associated person.

#### Connected persons

41. A supplier may be an excluded supplier or an excludable supplier if certain exclusion grounds apply to a connected person and if the circumstances giving rise to the ground are continuing or likely to occur again. For example, a supplier may be an excluded supplier if



any offence in Schedule 6, Part 1 has been committed by a connected person and the circumstances giving rise to that ground are continuing or are likely to occur again.

42. A connected person is defined in Schedule 6 of the Act. In summary, it covers:

- a. persons with significant influence or control over the supplier or persons over which the supplier has significant influence or control, including for example majority shareholders;
- b. directors and shadow directors;
- c. parent and subsidiary companies. (Sister companies of the supplier, i.e. a company with the same parent, are not connected persons unless they fall within one of the other categories of connected persons);
- d. predecessor companies (companies which have become insolvent and ceased to trade and the business has effectively been transferred to the supplier); and
- e. other persons who can reasonably be considered to stand in an equivalent position to the above categories.

43. Connected persons include those who exercise (or have a right to exercise) significant influence or control over the supplier as well as those over which the supplier exercises (or has the right to exercise) significant influence or control.

44. Where a supplier is an excludable supplier because of the misconduct of a connected person, contracting authorities may factor in the strength of the connection between the connected person and the supplier when exercising their discretion on whether or not to exclude. Where the connection is weak, this might suggest that the risk of misconduct arising in the procurement or the delivery of the contract is lower and therefore the situation is less serious, meaning it may be appropriate to exercise discretion to permit the supplier to continue in the procurement.

45. Excluding a supplier on the basis of connected persons is different from associated persons and sub-contractors because it cannot be replaced for the particular procurement in the same way as entities in these other categories can. This means that there is no requirement to give a supplier a reasonable opportunity to replace a connected person before exclusion.

#### Sub-contractors

46. Contracting authorities must ask for details of all sub-contractors a supplier intends to use as part of the procurement (as required by section 28(1)(a) of the Act). This is not restricted to sub-contractors that the supplier is relying on to meet conditions of participation (who will in any event be associated persons) but applies to all sub-contractors (of all tiers) the supplier intends to sub-contract the performance of all or part of the contract to.

47. The supplier must provide an exhaustive list of all their intended sub-contractors in the supply chain proposed for the contract. However, this does not include every supplier with whom the supplier has a commercial relationship; for example, an existing supply contract where there is no intention to specifically sub-contract all or part of the contract to that supplier. If a sub-contractor is unknown at the start of the procedure (or brought in during it), this should be made clear by the supplier and relevant details of the sub-contractor should be provided once their identity and role is confirmed. This information should be shared with the contracting authority as soon as possible and at least by final tenders. In a competitive flexible procedure, which is likely to include multiple stages, it is best practice to seek updated details of sub-contractors at each stage.
48. A contracting authority must check whether any of the intended sub-contractors are on the debarment list (as required by section 28(1)(b) of the Act). In addition, a contracting authority should ensure that the successful supplier will not contract with a sub-contractor that is on the debarment list, at least not without the contracting authority's prior written consent where the sub-contractor is on the debarment list on the basis of a discretionary exclusion ground, during the term of the contract for the purpose of delivering the contract. This should be included as a restriction in the contract to be awarded.
49. The contracting authority may also ask suppliers for further information to determine whether any of the intended sub-contractors are excluded or excludable suppliers. This should be done for categories of sub-contractors, such as tier 1 sub-contractors only, or for sub-contractors that are providing key services or supplies, or if particular supply chain risks are identified for the procurement, particularly in high risk areas or industries. These risks can be considered regardless of how far down the supply chain they are.
50. As with associated persons, if a supplier is an excluded supplier or an excludable supplier by virtue of a sub-contractor, the supplier must be given the opportunity to replace the sub-contractor before being excluded. If the supplier suggests a replacement, a contracting authority must check that the newly-proposed sub-contractor is not on the debarment list and, if the sub-contractor is within the relevant category of sub-contractors for which the contracting authority has chosen to consider exclusions, the contracting authority should also check that the sub-contractor is not subject to an exclusion ground along with any relevant self-cleaning evidence. The contracting authority should also check that the supplier still meets any conditions of participation following the proposed change.
51. As with associated persons, contracting authorities may wish to include within their tender documents the process to be followed if the supplier is determined to be an excluded supplier or an excludable supplier by virtue of a sub-contractor; for example the time period allowed at tender stage to find an alternative, that no changes should be made to the tender other than to reflect a different sub-contractor, and how any changes will be assessed. A re-assessment of the tender must be done in a way that avoids any unfair disadvantage to other suppliers or any changes to the tender beyond those directly linked to the replacement of the associated person.

52. A supplier can also be considered an excluded or excludable supplier by virtue of a connected person of a sub-contractor.

### Self-cleaning

53. When establishing whether the circumstances giving rise to the application of an exclusion ground are continuing or likely to occur again, contracting authorities should look at a range of evidence and factors, as set out in section 58. These include:

- a. evidence that the supplier, associated person or connected person has taken the circumstances seriously, for example by paying compensation;
- b. steps that the supplier, associated person or connected person has taken to prevent the circumstances occurring again, for example by changing staff or management, or putting procedures and training in place;
- c. commitments that such steps will be taken, or to provide information or access to allow verification or monitoring of such steps;
- d. the time that has elapsed since the circumstances last occurred; and
- e. any other evidence, explanation or factor that the authority considers appropriate.

54. In the context of self-cleaning, 'circumstances giving rise to the application of an exclusion ground' includes the underlying issues in addition to the specific misconduct. For instance, underlying issues might include a toxic office culture, due diligence failures, a lack of a compliance function or inappropriate governance mechanisms.

55. When considering whether the circumstances are likely to 'occur again', the recurrence could be at any point in the future. However, given the purpose of the exclusions regime is to minimise risks to public contracts, when considering this in the context of a particular procurement, contracting authorities may wish to focus on the risk of recurrence within the lifetime of the contract. This does not mean that there must be a risk of recurrence in connection with the delivery of the contract. The circumstances could re-occur elsewhere in the supplier's operations (or a connected person's, associated person's or sub-contractor's) operations and still be relevant to this judgement.

56. What constitutes good self cleaning in any particular situation will be specific to the circumstances giving rise to that exclusion ground. When seeking to determine whether circumstances are continuing or likely to occur again, contracting authorities should consider what expectations (if any) are set by the appropriate authority if one exists, such as the Environment Agency for environmental misconduct or the Competition and Markets Authority (CMA) for competition infringements.

57. Contracting authorities should also factor in the level and nature of co-operation with appropriate authorities when seeking to determine whether the supplier has 'taken the

circumstances seriously'. For example, the [Serious Fraud Office \(SFO\) corporate co-operation guidance](#) provides a set of principles that may be used to help assess cooperation and defines co-operation as "providing assistance to the [relevant authority] that goes above and beyond what the law requires."

58. Before deciding whether a supplier is an excluded supplier or an excludable supplier, the contracting authority must give the supplier a reasonable opportunity to make representations, including, for example, as to whether exclusion grounds apply, and to provide evidence that the circumstances giving rise to the exclusion ground are not continuing or likely to occur again (by reference to the information set out in the bulleted list above).
59. Where an exclusion ground applies because of the circumstances or misconduct of a connected person, associated person or sub-contractor, the self-cleaning evidence should relate to that individual or entity as well as any measures put in place by the supplier, including to prevent further misconduct by the relevant person and more generally. For example, a supplier may have put in place more robust training, due diligence and oversight arrangements for group companies following a subsidiary company being engaged in professional misconduct.
60. When asking for particular evidence or information, the contracting authority must ensure such requests are proportionate based on the nature and complexity of the matters being assessed, and the design of the procurement. For example, a supplier could be asked for details of a business-wide corporate renewal programme where there has been professional misconduct, whereas a summary of changes made to payroll systems and procedures may be sufficient where there has been a breach of national minimum wage laws. Contracting authorities should consider when it would be appropriate for suppliers to submit evidence and information, having regard to the procurement objectives and what is required to ensure the proper conduct of the procurement. For example, it may not be proportionate to require all evidence at the participation stage of a competitive flexible procedure.
61. It is for the supplier to demonstrate it has self-cleaned and this must be to the satisfaction of the contracting authority, taking into account the gravity and particular circumstances giving rise to the ground for exclusion. In order to conclude that a supplier is an excluded supplier or an excludable supplier, the contracting authority does not need to be satisfied that the particular situation will occur again but rather that the circumstances leading to it are continuing or are likely to occur again. Suppliers can be asked to pay for an independent audit of self-cleaning action if the contracting authority deems this proportionate, reasonable and necessary.
62. Where a supplier has been investigated for a debarment, but not been placed on the debarment list for a mandatory or discretionary exclusion ground, a debarment investigation report will be available which may include a description of the circumstances and evidence considered as part of that investigation. This is a good example of additional evidence that a contracting authority could consider as outlined in section 58(1)(e) of the Act.

#### Factoring time elapsed in self-cleaning assessments

63. In general, the more time that has elapsed since the misconduct or circumstances occurred, the less likely they are to occur again. However, time elapsed by itself should not be sufficient to demonstrate that misconduct is unlikely to occur again; any other relevant evidence should also be considered.
64. Evidence that misconduct or circumstances would have arisen but were prevented from occurring, for example by measures put in place by the supplier, should be taken into account. However, time elapsed might not be sufficient evidence if there were no opportunities for the circumstances to arise in that time.

#### Factoring future commitments into self-cleaning assessments

65. Future commitments should not be given equal weight to actions already taken. In the absence of any concrete action, commitments alone should not be sufficient evidence that misconduct is unlikely to occur again.
66. Any future commitments provided should be SMART, (specific, measurable, achievable and time-bound). Contracting authorities should ensure there is a robust mechanism for monitoring the implementation of commitments made, especially if these are a significant factor in the decision that a supplier is not an excluded or excludable supplier and the supplier is subsequently awarded the contract. For example, this might include the appointment of an independent auditing firm, paid for by the supplier, to verify steps taken, or regular reporting to the contracting authority.

#### Verifying exclusions

67. Contracting authorities should ask suppliers for the information listed below to be submitted with their requests to participate in a competitive flexible procedure or with their tenders in an open procedure:
- a. basic information about themselves and their connected persons and associated persons;
  - b. self-declarations as to whether any mandatory or discretionary exclusion grounds apply to the supplier, connected persons or associated persons; and
  - c. where the supplier self-declares that an exclusion ground applies:
    - i. which exclusion ground applies;
    - ii. a short description of the event giving rise to the exclusion ground;
    - iii. the name of the person who is the subject of the event;
    - iv. the person's name, contact postal address and email address; and

- v. in the case of a conviction or other event where there is a recorded decision of a public authority which is the authoritative basis for the conviction or other event:
  - 1. a link to the webpage where the decision can be accessed; or
  - 2. a copy of the decision;
  - 3. any evidence that the person who is the subject of the event:
    - a. took the event seriously, for example by paying any fine or compensation;
    - b. took steps to prevent the event occurring again, for example by changing staff or management, or putting procedures or training in place;
    - c. committed to take further preventative steps, where appropriate; and
  - 4. if the circumstances which led to the event have ended, the date when they ended.

68. Contracting authorities are not required to ask suppliers to self-declare the national security discretionary exclusion ground; this should be investigated by contracting authorities as part of their standard due diligence checks, other than for Government departments and the Corporate Officers of the House of Commons and House of Lords, and only used following a referral to NSUP.

69. Contracting authorities must always request details of intended sub-contractors (of all tiers) in each procurement so that checks can be made that sub-contractors are not on the debarment list. Contracting authorities may also wish to request further information about sub-contractors in order to themselves consider exclusions (in addition to checking the debarment list) as explained above.

70. Information about the supplier and connected persons must be provided by the supplier via the central digital platform before the end of the tendering period but can be provided prior to that either directly to the contracting authority or via the platform. For example, in a competitive flexible procedure, the contracting authority will need this information in order to consider exclusions at the invitation to participate stage and can obtain this information directly or by asking suppliers to register on the platform and provide it via the platform at this stage. It is also best practice to encourage associated persons and sub-contractors to register on the central digital platform to gain a unique identifier so that the supplier can provide their information via the platform as well, but this information can also be provided directly by the supplier and not via the platform. Before the end of the tendering period in

open and competitive flexible procedures (or prior to contract award for a direct award or a competitive selection process under a framework), contracting authorities must seek confirmation from the supplier that it has:

- a. registered on the central digital platform;
- b. submitted the above information about itself and connected persons to the central digital platform; and
- c. shared that information with the contracting authority via the central digital platform.

71. It is best practice to seek confirmation that any information provided directly to the contracting authority that has not been provided via the central digital platform is also up-to-date.
72. Contracting authorities should undertake further due diligence, particularly where the contract raises particular risks, such as cartel behaviour in the construction industry or risks of modern slavery. There are a variety of resources and tools available to assist with contracting authorities' due diligence including Companies House and Spotlight, government's online automated due-diligence tool which includes insights from Dun and Bradstreet. The Spotlight tool is available on gov.uk.
73. Contracting authorities may also wish to undertake further due diligence for other reasons, for example if they are aware or suspicious of misconduct from publicly-available information but the supplier has not provided this information.
74. Contracting authorities may seek information from relevant regulatory bodies. Requests for evidence should be limited to cases where the conduct gives rise to an exclusion ground.

#### Discretion to exclude

75. Where a supplier is an excludable supplier, contracting authorities have a discretion to exclude the supplier. In exercising this discretion, contracting authorities are reminded of the duty to have regard to the objectives set out in section 12 of the Act including delivering value for money, maximising public benefit, information sharing and acting (and being seen to act) with integrity. More generally, the risk posed by the circumstances or misconduct giving rise to the exclusion ground should be considered and whether this outweighs the public interest in allowing the supplier to participate in the procurement.
76. Contracting authorities should consider all relevant factors when exercising discretion to exclude a supplier, or not to exclude a supplier. This will depend on the particular circumstances, but an example of where it may be appropriate to allow a supplier to continue to participate in the procurement or to be awarded a contract is where the type of contract is such that the relevant risk is unlikely to arise in relation to the contract even if the circumstances giving rise to the exclusion ground are likely to occur again.

77. Discretion should not be used:

- a. to avoid a decision on whether an exclusion ground applies or looking at self-cleaning evidence. Discretion only arises when a contracting authority considers that a discretionary exclusion ground applies and that the circumstances giving rise to the ground are continuing or are likely to occur again (i.e. having considered self-cleaning evidence); or
- b. to take into account irrelevant factors such as the cost of the supplier's tender. The cost of the supplier's tender (and other matters relating to the tender) should be considered as part of the assessment of tenders.

78. The factors that may be relevant in any particular situation include (but are not limited to):

- a. factors relating to the supplier, such as the seriousness of the circumstances or misconduct giving rise to the exclusion ground and the time elapsed since the circumstances or misconduct in question; and
- b. factors relevant to the procurement, such as whether there are other suitable suppliers, the impact of exclusion on public services and whether the risks posed by the supplier due to being an excludable supplier are likely to transpire in the delivery of the particular contract. For example, in a procurement for IT support services, a contracting authority may decide not to exclude a supplier for environmental misconduct relating to its operations overseas in a different sector.

79. Contracting authorities should not operate a policy to always exclude, or to never exclude, on particular exclusion grounds. Case by case decisions must be made on the basis of the circumstances of each procurement and consideration of all relevant factors at that time.

80. Contracting authorities also have a discretion under section 41(2) of the Act to directly award a contract to an excluded supplier where a direct award justification applies and there is an overriding public interest in awarding that contract to that supplier. There is an overriding public interest in this context if one of the following circumstances listed in section 41(5) applies:

- a. the procurement is essential for the construction or maintenance of critical national infrastructure. This means those critical elements of infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:
  - i. major detrimental impact on the availability, integrity or delivery of essential services (including those services whose integrity, if compromised, could result in significant loss of life or casualties) taking into account significant economic or social impacts; and/or



- ii. significant impact on national security, national defence, or the functioning of the state;
- b. the procurement is in a strategically important sector for the UK. Strategically important sectors are those that are vital to the defence and security of the UK's national interests. These are discussed in detail in the Defence and Security Industrial Strategy;
- c. failure to award the contract to the excluded supplier would prejudice the conduct of military or security operations or the effective operation of the armed forces or intelligence services; and
- d. there is a situation of extreme and unavoidable urgency and the contract cannot be awarded to another supplier.

81. If there is evidence to suggest any of the discretionary exclusion grounds may apply, the burden is on the contracting authority to be satisfied that the relevant conduct or circumstances have occurred. A contracting authority can rely on a wide range of available information, such as the examples listed below. In all cases, the evidence must be specific to the relevant supplier (or other relevant person's conduct or circumstances). There is no single type of evidence that would automatically satisfy the evidentiary requirements. However, the more reliable the evidence, the more likely it is that the evidence will be sufficient.

82. A contracting authorities conducting due diligence (for example where it is aware of or have a suspicion that relevant misconduct may be a particular risk for that procurement or have occurred) is encouraged to review a wide range of information on suppliers, including from the sources below:

- a. international debarment lists (e.g. US Customs and Border Protection's Withhold Release Orders or US Department of Commerce's Bureau of Industry and Security Entity List);
- b. international policy institutes (e.g. Australian Strategic Policy Institute);
- c. government business registries;
- d. local government reports;
- e. company websites;
- f. NGOs or independent research organisations;
- g. peer-reviewed academic articles; and
- h. media reports.

### Operation of exclusions for dynamic markets and frameworks

83. Dynamic markets are open lists of suppliers that have met certain conditions to be eligible to tender for public contracts in competitive flexible procedures open only to members of the market. Frameworks are themselves public contracts which provide for the award of future contracts to suppliers who are on the framework by direct award or a competitive selection process.
84. An excluded supplier must not be admitted to a dynamic market, whilst a contracting authority has discretion not to admit an excludable supplier (see section 36 of the Act). When undertaking a competitive flexible procedure restricted to members of a dynamic market, the same rules apply as to a normal competitive flexible procedure. In other words, tenders must be disregarded where a supplier is an excluded supplier and may be disregarded where a supplier is an excludable supplier. Depending on whether the supplier is an excluded supplier or an excludable supplier, suppliers must or may be excluded from participating in or progressing as part of the procedure.
85. A supplier must be removed from a dynamic market if it is on the debarment list on the basis of a mandatory exclusion ground and the supplier may be removed if it is an excluded supplier (but not by virtue of being on the debarment list on this basis) or an excludable supplier (see section 37 of the Act). For example, if a contracting authority managing a dynamic market determines that a supplier is an excluded supplier, it has a discretion to remove them from the dynamic market or allow them to remain there. If the supplier remains on the market, it will not be able to compete for contracts (and should be excluded by contracting authorities if it tries to do so) but keeping them on the market may be a way for the contracting authority to incentivise the supplier to undertake self-cleaning.
86. When a framework is awarded, the rules on disregarding tenders and excluding suppliers from participating in or progressing as part of the procurement procedure apply as normal. A framework must not allow for the award of a contract to an excluded supplier (see section 45) but may allow for the award of a contract to an excludable supplier. The contracting authorities who establish frameworks should consider on a regular basis whether each supplier on a framework has become an excluded supplier or an excludable supplier. Any contracting authority awarding a public contract under a framework must also consider whether a supplier is an excluded supplier, and should consider whether a supplier is an excludable supplier, prior to the award of each public contract under the framework.

### Applying the exclusions provisions during the procurement process

87. Preliminary market engagement: Contracting authorities should use this opportunity to familiarise or remind suppliers of the exclusion grounds. All exclusion grounds must be considered for all covered procurements but contracting authorities can also use preliminary market engagement to focus due diligence efforts on a supplier by understanding if there are exclusion grounds that may be particularly relevant. For example:

- a. if a supplier has an overseas supply chain for low cost goods, there may be a higher likelihood of labour market misconduct; or
  - b. if a supplier is operating in the agriculture sector, the environmental misconduct grounds may be particularly relevant.
88. Supplier information: At the start of a competitive flexible procedure, contracting authorities must check the debarment list on gov.uk. Each supplier's exclusion grounds information either provided directly by the supplier or provided via the central digital platform must also be checked, including details of connected persons, associated persons and sub-contractors (where relevant) and any additional information requested by the contracting authority at that stage. Contracting authorities may undertake the same check at some or all stages of a competitive flexible procedure. The check must be made when assessing final tenders in both competitive flexible and open procedures.
89. Identification of an excluded supplier or an excludable supplier: If the contracting authority determines that the supplier is an excluded supplier or an excludable supplier at any point in the procedure prior to assessment of tenders, the supplier should not be allowed to continue with the procedure if the supplier is an excluded supplier or, if the supplier is an excludable supplier, consideration should be given as to whether to allow the supplier to continue or not. At the point of assessment of tenders, the contract cannot be awarded to an excluded supplier and consideration should be given to awarding to an excludable supplier. Contracting authorities should provide suppliers with the reasons for any exclusion.
90. Excluding on the basis of an associated person or sub-contractor: If the supplier is an excluded supplier or an excludable supplier by virtue of an associated person or an intended sub-contractor, the supplier must be given the opportunity to replace that person or sub-contractor before they are excluded.
91. Reporting: Contracting authorities must notify the appropriate authority (for authorities other than devolved Welsh authorities or transferred Northern Ireland authorities, this is a Minister of the Crown, via the PRU) within 30 days of excluding a supplier. Exclusion can be reported to the PRU via gov.uk.
92. Contracting authorities may wish to consider the implications of a supplier being investigated or added to the debarment list during a live procurement, particularly if the decision is taken towards the end of a competitive tendering procedure and consider setting out in the tender documentation how it will progress to contract award in such a circumstance.

#### Exclusions post-contract award

93. If a supplier (or a sub-contractor in respect of which the contracting authority requested information during the procurement procedure for the purpose of determining whether the sub-contractor was an excluded supplier or an excludable supplier under section 28(2)) is found to be an excluded supplier or an excludable supplier during the term of a public contract (including a framework), the contracting authority should decide whether to

terminate the contract with that supplier. Section 78 of the Act implies a right to terminate in these circumstances into each public contract, and section 48 provides for the same in relation to each framework.

94. The implied right in section 78(2)(c) allows for termination where the contracting authority finds out that a sub-contractor was an excluded supplier or an excludable supplier at the point of award of the contract but the contracting authority did not know that the supplier intended to sub-contract the performance of all or part of the contract (see section 78(4)), or that the sub-contractor was an excluded or excludable supplier (see sections 78(5) and (6)), in all cases despite seeking the relevant information and making the necessary checks during the procurement procedure. For example, new information may come to light that the contracting authority was not aware of during the procurement procedure. The implied right in section 78(2)(c) also allows for termination where a sub-contractor becomes an excluded or an excludable supplier after contract award.
95. The implied right in section 78(2)(b) allows for termination if the supplier (including by virtue of an associated person) becomes an excluded supplier or an excludable supplier after being awarded the contract. For example, the supplier may be convicted of an offence or may commit misconduct which constitutes an exclusion ground. Section 78(11) ensures that this implied right does not apply where the supplier was excludable during the procurement but the contracting authority exercised their discretion so as not to exclude them. Contracting authorities cannot re-visit that decision without there being any change in circumstances.
96. The right to terminate is discretionary, even where the supplier is an excluded supplier (i.e. subject to a mandatory exclusion ground). Before terminating a contract because a sub-contractor is an excluded supplier or an excludable supplier, the contracting authority must give the supplier the opportunity to replace the sub-contractor.
97. Notwithstanding these implied terms, contracting authorities may wish to expressly replicate these implied terms in their contracts and may wish to include ancillary terms, for example, to provide for an orderly exit and payment of sums due. Contracting authorities may also wish to provide for processes on the replacement of sub-contractors who become an excluded supplier or an excludable supplier, including a right to approve such sub-contractors. It would be appropriate to refuse approval where the replacement sub-contractor is an excluded supplier and contracting authorities will want to allow themselves a right to refuse approval also where the replacement is an excludable supplier.
98. Contracting authorities should, as a matter of best practice, expressly include in their contracts that suppliers must notify them if it or any relevant sub-contractor that was checked during the procurement procedure becomes an excluded or excludable supplier (including where it is put on the debarment list during the term of the contract or by virtue of connected persons or associated persons). The implied right to terminate applies only to those sub-contractors in respect of which the contracting authority sought information in relation to exclusions during the procurement procedure and not to other sub-contractors. For example, if the contracting authority sought information about tier 1 sub-contractors only, then the implied right to terminate applies with respect to those tier 1 sub-contractors only.

99. Transparency of changes to a supplier's connected persons once the contract has been awarded is also important, as it provides the contracting authority with visibility of individuals or entities that have influence or control over the supplier. Contracting authorities should therefore, as a matter of best practice, expressly include in their contracts a requirement that the supplier must notify them (within a specified timeframe) of any changes to their connected persons during the contract term. Non-compliance either through failing to notify within the specified timeframe or by providing information that is incomplete, inaccurate or misleading should be set out in the contract as constituting grounds for contract termination. These terms should be included expressly in contracts.

100. When exercising discretion on whether to terminate contracts in these situations, contracting authorities should consider factors including:

- a. time elapsed on the contract;
- b. time remaining in the contract;
- c. the nature and relevance of the misconduct to the contract;
- d. the impact of termination on public services; and
- e. the cost of termination and re-procurement.

#### Reporting requirements when excluding a supplier

101. Contracting authorities must notify a relevant appropriate authority within 30 days of excluding a supplier.

- a. For devolved Welsh authorities, the appropriate authority is Welsh Ministers.
- b. If the contracting authority is a transferred Northern Ireland authority, the relevant authority is the Northern Ireland department that the contracting authority considers it most appropriate to notify.
- c. In any other case, the relevant authority is a Minister of the Crown.

102. This reporting requirement also applies where a contracting authority notifies a supplier that it is an excluded supplier or an excludable supplier due to an associated person or sub-contractor and gives the supplier the opportunity to replace the associated person or sub-contractor. Similarly, it applies where a contracting authority has rejected an application from a supplier for membership of a dynamic market or has removed a supplier from a dynamic market.

103. A key purpose of these notification requirements is to allow appropriate authorities to consider whether they may wish to investigate the supplier for potential debarment. For that

reason, notification is not required where the supplier is excluded on the basis it is on the debarment list, other than in respect of the mandatory exclusion ground for national security in Schedule 6, paragraph 35 of the Act. These notification requirements also do not apply for exclusion on the basis of the mandatory exclusion ground for failure to co-operate with a debarment investigation under Schedule 6, paragraph 43.

104. To notify a Minister of the Crown, contracting authorities must report each exclusion of a supplier to PRU via gov.uk. For the purposes of a centralised record of exclusions, Welsh and Northern Irish devolved authorities should report any exclusions to PRU as well as to the Welsh Ministers or Northern Ireland department (as appropriate).

## **What notices are linked to this aspect of the Act?**

### Transparency notice

105. The information in this notice about each supplier who is to be awarded a contract will include their unique identifier and, where the contract is being directly awarded to an excluded supplier because the contracting authority considers that there is an overriding public interest the contract to that supplier, the fact that it is an excluded supplier, the direct award justification, which exclusion ground applies and why the contracting authority believes there is an overriding public interest to award the contract to that supplier. When awarding to more than one supplier, the contracting authority will need to be clear about which supplier is an excluded supplier. See the guidance on direct award for more information.
106. This information will normally have been provided to the contracting authority by the supplier through the central digital platform as required by regulation 6 of the Procurement Regulations 2024 (the Regulations). The identifier and details that are entered in the notice should therefore correspond to the information the supplier has submitted.

### Contract award notice

107. When publishing a contract award notice relating to a direct award to an excluded supplier, the information to be included in the contract award notice replicates the information that must be included in the transparency notice. See the guidance on contract award notices and standstill for more information.

### Contract details notice

108. Regulation 35 of the Regulations sets out the information required to be included in a contract details notice published following a direct award.
109. Where a direct award has been made, contracting authorities must include in this notice whether the contract was awarded directly to a supplier that is an excluded supplier because the contracting authority considered there was an overriding public interest in awarding the contract to that supplier in accordance with section 41(2) of the Act. In this situation,

contracting authorities must detail which circumstance in section 41(5) of the Act applies and an explanation of why the contracting authority considers that it applies. See the guidance on contract details notices for more information.

### Contract termination notices

110. The contract termination notice is used to fulfil the breach provision in section 71(5) of the Act which requires certain information to be published where the contract is terminated in full as a result of a breach of contract. This ensures there is a public record of which suppliers are subject to the discretionary exclusion ground relating to breach of contract, primarily to make it easier for authorities to apply the ground, but also for transparency purposes. For all other circumstances relating to breach of contract, including partial termination of the contract, the contract performance notice must be used instead. This avoids the need for two notices to be published in respect of the same event. See the guidance on contract termination for more information.

### **What other guidance is of particular relevance to this topic area?**

Guidance on debarment

Guidance on conditions of participation

Guidance on direct award

Guidance on competitive tendering procedures

Guidance on contract termination

## Annex 1: Ground-Specific Guidance

### Summary of Schedule 6 - Mandatory Exclusion Grounds

1. Schedule 6 of the Act sets out the mandatory exclusion grounds, which are the most serious, high risk scenarios. These are broken down into Part 1 and Part 2.
2. The grounds in Part 1 apply to a supplier where the supplier or a connected person of the supplier has been convicted of specific offences. Only UK offences are listed but the grounds also apply if the supplier or a connected person of the supplier has been convicted of an offence outside of the UK which would have been one of the listed offences if it had been committed in the UK. Where equivalent or similar offences are covered by separate legislation in Scotland and Northern Ireland, these are also included in Schedule 6.

### Specific offences

3. The specific offences in Part 1 are as follows:
  - a. *Corporate manslaughter or corporate homicide*: these offences apply where the way in which a relevant organisation's activities are managed or organised causes a person's death and amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.
  - b. *Terrorism*: this covers a range of offences, which include offences relating to proscribed organisations, terrorist property, failure to disclose information about acts of terrorism, directing terrorism, possessing things and collecting information for the purposes of terrorism, eliciting information about members of armed forces etc., entering or remaining in a designated area and inciting terrorism outside the UK, as well as offences relating to the use of noxious substances or things and offences relating to encouragement of terrorism, preparation and training for terrorism, radioactive devices and material and nuclear facilities.
  - c. *Theft, fraud, bribery etc*: this includes offences of bribing another person, being bribed and bribing a foreign official, offences of bribery relating to elections and offences of blackmail, as well as offences of fraud and fraudulent trading. It also covers offences of theft, robbery, burglary and relating to stolen goods.
  - d. *Labour market, slavery and human trafficking offences*: this covers the most serious forms of labour abuse, which are those within the purview of the Director for Labour Market Enforcement, as well as modern slavery and human trafficking offences. It also covers offences relating to the carrying out of an employment agency or employment business, the offence of refusing or wilfully neglecting to pay the national minimum wage and gangmaster offences.



- e. *Organised crime*: this covers the offence of participation in the activities of an organised crime group and the offence of agreeing with another person to become involved in serious organised crime.
- f. *Tax offences*: this includes the offence of cheating the public revenue and the offence of fraudulent evasion of tax. Other misconduct in relation to tax which do not amount to criminal convictions are covered in Part 2 of Schedule 6.
- g. *Cartel offences*: this applies where there has been a criminal cartel offence. A person commits the criminal cartel offence if they agree with at least one other person that two or more undertakings will engage in certain prohibited cartel arrangements, namely price fixing, market sharing, bid-rigging, and limiting output, subject to certain exclusions and defences. This offence applies only to individuals so would be relevant only to suppliers who are individuals and those categories of connected persons who are individuals.
- h. *Ancillary offences*: these include aiding and abetting, encouraging or assisting crime, inciting crime and conspiring or attempting to commit a crime in relation to the listed offences are also covered.

4. The mandatory exclusion grounds in Part 2 do not require a conviction and are outlined below:

5. *National security*

- a. A mandatory exclusion ground applies to a supplier in relation to contracts of a particular description where an appropriate authority determines that the supplier or a connected person poses a threat to the national security of the UK, and would pose such a threat in relation to public contracts of that description. An appropriate authority in this case is a Minister of the Crown, the Welsh Ministers or a Northern Ireland department when conducting an investigation which may lead to a Minister of the Crown putting a supplier on the debarment list.
- b. This exclusion ground only applies where a Minister of the Crown has subsequently put the supplier on the debarment list in relation to particular types of contracts. This is set out in paragraph 35(3), which refers to an appropriate authority's functions under the debarment provisions of the Act. These provisions only enable a Minister of the Crown to put a supplier on the debarment list and this ground cannot be relied on by a contracting authority where there has been no such entry.

6. *Misconduct in relation to tax*

- a. The Act also includes as mandatory exclusion grounds certain tax non-compliance. These include where the supplier or connected person has:
  - i. been convicted of a common law offence of cheating the public revenue;

- ii. been convicted of an offence of being knowingly concerned in or taking steps with a view to the fraudulent evasion of tax;
- iii. been convicted of an offence under sections 45 or 46 of the Criminal Finance Act 2018 or failure to prevent facilitation of tax evasion;
- iv. been liable to a penalty under section 69C of the VAT Act 1994 (transactions connected with VAT fraud) or section 25 of the Finance Act 2003 (evasion of tax or duty);
- v. been liable to a deliberate penalty under Schedule 24 of the Finance Act 2007 (errors in tax documentation) or Schedule 41 of the Finance Act 2008 (failure to notify certain VAT and excise wrongdoing);
- vi. been the subject of a successful challenge by HMRC in relation to tax arrangements under the General Anti-Abuse Rule (GAAR) or the Halifax Abuse Principle. A successful challenge could follow a ruling by the HMRC GAAR panel or HMRC issuing a decision using the HMRC Abuse Principle;
- vii. incurred a defeat of an avoidance scheme which was, or should have been, notified under the Disclosure of Tax Avoidance Schemes framework (DOTAS) or the Disclosure of Avoidance Schemes for VAT and other Indirect Taxes (DASVOIT). This is determined by reference to the fact that a Scheme Reference Number (SRN) has been allocated to the supplier or connected person, which means the supplier (or connected person) will know that its arrangements are DOTAS/DASVOIT ones;
- viii. been subject to a penalty or a decision by a regulator, court or other authority outside of the UK where that conduct would give rise to a penalty or decision in the UK if it had been committed in the UK; or
- ix. had a tax advantage counteracted outside of the UK where it would have incurred a defeat of an avoidance scheme in the UK had the tax advantage arisen in respect of tax payable in the UK.

The trigger point for the supplier becoming an excluded supplier will be the point at which the supplier (or connected person)'s tax position is finalised, such as a successful challenge by HMRC and defeat of an avoidance scheme or where HMRC has determined a final penalty and all avenues of appeal have been exhausted.

## 7. *Competition law infringements*

- a. A mandatory exclusion ground applies to a supplier if the CMA (or a concurrent regulator) has made a decision that there has been an infringement of the 'Chapter I prohibition' through participation in a cartel. Chapter I of the Competition Act 1998

prohibits agreements between undertakings, decisions by associations of undertakings, or concerted practices which may affect trade within the UK and which have as their object or effect the prevention, restriction or distortion of competition within the UK. It will usually be clear from the decision whether the infringement was through participation in a cartel (including practices such as fixing or co-ordinating purchase or selling prices or other trading conditions, sharing markets and customers, bid-rigging or output restrictions).

- b. This ground does not apply where the supplier or connected person is an 'immunity recipient', i.e. it was granted immunity from financial penalties in respect of its participation in the infringement under a cartel leniency programme. Guidance on leniency can be found in the CMA guidance [here](#).
- c. As with the tax misconduct grounds, it is also a mandatory exclusion ground where the supplier or a connected person has been subject to a competition law infringement decision by a regulator, court or other authority outside of the UK where that conduct would give rise to a decision in the UK if it had been committed in the UK.
- d. The public register of decisions made under the Competition Act 1998 is available [here](#).

#### 8. *Failure to cooperate with investigation*

- a. This covers instances where an appropriate authority (for example, PRU NSUP on behalf of a Minister of the Crown) has given the supplier or connected person a relevant notice requesting documents or other assistance in connection with a debarment investigation and the relevant entity has failed to comply with the notice to the satisfaction of the authority, in the period specified.
- b. This exclusion ground only applies where a Minister of the Crown has determined that a failure to provide the information or assistance requested in the timeline specified is sufficiently serious to warrant a mandatory exclusion ground.
- c. Further information is provided on the debarment process in the guidance on debarment.

- 9. Offences or misconduct listed in Schedule 6 will only constitute a mandatory exclusion ground where it has occurred within the relevant time periods set out in Schedule 6, paragraph 44. See paragraphs 27-29 above in relation to these time periods.

### **Summary of Schedule 7 - Discretionary Exclusion Grounds**

- 10. Schedule 7 of the Act sets out the discretionary exclusion grounds, which do not all require a conviction but represent situations that may pose unacceptable risks. Guidance for each ground is briefly outlined below.

## 11. *Labour market misconduct*

- a. This ground will allow contracting authorities to exclude suppliers for certain types of serious labour misconduct.
- b. Paragraph 1 provides for a discretionary exclusion ground where a supplier or a connected person of the supplier has been subject to regulatory enforcement in relation to labour misconduct by way of being issued certain orders. These include Slavery and Trafficking Prevention Orders (STPOs), Interim Slavery and Trafficking Prevention Orders (ISTPOs), Slavery and Trafficking Risk Orders (STROs) and Interim Slavery and Trafficking Risk Orders (ISTROs) under Part 2 of the Modern Slavery Act 2015. The Home Office has published comprehensive guidance on these orders [here](#). Equivalent orders under Scots and Northern Irish laws are also included.
- c. These also include Labour Market Enforcement Orders (LMEOs) under section 18 of the Immigration Act 2016, which are intended for more serious or persistent offenders where this type of intervention is judged appropriate to prevent further offending. The Government published a Code of Practice on LMEOs that contains comprehensive guidance on these orders.
- d. Contracting authorities should be aware of the potential overlap of this ground with the mandatory exclusion grounds for labour offences. The orders listed above can be issued without a conviction, however, there are circumstances in which these orders will be issued following a conviction for an offence that is itself a mandatory exclusion ground. In these circumstances, contracting authorities should consider whether either or both grounds apply.
- e. Paragraph 2 provides for a discretionary exclusion ground where conduct committed outside of the UK would have resulted in a relevant order being made if it had been committed within the UK.
- f. Paragraph 3 provides for a discretionary exclusion ground where there is sufficient evidence that a supplier or connected person has engaged in modern slavery, irrespective of where that occurred, that would if it occurred in the UK constitute an offence under relevant modern slavery and human trafficking legislation. This ground captures modern slavery or human trafficking occurring in jurisdictions that are failing to prosecute the offenders.

## 12. *Environmental misconduct*

- a. This ground applies where the supplier or a connected person of the supplier has been convicted of certain environmental misconduct offences. It applies to offences where the conduct constituting the offence caused or had the potential to cause significant harm to the environment.

- b. 'Incidents causing potential or actual environmental impact' refer to categories 1 and 2, and category 3 but only by virtue of 'risk of category 2 harm', set out at step 3 of the Environmental Offences Definitive Guideline for [organisations](#) and [individuals](#) (as appropriate).
- c. The harm category is determined by the court as part of the sentencing process. Contracting authorities should make it clear to suppliers that they should self-declare that this exclusion ground applies if the supplier (or a connected person) has been convicted of an environmental offence meeting the relevant harm categories. Further details of the offence and the harm category will usually be evident from the court judgment, which can be requested from the supplier or the relevant court.
- d. The incident does not need to result in an environmental impact and includes potential impact, as it may be possible to prevent damage occurring. Incidents that have a potential or actual environmental impact include the following:
  - i. environmental harm/pollution of surface waters or groundwater;
  - ii. environmental harm to land, air and water from a site, substance or process;
  - iii. impacts on human health or nuisance to the local community from a site, substance or process;
  - iv. major air pollution incidents;
  - v. fish kills and illegal fishing;
  - vi. damage to nature conservation sites and species;
  - vii. illegal abstraction and low river flows;
  - viii. speeding vessels and closure of a navigation fairway;
  - ix. flooding or potential causes of flooding; and
  - x. environmental harm from land drainage works.
- e. This ground is broad enough to cover offences under the following legislation, where the conviction relates to incidents that have caused or have the potential to cause significant harm to the environment. However, this list is not exhaustive and the exclusion ground may also capture other offences relating to incidents of this nature.
  - i. Animal By-Products (Enforcement) (England) Regulations 2013;
  - ii. Animal By-Products (Enforcement) (Wales) Regulations 2014;

- iii. Control of Major Accident Hazards Regulations 2015;
- iv. Control of Pollution (Amendment) Act 1989, sections 1, 5 and 7;
- v. End-of-Life Vehicles Regulations 2003;
- vi. End-of-Life Vehicles (Producer Responsibility) Regulations 2005;
- vii. Environment Act 1995, section 110;
- viii. Environmental Permitting (England and Wales) Regulations 2016;
- ix. Environmental Protection Act 1990;
- x. Food and Environment Protection Act 1985, section 9;
- xi. Hazardous Waste (England and Wales) Regulations 2005;
- xii. Hazardous Waste (Wales) Regulations 2005;
- xiii. Health & Safety at Work etc Act 1974;
- xiv. Landfills Disposals Tax (Wales) Act 2017;
- xv. Pollution Prevention and Control (England and Wales) Regulations 2000;
- xvi. Producer Responsibility Obligations (Packaging Waste) Regulations 2007;
- xvii. Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012;
- xviii. Scrap Metal Dealers Act and 2013;
- xix. Transfrontier Shipment of Waste Regulations 2007;
- xx. Vehicles (Crimes) Act 2001, Part 1;
- xxi. Waste (England and Wales) Regulations 2011, regulation 42;
- xxii. Waste Batteries and Accumulators Regulation 2009;
- xxiii. Waste Electrical and Electronic Equipment Regulations 2013; and
- xxiv. Water Resources Act 1991, sections 202 and 206.

### 13. *Insolvency, bankruptcy, etc.*

- a. This ground applies where a supplier or connected person is declared bankrupt, or is subject to certain types of insolvency or pre-insolvency proceedings in the UK or similar procedures outside of the UK.
- b. A separate ground applies where the supplier or connected person has suspended or ceased carrying on all or a substantial part of its business.

### 14. *Potential competition infringements*

- a. These grounds cover a broader range of infringements than are covered by the mandatory exclusion grounds for cartel competition law infringements, as well as situations where a case is not prioritised by the CMA for investigation or where a case is being investigated but that investigation has not yet concluded.
- b. The first discretionary ground applies where a contracting authority considers that an agreement or concerted practice which the supplier or a connected person of the supplier has participated in has infringed the Chapter I prohibition (or a substantially similar prohibition outside of the UK). Unlike the mandatory exclusion ground, this is not limited to where the infringement is through participation in a cartel and does not require a decision by the CMA (or concurrent or non-UK regulator), although the ground may also cover situations where there has been such a decision. Where the CMA (or a concurrent regulator) has made a decision that there has been an infringement of the Chapter I prohibition through participation in a cartel, a mandatory ground for exclusion will apply.
- c. As with the mandatory exclusion grounds, this discretionary ground does not apply if the supplier or connected person is an 'immunity recipient' (or has been granted similar immunity outside of the UK). Guidance on leniency can be found in the CMA guidance [here](#).
- d. The second and third grounds relate to infringements of the 'Chapter II prohibition'. Chapter II of the Competition Act 1998 prohibits the abuse of a dominant position in a market if it may affect trade within the UK. The second ground applies where a contracting authority considers that the supplier or a connected person of the supplier has infringed the Chapter II prohibition (or a substantially similar prohibition outside of the UK). The third ground applies where the CMA (or concurrent regulator or a non-UK authority) has made a decision that the supplier or a connected person has infringed the Chapter II prohibition (or a substantially similar prohibition outside of the UK).
- e. The final ground in this section applies where a contracting authority considers that the supplier or a connected person of the supplier has engaged in conduct constituting a criminal cartel offence under section 188 of the Enterprise Act 2002 (or a substantially similar offence outside of the UK). This offence applies only to

individuals so would be relevant only to suppliers who are individuals and those categories of connected persons who are individuals. This ground does not apply where the individual has received an immunity from prosecution letter in connection with the conduct (or has been granted similar immunity outside of the UK). Guidance on such letters has been published by the CMA [here](#).

- f. The legal framework for information sharing in relation to competition matters is contained within Part 9 of the Enterprise Act 2002 (EA02). This includes important restrictions on the disclosure of information relating to individuals and businesses.

#### 15. *Professional misconduct*

- a. The first ground relating to professional misconduct applies where a contracting authority considers that the supplier or a connected person of the supplier has engaged in professional misconduct which brings into question the supplier's professional integrity.
- b. The second ground relating to professional misconduct applies where a court, regulator or other authority has ruled that the supplier or a connected person of the supplier has engaged in such professional misconduct. This covers situations where there has been a finding by a court, such as a conviction for a criminal offence, but also extends to decisions taken by wider authorities including regulators and/or other authorities, such as for a breach of standards or for rulings by a professional disciplinary body like the Financial Conduct Authority. The fact that a regulatory body has entered into a Deferred Prosecution Agreement (DPA) (or similar) with a supplier may be sufficient evidence of professional misconduct but this will depend on the underlying misconduct. A DPA may also be evidence of self-cleaning in order to demonstrate that the circumstances giving rise to the misconduct are not likely to occur again due to measures taken by the supplier and agreed as part of the DPA.
- c. The concept of 'professional misconduct' in both of these grounds is expressly stated to include dishonesty, impropriety and a serious breach of ethical or professional standards applicable to the supplier (whether those standards are mandatory or not). Although this list is not exhaustive, it is indicative of the types of misconduct that are covered by these grounds. The professional misconduct grounds are intended to cover a broad range of misconduct, including certain offences that are not covered by the mandatory exclusion grounds and behaviour where there has been no conviction.
- d. For example, it may apply for convictions for the offence of failing to prevent bribery under section 7 of the Bribery Act 2010; the offence of participating in a fraudulent business carried out by a sole trader under section 9 of the Fraud Act 2006; the offence of obtaining services dishonestly under section 11 of that Act and the liability of company officers for offences committed by the company under section 12 of that Act.



- e. When considering whether there has been 'impropriety', a contracting authority should consider whether there has been improper behaviour. There is no legislative definition of impropriety in this context but improper behaviour might include failing to act in good faith or to act impartially where that would be expected in the particular profession the supplier operates in, or a breach of trust where there are standards or expectations of professional trust.
- f. When assessing what constitutes a serious breach of ethical or professional standards, a contracting authority should consider both whether the standard applies to the supplier or connected person and whether it is an ethical or professional standard. The breach must also be serious.
- g. Ethical or professional standards applicable to the supplier or connected person may be generic, such as data protection, corporate governance or standards relating to the treatment of employees, or may depend on the industry. Accounting standards in the finance industry, for example, may be relevant for one supplier, but a manufacturing code of conduct relevant for another. The standards do not have to be mandatory and could include standards set by a regulator or professional disciplinary body, voluntary industry codes of conduct that the supplier has signed up to, internal policies or statements of company values, or technical standards such as building regulations.
- h. In order for these grounds to apply, the misconduct must be serious enough to call into question the supplier's integrity: it cannot be minor or of a nature that does not impact on the supplier's overall integrity. For example, where a supplier has been dishonest, this does not necessarily mean either of these grounds will apply and consideration must be given to whether the supplier's integrity has been called into question by the dishonesty. This will be particularly relevant where the misconduct has been committed by a connected person, as it is the supplier's (not the connected person's) integrity which must be called into question for the grounds to apply.

#### 16. *Breach of contract and poor performance*

- a. These grounds are aimed at covering situations where suppliers have a poor track record of delivering on certain types of contracts. These grounds relate to breaches and poor performance of contracts to which a 'regulated authority' is a party. A regulated authority for these purposes is a contracting authority, another public authority or equivalent authorities outside of the UK. This covers a broader range of contracts than just public contracts, including below threshold contracts and exempted contracts entered into with a contracting authority, as well as all types of contracts entered into by other public authorities. Breach or poor performance of contracts the supplier has with private entities are not relevant to these grounds. These grounds also do not apply in relation to connected persons.
- b. The first two grounds (Schedule 7, paragraph 12(1) and (2)) relate to breach of contract. Firstly, where the supplier has breached a relevant contract and the breach

was sufficiently serious. Secondly, where a court has ruled that the supplier has breached a relevant contract and the breach was sufficiently serious. When considering whether either of these grounds apply, a breach is sufficiently serious where it has led to termination, damages or a settlement agreement. A settlement agreement is where the parties have entered into an agreement to settle a contractual dispute. Damages in this context include liquidated and unliquidated damages, including on an indemnity basis, but not debts payable under contracts.

- c. The third ground (Schedule 7, paragraph 12(3)) applies where a supplier has not performed a relevant contract to a satisfactory level, and has failed to improve their performance, having been given an opportunity for improvement. This is intended to cover serious performance failures, as determined by the terms of the contract, such as failure to meet a certain number of key performance indicators (KPIs) over a set period, or a certain level of KPI failure, as well as failure to meet other contractual performance requirements like delivery dates, specification requirements or quality standards. Contracts should set out clear standards for performance.
- d. A supplier must be given a proper opportunity to improve performance. This will usually be by reference to contractual mechanisms. These could include (but are not limited to) notification of poor performance and clear time periods to rectify, rectification plans, or improvement plans. The poor performance ground applies where performance has not improved following application of such mechanisms, which are common in most public sector contracts. Guidance on performance management is outlined in the [Sourcing Playbook](#). Contracting authorities should ensure that any remedial actions provided for in improvement or other similar plans are SMART.
- e. In determining whether the poor performance ground applies, contracting authorities should consider the nature and frequency of performance failures, any mitigating factors such as contributory actions by the relevant authority, as well as other relevant circumstances.
- f. The final ground in this section (Schedule 7, paragraph 12(4)) applies where a contracting authority has published information relating to breach or poor performance under section 71(5). This information will be published in a contract performance notice or contract termination notice. More detail on the publication of this information is provided in the guidance on the contract performance and contract termination notices.

#### *17. Acting improperly in procurement*

- a. This ground applies where a supplier has acted improperly in a procurement and, as a result, has put itself at an unfair advantage in relation to the award of a public contract.
- b. The types of improper behaviour identified in relation to this ground are:

- i. failing to provide information requested by the contracting authority;
- ii. providing information that is incomplete, inaccurate or misleading;
- iii. accessing confidential information; and
- iv. unduly influencing the contracting authority's decision-making.

This list is not exhaustive but is indicative of the type of behaviour covered by the ground.

- c. Where a supplier acts improperly in relation to the particular procurement and has gained an unfair advantage in the procurement as a result, the supplier must under section 30 be treated as an excluded supplier and must not be allowed to progress further in that procurement. However, this discretionary exclusion ground also covers situations where a supplier has behaved improperly in a different procurement to the one being carried out, meaning the supplier could be excluded from multiple procurements as a result of a single act.

#### 18. *National security*

- a. This ground is intended to protect the UK's national security interests in covered procurements.
- b. A discretionary exclusion ground applies to a supplier if a decision-maker determines that the supplier or a connected person poses a threat to the national security of the UK. However, the contracting authority (other than government departments and Corporate Officers of the House of Commons and House of Lords) may not exclude the supplier or notify the supplier of its intention to do so unless:
  - i. the authority has notified a Minister of the Crown of its intention (in practice this must be a Cabinet Office minister who can be notified via PRU on gov.uk); and
  - ii. the Minister of the Crown considers that:
    - a. the supplier is an excludable supplier by reference to Schedule 7, paragraph 14; and
    - b. the tender should be disregarded or the supplier excluded.
- c. This same process applies where the supplier is an excludable supplier under this ground by virtue of an associated person or intended sub-contractor and the contracting authority intends to notify the supplier to give them the opportunity to replace the associated person or sub-contractor.

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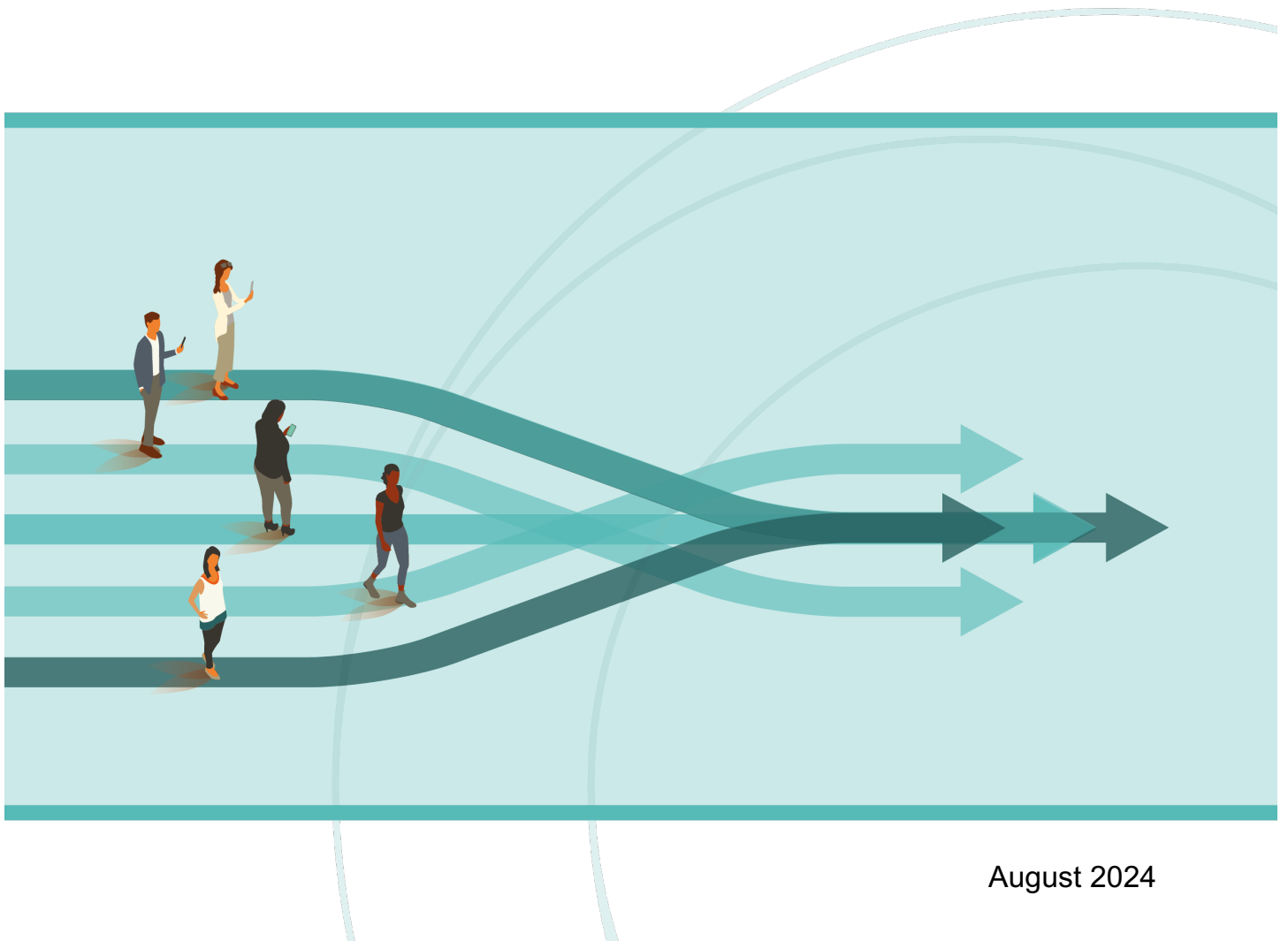
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# Guidance: Debarment



August 2024

## **Guidance on Debarment**

### **What is debarment?**

1. The debarment regime enables Ministers to put suppliers on a published debarment list. Inclusion on the list means that the supplier's past behaviour or circumstances mean that it is not, or may not be, allowed to participate in covered procurements or be awarded public contracts. Debarment aims to minimise supplier-related risk in public procurement and incentivise suppliers to achieve excellent corporate compliance and standards of behaviour.
2. Whereas the exclusion regime relies wholly on assessments undertaken by contracting authorities, debarments will be managed centrally. Debarment is closely linked to exclusions in that a supplier can only be considered for debarment if any of the mandatory or discretionary exclusion grounds, outlined in Schedule 6 and 7 of the Procurement Act 2023 (Act), apply and the circumstances giving rise to the relevant exclusion ground are continuing or are likely to occur again. The main distinction is that only a Minister of the Crown can make the decision to put a supplier on the debarment list. All contracting authorities must check the debarment list in each procurement and must exclude (or have a discretion to exclude) suppliers, if they are on the debarment list.

### **What is the legal framework that governs debarment?**

3. Section 59 (Notification of exclusion of supplier) requires contracting authorities to notify a Minister of the Crown, the Welsh Ministers or Northern Ireland departments (depending on the status of the contracting authority) whenever a contracting authority has determined that a supplier (including by virtue of a connected person, associated person or sub-contractor) is an excluded supplier or an excludable supplier and has taken certain actions under the exclusions regime. This provides one route by which suppliers may be brought to the attention of a Minister of the Crown for potential debarment.
4. Section 60 (Investigations of supplier: exclusion grounds) allows a Minister of the Crown, the Welsh Ministers or Northern Ireland departments to undertake investigations of suppliers to establish whether they are an excludable supplier or an excluded supplier, for the purpose of a Minister of the Crown subsequently considering whether the supplier should be added to the debarment list. It provides powers to facilitate the collation of information during the investigation and requires that the supplier be notified of an investigation. It also requires a Minister of the Crown to keep under review whether suppliers should be investigated in the light of national security threats. In all cases, an investigation is a prerequisite before a supplier can be put on the debarment list by a Minister of the Crown.
5. Section 61 (Investigations under section 60: reports) allows Welsh Ministers and Northern Ireland departments to refer a supplier that they have investigated to a Minister of the Crown for consideration for potential debarment.
6. Section 62 (Debarment list) allows a Minister of the Crown to create a debarment list. This is a published list of suppliers which, following an investigation, they consider are excluded or excludable suppliers and which they have decided to put on the debarment list. It also allows

the Minister to put a supplier on the debarment list where the Minister has determined the supplier's failure to cooperate with an investigation under section 60 (Investigations of supplier: exclusion grounds) is sufficiently serious to warrant mandatory exclusion. In addition the Act sets out: what information must be recorded on the debarment list; the advance notice that must be given to the supplier before they are entered onto the debarment list (which triggers a standstill period); when the Welsh Ministers and Northern Ireland departments must be consulted; and other requirements pertaining to how the list is maintained.

7. Section 63 (Debarment decisions: interim relief) allows a supplier to apply to the court for interim relief i.e. to suspend a debarment decision pending an appeal. After notifying the supplier of the debarment decision, per section 62 (Debarment list), the Minister must wait 8 working days (the standstill period) before entering the supplier's name onto the debarment list. If the supplier successfully applies for interim relief during the standstill period, the Minister may not enter the supplier's name onto the debarment list until a subsequent appeal has concluded or the time allowed to bring an appeal has elapsed. When considering an application for interim relief, the court must balance the interests of the supplier against the public interest.
8. Section 64 (Debarment list: application for removal) allows a supplier on the debarment list to apply for their entry to be revised or removed from the list. The Minister of the Crown is only required to consider such an application if there has been significant new information or a material change of circumstances.
9. Section 65 (Debarment decisions: appeals) allows suppliers to appeal certain decisions relating to debarment to the court. Appeals must be brought within 30 days of when the supplier was, or ought to have been aware, of the Minister's decision. The court can only make an order setting aside the debarment decision if it is satisfied that the Minister has made a material mistake of law; the court can also order the Minister to pay the supplier's bid costs incurred in a procurement it has been excluded from as a result of the mistake. Suppliers will be expected to have mitigated those costs.
10. Section 66 (Debarment proceedings and closed material procedure) allows the Minister for the Cabinet Office to apply for a declaration permitting closed material procedure applications in interim relief and appeal proceedings. Closed material procedure involves the non-government parties leaving the courtroom whilst sensitive material is heard. This is likely to only be used in very limited circumstances, such as where a supplier has been added to the debarment list on national security grounds.

### **What has changed?**

11. The Act creates a new debarment regime with powers for the Minister of the Crown to place suppliers on a published debarment list, which must be taken into account for all covered procurements, thereby putting a centralised debarment process on a legislative footing across all public procurements, as well as broadening the supplier exclusions regime (see guidance on exclusions for further information).

12. As a result of the debarment process, under the Act, contracting authorities will have access to a central source of information published on gov.uk which will support contracting authorities in making exclusion decisions and ensure a level of consistency across the public sector. The publication of reports produced following debarment investigations will also assist contracting authorities in making their own assessments of suppliers that have already been subject to a debarment investigation. This additional information will be most useful where a supplier has been investigated but not added to the debarment list and when a supplier is on the debarment list in relation to a discretionary exclusion ground as a contracting authority can apply it to the context of its own procurement and use it to support its own decision-making process.

### **Key points and policy intent**

13. Debarment is not intended to be a punishment for past misconduct, but is a risk-based measure to ensure a supplier does not or may not participate in procurements or be awarded contracts where a Minister has put the supplier on the debarment list.

14. The debarment list will be published on gov.uk. It will set out:

- a. the supplier;
- b. the exclusion ground that applies (and whether this is mandatory or discretionary);  
and
- c. the date the supplier's name is expected to be removed from the debarment list.

15. Contracting authorities should check the debarment list before allowing any supplier to participate in a covered procurement and before deciding to award a public contract to a supplier. Contracting authorities must check whether the supplier's name or the names of any associated persons or intended sub-contractors are on the debarment list and should also check whether the names of any connected persons of the supplier are on the debarment list, as this may be grounds for considering exclusion of the supplier. References to a supplier being on the debarment list in this guidance include associated persons and intended sub-contractors. For further details please see the guidance on exclusions.

16. When a supplier is on the debarment list in relation to a mandatory exclusion ground, a contracting authority must not allow the supplier to bid in a competitive flexible procedure or be awarded a public contract in any competitive tendering procedure or by way of direct award and must disregard any tender submitted by them. The following exceptions apply:

- a. procurements by private utilities;
- b. where a supplier is on the debarment list on national security grounds for particular types of contracts, as the debarment does not affect their eligibility to bid for other types of contracts; or



- c. procurements by direct award where there is an overriding public interest in awarding the contract to that supplier. These include certain defence and security reasons and in certain cases where there is an extreme and unavoidable urgency.
17. Where a supplier is on the debarment list as a result of a discretionary ground, it is still possible for a contracting authority to permit the supplier to bid for and be awarded a public contract. Contracting authorities should use caution and only do so after careful review, having considered any relevant investigation report relating to the debarment list entry, and undertaken appropriate additional due diligence. Contracting authorities should only proceed if they have good reasons for doing so. These may include market limitations, operationally critical contracts or the risk posed by the supplier on that particular contract, but each case will depend on the circumstances. As with all exclusion decisions, contracting authorities should keep an audit trail of the decision and the reasons for it.
18. Where the supplier is on the debarment list in relation to specific types of contracts (where a Minister of the Crown has assessed that the supplier poses a threat to national security in relation to those types of contracts), debarment will ensure that suppliers assessed as posing a threat cannot be used in sensitive contexts, ensuring that high-risk procurements are handled prudently.
19. Contracting authorities may want to consider the debarment list when awarding contracts other than public contracts (such as exempted contracts or below-threshold contracts).
20. If a supplier is not named on the debarment list, contracting authorities may only exclude suppliers from procurements and disregard their tenders if they are satisfied, on their own assessment, that the supplier is an excluded or excludable supplier. It should not be assumed that any of the exclusion grounds apply to a supplier which is under investigation or being considered for debarment. See the guidance on exclusions.
21. The Act implies terms into public contracts (section 78) giving contracting authorities a right to terminate the contract in particular circumstances. This enables a contracting authority to terminate a contract where a supplier has, since the award of the contract, become an excluded supplier or excludable supplier (including by reference to an associated person); or where a supplier (other than an associated person) to which the supplier is sub-contracting the performance of all or part of the public contract is an excluded or excludable supplier. This includes where such suppliers have been added to the debarment list. Contracting authorities should, as a matter of best practice, expressly include in their contracts an obligation on suppliers to notify them if they become an excluded or excludable supplier (including where they are put on the debarment list during the term of the contract or by virtue of their connected persons, associated persons or sub-contractors). Further information can be found in the guidance on contract termination.
22. Contracting authorities must notify a Minister of the Crown, the Welsh Ministers or a Northern Ireland department if they exclude a supplier (or if they take certain other types of action under the exclusions regime; see guidance on exclusions) and also if the supplier challenges an exclusion decision. Which authority must be notified depends on whether the contracting authority is a devolved, transferred or reserved authority (as defined in the Act). Notification must be provided within 30 days of the supplier being excluded (or the other

relevant action taken). For contracting authorities that are not a devolved Welsh authority or transferred Northern Ireland authority, the contracting authority will notify Procurement Review Unit (PRU) via its gov.uk page. Any cases relating to national security will be forwarded to the National Security Unit for Procurement (NSUP). For the purposes of a centralised record of exclusions, devolved Welsh authorities and transferred Northern Ireland authorities should report any exclusions to PRU as well as to the Welsh Ministers or Northern Ireland department (as appropriate).

23. Where a contracting authority excludes a supplier on the basis that it is on the debarment list for either the mandatory or discretionary national security exclusion grounds, the contracting authority must notify a Minister of the Crown. It should be noted that where a contracting authority intends to exclude a supplier on the basis of the discretionary national security ground, this decision will need to be approved in advance by a Minister of the Crown (via referral to PRU).

#### Debarment investigations and decisions

24. Suppliers may be brought to the attention of a Minister of the Crown for potential debarment through any means, including notification of the exclusion of a supplier from a particular procurement by a contracting authority, an investigation by the Welsh Ministers or a Northern Ireland department, or through information otherwise available. The Minister of the Crown may consider suppliers for potential debarment based on either a referral from Welsh Ministers or Northern Ireland departments, or on their own investigation (led by either PRU or NSUP within the Cabinet Office, depending on the exclusion ground in question). PRU may also use notification of supplier exclusion to initiate a debarment investigation.
25. Once the decision to investigate has been made, investigating authorities are under a duty to inform a supplier that they are to be investigated, confirm which exclusion ground(s) is the subject of the investigation and provide information about how a supplier can make representations.
26. During an investigation, suppliers may be requested by the investigating authority to provide information or provide assistance. Although suppliers do not have a legal duty to comply with requests for information or other assistance, failure to do so could result in debarment by virtue of the mandatory exclusion ground for failure to cooperate with an investigation.
27. Contracting authorities may be required to provide information and assistance during an investigation of a supplier for potential debarment. As part of an investigation, contracting authorities may be asked to supply relevant information about suppliers they have contracts with or have had contracts with in the past, or where they otherwise hold information about suppliers. Unlike suppliers, contracting authorities are under a legal duty to comply with such requests, unless they are otherwise prevented from doing so by other legal duties (such as restrictions on information sharing).
28. The questions that must be considered prior to making a debarment decision are whether an exclusion ground applies and whether the circumstances that gave rise to the exclusion ground are continuing or are likely to reoccur. The likelihood of recurrence constitutes the self-cleaning assessment. The factors that are relevant to self-cleaning include but are not

limited to: evidence that the circumstances have been taken seriously, for example paying compensation, steps that have been taken to prevent the circumstances occurring again, for example changing staff and commitments that such steps will be taken (see the guidance on exclusions for further detail). Where a Minister of the Crown determines that both of these tests are met, the Minister is able to make a debarment decision. The Minister may decide not to put a supplier's name on the debarment list for a variety of reasons, including, for example, where there is an overriding public interest in allowing the supplier to continue to bid for public contracts.

29. Once an investigation has concluded, or where a Minister of the Crown has considered an investigation by the Welsh Ministers or a Northern Ireland department, the supplier will be provided with a copy of the investigation report, usually prior to publication and subject to certain exceptions (as set out below in paragraph 35). A Minister of the Crown is also under a duty to notify a supplier before entering its name on the debarment list.
30. Debarment will either be on a discretionary or mandatory basis, based on the type of exclusion ground which applies. For some types of misconduct, there are both discretionary and mandatory exclusion grounds and which will apply will depend on the severity or nature of the misconduct. The exclusion grounds are listed in Schedules 6 and 7 of the Act and the rules on considering whether a supplier is 'excluded' or 'excludable', including self-cleaning and considerations of a supplier's connected persons, associated persons and sub-contractors are described further in guidance on exclusions.
31. A supplier will usually remain on the debarment list for up to 5 years from when the relevant event occurred (for mandatory exclusion grounds) or when the Minister knew, or a reasonably well-informed decision-maker in their position would have been aware of)<sup>1</sup> the event (for discretionary exclusion grounds).
32. It may take time to reach the point of determining if a supplier should be added to the debarment list. Contracting authorities may wish to consider the implications of a supplier being added to the debarment list during a live procurement, particularly if the decision is taken towards the end of a competitive tendering procedure, and consider setting out in the tender documentation how it will progress to contract award in such circumstances.
33. Although the Act states that in certain circumstances outside of those listed in Schedule 6, a supplier must be treated as an excluded supplier, these are not grounds for debarment and, if any of these apply, the supplier must simply be excluded from that particular procurement. The circumstances are:
  - a. where a supplier's participation in preliminary market engagement has put the supplier at an unavoidable unfair advantage (see section 16 (Preliminary market engagement));

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<sup>1</sup> In this guidance, for brevity, subsequent references to awareness include reference to matters the contracting authority ought to have been aware of but the legal test is whether a reasonably well-informed decision-maker in the contracting authority's position would have been aware.

- b. where the supplier has acted improperly in the course of the procurement (note that acting improperly in other procurements is a discretionary exclusion ground under Schedule 7, paragraph 13) (see section 30 (Excluding suppliers for improper behaviour));
  - c. where a supplier has failed to provide information about its connected or associated persons (see section 30 (Excluding suppliers for improper behaviour)); or
  - d. where a conflict of interest has put a supplier at an unavoidable unfair advantage (see section 82 (Conflicts of interest: duty to mitigate)).
34. Reports of investigations conducted by a Minister of the Crown, or of consideration of the findings made by the Welsh Ministers or a Northern Ireland department must be published. The report must state whether the Minister is satisfied the supplier is excluded or excludable and, if so:
- a. in relation to each relevant exclusion ground, whether this is mandatory or discretionary;
  - b. if the mandatory exclusion ground relating to national security threats for particular types of contracts applies, a description of the types of contracts;
  - c. the date on which the Minister expects the ground to cease to apply; and
  - d. whether the Minister intends to add the supplier's name to the debarment list,
- alongside the Minister's reasons for each of these points.
35. The only exceptions to this publication requirement are where the Minister considers it necessary to redact, withhold publication or limit the disclosure of the report in order to safeguard national security or to prevent publication of commercially sensitive information where there is an overriding public interest in it being withheld from publication.
36. The Minister is under an obligation to keep the debarment list under review and must remove a supplier's name from the list if they are satisfied that there are no longer an excluded or excludable supplier. This will be the case where, for example, the exclusion ground no longer applies to the supplier due to expiry of the relevant time period or where the supplier has provided sufficient self-cleaning evidence.

#### Suppliers' right to appeal

37. At any time, a supplier can apply to a Minister of the Crown for removal or revision of their entry on the debarment list. Such an application need only be considered where there has been a material change of circumstances or significant new information.
38. Suppliers will have eight working days ('the debarment standstill period') after notification of the decision to add them to the debarment list, to apply to the court for a temporary suspension of the decision. If the application is successful, the supplier's name cannot be

added to the list until either 30 days have passed since the supplier knew (or should have known) of the Minister's decision and the supplier has not commenced appeal proceedings, or any appeal that has commenced has been resolved or disposed of (e.g. withdrawn).

39. Suppliers can only appeal a debarment decision in the courts on the grounds that, in making the decision, the Minister made a material mistake of law. A supplier must commence an appeal within 30 days, from knowing (or from when it should have known) of the Minister's decision.

40. An appeal may only be brought in regard to the decision:

- a. to enter the supplier's name on the debarment list;
- b. to indicate contracts of a particular description as part of an entry made in respect of the supplier on the basis of Schedule 6, paragraph 35 (National security);
- c. to indicate a particular date as part of an entry in respect of the supplier under section 62 (debarment list) (4)(d); or
- d. not to remove or revise an entry made in respect of the supplier following an application under section 64 (Debarment list: application for removal).

41. As set out in paragraph 9, if the Court is satisfied that the Minister made a material mistake of law, it can set aside the decision. If, as a result of that erroneous decision, the supplier was excluded from a procurement, the court may award compensation to the supplier for any costs incurred by the supplier's participation in that procurement procedure.

42. Each debarment entry will stay on the debarment list until the time period stated in the entry expires. However, in the following circumstances the supplier may be removed earlier than the specified time period:

- a. where a supplier successfully applies to have their name removed from the list;
- b. where the Minister considers that there are no longer grounds for debarment (such as the exclusion ground no longer applies or where the supplier has demonstrated self-cleaning); or
- c. where the court sets aside a debarment decision following a successful appeal by the supplier.

#### The National Security Unit for Procurement

43. Ministers will be supported by NSUP (which will coordinate across the wider national security community) to determine whether a supplier poses a national security risk.

44. For suppliers to whom the mandatory national security ground applies (because they pose national security threats on contracts of a particular description), contracting authorities must not allow the supplier to participate in procurements for any contract of the type described.

The supplier is still permitted to participate in procurements for other contracts, but only where the contracting authority is satisfied the supplier should not be excluded. This is because where the mandatory national security ground exclusion applies to a supplier, the test for the discretionary national security ground will also apply (i.e. the supplier is considered to be a threat to the national security of the UK) so contracting authorities should consider whether to exercise their discretion to exclude the supplier on this basis from other types of contracts.

**What other guidance is of particular relevance to this topic area?**

Guidance on exclusions

Guidance on contract performance notice

Guidance on contract termination

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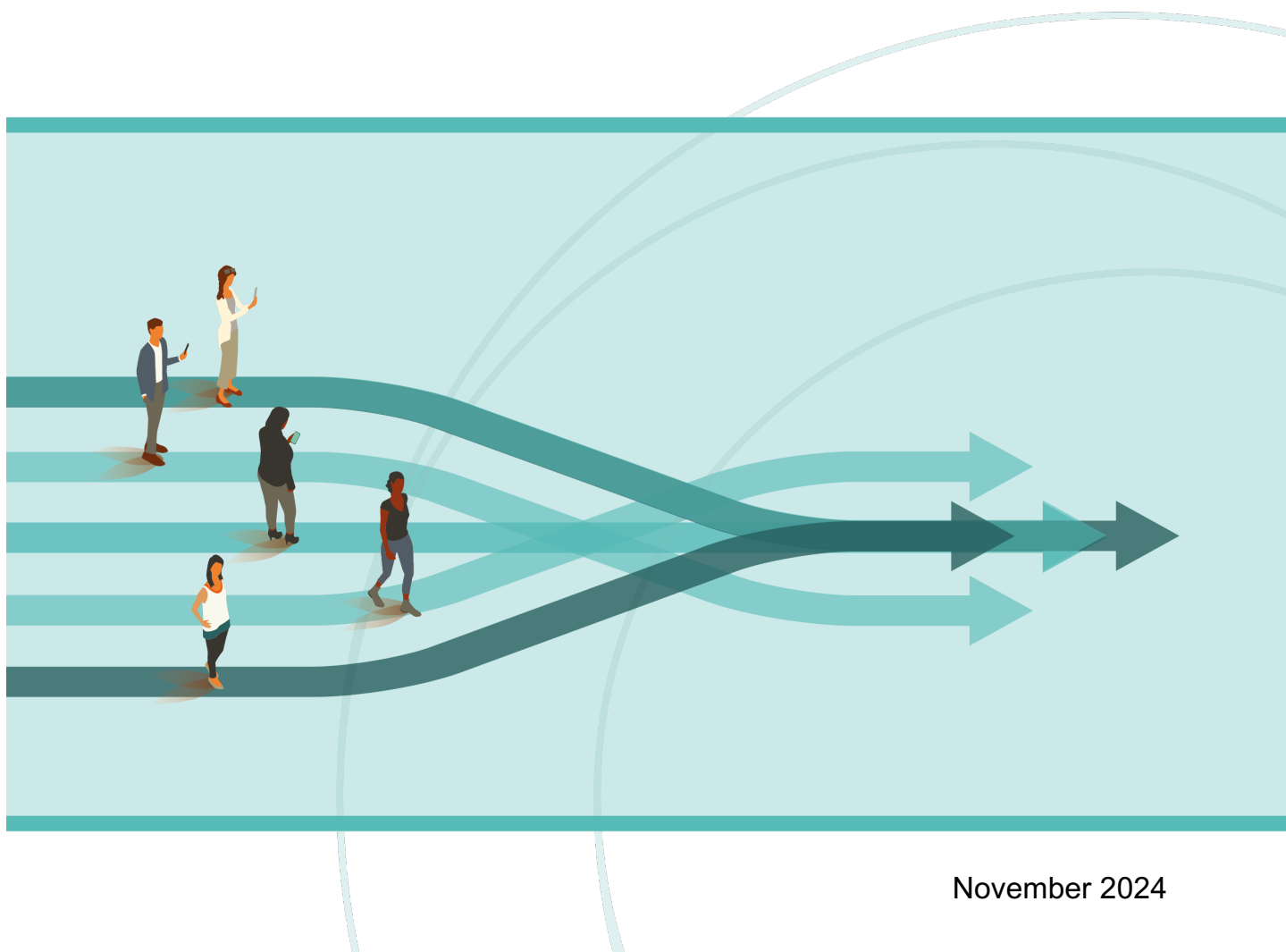
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Procurement Act 2023

# Guidance: Remedies



November 2024



## Guidance on Remedies

### What are remedies?

1. Contracting authorities are under a statutory duty to comply with the Procurement Act 2023 (Act) and the Procurement Regulations 2024 (regulations). A breach of statutory duty may cause loss or damage to a supplier. As such, it is important that contracting authorities can be challenged and that civil remedies are available to compensate suppliers for any loss or damage or remedy the situation and to incentivise contracting authorities to comply with the Act.
2. This guidance focuses on the legal remedies that are available under the Act. It covers the actions or decisions that the Court may take in civil claims against a contracting authority for breach of statutory duty. It does not cover any other remedies which a supplier may seek, such as judicial review.

### What is the legal framework that governs remedies?

3. The remedies provisions are set out in Part 9 of the Act (Remedies for breach of statutory duty):
  - a. Section 100 (Duties under this Act enforceable in civil proceedings): This section sets out the basis and scope for challenge under Part 9 of the Act;
  - b. Section 101 (Automatic suspension of the entry into or modification of contracts): This section provides for an automatic suspension to apply to prevent the contracting authority from entering into or modifying a public contract. The effect is to enable the supplier to seek 'pre-contractual remedies' which are remedies that can only apply where the contract has not been entered into or the modification has not been made;
  - c. Section 102 (Interim remedies): This section sets out the orders that may be made by the court pending the outcome of a legal claim, such as lifting the automatic suspension, and the basis on which the court will consider making such orders;
  - d. Section 103 (Pre-contractual remedies): This section sets out the remedies available to the supplier if its claim is successful and is resolved before the contract is entered into or the modification made;
  - e. Section 104 (Post-contractual remedies): This section sets out the remedies available if the claim is successful and the contract has already been entered into or the modification made;
  - f. Section 105 (Post-contractual remedies: set aside conditions): This section sets out when the post-contractual remedy (set out in section 104(2)) of 'set aside' (of the contract) must be made;
  - g. Section 106 (Time limits on claims): This section sets out how long a supplier has to commence proceedings for breach of statutory duty; and
  - h. Section 107 (Part 9 proceedings and closed material procedure): This section enables sensitive information to be protected during court proceedings.

4. Part 9 of the Act reflects the UK's international obligations on public procurement that require timely, effective, transparent and non-discriminatory review procedures to be in place that allow suppliers to challenge procurement law breaches.

### **What has changed?**

5. The remedies regime under the Act replicates the intent of the provisions in the previous legislation. As with the previous legislation, a standstill period is required under the Act prior to entering into a contract in certain circumstances and the contracting authority is prohibited from entering into the contract if a challenge is brought, the contracting authority is aware of the challenge and the contract has not yet been entered into (automatic suspension). The standstill period differs under the Act as it is 8 working days in all cases. The automatic suspension is also slightly different under the Act in that it only applies if a challenge is brought within the standstill period. Also like the previous legislation, there are a range of interim and pre-contractual and post-contractual remedies, including damages.
6. There are some changes in wording to reflect UK nomenclature; notably 'ineffectiveness' is now 'set aside', but means the same thing. The triggers (conditions) for set aside also look rather different from the ineffectiveness provisions in the previous legislation but they reflect the same intent: that a supplier should have the option of bringing a claim to set aside the contract where it has been denied the opportunity to bring a claim before the contract has been entered into or the modification made. The set aside conditions are different from the grounds for ineffectiveness in the previous legislation because of the increased transparency provisions under the Act which provide more information and at more stages to suppliers before the contract is awarded or entered into.
7. The Act introduces a new, procurement-specific test to be applied by the Court when determining whether to make an order for an interim remedy. This test will be used by the Court, for example, when determining whether to lift an automatic suspension on application by the contracting authority (see paragraph 20 below).

### **Key points and policy intent**

8. Having an effective and well-functioning remedies system is essential to ensure the successful operation of any public procurement regime. It helps to ensure contracting authorities comply with procurement rules and gives suppliers confidence that public contracts will be awarded fairly and transparently. This, in turn, encourages them to tender for public contracts.
9. When challenging a contracting authority under the Act, a supplier must commence proceedings for breach of statutory duty, within the prescribed time limits. Proceedings are commenced when the Court issues a claim form (at the request of the supplier who is bringing the claim). The remedies that the Court may grant to the challenging supplier (the claimant) if its claim is successful and the conditions under which such remedies are available are set out in the Act. The Court may also order that one of the interim remedies set out in the Act applies pending resolution of the claim.
10. However, court proceedings are not the only way for suppliers to resolve concerns about a procurement. The transparency requirements included in the Act support the remedies regime by enabling suppliers to spot and raise any issues related to the procurement at the

earliest opportunity, so that, as much as possible, they can be resolved when they arise and before the contract award decision is made or the contract is entered into (and outside of court). By resolving issues that arise during the procedure at an early stage, the risk of disruptive legal action is reduced.

#### Scope (section 100)

11. Not all suppliers have a right to a remedy under Part 9 of the Act and not every type of breach (failure to comply with the Act) has the potential to give rise to a claim against the contracting authority.
12. Section 100 (Duties under this Act enforceable in civil proceedings) sets out some important principles that underpin the remedies regime and the conditions that a supplier must meet in order to 'have standing' (i.e. the right to bring a claim). These are:
  - a. breaches of the following Parts of the Act (concerned with the award, entering into and management of public contracts) may give rise to a claim for breach of statutory duty:
    - i. Part 1: Key Definitions;
    - ii. Part 2: Principles and Objectives;
    - iii. Part 3: Award of Public Contracts and Procedures;
    - iv. Part 4: Management of Public Contracts;
    - v. Part 5: Conflicts of Interest;
    - vi. Part 7: Implementation of International Obligations; and
    - vii. Part 8: Information and Notices: General Provision.
  - b. Only 'United Kingdom suppliers' and 'treaty state suppliers' (as defined in section 90(7) and 89(1) of the Act, respectively) have a right to bring a claim for breach of statutory duty under the Act, in respect of 'covered procurement' (as defined in section 1(1) of the Act) (see paragraph 13 below).
  - c. A supplier must be able to demonstrate that it has suffered, or is at risk of suffering loss or damage as a result of the breach.
  - d. The claim form must be issued by the Court within the time periods set out in section 106 (Time limits on claims). If the claim form is not issued within the relevant time limit, the supplier may lose its right to claim a remedy; the Court may make an order to extend the time period to commence proceedings but only if it considers there is a good reason for doing so and subject to a maximum period.
13. Contracting authorities should note that section 89(2) of the Act limits a treaty state supplier's rights under the Act to "the extent that it is entitled to the benefits of an international agreement specified in Schedule 9 in relation to the procurement being carried out or challenged". For the purposes of remedies, this means that a treaty state supplier will only have standing to bring a claim for the types of procurement and provisions of the Act

covered by the international agreement between the relevant treaty state and the UK. See guidance on treaty state suppliers for more information.

14. A supplier's claim is often based on the loss of profits that it would have expected to earn if it had won the contract, but 'loss or damage' may also include bid costs or other consequential loss, for example. Whatever the loss or damage relates to, the claimant must be able to demonstrate to the Court's satisfaction that it was caused by the alleged breach.
15. There are a small number of obligations in Parts 1 to 8 of the Act which cannot be challenged under Part 9 if breached. This includes all obligations within Part 6 (Below-threshold contracts) and other obligations set out in section 100(5-6) as follows:
  - a. the duty to comply with section 12(4) (requirement to have regard to barriers facing SMEs);
  - b. the duty to comply with section 13(9) or 14(8) (requirement to have regard to procurement policy statements); and
  - c. the duty to comply with section 90 (treaty state suppliers: non-discrimination) if the procurement is not a covered procurement.

These may, however, be subject to public law remedies, i.e. judicial review.

16. Additionally, under section 100(7) a supplier may not bring a claim against a contracting authority that has excluded it from a procurement on the basis of a Minister of the Crown's decision in relation to the debarment list, namely:
  - a. the Minister's decision to enter a supplier's name on the debarment list;
  - b. the Minister's decision relating to the information included on the debarment list;
  - c. the Minister's decision not to remove a supplier from the debarment list; and
  - d. the Minister's decision not to revise information included on the debarment list.

The Act does, however, give a supplier the right to appeal the Minister's decisions under section 65 (Debarment decisions: appeals). See the guidance on debarment for more information.

#### Automatic suspension (section 101 and 102)

17. If a mandatory or voluntary standstill period applies to the award or modification of a contract and during the standstill period a supplier:
  - a. has commenced proceedings; and
  - b. notifies the contracting authority that it has done so,

the contracting authority's ability to enter into the contract will be automatically (and immediately) suspended. That means that the contract must not be entered into or the modification must not be made.

18. If the claim form is issued and/or notified after the standstill period has ended but before the contract has been entered into, the automatic suspension in section 101 does not apply and the contracting authority is freely able to enter into the contract or make the modification. However, in such circumstances, it is advisable to seek legal advice before continuing. When a contracting authority has agreed to extend a standstill period, for example to respond to a supplier's query about the procurement, the contract award notice should be amended accordingly and re-published in order to ensure suppliers are aware that they have more time to commence proceedings.
19. Usually, a supplier's reason for bringing a claim is to challenge the decision to award a contract to another supplier or to challenge the lawfulness of a modification and to secure the contract (or new contract implementing the modification) for itself. Suspending the ability of the contracting authority to enter into the contract or make the modification allows that possibility. Resolving any dispute prior to entering into a new contract or making a modification is generally in the interests of the contracting authority as well, to ensure successful delivery of the goods, services or works and avoid the disruption and cost associated with post-contractual remedies. The automatic suspension, therefore, serves an important purpose, because once a contract is entered into, only post-contractual remedies are available (and the contracting authority may end up paying twice, i.e. paying the supplier under the contract awarded and paying compensation for loss or damage if a supplier successfully challenges an award or modification).
20. However, in some circumstances, delaying entry into the contract or making the modification is problematic, for example, if the contract is to deliver certain defence or health-related services where delay would have unacceptable operational impacts. To allow for such situations, a contracting authority can ask the Court to lift or modify the automatic suspension i.e. bring the suspension to an end or modify it (for example, provide for a shorter standstill period) and allow the contract to be entered into or the modification to be made immediately (or within a shorter period than would otherwise be the case). The Court will apply the test in section 102(2) to consider whether the suspension should be lifted or modified.
21. If the Court does not lift or modify the automatic suspension (see paragraphs 23-25 below), it will remain in place until the claim has been resolved.

#### Interim remedies (section 102)

22. Interim remedies can apply to any claim, whether the claim form is issued before or after an award decision, or after a contract has been entered into or a modification has been made. They are available to both the contracting authority and the supplier. These interim measures are temporary measures intended to be in place until the Court has considered the claim and delivered its judgment.
23. Following an application to the Court (by either party), the Court has the power to make one or more of the orders set out in section 102(1):
  - a. an order lifting or modifying the automatic suspension;
  - b. an order extending the automatic suspension or imposing another suspension;

- c. an order suspending the effect of any decision made or action taken by the contracting authority in the course of the procurement;
  - d. an order suspending the procurement or any part of it;
  - e. an order suspending the entry into or performance of a contract;
  - f. an order suspending entering into a contract or making a modification or performance of a contract as modified.
24. The Court cannot make an order which allows a contract to be entered into or modified before the end of any standstill period.
25. Before making such an order, the test in section 102(2) requires the Court to consider the merits of the case to ensure that the interests of suppliers, including the claimant, and the supplier to whom the contracting authority has decided to award the contract, are considered alongside the public interest. The Court may also consider any other matter it considers appropriate.
26. Public interest considerations include upholding the principle that the law should be complied with, as well as the implications of delaying the procurement or modification and therefore the goods, services or works the contract or modification is intended to deliver.

#### Pre-contractual remedies (section 103)

27. Pre-contractual remedies are those remedies available to the supplier where the Court has found in its favour i.e. where it has found that the contracting authority has breached its statutory duty (see paragraph 1 above). The pre-contractual remedies available to the Court are set out in section 103(2), but there is a wide discretion as section 103(2) permits the Court to make any order, in addition to those set out at section 103(2)(a-c), that it considers appropriate. Pre-contractual remedies are only available where the contract in relation to which the breach occurred has not yet been entered into or the modification has not yet been made.
28. As set out above, suppliers that bring a claim prior to the contract being entered into or modification being made are often seeking an opportunity to tender for the contract or to deliver it (or the modification) themselves. Pre-contractual remedies reflect this and allow the Court to make an order setting aside a decision or action of the contracting authority; for example, it may set aside a decision to award a contract. The Court can also make an order that an action is taken by the contracting authority, for example that it re-assesses tenders against the award criteria. Other actions ordered could be, for example, to re-commence parts of the procurement procedure (for example, to wind the procurement back to a previous stage in a competitive flexible procedure), or may be to award the contract to the claimant.
29. Section 103(2) also permits the Court to award damages (see paragraph 31).

## Post-contractual remedies (sections 104 and 105)

30. Post-contractual remedies are those remedies available to the supplier where the Court has found the contracting authority to be in breach of its statutory duty where the contract in relation to which the breach occurred has already been entered into or the modification has already been made. In this situation, section 104(2) provides that the Court must set aside the contract where certain conditions are met and may, in any case, make an order for the award of damages.

### Damages

31. An award of damages is effectively a form of compensation to the claimant for the loss or damage it has suffered as a consequence of the breach by the contracting authority of its statutory duty. In all cases, whether this is a pre-contractual remedy or a post-contractual remedy, it is for the Court to decide whether the breach caused the damage or loss suffered by the claimant and therefore whether an award of damages is appropriate in the circumstances. If the Court decides to award damages, it will also decide the amount of the damages. In determining the value, the Court will take into account all the circumstances of the case, including any mitigating factors.

### Set aside

32. Set aside is the most disruptive of the remedies available to suppliers under the Act. It applies when a breach has occurred in the award or modification of a contract but the supplier has been denied the opportunity to seek a pre-contractual remedy (under section 103) for a reason set out in section 105(1) (referred to in the Act as 'set aside conditions') (see paragraph 35 below). Set aside is mandatory in these circumstances, subject to the public interest test at section 104(3) (see paragraphs 36-37 below).
33. An unlawful decision to award a contract would, for example, be where the supplier did not submit the most advantageous tender in a competitive tendering procedure or a direct award was not permissible under section 41(Direct award in special cases) or section 43 (Switching to direct award) of the Act. An unlawful modification to a contract would be where the contract modification was not permitted under section 74 (Modifying a public contract).
34. Setting aside the contract or modification means that the contract has no effect from the date of the order (i.e. it is of no effect from that point onwards, but not retrospectively). Where a contract or modification is set aside or the term or goods, services or works to be supplied is reduced (see paragraph 36 below), the order may include provisions dealing with consequential or supplementary matters, for example, payment to the supplier for performance to date where this is not provided for in the contract or contract as modified. The contracting authority will also have to bear any cost and time impact of carrying out a new procurement for the goods, services or works intended to be provided under the contract or modification.
35. Section 105 sets out the set aside conditions, one of which must apply for the Court to be able to set aside a contract or modification. As set out at paragraph 32 above, where a supplier is denied the opportunity to seek a pre-contractual remedy, the Court must set aside the relevant contract or modification. These set aside conditions set out in section 105(1) are:

- a. a required contract award notice was not published: the Act generally requires that a contract award notice setting out that the contracting authority intends to enter into a contract with a particular supplier must be published before the contracting authority enters into a public contract (section 50). If it is not published, then unsuccessful suppliers may not be aware of the decision and cannot challenge an unlawful decision before the contract is entered into. This set aside condition is not relevant where the Act does not require the publication of a contract award notice. However, it does apply where the contracting authority wrongly concluded that a contract award notice was not required, or an inaccurate notice was published;
- b. the contract was entered into or modified before the end of any applicable standstill period: the standstill period gives suppliers a window of time before the contract is entered into to commence proceedings. If the contracting authority entered into or modified a contract before the end of any standstill period, the ability to commence proceedings before the contract is entered into is reduced or denied altogether and the supplier is not able to bring a claim for a pre-contractual remedy. It applies whether the standstill was required or voluntary and includes where the contracting authority had wrongly determined that a standstill period was not required;
- c. the contract was entered into or modified during a period of automatic suspension or in breach of a court order: as set out at paragraph 17 above, section 101(1) prohibits a contracting authority from entering into or modifying a public contract if, during an applicable standstill period, a supplier commences proceedings and the contracting authority is notified of this. Where a contracting authority fails to comply with this requirement, the supplier is unable to bring a claim for a pre-contractual remedy;
- d. where the contracting authority is not required to implement a standstill period, the breach became apparent only on publication of a contract award notice: this condition addresses the circumstance where the contracting authority did not implement a standstill period because it was not required to do so due to the nature of the contract and the breach became apparent only after the contract was entered into. This could arise, for example, where a contracting authority enters into a contract immediately after publishing its contract award notice and so denies the supplier the opportunity to fully consider the notice and the time to commence proceedings for a pre-contractual remedy. This condition is not met if, despite the fact that the contracting authority was not required to observe a standstill period, the contract award notice nonetheless provided for a voluntary standstill period and the contract modification was not entered into before the end of that standstill period;
- e. the breach became apparent only on publication of a contract change notice: this condition is relevant only where a contract is being modified and would arise (as with paragraph d above) where a contracting authority does not implement a voluntary standstill period after publication of the notice. Again, this condition is not met if, despite the fact that the contracting authority was not required to observe a standstill period, the contract award notice nonetheless provided for a voluntary standstill period and the contract modification was not entered into before the end of that standstill period; or



- f. the breach became apparent only after the contract was entered into or modified: this condition addresses the circumstance where the claimant did not know about the breach prior to the contract being entered into or the modification being made. For example, this could be because the contract award notice or contract change notice does not correspond with the contract that was entered into, or the modification made, which became apparent only after the contract or contract as modified was published. This condition might also be met where a contracting authority does not provide assessment summaries (or full and/or accurate assessment summaries) before publishing the contract award notice and entering into the contract, which denies the supplier the opportunity to identify any potential breaches.
36. Even where a set aside condition is met, the Act allows the Court discretion not to set aside the contract or modification, if it is satisfied that there is an overriding public interest not doing so. This could be, for example, the case of certain health or defence-related contracts where the impact of setting a contract or modification aside could have unacceptable impacts. If a Court is satisfied that there is an overriding public interest, it may, instead of setting aside the contract or modification, reduce the duration of the contract or the goods, services or works to be provided.
  37. Section 104(5) sets out certain limitations on what the Court can take into account when considering the public interest in not setting aside the contract or modification. It must not, for example, consider the additional costs to the contracting authority of having to run a new procurement or the financial implications of delaying the provision of the goods, services or works to which the contract or modification relates.
  38. Section 106(2) provides that for most claims a supplier must commence proceedings before the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the relevant circumstances giving rise to the claim ('30 day period') (see paragraph 47). This includes in the case of proceedings to set aside a contract, provided the contracting authority published a contract details notice under section 53.
  39. However, where a supplier wishes to commence proceedings to set aside a contract where a contracting authority did not publish a contract details notice or to set aside a modification ('specified set-aside proceedings'), section 106(1) potentially provides a longer period. In this case, proceedings must be commenced before the earlier of the end of the 30 day period and the end of the period of six months beginning with the day the contract was entered into or modified ('six month period'). The following examples illustrate how the time limit works:
  40. A public contract is entered into on 2nd January. A contract details notice is not published as required by section 53. Applying the six month period, the deadline to commence specified set-aside proceedings is therefore 1st July.
  41. Example A: A supplier gains access to information on 22nd June that indicates that a contract may have been awarded to a supplier that did not submit the most advantageous tender and it may have grounds for a claim for breach of statutory duty.
  42. The supplier has only ten days (including the day it received the information) to commence proceedings to have the contract set aside because there are only ten days left until the expiry of the six month period (1st July).

43. If the supplier only wants to claim for damages, the standard 30 day period to do so applies.
44. Example B: A public contract is entered into on 2nd January. A contract details notice is not published as required by section 53. Applying the six month period, the deadline to commence specified set-aside proceedings is therefore 1st July.
45. On 19th January a supplier gains access to information that indicates that a contract was awarded to a supplier that may not have submitted the most advantageous tender and it may have grounds for a claim for breach of statutory duty.
46. The supplier has 30 days from 19th January to commence proceedings to have the contract set aside. This is because the supplier now has knowledge of the potential breach and section 106(1) requires the supplier to commence proceedings before the earlier of the 30 day period and the six month period.

#### Time limits (section 106)

47. As set out at paragraph 38 above, generally a supplier has 30 days from when it first knew, or ought to have known, about the relevant circumstances to commence proceedings for breach of statutory duty (the 30 day period). This means that the 30 day period would usually commence when the supplier is provided with or has access to information that enables it to identify a breach.
48. For example, if a supplier considers that the award criteria in a particular procurement breaches the Act, it must issue the claim within 30 days of the award criteria being made available to it. Where a notice identifies a breach, the supplier has 30 days from the publication of the notice to commence proceedings. The onus is on the supplier to review the information in a timely manner to ensure that it can commence proceedings within the relevant timescales.
49. The supplier can apply to the Court to extend the time limit for commencing proceedings. The Court can generally extend the period to allow a maximum of three months in which to commence proceedings, but only where it considers there is good reason to do so. The period for commencing any specified set-aside proceedings (see paragraphs 39-46 above) can be extended up to a maximum of six months.
50. After the Court has issued a claim form, the Civil Procedure Rules (which govern the management of civil claims in England and Wales) will apply. These require the claimant to serve the claim form on the contracting authority within 4 months of the date the claim form is issued. It is also worth noting that the Technology and Construction Court (which deals with public procurement claims) has issued a [guide](#) which contains a protocol for the management of procurement claims. This includes (at paragraph 9 of Appendix H) an expectation that claimant suppliers will serve the claim form on contracting authorities within 7 days of issue. (It is our intention to update this guide to better align it with the Act and its aims.) It is expected that a claimant will serve the claim form on the contracting authority at the same time as notifying it of the commencement of proceedings; notification which is required by section 101 of the Act (see paragraph 17 above) where it wishes the automatic suspension to apply.

51. In any case where the claim form has not been served, and in order to avoid waiting the full 4 months, contracting authorities can serve a notice on the claimant requiring the claimant to serve the claim form within a set deadline (which must be at least 14 days after service of the notice) or discontinue the claim (see Civil Procedure Rule 7.7(1) and (2)). Where the claimant commences proceedings and notifies the contracting authority within the standstill period (and therefore the automatic suspension applies), contracting authorities are advised to serve a notice on the claimant requiring it to serve the claim form immediately after they have been notified.
52. While the claim form is often served along with the Particulars of Claim, this is not mandatory and the Particulars of Claim may be marked as 'to follow'. If this is the case, the claimant will have an additional 14 days to serve the Particulars of Claim on the contracting authority following service of the claim form.

#### Closed proceedings (section 107)

53. The Justice and Security Act 2013 allows a Secretary of State to apply for legal proceedings to be carried out as a closed material procedure. Closed material procedure involves the non-government parties leaving the courtroom while sensitive material is heard by the Court and can be particularly relevant if the case includes matters relating to national security. As the Act gives powers to, and requires some decisions to be made by, the Minister for the Cabinet Office, section 107 of the Act extends this ability to request closed procedures to the Minister for the Cabinet Office.

#### Managing the risk of a claim

54. The risk of legal challenge should be assessed throughout a procurement with decisions and appropriate steps being taken to mitigate the risks as they are identified.
55. Applying a voluntary standstill period (i.e. where the Act does not require it) is an effective way of mitigating the risk of a contract or modification being set aside, as it ensures suppliers have adequate time to commence proceedings seeking a pre-contractual remedy. See the guidance on contract award notices and standstill for more information.
56. By ensuring that those involved in carrying out procurements are aware that public law principles require public bodies to act fairly and rationally when making decisions and that they must have regard to the objectives in section 12 of the Act (to share information and act, and be seen to act, with integrity), contracting authorities can assure suppliers that the procurement is robust and fair and that they can have confidence in the procurement. Contracting authorities should provide suppliers with an explanation of any decisions that affect them as soon as possible and release information to suppliers at the same time, as far as practicable.
57. Being transparent throughout the procurement, particularly during the procedure itself or process for awarding the contract, and providing information as early as possible can mitigate the risk of a claim arising later in the procurement, after the award decision has been announced.

58. Publishing notices earlier than the final deadline in the Act (where possible) and adopting the full transparency regime even where there is no obligation to do so enables the general 30 day period for proceedings to be commenced to be used to greatest effect. For example:

- a. publishing a transparency notice as early as possible means that if a supplier has any concerns with a decision to make a direct award, these will be raised early and can be resolved with minimal disruption to the procurement. This may also avoid the need for a legal claim;
- b. publishing a contract details notice and the contract or modification or the contract as modified as soon as possible after the contract has been entered into or the modification has been made (even if it is not required by the Act) means the risk of a claim for set aside should be reduced once the 30 day period has expired.

59. Engaging with suppliers that raise concerns, with a view to overcoming any issues outside of the legal remedies regime, should avoid the need for the supplier to commence proceedings, and thus the cost and disruption that legal challenges can bring. Contracting authorities should act in a timely manner, so as not to force the supplier to take legal action due to time constraints; where necessary and applicable the standstill period can be extended to provide for such additional time. Contracting authorities could consider the benefits of peers (who are not directly involved in the procurement) providing an independent view of a particular issue, where this is warranted and possible.

#### **What other guidance is of particular relevance to this topic area?**

In order to effectively manage the risk of receiving a legal claim, contracting authorities will need to be familiar with the obligations that can trigger a legal claim if they are not complied with; i.e. those contained in the following Parts of the Act:

- 1 Key Definitions;
- 2 Principles And Objectives;
- 3 Award Of Public Contracts And Procedures;
- 4 Management Of Public Contracts;
- 5 Conflicts Of Interest;
- 7 Implementation Of International Obligations;
- 8 Information And Notices: General Provision.

These obligations and requirements are explained in more detail in the full suite of guidance on the Act. In order to fully understand the options available to suppliers who have concerns about the procurement, it would be beneficial to have an understanding of the procurement oversight regime (including the role of the Procurement Review Unit) and the judicial review process.

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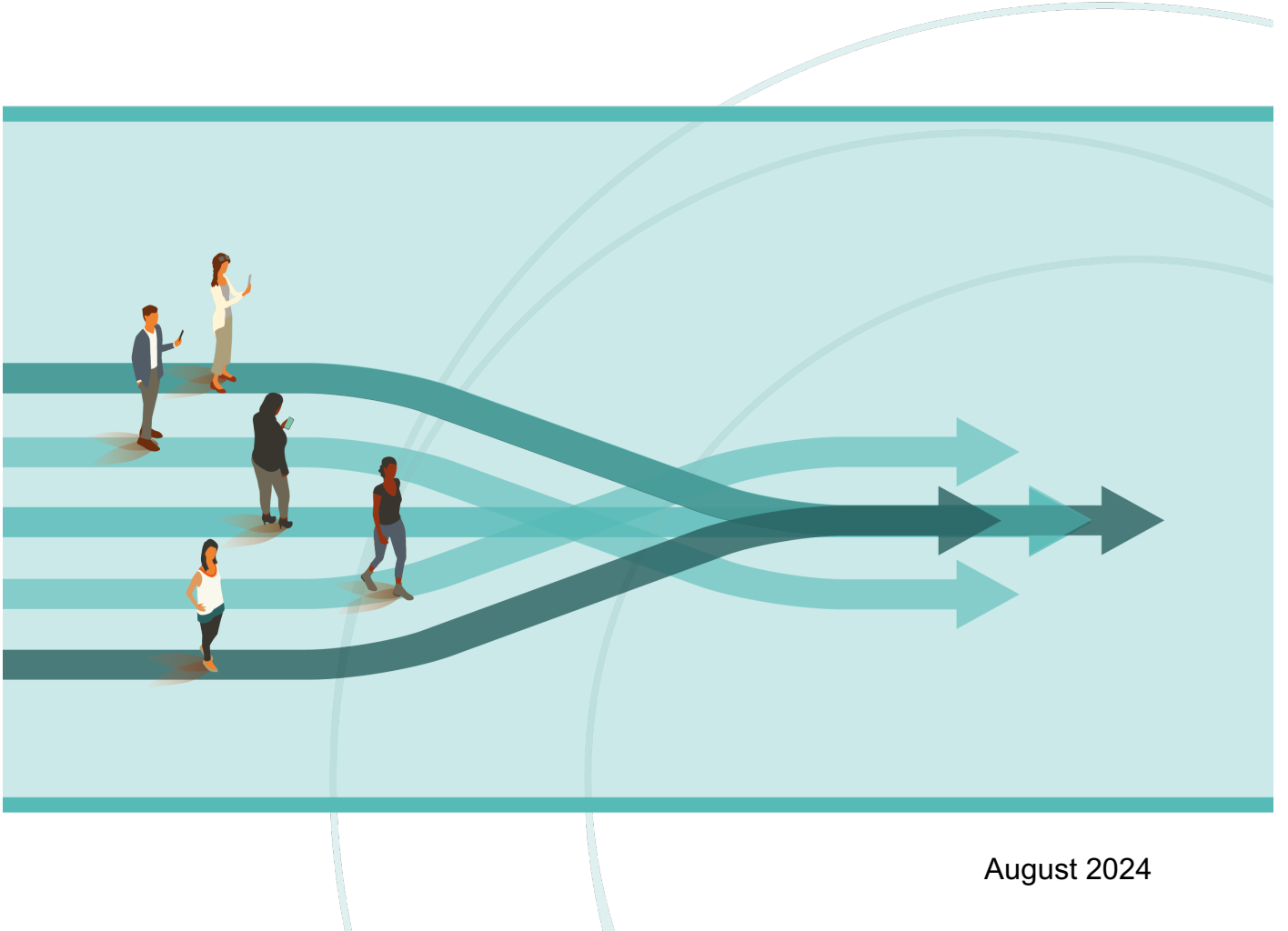
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Procurement Act 2023

# Guidance: Assessment Summaries



August 2024

## Guidance on Assessment Summaries

### What is an assessment summary?

1. Under the Procurement Act 2023 (Act), before entering into a public contract, a contracting authority must generally publish a contract award notice (section 50(1)) on the central digital platform. The contract award notice triggers the commencement of the mandatory standstill period.
2. In addition, where a contracting authority has carried out a competitive tendering procedure under the Act, it must, prior to publishing the contract award notice, provide an 'assessment summary' which provides information to enable a relevant supplier to understand why its tender was either successful or unsuccessful.
3. When awarding a contract following a competitive tendering procedure, a contracting authority must provide an assessment summary to each supplier that submitted an 'assessed tender' (see paragraph 10 below) and publish a contract award notice.

### What is the legal framework that governs the assessment summary?

4. Section 50 (Contract award notices and assessment summaries) sets out the definition of, the requirement for, and timing of, the assessment summary. The provisions are relevant to public contracts and not other contracts and this guidance therefore relates to public contracts. The information that must be included in the assessment summary is set out in regulation 31.

### What has changed?

5. Assessment summaries broadly fulfil the same function as notices of a decision to award a contract (commonly referred to as 'standstill letters') in the previous legislation<sup>1</sup> but there are some important differences. Under the Act, it is the publication of the contract award notice that initiates the standstill period, rather than the issue of standstill letters to participating suppliers as under the previous legislation. Contracting authorities are not required to include in an assessment summary a direct comparison between the successful supplier's assessed tender and an unsuccessful supplier's assessed tender. The assessment summary provided to unsuccessful suppliers must, however, include a copy of the information provided to the successful supplier (redacted for confidentiality where required) explaining how its tender scored against each of the criteria. A supplier reading the two sets of information alongside each other will be able to ascertain the relative advantages.

### Key points and policy intent

6. The aim of the assessment summary is to ensure that a supplier that submitted an assessed tender in relation to a competitive tendering procedure can understand why its tender was either successful or unsuccessful. It also allows unsuccessful suppliers to see how the

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<sup>1</sup> Referred to in the Defence and Security Public Contracts Regulations 2011 as an 'award decision notice'.

contracting authority has determined the most advantageous tender (MAT) in accordance with the award criteria and assessment methodology.

7. The regulations set out what type of information must be provided in an assessment summary in a way that aims to provide a level of consistency across procurements, regardless of the contracting authority awarding the contract, what the contract is for, or the various approaches to award criteria and assessment methodology that may be taken.
8. Contracting authorities should be able to use information generated during the assessment process to meet the requirements of the assessment summary. In order to use the same information and minimise the need for reformatting, contracting authorities are advised to consider the format and requirements of assessment summaries as set out in regulation 31 when developing award criteria, processes and templates for assessment.
9. Contracting authorities must provide each supplier that submitted an assessed tender with an assessment summary, which includes the required assessment information pertaining to its tender and, if the supplier is unsuccessful, the relevant assessment information pertaining to the MAT (see regulation 31(2) and (3)).
10. Section 50(5) of the Act defines an assessed tender as “a tender which — (a) was submitted in respect of the contract and assessed for the purposes of determining the most advantageous tender under section 19(1), and (b) was not disregarded in the assessment of tenders.” For the purposes of a competitive flexible procedure, which may have multiple assessment stages, it is the final assessment stage that determines which supplier submitted the MAT and is awarded the contract. This means that assessed tenders are only those tenders that are assessed at the final stage; tenders are not assessed tenders if they were rejected following an earlier assessment against the award criteria and were therefore not included in the final assessment. Tenders must be disregarded because they do not satisfy the conditions of participation and may be disregarded for other reasons (see section 19(3)). Assessment summaries are also not required to be provided where contracts are awarded under a framework (see paragraph 40 below) or directly under sections 41 or 43.
11. While there is no obligation under the Act to provide an assessment summary to suppliers who have not submitted an assessed tender, contracting authorities should inform suppliers in writing as soon as reasonably possible that they are not being taken forward in a competitive tendering procedure or will not be awarded the contract (as appropriate).
12. In the case of a competitive flexible procedure with multiple assessment stages, contracting authorities are advised to use the same feedback structure for suppliers who are unsuccessful in intermediate rounds as will be provided for assessed tenders. The assessment summary structure has been designed to provide suppliers with a robust explanation for their scores having regard to section 12(1)(c) and (d) of the Act and the requirement to have regard to the importance of sharing information and acting, and being seen to act, with integrity. When notifying suppliers who have not submitted assessed tenders, contracting authorities should aim to provide the appropriate level of detail to explain the suppliers’ scores and the reasons for exclusion relevant to the point in the procurement procedure at which the supplier was excluded. Setting out in the tender documents that this information will be provided to all suppliers, not just those who submitted



assessed tenders may help to ensure a strong competitive field, particularly where bid costs are high and the prospect of not receiving an assessment summary may deter suppliers from tendering.

13. Assessment summaries must be provided at the same time (regulation 31(4)) to all suppliers that submitted an assessed tender and before the contract award notice (which triggers the commencement of the standstill period) can be published (see paragraphs 37-38 below for more guidance on timing). Assessment summaries must be provided before the contract award notice is published to ensure that suppliers have the full standstill period in which to consider the information provided before the contract is entered into.
14. There is no requirement to publish assessment summaries on the central digital platform or to transmit them to suppliers through the central platform. Contracting authorities are free to provide assessment summaries by whichever method works best for their process (taking into consideration the requirements of section 96 (Electronic communications) of the Act); for example, this could be through their own eProcurement system or via email.

#### Required assessment information

15. The information to be included in an assessment summary is largely the same for both successful and unsuccessful suppliers, but unsuccessful suppliers will receive information about their own assessed tender (to the extent their tender was assessed (see paragraph 16 below)) as well as information about how the MAT scored against the award criteria. In addition to the information set out below, regulation 31(2)(a-c) requires the assessment summary to include the recipient supplier's name, postal and email address, and unique identifier. There is no requirement to include the successful supplier's identifying information in assessment summaries that are provided to unsuccessful suppliers but contracting authorities should provide at least the name of the supplier who has submitted the MAT where doing so would not create a significant burden (which might be the case, for example, when awarding a framework to a large number of suppliers).
16. For unsuccessful suppliers, the regulations only require this information to be provided in relation to criteria that were assessed against the award criteria; if a contracting authority determines during the assessment of the tender that a 'pass/fail' criterion has not been met, it is not required to continue to assess the tender and to score it against the remaining award criteria (regulation 31(3)(b)), but the information must be provided against those criteria that have been assessed. If the contracting authority intends to adopt such an approach, this should be set out in the assessment methodology.

#### Award criteria and assessment methodology (regulation 31(2)(d))

17. Suppliers will have had access to the award criteria and assessment methodology in the tender notice and any associated tender documents. Consequently, this information does not need to be repeated in full in the assessment summary. Instead, the assessment summary can include only a summary of the award criteria. If this approach is taken, the contracting authority must indicate to suppliers where the full version of the award criteria and assessment methodology can be accessed (for example, by providing the tender notice reference).

18. The minimum award criteria information to be provided in the assessment summary is the title of each criterion and its relative importance (for example, the weighting), how each criterion was to have been assessed and the scores available for each criterion.
19. It can be beneficial, however, to provide the full detail of the award criteria and assessment methodology used to determine the MAT in the assessment summary. This is particularly the case if, for example, award criteria have been refined during the course of a competitive flexible procedure in accordance with section 24 (see guidance on competitive tendering procedures for more information).

Scores awarded and justification (regulation 31(2)(e))

20. Contracting authorities must provide suppliers with the score determined for each award criterion (regulations 31(2)(e) and 31(3)(b)). This means providing the score for each criterion (including each sub-criterion where sub-criteria have been used for assessment) as well as the total score. In practice and depending on the assessment methodology, this may also include sub-total scores.
21. For example, if the assessment methodology has different categories of award criteria (for example, technical, commercial and social value categories) and it states that the scores of each criterion in a category will be added together to make a subtotal, and those subtotals will be added together to create a total score, then all of this information must be provided. An illustration could look like this:

	Technical			Commercial			Social Value
Criteria	A	B	C	D	E	F	G
Score	3	3	3	1	1	1	3
Sub-totals	9			3			3
Total	15						

22. For each award criterion (including any sub-criteria), the contracting authority must explain why that score was awarded by making reference to 'relevant information in the tender'.
23. This aspect of the assessment summary requires the contracting authority to make a judgement as to the appropriate level of detail to provide. As a guiding principle, the assessed tender should be recognisable from the information provided, so the supplier should be given sufficient information to understand the scores awarded without the contracting authority needing to reference sensitive details of the supplier's solution. Depending on how the award criteria are structured, contracting authorities will usually need to refer to the detail of the criterion and/or the definition of the score when explaining each score.

24. For example, the award criterion may state that in order to be awarded a particular score the tender must demonstrate that a number of requirements will be achieved in delivering the contract. If an assessed tender is then awarded that particular score, each of the requirements achieved should be referenced in the explanation.
25. Contracting authorities cannot simply repeat the award criterion and state “the tender demonstrated x” or “failed to demonstrate y,” because reference must be made to the tender. The below is an illustrative example of a more appropriate approach:

“The tender demonstrated all the necessary requirements to achieve a score of 5. It provided, in section [x] of the tender, the necessary details to give the authority confidence that [requirements a, b, c] will be delivered, including [insert information in the tender relevant to the requirements demonstrated].”

26. In some cases, it might not be possible for a supplier to understand why a particular score was determined without also explaining why a higher score was not achieved. Provision of this information is, in any case, best practice to assure suppliers that the correct score has been awarded. How this is done will depend on the structure of the award criteria and the scoring description. To continue with the example in paragraph 25 above, it may be that to achieve a higher score, the tender must have demonstrated additional requirements. In explaining why the higher score was not awarded, the contracting authority should acknowledge which of those requirements it failed to demonstrate and why; for example:

“Although the tender stated that [requirements x and y] would be met, the tender failed to explain how the proposed solution met those requirements and therefore failed to demonstrate [requirement x] and [requirement y] would be delivered. This meant the tender could not be awarded a higher score.”

27. It is best practice to address the requirements of each award criterion as fully as possible. However, contracting authorities may determine, where the criteria are particularly complex or large in number, that focusing on key aspects of the tender is adequate to meet the requirements of the assessment summary where those aspects of the tender provide sufficient information to explain each score awarded. Contracting authorities should, however, take the same approach with each supplier to ensure the same level of detail is provided to each supplier that submitted an assessed tender.

#### Consideration of sensitive information

28. In most cases it should be possible to refer to the content of the tender in the assessment summary without needing to divulge sensitive commercial information, such as information which constitutes a trade secret or unique selling points that would prejudice the supplier if disclosed. Not going into such detail in templates or reports for assessing award criteria will facilitate sharing information in respect of the MAT to unsuccessful suppliers by minimising or removing the need for redaction. Where appropriate, focusing comments on the outcomes the tender will achieve can help, but contracting authorities should bear in mind

that the content of the assessment summary will be driven by the structure and drafting of the award criteria.

29. The following explanation for a score is provided as an illustrative example and is based on the contracting authority having an award criterion that relates to whether the tender demonstrates that:

- a. the supplier's software solution maximises the use of open standards and architectures;
- b. the supplier's software solution maximises the reuse of existing technologies and products; and
- c. a team of suitably qualified and experienced personnel will be available to deliver the software.

The explanation given for the score determined for the above award criterion could take an approach similar to the following:

"The tender proposed an architecture design that is based on an open standard. A 'plug and play' approach has been adopted, demonstrated by an annotated list of suitable alternative off the shelf components. Analysis of various existing products is provided that demonstrated only two aspects of its solution will require modified or bespoke products, with clear justification. The tender included a team organogram, with nominated personnel against roles, based on qualifications and experience (detailed in the tender) and project timing. The contracting authority has confidence in the evidence that demonstrates that the contract will be performed by the appropriate number of experts with expertise which exceeds minimum requirements. A reasonable minimum level of qualifications and experience required for any new or additional team members has been proposed."

30. The above example references information from the tender for each of the three elements the criterion lists, and consequently provides the corresponding detail. This approach enables the supplier to understand its score by reference to its tender, but avoids including sensitive commercial information.

31. However, it is recognised that sometimes including sensitive commercial information cannot be avoided. When the assessment information will only be provided to the supplier that the information pertains to, this is not a concern. However, the successful supplier's assessment summary information will be shared with the unsuccessful suppliers and therefore contracting authorities should consider whether there is sensitive commercial information relating to the MAT that should not be provided to other suppliers as part of their assessment summaries.

32. Section 94 of the Act permits contracting authorities to withhold information to protect national security or if the information is commercially sensitive and there is an overriding public interest in it being withheld (see guidance on publication of information for more

information). This provision can be used to redact details about the MAT for the purpose of providing that information to unsuccessful suppliers. Where information is withheld, the contracting authority should ensure that the information being provided to unsuccessful suppliers against each criterion nonetheless gives a sufficient explanation of the score awarded to the MAT.

33. To help understand what details may be commercially sensitive, contracting authorities are encouraged to request in tender documents that suppliers, at tender stage, identify the sensitive commercial information that is included in their tenders. This could be achieved, for example, by the inclusion of a schedule detailing the sensitive information (referencing where in the tender that information is contained) and the justification for its confidentiality. Contracting authorities are not obliged to accept that information is commercially sensitive simply because a supplier has labelled it as such and should discourage suppliers from making blanket and unsustainable confidentiality claims. Contracting authorities should engage with the supplier in order to reach an agreement on what information is sensitive commercial information, noting that the contracting authority must still be satisfied that there is an overriding public interest in that information being withheld from disclosure if such information is not provided. More information on commercially sensitive information can be found in the guidance on publication of information.

#### Other information that may apply to an unsuccessful tender (regulation 31(3)(c))

34. In the case of unsuccessful suppliers, the assessment summary must also include any further explanation of why that supplier is not being awarded the contract.
35. For example, the assessment methodology may state that if a tender fails to achieve the minimum score for a particular award criterion, then the assessment of that tender will cease and the tender will be disqualified. In that scenario, the assessment summary would provide information for each score awarded to the extent that the tender was assessed against the award criteria before it was disqualified, plus further explanation that the tender was disqualified once it was assessed as failing to meet the minimum score for a particular award criterion (and the reason for that assessment).
36. In addition, regulation 31(5) allows contracting authorities to include any other information they consider appropriate. Contracting authorities may therefore consider whether to include general feedback that may help the supplier improve its future tenders in order to encourage them to participate in future procurement opportunities. There is no legal requirement to provide feedback of this nature but it may be particularly useful for small and medium-sized enterprises or new entrants to the market.

#### Timing

37. Contracting authorities must provide an assessment summary to each supplier at the same time (regulation 31(4)) and before the contract award notice is published (section 50(3)). It is important that contracting authorities provide the assessment summaries promptly after the award decision has been made.

38. It is anticipated that in most circumstances, the contracting authority will want to publish the contract award notice on the same day that the assessment summaries are provided, assuming they are provided electronically. The Act does not prescribe any particular period of time between the provision of the assessment summary and the publication of the contract award notice. In certain circumstances, the contracting authority may want to build in a period of time following the provision of assessment summaries and before the contract award notice is published. The time between provision of assessment summaries and publication of the contract award notice should be given careful consideration as it is publication of the contract award notice that starts the standstill period. Timing will be for the contracting authority to determine, given the circumstances at hand, including the design of any competitive tendering procedure.

#### Lots, dynamic markets and frameworks

39. Lots When awarding contracts by reference to lots, the requirement to provide an assessment summary applies to the contract awarded. For example, if a contracting authority awards a public contract that encompasses two lots, the assessment summary would include the assessment information for both lots. However, if it awarded separate contracts for each lot, it would provide the supplier with an assessment summary for each contract.
40. Dynamic markets Assessment summaries are not relevant to establishing a dynamic market, as a dynamic market is not a public contract; neither are they relevant when suppliers are admitted (or not admitted) to a dynamic market as this does not create a contract. An assessment summary is required when awarding a public contract under a dynamic market, however, because these contracts are awarded under a competitive flexible procedure pursuant to section 19 of the Act.
41. Frameworks The requirement to provide assessment summaries applies when awarding a framework that is a public contract. It does not apply when awarding a contract in accordance with a framework (awarding a call-off contract) as those contracts are awarded in accordance with the terms of the framework, rather than section 19 of the Act. It is best practice, however, to adopt a similar or the same approach when awarding these contracts, which should be considered when setting up the framework itself.
42. It is recognised that when a high number of suppliers have tendered, such as when awarding a framework, providing assessment summaries can be time consuming. As set out above, there is some discretion available to contracting authorities to determine the level of detail appropriate to the procurement.
43. Additionally, when awarding a multi-supplier framework (or any form of contract following a competitive tendering procedure where there are multiple successful suppliers), there will be more than one MAT. In these circumstances, the successful suppliers will only need to be provided with the assessment information relevant to their own tender. When providing unsuccessful suppliers with the assessment information relating to the MAT, there is no requirement for a contracting authority to provide assessment information about all the successful tenders. Instead, the contracting authority should use the lowest scoring successful tender as the relevant MAT as this approach is likely to give the unsuccessful

suppliers the best indication of the gap between their unsuccessful tenders and what was required to be successful.

**What are the notices linked to this aspect of the Act?**

44. The assessment summary will be published after a tender notice that has invited suppliers to submit tenders for the procurement in question. The next notice in the sequence will be the contract award notice, unless the procurement is terminated in which case this decision will be communicated in a procurement termination notice.

**What other guidance is of particular relevance to this topic area?**

Guidance on competitive tendering procedures

Guidance on awarding a contract following a competitive tendering procedure

Guidance on contract award notice and standstill

Guidance on publication of information

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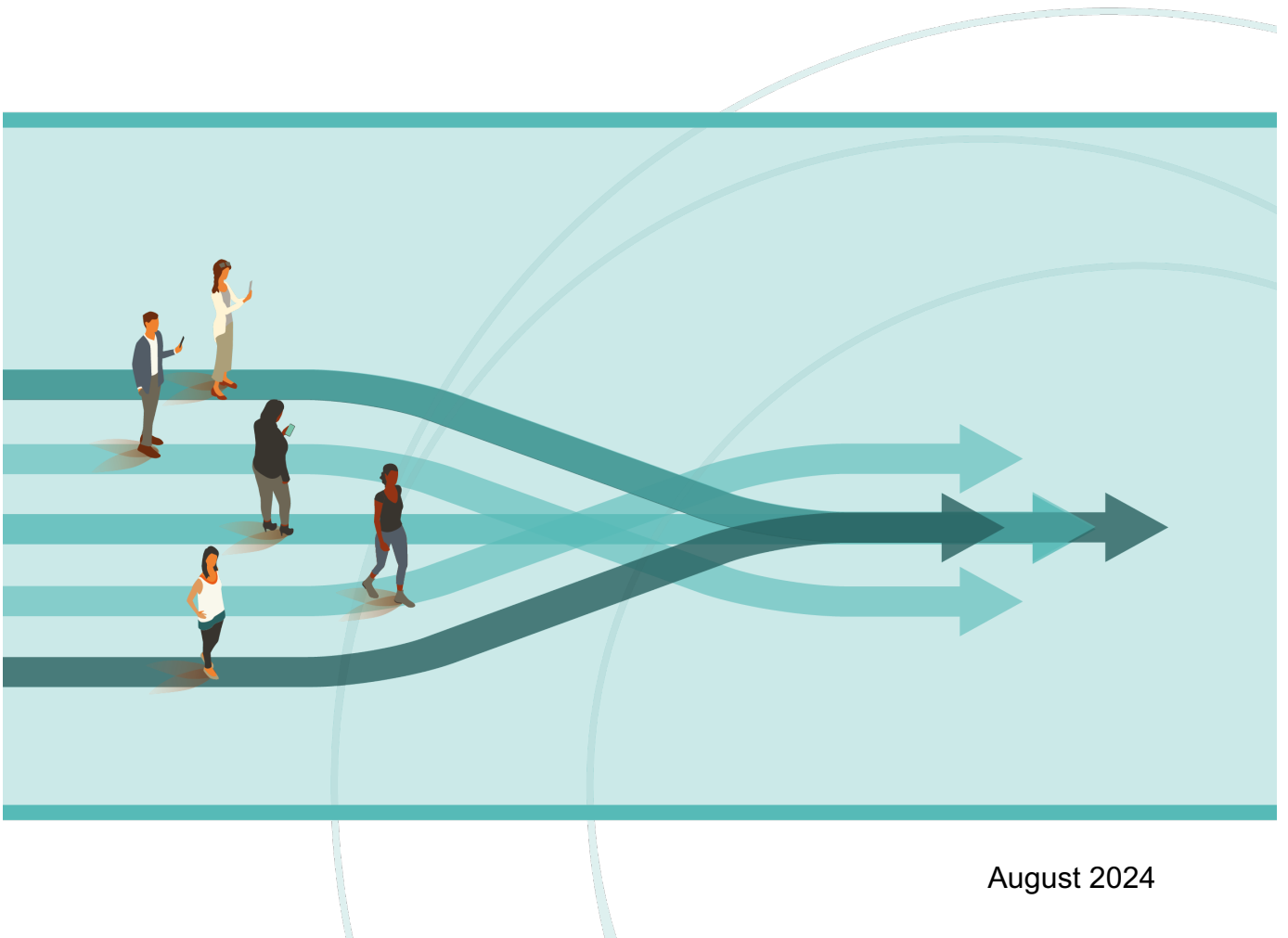




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Procurement Act 2023

# Guidance: Contract Award Notices and Standstill



August 2024

## **Guidance on Contract Award Notices and Standstill**

### **What are contract award notices and how do they link with standstill?**

1. A contract award notice informs interested parties that the contracting authority intends to enter into a public contract with a specified supplier (or, where relevant, multiple suppliers).
2. The standstill period is the period between the contracting authority announcing its intention to enter into a contract (by publishing the contract award notice) and actually entering into that contract; the contracting authority cannot enter into the contract during the standstill period. The standstill period provides an opportunity for suppliers to raise any concerns about, or formally challenge, the award decision before the contract is entered into. It must be at least eight working days beginning with the day on which the contract award notice is published.

### **What is the legal framework that governs contract award and standstill?**

3. Section 50 (Contract award notices and assessment summaries) of the Procurement Act 2023 (Act) sets out the requirement for contracting authorities to publish a contract award notice before entering into a public contract (and the exemptions to this requirement). Regulations 27-30 set out what needs to be included in this notice.
4. Section 51 (Standstill periods on the award of contracts) provides that the 'mandatory standstill period' is the period of eight working days beginning with the day the contract award notice is published. It also sets out the exemptions to this requirement and makes provision for a voluntary standstill period where these exemptions apply.

### **What has changed?**

5. Contract award notices under the Act are different from contract award notices under the previous legislation which were used to inform interested parties that the contract had been entered into and to provide certain information about that contract. Under the Act, this function is broadly replicated by the contract details notice (see guidance on contract details notice for more information).
6. Under the Act, the publication of the contract award notice takes place before the contract has been entered into and starts the standstill period where applicable. This position is different from the previous legislation where the standstill period was triggered by issuing notices of a decision to award a contract (commonly referred to as 'standstill letters') to suppliers. The function of the standstill letter in providing information about assessed tenders is now provided by the assessment summary (see guidance on assessment summaries). The requirement to publish a notice informing suppliers and other interested parties that the contracting authority intends to enter into a contract is a new obligation.

7. The standstill period is now a minimum of eight working days (rather than 10 calendar days) and applies to all public contracts apart from those listed in section 51(3). This eight working day period will usually result in a standstill period commensurate with that under the previous legislation but avoids the standstill period being artificially shortened by bank holidays.

## **Key points and policy intent**

### Contract award notices

8. Before entering into a public contract, a contracting authority must publish a contract award notice on the central digital platform. This notice provides advanced information to suppliers and other interested parties that the contracting authority intends to enter into a contract and provides certain information about the contract. Generally, the contract award notice will initiate a standstill period of at least 8 working days, but there are exceptions. Further information on standstill is provided at paragraphs 37-50 below.
9. Section 50(6) provides that the requirement to publish a contract award notice does not apply to:
  - a. a defence and security contract awarded under a defence and security framework; or
  - b. a contract awarded under section 41 by reference to Schedule 5, paragraph 15 (Direct award: user choice contracts).

(The requirement to publish a contract award notice does not apply to below-threshold contracts as the requirement to publish a contract award notice only applies to public contracts.)

10. Regulations 27 to 30 set out the information to be included in contract award notices. Much of this information will replicate and update what was published in the tender notice or transparency notice (as relevant), including the value and scope of the contract. Significant additional information requirements are explained below.
11. For private utilities, the information (set out in regulations 28-30) is slightly different from that for contract award notices published by other contracting authorities. This is because the notice for private utilities contains information that would usually be set out in the contract details notice, which private utilities are not required to publish. The differences for private utilities are set out at paragraphs 32-36 below.
12. For each supplier awarded the contract, information is required to be published about the supplier's:
  - a. associated persons, as defined in section 26(4) of the Act; and
  - b. connected persons as defined in Schedule 6, paragraph 45 of the Act.

13. Regulation 11 sets out the supplier's connected person information to be included in the contract award notice. For certain connected persons who are individuals, connected person information which is 'secured information' as defined in regulation 27(5) is not required to be published.
14. Where secured information is not required to be published, contracting authorities should instead indicate that there is a connected person who meets the description in regulation 11(3)(b) or (c), or the description in regulation 11(15)(b), but not provide any details. The information should be correct as at the time the notice is published. Whilst not a requirement of the legislation, once that connected person information no longer meets the definition of secured information, it would be good practice for the contracting authority to update the contract award notice with the connected person information.
15. The contracting authority must publish the date the decision was made to award the public contract to the supplier. This is in addition to the estimated date the contract will be entered into, which will be after any standstill period.

#### Publication of a contract award notice following a competitive tendering procedure

16. In a competitive tendering procedure, in addition to updating information provided in the tender notice and that set out above, the contract award notice must include information about 'assessed tenders' (as defined in section 50(5)) and, in the case of contracts over £5 million, the unsuccessful suppliers who submitted those tenders.
17. In competitive tendering procedures for public contracts valued at under £5 million, the contract award notice does not need to include information about each unsuccessful supplier. Instead, the contract award notice must include:
  - a. the total number of tenders submitted by the contracting authority's deadline for submitting tenders (discounting tenders submitted but subsequently withdrawn);
  - b. the total number of tenders assessed by the contracting authority, and the total number of tenders assessed by the contracting authority which were submitted by either:
    - i. a small and medium-sized enterprise; and
    - ii. a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.
18. Information relating to unsuccessful suppliers and their tenders is not required for call-off contracts under frameworks which do not involve the assessment of 'tenders', rather 'proposals' are assessed under section 46(8) of the Act. Where a call-off contract is being awarded under a framework, regulation 27 requires the contracting authority to state whether a competitive selection process or award without further competition was used to award the contract.

## *Lots*

19. A procurement may result in more than one contract being awarded, for example, if it is divided into lots. Where a supplier is successful in more than one lot, it may be awarded separate contracts for each lot or a single contract covering all or some of the lots it has been successful in. In this scenario, once the nature and content of each contract is known, the contracting authority can determine whether the contract to be awarded is a public contract, for example because it is above the relevant threshold, and therefore whether a contract award notice is required. It is possible for a procurement to result in some contracts that are public contracts, which generally require publication of a contract award notice, and some contracts that are not public contracts. It could also be the case that an above-threshold procurement results in only below-threshold contracts being awarded, for example because all lots and all contracts to be awarded are below-threshold. For those contracts that are not public contracts, contracting authorities will need to determine whether a below-threshold contract details notice will need to be published under section 87(4). Contracting authorities are encouraged to voluntarily publish a contract award notice for these below-threshold contracts in order to provide greater transparency about the outcome of the procurement.
20. If a contracting authority decides not to proceed with one or more lots during a procurement procedure (but not to terminate the entire procurement procedure), the contracting authority must include the 'ceased lot information' in the contract award notice, which will inform suppliers that those specific lots are not going to be awarded to any supplier. A contracting authority may decide not to award one or more lots in a procurement for a variety of reasons such as, for example, the contracting authority deciding it no longer wishes to procure the goods, services or works in those lots, or because no suitable tenders have been submitted with respect to those lots.
21. The contracting authority can decide to cease procurement of a specific lot at any time after the tender notice has been published. This decision should be shared with interested suppliers (where known) as soon as the decision is made as well as being set out in the contract award notice. If the decision not to award a contract for a specified lot is made after the final assessment of tenders, suppliers will be informed through the contract award notice.
22. A contracting authority is not required to explain or justify in the contract award notice its decision to cease the procurement of a specific lot, but it must have regard to the importance of sharing information for the purpose of allowing suppliers and others to understand its decision (section 12(1)(c)).

## *Timing of the notice*

23. In a competitive tendering procedure, the contract award notice can only be published after assessment summaries have been issued to successful and unsuccessful suppliers (see guidance on assessment summaries). It is anticipated that in most circumstances the contracting authority will want to publish the contract award notice on the same day that the assessment summaries are provided, assuming assessment summaries are provided

electronically. In others, they may want to build in a period of time following the provision of assessment summaries and before the contract award notice is published. The Act allows for both scenarios and does not prescribe any particular period of time between when assessment summaries are provided and when the contract award notice should be published. It will be for the contracting authority to determine the appropriate time to publish the contract award notice, taking into account the circumstances at hand, including the design of any competitive flexible procedure. Assessment summaries should be provided promptly after the award decision has been made.

#### Publication of a contract award notice prior to a direct award

24. In the case of directly awarded contracts, the contract award notice provides similar and updated information to that set out in the transparency notice regarding the justification for the direct award as well as information about the supplier who has been awarded the contract (see guidance on direct award). This includes where a contract is being awarded to an excluded supplier, the grounds under which the supplier is excluded and the overriding public interest that justifies awarding the contract to that supplier.
25. If a contract is being awarded directly under regulations made under section 42 (Direct award to protect life, etc.), the title and registration number of the statutory instrument containing those regulations must be included in the contract award notice.
26. If the contract is being directly awarded under section 43 (Switching to direct award) of the Act, the contracting authority must set out in the contract award notice why it considers it has not received any suitable tenders or requests to participate (see section 43(2) for when a tender or request is not suitable) and why it considers that award under section 19 is not possible in the circumstances.
27. If a contracting authority has switched to direct award and awarded the contract under section 43, it does not need to complete the elements of the contract award notice related to unsuccessful suppliers as publication of the transparency notice (as required under section 44) in this circumstance confirms that the contract is not to be awarded following a competitive tendering procedure.

#### *Timing of the notice*

28. Where a contracting authority is directly awarding a contract, it must have published a transparency notice before it can publish a contract award notice. The purpose of the transparency notice is to provide visibility of the intention to directly award a contract and to provide transparency in the decision process and an opportunity for interested parties to consider the justification for the direct award. It is recommended that the transparency notice is published as soon as the decision to directly award the contract is made. (See guidance on direct award.)
29. A contracting authority can publish a contract award notice at any point after publication of the transparency notice (i.e. there is no requirement to wait until the contract is about to be

awarded). Early publication of the contract award notice can avoid any standstill period delaying the contracting authority entering into the contract and it could be published, for example, during negotiations or while contract administration is being finalised. Contracting authorities will, however, need to ensure that any contract award notice accurately reflects the contract that is to be awarded or the contract award notice will need to be re-published and (where relevant) a new standstill period observed.

30. Publication of a contract award notice is mandatory whenever a contract is directly awarded except, as set out in paragraph 9 above, when this is under Schedule 5, paragraph 15 (Direct award: user choice contracts).

31. Where multiple contracts will be entered into as a result of a single procurement exercise, it is possible for more than one public contract to be set out in the same contract award notice. The contracts can either be above threshold, below threshold or a combination of the two.

#### Contract award notices published by private utilities

32. The requirements for a contract award notice published by private utilities are set out in regulations 28-30, with regulations 29 and 30 dealing specifically with contract award notices prior to direct award and award of a public contract under a framework, respectively.

33. In all three regulations, private utilities are required to publish a description of any option in the public contract to supply additional goods, services or works; or to extend or renew the term of the contract, which is not required for a standard contract award notice under regulation 27 (as this is included in the contract details notice (see paragraph 11 above)).

#### *Contract award notices published by private utilities: competitive tendering procedures*

34. Regulation 28 sets out the information required to be included in contract award notices published by private utilities following an open or competitive tendering procedure. For the most part this is the same as that required under regulation 27 for a standard contract award notice. The exceptions are that private utilities are not required to provide information about tenders or unsuccessful suppliers as required for other contracting authorities.

#### *Contract award notices published by private utilities: direct awards*

35. Regulation 29 sets out the information required to be included in contract award notices published by private utilities prior to making a direct award. This requires less information to be included than for other contracting authorities.

#### *Contract award notices published by private utilities: contracts awarded under frameworks*

36. Whilst private utilities are required to publish contract award notices prior to entering into a contract awarded under a framework, the information required to be included in the notice is less than for other contracting authorities. Regulation 30 sets out this information.

## Standstill

37. A standstill period, during which time the contracting authority is not permitted to enter into the contract, generally applies both to contracts awarded following a competitive tendering procedure and those that are directly awarded. However, there are some types of contracts (listed in section 51(3) of the Act) that do not require a standstill period to be observed, which are:
- a. contracts directly awarded under:
    - i. Schedule 5, paragraph 13 (extreme and unavoidable urgency);
    - ii. regulations made under section 42 (Direct award to protect life, etc.); and
    - iii. sections 41 or 43 by a private utility;
  - b. call-off contracts awarded under a framework;
  - c. contracts awarded under a dynamic market; and
  - d. light touch contracts.
38. Where there is no requirement to observe a standstill period, contracting authorities can, however, choose to apply a voluntary standstill period. Like any required standstill period, any voluntary standstill period must be at least eight working days. If a voluntary standstill period is applied, a contracting authority must not enter into the contract before the end of that voluntary standstill period. Contracting authorities may wish to consider applying a voluntary standstill period as a means to manage the risk of the contract being set aside and other post contractual remedies for procurements and contract modifications (see section 104).
39. A legal challenge issued and notified during the standstill period will trigger automatic suspension, which prevents a contracting authority from entering into the contract until the challenge is withdrawn or resolved or the Court lifts the suspension. See guidance on remedies for more information. Any claims received outside of the standstill period will not trigger the automatic suspension, although suppliers may apply to the Court for an injunction which would have the same effect.

### Application of the standstill period

40. As set out at paragraph 8 above, publication of the contract award notice triggers, where relevant, the standstill period required under the Act (and any voluntary standstill period applied by the contracting authority).
41. The standstill period to apply is either the mandatory standstill period (eight working days) or any longer period set out in the contract award notice.
42. The appropriate length of the standstill period should be considered during the procurement planning/development stage, taking into account the specific circumstances of the procurement. For example, if there is a large number of award criteria and therefore a lot of



information provided in the assessment summary, contracting authorities may want to give suppliers a longer time to consider. Or, if the risk of a challenge being brought is considered to be high (perhaps because of the litigious nature of the market), giving suppliers more time to assure themselves that there is no basis for a claim may avoid a claim being issued prematurely, simply due to the pressure of the standstill period deadline. Contracting authorities may also decide that they wish to provide suppliers more time to review the information in assessment summaries when the standstill period falls over a holiday period and key staff in both supplier organisations and the contracting authority are likely to be on leave, as in the example at paragraph 47 below.

43. The last day of the standstill period must be set out in the contract award notice. This is to ensure that all unsuccessful suppliers are clear about the deadline for issuing a claim which will trigger automatic suspension and prevent the contract from being entered into. The contract award notice may be updated to reflect a longer standstill period if a decision to extend it is made after the standstill period has commenced; for example, where a supplier raises a concern directly with the contracting authority during the standstill period and the outcome of discussions may determine whether a claim will be issued. The contracting authority may decide that extending the standstill period is beneficial to give the parties adequate time to engage and to ensure the supplier does not feel compelled to issue a claim that may otherwise have been avoided, simply due to the standstill deadline. In addition to re-publishing the contract award notice, the contracting authority should also notify affected suppliers directly of the extension to ensure that each supplier is aware they have longer to consider the information provided.
44. It is important to remember that publication of the contract award notice is the first working day ('working day one') of the standstill period. If, for whatever reason, contracting authorities are unable to publish the contract award notice until late afternoon, they may wish to delay publication until the next morning in order to provide eight full working days. Alternatively, contracting authorities could add an additional working day to their standstill period.
45. Assuming a standstill period of the minimum eight working days, contracting authorities must not enter into the contract until working day nine. Weekends and bank holidays<sup>1</sup> in any part of the United Kingdom do not count as working days for the purposes of calculating the standstill period. This means that a contracting authority will need to factor in all of the bank holidays in England, Wales, Scotland and Northern Ireland when calculating the standstill period.

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<sup>1</sup> Bank holidays in the UK are listed or created under the Banking and Financial Dealings Act 1977

46. The below example assumes an eight working day standstill period with no public holidays.

WD 1 (contract award notice published and start of standstill period)	WD 2	WD 3	WD 4	WD 5	WD 6	WD 7	WD 8	WD 9 (contract can be entered into)
Mon	Tue	Wed	Thu	Fri	Mon	Tue	Wed	Thu

47. The next example assumes an eight working day standstill period that takes place over the Christmas period. The bank holidays (Christmas Day, Boxing Day and New Year's Day, which are bank holidays throughout the UK, and 2nd January, which is a bank holiday in Scotland only) have been taken into account.

WD 1 (contract award notice published and start of standstill)	WD 2	WD 3	WD 4	WD 5	WD 6	WD 7	WD 8	WD 9 (contract can be entered into)
Wed 19 Dec	Thu 20 Dec	Fri 21 Dec	Mon 24 Dec	Thu 27 Dec	Fri 28 Jan	Mon 31 Jan	Thu 03 Jan	Fri 04 Jan

48. There is no obligation to enter into the contract immediately after the standstill period has ended.

Entry into a contract

49. The term 'enter into' a contract is not defined in the Act or the regulations. It is the point when a legally binding contract comes into effect, which will be when the essential elements under contract law are satisfied (offer and acceptance; consideration; and intention to create legally binding relations).

50. When all of those elements have been satisfied will be fact-specific. For example, it may be when the contract is signed and dated, and that is likely to be the relevant date in the majority of cases. However, the date the contract is entered into may instead be, for example, after a particular event has occurred or based on when services or work start under the contract. It is for the contracting authority to determine the relevant date based on the circumstances. In doing so, contracting authorities must continue to have regard to the objective of information-sharing set out in section 12(1) and be transparent about when contracts have been entered into.

## **What are the primary notices linked to this aspect of the Act?**

51. The function of the contract award notice means that it is published at the end of a process to award a contract. It will be preceded by either the tender notice (for competitive tendering procedures) or the transparency notice (for contracts awarded directly under sections 41 or 43 or under regulations made under section 42).
52. The next notice in the sequence after the contract award notice will be one of the following:
  - a. the procurement termination notice: in the unlikely event that the contracting authority decides not to award the contract after the award decision has been made (or if it is required (for example by a Court) to terminate or re-start a procurement) before the contract is entered into;
  - b. contract details notice: informs interested parties that the contract has been entered into. Unless an exemption applies (for example in the case of private utilities), it must be published after the contracting authority has entered into the contract. If a contracting authority enters into a contract which is terminated or requires modification or is subject to partial termination before the contract details notice has been published, the contracting authority must first publish the contract details notice for the contract before publishing the next relevant notice.

## **What other guidance is of particular relevance to this topic area?**

Guidance on publication of information  
Guidance on direct award  
Guidance on competitive tendering procedures  
Guidance on assessing competitive tenders  
Guidance on assessment summaries  
Guidance on lots

**Annex A: Table setting out when assessment summaries, contract award notices and standstill periods are required**

<b>Procurement type</b>	<b>Requires assessment summary</b>	<b>Legislative reference</b>	<b>Requires contract award notice</b>	<b>Legislative reference</b>	<b>Requires standstill period</b>	<b>Legislative reference</b>
Public contracts awarded under section 19	Y	Section 50(3)	Y	Section 50(1)	Y	Section 51(1)
Light touch contracts awarded under section 19	Y	Section 50(3)	Y	Section 50(1)	N	Section 51(3)
A defence and security contract awarded under a defence and security framework	N	Section 50(6)(a)	N	Section 50(6)(a)	N	Section 50(6)
Below-threshold contracts, including where awarded under a framework	N	Section 50(1)	N	Section 50(1)	N	Section 51(1)
Direct award: user choice contracts	N	Section 50(6)(b)	N	Section 50(6)(b)	N	Section 51(2)
Direct award: extreme and unavoidable urgency	N	Section 50(5)	Y	Section 50(1)	N	Section 51(3)(a)
Direct award to protect life	N	Section 50(5)	Y	Section 50(1)	N	Section 51(3)(b)
Direct award: switching to direct award	N	Section 50(5)	Y	Section 50(1)	Y <sup>2</sup>	Section 51(3)(c)
Direct award: other justification as set out in Schedule 5	N	Section 50(5)	Y	Section 50(1)	Y	Section 51(1)
Establishment of a framework that is a public contract	Y	Section 50(3)	Y	Section 50(1)	Y	Section 51(1)

<sup>2</sup> Unless the contract is being awarded by a private utility.

Public contracts awarded under a framework following a competitive selection process	N	Section 46 <sup>3</sup> and 50(3)	Y	Section 50(1)	N	Section 51(3)(d)
Public contracts awarded under a framework without further competition	N	Section 50(3)	Y	Section 50(1)	N	Section 51(3)(d)
Public contracts that are utilities contracts awarded under a framework (with or without competition) by private utilities	N	Section 50(3)	Y <sup>4</sup>	Section 50(1)	N	Section 51(3)(d)
Dynamic market establishment (including utilities dynamic market and utilities dynamic market established under section 40)	N	A dynamic market is not a contract	N	A dynamic market is not a contract	N	A dynamic market is not a contract
Public contracts (call-offs) awarded under a dynamic market, utilities dynamic market or qualifying utilities dynamic market	Y	Section 50(3)	Y	Section 50(1)	N	Section 51(3)(e)

Where there is no requirement to publish a contract award notice, there will also be no requirement to publish either an assessment summary or to observe a standstill period in relation to the procurement. This is because the assessment summary must be provided before publishing the contract award notice (section 50(3)) and it is the contract award notice which triggers the standstill period (section 51(2)).

<sup>3</sup> A competitive selection process for the award of a call-off contract under a framework does not have the same meaning in law as a section 19 competitive tendering procedure. This means that in the case of call-off contracts, assessment summaries and standstill periods are not required, regardless of whether a competitive selection process is used, but they may be applied optionally at the discretion of the contracting authority.

<sup>4</sup> Contract award notices published by private utilities when awarding public contracts that are utilities contracts are required to contain less information than a standard contract award notice (see regulation 30)

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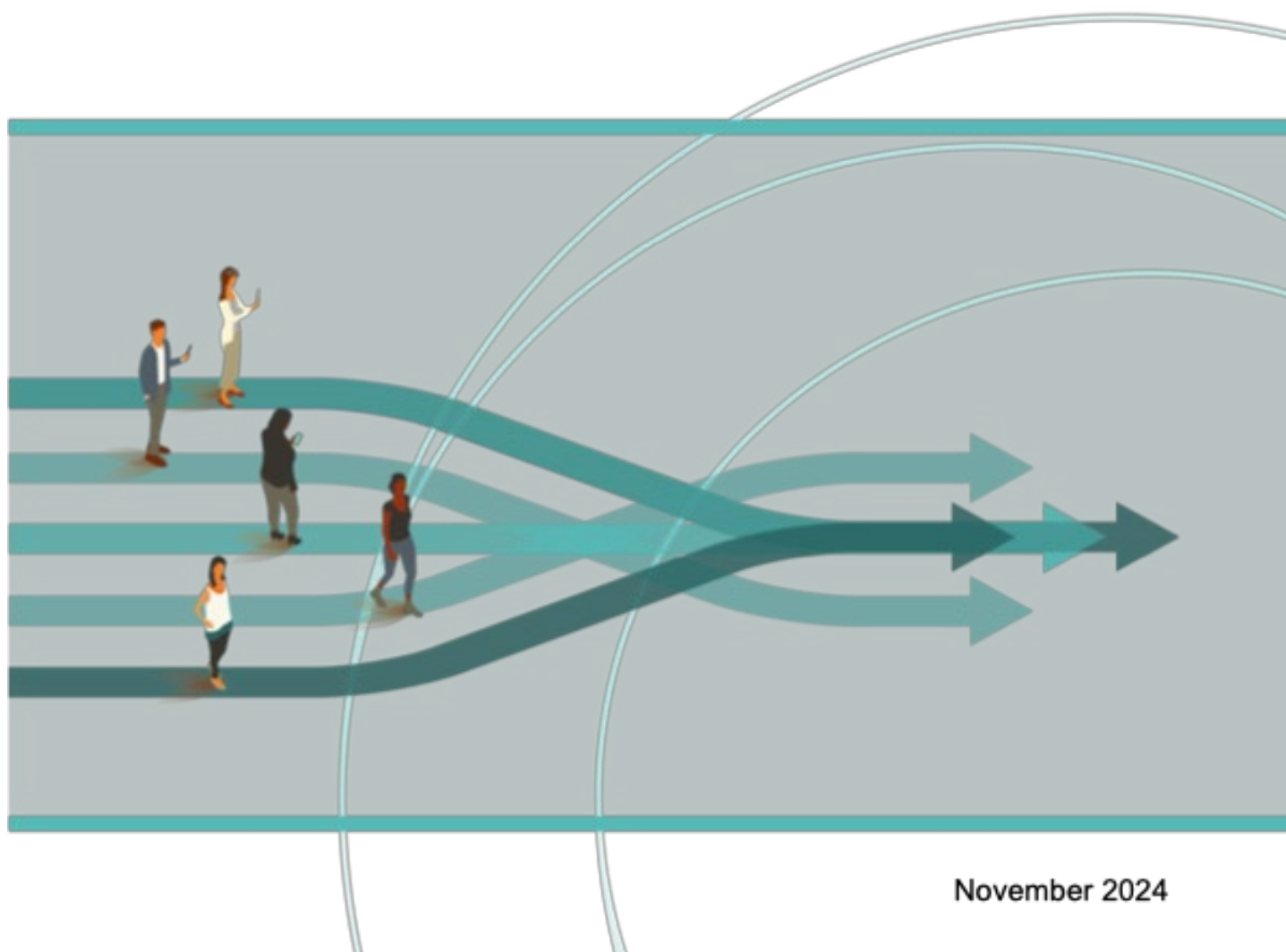
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Procurement Act 2023

# Guidance: Procurement Oversight



November 2024

## **Guidance on Procurement Oversight**

### **What is procurement oversight?**

1. Procurement oversight is intended to help ensure the requirements of the Procurement Act 2023 (Act) are adhered to, through the provision of recommendations and guidance, following investigation of a contracting authority's compliance. This will thus also help to ensure the benefits of the legislation are achieved.

### **What is the legal framework that governs procurement oversight?**

2. Part 10 of the Act (Procurement Oversight) comprises three provisions which enable the procurement oversight regime to support contracting authorities' compliance with the requirements of the Acts:
  - a. Section 108 (Procurement investigations) provides that an appropriate authority may investigate a relevant contracting authority's compliance with requirements of the Act and require a relevant contracting authority to provide documents and give assistance in connection with the investigation, as is reasonable;
  - b. Section 109 (Recommendations following procurement investigations) provides that, following a procurement investigation, an appropriate authority may issue a recommendation (a section 109 recommendation) to a relevant contracting authority, if it considers that the contracting authority is engaging in action which is causing, or that is likely to cause, a breach of any requirement of the Act. The contracting authority must have regard to the section 109 recommendation;
  - c. Section 110 (Guidance following procurement investigations) provides that, following a procurement investigation, an appropriate authority may publish 'lessons learned' guidance, to support compliance with the requirements of the Act by contracting authorities generally. Contracting authorities must have regard to this guidance.
3. The oversight powers in Part 10 may be exercised by an appropriate authority (which is defined in section 123 of the Act as 'a Minister of the Crown, the Welsh Ministers, or a Northern Ireland department') within its own jurisdiction.

### **What has changed?**

4. The Small Business, Enterprise and Employment Act 2015 (SBEEA) gave powers to the Minister for the Cabinet Office or Secretary of State to investigate a contracting authority's exercise of relevant functions relating to procurement. The Act repeals these powers and replaces them with the powers in Part 10, which explicitly relate to compliance with the Act. To strengthen the ability to tackle any non-compliance, the Act introduces new powers to issue recommendations to a supplier following an investigation to improve compliance (and to require progress reports on the implementation of recommendations) and to issue lessons learnt guidance to all contracting authorities following an investigation.
5. 'Maintained schools' (as defined in the Education Act 2002) and 'academies' (as defined in the Education Act 1996 and Academies Act 2010) were not within scope of investigation under the SBEEA but are in scope of the new oversight regime in the Act.



6. The Public Procurement Review Service (PPRS), which sits within the Cabinet Office, currently carries out investigations into procurement functions under the SBEEA on behalf of the Minister. These investigations are initiated by complaints from suppliers about a particular procurement. PPRS will continue to operate on this basis, but utilising the power provided by section 108 of the Act and as part of a new Procurement Review Unit (PRU), which has been established to operate the procurement oversight regime, as well as debarment.

## **Key points and policy intent**

### The role of PRU

7. PRU will manage the oversight regime on behalf of a Minister of the Crown.
8. It will monitor compliance across contracting authorities and will focus on investigations into contracting authorities who demonstrate patterns of repeated non-compliance across its procurements (referred to as institutional non-compliance). A pattern of non-compliance could also be across a number of different contracting authorities (referred to as systemic non-compliance) and this could mean that a number of contracting authorities are investigated in parallel. It is anticipated that an investigation into an individual procurement will only be in response to a supplier's complaint, in line with PPRS current practices.
9. The Minister will ultimately decide whether a section 109 recommendation is issued to a contracting authority following a procurement investigation.
10. PRU will manage the publication of any investigation reports, including any recommendations issued, and progress reports submitted by contracting authorities (or notice of a contracting authority's failure to submit a progress report). They will be published on a dedicated gov.uk page, which will also serve as the mechanism for suppliers and other stakeholders to raise a concern regarding a contracting authority's compliance with PRU.
11. PRU will also work with other central commercial teams, as appropriate, to manage the release of any guidance resulting from a procurement investigation.
12. The oversight regime applies to all contracting authorities that are subject to the Act, except private utilities (as independent regulators already provide oversight of these organisations). Welsh contracting authorities should refer to the Welsh-specific guidance for information on how the oversight regime will be managed on behalf of Welsh Ministers.
13. Government departments are excluded from the scope of the investigatory powers in the Act since Ministers already have non-statutory powers to oversee the contracting activities of government departments. However, government departments must have regard to any guidance issued under section 110.

### Procurement investigations

14. An appropriate authority may investigate a relevant contracting authority's compliance with the Act at any time; there does not need to be evidence of a contracting authority's non-compliance in order for an investigation to be triggered. However, it is most likely that an investigation will be initiated as a result of a complaint or referral to the appropriate authority or other evidence of non-compliance (for example, from analysis of data on the central digital platform).
15. If an investigation is being conducted, an appropriate authority may by notice require a relevant contracting authority to provide relevant documentation as is reasonably required for the purposes of the investigation and/or request other assistance as is reasonable in the circumstances. This could include requiring the contracting authority to make personnel available to be interviewed. The notice issued by the appropriate authority will provide details of the documentation or assistance required, including the form of documentation.
16. Depending on the nature of the investigation, a notice may be sent directly to a desk officer, for example if it relates to the procedure that the desk officer is managing, and/or the named point of contact on the tender notice. Other notices may be addressed to the relevant commercial director, or equivalent.
17. A contracting authority that receives a notice as part of a procurement investigation must comply within the timeframe specified in the notice, which must be at least 30 days from the day the notice is given. A contracting authority may request additional time to comply with the notice, but the appropriate authority (or an oversight unit acting on their behalf) is not obliged to agree. However, where a longer time frame is agreed, it will supersede the date given in the original notice.
18. The results of the investigation, including any recommendations issued, may be published.

### Recommendations following procurement investigations

19. Where an appropriate authority has conducted a procurement investigation and, as a result, considers that the contracting authority is acting in a way that either breaches, or is likely to breach, the requirements of the Act, the appropriate authority may issue a section 109 recommendation to that contracting authority.
20. Section 109(4) imposes a legal obligation on a contracting authority to 'have regard' to any section 109 recommendation that has been issued to it when carrying out covered procurements. To fulfil the duty to have regard to the section 109 recommendation, a contracting authority is not obliged to follow the recommendation, but it must properly consider and engage with it and, if a contracting authority decides not to follow it, it must have clear reasons for doing so and should record these in writing.
21. Section 109 recommendations are intended to bring contracting authorities back into compliance with the requirements of the Act and will specify the action(s) that the relevant contracting authority(ies) should take to achieve this, as well as the timing of these steps.
22. Section 109(3) sets out some limitations on the scope of section 109 recommendations; these are intended to maintain the contracting authority's autonomy regarding how it, for example, implements procurement objectives and to protect the probity of the procurement

procedure. Section 109 recommendations must not, therefore, relate to how the contracting authority:

- a. complies with section 12 (procurement objectives) and section 86 (regulated below-threshold contracts: duty to consider SMEs);
- b. has regard to the national procurement policy statement (NPPS) under section 13 or the Wales procurement policy statement under section 14 (as applicable);
- c. exercises its discretion in relation to a particular procurement, i.e. a section 109 recommendation must not relate to an individual procurement procedure.

23. However, section 109 does not prevent other, non-statutory recommendations being made with a view to addressing non-compliance relating to an individual procurement or to address other areas of procurement practice that fall outside of the boundaries of section 109 recommendations. It is therefore possible for non-statutory recommendations to be made as a result of a complaint raised by a supplier about a specific procurement. And it is possible that an investigation into repeated non-compliance could lead to both statutory and non-statutory recommendations being issued to a contracting authority. The appropriate authority will need to be clear about the status of the recommendations issued.
24. Sections 109(5) to 109(8) make provision for a contracting authority to submit progress reports, where this is required by the section 109 recommendation. Where required to do so, a contracting authority must submit a progress report setting out the action it has taken as a result of the recommendation. If no or different action (to that specified in the recommendation) has been taken, the progress report must include the contracting authority's reasons for this.
25. The appropriate authority may publish these progress reports or, if the contracting authority has failed to submit one, a notice of that failure.

#### Guidance following procurement investigations

26. Section 110 allows an appropriate authority to issue guidance following a procurement investigation, which contracting authorities are required to have regard to (see paragraph 14) when considering how to comply with the requirements of the Act.
27. This guidance will adopt a 'lessons learned' approach and will allow an appropriate authority to tackle compliance concerns identified by a procurement investigation which may affect a broader range of contracting authorities. All contracting authorities are subject to section 110, but an appropriate authority can target guidance to the types of contracting authorities that would benefit from the particular lessons.
28. A Minister of the Crown may, with express consent from devolved administrations, be able to issue guidance to devolved authorities.

#### **Where can I go for more information or training?**

[PRU ambition document](#)

The PRU gov.uk page (from February 2025).

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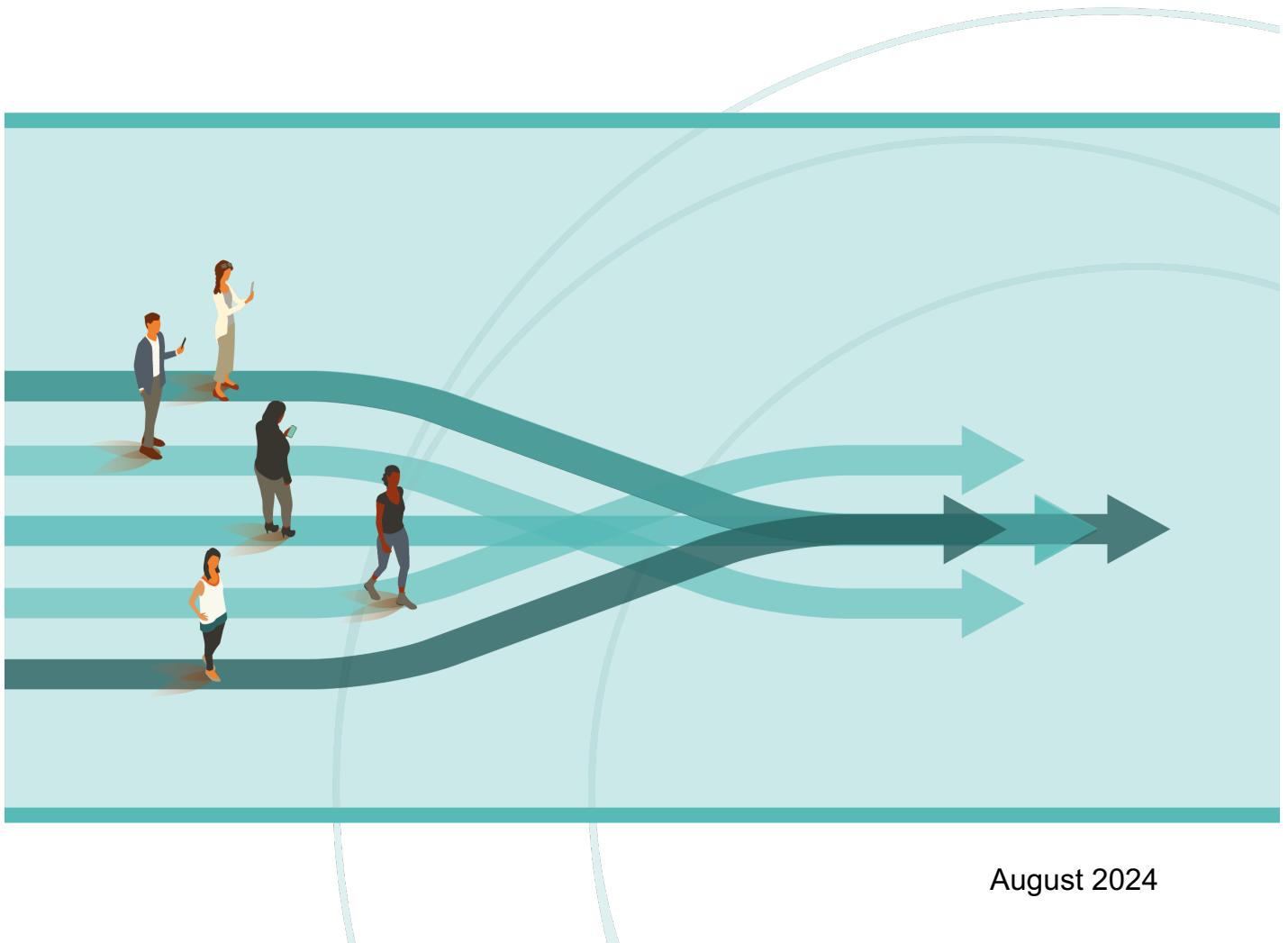
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# Guidance: Contract Details Notices



## Guidance on Contract Details Notices

### What is a contract details notice?

1. A contract details notice informs suppliers and the public that the contracting authority has entered into a contract. It provides key information about the contract that has been entered into.
2. Where the contracting authority has entered into a public contract with an estimated value of more than £5 million, the contract details notice:
  - a. provides access to the contract (and therefore serves to fulfil the obligation in section 52(3) to publish the KPIs); and
  - b. where relevant, sets out the three key performance indicators (KPIs) that the contracting authority regards as most material to performance of the contract obligations at the time the contract details notice is published.
3. Publication of the contract details notice takes place after any standstill period has ended and the contract has been entered into. The contract details notice is required to be published on the central digital platform.

### What is the legal framework that governs contract details notices?

4. Section 53 of the Procurement Act (Act) requires contracting authorities to publish a contract details notice setting out that it has entered into a public contract within 30 days of the contract being entered into, except in relation to light touch contracts for which the period is 120 days. Regulations 32-35 set out the information required to be included in the notice. It also requires contracting authorities to publish a copy of any public contract it enters into with an estimated value of more than £5 million. The obligation to publish a contract details notice or a public contract does not apply to private utilities or to direct award: user choice contracts (see Schedule 5, paragraph 15).
5. Section 87 of the Act requires contracting authorities to publish a contract details notice as soon as reasonably practicable after entering into a 'notifiable below-threshold contract'.
6. This guidance deals with contract details notices required to be published under section 53, following entry into a public contract. See guidance on below-threshold contracts for guidance on contract details notices for regulated below-threshold procurements.

### What has changed?

7. The contract details notice is published on the central digital platform after the contract has been entered into. It replaces the contract award notice published on the Find a Tender Service and the awarded opportunity notice published on Contracts Finder under the previous legislation. For public contracts with an estimated value of more than £5 million, there are also new requirements to publish copies of the contract and the KPIs set in accordance with section 52(1).

## Key points and policy intent

8. A contract details notice serves to tell interested parties that the contract has been entered into and to provide details about that contract. Its publication is mandatory for all contracting authorities except for private utilities and for all public contracts (including call-off contracts that are public contracts) except contracts awarded under section 41 by reference to paragraph 15 of Schedule 5 (direct award: user choice contracts). Where a contract details notice is published for a contract over £5 million, the contracting authority must also publish a copy of the contract. These requirements are set out in tabular form in Annex A.
9. There are four separate regulations (regulations 32-35) that set out the information which must be included in a contract details notice published under section 53, with different information required depending on the circumstances (i.e. whether the notice is published following a competitive tendering procedure, direct award, the award of a framework or the award of a 'call-off contract' awarded under a framework).
10. There is no requirement to publish contracts over £5 million awarded by a devolved Welsh authority or a transferred Northern Ireland authority (unless it is awarded under a reserved procurement arrangement) or contracts awarded under a devolved Welsh procurement arrangement or a transferred Northern Ireland procurement arrangement (see guidance on Devolved Contracting Authorities). This is the case even though there is a requirement to publish a contract details notice. Devolved Welsh authorities should refer to the Welsh-specific guidance.

### Content of contract details notices: competitive tendering procedures

11. The information to be published in a contract details notice where an open or competitive flexible procedure is used to award a public contract is set out in regulation 32. It includes much of the same information published in previous notices (such as in the tender notice, transparency notice and contract award notice) for the relevant procurement, but with new and updated information to reflect that the contract has been entered into. Points to consider are set out below.

### KPIs

12. Where section 52 of the Act applies and KPIs have been set, contracting authorities must provide a description of the three KPIs which the contracting authority regards, at the time the contract details notice is published, as most material to performance of the contract obligations.<sup>1</sup> If the three KPIs that are most material to performance of the contract obligations at the time the contract details notice is published are only a snapshot in time and different KPIs would be relevant when considering those that are most material to performance of the contract obligations over the life of the contract, contracting authorities should also include those KPIs in the contract details notice. Circumstances when details of the KPIs must be included in the contract details notice are summarised in Annex A. See the guidance on KPIs for further information.

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<sup>1</sup> This guidance reflects planned changes to the KPI information required in the contract details notice. The regulations will be amended to reflect this position before the Act comes into force.

13. Where KPIs have not been set under section 52, the contract details notice must include an explanation of why KPIs were not appropriate to assess the performance of the supplier.

#### Contract value, duration and options

14. A procurement may result in more than one contract, all of which can be set out in the same contract details notice. Where this is the case, required information on contract value and duration must be included for each individual contract. This means that for each contract, there will be the option to include the minimum value and a requirement to include the maximum value, which must include the value of any options in the public contract. The contract details notice must also set out the estimated date when, or period over which, the goods, services or works will be supplied (this is part of the 'contract subject-matter' as defined in regulation 14) and the end date of any options to extend or renew the term of the contract.
15. As options that increase the value and/or duration of a contract are included in the maximum estimated value/duration of the contract as awarded and published in the contract details notice, modifications that rely on Schedule 8, paragraph 1 and increase the value or term of a contract are exempt in effect from the requirement to publish a contract change notice. If an option that is included in the contract details notice is not exercised before a contract is terminated, the final value of the contract set out in the contract termination notice may be lower than the value set out in the contract details notice.

#### Conflicts assessments

16. A contracting authority must confirm in the contract details notice that a conflicts assessment has been prepared and revised as necessary, as required by section 83(5) (note conflicts assessments themselves are not required to be published).

#### Content of contract details notices: frameworks

17. Regulation 33 sets out the information required to be included in a contract details notice published following the award of a framework that is a public contract. This is largely the information required by regulation 32 plus some additional information. The additional information includes details of any selection process to be followed when subsequent call-off contracts are awarded under the framework.
18. When publishing a contract details notice, the contracting authority will usually be able to set out comprehensive details of the contract subject-matter (as required by regulation 32(2)(f) and regulation 14). However, in some instances, the full extent of the contract subject-matter may not be known, which is recognised by regulation 14 which requires the contract subject-matter to be set out so far as it is known at the time the notice is published. This may be the case, for example, following the award of a framework where it is not known how the goods, services or works will be supplied for all call-off contracts that may be awarded under the framework.



### Content of contract details notices: call-off contracts awarded under frameworks

19. Regulation 34 sets out the information required to be included in a contract details notice published following the award of a call-off contract that is a public contract. This is largely the information required by regulation 32 plus some additional information. The additional information includes whether the award was made following a competitive selection process (under section 46 of the Act) or without further competition (under section 45(4) of the Act) and, if the latter, an explanation as to why the contracting authority considered no further competition was required (by reference to section 45(4)).

### Content of contract details notices: direct award

20. Regulation 35 sets out the information required to be included in a contract details notice published following the direct award of a public contract. This is largely the information required by regulation 32 plus some additional information, such as which direct award ground in Schedule 5 applies or whether the contract was awarded pursuant to regulations made under section 42.

### Timing of publication

21. Section 53(1) provides that the the contract details notice must be published:
- a. within 30 days of the contract being entered into; or
  - b. in the case of a light touch contract, within 120 days of the contract being entered into.
22. The 30 or 90 (calendar) day period begins with the day the contract is entered into; the period may end on a non-working day and contracting authorities should take this into account (although the central digital platform will be available for use on non-working days).
23. The definition of what it means for a contracting authority to enter into a contract is not set out in the Act or the regulations. It is the point when a legally binding contract comes into effect, which will be when the essential elements under contract law are satisfied (offer and acceptance; consideration; and intention to create legally binding relations).
24. When all of those elements have been satisfied will be fact-specific. For example, it may be when the contract is signed and dated, and it is expected that will be the relevant date in the majority of cases. However, the date the contract is entered into may instead be, for example, after a particular event has occurred or based on when services or works start under the contract. It is for the contracting authority to determine the relevant date based on the circumstances. In doing so, contracting authorities must continue to have regard to the objective of information-sharing set out in section 12(1) and be transparent about when contracts have been entered into.

### Publication of the contract

25. As set out in section 53 (Contract details notices and publication of contracts) contracting authorities that enter into a public contract with an estimated value of more than £5 million

must publish a copy of the contract. The contract details notice will be the vehicle for publication of the contract where this threshold is met. This will be done by including the contract as an attachment to the notice.

#### Timing of publication of the contract

26. For most contracts, publication must take place before the end of the period of 90 days beginning with the day on which the contract is entered into. For light touch contracts, a copy of the contract must be published before the end of the period of 180 days beginning with the day on which the contract is entered into.
27. These are the maximum timeframes for publication and mean that a contract may be published some time after the contract details notice is published. For efficiency, and to save having to add the contract to the notice later, the contract can be published at the same time as the contract details notice.
28. The contract may be redacted in accordance with the exemptions set out in section 94 (General exemptions from duties to publish or disclose information). The guidance on the central digital platform provides further information.

#### Contract change prior to publication of the contract details notice

29. The contract published with the contract details notice must be the contract that was originally entered into. There may be cases where there is an immediate change to a contract after it has been entered into i.e. a modification occurs immediately after the contract commences. This could trigger the requirement to publish a contract change notice (under section 77 of the Act) during the period in which the contract details notice would be published; this is in addition to the requirement under section 53(3) to publish the contract entered into.
30. In these cases, contracting authorities must not use the contract details notice to record the contract change. They must publish the contract details notice and a copy of the contract that was entered into; and then subsequently publish the contract change notice (and a copy of the contract as modified or the modification) to document the contract change. Please see the guidance on contract modifications for further information.

#### **What notices are linked to this aspect of the Act?**

31. Generally, the contract details notice will be preceded by the contract award notice under section 50; with one signalling the contracting authority's intent to enter into a specific contract and the other confirming that this has taken place.
32. The next notice in the sequence could be any of the following:
  - a. contract change notice: a contract may be modified after the contract has been entered into, with the changes published in a contract change notice;

- b. contract performance notice<sup>2</sup>: if KPIs were required to be included in the contract under section 52, a contract performance notice must be published at least annually to record the contracting authority's assessment of the supplier's performance against them. It must also be published if a breach occurs that results in partial termination, damages, or a settlement, or the contracting authority considers there to be poor performance. It may also be published in respect of a framework where the contracting authority is using the notice to notify framework users of the removal of a supplier (see guidance on contract performance notices and frameworks); or
- c. contract termination notice: when the contract ends, for whatever reason, there is a requirement to publish a contract termination notice.

33. If any of the events which require these notices to be published take place in the period after the contract has been entered into but before the contract details notice has been published, the contracting authority must first publish the contract details notice in respect of the contract that was entered into.

### **What other guidance is of particular relevance to this topic area?**

Guidance on contract award notices and standstill

Guidance on key performance indicators

Guidance on publication of information

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<sup>2</sup> This guidance reflects planned changes to the KPI information required in the contract performance notice at regulation 39(4)(d-e). The regulations will be amended to reflect this position before the Act comes into force

**Annex 1: Table setting out when contract details notices, contract documents and KPIs are required to be published**

Circumstance	Requires contract details notice	Section reference	Requires contract publication if over £5m	Section reference	Requires KPI listing in contract details notice if contract over £5m	Section reference
Public contract (except where specified below)	Y	53(1)	Y	53(3)	Y <sup>3</sup>	52(3)/53(2)
Framework (public contract)	Y	53(1)	Y	53(3)	N	52(6)
Concession contract	Y	53(1)	Y	53(3)	N	52(6)
Light touch contract	Y	53(1)	Y	53(3)	N	52(6)
Public contract awarded by a devolved Welsh authority or a transferred Northern Ireland authority, unless awarded under a reserved procurement arrangement.	Y	53(1)	N	53(4)	Y	52(3)/53(2)
Public contract awarded under a devolved Welsh procurement arrangement or a transferred Northern Ireland procurement arrangement.	Y	53(1)	N	53(4)	Y	52(3)/53(2)
Contract awarded by a private utility	N	53(6)	N	53(6)	N	52(6)
Direct award: user choice contract	N	53(6)	N	53(6)	N <sup>4</sup>	52(6)

<sup>3</sup> Does not apply if the contracting authority considers that the supplier's performance under the contract could not appropriately be assessed by reference to KPIs.

<sup>4</sup> All direct award: user choice contracts are light touch contracts and as such are exempt from the requirement to set and publish KPIs.

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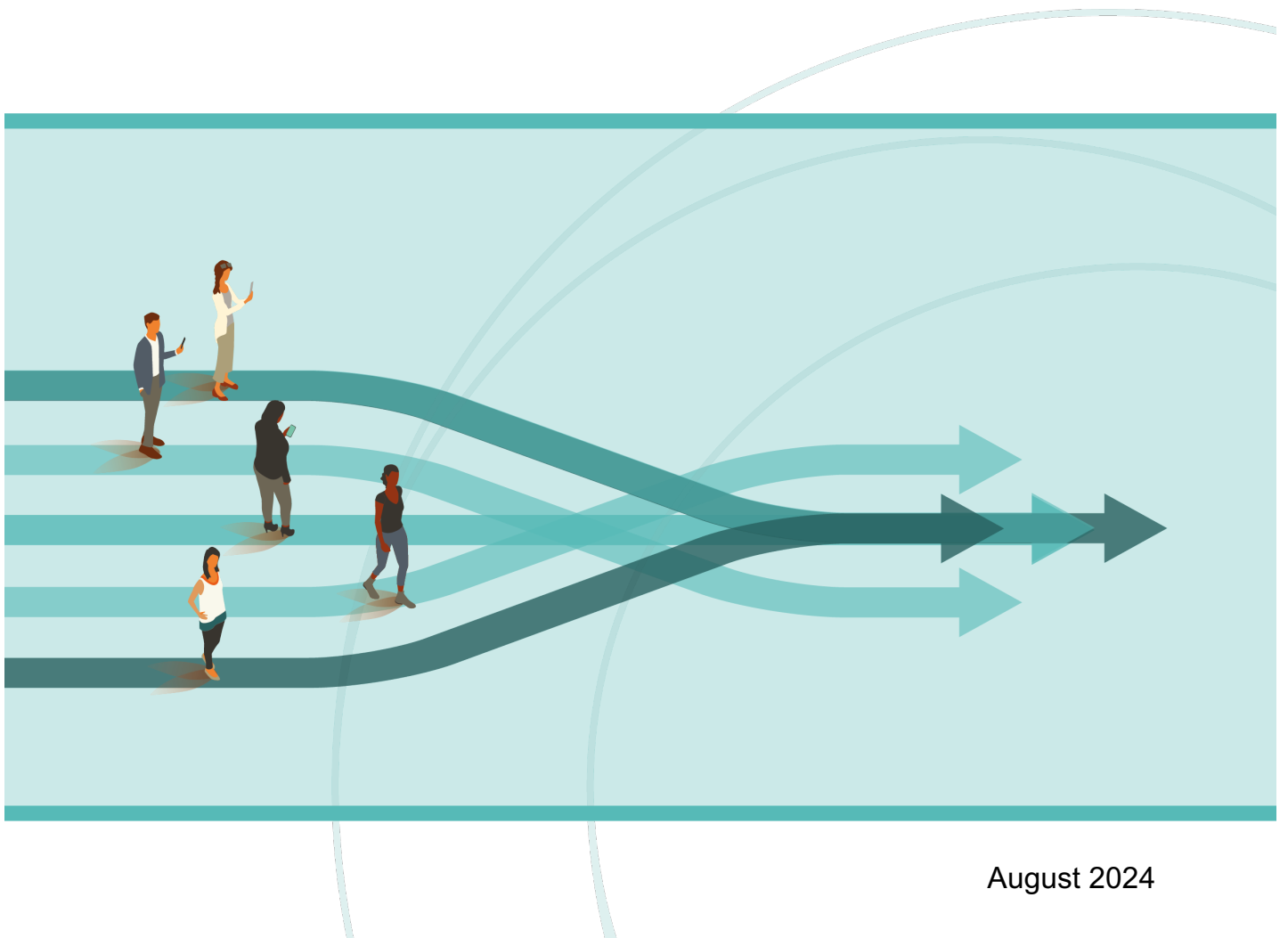
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# Guidance: Electronic Communications



# Guidance on Electronic Communications

## What are electronic communications?

1. The Procurement Act 2023 (Act) requires contracting authorities, so far as practicable, when carrying out covered procurement, to communicate electronically with suppliers and to take steps to ensure that suppliers participating in procurements also communicate electronically. This will help to ensure that communication is undertaken in an efficient, open and transparent way.
2. Electronic communications can help reduce the cost of carrying out a procurement, reduce timescales during the procurement procedure, encourage access to opportunities for suppliers and facilitate compliance with the Act.

## What is the legal framework that governs electronic communications?

3. Section 96 of the Act contains the main provisions on electronic communications.
4. The Act also contains requirements to publish or give certain notices, documents or information and the regulations generally require those notices, documents or information to be published electronically, on the central digital platform. Contracting authorities will need to comply with the requirements set out in the regulations in this regard (see guidance on the central digital platform) when communicating with suppliers.

## What has changed?

5. The Act does not change the general rule on communicating electronically set out in the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016, although it does simplify the rules in this area.
6. The Act does, however, include stricter requirements for electronic communication than in the Concession Contracts Regulations 2016 and the Defence and Security Public Contracts Regulations 2011. For example, these regulations in most cases allowed for other means of communication, which included post, facsimile, and oral communication. These are only permitted under the Act where it is not practicable to communicate electronically.

## Key points and policy intent

7. Section 96(1) requires contracting authorities to, so far as is practicable, communicate with suppliers electronically and take steps to ensure that suppliers participating in a procurement communicate electronically. In practice, this means, for example, that contracting authorities should make use of emails, e-procurement systems, virtual conferencing and share or publish key information electronically. This applies to covered procurements from the start of a procurement and throughout the period of the contract until it ends.
8. Contracting authorities should note that, under section 96(1), non-electronic communications are permissible where electronic communications are not practicable. For example, if an

aspect of a procurement requires a scale model to be submitted or a demonstration of a product is required, then this is unlikely to be possible electronically. Oral communication could take place during negotiations, meetings or for general conversations about the procurement. However, it would be best practice for this communication to be documented and where appropriate, for any relevant information to be shared electronically with suppliers.

9. A contracting authority may use or require the use of an 'electronic communication system', which includes any electronic system used for the purpose of communication with suppliers, to carry out a covered procurement.
10. Section 96(2) provides that electronic communication systems used or required to be used, however, must be:
  - a. free of charge and readily accessible to suppliers;
  - b. generally available or interoperable with other generally available systems; and
  - c. accessible to people with disabilities.
11. The purpose of section 96(2)(a) is to allow suppliers to freely see and access information in relation to tender opportunities and not be deterred by 'paywalls' which can limit the field of competition. Electronic communication systems are intended to help facilitate suppliers' participation in procurements and should not act as an indirect barrier, which could particularly disadvantage small and medium-sized enterprises.
12. Section 96(3) sets out an exception to the requirement for electronic communications systems to be free of charge and readily accessible to suppliers, which applies when these systems are used after the award of a public contract or in relation to a utilities dynamic market. The effect of this is that contracting authorities may, for example, charge suppliers a fee in connection with obtaining and maintaining membership of a utilities dynamic market and, after a contract has been entered into, require the use of electronic invoicing systems. The ability to charge a fee to suppliers for the use of an electronic invoicing system is, however, prohibited unless the contracting authority is a defence authority (see section 67(6)). It also allows contracting authorities to charge for supplier management systems, but this should be avoided where possible and practicable to do so. In addition, where there is a charge, the contracting authority should be transparent about the requirement and the charges to suppliers at the start of the procurement.
13. If a contracting authority considers that the use of electronic communication, or the use of an electronic communication system that is free of charge and readily accessible, generally available or interoperable with generally available systems and accessible to people with disabilities (i.e. meeting the requirements of section 96(2)), poses a security risk in a specific procurement, section 96(4) provides that section 96 does not apply. Where this exemption applies it is good practice for a contracting authority to use a system which aligns with as many of the section 96 requirements as possible, with any necessary modifications to account for security risks.



**What other guidance is of particular relevance to this topic area?**

Guidance on covered procurement objectives

Guidance on the central digital platform

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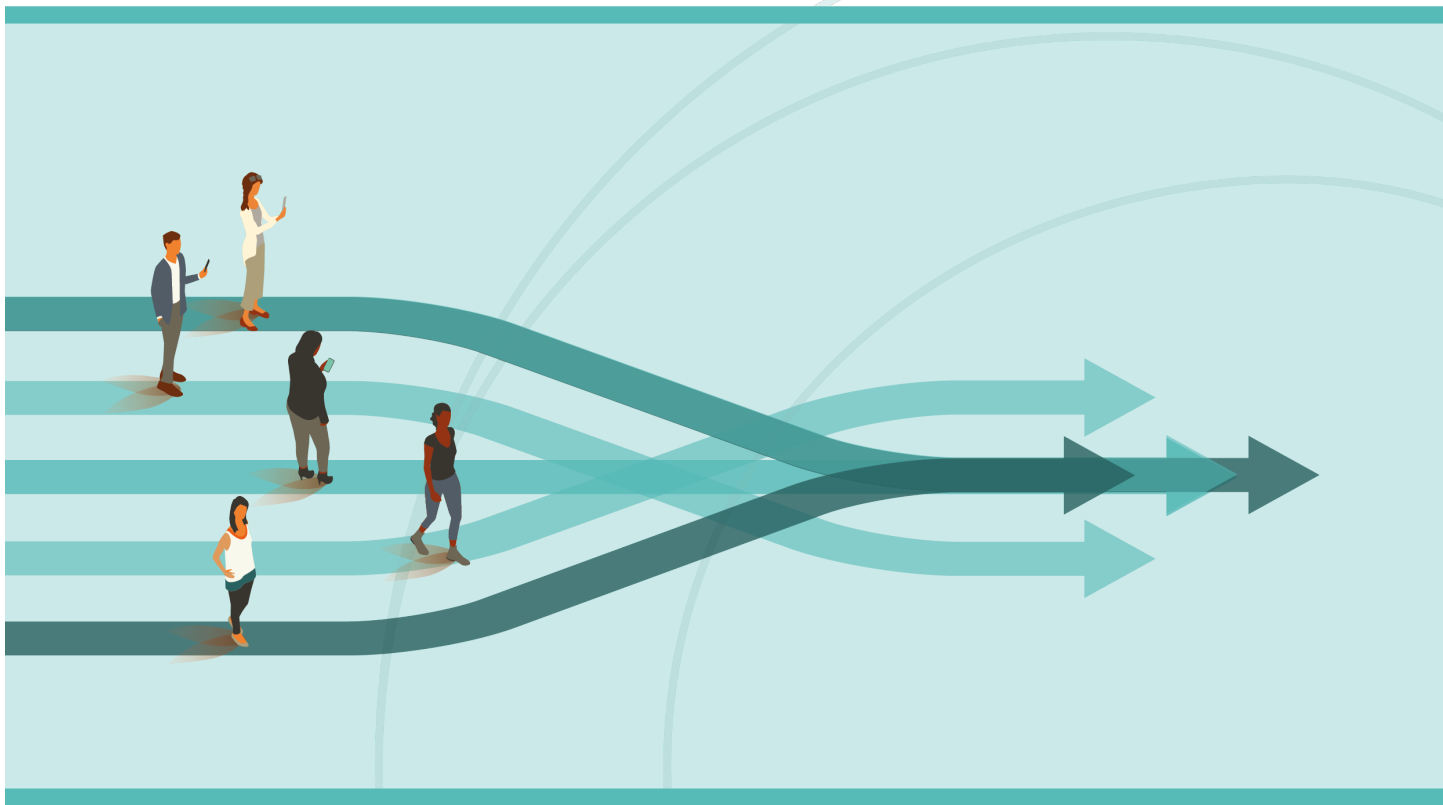
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# Guidance: Central Digital Platform and Publication of Information



# Guidance on the Central Digital Platform and Publication of Information under the Procurement Act

## What is the central digital platform?

1. The online system referenced in the Procurement Act 2023 (Act) and named in the Procurement Regulations 2024 (regulations) as the central digital platform is available at <https://www.find-tender.service.gov.uk/>
2. The central digital platform will enable:
  - a. contracting authorities and suppliers to register and receive a unique identifier;
  - b. contracting authorities to publish notices and other information as required under the Act for covered and below-threshold procurements;
  - c. suppliers to submit and store certain core organisational information as required by the regulations to participate in a covered procurement. This information will only be available to those contracting authorities that a supplier chooses to share it with; it cannot be freely accessed.
  - d. anyone to view the notices and access related public procurement data.
3. This guidance covers access to the central digital platform and the use of unique identifiers, the publication of information by contracting authorities (including requirements for the withholding of information), the submission and use of supplier information and requirements relating to the keeping of procurement records.
4. Note that there are differences for Wales in relation to the information to be published and submitted on the central digital platform so Welsh contracting authorities undertaking devolved procurement should refer to the devolved Welsh procurement-specific guidance. This will also apply to any other contracting authority using a framework or dynamic market established by a devolved Welsh contracting authority, contracting jointly with a devolved Welsh authority as the lead contractor, or using a devolved centralised procurement authority.

## What is the legal framework that governs the central digital platform?

5. Regulation 5 sets out that notices, information or documents under the Act are to be published on the central digital platform found at [www.gov.uk/find-a-tender](http://www.gov.uk/find-a-tender).
6. Regulation 6 sets out contracting authorities' responsibilities, including confirming the supplier has shared its core supplier information (see paragraph 58 below) with the contracting authority through the platform when required.

7. Sections 94, 98 and 99 contain provisions on the management of information including exemptions to information publication and requirements for record-keeping. The detail on information required to be published under the Act, specifically in procurement notices, is contained in regulations 15-41.

### **What has changed?**

8. Under the Act, procurement notices will be published by all contracting authorities in one place on the central digital platform.
9. Contracting authorities are required to obtain confirmation of registration and submission of core supplier information on the platform from suppliers who wish to participate in a specific procurement.
10. The approach to the publication and redaction of information under the Act is different from the previous legislation. The previous legislation sets out that in publishing contract award notices, certain information on the award of the contract or the conclusion of the framework agreement may be withheld from publication where its release:
  - a. would impede law enforcement or would otherwise be contrary to the public interest;
  - b. would prejudice the legitimate commercial interests of a particular economic operator, whether public or private; or
  - c. might prejudice fair competition between economic operators.
11. These provisions were also mirrored in regulation 112 of the Public Contracts Regulations 2015 (PCR) in relation to publishing information on Contracts Finder about below-threshold contracts.
12. The Act sets out a more limited test, in that the exemptions from publication are restricted to those set out in section 94. Disclosure of information is also subject to the provisions in section 99 on data protection. These sections are also of broader application, in that they must be considered when determining whether *any* information to be disclosed or published under the Act (that is to say, information other than that published on the central digital platform) may be withheld.
13. The Act also creates a requirement that if a contracting authority withholds information under section 94, the fact that information is being withheld must be published, along with the relevant ground, unless it would be contrary to the interests of national security to do so. These exceptions are modelled on the equivalent exemptions on data protection outlined in the Freedom of Information Act 2000 (FOIA) and are designed to be interpreted in the same way.

## Key points and policy intent

### Unique identifiers

14. As well as allowing for notices to be created, searched and viewed, the central digital platform will publish information in a standardised way in line with the Open Contracting Data Standard (OCDS) throughout the whole procurement process.
15. To ensure that published data is correctly attributed to specific parties and processes, all contracting authorities, suppliers, procurements and contracts will have a unique identifier on the central digital platform. The different types of identifiers are set out in regulation 8. Use of identifiers will prevent duplication of records and will link together all information associated with each procurement (and each supplier and contracting authority), facilitating tracking and analysis.
16. Contracting authorities are required to include these unique identifiers when publishing notices to the central digital platform.

### Registration, buyer and supplier identifiers

17. Organisations using the central digital platform will use a unique number to identify themselves. This applies if the organisation is:
  - a. a supplier;
  - b. a contracting authority;
  - c. a person (i.e. an agent or organisation) carrying out a procurement or part of a procurement on behalf of a contracting authority; or
  - d. a person other than a contracting authority who is establishing a dynamic market under section 35(3).
18. For suppliers and contracting authorities, their identifiers are generated when they first register. Where an organisation already has a unique identifier from one of the official registers set out below, this identifier can be used on the central digital platform and inputted when first registering:
  - a. Companies House;
  - b. Charity Commission for England and Wales;
  - c. Scottish Charity Regulator;
  - d. Charity Commission for Northern Ireland;
  - e. Mutuels Public Register;
  - f. Guernsey Registry;

- g. Jersey Financial Services Commission Registry
- h. Isle of Man Companies Registry;
- i. National Health Service Organisation Data Service;
- j. UK Register of Learning Providers (UKPRN number).

19. Once registered, the organisational identifier will be published:

- a. in the case of a contracting authority, when the organisation submits a notice, to the central digital platform; or
- b. in the case of the supplier, whenever a notice is published that contains information about them. (To note, this supplier identifier is shared with contracting authorities as part of the supplier information requirements described in paragraph 59.)

20. The central digital platform will accommodate changes to both contracting authorities and suppliers, including, for example name changes, corporate restructure and governmental reorganisation.

#### Procurement and associated identifiers

21. A procurement identifier is allocated by the central digital platform when contracting authorities publish the first notice relating to a procurement.

22. Once the first notice is published, contracting authorities are required to use this procurement identifier in every notice. It can then be used to link all of the notices in a procurement process together. Each notice that a contracting authority subsequently publishes relating to that procurement adds more data to this record. By the time that a contract is terminated, a contracting authority will have a single data record for their procurement that shows activity at every phase of the commercial lifecycle.

23. There are two exceptions to this, explained below. These differences are set out clearly in the notices.

- a. Switching to direct award from a competitive process. When switching to direct award, a new procurement identifier is allocated when the transparency notice is published. This signals that the old competitive procurement has been discontinued. In this case, contracting authorities will include the procurement identifier of the original procurement within the transparency notice. Then, when the transparency notice is published, the system will generate a new procurement identifier. Subsequent notices will then be linked to the new procurement identifier from the transparency notice;
- b. Open Frameworks. Identifiers are used to ensure that awards made in accordance with the framework are linked to the correct framework within an open framework scheme and that each framework within the open scheme links back to the

procurement for the originating framework. The original procurement process will have an identifier. Each individual framework within the scheme will have its own procurement identifier which is linked to the originating procurement identifier.

#### Identifiers for awards in accordance with frameworks

24. Awards made in accordance with a framework (call-offs) are considered separate contracting processes from the framework itself, so each has its own procurement identifier. This is generated when the first notice in relation to the call-off is published. For a call-off contract which is likely to be above £2m, this may be as early as the pipeline notice.
25. Notices relating to awards made in accordance with frameworks must include the identifier for the relevant framework.

#### Identifiers for the establishment of dynamic markets

26. In the case of a dynamic market, the dynamic market identifier is allocated by the central digital platform when the first notice relating to the dynamic market is published. The identifier will be the same throughout the life of the dynamic market.

#### Identifiers for awarding contracts under a dynamic market

27. The dynamic market identifier and the procurement identifier for the contract to be awarded must be included in published notices. Where a dynamic market is divided into parts, and the contracting authority is restricting competition to suppliers on that part, the number of the part is also required. This information can be found in the dynamic market establishment notice.

#### Contract identifiers where more than one contract arises from a procurement

28. There may be more than one contract associated with the procurement. Contracting authorities should distinguish these contracts in the notice by numbering them sequentially, starting with 1. The same numbering will then be used in later notices, to allow the platform and users of the data to identify and link subsequent notices and information.

#### Publication of notices and other information by the contracting authority

29. Contracting authorities are responsible for publishing notices on time, containing all required information and accompanied by any associated documents. Failure to publish a notice when it is required, or publishing incorrect or incomplete information, could result in non-compliance with the Act and place contracting authorities at risk of a legal challenge. Refer to the guidance on remedies for further information.
30. To meet the requirements of the regulations, notices must first be published on the central digital platform, before being posted elsewhere. It is a contracting authority's responsibility to ensure that submission has been acknowledged or to check that the information is viewable on the central digital platform. Viewing the notice will enable contracting authorities to ensure



that all the submitted information is correctly displayed and to enable the rapid correction of any inadvertent mistakes.

31. If publishing directly using the central digital platform, contracting authorities will be prompted where information is incomplete and will not be able to submit their notice until all mandatory information has been completed.
32. If using an e-procurement service provider, notices that are rejected by the central digital platform will need to be reviewed and resubmitted if they are to be published. The exact process for resubmission will depend on the system used to publish the notices and contracting authorities will need to follow the relevant provider's procedures for resubmission.
33. Once published on the central digital platform, the notice or document may be posted elsewhere, for example a local or devolved procurement portal or a procurement section or buyer profile of a local authority website or portal.

#### Exemptions from duties to publish or disclose information

34. The Act establishes that information may be withheld from publication or disclosure if one of the exemptions set out in section 94 applies. Contracting authorities relying on section 94 must notify potential recipients (by including this in the relevant notice) that information is withheld and explain why, unless the contracting authority is satisfied that it would be contrary to the interests of national security to do so.
35. *National security*: Section 94(1)(a) provides that a contracting authority is not required to publish or disclose information if it is satisfied that withholding the information is necessary for the purpose of safeguarding national security.
36. Examples of information that may be withheld on national security grounds may include, but are not limited to:
  - a. classified information that requires protection from unauthorised access or distribution;
  - b. details relating to sensitive sites, such as military or intelligence services operations;
  - c. information relating to critical national infrastructure, where loss or compromise could result in serious economic or social damage to the UK;
  - d. information the release of which may result in suppliers or their supply chains becoming exposed to targeting by terrorist activities.
37. *Sensitive commercial information*: Section 94(1)(b) provides that a contracting authority is not required to publish or disclose information if it is satisfied that the information is sensitive commercial information and there is an overriding public interest in it being withheld. Section 94(2) defines exempt commercial information as information which:
  - a. constitutes a trade secret; or

- b. would likely prejudice the commercial interests of any person if it were published or disclosed.

38. The type of information that could potentially be withheld on the grounds of commercial sensitivity includes, but is not limited to:

- a. pricing: the way the supplier has determined the price it is charging including:
  - i. individual pricing elements;
  - ii. financial models and business plans, including details of profit margins and overheads;
  - iii. matters which enable the make-up of the bid to be determined;
- b. financial information which would affect the outcome of re-bid or future procurement. (this should not be grounds for withholding the contract value itself)
- c. intellectual property: elements of the bid (and assessment) which would reveal intellectual property; for example:
  - i. proprietary details of the solution that the contractor is deploying;
  - ii. innovative or unique technical solutions and methodologies; and
  - iii. trade secrets

39. Information can only be withheld on sensitive commercial grounds following a public interest test confirming that withholding the information outweighs the public interest in disclosing it. Contracting authorities should record and retain public interest test justifications where these have been undertaken.

*Protected information in relation to connected persons*

40. When publishing a contract award notice, contracting authorities have a duty to publish information about a supplier's associated person(s) (as defined in section 26(4)) and connected person(s) (as set out in regulation 11).

41. Depending on the type of connected person, this may include their name, date of birth, nationality and service address (which could be the same as their personal address). In most instances, this information will already be available on Companies House and therefore there should be no sensitivity around its publication.

42. Regulation 27(4-6) makes provision for circumstances where disclosure of information about a connected person could place that person or anyone living with them at risk. These provisions are modelled on the Register of People with Significant Control Regulations 2016 (the '2016 Regulations') but apply to all connected persons under the Act. Contracting

authorities should check with the suppliers that the details they share on connected persons are publishable, or if they are exempted from publication by the 2016 Regulations.

43. Where a connected person is a person with significant control (PSC) under the Companies Act 2006, and information relating to them is omitted from the PSC register established under that Act in accordance with regulation 33(1) of the 2016 Regulations, a contracting authority is not required to publish their information.
44. Where a connected person is not a PSC, a contracting authority is nevertheless not required to publish their information where that individual has confirmed in writing to the contracting authority that they are reasonably of the view that:
  - a. the activities of the company to whom they are connected; or
  - b. one or more characteristics or personal attributes of the applicant when associated with that company;

will put the applicant or a person living with the applicant at serious risk of being subjected to violence or intimidation. This could be the case, for example, if the supplier is operating in a controversial industry such as certain life sciences.

45. Where information about connected persons is protected from disclosure on the PSC register under the 2016 Regulations, contracting authorities should indicate that there is a PSC (by stating this in the relevant notice) but not provide any details.

#### Data Protection

46. Some of the information which may be published in accordance with the Act and regulations may amount to personal data. This could be the case where, for example, a contracting authority is required to publish the name of a connected person in a contract award notice.
47. Publishing personal data is a form of processing, and Article 5(1) of the UK General Data Protection Regulation ('GDPR') requires that, amongst other things, personal data must be processed lawfully. Article 6(1)(c) provides that personal data is processed lawfully where it is processed in accordance with a legal obligation. The obligations placed on contracting authorities by the Act and regulations therefore permit the publication of personal data where this is done in accordance with the Act and regulations. Section 99 of the Act makes this clear: it provides that the Act does not authorise or require any disclosure of information which would contravene data protection legislation (including the GDPR) but notes that account must be taken of the duties under the Act; that is to say that where the Act (and the regulations) require publication, this must be done in accordance with data protection legislation but does not in and of itself contravene that legislation. However, the Data Protection Act 2018 and GDPR do still apply to all other information that is published and must be considered by contracting authorities.
48. When considering whether to disclose information about any individual, contracting authorities must think about whether that could expose them to attention outside the expectations or responsibilities of that individual and whether mitigating action can be taken.

For example, in relation to contracting authority staff, contracting authorities can elect to use a group mailbox/contact centre details rather than providing the details of an individual procurement officer.

#### Alternative procedure for publication of information

49. Regulation 5(5) establishes an alternative procedure for publication of information which can be used where the following conditions are met:

- a. the contracting authority has not received confirmation that the notice or document has successfully been published on the central digital platform; and
- b. the notice or document is not capable of being viewed by members of the public on the central digital platform;

and;

- c. no less than 48 hours have passed since the notice or document was submitted to the central digital platform; or
- d. in the case of the notice being published pursuant to Schedule 5, paragraphs 13 or 14 (urgency) or pursuant to regulations made under section 42 of the Act (direct award to protect life, etc.), no less than 4 hours have passed since the notice was submitted to the central digital platform.

50. Where these conditions are met, contracting authorities may publish notices on an alternative online system (such as a local or devolved procurement portal or public website). This alternative online system must be free of charge and readily accessible to suppliers and to people with disabilities.

51. Contracting authorities should be able to manage their publications and procurements around any planned maintenance, which will be advertised in advance.

52. Where a contracting authority has published a notice on an alternative online system in accordance with regulation 5(5), publication is determined to have taken place for the time being as if the notice had been published on the central digital platform. This means that time periods triggered by publication of a notice, such as tendering periods and standstill, can continue as if publication had taken place on the central digital platform.

53. When publishing on an alternative online system, contracting authorities must ensure the notice contains all of the information required by the regulations. The only exception is the provision of the unique identifiers which do not need to be included until the notice is subsequently published on the central digital platform.

54. When publishing to an alternative online system, contracting authorities should consider what further steps can be taken to ensure that the market is aware of the publication, especially if the notice is inviting suppliers to submit a tender or request to participate. Appropriate steps might be, for example, setting out on the organisation's website or buyer profile where such notices can be accessed in these circumstances and/or notifying

suppliers directly who have previously expressed an interest or been engaged in earlier stages of the process that publication has taken place, as well as extending any deadlines relating to the procurement process.

55. Once the central digital platform is available, contracting authorities must ensure that the notice or document in question is subsequently:
  - a. published on the central digital platform; and
  - b. capable of being accessed by members of the public on the central digital platform.
56. Contracting authorities are not required to remove the notice from the alternative place of publication once it has been published on the central digital platform, but it would be advisable to ensure that any interested parties are aware that further information about the procurement will be published on the central digital platform.
57. A notice that has been published on an alternative online system is no longer to be treated as being published if it is subsequently submitted to the central digital platform and is rejected by the Cabinet Office. If this is the case then the contracting authority must publish a valid notice to continue with the procurement. Depending on the stage of the procurement, the contracting authority should consider whether any further action is required, for example restarting the procurement or extending time periods.

#### Supplier information

58. A key objective of the Act is to reduce the burden on suppliers by storing 'core supplier information' in one place: the central digital platform. Core supplier information is the data that is required for every procurement and that usually remains relatively unchanged from procurement to procurement, such as the supplier's address.
59. The core supplier information defined in the regulations (regulation 6) is divided into four key categories of information and covers (in summary):
  - a. supplier information: basic information. This includes (and is not limited to) the supplier's name, unique identifier, address, VAT number (if applicable), legal form and date of company registration (if applicable), details of qualifications/trade associations and classification, for example whether the supplier is an SME and/or a public service mutual;
  - b. supplier information: economic and financial standing as set out in the supplier's most recent financial accounts;
  - c. supplier information: connected persons. This includes (but is not limited to) information relating to relevant connected persons such as names, date of birth and nationality, service address and legal form.

- d. supplier information: exclusion grounds. This includes information relating to relevant convictions and events that form either a mandatory or discretionary exclusion ground under the Act.

60. Regulation 6 requires contracting authorities to obtain confirmation from suppliers that they have registered on the central digital platform, submitted their up-to-date core supplier information and have shared it via the central digital platform. Regulation 6(3-4) set out the latest point where this should be done (this is described further below) but contracting authorities can set an earlier deadline if required. This centrally-stored core supplier information will be submitted (and re-submitted) to contracting authorities by suppliers as directed by the contracting authority.
61. In order to meet this requirement, the conditions of participation should set out that suppliers will be required to register and submit their core supplier information through the central digital platform and when this must take place.
62. Once registered, suppliers can complete the core supplier information in advance or in response to a specific procurement opportunity. Suppliers will be able to update and add to this information and may upload supporting documents. Before submitting information to contracting authorities as directed, suppliers should check the information carefully, updating where required.
63. Contracting authorities may wish to request information that is not set out in the regulations and therefore not stored in supplier information on the central digital platform; this should be requested separately from the supplier. Where information that is set out in the regulations is missing from the central digital platform, contracting authorities must not request it separately and should instead request that suppliers provide that information via the central digital platform. See guidance on conditions of participation for further information.
64. When conducting covered procurements, certain information contained within supplier information will be required in subsequent notices as set out in the regulations.
65. If the supplier provides updated or corrected information to the contracting authority before the contracting authority decides to whom to award the contract, the contracting authority must obtain further confirmation that the supplier has updated and shared its information via the central digital platform (regulation 6(6)(b)).

#### Supplier information under competitive tendering procedures

66. When undertaking a competitive tendering procedure, core supplier information should be requested before the end of the tendering period, as this is the deadline by which the contracting authority must have obtained confirmation that the supplier has taken the necessary steps. This allows the information to be used as part of the assessment of supplier suitability.

Supplier information in competitive selection processes for the award of a contract under a framework

67. Contracting authorities should obtain supplier information through the central digital platform as part of a competitive selection process for the award of call-off contracts (section 46). Contracting authorities must have obtained confirmation that a supplier has taken the necessary steps before the decision to award the contract is made.

Supplier information when establishing a dynamic market

68. There is no requirement for the contracting authority to use the central digital platform to obtain supplier information when establishing a dynamic market. However, contracting authorities will need to set out the details of each supplier that has been admitted to the dynamic market, both upon establishment and whenever new suppliers are admitted, and this must include an identifier which can only be obtained by registering on the platform. It is therefore recommended that contracting authorities obtain supplier information from those suppliers being assessed for admittance to the dynamic market through the central digital platform.

Direct award under sections 41 or 43 of the Act

69. Contracting authorities have a duty to identify whether a supplier to be awarded a contract under sections 41 or 43 is an excluded supplier. With the exception of direct award in the case of urgency (see paragraph below), contracting authorities will, as a matter of practice, need to obtain core supplier information either before the transparency notice is published (as this will usually identify the supplier to be awarded the contract) or before the contract award notice is published. The contracting authority must have confirmation that the supplier has taken the necessary steps in relation to supplier information before it awards the contract.

Direct award in the case of urgency

70. In respect of a direct award in the case of urgency (Schedule 5, paragraphs 13 and 14), contracting authorities may not be able to wait for a supplier to register, complete and submit core supplier information through the central digital platform before contract award. Regulation 7(4) requires contracting authorities to ensure that the supplier registers and submit core supplier information via the central digital platform as soon as practicable and in any event before the date when the contract details notice (rather than the contract award notice) is published.
71. Contracting authorities will still be expected to undertake due diligence to confirm the supplier's eligibility and complete all of the required information in the transparency and contract award notices. The contracting authority is not required, in these circumstances, to obtain this information through the central digital platform.
72. The contract award notice must include a supplier identifier which can only be achieved by registering on the platform. A supplier will be able to obtain an identifier without completing more than their basic supplier information (regulation 9).

73. Private utilities relying on Schedule 5, paragraphs 13 and 14 are not required to receive core supplier information through the central digital platform (regulation 7(5)).

#### Applicability of supplier information to below-threshold contracts

74. There is no requirement for contracting authorities to use the central digital platform to collect supplier information in below-threshold procurement and the publication of supplier identifiers is optional in below-threshold notices. However, there is nothing preventing the contracting authority from requiring supplier information to be submitted in a below-threshold procurement. If known, contracting authorities should include supplier identifiers.

#### Alternative procedure for obtaining supplier information

75. Unavailability of the central digital platform may mean that a supplier is not able to register on the central digital platform and submit its information to the contracting authority before the end of the tendering period for an open or competitive flexible procedure, meaning that a contracting authority cannot meet its obligation to ensure that these steps have taken place. If this occurs, the contracting authority must obtain confirmation that these steps have been taken as soon as practicable and in any event before the award of the contract. There is nothing to prevent the contracting authority requesting this information directly from the supplier in the meantime in order to be able to continue with the procurement but this information should be checked against that received from the central digital platform.

#### Record-keeping

76. Section 98 requires contracting authorities to keep records sufficient to explain a 'material decision' made for the purpose of awarding or entering into a public contract. Section 98 does not apply to defence and security contracts.

77. Section 98(2-4) explains that a material decision relates to a decision that the Act requires the contracting authority to make (including where the Act requires publication or provision of a notice or other information in respect of the decision). This might include, for example, recording decisions relating to application of the National Procurement Policy Statement or which barriers the contracting authority has identified in relation to access for small and medium-sized enterprises, decisions relating to how to ensure that incumbent suppliers are not granted an unfair advantage or where it has been decided to disqualify a supplier from participating further in a competitive tendering procedure.

78. It is unlikely that a notice by itself will be sufficient to discharge this obligation and contracting authorities must ensure that they keep their own records and not rely on the fact that they have published a notice on the central digital platform.

79. In addition, section 98(3) provides that a contracting authority must keep records of any communication between the authority and a supplier that is made:

- a. in relation to the award or entry into of a public contract; and



b. before the contract is entered into.

80. Records kept under section 98 must be retained for either:

- a. three years from the day the contract is entered into;
- b. three years from the date the contract is awarded, if it is awarded but not subsequently entered into; or
- c. where no contract is ultimately awarded under the procurement process in question, until the day the contracting authority gives notice of its intention not to award the contract, usually done via publication of a procurement termination notice.

81. Other legal duties may apply to data retention, archiving and disposal (some of which may require contracting authorities to keep records for longer than the 3 years specified in the Act). The retention, review and disposal of original records (including, where relevant, the transfer of public records to the National Archives) remains the responsibility of individual contracting authorities.

**What other guidance is of particular relevance to this topic area?**

In order to comply with the requirements relating to the publication and use of information on the central digital platform, contracting authorities will need to be familiar with the requirements for each of the notices which are explained in more detail in the full suite of guidance on the Act.

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## **11.4      Manage**

11.4.1      Electronic Invoicing and Payment (not yet published)

11.4.2      Payments Compliance Notices (not yet published)

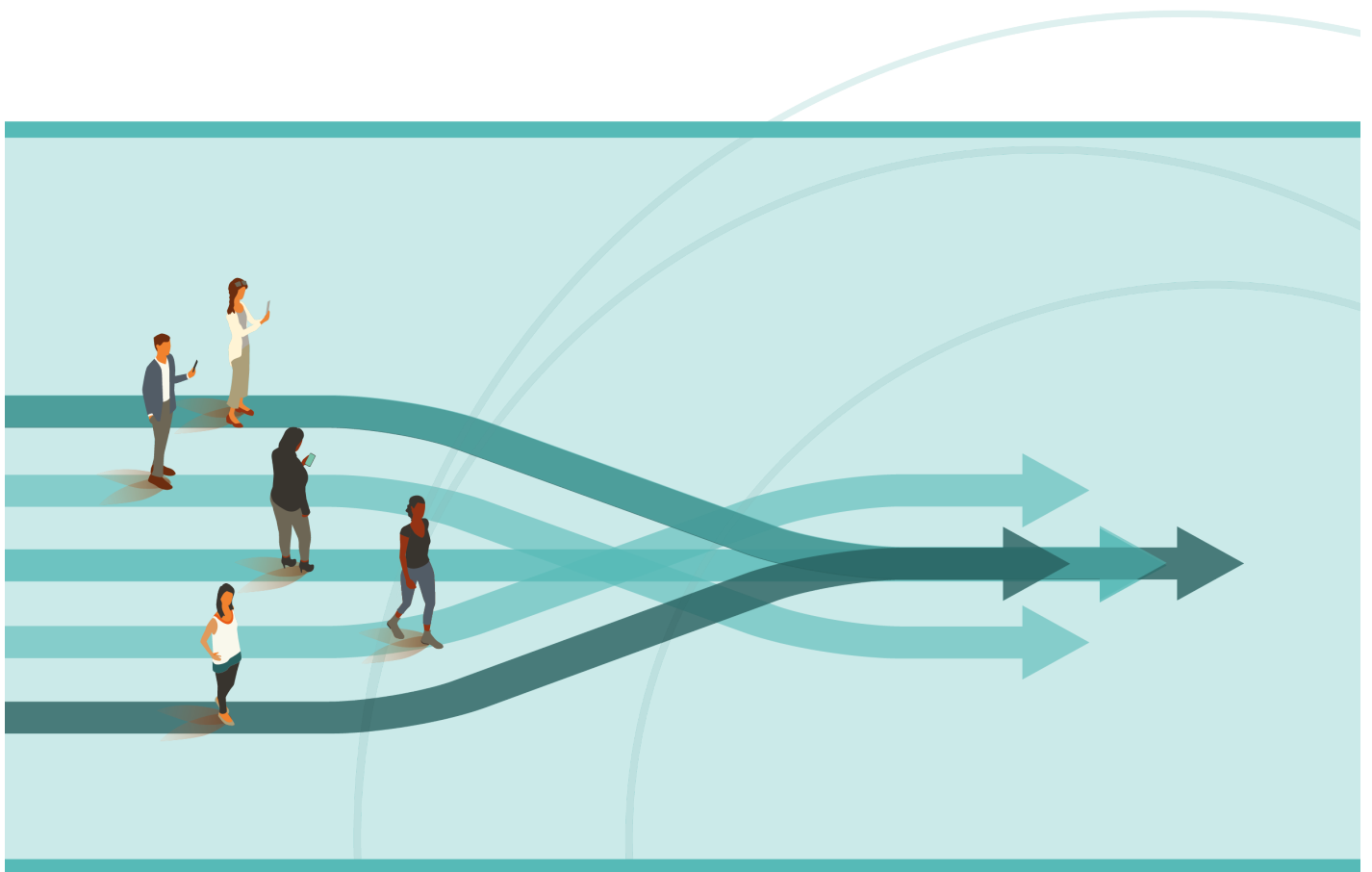
11.4.3      Contract Performance Notices (Published)

11.4.4      Contract Modifications (Published)

**11.4.5**      Contract Termination (Published)



# Guidance: Contract Terminations



## **Guidance on Contract Terminations**

### **What are contract terminations?**

1. The Procurement Act 2023 (Act) gives contracting authorities the benefit of an implied term in every public contract that ensures that the contract can be terminated by the contracting authority in three specific circumstances, referred to as 'termination grounds' in the Act.
2. The Act also introduces a mandatory transparency requirement whenever a contract comes to an end, including following termination under one of the implied termination grounds. For the purpose of the transparency requirement, the Act defines 'termination' as encompassing all circumstances in which a contract may come to an end. All contracting authorities must publish a 'contract termination notice' following the termination of any public contract (with the exception of contracts awarded by private utilities and contracts for 'user choice services' that have been directly awarded under Schedule 5, paragraph 15). Publication of contract termination notices will allow greater scrutiny of what has happened during the life of a contract, enabling interested parties to see, across all published notices, for example, if the value and term of the contract has increased since it was awarded, or the reasons behind an early termination of a contract. It will also assist in wider data analysis and oversight, enabling contracting authorities and government to understand, for example, how many contracts are extant and being delivered.

### **What is the legal framework that governs contract terminations?**

3. Sections 78-80 of the Act regulate contract terminations.
4. Section 78 sets out the three termination grounds (see paragraph 11 below) that are implied into every public contract.
5. Section 79 sets out provisions for 'relevant contracting authorities' (see paragraph 20 below) considering terminating a contract under the implied term on the basis of the discretionary exclusion ground in Schedule 7, paragraph 14 and the mandatory exclusion ground in Schedule 6, paragraph 35 relating to suppliers which pose a threat to national security.
6. Section 80 of the Act and regulation 41 of the Procurement Regulations 2024 set out provisions relating to contract termination notices.

### **What has changed?**

7. The three implied termination grounds in the Act expand on the termination rights implied by the previous legislation and strengthen contracting authorities' rights to terminate a contract where the supplier or sub-contractor is or becomes an excluded or excludable supplier. Another notable difference is the mandatory requirement to publish contract termination notices.

## Key points and policy intent

8. Whilst there are many reasons why a contract may come to an end, the Act provides, at section 80(3), that ‘termination’ for the purpose of the publication of a contract termination notice encompasses all of the circumstances in which a contract may come to an end and sets out the following non-exhaustive list:
  - a. discharge: including for example, where the contract obligations / deliverables are fulfilled, payments made and any disputes settled, by mutual agreement or contract frustration;
  - b. expiry: where the contract has reached its end date (which may include periods of extension);
  - c. termination by a party: where one party exercises a contractual or implied right to terminate the contract;
  - d. rescission: where the contract ends and the parties restored to the position they were in before the contract was entered into; or
  - e. set aside by court order: where the contract is declared to be invalid by legal judgement.
9. Public contracts can vary considerably and the Act does not set out a definitive list of circumstances in which a contract may be terminated. The grounds on which a contract may be terminated by the contracting authority or the supplier are usually set out in the contract.

### Implied grounds for contract termination

10. The Act implies into every public contract grounds on which the contracting authority may terminate the contract. These grounds will apply to all public contracts, whether or not they are also expressly replicated in the contract. The Act does not imply terms relating to restitution and other ancillary matters if the contracting authority terminates the contract on one of the implied termination grounds, which contracting authorities should consider including as express terms in their contracts (see paragraph 17 below).
11. The three implied contract termination grounds, as set out in section 78(2) are:
  - a. the contracting authority considers that the contract was awarded, or modified, in material breach of the Act or regulations made under it<sup>1</sup>;
  - b. since the contract was awarded, the supplier has become an excluded or excludable supplier (including by reference to an associated person<sup>2</sup>);

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<sup>1</sup> Section 78 defines a ‘material breach’ as a breach that the contracting authority considers could reasonably result in a successful legal challenge under Part 9 or otherwise.

<sup>2</sup> An ‘associated person’ is someone who the supplier is relying upon to satisfy the conditions of participation (that is not a guarantor), for example, a key sub-contractor. More information may be found in the guidance on exclusions.

- c. a sub-contractor (other than an associated person) is an excluded or excludable supplier.
12. The reference to the terms 'excluded' and 'excludable' suppliers in section 78(2)(b) and (c) are defined in section 57(1) and (2) of the Act. Section 78(11) clarifies what is meant by a supplier becoming an excludable supplier, which is where:
- a. a discretionary exclusion ground did not apply before the contract was awarded, but applies afterwards (section 78(11)(a)(i));
  - b. a discretionary exclusion ground applies after the contract was awarded that also applied before the contract was awarded, but it applies to different circumstances, for example, a different episode of poor performance or professional misconduct arises before and after the contract was awarded (section 78(11)(a)(ii)); and
  - c. the contracting authority only discovers after awarding the contract that the supplier was an excludable supplier before the contract was awarded (section 78(11)(b)).
13. This ensures that the implied term in section 78(2)(b) does not apply where the supplier was excludable during the procurement but the contracting authority exercised their discretion so as not to exclude them. In other words, contracting authorities cannot re-visit that decision without there being any change in circumstances.

#### Using the implied term

14. The Act sets out, in sections 78(3-7), a number of restrictions on and provisions relating to the use of the implied term in section 78.
15. In all scenarios, before terminating a contract by reference to the implied term, section 78(7) requires that a contracting authority must:
- a. notify the supplier of its intention to terminate;
  - b. specify which of the grounds in 78(2)(a-c) applies and why it has decided to terminate the contract; and
  - c. give the supplier reasonable opportunity to respond to the contracting authority on whether a termination ground applies and its decision to terminate.
16. There are restrictions on the use of the termination ground in section 78(2)(c) (which relates to a sub-contractor being an excluded or excludable supplier, which includes both where this was the case prior to contract award and where the sub-contractor becomes an excluded or excludable supplier after contract award). Section 78(3-6) provides that contracting authorities may only rely on this implied term if they requested information about sub-contractors under section 28(1)(a) (information about subcontractors). It also provides that one of the following conditions must be met (section 78(3)):

- a. before awarding the contract, the contracting authority was not aware that the supplier intended to sub-contract all or part of the contract (section 78(4));
  - b. before awarding the contract, the contracting authority sought to determine<sup>3</sup> if the sub-contractor was an excluded or excludable supplier by virtue of being on the debarment list<sup>4</sup> (see guidance on debarment), but did not know that in fact it was (section 78(5));
  - c. the contracting authority requested information about the sub-contractor as part of a competitive tendering procedure in order to determine whether any intended sub-contractor is an excluded or excludable supplier<sup>5</sup>, but before awarding the contract did not know that this was in fact the case (section 78(6)).
17. The Act also requires at section 78(8) that when termination is on the grounds of a sub-contractor being an excluded or excludable supplier (whether under section 78(2)(b) or (c)), the contracting authority must give the supplier a reasonable opportunity to cease its arrangement with that sub-contractor and, if necessary, find a replacement. This includes associated persons that are sub-contractors as well as other sub-contractors that the contracting authority sought information about during the procurement.
18. Contracting authorities should always set out in the contract what happens when the contract is terminated, including under the implied term in section 78. There will be practical considerations, for example, how long after serving notice the contract will terminate; transfer of assets, data, etc.; assistance with re-procuring; payment of money owed and whether there are any 'breakage costs' for early termination (for example, for costs the supplier is committed to pay to its suppliers). The Act does not prevent contracting authorities from replicating the implied term expressly in their public contracts and also expressly permits public contracts to contain ancillary provisions about restitution and other matters relating to termination of a contract by reference to the implied term (section 78(9)).
19. If the contracting authority and the supplier include a term in the public contract that purports to restrict or override the implied term, this will have no effect and the implied term will remain valid (section 78(10)); for example, if the contracting authority sought to provide that there were no termination rights in the circumstances set out in section 78 or to narrow those termination rights. Contracting authorities are able to provide for termination on other grounds than those implied by section 78.

#### National security

20. Whilst contracting authorities are able to terminate a public contract on one of the termination grounds in section 78, section 79 sets out specific provisions that apply to relevant contracting authorities when terminating a contract under the implied term on the basis of the discretionary or mandatory exclusion grounds relating to national security.

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<sup>3</sup> under section 28(1)(b)

<sup>4</sup> under section 57(1)(b) or (2)(b) .

<sup>5</sup> under section 28(2) of the Act



These requirements apply irrespective of whether the contracting authority has replicated the implied term expressly in their contract.

21. Relevant contracting authorities are defined in section 79(3) as any contracting authority other than:
  - a. a Minister of the Crown or a government department;
  - b. the Corporate Officer of the House of Commons; or
  - c. the Corporate Officer of the House of Lords.
22. Section 79(1) provides that a relevant contracting authority may not terminate a contract by reference to the implied term in section 78 on the discretionary exclusion ground of the threat to national security (Schedule 7, paragraph 14) unless:
  - a. the contracting authority has notified a Minister of the Crown of its intention; and
  - b. the Minister agrees that the supplier or sub-contractor is an excludable supplier under Schedule 7, paragraph 14 and that the contract should be terminated.
23. In regards to termination on the basis of the mandatory exclusion ground of the threat to national security (Schedule 6, paragraph 35), the contracting authority may only terminate a contract by reference to the implied term in section 78 if they have notified a Minister of the Crown of its intention (section 79(2)).

### **What notices are linked to this aspect of the Act?**

#### The contract termination notice

24. Section 80(4) of the Act requires contracting authorities to publish a contract termination notice following 'termination' (as defined in section 80(3) (see paragraph 8)) of all public contracts with the exception of:
  - a. contracts entered into by private utilities; and
  - b. contracts for 'user choice services' that have been directly awarded under Schedule 5, paragraph 15.
25. Publication of a contract termination notice is used to inform stakeholders that a public contract has been terminated, the reason for that termination and the date of the termination. It provides visibility of whether the contract has been extended beyond its planned term, or where options have been exercised. Where a termination has resulted from a supplier breaching a contract, the termination notice also provides information about that breach, including the events leading up to it and the result of that breach. The contract termination notice also serves to end the record on the central digital platform where it must be published. It is the last notice published in the sequence of notices relating to a procurement.

26. The notice must be published before the end of the period of 30 days beginning with the day on which the public contract is terminated (section 80(1)).
27. There may be occasional instances when a contract is terminated before a contract details notice for that contract has been published, particularly in the case of light touch contracts, where the contracting authority has 120 days to publish the notice (as opposed to 30 days for other contracts) (see the guidance on the contract details notice for further information). In such circumstances, contracting authorities should publish both the contract details notice and then the contract termination notice before the end of the 30 day period required for publication of a contract termination notice.
28. In instances where procurements are terminated before a contract is entered into, the publication of a procurement termination notice is required instead. See the guidance on the procurement termination notice for more information.

#### Information required to be included in the contract termination notice

29. Regulation 41 sets out the information that contracting authorities are required to set out in the contract termination notice.
30. This includes the reasons for terminating the public contract, the date when the public contract was terminated, and the estimated value of the public contract inclusive of VAT. The value figure must be estimated in accordance with Schedule 3.
31. As section 80(3) is a non-exhaustive list of circumstances that may amount to termination, the contract details notice allows contracting authorities to either indicate that the contract was terminated by one of the means set out in section 80(3) or for other reasons.
32. Where termination arises as a result of a breach of contract, regulation 41(2)(h) provides that the contract termination notice must include the following information:
  - a. a statement that section 71(5) of the Act applies because the supplier breached the contract;
  - b. in cases where the supplier did not perform to the contracting authority's satisfaction, the date when the contracting authority considered the supplier had failed to improve performance; and
  - c. an explanation of the nature of the breach or failure to perform, the impact and duration of the breach or failure to perform, any steps taken by the contracting authority to notify the supplier of the breach/failure to perform and encourage them to improve the situation (including any warning notices given under the public contract or other opportunity to improve performance pursuant to section 71(4)(b) of the PA 2023) and what steps the supplier took to mitigate the impact of the breach and why these were not sufficient.
33. In situations where there was an award of damages following the breach or failure to perform, contracting authorities must provide details of any settlement agreement or award

of damages, if this happened prior to the deadline for publishing the contract termination notice. In such circumstances, the contract termination notice must include confirmation that this is the case, the amount of damages or other monies paid, the basis on which damages were awarded (for example, in accordance with the public contract, a decision of a court or tribunal, or a negotiated settlement). Where there is a recorded decision of a court or tribunal finding that there is a breach, contracting authorities must also include a link to the web page where the decision can be accessed or a copy of the decision.

34. If damages are awarded or agreed after a contract termination notice has been published, the Act does not require the contracting authority to retrospectively update the notice with information concerning damages or settlement agreement. It would, however, be good practice to do so.
35. In circumstances where breach or failure to perform results in partial termination of the contract, contracting authorities should publish information using the contract performance notice (within 30 days of a breach occurring) rather than the contract termination notice (see guidance on the contract performance notice).
36. The purpose of publishing information about a breach of contract or failure to perform that results in termination of the contract is to provide a public record of occasions when this occurred. Contracting authorities have the discretion to exclude suppliers for breach or poor performance (on the ground in Schedule 7, paragraph 12) where it can be demonstrated that they have not performed one or more contracts to a satisfactory level, and have failed to improve their performance (subject to self-cleaning). Information published in contract termination notices serves to provide evidence to enable authorities to apply the ground. See guidance on exclusions for more information.
37. Given the need for transparency and the potential for suppliers to be subject to discretionary exclusion, there is a high bar for withholding information from publication in the contract termination notice. For example, if the basis for the award of damages was in accordance with the public contract, and that contract had been published, then there would be little justification for withholding that information. Similarly, where there has been a decision by a court or tribunal and that information is publicly available there would be no justification for failing to include a link to the judgement in this notice.

#### Related notices

38. Notices that precede the publication of the contract termination notice may include:
  - a. a contract details notice: will be published after the contract is entered into. In the rare circumstances where the contract is terminated before the contract details notice has been published, a contracting authority will need to publish the contract details notice before the contract termination notice to ensure that the data record is complete;
  - b. a contract change notice: any notifiable changes to the contract will need to be published in a contract change notice before any termination notice for the same contract is published;

- c. a contract performance notice: if the contract is one for which key performance indicators are reported (or a breach resulting in damages, or a settlement has occurred), a number of contract performance notices will be published during the lifetime of the contract and upon termination. In the latter case, this would need to be published before the contract termination notice.

**What other guidance is of particular relevance to this topic?**

Guidance on exclusions

Guidance on contract details notice

Guidance on the contract performance notice

Guidance on the publication of information

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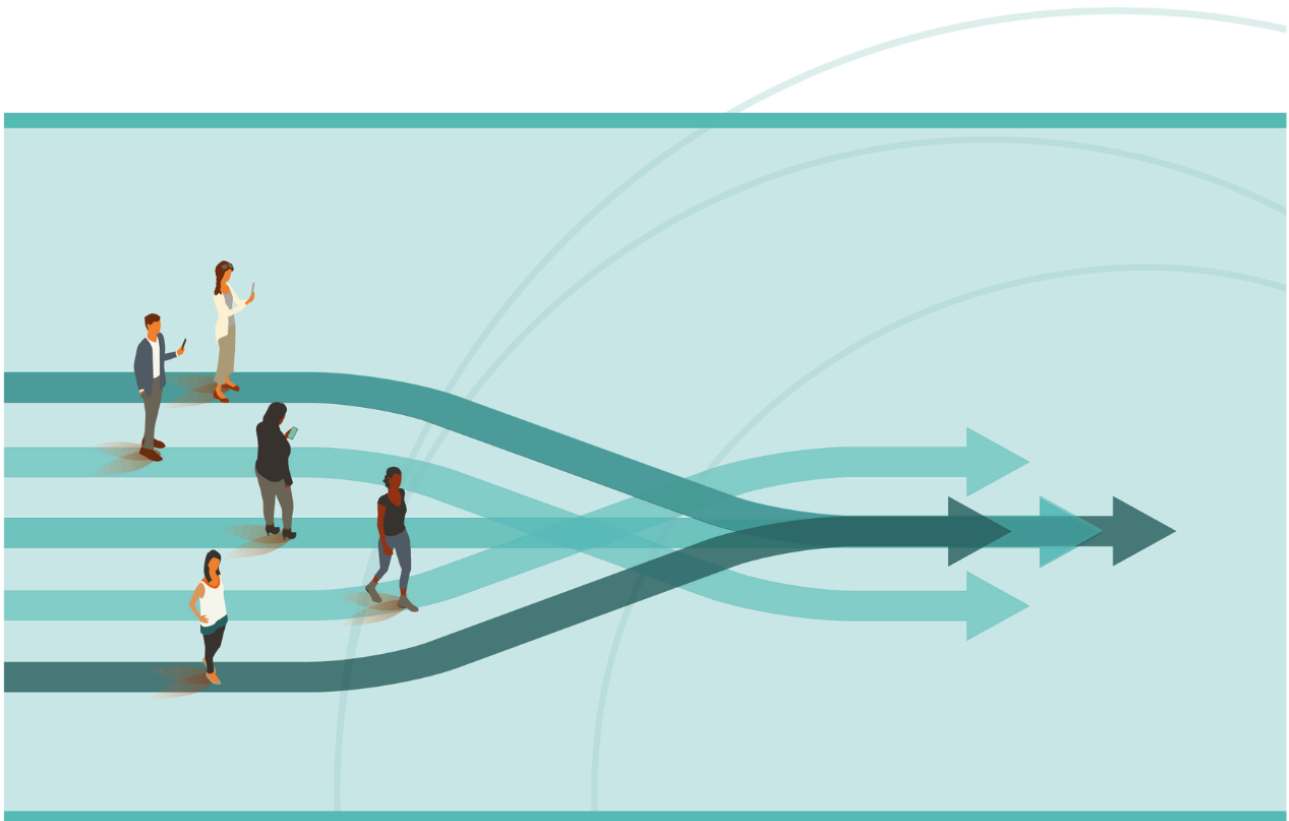
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# Guidance: Contract Performance Notices



August 2024

# Guidance on Contract Performance Notices

## What is a contract performance notice?

1. A contract performance notice is a notice that is used to publish the information required to be published under section 71 of the Procurement Act 2023 (Act). The contract performance notice fulfils two functions:
  - a. recording the performance of suppliers against key performance indicators (KPIs) where section 52(1) of the Act applies; and
  - b. recording information relating to particular breaches or failure to perform a public contract *except* where the breach results in a contract being terminated in full (in which case a contract termination notice must be published (see paragraph 27 below)).
2. The contract performance notice provides transparency to other contracting authorities and the public on supplier performance. It also provides contracting authorities with an objective source of information for a discretionary exclusion ground relating to breach of contract and poor performance, and will allow improved decision-making when considering the exclusion ground. Once developed, a centralised contract performance 'register' will be populated using the information set out in contract performance notices. Further information on this register will be published in due course.

## What is the legal framework that governs contract performance notices?

3. Section 52 defines and sets out the obligations to set and publish KPIs and the exceptions to these requirements. It defines a KPI as "a factor or measure against which a supplier's performance of a contract can be assessed during the life-cycle of the contract."
4. Information relating to the KPIs set out in the contract when it is entered into is required to be set out in the contract details notice published under section 53. Regulations 32-35 set out what KPI information must be included in the contract details notice.
5. Section 71 requires contracting authorities to regularly assess suppliers' performance against the KPIs set and to publish information relating to that assessment and in relation to particular breaches of contract or poor performance.
6. The information required to be published under section 71 is captured in the contract performance notice referred to in regulation 39.

## What has changed?

7. The contract performance notice is published on the central digital platform. It is a new notice containing information not required to be published under previous legislation, and provides increased transparency during the contract period.

8. Section 71 of the Act requires that at least annually during the lifetime of the contract and on termination of the contract, the contracting authority must assess the supplier's performance against any KPIs set under section 52 and publish information specified in the regulations in relation to that assessment. Regulation 39 requires that the information specified must be published in the contract performance notice. See the guidance on KPIs for more information.
9. These requirements expand the current KPI reporting requirement policy for central government contracting authorities and associated arm's length bodies to the majority of public contracts above £5 million. They are in addition to (and so do not replace) the existing requirements on these contracting authorities set out in the Commercial Playbooks.
10. Section 71 also requires that the contracting authority must publish information relating to particular breaches of contract or failure to perform a public contract. Regulation 39 requires that the information specified must also be published in the contract performance notice. Where a contracting authority has published a contract performance notice following a breach of contract or poor performance as set out in section 71, Schedule 7, paragraph 12(4) provides that a discretionary exclusion ground applies in respect of the relevant supplier. The supplier is only at risk of exclusion on this basis if the notice was published in the preceding 5 years and if the contracting authority considers that the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again. See guidance on exclusions for more information.
11. This exclusion ground is new and sits alongside three other discretionary exclusion grounds relating to breach of contract and past performance set out in Schedule 7, paragraphs 12(1-3). The equivalent exclusion ground in the PCRs was narrower and, in the absence of any kind of notice requirement, contracting authorities relied on supplier self-declarations for confirmation that suppliers did not meet this ground.

## **Key points and policy intent**

### Assessment of performance against KPIs and publishing KPI information

12. Information about setting KPIs can be found in the guidance on KPIs and the guidance on contract details notices. In summary (but please refer to the guidance on KPIs), section 52(1) sets out that before entering into a public contract with an estimated value of more than £5 million, a contracting authority is generally required to set at least three KPIs in respect of the contract. Where KPIs are set in accordance with section 52(1), section 52(3) requires that a contract authority must publish all the KPIs set, and regulation 32(2)(r)<sup>1</sup> requires that it must include in the contract details notice the three KPIs that the contracting authority regards as most material to performance of the contract obligations as at the time the contract details notice is published.

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<sup>1</sup> This guidance reflects planned changes to the KPI information required in the contract performance notice at regulation 39(4)(d-e). The regulations will be amended to reflect this position before the Act comes into force.



13. Section 52(6) provides that the requirement to set KPIs under section 52(1) does not apply where the public contract is:
- a. a framework;
  - b. a utilities contract awarded by a private utility;
  - c. a concession contract; or
  - d. a light touch contract.
14. Where a contract is exempt from the setting of KPIs or where the contracting authority considers that the supplier's performance could not be appropriately assessed through such indicators, then there is no obligation to publish contract performance notices for the purpose of KPI monitoring (although they may be required following a breach or poor performance as described in section 71).
15. Where a contract is a 'convertible contract' as defined in section 74 (modifying a public contract), there is no requirement to set KPIs when the contract converts, even if, once converted into a public contract, that contract is valued at over £5 million. This is because the requirement to set KPIs under section 52(1) arises before a public contract is entered into. Contracting authorities are, however, required to start reporting on instances of breach or failure to perform on these contracts should the relevant circumstances in section 71 apply. This is because once a convertible contract becomes a public contract, the relevant provisions in section 71 that apply to public contracts will apply to that public contract.
16. Regulation 39 sets out the information to be published in the contract performance notice when reporting on KPIs. The notice must contain:
- a. the contracting authority information;
  - b. the title of the procurement;
  - c. the unique identifier for the procurement and the public contract;
  - d. the three KPIs that the contracting authority regards as most material to performance of the contract obligations as at the time the contract performance notice is published;
  - e. a statement that the notice is being used to set out the contracting authority's assessment of performance against the selected KPIs;
  - f. information about the identity of the supplier to whom the notice relates;
  - g. the contracting authority's assessment of performance against the selected KPIs in accordance with the ratings set out in regulation 39(5) (as replicated in the below table at paragraph 17); and

h. the time period to which the contracting authority's assessment applies.

17. The ratings set out in regulation 39(5) are as follows:

<b>Rating</b>	<b>Description</b>
Good	Performance is meeting or exceeding the key performance indicators
Approaching target	Performance is close to meeting the key performance indicators
Requires improvement	Performance is below the key performance indicators
Inadequate	Performance is significantly below the key performance indicators
Other	Performance cannot be described as good, approaching target, requires improvement or inadequate

18. A contracting authority may still assess their suppliers against their own internal ratings but must use the above ratings when completing the contract performance notice.

Timing of publication: reporting KPI performance

19. When used for publishing an assessment of performance against KPIs set under section 52(1), the contract performance notice must be published at least once every 12 months during the life-cycle of the contract and on termination of the contract. Contracting authorities may choose to assess performance (whether with or without publishing KPI information) more frequently if they choose. Each contract performance notice published will be linked to the previous one in the sequence so that a viewer can track how the contract has been performed over its lifetime. For contracting authorities that are currently required to comply with government's policy on reporting requirements for KPIs set out in the Commercial Playbooks, this requirement will continue to apply alongside the requirements set out in the Act.

20. As the assessment of KPI performance and a breach of contract or failure to perform the contract may arise at different times, contract performance notices may contain different things at different times, depending on the circumstances, and there may be multiple contract performance relating to a particular contract.

21. Upon termination of the contract, the contract performance notice setting out the final assessment of contract performance will need to be published before the contract termination notice. This is because the contract termination notice effectively closes the record of the contract on the central digital system.

## Changes to KPIs

22. Regulation 39 requires a contracting authority to publish an assessment of performance against the three KPIs set under section 52(1) which the contracting authority regards, at the time the contract performance notice is published, as most material to performance of the contract obligations. These KPIs may be different from the KPIs set out in the contract details notice or in previous contract performance notices as the KPIs to be included must be those regarded as most material as at the time the contract performance notice is published. The KPIs that are most material may therefore depend on when during the life-cycle of the contract the contract performance notice is published.
23. Where the contracting authority considers that fewer than three KPIs set in accordance with section 52(1) are material to performance of the contract obligations at the time the contract performance notice is published, it could (provided this would be a permitted modification under section 74 of the Act) consider introducing a new (or amending an existing) KPI to be assessed against and reported on or continue reporting on the KPIs used in the contract details notice or last contract performance notice (as relevant) but with an 'Other' rating. Contracting authorities should use the free text box in the KPI description field to indicate which KPIs included in the contract performance notice are new or amended KPIs.

## Withholding information under Section 94

24. As the KPIs to be measured against must be published, publication of the supplier's performance against these KPIs in contract performance notices is unlikely to constitute 'sensitive commercial information' (as defined in section 94) that is not required to be published, although this will need to be assessed against the circumstances that apply at the time.

## Publishing information about incidents of poor performance and breach of contract

25. The contract performance notice is also the means by which contracting authorities report on relevant incidents of breach of contract and poor performance as required under section 71(5), except where, following a breach, the contract is terminated in full. Section 71(5) applies to most public contracts (not just those above £5 million) including frameworks and concession contracts.
26. Where the contract performance notice is used to publish information about a supplier's breach of a public contract, the breach must have resulted in one (or a combination) of the following:
  - a. partial termination of the contract (see paragraph 27 for publication requirements where a contract is terminated in full);
  - b. the award of damages; or
  - c. a settlement agreement between the supplier and the contracting authority.

27. Where a breach leads to a contract being terminated in full, a contract termination notice is published instead, which provides the relevant information about the breach or performance (see separate guidance on contract termination). This avoids the need for two notices to be published in respect of the same event.
28. When the contract performance notice is used to publish information about a supplier not performing a public contract to the authority's satisfaction, the supplier must have been given proper opportunity to improve performance, and must have failed to do so before the notice is published.
29. The requirement to publish a contract performance notice in respect of breaches and failure to perform under section 71 does not apply to private utilities or in relation to light touch contracts.
30. It is important to note that breach of contract and poor performance relate to the entire contract, not just the KPIs that may have been included in the contract details notice or most recent contract performance notice.
31. The breach of contract and failure to perform grounds that give rise to contract performance notice obligations in sections 71(3) and 71(4) respectively are not mutually exclusive. For example, it is possible for an event to occur that amounts to both a failure to perform (under section 71(4)), and a breach of contract (under section 71(3) for which the contracting authority subsequently decides to partially terminate the contract. These can be reported in the same contract performance notice, depending on how far apart the events occur (see timing of publication below).

#### Information requirements

32. Where there has been a breach or failure to perform under a public contract, the notice must include the information set out in regulation 39(7). In both cases this includes:
  - a. the contracting authority information;
  - b. the title of the procurement;
  - c. the unique identifier for the procurement and the public contract;
  - d. supplier information;
  - e. that section 71(5) of the Act applies and the circumstances giving rise to the application of that section;
  - f. a statement as to why the information is being published; and
  - g. the additional information set out in regulation 39(7)(g-m) in respect of the breach or failure to perform (for example, remediation or improvement plans, warning or breach notices).

33. Where a supplier has breached a public contract, the contract performance notice must also set out:
- a. whether the breach resulted in partial termination and the extent to which the contract has been terminated;
  - b. whether the breach resulted in the award of damages or a settlement agreement along with the associated dates;
  - c. where there is an award of damages or payment of other monies, the amount of damages or other monies paid and the basis on which this has been awarded (for example, whether in accordance with the public contract, a decision of a court or tribunal, or a negotiated settlement);
  - d. where there has been a recorded decision of a court or tribunal finding a breach, a link to the web page where the decision can be accessed, or a copy of the decision (which can be attached to the notice).

#### Timing of publication

34. The contract performance notice must be published within 30 days of the day on which section 71(5) first applies in relation to a particular breach or failure to perform. This means that the clock starts from:
- a. where there is a breach, when one of the following occurs:
    - i. partial termination<sup>2</sup>;
    - ii. the award of damages;
    - iii. a settlement agreement is reached between the contracting authority and the supplier; or
  - b. in the case of poor performance, when the supplier fails to improve performance.
35. In the case of a breach, the timing requirements in section 71 might mean, for example, that the contract performance notice must be published before an award of damages has been made or before a settlement agreement has been reached if, prior to the award being made or settlement agreement being reached, part of the contract was terminated. In this instance the information provided in the contract performance notice will be limited to what is available at the time of publication. There is no requirement under the Act for the contracting authority to update the notice with additional information when it becomes available, although the contracting authority can choose (and it would be good practice) to do so.

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<sup>2</sup> Where the contract is terminated in whole, section 80 requires that a contract termination notice must be published within the same period.

36. In the case of poor performance, the point at which the requirement to publish a contract performance notice arises may be more of a judgement call on the part of the contracting authority, depending on the circumstances. The trigger for the clock to start here is when the contracting authority determines that the supplier has failed to perform to the contracting authority's satisfaction after having been given a proper opportunity to improve its performance. The contracting authority will need to determine the precise date that this arises, having regard to the specific contractual provisions that apply. It may, for example, be the date on which a notice was issued to the supplier to the effect that it has failed to improve its performance after a particular period of time and/or has failed to implement an agreed rectification plan.

#### Withholding information under section 94

37. A supplier might ask for information to be withheld from publication under section 94 on the grounds that it is 'sensitive commercial information' because disclosure of the information "would be likely to prejudice the commercial interests of any person if it were published or otherwise disclosed". It is for the contracting authority to determine whether these grounds are justified and section 94(1) provides that a public interest test is necessary when considering whether to withhold information.
38. One of the reasons for publishing information under section 71(5) about a breach or poor performance is to provide a public record of which suppliers are subject to the discretionary exclusion ground set out in Schedule 7, paragraph 12(4) (i.e. publication of a notice relating to breach of contract and poor performance). The existence of the notice means that the supplier will (if the notice is within the relevant time period) be excludable under a procurement being carried out by another contracting authority if the circumstances giving rise to the exclusion ground are continuing or are likely to occur again (see guidance on exclusions). So, whilst some of the information requirements in regulation 39, (particularly, the requirement in regulation 39(7)(k) to explain the nature of the breach or performance failure) might be considered by the supplier to be sensitive commercial information, in order for it to be withheld under section 94(1)(b) there must be an overriding public interest for doing so. There is a high bar for withholding such information due to it generally being in the public interest to release.
39. With respect to the sensitivity of the details of any award of damages, if these were awarded in accordance with a public contract that had been published, then there would be little justification for withholding the information. Similarly, where there has been a decision by a court or tribunal and that information is publicly available there would be no justification for failing to include details (or a link to, or copy of, the decision) in the contract performance notice.
40. The details of a settlement agreement are not required to be published under the Act or regulations; it is sufficient to simply identify that a settlement agreement has been reached and, where relevant, include the amount of monies paid under the agreement.
41. Contracting authorities should also be mindful that information that is not published in the contract performance notice could still be requested by interested parties under the [Freedom](#)

[of Information Act 2000](#) and that where information is not published or is withheld under section 94, a contracting authority could be challenged by way of a judicial review.

#### Use of the contract performance notice when removing a supplier from a multi-supplier contract

42. Where a contracting authority has a single contract with multiple suppliers, such as in the case of some frameworks, the contracting authority may decide to remove a supplier from the contract, for example, because it has become an excluded or excludable supplier after the award of the contract, but continue with the contract. Where this is the case, contracting authorities are encouraged to publish a contract performance notice (where not already required by the Act) to provide transparency about which suppliers are able to perform the contract or, where relevant, may be awarded a call-off contract under a framework. Where a contract performance notice is published voluntarily for this purpose, the contract performance notice should make clear that the notice is not being published under section 71(5) of the Act, i.e. that the supplier has not breached the contract, unless section 71(5) does in fact apply in the circumstances.
43. In addition, to understand which suppliers are party to particular frameworks set up by other contracting authorities, and are therefore eligible to be awarded a call-off contracts under the framework, contracting authorities can:
- a. check with the framework administrator to see whether any suppliers have been removed from the framework under section 78 (or otherwise);
  - b. ask suppliers to certify that they are still a party to the framework.

#### **What notices are linked to this aspect of the Act?**

44. The contract performance notice may be preceded by any of the following notices:
- a. contract details notice: this will always be published before the first contract performance notice and, where section 52(1) applies, will include at least three KPIs;
  - b. contract performance notice: as multiple contract performance notices may be necessary over a contract's lifetime, one notice may follow on from another;
  - c. contract change notice: a contract may have been modified which required the publication of a contract change notice under section 75.
45. The next notice in a sequence may be:
- a. contract change notice;
  - b. contract performance notice;
  - c. contract termination notice: at the end of the contract, there is a requirement to publish a contract termination notice. If a breach results in full termination of the

contract this notice is used to set out the information relating to the breach instead of the contract performance notice.

**What other guidance is of particular relevance to this topic area?**

Guidance on KPIs  
Guidance on publication of information  
Guidance on contract details notices  
Guidance on exclusions

**Where can I go for more information or training?**

[The Sourcing Playbook](#)  
[The Construction Playbook](#)  
[The Digital, Data and Technology Playbook](#)  
[The Consultancy Playbook](#)  
[Freedom of Information Act 2000](#)



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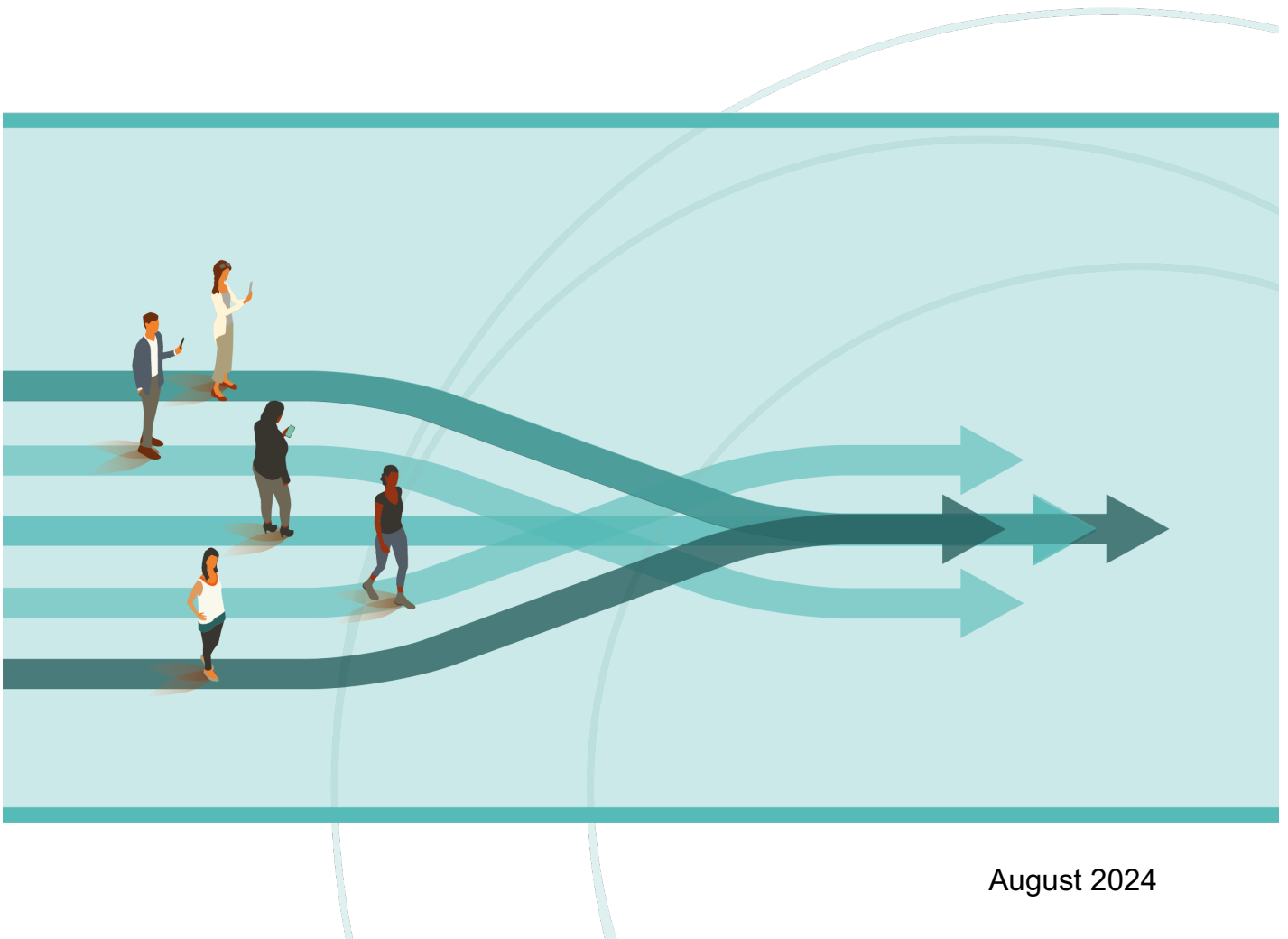
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Procurement Act 2023

# Guidance: Contract Modifications



August 2024

## Guidance on Contract Modifications

### What are contract modifications?

1. Following the award of a contract, changes (referred to as modifications in the Procurement Act 2023 (Act)) may need to be made to that contract to ensure it can be successfully fulfilled, as demands and circumstances change throughout its lifetime. The Act gives contracting authorities legal certainty when making modifications, setting out ten grounds in total on which public contracts or 'convertible contracts' (see paragraphs 37-39 below) may be modified during their term, provided the relevant requirements are met. If a modification cannot be justified on at least one of the grounds, the modification is not permitted and a new procurement must be carried out if the contracting authority wishes to implement the subject-matter of the modification.
2. Modifications to below-threshold contracts (unless they are convertible contracts) and light touch contracts do not need to be justified on one of the ten grounds; they may be freely modified under the Act. Except where expressly set out, this guidance applies to public contracts only and not below-threshold contracts.

### What is the legal framework that governs contract modifications?

3. Sections 74-77 and Schedule 8 of the Act and regulation 40 regulate contract modifications.
4. Section 74(1) sets out the circumstances under which public contracts or convertible contracts may be modified. Contracting authorities may modify a public contract or a convertible contract if the modification:
  - a. is a 'permitted modification' under one of the eight grounds set out in Schedule 8 (section 74(1)(a)); or
  - b. is not a 'substantial modification' as described in section 74(3) (section 74(1)(b)) (a modification on this ground is described in this guidance as 'non-substantial' modifications); or
  - c. is a 'below-threshold modification' as described in section 74(4) (section 74(1)(c)).
5. Section 74 also expressly permits contracting authorities to modify light touch contracts.
6. Section 75 provides that before modifying a contract, contracting authorities must publish a contract change notice, unless an exemption applies. The information that must be included in a contract change notice is set out in regulation 40.
7. Section 76 sets out the rules contracting authorities must follow if they choose to enter into a voluntary standstill period (see paragraphs 50-57 below) after publishing a contract change notice.

8. Section 77 sets out a second transparency requirement. If a modification is made that requires the publication of a contract change notice and the modification is to a contract with a value greater than £5 million (including the value of the modification itself), the contracting authority must publish a copy of the modification or a copy of the contract as modified. Some contracts are exempt from this requirement (either expressly or by operation of section 77), as set out in the table in paragraph 40 below.

## **What has changed?**

9. To give contracting authorities greater flexibility to deal with the challenges of managing a contract successfully, there are four new modification grounds in the Act. These are: urgency and the protection of life; materialisation of a known risk; and two new grounds specific to defence authority contracts. Four grounds that were available under the Public Contract Regulations 2015 (PCR), Utilities Contracts Regulations 2016 (UCR) and Concessions Contract Regulations 2016 (CCR)<sup>1</sup> have been retained but updated, to give contracting authorities greater certainty when using them.
10. The four grounds retained from the previous legislation are: where the modification is provided for in the contract, where the modification has arisen due to unforeseeable circumstances, where the modification is for additional goods, services or works provided for in the contract and where the modification is to enable the transfer of the contract on corporate restructuring.
11. Overall, greater flexibility to make contract modifications is balanced by far greater transparency under the Act. The requirements to publish contract change notices and modifications to contracts valued at over £5 million are significant changes from the previous legislation. They are changes that will give interested parties visibility over the modifications made (including the cost of those modifications) during the life of a contract.
12. Other changes include the introduction of a convertible contract and changes to the way the value of a contract is calculated when making modifications (as set out at paragraph 16).

## **Key points and policy intent**

### The modification grounds

13. Modifications to public and convertible contracts can only be made if at least one of the ten grounds set out in section 74 and Schedule 8 of the Act applies. Sections 74(1)(b) and 74(1)(c) may be considered to be more appropriate to more minor amendments, but the Act does not prohibit minor amendments being made under Schedule 8 and an amendment under section 74(1)(b) or 74(1)(c) may be significant; for example an amendment to a works contracts under section 74(1)(c) may amount to a fairly significant amendment, given the value of the works threshold. The modification grounds are summarised in the table below:

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<sup>1</sup> See regulation 72 of the PCR, regulation 88 of the UCR and regulation 43 of the CCR. The Defence and Security Public Contracts Regulations 2011 do not contain specific provisions on contract modification; in practice regulation 16 was used to modify contracts.

<b>Non-substantial and below-threshold modifications</b>		
<b>1</b>	<b>Non-substantial</b>  Section 74(1)(b)	Modification is permitted on this ground if it is not a 'substantial modification as defined in section 74(3), i.e. if it does not: <ul style="list-style-type: none"> <li>● increase or decrease the term of the contract by more than 10% of the maximum term provided for on award; or</li> <li>● materially change the scope of the contract; or</li> <li>● materially change the economic balance of the contract in favour of the supplier.</li> </ul>
<b>2</b>	<b>Below-threshold</b>  Section 74(1)(c) and section 73(4) (meaning of 'below-threshold modification')	Modification is permitted on this ground if it: <ul style="list-style-type: none"> <li>● does not increase or decrease the estimated value of a goods or services contract by more than 10%, or a works contract by more than 15%; and</li> <li>● does not materially change the scope of the contract.</li> <li>● cannot be made on the grounds at Schedule 8 or is not a substantial modification (as set out in section 74(3)).</li> </ul> <p>Section 74(1)(c) may be used multiple times, but the meaning of a below-threshold modification provides, at section 74(4)(b), that the aggregated value of the changes made on this ground must be less than the threshold applicable to that type of contract.</p>
<b>Permitted modifications under Schedule 8</b>		
<b>3</b>	<b>Provided for in the contract</b>  Schedule 8, paragraph 1	Modification is permitted on this ground if the possibility of the modification is unambiguously provided in: <ul style="list-style-type: none"> <li>● the contract as awarded; and</li> <li>● the tender or transparency notice for the award of that contract; and</li> <li>● the modification would not change the overall nature of the contract.</li> </ul>
<b>4</b>	<b>Urgency and the protection of life</b>  Schedule 8, paragraphs 2-3	Modification is permitted on this ground if its purpose: <ul style="list-style-type: none"> <li>● could, alternatively, be achieved by directly awarding a contract under section 41 (Direct award in special cases); and</li> <li>● such direct award could be made by reference to either extreme and unavoidable urgency (under Schedule 5, paragraph 13) or regulations made under section 42 (Direct award to protect life, etc).</li> </ul>
<b>5</b>	<b>Unforeseeable circumstances</b>  Schedule 8, paragraph 4	Modification is permitted on this ground if: <ul style="list-style-type: none"> <li>● the circumstances giving rise to the modification could not reasonably have been foreseen by the contracting authority before the award of the contract; and</li> <li>● it does not change the overall nature of the contract; and</li> <li>● it does not increase the estimated value of the contract by</li> </ul>

		more than 50%. This 50% threshold does not apply if the contract is a utilities contract.
<b>6</b>	<b>Materialisation of a known risk</b>  Schedule 8, paragraphs 5-7	<p>Modification is permitted on this ground if:</p> <ul style="list-style-type: none"> <li>● a 'known risk' (as defined in Schedule 8, paragraph 6) has materialised which was not caused by any act or omission of the contracting authority or supplier, and as a result the contract cannot be delivered to the contracting authority's satisfaction; and</li> <li>● it is in the public interest in the circumstances to amend the contract rather than award a new contract; and</li> <li>● it does not increase the estimated value of the contract by more than 50% (unless it is a utilities contract, in which case the 50% cap does not apply); and</li> <li>● it was set out in the tender notice or transparency notice for award of the contract that the contract may require amendment due to the identified risk; and</li> <li>● goes no further than necessary to address the known risk.</li> </ul> <p>When considering the public interest in relation to this type of modification, the contracting authority:</p> <ul style="list-style-type: none"> <li>● must consider whether a new contract (rather than a modification) could provide more value for money; and</li> <li>● may consider technical and operational matters.</li> </ul>
<b>7</b>	<b>Additional goods, services or works</b>  Schedule 8, paragraph 8	<p>Modification is permitted on this ground if:</p> <ul style="list-style-type: none"> <li>● it is for goods, service or works that are additional to (which would include a repetition of) goods, services or works already provided for in the contract; and</li> <li>● using a different supplier would result in the supply of goods, services or works that are different from, or incompatible with, those already provided for in the contract; and</li> <li>● the contracting authority considers that the difference or incompatibility would result in: <ul style="list-style-type: none"> <li>○ disproportionate technical differences in operation or maintenance or other significant inconvenience; and</li> <li>○ substantial duplication of costs for the authority; and</li> </ul> </li> <li>● the modification would not increase the estimated value of the contract by more than 50%. This limit of 50% does not apply if the contract being modified is a utilities contract.</li> </ul>
<b>8</b>	<b>Transfer on corporate restructuring</b>  Schedule 8, paragraph 9	<p>The novation or assignment of a public contract to another supplier (which would include another contracting authority) is a permitted modification if it is required following a corporate restructuring or similar circumstance.</p> <p>Section 74(9) prohibits a contracting authority from modifying a</p>

		contract to change a supplier except where this ground applies. The new supplier must not be an excluded supplier.
<b>Permitted modifications under Schedule 8 for defence authority contracts<sup>2</sup></b>		
<b>9</b>	<b>Defence authority contracts</b>  Schedule 8, paragraph 10	Modification to a defence authority contract is permitted to: <ul style="list-style-type: none"> <li>● ensure the contracting authority is able to keep up with developments in technology; or</li> <li>● prevent or mitigate any adverse effect of such developments.</li> </ul>
<b>10</b>	<b>Defence authority contracts</b>  Schedule 8, paragraph 11	Modification to a defence authority contract is permitted to ensure the continuous provision of goods, services or works where that is necessary to ensure the Armed Forces maintain their operational capabilities, effectiveness, readiness, safety, security or logistical capabilities.

14. More than one ground may apply to a particular modification. For example, a modification may be permissible under section 74(1)(a) on more than one of the grounds set out in Schedule 8 or may meet the criteria for a non-substantial modification under section 74(1)(b) and also be permissible under Schedule 8. For example, a modification that is of low value and involves minimal scope changes may be required to deal with unforeseeable circumstances and therefore meet the criteria for both a non-substantial modification (under section 74(1)(b)) and the 'unforeseeable circumstances' ground in Schedule 4, paragraph 8. Note, however, that this is not the case for below-threshold modifications. A modification cannot be classed as a below-threshold modification if it could be made under another ground i.e. if it meets the criteria for a non-substantial modification or if a ground in Schedule 8 applies (section 74(4)(d)).
15. The Act prohibits (at section 74(7)) contracting authorities from combining a modification that is not permitted by the Act with one that is permitted in order to make the non-permitted modification. For example, a contracting authority should not make repeated small below-threshold modifications to a contract in order to purchase additional goods, services or works when those modifications could reasonably have been made as a single (larger) modification but that single modification would have been over the threshold set out in section 74(4)(a).
16. Where a reference is made to the 'estimated value of the contract' in the contract modification grounds, this means the estimated value of the contract at the time it is valued - i.e. the estimated value immediately before the modification is made (see section 4).

<sup>2</sup> Section 7(7) defines a defence authority contract as a defence and security contract awarded by a defence authority. Section 7(5) and regulation 46 provide that a defence authority is the Secretary of State for Defence, AWE plc, the National Crime Agency and the Oil and Pipelines Agency.

### Use of the grounds in sections 74(1)(b) and (1)(c)

17. When making changes to a contract, contracting authorities should select the ground that is most appropriate for the changes they wish to make, and, as set out at paragraph 14 above, in some (but not all) cases more than one ground may apply.
18. The non-substantial and below-threshold grounds in section 74(1)(b) and (c) have some common features in that both set limits on any increase or decrease in contract term or value (respectively) and on changes in scope. The term 'increase or decrease' in the meaning of non-substantial and below-threshold modifications refers to modifications that reduce the duration or value of a contract, as well as modifications that increase the duration or value. There are differences, however, in how changes to the value or contract term are calculated (see paragraphs 20 and 24 below).

#### The non-substantial ground

19. The effect of section 74(1)(b) means that contracting authorities may amend a contract in any way provided this does not amount to a substantial modification as described in section 74(3).
20. One of the restrictions in section 74(3) relates to the term of the contract. If using the non-substantial ground to increase or decrease the duration of a contract, the increase or reduction must amount to 10% or less of the maximum duration provided for when the contract was awarded. To note, the maximum duration provided for includes any extensions to the contract term provided for in the original contract.
21. The contracting authority may have flexibility to modify the duration of the contract above 10% using other grounds, rather than 74(3) in the Act. For example, if a contracting authority wishes to extend a 5 year contract by an additional year not provided for in the original contract (a 20% increase in duration), but the modification does not increase the estimated value of the contract by more than 10%, then the below-threshold ground may be available as a ground on which to make the modification. Alternatively, one of the grounds in Schedule 8 may be available, depending on the situation. Contracting authorities should note that, when relying on the non-substantial ground, the maximum (10%) change to the duration of the contract (if relevant) is based on the original maximum duration provided for in the contract, not the maximum duration provided for immediately prior to the modification (i.e. ignoring any previous modifications that have increased the duration beyond the maximum originally provided for).
22. A modification on the non-substantial ground is also only permitted if the modification would not materially change the scope of the contract or materially change the 'economic balance' of the contract in favour of the supplier. Section 74(5) provides that the reference to a material change to the scope means a change to the type of goods, services or works to be supplied under the contract that was not already provided for in the contract.
23. Whether there is a material change in the economic balance in favour of the supplier is concerned with whether the supplier is put in a better place under the contract that materially benefits the supplier economically and should be assessed by reference to the contractual



bargain agreed between the contracting authority and the supplier in the context of the whole contract. Each modification will need to be considered on its own facts, but additional goods, services or works to be provided at the same price as that agreed for the original goods, services or works, for example, may not, in the particular circumstances, materially change the economic balance in favour of the supplier. However, a modification that resulted in an increase in the supplier's profit under the contract from 8% to 16%, or which transferred ownership of intellectual property rights to the supplier, where those rights had value, or repeated modifications that resulted in the purchase of a significant amount of additional goods, services or works over a period of time would, for example, be likely to materially change the economic balance in favour of the supplier.

The below-threshold ground

24. Section 74(4) provides that a below-threshold modification is only permitted if it would not increase or decrease the estimated value of the contract by more than 10% in case of a contract for goods or services or 15% in case of a contract for works. The total value of all below-threshold modifications must also be less than the threshold amount for the type of contract. This means that contracting authorities may only be able to make a limited number of below-threshold modifications. For example, in the case of a goods contract, a number of below-threshold modifications could be made, but the total value of those modifications must not exceed the threshold for goods contracts in Schedule 1 of the Act (£139,688<sup>3</sup>).
25. As with a non-substantial modification, a below-threshold modification must not materially change the scope of the contract and, as set out at paragraph 14 above, the below-threshold modification must not be permissible under section 74(1)(a) (Schedule 8) or section 74(1)(b) (non-substantial modification).

#### Use of the grounds in Schedule 8

Modification is provided for in the contract

26. Schedule 8, paragraph 1 permits a modification if it is unambiguously provided for as an option in the original contract and original tender or transparency notice and the modification would not change the overall nature of the contract. It is important that as much information as possible is provided about the potential modification to ensure that the ground can be relied upon.

Modification is due to urgency and the protection of life, etc

27. Schedule 8, paragraphs 2-3 permit a modification only if the purpose of the modification (for example, to respond to an emergency event) could, alternatively, be achieved if the contracting authority made a direct award (of a separate contract) under section 41, Schedule 5, paragraph 13 (urgency) of the Act or regulations made under section 42 (direct award to protect life, etc.). (Further information on these specific direct award justifications can be found in the guidance on direct award.) This ground enables contracting authorities

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<sup>3</sup> The thresholds in this guidance are the current thresholds. Schedule 1 of the Act will be updated when it comes into force to include these thresholds.

to act swiftly and efficiently in extraordinary circumstances to adapt to urgent requirements. It may be useful where the circumstances require a rapid response and it is quicker and/or better value to modify an existing contract than directly award a new contract. Modifications made on this ground are not capped, so contracting authorities have sufficient flexibility to procure what is necessary in such circumstances.

Modification has arisen due to unforeseeable circumstances

28. Schedule 8, paragraph 4 permits a modification if the circumstances giving rise to the modification could not reasonably have been foreseen by the contracting authority before the contract was awarded, the modification would not change the overall nature of the contract and the modification would not increase the estimated value of the contract by more than 50%.

Modification is due to materialisation of a known risk

29. Schedule 8, paragraphs 5-7 permit a modification where it is to deal with a known risk which materialises during the life of the contract and allows contracting authorities to better manage potential risks in their procurements that otherwise may have resulted in legal uncertainty or an impact on delivery. The Act defines a known risk as a risk which the contracting authority considers could jeopardise the satisfactory performance of the contract but could not, due to its nature, be addressed in the contract from the outset. The risk must have been identified in the tender notice or transparency notice for the award of the contract, which means it must have been identified before the award of the contract. Paragraph 5 provides that the modification is permitted only if the known risk did not materialise due to any act or omission of the contracting authority or the supplier and the existence of the risk means that the contract cannot be performed to the satisfaction of the contracting authority. The modification must go no further than is necessary and it must be in the public's interest to modify the contract, rather than award a new contract. In addition, the modification must not increase the estimated value of the contract by more than 50%.
30. For example, if, due to emerging cyber threats, a contracting authority needs to ask its supplier to make changes to the software system it provides to enable the system to operate safely and adequately protect personal information stored on the system, the contracting authority could modify the contract to include this requirement, provided the specific risk of emerging cyber threats was identified and detailed in the relevant notice and the other requirements of Schedule 8, paragraphs 5-7 are met.
31. Contracting authorities should be specific and highly selective when identifying known risks; the ground is not intended to capture all risks that may emerge during the lifetime of a contract.

Modification is for additional goods, services or works

32. Schedule 8, paragraph 8 permits a modification if: it is for the supply of goods, services or works in addition to those already provided for in the contract; and using a different supplier would result in the supply of goods, services or works that are different from, or incompatible with, those already provided for in the contract; and the contracting authority considers that

this would result in disproportionate technical difficulties in operation or maintenance or other significant inconvenience and the substantial duplication of costs for the authority. In addition, the modification must not increase the estimated value of the contract by more than 50%.

Modification is to enable the transfer of a contract on corporate restructuring

33. Schedule 8, paragraph 9 provides that a novation or assignment (or in Scotland, an assignation) of a public contract to a supplier that is not an excluded supplier is a permitted modification if it is required following a corporate restructuring or similar circumstance. A corporate restructuring could include sale of a business as part of a planned strategy, or one that has been required following the insolvency of the supplier. There is no intention for this ground to be narrower than in the previous legislation.

Modification to defence authority contracts

34. The two grounds which are available to modify defence authority contracts are available to defence authorities, in addition to the other grounds in the Act. A modification to a defence authority contract is permitted to:
- a. ensure the contracting authority is able to keep up with developments in technology or prevent or mitigate any adverse effect of such developments; or
  - b. ensure the continuous provision of goods, services or works where that is necessary to ensure the Armed Forces maintain their operational capabilities, effectiveness, readiness, safety, security or logistical capabilities.

Modification of frameworks, call-off contracts and dynamic markets

35. If a framework, a call-off contract under a framework or contract awarded under a dynamic market is a public contract or a convertible contract, the contract modification provisions in the Act apply; this includes those relating to the publication of contract change notices and the publication of modifications (see below for publication requirements).
36. However, there are some points that are specific to frameworks and call-off contracts:
- a. with regard to frameworks, if a contracting authority wishes to modify a framework to extend the term beyond the timeframe set out under section 47(1)<sup>4</sup> of the Act, then it would, in addition to satisfying one of the permitted grounds in section 74(1), also need to satisfy the test in section 47(2). See the guidance on frameworks;
  - b. with regard to call-off contracts:
    - i. if a contracting authority wishes to rely on the 'materialisation of a known risk' ground (Schedule 8 paragraphs 5-7) to make modifications to call-off

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<sup>4</sup> Which provides that the maximum term of a framework is either four years, or, in the case of defence and security or utilities frameworks, eight years.

contracts, it must sufficiently identify the specific risks that may require a modification in the tender notice or transparency notice for the framework (because these notices are not used when awarding a call-off contract).

For example, in order for call-off contracts under a framework for the maintenance of school buildings to be modified to deal with RAAC crumbling concrete being discovered in a site survey, the tender notice or transparency notice for the framework would need to specify that the risk may arise in particular call-off contracts.

For this reason, this modification ground in relation to call-off contracts is likely to be of greater use where frameworks are designed to be relatively specific in their nature and have a particular group of contracting authorities in mind;

- ii. similarly, if a contracting authority wishes to rely on the 'provided for in the contract ground' (Schedule 8, paragraph 1) to make a modification that is unambiguously provided for in a call-off contract as awarded, it must provide sufficient information about the possible modification in the tender notice or transparency notice for the framework.

For example, the tender notice or transparency notice for a framework for road upkeep and resurfacing could set out that possible modifications that enable their duration to be extended or ancillary road maintenance services to be purchased may be unambiguously provided for in the call-off contracts.

### Convertible contracts

37. The Act provides for the concept of a 'convertible contract' at section 74(1). A convertible contract is a below-threshold contract that, as a result of the modification, will become a public contract.
38. Because a convertible contract will become a public contract after modification, it is treated as a public contract prior to the relevant modification being made for the purposes of section 74 (and section 75 and section 77 dealing with contract change notices and the publication of modifications (see paragraphs 40-49 below). This means that a modification that would result in a below-threshold contract becoming a public contract can only be made if the modification is permitted under section 74(1).
39. After modification, the contract will be subject to all of the provisions in the Act that apply to public contracts, for example, the various notice requirements, rather than just the provisions in Part 6 of the Act that are specific to below-threshold contracts. Contracting authorities should note that when a convertible contract becomes a public contract, there is no requirement to set and assess performance against key performance indicators (KPIs) for that contract even if, once modified, the contract is valued at over £5 million. This is because the requirement to set key performance indicators under section 52(1) arises before a public contract is entered into. See guidance on KPIs and guidance on contract performance notices.

## Transparency requirements

40. The first transparency requirement (set out in section 75) is that before modifying a public contract or a convertible contract, a contracting authority must publish a contract change notice on the central digital platform unless one of the following exemptions apply:

Exemptions from the requirement to publish a contract change notice	
The modification is below the threshold for publication (section 75(2))	<p>If the modification increases or decreases the</p> <ul style="list-style-type: none"><li>• estimated value of the contract by 10% or less for goods or services or 15% or less for works; or</li><li>• contract term by 10% or less of the maximum term provided for on award,</li></ul> <p>contracting authorities generally do not need to publish a contract change notice.</p> <p>In effect, these publication thresholds mean that non-substantial and below-threshold modifications do not require a contract change notice.</p> <p>Modifications made under Schedule 8, paragraph 1 (Provided for in the contract) are also likely to be exempt in effect in most cases. This is because if the option to modify the contract under Schedule 8, paragraph 1 would increase the contract value, the estimated value of the option will be included in the estimated value of the contract (which is the maximum amount the contracting authority expects to pay, assessed in accordance with Schedule 3, paragraph 1) assessed immediately prior to the modification being entered into. If the option to modify the contract would extend the term of the contract, this would be within the maximum duration permitted on award. Consequently, when these options are exercised, the value or term of a contract are not increased beyond the estimated value or maximum term provided for. The exception to this is if an option to modify a contract under Schedule 8, paragraph 1 would reduce its value or term. In these cases, if the option is exercised, a contract change notice is required if there is a decrease in the value or term of the contract by more than the percentages in section 75(2).</p> <p>Contract change notices are required only where modifications are made to a contract. If there is any increase or decrease in contract value that is not as a result of a modification, such as a natural underspend on a contract, a contract change notice is not required.</p> <p>To note: if the modification is made under Schedule 8, paragraph 9 (novation or assignment on corporate restructuring), the exemptions in section 75(2) do not apply and a contract change notice must be published. This is to ensure that a conflicts of interest assessment is carried out under section 83<sup>5</sup> and that confirmation that it has been prepared and revised is recorded in the contract change notice.</p>

<sup>5</sup> See section 83(5) and the definition of a 'relevant notice' in section 83(8).

<p>The type of contract is exempt from the provision (section 75(6))</p>	<p>Section 75 (and therefore the requirement to publish a contract change notice) does not apply to a contract that:</p> <ul style="list-style-type: none"> <li>● is a defence and security contract; or</li> <li>● is a light touch contract; or</li> <li>● was awarded by a private utility; or</li> <li>● was awarded by a transferred Northern Ireland authority, unless awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement; or</li> <li>● was awarded as part of a procurement under a transferred Northern Ireland procurement arrangement.</li> </ul>
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41. Section 75(4) and (5) prohibit contracting authorities from dividing modifications into smaller ones to fit below the publication threshold and avoid publishing a contract change notice.

42. The second publication requirement (set out in section 77) is that the contracting authority must publish a copy of the contract as modified or the modification itself where it has made a 'qualifying modifications'.

43. A qualifying modification is a modification to a contract which:

- a. requires the publication of a contract change notice under section 75; and
- b. modifies, or results in, a public contract with an estimated value of more than £5 million (including the value of the modification).

44. The copy of the contract as modified or the modification must be published within 90 days of the qualifying modification being made (beginning with the day on which it was made). The central digital platform requires that these are published as an attachment to the contract change notice.

45. A contracting authority could choose to attach agreed drafts of the modification or modified contract to the contract change notice at the time the notice is published. Where this is the case, the final modification made or modified contract must be attached to the contract change notice before the end of the 90 day deadline in section 77(1).

46. Where a modification or modified contract is published, it may be redacted in accordance with section 94 (General exemptions from duties to publish or disclose information). See the guidance on publication of information for further information.

47. Where the value of the modification takes the total value of the contract over the £5 million publication threshold, the contracting authority will not have been required to publish a copy of the original contract under section 53(3) of the Act. In this instance, contracting authorities are encouraged to publish the contract as modified, rather than just the modification, in order to enable interested parties to better understand the modification.

48. To note, as contract change notices are not required to be published prior to modifying the contracts referred to in section 75(6) (see the table at paragraph 40 above), this means any

modifications to those contracts are not qualifying modifications and therefore the requirement to publish the modification or a copy of the modified contract does not apply.

49. The requirement to publish a qualifying modification does not apply to a modification to a contract that was awarded by a devolved Welsh authority, unless it was awarded as part of a procurement under a reserved procurement arrangement (the latter would be the case if, for example, a devolved Welsh authority is awarding a call-off contract over £5 million under a framework established by a reserved contracting authority, such as the Cabinet Office) or was awarded as part of a procurement under a devolved Welsh procurement arrangement, for example where a contracting authority that is not a devolved Welsh authority is awarding a contract under a framework or dynamic market established by a devolved Welsh contracting authority. Devolved Welsh authorities should refer to the Welsh-specific guidance.

#### Voluntary standstill

50. Contracting authorities may choose to implement a 'voluntary standstill period' prior to making a contract modification.
51. A standstill period in the context of a contract modification is the period of time between publication of the contract change notice and making the modification. The standstill period gives suppliers and other interested parties the opportunity to consider the proposed modification and validity of the grounds relied on. It is important to note that during this period contracting authorities are only prohibited from making the modification; delivery of the extant contract continues. For more information on standstill, see guidance on contract award notices and standstill.
52. Where a voluntary standstill applies, section 76 provides that:
- a. the contracting authority may not modify a public contract or a convertible contract before the end of the standstill period stated in the contract change notice; and
  - b. the standstill period must not be less than a period of eight working days, beginning with the day on which the contract change notice is published.
53. Where there is no requirement to publish a contract change notice prior to modifying the contract, but the contracting authority wishes to implement a voluntary standstill period, a contract change notice must be published. This is because it is the contract change notice that formally triggers the start of the voluntary standstill period.
54. Contracting authorities must state in the contract change notice whether a voluntary standstill period applies, and if so, the duration of that period (noting the minimum period in section 76(2) (see above)) and set out the date that the contract will be modified, and the date that the modification will have effect. By applying a voluntary standstill period, contracting authorities can protect themselves from risk of the modification being set aside or post-contractual damages being awarded if there is a successful legal challenge.

55. A contract change notice can be published and a voluntary standstill period commenced whilst negotiations on the modification are ongoing, provided that the contracting authority includes all of the information required by the regulations in the contract change notice (this might not be feasible if, for example, the change to the value or term of the contract are part of that negotiation). When a contract change notice can be published early, this provides the added benefit that the contracting authority will not need to pause the process of making the modification in order to observe the standstill period.
56. If proceedings are commenced to challenge a modification and notified to the contracting authority during the standstill period, the 'automatic suspension' will apply and the contracting authority will be unable to modify the contract until the claim has been resolved or the suspension lifted by the court. Publishing the contract change notice as early as possible means any challenges can be managed at a less disruptive stage and potentially resolved outside of formal court processes.
57. The nature of the modification (for example, if it needs to be completed urgently) may justify accepting the risk of the modification being set aside and not implementing a voluntary standstill period. Therefore, whilst a voluntary standstill period is best practice in most circumstances, there may be other factors to consider. It is up to individual contracting authorities to make a risk-based decision whether to apply it or not.

#### **What notices are linked to this aspect of the Act?**

58. The key notice relating to contract modifications is the contract change notice which informs suppliers and other interested parties that a contract is to be modified.
59. The information that must be included in a contract change notice is set out in regulation 40 and includes the applicable ground(s) for modification, an explanation of why the modification falls within the specific ground(s) used, and details of any changes to the value and term of the contract resulting from the modification. To note it is not the intention that legally a ground does not or cannot apply because it is not included in the contract change notice.
60. If the modification is made under Schedule 8, paragraph 9 and the contract is being transferred to a different supplier as a result of a corporate restructure, the details of any new supplier as well as the details of any supplier that is no longer party to the contract must also be included in the contract change notice.
61. Following the publication of a contract change notice and subsequent modification of the contract, the next notice that a contracting authority may be required to publish will be one of the following:
- a. contract change notice: a contracting authority must publish a contract change notice each time it modifies the contract again (unless an exemption applies);
  - b. contract performance notice: multiple contract performance notices may be required to be published during the lifetime of the contract;



- c. contract termination notice: publication of this notice will inform interested parties that a contract has been concluded. Private utilities contracts and user choice contracts are exempt from this requirement.

**What other guidance is of particular relevance to this topic area?**

Guidance on valuation of contracts

Guidance on competitive tendering procedures

Guidance on direct award

Guidance on contract award notices and standstill

Guidance on publication of information

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## 12 WELSH GOVERNMENT GUIDANCE

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Please note that only some of the guidance below has been published as of 2<sup>nd</sup> September 2024 and further guidance remains to be published.

Please visit <https://www.gov.wales/procurement-act-2023-guidance-documents> for up-to-date guidance.

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### 12.1 General

12.1.1 Wales Procurement Policy Statement

12.1.2 Notice Flowchart

12.1.3 Pre-implementation checklist

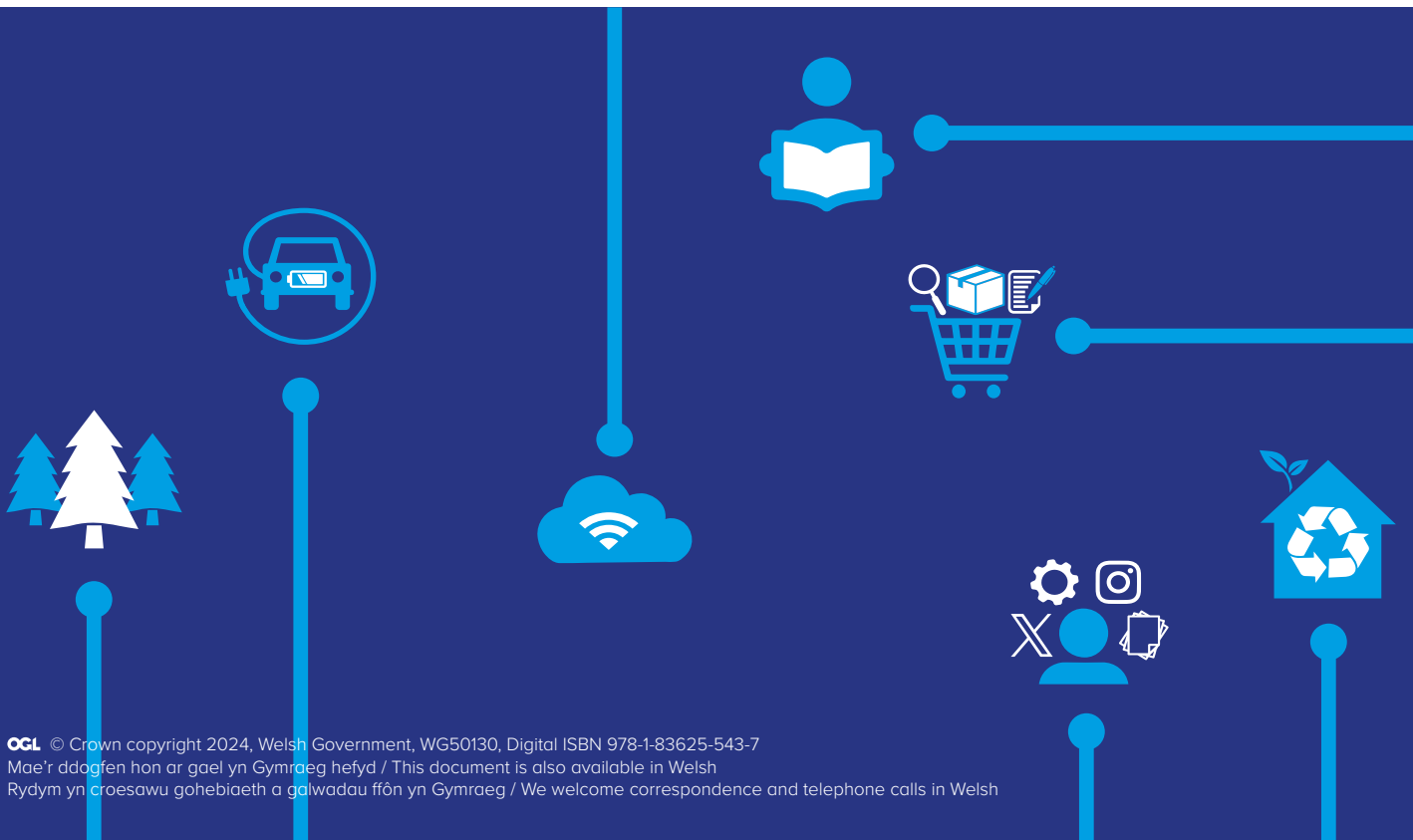


Llywodraeth Cymru  
Welsh Government

# Guidance

# Procurement Reform in Wales

August 2024





## Guidance: Procurement Reform in Wales

1. The procurement landscape in Wales has changed following the introduction of three areas of legislation that will affect the way public procurement is undertaken in Wales. These are:
  - [The Procurement Act 2023 \(The Act\)](#)
  - [The Social Partnership and Public Procurement \(Wales\) Act 2023 \(SPPP Act\)](#)
  - [The Health Service Procurement \(Wales\) Act 2024 \(HSP Act\)](#)
2. In addition to these areas of legislation, there is also the overarching framework for public procurement in Wales, [the Well-being of Future Generations \(Wales\) Act 2015](#) (WBFG Act).
3. This guidance will provide an overview of each area of legislation in the order listed above and, for the Act, it will also highlight any specific differences for Wales, as compared with England.

### The Procurement Act 2023

4. Once this legislation comes into force, it will replace the existing procurement legislation in Wales, namely the Public Contract Regulations 2015 (PCR), the Utilities Contract Regulations 2016 (UCR), and the Concession Contracts Regulations 2016 (CCR). Please see separate guidance on transitional and saving arrangements to determine how procurements which straddle the implementation date of the Act are to be carried out and which legislation will apply.
5. The Act will regulate the way that Devolved Welsh Authorities (DWAs) (as defined at section 111 of the Procurement Act) procure contracts covered by the Act and will ensure compliance with international agreements.
6. Welsh Government have made the [Procurement \(Wales\) Regulations 2024](#) (Welsh Regulations), which sit beneath the Act and which provide the detail needed for the law to operate in practice and be enforced.

### Differences for Wales

7. The provisions within the Procurement Act and Welsh Regulations predominantly apply to DWAs and non-DWAs (such as English Contracting Authorities) in the same way, however there are some important differences. These are set out below:



Act	Regulation	Description
<b>53(4) &amp; 77(3)</b>	-	DWA's are <b>not</b> required to publish public contracts or modified contracts valued over £5m. Wales has a derogation which removes this requirement except where a DWA awards a contract pursuant to a reserved (non-devolved) procurement arrangement. For example, under a framework which has been awarded by Crown Commercial Services (CCS).
<b>14</b>	-	DWA's are required to have regard to the Wales Procurement Policy Statement (WPPS) rather than the National Procurement Policy Statement (NPPS). Where there is cross border collaboration, the policy statement which applies will depend on who the lead authority / centralised procurement authority is.
-	<b>28 - 31</b>	DWA's are not required to publish the names of unsuccessful suppliers in Contract Award Notices for contracts valued above £5m, unless the contract was awarded under a reserved (non-devolved) procurement arrangement. DWA's will however need to provide this information for data collection and analysis purposes. The Welsh Government will be issuing separate guidance on this.
-	<b>26</b>	DWA's will need to confirm that a conflicts assessment was prepared and revised when publishing a dynamic market modification notice.
-	<b>5</b>	In order to fulfil the obligation to publish a notice, document or information on the Central Digital Platform (CDP), DWA's must submit the notice, document or information to the Welsh Digital Platform, Sell2Wales, unless it is unavailable. Sell2Wales will feed into the CDP and will publish on Sell2Wales itself (after it has been published on the CDP).
<b>85</b>		For regulated below-threshold contracts, DWA's are permitted to restrict the submission of tenders by reference to an assessment of the supplier's suitability to perform the contract (i.e. they can use a Pre-Qualification Questionnaire stage). A regulated below-threshold contract means a below-threshold contract which is not an exempted contract, a concession contract or a utilities contract.
-	<b>37</b>	Unique supplier IDs will be required for the notifiable below-threshold contract details notice. A notifiable below-threshold contract is a regulated below-threshold contract with a value above £30,000 (including VAT) to be awarded by a DWA. However, if a DWA is also a central government authority (CGA) and is awarding a



		notifiable below-threshold contract under a reserved (non-devolved) procurement arrangement (for example where a CGA has utilised a CCS framework), then the value is above £12,000 (including VAT). The list of CGAs is included at Schedule 2 of the Welsh Regulations.
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8. Welsh Government will lay further regulations later in the year which will come into force at the same time as the Act and the Welsh Regulations referenced above. These regulations will update the threshold amounts listed in Schedule 1 of the Act in line with the GPA thresholds, which are detailed in [PPN 11/23](#); and will provide detail on how the percentages contained within Schedule 2 of the Act (Exempted Contracts) are to be calculated, although it should be noted that the policy intent is to maintain the effect of the exemptions in the PCR and UCR.

### The Social Partnership and Public Procurement (Wales) Act 2023

9. When brought into force the socially responsible procurement duty in the SPPP Act will require public bodies to improve economic, social, environmental and cultural wellbeing by carrying out procurement in a socially responsible way. The socially responsible procurement duties complement the existing well-being duties that certain public bodies are already subject to under Part 2 of the WBFG Act In this section of the guidance, a “public body” means a person listed as a “public body” in section 6(1) of the WBFG 2015, but for the purposes of sections 16 and 18 it does not include the Welsh Ministers.
10. The SPPP Act and the regulations which sit beneath the Act will come into force at a time when the Welsh Ministers consider appropriate in light of wider procurement reform activities.
11. The list of contracting authorities who must follow the socially responsible procurement duties in the SPPP Act differs from those defined as a DWA in the Act. A “contracting authority” (CA) in the SPPP Act means a body, office-holder or other person listed in Schedule 1 of that Act.
12. Public bodies and CAs covered by the SPPP Act can use this time to prepare for the changes the legislation will bring.
13. Summaries of the key procurement related requirements under the Act are listed below:



Act	Description
24	Socially responsible procurement duty. This requires a CA to seek to improve the economic, social, environmental and cultural well-being through procurement, contributing to well-being goals, setting and publishing objectives. It applies to all procurement.
25	For major construction contracts (which are over £2m), CAs must have regard to social public works clauses, consider their inclusion in relevant contracts, and ensure they are implemented where they are included. (NB. A notification duty applies if a decision is made not to include the clauses, see below).
26	For outsourcing services contracts, CAs must have regard to the public services outsourcing and workforce code and the social public workforce clauses, consider the inclusion of these clauses in relevant contracts, and ensure they are implemented where they are included. (NB. A notification duty applies if a decision is made not to include the clauses, see below)
28 & 34	Where social public works/workforce clauses have been included in a major construction or outsourcing services contract, respectively, the CA must take all reasonable steps to ensure that the obligations in the social public works clauses are implemented where the contractor enters into a subcontract with any other economic operator.
29 & 35	The CA must notify Welsh Ministers if social public works /workforce clauses are not to be, or have not been included in the relevant contracts, or there is no process to ensure the obligations in such clauses are implemented in the contract/sub-contract. Welsh Ministers will consider the reasons. They may be satisfied with the reasons, and if they are not satisfied, they may direct the CA to include the clauses. A summary of the outcome of Welsh Minister's considerations will be published.
38	The CA must prepare a procurement strategy setting out how the authority intends to carry out public procurement.
39	CAs that have awarded any prescribed contracts during a financial year must prepare and publish an annual report on its public procurement setting out how it has met its objectives. The information that must be included in the annual reports will be described in regulations
40	CAs must create, maintain and publish a contracts register. "Registrable contracts" will be defined in regulations.





## The Health Service Procurement (Wales) Act 2024

14. The provisions in the HSP Act provide the Welsh Ministers with powers to change the way health services, delivered on behalf of the NHS in Wales, are procured.
15. The forthcoming regulations under the HSP Act will reform the way certain health services are procured in Wales by 'relevant authorities' (as defined by the National Health Service (Wales) Act 2006<sup>1</sup>) by introducing a new regime that will increase flexibility, reduce bureaucracy, and encourage supplier collaborations and partnerships. The proposed changes to health service procurement are partly in response to the introduction of the UK Government's Department of Health and Social Care's Provider Selection Regime (PSR) in England.
16. The HSP Act received Royal Assent on 5 February 2024. The Welsh Government undertook a consultation exercise on the operational principles of the proposed new health service regime for Wales and have recently published a summary of responses<sup>2</sup>. Stakeholder feedback will inform the forthcoming PSR Wales regime, regulations and statutory guidance which will set out the steps that relevant authorities need to follow when implementing the proposed new procurement regime for health services.
17. It is the intention to lay the PSR Wales regulations that underpin the new health services procurement regime before the Senedd in the coming months. Subject to the Senedd's agreement of the regulations, it is proposed that the new PSR Wales regime will come into force later this year (2024).

### Proposed application of the PSR Wales

18. It is proposed that if a relevant authority as defined by the National Health Service (Wales) Act 2006 is making decisions about awarding a contract or concluding a framework agreement for 'health services' that fall within one or more of the Common Procurement Vocabulary (CPV) codes set out in the forthcoming PSR Wales regulations, referred to as 'relevant health services', they must use the procurement processes set out in the proposed new PSR Wales regime. In addition, the regulations will make provision for mixed procurements whereby goods and other services that are 'connected to' a

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<sup>1</sup> [National Health Service \(Wales\) Act 2006 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2006/19/section/10A) – section 10A(9) defines a relevant authority as a county council or county borough council, a local health board, a National Health Service trust and a special health authority in Wales.

<sup>2</sup> [Health service procurement in Wales | GOV.WALES](#)



relevant health service can be procured under the PSR Wales regime in certain circumstances, which will be set out in the regulations.

19. Conversely, if the health service is not covered by the list of CPV codes in the proposed PSR Wales regulations, then the relevant authority will need to follow the requirements of the Procurement Act 2023.
20. Regardless of whether a contracting authority or relevant authority procures under the Procurement Act regulations or the PSR Wales regulations, they may still have to comply with the wider procurement principles and key criteria, such as the Socially Responsible Procurement Duties under the SPPP Act, the WBFG Act, etc.
21. Further detail of the proposed application will be provided in the statutory guidance for the PSR Wales.

## The Well-being of Future Generations (Wales) Act 2015

22. The WBFG Act requires public bodies in Wales to think about the long-term impact of their decisions, to work better with people, communities and each other, and to prevent persistent problems such as poverty, health inequalities and climate change. The WBFG Act provides an opportunity to transform the way procurement is planned and delivered in Wales. By moving from a process-driven approach towards an outcomes-based approach, this can ensure that public sector spend in Wales delivers the best outcomes for current and future generations.
23. The WBFG Act puts in place seven well-being goals and makes it clear that the public bodies covered by the WBFG Act must work to achieve all of the goals, not just one or two.
24. The seven well-being goals are:



25. The following links provide access to key information:

- [Well-being of Future Generations \(Wales\) Act 2015 \(legislation.gov.uk\)](https://legislation.gov.uk)
- [The Well-being of Future Generations | GOV.WALES](https://gov.wales)
- [Well-being of future generations act: the essentials \(gov.wales\)](https://gov.wales)

### Other potential requirements

26. You should also consider whether any of the [Wales Procurement Policy Notes](#) may apply to your procurement. For example, WPPN 3/21 encourages the use of project bank accounts (PBAs) as a means of addressing poor payment practices in public sector supply chains; and WPPN 04/21 provides the guidelines for deploying this project bank account policy.
27. A digital policy mapping tool is being developed by Welsh Government, which will, through completion of a short questionnaire, enable you to determine what policies will apply to your procurement and the appropriate actions that you should undertake.



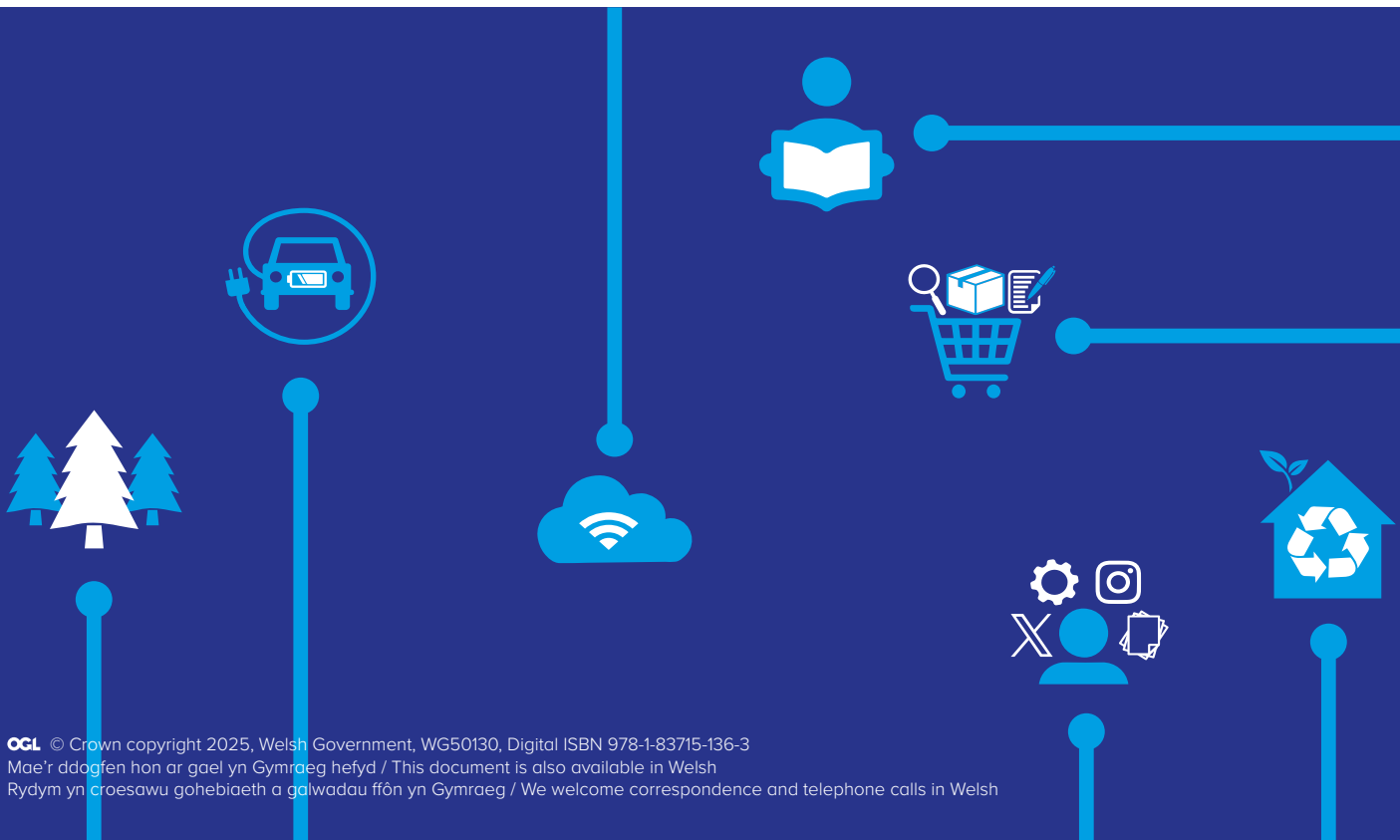


Llywodraeth Cymru  
Welsh Government

# Guidance

## Notice Sequencing and Flowcharts

January 2025





# Guidance: Notice Sequencing and Flowcharts

## Description of all notices under the Procurement Act 2023

1. Below is a description of all notices required under the Procurement Act 2023 (the Act). We have highlighted which notices are compulsory and which are voluntary. All values quoted within this document are inclusive of VAT.
  - a. **Pipeline Notice** – Compulsory for contracting authorities (CAs) who consider that they will pay more than £100m under relevant contracts in the coming financial year and if the contract will be over £2m. The pipeline notice must be published within 56 days of the first day of the relevant financial year, which is the period of twelve months beginning on 1 April.
  - b. **Planned Procurement Notice** – This is a voluntary notice that is equivalent to the Prior Information Notice (PIN) under the previous Regulations, although not used as a means to call for competition.
  - c. **Preliminary Market Engagement (PME) Notice** – Compulsory if a CA plans to conduct or has conducted PME. CAs don't have to conduct PME, but if they do then they must publish a PME notice or provide reasons for not doing so in the Tender Notice.
  - d. **Tender Notice** – Compulsory where a CA intends to award a public contract under section 19 of the Act ('public contract' is defined at Section 3 of the Act). This does not apply if a Dynamic Market (DM) call-off relates to a qualifying utilities DM or for below threshold DM call-offs put in place by a devolved Welsh authority.
  - e. **Procurement Termination Notice** – Compulsory if, after publishing a tender or transparency notice in respect of a public contract a CA decides not to award the contract. Please note, this does not apply to private utilities.
  - f. **Contract Award Notice** – This is a compulsory notice which establishes the CA's intention to enter into, and must be published before entering into, a public contract.
  - g. **Contract Details Notice (CDN)** – This is a compulsory notice which sets out that a public contract has been entered into. When publishing a CDN devolved Welsh authorities do not need to publish a copy of the (redacted) contract, unless they are procuring a public contract with an estimated value of more than £5m under a reserved procurement arrangement, (i.e. a framework or dynamic market awarded by an English / non- devolved CA.).



- h. **Contract Change Notice (CCN)** – Compulsory if certain thresholds stated in the Act are met. A CA must publish a CCN before modifying an existing public contract (except in prescribed circumstances). Please refer to the guidance on ‘Contract Modifications’ for the circumstances under which a CA must publish a CCN and any associated documents. Devolved Welsh authorities should note that, if they are procuring under a reserved procurement arrangement, they may need to publish a copy of the (redacted) modified public contract, should the contract modification meet certain thresholds (as outlined in the ‘Contract Modifications’ guidance).
- i. **Contract Termination Notice (CTN)** – This is a compulsory notice for a public contract, and it must be published within 30 days of termination (including termination by a party, discharge, expiry, rescission and set aside by a court order.)

A CTN does not apply:

- i. to private utilities, or
  - ii. in relation to user choice contracts (see section 41 and Schedule 5, paragraph 15 of the Act).
- j. **Dynamic Market (DM) Notices** – Compulsory where a dynamic market is to be advertised, established, awarded, modified or ceases to operate. There will be one notice called Dynamic Market Notice, which then gets updated as it flows through each of the stages.

1 – Advertising,

2 – Establishment,

3 – Change,

4 – Termination.

Note that Stage 4 does not apply if the DM was established by a private utility.

- k. **Transparency Notice** – Compulsory where there is a direct award under section 41 or section 43 of the Act.
- l. **Below Threshold Tender Notice** – Compulsory where a contracting authority intends to advertise for the purpose of inviting tenders for a below threshold procurement.
- m. **Contract Performance Notice (CPN)** – This is a compulsory notice in the circumstances outlined below and fulfils two actions during the contract management stage (please note however, that a CPN is not required for a utilities contract awarded by a private utility):



- Key Performance Indicators: There will need to be a contract performance notice for all contracts valued over £5m where key performance indicators (KPIs) have been set (as outlined in the KPIs guidance). It must be published at least once in every twelve month period during the life-cycle of the contract and on termination of the contract, and must assess the supplier's performance against the set KPIs.
- Breach/Failure to Perform: The CPN must also be published if there is a breach or failure to perform, (as outlined in the Contract Performance Notice guidance). The requirement to publish a CPN for breaches of contract or poor performance applies to most public contracts, not just those valued above £5 million. However, if the contract is terminated in full a contract termination notice is required.




## Notice Flowcharts

2. The information on the following pages is adapted from the 'Notice Flowchart' (available [here](#)).
3. **Please note that all values quoted within this document are inclusive of VAT.**

## Notices required under the Procurement Act 2023 Key

4. The following key is for all the flowcharts below:

**Key:**

-  Notices required in certain circumstances in blue.
-  Mandatory notices in red.
-  Optional notices in green.

Key:

Notices required in certain circumstances in blue.

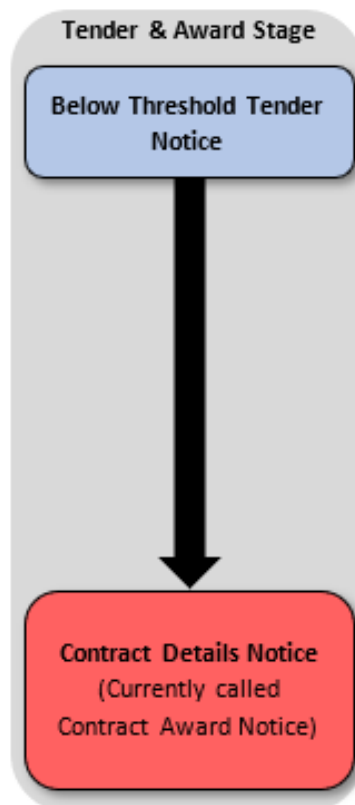
Mandatory notices in red.

Optional notices in green.



## Notifiable Below Threshold

5. Differences for notifiable below-threshold contracts in Wales:
  - a. For devolved Welsh authorities a “notifiable below-threshold contract” is a regulated below-threshold contract with an estimated value above £30,000. This threshold will apply equally to Welsh central government authorities (CGAs) and non-CGAs.
  - b. If a Welsh CGA is procuring under a reserved procurement arrangement, for example a Framework established by Crown Commercial Service, then the below-threshold value that would apply is £12,000.
  
6. The flowchart below shows the sequence of notices to be published for a notifiable below threshold procurement.



Tender and Award Stage:

Below Threshold Tender Notice - required in certain circumstances.

Contract Details Notice (Currently called Contract Award Notice) – mandatory.





### Relevant Guidance for Notifiable Below Thresholds:

- Guidance on below-threshold contracts
- Guidance on contract details notice and contract documents

### Public Contracts

7. All notices in the following sections of this guidance refer to Public Contracts.
8. A public contract is defined within Section 3 of the Act, which states:

**Any contract for the supply, for pecuniary interest, of goods, services or works to a contracting authority which—**

- a. has an estimated value of not less than the threshold amount for the type of contract, and
- b. is not an exempted contract.

**Any framework which—**

- a. has an estimated value of not less than the threshold amount for the type of contract, and
- b. is not an exempted contract.

**Any concession contract which—**

- a. has an estimated value of not less than the threshold amount for the type of contract, and
- b. is not an exempted contract.

**Schedule 1 in the Procurement Act sets out the threshold amounts.**

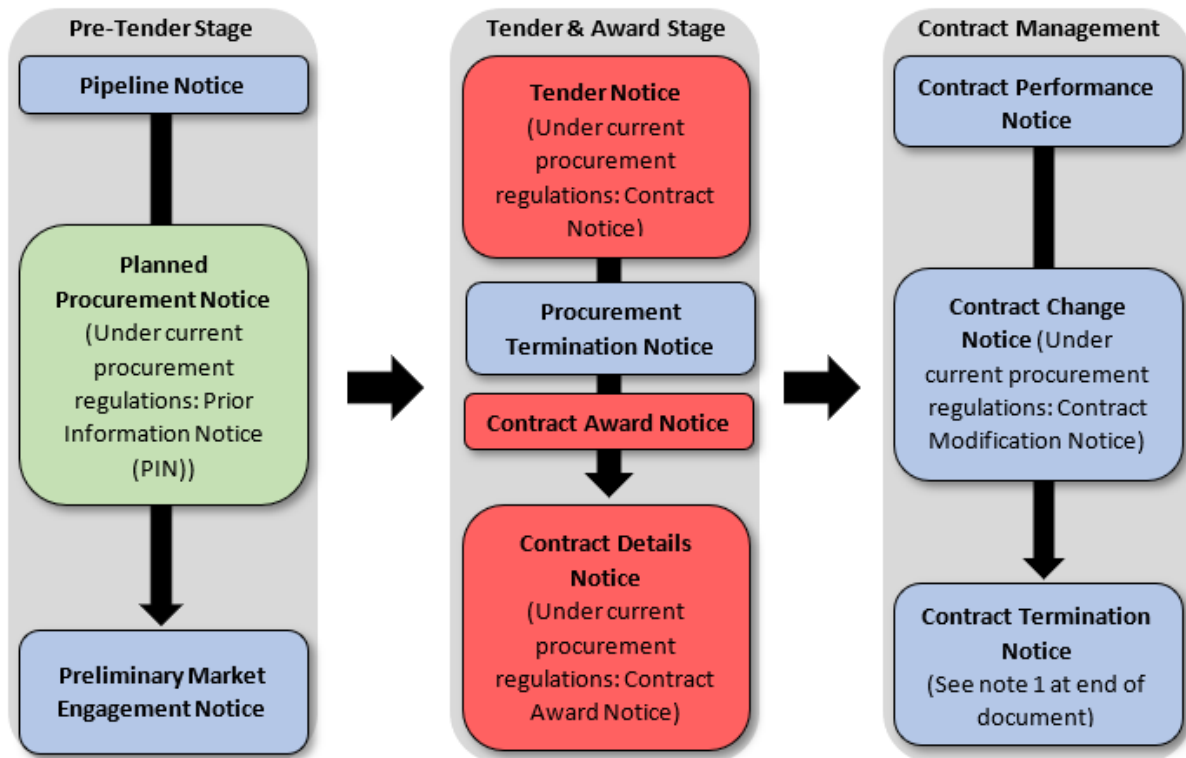
### Relevant Guidance for Public Contracts:

- Guidance on covered procurement
- Guidance on thresholds



## Open Procedure/Competitive Flexible Procedure

9. The flowchart below shows the sequence of notices to be published for an open procedure/competitive flexible procedure.



### Pre-Tender Stage:

Pipeline Notice - required in certain circumstances.

Planned Procurement Notice (Under current procurement regulations: Prior Information Notice (PIN)) – optional.

Preliminary Market Engagement Notice - required in certain circumstances.

### Tender and Award Stage:

Tender Notice (Under current procurement regulations: Contract Notice) – mandatory.

Procurement Termination Notice - required in certain circumstances.

Contract Award Notice – mandatory.

Contract Details Notice - Under current procurement regulations: Contract Award Notice) – mandatory.



## Contract Management:

Contract Performance Notice - required in certain circumstances.

Contract Change Notice (Under current procurement regulations: Contract Modification Notice) - required in certain circumstances.

Contract Termination Notice (See note 1 at end of document) - required in certain circumstances.

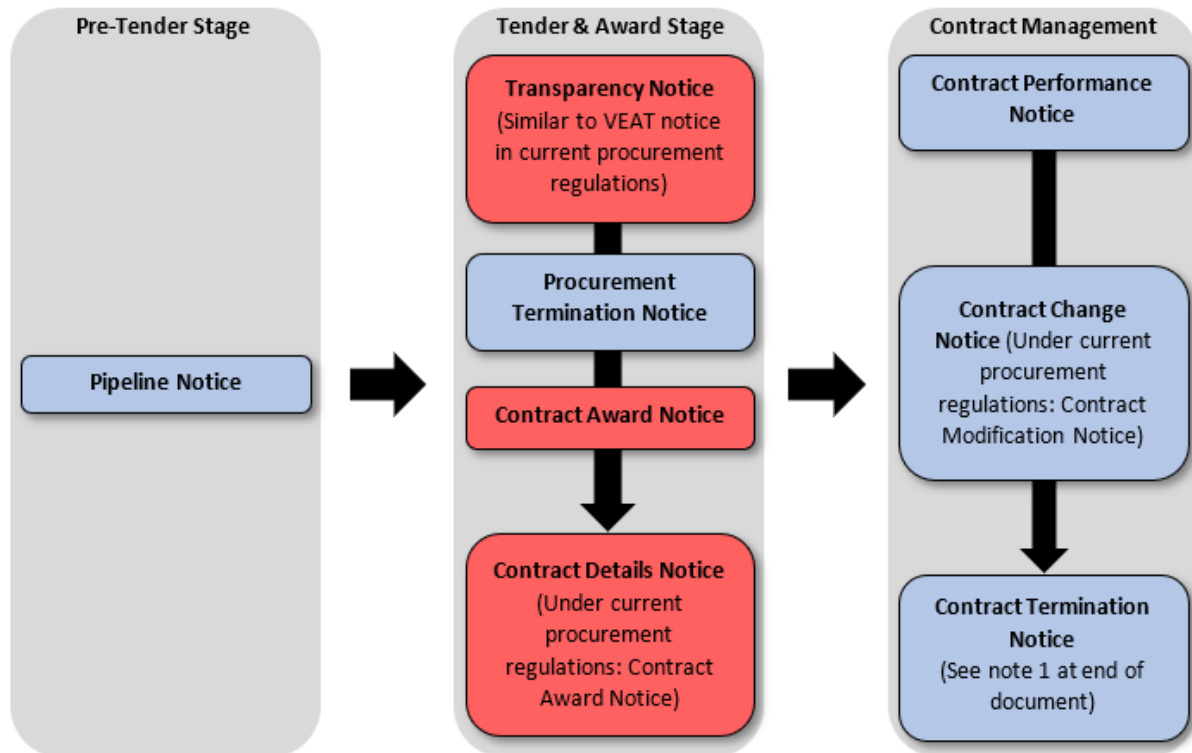
## Relevant Guidance for Open Procedure/Competitive Flexible Procedure:

- Guidance on competitive tendering procedures and tender notices
- Guidance on pipeline notice
- Guidance on planned procurement notices
- Guidance on preliminary market engagement
- Guidance on procurement termination notice
- Guidance on contract award notices and standstill
- Guidance on contract details notice and contract documents
- Guidance on contract performance notices
- Guidance on contract modifications
- Guidance on contract termination



## Direct Award

10. The flowchart below shows the sequence of notices to be published for a direct award.



Pre-Tender Stage:

Pipeline Notice - required in certain circumstances.

Tender and Award Stage:

Transparency Notice (similar to VEAT notice in current procurement regulations) – mandatory.

Procurement Termination Notice - required in certain circumstances.

Contract Award Notice – mandatory.

Contract Details Notice (Under current procurement regulations: Contract Award Notice) – mandatory.

Contract Management:

Contract Performance Notice - required in certain circumstances.



Contract Change Notice (Under current procurement regulations: Contract Modification Notice) - required in certain circumstances.

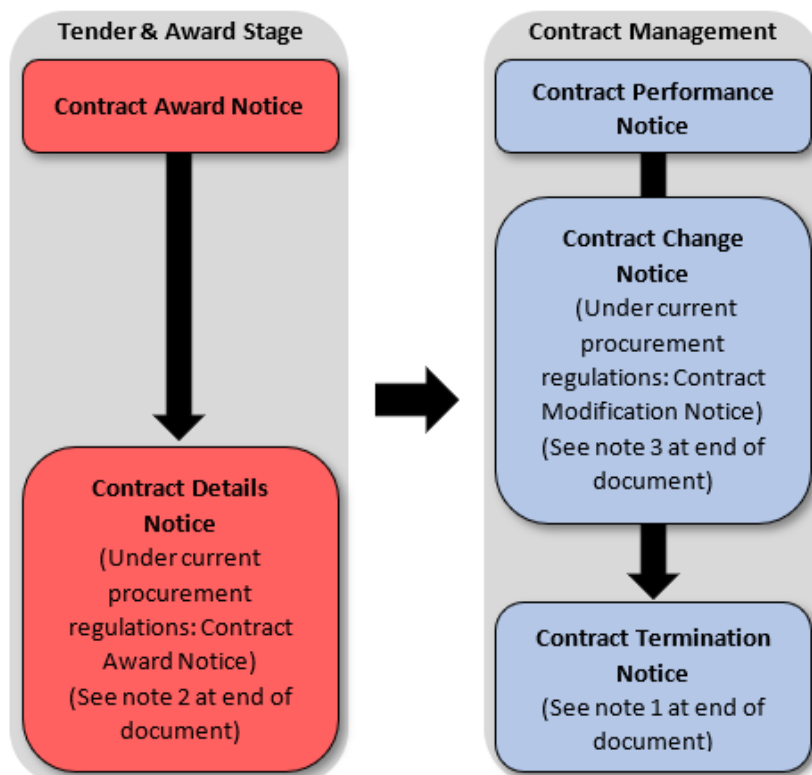
Contract Termination Notice (See note 1 at end of document) - required in certain circumstances.

#### Relevant Guidance for Direct Award:

- Guidance on direct award
- Guidance on pipeline notice
- Guidance on procurement termination notice
- Guidance on contract award notices and standstill
- Guidance on contract details notice and contract documents
- Guidance on contract performance notices
- Guidance on contract modifications
- Guidance on contract termination

#### Call-offs from Frameworks

11. The flowchart below shows the sequence of notices to be published for call-offs from frameworks.



## Tender & Award Stage:

Contract Award Stage – mandatory.

Contract Details Notice (Under current procurement regulations: Contract Award Notice) (See note 2 at end of document) – mandatory.

## Contract Management:

Contract Performance Notice - required in certain circumstances.

Contract Change Notice (Under current procurement regulations: Contract Modification Notice) (See note 3 at end of document) - required in certain circumstances.

Contract Termination Notice (See note 1 at end of document) - required in certain circumstances.

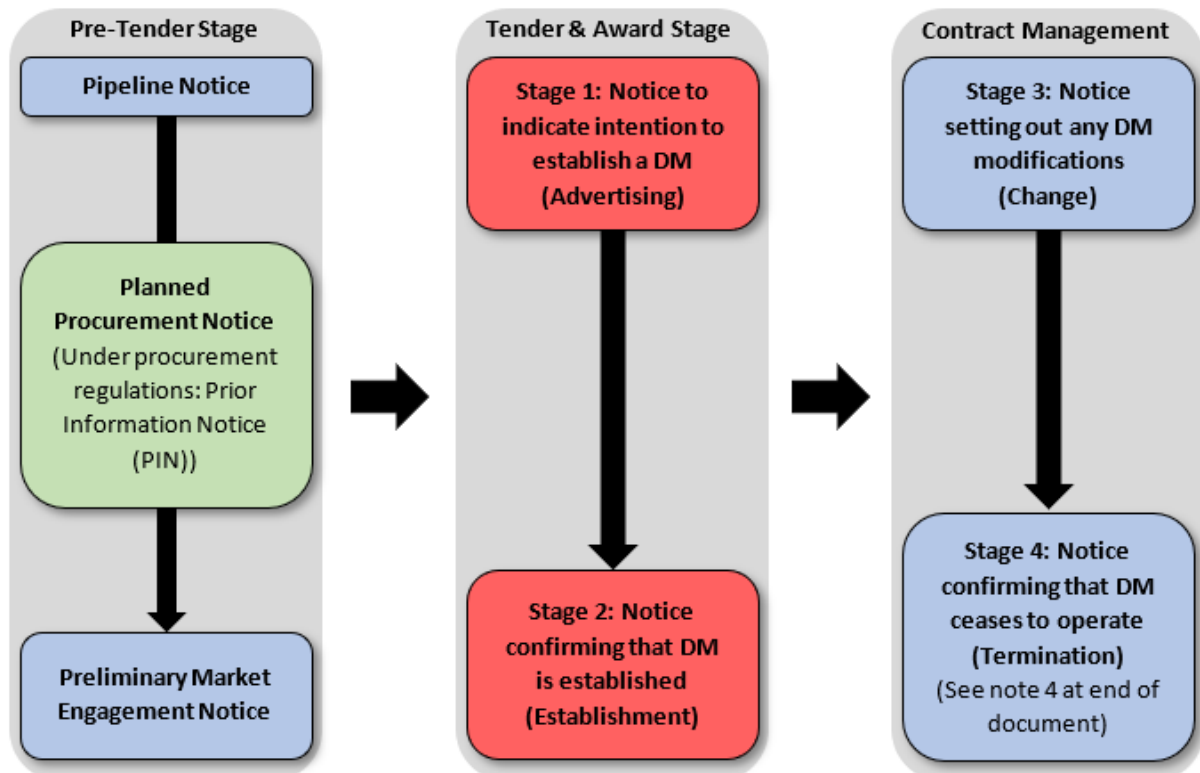
## Relevant Guidance for Call-offs from Frameworks:

- Guidance on frameworks
- Guidance on contract award notices and standstill
- Guidance on contract details notice and contract documents
- Guidance on contract performance notices
- Guidance on contract modifications
- Guidance on contract termination



## Dynamic Markets (DM)

12. The flowchart below shows the sequence of notices to be published for dynamic markets (DM).



### Pre-Tender Stage:

Pipeline Notice - required in certain circumstances.

Planned Procurement Notice (Under procurement regulations: Prior Information Notice (PIN)) – optional.

Preliminary Market Engagement Notice - required in certain circumstances.

### Tender and Award Stage:

Stage 1: Notice to indicate intention to establish DM (Advertising) – mandatory.

Stage 2 Notice confirming that DM is established (Establishment) – mandatory.



## Contract Management:

Stage 3: Notice setting out any DM modifications (change) - required in certain circumstances.

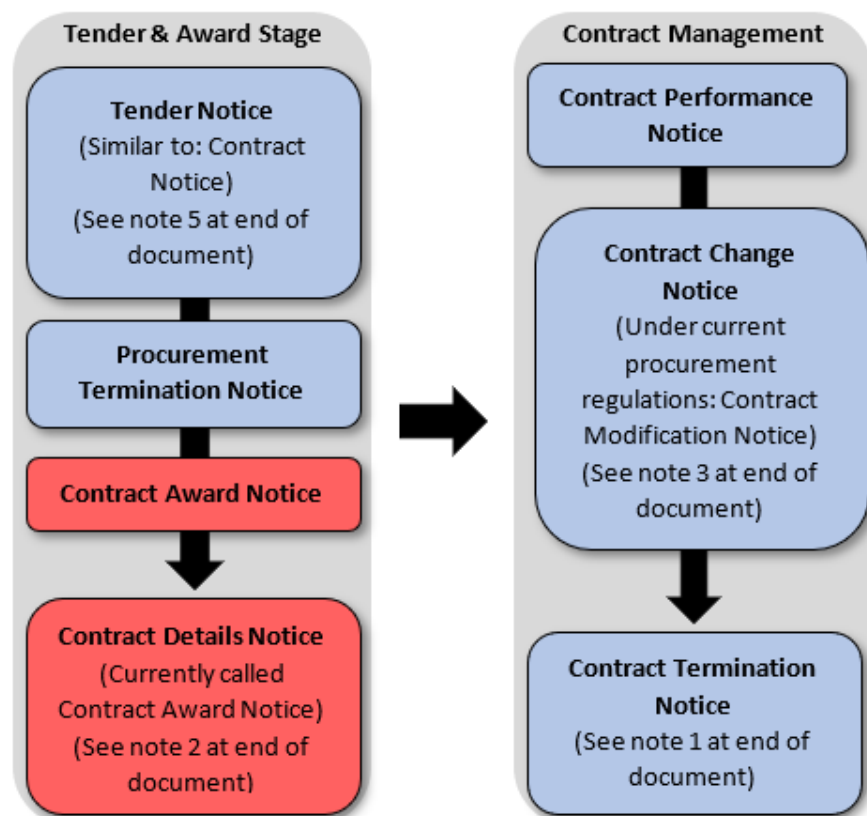
Stage 4: Notice confirming that DM ceases to operate (Termination) (See note 4 at end of document) - required in certain circumstances.

## Relevant Guidance for Dynamic Markets (DM):

- Guidance on pipeline notice
- Guidance on planned procurement notice
- Guidance on preliminary market engagement
- Guidance on dynamic markets

## Call-off from Dynamic Markets

13. The flowchart below shows the sequence of notices to be published for a call-off from dynamic markets.







## Tender & Award Stage:

Tender Notice (similar to: Contract Notice) (See note 5 at end of document) - required in certain circumstances.

Procurement Termination Notice - required in certain circumstances.

Contract Award Notice – mandatory.

Contract Details Notice (Currently called Contract Award Notice) (See note 2 at end of document) – mandatory.

## Contract Management:

Contract Performance Notice - required in certain circumstances.

Contract Change Notice (Under current procurement regulations: Contract Modification Notice) (See note 3 at end of document) - required in certain circumstances.

Contract Termination Notice (See note 1 at end of document) - required in certain circumstances.

## Relevant Guidance for Call-offs from Dynamic Markets:

- Guidance on procurement termination notice
- Guidance on contract award notices and standstill
- Guidance on contract details notice and contract documents
- Guidance on contract performance notices
- Guidance on contract modifications
- Guidance on contract termination
- Guidance on dynamic markets



## Notes

14. Please see below notes 1 - 5 which are extracted from the Notes page in the 'Notice Flowchart' available [here](#).

**Note 1:** Contract Termination Notices are compulsory for a public contract, however they do not apply to private utilities, or user choice contracts (see section 41 and Schedule 5, paragraph 15 of the Act).

**Note 2:** Devolved Welsh authorities are required to publish redacted contracts only if the contract was awarded as part of a procurement under a reserved procurement arrangement (i.e. a framework or Dynamic Market awarded by an English / non-devolved contracting authority) and the value of the call off is over £5m.

**Note 3:** Devolved Welsh authorities are required to publish redacted modified contracts or the modification only if the contract was awarded as part of a procurement under a reserved procurement arrangement (i.e. a framework or Dynamic Market awarded by an English / non-devolved contracting authority) and the value of the call off is over £5m.

**Note 4:** The notice confirming that a Dynamic Market has ceased to operate is not required if the Dynamic Market was established by a private utility.

**Note 5:** A tender notice for a call off from a Dynamic Market (DM) does not apply if the call-off relates to:

- a. A qualifying utilities DM; or
- b. For below threshold call-offs put in place by a devolved Welsh authority.

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# Procurement Act 2023: Notice Flowchart



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# Notices required under the Procurement Act 2023 Key




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## Key:

-  Notices required in certain circumstances in blue.
-  Mandatory notices in red.
-  Optional notices in green.



# Notifiable Below Threshold

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## Difference for Wales (1)

For devolved Welsh authorities a “notifiable below-threshold contract” is a regulated below-threshold contract with an estimated value above £30,000. This threshold will apply equally to Welsh central government authorities (CGAs) and non-CGAs.

### Tender & Award Stage

Below Threshold Tender  
Notice



Contract Details  
Notice  
(Currently called  
Contract Award Notice)

## Difference for Wales (2)

If a Welsh CGA is procuring under a reserved procurement arrangement, for example a Framework established by Crown Commercial Service, then the below-threshold value that would apply is £12,000.

# Public Contracts

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All notices in the following slides refer to Public Contracts.

**A public contract is defined within Section 3 of the Act, which states:**

**Any contract for the supply, for pecuniary interest, of goods, services or works to a contracting authority which—**

- (a) has an estimated value of not less than the threshold amount for the type of contract, and
- (b) is not an exempted contract.

**Any framework which—**

- (a) has an estimated value of not less than the threshold amount for the type of contract, and
- (b) is not an exempted contract.

**Any concession contract which—**

- (a) has an estimated value of not less than the threshold amount for the type of contract, and
- (b) is not an exempted contract.

**Schedule 1 in the Procurement Act sets out the threshold amounts.**

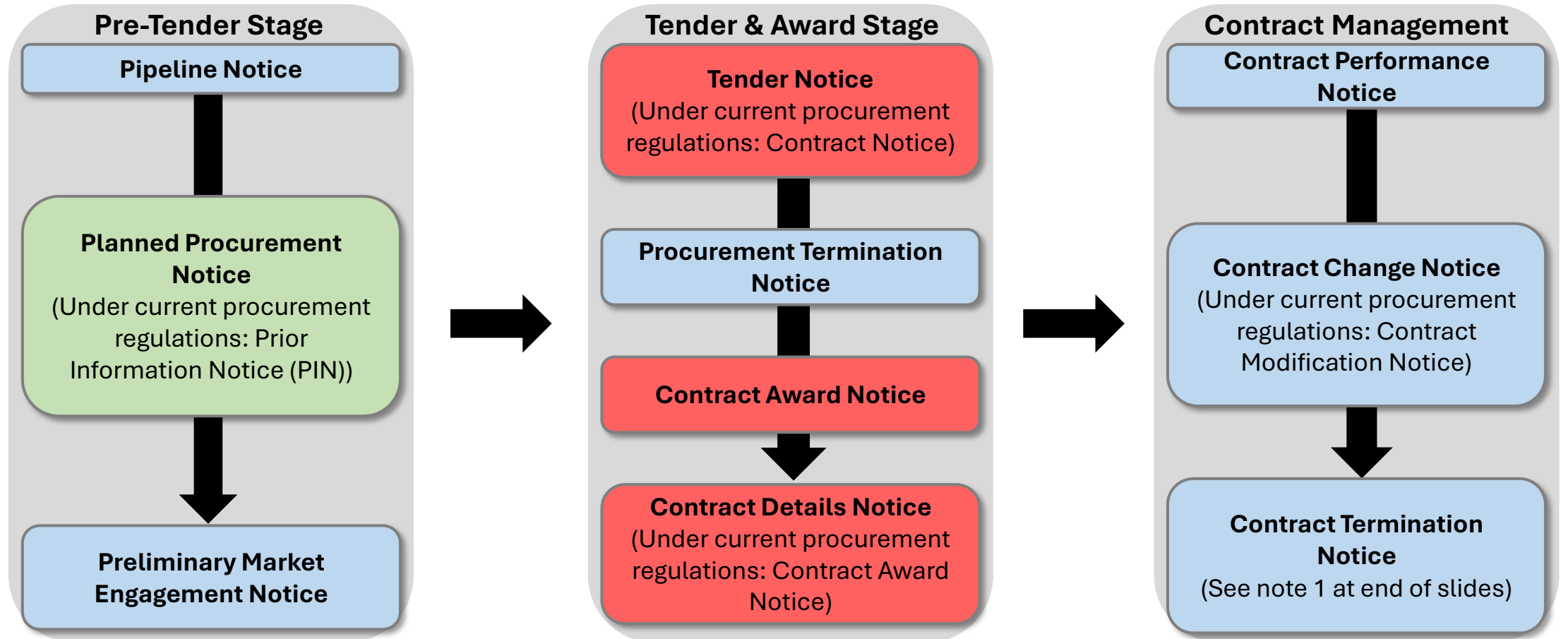
# Open Procedure/Competitive Flexible Procedure

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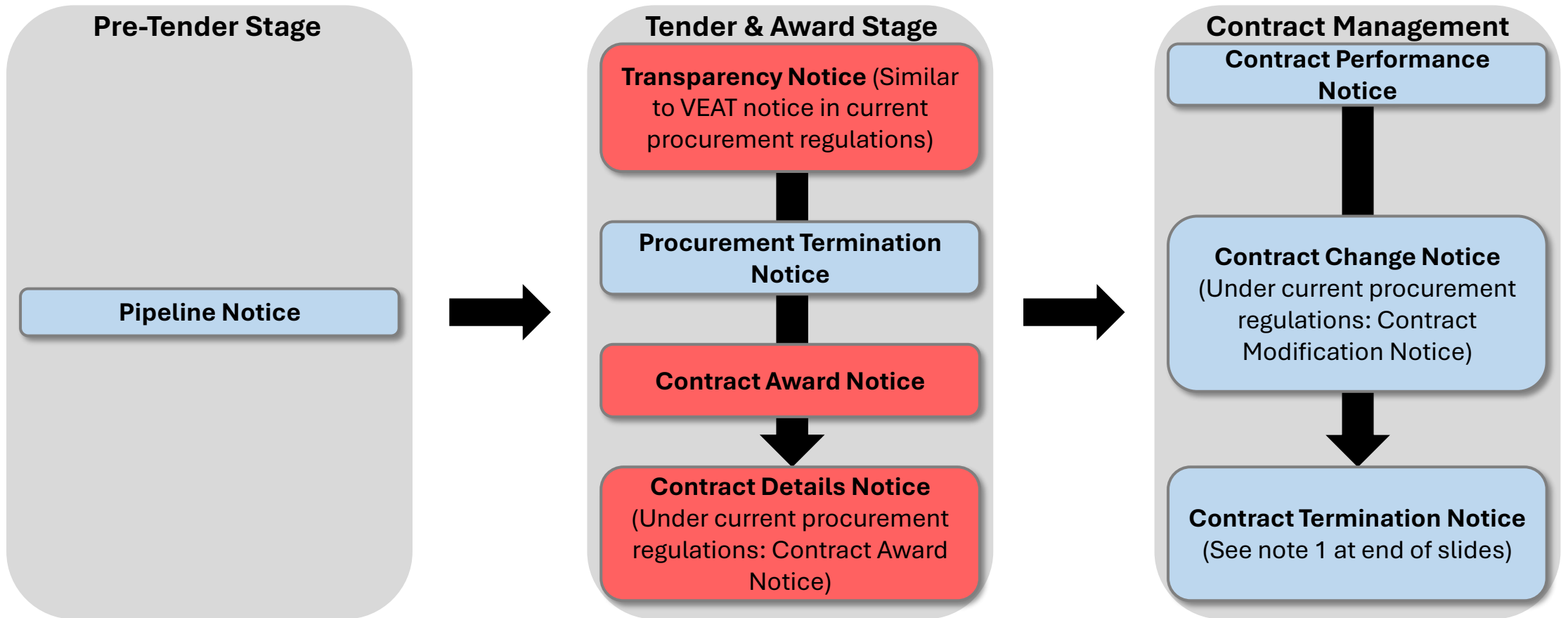
# Direct Award

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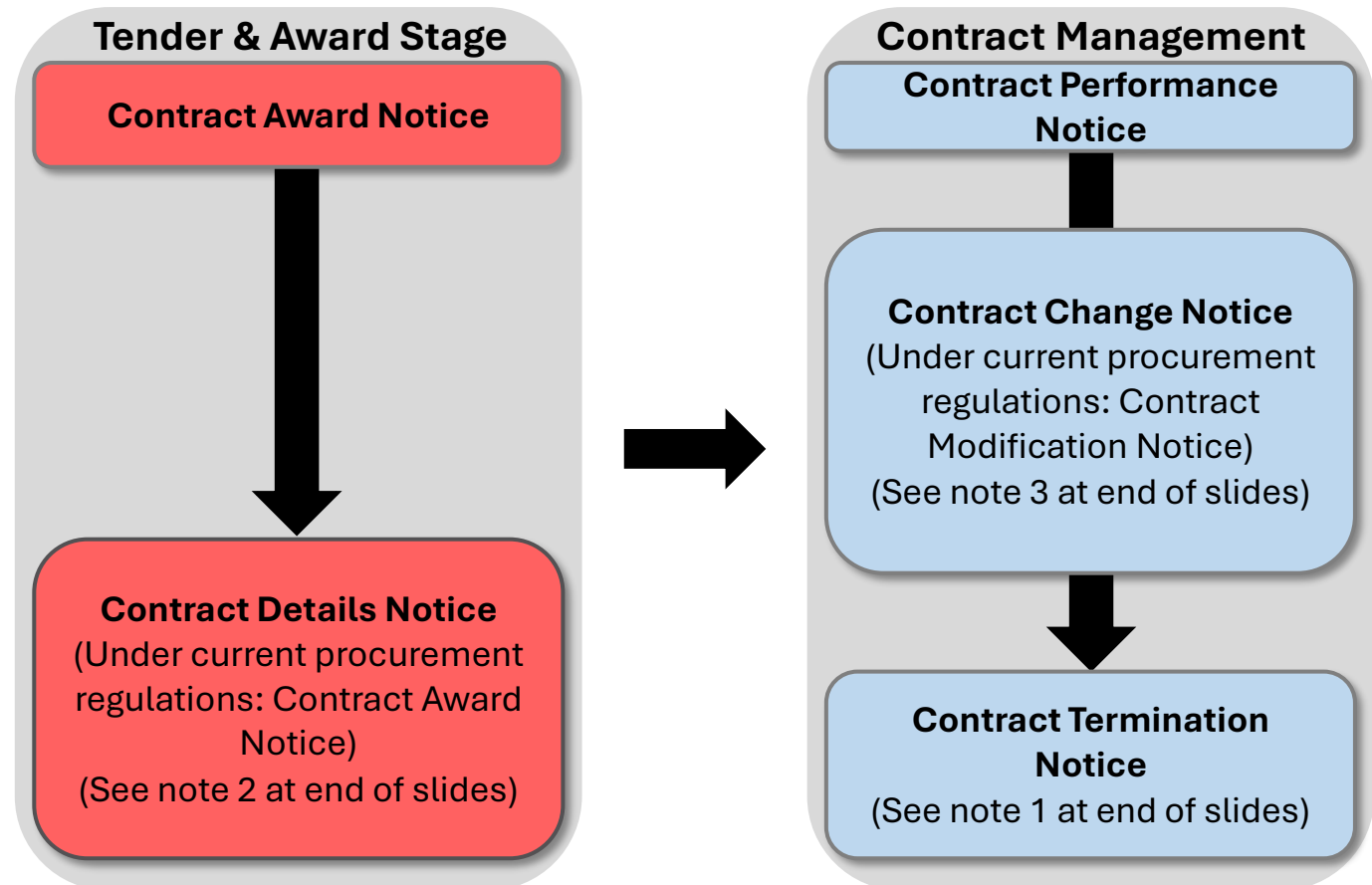
# Call-offs from frameworks

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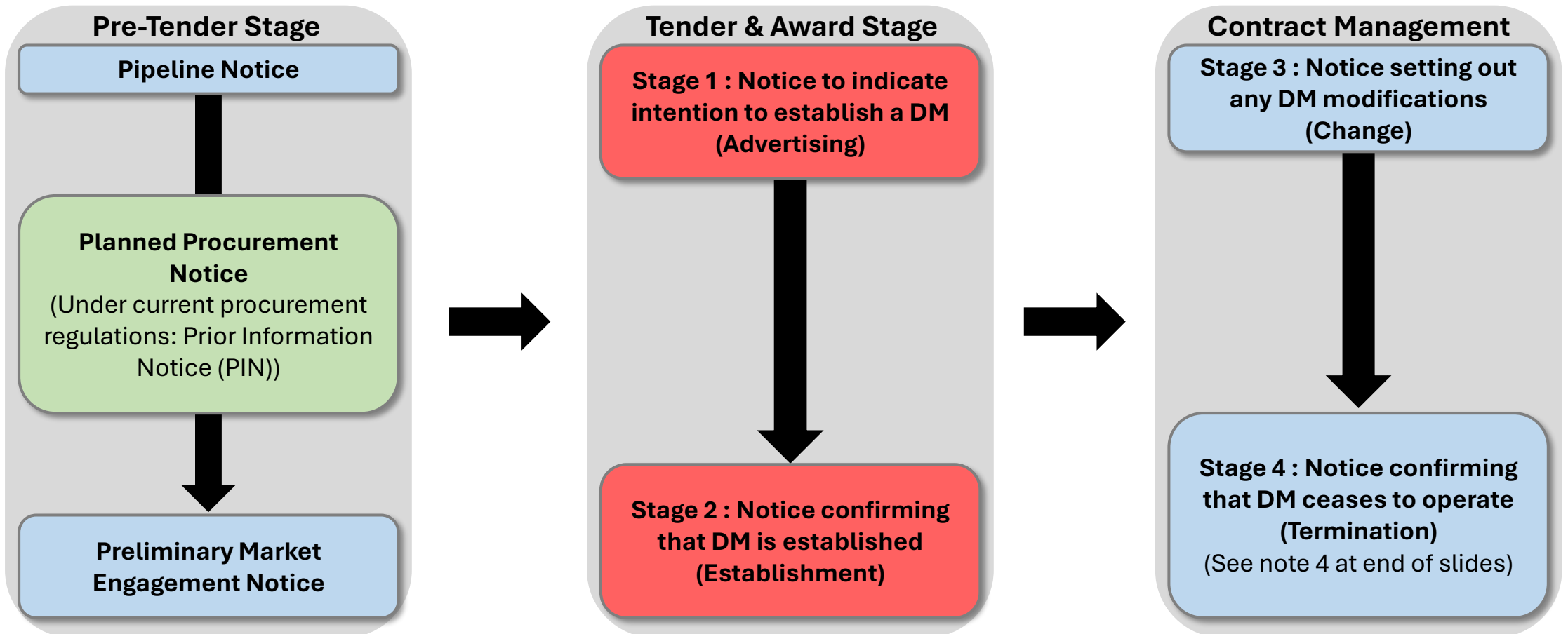
# Dynamic Markets (DM)

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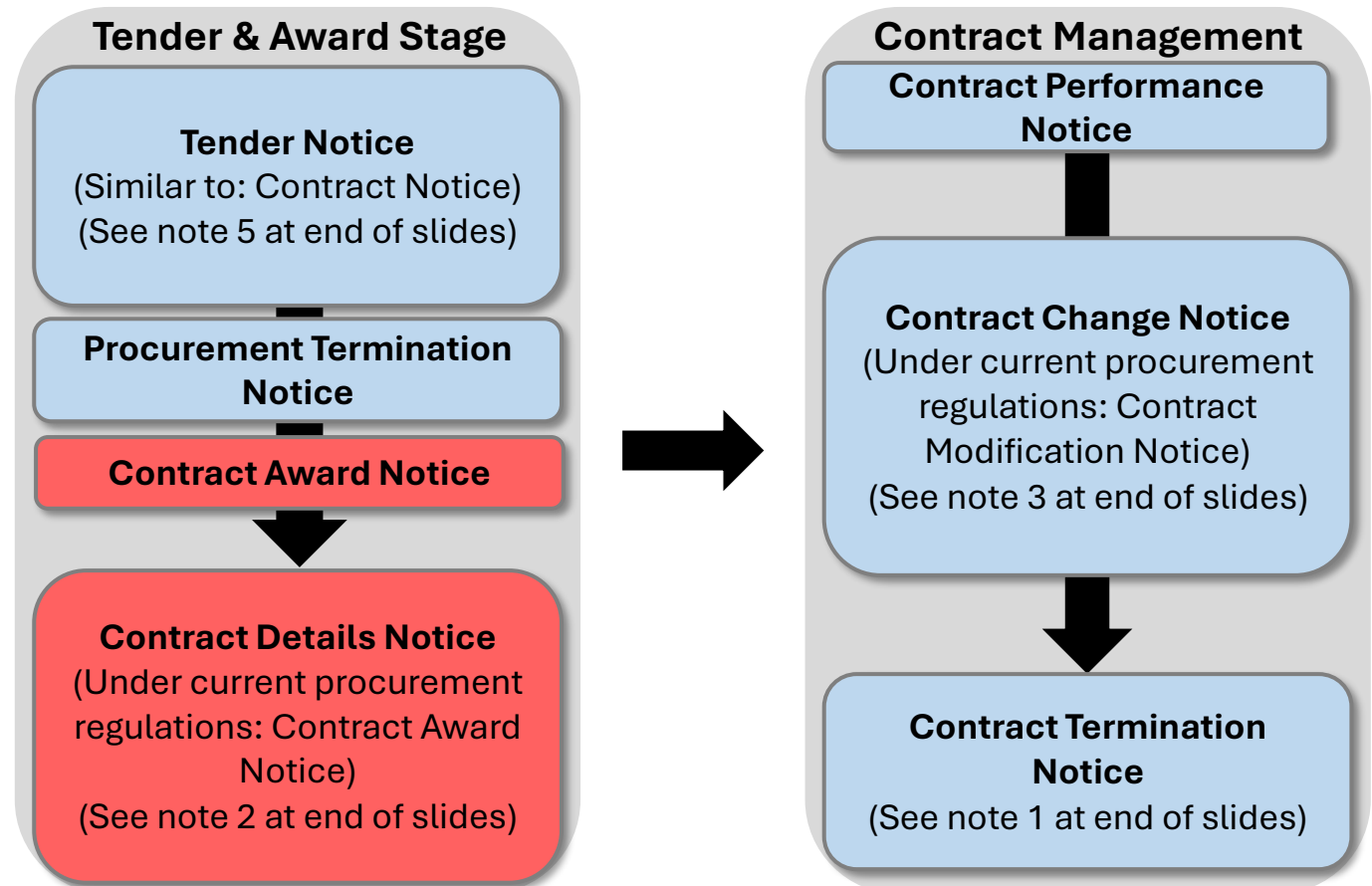
# Call-off from dynamic markets (DM)

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# Notes

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1. Contract Termination Notices are compulsory for a public contract, however they do not apply to private utilities, or user choice contracts (see section 41 and Schedule 5, paragraph 15 of the Act).
2. Contract Details Notice: Devolved Welsh authorities are required to publish redacted contracts only if the contract was awarded as part of a procurement under a reserved procurement arrangement (i.e. a framework or Dynamic Market awarded by an English / non-devolved contracting authority) and the value of the call off is over £5m.
3. Devolved Welsh authorities are required to publish redacted modified contracts or the modification only if the contract was awarded as part of a procurement under a reserved procurement arrangement (i.e. a framework or Dynamic Market awarded by an English / non-devolved contracting authority) and the value of the call off is over £5m.
4. The notice confirming that a Dynamic Market has ceased to operate is not required if the Dynamic Market was established by a private utility.
5. A tender notice for a call off from a Dynamic Market (DM) does not apply if the call-off relates to:
  - a) A qualifying utilities DM; or
  - b) For below threshold call-offs put in place by a devolved Welsh authority.



# Description of all notices under the Procurement Act 2023

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Below is a description of all notices required under the Procurement Act 2023 (the Act). We have highlighted which notices are compulsory and which are voluntary. All values quoted within this document are inclusive of VAT.

- 1. Pipeline Notice** – Compulsory for contracting authorities (CAs) who consider that they will pay more than £100m under relevant contracts in the coming financial year and if the contract will be over £2m. The pipeline notice must be published within 56 days of the first day of the relevant financial year, which is the period of twelve months beginning on 1 April.
- 2. Planned Procurement Notice** – This is a voluntary notice that is equivalent to the Prior Information Notice (PIN) under the previous Regulations, although not used as a means to call for competition.
- 3. Preliminary Market Engagement (PME) Notice** – Compulsory if a CA plans to conduct or has conducted PME. CAs don't have to conduct PME, but if they do then they must publish a PME notice or provide reasons for not doing so in the Tender Notice.
- 4. Tender Notice** – Compulsory where a CA intends to award a public contract under section 19 of the Act ('public contract' is defined at Section 3 of the Act). This does not apply if a Dynamic Market (DM) call-off relates to a qualifying utilities DM or for below threshold DM call-offs put in place by a devolved Welsh authority.
- 5. Procurement Termination Notice** – Compulsory if, after publishing a tender or transparency notice in respect of a public contract a CA decides not to award the contract. Please note, this does not apply to private utilities.
- 6. Contract Award Notice** – This is a compulsory notice which establishes the CA's intention to enter into, and must be published before entering into, a public contract.



# Description of all notices under the Procurement Act 2023

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7. **Contract Details Notice (CDN)** – This is a compulsory notice which sets out that a public contract has been entered into. When publishing a CDN devolved Welsh authorities do not need to publish a copy of the (redacted) contract, unless they are procuring a public contract with an estimated value of more than £5m under a reserved procurement arrangement, (i.e. a framework or dynamic market awarded by an English / non- devolved CA.).
8. **Contract Change Notice (CCN)** – Compulsory if certain thresholds stated in the Act are met. A CA must publish a CCN before modifying an existing public contract (except in prescribed circumstances). Please refer to the guidance on ‘Contract Modifications’ for the circumstances under which a CA must publish a CCN and any associated documents. Devolved Welsh authorities should note that, if they are procuring under a reserved procurement arrangement, they may need to publish a copy of the (redacted) modified public contract, should the contract modification meet certain thresholds (as outlined in the ‘Contract Modifications’ guidance).
9. **Contract Termination Notice (CTN)** – This is a compulsory notice for a public contract, and it must be published within 30 days of termination (including termination by a party, discharge, expiry, rescission and set aside by a court order). A CTN does not apply:
  - i. to private utilities, or
  - ii. in relation to user choice contracts (see section 41 and Schedule 5, paragraph 15 of the Act).
10. **Dynamic Market (DM) Notices** – Compulsory where a dynamic market is to be advertised, established, awarded, modified or ceases to operate. There will be one notice called Dynamic Market Notice, which then gets updated as it flows through each of the stages. 1 – Advertising, 2 – Establishment, 3 – Change, 4 - Termination. Note that Stage 4 does not apply if the DM was established by a private utility.
11. **Transparency Notice** – Compulsory where there is a direct award under section 41 or section 43 of the Act.



# Description of all notices under the Procurement Act 2023

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12. **Below Threshold Tender Notice** – Compulsory where a contracting authority intends to advertise for the purpose of inviting tenders for a below threshold procurement.
13. **Contract Performance Notice (CPN)** – This is a compulsory notice in the circumstances outlined below and fulfils two actions during the contract management stage (please note however, that a CPN is not required for a utilities contract awarded by a private utility):
  - **Key Performance Indicators:** There will need to be a contract performance notice for all contracts valued over £5m where key performance indicators (KPIs) have been set (as outlined in the KPIs guidance). It must be published at least once in every twelve month period during the life-cycle of the contract and on termination of the contract, and must assess the supplier's performance against the set KPIs.
  - **Breach/Failure to Perform:** The CPN must also be published if there is a breach or failure to perform, (as outlined in the Contract Performance Notice guidance). The requirement to publish a CPN for breaches of contract or poor performance applies to most public contracts, not just those valued above £5 million. However, if the contract is terminated in full a contract termination notice is required.

## 12.2

### **Plan**

- 12.2.1 Transitional and saving arrangements (published)
- 12.2.2 Contracting authorities (published)
- 12.2.3 Covered procurement (published)
- 12.2.4 Exempted contracts (published)
- 12.2.5 Devolved contracting authorities (Published)
- 12.2.6 Covered procurement objectives (Published)
- 12.2.7 Welsh Procurement Policy Statement (WPPS)
- 12.2.8 Utilities contracts (Published)
- 12.2.9 Concession contracts (published)
- 12.2.10 Light touch contracts (Published)
- 12.2.11 Reserved contracts for supported employment providers
- 12.2.12 Pipeline notice (published)



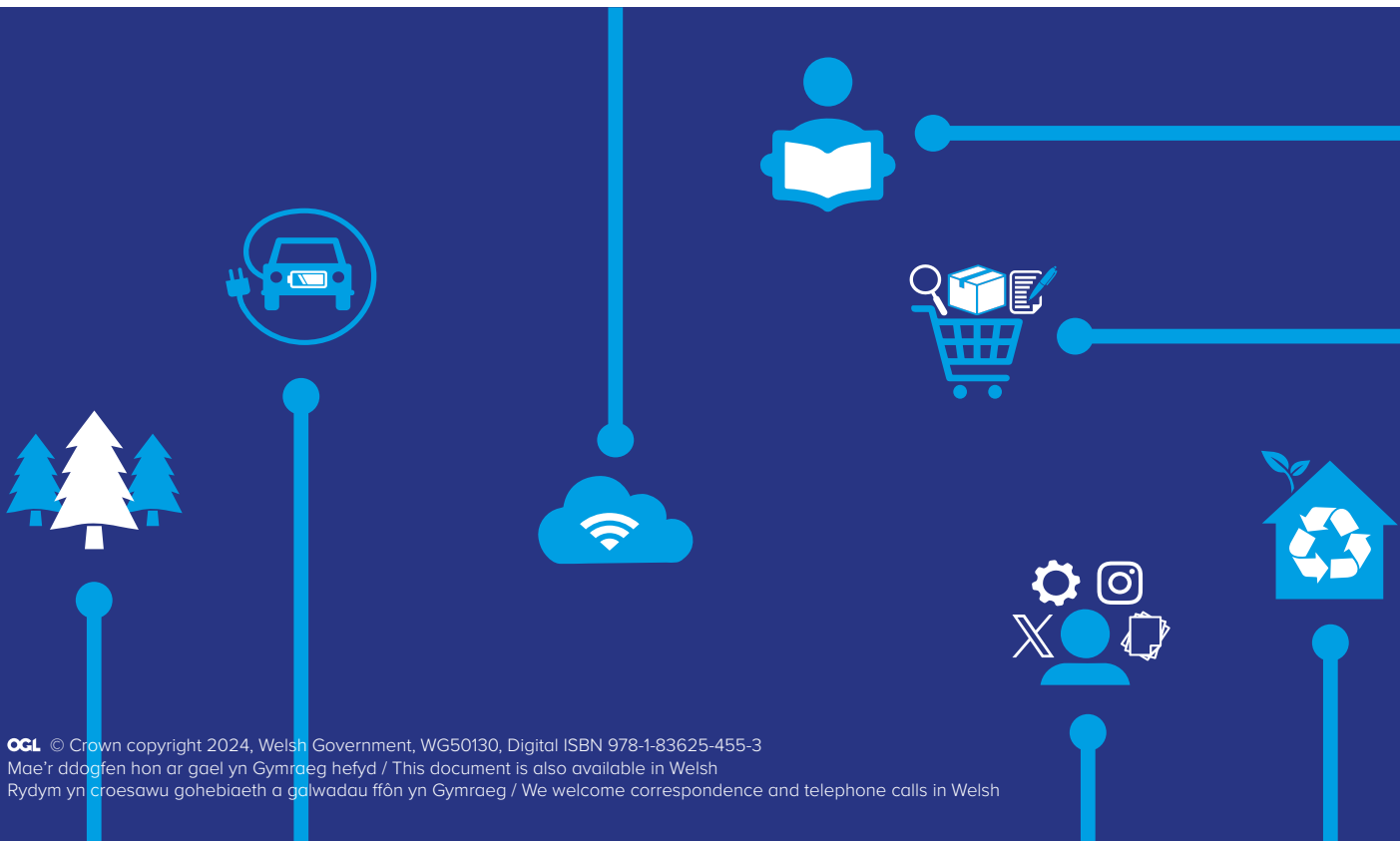


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# Guidance

## Procurement Act 2023 – List of Expressions and Definitions

July 2024





## Guidance: Procurement Act 2023 – List of Expressions and Definitions

The following table is listed in alphabetical order by expression/word used in the Procurement Act 2023 (“Act”). It is not an exhaustive list of all the expressions or words within the Act, but covers some of the main terms that devolved Welsh authorities may find relevant as a high-level reference aid. The table lists the expression/word, its meaning, and where it may be found within the Act to provide context and so that a devolved Welsh authority can refer back to the appropriate location in the Act.

The terms and wording under the columns ‘Provision Reference’, ‘Provision Title’ and ‘Meaning’ in the table below have not been translated, since the Procurement Act 2023 is UK Government legislation, and the original Act is only available in English.

<b>Expression</b>	<b>Provision Reference</b>	<b>Provision Title</b>	<b>Meaning</b>
air service	Schedule 2	Exempted Contracts	36(2) In this paragraph, “air service” means a flight, or a series of flights, carrying passengers or cargo (including mail).
airport	Schedule 2	Exempted Contracts	36(2) In this paragraph, “airport” means any area especially adapted for air services.
appropriate authority	section 123	Interpretation	(1) In this Act, “appropriate authority” means– (a) a Minister of the Crown, (b) the Welsh Ministers, or (c) a Northern Ireland department;



assessment summary	section 50	Contract award notices and assessment summaries	(4) An “assessment summary” means, in relation to an assessed tender, information about the contracting authority’s assessment of— (a) the tender, and (b) if different, the most advantageous tender submitted in respect of the contract.
appropriate supplier	section 72	Sub-contracting: directions	(4) In subsection (3), an “appropriate supplier” means a supplier that— (a) is not an excluded supplier, and (b) could have been relied on in place of the supplier referred to in subsection (1)(b)(ii).
assessed tender	section 50	Contract award notices and assessment summaries	(5) In this section, an “assessed tender” is a tender which— (a) was submitted in respect of the contract and assessed for the purposes of determining the most advantageous tender under section 19(1), and (b) was not disregarded in the assessment of tenders.
associated person	section 26	Excluding suppliers from a competitive award	(4) In this Act, “associated person” means a person that the supplier is relying on in order to satisfy the conditions of participation (see section 22(8)), but not a



			person who is to act as guarantor as described in section 22(9).
associated tender document	section 21	Tender notices and associated tender documents	(4) “Associated tender document” means, in relation to a tender notice, a document setting out information specified in regulations under section 95 that supplements that set out in the tender notice.
award criteria	section 23	Award criteria	(1) In this Act, “award criteria” means criteria set in accordance with this section against which tenders may be assessed for the purpose of awarding a public contract under section 19 (award following competitive tendering procedure).
below-threshold contract	section 5	Mixed procurement: above and below threshold	(5) In this Act “below-threshold contract” means— (a) a contract for the supply, for pecuniary interest, of goods, services or works to a contracting authority, (b) a framework, or (c) a concession contract, that has an estimated value of less than the threshold amount for the type of contract.
below-threshold tender notice	section 87	Regulated below-threshold	(5) A “below-threshold tender notice” is a notice setting out—



		contracts: notices	(a) that the contracting authority intends to award a contract, and (b) any other information specified in regulations under section 95.
central government authority	schedule 1	Threshold Amounts	(5)(1) In this Schedule, “central government authority” means a contracting authority specified, or of a description specified, in regulations made by an appropriate authority.
centralised procurement authority	section 1	Procurement and covered procurement	(4) In this Act, “centralised procurement authority” means a contracting authority that is in the business of carrying out procurement for or on behalf of, or for the purpose of the supply of goods, services or works to, other contracting authorities.
comparable contract	section 33	Reserving contracts to public service mutuals	(7) In this section, “comparable contract” means a contract that was— (a) a contract for the same kind of services, (b) awarded by the same contracting authority, and (c) awarded in reliance on this section
competitive flexible procedure	section 20	Competitive tendering procedures	(4) A competitive flexible procedure—



		<p>(a) may limit the number of participating suppliers, generally or in respect of particular tendering rounds or other selection processes;</p> <p>(b) may provide for the refinement of award criteria in accordance with section 24;</p> <p>(c) may not permit the participation of suppliers that did not submit a tender in the first round of tendering or that were excluded following an earlier round.</p> <p>(5) A competitive flexible procedure may provide for the exclusion of suppliers—</p> <p>(a) by reference to conditions of participation (see section 22);</p> <p>(b) by reference to an intermediate assessment of tenders;</p> <p>(c) that are not United Kingdom suppliers or treaty state suppliers;</p> <p>(d) that intend to sub-contract the performance of all or part of the contract to a supplier that is not a United Kingdom supplier or treaty state Supplier.</p>
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competitive selection process	section 46	Frameworks: competitive selection process	(10) In this section, a “competitive selection process” means a competitive selection process for the award of a public contract in accordance with a framework.
competitive tendering procedure	section 20	Competitive tendering procedures	(2) A “competitive tendering procedure” is— (a) a single-stage tendering procedure without a restriction on who can submit tenders (an “open procedure”), or (b) such other competitive tendering procedure as the contracting authority considers appropriate for the purpose of awarding the public contract (a “competitive flexible procedure”).
complete work	schedule 1	Threshold Amounts	(5)(1) In this Schedule— “complete work” means a functioning structure that results from the carrying out of works.
concession contract	section 8	Concession contracts	(1) In this Act, “concession contract” means a contract for the supply, for pecuniary interest, of works or services to a contracting authority where— (a) at least part of the consideration for that supply is a right for the supplier to exploit the works or services, and (b) under the contract the supplier is exposed to a real operating risk.



condition of participation	section 22	Conditions of participation	(2) A “condition of participation” is a condition that a supplier must satisfy if the supplier is to be awarded the public contract.
condition of participation	section 46	Frameworks: competitive selection process	(2) In this section, a “condition of participation” means a condition that a supplier must satisfy in order to be awarded a public contract in accordance with the framework.
connected person	Schedule 6	Mandatory exclusion grounds	(45) In this Schedule, “connected person”, in relation to a supplier, means any of the following— (a) a person with “significant control” over the supplier (within the meaning given by section 790C(2) of the Companies Act 2006 (“CA 2006”)); (b) a director or shadow director of the supplier; (c) a parent undertaking or a subsidiary undertaking of the supplier; (d) a predecessor company; (e) any other person who it can reasonably be considered stands in an equivalent position in relation to the supplier as a person within paragraph (a) to (d);





			<p>(f) any person with the right to exercise, or who actually exercises, significant influence or control over the supplier;</p> <p>(g) any person over which the supplier has the right to exercise, or actually exercises, significant influence or control</p>
contract award notice	section 50	Contract award notices and assessment summaries	<p>(2) A “contract award notice” means a notice setting out—</p> <p>(a) that the contracting authority intends to enter into a contract, and</p> <p>(b) any other information specified in regulations under section 95.</p>
contract change notice	section 75	Contract change notices	<p>(3) A “contract change notice” is a notice setting out—</p> <p>(a) that the contracting authority intends to modify the contract;</p> <p>(b) any other information specified in regulations under section 95.</p>
contract details notice	section 53	Contract details notices and publication of contracts	<p>(2) A “contract details notice” means a notice setting out—</p> <p>(a) that the contracting authority has entered into a contract, and</p>



			(b) any other information specified in regulations under section 95.
conflict of interest	section 81	Conflicts of interest: duty to identify	(2) There is a conflict of interest in relation to a covered procurement if— (a) a person acting for or on behalf of the contracting authority in relation to the procurement has a conflict of interest, or (b) a Minister acting in relation to the procurement has a conflict of interest.
contract termination notice	section 80	Contract termination notices	(2) A “contract termination notice” is a notice setting out— (a) that the contract has been terminated, and (b) any other information specified in regulations under section 95.
contracting authority	section 2	Contracting authorities	(1) In this Act “contracting authority” means— (a) a public authority, or (b) in the case of a utilities contract, a public authority, public undertaking or private utility, other than an excluded authority.



convertible contract	section 74	Modifying a public contract	<p>(1) A contracting authority may modify a public contract or a contract that, as a result of the modification, will become a public contract (a “convertible contract”) if the modification—</p> <p>(a) is a permitted modification under Schedule 8 (permitted modifications),</p> <p>(b) is not a substantial modification, or</p> <p>(c) is a below-threshold modification.</p>
covered procurement	section 1	Procurement and covered procurement	<p>(1) In this Act—</p> <p>(b) “covered procurement” means the award, entry into and management of a public contract.</p>
debarment list	section 57	Meaning of excluded and excludable supplier	<p>(5) In this Act “debarment list” means the list kept under section 62.</p>
devolved Welsh authority	section 111	Welsh Ministers: restrictions on the exercise of powers	<p>(1) The Welsh Ministers may only exercise a power under this Act for the purpose of regulating—</p> <p>(a) contracting authorities that are devolved Welsh authorities (within the meaning given in section 157A of the Government of Wales Act 2006),</p>



			<p>(2) A contracting authority that is a public undertaking or private utility is to be treated as a devolved Welsh authority for the purposes of this Act if—</p> <p>(a) it operates wholly or mainly in relation to Wales, and</p> <p>(b) its activities are wholly or mainly activities that do not relate to reserved matters.</p> <p>(3) Otherwise, a contracting authority is to be treated as a devolved Welsh authority for the purposes of this Act if the authority’s functions—</p> <p>(a) are exercisable wholly or mainly in relation to Wales, and</p> <p>(b) are wholly or mainly functions that do not relate to reserved matters.</p>
devolved Welsh authority	section 127	Commencement	(5) In this section, “devolved Welsh authority” has the meaning given in section 157A of the Government of Wales Act 2006.



<p>devolved Welsh procurement arrangement</p>	<p>section 114</p>	<p>Definitions relating to procurement arrangements</p>	<p>(2) A procurement arrangement is a devolved Welsh procurement arrangement if—</p> <p>(a) the framework was awarded by a devolved Welsh authority,</p> <p>(b) the dynamic market was established by a devolved Welsh authority,</p> <p>(c) the centralised procurement authority is a devolved Welsh authority, or</p> <p>(d) a devolved Welsh authority is designated the lead authority in the tender or transparency notice.</p>
<p>discretionary exclusion ground</p>	<p>Schedule 7</p>	<p>Discretionary Exclusion Grounds</p>	<p><b>Note:</b> Please refer to Schedule 7 ‘discretionary exclusion grounds’.</p>
<p>dynamic market</p>	<p>section 34</p>	<p>Competitive award by reference to</p>	<p>(8) In this Act, “dynamic market” means arrangements established under section 35(1);</p>



		dynamic markets	<p>references to a contract being awarded by reference to suppliers' membership of a dynamic market are references to a contract being awarded in reliance on this section;</p> <p>references to suppliers' membership of a dynamic market are references to suppliers' participation in arrangements established under section 35(1).</p> <p><i>Section 35 Dynamic markets: establishment</i> 35(1) A contracting authority may establish arrangements for the purpose of a contracting authority awarding public contracts by reference to suppliers' participation in the arrangements.</p>
dynamic market notice	section 39	Dynamic market notices	(1) A notice under this section is called a "dynamic market notice".



electronic invoice	section 67	Electronic invoicing: implied term	(3) For the purposes of the term in subsection (2)— “electronic invoice” means an invoice which is issued, transmitted and received in a structured electronic format that allows for its automatic and electronic processing.
enactment	section 123	Interpretation	(1) In this Act, “enactment” includes primary legislation and legislation made under primary legislation.
equivalent body	section 114	Definitions relating to procurement arrangements	(6) In this section, “equivalent body” means, in relation to a centralised procurement authority, a body carrying out functions of a kind described in section 1(4) (centralised procurement authorities).
estimated value	section 4	Valuation of contracts	(1) For the purposes of this Act, the “estimated value” of a contract is its value for the time being estimated by a contracting authority.
exclusion ground	section 59	Notification of exclusion of supplier	(6) In this section, “exclusion ground” means a mandatory exclusion ground or a discretionary exclusion ground;
excludable supplier	section 57	Meaning of excluded and excludable supplier	(2) A supplier is an “excludable supplier” if— (a) the contracting authority considers that— (i) a discretionary exclusion ground applies to the supplier or an associated person, and



			<p>(ii) the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or</p> <p>(b) the supplier or an associated person is on the debarment list by virtue of a discretionary exclusion ground.</p> <p>(4) For the purposes of a covered procurement carried out by a private utility—</p> <p>(a) an excluded supplier is to be regarded as an excludable supplier, and</p> <p>(b) a reference in this Act to an excludable supplier includes a reference to such an excluded supplier.</p>
excluded supplier	section 57	Meaning of excluded and excludable supplier	<p>(1) A supplier is an “excluded supplier” if—</p> <p>(a) the contracting authority considers that—</p> <p>(i) a mandatory exclusion ground applies to the supplier or an associated person, and</p> <p>(ii) the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or</p>





			<p>(b) the supplier or an associated person is on the debarment list by virtue of a mandatory exclusion ground.</p> <p>(3) If a supplier is an excluded supplier on the basis of the supplier or an associated person being on the debarment list only by virtue of paragraph 35 of Schedule 6 (threat to national security), the supplier is to be treated as an excluded supplier only in relation to public contracts of a kind described in the relevant entry.</p> <p>(4) For the purposes of a covered procurement carried out by a private utility—</p> <p>(a) an excluded supplier is to be regarded as an excludable supplier, and</p> <p>(b) a reference in this Act to an excludable supplier includes a reference to such an excluded supplier.</p>
exempted contract	Schedule 2	Exempted Contracts	<b>Note:</b> <i>Please refer to Schedule 2 ‘Exempted contracts’.</i>
existing legislation	section 127	Commencement	(8) In this section, “existing legislation” means any enactment, other than this Act or regulations made



			under this Act, that is passed or made before section 11 (covered procurement only in accordance with this Act) comes into force.
existing supplier	section 49	Open frameworks	(8) In this section, an “existing supplier” means a supplier that is party to a framework under the open Framework.
financial year	section 93	Pipeline notices	(4) In this section, “financial year” means— (a) the period of twelve months beginning with the 1 April following the day on which this section comes into force, and (b) each successive period of 12 months
framework	section 45	Frameworks	(2) A “framework” is a contract between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or Suppliers.
GPA	schedule 1	Threshold Amounts	(5)(1) In this Schedule, The “GPA” means the Agreement on Government Procurement signed at Marrakesh on 15 April 1994, as amended from time to time.



horizontal arrangement	Schedule 2	Exempted Contracts	(3)(2) A “horizontal arrangement” means an arrangement— (a) entered into— (i) with the aim of achieving objectives the authorities have in common in connection with the exercise of their public functions; (ii) solely in the public interest; (b) in which no more than 20 per cent of the activities contemplated by the arrangement are intended to be carried out other than for the purposes of the authorities’ public Functions.
information	section 97	Information relating to a procurement	(3) In this section, “information” means information shared under, or for a purpose relating to, this Act.
intelligence services	section 41	Direct award in special cases	(7) In this section, “intelligence services” means the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.
interest	section 81	Conflicts of interest: duty to identify	(4) In this section, “interest” includes a personal, professional or financial interest and may be direct or indirect.



key performance indicator	section 52	Key performance indicators	(4) A “key performance indicator” is a factor or measure against which a supplier’s performance of a contract can be assessed during the life-cycle of the contract.
lawyer	Schedule 2, paragraph 14	Exempted Contracts	(14)(3) In this paragraph, “lawyer” means— (a) a person who is an authorised person or an exempt person in relation to a reserved legal activity for the purposes of the Legal Services Act 2007 (see sections 18 and 19 of that Act); (b) a solicitor or advocate in Scotland; (c) a solicitor or barrister in Northern Ireland; (d) a person who is a member, and entitled to practise as such, of a legal profession regulated in a jurisdiction outside the United Kingdom.
light touch contract	section 9	Light touch contracts	(1) In this Act, “light touch contract” means a contract wholly or mainly for the supply of services of a kind specified in regulations under subsection (2). (2) An appropriate authority may by regulations specify services for the purposes of the definition in subsection (1).



			(5) In this Act, a reference to a light touch contract includes a reference to a framework for the future award of contracts wholly or mainly for the supply of services of a kind specified in regulations under subsection (2).
mandatory exclusion ground	Schedule 6	Mandatory Exclusion Grounds	(1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been convicted of an offence referred to in this Part of this Schedule. <i>(Note: Please refer to the entirety of Schedule 6.)</i>
mandatory standstill period	section 51	Standstill periods on the award of contracts	(2) The “mandatory standstill period” is the period of eight working days beginning with the day on which a contract award notice is published in respect of the contract.
material breach	section 78	Implied right to terminate public contracts	(12) In this section, “material breach” means a breach that the contracting authority considers could reasonably result in a successful legal challenge under Part 9 or otherwise.
member of the Welsh Government	section 81	Conflicts of interest: duty to identify	(4) In this section, “member of the Welsh Government” means a person referred to in section 45 of the Government of Wales Act 2006.



Minister	section 81	Conflicts of interest: duty to identify	(4) In this section, “Minister” means— (a) a Minister of the Crown; (b) a member of the Welsh Government; (c) the First Minister, deputy First Minister or a Northern Ireland Minister.
Minister of the Crown	section 123	Interpretation	(1) In this Act, “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.
modify	section 123	Interpretation	(1) In this Act, “modify”, in relation to enactments, includes amend, repeal or revoke.
most advantageous tender	section 19	Award of public contracts following a competitive tendering procedure	(2) The “most advantageous tender” is the tender that the contracting authority considers— (a) satisfies the contracting authority’s requirements, and (b) best satisfies the award criteria when assessed by reference to— (i) the assessment methodology under section 23(3)(a), and (ii) if there is more than one criterion, the relative importance of the criteria under section 23(3)(b).



the national procurement policy statement	section 13	The national procurement policy statement	(2) In this section, “the national procurement policy statement” means the statement for the time being published under this section.
necessary	section 42	Direct award to protect life, etc	(1) If a Minister of the Crown considers it necessary, the Minister may by regulations provide that specified public contracts may be awarded under section 41 as if a direct award justification applies. (2) In subsection (1), “necessary” means necessary to— (a) protect human, animal or plant life or health, or (b) protect public order or safety.
negotiated tendering period	section 54	Time limits	(5) In this section, “negotiated tendering period” means a tendering period agreed between a contracting authority and pre-selected suppliers in circumstances where tenders may be submitted only by those pre-selected suppliers.
notifiable below-threshold contract	section 87	Regulated below-threshold contracts: notices	(4) A “notifiable below-threshold contract” is a regulated below-threshold contract with an estimated value of— (a) in the case of a contract to be awarded by a central government authority, not less than £12,000, or (b) otherwise, not less than £30,000.



			<i>(Note: Regulations are intended to be laid which will make a consequential amendment to this section to amend the £12,000 to £30,000k.)</i>
open framework	section 49	Open frameworks	(1) An “open framework” is a scheme of frameworks that provides for the award of successive frameworks on substantially the same terms.
operating risk	Section 8	Concession contracts	(2) An “operating risk” is a risk that the supplier will not be able to recover its costs in connection with the supply and operation of the works or services, where the factors giving rise to that risk— (a) are reasonably foreseeable at the time of award, and (b) arise from matters outside the control of the contracting authority and the supplier.
parent undertaking / parent undertakings	Schedule 2	Exempted Contracts	2(4) In sub-paragraph (2)(a)— “parent undertaking” has the meaning given in section 1162 of the Companies Act 2006, save that an “undertaking” includes any person; “parent undertakings” means two or more contracting authorities acting jointly that would, if they were a single undertaking, be a parent undertaking.





participating supplier	section 31	Modifying a section 19 procurement	(7) In this section, “participating supplier” means a supplier that— (a) has submitted a request to participate in, or a tender as part of, the competitive tendering procedure, and (b) has not been excluded in accordance with the procedure or under this Act.
participation period	section 54	Time limits	(5) In this section, “participation period” means the period beginning with the day following the day on which a contracting authority invites the submission of requests to participate in a competitive flexible procedure and ending with the day by which those requests must be submitted.
payee	section 68	Implied payment terms in public contracts	(11) In this section, “payee” means the person due to be paid under the invoice concerned.
payments compliance notice	section 69	Payments compliance notices	(2) A “payments compliance notice” means a notice setting out— (a) specified information about the contracting authority’s compliance with the term set out in section 68(2) (payment within 30 days), and



			(b) any other specified information.
pipeline notice	section 93	Pipeline notices	(3) A “pipeline notice” means a notice setting out specified information about any public contract with an estimated value of more than £2 million in respect of which the contracting authority intends to publish a tender notice or transparency notice during the reporting period.
planned procurement notice	section 15	Planned procurement notices	(2) A “planned procurement notice” means a notice setting out— (a) that the contracting authority intends to publish a tender notice, and (b) any other information specified in regulations under section 95.
preliminary market engagement notice	section 17	Preliminary market engagement notices	(2) A “preliminary market engagement notice” means a notice setting out— (a) that the contracting authority intends to conduct, or has conducted, preliminary market engagement, and (b) any other information specified in regulations under section 95.



pre-selected supplier (preselected supplier)	section 54	Time limits	(5) In this section, “pre-selected supplier” means a supplier that— (a) has been assessed as satisfying conditions of participation before being invited to submit a tender as part of a competitive tendering procedure, or (b) in the case of a contract that is being awarded by reference to suppliers’ membership of a dynamic market, is a member of that market.
primary legislation	section 123	Interpretation	(1) In this Act, “primary legislation” means— (a) an Act of Parliament, (b) an Act of the Scottish Parliament, (c) an Act or Measure of Senedd Cymru, or (d) Northern Ireland legislation
private utility	section 2	Contracting authorities	(2) In this Act, “private utility” means a person that— (a) is not a public authority or public undertaking, and (b) carries out a utility activity.
procedural requirement	section 19	Award of public contracts following a competitive	(11) In this section “procedural requirement” includes a requirement that a supplier provide information.



		tendering procedure	
procurement	section 1	Procurement and covered procurement	(1) In this Act— (a) “procurement” means the award, entry into and management of a contract.
procurement arrangement	section 114	Definitions relating to procurement arrangements	(1) In this Act, a reference to a procurement under a procurement arrangement is a reference to a procurement as part of which the contract is awarded— (a) in accordance with a framework or similar arrangement, (b) by reference to a dynamic market or similar arrangement, or (c) following a procedure or other selection process carried out— (i) jointly by two or more authorities, or (ii) by a centralised procurement authority or equivalent body.
procurement documents	section 56	Technical specifications	(9) In this section, “procurement documents” means—



			<p>(a) the tender notice or associated tender documents, including any requirements of a competitive tendering procedure, conditions of participation or award criteria;</p> <p>(b) documents inviting suppliers to participate in a competitive selection process under a framework, including details of the process, any conditions of participation or criteria for the award of the contract;</p> <p>(c) documents inviting suppliers to apply for membership of a dynamic market, including any conditions for membership.</p>
procurement investigation	section 108	Procurement investigations	(5) In this section, “procurement investigation” means an investigation under subsection (1).
public authority	section 2	Contracting authorities	<p>(2) In this Act, “public authority” means a person that is—</p> <p>(a) wholly or mainly funded out of public funds, or</p> <p>(b) subject to public authority oversight, and does not operate on a commercial basis (but see subsections (9) and (10)).</p>



			<p>(9) In this Act, a reference to a public authority includes a reference to the Common Council of the City of London.</p> <p>(10) For the purposes of this Act, a person that operates on a commercial basis but is, as a controlled person, awarded an exempted contract by a public authority in reliance on paragraph 2 of Schedule 2 (vertical arrangements) is to be treated as a public authority in relation to any relevant sub-contract.</p>
public contract	section 3	Public contracts	<p>(1) A “public contract” is a contract of a kind specified in subsection (2), (3) or (4).</p> <p>(2) Any contract for the supply, for pecuniary interest, of goods, services or works to a contracting authority which—</p> <p>(a) has an estimated value of not less than the threshold amount for the type of contract, and</p> <p>(b) is not an exempted contract.</p> <p>(3) Any framework which—</p>



			<p>(a) has an estimated value of not less than the threshold amount for the type of contract, and</p> <p>(b) is not an exempted contract.</p> <p>(4) Any concession contract which—</p> <p>(a) has an estimated value of not less than the threshold amount for the type of contract, and</p> <p>(b) is not an exempted contract.</p>
public service mutual	section 33	Reserving contracts to public service mutuals	<p>(6) A “public service mutual” means a body that—</p> <p>(a) operates for the purpose of delivering public services and mainly for the purpose of delivering one or more reservable light touch services,</p> <p>(b) is run on a not-for-profit basis or provides for the distribution of profits only to members, and</p> <p>(c) is under the management and control of its employees.</p>
public sub-contract	section 73	Implied payment terms in sub-contracts	<p>(5) In this section, “public sub-contract” means a contract substantially for the purpose of performing (or contributing to the performance of) all or any part of a public contract.</p>



public undertaking	section 2	Contracting authorities	(2) In this Act, “public undertaking” means a person that— (a) is subject to public authority oversight, and (b) operates on a commercial basis;
publication of a tender notice	section 40	Qualifying utilities dynamic market notices: no duty to publish a tender notice	(7) In this Act, a reference to publication of a tender notice includes a reference to provision of a tender notice under subsection (2) or (3).
pupil referral unit	section 123	Interpretation	(1) In this Act, “pupil referral unit” means— (a) in England, a pupil referral unit within the meaning given by section 19 of the Education Act 1996; (b) in Wales, a pupil referral unit within the meaning given by section 19A of the Education Act 1996.
qualifying planned procurement notice	section 15	Planned procurement notices	(3) A “qualifying planned procurement notice” means a planned procurement notice published at least 40 days but not more than 12 months before the day on which the tender notice is published.





qualifying public service mutual	section 33	Reserving contracts to public service mutuals	(5) A “qualifying public service mutual” means a public service mutual that has not entered into a comparable contract during the period of three years ending with the day on which the contract referred to in subsection (1) is awarded.
qualifying utilities dynamic market notice	section 40	Qualifying utilities dynamic market notices: no duty to publish a tender notice	(6) In this section, “a qualifying utilities dynamic market notice” means a dynamic market notice under section 39(2) (dynamic market notices) that— (a) relates to the establishment of a utilities dynamic market, and (b) sets out— (i) that only members of the market will be notified of a future intention to award a contract by reference to suppliers’ membership of the market, and (ii) any other information specified in regulations under section 95.
quarter	section 70	Information about payments	(5) In this section, “quarter” means a period of three months ending with 31 March, 30 June, 30 September or 31 December in any year.



		under public contracts	
a reference to a contracting authority receiving an invoice	section 68	Implied payment terms in public contracts	(11) In this section, a reference to a contracting authority receiving an invoice includes a reference to an invoice being delivered to an address, or through an electronic invoicing system, specified in the contract for the purpose.
the reference to a supplier being excluded	section 65	Debarment decisions: appeals	(6) In this section, the reference to a supplier being excluded includes a reference to— (a) the supplier’s tender being disregarded under section 26; (b) the supplier becoming an excluded supplier for the purposes of section 41(1)(a), 43(1) or 45(6)(a).
regulated below-threshold contract	section 84	Regulated below-threshold contracts	(1) In this Part, a “regulated below-threshold contract” means a below-threshold contract which is not— (a) an exempted contract, (b) a concession contract, or (c) a utilities contract.



relevant appropriate authority	section 59	Notification of exclusion of supplier	(6) In this section, “relevant appropriate authority” means— (a) if the contracting authority is a devolved Welsh authority, the Welsh Ministers; (b) if the contracting authority is a transferred Northern Ireland authority, the Northern Ireland department that the contracting authority considers it most appropriate to notify; (c) in any other case, a Minister of the Crown.
relevant authority	section 116	Disapplication of duty in section 17 of the Local Government Act 1988	(4) In this section, “relevant authority” means an authority to which section 17 of the 1988 Act applies other than a devolved Scottish authority.
relevant contracts	section 93	Pipeline notices	(4) In this section, “relevant contracts” means any contracts for the supply of goods, services or works to the contracting authority other than exempted contracts.
relevant contracting authority	section 29	Excluding a supplier that is a threat to national security	(4) In this section, a “relevant contracting authority” means a contracting authority other than— (a) a Minister of the Crown or a government department, (b) the Corporate Officer of the House of Commons, or



			(c) the Corporate Officer of the House of Lords.
relevant contracting authority	section 108	Procurement investigations	(5) In this section, “relevant contracting authority” means a contracting authority other than— (a) a Minister of the Crown or a government department; (b) the Welsh Ministers; (c) a Northern Ireland department; (d) the Corporate Officer of the House of Commons; (e) the Corporate Officer of the House of Lords; (f) the Senedd Commission; (g) the Northern Ireland Assembly Commission; (h) a private utility
relevant debarment information	section 62	Debarment list	(4) In this section, the “relevant debarment information” means— (a) the exclusion ground to which the entry relates; (b) whether the exclusion ground is mandatory or discretionary; (c) in the case of an entry made on the basis of paragraph 35 of Schedule 6 (threat to national security), a description of the contracts in relation to which the supplier is to be an excluded supplier;



			(d) the date on which the Minister expects the exclusion ground to cease to apply (see paragraph 44 of Schedule 6 and paragraph 15 of Schedule 7).
relevant documents	section 60	Investigations of supplier: exclusion grounds	(8) In this section, “relevant documents” means documents or other information that— (a) are specified or described in a notice under subsection (4) or (6), and (b) are in the possession or control of the recipient of the notice.
relevant documents	section 108	Procurement investigations	(5) In this section, “relevant documents” means documents or other information that— (a) are specified or described in a notice under subsection (2), and (b) are in the possession or control of the relevant contracting authority to which the notice is given;
relevant exclusion ground	section 59	Notification of exclusion of supplier	(6) In this section, “relevant exclusion ground” means any exclusion ground except the one listed in paragraph 43 of Schedule 6 (failure to cooperate with investigation).
relevant joint venture	Schedule 2	Exempted Contracts	5(2) In this Schedule, “relevant joint venture” means a joint venture—



			(a) formed for the purpose of carrying out a utility activity; (b) where each party to the joint venture is a utility.
relevant notice	section 83	Conflicts assessments	(8) In this section, “relevant notice” means— (a) a tender notice, (b) a transparency notice, (c) a dynamic market notice in relation to the establishment of a dynamic market, (d) a contract details notice relating to a public contract, or (e) a contract change notice
relevant scheduled air service	Schedule 2, paragraph 36	Exempted contracts	36(2) In this paragraph, “relevant scheduled air service” means an air service that— (a) operates between two airports within the United Kingdom or within the United Kingdom and Gibraltar, and (b) the Secretary of State considers to be necessary in order to maintain sufficient transport links between the areas served by the airports.



relevant sub-contract	section 2	Contracting authorities	(12) In this section, “relevant sub-contract” means a contract substantially for the purpose of performing (or contributing to the performance of) all or any part of the exempted contract.
reporting period	section 93	Pipeline notices	(4) In this section, “reporting period” means the period of 18 months beginning with the first day of the financial year referred to in subsection (1).
requirements	section 19	Award of public contracts following a competitive tendering procedure	(7) In this Act, a reference to a contracting authority’s requirements is a reference to requirements described in the tender notice or associated tender documents (see section 21(5) and (6)).
required electronic form	section 67	Electronic invoicing: implied term	(3) For the purposes of the term in subsection (2)— “required electronic form” means a form that— (a) complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1:2017 (Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice), and



			(b) uses a syntax which is listed as a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution.
research and development services	Schedule 2, paragraph 22	Exempted Contracts	<p>22(2) In this paragraph, “research and development services” means services that consist of one or more of the following activities—</p> <ul style="list-style-type: none"><li>(a) research to acquire new scientific or technical knowledge without any particular application or use in view;</li><li>(b) research directed mainly at generating scientific or technical knowledge for the purposes of a particular objective;</li><li>(c) development which uses existing knowledge to initiate the manufacture of new materials or products, establish new processes, systems or services, or to achieve a substantial improvement in existing materials, products, processes, systems or services;</li><li>(d) the manufacture and testing of prototypes.</li></ul>





reservable light touch services	section 33	Reserving contracts to public service mutuels	(7) In this section, “reservable light touch services” means services of a kind specified in regulations under subsection (8).
reserved matters	section 111	Welsh Ministers: restrictions on the exercise of powers	(6) In this section, “reserved matters” has the meaning given in the Government of Wales Act 2006.
reserved procurement arrangement	section 114	Definitions relating to procurement arrangements	(5) A procurement arrangement is a reserved procurement arrangement if it is not— (a) a devolved Welsh procurement arrangement, (b) a transferred Northern Ireland procurement arrangement, or (c) a devolved Scottish procurement arrangement.
school	section 123	Interpretation	(1) In this Act, “school” means— (a) the governing body of a maintained school (see section 19(1) of the Education Act 2002); (b) the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of an Academy within the meaning given by that section;



			<p>(c) the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of a school that has been approved under section 342 of that Act;</p> <p>(d) the governing body, within the meaning given by section 90 of the Further and Higher Education Act 1992, of an institution within the further education sector within the meaning given by section 91 of that Act;</p> <p>(e) the Board of Governors of a grant-aided school within the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)).</p>
the Senedd	section 14	The Wales procurement policy statement	(10) In this section “the Senedd” means Senedd Cymru.
Sensitive commercial information	section 94	General exemptions from duties to publish or disclose information	(2) “Sensitive commercial information” is information which— <p>(a) constitutes a trade secret, or</p> <p>(b) would be likely to prejudice the commercial interests of any person if it were published or otherwise disclosed.</p>



similar arrangement	section 114	Definitions relating to procurement arrangements	(6) In this section, “similar arrangement” includes, in relation to a dynamic market, a dynamic purchasing or qualification system.
small and medium-sized enterprises	section 123	Interpretation	(1) In this Act, “small and medium-sized enterprises” means suppliers that— (a) have fewer than 250 staff, and (b) have a turnover of an amount less than or equal to £44 million, or a balance sheet total of an amount less than or equal to £38 million.
specified	section 116	Disapplication of duty in section 17 of the Local Government Act 1988	(4) In this section, “specified” means specified, or of a description specified, in regulations under this section.
specified information	section 95	Notices, documents and information: regulations and online system	(2) Regulations under subsection (1) may for example— (a) require a notice or document to contain specified information; (b) require publication on a specified online system.



			<p>[ (1) An appropriate authority may by regulations make provision about—</p> <ul style="list-style-type: none"><li>(a) the form and content of notices, documents or other information to be published or provided under this Act;</li><li>(b) how such notices or documents are, or information is, to be published, provided or revised. ]</li></ul>
special regime contract	section 10	Mixed procurement: special regime contracts	<p>(6) A “special regime contract” means—</p> <ul style="list-style-type: none"><li>(a) a concession contract,</li><li>(b) a defence and security contract,</li><li>(c) a light touch contract, or</li><li>(d) a utilities contract,</li></ul> <p>and a reference to a special regime contract of a particular kind is a reference to a special regime contract of a kind described in paragraph (a), (b), (c) or (d).</p> <p>(7) This section does not apply for the purpose of determining whether a contract is a public contract.</p>



			(8) This section does not apply to a contract awarded in accordance with a framework.
specified regulations	section 127	Commencement	(4) In this section, “specified regulations” means regulations to bring into force provisions regulating procurement by a devolved Welsh authority other than procurement under— (a) a reserved procurement arrangement, or (b) a transferred Northern Ireland procurement arrangement, but “specified regulations” does not include regulations to bring into force provisions in Part 7 (implementation of international obligations).
specified set-aside proceedings	section 106	Time limits on claims	(5) In this section, “specified set-aside proceedings” means proceedings under section 104(2) to— (a) set aside a public contract in circumstances where the contracting authority did not publish a contract details notice in respect of the contract in accordance with section 53, or (b) set aside a modification of a contract.
sub-central government authority	schedule 1	Threshold Amounts	(5)(1) In this Schedule, “sub-central government authority” means a contracting authority that is not— (a) a central government authority, or



			(b) a private utility or a public undertaking
supported employment provider	section 32	Reserving contracts to supported employment providers	<p>(4) A “supported employment provider” means an organisation that operates wholly or partly for the purpose of providing employment, or employment related support, to disabled or disadvantaged individuals where—</p> <p>(a) disabled or disadvantaged individuals represent at least 30 per cent of the workforce of the organisation,</p> <p>(b) if a particular part of the organisation is to perform the contract,</p> <p>disabled or disadvantaged individuals represent at least 30 per cent of the workforce of that part of the organisation, or</p> <p>(c) if more than one organisation is to perform the contract, disabled or disadvantaged individuals represent at least 30 per cent of the combined workforce of—</p> <p>(i) those organisations,</p> <p>(ii) where a particular part of each organisation is to perform the contract, those parts, or</p>



			(iii) where a combination of organisations and parts is to perform the contract, those organisations and parts.
tender notice	section 21	Tender notices and associated tender documents	(2) A “tender notice” means a notice setting out— (a) that a contracting authority intends to award a public contract under section 19, and (b) any other information specified in regulations under section 95.
tendering period	section 54	Time limits	(5) In this section, “tendering period” means the period beginning with the day following the day on which a contracting authority invites the submission of tenders as part of a competitive tendering procedure and ending with the day by which tenders must be submitted.
terms of a covered procurement	section 31	Modifying a section 19 procurement	(7) In this section, “terms of a covered procurement” means anything set out in a tender notice or associated tender documents, including any requirements of a competitive tendering procedure, conditions of participation or award criteria.
transparency notice	section 44	Transparency notices	(2) A “transparency notice” means a notice setting out— (a) that a contracting authority intends to award a contract directly, and



			(b) any other information specified in regulations under section 95.
treaty state	section 90	Treaty state suppliers: non-discrimination	<p>(5) In this section, a “treaty state” means a state, territory or organisation of states or territories that is party to an international agreement specified in Schedule 9, other than the United Kingdom.</p> <p>(6) And, in subsection (2)(a), a treaty state is a supplier’s treaty state if the supplier is entitled to the benefits of such an international agreement by reference to that treaty state being party to the agreement.</p>
treaty state supplier	section 89	Treaty state suppliers	<p>(1) In this Act, a “treaty state supplier” means a supplier that is entitled to the benefits of an international agreement specified in Schedule 9.</p> <p>(2) But a supplier is a treaty state supplier only to the extent that it is entitled to the benefits of an international agreement specified in Schedule 9 in relation to the procurement being—</p> <p>(a) carried out, or</p>





			<p>(b) challenged.</p> <p>(6) In this Act—</p> <p>(a) a reference to a treaty state supplier does not include a reference to a supplier that is entitled to the benefits of an international agreement only by reference to the United Kingdom being party to that agreement.</p> <p>(b) a reference to a state or territory being party to an agreement includes a reference to a state or territory being part of an organisation of states or territories that is party to an agreement.</p>
United Kingdom standard	section 56	Technical specifications	<p>(9) In this section, “United Kingdom standard” means a standard that is—</p> <p>(a) set by the British Standards Institution, or</p> <p>(b) primarily developed for use in the United Kingdom, or part of the United Kingdom.</p>
United Kingdom supplier	section 90	Treaty state suppliers: non-discrimination	<p>(7) In this Act, “United Kingdom supplier” means a supplier that is—</p> <p>(a) established in, or controlled or mainly funded from, the United Kingdom, a British Overseas Territory or a Crown Dependency, and</p>



			(b) is not a treaty state supplier.
user choice services	Schedule 5	Direct Award Justifications	<p>(15) The public contract is a contract for the supply of user choice services and the conditions in paragraph 17 are met.</p> <p>(16) In paragraph 15, “user choice services” means services—</p> <p>(a) that are of a kind specified in regulations under section 9 (light touch contracts),</p> <p>(b) that are supplied for the benefit of a particular individual, and</p> <p>(c) in respect of which a contracting authority would, in awarding a contract for their supply, be required under an enactment to have regard to the views of the individual, or a person providing care to the individual (their “carer”), in relation to who should supply the services.</p>
utility	section 35	Dynamic markets: establishment	<p>(4) In this Act, “utility” means—</p> <p>(a) a public authority, or public undertaking, that carries out a utility activity;</p> <p>(b) a private utility.</p>



utility activity	section 6	Utilities contracts	(2) In this Act, “utility activity” means an activity that— (a) is specified in Part 1 of Schedule 4, (b) is not specified in Part 2 of Schedule 4, (c) is not carried out wholly outside the United Kingdom, and (d) in the case of an activity carried out by a person that is not a public authority or public undertaking, is carried out pursuant to a special or exclusive right.
utilities contract	section 6	Utilities contracts	(1) In this Act, “utilities contract” means a contract for the supply of goods, services or works wholly or mainly for the purpose of a utility activity.  (7) In this Act, a reference to a utilities contract includes a reference to a framework for the future award of contracts for the supply of goods, services or works wholly or mainly for the purpose of a utility activity.
utilities dynamic market	section 35	Dynamic markets: establishment	(2) In this Act a “utilities dynamic market” means a dynamic market established only for the purpose of the award of utilities contracts by utilities.
utilities framework	section 47	Frameworks: maximum term	(4) In this section—



			(b) “a utilities framework” is a framework which does not provide for the future award of public contracts other than utilities contracts.
VAT	section 123	Interpretation	(1) In this Act, “VAT” means value added tax.
Wales	section 111	Welsh Ministers: restrictions on the exercise of powers	(6) In this section, “Wales” has the meaning given in section 158 of the Government of Wales Act 2006 (when read by reference to section 157A(9) of that Act).
the Wales procurement policy statement	section 14	The Wales procurement policy statement	(2) In this section, “the Wales procurement policy statement” means the statement for the time being published under this section.
working day	section 123	Interpretation	(1) In this Act, “working day” means a day other than— (a) a Saturday or Sunday, or (b) a day which is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971.
works	Schedule 1	Threshold Amounts	(5)(1) In this Schedule, “works” has the meaning given by regulations made by an appropriate authority.
works contract	Schedule 1	Threshold Amounts	(4) A contract is a “works contract” if its main purpose is—



			<p>(a) the carrying out of works under the contract (whether or not resulting in a complete work), or</p> <p>(b) to facilitate the carrying out of works otherwise than under the contract, where those works are intended to result in a complete work that complies with specifications set out in, or determined under, the contract.</p>
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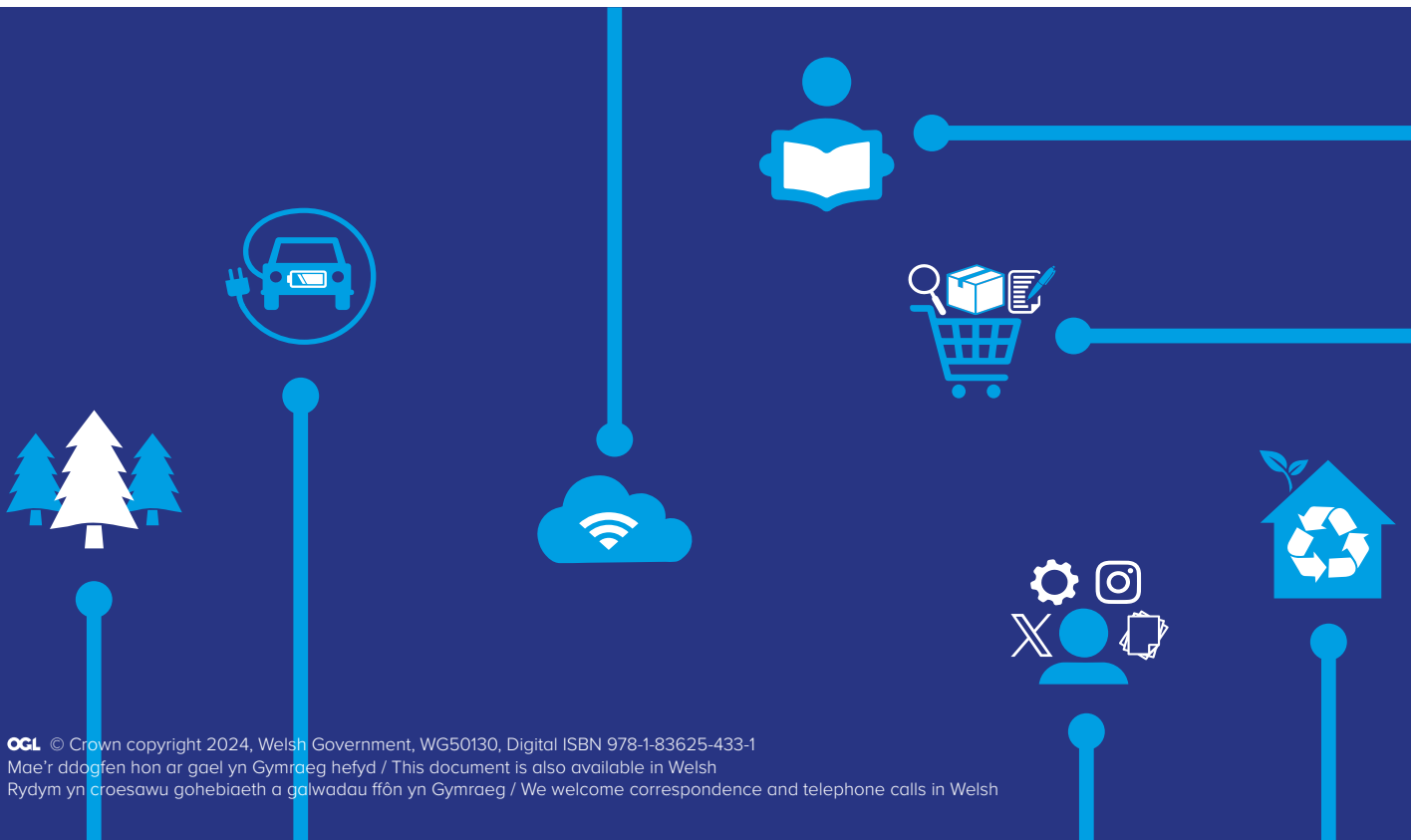


Llywodraeth Cymru  
Welsh Government

# Guidance

## Transitional and Savings Arrangements

July 2024





# Guidance: Transitional and Saving Arrangements

## What are transitional and saving arrangements?

1. Transitional and saving arrangements are set out in the regulations which determine how the changeover from the previous legislation to the Procurement Act 2023 (the Act) is managed and effected by contracting authorities. They determine how procurements which straddle the implementation date of the Act are to be carried out and which legislation applies. The intent is that the implementation of the Act will cause as little disruption as possible for procurements which are already underway, and contracts which have already been awarded, when the Act comes into force.

## What is the legal framework that governs the transitional and saving arrangements?

2. The transitional and saving arrangements will be set out in regulations made under the powers set out in sections 122(3)(d) and 127(2) of the Act.
3. These regulations, the Procurement Act (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024, set out the rules for which legislation applies to ongoing procurements and contracts awarded under the previous legislation, which determine how those procurements and contracts are to be managed.

## Key points and policy intent

4. The fundamental principle is that procurements that commence after the entry into force of the Act must be conducted by reference to the Act only, whilst those that were commenced under the previous legislation (the Public Contracts Regulations 2015 (PCR), the Utilities Contracts Regulations 2016 (UCR) and the Concession Regulations 2016 (CCR) (see paragraphs 8 and 9 below) must continue to be procured and managed under that legislation.
5. Any contracts awarded under the previous legislation will continue to be managed under that legislation until such a time as the contract, or commercial tool (see paragraph 18 below), ceases to exist. This means that in respect of modifications, for example, contracting authorities can only modify contracts awarded under the previous legislation using provisions set out at regulation 72 of the PCR, regulation 88 of the UCR and regulation 43 of the CCR as appropriate. Contract



management includes only using the noticing pertaining to the previous legislation. For example, after the Act comes into force and a contract awarded under the PCRs is modified in accordance with regulation 72 of the PCR, a notice in accordance with regulations 51 and 72 of the PCR must be published (on find a tender service, contracts finder or the tenders electronic daily (TED) portal as required) and not a contract change notice (under section 75 of the Act).

6. Procurements, including those that would result in a below-threshold contract, that have been commenced under the previous legislation will continue to be procured, and any resulting contracts or contracts already awarded will continue to be managed (which includes modified and terminated) under the previous legislation until:
  - a. the end of the contract (for whatever reason) that is awarded under the previous legislation (including contracts that have had valid extensions);
  - b. where no contract is awarded, the procurement process ends (i.e. where the procurement does not result in the award of a contract - for example, because the contracting authority has discontinued the procurement);
  - c. where it is a framework agreement, the end (for whatever reason) of the last contract awarded under the framework agreement during the term of the framework arrangement;
  - d. where it is a dynamic purchasing system, the end (for whatever reason) of the last contract awarded under the dynamic purchasing system during the term of the dynamic purchasing system; or
  - e. where it is a qualification system, the end (for whatever reason) of the last contract awarded under the qualification system within the term of the qualification system, or where it has an unlimited duration, the end (for whatever reason) of the last contract awarded before the termination of the qualification system.
  
7. In respect of qualification system, the organisations that set up the qualification system are encouraged to terminate it as follows (although no later than 27th October 2028, when all qualification systems must end):
  - a. where the qualification system is used for the procurement of a specific programme or project (e.g. building and operating a nuclear reactor), the qualification system should be terminated when the programme or project comes to a natural end; or
  - b. where the qualification system is currently used for general utilities procurement, the qualification system should be terminated after a fair and reasonable period.





## Competitive procurements commenced under the previous legislation

8. For the purposes of the previous legislation, a competitive procurement is 'commenced' when:
- a. before 26th May 2023 a PIN was used as a call for competition by a sub-central contracting authority; or
  - b. a contract notice<sup>1</sup> has been submitted to be published under the previous legislation; or
  - c. a voluntary transparency notice is published under the PCR (see regulation 99(3)(b) and (4)), or
  - d. a below-threshold contract opportunity is published under the PCR (see regulation 110); or
  - e. a utilities notice on the existence of a qualification system that acts as a call for competition is published under the UCR (see regulations 44(4)(b), 68 and 77); or

## Negotiated procedure without prior publication ('direct award') procurements commenced under the previous legislation

9. Where a contracting authority has contacted a supplier with the intention of entering into a contract with it under any of the following provisions, the procurement is deemed to have been commenced for the purposes of the transitional and saving provisions and the relevant previous legislation will continue to apply:
- a. regulation 32 of the PCR;
  - b. regulation 50 of the UCR; or
10. This means if a contracting authority signalled its intent to enter into a contract with a supplier without prior publication of a contract notice, then they can continue to negotiate that contract under the previous legislation that was in place when the intention to award the contract was given. This is consistent with the position on competitive procurements.

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<sup>1</sup> 'Contract notice' in this document includes 'Contract notice' (regulation 49 PCR and 69 UCR), 'Concession notice' (regulation 31 CCR), 'Design contest notice' (regulation 79 PCR).



## Pipeline notices

11. A pipeline notice sets out the forthcoming procurements of a contracting authority. While best practice there is no obligation in the previous legislation for contracting authorities to publish a pipeline notice. The Act includes an obligation (in section 93) on contracting authorities who anticipate spending more than £100 million under 'relevant contracts'<sup>2</sup> in the coming financial year to publish a pipeline notice. That notice must list all public contracts with an estimated value of more than £2 million for which the contracting authority anticipates publishing a tender notice or transparency notice in the coming 18 months starting with the first day of the financial year.
12. Where a public contract has been included on a 'non-statutory' pipeline notice before section 93 comes into force, but as at the date the Act comes into force the procurement for that public contract has not yet 'commenced' as described in this guidance, the procurement must be carried out under the Act. It should also be noted that a contracting authority's statutory obligation to publish a pipeline notice will only arise from the 1st April which follows section 93 coming into force (i.e. from 1st April 2025), and will need to include all forthcoming procurements which fall within the requirements of section 93 irrespective of whether the procurement was included in a previous non-statutory pipeline notice or not.

## Prior information notice/periodic indicative notice

13. Under the previous legislation, contracting authorities could publish their potential forthcoming procurements via the use of a prior information notice (under the PCR, or CCR) or a periodic indicative notice (under the UCRs), collectively referred to as 'PINs'. PINs have also been used for the purposes of preliminary market engagement.
14. Unless used as a call for competition by a sub-central contracting authority prior to 26th May 2023, the publication of a PIN under the previous legislation, whether used for preliminary market engagement or not, is not one of the commencement trigger notices referred to at paragraph 8 above. This means that where a PIN has been published before the Act comes into force, but none of the other circumstances in paragraph 8 apply, the procurement must be carried out under the Act and not the previous legislation.
15. However, where a PIN has been used for preliminary market engagement, this engagement and the PIN can be relied on as part of a procurement under the Act

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<sup>2</sup> 'relevant contracts' are defined in section 93(4) as 'any contracts for the supply of goods, services or works to the contracting authority other than exempted contracts'.



and a preliminary market engagement notice would not have to be published under section 17 of the Act. Under section 17 of the Act, where preliminary market engagement has been carried out a contracting authority is required to publish a preliminary market engagement notice before publishing a tender notice, or provide reasons for not doing so. The fact that the preliminary market engagement was carried out via a PIN under the previous legislation can be used as the reason to justify why a preliminary market engagement notice has not been published under section 17, even though preliminary market engagement has been carried out.

16. This would require the contracting authority to state when publishing a tender notice that a preliminary market engagement notice was not published because the preliminary market engagement was undertaken, and notice of it provided in a PIN, prior to the Act coming into force.
17. If a contracting authority wishes to shorten the tendering period (as permitted by section 54 of the Act) then a planned procurement notice will need to be published enough time in advance of the tender notice to become a qualifying planned procurement notice (see guidance on the planned procurement notice for more information), regardless of whether or not a PIN was issued under the previous legislation.

## Commercial Tools

18. Any contracts awarded through a framework agreement, dynamic purchasing system or qualification system (referred to as 'commercial tools') under the previous legislation will continue to be managed in accordance with that legislation. For example, a call-off contract awarded under a framework agreement set up under the PCR will continue to require publication of the relevant notices for that framework under the PCR until the call-off contract is terminated (for whatever reason), even if the framework itself has ended.
19. The transitional and saving regulations set out that any dynamic purchasing system and qualification system established under the previous legislation must come to an end as set out when they were established, or by 27th October 2028 (four years after the new regime comes into effect), whichever is earlier. Any contract awarded under such an arrangement will continue until it comes to an end and be managed by the previous legislation (even if the dynamic purchasing system or qualification system has terminated prior to that point).



20. The regulations restrict the ability to extend a dynamic purchasing system or qualification system awarded under the previous legislation (see, for example, as might arise under PCR regulation 34(28)) by providing that any dynamic purchasing system or qualification system extended after the Act comes into force can only be extended in the first twelve months after the Act comes into force and cannot be extended beyond 27th October 2028.
21. There will be a transition period during which contracting authorities may be able to award contracts under commercial tools set up under both regimes. Therefore contracting authorities should also ensure that any decision on which commercial tool is to be used and the associated rationale is fully documented before commencing the procurement.

### Payments compliance notice

22. The obligations in the Act in relation to the payments compliance notice will apply to all contracts awarded by a contracting authority's, not those just awarded under the Act. i.e. the notice must also include payments against contracts awarded under the previous legislation.
23. Under the Act, the obligation set out in section 69 requires contracting authorities to publish payments compliance notices every six months where they have made a payment under a public contract, or a sum owed under a public contract has become payable, in the previous six months. (The precise requirements and detail of what is to be included in such notices are set out in section 69 of the Act and regulation 39 of the Procurement (Wales) Regulations 2024; please see guidance on the payments compliance notice for more information.) The payment reporting obligations under the previous legislation, found in PCR regulation 113(7), required contracting authorities to publish prompt payment performance statistics online once per year. Once the ability to publish this information on the central digital platform is available (see paragraph 24 below), contracting authorities will also be required to include payments made or due under public contracts procured under the previous legislation in the payments compliance notices.
24. The phased delivery model of the central digital platform will mean the digital capability to publish a payments compliance notice on that platform will not be available when the Act comes into force. As such, contracting authorities should continue to publish their notices under regulation 113(7) PCR as they do currently, until the payments compliance notice obligation under section 69 of the Act comes into force.



## Key Performance Indicators (KPIs)

25. The obligations in the Act relating to KPIs only apply to contracts awarded under the Act. Contracting authorities are not required by the Act to set or publish KPIs for contracts that were awarded under the previous legislation, even where those contracts are above the threshold set out in section 52 of the Act.

## Direct award for additional works and services relating to contracts awarded under the previous legislation

26. The transitional and saving regulations make provision for the use of the direct award ground set out in Schedule 5, paragraph 8 of the Act for contracts awarded under the previous legislation in very specific circumstances. Schedule 5, paragraph 8 allows for the direct award of a contract for additional works and services from a supplier with whom the contracting authority already has a contract (provided it was awarded under a competitive tendering procedure) provided that intention was set out in the tender notice or tender documentation for the original contract.
27. This ground broadly replicates a similar ground in the previous legislation (at PCR regulation 32(9-12), and UCR regulation 50(1)(f) and 50(4)). In order to preserve the expectation when these contracts were awarded under one of the competitive procedures in the previous legislation that such additional works and services could be procured at a later date through direct award, the transitional and saving regulations permit contracting authorities to use the ground at Schedule 5, paragraph 8 where they can demonstrate compliance with the relevant requirements of the previous legislation. This requirement includes that the contracting authority has set out its intention to rely on the right to make a direct award in this way before it entered into the original contract.

## Awards under the Act

28. Once the Act comes into force, contracting authorities wishing to carry out a 'covered procurement' (see section 1 and guidance on covered procurement) or a procurement for a regulated below-threshold contract in accordance with Part 6 of the Act (see guidance on below-threshold contracts), and have not yet 'commenced' the procurement in accordance with the transitional and saving provisions must conduct the procurement in accordance with the Act.



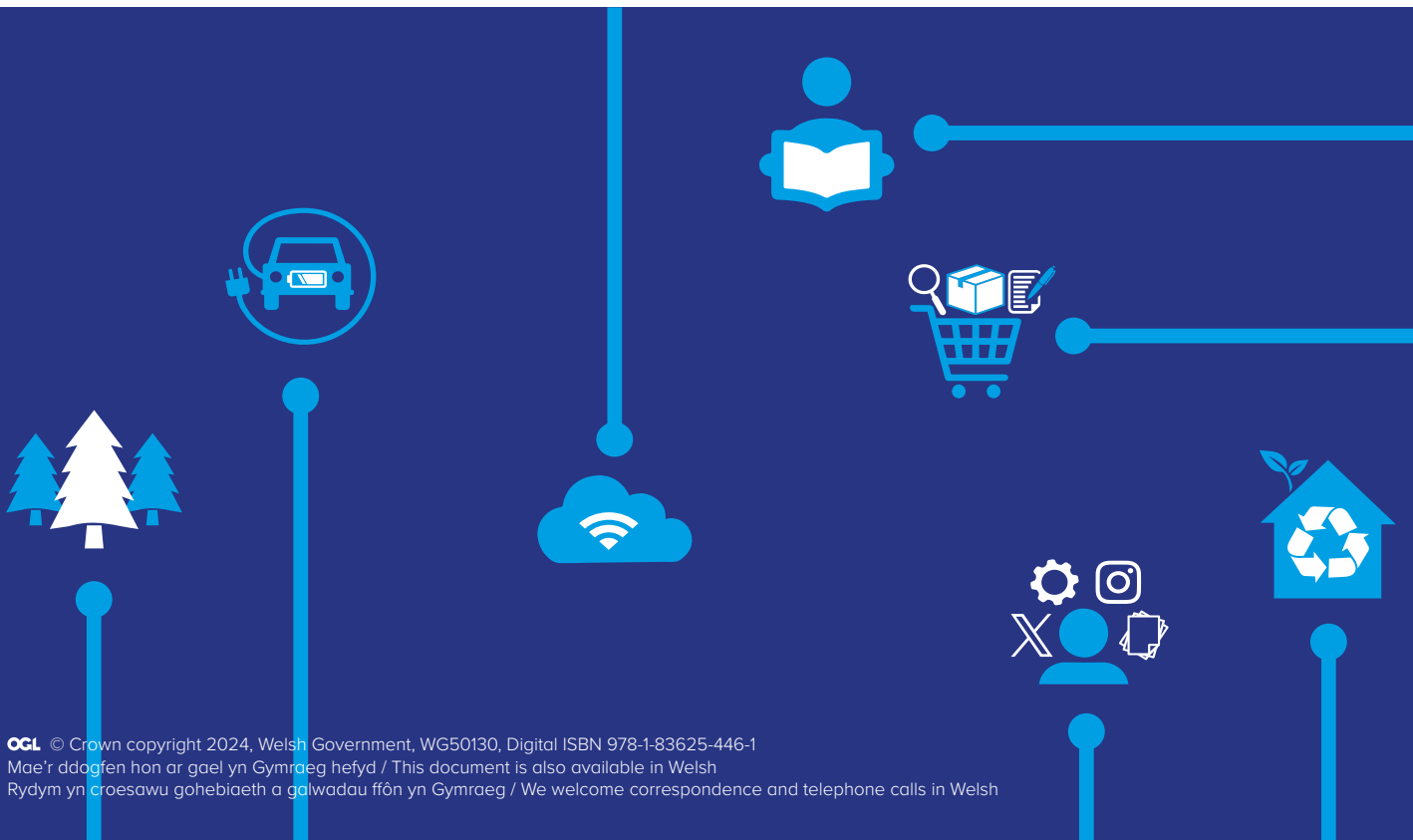
29. Any contracting authority intending to carry out a procurement soon after the Act comes into force will need to consider the provisions in the Act when planning that procurement, even though the Act may not be in force during the planning process. For example, this would mean ensuring that the procurement is in compliance with all obligations contained in the Act in relation to, for example, obligations with regard to the priorities within Wales Procurement Policy Statement, procurement objectives, conflicts of interest, record-keeping, KPIs etc., even if this requires the contracting authority to take steps prior to the Act coming into force to ensure compliance.



Llywodraeth Cymru  
Welsh Government

# Guidance Contracting Authorities

July 2024





## Guidance: Contracting Authorities

### What are contracting authorities?

1. 'Contracting authority' is the term used to refer to an entity (referred to as a 'person' in the Procurement Act 2023 (the Act) to ensure it applies to a variety of circumstances) that is subject to the Act. A legal definition of contracting authorities is essential in order for entities to determine whether they are in scope of the rules, or not.

### What is the legal framework that governs contracting authorities?

2. Section 2 of the Act defines a contracting authority. It sets out the criteria to determine whether entities are covered and specifically sets out which entities are excluded ('excluded authorities').
3. Section 2 brings the definition of a 'utility' into the definition of a contracting authority, consolidating the separate definitions in the previous legislation. Note that this guidance deals only with contracting authorities that are not utilities. Utilities<sup>1</sup> are dealt with in separate guidance.
4. Section 2(5) specifically defines entities that are excluded authorities i.e. those that are not covered by the Act.
5. Section 2(10) provides that where a controlled entity operates on a commercial basis and is awarded an exempted contract pursuant to the vertical arrangement in Schedule 2, paragraph 2, that controlled entity is deemed to be a public authority in relation to any relevant sub-contracts it awards.
6. Section 111 sets out the criteria when a contracting authority is to be treated as a 'devolved Welsh authority'. This definition includes reference to a 'private utility' but note that this guidance only deals with contracting authorities that are not utilities.

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<sup>1</sup> Utilities are public authorities or public undertakings that carry out a utility activity and private utilities (section 35(4)).





## What has changed?

7. The features of a contracting authority are intended to be the same as those in the previous legislation, with adjustments made purely for the purposes of UK law.
8. The definition covers what was referred to in the previous legislation as the state, regional or local authorities and bodies governed by public law (and associations of such authorities or bodies), and includes central government authorities, (defined in regulation 44 and Schedule 2 of the Procurement (Wales) Regulations 2024). There is no intended or implied change in the scope of entities covered. Indeed, since the definition forms the basis of the UK's international obligations on public procurement, it is important that the scope of entities covered is not changed.
9. Entities that were contracting authorities under the previous legislation are intended to still be contracting authorities (unless their status has changed, for example because their funding has changed from mainly public to mainly private sector or they are now operating commercially, whereas previously they were not). Similarly, entities that were not caught by the definition in the previous legislation are not intended to be caught by the new definition, unless their circumstances have changed. There is no intention to try and catch new entities, or to exclude entities that were covered previously – the aim is for a consistent effect, ensuring a smooth transition from the previous legislation to the new.
10. The features of funding, control and non-commercial nature are intended to capture the same contracting authorities as were previously covered.

## Key points and policy intent

### Contracting authorities

11. Contracting authorities are comprised of public authorities and, in the case of a utilities contract, public authorities, public undertakings and private utilities. They do not include excluded authorities, which are listed at section 2(5) of the Act. Since this guidance does not cover utilities, it only considers the definition of a public authority.
12. The definition of a contracting authority does not list individual entities or categories of entities explicitly. This would be impracticable as there are simply too many entities to list, and any list would only be a snapshot in time, as entities can change their structure or disappear and new entities emerge. Rather, the definition uses a number of tests to determine whether an entity is covered or not.



13. As stated above, section 111(3) and (4) of the Act sets out the criteria when a contracting authority is to be treated as a 'devolved Welsh authority'. It states that a devolved Welsh authority is a public undertaking or private utility if it operates wholly or mainly in relation to Wales, and its activities are wholly or mainly activities that do not relate to reserved matters. Otherwise, a contracting authority is to be treated as a devolved Welsh authority if its functions are exercisable wholly or mainly in relation to Wales, and its functions are wholly or mainly functions that do not relate to reserved matters. For information on what constitutes "reserved matters" under this section of the Act, please refer to the [Government of Wales Act 2006 Schedule 7A](#).

## Public authorities

14. In considering whether an entity is a public authority, there are three elements to consider. The first two elements of the test are:
- a. Public funding (section 2(2)(a)) - whether the entity's funding is derived entirely or mainly from public funds; or
  - b. Public authority oversight (section 2(2)(b)) – whether the entity is under the management or control of one or more public authorities, or of a board with more than half of its membership appointed by one or more public authorities (section 2(3)).
15. The third element of the test is that, in each case, the entity does not operate on a commercial basis (section 2(2)). To assist, section 2(4) sets out examples of factors that may be relevant when determining whether an entity operates on a commercial basis - this is not an exhaustive list and there may be other factors to be taken into account in different cases. For example, it may also be relevant to consider the intended purpose of the entity. Contracting authorities may need to consider questions such as if the entity was established with, or has a substantial purpose of providing a service in the public interest e.g. to provide social housing, even though it may have a commercial side too. If so, this could mean that the entity is not operating on a commercial basis in the true sense of the term. Conversely, entities established or operating for a commercial purpose, such as local authority trading companies established under section 95 of the Local Government Act 2003, are likely to be competing on the open market in all areas of their business and therefore are likely to fall within the meaning of operating commercially under the Act.
16. Public funding may be from a variety of sources, for example, funding may be provided:



- a. in the case of local authorities, from council tax and non-domestic rates;
  - b. in the case of Welsh Government sponsored bodies, from the sponsoring department; or
  - c. in the case of local authority companies, from the local authority itself.
17. Section 2(3) sets out what it means to be subject to public authority oversight, which is that the entity is subject to the management or control of:
- a. one or more public authorities; or
  - b. a board with more than half of members appointed by one or more public authorities.
18. Entities will need to consider their own structure, oversight, funding and commercial circumstances to determine whether they meet the test for a public authority, but the examples and explanations in the Act and this guidance should assist.

### Centralised procurement authorities

19. Centralised procurement authorities are contracting authorities that are in the business of carrying out procurement for the benefit of other contracting authorities. These are considered further in the guidance on frameworks.

### Exempted contracts

20. The authorities that are specifically excluded from the scope of the Act are named in section 2(5).
21. Schedule 2, paragraph 2 exempts contracts (referred to here as 'relevant contracts') awarded by public authorities to commercial entities that they control, such as local authority trading companies. Section 2(10) serves as an anti-avoidance mechanism to ensure that where a public authority awards a relevant contract to a controlled entity that operates on a commercial basis, the obligation to comply with the Act is flowed down from the public authority to the controlled entity when it is delivering the contract.

### What other guidance is of particular relevance to this topic?

- Guidance on exempt contracts (for information relating to vertical arrangements)
- Guidance on utilities



## Related questions

### Q. Does the definition of contracting authority include housing associations?

The Act's definition of a contracting authority ensures consistency with the UK's international obligations regarding commitments in relation to registered providers of social housing. In determining whether a person operates on a commercial basis, section 2(4) of the Act provides examples of factors to be taken into account. Section 2(4) is not exhaustive and so in the context of housing providers, it may be relevant to consider other factors, such as the purpose of the entity. The Act is not intended to change the position of the previous legislation.

### Q. Will being regulated by a regulator be enough to meet the contracting authority oversight requirement?

Not necessarily. Section 2(3) defines public authority oversight as meaning subject to the management or control of a public authority (or authorities) or of a board where more than half of the members are elected by a public authority (or authorities). It is not intended that regulators will always be classed as having the necessary oversight and therefore meet Section 2(3). There may however be circumstances where this is the case.

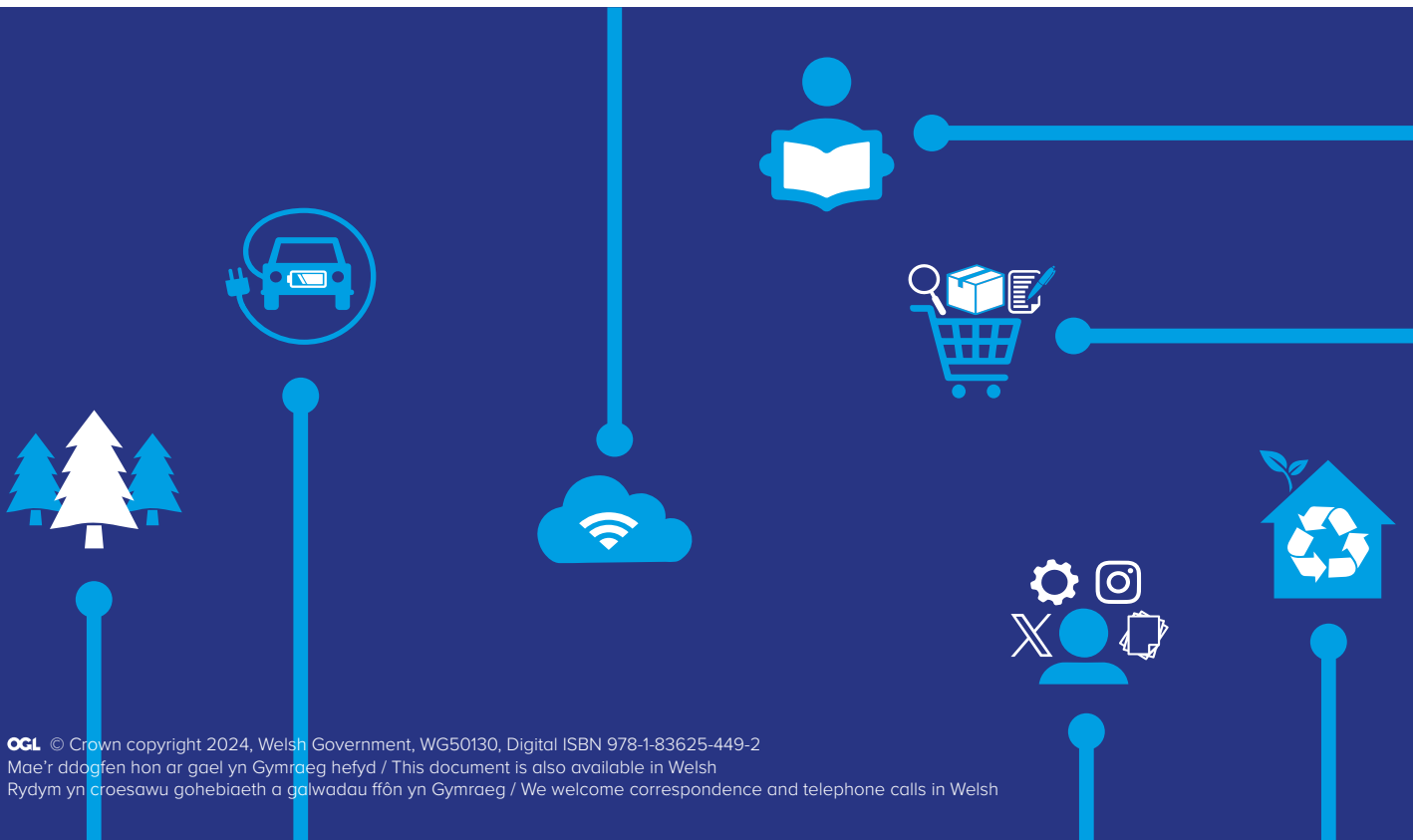




Llywodraeth Cymru  
Welsh Government

# Guidance Covered Procurement

July 2024





## Guidance: Covered Procurement

### What is covered procurement?

1. Covered procurement means the award, entry into and management of a public contract. A public contract is a contract entered into by a contracting authority with a value above the relevant threshold that is not exempted by Schedule 2 of the Procurement Act 2023 (the Act).
2. Having a defined term helps contracting authorities understand exactly what provisions apply to above threshold, non-exempted procurement. The Act also includes a wider definition of 'procurement', which means the award, entry into and management of a contract (i.e. public contracts and below-threshold and exempted contracts). That allows the Act to make some separate and limited provisions in relation to matters such as:
  - a. particular requirements for certain below threshold procurements;
  - b. non-discrimination obligations with respect to treaty state suppliers to satisfy international obligations on public procurement that apply to below threshold or exempted procurements; and
  - c. the duty to have regard to the Wales Procurement Policy Statement at Section 14.

### What is the legal framework that governs the definition of covered procurement?

3. Section 1(1) defines 'procurement' and 'covered procurement'; terms which are referred to extensively in other sections of the Act.
4. Section 1(2) makes clear that the term 'procurement' and by extension 'covered procurement' includes all steps taken in the contract award, and the management of a contract, up to and including expiry or termination of the contract.
5. Sections 1(3) & (4) clarify that the terms 'procurement' and 'covered procurement' also apply to joint procurement and procurement by a centralised procurement authority.
6. Section 11(1) sets out that a covered procurement must be carried out in accordance with the Act.



7. Section 11(2) sets out the different methods by which a contracting authority may award a public contract.

## Key points and policy intent

8. The term 'covered procurement' is defined in Section 1 as "the award, entry into and management of a public contract" and 'public contract' is defined in Section 3. Contracting authorities will need to refer to Section 3 for a complete definition but in summary it covers contracts (for the supply, for pecuniary interest, of goods, services and works), frameworks and concession contracts that have a value above the relevant threshold and are not exempted. Frameworks and concession contracts are specifically defined elsewhere in the Act.
9. The term 'pecuniary interest' has a more precise meaning than 'consideration' which could take any form. This is intended to capture contracts made with profit in mind. The Act does not intend to capture purely compensatory or supportive arrangements, such as grants or sponsorship arrangements as doing so might remove the flexibility for the Government to support schemes which are purely compensatory in nature or provide non-pecuniary support which helps foster the development of British businesses.
10. The Act allows contracting authorities to carry out procurements jointly with other contracting authorities. It also provides for certain contracting authorities to act as 'centralised procurement authorities'.
11. The term 'centralised procurement authority' is defined as a contracting authority that is in the business of carrying out procurement for or on behalf of other contracting authorities or for the purpose of the supply of goods, services or works to other contracting authorities. It could apply to any type of contracting authority, whether that be central government, local authorities or other types of contracting authority, as long as they are in the business of undertaking procurement or purchasing for other contracting authorities. It could be a single contracting authority or a consortium of contracting authorities acting as a centralised procurement authority.
12. 'In the business of' ensures that only contracting authorities that specialise in this activity rather than those who carry out this activity on an ad hoc basis can be centralised procurement authorities. Where a contracting authority uses a centralised procurement authority for its procurement, the contracting authority can only be said to be compliant with the Act to the extent that the centralised procurement authority has complied with the Act on its behalf. This will not however extend to any elements of the procurement process which the contracting authority undertakes itself.



13. Examples of centralised procurement authorities include the Welsh Government Commercial Delivery (WGCD) – formerly the National Procurement Service – which specialises in setting up frameworks and procuring products and services for the Welsh public sector. WGCD works with the wider public sector including local authorities and the Welsh NHS to develop and deliver collaborative national framework agreements.
14. Section 11 obliges contracting authorities to carry out covered procurement solely in accordance with this Act. Specifically, contracting authorities must use the procedures in the Act for the award of public contracts, namely competitive tendering (including under a dynamic market), direct award in special cases, direct award after switching procedures and award under frameworks. This will ensure contracting authorities properly engage with the market where appropriate and achieve value for money.
15. The Act requires contracting authorities to use a competitive tendering procedure for covered procurement - except in the limited circumstances where direct award is permitted or for awards under frameworks - which provides suppliers with the chance to bid for public contracts on a level playing field. The rules on how to write the technical specification for what the authority wishes to purchase, what information has to be published, how it will assess tenders and how it will award contracts are essential to maintaining this level playing field.
16. Section 11 will allow a supplier to hold the contracting authority conducting covered procurement to account, with remedies under Part 9 available where it can be demonstrated that a contracting authority has failed to comply with one or more of the requirements in the Act (for example, direct award without proper justification, discriminatory technical specifications), and the supplier has consequently suffered, or is at risk of suffering, loss or damage in consequence of a breach of the duty.

### What other guidance is of particular relevance to this topic area?

- Guidance on exempted contracts
- Guidance on thresholds
- Guidance on contracting authorities



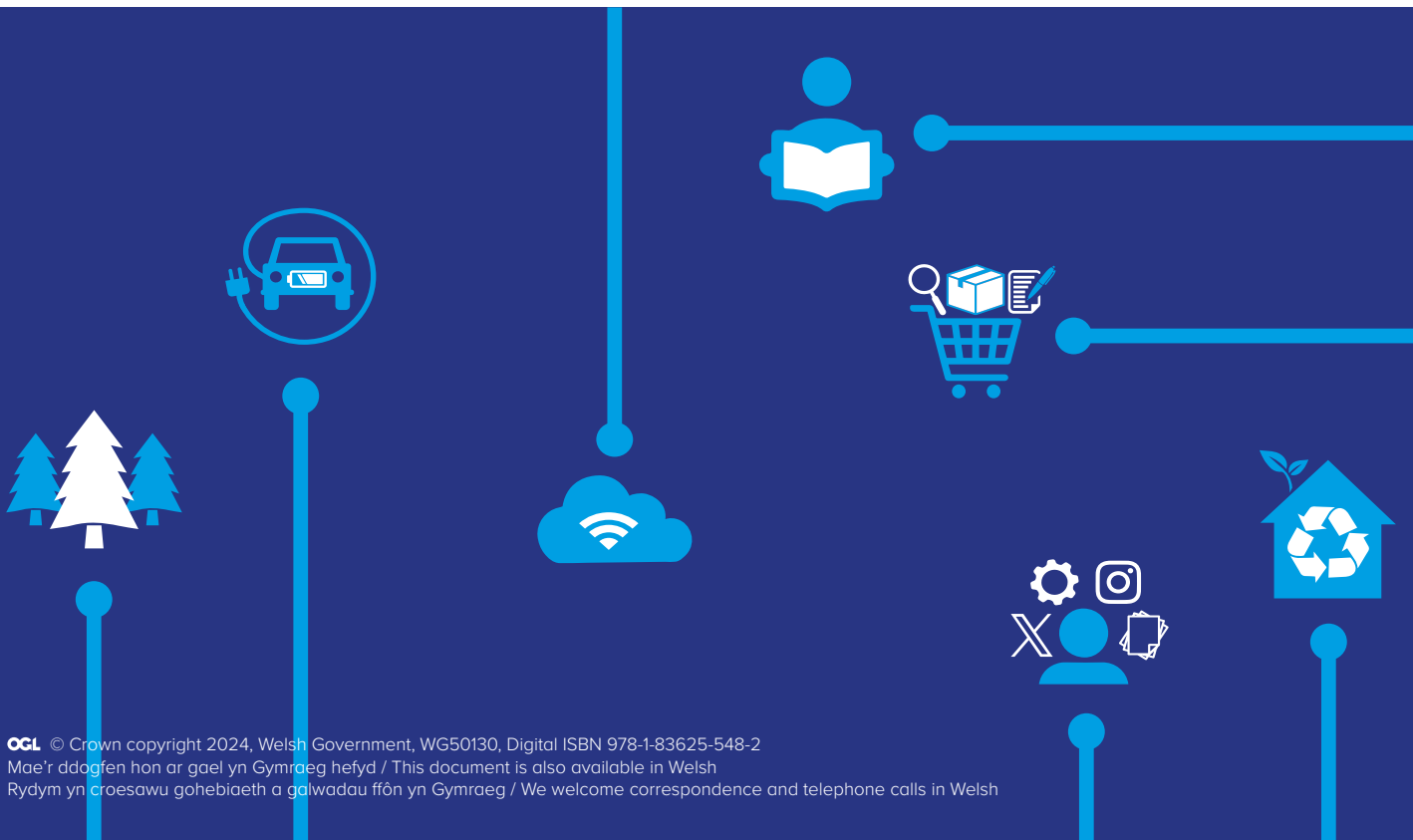




Llywodraeth Cymru  
Welsh Government

# Guidance Exempted Contracts

August 2024





## Guidance: Exempted Contracts

### What is an exempted contract?

1. An exempted contract is a type of contract listed in Schedule 2 to which the rules on covered procurement in the Procurement Act 2023 (the Act) do not apply.
2. The exemptions ensure that contracting authorities have the freedom to carry out the most appropriate procurement where the rules in the Act would otherwise be inappropriate or unsuitable.

### What is the legal framework that governs exempted contracts?

3. Section 3 of the Act sets out the three types of contracts that are public contracts. These are contracts for the supply of: goods, services or works; frameworks; and concession contracts that have an estimated value above the applicable financial threshold and are not exempted contracts.
4. Schedule 2 of the Act sets out the types of exempted contracts. It is split into two parts. Part 1 establishes which contracts are always exempted due to the nature of the relationship between the contracting authority and the other party to the contract, and Part 2 determines which contracts are exempted because of the nature of the subject matter of the contract.
5. Exempted contracts are not required to be procured in line with the provisions of the Act that relate to covered procurement. Exempted contracts are, however, bound by the provisions of the Act that relate to 'procurement'; for example in relation to the Wales procurement policy statement (WPPS) at section 14 (which may or may not apply, depending on the requirements of the WPPS itself). In this guidance, references to contracts being exempted from the Act mean the general provisions of the Act i.e. those which relate to covered procurement.

### What has changed?

6. The Act maintains the exemptions available in previous legislation (with a minor change to remove the political campaign services exemption that was relevant when the UK was a member of the EU where, in some states, political parties are contracting authorities, which is not the case in the UK), simplifies how those exemptions are framed and ensures the terminology used is more appropriate for domestic law.



## Key points and policy intent

### Part 1: Counterparty exempted contracts

7. Part 1 describes the contracts that are exempted from the Act due to the nature of the relationship between the contracting parties. These are referred to as counterparty exempted contracts and are set out below.

### Vertical arrangements

8. The vertical arrangement exemption applies only to contracting authorities that are public authorities; it does not apply to public undertakings or private utilities. The exemption is available where a contracting authority (or two or more contracting authorities acting together) (referred to in this guidance as the 'contracting authority owner') contracts with a person (referred to in this guidance as the 'controlled person') over which the contracting authority owner has the form of control set out in the Act. One example of a controlled person is a local authority trading company that the contracting authority owner has set up, either on its own or with other contracting authorities, to provide services.
9. Schedule 2, paragraph 2(2) of the Act sets out the criteria that determine whether the person is 'controlled', all of which must be met in order for the exemption to apply. These are:
  - a. The contracting authority owner is a parent undertaking, as defined in paragraph 2(4) (which refers to the definition in Section 1162 Companies Act 2006).
  - b. No other person exercises (directly or indirectly) a decisive influence over the activities of the controlled person;
  - c. The controlled person carries out more than 80% of its activities for, or on behalf of, the contracting authority owner, or for or on behalf of other persons controlled by the contracting authority owner; and
  - d. Where there is joint control by a contracting authority owner made up of more than one contracting authority, each contracting authority is represented on the controlled person's board or equivalent decision-making body, and the controlled person does not carry out activities which are contrary to the interests of one or more of these contracting authorities.
10. A person is not 'controlled' if another person who is not a public authority holds shares in that person.
11. This exemption applies to contracts awarded by the contracting authority owner to the controlled person and to contracts awarded by the controlled person to its contracting authority owner.



## Horizontal arrangements

12. Schedule 2, paragraph 3 of the Act sets out the exemption that applies only to contracts between contracting authorities (referred to in this guidance as the ‘co-operating contracting authorities’) and only where both of the co-operating contracting authorities are public authorities - it does not apply to public undertakings or private utilities.
13. A horizontal arrangement exists between co-operating contracting authorities when:
  - a. the arrangement is intended to achieve common goals in connection with the exercise of their public functions;
  - b. the arrangement is solely in the public interest;
  - c. no more than 20% of the activities envisaged by the arrangement are intended to be carried out for reasons other than for the purposes of their public functions.
14. Public functions are activities contracting authorities carry out as a public authority - for example, local authorities are responsible for the disposal of household waste. Activities carried out for the purpose of a waste disposal function could be, for example, recycling or disposing of waste in landfill.
15. Contracting authorities may also carry out activities that are not for the purpose of their public function, for example, local authorities disposing of commercial waste to create a profit.

## Defence and security contracts

16. Schedule 2, paragraph 4 of the Act sets out an exemption for defence and security contracts between a contracting authority and the government of another state or territory. Further details can be found in the UK Governments guidance on defence and security provisions.

## Utilities contracts

17. Schedule 2, paragraphs 5 and 6 of the Act set exemptions for utilities contracts. Paragraph 5 exempts a contract between a utility and relevant joint venture to which the utility is a party. Paragraph 6 exempts a contract awarded by a utility to a person affiliated with the utility or by a relevant joint venture to a person affiliated with any member of the joint venture. Further details can be found in the guidance on utilities procurement.



## Exempted contracts calculations – Vertical arrangements, Horizontal arrangements and Affiliated persons'

18. In order to adequately address all comments received on improving the clarity of the SI provisions on calculations and to also provide sufficient time to draft and review the revisions, we decided to remove the calculation provisions from the Procurement (Wales) Regulations 2024. Instead we will incorporate these provisions into our next statutory instrument which we plan to lay in September. This guidance will be updated when these calculation provisions are finalised.

### Part 2: Subject matter exempted contracts

19. Schedule 2, paragraph 7(1) of the Act explains that exempted contracts are contracts of a kind listed in Part 2 and frameworks for the future award of contracts only of a kind listed in Part 2. If a framework also provides for the award of contracts of a kind not listed in Part 2, the exemption is not available. The exemptions in Part 2 are not mutually exclusive and a contract may be an exempted contract because it falls into more than one kind of exemption.
20. Where an exemption applies only to part of a contract, a reasonableness test applies (see paragraph 7(2)) to prevent the contract from being an exempted contract if the goods, services or works to be provided for the main purpose of the contract could reasonably be separated and supplied under a different contract, and that separate contract would not fall under one of the exemptions in Part 2.
21. Paragraph 7(3) provides that when considering whether it is reasonable to supply the goods, services or works under a separate contract, contracting authorities may take into account the practical and financial consequences of awarding more than one contract. This is not a finite list and other factors may be taken into account.

### Land and buildings etc.

22. Schedule 2, paragraph 8 of the Act exempts a contract for the acquisition (by whatever means) (or the acquisition of an interest in or right over) of land, buildings or any other complete work<sup>1</sup> or a contract concerning an interest or right over any such things. This would include, for example, contracts for the purchase or rental of parks or buildings.

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<sup>1</sup> Defined by reference to Schedule 1 as a functioning structure that results from the carrying out of works.



23. The exemption allows contracting authorities to consider particular buildings or sites that meet their requirements, taking into account a range of factors - for example the need for a jobcentre, library or office accommodation to be in a particular location, of a particular design, and with particular facilities. In this example, it would be inappropriate for a contracting authority to be required to comply with the Act for the purchase of a specific, existing building or site; since only the owner of the building or site would be in position to respond to the tender.

## Broadcasting

24. There are two exemptions for contracts relating to broadcasting. The exemption at schedule 2, paragraph 9 exempts contracts entered into by contracting authorities (e.g. the BBC) for broadcast content. This would allow, for example, broadcasters to stimulate creativity by setting limits, within the legal framework they operate, on who can tender in order to increase competition between internal and external suppliers.
25. The exemption at paragraph 10 exempts contracts for the right to broadcast (by any means) to the general public, material supplied by the supplier - this material would include, for example, a programme or advertisement supplied by the supplier.
26. These exemptions do not apply to the supply of technical equipment or services necessary for the production, co-production and broadcasting of such programmes, for example, camera, lighting, props.

## Electronic communications services

27. Schedule 2, paragraph 11 of the Act exempts contracts whose main purpose is to facilitate the provision by a contracting authority of an 'electronic communications service'<sup>2</sup> to the public. Paragraph 12 exempts contracts whose main purpose is to permit a contracting authority to provide, maintain or use a 'public electronic communications network'<sup>3</sup>.

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<sup>2</sup> An 'electronic communications service' is defined in section 32 of the Communications Act as: "a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except insofar as it is a content service."

<sup>3</sup> A 'public electronic communications network' is defined in section 151 of the Communications Act as: "an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public".



28. These contracts are exempted as contracting authorities participating in these areas are operating in a competitive market that is sufficient to ensure they achieve value for money without the need for regulation.

## Alternative dispute resolution

29. Schedule 2, paragraph 13 of the Act exempts contracts for the purchase of arbitration, mediation or conciliation services and other similar services. This is because such services are provided by bodies or individuals with particular expertise or reputation and are subject to agreement between the parties involved.

## Legal services

30. Not all contracts for legal services are exempted under schedule 2, paragraph 14 of the Act. The types of legal services that are exempted are those relating to judicial or other dispute resolution proceedings, notary services and services that must be carried out by a particular person under an order of a court or tribunal or enactment, e.g. legal services provided by appointed guardians. It would be inappropriate to open these contracts up to competition. Other legal services (i.e. those not listed in paragraph 14) are not exempted, but instead will be subject to the special rules for light-touch services<sup>4</sup> in the Act.

## Financial services

31. The exemption for financial services contracts recognises that it would be inappropriate for contracting authorities to obtain loans or financial services by carrying out a procurement under the Act. The primary sources of finance for contracting authorities would be unlikely to respond to tender notices so the authority would be unlikely to acquire the best deal. Furthermore, the timescales and many of the other rules are unsuitable.
32. The exemption at schedule 2, paragraph 15 of the Act allows contracting authorities to obtain loans from, for example, the Public Works Loan Board, when they require funding, for example, for capital projects such as new roads or school buildings.
33. Paragraph 16 excludes contracts for an 'investment service or activity', or for an 'ancillary service' in relation to a 'financial instrument' where the service or

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<sup>4</sup> Light touch services are set out in Schedule 1 of The Procurement Regulations 2024 and include legal services not covered by this exemption.



activity is provided by an investment firm or a qualifying credit institution. These terms are defined in separate legislation (see paragraph 16(2)).

34. The exemption at paragraph 17 makes it clear that contracts for services provided by the Bank of England fall outside the scope of the Act. The Bank of England supports the economic policies of the Government. It provides the Government with near risk-free wholesale sterling facilities, acts as execution agent for foreign exchange transactions, supports sterling as a global reserve currency and the reciprocal reserve management requirements of central banks and manages foreign currency reserves as agent for HM Treasury. As such, contracts with the Bank of England are not appropriate for procuring under the Act.

## Employment

35. Schedule 2, paragraphs 18 and 19 of the Act exempt employment contracts (which are defined by reference to relevant employment legislation at paragraph 18(2)) and other contracts with individuals appointed to a public office (which may include the appointment of nonexecutive directors of a public authority or members of a public enquiry).
36. The exemption for employment and other contracts does not cover service contracts for personnel placement, where, under the contract with the supplier, the supplier places personnel with the contracting authority.

## Emergency services

37. Schedule 2, paragraph 20 of the Act exempts contracts for emergency services, but only in relation to those services listed and only where the supplier appointed is a non-profit organisation or association. Contracts, for example, for non-emergency ambulance services (e.g. ambulance services to pick up patients at home and take them to routine appointments) are not covered by this exemption.

## Public passenger transport services

38. Schedule 2, paragraph 21 of the Act exempts contracts for certain public passenger transport services that are awarded under separate legislation specified at section 136(11) of the Railways Act 1993. (See paragraph 76 below which discusses Schedule 2, paragraph 37 which also exempts concession contracts for public passenger transport services.)





39. The practical effect of this exemption is that the award of contracts for rail and metro, and bus and tram concessions, are exempt from the Act whilst contracts for tram and bus that are not concessions are not exempt and are therefore procured under the Act.

## Research and development services

40. The exemption for contracts for research and development (R&D) services at schedule 2, paragraph 22 of the Act applies where the services are intended to be for or result in a public benefit and provided the contract does not include goods or works.

41. The R&D services to be provided must comprise at least one of the following activities:

- a. 'fundamental' research to acquire new scientific or technical knowledge without any particular application or use in view;
- b. 'applied' research directed primarily at generating scientific or technical knowledge for a specific objective;
- c. 'experimental' development which draws on existing knowledge to initiate the manufacture of new materials or products, establish new processes, systems or services; or to achieve a substantial improvement in existing materials, products, processes, systems and services;
- d. the manufacture and testing of prototypes.

42. The scope of R&D services exemption is limited so it falls short of the commercial industrialisation of the goods and/or services. The exemption does not therefore apply if the contract includes:

- a. the production of tools for manufacture; or
- b. the development of industrial processes to manufacture goods or works arising from R&D, which would include, for example:
  - i. the making and qualification of pre-production prototypes used to develop the manufacturing processes; and
  - ii. industrial engineering, industrial design or manufacture.

43. The Act allows contracting authorities to choose how they conduct R&D and procure R&D services. The R&D services exemption gives contracting authorities the freedom to design R&D programs that could seek to develop products or technology for the benefit of the market as a whole, and for which the authority itself has no requirements. For example, government contracts for research by public research institutions, universities or the private sector.



44. In addition to the exemption for R&D contracts, contracting authorities are able to directly award a contract where the direct award justification in schedule 5, paragraph 2 (Prototypes and development) applies. The grounds for direct award have a wider scope for R&D than this exemption; see guidance on direct award for further information.
45. Contracting authorities are also able to procure R&D under a competitive flexible procedure if, for example, the intention is to build an R&D phase into a procurement in order to be able to also purchase the resulting product.

## International agreements and organisations

46. Schedule 2, paragraphs 23 and 24 of the Act exempt contracts which the contracting authority is obliged to award in accordance with the procurement rules of an international agreement<sup>5</sup> to which the UK is a party or an international organisation<sup>6</sup> of which the UK is a member.
47. The exemption at paragraph 23 applies only where an international agreement sets out a procurement procedure that the contracting authority must follow and only to contracts relating to:
  - a. the stationing of troops; or
  - b. the implementation of a joint project by the signatory countries.
48. The exemption at paragraph 24 applies only when:
  - a. it is a requirement of an international organisation of which the UK is a member that the UK (and therefore contracting authorities) awards a contract in accordance with the procedure adopted by the organisation; and
  - b. that procedure is inconsistent in any material way with the procedure to be followed in the Act.
49. Paragraph 24 does not apply to defence and security contracts (separate exemptions apply to defence and security contracts).

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<sup>5</sup> An international agreement may be, for example, a convention, treaty or other arrangement such as a memorandum of understanding between states.

<sup>6</sup> An international organisation may be, for example, a permanent international institution with separate legal personality, set up by a treaty between states or intergovernmental organisations.



## National security

50. The exemption at schedule 2, paragraph 25 of the Act applies to contracts that a contracting authority considers, in the interests of national security, should not be subject to all or part of the Act.
51. National security is not defined in the Act to ensure that it is sufficiently flexible to protect the UK's national security interests. Neither does this guidance define national security. However, contracting authorities should recognise the concept of national security has evolved beyond sovereignty, national defence, intelligence and counterintelligence. It may include dimensions such as countering terrorism and organised crime, cyber security, maintenance of public order, economic security, foreign relations, and environmental security.
52. A decision to apply the exemption can only be made in the interests of national security. Other interests are irrelevant. For example, a contracting authority cannot use the exemption to secure economic benefits for itself. That does not mean national security does not have an important economic dimension, as it can be understood as the protection of infrastructure and activities that are critical for the functioning or stability of the economy or financial system (including payment systems) or to the safety and soundness of financial institutions. So, the national security exemption may be necessary to protect such economic infrastructure and activities but not to secure an economic advantage for the authority.
53. For illustration only, the scenarios where the national security exemption could be used for critical economic and financial infrastructure, provided they are properly justified by the contracting authority, include but are not limited to:
  - a. where the performance of the contract requires access to highly sensitive sites, e.g. access to sites used for confidential activities relating to Bank of England banknotes;
  - b. where the information required to be able to bid for and perform the contract requirement is highly classified, e.g. information related to sensitive aspects of banknote design and security features;
  - c. where confidentiality of the contract or identity of the provider is critical for the functioning or stability of the national economy or financial system (including payment systems) or to the safety and soundness of financial institutions, e.g.:
    - i. opening of accounts for, and/or maintaining of banking services by, the Bank of England; and
    - ii. legal or professional advice or appointments relating to market interventions, pre-resolution work, potential failure of a financial institution(s) or gilt operations.



54. The national security exemption is available to all contracting authorities. Contracting authorities know their own business best, including how national security risks are identified and managed to support their own operations and services and may wish to issue local guidance on how to address specific national security risks which are highly sensitive in nature, including who is the decision maker or needs to be consulted, and what factors must be considered.
55. Contracting authorities are strongly advised to keep a written record of their rationale for using this exemption. The contracting authority should, in broad terms, explain and justify what those national security risks are and the actions taken to mitigate the risks. This explanation needs to be a record of what was decided when the decision was made.

### National security exceptions in international agreements

56. Where a contracting authority is seeking to rely on the national security exemption to award a contract that is covered by an international agreement that the UK has entered into with another country, the contracting authority should satisfy itself that an exception in the international agreement applies in relation to the award.
57. The question of whether a contract is covered by an international agreement will depend on whether the works, services or goods to be provided are included in the UK's coverage schedules to the agreement. For example, the UK's coverage schedules to the WTO's Agreement on Government Procurement (GPA) are set out in 7 Annexes.
58. The procurement chapters of most international agreements that the UK is party to contain a national security exception on the same or similar terms to that in Article III.1 of the GPA which states:

“Nothing in this Agreement shall be construed to prevent any Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.”
59. A contracting authority seeking to rely on this exception must be satisfied that the requirements of the exception are met. The GPA exception permits contracting authorities “taking any action” or “not disclosing any information” where necessary to protect the UK's essential security interests. The application of the



GPA exception is, however, significantly limited in that it can only be relied on in relation to three categories of procurement:

- a. procurement of arms, munitions or war material;
- b. procurement indispensable for national security; or
- c. procurement for national defence purposes.

60. For all other procurements, a contracting authority would need to consider other exceptions in the international agreement. For example, Article III.2 of the GPA provides an exception that:

“Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent any Party from imposing or enforcing measures:

- a. necessary to protect public morals, order or safety;
- b. necessary to protect human, animal or plant life or health;
- c. necessary to protect intellectual property; or
- d. relating to goods or services of persons with disabilities, philanthropic institutions or prison labour.”

Again, contracting authorities wishing to rely on this exception must demonstrate that the requirements of the exemption are met. Article III.2(a) and (b) are potentially relevant to national security. The award of the contract must not constitute a means of arbitrary or unjustifiable discrimination between parties to the international agreement, nor a disguised restriction on international trade. In other words, contracting authorities cannot rely on this exception in order to favour UK suppliers or UK-made products in a manner that is arbitrary or unjustified or in order to limit international trade. The award must also be connected to and address a particular interest specified in (a) or (b), e.g. public order and must be ‘necessary’ to protect that interest, e.g. countering large-scale public disorder such as arson and looting.

61. Where the national security exemption at schedule 2, paragraph 25 of the Act applies, it is likely that an exception in an international agreement can also be invoked, but this requires separate and particular analysis on a case by case basis. Further details on the international agreements at Schedule 9 of the Act can be found in the guidance on treaty trade suppliers.



## Intelligence activities

62. Schedule 2, paragraph 26 of the Act exempts contracts for the purposes of carrying out, facilitating, or supporting intelligence activities. The Act does not define intelligence activities, and it is for individual contracting authorities to determine whether it applies to their contractual requirement
63. Section 2(5)(b) of the Act sets out that the Security Service (MI5), the Secret Intelligence Service (MI6) and the Government Communications Headquarters (GCHQ) are excluded authorities and therefore are not covered by the definition of a contracting authority, which means that they are not covered by the Act, and therefore this exemption is not relevant. However, it may be relevant for other contracting authorities whose principal function is not intelligence, e.g. the Home Office, that enter into contracts which relate to intelligence activities.

## Defence and security contracts

64. Schedule 2, paragraphs 27 to 30 of the Act exempt defence and security contracts where:
  - a. (paragraph 27) the supplier is located in an area outside of the UK where armed forces are deployed and operational needs require the contract to be awarded to that supplier.
  - b. (paragraph 28) the supplier is located in a state or territory outside the UK in which the armed forces maintain a military presence and the state or host nation requires that the supplier delivers the goods, services or work to which the contract relates.
  - c. (paragraph 29) contracts are awarded under a procedure adopted by an international organisation of which the UK is a member.
  - d. (paragraph 30) contracts are awarded under international arrangements to jointly develop new products or for the exploitation of those projects following development.
65. Further details can be found in the UK Governments guidance on the defence and security provisions.



## Utilities contracts

66. Schedule 2, paragraphs 31 to 34 of the Act exempt utility contracts as follows:

- a. (paragraph 31) contracts awarded for the purpose of further sale or lease to third parties of the goods, works or services supplied under those contracts (except where the utility is a centralised purchasing authority).
- b. (paragraphs 32 and 33) contracts for the purchase of water or energy, or fuel for the production of energy, by utilities carrying out a relevant utility activity.
- c. (paragraph 34) contracts for the activities set out in Part 2 of Schedule 4, which are exempted from the Act as they are exposed to competitive forces in an unrestricted market.

67. Further details can be found in the guidance on utilities procurement.

## Concession contracts

68. Schedule 2, paragraphs 35 to 37 of the Act exempt concession contracts as follows:

- a. (paragraph 35) for the carrying out of a utility activity for certain water services.
- b. (paragraph 36) contracts giving an exclusive right to operate a relevant scheduled air service.
- c. (paragraph 37) contracts for public passenger transport services.

69. Further details can be found in the guidance on concessions procurement.

## City of London

70. Schedule 2, paragraph 38 of the Act exempts contracts entered into by the Common Council of the City of London Corporation other than for the purposes of its public functions. This allows the City of London to conduct procurements relating to its commercial trading activities without applying the Act and is necessary due to the unique structure of the City of London.

## What other guidance is of particular relevance to this topic area?

- Guidance on covered procurement
- Guidance on treaty state suppliers
- Guidance on concessions contracts
- Guidance on utilities contracts



Llywodraeth Cymru  
Welsh Government



# Wales Procurement Policy Statement

March 2021





# Ministerial Foreword

The consequences of the Covid-19 pandemic are truly profound for our economy, our society, and our communities. With this backdrop, together with the continued uncertainty of the long term impacts of the UK's departure from the EU, we must ensure public sector expenditure delivers even greater value in contributing to positive social, economic, environmental and cultural outcomes. Effective, sustainable procurement, and the successful delivery of works, goods and services we all rely on, has never been more important.

Public procurement can play a central role in the delivery of progressive policy priorities ranging from decarbonisation, to social value, fair work, and community benefits, the Circular Economy and the Foundational Economy. These policies help to combat climate change, support jobs and training while helping the most vulnerable.

Delivery on these ambitions is reliant upon a procurement profession with the skills and capacity needed to make our goals a reality. I am proud of the progress we are making together to upskill the profession and increase training opportunities.

The Wales Procurement Policy Statement (WPPS) sets the strategic vision for public sector procurement in Wales. It will help to define our progress against the well-being goals we are pursuing for future generations putting the Well-being and Future Generations (Wales) Act 2015 at the heart of all procurement decisions supporting us to achieve the 'Wales we want'. We all have a responsibility to ensure we are preventing problems and thinking about the long-term, while maximising opportunities to deliver economic, social, environmental and cultural well-being.

The key to delivery of this WPPS will be through continued collaborative working. We will review and refresh the WPPS regularly with partners to ensure that it remains a true reflection of our shared ambition of public procurement in Wales. We aim to achieve greater transparency on outcomes.

Welsh Government will develop an action plan to underpin delivery against the Statement's principles which will be published on our website. I ask buying organisations, either individually or as part of a collaboration, to develop and publish their own action plans detailing how they will support the delivery of priorities at a local, regional and national level. The proposed Social Partnerships Bill statutory guidance will take into account this Statement and associated action plans, placing contracting authorities under a duty to deliver socially-responsible outcomes through procurement. This places fair work and social value at the centre rather than being solely focused on achieving financial savings.

I hope that you will welcome this Statement and work with us to make our shared vision a reality.



*Rebecca Evans.*

**Rebecca Evans MS**  
Minister for Finance  
and Trefnydd



# Procurement Policy in Wales

The purpose of this document is to set the strategic direction for public sector procurement in Wales.

The vision is:

**“Welsh public sector procurement is a powerful lever with ability to affect sustained change to achieve social, economic, environmental and cultural outcomes for the well-being of Wales”**

## The Wales Procurement Policy Statement Principles

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**The Welsh public sector will follow ten principles for procuring well-being for Wales based on the Well-being of Future Generations (Wales) Act Goals and key Welsh Government policies:**

1. We will leverage **collaborative** procurement activity in Wales to maximise **long-term** sustainable social and economic value outcomes from public spend
2. We will **integrate** procurement into the heart of Welsh policy development and implementation
3. We will progress **long-term** sustainable procurement, which builds on and scales best practice and sets clear steps that show how procurement is supporting the delivery of organisational well-being objectives
4. We will raise the **long-term** standing and profile of the procurement profession and its role as an enabler for procurement policy
5. We will support Welsh Government policy objectives relating to progressive procurement, such as the Foundational and Circular Economy, through **collaborative**, place-based (whether national, regional or local) procurement activity which nurtures resilient local supply chains
6. We will act to **prevent** climate change by prioritising carbon reduction and zero emissions through more responsible and sustainable procurement to deliver our ambition for a net zero public sector Wales by 2030
7. We will align our ways of working and increase stakeholder **involvement** to support innovative and sustainable solutions through procurement
8. We will **collaborate** with stakeholders to promote equal opportunities and fair work in Wales
9. We will improve the **integration** and user experience of our digital solutions and applications, maximising the use of our procurement data to support decision making
10. We will promote value-based procurement which delivers optimum **long-term** outcomes for Wales.

# Wales Procurement Policy Statement – Key Information

## Structure of the Wales Procurement Policy Statement

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- The Principles are the Welsh Government’s principles in relation to procurement.
- The definition of each principle describes what the principle means.
- The potential considerations specify, but do not constitute an exhaustive list of, the kind of questions which a contracting authority may wish to consider in order to demonstrate that it has had regard to the Welsh Government’s principles.
- The intended outcomes describe what contracting authorities are expected to achieve when they have regard to the principles.
- Each contracting authority is encouraged to have regard to all the principles but may exercise its judgement to decide if each principle is relevant to a procurement and/or its procurement activity.

### Interaction with the Well-being of Future Generations (Wales) Act 2015

- The potential considerations and intended outcomes refer to concepts under the Well-being of Future Generations (Wales) Act 2015 (the “Act”). Most, but not all, contracting authorities are included in the Act. The Act places a duty on those

contracting authorities to carry out sustainable development. The Welsh Government therefore recognises that not all contracting authorities are required to set and publish well-being objectives or to work to achieve the seven well-being goals but it encourages each contracting authority to consider how its procurement activity can contribute to sustainable development. For further information on the Act, please visit:

<https://gov.wales/well-being-of-future-generations-wales>

### Interaction with relevant legislation

- Contracting authorities are reminded that they must not take any action in accordance with these principles which would conflict with any obligation relating to existing relevant legislation or public procurement requirements, whether under the Public Contracts Regulations 2015 or otherwise.

### Contracting Authorities

- In this document, references to a “contracting authority” is meant to reflect contracting authorities in the Welsh Public Sector.

# Wales Procurement Policy Statement Principles

1. We will leverage **collaborative** procurement activity in Wales to maximise **long-term** sustainable social and economic value outcomes from public spend

## Definition

Delivering long-term sustainable social and economic value outcomes from public spend requires public, private and third sector organisations to work together effectively for the well-being of Wales. Collaborative procurement is where two or more contracting authorities work together to maximise benefit. For example, contracting authorities may choose to collaborate to align and leverage their procurement activity to deliver efficiencies. Similarly, suppliers may choose to work together to reduce bidding costs and offer improved value for money. Collaboration can also be local and/or cross-sector and can involve small and medium-sized enterprises (SME) and Voluntary Community and Social Enterprises (VCSE).

## Potential considerations for contracting authorities

- What social, economic, environmental and cultural outcomes is the organisation trying to achieve?
- How is the organisation identifying appropriate opportunities for collaborative procurements with other organisations?
- Are there any potential benefits to the well-being of Wales that could be realised through collaboration?
- What are the shared long-term goals for the collaboration?
- Do the organisations have the appropriate level of procurement expertise and resource available to make the collaboration a success?
- How can knowledge be shared effectively between the collaborating partners?
- How do the organisations overcome any cultural barriers that could hinder the effectiveness of the collaboration?
- Are formal contractual arrangements necessary for the collaboration including adequate dispute and escalation mechanisms?
- How will the organisations ensure transparency between the parties?

- What are the risks and opportunities associated with the collaboration? How will the risks be allocated appropriately between the parties? How will the risks be monitored and managed? How will the opportunities be maximised?
- How will the organisations monitor and report on engagement with collaborative procurement initiatives?

## Intended Outcomes

- Contracting authorities should embrace collaborative approaches to procurement to maximise economic value outcomes from public spend
- Contracting authorities can avoid inefficiency as a result of duplication of effort
- Where possible, support a “Buy once for Wales” approach
- Contracting authorities should publish their procurement pipelines so that opportunities for collaborative procurement can be identified
- Contracting authorities should ensure appropriate structures are in place to support knowledge sharing and the identification and adoption of internal and external best practice

## 2. We will **integrate** procurement into the heart of Welsh policy development and implementation

### Definition

Strategic procurement is an important policy delivery mechanism to deliver local, regional and national policy ambitions. Using Welsh public sector procurement to deliver policy requires a proactive and strategic approach, led by professionally qualified and experienced procurement teams, which involves cross-functional teams and collaboration with public and private sector stakeholders.

### Potential considerations for contracting authorities

- What role will procurement play in the development of local and regional policies?
- What role will procurement play in the implementation of local, regional and national policies?
- How effectively are Wales Procurement Policy Notes being implemented and applied by the organisation?
- What is the current level of procurement and contract management capacity and capability within the organisation, and is this sufficient?
- Is the organisation using the available training opportunities and resources to their full potential?
- How effective is the organisation's existing guidance and training for current and future commercial and procurement professionals, and those who are outside procurement but undertake procurement tasks?
- How effective are existing policies and processes to ensure that procurement-related considerations are appropriately reflected?
- How will performance and outcomes be recorded, monitored and reported to support continuous improvement?
- Is the organisation's procurement policy aligned with the organisational corporate policies and objectives?

### Intended Outcomes

- Contracting authorities should integrate procurement into their corporate strategies, and procurement policies should align with corporate policies and objectives
- Procurement should be recognised as a key strategic function to deliver organisational policy objectives
- Contracting authorities should ensure adequate skills and resources are in place to carry out effective procurement and contract management
- Contracting authorities should adopt a collaborative approach to policy development and implementation
- Procurement's role in the delivery of policy objectives should be clearly defined

### 3. We will progress **long-term** sustainable procurement, which builds on and scales best practice and sets clear steps that show how procurement is supporting the delivery of organisational well-being objectives

#### Definition

Sustainable procurement happens when organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising and eliminating negative environmental impacts and maximising the cultural well-being of people and communities in Wales.

#### Potential considerations for contracting authorities

- Does the organisation's procurement approach embed the five Ways of working in the Sustainable Development Principle in the Well-being of Future Generations (Wales) Act?
- How can the organisation take better account of social, environmental, economic and cultural impacts in its procurement activity?
- Does the organisation set well-being objectives which are widely understood, and how does the organisation's procurement activity help them to meet these objectives?
- Is the organisation using relevant tools, such as the Sustainable Risk Assessment, in the decision-making process?
- Does the organisation have a clear definition and understanding of what value for money means for them and their stakeholders?
- How can the organisation identify and adopt emerging and established procurement best practice from across the public, private and third sector?
- Is the organisation using the available training opportunities and resources to their full potential?
- How can the organisation share best practice both internally and with external stakeholders?
- How will sustainable procurement performance and outcomes be monitored and reported to support continuous improvement?

- What reporting metrics can the organisation develop and use to demonstrate how procurement is supporting the delivery of organisational well-being objectives?
- Does the organisation's procurement strategy and annual procurement report provide detail on these metrics?
- How can the organisation use benchmarking to compare performance with other organisations in the Welsh public sector, and with other 'best in class' organisations both nationally and internationally?

#### Intended Outcomes

- Contracting authorities demonstrate clear buy-in, leadership involvement and engagement in procurement as an important lever in meeting corporate organisational well-being objectives
- Contracting authorities should use procurement to support local employment, skills and training opportunities for people of all ages
- Contracting authorities should seek to maximise the delivery of social value through all procurement contracts
- Contracting authorities should develop clear reporting metrics to demonstrate how procurement is supporting the delivery of organisational well-being objectives

#### 4. We will raise the **long-term** standing and profile of the procurement profession and its role as an enabler for procurement policy

##### Definition

As a strategic function, procurement is one of the most important levers available to support contracting authorities in Wales in meeting their well-being objectives and contribute to the well-being goals for a prosperous, more equal, resilient, healthier and globally responsible Wales with cohesive communities, a thriving culture and vibrant Welsh language. Contracting authorities must ensure that there are appropriate skills, knowledge and behaviours in place to carry out effective procurement and contract management, cementing procurement's role as a strategic facilitator of growth, innovation and improving public services delivery.

##### Potential considerations for contracting authorities

- How well is procurement supported by senior management within the organisation?
- Does the organisation provide clear leadership of strategic procurement activity in line with local and national policies and priorities?
- What is the current level of strategic procurement and contract management capacity and capability within the organisation, and is this sufficient?
- Does procurement have an appropriate level of professional involvement and influence within the organisation?
- To what extent are procurement professionals being engaged and involved at an early stage of the procurement?
- How can the organisation's approach to procurement secure wider value for money benefits?
- How well established are the training and development support structures for staff involved in procurement?
- Is the organisation using the available training opportunities and resources to their full potential?
- How can the organisation identify and adopt emerging and established procurement best practice from across the public, private and third sector?

##### Intended Outcomes

- Procurement must be represented at a strategic level within contracting authorities
- Procurement is seen as an enabler and not a blocker, and procurement/commercial teams should act accordingly
- Procurement is seen as a profession of choice and people are encouraged and motivated to enter the profession
- Existing procurement talent in Wales should be nurtured and retained, with appropriate support and development plans in place and clear paths for progression within the profession

5. We will support Welsh Government policy objectives relating to progressive procurement, such as the Foundational and Circular Economy, through **collaborative**, place-based (whether national, regional or local) procurement activity which nurtures resilient local supply chains

## Definition

Progressive procurement can develop diverse and resilient local supply chains consisting of local enterprises, SMEs, employee-owned businesses, social enterprises, cooperatives and other forms of local ownership. By increasing local procurement and using Welsh public sector buying power to support local businesses through local-focussed procurement strategies, Welsh contracting authorities can develop their local economy and ensure that greater value from their public procurement activity remains within and benefits their local areas.

## Potential considerations for contracting authorities

- How can the organisation break larger contracts down into smaller lots and encourage collaborative bidding?
- How will the organisation advertise procurement pipelines more widely to inform the market of potential contract opportunities?
- How will the organisation use early market engagement and ‘meet the buyer’ events to encourage engagement from the local supply market?
- How will the organisation work with organisations such as Business Wales to support local SMEs and social enterprises through the bidding process, improving the quality of their bids?
- How will the organisation reduce bureaucracy and excessive bidding costs by simplifying the procurement process, making it easier for social enterprises and SMEs to bid?
- How will the organisation move away from reliance on lowest price tendering, focussing instead on the Well-being goals and five ways of working?
- How will the organisation identify and collaborate with local anchor institutions to increase the value and volume of procurement from regionally based SMEs?

- How will the organisation encourage suppliers to adopt practices that create beneficial social, economic and environmental impacts?
- How effectively are Wales Procurement Policy Notes being implemented and applied by the organisation?

## Intended Outcomes

- Increase spend with local businesses, social enterprises and the voluntary and community sector
- Promote collaboration between local and regional contracting authorities
- Provide local Welsh businesses with greater opportunity to bid for Welsh public sector contracts
- Develop resilient and reliable local supply chains of businesses who support the recruitment and retention of local employment
- Support, develop and grow business start-ups and local owned enterprises
- Maximise the Welsh public sector spend that remains in Wales with businesses owned in Wales
- Map local spend to maximise the local benefit of every £ spent through Welsh public sector contracts



6. We will act to **prevent** climate change by prioritising carbon reduction and zero emissions through more responsible and sustainable procurement to deliver our ambition for a net zero public sector Wales by 2030

### Definition

Climate change is one of the biggest challenges of our time. Contracting authorities must lead the fight against climate change and take urgent, proactive action to reduce and reverse the negative impacts on the environment from our actions and activities to safeguard and protect future generations. Using the collective power of strategic procurement, there is significant scope and opportunity for contracting authorities in Wales to achieve our net zero ambitions by prioritising and taking account of climate issues in procurement activity and maximising the use of available sustainable procurement tools, such as the Sustainability Risk Assessment.

### Potential considerations for contracting authorities

- How can procurement contribute towards the organisation's wider environmental objectives and impact?
- How can the organisation embed carbon reduction and zero emissions within their specifications?
- How can the organisation assess the carbon impact of spend?
- How can the organisation engage and involve suppliers and the wider supply chain to achieve their net zero ambitions?
- How can the organisation identify, adopt and embed environmental best practices learned from suppliers, the supply chain and other stakeholders?
- How will procurement-related environmental performance and outcomes be monitored and reported to support continuous improvement?
- What reporting metrics can the organisation use to demonstrate how procurement is supporting the delivery of net zero ambitions?
- How can the organisation use benchmarking to compare performance with other organisations in the Welsh public sector, and with other 'best in class' organisations both nationally and internationally?
- Does the organisation have the necessary skills and understanding to make the right decisions for the climate and the environment?

### Intended Outcomes

- Contracting authorities **must** take action to reduce and reverse the negative impacts on the environment from our actions and activities to safeguard and protect future generations
- Appropriate reporting metrics are developed and used across the Welsh public sector to demonstrate how procurement is supporting the delivery of net zero ambitions
- Contracting authorities take a co-ordinated approach through procurement to reduce and reverse climate impacts
- Contracting authorities work closely with suppliers and industry to achieve our net zero ambitions

## 7. We will align our ways of working and increase stakeholder **involvement** to support innovative and sustainable solutions through procurement

### Definition

Contracting authorities in Wales listening to, and working with, stakeholders from across the public, private and third sectors, as well as the communities we serve, is essential to develop sustainable and innovative solutions that will result in better outcomes for all. Stakeholders should be identified at an early stage of the procurement process, and meaningfully engaged as appropriate to deliver maximum value.

### Potential considerations for contracting authorities

- Who are the internal and external stakeholders?
- What are the stakeholder's priorities?
- How can the organisation increase stakeholder input and engagement at appropriate stages of the procurement process?
- Does the organisation have the processes and procedures in place to encourage and facilitate effective working with internal and external stakeholders?
- What information is needed from stakeholders, and how will that information be used?
- How can conflicting stakeholder priorities be managed effectively?
- What is the most effective method of communicating with different stakeholders?
- Who is responsible for stakeholder information management and ensuring the stakeholder analysis is continually reviewed?
- How can the organisation drive innovation and improved outcomes through early market engagement?
- What input can internal and external stakeholders have to the organisation's procurement strategies?
- Has the organisation considered alternative solutions such as insourcing, or alternative routes to market, such as partnership agreements or grants?

### Intended Outcomes

- Contracting authorities should ensure processes and structures are in place to support greater stakeholder participation across the end-to-end procurement process
- Contracting authorities should leverage suppliers' knowledge and expertise to deliver greater innovative solutions

## 8. We will **collaborate** with stakeholders to promote equal opportunities and fair work in Wales

### Definition

Contracting authorities should consider well-being and fair work, as well as the needs of people sharing protected characteristics, before procurement decisions are taken and throughout the complete procurement lifecycle, including contract management. Through the effective use of ethical and responsible sourcing strategies, contracting authorities can use procurement to achieve 'inclusive economies', where there is expanded opportunity for more broadly shared prosperity, especially for those facing the greatest barriers to advancing their well-being.

### Potential considerations for contracting authorities

- How will the organisation reflect Fair Work as part of their corporate objectives?
- How will the organisation include modern slavery and ethical employment issues on their corporate risk register?
- How will the organisation undertake formal, documented modern slavery risk assessments as part of the procurement process to identify, assess and manage the risk of exploitation and unethical employment practice in their supply chains?
- How will the organisation collaborate with public and private sector stakeholders to develop improved visibility of the supply chain through effective supply chain mapping?
- How will the organisation undertake formal, documented equality impact assessments at an early stage of the procurement process to ensure that equality-related considerations are reflected, and that opportunities to bring about positive improvements in equality are maximised?
- How will equality-related considerations be incorporated throughout the procurement process, from pre-procurement to contract and supplier management?
- What are the minimum standards of behaviour and practice expected of suppliers and their sub-contractors?

### Intended Outcomes

- Develop procurement strategy which sets out how procurement will be undertaken in a socially responsible way
- Simplify procurement processes to make them more accessible for SMEs, VCSEs and businesses owned by ethnic minorities
- Embed equality-related considerations throughout the procurement process
- Use contractual levers to ensure employees across the supply chain are treated fairly and ethically
- Implement and embed the Code of Practice Ethical Employment in Supply Chains in the procurement process, encourage suppliers and sub-contractors to sign up to the code, and develop effective reporting and auditing mechanisms to monitor the impact

## 9. We will improve the **integration** and user experience of our digital solutions and applications, maximising the use of our procurement data to support decision making

### Definition

Suppliers and contracting authorities expect eProcurement solutions to be built with a focus on user needs as a priority. In the same way as effective communication between people facilitates effective procurement, users expect systems to integrate seamlessly with minimum duplication.

The introduction of the Open Contracting Data Standard (OCDS), which is a standard for publishing data on public contracting processes, will increase transparency throughout the commercial lifecycle, enable deeper analysis of contracting data, and facilitate the use of data by a wide range of stakeholders, thus maximising the use of procurement data to support decision making.

### Potential considerations for contracting authorities

- How effectively are Wales Procurement Policy Notes that impact on transparency and digital ways of working being applied by the organisation?
- How much reliance does the organisation place on off-system ways of working such as email and excel?
- How effectively is data collected and used throughout the procurement lifecycle to enhance decision making?
- Does the organisation share procurement and spend data with Welsh Government in a timely and prompt manner to support Policy initiatives?
- How much use does the organisation make of Welsh Government funded eProcurement systems? (i.e. Sell2Wales including Single Procurement Document, eTenderWales and eTradingWales)
- If the organisation is not using Welsh Government funded eProcurement systems, how do they ensure that the systems they use are correctly integrated with Sell2Wales and provide equivalent or better functionality for the rest of the procurement lifecycle?

### Intended Outcomes

- Procurement digital solutions are built and enhanced using user centre design principles
- Transparency is embedded by default into each stage of the procurement lifecycle, through the implementation of OCDS
- Procurement lifecycle data is freely available on Sell2Wales and is being analysed by internal and external stakeholders to support both policy implementation and improved decision making through deeper insight and business intelligence from available data

## 10. We will promote value-based procurement which delivers optimum **long-term** outcomes for Wales

### Definition

Value-based procurement approaches use the procurement process to drive market innovation to deliver life-cycle value across services, improving outcomes, reducing cost, and evidencing impact. These approaches also attempt to strategically align suppliers' resources, products and services to outcomes-based goals. Value-based-procurement generates opportunities for contracting authorities to focus on products and services that provide maximum value and deliver high quality outcomes across the full commercial lifecycle. Value-based procurement should focus on the outcomes required by the end user, and on securing the maximum result and impact using a whole-life costing approach. It should be supported by finance and procurement teams with the view that it should deliver tangible, measurable benefits that make a positive impact on our stakeholders.

### Potential considerations for contracting authorities

- What does 'value' mean for the organisation and its stakeholders in the context of the procurement?
- What role does value-based procurement play in helping the organisation achieve its strategic goals and objectives?
- How can the organisation ensure that relevant areas of value are identified as part of the pre-tendering activity and specification development for new contracts?
- How can the organisation ensure that value measures are clearly defined and understood?
- Are all relevant value factors included in the in the procurement process and contract documents?
- Are relevant and measurable value questions included in the tender documents?
- What reporting metrics can the organisation develop and use to demonstrate how value-based procurement is delivering efficiency improvements?
- How effective are contract management processes at leveraging existing supplier relationships to optimise value within existing contracts through the adoption of supplier relationship management?

### Intended Outcomes

- Contracting authorities should consider value from the perspective of the end user, and use this to drive greater focus on achievement of outcomes
- Where appropriate, contracting authorities should adopt whole-life costing approaches to procurements
- Contracting authorities should work with suppliers across the supply (value) chain to identify opportunities to reduce waste and inefficiency, and maximise value
- Contracting authorities should ensure that mutually beneficial and collaborative relationships are maintained with strategically significant suppliers across the supply (value) chain to support the co-creation of additional value
- Contracting authorities should develop appropriate reporting metrics to demonstrate how value-based procurement is delivering efficiency improvements

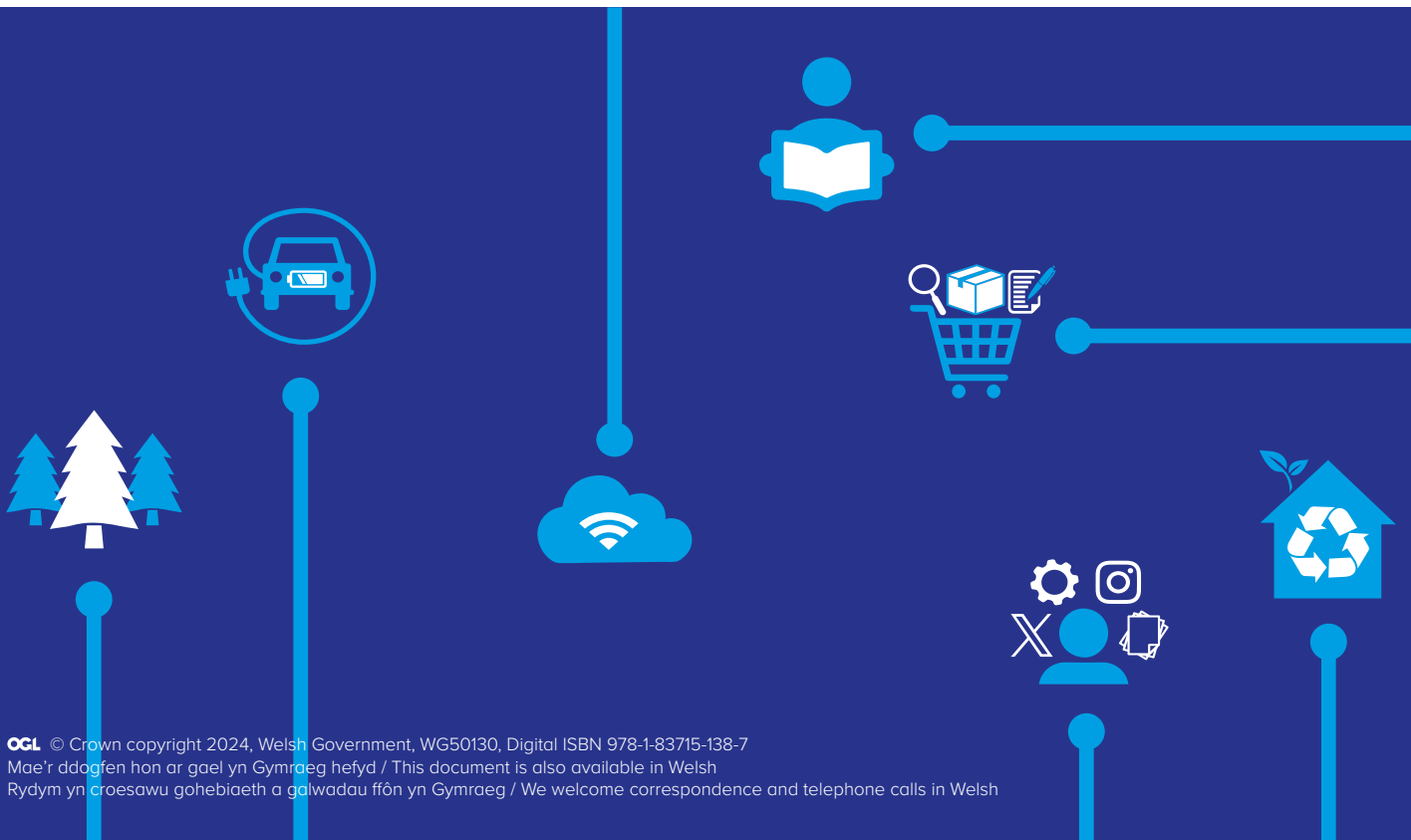


Llywodraeth Cymru  
Welsh Government

# Guidance

## Utilities Contracts

December 2024





## Guidance: Utilities Contracts

### What are utilities and utilities contracts?

1. Utilities are public authorities, public undertakings or other entities ('private utilities') that carry out 'utility activities' in the energy, water and transport sectors. They are regulated by the [Procurement Act 2023 \(the Act\)](#) when carrying out utility activities as they are not exposed to competitive forces in the market (refer to section 6(5) and 6(6) of the Act) and the UK is required by various international agreements to allow 'treaty state suppliers' with certain rights under relevant international agreements to participate in procurements for 'utilities contracts'.

### What is the legal framework that governs utilities contracts?

2. The rules governing utilities procurement in the UK are contained in the Act and replace the repealed Utilities Contracts Regulations 2016 (UCR). Utility activities and utilities contracts are defined at section 6, and utilities at section 35 of the Act.
3. Contracting authorities awarding utilities contracts are generally governed by the provisions in the Act, just like any other contracting authority. This guidance provides an overview of the specific provisions in the Act that relate to utilities.
4. It should be read alongside other guidance on the Act that applies to all contracting authorities and that will, unless otherwise set out, apply to utilities.
5. The general rule is that the Act will apply to utilities in the same way as it applies to other contracting authorities. However, there are exceptions to the general rule and some specific provisions provide additional flexibility for utilities. In some cases, these provisions apply to all utilities and in others they only apply to particular types of utilities, e.g. private utilities. These are set out at Annex A.
6. Some mixed contracts will contain elements which, if procured separately, would be subject to special rules, such as those applicable to utilities contracts. Section 10 of the Act provides for when those contracts are to be treated according to the rules that reflect the special nature of one element (i.e. when they are to be treated as a 'special regime contract' as defined in section 10), or when they are to be treated as subject to the standard rules in the Act.



## What has changed?

7. Whereas utilities contracts were previously regulated separately (under the UCR), the Act regulates utilities contracts and other types of contracts. This consolidation serves to reduce the overall volume of procurement legislation and simplifies the rules for contracting authorities.
8. Schedule 4 of the Act sets out the utility activities covered by the Act and aligns with the scope of utility activities covered by the previous legislation, with the exception of postal services which are not regulated under the Act.
9. The exemptions at Part 2 of Schedule 4 reflect the exemptions set out in three EU Commission Decisions:
  - [2006/211/EC](#),
  - [2007/141/EC](#), and
  - [2010/192/EU](#)
10. The specific utility provisions provide flexibility for utilities that reflect their commercial nature. In particular, a utilities dynamic market established under a qualifying utilities dynamic market notice will replace qualification systems in the UCR to speed up utilities procurement.
11. Utilities are the same types of bodies under the Act as were covered under the UCR.
12. Regarding the definition of a public undertaking, the express commercial operating requirement at section 2(2)(b) of the Act is a change from the UCRs where there is a control (dominant influence) requirement, but there is no express requirement that the entity operates commercially, although many do so.
13. The addition of this commercial operating requirement may mean some bodies classed as public undertakings in the UCRs may be classed as public authorities under the Act. There is generally no practical impact of this re-categorisation as the rules for public authorities and public undertakings in the Act are similar. The differences are highlighted at Annex A.





## Key points and policy intent

### Application

14. The utilities provisions in the Act apply to utilities contracts that are public contracts. A utilities contract is a public contract where:
- a. the estimated value of the contract exceeds the relevant thresholds; and
  - b. the contract is not an exempted contract.

### What is a utility?

15. The Act regulates utilities procurement carried out by public authorities, public undertakings and private utilities, referred to as utilities in the definition at section 35(4).
16. It will be for organisations to determine whether they are a public authority, public undertaking or private utility, applying the definitions in section 2(2) of the Act. It is not appropriate or possible to have a definitive list of entities as structures can be complex and change over time and entities leave and enter the sector. Utilities can range from, for example, private companies that operate electricity transmission networks to local authorities that own district heating networks.

### Public authorities and undertakings

17. **Public authorities** are funded wholly or mainly out of public funds or are subject to public authority oversight, and (in each case) do not operate on a commercial basis.
18. **Public undertakings** are subject to public authority oversight although, unlike public authorities, they do operate commercially.
19. Taking public authority oversight and operating commercially in turn:
- a. **Public authority oversight** applies equally to public authorities and public undertakings. The Act defines public authority oversight at section 2(3) as being subject to the management or control of one or more public authorities or a board of which more than half of the members are appointed by one or more public authorities.



The principle of management and control is well established and understood in procurement law and analogous within existing UK company law. The Act does not change this interpretation.

Utility regulators, such as OFGEM and OFWAT, in performing their statutory duties, are not considered to manage or control a utility. Being subject to utility regulators is therefore, by itself, not sufficient to satisfy section 2(2)(a) of the Act for public undertakings. If a utility meets the definition of a private utility then it is a private utility covered by the Act.

- b. **Operating commercially** - public undertakings operate on a commercial basis. Section 2(4) of the Act sets out examples of the factors to be taken into account in determining whether an entity operates on a commercial basis (this is not a definitive list and there may be other factors in the circumstances).

### Private utilities

20. Private utilities are other entities (i.e. not public authorities or public undertakings) that carry out a utility activity. Private utilities only carry out utility activities that are regulated under the Act where they have been granted a special or exclusive right to do so (refer to section 6(2)(d) of the Act).
21. Section 6(3) of the Act provides that carrying out a utility activity pursuant to a special or exclusive right means that the person does so pursuant to a right granted by a statutory, regulatory or administrative provision that has the effect of substantially limiting other entities (who have not been granted such a right) from carrying out those activities. Private utilities which enjoy special or exclusive rights are, to an extent, in a monopoly position and therefore could, however unlikely it is, without regulation, engage in preferential treatment that, for example, favours their own affiliates or strategic partners and discriminates against other suppliers bidding for their contracts.
22. Section 6(4) of the Act provides that rights are not special or exclusive when they are granted following a competitive tendering procedure under the Act or where the opportunity was adequately publicised and the rights were granted on the basis of objective, non-discriminatory criteria. However, section 6(4) does not apply if an incumbent has an existing special or exclusive right that is renewed or replaced in a manner that does not comply with the section; in this case, the new grant or replacement of the right will mean that section 6(3) applies and the supplier is a private utility under the Act.



23. Similarly, where a contract is awarded following a procedure that complies with section 6(4) (whether before or after the entry into force of the Act), but the incumbent is subsequently directly awarded a new or replacement contract, that will also amount to the grant of a special or exclusive right. An example of this is where a direct award is made to an incumbent under the public service obligations regulations (as defined at Schedule 2, paragraph 21(2) of the Act) where the original contract had been awarded following a competitive process.

#### What is a utilities contract?

24. A utilities contract is a contract for the supply of goods, services or works wholly or mainly for the purpose of a 'utility activity'.

#### What are utility activities?

25. Utility activities are defined in section 6(2) of the Act and are activities that are:
- a. specified in Part 1 of Schedule 4;
  - b. not specified in Part 2 of Schedule 4;
  - c. not carried out wholly outside of the UK; and
  - d. in the case of private utilities, are carried out pursuant to a special or exclusive right (as explained above).
26. Schedule 4 of the Act sets out the scope of utilities activities and is made up of two parts. Part 1 sets out the activities that are utility activities (and therefore covered by the Act), and Part 2 sets out the activities that are not utility activities (and are therefore not covered by the Act). In summary, utility activities are activities connected with the:
- a. provision or operation of gas and heat, electricity and water networks and the supply to those networks;
  - b. provision or operation of public transport networks, ports and airports; or
  - c. extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels.
27. In certain circumstances the supply of gas or heat, electricity and drinking water (respectively) is not a utility activity. Refer to paragraphs:
- 1(2)(c)
  - 2(2)(d), and
  - 3(4)(d) of the Act.



In order for this to be the case, conditions apply that require a calculation of the percentage of gas or heat, electricity and drinking water supplied. In each case, the Act provides that an 'appropriate authority', which is a Minister of the Crown, Welsh Ministers or a Northern Ireland department) may make regulations about how to calculate the relevant percentage.

28. Following consultation, these regulations have not been included in the Procurement (Wales) Regulations 2024 and will instead be included in another statutory instrument, expected to go live prior to the Act coming into force. This guidance will be updated to incorporate the relevant regulations.
29. The utility activities that are set out in Part 2 of Schedule 4 are summarised in Annex B. An appropriate authority may specify activities to be included in Part 2 of Schedule 4 if they are exposed to competition in open markets (refer to sections 6(5) and 6(6)) of the Act). The effect of this is that those specified activities will not be utility activities and therefore will not be regulated by the Act. Any such activities will be set out in regulations and be added to Part 2 of the Act.

#### What are the financial thresholds for utility contracts?

30. The threshold amounts are set out in Schedule 1 of the Act. The table below sets out the thresholds for utilities contracts that have applied since 1 January 2024. The thresholds in the Act reflect those in place at the time of Royal Assent and will be updated by the Procurement (Miscellaneous Amendments) (Wales) Regulations prior to the Act coming into force.

<b>Utilities contract</b>	<b>Threshold</b>
Goods	£429,809
Services	£429,809
Works	£5,372,609
Light touch	£884,720

31. The thresholds reflect the thresholds in our international agreements and are revised on the first of January of every even year to reflect currency fluctuations and inflation.



32. The rules on estimating the contract value are set out in Schedule 3 of the Act. The overriding principle is that the estimate must reflect the total likely amount the contracting authority could expect to pay under the contract, inclusive of VAT (refer to section 123(2) of the Act). Schedule 3 sets out a non-exhaustive list of what could be relevant when estimating the amount expected to be paid.

#### What exemptions are available to utilities?

33. Schedule 2 of the Act sets out the types of 'exempted contracts' to which the rules on covered procurement do not apply. Provided the relevant conditions are met, they can all be used by utilities unless stated otherwise. The exemptions that apply specifically to utilities are summarised in this guidance. For other exemptions refer to [guidance on exempted contracts](#).

#### Relevant joint adventure

34. Schedule 2, paragraph 5 of the Act exempts utilities contracts awarded by a 'relevant joint venture' to one of the joint venture members, and by a joint venture member to the relevant joint venture. A relevant joint venture is a joint venture formed for the purpose of carrying out a utility activity and comprised only of members that are utilities.
35. Utilities may come together to form a relevant joint venture to deliver a particular utility activity, for example, operation of an integrated transport system, where different utilities bring different expertise or resources, for example, financial, technical, marketing or employee. This provision would exempt, for example, a contract under which a member utility provides specialised works to the relevant joint venture in order to deliver the contract. This ensures that these arrangements remain attractive and viable, which may not be the case if utilities are required to carry out the procurements under the Act.
36. Schedule 2, paragraph 6 of the Act exempts utilities contracts awarded by a utility to a person 'affiliated' with the utility and by a utility that is a relevant joint venture to a person affiliated with any member of that joint venture. Utilities may be part of a group where it or a company at the top of the structure (the parent company) owns (either directly or indirectly) one or more subsidiaries beneath it.
37. Schedule 2, paragraph 6 of the Act also provides that a person is affiliated with another if the person falls within the definition of a 'group undertaking' of the other person, as that term is defined in section 1161(5) of the [Companies Act 2006](#).



38. This is the case regardless of whether either of them is an 'undertaking' as defined in section 1161(1) of the Companies Act. In summary, a relationship between affiliates arises where, in relation to an 'undertaking (A)', another undertaking is:
- a. a parent undertaking or a subsidiary undertaking of undertaking (A); or
  - b. a subsidiary undertaking of any parent undertaking of undertaking (A).
39. The terms 'subsidiary undertaking' and 'parent undertaking' are defined in section 1162 of the Companies Act. By applying those terms when considering what is meant by a group undertaking under section 1161(5) of the Companies Act, the affiliates exemption would be available (provided all of the relevant requirements are met), for example, to utilities contracts awarded by:
- a. a utility to its subsidiary;
  - b. a utility that is itself a subsidiary, to a fellow subsidiary controlled by the same parent (sometimes referred to as a 'sister' subsidiary); and
  - c. a utility ('utility A') to a subsidiary controlled by utility A's subsidiary (sometimes referred to as a 'grandchild' subsidiary).
40. The exemption applies only where the 'turnover test' at paragraph 6(3) of Schedule 2 of the Act is met. The turnover test ensures that the exemption cannot be abused by providing that it applies only when the provision of goods, services or works to the utility and others affiliated with the utility is a substantial part of the affiliated person's business.
41. The turnover test requires a calculation of the percentage of the relevant turnovers comprising the 'affiliated turnover amount' as a percentage of their total turnover amount.
42. The Act provides that an appropriate authority may make regulations about how to calculate a person's affiliated turnover amount and total turnover amount. Following consultation, these provisions have not been included in the Regulations and will instead be included in the Procurement (Miscellaneous Amendments) (Wales) Regulations, which are expected to go live prior to the Act coming into force. This guidance will be updated to incorporate the relevant regulations.
43. Schedule 2, paragraph 21 of the Act exempts contracts for public passenger transport services that are awarded under separate legislation; the legislation is specified at section 136(11) of the [Railways Act 1993](#). The practical effect of this exemption is that the rules on covered procurement do not apply to the award of contracts for rail and metro, and rail and metro concessions, although they do apply to contracts for bus and tram that are not concessions.



44. Schedule 2, paragraph 37 of the Act exempts concession contracts for public passenger transport services.
45. Schedule 2, paragraph 31 of the Act exempts utilities contracts awarded for the purpose of further sale or lease to third parties, provided the utility does not have a special or exclusive right to sell or lease the goods, services or works purchased and the market is open. The reason for this exemption is that the purpose of acquiring the goods, services or works is not for the utility to carry out a utility activity itself. This exemption is not available where the utility awarding the contract is acting as a central purchasing authority.
46. Schedule 2, paragraph 32 of the Act exempts utilities contracts for the purchase of water awarded by utilities carrying out a utility activity in Schedule 4, paragraph 3(1) (provision or operation of a fixed network or the supply of drinking water to such a fixed network).
47. Paragraph 33 of the Act exempts utilities contracts for purchases of energy, or fuel for the production of energy, awarded by utilities carrying out a utility activity in Schedule 4, paragraphs 1, 2 or 6 (gas and heat, electricity and extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels). The exemption applies only to purchases of energy or fuel for the production of energy, and not to purchases made for other reasons, e.g. purchases of fuel for transport purposes unrelated to the utility activity.
48. Paragraph 34 of the Act exempts contracts for the purpose of the activities set out in Part 2 of Schedule 4, that would be utility activities if they were not set out in Part 2.

## Carrying out utilities procurement, including under utilities dynamic markets

### Excluding suppliers from a competitive tendering procedure

49. With the exception of private utilities, the provisions in the Act relating to excluded and excludable suppliers apply to procurements carried out by utilities in the same way as they apply to other contracting authorities.
50. For private utilities, any reference in the Act to excluded suppliers is treated as a reference to excludable suppliers and any reference to excludable suppliers is treated as including excluded suppliers (refer to section 57(4)). This means that private utilities can treat suppliers subject to a mandatory exclusion ground as being subject to a discretionary exclusion ground.



## Competitive tendering procedures

51. Generally, contracting authorities awarding utilities contracts must use the same procurement procedures as are used by other contracting authorities. Section 20 of the Act sets out the provisions relating to competitive tendering procedures. Please refer to the guidance on [competitive tendering procedures](#) for more information.

## Direct award

52. Section 41 of the Act permits a contracting authority to award a contract directly, without first running a competitive tendering procedure when a direct award justification applies. Direct award justifications are set out in Schedule 5 of the Act. Please refer to the guidance on direct award for more information.

## Utilities dynamic markets (refer also to guidance on dynamic markets)

53. Sections 34 and 35 of the Act provide that dynamic markets, including utilities dynamic markets, may be established and contracts may be awarded to suppliers on dynamic markets following a competitive flexible procedure.
54. Dynamic markets are essentially up to date lists of suppliers that have met the conditions necessary to participate in procurements for the award of the types of contracts covered by the market. Suppliers must be able to apply at any time to be admitted to the market and if successful, be admitted as soon as reasonably practicable (refer to section 36(6)(a) and (c)).
55. A utilities dynamic market is a dynamic market established solely for the award of utilities contracts by utilities. This means that any reference in the Act to a dynamic market includes a utilities dynamic market, unless it is stated not to (but references to utilities dynamic markets do not include other dynamic markets).
56. Section 35(3) of the Act allows utilities to award utilities contracts under a utilities dynamic market established by any person (which would include a person that is not a contracting authority under the Act, e.g. a private company who provides qualification services), provided the market has been established in accordance with the rules in the Act applicable to utilities dynamic markets established by private utilities.
57. Section 36 of the Act sets out how suppliers can become members of dynamic markets. Section 36(1) of the Act allows contracting authorities to set conditions of membership that suppliers must meet in order to be admitted to a dynamic market. The conditions of membership must be a proportionate way of assessing





suppliers' legal and financial capacity and technical ability to deliver contracts that might be awarded under the market.

58. Section 38 of the Act allows contracting authorities to charge fees to suppliers. For utilities dynamic markets, fees can only be charged in connection with obtaining and maintaining membership of the market. For other dynamic markets, fees can only be charged to suppliers that are awarded a contract under a dynamic market and not for membership.
59. Section 39 of the Act deals with various dynamic market notices. These apply to all contracting authorities, including utilities, except in the case of the notice required under section 39(5) relating to the market ceasing to operate. In this instance, private utilities are not required to publish a notice.

#### Qualifying utilities dynamic market notice

60. A utilities dynamic market established under a qualifying utilities dynamic market notice permits utilities to limit participation in competitive flexible procedures to suppliers that are registered on the market. Suppliers are able to apply to be admitted to the market at any time.
61. Section 40 of the Act has the effect of speeding up procurements and reducing the burden for utilities procuring under a utilities dynamic market that has been established using a qualifying utilities dynamic market notice.
62. Where this notice is used, utilities are required to provide tender notices for upcoming procurements to suppliers already on the utilities dynamic market, or appropriate part of the utilities dynamic market, instead of publishing the notice (which is the case for other dynamic markets). In practice, that means utilities can, for example, provide the tender notice to suppliers on the utilities dynamic market as part of the associated tender documents as each procurement under the utilities dynamic markets is commenced.
63. In order to take advantage of this flexibility, the qualifying utilities dynamic market notice must specify that only members of the utilities dynamic market will be provided with tender notices and meet minimum information requirements, which are set out in the Regulations (refer to section 40(6) of the Act). New members joining the utilities dynamic market are entitled to receive future tender notices.



## Reduced timescales for utilities

64. Sections 54(4) and 54(5) of the Act allow shorter time periods for submission of tenders in procurements carried out by utilities where the suppliers are 'pre-selected suppliers'. Suppliers are pre-selected suppliers where they are invited to submit a tender after previously satisfying conditions of participation as part of a competitive tendering procedure or where they are on a utilities dynamic market and invited to submit a tender for a procurement under the utilities dynamic market.
65. Under section 54 of the Act, utilities can agree a suitable time period with all pre-selected suppliers (in which case there is no minimum time period); or, in the absence of agreement, set a time period that must be at least 10 days.

## Frameworks

66. Section 47 of the Act sets out the maximum term for frameworks. It provides under section 47(1)(a) that the maximum term for a 'utilities framework' awarded by a public authority or public undertaking (or for a defence and security framework) is eight years.
67. There is no maximum term for frameworks awarded by private utilities (refer to section 47(5)(b) of the Act).
68. The Act defines under section 47(4)(b) a utilities framework as a framework that provides for the future award of public contracts that are utilities contracts and no other public contracts.
69. The maximum term for frameworks that are not utilities frameworks (or defence and security frameworks) is four years. The longer term reflects the complexities of the defence and utilities markets, where longer terms are more appropriate.
70. In all cases, the maximum term may be longer if the contracting authority considers the nature of the goods, services or works to be supplied under contracts awarded under the framework means a longer term is required.

## Standstill

71. Section 50 of the Act requires contracting authorities to publish a contract award notice before entering into a public contract. The notice will include details about the outcome of the procurement, alert the market to the fact that a contract is to be entered into and, where there is one, start the relevant standstill period.



72. Section 51 of the Act deals with the standstill period. The standstill period commences on the day the contract award notice is published and the minimum period for the 'mandatory standstill period' is eight working days. The standstill period may be longer if a longer period is set out in the contract award notice (refer to section 51(1) of the Act).
73. The standstill period is a mandatory pause before the contracting authority can enter into the contract, although there are certain exceptions as set out in section 51(3) of the Act. This includes where a direct award is made by a private utility. Private utilities may, in these circumstances, choose to apply a voluntary standstill period by setting this out in the contract award notice.
74. Where a voluntary standstill period is implemented, section 51(4) of the Act sets out that it must be fully observed, and the contract not entered into before the expiry of the period. Any voluntary standstill period must not be less than eight working days beginning on the day the contract award notice is published, and can be longer if it is appropriate to do so.

### What are the primary notices linked to this aspect of the Act?

75. Utilities procurement is generally governed by the same notice requirements as other procurement under the Act including, for example, the publication of a contract award notice for contracts awarded under a utilities framework.
76. Particular rules apply when a utilities dynamic market is established by reference to a qualifying utilities dynamic market notice. There are further exemptions from certain provisions or publication requirements for utilities or private utilities which are set out below.

### Tender notice

77. Utilities dynamic markets may be established using a:
  - a. dynamic market notice, in the usual way (refer to section 39 of the Act); or
  - b. qualifying utilities dynamic market notice (refer to section 40 of the Act).
78. Section 40(2) of the Act provides an exception to the duty to publish a tender notice as part of an open procedure or competitive flexible procedure when contracts are procured under a utilities dynamic market established by reference to a qualifying utilities dynamic market notice.
79. Section 40(2) provides that the tender notice must instead be provided to all suppliers that are members of the dynamic market, or the relevant part of the



market, and provides discretion to provide a tender notice to suppliers that are still being considered for membership of the utilities dynamic market or part of the market.

80. The effect of section 40(4) of the Act is that in the case of a utilities dynamic market established by reference to a qualifying utilities dynamic market notice, the tender notice provided to suppliers, associated tender documents or qualifying utilities dynamic market notice must contain the level of sufficiency of information required by section 21(5) of the Act in order to invite suppliers to submit a tender.
81. Section 40(5) of the Act provides that, for a dynamic market that has been established by reference to a qualifying utilities dynamic market notice, there is no obligation for contracting authorities to consider new applications for membership of a utilities dynamic market, or part of a market, before excluding suppliers or disregarding tenders because the supplier is not a member of the market.
82. As set out in section 40(7) of the Act, references elsewhere in the Act to 'publication of a tender notice' include the provision of a tender notice to suppliers on, or applying to be admitted to, a utilities dynamic market.

#### Qualifying utilities dynamic market notice

83. Section 40(6) of the Act provides that in the case of a qualifying utilities dynamic market notice, the notice must include a statement that only members of the market will be notified of a future intention to award a contract under the utilities dynamic market (because a tender notice is not published).
84. Regulation 26(2)(i) of the Regulations requires that the notice must include as much of the information as would be published in any tender notice under regulation 22(2), to the extent that this is available at the time the qualifying utilities dynamic market notice is published.
85. When providing a tender notice to the members of the dynamic market, only information that has not already been provided in the qualifying utilities dynamic market notice will need to be included in the tender notice.



## Exemptions to publish notices for private utilities

86. Private utilities are not required to publish the following:

<b>Publication exemptions</b>	<b>Sections of the Act</b>
Preliminary market engagement notices	Section 17 of the Act has been amended by the Procurement (Wales) Regulations 2024 to disapply this section for private utilities
Notices specifying that a dynamic market has ceased to operate	Refer to section 39(6) of the Act
Key performance indicators	Section 52(6)(b) of the Act provides that the requirement to set and publish key performance indicators does not apply to utilities contracts awarded by a private utility
Contract details notices or Contracts	Refer to section 53(6)(a) of the Act
Procurement termination notices	Refer to section 55(3) of the Act
Payments compliance notices	Refer to section 69(6)(b) of the Act
Information about payments under public contracts	Refer to section 70(4)(a) of the Act
Contract change notices	Section 75(6)(c) of the Act provides that the requirement to publish a contract change notice prior to modifying a public contract or a 'convertible contract' (refer to section 74(1) of the Act) does not apply to a private utility
A copy of a modified contract or the relevant modification.	Only 'qualifying modifications' must be published and modifications to contracts awarded by private utilities do not fall within this definition because there is no requirement to publish a contract change notice (refer to section 77 of the Act)
Contract termination notices	Refer to section 80(4)(a) of the Act
Pipeline notices	Refer to section 93(6) of the Act



## Procurement (Wales) Regulations 2024

87. The Regulations include provisions on the contents of the different procurement notices established under the Act. There are some differences in the notice contents for utilities contracts (and also private utilities). Details of these can be found in Annex A.

### What other guidance is of particular relevance to this topic area?

88. Utilities will need to understand the whole of the Act, as, save for minor differences in the provisions, it applies equally to utilities and utility contracts as to contracting authorities awarding other types of contract.



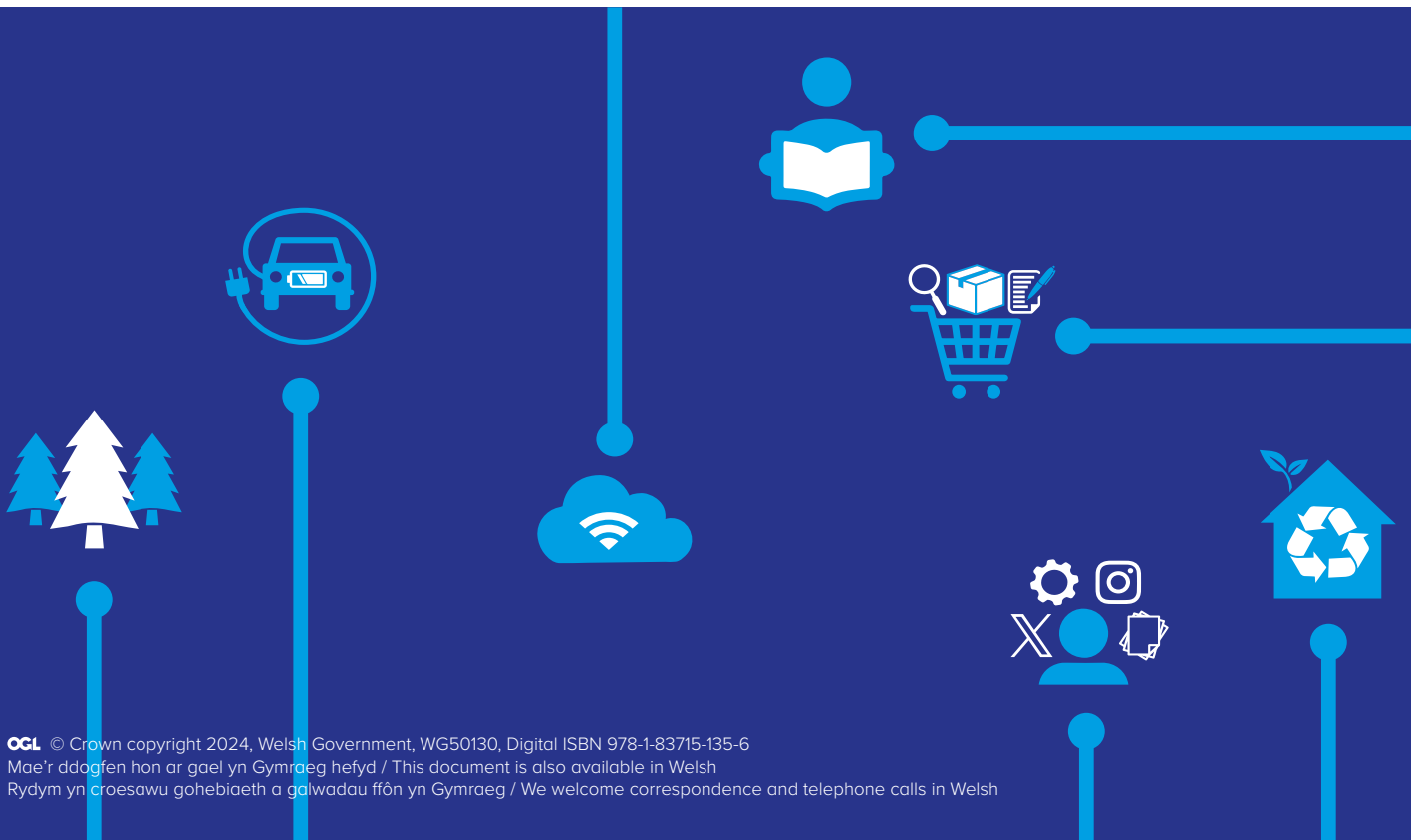
Llywodraeth Cymru  
Welsh Government

# Guidance

## Utilities Contracts

Annex A: Summary of specific utility provisions  
in the Procurement Act 2023 (the Act)

December 2024





## Guidance: Utilities Contracts

### Annex A: Summary of specific utility provisions in the Procurement Act 2023 (the Act)

Legislative reference	Specific utilities provisions	Applicable utility
Section 2: Contracting authority	Section 2 (1) sets out that a 'contracting authority' is a 'public authority'; or in relation to a utilities contract, a public authority, 'public undertaking' or 'private utility', other than (in each case) an excluded authority.	All utilities
	Section 2 (2) describes:  'Public authority' as a person that is: <ul style="list-style-type: none"><li>• wholly or mainly publicly funded; or</li><li>• subject to public authority oversight;</li></ul> and does not operate on a commercial basis (but refer also to subsections (9) and (10) of the Act);	Public authorities
	'Public undertaking' is a person that is subject to public authority oversight and operates on a commercial basis; and	Public undertakings
	'Private utility' as a person that is not a public authority or public undertaking and carries out a 'utility activity'.	Private utilities
	Section 2 (7) provides that public undertakings and private utilities are to be treated as devolved Scottish authorities if they operate only in or as regards Scotland, and where: <ul style="list-style-type: none"><li>• none of its activities relate to reserved matters; or</li><li>• some of its activities relate to reserved matters and some do not.</li></ul>	Public undertakings and private utilities
Section 6: Utilities contracts	Section 6 (1) sets out the definition of a 'utilities contract', being a contract for the supply of goods, services or works wholly or mainly for the purpose of a 'utility activity'.	All utilities







Legislative reference	Specific utilities provisions	Applicable utility
	<p>Section 6 (2) defines a 'utility activity' as follows:</p> <p>Section 6 (2) (a) and (b) - an activity listed in Part 1 but not Part 2 of Schedule 4 (utility activities);</p> <p>Section 6 (2) (c) - an activity carried out wholly outside of the UK (e.g. not involving the use of a network or geographical area within the UK); and,</p>	All utilities
	Section 6 (2) (d) - for private utilities, any activity for which the utility has been granted a special or exclusive right (i.e. a procurement for which a private utility has not been granted such a right would not be covered by the Act).	Private utilities
	Section 6 (3) provides that a person carries out a utility activity based on a 'special or exclusive right' if the right to carry out the activity has been granted by statutory, regulatory or administrative provision and the provision also substantially limits the ability of other persons not granted the right to carry out the activity.	Private utilities
	Section 6 (4) provides that a right is not a 'special or exclusive right' if it has been granted following a competitive tendering procedure under section 19 of the Act or where the opportunity was adequately publicised and the grant of the right was based on non-discriminatory criteria.	Private utilities
	Section 6 (5-6) work together and provide that an appropriate authority may amend Part 2 of Schedule 4, which sets out activities that are not utility activities, to specify or remove activities from that Part. An appropriate authority may only specify an activity in Part 2 where it is satisfied that the test at section 6 (6) has been met: i.e. that the market for the activity specified is	All utilities





<b>Legislative reference</b>	<b>Specific utilities provisions</b>	<b>Applicable utility</b>
	subject to fair and effective competition and entry to that market is unrestricted.	
	Section 6 (7) makes clear that a reference to a utilities contract includes a reference to a framework agreement where that framework is for the future award of utilities contracts.	All utilities
Section 10: Mixed procurement: special regime contracts	Section 10 (6) provides that utilities contracts are a type of special regime contract subject to the rules in this section.	All utilities
Section 13: The national procurement policy statement:	Section 13 (10) provides that the obligation in section 13 (9) to have regard to the national procurement policy statement does not apply to private utilities.	Private utilities
Section 14: The Wales procurement policy statement	Section 14 (9) provides that the obligation in section 14 (8) to have regard to the Wales procurement policy statement does not apply to private utilities.	Private utilities
Section 17: Preliminary market engagement Notices	Section 17 does not apply to private utilities: section 17 has been amended by the Procurement (Wales) Regulations 2024 to disapply this section for private utilities	Private utilities
Section 21: Tender notices and associated tender documents	Section 21 (7) refers to section 40 (Qualifying utilities dynamic market notices: no duty to publish a tender notice) which provides an exception to the duty to publish a tender notice (as part of an open procedure or competitive flexible procedure) when contracts are awarded under a utilities dynamic market established by reference to a qualifying utilities dynamic market notice. (Section 40 provides that the tender notice must instead be provided to all suppliers that are members of the dynamic market, or relevant part of the market.)	All utilities
Section 34: Competitive	Section 34 (7) means that concession contracts which are also utilities contracts	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
award by reference to dynamic markets	can be procured under dynamic markets (but otherwise cannot).	
Section 35: Dynamic markets: establishment	Section 35(2) defines a utilities dynamic market as a dynamic market set up only for the purpose of the award of utilities contracts by utilities.	All utilities
	Section 35 (3) provides that, if ‘any person <sup>1</sup> ’ sets up a utilities dynamic market which complies with the provisions of the Act applicable to utilities dynamic markets established by private utilities, that is to be treated as a utilities dynamic market established by a private utility and utilities can use them to award public contracts that are utilities contracts.	N/A, provision relates to any person
	Section 35(4) defines a ‘utility’ for the purpose of the Act as a public authority, or public undertaking, that carries out a utility activity; or a private utility.	All utilities
Section 38: Dynamic markets: fees	Section 38 (1) and (2) relating to fees is not applicable to utilities dynamic markets.	Not applicable
	Section 38 (3) applies only to utilities dynamic markets. It provides that fees set out in documents establishing a utilities dynamic market can only be charged to suppliers under a utilities dynamic market in connection to obtaining and maintaining membership of the market. This, like other provisions relating to dynamic markets established by private utilities, is a requirement of utilities dynamic markets established by any person where the market is used by a contracting authority under the Act (section 35 (3)).	All utilities (including where utilities dynamic market established by any person)

<sup>1</sup> “Any person” in this table means a person who is not a utility and has set up and operates a utilities dynamic market.





Legislative reference	Specific utilities provisions	Applicable utility
Section 39: Dynamic market notices	Section 39 (6) provides that private utilities do not have to publish a notice in accordance with section 39 (5) once a dynamic market has ceased to operate.	Private utilities
Section 40: Qualifying utilities dynamic market notices: no duty to publish a tender notice	Utilities dynamic markets may be established using a: <ul style="list-style-type: none"><li>• dynamic market notice, in the usual way (refer to section 39); or</li><li>• qualifying utilities dynamic market notice, using different rules for tender notices explained in this section (section 40).</li></ul>	All utilities
	Section 40 (1) provides that a contracting authority that procures a contract under a utilities dynamic market established using a qualifying utilities dynamic market notice must not, as part of the competitive flexible procedure, publish a tender notice for the purpose of inviting suppliers to submit a request to participate or, where relevant, a tender for a procurement (refer to section 21 (1) (Tender notices and associated tender documents)).	All utilities
	Section 40 (2) provides that where tender notices must not be published (i.e. where section 40 (1) applies), a contracting authority must, instead, provide a tender notice to members of the utilities dynamic market or appropriate part of the market.	All utilities
	Section 40 (3) allows a contracting authority the discretion to provide a tender notice to suppliers that are still being considered for membership of the utilities dynamic market, or part of the market.	All utilities
	Section 40 (4) incorporates a qualifying utilities dynamic market notice into section 21 (5) (Tender notices and associated tender documents). This means that, in the case of a utilities dynamic market	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	established by reference to a qualifying utilities dynamic market notice, the tender notice provided to suppliers, associated tender documents or qualifying utilities dynamic market notice must contain the level of sufficiency of information required by section 21 (5) in order to invite suppliers to submit a tender.	
	Section 40 (5) disapplies the requirement in section 34 (4) (Competitive award by reference to dynamic markets), where a dynamic market has been established by reference to a qualifying dynamic market notice, for contracting authorities to consider applications for membership of a utilities dynamic market, or part of a market, before excluding suppliers or disregarding tenders because the supplier is not a member of the market.	All utilities
	Section 40 (6) defines a 'qualifying utilities dynamic market notice'. This notice must relate to the establishment of a utilities dynamic market and contain the information specified in section 40 (6) (b)	All utilities
	Section 40 (7) provides that any references to 'publication of a tender notice' elsewhere in the Act include references to provision of a tender notice as described in section 40 (2) and (3).	All utilities
Section 47: Frameworks: Maximum term	Section 47 (1) states the maximum term for a utilities framework is 8 years.  Section 47 (2) provides that the restriction does not apply if the contracting authority considers that a longer term is required. Section 47 (3) provides that the contracting authority must set out its reasons in the tender or transparency notice for the framework.	Public authorities and public undertakings
	Section 47 (4) (b) defines 'a utilities framework' as a framework which does not	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	provide for the future award of public contracts other than utilities contracts.	
	Section 47 (5) (b) provides that the maximum terms for frameworks set out at section 47 (1) do not apply to private utilities.	Private utilities
Section 51: Standstill periods on award of contracts	Section 51 (3) (c) provides that the prohibition on entering into a contract before the end of a standstill period does not apply to private utilities when the award is made under sections 41 or 43 (direct award and switching to direct award, respectively).	Private utilities
Section 52: Key performance indicators	Section 52(6)(b) provides that the requirement to set and publish key performance indicators does not apply to utilities contracts awarded by a private utility.	Private utilities
Section 53: Contract details notices and publication of contracts	Section 53 (6) (a) provides that the requirement to publish a contract details notice following the award of a contract and, where relevant, a copy of the contract does not apply to private utilities (although details of the contract to be awarded must be included in the contract award notice under section 50 prior to entry into the contract).	Private utilities
Section 54: Time limits	<p>Section 54 (4) sets out in tables the minimum 'tendering periods' in different circumstances. For utilities, the following flexibilities apply:</p> <ul style="list-style-type: none"><li>• there is no minimum tendering period if the contract being awarded is a utilities contract that is subject to a 'negotiated tendering period'; and</li><li>• the minimum tendering period is 10 days if the contract being awarded is a utilities contract and tenders may be submitted only by 'pre-selected suppliers'</li></ul>	All utilities





<b>Legislative reference</b>	<b>Specific utilities provisions</b>	<b>Applicable utility</b>
	The effect of these two provisions is that where the contract to be awarded is a utilities contract and tenders may only be submitted by pre-selected suppliers, the contracting authority and the suppliers may agree the time period or, in the absence of agreement, the minimum time period is 10 days. (Tendering period, negotiated tendering period and preselected supplier' are defined in section 54 (5)).	
Section 55: Procurement termination notices	Section 55 (3) provides that the requirement to publish a procurement termination notice if it terminates the procedure does not apply to private utilities.	Private utilities
Section 57: Meaning of excluded and excludable supplier	Section 57 (4) provides that for private utilities, any reference to excluded suppliers is to be regarded as excludable suppliers and that any reference in the Act to an excludable supplier includes an excluded supplier.	Private utilities
Section 68: Implied payment terms in public contracts	Section 68 (1) provides that the implied payment terms set out in this section do not apply to utilities contracts awarded by private utilities.	Private utilities
Section 69: Payment compliance notices	Section 69 (6) (b) provides that payments compliance notices do not apply to private utilities.	Private utilities
Section 70: Information about payments under public contracts	Section 70 (4) (a) provides that the requirement to publish specified information on payments over £30,000 under public contracts does not apply to a public contract that is a utilities contract awarded by a private utility.	Private utilities
Section 71: Assessment of contract performance	Section 71 (7) makes it clear that the requirement for contracting authorities to assess contract performance against key performance indicators set under section 52 (1) and publish certain information is not applicable to private utilities.	Private utilities





<b>Legislative reference</b>	<b>Specific utilities provisions</b>	<b>Applicable utility</b>
Section 73: Implied payment terms in subcontracts	Section 73 (6) (b) provides that the implied payment terms (relating to 'public sub-contracts') set out in this section do not apply to a public sub-contract that is for the purpose of performing (or contributing to the performance of) all or part of a utilities contract awarded by a private utility.	Private utilities
Section 75: Contract change notices	Section 75 (6) (c) provides that the requirement to publish a contract change notice prior to modifying a public contract or a 'convertible contract' (refer to section 74 (1)) does not apply to a private utility.	Private utilities
Section 77: Publication of modifications	Section 77 (2) (a) and the definition of 'qualifying modification' means the requirement to publish a copy of a modified contract or the relevant modification does not apply to private utilities (because private utilities are not required to publish a contract change notice under section 75).	Private utilities
Section 80: Contract termination notices	Section 80 (4) (a) provides that the requirement to publish a contract termination notice when a contract is terminated does not apply to private utilities.	Private utilities
Section 83: Conflicts assessments	Section 83 (7) does not exempt private utilities from the section but does modify some terms when applying those terms to private utilities, otherwise the section would contain references that do not apply to private utilities. For example, section 83 (7) (b) provides that a reference to a termination notice being published is a reference to the contract being terminated.	Private utilities
Section 93: Pipeline notices	Section 93 (6) provides that private utilities are not required to publish pipeline notices.	Private utilities
Section 96: Electronic communications	Section 96 (3) (b) provides that the requirement to use electronic communications systems as far as is practicable does not apply to procurements carried out under a utilities dynamic market.	All utilities







<b>Legislative reference</b>	<b>Specific utilities provisions</b>	<b>Applicable utility</b>
Section 108: Procurement investigations	Section 108 (5) provides that a private utility is not considered a 'relevant contracting authority' for the purposes of this section and as a result is not subject to procurement investigations under this section. (Private utilities are subject to any guidance published by an appropriate authority following a procurement investigation as provided for in section 110, subject to the recommendation itself.)	Private utilities
Section 111: Welsh Ministers: restrictions on the exercise of powers	Section 111 (2) provides that contracting authorities that are public undertakings or private utilities operating wholly or mainly in relation to Wales, and whose activities are wholly or mainly activities that do not relate to reserved matters, are to be treated as devolved Welsh authorities.	Public undertakings and private utilities
Section 112: Northern Ireland department: restrictions on the exercise of powers	Section 112 (3) provides that contracting authorities that are public undertakings or private utilities operating only in or as regards Northern Ireland and whose activities are wholly or mainly activities that do not relate to excepted or reserved matters are to be treated as transferred Northern Ireland authorities.	Public undertakings and private utilities
Section 115: Powers relating to procurement arrangements	Section 115 (4) (c) provides that the meaning of 'Scottish procurement legislation' in the Act includes the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49).	All utilities
Section 119: Repeals etc	Section 119 (2) (b) provides that the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49) applies only in relation to devolved Scottish authorities.	All utilities
Section 121: Power to amend this Act in relation to private	Section 121 (1) provides a power for an appropriate authority to make regulations to reduce the regulation of private utilities under the Act.	Private utilities





Legislative reference	Specific utilities provisions	Applicable utility
utilities		
	Section 121 (2) provides a non-exhaustive list of what the regulations may do, for example disapply requirements; or modify requirements so as to reduce a particular burden or the overall burden.	Private utilities
	Section 121 (3) provides that an appropriate authority must consult with certain persons before making regulations.	Private utilities
	Section 121 (4) sets out a non-exhaustive list of provisions that might be considered to be a 'burden', such as those that result in financial cost, administrative inconvenience or obstacles to profitability, productivity or efficiency. This is not an exhaustive list.	Private utilities
Section 124: Index of defined expressions	This section provides a table which cross-references expressions used elsewhere in the Act to the relevant provisions where they are defined, including the terms private utility, public undertaking, utilities contract, utilities dynamic market, utility and utility activity.	All utilities
Schedule 1, paragraph 1: Threshold amounts (as to be updated by the Procurement (Miscellaneous Amendments) (Wales) Regulations (to be laid in September))	Thresholds for utilities are: Utilities contract that is not a works contract or light touch contract e.g. goods or service contract (Row 6): £429,809; Utilities contract that is a works contract (Row 4): £5,372,609; Utilities contract that is a light touch contract (Row 5): £884,720.	All utilities
Schedule 1, paragraph 5: Threshold amounts	Schedule 1, paragraph 5 (1) (b) exempts private utilities or public undertakings from the definition of 'sub-central government authority'.	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
Schedule 2, paragraphs 2-3: Exempted contracts	<p><u>Vertical arrangements</u></p> <p>Paragraph 2 (8) provides that the vertical arrangements exemption in this paragraph does not apply to public undertakings or private utilities. A public undertaking or private utility may instead use the exemption at paragraph 6 of this Schedule, where relevant (which applies to all utilities).</p>	Public authorities
	<p><u>Horizontal arrangements</u></p> <p>Paragraph 3 (4) provides that the horizontal arrangements exemption does not apply to public undertakings or private utilities. A public undertaking or private utility may instead use the exemption at paragraph 6 of this Schedule, where relevant (which applies to all utilities).</p>	Public authorities
Schedule 2, paragraphs 5-6: Exempted contracts	<p><u>Utilities contracts (counterparty exempted contracts)</u></p> <p>Paragraph 5(1) exempts utilities contracts awarded by a 'relevant joint venture' to one of the joint venture members, and by a joint venture member to the relevant joint venture. A relevant joint venture is formed for the purpose of carrying out a utility activity and is committed to doing so for a period of at least three years. In addition, the utilities forming the joint venture must remain members of the joint venture for a minimum of three years after the date of the agreement.</p>	All utilities
	<p>Paragraph 5 (2) defines a 'relevant joint venture', which is used in paragraphs 5 (1) and (2) and 6 (1) of this Schedule. A relevant joint venture is a joint venture that was formed for the purpose of carrying out a utility activity and is comprised only of utilities.</p>	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	<p>Paragraph 6 (1) exempts utilities contracts awarded:</p> <ul style="list-style-type: none"> <li>• by a utility to a person affiliated with the utility; and</li> <li>• by a utility that is a relevant joint venture to a person affiliated with any member of the joint venture, provided the turnover test is met when considering the affiliated person.</li> </ul>	All utilities
	<p>Paragraph 6 (2) explains, by reference to the Companies Act 2006, what it means if a person is 'affiliated' with another. A person is affiliated with another if the person is in a 'group undertaking', as defined in section 1161 (5) of that Act, with that person. Paragraph 6 (2) provides that this would be the case even where one of them is not an 'undertaking' as defined in section 1161 (1) of that Act: for example, where one is not a limited company.</p>	All utilities
	<p>Paragraphs 6 (3) and (5) provide that in order for the exemption to apply, the 'turnover test' must be met, with further details to be set out in regulations.</p>	All utilities
<p>Schedule 2, paragraph 21: Exempted contracts</p>	<p><u>Public passenger transport services (subject-matter exempted contract)</u></p> <p>Paragraph 21 exempts contracts that are awarded under the 'public service obligations regulations' which are defined in section 136(11) of the Railways Act 1993. This provision operates to exempt from the Act certain public passenger transport services.</p>	All utilities
<p>Schedule 2, paragraphs 31-34: Exempted contracts</p>	<p><u>Utilities contracts (subject-matter exempted contracts)</u></p> <p>Paragraph 31 exempts utilities contracts awarded for the purpose of further sale or lease to third parties, provided the utility does not have a special or exclusive right</p>	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	(as defined in section 6(3)) to sell or lease the goods, services or works purchased and the market is open. This exemption is not available where the utility awarding the contract is acting as a centralised purchasing authority.	
	Paragraph 32 exempts utilities contracts for the purchase of water awarded by utilities carrying out a utility activity in Schedule 4, paragraph 3(1)(a) or (b).	All utilities
	Paragraph 33 exempts utilities contracts for purchases of energy, or fuel for the production of energy, awarded by utilities carrying out a utility activity in Schedule 4, paragraphs 1, 2 or 6 (gas and heat, electricity and extraction oil and gas and exploration for, or extraction, of coal or other solid fuels). The exemption applies only to purchases of energy or fuel for the production of energy, and not to purchases made for other reasons, e.g. purchases of fuel for transport purposes unrelated to the utility activity.	All utilities
	Paragraph 34 exempts contracts for the purpose of the activities set out in Part 2 of Schedule 4, that would be utility activities if they were not set out in Part 2.	All utilities
Schedule 2, paragraph 35-37: Exempted contracts	<p><u>Concession contracts (subject matter exempted contracts)</u></p> <p>Paragraph 35 exempts concession contracts for utility activities relating to water services described in Schedule 4 Paragraph 3(1) or (2).</p> <p>Paragraph 36 exempts concession contracts for scheduled air services for specified periods within the UK or the UK and Gibraltar and which are operated under an exclusive licence and subject to minimum service requirements. These</p>	<p>All utilities</p> <p>All utilities</p>





Legislative reference	Specific utilities provisions	Applicable utility
	<p>contracts are known as restricted public service obligations (PSOs) and are separately regulated by Regulation 1008/2008.</p> <p>Under this regulation, the Secretary of State for Transport (SoS) can impose a PSO in respect of scheduled air services between an airport in the UK and an airport serving a peripheral or development region of the UK or on a route which is considered to be vital for the economic and social development of the region. When a PSO has been imposed, any qualifying air carrier is allowed to commence scheduled air services meeting all the requirements of the PSO. This is known as an 'open' PSO and does not involve the award of a contract.</p> <p>If no qualifying air carrier has commenced or can demonstrate that it is about to commence sustainable scheduled air services on a route in question in accordance with the PSO then the SoS can limit access to the scheduled air services to only one qualifying air carrier for a period of up to four years. This is known as a 'restricted' PSO.</p> <p>The right to offer the services for a restricted PSO must be offered by public tender under Regulation 1008/2008. The exemption in paragraph 36 covers concession contracts for restricted PSOs.</p>	
	Paragraph 37 exempts concession contracts for the provision of public passenger transport services.	All utilities
Schedule 4, paragraph 1: Utility activities: gas and heat	Paragraph 1 sets out when activities associated with gas and heat are utilities activities.	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	Paragraph 1 (1) provides that the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat and the supply of gas or heat to such networks are utility activities.	All utilities
	<p>Paragraph 1 (2) sets out circumstances where the supply of gas and heat to a network is not considered a utility activity, all of which must be met for the exemption to apply.</p> <p>These are: that the operator (i.e. the supplier of gas or heat) is a private utility or public undertaking; that the operator produces the gas or heat as an unavoidable by-product when carrying out an activity that is not a 'specified activity'; and the amount of gas or heat supplied to the network represents not more than 20% of the operator's turnover amount. The definition of specified activities (which are referred to in this paragraph and paragraphs 2 and 3) are set out in paragraph 7 of this Schedule.</p>	Public undertakings and private utilities
	Paragraph 1 (3) and (4) provide that an appropriate authority may make regulations setting out how to calculate the amount referred to in paragraph 1 (2) (c) and set out a non-exhaustive list of provisions that may be included in those regulations.	N/A
Schedule 4, paragraph 2: Utility activities: electricity	Paragraph 2 sets out when activities associated with electricity are utilities activities.	All utilities
	Paragraph 2 (1) provides that the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity and	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
	the supply of electricity to such networks are utility activities.	
	Paragraph 2 (2) sets out circumstances where the supply of electricity to a network is not considered a utility activity, all of which must be met for the exemption to apply. These are: that the operator (i.e. the supplier of electricity) is a private utility or public undertaking; the operator produces electricity because it needs the electricity to do something other than a specified activity; the electricity supplied is only the excess from such production that the operator has not used itself; and the electricity supplied represents not more than 30% of all the energy produced by the operator.	Public undertakings and private utility
	Paragraph 2 (3) and (4) provide that an appropriate authority may make regulations setting out how to calculate the amount referred to in paragraph 2 (2) (d) and sets out a non-exhaustive list of provisions that may be included in those regulations.	N/A
Schedule 4, paragraph 3: Utility activities: water	Paragraph 3 sets out when activities associated with water are utility activities.	All utilities
	Paragraph 3 (1) provides that the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of drinking water and the supply of drinking water to such networks are utility activities.	All utilities
	Paragraph 3 (2) sets out further activities which, to the extent that they are carried out by a person that also carries out the activities referred to in paragraph 3 (1), are also utility activities. These are: any activity connected with a hydraulic engineering project, irrigation or land drainage, provided	All utilities







Legislative reference	Specific utilities provisions	Applicable utility
	the condition in paragraph 3 (3) is met; and any activity connected with the disposal or treatment of sewage.	
	Paragraph 3 (3) sets out the condition referred to in paragraph 3 (2), which is that a person carrying out the activity must reasonably expect that more than 20% of the total water made available under paragraph 3 (2) is to be supplied as drinking water to a network within paragraph 3 (1).	All utilities
	Paragraph 3 (4) sets out circumstances where the supply of drinking water is not considered a utility activity, all of which must be met in order for the exemption to apply. These are: that the operator (i.e. the supplier of drinking water) is a private utility or public undertaking; the operator produces drinking water because it needs the drinking water to do something other than a specified activity; the drinking water supplied is only the excess from such production that the operator has not used itself; and the drinking water supplied represents not more than 30% of all the drinking water produced by the operator.	Public undertakings and private utilities
	Paragraphs (5) and (6) provide that an appropriate authority may make regulations setting out how to calculate the amount referred to in paragraph 4 (d) and set out a non-exhaustive list of provisions that may be included in those regulations.	N/A
Schedule 4, paragraph 4: Utility activities: Transport	Paragraph 4 sets out when activities associated with transport are utility activities and provides that the provision or operation of a network providing a service to the general public for transport is a utility activity. Such a network may be provided by any means, such as by rail, tram or bus.	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
Schedule 4, paragraph 5: Utility activities: Ports and airports	Paragraph 5 sets out when activities associated with ports and airports are utility activities.	All utilities
	Paragraph 5 (1) specifies that an activity relating to the exploitation of a geographic area for particular purposes is a utility activity associated with ports and airports. Those purposes are - to provide an airport to carriers of passengers or goods by air; and to provide a port or other terminal facilities to carriers of passengers or goods by sea or inland waterway.	All utilities
	Paragraph 5 (2) defines 'airport' by reference to section 66 of the Civil Aviation Act 2012.	All utilities
Schedule 4, paragraph 6: Utility activities: Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels	Paragraph 6 provides that an activity relating to the exploitation of a geographic area for the extraction of oil or gas and exploration for, or extraction of, coal or other solid fuels are utility activities.	All utilities
Schedule 4, paragraph 7: Utility activities: interpretation of Schedule	Paragraph 7 sets out the definitions of 'specified activity' and 'supply' which are used in this part of the Schedule	All utilities
Schedule 4, paragraphs 8-17: Utility activities: Activities that	Part 2 of this Schedule specifies the activities which are not utility activities and therefore not covered by the Act. These exemptions reflect the exemptions set out in three EU Commission Decisions (2006/211/EC, 2007/141/EC and 2010/192/EU). The power in section 6 (5) of	All utilities





Legislative reference	Specific utilities provisions	Applicable utility
are not utility activities	the Act allows an appropriate authority to make regulations to amend Part 2.	
Schedule 8, paragraph 4: Permitted contract modification	<u>Unforeseeable circumstances</u> Paragraph 4 (2) provides that the 50% threshold for modifying contracts where the unforeseeable circumstances permitted modification ground applies does not apply to utilities contracts.	All utilities
Schedule 8, paragraph 5: Permitted contract modification	<u>Materialisation of a known risk</u> Paragraph 5 (2) provides that the 50% threshold for modifying contracts where the materialisation of a known risk permitted modification ground applies does not apply to utilities contracts.	All utilities
Schedule 8, paragraph 8: Permitted contract modification	<u>Additional goods, services or works</u> Paragraph 8 (2) provides that the 50% threshold where the modifying contracts for additional goods, services or works permitted modification ground applies does not apply to utilities contracts.	All utilities
Schedule 11, Paragraph 7: repeals and revocations	Paragraph 7 repeals The Utilities Contracts Regulations 2016 (S.I. 2016/274).	N/A





## Appendix to Annex A: Summary of specific rules in the Procurement (Wales) Regulations 2024

Regulation	Specific utilities rules in the Procurement (Wales) Regulations 2024	Applicable utility types
Regulation 5: Publication of notices on central digital platform	Regulation 5 sets out when a notice must be published on the central digital platform. The list of provisions referred to where notices must be published on the platform includes notices under section 39 (2) of the Regulations (dynamic market notices: intention to establish a dynamic market), which includes qualifying utilities dynamic market notices (by virtue of section 40 (6) of the Act).	All utilities
Regulation 8: Core supplier information: platform not working, urgency, private utilities	Regulation 8 sets out an exemption to regulation 6 (sharing core supplier information through central digital platform) for private utilities in the case of a directly awarded public contract pursuant to paragraphs 13 and 14 of Schedule 5 of the Act (urgency).	Private utilities
Regulations 19 to 22: Tender Notices	Regulations 19 to 22 set out the contents of the tender notices for the open procedure, competitive flexible procedure, frameworks, and dynamic markets (except qualifying utilities dynamic markets).	All utilities
Regulation 19: Tender notices: open procedure	Regulation 19 includes special provisions for utilities as follows: <ul style="list-style-type: none"><li>• regulation 19 (2) (e): requirement to identify the contract as a utilities contract in the tender notice; and</li><li>• regulation 19 (2) (q): exemption for utilities having to provide a reason for not dividing the contract into lots.</li></ul>	All utilities
Regulation 20: Tender notices: competitive flexible procedure Regulation 21: Tender	Regulations 20 to 22, by cascading the requirements to include the information in regulation 19 (2), in effect create similar provisions that also apply to tender notices for the competitive flexible procedure, frameworks, and dynamic markets (except qualifying utilities dynamic markets).	





Regulation	Specific utilities rules in the Procurement (Wales) Regulations 2024	Applicable utility types
notices: frameworks  Regulation 22: Tender notices: dynamic markets except qualifying utilities dynamic markets		
Regulation 23: Tender notices: qualifying utilities dynamic market notices	<p>Regulation 23 sets out the contents of the tender notices where they relate to procurements carried out under a utilities dynamic market established by way of a qualifying utilities dynamic markets notice - i.e. where tender notices are provided to members of the market, rather than published.</p> <p>This notice must include the information required to be included in the qualifying utilities dynamic market notice to which the tender notice relates where this has not been included (as permitted by regulation 26 (2) (ii)) in that notice. Together a qualifying utilities dynamic market notice and the relevant tender notice and associated tender documents must provide all the information required for suppliers to be able to prepare a tender (sections 21 (5) and 40 (4) of the Act).</p>	All utilities
Regulation 26: Dynamic market notices (including qualifying utilities dynamic market notices)	Regulation 26 sets out the details that the notice establishing a utilities dynamic market, including a qualifying utilities dynamic market, must contain, including the additional information that the notice must contain if it is a qualifying utilities dynamic market notice (refer to regulation 25 (2) (h) (ii)).	All utilities, and third persons
Regulation 27: Transparency notices	Regulation 27 sets out the details that the transparency notice, which a contracting authority is generally required to publish before directly awarding a contract under	All utilities





Regulation	Specific utilities rules in the Procurement (Wales) Regulations 2024	Applicable utility types
	sections 41 or 43 of the Act, must contain. Regulation 27 (2) (g) sets out a requirement to identify the contract as a utilities contract in the transparency notice.	
Regulation 28: Contract award notices except those published by private utilities	<p>Regulation 28 sets out the information required in the contract award notice, published prior to a contracting authority entering into a contract with a specified supplier or suppliers. Regulation 28 (2) (k) sets out a requirement to identify the contract as a utilities contract in the contract award notice.</p> <p>Regulation 28 (8) sets out that regulation 28 does not apply to a utilities contract awarded by a private utility.</p>	<p>Public authorities and public undertakings</p> <p>Private utilities</p>
<p>Regulation 29: Contract award notices published by private utilities</p> <p>Regulation 30: Contract award notices published by private utilities: direct awards</p> <p>Regulation 31: Contract award notices published by private utilities: frameworks</p>	Regulations 29 to 31 set out the content of the contract award notices published by private utilities, reflecting the desire to minimise burdens on private utilities. As private utilities are not required to publish a contract details notice after a contract has been awarded, the contract award notice is used to capture certain information relating to the contract to be awarded.	Private utilities
Regulation 33: Contract details notices: open or competitive flexible procedure	Regulations 33 to 36 set out the information required in the contract details notice, published after a contracting authority has entered into a contract.	Public authorities and public undertakings





Regulation	Specific utilities rules in the Procurement (Wales) Regulations 2024	Applicable utility types
<p>Regulation 34: Contract details notices: frameworks</p> <p>Regulation 35: Contract details notices: public contracts awarded in accordance with frameworks</p> <p>Regulation 36: Contract details notices: direct award</p>	<p>Regulation 33 (2) (o) sets out a requirement to identify the contract as a utilities contract in the contract details notice for an open or competitive flexible procedure.</p> <p>Regulations 34 to 36, by cascading references to the relevant parts of regulation 33 (2), extend this requirement to contract detail notices for frameworks, public contracts awarded in accordance with frameworks, and directly awarded contracts.</p>	
<p>Regulation 49: Preliminary market engagement in relation to private utilities</p>	<p>Regulation 49 provides, in exercise of the power in section 121 of the Act, that the requirement in section 17 of the Act to publish a preliminary market engagement notice does not apply to private utilities, other than to a private utility which is a devolved Welsh authority that is not carrying out procurement under a reserved procurement arrangement or a transferred Northern Ireland procurement arrangement.</p> <p>The Procurement (Wales) Regulations 2024 have made an amendment to exempt devolved Welsh contracting authorities from section 17 in relation to private utilities (refer to regulation 47 of those regulations).</p> <p>The effect of the amendments in both sets of regulations is that section 17 will not apply to any private utilities.</p>	Private utilities





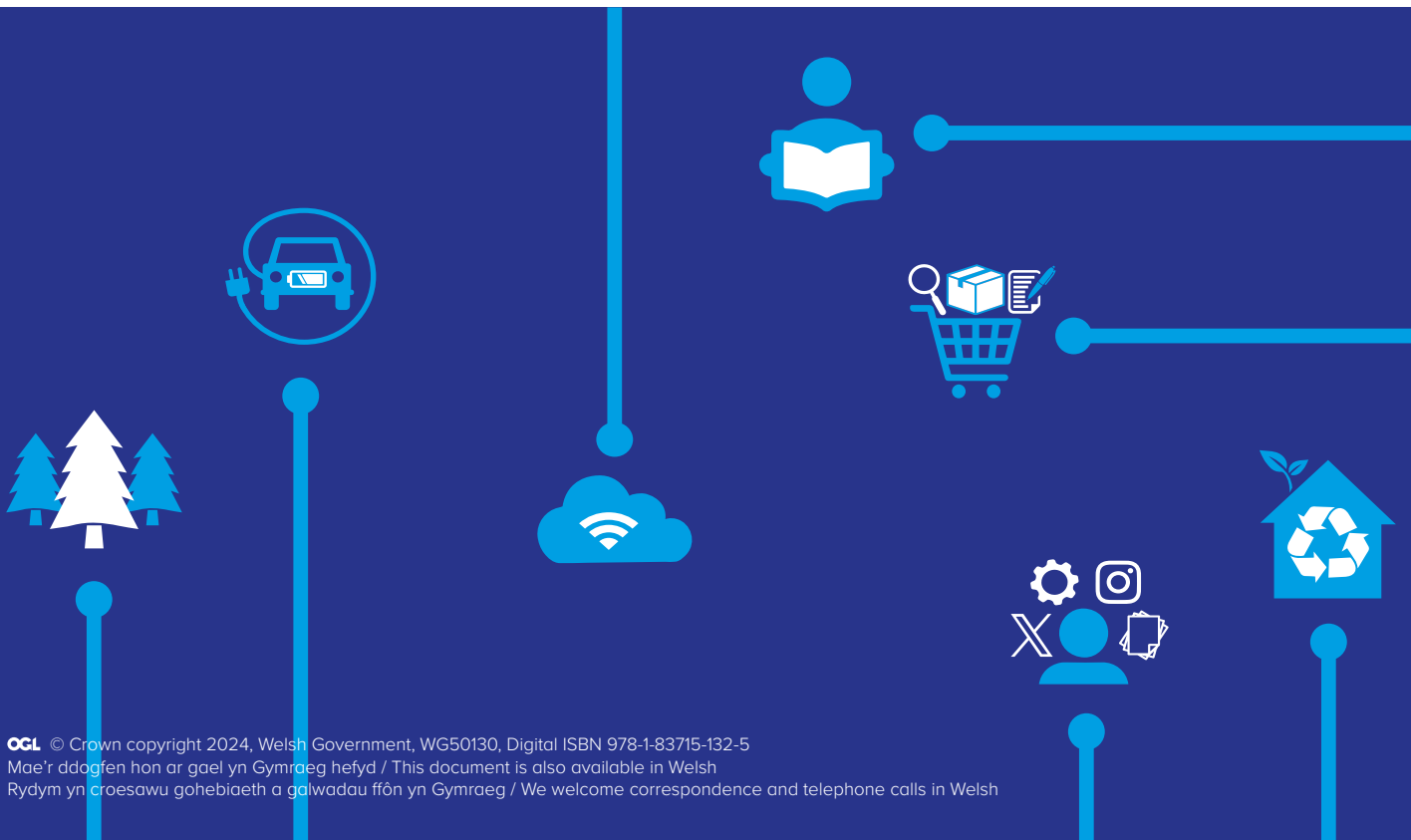
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# Guidance

## Utilities Contracts

Annex B: Summary of utilities activities  
in the Procurement Act 2023

December 2024







## Guidance: Utilities Contracts

### Annex B: Summary of utilities activities in the Procurement Act 2023

Sector	Schedule 4 Utility activities	Schedule 4 (Part 2) Excluded activities or Schedule 2 Exempted contracts
Gas and heat	Schedule 4, paragraph 1 - the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of gas or heat, and the supply of gas or heat to such a network. This is likely to be relevant to gas and heat transmission and distribution network businesses that provide a service to the public	Schedule 4, paragraph 1(2) - Supplies of gas or heat to a network that are not utility activities  Schedule 4, paragraph 11 - Wholesale or retail sale of gas in England, Scotland or Wales  Schedule 2, paragraph 33 - Utilities contracts for the supply of energy or fuel for production of energy
Electricity	Schedule 4, paragraph 2 - the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such a network. This is likely to be relevant to electricity transmission and distribution network businesses that provide a service to the public	Schedule 4, paragraph 2(2) - Supplies of electricity to a network that are not utility activities  Schedule 4, paragraphs 8 and 9 - Generation and production of electricity in England, Scotland or Wales  Schedule 4, paragraph 10- Wholesale or retail sale of electricity in England, Scotland or Wales  Schedule 2, paragraph 33 - Utilities contracts for the supply of energy or fuel for production of energy
Water	Schedule 4, paragraph 3 - Provision or operation of a fixed network to provide a service to the public in connection with the production, transport or distribution of drinking water. This is likely to be relevant to regulated water and sewerage companies and regulated water companies]	Schedule 2, paragraph 32 - Utilities contracts for the supply of water  Schedule 2, paragraph 35 - Concession contracts for the carrying out of water services





<b>Sector</b>	<b>Schedule 4 Utility activities</b>	<b>Schedule 4 (Part 2) Excluded activities or Schedule 2 Exempted contracts</b>
Transport	Schedule 4, paragraph 4 - Activities relating to the provision or operation of networks providing a service to the public in the field of transport by (i) railway; (ii) automated systems; (iii) tramway; (iv) trolley bus; (v) bus; or (vi) cable.	Schedule 2, paragraph 21 - Rail and metro regulated by DfT legislation  Schedule 2, paragraph 36 - Concession contracts for air services  Schedule 2, paragraph 37 - Concession contracts for public passenger transport services
Ports and airports	Schedule 4, paragraph 5 - Activities relating to the provision of airports to carriers of passengers or goods by air or of ports (which would include maritime or inland ports) or other terminal facilities to carriers by sea or inland waterway	
Oil and gas	Schedule 4, paragraph 6 - Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels	Schedule 4, paragraphs 12 and 13 - Exploration for oil and natural gas in England, Scotland or Wales  Schedule 4, paragraphs 14 and 15 - Production of oil and natural gas in England, Scotland or Wales  Schedule 4, paragraphs 16 and 17 - Development of infrastructure for production of oil and natural gas in England, Scotland or Wales  Schedule 2, paragraph 33 - Utilities contracts for the supply of energy or fuel for production of energy

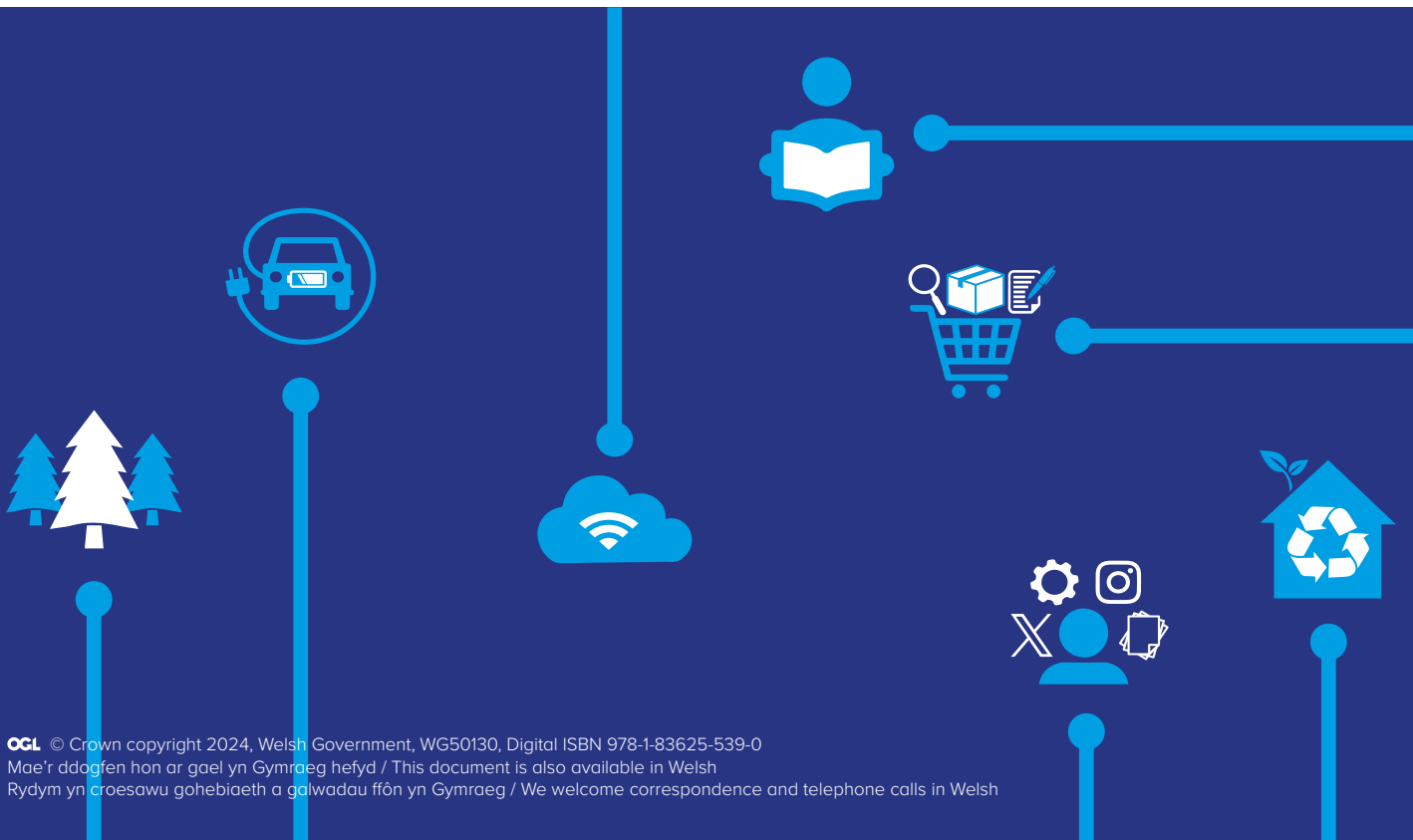




Llywodraeth Cymru  
Welsh Government

# Guidance Concession Contracts

August 2024





## Guidance: Concession Contracts

### What are concession contracts?

1. Under a concession contract, the supplier receives at least part of their remuneration from users of the works or services they are providing. As such, suppliers are exposed to a potential loss on their investment due to demand fluctuations.
2. There are two different types of concession contracts:
  - a. a concession contract for the supply of works; for example for the construction and operation of a toll road where the supplier would receive income directly from users of the toll road; and
  - b. a concession contract for the supply of services; for example a contract to operate a leisure centre where the supplier would receive income directly from customers using the centre.
3. This guidance deals only with the specific provisions that apply to concession contracts. Where there are no specific provisions, there is no difference for concession contracts and reference should be made to relevant other guidance on various aspects of the Procurement Act 2023 (the Act).

### What is the legal framework that governs concession contracts?

4. The procurement rules governing concession contracts in the UK are contained in the Act, which replaces the repealed Concession Contracts Regulations 2016. Concession contracts are defined at section 8 of the Act.
5. The general rule is that the Act will apply to concessions in the same way as it applies to other procurement. However, there are exceptions to the general rule and in some instances specific provisions provide additional flexibility for concessions. These are set out at Annex A.
6. Section 10 of the Act provides for situations where a mixed procurement contains concession and non-concession elements which, if procured separately, would be subject to different thresholds and rules. It provides for when those contracts are to be treated according to the rules that reflect the special nature of one element (i.e. when they are to be treated as a 'special regime contract' as defined in section 10), or when they are to be treated as subject to the standard rules in the Act.



## What has changed?

7. Whereas concession contracts were previously regulated separately, the Act amalgamates the concession contracts regime into the same set of common rules covering other types of contracts. This consolidation serves to reduce the overall volume of procurement legislation and simplifies the rules for contracting authorities.

## Key points and policy intent

### Application

8. Concession contracts are often of high value and deliver essential infrastructure or services. It is therefore appropriate that they are open to competition in the same way as other types of public contracts for the supply of works or services to ensure best value for money.
  - a. The specific rules on concession contracts apply to concession contracts that are public contracts. A concession contract is public contract where:
    - i. the estimated value of the contract exceeds the threshold value for concession contracts; and
    - ii. the contract is not an exempted contract as defined in the Act (see guidance on exempted contracts).
9. The provisions in Part 6 of the Act relating to 'regulated below-threshold contracts' do not apply to concessions contracts.

## What is a concession contract?

10. Concession contracts are defined in section 8 of the Act. This guidance relates to concessions contracts that are public contracts.
11. As with other types of public contracts, a concession contract must be for pecuniary interest, which can encompass monetary and non-monetary consideration. However, the definition of concession contract has a number of specific features:
  - a. a concession contract must only be for the supply of works or services to a contracting authority. The definition does not include contracts for the supply of goods;
  - b. at least part of the consideration must be the right to exploit the works or services. For example, the supplier may be entitled to receive income from public users rather than solely payment from the contracting authority. The



supplier can still receive some payment from the contracting authority but must also be entitled to exploit the works or services as part of the consideration;

c. under the contract, the supplier must be exposed to a real operating risk. The risk must be 'real', i.e. it should not be hypothetical or nominal. An operating risk is defined as a risk that the supplier will not be able to recover its costs in connection with the contract. In other words, there must be a risk that the supplier may not break even on the contract. The factors giving rise to the operating risk must:

- i. be reasonably foreseeable at the time the contract was awarded; and
- ii. arise from matters that are outside of the control of the contracting authority and the supplier. For example, it cannot arise from factors such as poor performance or contract breaches.

For example, a concession contract to run a canteen might carry the risk that turnover would be insufficient to cover expenses and expose the supplier to the risk of not making a return on the investments made and costs incurred.

## What are the financial thresholds for concession contracts?

12. The award, entry into and management of a concession contract with an estimated value exceeding the relevant threshold that is not an exempted contract (i.e. that is a public contract) will be 'covered procurement' under the Act. The thresholds in Schedule 1 of the Act reflect those in place at the time the Act received Royal Assent and will be updated prior to the Act coming into force. The threshold figure for concession contracts, defence and security contracts that are a concession contract and light touch contracts that are a concession contract that has applied since 1 January 2024 is £5,372,609.
13. There is no difference in the threshold for a concession contract for the supply of works and a concession contract for the supply of services.
14. The thresholds reflect the thresholds in our international obligations and are adjusted on the first of January of every even year to reflect currency fluctuations and inflation.
15. Section 10 of the Act sets out the rules for mixed procurements for 'special regime contracts', which are relevant when a concession contract is combined with an element of goods or non-concession services or works or procured with another special regime contract such as a light-touch services or utilities contract. Please see the guidance and related flowcharts on mixed procurement for further information on how to apply these rules.



## What exemptions are available to contracting authorities?

16. The exemptions, where the rules relating to covered procurement in the Act do not apply, for all public contracts, including concession contracts, are set out in Schedule 2. Three exemptions are specific to concession contracts as set out below, although other types of exempted contracts may also be relevant. Please refer to the guidance on exempted contracts for further information.
17. Water services Schedule 2, paragraph 35 of the Act exempts concession contracts for the carrying out of certain water services. This is to ensure that the exemptions for a utilities contract for such water services also apply where the contract is a concession contract.
18. Scheduled air services (restricted public service obligations) Schedule 2, paragraph 36 of the Act makes provision for an exemption for concession contracts for scheduled air services for specified periods within the UK or the UK and Gibraltar and which are operated under an exclusive licence and subject to minimum service requirements. These types of contracts are known as restricted public service obligations (PSOs) and are separately regulated by Regulation 1008/2008. Under this regulation, the Secretary of State for Transport (SoS) can impose a PSO in respect of scheduled air services between an airport in the UK and an airport serving a peripheral or development region of the UK or on a route which is considered to be vital for the economic and social development of the region. When a PSO has been imposed, any qualifying air carrier is allowed to commence scheduled air services meeting all the requirements of the PSO. This is known as an 'open' PSO and does not involve the award of a contract. If no qualifying air carrier has commenced or can demonstrate that it is about to commence sustainable scheduled air services on a route in question in accordance with the PSO then the SoS can limit access to the scheduled air services to only one qualifying air carrier for a period of up to four years. This is known as a 'restricted' PSO. The right to offer the services for a restricted PSO must be offered by public tender under Regulation 1008/2008. The exemption in paragraph 36 covers concession contracts for restricted PSOs.
19. Public passenger transport services Schedule 2, paragraph 37 of the Act sets out this exemption.



## Valuation of a concession contract

20. In addition to any payments to the supplier from the contracting authority, a concession contract must also include the right to exploit the works or services during the contract period. Therefore, the value calculation for a concession contract must take into account the full range of potential consideration to be received by the supplier over the length of the contract, including any renewals or extensions.
21. The estimated value must be based on the expected maximum value and calculated in accordance with Schedule 3, paragraph 3, of the Act which lists amounts the supplier may expect to receive under a concession contract. For example, the contracting authority must include the total revenue likely to be received, including income receivable from the contracting authority or from the exploitation of the services or works, such as charges levied on users. Revenue is not estimated profit and should not be reduced by factoring in costs expected to be incurred by the supplier. Other remuneration such as premiums, fees, commissions, receipt of assets, sale of assets must also be incorporated into the valuation.
22. The list in Schedule 3, paragraph 3 is non-exhaustive but instructive in interpreting the other forms of amounts receivable that must be taken into account when estimating the value of a concession contract.
23. In the same way as all public contracts, the estimated value should be calculated inclusive of value added tax (VAT) and follow the rules in Schedule 3 on anti-avoidance and cases where an estimate is not possible.

## What other guidance is of particular relevance to this topic area?

Contracting authorities awarding concession contracts will need to understand the whole of the Act, as the same provisions (for example, relating to competitive tendering procedures, conditions of participation and award criteria) as apply to contracting authorities awarding other contracts apply. The only exceptions and flexibilities are set out in this guidance. The suite of guidance published on the Act is therefore relevant, although the following guidance is of particular relevance to concession contracts:

- Guidance on mixed procurement
- Guidance on valuation of contracts
- Guidance on exempted contracts
- Guidance on thresholds





## Annex A

### Summary of specific concessions contract provisions in the Procurement Act 2023

Legislative reference	Concessions-specific provision
Section 3: Public contracts	Section 3(4) provides that a concession contract is a public contract for the purpose of the Act provided it is not an exempted contract and has an estimated value above the applicable threshold set out in Schedule 1 (as it is amended).
Section 5: Mixed procurement: above and below threshold	Section 5(5) makes clear that concession contracts with an estimated value below the application threshold are below-threshold contracts.
Section 8: Concession contracts	<p>Section 8(1) defines a concession contract as a contract for the supply, for pecuniary interest, of works or services where at least part of the consideration for that supply is a right for the supplier to exploit the works or services that are the subject of the contract and where, under the contract, the supplier is exposed to a real operating risk. A contract for the provision of goods is not a concession contract..</p> <p>Section 8(2) defines an ‘operating risk’ for the purpose of section 8(1). An operating risk is the risk that the supplier is not able to recover its costs relating to the supply and operation of the works or services during the contract period, and the factors creating the risks were reasonably foreseeable at the time of award and arise from issues outside the control of the contracting authority and the supplier.</p>
Section 10: Mixed procurement: special regime contracts	Section 10(6) explains that concession contracts are a type of special regime contract for the purpose of the Act. Section 10(3) provides that a contract is not to be treated as a special regime contract if some of the goods, services or works could reasonably be supplied under a separate contract which would not be a special regime contract and would have an estimated value of not less than the relevant threshold for that type of contract.



Section 34: Competitive award by reference to dynamic markets	Section 34(7) provides that concession contracts, other than those which are also utilities contracts, cannot be awarded under dynamic markets.
Section 45: Frameworks	Section 45(8)(a) provides that concession contracts cannot be awarded under a framework.
Section 52: Key performance indicators	Section 52(6)(c) sets out that the obligation to set and publish key performance indicators under this section does not apply in relation to concession contracts.
Section 68: Implied payment terms in public contracts	Section 68(1) provides that payment terms implied into contracts by this section are not implied into concession contracts.
Section 69: Payments compliance notices	Section 69(6)(d) provides that the obligation to publish payments compliance notices does not apply to concession contracts.
Section 70: Information about payments under public contracts	Section 70(4)(b) provides that the obligation to publish information about payments under public contracts does not apply to concession contracts.
Section 73: Implied payment terms in sub-contracts	Section 73(6)(a) provides that terms implied into sub-contracts are not implied into subcontracts that are for the purpose of carrying out all or any part of a concession contract.
Section 84: Regulated below threshold contracts	Section 84(1)(b) defines a regulated below-threshold contract as not including a below threshold contract that is a concession contract.
Schedule 1: Threshold amounts	The thresholds in Schedule 1 of the Act reflect those in place at the time the Act received Royal Assent and will be updated prior to the Act coming into force. The threshold figure for concession



	<p>contracts, defence and security contracts that are a concession contract and light touch contracts that are a concession contract that has applied since 1 January 2024 is £5,372,609.</p>
<p>Schedule 2: Exempted contracts</p>	<p>Paragraph 35 provides that concession contracts for utility activities relating to water services described in Schedule 4, paragraph 3(1) or (2) are exempted contracts.</p> <p>Paragraph 36 provides that concession contracts for scheduled air services for specified periods within the UK or the UK and Gibraltar and which are operated under an exclusive licence and subject to minimum service requirements are exempted contracts. These types of contracts are known as restricted public service obligations (PSOs) and are separately regulated by Regulation 1008/2008. Under this Regulation, the Secretary of State for Transport (SoS) can impose a PSO in respect of scheduled air services between an airport in the UK and an airport serving a peripheral or development region of the UK or on a route which is considered to be vital for the economic and social development of the region. When a PSO has been imposed, any qualifying air carrier is allowed to commence scheduled air services meeting all the requirements of the PSO. This is known as an ‘open’ PSO and does not involve the award of a contract. If no qualifying air carrier has commenced or can demonstrate that it is about to commence sustainable scheduled air services on a route in question in accordance with the PSO then the SoS can limit access to the scheduled air services to only one qualifying air carrier for a period of up to four years. This is known as a ‘restricted’ PSO. The right to offer the services for a restricted PSO must be offered by public tender under Regulation 1008/2008. The exemption in paragraph 36 covers concession contracts for restricted PSOs.</p> <p>Paragraph 37 provides that concession contracts for the provision of public passenger transport services are exempted contracts.</p>
<p>Schedule 3: Estimating the value of a contract</p>	<p>Paragraph 3(1) makes it clear that the valuation rules in paragraph 1 do not apply to the valuation of a concession contract.</p> <p>Paragraph 3(2) obliges the contracting authority to estimate the value of a concession contract as the maximum amount the supplier could expect to receive as a result of the contract, reflecting the requirement that some revenues must be</p>



	<p>estimated to come from sources other than payments by the contracting authority.</p> <p>Paragraph 3(3) sets out a list of the types of consideration a supplier could expect to receive, which must be taken into account in estimating the value of a concession contract. This includes amounts received from users of the works or services and could be monetary or nonmonetary. The value of any goods, services or works provided by the contracting authority under the contract must also be included in the valuation. VAT payable on the supply of services or works, the value of any options included in the contract for additional services or works or for extension or renewal of the contract are all to be valued, plus any premiums, fees, commission or interest that the supplier could receive in delivering the contract and amounts received on the sale of assets held by the supplier. The list in paragraph 3(3) is not exhaustive and amounts may be received from other sources or take other forms.</p>
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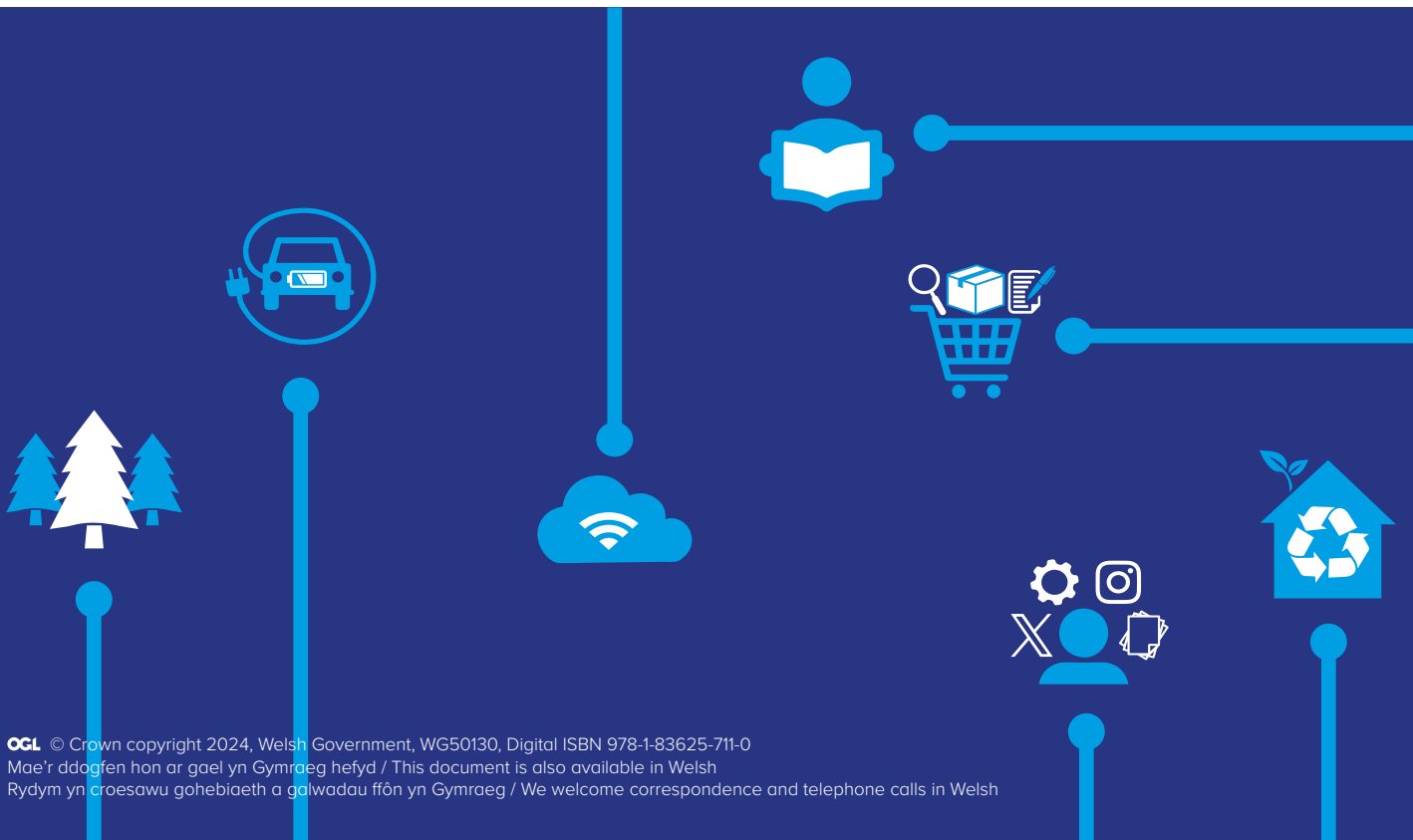


Llywodraeth Cymru  
Welsh Government

# Guidance

## Light Touch Contracts

September 2024





## Guidance: Light Touch Contracts

### What are light touch contracts?

1. Light touch contracts are contracts for certain social, health, education and other public services and are subject to more flexible procurement rules. One thing these services have in common is that they are services provided directly to individuals or groups of people and therefore warrant special treatment and greater flexibility.
2. This guidance deals only with the specific provisions that apply to light touch contracts. Where there are no specific provisions, there is no difference for light touch contracts and reference should be made to relevant other guidance on various aspects of the Procurement Act 2023 (the Act).

### What is the legal framework that governs light touch contracts?

3. Section 9 (Light touch contracts) of the Act defines a 'light touch contract' and provides for regulations to specify which services (referred to in the regulations as 'light touch services') can be procured under a light touch contract.
4. Schedule 1 to the Procurement (Wales) Regulations 2024<sup>1</sup> (the Regulations) specifies which services are light touch services by description and reference to corresponding Common Procurement Vocabulary (CPV) codes. Light touch contracts (that are not exempted contracts) are public contracts if they are above the relevant threshold in Schedule 1 of the Act for the type of contract.
5. The Act contains special rules and exemptions for light touch contracts that are summarised in the table at Annex A of this guidance.
6. Section 33 (Reserving contracts to public service mutuals) permits certain light touch contracts to be reserved for public service mutuals, as long as the contract term is for 5 years or less.

### What has changed?

7. The Act specifies which contracts are light touch contracts in broadly the same manner as the previous legislation - by identifying specific services which can be procured under light touch contracts. While there are no longer separate rules, there are exceptions and special provisions in the Act that result in more

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<sup>1</sup> [The Procurement \(Wales\) Regulations 2024](#)



flexibility and fewer rules regulating how procurement is carried out for light touch contracts.

8. Schedule 5, paragraphs 15 to 17 (Direct award justifications) of the Act set out a new direct award justification for 'user choice contracts', which, if satisfied, means the contracting authority does not need to carry out a competitive tendering procedure prior to awarding a contract. Broadly, this direct award justification applies where separate legislation or statutory guidance imposes a legal obligation on the contracting authority, when procuring such services, to have regard to the views of the user of the services, or their carer, with regard to which supplier should provide the services.

## Key points and policy intent

### Application

9. A light touch contract is a contract wholly or mainly for the supply of services, as stated above, of a kind specified in Schedule 1 to the Regulations.
10. The specific light touch provisions in the Act apply in procurements where:
  - a. the light touch contract is a public contract; and
  - b. the procurement is not a regulated health procurement as defined in regulations made under the National Health Service Act 2006.
11. A light touch contract is a public contract where:
  - a. the estimated value of the contract exceeds the relevant financial threshold; and
  - b. the contract is not an exempted contract as defined in the Act (see guidance on exempted contracts).

### What is regulated health procurement?

12. Regulated health procurement is the procurement of specified goods or services by a 'relevant authority' that are subject to separate procurement provisions made under section 10A of the National Health Service (Wales) Act 2006<sup>2</sup>. The forthcoming Health Services (Provider Selection Regime) (Wales) Regulations, subject to the agreement of the Senedd, will introduce the new 'Provider Selection Regime Wales' (PSR Wales) and make separate provision for the procurement of certain health services by relevant authorities in Wales. 'Relevant authority' is defined under section 10A of the National Health Service (Wales) Act 2006 and includes local health boards, NHS Trusts, special health authorities,

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<sup>2</sup> [National Health Service \(Wales\) Act 2006 - section 10A](#)



and county councils or county borough councils in Wales. Relevant authorities must follow the rules established under the PSR Wales Regulations, rather than the Procurement Act 2023 when procuring health services covered by the PSR Wales.

#### What are the financial thresholds for light touch contracts?

- Schedule 1 of the Act sets out the various thresholds applicable to the different categories of contracts. Whether the estimated value of a contract (that is not an exempted contract) is above or below the relevant threshold determines whether it is a public contract under the Act, that is, whether generally it is subject to the rules for public contracts, or (if relevant) to the below-threshold provisions in Part 6.
- The current financial thresholds at or above which light touch contracts are public contracts are set out below and have applied since 1 January 2024. The thresholds in the Act currently reflect those in place at the time of royal assent and will be updated by secondary legislation prior to the Act coming into force.

<b>Light touch contracts</b>	<b>Threshold</b>
Utilities contract that is a light touch contract	£884,720
Concession contract that is a light touch contract	£5,372,609
All other light touch contracts	£663,540

- The rules on calculating estimated contract value are set out in Schedule 3 of the Act (Estimating the value of a contract). The overriding principle is that the estimate must reflect the total likely amount the contracting authority could expect to pay under the contract (inclusive of VAT) and the method of calculation





must not be intended to avoid having to comply with the Act. See guidance on valuation of contracts for more information.

### Procurement of light touch contracts

16. The Act integrates light touch contracts into the broader procurement regime, and includes special rules and exemptions where greater flexibility is justified. This makes it clear how such procurements should be carried out, and ensures that probity and transparency are built into the process, while respecting these contracts' unique characteristics.
17. Light touch contracts must be advertised using a tender notice unless a direct award justification applies. Contracting authorities are required to determine whether suppliers are excluded or excludable suppliers and consider conflicts of interest before awarding the contract. Transparency will be maintained through publication requirements, including requirements for a contract award notice and a contract details notice. When a devolved Welsh authority procures under a reserved procurement arrangement and the contract is over £5 million, publication of the contract will also be required.
18. Procurement of a light touch contract that is a public contract is covered procurement and therefore will be subject to the procurement objectives in section 12 (Covered procurement: objectives) of the Act. Namely, a contracting authority must have regard to:
  - a. the importance of delivering value for money;
  - b. the importance of maximising public benefit;
  - c. the importance of sharing information for the purpose of allowing suppliers and others to understand the contracting authority's procurement policies and decisions; and
  - d. the importance of acting, and being seen to act, with integrity.
19. Section 12 also provides that, when carrying out covered procurement, contracting authorities must:
  - a. treat suppliers the same unless a different treatment is justified; and
  - b. have regard to the fact that small and medium-sized enterprises may face barriers to participation and consider whether such barriers can be removed or reduced.
20. These procurement objectives provide overall parameters within which the contracting authority has freedom to design the procedure for light touch contracts. See the guidance on covered procurement objectives for more information.



## Reserving contracts for light touch services to public service mutuals

21. Section 33 of the Act permits contracting authorities to reserve certain types of contracts for public sector mutuals. This ability complements the social value agenda and can help contracting authorities to deliver on social value commitments by awarding contracts to suppliers that have such priorities at the heart of their organisation. Whilst reserving contracts is encouraged, doing so must be considered in the wider context of value for money.
22. Public service mutuals are organisations that:
  - a. operate for the purpose of delivering public services and mainly for the purpose of delivering one or more ‘reservable light touch services’ (see paragraph 24 below);
  - b. are not for profit, or provide for the distribution of profits only to its members; and
  - c. are under the management and control of their employees.
23. In order to be awarded a ‘reserved contract’, a public service mutual must be a ‘qualifying public service mutual’, which means that it must not have entered into a reserved contract for the same kind of light touch services with the same contracting authority in the preceding three years.
24. The types of light touch contracts that can be reserved under section 33 are those for the supply of ‘reservable light touch services’, which are identified by an “R” next to the description of the service in Schedule 1 to the Regulations.
25. Where a contract is being reserved to a public service mutual, section 33(2) of the Act requires contracting authorities to use the competitive flexible procedure as, unlike the open procedure, it allows for the exclusion of suppliers who do not meet this requirement.
26. Section 33(4) of the Act requires contracting authorities to disregard any tenders from suppliers that are not qualifying public service mutuals in assessing tenders under section 19 when carrying out such a procedure. This can be done at the participation stage or as part of the assessment of tenders, depending on how the procedure is structured. More information can be found in the guidance on reserved contracts for supported employment providers.



## Lots

27. Section 18 (Duty to consider lots) of the Act applies to light touch contracts and requires a contracting authority to consider whether the requirement could be broken into lots and the services supplied under more than one contract. For light touch contracts regulation 19(2)(q) (Tender notices: open procedure) of the Regulations provides that there is no requirement to provide a justification in the tender notice if not dividing the contract into lots. See the guidance on lots for more information.

## Competitive tendering procedures

28. Contracting authorities awarding light touch contracts are subject to the same provisions relating to competitive tendering procedures as apply when awarding other types of contracts. The provisions relating to competitive tendering procedures are set out in section 20 (Competitive tendering procedures) of the Act. See the guidance on competitive tendering procedures for more information.
29. The participation and tendering periods for light touch contracts are not mandated by section 54 (Time limits) of the Act, allowing for light touch services to be procured more swiftly. However, contracting authorities must ensure that timescales are reasonable, for example, having regard to the nature of the requirement and the complexity of the contract being awarded (see section 54(1)).

## Changes to competitive procedures prior to submission of final tenders

30. Section 31(2)(b) (Modifying a section 19 procurement) of the Act allows modifications to a competitive flexible procedure, even if they are considered to be substantial, to be made before the deadline for submission of final tenders where the procurement is for a light touch contract.
31. When making such modifications contracting authorities must:
  - a. ensure such modifications are in line with the procurement objectives at section 12 of the Act;
  - b. consider revising any applicable timescales as a result of such modification;
  - c. notify the participating suppliers of such changes, where a participation period applies.



## Direct award

32. Section 41 (Direct award in special cases) of the Act permits a contracting authority to award a contract without first running a competitive tendering procedure when a direct award justification (set out in Schedule 5 of the Act) applies. Whilst other justifications may be relevant, there is a specific justification for contracts for 'user choice services' and those set out below may be particularly relevant.
33. Schedule 5, paragraph 6 (Single suppliers) of the Act permits a contracting authority to award a contract directly where technical reasons mean only a particular supplier can supply the goods, services or works required, and there are no reasonable alternatives to those goods, services or works. In the context of light touch contracts, this could arise when the application of a particular legislative regime means that a contract can be awarded only to one specific provider. For example, the Additional Learning Needs and Education Tribunal (Wales) Act 2018 may require additional learning needs provision to be delivered by a particular supplier. In some cases a decision may be made by an independent tribunal that a particular provider must provide education services, and compliance with that judicial decision would satisfy the direct award ground for technical reasons.
34. Schedule 5, paragraphs 15 to 17 (User choice contracts) of the Act permit a contracting authority to directly award a user choice contract. The contract must be for user choice services and the contracting authority must be under a legal obligation (for example, as required under the Social Services and Well-being (Wales) Act 2014) to have regard to the views of the individual receiving the services, or their carer, when selecting the supplier to be awarded the contract. This makes it clear that there is no requirement under the Act to carry out a competitive tendering procedure in a scenario where the individual, or their carer, has a legal right for their preference for a particular supplier to be taken into account by the contracting authority and paragraphs 15 to 17 apply.
35. Schedule 5, paragraph 16 of the Act defines user choice services as services that:
  - a. are of a kind specified in regulations under section 9 (Light touch contracts);
  - b. are supplied for the benefit of a particular individual; and
  - c. in respect of which a contracting authority would, in awarding a contract for their supply, be required under an enactment to have regard to the views of the individual, or a person providing care to the individual (their carer), in relation to whom should supply the services.



36. The contract must comply with the conditions in Schedule 5, paragraph 17 of the Act:
- a. paragraph 17(a), that the individual or carer has expressed a preference as to who should supply the services, or the nature of the services to be supplied is such that only one supplier is capable of providing them; and
  - b. paragraph 17(b), that the contracting authority considers it is not in the best interests of the individual for a competitive tendering procedure to apply.
37. Contracting authorities have the flexibility to reflect the specific needs of different categories of users (including the need to involve and empower disadvantaged and vulnerable groups) in the award criteria for light touch contracts.
38. Contracting authorities must generally publish a transparency notice before directly awarding a light touch contract. The notice is not required for user choice contracts awarded under paragraphs 15 to 17 of Schedule 5 of the Act.
39. Please refer to the guidance on direct award for further information on these justifications.

#### Frameworks

40. The definition of a light touch contract under the Act includes a 'light touch framework', which is a contract that provides for the future award of contracts that are wholly or mainly for light touch services.
41. This means that light touch frameworks are generally subject to the Act, for example the provisions in section 45 (Frameworks) relating to frameworks generally apply. However, there are exceptions and section 45(9) provides greater flexibility in that there is no requirement for a competitive selection process (and therefore section 46 does not apply) or for specific information to be included in the framework. Section 47(5)(c) provides that there is no maximum term for a light touch framework.
42. Where a framework that is not a light touch contract is being used for the award of contracts for light touch services, the Act applies in full, including, for example, the competitive selection process set out in the framework.

#### Award criteria

43. Section 23(6) (Award criteria) of the Act allows additional factors to be taken into account in award criteria for light touch contracts, such as to reflect that a service recipient may have the right to exercise their choice, or that proximity of the supplier and service user may be important for the effective and efficient supply



of services (i.e. not having numerous care providers criss-crossing a local authority).

### Standstill

44. Section 51(3)(f) (Standstill periods on the award of contracts) of the Act provides that there is no mandatory standstill period for light touch contracts, although contracting authorities are encouraged to apply a voluntary standstill period to reduce the risk of the contract being set aside under section 105 (Post-contractual remedies: set aside conditions) of the Act. See guidance on the contract award notices and standstill for more information.

### Key performance indicators

45. Section 52(6) (Key performance indicators) of the Act exempts light touch contracts from the requirement for contracting authorities to set and publish at least three key performance indicators in respect of contracts with a value of more than £5 million.

### Contract modifications

46. Section 74(2) (Modifying a public contract) of the Act allows the modification of light touch contracts, without having to apply the other provisions of the section. In addition, in accordance with section 75(6) (Contract change notices) of the Act, modification of a light touch contract does not require the publication of a contract change notice. Again, this reflects the overall intent to maintain less onerous light touch rules.
47. Light touch contracts may therefore be modified under the Act in any circumstances, provided contracting authorities have regard to the procurement objectives in section 12 of the Act.

### What are the primary notices linked to this aspect of the Act?

48. Procurement of light touch contracts under the Act is generally governed by the same transparency and noticing requirements as apply to other contracts. The exceptions are set out in more detail above and are as follows:
  - a. there is no obligation for light touch contracts to justify not awarding a contract by reference to lots within a tender notice (please refer to paragraph 27 above);
  - b. light touch contracts are not subject to a mandatory standstill and there is therefore no obligation to set out the standstill period in the contract award



notice (voluntary standstill information must be included where such a period is to be observed) (please refer to paragraph 44 above);

- c. publication of the contract details notice for light touch contracts is required to take place within 120 days after the contracting authority has entered into the contract and publication of the contract (when required under a reserved procurement arrangement) within 180 days (section 53 'Contract details notices and publication of contracts' of the Act);
- d. the Act does not require light touch contracts to set or publish key performance indicators and therefore the obligation to publish related performance information in the contract performance notice does not apply (please refer to paragraph 45 above); and
- e. there is no requirement for contracting authorities modifying a light touch contract to publish a contract change notice (please refer to paragraphs 46 – 47 above).

### What other guidance is of particular relevance to this topic area?

49. Contracting authorities awarding light touch contracts will need to understand the whole of the Act, as the same provisions (for example, relating to competitive tendering procedures, conditions of participation and award criteria) as apply to contracting authorities awarding other contracts apply. However, the following guidance is of particular relevance in determining whether a contract will be governed by the provisions in the Act for light touch contracts:

- Guidance on thresholds
- Guidance on exempted contracts
- Guidance on mixed procurement
- Guidance on covered procurement objectives
- Guidance on reserved contracts for supported employment providers
- Guidance on direct award
- Guidance on lots
- Guidance on competitive tendering procedures
- Guidance on valuation of contracts
- Guidance on contract award notices and standstill



## Annex A Summary of specific light touch provisions in the Act

Legislative reference	Specific Light Touch Rules
Section 9 - Light touch contracts	<p>Section 9(1) defines a 'light touch contract' as a contract wholly or mainly for the supply of certain services which will be identified by regulations made under section 9(2).</p> <p>Section 9(2) provides that an appropriate authority (defined in section 123(1)) may by regulations specify which services are light touch services.</p> <p>Section 9(3-4) limits the power at 9(2) by requiring an appropriate authority to have regard to the nature of the services and consider whether it is appropriate for them to be light touch contracts.</p> <p>Section 9(5) makes clear that a reference to a light touch contract includes a reference to a framework for the award of light touch contracts.</p>
Section 10 - Mixed procurement: special regime contracts	<p>Section 10(6) lists light touch contracts among the different types of special regime contracts.</p> <p>Some mixed contracts will contain elements which, if procured separately, would be subject to special rules, such as light touch contracts. When awarding a mixed contract containing one or more elements that would, if procured separately, be subject to a 'special regime', together with other above-threshold elements that would not be subject to that special regime, section 10(3) provides that a contracting authority cannot take advantage of such special regime rules where it would be reasonable to split out the requirement.</p>
Section 23 - Award criteria	<p>Section 23(6) provides an additional (non-exhaustive) list of what may constitute the 'subject matter of a contract' for light touch contracts. This includes the views of an individual or their carer and the varied needs of different service recipients. It may also include where proximity of the supplier and service recipients is important for the effective and</p>





	<p>efficient supply of the services. This additional flexibility recognises the special nature of these contracts.</p>
<p>Section 31 - Modifying a section 19 procurement</p>	<p>Section 31(2)(b) allows the modification of the terms of a competitive flexible procedure for the procurement of a light touch contract before the deadline for submitting tenders or final tenders, as relevant.</p>
<p>Section 33 - Reserving contracts to public service mutuals</p>	<p>Section 33(1) provides that a contract for 'reservable light touch services' with a maximum term of five years or less may be reserved for 'qualifying public service mutuals' under this section.</p> <p>Section 33(2-4) requires that the procurement must be carried out under a competitive flexible procedure and that the contracting authority must disregard any tender from a supplier that is not a qualifying public service mutual.</p> <p>Section 33(8) allows an appropriate authority to, by regulations, specify which of the light touch services (that have been specified as such via regulations made under section 9 (light touch contracts)) are 'reservable light touch services', and so reservable under this section.</p>
<p>Section 45 - Frameworks</p>	<p>Section 45(9) provides that section 45(3-5) does not apply when a framework is a light touch contract (i.e. it is a framework wholly or mainly for the future award of light touch contracts).</p> <p>Section 45(3-5) contains rules about the selection processes for the award of contracts and what information must be included in the framework.</p>
<p>Section 46 - Frameworks: competitive selection process</p>	<p>Section 46(11) states that this section does not apply where the framework is a light touch contract.</p>



<p>Section 47 - Frameworks: maximum term</p>	<p>Section 47(5)(c) states this section (and therefore the maximum term) does not apply to frameworks which are light touch contracts.</p>
<p>Section 51 - Standstill periods on the award of contracts</p>	<p>Section 51(3) explains that certain types of contract do not require a mandatory standstill period, which includes light touch contracts. This means light touch contracts can be entered into immediately following publication of the contract award notice.</p> <p>Section 51(4) permits contracting authorities awarding light touch contracts to voluntarily specify a standstill period in the contract award notice and states that if such a standstill is provided for, it must be complied with.</p> <p>Section 51(5) states that a voluntary standstill period must be a period of at least 8 working days.</p>
<p>Section 52 - Key performance indicators</p>	<p>Section 52(6) states that this section does not apply to light touch contracts.</p>
<p>Section 53 - Contract details notices and publication of contracts</p>	<p>Section 53(1)(a) requires that once a contracting authority has entered into a light touch contract, it must publish a contract details notice in relation to that contract within a 120 day time period after the contract is entered into.</p> <p>Section 53(3)(a) requires a contracting authority to publish a copy of a light touch contract within a 180 day time period of the date that it is entered into, if the estimated value exceeds £5 million.</p> <p>Section 53(4)(a) and 53(4)(b) state under which circumstances section 53(3) does not apply, which includes a light touch contract awarded by a devolved Welsh authority unless it is awarded under a reserved procurement arrangement.</p>



<p>Section 54 - Time limits</p>	<p>Section 54(3) states there is no minimum ‘participation period’ for light touch contracts. This refers to the period beginning with the day following the day on which a contracting authority invites the submission of requests to participate in a competitive flexible procedure and ending with the day by which those requests must be submitted.</p> <p>Section 54(4) states there is no minimum tendering period for light touch contracts. This refers to the period beginning with the day following the day on which a contracting authority invites the submission of tenders as part of a competitive tendering procedure and ending with the day by which tenders must be submitted.</p>
<p>Section 71 - Assessment of contract performance</p>	<p>Section 71(6) exempts light touch contracts from the publication obligations in section 71(5) with regard to a particular breach or failure to perform.</p>
<p>Section 74 - Modifying a public contract</p>	<p>Section 74(2) sets out that a contracting authority may modify a public contract or a convertible contract if the contract is a light touch contract.</p>
<p>Section 75 - Contract change notices</p>	<p>Section 75(6)(b) provides that the requirement to publish a contract change notice does not apply to light touch contracts</p>
<p>Section 120A - Power to disapply this Act in relation to procurement by NHS in Wales</p>	<p>Section 120 is amended by section 2 of the Health Service Procurement (Wales) Act 2024<sup>3</sup>. Subsection 120A provides a power for Welsh Ministers to make regulations disapplying any provision of the Act in relation to regulated health service procurement provided as part of the health service in Wales, which are procurements subject to provision made under section 10A of the National Health Service (Wales) Act 2006.</p>
<p>Section 124 - Index of defined expressions</p>	<p>Section 124 cross-references terms used in the Act to the relevant provisions where they are defined and includes the term light touch contract.</p>

<sup>3</sup> [Health Service Procurement \(Wales\) Act 2024](#)



<p>Schedule 1 - Threshold Amounts</p>	<p>Paragraph 1 sets out the thresholds for light touch contracts. These will be updated by regulations prior to the Act coming into force to reflect changes in force since 1st January 2024, which are:</p> <ul style="list-style-type: none"><li>• Utilities contract that is a light touch contract - £884,720</li><li>• Concession contract that is a light touch contract - £5,372,609</li><li>• Other light touch contracts - £663,540</li></ul> <p>Paragraph 3 provides a separate power to update light touch contract thresholds.</p>
<p>Schedule 5, paragraphs 15 to 17 - Direct award justifications</p>	<p>This direct award justification applies where a contract is not suitable for a competitive tendering procedure due to a legal requirement for a contracting authority to take account of the needs or preferences of a specific user.</p> <p>Paragraph 15 provides that public contracts for the supply of ‘user choice services’ may be awarded directly, provided the conditions of paragraph 17 are met.</p> <p>Paragraph 16 defines ‘user choice services’ as ‘light touch services’ (specified under regulations in section 9) which are supplied for the benefit of a particular individual and where (by another enactment, i.e. another legislative means such as the Social Services and Well-being (Wales) Act 2014) the contracting authority must take into account the view of the individual or their carer as to who should supply the service.</p> <p>Paragraph 17 requires that the individual or their carer must have expressed a preference as to who should provide the service, or the nature of the service to be provided means that only one supplier can provide it. In addition, the contracting authority must consider that it is in the best interest of the individual that the contract is not awarded under a competitive tendering procedure.</p>



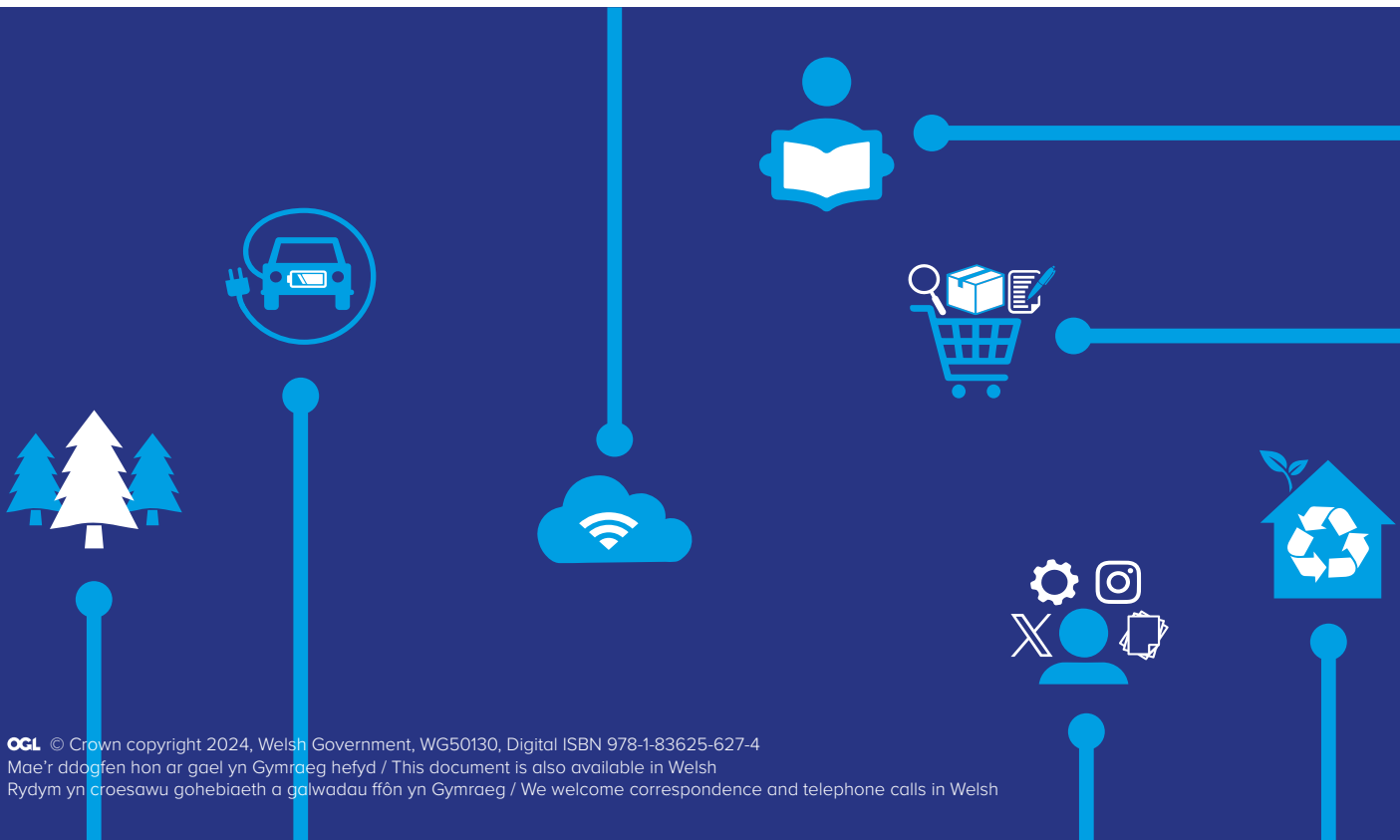


Llywodraeth Cymru  
Welsh Government

# Guidance

## Reserving Contracts for Supported Employment Providers

September 2024





# Guidance: Reserving Contracts for Supported Employment Providers

## What does it mean to reserve a contract?

1. A contract is reserved if only certain types of suppliers can participate in the procurement for the contract. This guidance focuses on reserving a contract for 'supported employment providers', which are organisations that employ or provide employment related support to disabled or disadvantaged people.
2. Contracting authorities can also reserve a light touch contract for public sector mutuals, which is dealt with in the guidance on light touch contracts.

## What is the legal framework that governs reserving contracts for supported employment providers?

3. Section 32 of the Procurement Act 2023 (the Act) provides for reserving contracts to supported employment providers.

## What has changed?

4. While the provisions in the Act that relate to reserving contracts for supported employment providers look different from those in the previous legislation, this is due to changes in terminology to remove EU-derived phraseology. There is no change in the policy intent.

## Key points and policy intent

5. Reserving contracts to supported employment providers enables public procurement to be used in such a way as to improve employment prospects for people who may face barriers to finding employment. To maximise the potential to do this, contracts for any type of goods, services or works can be reserved under section 32.
6. Section 32(4) of the Act requires that the supported employment provider must provide employment, or employment-related support, to disabled or disadvantaged people. The Equality Act 2010 defines a disabled person as someone with a physical or mental impairment that has a substantial and long-term negative effect on their ability to do normal daily activities. There isn't a definition of disadvantaged people in other legislation and the Act hasn't introduced a definition. This is to enable the provision to work with evolving social



policy and recognise the breadth of people that may benefit from the support of a supported employment provider. For example, single parents, carers, and people that have been unemployed for some time can all experience barriers to employment.

7. Although there are no restrictions on the type of contract contracting authorities can reserve, the viability of a restricted competition should be considered. Contracting authorities should use market knowledge to consider whether a reserved procurement will attract sufficient interest from supported employment providers and deliver value for money. Contracting authorities may choose to undertake some preliminary market engagement to inform their procurement strategy.
8. A supported employment provider is an organisation that operates wholly or partly for the purpose of providing employment, or employment-related support, to disabled or disadvantaged people where at least 30% of the employees of the organisation (or the part of the organisation that will perform the relevant contract) are disabled or disadvantaged (see section 32(4)). A supplier must demonstrate to the contracting authority's satisfaction that it meets both parts of the definition i.e. the organisation's purpose and the 30% workforce requirement.
9. The Act provides some flexibility to allow the criteria to be met in various ways, depending on the organisation and the organisational arrangement that will deliver the contract. For example, if a supplier with 50 employees tenders for the contract, it must demonstrate:
  - a. that the organisation operates wholly or partly for the purpose of providing employment or employment related support to disabled or disadvantaged people; and
  - b. at least 15 (i.e. 30%) of its employees are disabled or disadvantaged (to meet section 32(4)(a)).
10. If a large organisation tenders for the contract and a single division (a part) is going to deliver the contract, it must demonstrate:
  - a. that the organisation operates wholly or partly for the purpose of providing employment or employment related support to disabled or disadvantaged people (which could be met even if only the division operates wholly or partly for that purpose); and
  - b. that 30% of the workforce in that division are disabled or disadvantaged (to meet section 32(4)(b)).
11. In more complex arrangements, where multiple organisations may be collaborating together (to form what is often referred to as an employment



programme), the programme must operate wholly or partly for the purpose of providing employment, or employment related support to disabled or disadvantaged people. In this scenario, the contract may be delivered by several distinct parts of the collaborating organisations and the 30% requirement applies to the combined workforce from across the various parts of the organisations that will deliver the contract (to meet section 32(4)(c)). For example, if a tender is submitted by a collaboration between three organisations where the contract will be delivered by several departments within those organisations and:

- a. organisation 1 will contribute a department of 10 people to the delivery;
- b. organisation 2 will contribute two departments of 20 people each to the delivery; and
- c. organisation 3 will contribute a department of 40 people to the delivery,

the collaborating organisations must demonstrate that at least 27 workers from across the relevant departments in the organisations are disabled or disadvantaged (27 is 30% of the total workforce of 90 engaged on the delivery of the contract). The Act does not prescribe any particular distribution across the organisations, so in this example organisation 3 could employ all 27 people and the threshold would still be met.

12. The definition also caters for the various ways in which an organisation can help disabled or disadvantaged people with regard to employment. This can include direct employment (sometimes known as sheltered employment) such as a manufacturing company which predominantly employs disabled people, or the provision of employment-related support, such as helping people to improve their interview skills, or to find appropriate positions in other organisations. The Act isn't prescriptive about what counts as 'providing employment-related support' to enable the contracting authority to use its own judgement.
13. Contracting authorities must use the competitive flexible procedure when carrying out a procurement in which they reserve the contract to a supported employment provider.
14. The competitive flexible procedure must provide for the exclusion of suppliers that do not meet the definition of a supported employment provider. Contracting authorities are able to apply the test as a condition of participation, or as part of the assessment of tenders, depending on how the procedure is structured.





15. A contracting authority that intends to reserve a contract to supported employment providers is required to identify this in the tender notice, contract award notice and contract details notice<sup>1</sup>.

What other guidance is of particular relevance to this topic area?

- Guidance on preliminary market engagement
- Guidance on conditions of participation
- Guidance on competitive procurement procedures
- Guidance on awarding competitive contracts

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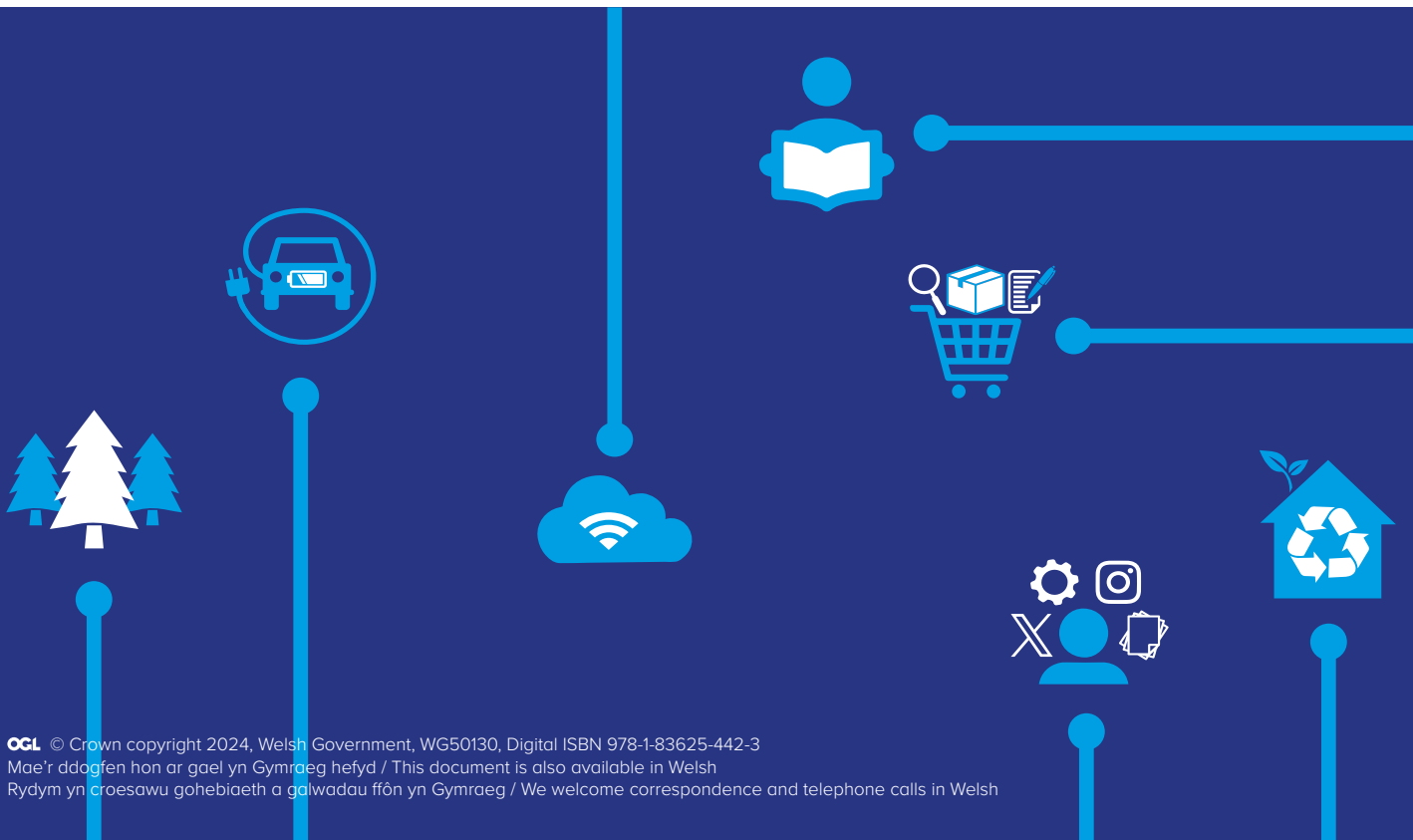
<sup>1</sup> [The Procurement \(Wales\) Regulations 2024](#), regulations 20 (Tender notices: competitive flexible procedure), 28 (Contract award notices except those published by private utilities) and 33 (Contract details notices: open or competitive flexible procedure)



Llywodraeth Cymru  
Welsh Government

# Guidance Pipeline Notice

July 2024





## Guidance: Pipeline Notice

### What is a pipeline notice?

1. One of the most important things contracting authorities can do is to provide the market with information about current and future public contract opportunities by publishing a forward-looking procurement pipeline. The Procurement Act 2023 (the Act) achieves this by requiring the publication of pipeline notices in certain circumstances. This is of particular benefit to small and medium-sized enterprises (SMEs) and voluntary, community and social enterprises (VCSEs) as it provides them with time to plan for future work, ensuring a competitive and diverse market.
2. A pipeline notice is “a notice setting out specified information about any public contract with an estimated value of more than £2 million in respect of which the contracting authority intends to publish a tender notice or transparency notice during the reporting period”. In other words, it is the collection of individual procurements that make up a contracting authority’s procurement pipeline over the next reporting period. The ‘reporting period’ is 18 months, commencing on the first day of the financial year in which the notice is published.
3. Private utilities are not required to publish a pipeline notice, but are encouraged to do so for the reasons outlined above.

### What is the legal framework that governs pipeline notices?

4. The relevant provisions are section 93 and regulation 16.

### What has changed?

5. The Act when read with the regulations make publication of a pipeline notice on the central digital platform a legal requirement in the circumstances set out in the Act.
6. The pipeline notice may form a subset of a contracting authority’s wider commercial pipeline which is used for internal planning. The new legal requirement to publish a pipeline notice does not replace any internal reporting requirements.



## Key points and policy intent

7. Devolved Welsh authorities (DWAs) who consider they will, in the coming financial year, pay more than £100 million under relevant contracts are under the regulations required to publish a pipeline notice on the Welsh Digital Platform, Sell2Wales. Sell2Wales will subsequently forward the notice to the central digital platform, thereby fulfilling the legal requirement to publish a pipeline notice on the central digital platform in the circumstances set out in the Act.
8. For the purpose of calculating whether a contracting authority will exceed the £100 million threshold, the calculation must include all payments that will be made under contracts for the supply of goods, services or works other than exempted contracts ('relevant contracts'). This includes below-threshold contracts and the establishment of frameworks. The calculation will comprise payments due in the coming financial year under existing and future contracts. In the case of a framework, whilst a framework is a contract, the value of the framework itself is not taken into account. This is because payments will not be made under the framework itself, but instead will be made under each relevant contract awarded under the framework. Relevant contracts also include contracts awarded under frameworks and dynamic markets.
9. Whilst not required to do so under the Act, a centralised procurement authority that is planning to establish a framework for use by other contracting authorities that is valued over £2 million (based on the total value of the contracts to be awarded under the framework) should publish a pipeline notice in order to provide visibility to the market.
10. Note that the planned establishment of a dynamic market is not taken into account in calculating anticipated expenditure in the coming financial year for the purpose of determining whether a pipeline notice must be published (because a dynamic market is not a contract). However, a contracting authority establishing a dynamic market or intending to use one will need to include its planned spend under the dynamic market in the calculation. This spend includes only the contracting authority's own planned spend through dynamic markets, not the potential spend of any other users of the relevant dynamic markets. So, for example, if a contracting authority established a dynamic market for multiple contracting authorities in Wales to use and anticipated that it (alone) would pay £10 million under relevant contracts awarded under the dynamic market in the coming financial year, whilst other users of the dynamic market might pay a further £50 million under contracts awarded under the dynamic market, the contracting authority establishing the dynamic market would only take into account the £10 million when calculating whether the £100 million threshold is met. Other contracting authorities awarding contracts under the dynamic market



would include their share of that £50 million expenditure in their own calculations of spend.

11. The pipeline notice must be published within 56 days of the first day of the relevant financial year. Section 93(4) sets out that 'financial year' means:
  - a. the period of twelve months beginning with the 1 April following the day on which this section comes into force; and
  - b. each successive period of 12 months.
12. What this means is that the first procurement pipeline notice will need to be published within 56 days of April 1 2025, i.e. by 26th May 2025 and by 26th May in subsequent years.

## Content of a pipeline notice

13. Regulation 16 sets out the information that must be published for each procurement contained in the pipeline notice.
14. The pipeline notice is a single notice providing details of all relevant contracts that an authority intends to award during the reporting period. Digitally, though, details will be entered in the central digital platform in relation to each individual procurement so that subsequent notices about that procurement can be linked to those details. This information will be collated and presented as a cohesive pipeline notice view for that contracting authority, enabling the viewer to easily see all the procurements making up the authority's pipeline notice.
15. The intention is that the Welsh Digital Platform (Sell2Wales) will allow the user to publish Pipeline Notices individually or by using a bulk upload feature.
16. If publishing directly onto the central digital platform, an authority will need to complete and publish details individually for each proposed public contract over the £2 million threshold. Regardless of the publication method used, all of the contracting authority's procurements forming the pipeline will still be presented together in a pipeline notice view on the system.
17. When completing the information, particularly the contract subject-matter, not all information is likely to be known at the point of publication of a pipeline notice and the expectation is that this information would be less detailed than any subsequent tender or transparency notice. Further information about what to consider when publishing pipeline information is included in the guidance on the central digital platform and publication of information.



18. While the Act requires the pipeline notice to be published within 56 days of the first day of the relevant financial year, there are likely to be circumstances where a contracting authority will identify additional requirements during the financial year. Whilst not a requirement of the legislation, contracting authorities are encouraged to review and update their pipeline notices throughout the year, adding new procurements above the £2 million threshold. These additional procurements will be collated and presented in the pipeline notice view with the rest of the contracting authority's upcoming procurements that have already been published in its pipeline notice.
19. Where an additional procurement above the £2 million threshold for inclusion in a pipeline notice is identified and the contracting authority considers that there is not enough time to publish an additional entry in their pipeline notice before commencing that new procurement, then the contracting authority is not required to include that procurement in its pipeline notice.
20. Contracting authorities are encouraged to go further than required by the Act by including in their pipeline notice:
  - a. works contracts above £2 million but below the works threshold at the time of publication where the contracting authority intends to carry out a competitive tendering process. This also aligns with the £2m threshold for major construction contracts in the Social Partnership and Public Procurement (Wales) Act 2023, thereby emphasising the importance of publishing pipelines for works contracts valued above £2m;
  - b. contracts above £2 million where publication of a tender or transparency notice is not required, for example to alert the market where a contracting authority intends to award a call-off contract under a third party's framework through a competitive selection process and contracts awarded under certain types of utilities dynamic markets;
  - c. contracts below £2 million where the contracting authority is intending to advertise the opportunity as this can be particularly beneficial to SMEs;
  - d. relevant contracts to be awarded over a period that is longer than 18 months.
21. Contracting authorities who are uncertain as to whether the £100 million threshold will be reached in a given financial year are also encouraged to publish a pipeline notice. This could arise, for example, because a contracting authority may receive funding for several years and be unsure how that will be divided between the current and subsequent financial years.
22. Additionally, contracting authorities who are exempt from publishing pipeline notices may publish them voluntarily.



23. While a pipeline notice is intended to provide suppliers with an indication of a contracting authority's plans and expenditure for the following 18 months, this could change over time as plans for the procurements become clearer. Contracting authorities are not under any legal obligation to proceed with any procurement that has been specified in a pipeline notice. While there is no legal obligation to indicate that the procurement will not proceed, it would be good practice to provide visibility of such changes using the procurement termination notice on a voluntary basis.

### What other guidance is of particular relevance to this topic area?

- Guidance on the central digital platform and publication of information
- Guidance on valuation of contracts
- Guidance on notice sequencing and flowcharts
- Guidance on the Welsh Digital Platform



## 12.3

### **Define**

- 12.3.1 Valuation of contracts (published)
- 12.3.2 Thresholds (published)
- 12.3.3 Below-threshold contracts (Published)
- 12.3.4 Mixed procurement (Published)
- 12.3.5 Planned procurement notice (published)
- 12.3.6 Preliminary market engagement (published)
- 12.3.7 Technical specifications (published)
- 12.3.8 Treaty state suppliers (Published)
- 12.3.9 Competitive tendering procedures (Published)
- 12.3.10 Direct award (Published)
- 12.3.11 Dynamic markets (not yet published)
- 12.3.12 Frameworks (not yet published)
- 12.3.13 Lots (Published)
- 12.3.14 Managing conflicts of interest (Published)



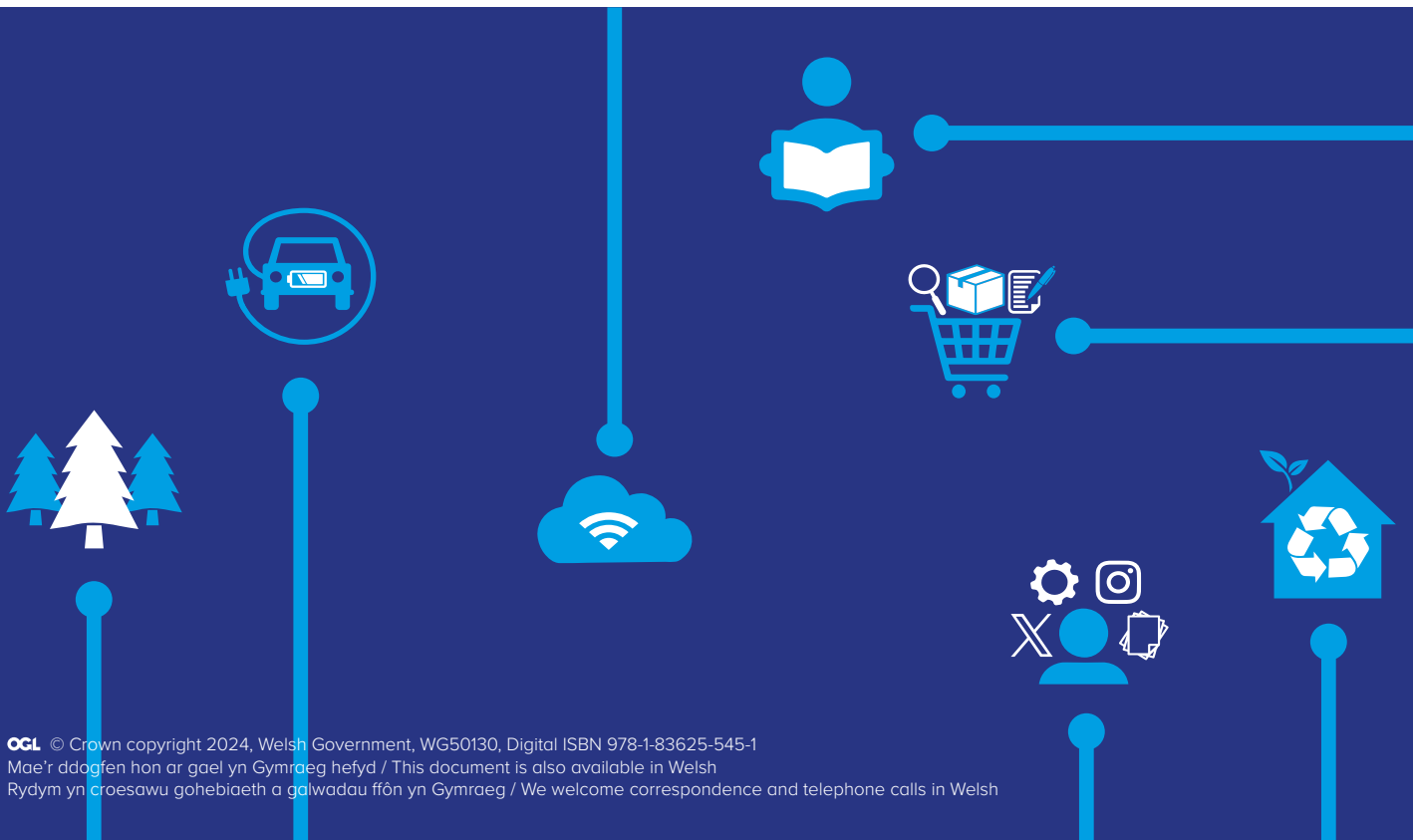


Llywodraeth Cymru  
Welsh Government

# Guidance

## Valuation of Contracts

August 2024





## Guidance: Valuation of Contracts

### What is Valuation of Contracts?

1. Rules on estimating contract values are necessary as a result of there being different thresholds (and consequently different obligations on contracting authorities) for different types of contract. These rules provide a simple methodology for contracting authorities to estimate the financial value of their contract. This guidance focuses on valuing contracts in order to determine whether a contract is above or below the relevant threshold.

### What is the legal framework that governs Valuation of Contracts?

2. Section 4 and Schedule 3 of the Procurement Act 2023 (the Act) collectively provide the relevant rules on valuation of contracts.
3. Section 4 of the Act requires contracting authorities to estimate the value of contracts, in accordance with a methodology set out in Schedule 3 and restricts manipulation of the estimated value of a contract in order to avoid the requirements in this legislation. The effect is that authorities will have an estimated value for their contract and thus be able to determine whether they are above or below the relevant threshold and in turn determine which rules have to be followed.
4. Schedule 3 of the Act provides a methodology that contracting authorities must use when estimating the value of their contracts in order to discharge their obligations under Section 4. The provision also prevents contracting authorities from artificially subdividing contracts for the purposes of evading any of the requirements of the Act.
5. Schedule 3 also sets out how contracting authorities must estimate the value of a contract for the purposes of determining whether it is subject to the general rules regime for above threshold contracts or the below-threshold regime.

### What has changed?

6. As is the case with certain other basic definitions and concepts, the policy on valuation of contracts has not been substantively reformed. The rules imposed by this Act are therefore similar in intention and effect to the former rules on estimating contract values set out in the previous legislation. The valuation methodology in Schedule 3 is also deliberately similar to that set out in the previous legislation.



7. There are some inevitable differences in the way these rules are set out in the Act. For example, the previous legislation did not address situations where an estimate was not possible. This modification was necessary in order to achieve and to be able to demonstrate full compliance with international agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), but should not cause any significant changes in practice.
8. The concept of separate Operational Units, which is an undefined term from the European Directives, has not been included in the Act. It is recognised that some contracting authorities will operate in highly delegated structures and some business units will need to act independently. This flexibility has been preserved using a simple anti-avoidance mechanism as Schedule 3, paragraph 4 which mirrors the similar provision in the previous legislation and requires contracting authorities to aggregate requirements that can reasonably be aggregated for the purpose of their estimation, unless there are good reasons for not doing so. Clearly, disaggregating for the purposes of reaching a below-threshold value would not be a good reason, but otherwise the rules are flexible in this respect. The drafting leaves a wide discretion for contracting authorities not to aggregate when they have cause not to.
9. Case law and government guidance has highlighted that, in the context of development agreements, it can be necessary to take into account a wider range of factors than the amount that an authority expects to pay, as the true value of the opportunity may lie in the value of payments from third parties. The valuation approach in the Act is consistent with the longstanding approach in the previous legislation in requiring the estimate to be made in respect of what an authority expects to pay. There is no change in policy.

### Key points and policy intent

10. Section 4 of the Act provides the essential obligation on contracting authorities to apply the methodology at Schedule 3 when estimating the value of a contract, in order to determine whether the contract is above or below threshold and consequently the relevant rules that must be followed. Section 4 also includes an anti-avoidance mechanism that makes it unlawful to exercise any discretion in valuing a contract with a view to avoiding the requirements of the Act.
11. Schedule 3 of the Act sets out the valuation methodology. The 'general rule' requires contracting authorities to estimate the maximum value payable under the contract, taking account of any potential variables such as options to supply additional goods/services/works or options to extend or renew the contract, and sets out a non-exhaustive list of matters that could be relevant to this estimation.



12. When calculating the estimated value of the contract, the contract value estimation should be inclusive of VAT. This change in practice has been in place since 1 January 2021 and is a result of the UK's independent membership of the WTO Agreement on Government Procurement (GPA). Whilst the UK was a member of the EU, the value of contracts was calculated exclusive of VAT. The EU's GPA thresholds were reduced in comparison to other GPA members to take this into account. The UK is now subject to the standard GPA threshold and shares the common GPA practise of valuing contracts inclusive of VAT.
13. The estimated value of the contract must include the value of any goods, services or works "provided by the contracting authority under the contract other than for payment" (Schedule 3, paragraph (2)(a)). This obligation may only be relevant to the calculation in a limited number of procurements but recognises that in some cases contract authority provides items with the contractor to use in delivering the contract and it is the value of these items which should be included in the estimation of the contract value. For example, in a motorways programme, the electronic equipment for the gantries may be supplied by the contract authority to the contractor to ensure consistent equipment is deployed across the network. In this example, the value of the electronic equipment provided would be included when calculating the estimated value of the contract.

## Frameworks and concession contracts

14. There are provisions reflecting slight differences in approach needed when estimating the values of frameworks and concession contracts.
15. Frameworks must follow the general rule in Schedule 3 in terms of how to estimate the value of the contract but must also follow the particular valuation method set out for frameworks, which requires that the estimate of the framework is the value of all contracts that could be awarded under the framework. Open frameworks, which are schemes of successive frameworks on substantially the same terms, must be valued by including the value of all frameworks that could be awarded under the open framework (and therefore the value of all contracts that could be awarded under each of the frameworks in the scheme).
16. Concession contracts are not valued according to the general rule in the Act but must follow the particular valuation methods set out for concession contracts. This involves estimating the maximum amount suppliers could expect to receive, taking account of a similar non-exhaustive list of variables in the general rule, with certain modifications more pertinent to concession contracts, such as amounts received on the sale of assets held by the supplier under the contract.



17. The reason for concession contracts being valued differently is because at least part of the value in concession contracts is in the right to exploit the works or services or stop as such in addition to any amount received as payment from the contract authority the contract valuation should include amounts a supplier expects to receive in the expectation of the work services. This might include for example anticipated revenue from users of a toll bridge.

## Anti-avoidance

18. The anti-avoidance mechanism at Schedule 3, paragraph 4 of the Act is designed to ensure contracting authorities do not artificially subdivide procurements in order to evade the rules. This includes the basic rule that contracting authorities should where possible seek to aggregate purposes of valuation, but this should not be a blunt instrument and so it permits exceptions where there are good reasons. For example, just because a contracting authority buys printers from a particular supplier, it does not mean that they should necessarily buy all of their toner, paper and servicing from that same supplier if they believe they can get a better deal elsewhere.

19. The rules do not need to be prescriptive on this as the anti-avoidance measure works on the basis that rule avoidance would never be a good reason. An example of a good reason for not aggregating could be:

- where a business unit within a large contracting authority has a delegated budget and procures only for the purposes of that business unit;
- where there are many business units with their own needs that cannot feasibly be expected to know every permit requirement of other business units within the wider organisation;
- where not aggregating would lead to better value outcomes.

## Where estimation is not possible

20. The policy intention behind Schedule 3, paragraph 5 in the Act, which provides that contracts whose value cannot be estimated are deemed above-threshold, arises from the need to ensure full compliance with international obligations on public procurement. In practice the situation is unlikely to arise and in general terms it is recommended that contracting authorities simply undertake the best valuation of the information available, following the detailed rules set out in Schedule 3.

## What other guidance is of particular relevance to this area?

- Guidance on thresholds



- Guidance on mixed procurement

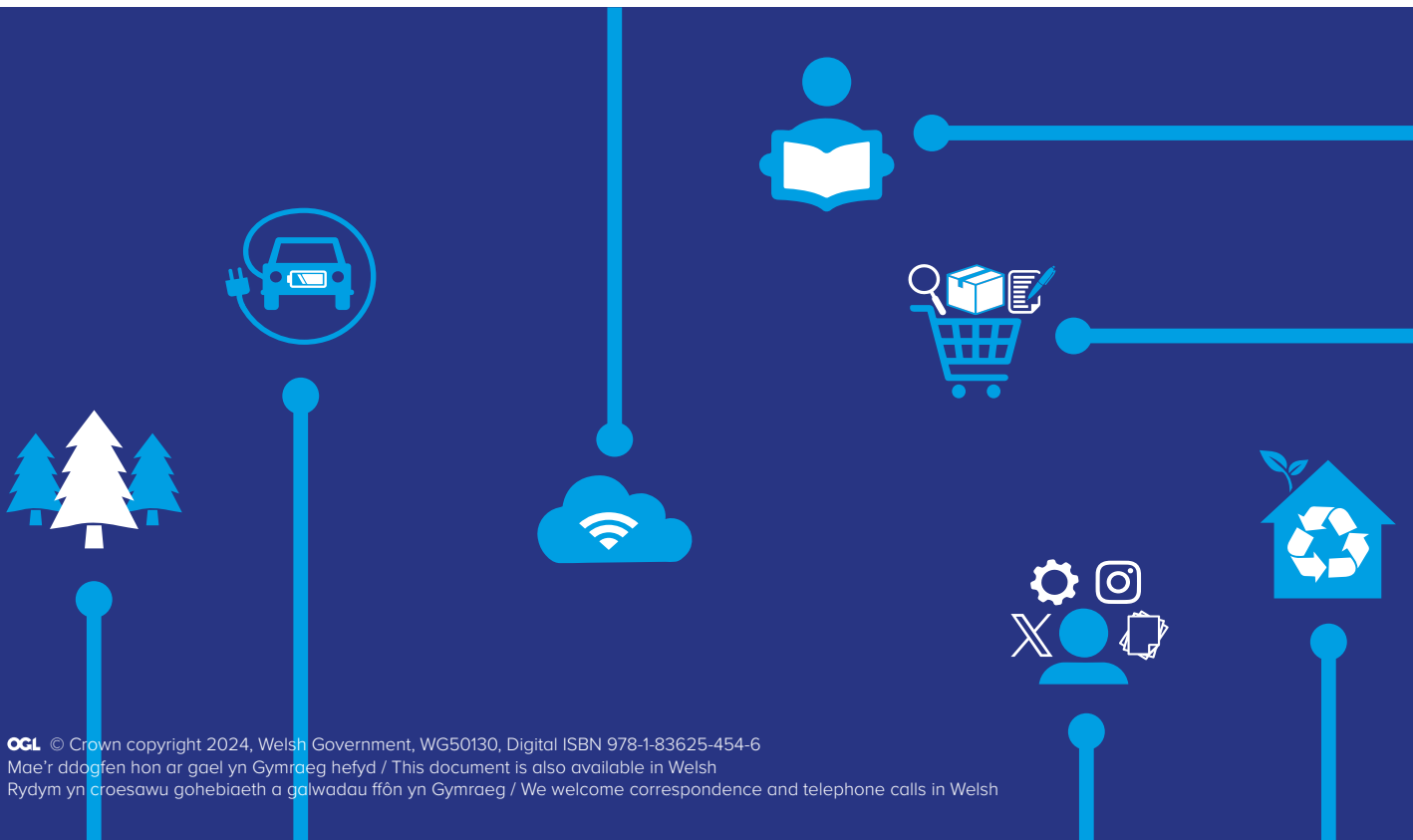




Llywodraeth Cymru  
Welsh Government

# Guidance Thresholds

July 2024





## Guidance: Thresholds

This guide covers the thresholds included in the Procurement Act 2023. Information regarding thresholds contained within the Social Partnership and Public Procurement (Wales) Act 2023 is available at the end of the document.

### What are thresholds?

1. The majority of the provisions in the Procurement Act 2023 (the Act) only apply to a public contract (as defined in section 3). A contract is only a public contract where it is not exempted (as set out in Schedule 2) and has an estimated value (including VAT)<sup>1</sup> of not less than the threshold amounts set out in Schedule 1. These thresholds are therefore critical in ensuring that contracting authorities understand when they need to comply with the standard provisions in the Act.
2. Certain contracts with a contract value less than the threshold amounts in Schedule 1 are subject to the below-threshold provisions in Part 6 of the Act. For further information, please see paragraphs 14 to 16 below and the separate guidance on below-threshold contracts.

### What is the legal framework that governs thresholds?

3. The applicable thresholds are set out in Schedule 1 of the Act and can be grouped into three main categories:
  - a. Those aligned to international agreements;
  - b. Defence and security contracts (although these are not applicable to devolved Welsh authorities); and
  - c. Light touch contracts.
4. Devolved Welsh authorities must also consider the following thresholds:
  - a. Notifiable below-threshold contracts (see paragraphs 14 to 16 below and the separate guidance on below-threshold contracts)

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<sup>1</sup> Section 123 of the Act, 'Interpretation', explains that a reference to an amount payable or paid, receivable or received, or to be paid or received, under a contract includes a reference to any amount referable to VAT (the terms receivable and received are used to reflect the different way in which concession contracts are valued).





- b. Social Partnership and Public Procurement (Wales) Act 2023 and regulations, above which certain duties will apply when this legislation comes into force (see end of document for further information).
5. As explained in more detail at paragraph 10 below, the thresholds in the Act have since been updated to align with the UK's international obligations on public procurement. The revised thresholds were set out in [Procurement Policy Note 11/23](#) and are replicated below. The Act will be updated when it comes into force to ensure that the revised thresholds are reflected.

## Key points and policy intent

### International Agreements

6. The UK has a duty to give access to its public procurement markets to suppliers from states which it has a relevant trade agreement with.<sup>2</sup> These trade agreements are listed in Schedule 9 of the Act.
7. The UK's thresholds in its relevant trade agreements either align with or are higher than the thresholds in the UK schedules to the WTO Government Procurement Agreement (GPA). Accordingly, the UK remains compliant with its international obligations by aligning relevant thresholds in the Act to the UK GPA thresholds.
8. The UK GPA thresholds are in Special Drawing Rights (SDRs). Every two years, the UK is obliged to provide the GPA with the sterling equivalent of its SDR thresholds. The revised threshold then takes effect from 1 January of every even year. This is to adjust for currency fluctuations.
9. To ensure the Act remains aligned to the sterling UK GPA thresholds, Schedule 1 contains a power for an appropriate authority (a Minister of the Crown, the Welsh Ministers or a Northern Ireland department) to update relevant thresholds in the Act by statutory instrument. A Procurement Policy Note is issued every two years to confirm the new sterling thresholds.
10. The thresholds listed in rows 4, 6 and 9 to 12 in Schedule 1, paragraph 1(1) correspond to the UK GPA sterling thresholds for the period 1 January 2022 to 31 December 2023. These thresholds were in place when the Act received Royal Assent on 26 October 2023. These thresholds will be updated when the Act comes into force to remain aligned with the GPA thresholds which were updated

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<sup>2</sup> This duty is only to the extent of the terms agreed within the trade agreement.



on 1 January 2024. For reference the updated thresholds are set out in the table below:

Type of Contract	Thresholds (including VAT): 1 January 2024 to 31 December 2025
<b>Utility</b> works contract	£5,372,609
<b>Utility</b> contract that is not a works contract, a defence and security contract or a light touch contract.	£429,809
<b>Concession</b> works and services contract	£5,372,609
<b>Works</b> contract	£5,372,609
Contract for the supply of goods or services (which may be mixed contracts that contain some works elements) to a central government authority not within any other row.	£139,688
Contract for the supply of goods or services (which may be mixed contracts that contain some works elements) to a sub-central government authority not within any other row.	£214,904

## Light Touch Contracts

11. Schedule 1 provides a power to update the thresholds for light touch contracts. These thresholds are not determined by the GPA and as such are not subject to change every two years.
12. Schedule 1 does, however, allow the light touch contracts' thresholds to be updated for different purposes, for example to allow for inflation or reflect changing priorities for this category of contract.



13. Where a light touch contract is also a concession contract, the higher threshold used for concession contracts applies. This threshold continues to align with the UK GPA threshold for construction services which is SDR 5,000,000 (currently £5,372,609) and is updated every two years.

Type of Contract	Threshold (including VAT)
Light touch utilities contract	£884,720
Light touch concession contract	£5,372,609 (1 January 2024 to 31 December 2025)
All other light touch contracts	£663,540

### Notifiable below-threshold contracts in Wales

14. Section 87 of the Act contains a power for the Welsh Ministers to update the financial threshold for a notifiable below-threshold contract by statutory instrument. Welsh Ministers have exercised this power through Regulation 47(3) of the Procurement (Wales) Regulations 2024, meaning that for devolved Welsh authorities a “notifiable below-threshold contract” is a regulated below-threshold contract with an estimated value above £30,000 (inclusive of VAT).

15. This threshold will apply equally to Welsh central government authorities (CGAs) and non-CGAs. This means that any contract valued above this value will require a contract details notice to be published by all devolved Welsh authorities (DWAs).

16. However, if a Welsh CGA is procuring under a reserved procurement arrangement, such as a Framework or Dynamic Market established by Crown Commercial Services for example, then the below-threshold value that would apply is £12,000 (inclusive of VAT).

### Definition of terms

17. Schedule 1 of the Act defines the following expressions used in Schedule 1 and throughout the Act:



Term	Definition
Central government authority	<p>The Welsh Ministers and each of the entities (and their successors) listed in columns 1 or 2 of the Table in Schedule 2 to the Procurement (Wales) Regulations 2024.</p> <p>(Schedule 1 of the Act contains a regulation making power permitting an appropriate authority to list those contracting authorities that are “central government authorities”.)</p>
Complete work	A functioning structure that results from the carrying out of works.
GPA	The Agreement on Government Procurement signed at Marrakesh on 15 April 1994, as amended from time to time.
Sub-central government authority	A contracting authority which is neither (i) a central government authority, nor (ii) a private utility or a public undertaking.
Works	<p>The activities which fall within the CPV codes listed in Schedule 3 to the Procurement (Wales) Regulations 2024.</p> <p>(Schedule 1 of the Act contains a regulation making power permitting an appropriate authority to list those categories of activity that are to count as “works” for the purposes of defining a “works contract”.)</p>
Works contract	A contract whose main purpose is either (i) the carrying out of “works” (see



	definition above) under that contract (whether or not resulting in a complete work), or (ii) to facilitate the carrying out of works under a separate arrangement, where those works are intended to result in a complete work that complies with specifications set out in that contract.
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### What other guidance is of particular relevance to this topic area?

- Guidance on covered procurement
- Guidance on exempted contracts
- Guidance on below-threshold contracts

### Where can I go for more information or training?

- PPN 11/23: New Thresholds

### Social Partnership and Public Procurement (Wales) Act 2023

18. The [Social Partnership and Public Procurement \(Wales\) Act 2023](#) (SPPP Act) places a socially responsible procurement duty on Welsh contracting authorities, so that they “...must seek to improve the economic, social, environmental and cultural well-being of its area by carrying out public procurement in a socially responsible way” (Section 24(1)).
19. The definition of a public contract in the Social Partnership and Public Procurement (Wales) Act 2023 is broader than the definition in the Procurement Act, with no reference to financial thresholds<sup>3</sup>.
20. The SPPP Act places additional (reasonable steps and reporting) duties on contracting authorities in relation to a category of procurements known as “prescribed contracts”. These are defined (section 24(8)) as “a major construction contract”, an outsourcing services contract and any other public contract of a description prescribed by the Welsh Ministers. A major construction contract, which DWAs will need to be aware of when this legislation comes into force, is a public contract that is a works contract with an estimated value of no

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<sup>3</sup> See Section 21 of the SPPP Act.



less than £2,000,000 inclusive of VAT.

21. The Explanatory Memorandum to the SPPP Act indicates that it has been the policy intention of Welsh Ministers to extend to the definition of prescribed contracts, by regulation, to include above-threshold contracts, linked to the Procurement Act.
22. A further category of “registrable contracts” will also be defined in regulations. The details of these contracts must be included in a published contracts register (section 40).
23. The definitions for “works” and “works contract” in the SPPP Act have been amended by the Procurement (Wales) Regulations 2024 (Regulation 46(3)(b) and (c) in relation to the Procurement Act 2023 (Act), to reflect the definitions contained within these Regulations and the Act.
24. Separate regulations and guidance on the SPPP Act will be published which will provide further information on the above.



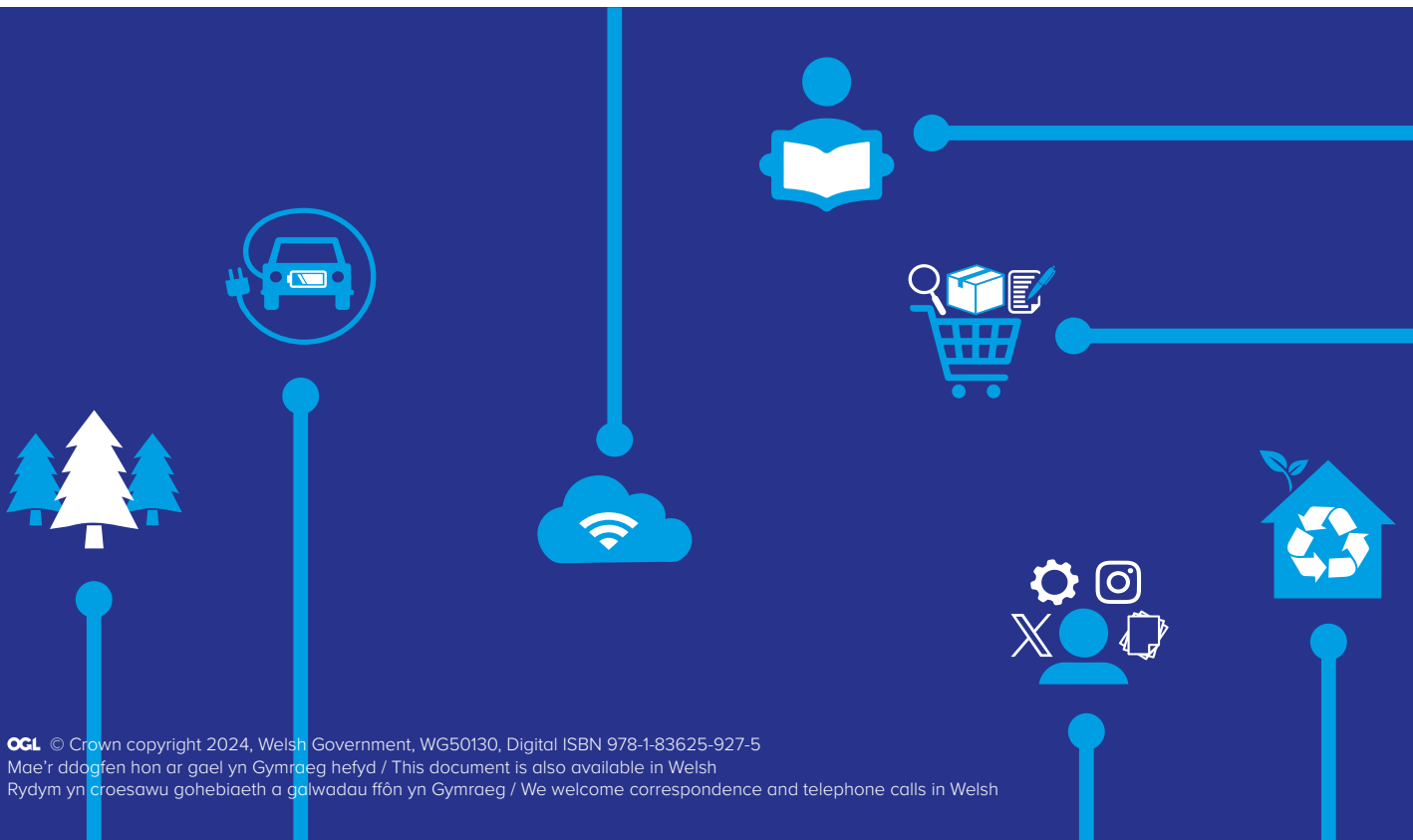


Llywodraeth Cymru  
Welsh Government

# Guidance

## Below-Threshold Contracts – Devolved Welsh Authorities

November 2024





## Guidance: Below-Threshold Contracts – Devolved Welsh Authorities

1. Note: If a Devolved Welsh Authority is conducting a procurement in relation to a below-threshold contract under a reserved procurement arrangement as defined in [Section 114 of the Procurement Act 2023](#) (the Act), please refer to [UK Government below-threshold guidance](#).

### What is a below-threshold contract?

2. A 'below-threshold contract' is defined in [section 5](#) of the Act (see paragraph 8 below) and is broadly a contract of lower monetary value than a 'public contract' (which is defined in section 3 of the Act and is subject to the thresholds set out in Schedule 1 of the Act).
3. The award, entry into and management of a below-threshold contract is not a 'covered procurement' as defined in [section 1 of the Act](#). This means that fewer obligations in the Act apply to the procurement of below-threshold contracts than apply to covered procurement.
4. If a provision in the Act expressly refers to covered procurement, it does not apply to below-threshold contracts. Generally the only provisions in the Act that are relevant to the procurement of below-threshold contracts are those set out in [Part 6](#), although there are some exceptions. For example, the obligations in [section 14](#) of the Act to have regard to the Wales procurement policy statement and in section 90(1) to not discriminate against a treaty state supplier (but only to the extent that below-threshold procurements are covered by an international agreement set out in Schedule 9 of the Act) apply to any procurement, including below-threshold contracts.
5. This gives contracting authorities undertaking a below-threshold procurement greater flexibility in designing and running the procurement, and awarding and managing the resulting contract.
6. This flexibility (which may be subject to local policies and procedures) might include, for example the ability to request quotes, proposals or tenders from targeted known suppliers only; or to suppliers who are small and medium-sized enterprises (SMEs), or voluntary, community and social enterprises (VCSEs).
7. Note however that the option to reserve procurements on the basis of location should not be used in relation to procurements which are of cross-border interest (i.e. which may be of potential interest to suppliers from EU Member States





including the Republic of Ireland) and which involve the provision of goods into Northern Ireland.

## What is the legal framework that governs below-threshold contracts?

8. [Section 5](#) of the Act defines a below-threshold contract as:
  - a. a contract for the supply, for pecuniary interest, of goods, services or works to a contracting authority;
  - b. a framework; or
  - c. a concession contract,that has an estimated value of less than the 'threshold amount' for the type of contract.
9. The threshold amounts are set out in Schedule 1 of the Act.
10. [Section 84](#) provides that a 'regulated below-threshold contract' is a below-threshold contract that is not:
  - a. an exempted contract as defined in Schedule 2 of the Act;
  - b. a concession contract; or
  - c. a utilities contract.
11. [Part 6](#) of the Act sets out the rules that apply when carrying out the procurement of below threshold contracts. This includes provisions relating to procurement procedures, duties, notices and implied payment terms. Regulation 25 of the Procurement (Wales) Regulations 2024 (the Regulations) sets out the information required to be included in a 'below-threshold tender notice'.
12. [Section 84](#) of the Act provides that the below-threshold contract provisions in Part 6 do not apply to procurements undertaken:
  - a. by a school (as defined in section 123 of the Act); or
  - b. by transferred Northern Ireland authorities, unless the procurement takes place under a reserved procurement arrangement or a devolved Welsh procurement arrangement (such as a framework or dynamic market). This would also be the case if the transferred Northern Ireland authority participated in a joint procurement led by a non-devolved authority or devolved Welsh authority, or a non-devolved or devolved Welsh central purchasing authority (for information about central purchasing authorities see guidance on frameworks); or
  - c. under a transferred Northern Ireland procurement arrangement, that is to say using a framework or dynamic market established by a transferred Northern



Ireland authority. This is also the case where a contracting authority participates in a joint procurement led by a transferred Northern Ireland authority or a transferred Northern Ireland central purchasing authority.

## What has changed for devolved Welsh Authorities?

13. Unlike the Public Contracts Regulations 2015 the Act sets out statutory requirements for devolved Welsh authorities covering below-threshold contracts.

## Categories and Thresholds

14. The below-threshold requirements included in the Act and associated regulations apply at different thresholds to different categories of contracting authorities.
15. The categories are listed at section 87(4) of the Act but different thresholds apply to devolved Welsh authorities to those listed in section 87(4) as these have been amended pursuant to Welsh regulations (see regulation 47 of The Procurement (Wales) Regulations 2024). The thresholds for devolved Welsh authorities are:
  - a. central government authorities that are a devolved Welsh authority - not less than £30,000 including VAT; and
  - b. all other contracting authorities - not less than £30,000 including VAT.
16. As detailed at the start of the guidance, if a devolved Welsh authority is conducting a procurement in relation to a below-threshold contract under a reserved procurement arrangement (such as a CCS framework), then the UK Government below-threshold guidance should be reviewed. This is because the application of the legislation will be different. For example, the threshold for central government authorities is not less than £12k including VAT, and there is a prohibition on applying a separate suitability stage which effects call-offs from Dynamic Markets.
17. A list of Welsh central government authorities can be found in Schedule 2 of the Procurement (Wales) Regulations 2024.

## Below-Threshold – Notice Publication Requirements

18. Where a below-threshold tender notice or a below-threshold contract details notice is required to be published, under the Act and Procurement (Wales) Regulations 2024, it must be published on the Welsh digital platform, Sell2Wales. The Welsh digital platform will then forward the notice to the central



digital platform, thereby fulfilling the legal requirement to publish the notice on the central digital platform in the circumstances set out in the Act.

## Below-Threshold – Tender notice

19. Section 87 of the Act requires that if a contracting authority intends to advertise a 'notifiable below-threshold contract' it must first publish a 'below-threshold tender notice'. A notifiable below-threshold contract is a regulated below-threshold contract with a value of not less than £30,000 including VAT. Regulation 5 of the Procurement (Wales) Regulations 2024 provides that this notice must be published on the central digital platform by publishing it on the Welsh digital platform.
20. There is no requirement to publish a below-threshold tender notice where the contracting authority invites quotes, proposals or tenders from a closed group of pre-selected suppliers, (i.e. suppliers on a framework) or from one or more targeted suppliers, provided it does not advertise the procurement in any other way (for example in a newspaper or on a local website or portal). In these circumstances, only the contract details notice is mandatory once the contract is awarded.
21. The below-threshold tender notice is a lighter touch version of the tender notice for covered procurement. It must set out that the contracting authority intends to invite the submission of tenders and contain as a minimum the information set out at regulation 25 of the Procurement (Wales) Regulations 2024, although contracting authorities may include additional information.
22. Whilst not set out in the regulations, a contracting authority may supplement the information in the below-threshold tender notice by including additional information in tender documents. Tender documents can be made available by the contracting authority in any way, for example at a portal/website address or via email. The information in the tender documents can duplicate information provided in the below-threshold tender notice. Tender documents could include information such as the specification, assessment methodology and terms and conditions of the contract.
23. Contracting authorities will need to ensure that the tender notice (and tender documents where applicable) provide suppliers with sufficient information to allow them to prepare a tender within the timeframes provided for in the tender notice.
24. Authorities should specify in any below-threshold tender notice if the contract is being awarded by reference to a dynamic market (and the relevant part of the market, if appropriate) and where that is the case, the unique identifier of the



dynamic market. Contracting authorities may choose to give suppliers the opportunity to join a dynamic market in order to participate in a procurement and, if doing so, should allow enough time for suppliers to become members of the dynamic market. Please refer to guidance on Dynamic Markets for further information.

## Contract Details Notice and Unique Identifiers

25. Section 87(3) of the Act provides that as soon as reasonably practicable after entering into a notifiable below-threshold contract, the contracting authority must publish a contract details notice. What is reasonably practicable will be a judgement for the contracting authority based upon the size, complexity and nature of each procurement but will usually mean:
- a. in the case of a contract to be awarded by a central government authority, within 30 days of the contract being entered into; or
  - b. otherwise, within 90 days of the contract being entered into.

This timeframe does not apply in the case of a below-threshold light touch contract, in which case the notice should be published within 120 days of the contract being entered into.

26. A notifiable below-threshold contract is a regulated below-threshold contract with a value of not less than £30,000 including VAT. As there is not always a requirement to publish a below-threshold tender notice, the contract details notice may sometimes be the first and only notice published in relation to a below-threshold contract.
27. The requirement to publish the contract details notice applies to all notifiable below-threshold contracts, and not just those which require the publication of a below-threshold tender notice. Contracting authorities should note that this includes where a contracting authority has not published a below-threshold tender notice because it has only sought a quote from a single supplier and where a below-threshold contract has been awarded under a framework.
28. [Regulation 37 of the Procurement \(Wales\) Regulations 2024](#) sets out the details to be included in the below-threshold contract details notice for devolved Welsh authorities. For devolved Welsh authorities all contracts awarded under the Procurement Act will need to include a unique supplier identifier in the contracts details notice. Unique Identifiers are defined in [Regulation 9 of the Procurement \(Wales\) Regulations 2024](#). The information to be included in a contract details



notice for a below-threshold contract is less than that required under section 53 for public contracts.

## Contract Change Notice

29. As set out in paragraph 41 below, when the value of a modification will take the value of a contract over the relevant threshold amount in Schedule 1 such that it will become a public contract, it is a convertible contract. A modification which will make the contract a public contract, and any subsequent modification to a convertible contract, is only permitted under section 74 of the Act and a contract change notice must be published in accordance with section 75.

## Pre- Qualification in Below-Threshold Contracts

30. Section 85 of the Act (which restricts the submission of tenders by reference to an assessment of the supplier's suitability to perform the contract) does not apply to the award of a contract by a devolved Welsh authority, unless it is awarded under a reserved procurement arrangement. Therefore, for regulated below-threshold contracts which are devolved Welsh procurement arrangements, the submission of tenders can be restricted by reference to an assessment of the supplier's suitability to perform the contract (i.e. they can use a Pre-Qualification Questionnaire (PQQ) stage) if they wish to (although authorities will still need to consider their duty to consider SMEs as laid out in Section 86 of the Act).

31. As section 85 of the Act does not apply to devolved Welsh authorities (unless awarding under a reserved procurement arrangement) this also means that below-threshold contracts can be awarded under Dynamic Markets which have been established by a devolved Welsh authority.

## Duty to Consider Potential Barriers to SME's

32. Section 86 of the Act imposes a duty on contracting authorities, before inviting tenders, to consider the barriers SMEs may face in competing for a contract and whether such barriers can be removed or reduced. This obligation does not however apply to below-threshold contracts awarded under a framework.

## Time Limits

33. Section 87(6) of the Act requires contracting authorities to provide a reasonable time period in the below-threshold tender notice for the submission of tenders. This time period must be the same for all suppliers.



## Prompt Payment

34. Section 88 of the Act applies specifically to below-threshold contracts and mirrors the prompt payment provisions in sections 68 and 73 that apply to public contracts. Further information on these is available in the guidance on electronic invoicing and payment.

## Below-Threshold Frameworks

35. Whilst unlikely, it is possible to award a below-threshold contract that is a framework (“below-threshold framework”). The definition of a below-threshold contract in section 5 of the Act recognises this. Section 45(2) of the Act defines a framework as a contract between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers.
36. A below-threshold Framework is one where the estimated total value of contracts to be awarded under the framework is below the applicable threshold for that type of contract (see Schedule 3 for how to estimate the value of a framework). It may be more likely that a below-threshold framework is awarded for works contracts where the threshold is much higher than for goods and services at £5,372,609 (and therefore the estimated value of contracts to be awarded under the framework is higher). If the contracting authority considers there is a possibility that a threshold may be exceeded they should award the framework as though it is an above-threshold contract i.e. a public contract.

## Dynamic Markets

37. Below-threshold contracts can be awarded under Dynamic Markets established by a devolved Welsh authority. It should be noted that there is a prohibition on applying a separate suitability stage for non-devolved contracting authorities under section 85 of the Act which affects call-offs from Dynamic Markets which are reserved procurement arrangements. If a devolved Welsh authority is conducting a procurement in relation to a below-threshold works contract under a reserved procurement arrangement (as defined in Section 114 of the Act), please refer to [UK Government below-threshold guidance](#).
38. The Act only regulates dynamic markets established for the future award of public contracts and not below-threshold contracts. Therefore, below-threshold contracts can be awarded under a dynamic market, but those awards are not regulated by the Act’s provisions on dynamic markets. In those cases, the contracting authority should follow this guidance for below threshold contracts



notice requirements. For instance, if awarding a below-threshold contract under a dynamic market, contracting authorities may be required to publish a below-threshold tender notice and a contracts details notice for below threshold contracts.

39. In the contract details notice for a below-threshold contract awarded under a dynamic market, the contracting authority must also provide the unique identifier of the dynamic market.

## Modifying a Below-Threshold Contract

40. Below-threshold contracts may be modified after the contract has been entered into without the same constraints on modifications that apply to public contracts in sections 74-77 of the Act. Local policies and procedures may apply to modification of contracts.
41. However, section 74(1) of the Act introduces the concept of a 'convertible contract', which is a contract where the value of a modification will take the value of the contract after the modification over the relevant threshold amount in Schedule 1 of the Act, such that the contract will become a public contract. A modification to a convertible contract is only permitted under section 74. Following the modification of the convertible contract, the contract is subject to the provisions in the Act that govern public contracts, rather than the provisions specific to below-threshold contracts in Part 6. See guidance on contract modifications for more information.

## Pipeline Notice Requirements

42. A pipeline notice is required if a contracting authority considers that it will, in the coming financial year, pay more than £100 million under contracts for the supply of goods, services or works, other than exempted contracts ('relevant contracts').
43. For the purpose of calculating whether a contracting authority will exceed the £100 million threshold, the calculation must include all payments that will be made under existing and future contracts. This includes payments made under below-threshold contracts.
44. Where a contracting authority is required to publish a pipeline notice, there is no requirement under the Act to include planned below-threshold contracts in that notice as they are not 'public contracts' as defined by the Act. However, a contracting authority may include below-threshold contracts in the notice if it wishes and should consider whether it would be useful to give early visibility to the market of upcoming below-threshold contracts as part of the authority's duty to consider barriers to SMEs under section 86 of the Act. In particular, the



authority might consider including below threshold works contracts, whose estimated value is between £2 million and the relevant threshold for works contracts, in the pipeline notice, to allow SME's more time to consider if they wish to respond to a planned tender and allocate resources accordingly.

## Unregulated Below-Threshold Contracts

45. Section 84 of the Act provides that Part 6 of the Act does not apply to below-threshold contracts that are:

- a. exempted contracts;
- b. utilities or concession contracts; or
- c. procured by a school, by a transferred Northern Ireland authority (unless the transferred Northern Ireland authority is carrying out a procurement under a reserved or devolved Welsh procurement arrangement, as defined in section 114 of the Act) or under a transferred Northern Ireland procurement arrangement (see section 84(2)).

However, obligations elsewhere in the Act relating to 'procurement' will apply, such as those relating to the WPPS and relevant treaty state suppliers (see paragraph 4 above)

## What other guidance is of particular relevance to this topic area?

- Guidance on thresholds
- Guidance on valuation
- Guidance on the publication of information and the central digital platform
- Guidance on notice sequencing and flowcharts
- Guidance on WPPS
- Guidance on treaty state suppliers
- UK Government below-threshold guidance
- UK Government Guidance on NPPS





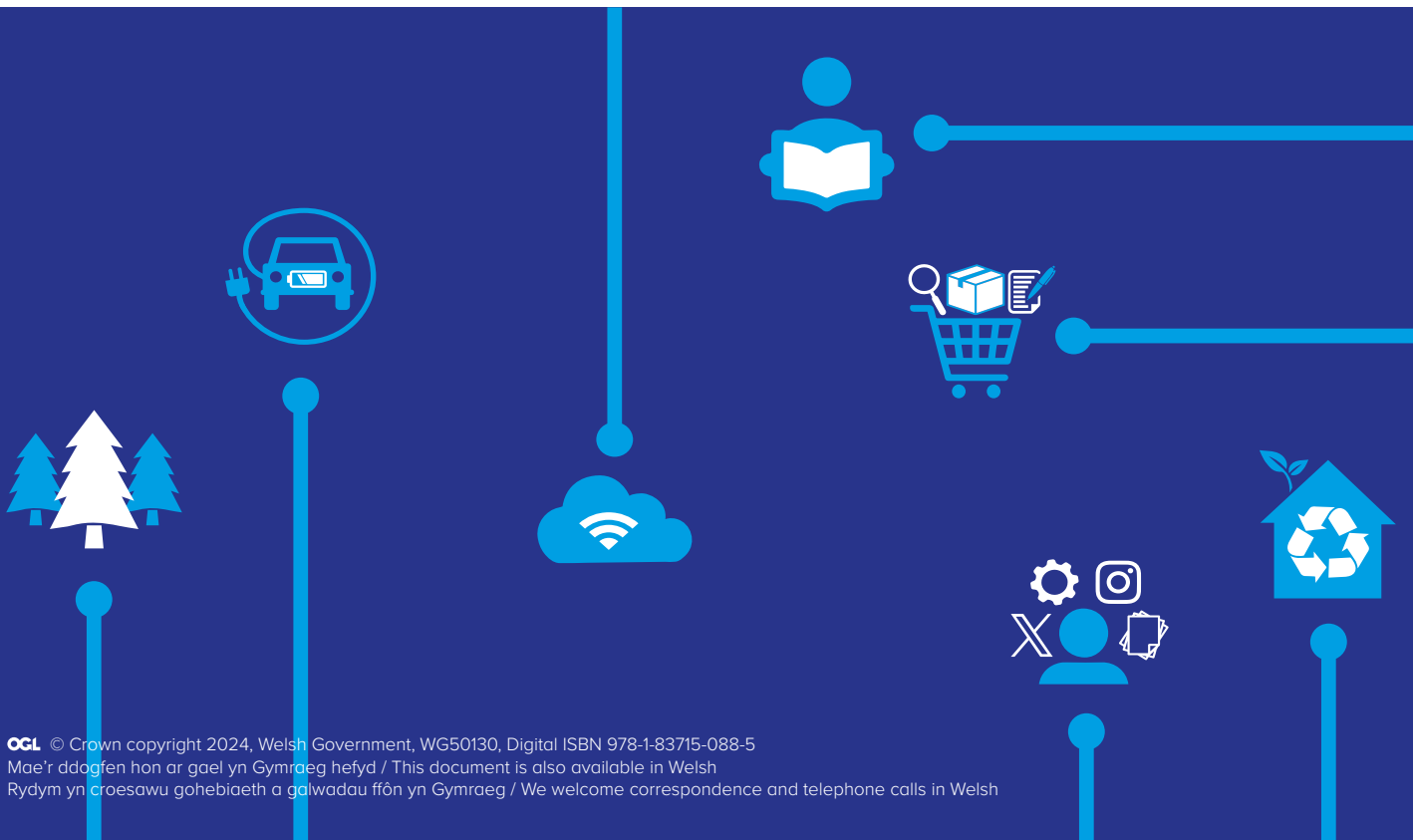


Llywodraeth Cymru  
Welsh Government

# Guidance

## Mixed Procurement

December 2024





## Guidance: Mixed Procurement

### What is mixed procurement?

1. Contracting Authorities need to be able to award contracts that are not always 100% goods, 100% services or 100% works. Contracts can therefore comprise a mixture of two or more different categories. Contracting authorities may also need to award contracts of either one type (such as a concession contract, or a light touch contract), or of a mixture of different types.
2. Contracts involving different categories or types will become public contracts above different value threshold levels. Contracts of different types (such as concessions, light touch contracts, defence and security, and utilities contracts - which are categorised as 'special regime' contracts) are also subject to different applications of the rules in the Procurement Act 2023 (the Act).
3. It is therefore important that contracting authorities know how to designate any contracts they wish to award that might comprise a mixture of different categories or types.

### What is the legal framework that governs mixed procurement?

#### Section 5

4. Section 5 of the Act sets out the rules on determining when a mixed contract will become a public contract. This is because a mixed contract may comprise two or more elements that, if procured separately, would have different applicable thresholds. Section 5 provides clarity on applying the rules on thresholds to situations where a contract contains mixed elements, and at least one is above and one is below the relevant thresholds. Consequently, authorities have the necessary flexibility to procure mixed contracts where appropriate but are prevented from exploiting that mixture to avoid the application of the more detailed rules in the Act.
5. These provisions must be understood in conjunction with [Schedule 1, paragraph 4](#) of the Act, which sets out that where the main purpose of a contract is works it will be deemed a works contract.



## Section 10

6. Section 10 of the Act sets out how the rules will apply to contracts of more than one type, where at least one type is a 'special regime' contract. It regulates circumstances where contracting authorities mix special regime contracts that benefit from certain flexibilities (such as higher thresholds or lighter process obligations), either with other contracts that should be subject to the general rules (which would not normally involve such flexibilities) or other special regime contracts. It provides a clear set of rules that contracting authorities can follow when determining whether to mix or split out contracts which include at least one element covered by a special rules regime. This means that authorities have the necessary flexibility to mix contracts involving special regime elements where appropriate, but are prevented from exploiting that flexibility (and taking advantage of the lighter rules of a particular special regime) where it is reasonable to split out a mixed contract.

## What has changed?

7. As is the case with certain other basic definitions and concepts, the policy on mixed procurement has not been substantively reformed. Rather, the opportunity has been taken to significantly streamline these rules while preserving a similar intention and effect to the former rules on mixed procurement in the previous legislation.
8. There are some inevitable differences in the way these rules are set out in the Act. For example, the previous legislation on mixed contracts involved navigating the interplay between combinations of procurements involving multiple regulatory schemes. In contrast, the Act addresses mixed procurement within a single scheme. There is therefore no longer a need for authorities to run a series of tests to determine which regulatory scheme will apply to their procurement. The 'subject-matter test' of the previous legislation has been replaced by a 'main purpose' test to reflect this change although both have a similar effect.

## Key points and policy intent

### Section 5

9. The thresholds set out in [Schedule 1](#) of the Act, will determine whether or not a contract is a public contract which is regulated by the Act. There are different thresholds for goods, works or services contracts. Where a contract contains a mixture of these elements (a mixed contract), contracting authorities will need to determine which threshold to apply and whether a mixed contract should have those elements separated into different contracts. If the contract is separated out,



thresholds can be calculated separately for each separate contract (each of which will only fall within one such type).

10. [Section 5](#) of the Act sets out the test to be applied to ensure that authorities do not mix above and below threshold elements purely for the purposes of avoiding the rules. This is important because, without any rules on mixed procurement, the different thresholds could provide a loophole to rule-avoidance.

#### Example 1

A goods contract for £200k (i.e. above threshold) must be awarded in accordance with the full rules, but the loophole would allow the possibility of adding in an unrelated element of works (say £1m, below the works threshold), and then advertising the whole package as a below-threshold works contract thereby avoiding the proper procurement rules for the goods element. The mixed contracts rules close this loophole whilst providing the necessary flexibility for contracting authorities to mix contracts where appropriate. There are two thresholds relevant in this context: the goods/services threshold, and the works threshold.

11. Contracts involving a mixture of elements involving the 'special regime' thresholds are dealt with separately in section 10 of the Act.
12. If a mixed contract can reasonably be separated out, but a contracting authority chooses not to do so, the mixed contract will be treated as an above-threshold public contract if one element is above its corresponding threshold. This is provided for in [section 5\(3\)](#), which requires mixed contracts to be treated as above-threshold where the conditions in [section 5\(1\)](#) are met.
13. [Section 5\(2\)](#) provides that a similar test applies when the contract awarded is a below-threshold framework that provides for the procurement of a mixed contract under it. If a mixed contract to be awarded under the framework contains above and below-threshold elements that could reasonably be separated out, and the above-threshold element can be awarded outside of the below-threshold framework, but a contracting authority chooses not to separate, the framework must be treated as an above-threshold public contract. In addition, [section 45](#) will apply to all mixed contracts awarded under that framework where an element of the mixed contract is above-threshold. This is regardless of whether the contract could reasonably be separated and [section 5\(6\)](#) provides that the test is not reapplied when contracts are awarded under the framework.



## Example 2

Where a Contracting Authority is seeking to award a Framework which includes a mix of Goods with an estimated value below the relevant threshold (for example, £90k) and Works with an estimated value above the relevant threshold (for example, £6m), and the contracting authority chooses not to separate the elements, this must be treated as an above threshold Public Contract. In addition, Section 45 will apply to all mixed contracts under that framework. This means that where a contracting authority awards a call off contract from the framework, and the call off contract includes a mixture of Goods and Works whose estimated values are below their relevant thresholds, this must be treated as an above thresholds public-contract regardless of whether the contract could be reasonably separated. Section 5(6) provides that the test is not reapplied when contracts are awarded under the framework.

14. There are a number of factors contracting authorities may consider when determining whether elements of a mixed contract can reasonably be procured separately. These may include (but are not limited to) the practical and financial consequences of splitting out the requirement.
15. Contracting authorities need flexibility given the wide range of public procurement: separate elements can always be procured separately, and mixed contracts whose elements are inseparable are permitted by the Act. Indeed, many contracts will contain elements of different categories. But the basic safeguard remains that if separation is reasonably possible, but a contracting authority chooses not to separate, a mixed contract containing both above and below threshold elements must be treated as above-threshold and therefore in-scope of the legislation.
16. The Act does not specify or give examples of these matters; this is at the discretion of the contracting authority, as such considerations will vary from one procurement to another. Conceivably such considerations might involve, for example, the extra resources required to run multiple procurements rather than one aggregated procurement, or the potential for increased value for money or potential SME-access benefits from separating the procurements, but the Act does not set any particular boundaries or limits on contracting authorities' discretion here.
17. Looking at the potential combinations of contracts that will be caught by the provisions in section 5, clearly if both/all elements are below-threshold then the whole contract will be below-threshold, whereas if all elements are above-threshold then the whole contract will be above-threshold. The rules on mixed procurement in section 5 are only therefore relevant in situations where an element for goods/services is combined with an element for works, and only one element is above-threshold. In such a situation, the contracting authority can



either split the elements out and procure them separately, or combine the elements into a mixed contract and follow the rules set out in section 5 to determine which threshold applies.

18. Having decided to pursue a mixed procurement approach, the contracting authority must then apply the test of 'reasonable separability'.
19. If the elements of the contract are not reasonably separable (e.g. because procuring them separately would compromise value for money) then the contracting authority would need to consider whether the main purpose of the contract is works. [Schedule 1, paragraph 4](#) of the Act is relevant here, as it sets out that where the main purpose of a contract is works it will be deemed a works contract and will be treated according to the value of the works element. If the main purpose is not works, then it is clear that the goods/services threshold is the relevant one.
20. If, however, as illustrated in example 1 above, the works and goods or services elements are reasonably separable, and one element is above its corresponding threshold, but a contracting authority chooses not to separate, the whole mixed contract must be treated as above-threshold. This prevents authorities from mixing entirely unrelated contracts for the purposes of avoiding the rules.
21. [Schedule 2, paragraph 1](#) of the Act provides that a contract is only an exempt contract where the goods, services or works that form its main purpose are exempt. An element of exempt services in a mixed contract will not, for example, mean the entire contract is exempt if that element does not comprise the main purpose of the contract.

## [Section 10](#)

22. Section 10 of the Act, which should be considered alongside the closely related section 5, addresses mixed contracts that involve (at least) one element to be procured under the 'special rules regime'. As 'special regime' contracts normally involve lighter touch rules and higher thresholds, it is necessary to consider how they can be mixed with contracts subject to the general rules regime. Similarly, not all special regimes have the same thresholds or application of lighter touch rules, so a decision needs to be made as to which special regime will apply where more than one special regime could be applied to the mixed contract.
23. In a similar vein to section 5, it is important to recognise and provide for the inevitable possibility that the need for such mixed contracts will arise, whilst safeguarding against possible exploitation of exemptions and the lighter touch



rules in situations where the full rules regime would be more appropriate. This is achieved in a similar way to the safeguard at section 5, through introducing a test of separability.

24. When placing a mixed contract containing one or more elements that would, if procured separately, be subject to 'special regime' provisions in the Act, together with other above-threshold elements that would not be subject to that special regime, [section 10\(3\)](#) provides that a contracting authority cannot take advantage of such special regime rules where it would be reasonable to split out the requirement. This rule applies whether or not the contract being placed is one directly for works/goods/services or whether it is for a framework under which contracts will be let for works/goods/services (see [section 10\(2\)](#) for application to frameworks).
25. In addition, [Schedule 2, paragraph 1](#) of the Act provides that a contract is only an exempt contract where the goods, services or works that form its main purpose are exempt. An element of exempt services in a mixed contract will not, for example, mean the entire contract is exempt if that element does not comprise the main purpose of the contract.
26. If separation of the general rules regime and special rules regime elements is possible, but a contracting authority chooses not to separate out the contract, then that mixed contract must be awarded in accordance with the general rules – it will not qualify for the special rules regime if the elements could reasonably be procured separately. When determining whether elements of a mixed contract can reasonably be procured separately or not, a contracting authority can consider factors such as the practical and financial consequences of awarding more than one contract.
27. Whether or not the mixed contract can be treated as a special regime contract, the contract is still to be treated as a public contract subject to the Act.
28. As with section 5, contracting authorities should not run the analysis again for contracts awarded under a framework; the test would have been applied prior to the procurement for the framework by considering the goods, services or works to be supplied under potential call-off agreements to be awarded under the framework (see [section 10\(2\)](#)).
29. Section 10 also acknowledges and provides for the possibility where a mixed contract involves two or more different 'special regime' elements. Although these cases may be rare, a test of reasonable separability will also be used to guide decisions on which rules to apply. The main purpose special regime will only apply where the two elements cannot be reasonably separated. If the elements can be reasonably separated but are not, the mixed procurement will be subject



to the normal rules regime, not the special rules regime. In this situation the contracting authority would have the choice as to procure two separate special regime contracts (and enjoy the flexibility of the correct respective regime in each procurement) or pursue a mixed contract under the full rules regime.

## Mixed Contracts involving health services covered by the Health Service Procurement (Wales) Act 2024 – Provider Selection Regime Wales (PSR Wales)

30. The provisions in the [Health Service Procurement \(Wales\) Act](#) (the Health Act) relate to changes in the operational process of procuring health services on behalf of the NHS in Wales.
31. The Health Act reforms the way certain health services are procured in Wales by 'relevant authorities' (as defined by the Health Act), by introducing a new procurement regime that will increase flexibility, reduce bureaucracy, and encourage collaboration and partnerships.
32. The proposed new procurement regime under the Health Act will apply to certain services defined by common procurement vocabulary (CPV) codes, and may also apply to the procurement of other goods or services if they meet the 'mixed procurement' tests and are 'connected to' the main health service. For the procurement of goods or services that are not in scope of the proposed new regime under the Health Act, the Procurement Act may apply.
33. The regulations to underpin the operation of the proposed new health service procurement regime will be laid in the Senedd in the coming months and if agreed, are expected to come into force later this year. The regulations will be supported by statutory guidance and training on the operational principles of the proposed new health service procurement regime. Guidance for Welsh Contracting Authorities on the scope and application will be updated once the regulations are in place.

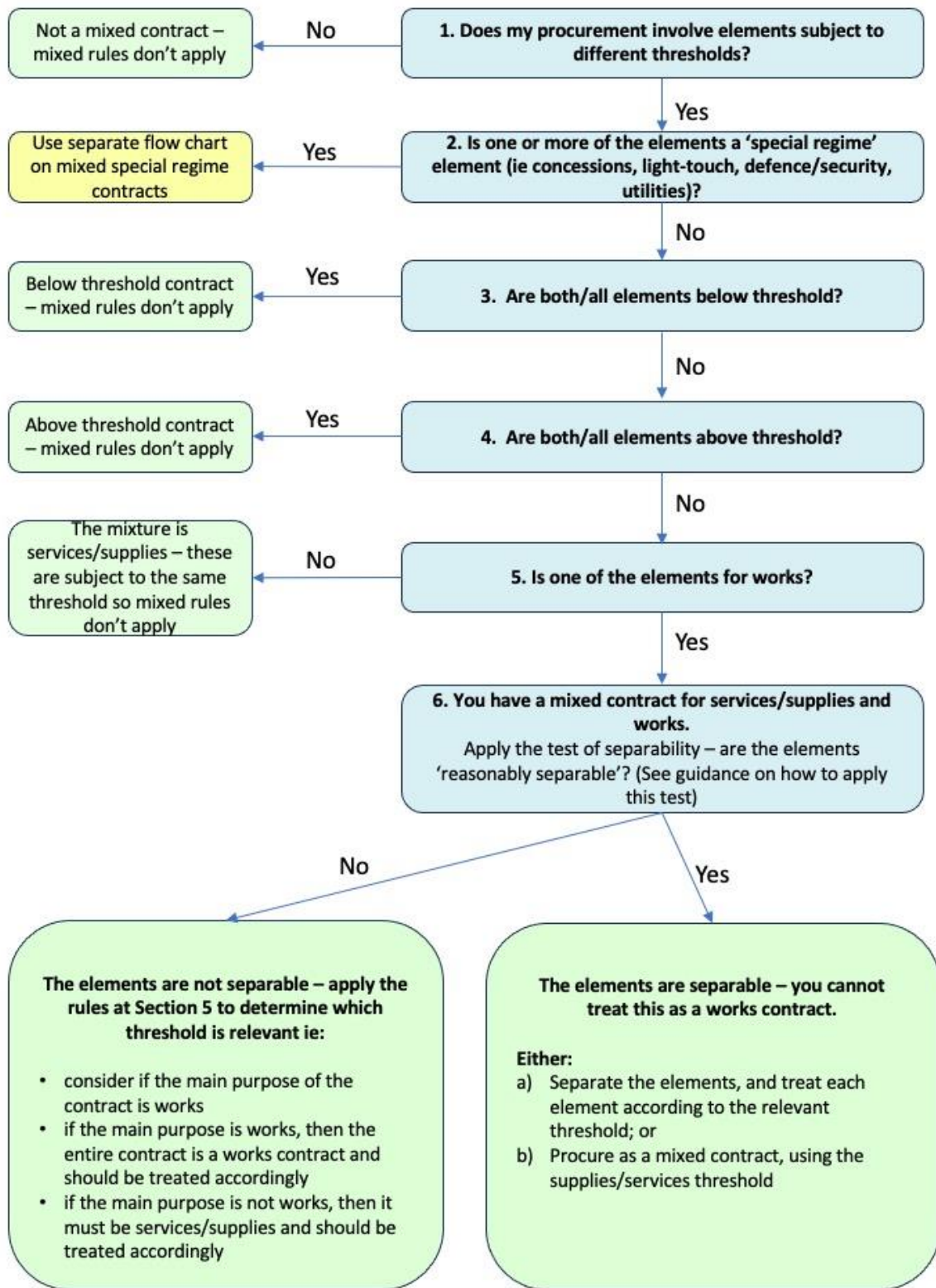
### What other guidance is of particular relevance to this topic area?

- Guidance on thresholds
- Guidance on valuation of contracts
- Guidance on the special regimes (concessions, utilities, light touch, defence and security)
- Guidance on Health Service Procurement (Wales) Act 2024 (when it is published)



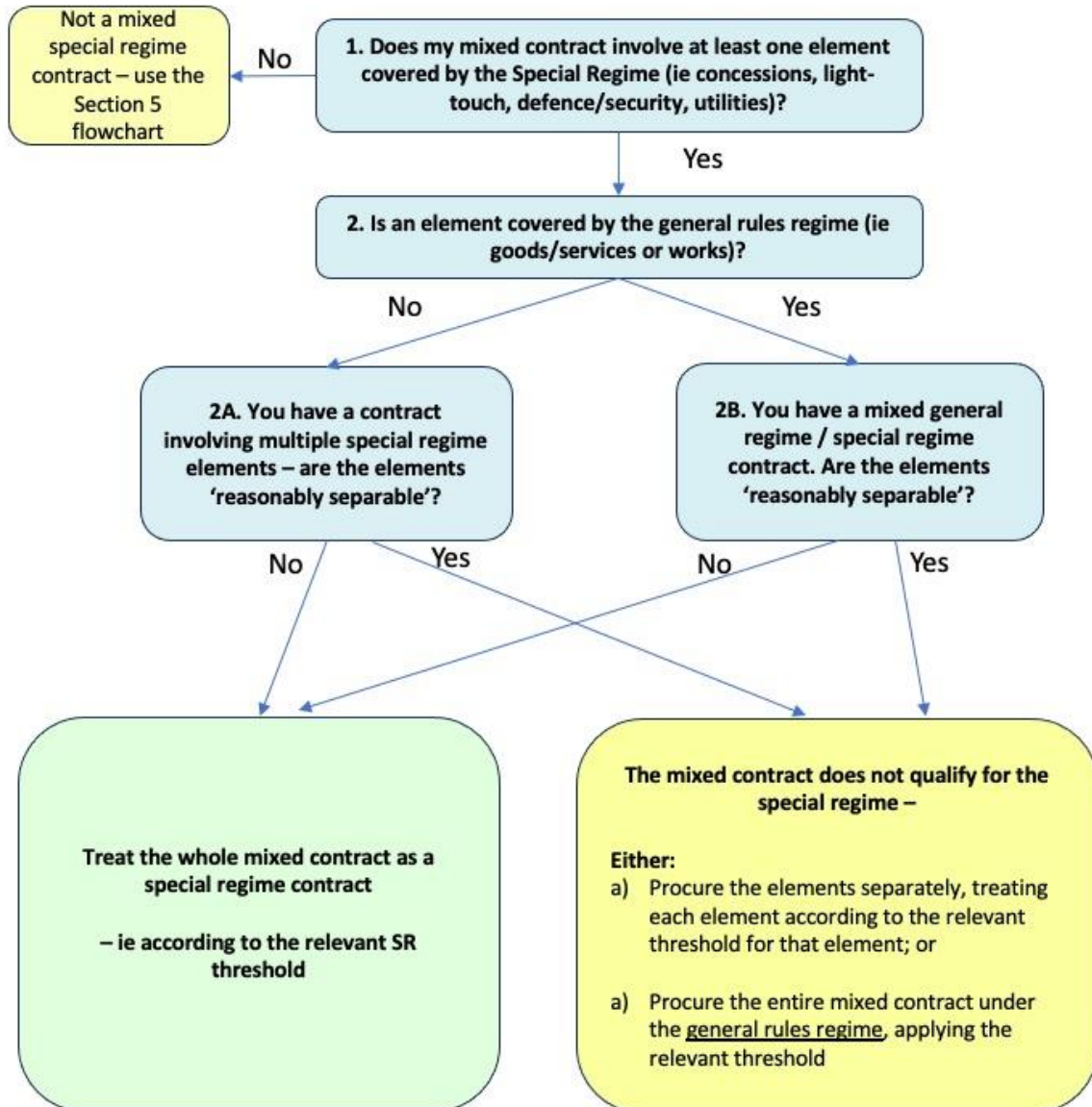


Annex A - Mixed Procurement – Above and Below Threshold (Section5)





## Annex B - Mixed Procurement – Special Regime (Section 10)



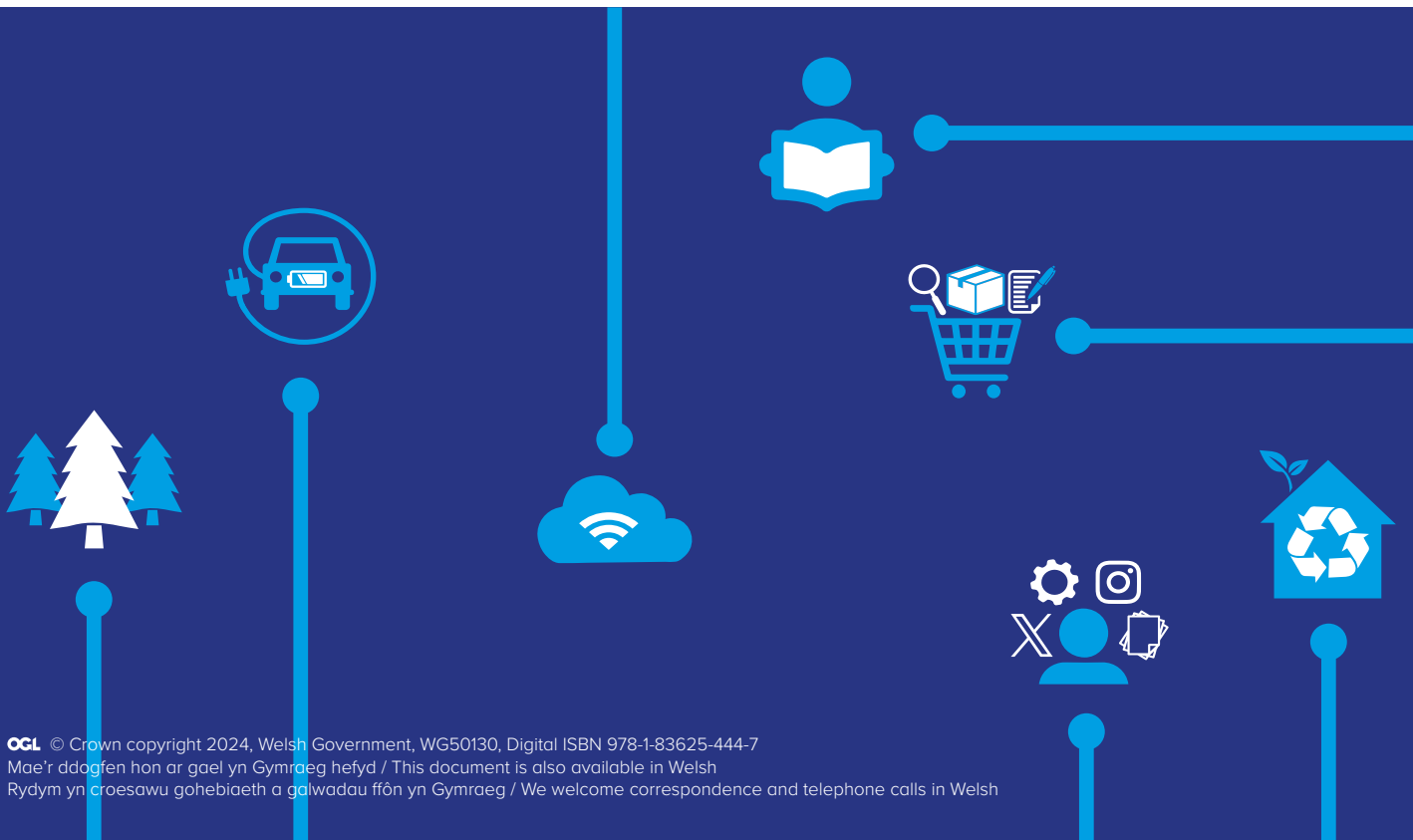


Llywodraeth Cymru  
Welsh Government

# Guidance

# Planned Procurement Notice

July 2024





## Guidance: Planned Procurement Notice

### What is a planned procurement notice?

1. The planned procurement notice is an optional notice under the Procurement Act 2023 (the Act) which is published at the pre-procurement stage. The planned procurement notice is similar to a pipeline notice in that it provides advance notice of an upcoming procurement. It goes further than a pipeline notice and is designed to give as much advance information to the market as possible to enable potentially interested suppliers to determine if the upcoming procurement is something that they wish to bid for, and to provide maximum time for preparation. It is the only type of notice that, when used correctly, can provide a reduction in the minimum time periods between submission of the tender notice and the deadline for submission of tenders in competitive tendering procedures.

### What is the legal framework that governs the planned procurement notice?

2. The legal framework that governs the planned procurement notice is as follows:
  - Section 15: planned procurement notices
  - Regulation 17: planned procurement notices
  - Regulation 19 (and as incorporated into regulations 20 - 23): tender notices (see guidance on competitive tendering procedures and time periods for more information).

### What has changed?

3. The planned procurement notice fulfils a similar function to a prior information notice and a periodic indicative notice (both referred to here as PIN), as relevant, in the previous legislation.<sup>1</sup>
4. The planned procurement notice replaces both PINs and when used, must be published on the central digital platform via the Welsh Digital Platform (Sell2Wales) (previously PINs published under the Public Contracts Regulations, Defence and Security Public Contracts Regulations and Utilities Contract

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<sup>1</sup> See [Public Contracts Regulations 2015](#) regulation 48, [Concession Contracts Regulations 2016](#) regulation 31, [Defence and Security Public Contracts Regulations 2011](#) regulation 14, and periodic indicative notices, used in [Utilities Contracts Regulations 2016](#) regulation 67



Regulations could be published on a buyer profile). Unlike the Utilities Contract Regulations and Concession Contracts Regulations PINs, a planned procurement notice cannot be used as a call for competition. As with a PIN, if it publishes a planned procurement notice, a contracting authority can reduce the time period for the submission of tenders (tendering period) in certain circumstances.

## Key points and policy intent

5. All contracting authorities are able to take advantage of the reduced tendering period provided by publishing a qualifying planned procurement notice. Publication may take place at any time before publication of the tender notice. It may be the first notice published about an upcoming procurement or it may follow a pipeline or a preliminary market engagement notice.
6. A planned procurement notice sets out that a contracting authority intends to publish a tender notice. A planned procurement notice is therefore not used when:
  - a. establishing a dynamic market;
  - b. awarding in accordance with a framework; or
  - c. making a direct award.
7. Section 15 of the Act sets out that if the notice is published at least 40 days and no longer than one year before publication of the tender notice then the notice is a 'qualifying' planned procurement notice. This means that the contracting authority may, if it chooses to, reduce the tendering period to a period of ten days or more. However, in setting the tendering period, the contracting authority must have regard to the covered procurement objectives in section 12 of the Act (such as the need to remove or reduce barriers to participation that small and medium-sized enterprises (SMEs) face and to ensure that tendering periods are sufficient to allow bidders to understand the contracting authority's procurement policies and decisions).

## Content of a planned procurement notice

8. A planned procurement notice must contain the information set out in regulation 17. This includes much of the information required in the tender notice for the procedure that the contracting authority intends to use (to the extent this information is known at the time of publication). A contracting authority can supplement the information required for the notice with additional information and documentation.



## Timing of publication

9. As above, contracting authorities are required to provide as much information relating to the tender notice as is available at the time of publishing the planned procurement notice. So contracting authorities will wish to consider the best time to publish their planned procurement notice i.e. there may be little benefit to suppliers in publishing a planned procurement notice 12 months in advance if the contracting authority can only provide limited detail about the opportunity.
10. Contracting authorities can, if they wish, revise their planned procurement notice to make further information available. Provided this is published within the timescales set out in paragraph 7 above, this would meet the requirements of a qualifying planned procurement notice.

## Qualifying planned procurement notice: reducing timescales

11. If a contracting authority publishes a qualifying planned procurement notice, it may, if it chooses to, reduce the tendering period to a minimum of ten days. The Act sets out that a qualifying planned procurement notice means a planned procurement notice published at least 40 days but not more than 12 months before the day on which the tender notice is published.
12. It is possible for a contracting authority to have published a planned procurement notice, undertaken a competitive tendering procedure and reduced the tendering period, but then to have subsequently switched to direct award using the section 43 provisions.
13. A planned procurement notice may be published prior to publishing a tender notice where an authority plans to award the contract under a dynamic market. However, as the minimum tendering period in this case is already 10 days, there is no reduction in the minimum period.
14. Contracting authorities may also voluntarily publish a planned procurement notice for contracts below the applicable threshold, to provide advance notice to suppliers, especially SMEs, although in these circumstances this will not result in a reduction in the tendering period as there is no minimum tendering period for below-threshold procurements.
15. Having published a qualifying planned procurement notice, a contracting authority does not have to take advantage of a reduced tendering period. In fact, contracting authorities should think carefully about applying any time reduction at the tender stage. In deciding whether to do so, contracting authorities should



consider whether their qualifying planned procurement notice, together with the tender notice have provided enough information to enable suppliers to effectively bid for the procurement during any reduced tendering period.

16. A contracting authority might determine that its procurement at the tender stage no longer reflects what it set out in its qualifying planned procurement notice and it is therefore not appropriate to reduce the tendering period. This may be because requirements have been refined to the extent that the types of suppliers who had been attracted to the planned procurement notice would be different from the types of suppliers who would likely now tender for the contract, for example, where the quantity of goods set out in a planned procurement notice is vastly different to that set out in the tender notice.
17. In these circumstances, the contracting authority could either terminate the current procurement (and (voluntarily) publish a procurement termination notice if it wished) and then publish a new planned procurement notice or proceed to publish a tender notice and continue with the procurement in accordance with the standard tendering period, forgoing any reduced tendering period. In considering whether to choose the latter option, contracting authorities should think about whether suppliers who might have seen the planned procurement notice and been following the procurement may have disregarded the opportunity due to different information being contained in the planned procurement notice in which case it would be advisable to restart the procurement.
18. A qualifying planned procurement notice cannot be used to reduce the tendering period where the procurement has changed substantially, such as where the notice expressed an intention to buy photocopiers but the tender notice relates to the purchase of computers. In such cases, a contracting authority must restart the procurement and publish a fresh planned procurement notice (which will not be a qualifying planned procurement notice until it meets the requirements of section 15(3) of the Act) or proceed to publish a tender notice, without relying on the original planned procurement notice to reduce the tendering period.
19. Information set out in the planned procurement notice relating to any timing of publication of the subsequent tender notice may also have a bearing on whether the contracting authority should reduce the tendering period. For example, if a planned procurement notice provided that the tender notice would be issued in six months' time, but it is actually issued in two months' time then suppliers might not be ready to bid. In these circumstances the contracting authority should not rely on the planned procurement notice to justify reducing the tendering period.



20. It would be good practice, although not a requirement under the Act, to publish a procurement termination notice if the contracting authority subsequently decides not to proceed with a procurement following publication of a planned procurement notice.
21. A qualifying planned procurement notice could contain a number of named contracting authorities who are cooperating in a procurement. For example, several local authorities might decide to enter into a joint contract for waste disposal services. If one of the contracting authorities who is named in the planned procurement notice decides, at the tender stage, not to participate in the joint procurement, the participating contracting authorities should consider whether it is still appropriate to rely on the qualifying planned procurement notice. In this case, it would very much depend on the circumstances, such as the impact of the contracting authority not participating and whether such a scenario had been envisioned in the content of the planned procurement notice. In some circumstances, it may not be advisable to reduce the tendering period.
22. Similarly, if a number of contracting authorities intend to procure individual waste services, and each publishes a planned procurement notice to this effect, and then it is subsequently considered appropriate to aggregate their requirements into a single procurement/contract, they might not attract the same suppliers because of the difference in scale of the requirement. In this scenario the contracting authorities should consider whether it is appropriate to reduce the tendering periods in reliance on the individual qualifying planned procurement notices, or if they should publish a new planned procurement notice (or proceed in reliance on a single tender notice and the standard tendering period).

### What other guidance is of particular relevance to this topic area?

- Guidance on competitive tendering procedures
- Guidance on the central digital platform and publication of information
- Guidance on Notice sequencing and flowcharts





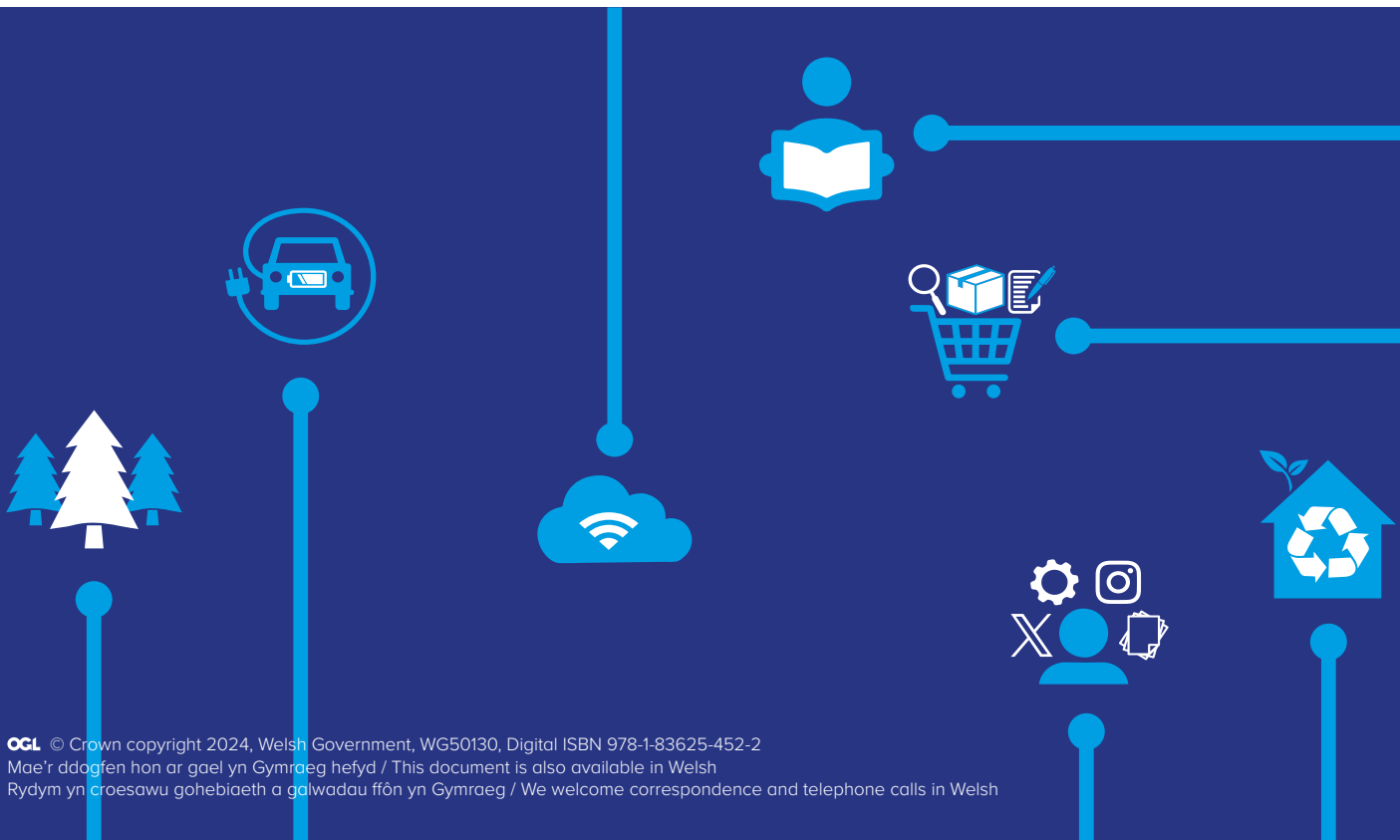


Llywodraeth Cymru  
Welsh Government

# Guidance

## Preliminary Market Engagement

July 2024





# Guidance: Preliminary Market Engagement

## What is preliminary market engagement?

1. Preliminary market engagement under the Procurement Act 2023 (the Act) takes place before the publication of a tender or transparency notice and helps contracting authorities and the market prepare for the procurement. This engagement is of particular importance under the Act, where contracting authorities have significant flexibility to design and tailor their competitive procurement procedures. However, this engagement must be conducted in a way that does not give a supplier an unfair advantage or distort competition.
2. The Act also includes a provision for contracting authorities to publish a preliminary market engagement notice. The notice is used to invite suppliers to participate in preliminary market engagement or to notify the market that engagement has taken place. Notices can help to ensure a level playing field and also serve to attract new entrants.

## What is the legal framework that governs preliminary market engagement?

3. The main provisions on preliminary market engagement are included in section 16 and section 17 of the Act.
4. There are also various overarching provisions under the Act, for example, the procurement objectives, non-discrimination requirements and conflicts of interest obligations which are relevant to preliminary market engagement.

## What has changed?

5. These sections are similar to the provisions in the Public Contracts Regulations 2015 (PCR) (see regulations 40 and 41). A key difference is the addition of obligations regarding a preliminary market engagement notice.
6. In addition, unlike the PCR (see regulation 41(2)) which sets out some examples of measures that an authority could take to ensure competition is not distorted, there are no specific examples given in sections 16 and 17 of the Act. However, measures such as the sharing of relevant information that has been gathered or exchanged with suppliers and fixing adequate time limits for the receipt of tenders



would also be measures that could be adopted under the Act to prevent unfair advantage and ensure competition is not distorted.

## Section 16 - Preliminary market engagement

7. Section 16 permits contracting authorities to engage with the market, lists the permitted purposes of such engagement, and requires that contracting authorities take steps to ensure that participating suppliers are not unfairly advantaged and that competition is not otherwise distorted.

## Section 17 - Preliminary market engagement notices

8. Contracting authorities are not required by the Act to conduct preliminary market engagement. However, section 17 requires that if a contracting authority carries out preliminary market engagement it must either:
  - a. publish a preliminary market engagement notice before it publishes a tender notice; or
  - b. explain, in the tender notice, why it did not publish a preliminary market engagement notice.
9. Following amendments in the Procurement Regulations 2024 and the Procurement (Wales) Regulations 2024, this section will not apply to private utilities.

## Key points and policy intent

10. The policy objective is to encourage contracting authorities to speak with the market before commencing a procurement. Whilst this is not mandatory, the information gathered during this stage can be invaluable for the contracting authority as it clarifies its requirements, assesses the market's capacity and develops its procurement strategy.

## Determining what might be considered preliminary market engagement

11. Section 16(1) lists the permitted purposes of engagement. The list is deliberately broad to give contracting authorities confidence to engage with the market about relevant and reasonable commercial considerations prior to commencing a procurement. The permitted purposes are:
  - a. developing the authority's requirements and approach to the procurement;
  - b. designing a procedure, conditions of participation or award criteria;



- c. preparing the tender notice and associated tender documents;
- d. identifying suppliers that may be able to supply the goods, services or works required;
- e. identifying likely contractual terms; and
- f. building capacity among suppliers in relation to the contract being awarded.

12. Contracting authorities should note that what constitutes preliminary market engagement in section 16(1) is the purpose and subject of the engagement and not the form of engagement. This means that whether or not the contracting authority considers the engagement to be 'formal' or 'informal', if its purpose is listed in 16(1) it should be seen as preliminary market engagement and handled as such. It should, however, be noted that not every engagement involving contracting authorities and suppliers and other persons will be for the purpose of 16(1), and therefore would not be defined as preliminary market engagement to which section 16 applies.

13. Preliminary market engagement is a particularly important tool for the achievement of value for money. It allows contracting authorities, for example, to recognise divergence between suppliers which enables the identification of suitable areas for negotiation, dialogue or testing/demonstration as part of a competitive flexible procedure. Contracting authorities should, where relevant, also use preliminary market engagement to increase the understanding of how requirements ought to be set in such a way as to reduce whole lifecycle costs rather than focus on the initial purchase price of the contract.

## Preparing to conduct preliminary market engagement

14. Contracting authorities will need to consider the purpose and format of their preliminary market engagement. The engagement is likely to be more effective if contracting authorities know the purpose and intended outcomes of the engagement and clearly articulate these to suppliers. The format could include various types or combinations of engagement such as face to face presentations or webinars, workshops, site visits, one to one meetings or a simple invitation to prospective suppliers to get in touch. It is important that contracting authorities consider the market's resources and the time and cost of engagement. For example, the requirement in the procurement objectives to have regard to the barriers small and medium-sized enterprises (SMEs) may face and to consider whether such barriers can be removed or reduced might affect how preliminary market engagement is carried out. As well as in-person events, hosting digital webinars or recording sessions can help make the engagement more accessible.



The details of the format of the event must be included in the preliminary market engagement notice, which may also include the purpose (or other information).

15. Contracting authorities can use preliminary market engagement to increase competition and the diversity of suppliers in procurement. For example, hosting events where suppliers can understand the bidding process and what the contracting authority is looking for in a tender can be helpful to new suppliers and SMEs. Indeed, engaging with a broad range of suppliers should improve the procurement. It is also important that preliminary market engagement is not used as a means of tailoring a procurement to a particular supplier.
16. Contracting authorities can engage with everyone who expresses an interest in preliminary market engagement. However, it is also possible for a contracting authority to state in the preliminary market engagement notice how numbers will be reduced; for example if there are too many respondents. Nevertheless, contracting authorities will still need to comply with their obligations in section 16 and the overarching duties under the Act, including those in section 12.
17. The conflicts of interest obligations in Part 5 of the Act are relevant when considering preliminary market engagement. This includes the requirement that contracting authorities must take all reasonable steps to identify and mitigate any conflicts of interest or potential conflicts of interest. In addition, before publishing a tender or transparency notice the contracting authority must also prepare a conflicts assessment in relation to the procurement. See guidance on conflicts of interest for more information.

### Steps to ensure a supplier is not put at an unfair advantage and/or to avoid competition being distorted

18. The Act requires contracting authorities to take steps to ensure that suppliers participating in the preliminary market engagement are not put at an unfair advantage and that competition in relation to the award of the contract is not otherwise distorted. Contracting authorities should consider their approach to meeting this requirement before they begin their preliminary market engagement. If a contracting authority considers that a supplier's participation in the preliminary market engagement has put a supplier at an unfair advantage in relation to the award of the contract and that the advantage cannot be avoided, the supplier must be excluded from the procurement.
19. A contracting authority should keep a record of the information it has shared and received as part of the preliminary market engagement. This can help to ensure that the information gathered is taken into account in the procurement. The



information can also be shared with other parties and used to help ensure that participating suppliers are not unfairly advantaged. Depending on the nature of the information shared and received, it would be best practice for any such information and/or outcomes of the engagement to be included in the tender notice or tender documentation. To help with this, contracting authorities should consider in advance how they will handle any confidential information including intellectual property. This could include information relating to the contracting authority, an incumbent supplier or organisations involved in the engagement.

20. Contracting authorities may be able to use preliminary market engagement to help comply with their duty to consider whether any particular barriers to participation faced by SMEs can be removed or reduced (this is one of the procurement objectives in section 12 of the Act). Preliminary market engagement sessions focused on SMEs and new entrants are permitted, provided this does not put those particular suppliers at an unfair advantage or distort competition. Such engagement must also comply with other procurement objectives such as sharing information and acting with integrity.
21. Contracting authorities who undertake preliminary market engagement are not obliged to proceed with the procurement to which it relates and if no tender or transparency notice has been published, a procurement termination notice is not required. However, even though no such notice is required it is best practice to record the reasons for a decision not to proceed with a procurement and a procurement termination notice can be used voluntarily to indicate that a particular procurement set out in a preliminary market engagement notice will not be progressed.

## Publishing a preliminary market engagement notice

22. It should be standard practice to publish a preliminary market engagement notice where it has been identified that preliminary market engagement will be beneficial to the procurement and it is intended that preliminary market engagement will take place. The decision to carry out market engagement without using a preliminary market engagement notice will need to be justified in the tender notice and contracting authorities will also need to bear in mind the objectives in section 12, non-discrimination requirements and conflicts of interest obligations. This means there is not complete freedom to decide not to use a preliminary market engagement notice for a covered procurement when a contracting authority intends to conduct or has conducted preliminary market engagement.



23. If the contracting authority has not conducted any preliminary market engagement, there is no requirement under the Act to publish the reason for not doing so in the tender notice.
24. Section 17(2) and Regulation 18 sets out the content that needs to be included in a preliminary market engagement notice. There is no set timeline for publishing the preliminary market engagement notice. However, if a notice is used to invite suppliers to attend a preliminary market engagement event, given the duties under section 12, it is advisable to allow a sufficient time period for those who may want to take part to prepare, proportionate to the nature of the preliminary market engagement intended to be undertaken. The time period can vary, for example, depending on the complexity of the market and the type of engagement planned. For example, some preliminary market engagements may require time for participants to read background documents and prepare questions/feedback. Other engagements may simply require attendance at a meeting to discuss the contracting authority's requirements (with no preparation required).
25. Contracting authorities can also use a preliminary market engagement notice to declare that preliminary market engagement has already taken place (for example with a selected group of suppliers) and provide details of the process by which it was undertaken. In this scenario, the notice can be used to share engagement outputs and ensure a wider audience is kept informed about the contracting authority's emerging thinking, therefore supporting the objectives of section 12 and ensuring all suppliers have access to the same information. The notice can also flag additional upcoming engagement opportunities.
26. During this stage of the process, when a contracting authority is completing the 'contract subject-matter' field in the notice, it may only be able to describe this in broad terms or provide high level estimates. The requirements in subsequent notices related to the procurement do not have to match precisely the information/estimates in the preliminary market engagement notice. Considering the purpose of this engagement is to help the contracting authority develop its requirements, these might be adjusted depending on the outcomes of the preliminary engagement.

## Joint Preliminary Market Engagement

27. Contracting authorities can jointly undertake preliminary market engagement exercises. In this case, a 'lead authority' can publish a preliminary market engagement notice on behalf of all of the contracting authorities and all of their procurements can be included in a single notice. When the contracting authorities are publishing their tender notices, they will be able to state in their notices that they are relying on the lead contracting authority's preliminary



market engagement notice as justification for not having published their own preliminary market engagement notice.

## Engagement without publishing a preliminary market engagement notice

28. The Act does allow a contracting authority to carry out preliminary market engagement without a notice, provided it gives its reasons for not doing so in the tender notice. Contracting authorities will also still be required to comply with the provisions contained within section 16 concerning *how* to conduct preliminary market engagement; for example the obligation to take steps to prevent unfair advantage and distortion of competition. A contracting authority must also consider the Act's overarching duties (such as those in section 12) when making this decision not to publish.
29. The option to allow non-publication of a preliminary market engagement notice, provided a contracting authority provides reasons in its tender notice, has been made to capture what is anticipated will be a limited number of circumstances. Whilst it will always be fact-specific, examples of situations where this might arise are where it was necessary to keep the engagement secret for national security purposes, or where there are extenuating circumstances, for example because there is a high risk of a critical service failure if the procurement does not progress quickly.
30. As the reasons for not publishing a preliminary market engagement notice will be published in the tender notice, any interested parties will be able to raise any concerns with the contracting authority.

## Preliminary market engagement for covered procurements which do not require a tender notice

31. Although the obligations set out in section 16 are linked to publication of a tender notice, section 16 does not prevent a contracting authority from engaging with suppliers as appropriate before commencing a procurement which does not require a tender notice. For example, in respect of contracts awarded under frameworks or direct awards. Similarly, a contracting authority establishing a dynamic market is not prevented from engaging with the market before publishing a dynamic market notice.
32. However, these will not be preliminary market engagements as defined in section 16(1) and some of the purposes set out in section 16(1) will not be relevant, such





as in the case of frameworks, where, for example, the award criteria will have been set out in the framework.

33. If contracting authorities do engage with the market in these circumstances, other relevant requirements in Act, such as the procurement objectives in section 12, must be complied with.
34. In these circumstances, a contracting authority may also choose to notify the market of an engagement, which it can do using a preliminary market engagement notice, but, again, there is no requirement to do so under the Act.

### Below-threshold contracts

35. The obligations in sections 16 and 17 do not apply to below-threshold contracts. Again, contracting authorities can, but are not required to, publish a preliminary market engagement notice for below-threshold contracts. There is also no requirement to explain non-publication of a preliminary market engagement notice in a below-threshold tender notice.

### Private utilities

36. Private utilities are encouraged to publish a preliminary market engagement notice when they intend to conduct or have conducted preliminary market engagement, but where they choose not to do so, they are not required to explain this in the tender notice.

### What notices are linked to this aspect of the regime?

37. The nature of the preliminary market engagement notice means that it is published early on in the sequence of notices provided for under the Act. It will usually be preceded by the pipeline notice but it could also be published as the first notice in the sequence (if the procurement is not published in a contracting authority's pipeline notice or if preliminary market engagement occurs prior to the contracting authority making a decision to proceed with the procurement and publish a pipeline notice). It could also follow the planned procurement notice.
38. The next notice in the sequence after the preliminary market engagement notice will be one of the following:
  - a. pipeline notice - to publish the individual procurements making up a pipeline.
  - b. planned procurement notice - to provide advance notice of the procurement and potentially take advantage of reduced timescales.



- c. tender notice - to advertise the opportunity to tender. As set out above, if preliminary market engagement is conducted but no preliminary market engagement notice is published, there is a requirement to explain this non-publication in the tender notice.
- d. transparency notice - for use when a direct award is being made.
- e. procurement termination notice - can be used voluntarily to indicate that a particular procurement set out in a preliminary market engagement notice will not be progressed.

39. Contracting authorities must ensure that when publishing the next notice in the sequence that they refer back to the originating notice. See further guidance on notice sequencing and flowcharts and the Welsh Digital Platform.

### What other guidance is of particular relevance to this topic?

- Guidance on notice sequencing and flowcharts
- Guidance on covered procurement objectives
- Guidance on competitive tendering
- Guidance on direct award
- Guidance on conflicts of interest
- Guidance on the Welsh Digital Platform

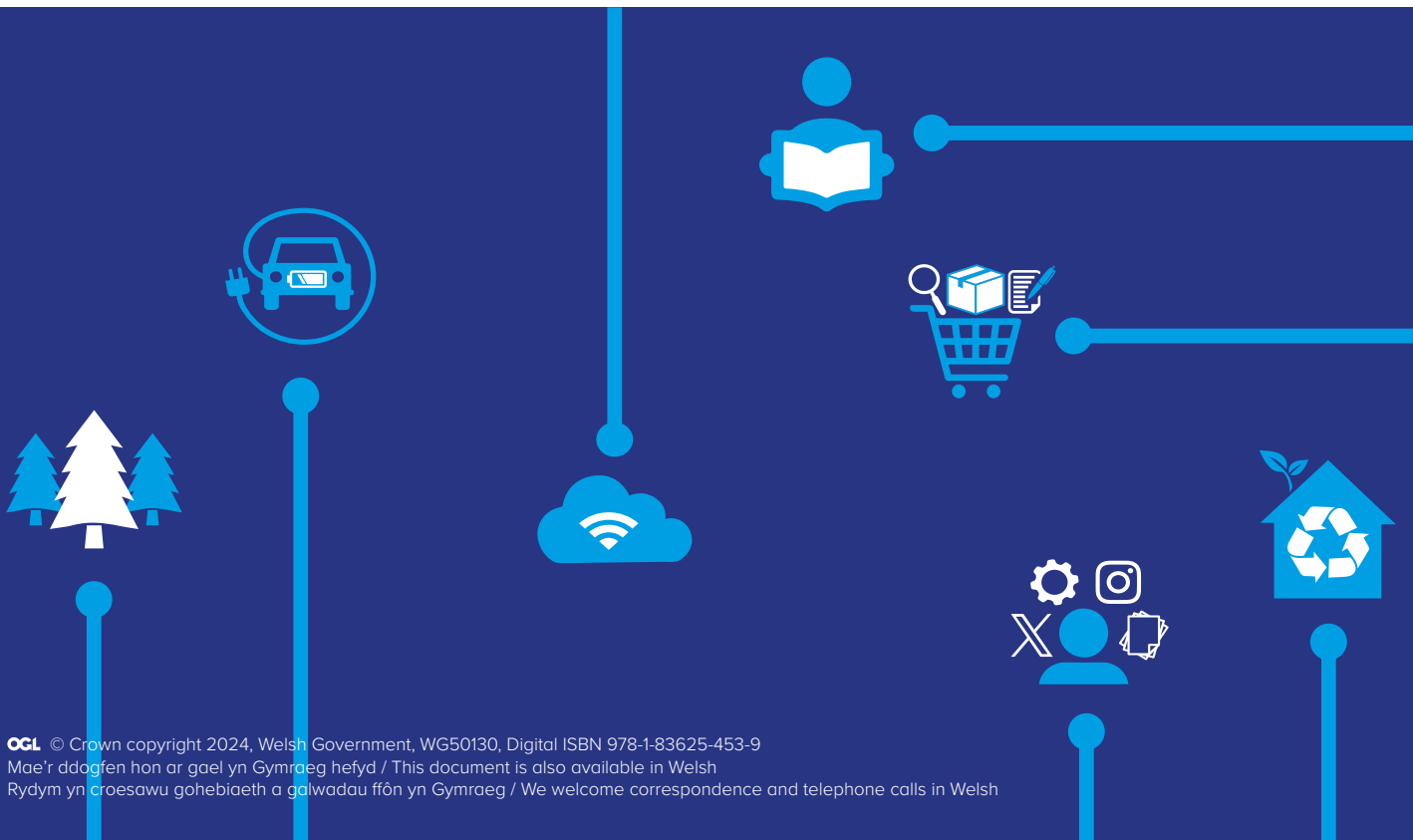




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# Guidance Technical Specifications

July 2024





## Guidance: Technical Specifications

### What are technical specifications?

1. Technical specifications set out the technical requirements for the goods, works, or services that a contracting authority is purchasing.
2. Technical specifications can form part of the:
  - a. contracting authority's requirements, which set out the details of the goods, services or works required;
  - b. conditions of participation under section 22 of The Procurement Act 2023 (the Act), which assess the supplier's legal and financial capacity and their technical ability to perform the contract;
  - c. conditions of participation used in a competitive selection process when awarding public contracts in accordance with frameworks;
  - d. conditions for membership of a dynamic market; or
  - e. award criteria, which are the criteria used to assess tenders.
3. The characteristics set out in technical specifications could relate to, for example, quality, performance, safety, dimensions, the process and methods of the production, packaging, marking and labelling. Technical specifications are included, where relevant, in the procurement documents to provide suppliers with a full description of the contracting authority's requirements. This enables suppliers to consider whether to participate in a procurement and to prepare and submit their tender, request or application. They also help to ensure that contracting authorities and suppliers have a common understanding of the requirements.
4. Technical specifications can play a key role in driving up quality. This includes through the use of recognised standards, and, where appropriate, by requiring evidence that standards are met, for example through certification, conformity assessment and accreditation. They can also help to ensure that what is procured complies with wider legislative requirements and aligns with industry best practice. Technical specifications can also be critical in ensuring value for money when requirements are set in such a way as to take whole-lifecycle cost and other considerations into account.



## What is the legal framework that governs technical specifications?

5. Section 56 of the Act sets out the main provisions on technical specifications and is intended to ensure that the procurement documents (which are defined in section 56(9)) do not unnecessarily limit competition, that suppliers are treated equally and treaty state suppliers are not discriminated against.
6. Alongside section 56, other sections in the Act highlight where the technical specifications provisions must be adhered to. If, in a procurement, technical specifications are part of the scope of the matters under these other sections, then the rules in these sections must also be applied. For example, technical specifications included as part of the award criteria must, in addition to complying with section 56, be related to the subject matter of the contract (as required by section 23(2)(a)). Where technical specifications are included in any of the following aspects of the procurement, the contracting authority must be satisfied that they do not break the rules set out in section 56:
  - a. the authority's requirements - section 21 (tender notices and associated tender documents);
  - b. conditions of participation relating to suppliers' technical ability, including qualifications and experience - section 22 (conditions of participation);
  - c. conditions of participation in a competitive selection process for the award of a public contract in accordance with a framework, relating to suppliers' technical ability, including qualifications and experience - section 46 (frameworks: competitive selection process);
  - d. conditions for membership of a dynamic market or part of a dynamic market, relating to suppliers' technical ability, including qualifications and experience - section 36 (dynamic markets: membership); and
  - e. award criteria - section 23 (award criteria).

## Wider Legislative Obligations

7. Other legal obligations (outside of the Act) may apply when drawing up technical specifications. These can include various health and safety, environmental and industry-specific regulatory requirements relevant to the goods, services or works. For example, technical specifications will need to be drawn up to take account of the needs of people with disabilities, with disability accessibility and broader considerations covered by the public sector equality duty under section 149 of the Equality Act 2010. Indeed, the Equality Act covers a range of protected characteristics and applies to the whole commercial lifecycle, not just technical specifications.



## What has changed?

8. The Act unlike the previous legislation,<sup>1</sup> does not include a permissive list of items which could be incorporated into technical specifications, though these, and others, can of course be included. Instead, it sets out the requirements for how technical specifications are formulated and applied, which are similar to the obligations contained in the previous legislation. Also similar to the previous legislation, the Act allows contracting authorities to request certification or other evidence in relation to any standards they require.

## Key Points and policy intent

9. The Act includes specific provisions to ensure that:
  - a. technical specifications do not unnecessarily narrow the competitive pool of suppliers and suppliers are treated equally. Even with the use of a competitive tendering procedure, it is important that contracting authorities do not design their requirements in such a way that they narrow the number of suppliers capable of meeting their needs or give an unfair advantage to particular suppliers.
  - b. contracting authorities do not discriminate against treaty state suppliers (i.e. suppliers from countries with whom the UK has entered into an international agreement specified in Schedule 9). These international agreements prohibit discrimination against treaty state suppliers and, in many cases, include specific provisions on technical specifications to support this, which are reflected in the Act.
10. In order to prepare effective technical specifications, contracting authorities should (where they are relevant) have an understanding of what standards are applicable to the goods, services and works they are procuring and ways of assuring these standards are met, such as the use of accredited conformity assessment. This includes (if it exists) where this is a legal or, policy requirement or industry best practice.
11. Some of the ways contracting authorities can do this is to make sure commercial and technical experts are involved throughout the procurement lifecycle (such as when drafting requirements, assessing tenders and during ongoing monitoring),

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<sup>1</sup> Section 56 of the Act replaces various provisions which were included in the Public Contracts Regulations 2015, including: regulations 42 (technical specifications), 43 (labels) and 44 (test reports, certificates and other means of proof). It also replaces similar provisions in regulations 60, 61 and 62 in the Utilities Contracts Regulations 2016, regulation 36 in the Concession Contracts Regulations 2016



incorporate lessons from previous procurements and conduct preliminary market engagement (both with suppliers and other persons).

12. Section 56 of the Act is applicable when contracting authorities are developing their requirements for:
  - a. a competitive tendering procedure (including to award a framework);
  - b. a competitive selection process for the award of public contracts in accordance with a framework;
  - c. a process to establish a dynamic market.

## Performance and functional requirements

13. The procurement documents must refer to performance or functional requirements (and not design, a particular licensing model or descriptive characteristics), unless it is not appropriate to do so. Functional requirements describe what the goods, services or works must do and performance requirements describe how well they must perform. For example:
  - a. requirements for fire-resistant doors could require that the doors (in addition to passing all the necessary tests on fire resistance and meeting the necessary standards) must be fire resistant with a 30-minute burn through time, rather than, unless there are good reasons to do so, specifying how they must be made;
  - b. requirements for software might include requirements relating to efficiencies, such as speed of response, or that the software is interoperable with existing software rather than prescribing a particular operating model when others could also suitably meet the requirement.
14. The Act does allow technical specifications to refer to a design, a particular licensing model or descriptive characteristics but only where performance or functional requirements cannot be appropriately referred to instead. This might be, for example, where it is necessary to detail a specific mechanical component for a customised vehicle or an exact colour of paint to match corporate branding.
15. Therefore, the tender documents might appropriately include a mixture of performance/functional requirements and design, model or descriptive requirements.

## Referring to standards

16. Where standards are considered appropriate, the procurement documents must refer to international standards or UK standards that adopt international



equivalent standards. Only when these do not exist can the documents refer to other UK standards.

17. International standards are standards such as those set by the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). International standards that have been adopted as UK standards include, for example, standards adopted by the British Standards Institution (BSI) as BS ISO or BS IEC standards. Only where these do not exist can other UK standards be specified, and contracting authorities must accept equivalent overseas standards.
18. It should be noted that a standard published by a multinational organisation should not be assumed to be internationally or nationally recognised. Contracting authorities should check to see whether standards are set or adopted internationally or nationally as relevant. If contracting authorities wish to use a standard which is not internationally or nationally recognised, whilst this is permissible in certain circumstances under section 56 of the Act, they should ensure that the standard genuinely delivers their requirement, for example ensuring it has been appropriately developed by a competent organisation.
19. Where a contracting authority has not referred to a standard and instead, so long as it is appropriate (see section 56(2)), requested certain characteristics as requirements, they could rely upon standards a supplier has obtained and verified as evidence of meeting these characteristics.

## UK standard equivalents

20. If referring to UK standards, contracting authorities must make it clear in the procurement documents that if they consider equivalent standards from overseas have been satisfied, this will be treated as having satisfied the UK standard. This does not mean that any standard that a supplier proposes to be equivalent must be accepted, without verification or without due diligence. The contracting authority may ask the supplier to demonstrate that their standard is truly equivalent and seek clarification (see paragraph 22 below). The contracting authority is only required to accept a standard as satisfying the UK standard if it is content that such a standard is a true equivalent.
21. A contracting authority may consider its purpose in requiring the standard when judging whether another standard is equivalent to a UK standard. For example, there may be legislative product safety requirements that specify that an exact UK standard must be adhered to and therefore other standards may not be considered as equivalent.





## Requiring certification or evidence

22. Contracting authorities who require a particular standard (which may be at an organisational level or in relation to the goods, services or works to be provided), or an equivalent, to be met should satisfy themselves that this is met. Section 59(6) provides that this can be done by requiring certification or other evidence. The different types of certification or other evidence and when to request this can be set by the contracting authority and should be set out in the procurement documents. For example, in a multi-stage procurement, depending on the circumstances, it may be appropriate to request evidence earlier to avoid suppliers that do not meet the required standards progressing to later stages. Alternatively, it may instead be appropriate to progress tenders based on self-certification and then verify the standards have been met before contract award. This could save suppliers, who are ultimately unsuccessful in the final stage of the procurement, time and resources conducting verification activities. When considering the most appropriate time to request and verify evidence, contracting authorities could, for example, look at factors such as:
- a. the nature of the goods, services and works;
  - b. the type of industry, the level of risk attached to the procurement; and
  - c. the resources that both the contracting authority and the supplier will need to devote to carrying out the procurement.
23. Whilst there is discretion for contracting authorities to set, request and verify evidence, they must be aware of their obligations elsewhere in the Act. In particular, the procurement objectives include a duty to have regard to the barriers facing small and medium-sized enterprises and whether such barriers can be removed or reduced and there are proportionality requirements relating to competitive tendering procedures, conditions of participation and award criteria.
24. The evidence requested may also include verification by third parties. This evidence may include certification or reports following testing, inspection, calibration, verification and/or validation by a conformity assessment body (including by an accredited conformity assessment body). Conformity assessment is the demonstration that what is being supplied actually meets the requirements specified or claimed. It is defined in the international standard for conformity assessment vocabulary and general principles ISO/IEC 17000 as, “the process demonstrating whether specified requirements relating to a product, process, service, system, person or body have been fulfilled”.<sup>2</sup> The organisations

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<sup>2</sup> [Conformity assessment and accreditation policy in the UK](#).



that carry out these assessments are called conformity assessment bodies. For example, a contracting authority may require the implementation of international standards that demonstrate a supplier's business performance, such as through systems relating to quality management, health and safety, environmental management etc., which is evidenced by accredited certification against those standards.

25. Where conformity assessment is the preferred method of evidence, contracting authorities are recommended to require this is provided by accredited conformity assessment bodies. Accreditation is the recommended means of demonstrating a conformity assessment body's technical competence, independence and impartiality. The United Kingdom Accreditation Service (UKAS) is the body appointed under the Accreditation Regulations 2009 as the UK's sole National Accreditation Body for undertaking accreditation of conformity assessment bodies in the UK, both when accreditation is required by law and otherwise (e.g. when it is considered best practice or preferred in an industry). This means that accredited UK-based conformity assessment bodies must be accredited by UKAS. Similarly, accredited conformity assessment bodies based in other countries must be accredited by their equivalent National Accreditation Body.
26. If a supplier provides evidence from a conformity assessment body accredited by an organisation equivalent to UKAS, it is recommended that the contracting authority considers whether the accreditation body is truly equivalent by checking whether such an organisation:
  - a. is a recognised National Accreditation Body;
  - b. has been assessed by comparable peer reviews; and
  - c. is a signatory to international multilateral recognition agreements alongside UKAS.<sup>3</sup>

### Referring to trademarks, trade names, etc. and providing for equivalents

27. Unless it is necessary to make its requirements understood, the procurement documents must not refer to trademarks, trade names, patents, designs or types, places of origin, or producers or suppliers. Where these are referred to, the

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<sup>3</sup> UKAS, together with many other National Accreditation Bodies, is a signatory to the International Accreditation Forum (IAF) and the International Laboratory Accreditation Cooperation (ILAC) multilateral agreements. These agreements are based on the peer assessment of National Accreditation Bodies and mean that the accreditations of signatories are considered technically equivalent. Contracting authorities should be wary of accepting accreditation by any organisations that are not signatories of these agreements (or any replacement or successor agreements having the same effect and to which UKAS is a signatory).



procurement documents must provide that alternatives which demonstrate equivalence will not be disadvantaged.

## Defined terms in this section

28. Section 56(9) defines the terms used in section 56 of the Act.
29. Contracting authorities should be mindful that the definition of 'procurement documents' means that the technical specifications provisions apply more broadly than just, for example, to the technical annexes in the tender documents.
30. This subsection also defines the term 'United Kingdom standard' to add clarity for contracting authorities. Standards are documents which set out certain rules, guidelines and/or characteristics that a supplier, goods, services, or works must meet or comply with.
31. If contracting authorities require specific labels as a way of indicating or demonstrating that suppliers, goods, services or works conform to particular standards, for example, in relation to environmental, social or other characteristics, these requirements like in standards generally, must comply with the provisions for technical specifications and the wider legal framework. For example, if a contracting authority wanted to require an environmental label as part of an environmental services contract, it would need to consider whether:
  - a. the label is internationally recognised (if not, equivalents must be accepted);
  - b. if this is part of the award criteria, it complies with section 23. For example, whether it relates to the subject-matter of the contract and is a proportionate means of assessing tenders, etc.;
  - c. it fulfils the non-discrimination obligations in section 90 of the Act relating to treaty state suppliers;
  - d. the requirements are clear in the procurement documents.

## What other guidance is of particular relevance to this topic area?

- Guidance on conditions of participation
- Guidance on awarding competitive contracts
- Guidance on competitive procedures
- Guidance on frameworks
- Guidance on dynamic markets



## Where can I go for more information or training?

The [Office for Product Safety & Standards](#) (OPSS): the OPSS is part of the Department for Business and Trade (DBT) and leads standards and accreditation policy across Government.

The [British Standards Institution](#) (BSI): the BSI is the UK's National Standards Body. It is responsible for producing national and international standards under a Memorandum of Understanding with DBT.

The [United Kingdom Accreditation Service](#) (UKAS): UKAS is the UK's National Accreditation Body. UKAS accreditation assures the competence, impartiality and integrity of conformity assessment bodies that deliver services such as testing, calibration, inspection and certification. UKAS operates within the terms of a Memorandum of Understanding with DBT.

Internal department/organisational guidance or policies: depending on the organisation, a contracting authority might have its own toolkit, checklist or policies with regards to specifications.



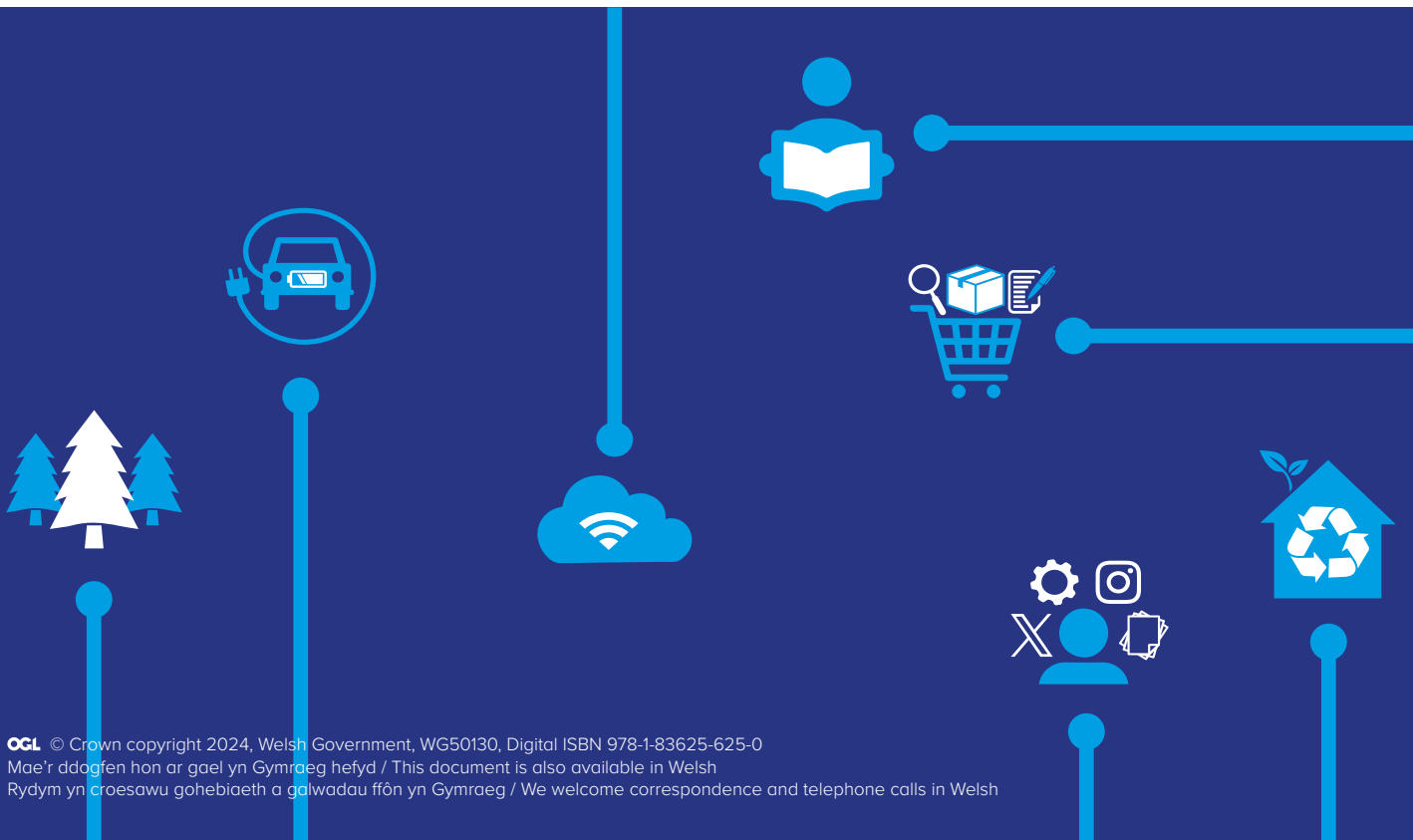


Llywodraeth Cymru  
Welsh Government

# Guidance

## Treaty State Suppliers

September 2024





# Guidance: Treaty State Suppliers

## What are treaty state suppliers?

1. Section 89 of the Procurement Act 2023 (the Act) defines a 'treaty state supplier' as a supplier that is entitled to the benefits of an international agreement specified in Schedule 9 of the Act.
2. The benefit for treaty state suppliers is that they cannot be discriminated against by contracting authorities (section 90). Treaty state suppliers have the same rights and, under section 100, access to remedies under the Act as 'UK suppliers' (see paragraph 14 below) for procurements covered by the relevant international agreement. This non-discrimination requirement has the effect of increasing the competitive pool of suppliers interested in participating in a procurement, driving better value for money.

## What is the legal framework that governs treaty state suppliers?

3. Part 7 of the Act establishes the rights that are accorded to treaty state suppliers under the Act. This Part is generally<sup>1</sup> only relevant to the procurement of public contracts (contracts that are for pecuniary interest, above-threshold and non-exempted contracts) and does not prevent below-threshold contracts being reserved to UK-based suppliers only or UK-based suppliers in a particular region or county of the UK. (See guidance on below-threshold contracts for more information.)
4. Section 89 sets out the definition of a treaty state supplier.
5. Schedule 9 sets out the international agreements which confer treaty state supplier status.
6. Section 90 provides that, when carrying out a procurement, a contracting authority may not discriminate against a treaty state supplier and it sets out what would constitute discriminating against a treaty state supplier.

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<sup>1</sup> The UK-EU Trade and Co-operation Agreement extends the non-discrimination obligation to the procurement of any contract and not just public contracts. At Article 288 it prohibits the UK from adopting a measure that would discriminate against suppliers from the EU that are established in the UK (and vice versa). There are exceptions to this for NHS clinical healthcare services (as defined), and procurements that are subject to the national security and general exceptions.



7. Section 100 (duties under this Act enforceable by civil proceedings) provides that the duties imposed on contracting authorities by Parts 1 to 5, 7 and 8 are owed to UK and treaty state suppliers (see paragraph 18 below).

## What has changed?

8. The Act uses the term 'treaty state supplier', setting out a definition of the term and providing that contracting authorities cannot discriminate against such suppliers when carrying out a procurement. This replicates the position in the previous legislation. The Act makes it clear that contracting authorities may disregard requests or tenders submitted by suppliers that are not treaty state suppliers (i.e. suppliers from countries with which the UK does not have a relevant international agreement).

## Key points and policy intent

9. The Act implements the UK's international obligations on public procurement by reflecting those obligations in its provisions and providing that contracting authorities must not discriminate against treaty state suppliers. A contracting authority complying with the Act will automatically be compliant with those international obligations.
10. Generally, the UK operates an open procurement regime<sup>2</sup>; this means that, subject to the provisions on excluded or excludable suppliers, contracting authorities should accept requests or tenders from both UK and overseas suppliers. The Act does permit contracting authorities to decide not to award a contract to a non-treaty state supplier (section 19(3)(b)) or to exclude non-treaty state suppliers from participating in a competitive flexible procedure (section 20(5)(c) and (d)). However, in order to ensure open competition and drive value for money, contracting authorities should think carefully before doing so. Before disregarding such a tender or excluding such a supplier, a contracting authority would need to assure itself that the supplier in question is not a treaty state supplier or is not proposing to provide goods, services or works that are covered by an international agreement. A contracting authority should only need to consider whether a supplier is a treaty state supplier or not if there is a good value for money reason to do so (for example, if this might impact the supplier's effectiveness to deliver the goods, service or works).

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<sup>2</sup> The position for defence and security procurement is covered later in the guidance.



## Treaty state suppliers: non-discrimination

11. Contracting authorities must not discriminate against treaty state suppliers.  
Section 90(2) provides that a contracting authority discriminates against a treaty state supplier if it treats the supplier less favourably than a UK supplier or another treaty state supplier based on the supplier's association with its treaty state or lack of association with the UK or another treaty state. Section 90(4) provides that this is also the case where the supplier supplies goods, services or works that originate in a 'treaty state', which is defined as a state, territory or organisation of states or territories that is a party to an international agreement set out in Schedule 9. This would be the case regardless of whether the supplier supplying those goods, services or works is a UK supplier, the relevant treaty state supplier or any other supplier. This applies throughout the procurement.
12. Section 90(3) provides that when considering whether a treaty state supplier is treated less favourably, the relevant comparison is between the way that treaty state supplier is treated compared to a UK or other treaty state supplier in circumstances which are not materially different.
13. A supplier is a treaty state supplier only to the extent that it is entitled to the benefits of an international agreement specified in Schedule 9 in relation to the procurement being carried out or challenged. This means that a supplier may be a treaty state supplier for some procurements and not others. A supplier is only a treaty state supplier if it comes from a country that has an international agreement with the UK that covers the contracting authority carrying out the procurement, the goods, services or works being procured and the provisions of the Act in question are within scope of that agreement.
14. Section 90(7) defines a UK supplier as a supplier established in, or controlled or mainly funded from, the UK or a British Overseas Territory or a Crown Dependency, and is not a treaty state supplier.
15. The international agreements specified in Schedule 9 have a procurement chapter. Within the chapter, in most cases, there is a market access schedule that sets out which entities (i.e. central government authorities, sub-central authorities and utilities), goods, services, works (referred to as 'construction services') and exceptions are applicable to the agreement. In terms of operation, Schedule 9 will be updated as required to reflect the removal or amendment of any existing international agreements or to add new agreements.
16. Contracting authorities can check if their procurement is covered by any of the international agreements listed in Schedule 9. These agreements are all publicly





available here: [UK trade agreements in effect - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/uk-trade-agreements-in-effect) There are exemptions for some sectors, for example, healthcare services, research and development services and broadcasting content and time.

17. Section 100 provides that the duty to comply with section 90 is enforceable in civil proceedings under the Act. This means that a treaty state supplier will have the same access to remedies under the Act to challenge a procurement covered by the relevant international agreement as a UK supplier. UK suppliers will have reciprocal access to remedies in procurement markets of treaty states. Under section 65 of the Act, treaty state (and UK) suppliers can also appeal to the court in relation to debarment decisions of a Minister of the Crown, for example, to add the supplier's name to the debarment list.
18. It should be noted that although a supplier that is not a UK or treaty state supplier may not have recourse through the Procurement Act directly, they may utilise other avenues for challenge. Retaliatory measures may also be put in place where a party breaches an agreement (see paragraph 20 below)
19. As set out in paragraph 10, the Act does permit contracting authorities carrying out a competitive flexible procedure to exclude non-treaty state suppliers (section 20(5)(c)) or disregard a tender from a non-treaty state supplier (section 19(3)(b)(i)) in a competitive tendering procedure. Contracting authorities carrying out a competitive flexible procedure can also exclude suppliers that intend to sub-contract the performance of all or part of the contract to a non-UK or non-treaty state supplier (section 20(5)(d)) or decide not to award a contract to such a supplier (section 19(3)(b)(ii)).

### Retaliatory measures

20. If a party to an international agreement does not comply with its obligations under that agreement, the other party may, subject to the terms of the agreement, be entitled to implement practical retaliatory measures or, if it is the party in breach, implement compensatory measures. Section 92 provides that regulations may be made where this arises as a result of a procurement-related dispute under an international agreement specified in Schedule 9. Retaliatory measures may be, for example, making regulations to remove market access to particular goods or services for treaty state suppliers from a country that is in breach. This power can only be used to make provision relating to procurement. It also requires Parliamentary approval.

### What other guidance is of particular relevance to this topic area?

- Guidance on covered procurement objectives
- Guidance on below-threshold contracts



- Guidance on exclusions
- Guidance on award rules
- Guidance on remedies



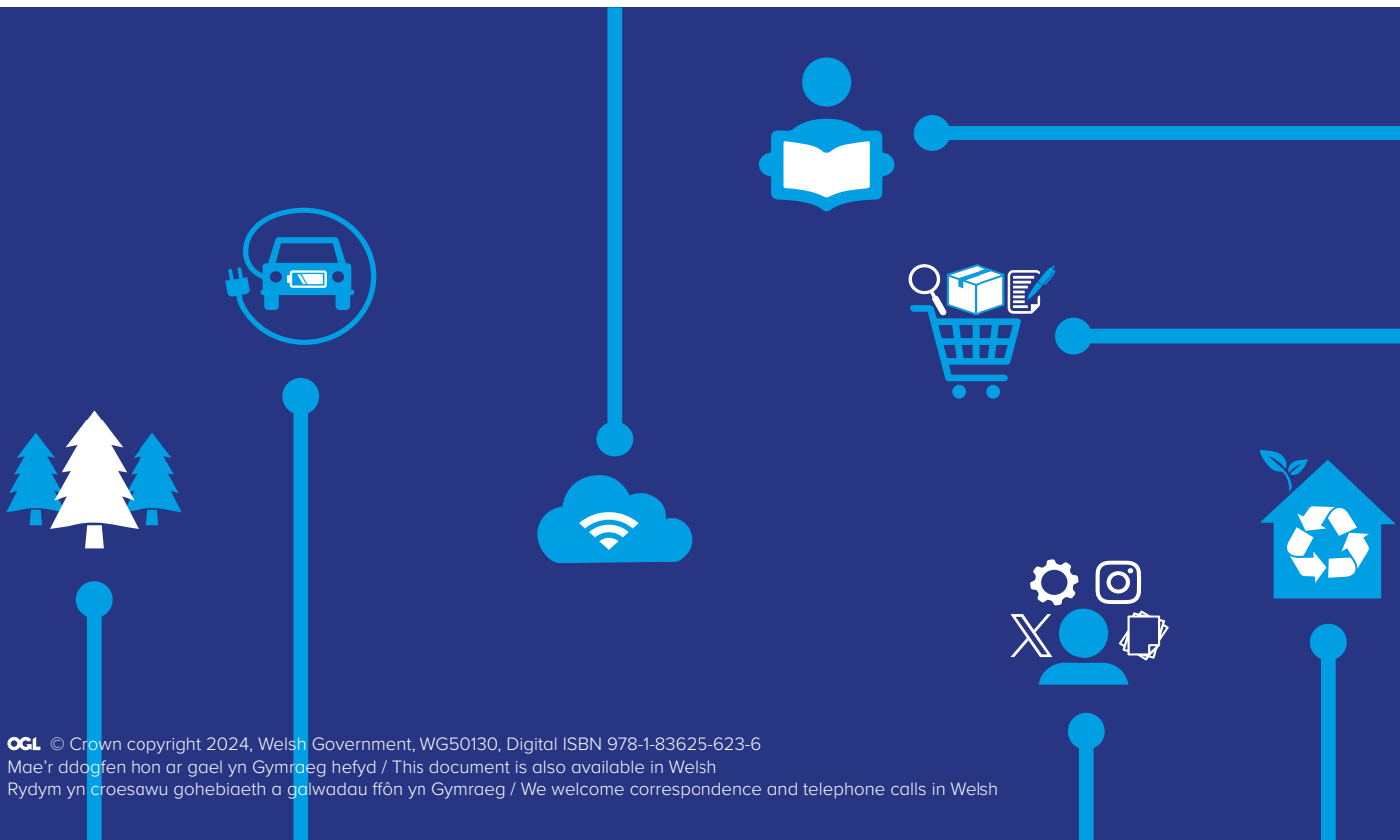


Llywodraeth Cymru  
Welsh Government

# Guidance

## Competitive Tendering Procedures and Tender Notices

September 2024





# Guidance: Competitive Tendering Procedures and Tender Notices

## What are competitive tendering procedures?

1. Effective competition and transparency are key enablers of the procurement objectives of delivering value for money and being seen to act with integrity. There are two competitive tendering procedures in the Procurement Act 2023 (the Act): the open procedure and the competitive flexible procedure, and both are commenced via publication of a tender notice.
2. Subject to paragraph 3, all public contracts (defined in section 3 of the Act), including special regime contracts (defined in section 10 of the Act as concession contracts, defence and security contracts, light touch contracts and utilities contracts), will be procured using one of these competitive tendering procedures. There is separate guidance on these special regime contracts.
3. There are limited circumstances where a contracting authority is not required to use a competitive tendering procedure for a public contract:
  - a. where direct award is justified under sections 41 (special cases) or 43 (switching to direct award) of the Act; or
  - b. when awarding (or 'calling off') a public contract under a framework (referred to in guidance as a 'call-off' contract), as set out in section 45 of the Act.

## What is the legal framework that governs a competitive tendering procedure?

4. The relevant provisions are:
  - a. section 19 of the Act (Award of public contracts following a competitive tendering procedure);
  - b. section 20 of the Act (Competitive tendering procedures);
  - c. section 21 of the Act (Tender notices and associated tender documents);
  - d. regulation 19 (Tender notices: open procedure);
  - e. regulation 20 (Tender notices: competitive flexible procedure);
  - f. regulation 21 (Tender notices: frameworks);
  - g. regulation 22 (Tender notices: dynamic markets except qualifying utilities dynamic markets);
  - h. regulation 23 (Tender notices: qualifying utilities dynamic market notices); and
  - i. regulation 24 (Associated tender documents).



## What has changed?

5. The Act includes an open procedure similar to that in the Public Contracts Regulations 2015 and Utilities Contracts Regulations 2016 and introduces a competitive flexible procedure.
6. The competitive flexible procedure replaces many of the previous, more prescriptive procedures. It provides contracting authorities with greater opportunity and flexibility to design their own competitive tendering procedure. However, in designing and carrying out their procedure, contracting authorities must have regard to the procurement objectives (section 12 of the Act) and meet the procedural requirements applicable to the competitive flexible procedure, such as those relating to time limits and transparency.
7. There is no longer a restricted procedure, competitive procedure with negotiation competitive dialogue or innovation partnership procedure but it is possible to adopt a similar approach in practice as part of a competitive flexible procedure where that is appropriate and complies with the Act.
8. A single tender notice replaces the contract notice and, for concessions contracts, the concession notice in the previous legislation.

## Key points and policy intent

### Choice and design of the competitive tendering procedure

9. Before awarding a public contract under section 19 of the Act (Award of public contracts following a competitive tendering procedure), a contracting authority must carry out a competitive tendering procedure. As stated above, the competitive tendering procedure used can take one of two forms (as defined in section 20 of the Act):
  - a. the first is an open procedure, which is a single stage procedure whereby any interested party can submit a tender and the authority will decide whom to award the contract to on the basis of that tender;
  - b. the second is a competitive flexible procedure, which is any other competitive tendering procedure the contracting authority considers appropriate for the purpose of awarding the public contract.
10. There are some circumstances where a contracting authority can only use the competitive flexible procedure; these include:
  - a. where it wishes to limit the number of suppliers before inviting tenders (section 20(4)(a) of the Act);



- b. when procuring under a dynamic market (section 34 of the Act) (see the guidance on dynamic markets and utilities (for utilities dynamic markets)); and
  - c. when reserving a public contract to supported employment providers or public service mutuals (sections 32 and 33 of the Act) (see the guidance on reserved contracts and light touch contracts).
11. Frameworks can be established under either the open procedure or the competitive flexible procedure. Call-off contracts are awarded in accordance with the terms of the framework (section 45 of the Act) and are not subject to the competitive tendering provisions in section 20 of the Act (see the guidance on frameworks).
  12. The contracting authority must ensure that the competitive tendering procedure as designed is a proportionate means of awarding the public contract, having regard to the nature, complexity and cost of the contract. Accordingly, the procurement procedure should not be overly burdensome. Unnecessarily complex and/or time-consuming procedures are potential barriers that could deter small and medium-sized enterprises (SMEs)<sup>1</sup> and other suppliers from participating.
  13. Any competitive tendering procedure must also comply with the areas of the Act that have an impact on their application such as:
    - a. the noticing requirements (see paragraphs 83-89 below);
    - b. the procurement objectives (section 12 of the Act);
    - c. preliminary steps (preliminary market engagement and lots) (sections 16-18 of the Act);
    - d. excluding suppliers (sections 26-30 and 57-58 of the Act);
    - e. modifying a section 19 procurement (section 31 of the Act); and
    - f. time limits (section 54 of the Act).
  14. The procurement objectives underpin the Act and must be considered when carrying out a procurement, which would include making any decision in relation to the procurement. For example, when designing the competitive tendering procedure, choosing realistic deadlines is important. Short deadlines (particularly if combined with overly prescriptive specifications) may limit SME participation and innovation in tenders.

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<sup>1</sup> Section 123 defines 'small and medium-sized enterprises' as suppliers that (a) have fewer than 250 staff, and (b) have a turnover of an amount less than or equal to £44 million, or a balance sheet total of an amount less than or equal to £38 million.



15. A contracting authority can design a procedure similar to one of the procedures in the previous legislation if helpful, or tailor one of those procedures as it considers appropriate, or design its own procedure entirely.
16. If the requirement for the public contract will be straightforward for suppliers to fulfil (for example, an off-the-shelf solution) then possibilities under the Act include, for example:
  - a. using the open procedure, where any supplier can tender for the contract. This is a simple, transparent process that should maximise the number of suppliers that tender; or
  - b. using the competitive flexible procedure to, for example, provide for a simple two-stage tendering procedure (similar to a restricted procedure under the previous legislation). The first stage could involve assessment of suppliers against conditions of participation and short-listing the suppliers in order to take those selected suppliers into the second stage where they will be invited to submit a tender.
17. If the requirement for the public contract is complex, then the Act allows contracting authorities to design a multi-stage competitive flexible procedure. Possibilities under the Act include, for example:
  - a. including post-tender negotiations following a round of open tendering, where all suppliers are invited to submit a tender;
  - b. including post-tender negotiations following a round of selective tendering, where short-listed suppliers are invited to submit a tender;
  - c. including multi-staged negotiations after an initial round of tendering; or
  - d. building in a stage where there is a physical inspection or demonstration of the product, technology or software to be supplied, such as a site visit or requiring suppliers to deliver a pilot.

### Carrying out a competitive tendering procedure

18. This section of the guidance sets out key aspects of a competitive tendering procedure that are common to open and competitive flexible procedures.
19. To commence a competitive tendering procedure, a tender notice must be published on Welsh digital platform (Sell2Wales). The tender notice will provide access to any associated tender documents or an explanation of how such documents are to be accessed. The associated tender documents are used to supplement the information set out in the tender notice. They provide further detail about the procurement and could include, for example, the specification, the award criteria and assessment methodology for the award criteria (if not fully set out in the tender notice), and terms and conditions of the contract. The



contracting authority is under no obligation to provide associated tender documents provided all the information necessary to allow suppliers to prepare a tender is contained in the tender notice. When used, associated tender documents must generally be provided free of charge and electronically (see section 96 of the Act).

20. Section 54(1) of the Act provides that a contracting authority must have regard to factors such as the nature and complexity of the contract when setting the date by which tenders must be submitted. This time period must be at least the minimum tendering period set out in section 54 (see the guidance on time limits).
21. Section 21(5) of the Act provides that a contracting authority may not invite suppliers to submit tenders in a competitive tendering procedure unless it is satisfied that the tender notice or associated tender documents contain sufficient information to allow suppliers to prepare their tenders and, in particular, details of the goods, services or works required. Therefore unless the tender notice and/or associated tender documents provide all the information required for suppliers to prepare their tenders, the contracting authority cannot set a deadline for submission of tenders and the tendering period in section 54 of the Act (Time limits) cannot commence.
22. Sections 26 and 28 of the Act require the contracting authority to consider whether any supplier (including by virtue of their connected persons, associated persons or sub-contractors) is excluded or excludable before assessing which tender best satisfies the award criteria. As a general rule these considerations should be made at the earliest point possible in the competitive tendering procedure but must be made (or confirmed) on assessment of tenders.
23. In certain circumstances, there is an obligation on contracting authorities to notify a supplier in advance of potential exclusion to allow it the opportunity to replace an associated person or sub-contractor. There is also an obligation for contracting authorities to notify and, in some cases, seek agreement from a Minister of the Crown before excluding a supplier (or before allowing the supplier the opportunity to replace an associated person or sub-contractor) on national security grounds (see section 29 of the Act).
24. The tender notice and any associated tender documents will set out any conditions of participation that must be met in order for a supplier to be awarded the public contract. Conditions of participation are used to assess whether a supplier can perform the contract. They must be a proportionate means of ensuring the supplier's relevant capacity or ability (see below), having regard to the nature, complexity and cost of the public contract. They are distinct from





award criteria, which determine which is the most advantageous tender. Conditions of participation are a means to ensure that suppliers have:

- a. the legal and financial capacity to perform the contract, or
- b. the technical ability to perform the contract.

25. A contracting authority may only award a public contract in a competitive tendering procedure to the supplier that submits the most advantageous tender. Section 19(2) of the Act, defines the most advantageous tender as the tender that the contracting authority considers:

- a. satisfies the requirements; and
- b. best satisfies the award criteria when assessed by reference to:
  - i. the assessment methodology set under section 23(3)(a) of the Act; and
  - ii. if there is more than one criterion, the relative importance of the criteria under 23(3)(b) of the Act.

26. It is possible for a contracting authority to award separate contracts following a competitive tendering procedure to multiple suppliers (for example, when establishing a framework) if the award criteria and assessment methodology set out in the tender notice and any associated tender documents provide that more than one tender can satisfy the contracting authority's requirements and best satisfy the award criteria and on what basis. In these circumstances, all tenders considered successful pursuant to the award criteria and assessment methodology should be considered the most advantageous tender.

27. In assessing tenders under section 19 of the Act (Award of public contracts following a competitive tendering procedure) a contracting authority:

- a. must disregard any tender from a supplier that does not satisfy the conditions of participation;
- b. may choose to disregard a tender from a supplier who is not a UK or treaty state supplier, or from a supplier who intends to sub-contract the performance of all or part of the contract to a supplier who is not a UK or treaty state supplier. The guidance on treaty state suppliers should be consulted for more information;
- c. may choose to disregard any tender that offers a price that it considers to be abnormally low for performance of the contract, provided it complies with the relevant provisions in the Act;
- d. may choose to disregard any tender which breaches a procedural requirement that is set out in the tender notice or associated tender documents, such as a tender being submitted past the required deadline or being over the prescribed word count. For clarity, contracting authorities should highlight which



procedural requirements set out in the tender notice or associated tender documents may result in the contracting authority disregarding a tender if breached.

28. In a competitive tendering procedure, the contracting authority must release two sets of information once the most advantageous tender has been identified:
  - a. firstly, it must provide assessment summaries to all suppliers who submitted a bid;
  - b. after providing assessment summaries, it must publish a contract award notice on Welsh digital platform (Sell2Wales).
29. The contracting authority must not enter into a contract following a competitive tendering procedure without having first issued the assessment summaries and published the contract award notice.
30. The contracting authority must provide an assessment summary to each supplier that submitted an assessed tender. An assessment summary provides information to enable a supplier to understand why its assessed tender was either successful or unsuccessful. See the guidance on assessment summaries.
31. Under the Act, it is the publication of the contract award notice that initiates the standstill period. The mandatory standstill period is a minimum of eight working days and applies to all public contracts apart from those listed in section 51(3) of the Act. A contracting authority may voluntarily apply a standstill period to those contracts listed in section 51(3). Where it does so, any voluntary standstill period must also be for a minimum of eight working days. Once the standstill period has ended, the contracting authority may enter into the contract. See the guidance on the contract award notice and standstill.
32. Once the contracting authority has entered into the contract, it must publish a contract details notice. A contract details notice tells interested parties that the contract has been entered into and is mandatory for all contracting authorities except for private utilities and in relation to a contract awarded under section 41 of the Act by reference to paragraph 15 of Schedule 5 of the Act (direct award: user choice contracts). In certain circumstances the contracting authority must also publish a copy of the contract and the key performance indicators set. See the guidance on the contract details notice and contract documents, and the guidance on key performance indicators.



## The open procedure

33. As set out above, section 21(5) of the Act provides that the contracting authority must be satisfied, before inviting tenders, that the tender notice or associated tender documents provide sufficient information in order for tenders to be prepared.
34. In the case of the open procedure, the tender notice is the 'invitation to tender' as it invites all interested suppliers to submit a tender. Where used, any associated tender documents would also need to be provided through Welsh digital platform (Sell2Wales) at the outset of the procurement (i.e. at the same time as the tender notice) in order to meet section 21(5) of the Act and enable the tendering period to commence. This can be achieved either by attaching the documents to the tender notice or by providing a direct link to the web page where the documents are provided.

## Considering exclusions, conditions of participation and assessing tenders

35. In an open procedure, following receipt of tenders and before awarding a contract, the contracting authority must check whether a supplier is an excluded or excludable supplier, assess any conditions of participation and determine the most advantageous tender.
36. With regard to exclusions, the effect of section 26 and section 28 of the Act in an open procedure is that the contracting authority must check whether any suppliers who have submitted a tender are excluded or excludable (including by virtue of their connected persons, associated persons or sub-contractors) before tenders are assessed. This ensures that any tender from an excluded supplier is disregarded (and any tender from an excludable supplier can be disregarded if the contracting authority so decides) before tenders are assessed.
37. A contracting authority could then, for example, take the following approach:
  - a. assess the tenders against all of the considerations set out in section 19(3) of the Act, including checking whether each of the conditions of participation are satisfied, and disregard any tenders as appropriate (see para 27); and
  - b. then assess the tenders which have not been disregarded under section 19(3) to determine which is the most advantageous tender.
38. Annex A includes a flowchart for how the open procedure could be carried out, based on the scenario in paragraph 37.



39. There is flexibility for when a contracting authority can assess conditions of participation in an open procedure, and they can be assessed at any point following receipt of tenders and before the public contract is awarded.

#### The competitive flexible procedure

40. In contrast to an open procedure, a competitive flexible procedure will be multi-staged and therefore contracting authorities can (under section 20(4)(a) of the Act) limit the number of suppliers participating in a procurement or progressing to the next stage. In this guidance, the process of limiting the number of suppliers (following submission of a request to participate) by assessing conditions of participation and/or any other objective criteria set out in the tender notice or associated tender documents is referred to as the 'participation stage'.
41. The competitive flexible procedure allows the contracting authority the freedom to design its own procedure. The contracting authority may choose to incorporate numerous processes into the procedure, such as negotiation, dialogue or a demonstration stage. In this guidance, 'dialogue' refers to a discussion between the contracting authority and suppliers about any aspect of the procurement. 'Negotiation' is the discussion between the contracting authority and a supplier with a view to improving the content of tenders. Including dialogue and/or negotiation can offer benefits such as the ability to test risks and assumptions with suppliers and develop the contracting authority's requirements.
42. The contracting authority may choose to include a site visit or demonstration in a competitive flexible procedure. These can reduce risk by testing the deliverability of key aspects of tenders. A site visit may, for example, identify that a key supporting process has not been developed, that equipment has yet to be obtained or configured, or that systems and processes cannot cope with required peaks in volume.
43. The contracting authority may also require suppliers to deliver presentations during the procedure. Presentations can be helpful to confirm that the proposals or solutions are deliverable, for example, to manage the risk of proposals being incompatible with critical services provided by existing suppliers.
44. The contracting authority must ensure that any assessment of site visits, demonstrations or presentations is conducted in an objective way and in accordance with the award criteria and assessment methodology.
45. This guidance provides some examples of how a competitive flexible procedure could be designed, but it is not exhaustive and contracting authorities should not feel limited to using only those outlined in this guidance.



46. The contracting authority must set out in the tender notice how the competitive flexible procedure is to be carried out. For example, if the intention is to limit the number of suppliers generally or in respect of particular tendering rounds or other selection processes, the criteria by which those suppliers will be chosen must be in the tender notice or, if the procedure is to include negotiation, that must be stated. The contracting authority can also provide associated tender documents to supplement the tender notice, which will give more detail regarding the procurement.
47. As with the open procedure, the tender notice is the first formal step in the procedure, but in the competitive flexible procedure it can be used in two different ways:
  - a. to invite suppliers to submit a request to participate in the procedure; or
  - b. to invite suppliers to submit their first, or only, tender.
48. Section 12 of the Act requires that contracting authorities must have regard to the importance of “sharing information for the purpose of allowing suppliers and others to understand the authority’s procurement policies and decisions”. This is particularly relevant during the carrying out of a competitive flexible procedure.
49. The information provided in the tender notice and any associated tender documents at the outset of a competitive flexible procedure must be sufficiently clear and specific to enable suppliers to identify the nature and scope of the requirement, and decide whether to submit a request to participate or, where no such invitation is made, to submit a tender. If a contracting authority is relying on associated tender documents (in addition to the tender notice) in order to meet this requirement to provide sufficient information, this would mean that the contracting authority would need to provide the associated tender documents at the same time as the tender notice.
50. The contracting authority may continue to update, and provide fuller information in, the associated tender documents as the procurement progresses, particularly in circumstances where certain elements to be included in the final documents may necessarily depend on the outcomes of previous negotiations or dialogue. The key requirement to bear in mind under section 21(5) of the Act is, as stated above, that tenders cannot be invited as part of a competitive tendering procedure unless the tender notice or associated tender documents provide sufficient information to allow suppliers to prepare their tenders.
51. Where an associated tender document is being, or may be, provided after the publication of the tender notice, the Procurement (Wales) Regulations 2024 (the regulations) allow a contracting authority to provide a link in the tender notice to the web page where that additional associated tender document will be provided,



or to provide an explanation of how that document will be provided. For example, a contracting authority may set out in the tender notice that additional associated tender documents will be issued to suppliers at certain stages during the negotiation process.

52. In order to provide as much transparency of the tendering process as possible, not just to suppliers who remain in the process, but also to other interested parties, where additional information is provided after the deadline for submitting a request to participate in, or where there has been no invitation to submit such request, the deadline for submitting a first or only tender, it is advisable to update the published tender notice with any additional associated tender documents as these are released during the procedure.

### Exclusions in a competitive flexible procedure

53. As set out above, section 26 of the Act provides that in all competitive tendering procedures, a contracting authority must consider whether a supplier is an excluded or excludable supplier before assessing which tender best satisfies the award criteria. Section 27 of the Act deals specifically with excluding suppliers in a competitive flexible procedure and requires the contracting authority to check if a supplier is an excluded or excludable supplier before permitting it to participate in a competitive flexible procedure. If the supplier is an excluded supplier, it must not be allowed to participate in the procedure. If it is an excludable supplier, a contracting authority may choose to exclude it.
54. If a supplier becomes an excluded supplier during the course of a competitive flexible procedure, a contracting authority must exclude it from progressing further in accordance with section 27 of the Act. If a supplier becomes an excludable supplier during the course of a procedure, a contracting authority may exclude it from progressing further.
55. A contracting authority must therefore check exclusions at the start of the procedure and prior to assessment of final tenders. Where there are multiple stages in a competitive flexible procedure, contracting authorities should also consider exclusions (and take appropriate action) at key points such as when undertaking an 'intermediate assessment of tenders' (which is an assessment of tenders other than final tenders (see section 20(6) of the Act)).

### Limiting the number of suppliers in a competitive flexible procedure

56. In a competitive flexible procedure, references to a 'request to participate' refers to where a supplier, in response to a tender notice, registers its interest in participating in the procurement. A contracting authority will invite requests to



participate when its intention is to limit the number of suppliers that are invited to submit tenders. The reasons to limit the number of suppliers that submit tenders and create a shortlist may include:

- a. to remove those not meeting the conditions of participation or only select a set number of the highest ranking suppliers, in order to keep the procurement administratively manageable and to ensure only suppliers with the relevant, or best, capacity and ability to perform the contract participate. This may be, for example, where preliminary market engagement or the contracting authority's market knowledge suggests that the number of tenders received may be high;
- b. because the requirement is complex and inappropriate for a single-staged open procedure;
- c. because the nature of the procurement means that the cost of preparing tenders or assessing all tenders submitted may be excessive for the contracting authority and/or the suppliers; or
- d. to ensure that suppliers are motivated to tender when the level of competition is extremely high and suppliers may be reluctant to tender due to the low likelihood of success.

57. It should be noted that reducing the number of suppliers participating in a procedure can act as a barrier to start-ups and new entrants, who may have a suitable solution but lack a track record because they are new to a sector. When setting the conditions of participation (or indeed in all aspects of carrying out the procedure), in order to comply with section 12 of the Act, a contracting authority must have regard to the fact that SMEs may face particular barriers to participation, and consider whether such barriers can be removed or reduced. Therefore, careful consideration should be given to the conditions of participation used to limit the number of suppliers that progress in a competitive flexible procedure in order to reduce the risk of removing suppliers who may have a good solution but limited record. Preliminary market engagement will help quantify this risk.

58. If a supplier does not satisfy the conditions of participation, a contracting authority may choose to prevent them from participating or progressing in a competitive flexible procedure. However, it may be the case that whilst a supplier cannot meet the conditions of participation (or a particular condition) on initial assessment, it can demonstrate that it will be able to do so at a later stage and before the award of the contract. In this scenario a contracting authority may decide (but is not required) to allow the supplier to participate or progress in the procedure with the requirement that it will, if successful, fulfil the conditions before the award of the contract. If the contracting authority decides to allow the supplier to participate or progress in the procedure, it should be mindful of the requirement for equal treatment in section 12 of the Act. If a contracting authority thinks it is likely to exercise its discretion in this way, it is recommended that this



is set out in the tender notice and any associated tender documents so that suppliers are aware of this possibility when deciding whether or not to tender. A supplier must meet all of the conditions of participation to be awarded the contract.

59. If the contracting authority sets a maximum number of suppliers to participate or progress in any stage in a procedure, it must set out in the tender notice the objective criteria to be used to determine which suppliers will be invited to participate or progress.
60. If the contracting authority sets out that a minimum number of suppliers should participate or progress in any stage in a procedure and fewer than the intended minimum number of suppliers remain at that stage, the contracting authority may continue to proceed with those suppliers that do remain.
61. In all cases, the number of suppliers that participate or progress should be sufficient to ensure genuine competition. The Act does not set out a minimum numbers of suppliers as the minimum number appropriate to ensure genuine competition will vary based on matters such as:
  - a. the nature and complexity of the contract;
  - b. the number of suppliers likely to be interested in participating or progressing; and
  - c. the length and complexity of the procedure, including whether it includes any dialogue or negotiation stage.
62. However, it is suggested that, provided sufficient suppliers have expressed an interest to participate, the contracting authority should invite at least five suppliers to progress where the procedure is straightforward with no dialogue or negotiation. Where the procedure is more complex and will include extensive dialogue or negotiation, it is suggested that at least three suppliers are invited to progress. Given the scope for numerous variances in the design of the competitive flexible procedure and in individual contracting authorities' requirements, one size does not fit all.
63. The contracting authority should ensure timely notification to suppliers as the procedure progresses, especially where it is determined that a supplier will not participate or progress further in the procedure, for example when limiting the number of suppliers following their assessment against conditions of participation or following an intermediate assessment of tenders. In the event a supplier is excluded from the procedure, or its tender disregarded, notification to the





supplier should include an explanation for the decision, having regard to section 12(1)(c) and (d) of the Act.

64. When a supplier's tender is an 'assessed tender' as defined in section 50(5)<sup>2</sup>, of the Act, a contracting authority is required to provide an assessment summary to the supplier. If a procedure includes numerous tendering rounds with intermediate assessments of tenders, contracting authorities should inform suppliers as soon as reasonably possible if they are not being taken forward in the procedure. Contracting authorities are advised to use the same feedback structure for intermediate rounds as will be provided for assessed tenders as the assessment summary structure has been designed to ensure suppliers receive a robust explanation for their scores, having regard to section 12(1)(c) and (d) of the Act. When preparing notifications to suppliers who have not submitted assessed tenders, contracting authorities should aim to provide the appropriate level of detail for the stage in the procedure at which the supplier was excluded. Where a suppliers bid is disregarded during an intermediate assessment, there is no requirement to also provide a copy of the assessment summaries of the suppliers who did progress to the next stage of the process.

### What are the primary notices linked to competitive tendering procedures?

65. A competitive tendering procedure may have been the subject of a pipeline notice, a preliminary market engagement notice and/or a planned procurement notice before it commenced.
66. As set out previously, the key notice in a competitive tendering procedure is the tender notice, which commences the procedure. As well as being used as either an invitation to tender or as an invitation for suppliers to submit a request to participate in the procedure, it is used to notify the market of a modification to the terms of procurement.
67. The regulations specify certain information that a contracting authority must include in a tender notice. For all competitive tendering procedures, where relevant, this must include (in accordance with regulation 20):
- a. whether one of the shorter minimum tendering periods set out in the table in section 54 of the Act applies and, if so, which circumstance in the table applies (for example, if a qualifying planned procurement notice has been published, the tender notice must include the unique identifier used for that notice in order to link the tender notice to that same procurement procedure);

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<sup>2</sup> An assessed tender is a tender that was assessed for the purpose of determining the most advantageous tender under section 19(1) and was not disregarded.



- b. a description of any technical specifications which are expected to be met or a cross reference to where they may be accessed;
  - c. a description of any conditions of participation to be met. Note that for public contracts, contracting authorities will need to follow the requirements of regulation 6 in respect of core supplier information and should set out in the tender notice that suppliers will be required to submit their core supplier information through the platform at a relevant point in the procedure (for example when they submit their request to participate or their tenders). This will ensure that suppliers know where to register and complete their profiles. Refer to guidance on publication of information for further details about supplier information;
  - d. whether a contracting authority intends to use an electronic auction and, if so, a description of that process.
  - e. any payment terms that are in addition to the implied payment terms set out in section 68 of the Act. The contracting authority may wish to set out in the tender notice any time period that is less than 30 days to apply to contracting authority payments to suppliers, the process for submission of invoices and the process for dealing with disputed invoices (although this level of detail is not required by the Act or regulations);
  - f. where the public contract is awarded by reference to lots, whether a supplier may only submit a tender for a maximum number of lots and, if so, the maximum number; whether a supplier may only be awarded a maximum number of lots and, if so, the maximum number; and whether the contracting authority will award multiple lots to the same supplier in accordance with certain criteria and, if so, a summary of the objective mechanism (see section 23(4) of the Act for the setting of award criteria for the assessment of tenders by reference to lots);
  - g. except in the case of a utilities contract or a light touch contract, where the contracting authority considers that the public contract could be awarded by reference to lots but it is not, the reasons for this;
  - h. the award criteria or a summary of the award criteria;
  - i. how tenders or requests to participate may be submitted and the date by when they must be submitted;
  - j. if contracting authorities think it might wish to rely on the 'Materialisation of a known risk' ground in paragraph 5 of Schedule 8 of the Act to make any future modifications to a contract awarded under the competitive tendering procedure, the known risks. See the guidance on contract modifications.
68. When using the competitive flexible procedure, in addition to the information above, the tender notice must also include:



- a. where the contracting authority intends to select a limited number of suppliers during the procedure, the criteria that will be used to select them;
- b. where the contracting authority intends to select a minimum number of suppliers, the intended minimum number of suppliers;
- c. where the contracting authority is procuring under a dynamic market (and therefore restricting supplier participation to those on the relevant dynamic market or part of the dynamic market) details of the dynamic market or part of the dynamic market;
- d. a description of the process to be followed during the procedure, including whether the procedure may include negotiation at any stage, and whether the award criteria will be refined during the procedure;
- e. whether the tender notice is being used:
  - i. to reserve a contract to supported employment providers in accordance with section 32 of the Act; or
  - ii. to reserve a contract to public service mutuels in accordance with section 33 of the Act.

69. See the guidance on frameworks and dynamic markets for additional guidance on using the tender notice in those cases.

70. See the guidance on publication of information, for information that needs to be included in notices generally and how to redact or withhold information that is permitted to be withheld or redacted under the Act.

### What other guidance is of particular relevance to this topic area?

71. The content in this guidance has significant overlaps with other topic areas. The following guidance documents provide further detail on these key areas and should be read in conjunction with this guidance:

- Guidance on assessing competitive tenders
- Guidance on conditions of participation
- Guidance on exclusions
- Guidance on modifying a competitive procurement

### Other relevant guidance includes:

- Guidance on covered procurement objectives
- Guidance on preliminary market engagement
- Guidance on lots
- Guidance on time period

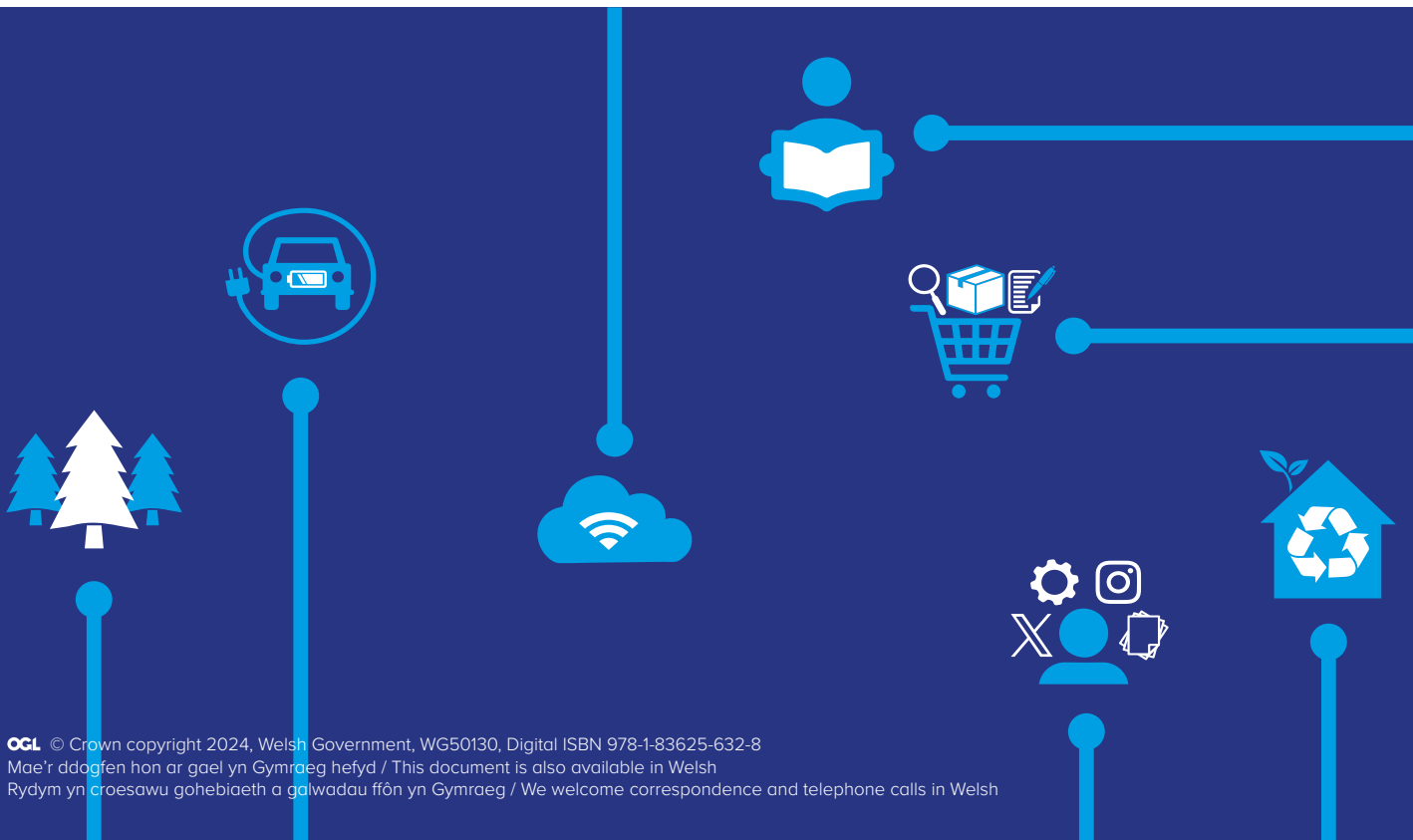


Llywodraeth Cymru  
Welsh Government

# Guidance

## Lots

September 2024





## Guidance: Lots

### What are lots?

1. Lots are a way to split a larger single procurement into smaller 'chunks' which are then procured under separate contracts with different suppliers (some suppliers may be successful in more than one lot and may be awarded more than one contract). There are potentially significant benefits of doing this, including risk reduction in the supply chain (for example, by having multiple suppliers for a similar service in different geographical areas or multiple sources for a particular good or service reducing the risk of supplier failure) and maintaining the long-term viability and diversity of the supply market through the award of a higher number of contracts.
2. Additionally, using lots might encourage small and medium-sized enterprises (SMEs) to bid; for example, they may find it easier to tender for or deliver smaller contracts, or smaller parts of larger contracts. This can support innovation, value for money, economic growth and potential expansion of the supplier base for that market.

### What is the legal framework that governs lots?

3. The Procurement Act 2023 (the Act) makes provisions in relation to lots at section 18 (Duty to consider lots), section 20 (Competitive tendering procedures) and section 23 (Award Criteria). These are supported by various provisions in the Procurement (Wales) Regulations 2024 (the Regulations).

### What has changed?

4. The requirement to consider lots is strengthened by the specific SME duty at section 12 of the Act because, as mentioned above, the use of lots is likely to be of particular benefit to SMEs and may serve to reduce some of the barriers mentioned in section 12(4).
5. Contracting authorities are required by the Act to provide information related to the use (or otherwise) of lots as applicable in the Act's new transparency notices as set out in the regulations. This includes the tender notice, the contract award notice and the contract details notice.
6. There is no longer specific detailed provision on the valuation of contracts that are to be split into lots (such as those at regulation 6(11-15) of the Procurement Contracts Regulations 2015) but this change is not intended to have a practical



effect: contracts must still be valued by aggregating the total value of all the lots, as the provisions at Schedule 3, paragraph 4 of the Act make clear.

## Key points and policy intent

7. Before publishing a tender notice for a public contract, the contracting authority is required by section 18 of the Act to consider whether the goods, works or services could reasonably be supplied under more than one contract and if these contracts could appropriately be awarded by reference to lots.
8. Lots might be particularly useful for commodity purchases or for straightforward service contracts. An example of the latter could be where a contracting authority is looking to put in place provision for cleaning services at different sites across the country. The requirements for each site are similar in nature; they all require office and window cleaning services, but there are variances for different locations, for example, enhanced security, catering cleans and additional gym cleaning for certain sites. As office cleaning is a generic service with a large number of suppliers able to deliver the service, the initial plan may be to award a single contract for all sites to a large nationwide supplier in order to benefit from economies of scale and secure value for money. However, the contracting authority may also want to consider other factors such as supporting SMEs or ensuring resilience across the supply chain to avoid over-dependency on one supplier. This may mean that choosing to divide the procurement into lots based on geographical area is a more appropriate solution, allowing smaller suppliers to better compete against larger suppliers where only one location is involved and at the same time improving resilience in the supply chain.
9. That said, section 18 provides that even if the procurement could reasonably be split into lots, it does not have to be split if the contracting authority can provide reasons for not doing so.
10. Section 18 does not prescribe a list of reasons contracting authorities could rely upon as their rationale for not using lots; any such reasons will be procurement specific. The contracting authority must, however, have regard to the procurement objectives in section 12 when determining their reasons for not using lots. Of particular relevance are the objectives related to delivering value for money and acting and being seen to act with integrity. In addition, section 12(4) requires contracting authorities to have regard to the fact that SMEs may face barriers to participation and consider whether such barriers can be removed or reduced. Dividing a procurement into lots may be one way of reducing or removing any such barriers.
11. Possible reasons for choosing not to split the procurement into lots may include where this could increase technical risk to delivery of the requirement or where



having different suppliers could undermine the contract liability and/or management or make the requirement disproportionately expensive to manage. It may be helpful to use pre-market engagement to test the market and understand the supplier base which may inform the decision on the appropriateness of dividing the contract into lots.

12. In terms of providing reasons for not splitting a procurement into lots, for contracts other than light touch contracts and utilities contracts, regulations 19(2)(q) and 20(2)(a) of the Regulations require that these are set out in the tender notice. For light touch contracts and utilities contracts the reasons may be included in the tender notice or the contracting authority may keep its own record.
13. Section 20(7) of the Act, allows contracting authority running a competitive tendering procedure to limit the number of lots any one supplier can tender for. If the contracting authority intends to do this they must state the maximum number in the tender notice.
14. The contracting authority will set out in the tender notice (and if applicable supplemented by the tender documents) the award criteria for each lot. Provided that the tender satisfies the contracting authority's requirements, the award criteria will determine which lots will be awarded to a supplier based on the most advantageous tender per lot.
15. The contracting authority may decide that it wants to limit the number of lots one supplier can be awarded, in which case, the maximum number of lots and the criteria by which it will be decided which of the lots a supplier will be awarded must be set out in the tender notice and/or associated tender documents. The contracting authority must state in the tender notice or associated tender documents if it wants to include options such as to combine lots into a single contract if a supplier wins multiple lots.
16. If a contracting authority does not receive any suitable requests to participate or tenders for one of the lots, it may switch to direct award for that lot (only) in accordance with section 43 of the Act. It may also choose to decide not to award a contract for one or more separate lots for any reason; in which case this decision must be recorded in the 'ceased lots' field in the contract award notice. In both circumstances, other lots may be awarded competitively as intended.



## What notices are linked to this aspect of the Act?

17. Tender notice - This is the key notice with regard to lots; the regulations require the contracting authority to state in the notice whether or not the contract will be split into lots. If it is, the contracting authority must also provide information related to the lots to be awarded. This will include information such as: a description of each lot and whether a supplier may only submit a tender for or be awarded a maximum number of lots (and, if so, the maximum number). As stated above, for contracts other than utilities and light touch contracts, the tender notice must contain the reasons for not splitting the contract into lots where it would be reasonable and appropriate to do so.
18. Contract award notice - A contracting authority must publish a contract award notice before entering into a public contract, which would include a public contract awarded for a lot. Regulation 28 of the Regulations sets out the information that must be included in the contract award notice, which includes information about the public contract to be awarded, including information relating to any lot. The contracting authority may wish to publish a single contract award notice for a number of lots, for example if more than one lot was awarded to a single supplier or if multiple lots are being awarded at the same time.
19. If a contracting authority decides that it no longer wishes to award a lot, it must use the 'ceased lots' field in the contract award notice to let the market know that this is the case.
20. Prior to the contract award notice being published, contracting authorities must provide an assessment summary to all suppliers that submitted an assessed tender for the lot (see the guidance on assessment summaries for more information).
21. Contract details notice - The contracting authority must publish a contract details notice for each public contract. Regulation 33(2)(j) of the Regulations includes requirements in relation to lots that must be included in that notice, where relevant, including a description of the goods, services or works which will be supplied under the lot and the estimated value of each lot.

## What other guidance is of particular relevance to this topic area?

- Guidance on covered procurement objectives
- Guidance on preliminary market engagement
- Guidance on valuation of contracts
- Guidance on competitive tendering procedures
- Guidance on assessing competitive tenders





- Guidance on assessment summaries
- Guidance on the contract award notice and standstill
- Guidance on the contract details notice



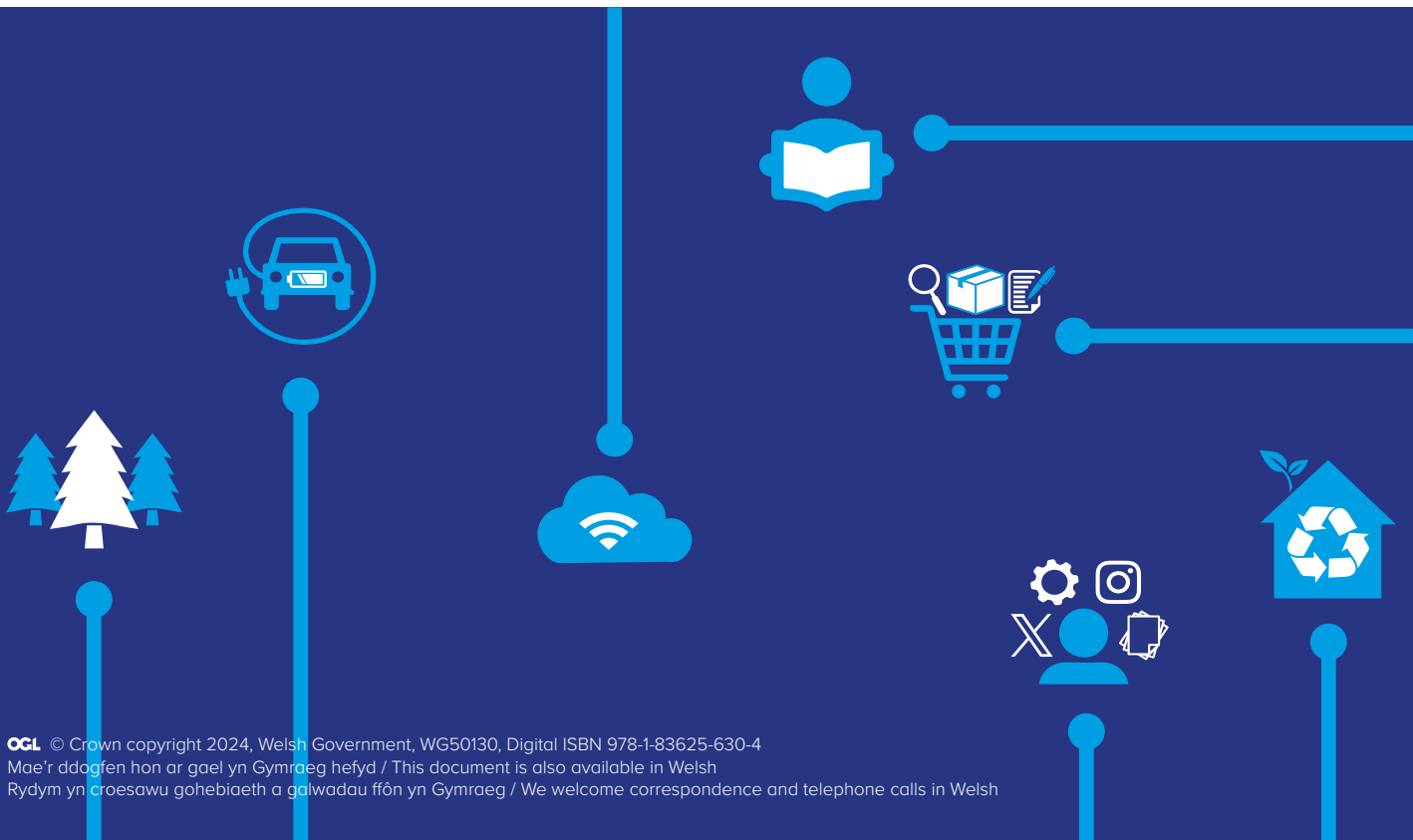


Llywodraeth Cymru  
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# Guidance

## Conflicts of Interest

September 2024





## Guidance: Conflicts of Interest

### What are conflicts of interest?

1. The Procurement Act 2023 (the Act) requires contracting authorities, when carrying out a 'covered procurement', to have regard to a number of objectives, which include acting, and being seen to act, with integrity (section 12(1)(d) of the Act). The integrity of a procurement may be compromised if it is influenced by external or private interests. Alongside the procurement objectives, the Act includes specific provisions dealing with conflicts of interest when carrying out a covered procurement (Part 5 of the Act).
2. A conflict of interest arises in a procurement context where there is a conflict between the interests of a person acting in relation to a procurement and those of the procurement itself.
3. Conflicts of interest need to be managed effectively to ensure that the public can trust contracting authorities to carry out public procurement responsibly and impartially. It also helps to encourage suppliers to participate in procurements, providing confidence that they will be treated fairly and that there will be genuine competition. When conflicts of interest are not identified and effectively mitigated, there can be far-reaching consequences. It can lead to accusations of fraud, bribery and corruption, legal challenges and the undermining of public confidence in the integrity of public institutions.
4. The Act requires contracting authorities to identify and keep under review actual and potential conflicts of interest. They must also mitigate conflicts of interest and address circumstances which the contracting authority considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest ('perceived conflict of interest').
5. This guidance provides an explanation of the provisions in the Act and advice for contracting authorities on how to comply with the Act. A new Welsh Procurement Policy Note on managing conflicts of interest in procurements is also planned to be published. This will replace the conflicts content in the UK Government guidance accompanying Procurement Policy Note 04/21: Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing, which was adopted by the Welsh Government.



## What is the legal framework that governs conflicts of interest?

6. The provisions in the Act relating to conflicts of interest, and therefore this guidance, apply to any covered procurement. The main provisions on conflicts of interest are set out in sections 81-83 of the Act.
7. The requirements in the Act sit alongside other considerations, such as:
  - a. prosecution for fraud, bribery, corruption through abuse of position or misconduct in public office if conflicts are not managed appropriately;
  - b. the fact that bias or apparent bias in decision making could be grounds for judicial review;
  - c. public office-holders being subject to the Seven Principles of Public Life (the Nolan Principles) and various ethical codes of standards (for example, the Civil Service code, Civil Service management code, the Ministerial Code and business appointment rules); and
  - d. other relevant internal business or organisational rules.

## What has changed?

8. The Act retains the basic nature of the obligations from the previous legislation<sup>1</sup>, but strengthens the requirements with some important changes. The Act retains an approach based on principles rather than prescriptive rules, but there are some important changes:
  - a. The Act introduces a requirement for contracting authorities to formally prepare a conflicts assessment and to publicly confirm that this has been done and that it has been reviewed and revised as necessary. The Public Contracts Regulations 2015 (PCR), Utilities Contracts Regulations 2015 and Concession Contracts Regulations 2016 required contracting authorities to take appropriate steps to identify conflicts of interest and, for contracts procured under the PCR, regulation 84(1)(i) required the inclusion of any conflicts of interest detected and subsequent measures taken in the procurement report. The Act goes further in formalising this with greater transparency and record-keeping.
  - b. Under the Act it is mandatory to exclude a supplier from the procurement where a conflict of interest puts the supplier at an unfair advantage if steps cannot be taken to avoid that advantage or the supplier refuses to take any necessary steps. Regulation 57(8)(e) of the PCR included a discretionary exclusion ground when the conflict could not be effectively remedied by other, less intrusive, means, although contracting authorities may, in certain

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<sup>1</sup> See regulations 24 and 84 of the Public Contracts Regulations 2015 (PCR), regulation 42 of the Utilities Contracts Regulation 2015, and regulation 35 of the Concession Contracts Regulations 2016.



circumstances, have chosen to exclude suppliers in order to ensure compliance with equal treatment. (This was not included in other previous legislation.)

- c. The Act clarifies that Ministers may have a conflict of interest. This is because Ministers can have an influence on procurement decisions. By specifying Ministers in the Act, it helps ensure that conflicts of interests are considered at all levels. Ministers, of course, will not be involved in every procurement.
- d. The Act provides that suppliers may be required to take certain steps to mitigate a conflict of interest and will be excluded if they refuse to do so. This is because suppliers are expected to meet the highest standards of integrity in the supply and delivery of goods, services and works and to operate with openness and transparency.
- e. The Act makes it clear that managing conflicts of interest is required throughout the procurement lifecycle. It begins at the planning stage, prior to the publication of a tender or transparency notice, or a dynamic market notice establishing a dynamic market, and continues throughout the procurement for the contract and management of the contract or dynamic market through to the end of the contract or dynamic market.

## Key points and policy intent

### Identifying conflicts of interest

9. Section 81(1) of the Act provides that contracting authorities must take all reasonable steps to identify, and keep under review, in relation to a procurement, any conflicts of interest, or potential conflicts of interest. Contracting authorities must also be aware of their obligations in relation to perceived conflicts of interest (see paragraph 20 below).
10. A 'conflict of interest' arises where there is an actual conflict of interest. For example, where a person assessing tenders in a procurement owns shares in a supplier that has submitted a tender. A 'potential conflict of interest' exists where a conflict of interest will arise in future if certain circumstances occur. For example, the spouse of someone who will be assessing tenders is the CEO of a business that is in the process of acquiring ownership of another company, and that company has recently submitted a tender. Section 81(4) of the Act defines an 'interest' as including a personal, professional or financial interest that may be direct or indirect.
11. The persons in respect of whom conflicts, or potential conflicts should be considered are:



- a. a person acting for or on behalf of the contracting authority in relation to the procurement; and,
  - b. a Minister acting in relation to the procurement.
12. A person acts 'in relation to' the procurement (and therefore should be considered) if they are in a position to influence a decision made by or on behalf of a contracting authority.
13. The following are examples of persons who may act in relation to a procurement and who may therefore be relevant when considering conflicts of interest: the senior responsible officer, the budget holder, the commercial director, members of the management board, commercial staff, people who will assess tenders, external experts, private sector secondees and consultants, non-executive board members, special advisers, private office employees and, as set out in section 81(2)(b) of the Act, Ministers.
14. The Act does not set out the specific steps that contracting authorities must take to identify a conflict or potential conflict of interests and this may vary depending on the circumstances. For example, it might be appropriate to take further steps in relation to individuals closely involved with the procurement and with a greater ability to influence its outcome. Contracting authorities may, for example:
  - a. require individuals to complete a conflicts of interest declaration specific to the procurement;
  - b. check pre-existing conflicts of interest declarations to see if they contain any relevant interests;
  - c. check existing public declarations or registers. This could be particularly relevant for Ministers; and
  - d. confirm with individuals and/or teams for the forthcoming procurement whether there are any relevant interests and if there are, requiring mitigation steps.

### Mitigating conflicts

15. Section 82 of the Act provides that contracting authorities must take all reasonable steps to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage in relation to a procurement. If a conflict of interest puts a supplier at an unfair advantage and this cannot be avoided, or the supplier refuses to take the steps required by the contracting authority to avoid it, the supplier must, in relation to the procurement:



- a. be treated as an excluded supplier for the purpose of assessing tenders under section 19 of the Act or directly awarding a contract under sections 41<sup>2</sup> or 43; and
  - b. not be allowed to participate or progress in any competitive tendering procedure.
16. Contracting authorities will need to consider what steps are reasonable to take under section 82(1) of the Act on a case by case basis, taking into account the nature of the conflict of interest, how it could impact an individual's duties and how it might impact the procurement. Examples of steps which might mitigate a conflict of interest are:
- a. reassigning individuals with a conflict or potential conflict of interest away from situations where they can influence decisions;
  - b. providing for more than one person to assess tenders and carrying out and recording moderation meetings;
  - c. cancelling and re-running the procurement;
  - d. including an independent observer in the procurement team;
  - e. ensuring that management with appropriate oversight is aware of the conflict of interest and that they review and sign-off outputs from the individual;
  - f. monitoring the situation and having checkpoints to review whether it has led to an unfair advantage or disadvantage for a supplier; and
  - g. sharing procurement and process information with all relevant suppliers in a timely manner and at the same time.
17. Contracting authorities may employ or engage individuals with a variety of career experience, external interests and networks which can be beneficial to the contracting authority and its commercial activities. The duty to mitigate conflicts of interest does not mean that a person cannot have legitimate private interests. Instead, contracting authorities must take all reasonable steps to ensure that the legitimate private interest of the person are balanced with the need to ensure that decision making operates in the interests of the procurement rather than the private interests, for example, ensuring that a conflict of interest does not lead to a supplier having an unfair advantage or disadvantage.
18. Section 82(2) of the Act provides that the steps taken by contracting authorities to mitigate a conflict of interest can include a contracting authority requiring a supplier to take reasonable steps. For example, if a consultancy firm is advising

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<sup>2</sup> In exceptional circumstances, section 41 allows a contracting authority to award a public contract directly to an excluded supplier if it considers there is an overriding public interest in doing so. In this scenario a contracting authority must still take all reasonable steps to mitigate the conflict of interest and comply with section 83 in relation to a conflicts assessment.



the contracting authority on a procurement, the contracting authority could require a supplier not to use the same company to assist with its tender. It is in the interests of the supplier to comply with any requirement to take reasonable steps, otherwise the supplier must be treated as an excluded supplier and excluded from the procurement if the conflict of interest cannot otherwise be avoided (see paragraph 15 above (section 82(3) and (4) of the Act).

## Conflicts assessments

19. Section 83(1) of the Act provides that a conflicts assessment must be prepared before publishing a tender or transparency notice or dynamic market notice relating to the establishment of a dynamic market. The Procurement (Wales) Regulations 2024 also provides that a conflicts assessment must also be prepared before publishing a dynamic market modification notice.
20. A conflicts assessment is a record to be kept by the contracting authority which must include (as required by section 83(3) of the Act) details of the conflicts or potential conflicts of interest identified and any steps taken, or to be taken, to mitigate them. Section 83(4) of the Act requires that if a perceived conflict of interest exists, the contracting authority must also include in the conflicts assessment details of any steps that the contracting authority has taken or will take to demonstrate that a conflict or potential conflict does not exist. As set out at paragraph 4, a perceived conflict of interest is where there are circumstances which the contracting authority considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest. Contracting authorities should be mindful, in carrying out a procurement, how circumstances might appear to others, even if they consider there are no conflicts or potential conflicts of interest. Compliance with this obligation will help contracting authorities to allay any concerns that a conflict exists when it does not.
21. Conflicts assessments will need to be handled in accordance with relevant data protection legislation. Whilst the Act allows for the structure and format of the conflicts assessment to be governed by the contracting authority, it would be good practice and would help demonstrate compliance with section 83(3) of the Act to include the following information:
  - a. individuals and/or teams relevant to the procurement and their roles;
  - b. how individuals/teams are relevant to the procurement;
  - c. whether the required conflicts of interest information or declaration has been received;
  - d. whether any actual, potential or perceived conflicts have been identified (and the details of the conflict);
  - e. mitigation steps;





- f. whether, following any mitigation, a supplier remains at an unfair advantage or disadvantage; and
  - g. when the conflicts assessment was last reviewed and the next planned review.
22. Sections 83(5) and 83(6) of the Act provide that until the contracting authority has (as relevant) given notice of its decision not to award a contract or published a contract termination notice in relation to the procurement or a dynamic market notice in relation to the market ceasing to operate<sup>3</sup>, it must, in relation to the conflicts assessment:
- a. keep it under review;
  - b. revise it as necessary; and
  - c. when publishing any 'relevant notice', confirm that it has been prepared and revised in accordance with section 83 of the Act. This does not mean that the actual conflicts assessment must be published, just confirmation that it has been prepared and revised. Section 83(8) of the Act provides that the relevant notices are:
    - i. a tender notice;
    - ii. a transparency notice;
    - iii. a dynamic market notice in relation to the establishment of a dynamic market;<sup>4</sup>
    - iv. a contract details notice relating to a public contract; or
    - v. a contract change notice.
23. Whilst other notices (for example a preliminary market engagement notice or contract award notice) could be used by contracting authorities as a prompt to review their conflicts assessment, there is no requirement under the Act to confirm in such notices that the assessment has been prepared and revised.
24. It is good practice for contracting authorities to set a time to audit their conflicts assessments to confirm they are up to date. In addition to a planned review, the conflicts assessment should be updated when there are key changes in personnel or the contract (for example, where a contract is amended and a contract change notice is not required). This is particularly relevant where, after the contract is entered into, the contracting authority reassigns the responsibility

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<sup>3</sup> For private utilities, reflecting that certain notice requirements do not apply to them, section 83(7) sets out equivalent circumstances.

<sup>4</sup> There is no obligation under the Act for contracting authorities to include confirmation that a conflicts assessment has been prepared and revised when a dynamic market is modified. However, contracting authorities establishing and operating the dynamic market must still keep any conflicts assessment under review and revise the assessment as necessary.



for the contract from a procurement team to a contract management or operations team.

### [Below-threshold procurements](#)

25. The conflicts of interest provisions in the Act do not apply to below-threshold procurements. However, the underlying principles are nonetheless likely to be relevant and appropriate. Contracting authorities and individuals involved in below-threshold procurements will still be liable to, for example, prosecution for fraud, bribery, corruption through abuse of position or misconduct in public office if conflicts are not managed appropriately. Relevant public service codes and internal business rules must still be upheld. A proportionate approach to conflicts of interests assessment is therefore good practice in below-threshold procurements.

### [What other guidance is of particular relevance to this topic area?](#)

- [Guidance on covered procurement objectives](#)
- [Guidance on publication of information](#)

### [Where can I go for more information or training?](#)

[Civil Service Code](#)

[Civil Service Management Code](#)

[Civil Service Business Appointment Rules](#)

[Ministerial Code](#)

[The Seven Principles of Public Life](#)

## 12.4

### **Procure**

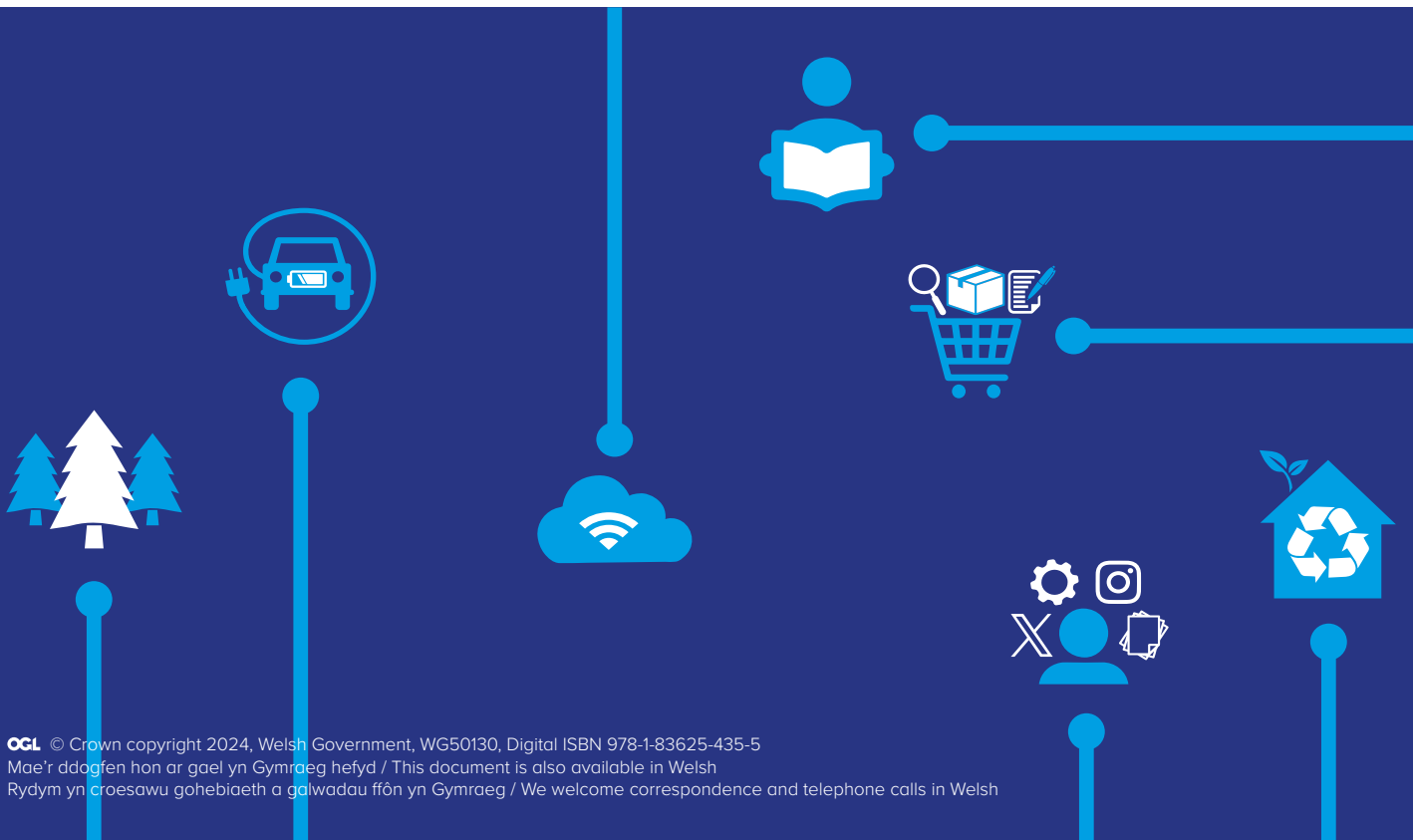
- 12.4.1 Time periods (published)
- 12.4.2 Conditions of participation (Published)
- 12.4.3 Exclusions (not yet published)
- 12.4.4 Debarment (not yet published)
- 12.4.5 Assessing competitive tenders (Published)
- 12.4.6 Electronic communications (Published)
- 12.4.7 Modifying a competitive procurement (published)
- 12.4.8 Procurement termination notice (Published)
- 12.4.9 Key Performance Indicators (Published)
- 12.4.10 Assessment summaries (Published)
- 12.4.11 Contract award notices and standstill (Published)
- 12.4.12 Contract details notices and contract documents (Published)
- 12.4.13 Oversight (not yet published)
- 12.4.14 Remedies (Published)



Llywodraeth Cymru  
Welsh Government

# Guidance Time Periods

July 2024





## Guidance: Time Periods

### What are time periods and why is it important to regulate them?

1. The Procurement Act 2023 (the Act) specifies certain minimum time limits, which a contracting authority must comply with during a competitive tendering procedure. The Act also sets out the considerations that apply in setting time periods more generally.
2. As well as ensuring that suppliers have reasonable time to prepare, for example, for the submission of tenders, the minimum time limits set out in the Act ensure compliance with the UK's international obligations on public procurement.

### What is the legal framework that governs time limits during a procurement?

3. Section 54 (Time limits) provides the minimum time limits to be set by contracting authorities in different circumstances.

### What has changed?

4. The rules relating to 'participation periods' and 'tendering periods' are largely unchanged from the previous legislation. In the Act, they are consolidated into a single section rather than referenced in different places in the legislation.

### Key points and policy intent

5. There are mandatory minimum time periods that must be provided for in a competitive tendering procedure. There are no set maximum time periods. In designing the procurement timetable, a contracting authority must find an appropriate balance which gives suppliers sufficient time to prepare and takes into account, where relevant, matters such as the complexity of the contract (see paragraph 7 below).
6. The tables in section 54(3) and (4) set out the mandatory minimum time periods that apply in different circumstances. Broadly, the minimum time periods are reduced where there is a state of urgency, or if suppliers are already aware of the impending procurement via publication of a 'qualifying planned procurement notice' (see paragraph 20(d) below); or in specific circumstance, such as when it is a light touch contract or when a dynamic market is being utilised etc. Minimum



periods are longer if tenders cannot be submitted electronically or if associated tender documents are not provided at the same time as the tender notice.

7. In addition to compliance with the minimum time periods for participation and tendering, there are other situations where contracting authorities have an obligation to consider setting reasonable time limits. For example, when undertaking preliminary market engagement, directly awarding a contract or making a modification to the terms of the procurement procedure. When setting any time limits for a procurement, contracting authorities must, where relevant, have regard to the factors in section 54(1):
  - a. the nature and complexity of the contract being awarded;
  - b. the need for site visits, physical inspections and other practical steps;
  - c. the need for sub-contracting;
  - d. the nature and complexity of any modification of the tender notice or any associated tender documents;
  - e. the importance of avoiding unnecessary delay.
8. The factors set out in section 54(1)(a)-(c) will be particularly relevant when inviting requests to participate or inviting tenders, and contracting authorities must consider whether allowing more time for suppliers to prepare and submit their responses is necessary, taking into account the relevant factors.
9. Section 54(1)(d) is relevant when making a modification to the tender notice or associated tender documents during the procedure, although other factors may also be relevant. Further information on modifications during a procedure can be found in the guidance on modifying a section 19 procurement.
10. In accordance with section 54(1)(e), contracting authorities must have regard to the importance of avoiding unnecessary delay. This could, for example, mean having all the tender documents prepared as early as possible, ready to be shared with suppliers at the same time as publication of the tender notice. Or not having significant gaps in the procedure, such as between receipt of requests to participate and issuing an invitation to tender. It may also mean responding quickly to clarification questions.
11. Any time limit set must be the same for all suppliers.
12. The contracting authority must also have regard to the procurement objectives when setting time limits. Of particular relevance is acting and being seen to act, with integrity, and the requirement to have regard to the fact that small and medium-sized enterprises may face particular barriers to participation and whether such barriers can be removed (for example, by providing a longer time period).



13. The participation and tendering periods can be reduced where the contracting authority considers there to be a state of urgency which means the usual minimum time period is impractical. 'State of urgency' is not a defined term in the Act and should only be used in exceptional circumstances; the decision to reduce the minimum time period must be based on an objective need for urgency and where following the usual time scales would have a genuine adverse effect. It should not be used as a way to 'catch up' following delays in the procurement.

## Participation period

14. In a competitive flexible procedure there may be a separate participation stage to limit the number of suppliers invited to participate further in the procedure (this is akin to a selection stage in the previous legislation).
15. The contracting authority will invite suppliers to submit requests to participate by publishing a tender notice, detailing the conditions of participation and any other criteria by which the number of suppliers may be limited<sup>1</sup>. The participation period starts with the day after a contracting authority invites requests to participate in a competitive flexible procedure and ending with the day by which those requests must be submitted.
16. Section 54(3) provides that in most cases a participation period of at least 25 days must be allowed for suppliers to submit requests. The only exceptions are:
  - a. where the contract is a light touch contract: there is no minimum participation period;
  - b. where the contracting authority considers there to be a state of urgency meaning a 25 day participation period is impractical: the minimum participation period may be reduced to 10 days.

## Tendering period

17. All competitive tendering procedures will include at least one tendering period. This is the period during which suppliers prepare their tenders.
18. In an open procedure, there will only be one tendering period and this will start following publication of the tender notice.
19. In a competitive flexible procedure, if the contracting authority has chosen not to have a separate participation period, the tender will be submitted in response to

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<sup>1</sup> See The Procurement (Wales) Regulations 2024, regulations 19 (Tender notices: open procedure) and 20 (Tender notices: competitive flexible procedure)



the tender notice and therefore the tendering period will again commence following publication of the tender notice. Where there is a separate participation period or multiple tendering rounds, tenders will be submitted in response to an invitation to tender sent directly to participating suppliers. In these circumstances, the tendering period starts with the day after a contracting authority invites the submission of tenders as part of a competitive tendering procedure and ends with the day by which tenders must be submitted.

20. Section 54(4) provides that the minimum tendering period will depend on the type of contract/circumstance as set out below:
  - a. No minimum tendering period for light touch contracts.
  - b. No minimum tendering period for utilities contracts or those awarded by non-central government authorities (such as local authorities) where there is a negotiated tendering period. This will be the situation where only pre-selected suppliers are invited to tender and a tendering period is agreed between the contracting authority and those pre-selected suppliers. A pre-selected supplier is defined in section 54(5) as a supplier that (i) has been assessed as satisfying conditions of participation before being invited to submit a tender, or (ii) is a member of a dynamic market where the contract is being awarded under that dynamic market.
  - c. 10 day minimum tendering period for utilities contracts or those awarded by non-central government authorities where only pre-selected suppliers are invited to tender (and they have not agreed to a shorter time period for submitting tenders).
  - d. 10 day minimum tendering period where a qualifying planned procurement notice has been published. A qualifying planned procurement notice is a planned procurement notice that is published at least 40 days and no more than 12 months before the tender notice. See the guidance on the planned procurement notice for more information.
  - e. 10 day minimum tendering period where the contracting authority considers there to be a state of urgency meaning any other applicable minimum tender period is impractical.
  - f. 10 day minimum tendering period if the contract is being awarded under a dynamic market.
  - g. 25 day minimum tendering period where tenders are submitted electronically and all of the associated tender documents are provided at the same time as the tender notice.
  - h. 30 day minimum tendering period where tenders are submitted electronically but not all of the associated tender documents are provided at the same time as the tender notice.
  - i. 30 day minimum tendering period where tenders are not submitted electronically but all of the associated tender documents are provided at the same time as the tender notice.





- j. 35 day minimum tendering period where tenders are not submitted electronically and all of the associated tender documents are not provided at the same time as the tender notice.
21. Where there are multiple tendering rounds, it is expected that the minimum tendering period will apply to each tendering round, unless the contracting authority considers further tenders to simply be updates to previously submitted tenders (for example as an outcome of negotiations). In this case it is expected that a reasonable time limit is set, which is the same for all suppliers, having regard to the factors set out in section 54(1).
22. In accordance with section 96 (electronic communications), the contracting authority must, as far as practicable, communicate with suppliers electronically (and take steps to ensure that suppliers participating in the procurement communicate electronically) (see guidance on electronic communications).
23. The requirement in section 96 extends to allowing for electronic submission of tenders unless it is not practicable. Electronic submission may not be practicable because, for example:
- a. the specialised nature of the procurement means the use of electronic means of communication would require specific tools, devices or file formats that are not generally available or supported by generally available applications;
  - b. the applications supporting file formats that are suitable for the description of the tenders use file formats that cannot be handled by any other open or generally available applications or are under a proprietary licensing scheme and cannot be made available for downloading or remote use by the contracting authority;
  - c. the submission of physical or scale models is required;
  - d. some or all of the tender is above the security classification that can be sent electronically.

## What notices are linked to this aspect of the Act?

### Planned procurement notice

24. Publication of the planned procurement notice may take place at any time before publication of the tender notice. If publication of this notice is a qualifying planned procurement notice (see paragraph 20(d) above), the contracting authority may reduce the minimum tendering period to ten days.



## Tender notice

25. Publication of the tender notice formally initiates the procedure and invites suppliers either to submit requests to participate or submit a tender.

### What other guidance is of particular relevance to this topic area?

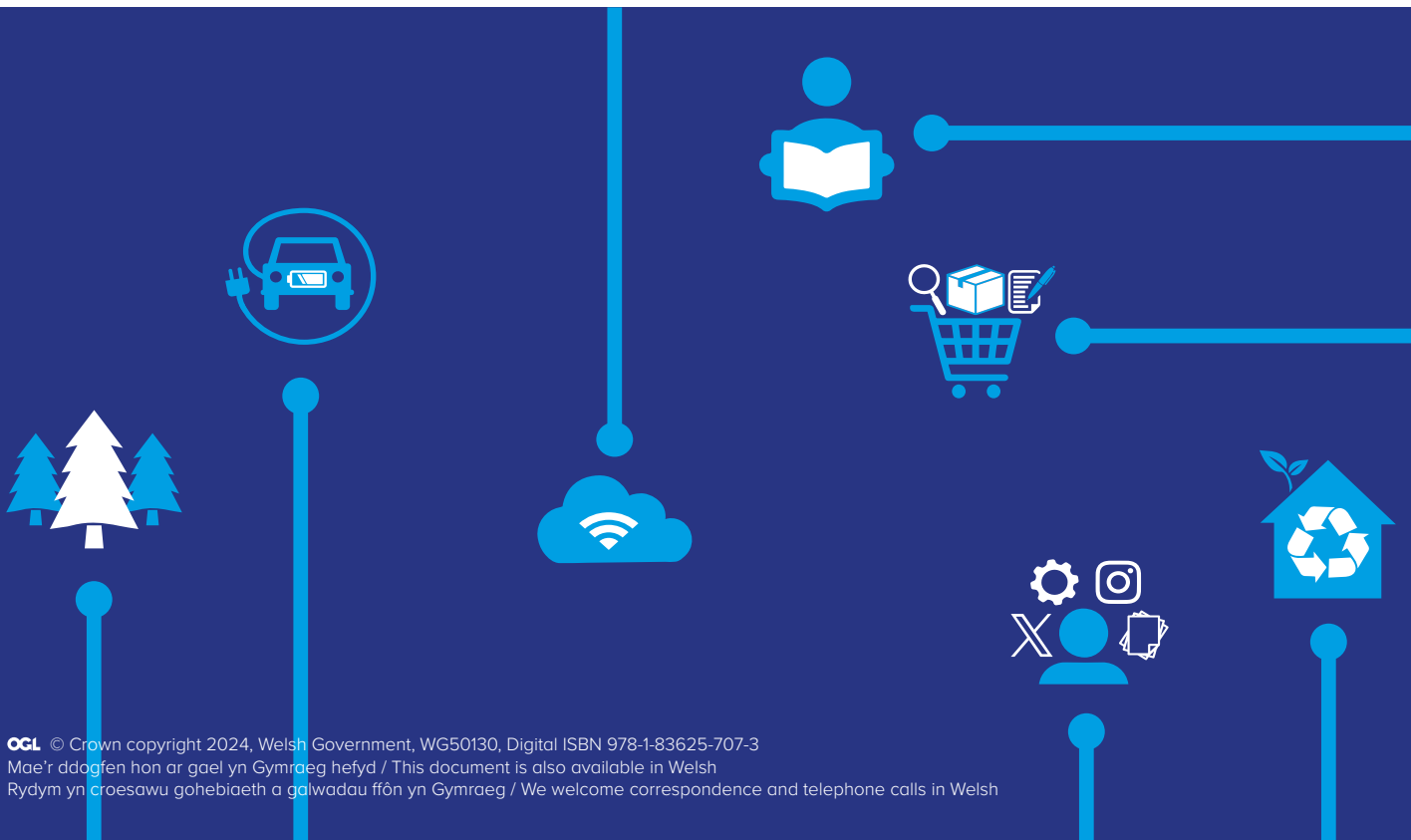
- Guidance on covered procurement objectives
- Guidance on planned procurement notices
- Guidance on electronic communications
- Guidance on competitive tendering procedures
- Guidance on assessing competitive tenders
- Guidance on modifying a competitive procurement



Llywodraeth Cymru  
Welsh Government

# Guidance Conditions of Participation

September 2024





## Guidance: Conditions of Participation

### What are conditions of participation?

1. The Procurement Act 2023 (the Act) allows contracting authorities to set conditions of participation which a supplier must satisfy in order to be awarded a public contract following a competitive tendering procedure. The conditions must only relate to the supplier's:
  - a. legal and financial capacity; or
  - b. technical ability to perform the contract.
2. They must be a proportionate means of ensuring the supplier's relevant capacity or ability, having regard to the nature, complexity and cost of the public contract.
3. When compared with award criteria (section 23 of the Act) which are used to assess the tender, conditions of participation are used to assess the supplier. Contracting authorities must make these conditions clear in the tender notice, supplemented (where necessary) by the tender documents.
4. In a competitive flexible procedure, the conditions of participation may be used to limit the number of suppliers. The conditions may provide for the selection of suppliers in an initial participation round via a pass/fail mechanism or using objective criteria to score suppliers as set out in the tender notice. This could then lead to reducing the number of participants to a shortlist of suppliers who then progress to future tendering rounds.
5. It will be the responsibility of the contracting authority to consider and draft suitable conditions of participation and determine how these will be assessed.

### What is the legal framework that governs conditions of participation?

6. Conditions of participation are primarily covered in section 22 of the Act. This makes provision for contracting authorities to set conditions of participation which a supplier must meet in order to be awarded the contract. It establishes limitations on this practice (explained below) as well as setting parameters for the use of evidence and reliance by the supplier on third parties in meeting the conditions of participation.



## What has changed?

7. The obligation that conditions of participation must be proportionate to the procurement is a change in wording from the Public Contracts Regulations 2015 (PCR), and Utilities Contracts Regulations 2016 (UCR) but is not expected to lead to any change in practice.
8. The Act does not prescribe how suppliers should demonstrate that they meet the conditions of participation, unlike regulation 59 of the PCR and regulation 80(4) of the UCR which require the use of the Single Procurement Document (in practice the Standard Selection Questionnaire (SSQ)). Nevertheless, 'participation' templates may be used so long as these comply with the Act's requirements on conditions of participation.
9. The PCR (regulation 60), and UCR (regulation 80) set out exhaustive lists of means of proof which could be used by contracting authorities to assess standards of technical or professional ability. These provisions are not replicated in the Act.
10. The Act also includes specific restrictions around requiring audited accounts and insurance in the conditions of participation. These have been included to remove barriers for new entrants and to facilitate increased participation from small and medium-sized enterprises (SMEs) in public procurement.

## Key points and policy intent

11. Section 22(1) of the Act allows contracting authorities to set conditions that ensure a supplier's legal and financial capacity and technical ability to perform the contract. Any conditions set must be a proportionate means of ensuring suppliers have this capacity or ability, having regard to the nature, cost and complexity of the contract. Therefore, it will usually be the case that conditions of participation are limited to assessing those aspects of legal and financial capacity and technical ability which are essential for the contract to be delivered.
12. A supplier must meet the set conditions of participation in order to be awarded the contract. Contracting authorities should think very carefully when setting conditions because if a supplier fails to meet one condition, even if they meet all others, then they cannot ultimately be awarded the contract (see below on the timings of satisfying the conditions of participation).
13. Section 22(4) of the Act makes it clear that:
  - a. whilst conditions can include qualifications, experience or technical ability, they cannot relate to a prior award by a particular contracting authority (so for



- example public sector experience may be required but experience with a specific public sector organisation cannot);
- b. the conditions may not contravene the rules on technical specifications in section 56 (technical specifications);
  - c. a condition cannot require particular qualifications without allowing for their equivalents.
14. Contracting authorities may prevent a supplier from participating in, or progressing as part of, a competitive tendering procedure when the supplier has not satisfied a condition of participation (section 22(7) of the Act). This means that whilst a supplier must satisfy every condition of participation in order to be awarded the public contract (see section 22(2) of the Act), a contracting authority may choose the timing at which exclusion from a competitive tendering procedure takes place. For example, a contracting authority may allow suppliers to confirm they meet certain conditions at a later point in the process in a multi-stage procedure or may, under section 72 of the Act, direct that the supplier sub-contracts part of the contract to another supplier to meet the conditions of participation (see paragraph 28 below).
15. It will often be good practice when excluding suppliers who are unable to meet the conditions of participation (and are therefore not capable of delivering the contract), to do so at the earliest point. This can avoid the contracting authority and supplier expending unnecessary time and resources. Providing prompt feedback could also help forestall challenges to any subsequent award decisions. However, in certain procurements, contracting authorities may decide that they will allow suppliers to progress through the procurement with a requirement that suppliers will fulfil the conditions by a later stage and before the award of the contract. For example, a contracting authority may decide not to prevent a supplier who does not satisfy a particular standard from proceeding if that supplier is undergoing the process of obtaining the standard at the point when conditions are assessed. If the contracting authority decides to allow the supplier to progress in the procurement, they should be mindful of the equal treatment provisions in section 12 of the Act. If a contracting authority thinks it is likely to exercise their discretion in this way, it is strongly recommended that the discretion to do so is set out in the tender notice and any associated tender documents so suppliers are informed of this possibility when deciding whether to bid.



## Financial and insurance information

### Audited accounts

16. Contracting authorities are prohibited from requiring, as a condition of participation, the provision of audited annual accounts from suppliers that are not otherwise required by the Companies Act 2006 or an overseas equivalent to have their accounts audited.
17. If the supplier is not so required, alternative evidence will need to be assessed when considering their financial capacity.

### Insurance

18. Contracting authorities are prohibited from requiring insurance relating to the performance of the contract to be in place before award. This is to prevent businesses from being expected to incur unnecessary costs for insurance when they have no guarantee of winning the business.
19. Instead, if a certain level of insurance will be required for the contract, contracting authorities are first encouraged to consider the necessity of the requirement level. If the contracting authority considers it is required, a contracting authority is able to include a condition of participation that the supplier will have the contractual levels of insurance required on contract commencement and to ask for evidence of that (providing this condition otherwise complies with the Act including the objectives in section 12). For example, the evidence could be certificates showing that the supplier already has such insurance in place or a letter from an insurance company confirming that they would offer the insurance to the supplier coupled with a commitment from the supplier that it will take out the insurance. In the latter case, the fact that the supplier has the insurance in place must be verified before it can be awarded the contract.
20. If there are legal requirements on suppliers relating to insurance which exist outside of the contract but would nevertheless be relevant to the contract (i.e. employers' liability insurance), these may also be required as part of the conditions of participation.

### Assessing the conditions of participation

21. Contracting authorities will need to consider how to evaluate supplier responses to the conditions set for the procurement, and if used, what the criteria will be for assessment. This includes setting out what is required to meet the condition.



22. Conditions of participation are separate from award criteria and in any procedure the responses to the conditions of participation must be assessed separately from the tender response and award criteria. In practice, it may happen in parallel (for example, in an open procedure) but once a supplier has met the conditions of participation, their tender must be assessed in relation to the award criteria only and not with any reference to any score or ranking determined as part of the assessment of the conditions of participation.
23. Under a competitive flexible procedure, a contracting authority may, using objective criteria which have been set out in the tender notice, use conditions of participation in order to limit the number of suppliers that progress or to create a shortlist of suppliers (section 20(4)(a) of the Act). For example, following a tender notice that invites requests to participate, all interested suppliers may submit their response to the conditions of participation and, following an assessment against the conditions of participation published in the tender notice, a limited number of suppliers could be selected to proceed to the next stage. In all cases, the number of suppliers the contracting authority intends to progress should be sufficient to ensure genuine competition.

### Verifying the conditions of participation

24. The Act is not prescriptive about the types and sources of information contracting authorities can use to verify conditions of participation. Section 22(6) of the Act allows a contracting authority to require evidence that is verifiable by a third party to satisfy a condition of participation. For example, assertions as to the financial stability of a supplier may be independently verifiable by reference to data provided by the supplier's bank (at the supplier's behest) or by reference to credit ratings by a rating agency. Nevertheless, means of proof and supporting evidence should not be overly arduous for suppliers and must meet the proportionality requirement in section 22 of the Act. For example, requesting site visits, samples and audits might be appropriate in some circumstances but not all. If supporting evidence is required, contracting authorities should consider when it would be appropriate for suppliers to submit that evidence, having regard to the procurement objectives and what is required to ensure the proper conduct of the procurement.

### Relying on other suppliers to pass conditions of participation

25. In certain procurements, a supplier might not be able to fulfil all the conditions of participation alone. In these circumstances, it may meet the conditions through a relationship with another supplier, for example through the formation of a consortium, or nomination of a sub-contractor who fulfils some or all of the





conditions; section 22(8-9) of the Act set out the circumstances in which a supplier may satisfy conditions of participation through such an association. For example, to deliver an integrated facilities management contract, a supplier specialising in soft services and a supplier specialising in hard services could form a consortium to bid. Alternatively, a supplier specialising in soft services could sub-contract the hard services part of the contract.

26. Section 22(9) of the Act explains the different relationships that will be classed as meaning a supplier (the first supplier) is associated with another supplier. These are where:

- a. the suppliers are submitting a tender together, e.g. as a consortium; or
- b. the first supplier intends to sub-contract the performance of all or part of the contract to another supplier; or
- c. another supplier will guarantee the performance of all or part of the contract by the first supplier.

In the case of sub-contracting or guarantee arrangements which enable the first supplier to meet the conditions of participation, the contracting authority must be satisfied that the suppliers will enter into legally binding arrangements to the effect that the first supplier will sub-contract the performance of all or part of the contract to the other, or that the other supplier will guarantee the performance of all or part of the contract by the first supplier.

27. For the purpose of satisfying section 22(9) of the Act, it is not necessary for the first supplier to be in a directly legally binding arrangement with the other supplier. For example, where a second-tier sub-contractor is being relied upon to satisfy the condition, section 22(9)(b) of the Act could be met where there are effectively back-to-back legally binding arrangements, between the first supplier and their first-tier sub-contractor and also between the first-tier sub-contractor and the second-tier sub-contractor.

28. Section 72 of the Act applies when a contracting authority either requires a supplier to sub-contract or allows a supplier to sub-contract and that sub-contractor has been relied on to meet conditions of participation. In these circumstances, a contracting authority may direct a supplier to enter into a legally binding agreement with the proposed sub-contractor. If the supplier fails to do as directed, the contracting authority can refuse to enter into the public contract with the supplier, require an alternative sub-contractor (that could have satisfied the relevant conditions of participation) or terminate the contract if already entered into.

29. If a contracting authority intends to award a contract to a supplier that has relied on other suppliers to satisfy the conditions of participation, details of these



suppliers, with the exception of those acting as a guarantor (section 22(9)(b)(ii) of the Act), will need to be published in the contract award notice (see regulation 28 of [The Procurement \(Wales\) Regulations 2024](#)).<sup>1</sup> Therefore a contracting authority should ensure they obtain this information during the procurement.

## Dynamic markets

30. A dynamic market is essentially a list of suppliers who have met the 'conditions for membership' of the dynamic market (or part of the dynamic market). Conditions for membership are similar to conditions of participation and are allowed as long as they are a proportionate way of assessing suppliers' legal and financial capacity or technical ability to perform contracts to be awarded by reference to the market. Sections 36(1-5) of the Act set out provisions relating to the submission of accounts, insurance, suppliers' qualifications, experience or technical ability, proportionality and evidence, which are similar to those for conditions of participation.
31. Contracting authorities may set conditions of participation, applying section 22 of the Act, when awarding contracts under a dynamic market.

## Frameworks

32. Since a framework is itself a public contract (provided it is for pecuniary interest, above the relevant threshold and not an exempted contract), the Act generally applies when a framework is awarded. This means that contracting authorities may set conditions of participation, applying section 22 of the Act, in the same way as for any other public contract.
33. Contracting authorities who are calling off from a framework must comply with the terms of the framework they are using and so contracting authorities establishing a framework should ensure that the framework permits the application of conditions of participation in the competitive selection process for call-off contracts.
34. Where permitted in the framework, section 46 of the Act allows a contracting authority to also set 'conditions of participation' at the stage of awarding a call-off contract based on a competitive selection process under a framework (see section 46(2)). These are similar to conditions of participation under section 22 of

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<sup>1</sup> Section 26(4) defines an 'associated person', for the purpose of the Act, as a person that the supplier is relying upon in order to satisfy the conditions of participation, but not a person who is to act as a guarantor. Regulation 28 of [the Procurement \(Wales\) Regulations 2024](#) requires the name and address of each 'associated person' to be published in the contract award notice.



the Act in that they are permitted as long as they are a proportionate way of assessing suppliers' legal and financial capacity or their technical ability to perform the relevant contract to be awarded under the framework. Section 46(1-5) of the Act sets out provisions relating to the submission of accounts, insurance, suppliers' qualifications, experience or technical ability, proportionality and evidence, which are similar to those for conditions of participation under section 22 of the Act.

35. A condition of participation for the award of a call-off contract may include a condition that the conditions of participation for award of the framework must be met or may include some or all of the same conditions. It may also include additional conditions that did not apply to the award of the framework, for example, bespoke insurance requirements relevant to the particular call-off contract to be awarded.

## Works contracts

36. For works contracts, including the procurement of mixed contracts that include supplies and services, contracting authorities can continue to make use of industry pre-qualification questionnaires such as the Common Assessment Standard (CAS) provided they meet the requirements of the Act (for example, the conditions are proportionate and permit the contracting authority to have regard to the procurement objectives in section 12 of the Act).

## Interaction with the central digital platform

37. The central digital platform will store supplier information that may be relevant to assessing conditions of participation. (See guidance on the central digital platform.)
38. Regulation 6 of [the Procurement \(Wales\) Regulations 2024](#) requires contracting authorities to obtain confirmation from suppliers that they have submitted up-to-date 'core supplier information' on the central digital platform, and that such core supplier information has been shared. Therefore, suppliers that tender for public contracts will need to share certain information via the central digital platform in order to participate. Core supplier information covers:
  - a. basic supplier information (i.e. name and address);
  - b. exclusion grounds information;
  - c. economic and financial standing information, such as audited accounts in certain circumstances; and
  - d. connected person information.



39. Any information relating to conditions of participation required by the contracting authority which is not covered by the central digital platform will need to be obtained by the contracting authority from the supplier by other means (for example, as part of the information suppliers submit in the procurement process via the contracting authority's own electronic tendering system).

### Which notices are linked to this aspect of the Act?

40. The tender notice, supplemented by any tender documents, must include the conditions of participation and any criteria that might be used to limit the number of participants.
41. The contract award notice will need to include details of associated persons i.e. suppliers that the supplier has relied upon to meet the conditions of participation.

### What other guidance is of particular relevance to this topic area?

- Guidance on covered procurement objectives
- Guidance on assessing competitive tenders
- Guidance on competitive tendering procedures
- Guidance on the central digital platform and the publication of information
- Guidance technical specifications
- Guidance on exclusions
- Guidance on debarment
- Guidance on notice sequencing and flowcharts

### Where can I go for more information or training?

[The Government Commercial Function Playbooks](#)  
[Assessing and Monitoring the Economic And Financial Standing Of Bidders And Suppliers](#)



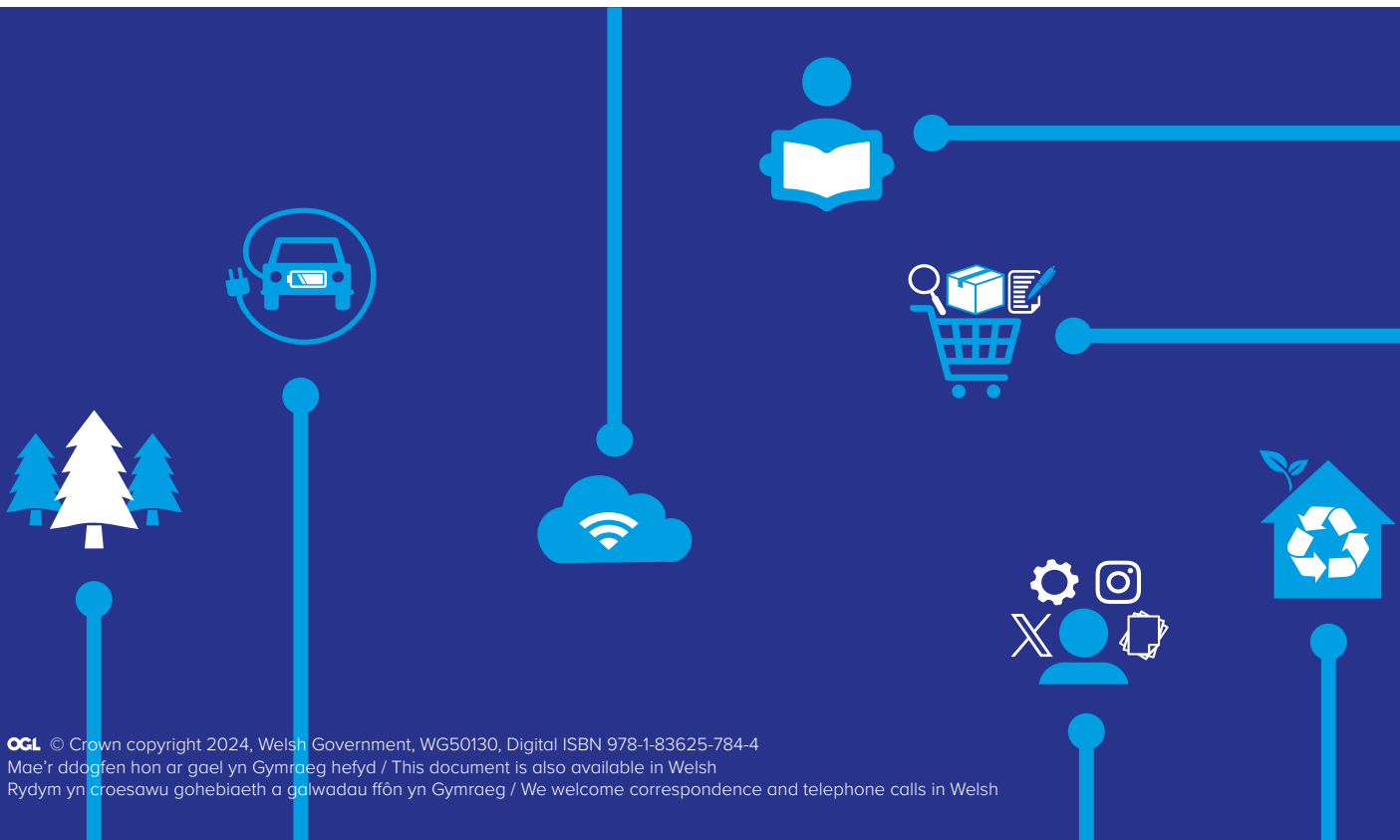


Llywodraeth Cymru  
Welsh Government

# Guidance

# Assessing Competitive Tenders

October 2024





## Guidance: Assessing Competitive Tenders

What are the rules on assessing tenders in a competitive tendering procedure?

1. The process by which tenders in a competitive tendering procedure are assessed in order to determine the most advantageous tender (i.e. to identify the supplier(s) that will be awarded the contract) is key to achieving value for money and the successful delivery of public services. The Procurement Act 2023 (the Act) regulates this process by making provision for rules on award criteria and assessment methodologies, addressing abnormally low tenders and refining award criteria.

What is the legal framework that governs the assessment of tenders submitted in a competitive tendering procedure?

2. The legal framework is set out in the following sections of the Act:
  - a. section 19: Award of public contracts following a competitive tendering procedure;
  - b. section 23: Award criteria; and
  - c. section 24: Refining award criteria.

What has changed?

3. The basis on which contracts are awarded is largely unchanged from the previous legislation, in terms of what can be assessed when evaluating tenders. The removal of the requirement that award criteria must be considered from the 'point of view of the contracting authority' that was included in the previous legislation<sup>1</sup> serves only to highlight and clarify that contracting authorities may take wider factors than price and technical quality into account when determining value for money.
4. The overall basis of award is now referred to as the most advantageous tender (MAT), rather than, as in the previous legislation, the 'most economically advantageous tender' (MEAT). However, this is not a change in policy and the

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<sup>1</sup> See regulation 67(1) of the Public Contracts Regulations 2015, regulation 82(1) of the Utilities Contracts Regulation 2016 and regulation 31(1)(a) of the Defence and Security Public Contracts Regulations 2011



change is to clarify and reinforce for contracting authorities that tenders do not have to be awarded on the basis of lowest price/cost, or that price/cost must always take precedence over non price/cost factors.

5. Under the Act, a contracting authority may refine the award criteria in a competitive flexible procedure in certain circumstances. This is a new provision in the Act and was not dealt with directly under previous legislation.
6. Unlike (where relevant<sup>2</sup>) under the previous legislation, where in some instances<sup>3</sup> (but not all) it was mandatory, contracting authorities are not required under the Act to ask suppliers to explain their price where it appears to be abnormally low. They are required under the Act, however, as in the previous legislation<sup>4</sup>, to investigate an abnormally low price and provide the supplier with an opportunity to demonstrate that it will be able to perform the contract for the price proposed before disregarding a tender on that basis. Unlike in the previous legislation, the Act does not include an illustrative list of the types of explanations that suppliers may provide to explain their price (for example, the economics of the manufacturing process) but these may still be relevant and under the Act contracting authorities can seek explanations about anything related to a supplier's ability to perform the contract for the price offered.

## Key points and policy intent

7. Throughout the procurement, contracting authorities must have regard to the objectives set out in section 12 of the Act. Of particular relevance to the design and application of award criteria are the objectives relating to maximising public benefit, delivering value for money and the duty to have regard to the fact that small and medium-sized enterprises (SMEs) may face particular barriers to participation, and consider whether such barriers can be removed or reduced. Contracting authorities must also have regard to the Wales Procurement Policy Statement (WPPS) in accordance with section 14 of the Act.
8. In the context of awarding a public contract following a competitive tendering procedure, there are a number of key points arising from the requirements of sections 12 and 14 of the Act:

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<sup>2</sup> The Concessions Contracts Regulations 2016 do not include provisions on abnormally low tenders

<sup>3</sup> See regulation 69 of the Public Contracts Regulations 2015 and regulation 84 of the Utilities Contracts Regulation 2016

<sup>4</sup> See regulation 69 of the Public Contracts Regulations 2015, regulation 84 of the Utilities Contracts Regulation 2016 and regulation 31(6)(7) of the Defence and Security Public Contracts Regulations 2011



- a. the objective of sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions means sharing all relevant information at the earliest opportunity and ensuring that everyone has parity of information and at the same time;
- b. in complying with the duty to have regard to SMEs, contracting authorities should not create award criteria that are prohibitive, or set timescales in the procedure that do not give suppliers sufficient time to prepare quality tenders;
- c. in order to achieve value for money, contracting authorities should have a comprehensive understanding of their requirements and link them to their policy priorities (which may include wider economic, social, environmental and cultural considerations where they are relevant, proportionate and non-discriminatory) and any priorities set out in the WPPS;
- d. in complying with the duty to have regard to the Wales Procurement Policy Statement (WPPS), value for money should be considered on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising and eliminating negative environmental impacts and maximising the cultural well-being of people and communities in Wales. To achieve this, contracting authorities should take these factors into account when designing specifications, award criteria and other requirements;
- e. value for money can be directly affected by the choice of assessment methodology and contracting authorities should undertake appropriate scenario-testing to understand the impact of different methodologies and criteria weightings.

#### Award Criteria (section 23 of the Act)

9. The award criteria are the criteria against which tenders are assessed during a competitive tendering procedure. Award criteria, including any social, economic, environmental and cultural criteria, must relate to the subject-matter of the contract. This will mean contracting authorities focus on the particular procurement in question and properly assess each tender in respect of what is being procured. The Act gives contracting authorities a wide discretion when selecting award criteria: the fact that there is no list of criteria that can be taken into account means that any criteria can be considered, provided they meet the requirements of section 23. There is also no reference in the Act to award criteria needing to be considered solely from the 'point of view' of the contracting authority, so that it is clear that benefits of a contract to service users or other stakeholders, which may not directly flow to the contracting authority itself, may





be explicitly factored in if they are relevant and meet the other requirements of award criteria.

10. The key requirements for award criteria are:
  - a. they must relate to the subject-matter of the contract;
  - b. they must be sufficiently clear, measurable and specific;
  - c. they must comply with the rules on technical specifications (see guidance on technical specifications for more information);
  - d. they must be a proportionate means of assessing tenders having regard to the nature, complexity and cost of the contract. For example, it is unlikely to be proportionate to include a wide range of award criteria for a low value contract for stationery.
11. Section 23(3)(a) refers to the 'assessment methodology', which must set out how tenders will be assessed against the award criteria. For example, this will include any scoring matrices to be used by evaluators when assessing tenders against the award criteria.
12. The process of awarding contracts must be transparent; contracting authorities must publish the award criteria and the assessment methodology, or a summary of the criteria, in the tender notice. Section 21(5) of the Act requires the contracting authority to provide information sufficient to allow suppliers to prepare tenders in the tender notice or associated tender documents before inviting suppliers to submit a tender. Therefore, if not published in full in the tender notice, further details of the award criteria and assessment methodology must be included in any associated tender documents.
13. If there is more than one criterion, the contracting authority must set out the relative importance of all the criteria. This can be through the use of weightings or ranking in order of importance or described in another way. For example, percentage figures could be applied to each criterion to explain how they are weighted. The rules provide for flexibility in terms of how the relative importance of criteria are described. Pass/fail criteria are also permitted but it must be set out in the assessment methodology if failure to meet one or more criteria would disqualify a tender.
14. Where a procurement has been divided into lots, the contracting authority can limit the number of lots an individual supplier may be awarded, as long as it applies an objective mechanism for doing so.



15. For light touch contracts, because of the special nature of these contracts, section 23(6) of the Act provides an additional list of what may be considered 'the subject-matter of the contract' to take account of service recipients. (Further information can be found in the guidance on light touch contracts.)
16. Award criteria are distinct from conditions of participation. Conditions of participation are used to determine whether a supplier is capable/suitable to perform the contract. This is distinct from award criteria, which determine the merits of the supplier's tender. Conditions of participation must only relate to the supplier's legal and financial capacity or technical ability to perform the contract.
17. In any procedure, the responses to the conditions of participation must be assessed separately from the tender, the tender (only) being assessed against the award criteria. In practice, their assessment may occur in parallel (for example, in an open procedure), but once a supplier has met the conditions of participation, their tender must, in relation to the award criteria, be assessed without consideration given to how they were assessed under the conditions of participation. (Further information can be found in the guidance on conditions of participation.)
18. Awarding on the basis of MAT includes the possibility of awarding based on lowest price/cost only, where price/cost is the sole criterion, although this is unlikely to be suitable for most contracts. Contracting authorities may assess tenders against a wide range of factors to determine the best solution. These factors may include price, quality and technical criteria in addition to wider social, economic, environmental and cultural issues and benefits (for instance, creating new jobs and skills, reducing waste and addressing net zero or carbon reduction outcomes) as long as such factors relate to the subject-matter of the contract, are sufficiently clear, comply with the rules on technical specifications in section 56 of the Act and are a proportionate means of assessing tenders.
19. When assessing tenders against the award criteria, contracting authorities must base their assessment on the published assessment methodology and the relative importance of the award criteria:
  - a. if only a single award criterion is used, the assessment will be based on that criterion;
  - b. if more than one criterion is used, the MAT will be assessed across the range of criteria.



20. The Act allows for flexibility in how contracting authorities describe the relative importance of the criteria and refers to weighting criteria using percentages or ranking them in order of importance or describing relative importance in another way. There is no hierarchy in these options - contracting authorities are able to choose the most appropriate method for their particular circumstances.
21. A contracting authority must always consider its other obligations under the Act before deciding to have price as the sole award criterion, for example having regard to the section 12 duties including the requirement to maximise public benefit and to achieve value for money which is likely to be broader than cost alone in most procurements.

#### Refining award criteria (section 24 of the Act)

22. Section 24 allows contracting authorities, in a competitive flexible procedure, to refine award criteria (which might involve consequential refinements to the assessment methodology). This may be useful when there is a multi-stage procedure where all of the detail is not known at the first stage. Should contracting authorities wish to refine award criteria during the procedure, they must provide for this possibility in the tender notice or associated tender documents and may only refine award criteria before inviting final tenders (i.e. prior to inviting tenders to be assessed under section 19).
23. Contracting authorities may know the overall or general award criteria at the outset of a competitive flexible procedure, but may wish to retain the opportunity to refine those criteria as the procurement progresses (e.g. after carrying out dialogue with suppliers or reviewing prototypes from suppliers who are invited to participate in response to the tender notice). The outcome of such activities undertaken in the earlier part of a competitive flexible procedure may be a better understanding of what is possible, meaning that further detail or new sub-criteria related to the initial award criteria set out in the tender notice and any associated tender documents can be added. Contracting authorities can only refine what has already been provided; they cannot add new criteria. This is a mechanism by which a contracting authority can plan to add further detail to the award criteria as the procedure progresses and only applies in a competitive flexible procedure.
24. Contracting authorities may not make a refinement that would, had the refinement been made earlier, have allowed one or more suppliers that did not progress beyond an earlier round or selection process to have done so. This is similar to the rules on wider modifications to a procurement prior to the deadline for submitting tenders or requests to participate (as relevant) under section 31 of the Act which are appropriate when unforeseen modifications are required and which apply in any competitive tendering procedure (see guidance on modifications to a procurement).



25. Contracting authorities must modify and republish or provide again the tender notice and any associated tender documents affected by the refinements.
26. Set out below are some examples where contracting authorities are likely to be able, or likely to be unable, to refine award criteria. However, whether or not refinement will be possible in a particular scenario will always depend upon the specific facts. Refinement must comply with all the requirements of section 24 and other relevant obligations under the Act, for example the section 12 objectives.
27. Likely to be permitted:
  - a. adding sub-criteria to those set out in the tender notice/associated tender documents as long as they directly relate to the relevant existing main criteria;
  - b. adding more detail to existing main criteria set out in tender notice/associated tender documents;
  - c. adding more detail to existing sub-criteria set out in the tender notice/associated tender documents;
  - d. changing weightings within a pre-existing range that was set out in the tender notice/associated tender documents, e.g. if an award criterion relating to transition arrangements was set out at 10%-30%, a contracting authority could start with a 30% weighting and end with a 10% weighting for the final assessment if the other requirements in section 24 are met.
28. Likely to not be permitted:
  - a. adding new main criteria;
  - b. adding new sub-criteria not associated with the main criteria in the tender notice/associated tender documents;
  - c. adding or removing pass/fail tests;
  - d. reversing the answer to pass/fail tests expressed in the tender notice/associated tender documents (i.e. changing what initially constituted a 'fail' to a 'pass' instead).



## Awarding contracts following a competitive tendering procedure (section 19 of the Act)

29. Section 19 makes provision about awarding contracts following a competitive tendering procedure, including on how abnormally low tenders should be treated. The key points are:
  - a. following a competitive tendering procedure, a public contract can only be awarded to the supplier that submits the MAT; and
  - b. the MAT is the tender that both satisfies the contracting authority's requirements and is the best tender when assessed against the award criteria and the assessment methodology.
30. It is possible for a contracting authority to award separate contracts following a competitive tendering procedure to multiple suppliers (for example, when establishing a framework) if the award criteria and assessment methodology set out in the tender notice and any associated tender documents provide that more than one tender can satisfy the contracting authority's requirements and best satisfy the award criteria and on what basis. In these circumstances, all tenders considered successful pursuant to the criteria and assessment methodology should be considered the most advantageous tender.
31. In an open procedure, which is a single stage tendering procedure without restriction on who can submit tenders, all tenders submitted that are not disregarded (for example, because the tender was submitted by an excluded supplier or because the tender failed to meet a condition of participation) are assessed under section 19 for the purpose of determining the MAT. In a competitive flexible procedure that may have multiple tendering rounds, only final tenders are assessed under section 19 for the purpose of determining the MAT. The process for limiting tenders that progress in a competitive flexible procedure before the final assessment stage is set out in section 20 of the Act.
32. Section 19 of the Act sets out that a tender must be disregarded where the supplier does not satisfy the conditions of participation (see guidance on conditions of participation).
33. It also provides that a tender may be disregarded where:
  - a. the supplier is not a UK or treaty state supplier (a supplier entitled to the benefits of an international agreement specified in Schedule 9 of the Act). In making a decision to exclude a non-UK or non-treaty state supplier, the contracting authority must consider its other general duties under the Act including the objectives in section 12;



- b. the supplier intends to sub-contract the delivery of the contract or part of it to a supplier that is not a UK or treaty state supplier. Contracting authorities should be transparent about any restrictions on sub-contracting at the start of the procurement, for example by setting these out in the tender notice or any associated tender documents, and should apply these in a manner that is consistent with the equal treatment obligation in section 12(2) of the Act (further information can be found in the guidance on treaty state suppliers);
  - c. a contracting authority considers the price of the tender is abnormally low. Before disregarding a tender on this basis, a contracting authority must first notify the supplier and provide it with a reasonable opportunity to demonstrate that it will be able to perform the contract at the price offered. If the supplier demonstrates to the contracting authority's satisfaction that it will be able to perform the contract for the price offered, the tender may not be disregarded as abnormally low. If the supplier does not satisfy the contracting authority, the tender may be disregarded. Reasons for a low price might be production efficiencies or leveraging economies of scale. Alternatively, a low price might be due to inaccuracies in cost modelling or as a result of unlawful practices or funding sources, casting doubt on the ability of the supplier to perform the contract;
  - d. the supplier has breached a procedural requirement set out in the tender notice or associated tender documents (for example the tender is submitted late or the tender is over the prescribed word count).
34. In addition to the grounds on which a tender must or may be disregarded as set out expressly in section 19, the Act makes provision elsewhere for tenders to be disregarded on other grounds. There are cross references to these in sections 19(8) (referring to excluded or excludable suppliers), 19(9) (referring to reserving public contracts to supported employment providers and qualifying public service mutuals) and 19(10) (referring to disregarding tenders from suppliers that are not members of a dynamic market).
35. After the contracting authority has completed the assessment of tenders under section 19 and before publishing a contract award notice, it is required to provide an assessment summary to all suppliers who submitted an 'assessed tender'. Contracting authorities should consider the requirements of the assessment summary when developing their award criteria and assessment methodology and when carrying out the assessment of tenders. Please refer to the guidance on assessment summaries for more information.



## What other guidance is of particular relevance to this topic area?

- Guidance on covered procurement objectives
- Guidance on the Wales procurement policy statement
- Guidance on preliminary market engagement
- Guidance on conditions of participation
- Guidance on competitive tendering procedures
- Guidance on light touch contracts
- Guidance on lots
- Guidance on the contract award notice and standstill
- Guidance on assessment summaries

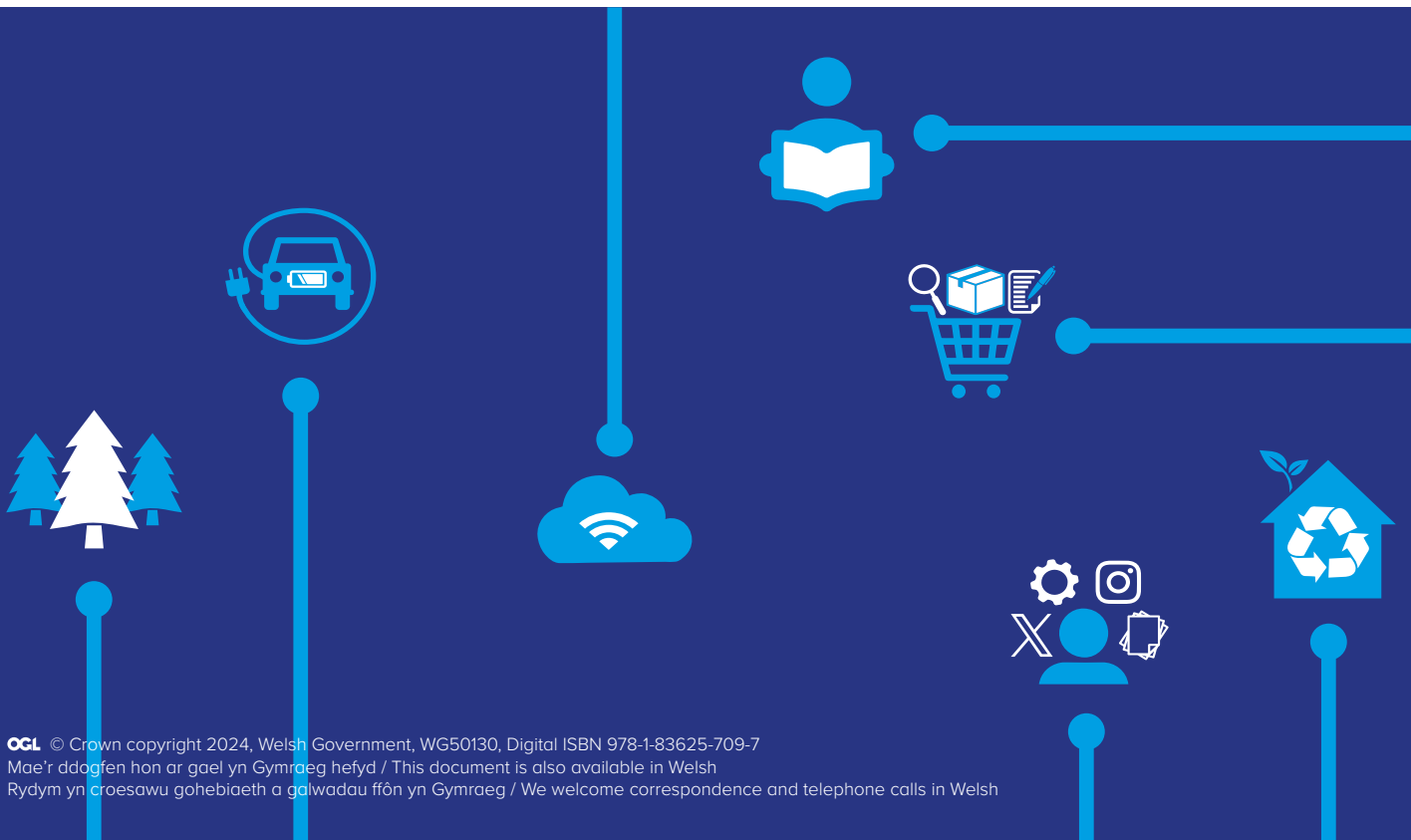


Llywodraeth Cymru  
Welsh Government

# Guidance

## Electronic Communications

September 2024







## Guidance: Electronic Communications

### What are electronic communications?

1. The Procurement Act 2023 (the Act) requires contracting authorities, so far as practicable, when carrying out covered procurement, to communicate electronically with suppliers and to take steps to ensure that suppliers participating in procurements also communicate electronically. This will help to ensure that communication is undertaken in an efficient, open and transparent way.
2. Electronic communications can help reduce the cost of carrying out a procurement, reduce timescales during the procurement procedure, encourage access to opportunities for suppliers and facilitate compliance with the Act.

### What is the legal framework that governs electronic communications?

3. Section 96 of the Act contains the main provisions on electronic communications.
4. The Act also contains requirements to publish or give certain notices, documents or information and the [Procurement \(Wales\) Regulations 2024](#) (“the regulations”) generally require those notices, documents or information to be published electronically, on the central digital platform. Contracting authorities will need to comply with the requirements set out in the regulations in this regard when communicating with suppliers. For devolved Welsh authorities, the requirement to publish on the central digital platform will be met via the use of the Welsh digital platform (Sell2Wales) as per [regulation 5 of the Regulations](#).

### What has changed?

5. The Act does not change the general rule on communicating electronically set out in the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016, although it does simplify the rules in this area.
6. The Act does, however, include stricter requirements for electronic communication than in the Concession Contracts Regulations 2016. For example, these regulations in most cases allowed for other means of communication, which included post, facsimile, and oral communication. These are only permitted under the Act where it is not practicable to communicate electronically.



## Key points and policy intent

7. Section 96(1) of the Act requires contracting authorities to, so far as is practicable, communicate with suppliers electronically and take steps to ensure that suppliers participating in a procurement communicate electronically. In practice, this means, for example, that contracting authorities should make use of emails, e-procurement systems, virtual conferencing and share or publish key information electronically. This applies to covered procurements from the start of a procurement and throughout the period of the contract until it ends.
8. Contracting authorities should note that, under section 96(1) of the Act, non-electronic communications are permissible where electronic communications are not practicable. For example, if an aspect of a procurement requires a scale model to be submitted or a demonstration of a product is required, then this is unlikely to be possible electronically. Oral communication could take place during negotiations, meetings or for general conversations about the procurement. However, it would be best practice for this communication to be documented and where appropriate, for any relevant information to be shared electronically with suppliers.
9. A contracting authority may use or require the use of an 'electronic communication system', which includes any electronic system used for the purpose of communication with suppliers, to carry out a covered procurement.
10. Section 96(2) of the Act provides that electronic communication systems used or required to be used, however, must be:
  - a. free of charge and readily accessible to suppliers;
  - b. generally available or interoperable with other generally available systems;
  - and
  - c. accessible to people with disabilities.
11. The purpose of section 96(2)(a) of the Act is to allow suppliers to freely see and access information in relation to tender opportunities and not be deterred by 'paywalls' which can limit the field of competition. Electronic communication systems are intended to help facilitate suppliers' participation in procurements and should not act as an indirect barrier, which could particularly disadvantage small and medium-sized enterprises.
12. Section 96(3) of the Act sets out an exception to the requirement for electronic communications systems to be free of charge and readily accessible to suppliers, which applies when these systems are used after the award of a public contract



or in relation to a utilities dynamic market. The effect of this is that contracting authorities may, for example, charge suppliers a fee in connection with obtaining and maintaining membership of a utilities dynamic market and, after a contract has been entered into, require the use of electronic invoicing systems. The ability to charge a fee to suppliers for the use of an electronic invoicing system is, however, prohibited unless the contracting authority is a defence authority (see section 67(6) of the Act). It also allows contracting authorities to charge for supplier management systems, but this should be avoided where possible and practicable to do so. In addition, where there is a charge, the contracting authority should be transparent about the requirement and the charges to suppliers at the start of the procurement.

13. If a contracting authority considers that the use of electronic communication, or the use of an electronic communication system that is free of charge and readily accessible, generally available or interoperable with generally available systems and accessible to people with disabilities (i.e. meeting the requirements of section 96(2)), poses a security risk in a specific procurement, section 96(4) of the Act provides that section 96 does not apply. Where this exemption applies it is good practice for a contracting authority to use a system which aligns with as many of the requirements in section 96 of the Act as possible, with any necessary modifications to account for security risks.

### What other guidance is of particular relevance to this topic area?

- Guidance on covered procurement objectives
- Guidance on the Welsh digital platform
- Guidance on the central digital platform



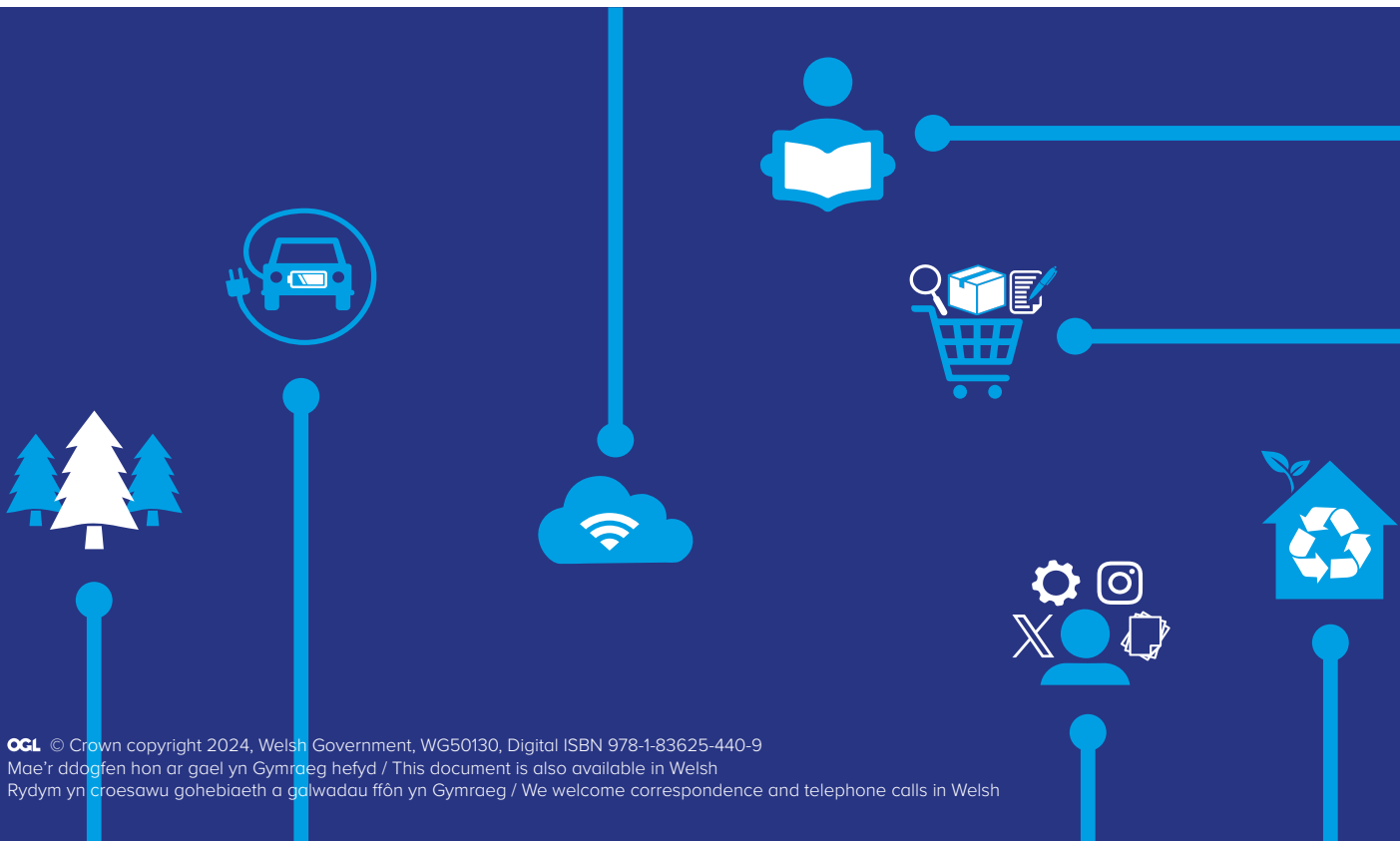


Llywodraeth Cymru  
Welsh Government

# Guidance

## Modifying a Competitive Procurement

July 2024





## Guidance: Modifying a Competitive Procurement

What are modifications to a competitive procurement and why is it important to regulate them?

1. During the course of a competitive tendering procedure it may be necessary to make amendments or clarifications to information in the tender notice or associated tender documents to deal with circumstances that were not anticipated.
2. Modifications during a procedure may be necessary for a number of reasons. For example, it could be that a supplier has raised a clarification question which requires an amendment to the associated tender documents or something was omitted from the tender notice. Any modifications must be made in accordance with section 31 of the Procurement Act 2023 (the Act).

What is the legal framework that governs modifications during a procurement?

3. Section 31 of the Act (Modifying a section 19 procurement).
4. Section 54 of the Act (Time limits).

What has changed?

5. The previous legislation allows suppliers to request information before submitting their tender but does not make specific provision for modifications during a procurement. The contracting authority must provide this information within a set time period before tenders are to be submitted. The Act makes specific provision in section 31 which sets out when the terms of a covered procurement may be modified, the extent of those modifications and how suppliers must be notified of those changes.

Key points and policy intent

6. Section 31 of the Act provides that a contracting authority may, provided the section is complied with, make changes to the 'terms of a covered procurement', which is defined in section 31(7) as 'anything set out in a tender notice or associated tender documents, including any requirements of a competitive tendering procedure, conditions of participation or award criteria'. Modifications may be made under section 31 in two scenarios, as set out below.



## Modifications to a procurement prior to submission of requests to participate or first/only tenders.

7. Section 31(1) of the Act sets out when a contracting authority is permitted to make any changes to the terms of a covered procurement:
  - a. in an open procedure, changes are permitted before the deadline for submitting tenders<sup>1</sup>;
  - b. in a competitive flexible procedure, changes are permitted:
    - i. before the deadline for submitting a request to participate; or
    - ii. where there has been no invitation to submit such requests, the deadline for submitting the first or only tender.
8. This allows for changes in the early stage of the procedure when suppliers have not yet submitted a tender or request to participate. If a contracting authority wishes to modify the procurement in these circumstances, the tender notice and any associated tender documents affected by the modification must be updated and republished or provided again (section 31(5)) and the contracting authority must consider the time limits (see paragraph 15 below). This allows all interested suppliers to see the revised information and decide whether they wish to submit a request to participate or a tender in light of the modification.
9. The provisions within the Act aim to achieve an appropriate balance between permitting changes to the terms of a covered procurement and allowing suppliers sufficient time to consider the modification and prepare their requests/tenders.

## Modifications to a procurement after submission of requests to participate or first tenders in a competitive flexible procedure.

10. Once a competitive flexible procedure is in progress, i.e. once a contracting authority has received requests to participate or has received initial tenders, there is still scope to modify the terms of a procurement, as long as the relevant requirements out in section 31 are met. Under section 31(2), contracting authorities are permitted to make modifications prior to the deadline for submitting final tenders for assessment under section 19, but limits any changes to those that are not 'substantial' (unless the procurement relates to the award of a light touch contract: see paragraph 14 below).
11. A modification is 'substantial' if:

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<sup>1</sup> In an open procedure, as the tender notice is the invitation to submit a tender, a modification can only be made prior to the end of the tendering period when tenders must be submitted.



- a. it would permit suppliers that are not 'participating suppliers' to submit a tender; or
- b. the contracting authority considers that, had the modification been reflected in the tender notice or associated tender documents before a deadline referred in section 31(1)(b) had passed (see paragraph 7(b) above):
  - i. one or more participating suppliers would not be a participating supplier; or
  - ii. one or more suppliers that are not participating suppliers would be a participating supplier.

A participating supplier is a supplier that has submitted a request to participate in, or has submitted a tender as part of, the competitive tendering procedure, and has not been excluded.

12. As an example, a change to a condition of participation would be a substantial modification if it would have had an impact on which suppliers were invited to submit tenders and which did not progress any further in the procurement. To illustrate, a contracting authority publishes a tender notice for a two-stage competitive flexible procedure and sets a condition of participation in the tender notice that requires suppliers to meet a particular technical standard in order to progress in the procedure. Following submission of requests to participate, the contracting authority changes the condition of participation to a different technical standard. Such a change would be substantial if the contracting authority considers that other suppliers may have submitted a request to participate or suppliers that did not meet the condition would have been invited to progress had that different technical standard been set out in the original tender notice.
13. Where a non-substantial modification is made prior to the deadline in section 31(2), the contracting authority must notify each participating supplier, for example by writing to them or updating the tender notice, of the modification and the contracting authority must consider the time limits (see paragraph 15 below).

### Modifications to a procurement for the award of a light touch contract

14. For procurements relating to the award of a light touch contract there are fewer restrictions on modifications after a contracting authority has received requests to participate or has received initial tenders. In contrast to other types of public contract, there is no requirement for a modification to not be substantial. The nature of the services for which a light touch contract may be used warrants this greater flexibility.



## What impact does a modification have on time periods?

15. Section 31(4) of the Act requires that whenever a modification to the terms of a covered procurement is made, the contracting authority must consider whether any tender deadlines and other time limits need to be revised in order to provide additional time for suppliers to take the change into account. Any revision of the deadlines or time limits must be in accordance with section 54 of the Act. In particular, section 54(1)(d) requires the contracting authority to have regard to the nature and complexity of any modification of the tender notice or any associated tender documents.

## What other guidance is of particular relevance to this topic area?

- Guidance on covered procurement objectives
- Guidance on competitive tendering procedures
- Guidance on time periods



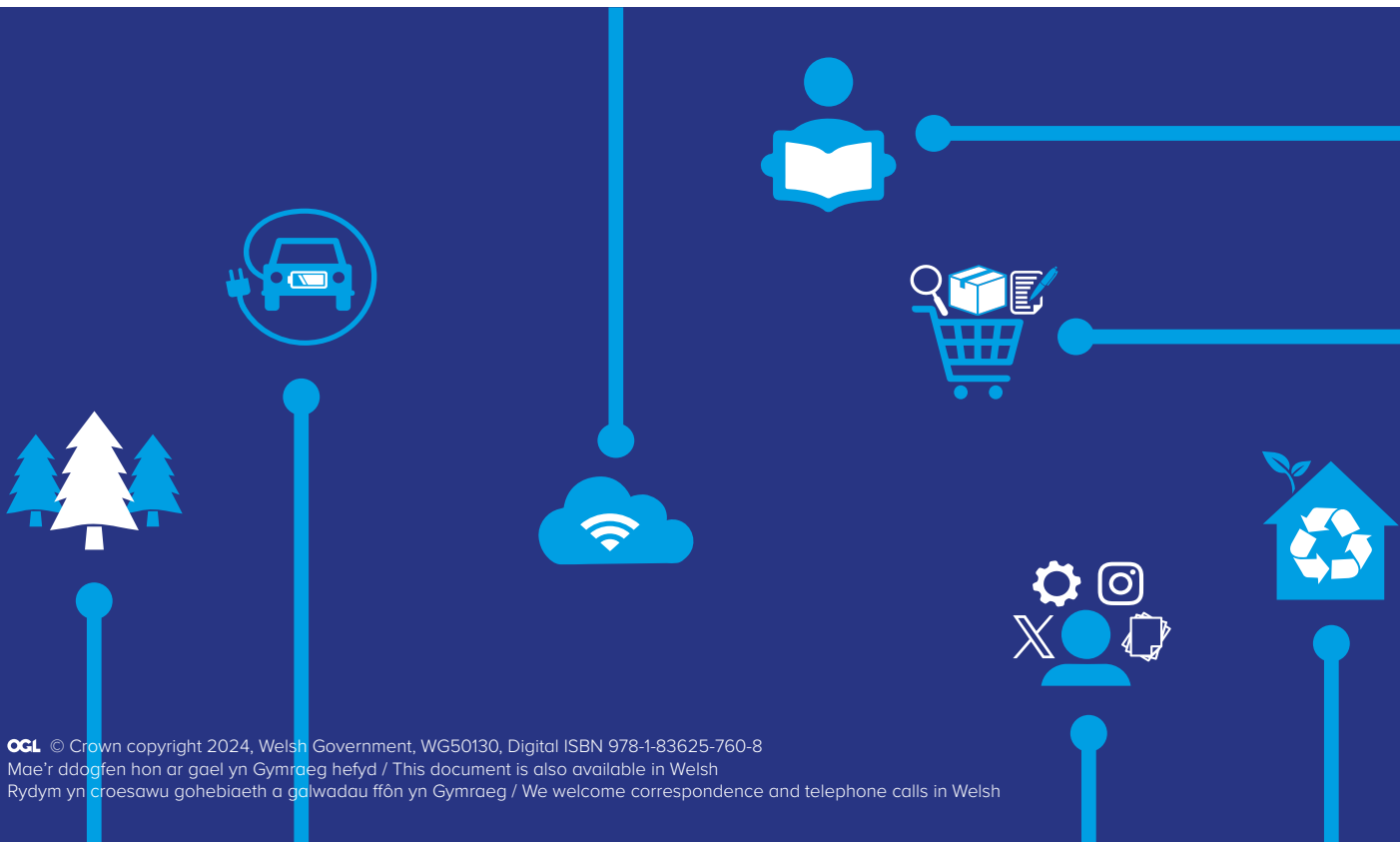


Llywodraeth Cymru  
Welsh Government

# Guidance

# Procurement Termination Notices

October 2024





## Guidance: Procurement Termination Notices

### What is a procurement termination notice?

1. A procurement termination notice informs the market that a contracting authority has decided not to award a contract and to terminate the procurement. The notice must be published on the central digital platform. For devolved Welsh authorities, this requirement is met where the devolved Welsh authority has submitted the notice to the Welsh digital platform (Sell2Wales) and received notification of successful submission to the central digital platform or the notice is accessible by all on the central digital platform.

### What is the legal framework that governs procurement termination notices?

2. The relevant provisions are contained in:
  - a. Section 55 (Procurement termination notices) of the Procurement Act 2023 (the Act), which sets out when the notice must be used; and
  - b. Regulation 38 (Procurement termination notices) of the Procurement (Wales) Regulations 2024, which sets out what information must be included in the notice.

### What has changed?

3. A procurement termination notice is a new concept introduced by the Act to inform suppliers and the public that the intentions of the contracting authority have changed, and the procurement is to be discontinued. In these circumstances, publication of the notice may reduce bid costs for suppliers (by allowing the release of resources they may have on standby) and provide increased market certainty.

### Key points and policy intent

4. If a contracting authority decides not to award a public contract after it has published a tender or transparency notice but before the contract has been entered into, the Act requires the contracting authority to publish a procurement termination notice. This requirement does not apply to private utilities.
5. Each time a tender or transparency notice is published, it creates a data record of the procurement and any resulting contract. Failing to publish a procurement termination notice will result in suppliers not being aware of the termination and



there being permanently incomplete data records on the Welsh digital platform and central digital platform, with the number of ongoing procurements incorrectly including terminated procurements. This is unhelpful for anyone monitoring and using this data. A procurement termination notice is therefore required to ensure that the data record is correct and a complete history of the procurement, up to its termination, is available.

6. The information required to be included in a procurement termination notice is set out in regulation 38 and includes a statement setting out that following the publication of a tender or transparency notice in respect of a contract, the contracting authority has decided not to award the contract, and the date when the contracting authority made the decision not to award the public contract.
7. There are circumstances where the Act does not require contracting authorities to publish a procurement termination notice, but contracting authorities may wish to do so. A procurement termination notice may be published voluntarily to inform the market that a below-threshold procurement or a selection process under a framework has been terminated and a contract will not be awarded, or to publicise the fact that a process to establish a dynamic market has been terminated. It may also be published prior to a tender or transparency notice being published where a procurement indicated in an earlier notice, such as a planned procurement notice, preliminary market engagement notice, or pipeline notice, is being terminated and a tender or transparency notice will not be published.
8. Where a procurement has progressed to the point of inviting tenders, either by the contracting authority publishing a tender notice or notifying selected suppliers in a multistage procedure, there is a reasonable expectation that suppliers will be incurring costs to prepare tenders. Contracting authorities should therefore inform suppliers directly of any decision to discontinue the procurement in addition to providing visibility of the decision through the publication of the procurement termination notice. Where a contracting authority is not yet aware of which suppliers intend to submit a tender, i.e. if first or only tenders have not yet been submitted, the procurement termination notice notifies suppliers of the termination of the procurement.
9. Where a procurement has been divided into lots and some lots progress to contract award, but some lots do not, contracting authorities should use a contract award notice, rather than a procurement termination notice, to indicate this. This is done by completing the 'ceased lot information' (see regulation 28(2)(v) and 28(3)).
10. Once the contract has been entered into, the procurement termination notice is no longer relevant. Contracting authorities are required, however, to publish a



contract termination notice after a public contract has terminated (see guidance on contract termination for more information).

### Timing

11. Contracting authorities must publish a procurement termination notice as soon as reasonably practicable after making the decision to terminate the procurement. Whilst not defined specifically in the Act, timely notification is important to avoid suppliers incurring unnecessary costs in relation to the procurement. Contracting authorities should consider the covered procurement objectives in section 12(1)(c-d) of the Act which make it clear that contracting authorities must have regard to the importance of sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions and acting, and being seen to act, with integrity.
12. Contracting authorities must ensure that when publishing the procurement termination notice they refer back to the originating notice for the procurement.

### What other guidance is of particular relevance to this topic area?

- Guidance on competitive tendering procedures
- Guidance on direct award
- Guidance on frameworks
- Guidance on dynamic markets
- Guidance on the publication of information
- Guidance on contract termination
- Guidance on Welsh digital platform (Sell2Wales)
- Guidance on notice sequencing and flowcharts



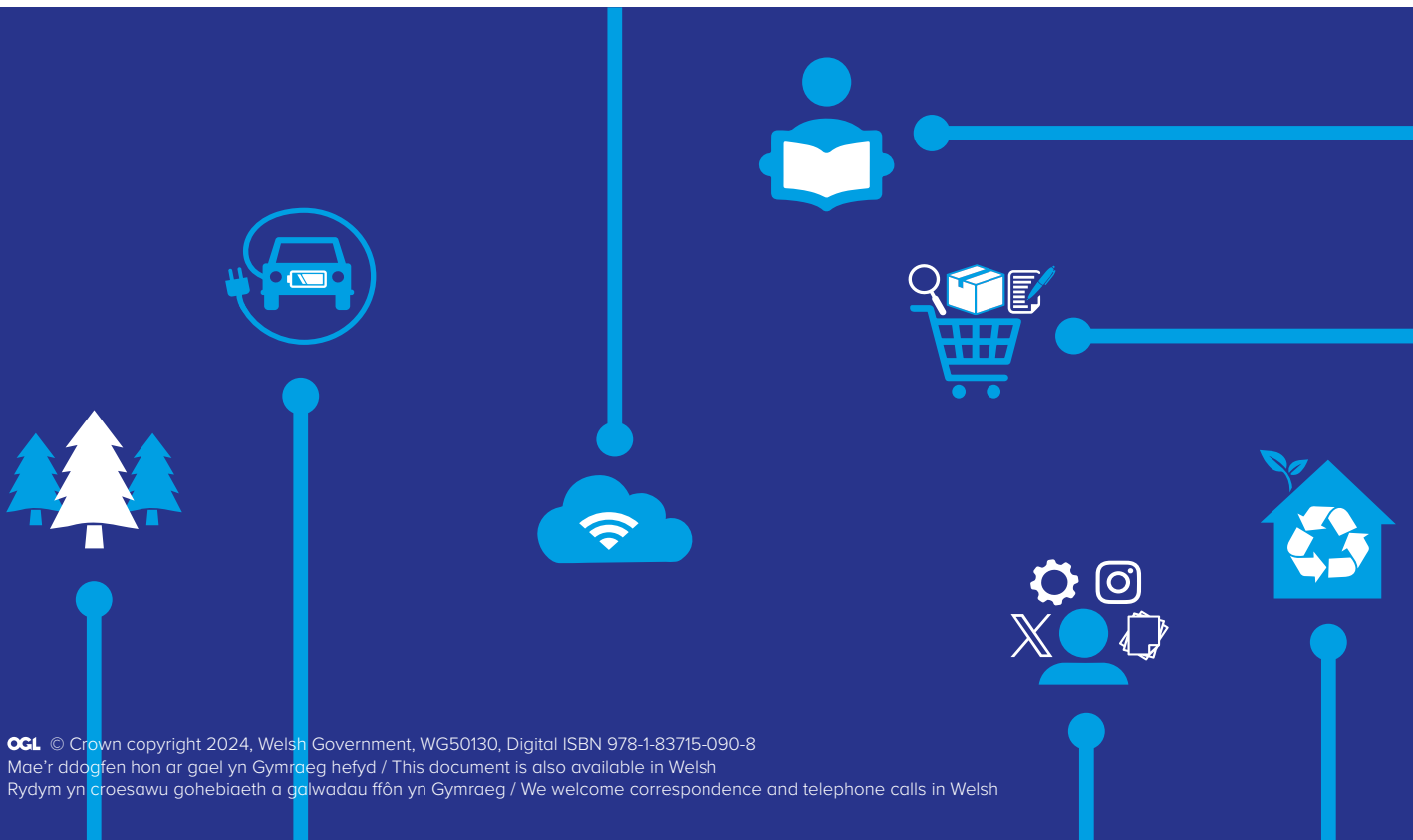


Llywodraeth Cymru  
Welsh Government

# Guidance

# Key Performance Indicators

December 2024





## Guidance: Key Performance Indicators

### What is a key performance indicator?

1. A key performance indicator (KPI) is defined in the Procurement Act 2023 (the Act) as a factor or measure against which a supplier's performance of a contract can be assessed during the life cycle of the contract.
2. By setting targets for the desired level of performance against KPIs, a contracting authority can measure and demonstrate a supplier's progress against those targets. Where KPIs apply, they will be set out in the contract between the contracting authority and the supplier. By working closely with bidders and suppliers the KPIs can be jointly shaped and understood.
3. By agreeing the definition(s) of poor performance, the escalation process for managing poor performance, and the contractual measures and timescales that will be put in place to rectify poor performance, contracting authorities can provide clarity and help to reduce the risk of disputes.

### What is the legal framework that governs KPIs?

4. Section 52 of the Act defines a KPI and sets out the circumstances in which a contracting authority must set and publish KPIs. Section 71 sets out when the contracting authority must assess the supplier's performance against the KPIs set and the information to be published in relation to that assessment.
5. Regulation 33 of the Procurement (Wales) Regulations 2024 (the Regulations) requires at least three KPIs to be published in the contract details notice where KPIs were set in accordance with section 52(1) of the Act.
6. Section 71(2) of the Act requires contracting authorities to assess performance against all the KPIs set in accordance with section 52(1) and to publish certain information about that assessment. Regulation 40 of the Regulations requires contracting authorities to publish assessment information with respect to all KPIs set out in the contract performance notice.
7. When a devolved Welsh authority uses a reserved procurement arrangement, the Welsh regulations will not apply, and they should therefore refer to the UKG guidance.



## What has changed?

8. This is the first time that KPIs have been legislated for in UK public procurement legislation. Contracting authorities should be aware of the new discretionary exclusion grounds in Schedule 7, paragraphs 12(3) and (4) of the Act which permit exclusion on the grounds of poor performance. This places more emphasis on the setting of KPIs and assessment of performance than has previously been the case. See guidance on exclusions for more information.

## Key points and policy intent

### Setting and publishing KPIs (sections 52 and 53 of the Act)

9. Before entering into a public contract with an estimated value of more than £5 million, section 52(1) of the Act generally requires that a contracting authority must set at least three KPIs in respect of the contract.
10. The obligation to set at least three KPIs does not apply if the contracting authority considers that the supplier's performance could not appropriately be assessed by reference to KPIs. This might include, for example, where the contract is for a one-off delivery of, or off-the-shelf, goods.
11. The requirement under section 52(3) of the Act to publish any KPIs set under section 52(1) is to be met by publishing the KPIs in the Contract Details Notice. Regulation 33(2)(r) of the Regulations requires that a Welsh contracting authority must publish a description of all KPIs and the frequency of assessment.
12. The obligation to set and publish at least three KPIs does not apply in relation to certain types of public contracts:
  - a. a framework (although it does apply to call off contracts under frameworks where these are over £5m);
  - b. a utilities contract awarded by a private utility;
  - c. a concession contract; or
  - d. a light touch contract.

### Assessment and publication of contract performance against KPIs (section 71 of the Act)

13. Where a contracting authority has set KPIs under section 52(1) of the Act, section 71 requires that it must assess the supplier's performance against those KPIs at least once in every twelve-month period during the lifetime of the contract and on termination of the contract, and to publish certain information in relation to



that assessment in the contract performance notice. A contracting authority may choose to assess performance (and publish information) more frequently.

14. Where a contract is terminated in full for poor performance, certain performance information must also be included in the contract termination notice. The information to be published in the contract performance notice is specified in regulation 40 of the Regulations and requires the contracting authority to publish an assessment of performance against all KPIs set under section 52(1) of the Act.
15. The KPIs included in the contract performance notice must be assessed in accordance with the ratings set out in regulation 40(5) of the Regulations and include the time period to which the assessment applies. The ratings are replicated in the table below. If a contracting authority has an internal rating system in place, it may still internally assess its suppliers against that rating system. However, it must use the ratings set out in regulation 40 when completing the contract performance notice. See the guidance on contract performance notices for further information.

<b>Rating</b>	<b>Description</b>
Good	Performance is meeting or exceeding the KPI
Approaching target	Performance is close to meeting the KPI
Requires improvement	Performance is below the KPI
Inadequate	Performance is significantly below the KPI
Other	Performance cannot be described as good, approaching target, requires improvement or inadequate

16. The ratings allow for an assessment of 'Other' to be recorded where performance does not fall within any of the other four descriptions. This rating could be used, for example, where no KPI data has been recorded by the contracting authority for that KPI for the relevant reporting period, for example, where the contracting authority publishes the contract performance notice quarterly but measures performance against a specified KPI on a six-monthly basis.





17. Contracting authorities may (provided this would be a permitted modification under section 74 of the Act) consider introducing a new KPI or amending an existing KPI. In this instance, the contracting authorities should use the free text box in the KPI description field to indicate which KPIs included in the contract performance notice are new or amended.

What other guidance is of particular relevance to this topic area?

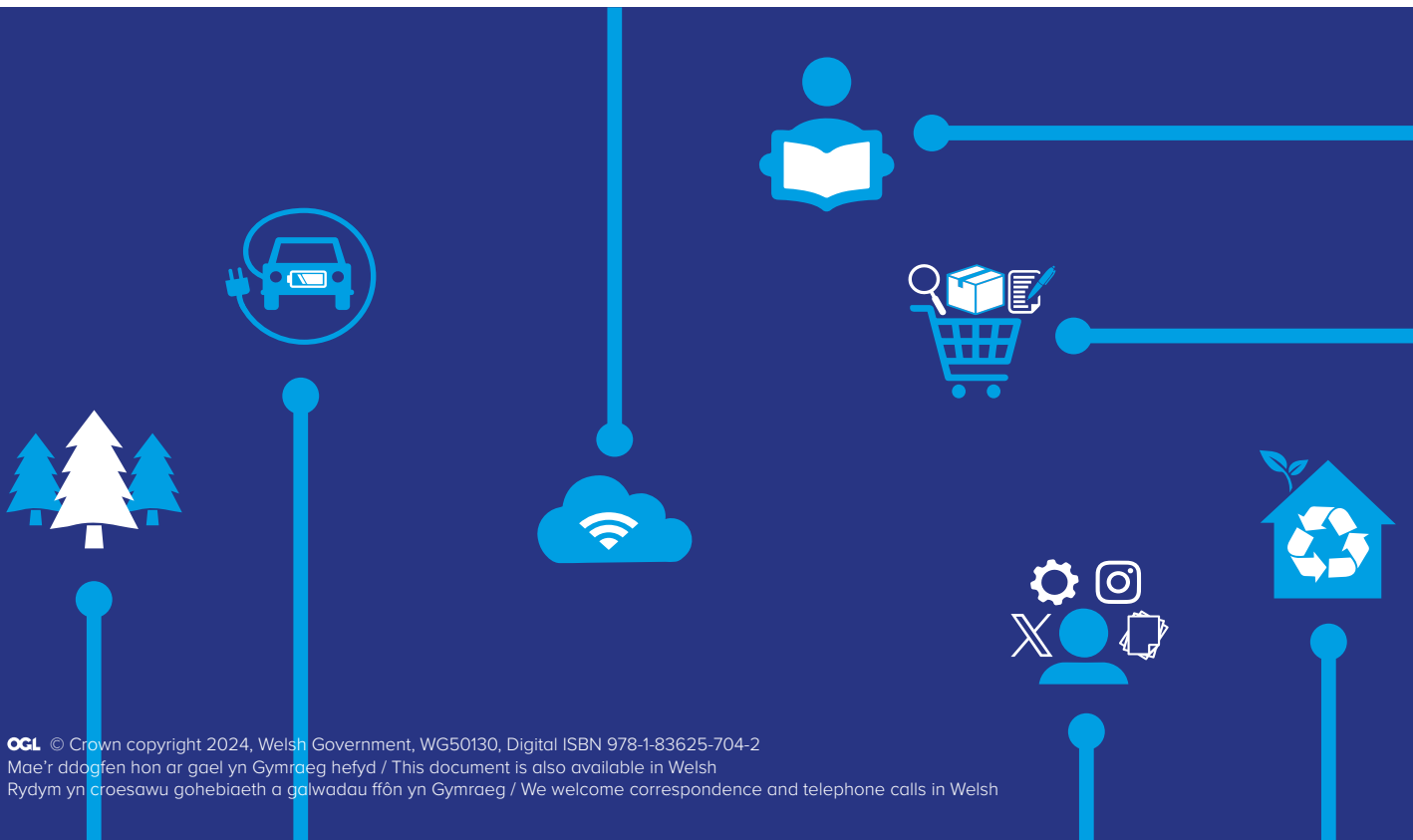
- Guidance on contract performance notices
- Guidance on contract details notices
- Guidance on contract termination notices



Llywodraeth Cymru  
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# Guidance Assessment Summaries

September 2024





## Guidance: Assessment Summaries

### What is an assessment summary?

1. Under the Procurement Act 2023 (the Act), before entering into a public contract, a contracting authority must generally publish a contract award notice (section 50(1) of the Act) on the central digital platform, and for devolved Welsh authorities this will be achieved by publishing it on the Welsh digital platform. The contract award notice triggers the commencement of the mandatory standstill period.
2. In addition, where a contracting authority has carried out a competitive tendering procedure under the Act, it must, prior to publishing the contract award notice, provide an 'assessment summary' which provides information to enable a relevant supplier to understand why its tender was either successful or unsuccessful.
3. When awarding a contract following a competitive tendering procedure, a contracting authority must provide an assessment summary to each supplier that submitted an 'assessed tender' (see paragraph 10 below) before publishing a contract award notice.

### What is the legal framework that governs the assessment summary?

4. Section 50 of the Act (Contract award notices and assessment summaries) sets out the definition of, the requirement for, and timing of, the assessment summary. The provisions are only relevant to public contracts as defined in Section 3 of the Act and not other contracts and this guidance therefore relates to public contracts. The information that must be included in the assessment summary is set out in regulation 32 of the Procurement (Wales) Regulations 2024.

### What has changed?

5. Assessment summaries broadly fulfil the same function as notices of a decision to award a contract (commonly referred to as 'standstill letters') in the previous legislation but there are some important differences. For example, under the Act, it is the publication of the contract award notice that initiates the standstill period, rather than the issue of standstill letters to participating suppliers as under the previous legislation. Also, contracting authorities are not required to include in an assessment summary a direct comparison between the successful supplier's assessed tender and an unsuccessful supplier's assessed tender. Rather, the



assessment summary provided to unsuccessful suppliers must include a copy of the information provided to the successful supplier (redacted for confidentiality where required) explaining how its tender scored against each of the criteria. A supplier reading the two sets of information alongside each other will be able to ascertain the relative advantages.

## Key points and policy intent

6. The aim of the assessment summary is to ensure that a supplier that submitted an assessed tender in relation to a competitive tendering procedure can understand why its tender was either successful or unsuccessful. It also allows unsuccessful suppliers to see how the contracting authority has determined the most advantageous tender (MAT) in accordance with the award criteria and assessment methodology.
7. The regulations set out what type of information must be provided in an assessment summary in a way that aims to provide a level of consistency across procurements, regardless of the contracting authority awarding the contract, what the contract is for, or the various approaches to award criteria and assessment methodology that may be taken.
8. Contracting authorities should be able to use information generated during the assessment process to meet the requirements of the assessment summary. In order to use the same information and minimise the need for reformatting, contracting authorities are advised to consider the format and requirements of assessment summaries as set out in regulation 32 of the Procurement (Wales) Regulations 2024 when developing award criteria, processes and templates for assessment.
9. Contracting authorities must provide each supplier that submitted an assessed tender with an assessment summary, which includes the required assessment information pertaining to its tender and, if the supplier is unsuccessful, the relevant assessment information pertaining to the MAT (see regulation 32(2) and (3) of the Procurement (Wales) Regulations 2024).
10. Section 50(5) of the Act defines an assessed tender as “a tender which — (a) was submitted in respect of the contract and assessed for the purposes of determining the most advantageous tender under section 19(1), and (b) was not disregarded in the assessment of tenders.” (For the purposes of a competitive flexible procedure, which may have multiple assessment stages, it is the final assessment stage that determines which supplier submitted the MAT and is awarded the contract.) This means that assessed tenders are only those tenders that are assessed at the final stage; tenders are not assessed tenders if they were rejected following an earlier assessment against the award criteria and



were therefore not included in the final assessment. Tenders must be disregarded because they do not satisfy the conditions of participation and may be disregarded for other reasons (see section 19(3) of the Act). Assessment summaries are also not required to be provided where contracts are awarded under a framework (see paragraph 40 below) or directly under sections 41 or 43 of the Act.

11. While there is no obligation under the Act to provide an assessment summary to suppliers who have not submitted an assessed tender, contracting authorities should inform suppliers in writing as soon as reasonably possible that they are not being taken forward in a competitive tendering procedure or will not be awarded the contract (as appropriate).
12. In the case of a competitive flexible procedure with multiple assessment stages, contracting authorities are advised to use the same feedback structure for suppliers who are unsuccessful in intermediate rounds as will be provided for assessed tenders. The assessment summary structure has been designed to provide suppliers with a robust explanation for their scores having regard to section 12(1)(c) and (d) of the Act and the requirement to have regard to the importance of sharing information and acting, and being seen to act, with integrity. When notifying suppliers who have not submitted assessed tenders, contracting authorities should aim to provide the appropriate level of detail to explain the suppliers' scores and the reasons for exclusion relevant to the point in the procurement procedure at which the supplier was excluded. Setting out in the tender documents that this information will be provided to all suppliers, not just those who submitted assessed tenders may help to ensure a strong competitive field, particularly where bid costs are high and the prospect of not receiving an assessment summary may deter suppliers from tendering.
13. Assessment summaries must be provided at the same time to all suppliers that submitted an assessed tender and before the contract award notice can be published (see paragraphs 37-38 below for more guidance on timing). Assessment summaries must be provided before the contract award notice is published to ensure that suppliers have the full standstill period in which to consider the information provided before the contract is entered into.
14. There is no requirement to publish assessment summaries on the Welsh digital platform or the central digital platform or to transmit them to suppliers through these platforms. Contracting authorities are free to provide assessment summaries by whichever method works best for their process (taking into consideration the requirements of section 96 (Electronic communications) of the



Act); for example, this could be through their own eProcurement system or via email.

### Required assessment information

15. The information to be included in an assessment summary is largely the same for both successful and unsuccessful suppliers, but unsuccessful suppliers will receive information about their own assessed tender (to the extent their tender was assessed (see paragraph 16 below)) as well as information about how the MAT scored against the award criteria. In addition to the information set out below, regulation 32(2)(a-c) of the Procurement (Wales) Regulations 2024 requires the assessment summary to include the recipient supplier's name, postal and email address, and unique identifier. There is no requirement to include the successful supplier's identifying information in assessment summaries that are provided to unsuccessful suppliers but contracting authorities should provide at least the name of the supplier who has submitted the MAT where doing so would not create a significant burden (which might be the case, for example, when awarding a framework to a large number of suppliers).
16. For unsuccessful suppliers, the regulations only require this information to be provided in relation to criteria that were assessed against the award criteria; if a contracting authority determines during the assessment of the tender that a 'pass/fail' criterion has not been met, it is not required to continue to assess the tender and to score it against the remaining award criteria (regulation 32(3)(b) of the Procurement (Wales) Regulations 2024), but the information must be provided against those criteria that have been assessed. If the contracting authority intends to adopt such an approach, this should be set out in the assessment methodology.

### Award criteria and assessment methodology (regulation 32(2)(d) of The Procurement (Wales) Regulations 2024)

17. Suppliers will have had access to the award criteria and assessment methodology in the tender notice and any associated tender documents. Consequently, this information does not need to be repeated in full in the assessment summary. Instead, the assessment summary can include only a summary of the award criteria. If this approach is taken, the contracting authority must indicate to suppliers where the full version of the award criteria and assessment methodology can be accessed (for example, by providing the tender notice reference).
18. The minimum award criteria information to be provided in the assessment summary is the title of each criterion and its relative importance (for example, the



weighting), how each criterion was to have been assessed and the scores available for each criterion.

19. It can be beneficial, however, to provide the full detail of the award criteria and assessment methodology used to determine the MAT in the assessment summary. This is particularly the case if, for example, award criteria have been refined during the course of a competitive flexible procedure in accordance with section 24 of the Act (see guidance on competitive tendering procedures for more information).

#### Scores awarded and justification (regulation 32(2)(e) of The Procurement (Wales) Regulations 2024)

20. Contracting authorities must provide suppliers with the score determined for each award criterion (regulations 32(2)(e) and 32(3)(b) of the Procurement (Wales) Regulations 2024). This means providing the score for each criterion (including each sub-criterion where sub-criteria have been used for assessment) as well as the total score. In practice and depending on the assessment methodology, this may also include sub-total scores.
21. For example, if the assessment methodology has different categories of award criteria (for example, technical, commercial and well-being impact categories) and it states that the scores of each criterion in a category will be added together to make a subtotal, and those subtotals will be added together to create a total score, then all of this information must be provided. An illustration could look like this:

	Technical			Commercial			Well-being Impacts
Criteria	A	B	C	D	E	F	G
Score	3	3	3	1	1	1	3
Sub-totals	9			3			3
Total	15						

22. For each award criterion (including any sub-criteria), the contracting authority must explain why that score was awarded by making reference to 'relevant information in the tender'.



23. This aspect of the assessment summary requires the contracting authority to make a judgement as to the appropriate level of detail to provide. As a guiding principle, the assessed tender should be recognisable from the information provided, so the supplier should be given sufficient information to understand the scores awarded without the contracting authority needing to reference sensitive details of the supplier's solution. Depending on how the award criteria are structured, contracting authorities will usually need to refer to the detail of the criterion and/or the definition of the score when explaining each score.
24. For example, the award criterion may state that in order to be awarded a particular score the tender must demonstrate that a number of requirements will be achieved in delivering the contract. If an assessed tender is then awarded that particular score, each of the requirements achieved should be referenced in the explanation.
25. Contracting authorities cannot simply repeat the award criterion and state "the tender demonstrated x" or "failed to demonstrate y," because reference must be made to the tender. The below is an illustrative example of a more appropriate approach:

"The tender demonstrated all the necessary requirements to achieve a score of 5. It provided, in section [x] of the tender, the necessary details to give the authority confidence that [requirements a, b, c] will be delivered, including [insert information in the tender relevant to the requirements demonstrated]."

26. In some cases, it might not be possible for a supplier to understand why a particular score was determined without also explaining why a higher score was not achieved. Provision of this information is, in any case, best practice to assure suppliers that the correct score has been awarded. How this is done will depend on the structure of the award criteria and the scoring description. To continue with the example in paragraph 25 above, it may be that to achieve a higher score, the tender must have demonstrated additional requirements. In explaining why the higher score was not awarded, the contracting authority should acknowledge which of those requirements it failed to demonstrate and why; for example:

"Although the tender stated that [requirements x and y] would be met, the tender failed to explain how the proposed solution met those requirements and therefore failed to demonstrate [requirement x] and [requirement y] would be delivered. This meant the tender could not be awarded a higher score."

27. It is best practice to address the requirements of each award criterion as fully as possible. However, contracting authorities may determine, where the criteria are particularly complex or large in number, that focusing on key aspects of the





tender is adequate to meet the requirements of the assessment summary where those aspects of the tender provide sufficient information to explain each score awarded. Contracting authorities should, however, take the same approach with each supplier to ensure the same level of detail is provided to each supplier that submitted an assessed tender.

### Consideration of sensitive information

28. In most cases it should be possible to refer to the content of the tender in the assessment summary without needing to divulge sensitive commercial information, such as information which constitutes a trade secret or unique selling points that would prejudice the supplier if disclosed. Not going into such detail in templates or reports for assessing award criteria will facilitate sharing information in respect of the MAT to unsuccessful suppliers by minimising or removing the need for redaction. Where appropriate, focusing comments on the outcomes the tender will achieve can help, but contracting authorities should bear in mind that the content of the assessment summary will be driven by the structure and drafting of the award criteria.
29. The following explanation for a score is provided as an illustrative example and is based on the contracting authority having an award criterion that relates to whether the tender demonstrates that:
  - a. the supplier's software solution maximises the use of open standards and architectures;
  - b. the supplier's software solution maximises the reuse of existing technologies and products; and
  - c. a team of suitably qualified and experienced personnel will be available to deliver the software.

The explanation given for the score determined for the above award criterion could take an approach similar to the following:

“The tender proposed an architecture design that is based on an open standard. A ‘plug and play’ approach has been adopted, demonstrated by an annotated list of suitable alternative off the shelf components. Analysis of various existing products is provided that demonstrated only two aspects of its solution will require modified or bespoke products, with clear justification. The tender included a team organogram, with nominated personnel against roles, based on qualifications and experience (detailed in the tender) and project timing. The contracting authority has confidence in the evidence that demonstrates that the contract will be performed by the appropriate number of experts with expertise which exceeds minimum requirements. A reasonable



minimum level of qualifications and experience required for any new or additional team members has been proposed.”

30. The above example references information from the tender for each of the three elements the criterion lists, and consequently provides the corresponding detail. This approach enables the supplier to understand its score by reference to its tender, but avoids including sensitive commercial information.
31. However, it is recognised that sometimes including sensitive commercial information cannot be avoided. When the assessment information will only be provided to the supplier that the information pertains to, this is not a concern. However, the successful supplier’s assessment summary information will be shared with the unsuccessful suppliers and therefore contracting authorities should consider whether there is sensitive commercial information relating to the MAT that should not be provided to other suppliers as part of their assessment summaries.
32. Section 94 of the Act permits contracting authorities to withhold information to protect national security or if the information is commercially sensitive and there is an overriding public interest in it being withheld (see guidance on publication of information for more information). This provision can be used to redact details about the MAT for the purpose of providing that information to unsuccessful suppliers. Where information is withheld, the contracting authority should ensure that the information being provided to unsuccessful suppliers against each criterion nonetheless gives a sufficient explanation of the score awarded to the MAT.
33. To help understand what details may be commercially sensitive, contracting authorities are encouraged to request in tender documents that suppliers, at tender stage, identify the sensitive commercial information that is included in their tenders. This could be achieved, for example, by the inclusion of a schedule detailing the sensitive information (referencing where in the tender that information is contained) and the justification for its confidentiality. Contracting authorities are not obliged to accept that information is commercially sensitive simply because a supplier has labelled it as such and should discourage suppliers from making blanket and unsustainable confidentiality claims. Contracting authorities should engage with the supplier in order to reach an agreement on what information is sensitive commercial information, noting that the contracting authority must still be satisfied that there is an overriding public interest in that information being withheld from disclosure if such information is not provided. More information on commercially sensitive information can be found in the guidance on publication of information.



## Other information that may apply to an unsuccessful tender (regulation 32(3)(c) of The Procurement (Wales) Regulations 2024)

34. In the case of unsuccessful suppliers, the assessment summary must also include any further explanation of why that supplier is not being awarded the contract.
35. For example, the assessment methodology may state that if a tender fails to achieve the minimum score for a particular award criterion, then the assessment of that tender will cease and the tender will be disqualified. In that scenario, the assessment summary would provide information for each score awarded to the extent that the tender was assessed against the award criteria before it was disqualified, plus further explanation that the tender was disqualified once it was assessed as failing to meet the minimum score for a particular award criterion (and the reason for that assessment).
36. In addition, regulation 32(5) of the Procurement (Wales) Regulations 2024 allows contracting authorities to include any other information they consider appropriate. Contracting authorities may therefore consider whether to include general feedback that may help the supplier improve its future tenders in order to encourage them to participate in future procurement opportunities. There is no legal requirement to provide feedback of this nature but it may be particularly useful for small and medium-sized enterprises or new entrants to the market.

### Timing

37. Contracting authorities must provide an assessment summary to each supplier at the same time (regulation 32(4) of the Procurement (Wales) Regulations 2024) and before the contract award notice is published (section 50(3) of the Act). It is important that contracting authorities provide the assessment summaries promptly after the award decision has been made.
38. It is anticipated that in most circumstances, the contracting authority will want to publish the contract award notice on the same day that the assessment summaries are provided, assuming they are provided electronically. The Act does not prescribe any particular period of time between the provision of the assessment summary and the publication of the contract award notice. In certain circumstances, the contracting authority may want to build in a period of time following the provision of assessment summaries and before the contract award notice is published. The time between provision of assessment summaries and publication of the contract award notice should be given careful consideration as it is publication of the contract award notice that starts the standstill period.



Timing will be for the contracting authority to determine, given the circumstances at hand, including the design of any competitive tendering procedure.

### Lots, dynamic markets and frameworks

39. Lots: When awarding contracts by reference to lots, the requirement to provide an assessment summary applies to the contract awarded. For example, if a contracting authority awards a public contract that encompasses two lots, the assessment summary would include the assessment information for both lots. However, if it awarded separate contracts for each lot, it would provide the supplier with an assessment summary for each contract.
40. Dynamic markets: Assessment summaries are not relevant to establishing a dynamic market, as a dynamic market is not a public contract; neither are they relevant when suppliers are admitted (or not admitted) to a dynamic market as this does not create a contract. An assessment summary is required when awarding a public contract under a dynamic market, however, because these contracts are awarded under a competitive flexible procedure pursuant to section 19 of the Act.
41. Frameworks: The requirement to provide assessment summaries applies when awarding a framework that is a public contract. It does not apply when awarding a contract in accordance with a framework (awarding a call-off contract) as those contracts are awarded in accordance with the terms of the framework, rather than section 19 of the Act. It is best practice, however, to adopt a similar or the same approach when awarding these contracts, which should be considered when setting up the framework itself.
42. It is recognised that when a high number of suppliers have tendered, such as when awarding a framework, providing assessment summaries can be time consuming. As set out above, there is some discretion available to contracting authorities to determine the level of detail appropriate to the procurement.
43. Additionally, when awarding a multi-supplier framework (or any form of contract following a competitive tendering procedure where there are multiple successful suppliers), there will be more than one MAT. In these circumstances, the successful suppliers will only need to be provided with the assessment information relevant to their own tender. When providing unsuccessful suppliers with the assessment information relating to the MAT there is no requirement for a contracting authority to provide assessment information about all the successful tenders. Instead, the contracting authority should use the lowest scoring successful tender as the relevant MAT as this approach is likely to give the unsuccessful suppliers the best indication of the gap between their unsuccessful tenders and what was required to be successful.



What other guidance is of particular relevance to this topic area?

- Guidance on competitive tendering procedures
- Guidance on awarding a contract following a competitive tendering procedure
- Guidance on contract award notice and standstill
- Guidance on publication of information
- Guidance on notice sequencing and flowcharts



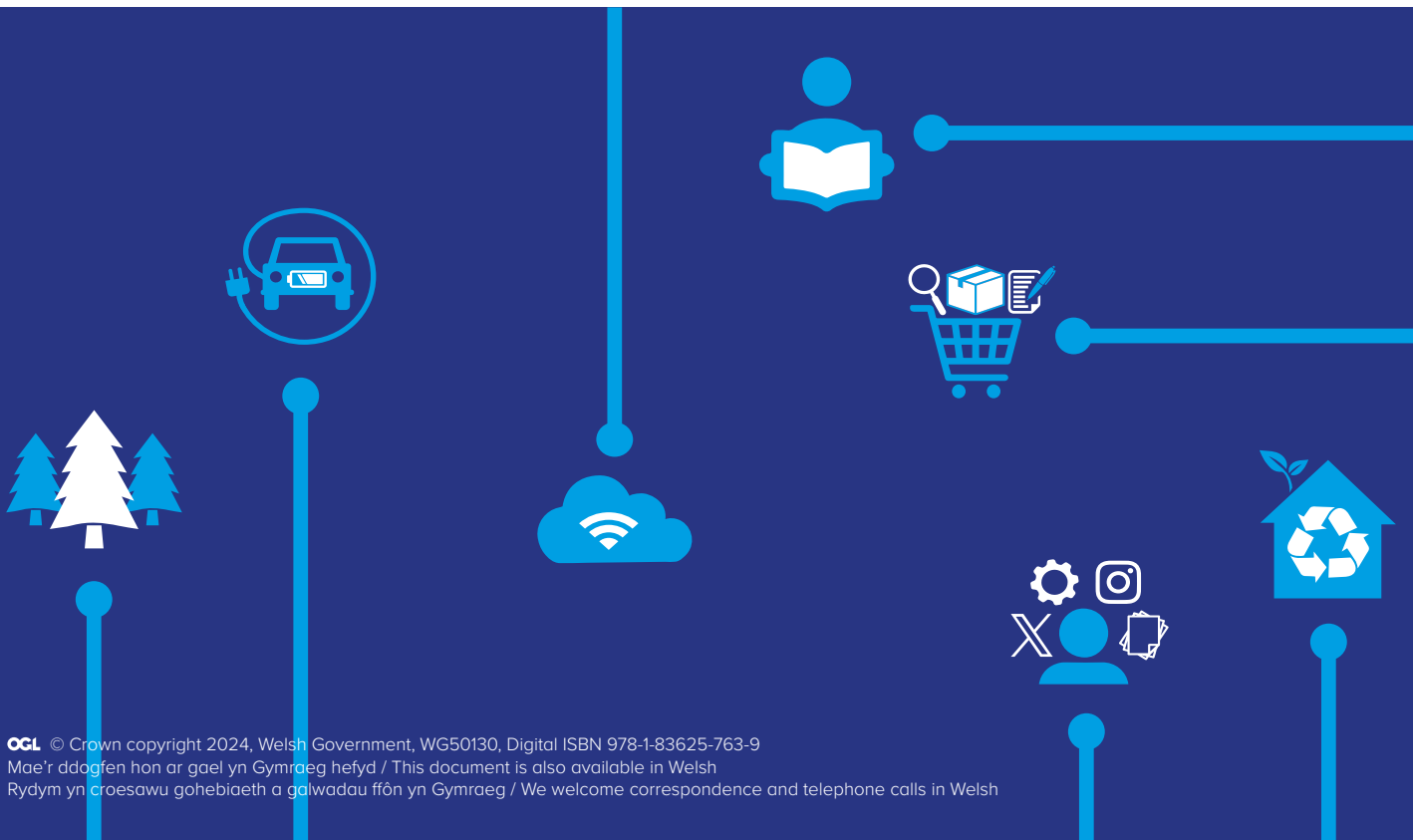


Llywodraeth Cymru  
Welsh Government

# Guidance

## Contract Details Notices

October 2024





## Guidance: Contract Details Notices

### What is a contract details notice?

1. A contract details notice informs suppliers and the public that the contracting authority has entered into a contract. It also provides key information about the contract that has been entered into.
2. Publication of the contract details notice takes place after any standstill period has ended and the contract has been entered into. For devolved Welsh authorities the contract details notice is required to be published on the central digital platform by publishing it on the Welsh digital platform (in accordance with regulation 5 of [the Procurement \(Wales\) Regulations 2024](#) (the Regulations)).

### What is the legal framework that governs contract details notices?

3. Section 53 of the Procurement Act (the Act) requires contracting authorities to publish a contract details notice setting out that it has entered into a public contract within 30 days of the contract being entered into, except in relation to light touch contracts for which the period is 120 days. Regulations 33-36 of the Regulations set out the information required to be included in the notice.
  - a. Where a devolved Welsh authority utilises a reserved procurement arrangement (as defined in [Section 114\(5\) of the Act](#)), it will also be required to publish a copy of any public contract it enters into with an estimated value of more than £5 million. The obligation to publish a contract details notice or a public contract does not apply to private utilities or to direct award: user choice contracts (see Schedule 5, paragraph 15).
4. Section 87 of the Act requires contracting authorities to publish a contract details notice as soon as reasonably practicable after entering into a 'notifiable below-threshold contract'. For devolved Welsh authorities a notifiable below-threshold contract is a regulated below-threshold contract with an estimated value of over £30,000.
5. This guidance deals with contract details notices required to be published under section 53 of the Act, following entry into a public contract. See guidance on below-threshold contracts for guidance on contract details notices for regulated below-threshold procurements.



## What has changed?

6. The contract details notice is published on the Welsh digital platform (Sell2Wales) and central digital platform after the contract has been entered into. It replaces the contract award notice published on the Find a Tender Service and the awarded opportunity notice published on Contracts Finder under the previous legislation.
7. For public contracts with an estimated value of more than £5 million, there are also new requirements to publish the KPIs set in accordance with section 52(1) of the Act.
8. Where devolved Welsh authorities utilise a reserved procurement arrangement (as defined in [Section 114\(5\) of the Act](#)), they are also required to publish copies of the contract.

## Key points and policy intent

9. A contract details notice serves to tell interested parties that the contract has been entered into and to provide details about that contract. Its publication is mandatory for all contracting authorities except for private utilities and for all public contracts (including call-off contracts that are public contracts) except contracts awarded under section 41 of the Act by reference to paragraph 15 of Schedule 5 (direct award: user choice contracts).
10. Where a contract details notice is published for a contract over £5 million and a reserved procurement arrangement (as defined in [Section 114\(5\) of the Act](#)) has been utilised, the contracting authority must also publish a copy of the contract.
11. There are four separate regulations (regulations 33-36 of [the Procurement \(Wales\) Regulations 2024](#)) that set out the information which must be included in a contract details notice published under section 53 of the Act, with different information required depending on the circumstances (i.e. whether the notice is published following a competitive tendering procedure, direct award, the award of a framework or the award of a 'call-off contract' awarded under a framework).
12. There is no requirement to publish redacted copies of contracts over £5 million awarded by a devolved Welsh authority (unless it is awarded under a reserved procurement arrangement) or contracts awarded under a devolved Welsh procurement arrangement. This is the case even though there is a requirement to publish a contract details notice.





## Content of contract details notices: competitive tendering procedures

13. The information to be published in a contract details notice where an open or competitive flexible procedure is used to award a public contract is set out in regulation 33 of [the Regulations](#). It includes much of the same information published in previous notices (such as in the tender notice, transparency notice and contract award notice) for the relevant procurement, but with new and updated information to reflect that the contract has been entered into. Points to consider are set out below.

### KPIs

14. Where section 52 of the Act applies and KPIs have been set, devolved Welsh authorities must provide a description of each KPI set within the contract details notice and detail how often the authority will assess performance against the KPI in accordance with section 71 of the Act. See the guidance on KPIs for further information.
15. Where KPIs have not been set under section 52 of the Act, the contract details notice must include an explanation of why KPIs were not appropriate to assess the performance of the supplier.

### Contract value, duration and options

16. A procurement may result in more than one contract, all of which can be set out in the same contract details notice. Where this is the case, required information on contract value and duration must be included for each individual contract. This means that for each contract, there will be the option to include the minimum value and a requirement to include the maximum value, which must include the value of any options in the public contract.
17. The contract details notice must also set out the estimated date when, or period over which, the goods, services or works will be supplied (this is part of the 'contract subject-matter' as defined in regulation 15) and the end date of any options to extend or renew the term of the contract.
18. As options that increase the value and/or duration of a contract are included in the maximum estimated value/duration of the contract as awarded and published in the contract details notice, modifications that rely on Schedule 8, paragraph 1 of the Act and increase the value or term of a contract are exempt in effect from the requirement to publish a contract change notice. If an option that is included in the contract details notice is not exercised before a contract is terminated, the



final value of the contract set out in the contract termination notice may be lower than the value set out in the contract details notice.

### Conflicts assessments

19. A contracting authority must confirm in the contract details notice that a conflicts assessment has been prepared and revised as necessary, as required by section 83(5) of the Act (note conflicts assessments themselves are not required to be published). Please see guidance on managing conflicts of interest for further information.

### Content of contract details notices: frameworks

20. Regulation 34 of [the Regulations](#) sets out the information required to be included in a contract details notice published following the award of a framework that is a public contract. This is largely the information required by regulation 33 plus some additional information. The additional information includes details of any selection process to be followed when subsequent call-off contracts are awarded under the framework.
21. When publishing a contract details notice, the contracting authority will usually be able to set out comprehensive details of the contract subject-matter (as required by regulation 33(2)(f) and regulation 15 of [the Regulations](#)). However, in some instances, the full extent of the contract subject-matter may not be known, which is recognised by regulation 15, which requires the contract subject matter to be set out so far as it is known at the time the notice is published. This may be the case, for example, following the award of a framework where it is not known how the goods, services or works will be supplied for all call-off contracts that may be awarded under the framework.

### Content of contract details notices: call-off contracts awarded under frameworks

22. Regulation 35 of [the Regulations](#) sets out the information required to be included in a contract details notice published following the award of a call-off contract that is a public contract. This is largely the information required by regulation 33 plus some additional information. The additional information includes whether the award was made following a competitive selection process (under section 46 of the Act) or without further competition (under section 45(4) of the Act) and, if the latter, an explanation as to why the contracting authority considered no further competition was required (by reference to section 45(4) of the Act).



## Content of contract details notices: direct award

23. Regulation 36 of [the Regulations](#) sets out the information required to be included in a contract details notice published following the direct award of a public contract. This is largely the information required by regulation 33 plus some additional information, such as which direct award ground in Schedule 5 of the Act applies or whether the contract was awarded pursuant to regulations made under section 42.

## Timing of publication

24. Section 53(1) of the Act provides that the contract details notice must be published:
- a. within 30 days of the contract being entered into; or
  - b. in the case of a light touch contract, within 120 days of the contract being entered into.
25. The 30 or 120 day period begins with the day the contract is entered into; the period may end on a non-working day and contracting authorities should take this into account (although the Wesh digital platform and central digital platform will be available for use on non-working days).
26. The definition of what it means for a contracting authority to enter into a contract is not set out in the Act or the regulations. It is the point when a legally binding contract comes into effect, which will be when the essential elements under contract law are satisfied (offer and acceptance; consideration; and intention to create legally binding relations).
27. When all of those elements have been satisfied will be fact-specific. For example, it may be when the contract is signed and dated, and it is expected that will be the relevant date in the majority of cases. However, the date the contract is entered into may instead be, for example, after a particular event has occurred or based on when services or works start under the contract.
28. It is for the contracting authority to determine the relevant date based on the circumstances. In doing so, contracting authorities must continue to have regard to the objective of information-sharing set out in section 12(1) of the Act and be transparent about when contracts have been entered into.



## Publication of the contract (reserved procurement arrangements)

29. As set out in section 53 of the Act (Contract details notices and publication of contracts) where a reserved procurement arrangement (as defined in [Section 114\(5\) of the Act](#)) has been utilised, devolved Welsh authorities that enter into a public contract with an estimated value of more than £5 million must publish a copy of the contract. The contract details notice will be the vehicle for publication of the contract where this threshold is met. This will be done by including the contract as an attachment to the notice.

## Timing of publication of the contract

30. For most contracts under reserved procurement arrangements, publication must take place before the end of the period of 90 days beginning with the day on which the contract is entered into. For light touch contracts, a copy of the contract must be published before the end of the period of 180 days beginning with the day on which the contract is entered into.
31. These are the maximum timeframes for publication and mean that a contract may be published some time after the contract details notice is published. For efficiency, and to save having to add the contract to the notice later, the contract can be published at the same time as the contract details notice.
32. The contract may be redacted in accordance with the exemptions set out in section 94 of the Act (General exemptions from duties to publish or disclose information).

## Contract change prior to publication of the contract details notice

33. The contract published with the contract details notice (where required) must be the contract that was originally entered into. There may be cases where there is an immediate change to a contract after it has been entered into i.e. a modification occurs immediately after the contract commences. This could trigger the requirement to publish a contract change notice (under section 77 of the Act) during the period in which the contract details notice would be published; this is in addition to the requirement under section 53(3) of the Act to publish the contract entered into.
34. In these cases, contracting authorities must not use the contract details notice to record the contract change. They must publish the contract details notice and a copy of the contract that was entered into; and then subsequently publish the contract change notice (and a copy of the contract as modified or the modification) to document the contract change. Please see the guidance on contract modifications for further information.



What other guidance is of particular relevance to this topic area?

- Guidance on contract award notices and standstill
- Guidance on key performance indicators
- Guidance on publication of information
- Guidance on notice sequencing and flowcharts
- Guidance on managing conflicts of interest

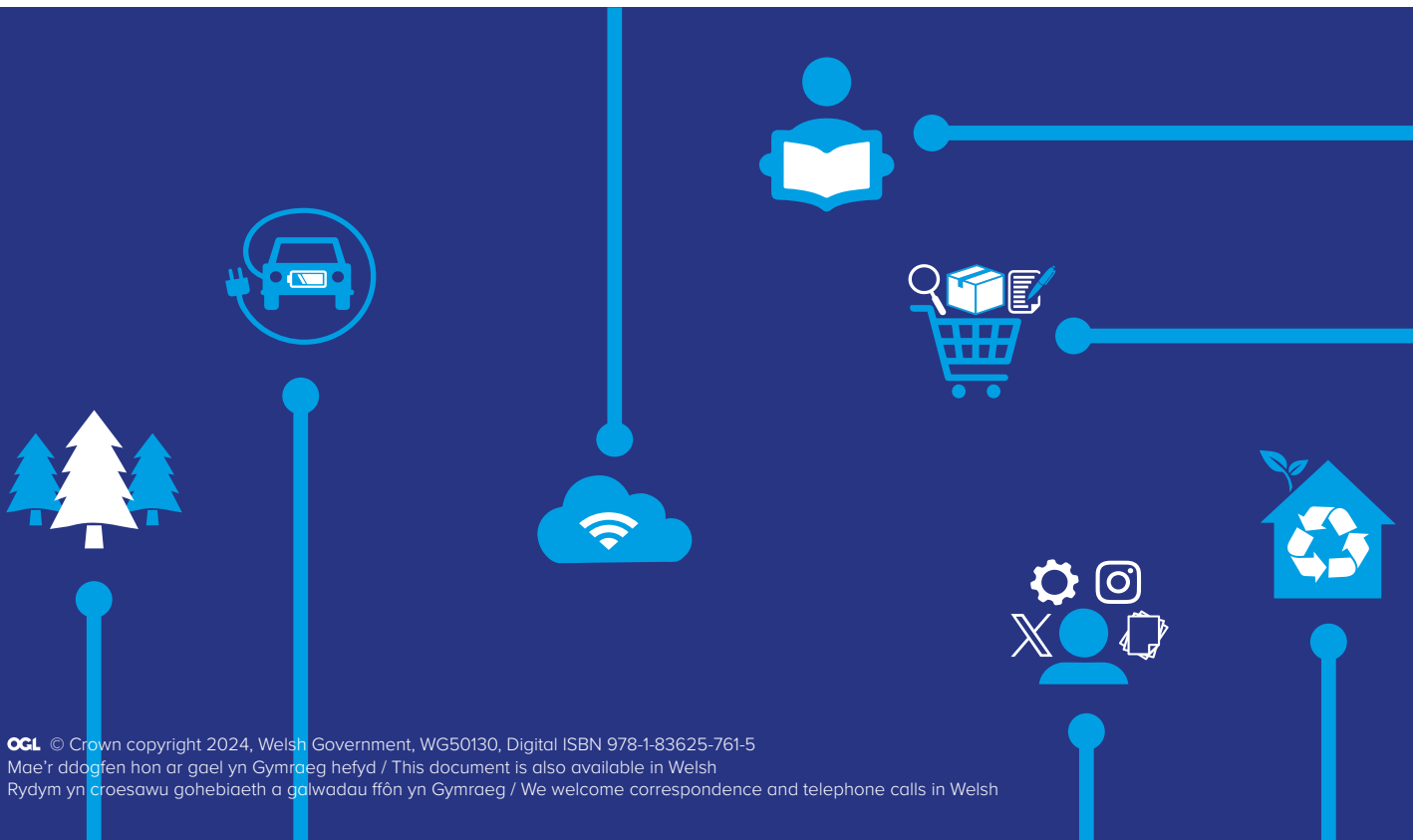




Llywodraeth Cymru  
Welsh Government

# Guidance Remedies

October 2024





## Guidance: Remedies

### What are remedies?

1. Contracting authorities are under a statutory duty to comply with the Procurement Act 2023 (the Act) and the Procurement (Wales) Regulations 2024 (the Regulations). A breach of statutory duty may cause loss or damage to a supplier. As such, it is important that contracting authorities can be challenged and that civil remedies are available to compensate suppliers for any loss or damage, or remedy the situation and to incentivise contracting authorities to comply with the Act.
2. This guidance focuses on the legal remedies that are available under the Act. It covers the actions or decisions that the Court may take in civil claims against a contracting authority for breach of statutory duty. It does not cover any other remedies which a supplier may seek, such as judicial review.

### What is the legal framework that governs remedies?

3. The remedies provisions are set out in Part 9 of the Act (Remedies for breach of statutory duty):
  - a. Section 100 (Duties under this Act enforceable in civil proceedings): This section sets out the basis and scope for challenge under Part 9 of the Act;
  - b. Section 101 (Automatic suspension of the entry into or modification of contracts): This section provides for an automatic suspension to apply to prevent the contracting authority from entering into or modifying a public contract. The effect is to enable the supplier to seek 'pre-contractual remedies' which are remedies that can only apply where the contract has not been entered into or the modification has not been made;
  - c. Section 102 (Interim remedies): This section sets out the orders that may be made by the court pending the outcome of a legal claim, such as lifting the automatic suspension, and the basis on which the court will consider making such orders;
  - d. Section 103 (Pre-contractual remedies): This section sets out the remedies available to the supplier if its claim is successful and is resolved before the contract is entered into or the modification made;
  - e. Section 104 (Post-contractual remedies): This section sets out the remedies available if the claim is successful and the contract has already been entered into or the modification made;



- f. Section 105 (Post-contractual remedies: set aside conditions): This section sets out when the post-contractual remedy (set out in section 104(2)) of 'set aside' (of the contract) must be made;
  - g. Section 106 (Time limits on claims): This section sets out how long a supplier has to commence proceedings for breach of statutory duty; and
  - h. Section 107 (Part 9 proceedings and closed material procedure): This section enables sensitive information to be protected during court proceedings.
4. Part 9 of the Act reflects the UK's international obligations on public procurement that require timely, effective, transparent and non-discriminatory review procedures to be in place that allow suppliers to challenge procurement law breaches.

### What has changed?

5. The remedies regime under the Act replicates the intent of the provisions in the previous legislation. As with the previous legislation, a standstill period is required under the Act prior to entering into a contract in certain circumstances and the contracting authority is prohibited from entering into the contract if a challenge is brought, the contracting authority is aware of the challenge and the contract has not yet been entered into (automatic suspension). The standstill period differs under the Act as it is 8 working days in all cases. The automatic suspension is also slightly different under the Act in that it only applies if a challenge is brought within the standstill period. Also like the previous legislation, there are a range of interim and pre-contractual and post-contractual remedies, including damages.
6. There are some changes in wording to reflect UK nomenclature; notably 'ineffectiveness' is now 'set aside', but means the same thing. The triggers (conditions) for set aside also look rather different from the ineffectiveness provisions in the previous legislation but they reflect the same intent: that a supplier should have the option of bringing a claim to set aside the contract where it has been denied the opportunity to bring a claim before the contract has been entered into or the modification made. The set aside conditions are different from the grounds for ineffectiveness in the previous legislation because of the increased transparency provisions under the Act which provide more information and at more stages to suppliers before the contract is awarded or entered into.
7. The Act introduces a new, procurement-specific test to be applied by the Court when determining whether to make an order for an interim remedy. This test will be used by the Court, for example, when determining whether to lift an automatic suspension on application by the contracting authority (see paragraph 29 below).





## Key points and policy intent

8. Having an effective and well-functioning remedies system is essential to ensure the successful operation of any public procurement regime. It helps to ensure contracting authorities comply with procurement rules and gives suppliers confidence that public contracts will be awarded fairly and transparently. This, in turn, encourages them to tender for public contracts.
9. When challenging a contracting authority under the Act, a supplier must commence proceedings for breach of statutory duty, within the prescribed time limits. Proceedings are commenced when the Court issues a claim form (at the request of the supplier who is bringing the claim). The remedies that the Court may grant to the challenging supplier (the claimant) if its claim is successful and the conditions under which such remedies are available are set out in the Act. The Court may also order that one of the interim remedies set out in the Act applies pending resolution of the claim.
10. However, court proceedings are not the only way for suppliers to resolve concerns about a procurement. The transparency requirements included in the Act support the remedies regime by enabling suppliers to spot and raise any issues related to the procurement at the earliest opportunity, so that, as much as possible, they can be resolved when they arise and before the contract award decision is made or the contract is entered into (and outside of court). By resolving issues that arise during the procedure at an early stage, the risk of disruptive legal action is reduced.

## Scope (section 100)

11. Not all suppliers have a right to a remedy under Part 9 of the Act and not every type of breach (failure to comply with the Act) has the potential to give rise to a claim against the contracting authority.
12. Section 100 (Duties under this Act enforceable in civil proceedings) sets out some important principles that underpin the remedies regime and the conditions that a supplier must meet in order to 'have standing' (i.e. the right to bring a claim). These are:
  - a. breaches of the following Parts of the Act (concerned with the award, entering into and management of public contracts) may give rise to a claim for breach of statutory duty:
    - i. Part 1: Key Definitions;
    - ii. Part 2: Principles and Objectives;



- iii. Part 3: Award of Public Contracts and Procedures;
- iv. Part 4: Management of Public Contracts;
- v. Part 5: Conflicts of Interest;
- vi. Part 7: Implementation of International Obligations; and
- vii. Part 8: Information and Notices: General Provision.

- b. Only 'United Kingdom suppliers' and 'treaty state suppliers' (as defined in section 90(7) and 89(1) of the Act, respectively) have a right to bring a claim for breach of statutory duty under the Act, in respect of 'covered procurement' (as defined in section 1(1) of the Act) (see paragraph 13 below).
- c. A supplier must be able to demonstrate that it has suffered, or is at risk of suffering loss or damage as a result of the breach.
- d. The claim form must be issued by the Court within the time periods set out in section 106 (Time limits on claims). If the claim form is not issued within the relevant time limit, the supplier may lose its right to claim a remedy; the Court may make an order to extend the time period to commence proceedings but only if it considers there is a good reason for doing so and subject to a maximum period.

13. Contracting authorities should note that section 89(2) of the Act limits a treaty state supplier's rights under the Act to "the extent that it is entitled to the benefits of an international agreement specified in Schedule 9 in relation to the procurement being carried out or challenged". For the purposes of remedies, this means that a treaty state supplier will only have standing to bring a claim for the types of procurement and provisions of the Act covered by the international agreement between the relevant treaty state and the UK. See guidance on treaty state suppliers for more information.
14. A supplier's claim is often based on the loss of profits that it would have expected to earn if it had won the contract, but 'loss or damage' may also include bid costs or other consequential loss, for example. Whatever the loss or damage relates to, the claimant must be able to demonstrate to the Court's satisfaction that it was caused by the alleged breach.
15. There are a small number of obligations in Parts 1 to 8 of the Act which cannot be challenged under Part 9 if breached. This includes all obligations within Part 6 (Below-threshold contracts) and other obligations set out in section 100(5-6) as follows:
- a. the duty to comply with section 12(4) (requirement to have regard to barriers facing SMEs);
  - b. the duty to comply with section 13(9) or 14(8) (requirement to have regard to procurement policy statements); and



- c. the duty to comply with section 90 (treaty state suppliers: non-discrimination) if the procurement is not a covered procurement.

These may, however, be subject to public law remedies, i.e. judicial review.

16. Additionally, under section 100(7) a supplier may not bring a claim against a contracting authority that has excluded it from a procurement on the basis of a Minister of the Crown's decision in relation to the debarment list, namely:
  - a. the Minister's decision to enter a supplier's name on the debarment list;
  - b. the Minister's decision relating to the information included on the debarment list;
  - c. the Minister's decision not to remove a supplier from the debarment list; and
  - d. the Minister's decision not to revise information included on the debarment list.

The Act does, however, give a supplier the right to appeal the Minister's decisions under section 65 (Debarment decisions: appeals). See the guidance on debarment for more information.

#### Time limits (section 106)

17. Generally a supplier has 30 days from when it first knew, or ought to have known, about the relevant circumstances to commence proceedings for breach of statutory duty ('30 day period'). This means that the 30 day period would usually commence when the supplier is provided with or has access to information that enables it to identify a breach.
18. For example, if a supplier considers that the award criteria in a particular procurement breaches the Act, it must issue the claim within 30 days of the award criteria being made available to it. Where a notice identifies a breach, the supplier has 30 days from the publication of the notice to commence proceedings. The onus is on the supplier to review the information in a timely manner to ensure that it can commence proceedings within the relevant timescales.
19. The supplier can apply to the Court to extend the time limit for commencing proceedings. The Court can generally extend the period to allow a maximum of three months in which to commence proceedings, but only where it considers there is good reason to do so. The period for commencing any 'specified set-aside proceedings' (see paragraphs 43 - 46 below) can be extended up to a maximum of six months.



20. After the Court has issued a claim form, the Civil Procedure Rules (which govern the management of civil claims in England and Wales) require the Particulars of Claim to be served on the contracting authority within the same time frame as the claim form must be served which, for procurement challenges, is within 7 days after the date of issue (see Civil Procedure Rule 7.4).

#### Automatic suspension (section 101 and 102)

21. If a mandatory or voluntary standstill period applies to the award or modification of a contract and during the standstill period a supplier:

- a. has commenced proceedings; and
- b. notifies the contracting authority that it has done so,

the contracting authority's ability to enter into the contract will be automatically (and immediately) suspended. That means that the contract must not be entered into or the modification must not be made.

22. If the claim form is issued and/or notified after the standstill period has ended but before the contract has been entered into, the automatic suspension in section 101 does not apply and the contracting authority is freely able to enter into the contract or make the modification. However, in such circumstances, it is advisable to seek legal advice before continuing. When a contracting authority has agreed to extend a standstill period, for example to respond to a supplier's query about the procurement, the contract award notice should be amended accordingly and re-published in order to ensure suppliers are aware that they have more time to commence proceedings.
23. Usually, a supplier's reason for bringing a claim is to challenge the decision to award a contract to another supplier or to challenge the lawfulness of a modification and to secure the contract (or new contract implementing the modification) for itself. Suspending the ability of the contracting authority to enter into the contract or make the modification allows that possibility. Resolving any dispute prior to entering into a new contract or making a modification is generally in the interests of the contracting authority as well, to ensure successful delivery of the goods, services or works and avoid the disruption and cost associated with post-contractual remedies. The automatic suspension, therefore, serves an important purpose, because once a contract is entered into, only post-contractual remedies are available (and the contracting authority may end up paying twice, i.e. paying the supplier under the contract awarded and paying compensation for loss or damage if a supplier successfully challenges an award or modification).
24. However, in some circumstances, delaying entry into the contract or making the modification is problematic, for example, if the contract is to deliver certain



defence or health-related services where delay would have unacceptable operational impacts. To allow for such situations, a contracting authority can ask the Court to lift or modify the automatic suspension, i.e. bring the suspension to an end or modify it (for example, provide for a shorter standstill period) and allow the contract to be entered into or the modification to be made immediately (or within a shorter period than would otherwise be the case). The Court will apply the test in section 102(2) to consider whether the suspension should be lifted or modified.

25. If the Court does not lift or modify the automatic suspension (see paragraphs 27-30 below), it will remain in place until the claim has been resolved.

#### Interim remedies (section 102)

26. Interim remedies can apply to any claim, whether the claim form is issued before or after an award decision, or after a contract has been entered into or a modification has been made. They are available to both the contracting authority and the supplier. These interim measures are temporary measures intended to be in place until the Court has considered the claim and delivered its judgment.
27. Following an application to the Court (by either party), the Court has the power to make one or more of the orders set out in section 102(1):
  - a. an order lifting or modifying the automatic suspension;
  - b. an order extending the automatic suspension or imposing another suspension;
  - c. an order suspending the effect of any decision made or action taken by the contracting authority in the course of the procurement;
  - d. an order suspending the procurement or any part of it;
  - e. an order suspending the entry into or performance of a contract;
  - f. an order suspending entering into a contract or making a modification or performance of a contract as modified.
28. The Court cannot make an order which allows a contract to be entered into or modified before the end of any standstill period.
29. Before making such an order, the test in section 102(2) requires the Court to consider the merits of the case to ensure that the interests of suppliers, including the claimant, and the supplier to whom the contracting authority has decided to award the contract, are considered alongside the public interest. The Court may also consider any other matter it considers appropriate.
30. Public interest considerations include upholding the principle that the law should be complied with, as well as the implications of delaying the procurement or



modification and therefore the goods, services or works the contract or modification is intended to deliver.

### Pre-contractual remedies (section 103)

31. Pre-contractual remedies are those remedies available to the supplier where the Court has found in its favour i.e. where it has found that the contracting authority has breached its statutory duty (see paragraph 1 above). The pre-contractual remedies available to the Court are set out in section 103(2), but there is a wide discretion as section 103(2) permits the Court to make any order, in addition to those set out at section 103(2)(a-c), that it considers appropriate. Pre-contractual remedies are only available where the contract in relation to which the breach occurred has not yet been entered into or the modification has not yet been made.
32. As set out above, suppliers that bring a claim prior to the contract being entered into or modification being made are often seeking an opportunity to tender for the contract or to deliver it (or the modification) themselves. Pre-contractual remedies reflect this and allow the Court to make an order setting aside a decision or action of the contracting authority; for example, it may set aside a decision to award a contract. The Court can also make an order that an action is taken by the contracting authority, for example that it re-assesses tenders against the award criteria. Other actions ordered could be, for example, to recommence parts of the procurement procedure (for example, to wind the procurement back to a previous stage in a competitive flexible procedure), or may be to award the contract to the claimant.
33. Section 103(2) also permits the Court to award damages (see paragraph 35).

### Post-contractual remedies (sections 104 and 105)

34. Post-contractual remedies are those remedies available to the supplier where the Court has found the contracting authority to be in breach of its statutory duty where the contract in relation to which the breach occurred has already been entered into, or the modification has already been made. In this situation, section 104(2) provides that the Court must set aside the contract where certain conditions are met and may, in any case, make an order for the award of damages.

### Damages

35. An award of damages is effectively a form of compensation to the claimant for the loss or damage it has suffered as a consequence of the breach by the contracting authority of its statutory duty. In all cases, whether this is a pre-



contractual remedy or a post-contractual remedy, it is for the Court to decide whether the breach caused the damage or loss suffered by the claimant and therefore whether an award of damages is appropriate in the circumstances. If the Court decides to award damages, it will also decide the amount of the damages. In determining the value, the Court will take into account all the circumstances of the case, including any mitigating factors.

## Set aside

36. Set aside is the most disruptive of the remedies available to suppliers under the Act. It applies when a breach has occurred in the award or modification of a contract but the supplier has been denied the opportunity to seek a pre-contractual remedy (under section 103) for a reason set out in section 105(1) (referred to in the Act as 'set aside conditions') (see paragraph 39 below). Set aside is mandatory in these circumstances, subject to the public interest test at section 104(3) (see paragraphs 40-41 below).
37. An unlawful decision to award a contract would, for example, be where the supplier did not submit the most advantageous tender in a competitive tendering procedure or a direct award was not permissible under section 41 (Direct award in special cases) or section 43 (Switching to direct award) of the Act. An unlawful modification to a contract would be where the contract modification was not permitted under section 74 (Modifying a public contract).
38. Setting aside the contract or modification means that the contract has no effect from the date of the order (i.e. it is of no effect from that point onwards, but not retrospectively). Where a contract or modification is set aside or the term or goods, services or works to be supplied is reduced (see paragraph 40 below), the order may include provisions dealing with consequential or supplementary matters, for example, payment to the supplier for performance to date where this is not provided for in the contract or contract as modified. The contracting authority will also have to bear any cost and time impact of carrying out a new procurement for the goods, services or works intended to be provided under the contract or modification.
39. Section 105 sets out the set aside conditions, one of which must apply for the Court to be able to set aside a contract or modification. As set out at paragraph 36 above, where a supplier is denied the opportunity to seek a pre-contractual remedy, the Court must set aside the relevant contract or modification. These set aside conditions set out in section 105(1) are:



- a. a required contract award notice was not published: the Act generally requires that a contract award notice setting out that the contracting authority intends to enter into a contract with a particular supplier must be published before the contracting authority enters into a public contract (section 50). If it is not published, then unsuccessful suppliers may not be aware of the decision and cannot challenge an unlawful decision before the contract is entered into. This set aside condition is not relevant where the Act does not require the publication of a contract award notice. However, it does apply where the contracting authority wrongly concluded that a contract award notice was not required, or an inaccurate notice was published;
- b. the contract was entered into or modified before the end of any applicable standstill period: the standstill period gives suppliers a window of time before the contract is entered into to commence proceedings. If the contracting authority entered into or modified a contract before the end of any standstill period, the ability to commence proceedings before the contract is entered into is reduced or denied altogether and the supplier is not able to bring a claim for a pre-contractual remedy. It applies whether the standstill was required or voluntary and includes where the contracting authority had wrongly determined that a standstill period was not required;
- c. the contract was entered into or modified during a period of automatic suspension or in breach of a court order: as set out at paragraph 21 above, section 101(1) prohibits a contracting authority from entering into or modifying a public contract if, during an applicable standstill period, a supplier commences proceedings and the contracting authority is notified of this. Where a contracting authority fails to comply with this requirement, the supplier is unable to bring a claim for a pre-contractual remedy;
- d. where the contracting authority is not required to implement a standstill period, the breach became apparent only on publication of a contract award notice: this condition addresses the circumstance where the contracting authority did not implement a standstill period because it was not required to do so due to the nature of the contract and the breach became apparent only after the contract was entered into. This could arise, for example, where a contracting authority enters into a contract immediately after publishing its contract award notice and so denies the supplier the opportunity to fully consider the notice and the time to commence proceedings for a pre-contractual remedy. This condition is not met if, despite the fact that the contracting authority was not required to observe a standstill period, the contract award notice nonetheless provided for a voluntary standstill period and the contract modification was not entered into before the end of that standstill period;





- e. the breach became apparent only on publication of a contract change notice: this condition is relevant only where a contract is being modified and would arise (as with paragraph d above) where a contracting authority does not implement a voluntary standstill period after publication of the notice. Again, this condition is not met if, despite the fact that the contracting authority was not required to observe a standstill period, the contract award notice nonetheless provided for a voluntary standstill period and the contract modification was entered into before the end of that standstill period; or
- f. the breach became apparent only after the contract was entered into or modified: this condition addresses the circumstance where the claimant did not know about the breach prior to the contract being entered into or the modification being made. For example, this could be because the contract award notice or contract change notice does not correspond with the contract that was entered into, or the modification made, which became apparent only after the contract or contract as modified was published. This condition might also be met where a contracting authority does not provide assessment summaries (or full and/or accurate assessment summaries) before publishing the contract award notice and entering into the contract, which denies the supplier the opportunity to identify any potential breaches.
40. Even where a set aside condition is met, the Act allows the Court discretion not to set aside the contract or modification, if it is satisfied that there is an overriding public interest not doing so. This could be, for example, the case of certain health or defence-related contracts where the impact of setting a contract or modification aside could have unacceptable impacts. If a Court is satisfied that there is an overriding public interest, it may, instead of setting aside the contract or modification, reduce the duration of the contract or the goods, services or works to be provided.
41. Section 104(5) sets out certain limitations on what the Court can take into account when considering the public interest in not setting aside the contract or modification. It must not, for example, consider the additional costs to the contracting authority of having to run a new procurement or the financial implications of delaying the provision of the goods, services or works to which the contract or modification relates.
42. As set out at paragraph 17 above, section 106(2) provides that for most claims a supplier must commence proceedings before the end of the 30 day period. This applies in the case of proceedings to set aside a contract, provided the contracting authority published a contract details notice under section 53.



43. However, where a supplier wishes to commence proceedings to set aside a contract where a contracting authority did not publish a contract details notice or to set aside a modification (specified set-aside proceedings), section 106(1) potentially provides a longer period. In this case, proceedings must be commenced before the earlier of the end of the 30 day period and the end of the period of six months beginning with the day the contract was entered into or modified ('six month period'). The following examples illustrate how the time limit works:

44. A public contract is entered into on 2nd January. A contract details notice is not published as required by section 53. The six-month deadline to commence specified set-aside proceedings is therefore 1st July.

45. Example A:

A supplier gains access to information on 22nd June that indicates that a contract may have been awarded to a supplier that did not submit the most advantageous tender and it may have grounds for a claim for breach of statutory duty.

The supplier has only ten days (including the day it received the information) to commence proceedings to have the contract set aside because there are only ten days left until the expiry of the six-month deadline on 1st July.

If the supplier only wants to claim for damages, the standard 30 day period to do so applies.

46. Example B:

A public contract is entered into on 2nd January. A contract details notice is not published as required by section 53. The six-month deadline to commence specified set aside proceedings is therefore 1st July.

On 19th January a supplier gains access to information that indicates that a contract was awarded to a supplier that may not have submitted the most advantageous tender and it may have grounds for a claim for breach of statutory duty.

The supplier has 30 days from 19th January to commence proceedings to have the contract set aside. This is because the supplier now has knowledge of the potential breach and section 106(1) requires the



supplier to commence proceedings before the earlier of the 30 day period and the six-month period.

### Closed proceedings (section 107)

51. The Justice and Security Act 2013 allows a Secretary of State to apply for legal proceedings to be carried out as a closed material procedure. Closed material procedure involves the non-government parties leaving the courtroom while sensitive material is heard by the Court and can be particularly relevant if the case includes matters relating to national security. As the Act gives powers to, and requires some decisions to be made by, the Minister for the Cabinet Office, section 107 of the Act extends this ability to request closed procedures to the Minister for the Cabinet Office.

### Managing the risk of a claim

52. The risk of legal challenge should be assessed throughout a procurement with decisions and appropriate steps being taken to mitigate the risks as they are identified.
53. Applying a voluntary standstill period (i.e. where the Act does not require it) is an effective way of mitigating the risk of a contract or modification being set aside, as it ensures suppliers have adequate time to commence proceedings seeking a pre-contractual remedy. See the guidance on contract award notices and standstill for more information.
54. By ensuring that those involved in carrying out procurements are aware that public law principles require public bodies to act fairly and rationally when making decisions and that they must have regard to the objectives in section 12 of the Act (to share information and act, and be seen to act, with integrity), contracting authorities can assure suppliers that the procurement is robust and fair and that they can have confidence in the procurement. Contracting authorities should provide suppliers with an explanation of any decisions that affect them as soon as possible and release information to suppliers at the same time, as far as practicable.
55. Being transparent throughout the procurement, particularly during the procedure itself or process for awarding the contract, and providing information as early as possible can mitigate the risk of a claim arising later in the procurement, after the award decision has been announced.
56. Publishing notices earlier than the final deadline in the Act (where possible) and adopting the full transparency regime even where there is no obligation to do so



enables the general 30 day period for proceedings to be commenced to be used to greatest effect. For example:

- a. publishing a transparency notice as early as possible means that if a supplier has any concerns with a decision to make a direct award, these will be raised early and can be resolved with minimal disruption to the procurement. This may also avoid the need for a legal claim;
- b. publishing a contract details notice and the contract or modification, or the contract as modified as soon as possible after the contract has been entered into, or the modification has been made (even if it is not required by the Act), means the risk of a claim for set aside should be reduced once the 30 day period has expired.

57. Engaging with suppliers that raise concerns, with a view to overcoming any issues outside of the legal remedies regime, should avoid the need for the supplier to commence proceedings, and thus the cost and disruption that legal challenges can bring. Contracting authorities should act in a timely manner, so as not to force the supplier to take legal action due to time constraints; where necessary and applicable the standstill period can be extended to provide for such additional time. Contracting authorities could consider the benefits of peers (who are not directly involved in the procurement) providing an independent view of a particular issue, where this is warranted and possible.

### What other guidance is of particular relevance to this topic area?

58. In order to effectively manage the risk of receiving a legal claim, contracting authorities will need to be familiar with the obligations that can trigger a legal claim if they are not complied with; i.e. those contained in the following Parts of the Act:

- Part 1: Key Definitions;
- Part 2: Principles And Objectives;
- Part 3: Award Of Public Contracts And Procedures;
- Part 4: Management Of Public Contracts;
- Part 5: Conflicts Of Interest;
- Part 7: Implementation Of International Obligations;
- Part 8: Information And Notices: General Provision.

These obligations and requirements are explained in more detail in the full suite of guidance on the Act – please refer to the ‘Procurement Act 2023: guidance documents’ page<sup>1</sup>. In order to fully understand the options available to suppliers who have concerns about the procurement, it would be beneficial to have an understanding of the procurement oversight regime (including the role of the Procurement Review Unit) and the judicial review process.

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<sup>1</sup> [Procurement Act 2023: guidance documents](#)

12.5

**Manage**

12.5.1 Electronic invoicing and payment (not yet published)

12.5.2 Payments compliance notices (not yet published)

12.5.3 Contract performance notices (not yet published)

12.5.4 Contract modifications (not yet published)

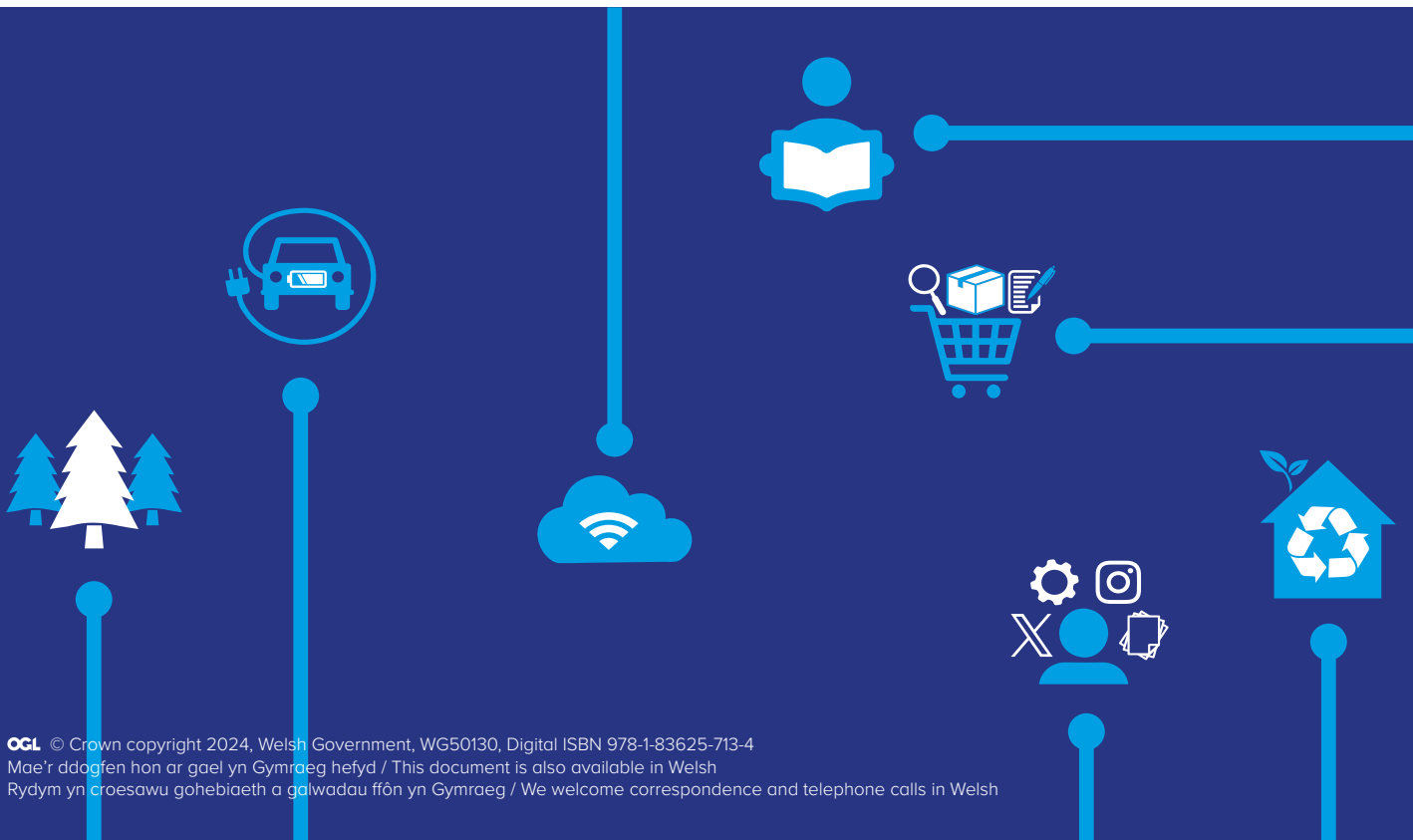
12.5.5 Contract termination (Published)



Llywodraeth Cymru  
Welsh Government

# Guidance Contract Terminations

September 2024





# Guidance: Contract Terminations

## What are contract terminations?

1. The Procurement Act 2023 (the Act) gives contracting authorities the benefit of an implied term in every public contract that ensures that the contract can be terminated by the contracting authority in three specific circumstances, referred to as 'termination grounds' in the Act.
2. The Act also introduces a mandatory transparency requirement whenever a contract comes to an end, including following termination under one of the implied termination grounds. For the purpose of the transparency requirement, the Act defines 'termination' as encompassing all circumstances in which a contract may come to an end (see paragraph 8 below). All contracting authorities must publish a 'contract termination notice' following the termination of any public contract (with the exception of contracts awarded by private utilities and contracts for 'user choice services' that have been directly awarded under section 41 by reference to Schedule 5, paragraph 15 of the Act). Publication of contract termination notices will allow greater scrutiny of what has happened during the life of a contract, enabling interested parties to see, across all published notices, for example, if the value and term of the contract has increased since it was awarded, or the reasons behind an early termination of a contract. It will also assist in wider data analysis and oversight, enabling contracting authorities and government to understand, for example, how many contracts are extant and being delivered.

## What is the legal framework that governs contract terminations?

3. Sections 78-80 of the Act regulate contract terminations:
  - a. Section 78: Implied right to terminate public contracts
  - b. Section 79: Terminating public contracts: national security
  - c. Section 80: Contract termination notices
4. Section 78 sets out the three termination grounds (see paragraph 11 below) that are implied into every public contract.
5. Section 79 sets out provisions for 'relevant contracting authorities' (see paragraph 20 below) considering terminating a contract under the implied term on the basis of the discretionary exclusion ground in Schedule 7, paragraph 14 and the mandatory exclusion ground in Schedule 6, paragraph 35 relating to suppliers which pose a threat to national security.



6. Section 80 of the Act and regulation 42 of the Procurement (Wales) Regulations 2024 (the Regulations)<sup>1</sup> set out provisions relating to contract termination notices.

## What has changed?

7. The three implied termination grounds in the Act expand on the termination rights implied by the previous legislation and strengthen contracting authorities' rights to terminate a contract where the supplier or sub-contractor is, or becomes, an excluded or excludable supplier. Another notable difference is the mandatory requirement to publish contract termination notices.

## Key points and policy intent

8. Whilst there are many reasons why a contract may come to an end, the Act provides, at section 80(3), that 'termination' for the purpose of the publication of a contract termination notice encompasses all of the circumstances in which a contract may come to an end, and sets out the following non-exhaustive list:
  - a. discharge: including for example, where the contract obligations / deliverables are fulfilled, payments made and any disputes settled, by mutual agreement or contract frustration;
  - b. expiry: where the contract has reached its end date (which may include periods of extension);
  - c. termination by a party: where one party exercises a contractual or implied right to terminate the contract;
  - d. rescission: where the contract ends and the parties restored to the position they were in before the contract was entered into; or
  - e. set aside by court order: where the contract is declared to be invalid by legal judgement.
9. Public contracts can vary considerably and the Act does not set out a definitive list of circumstances in which a contract may be terminated. The grounds on which a contract may be terminated by the contracting authority or the supplier are usually set out in the contract.

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<sup>1</sup> [The Procurement \(Wales\) Regulations 2024](#)





## Implied grounds for contract termination

10. The Act implies into every public contract grounds on which the contracting authority may terminate the contract (section 78(1) of the Act). These grounds will apply to all public contracts, whether or not they are also expressly replicated in the contract. The Act does not imply terms relating to restitution and other ancillary matters if the contracting authority terminates the contract on one of the implied termination grounds, which contracting authorities should consider including as express terms in their contracts (see paragraph 18 below).
11. The three implied contract termination grounds, as set out in section 78(2) of the Act are:
  - a. the contracting authority considers that the contract was awarded, or modified, in material breach of the Act or regulations made under it<sup>2</sup>;
  - b. since the contract was awarded, the supplier has become an excluded or excludable supplier (including by reference to an associated person<sup>3</sup>);
  - c. a sub-contractor (other than an associated person) is an excluded or excludable supplier.
12. The reference to the terms 'excluded' and 'excludable' suppliers in section 78(2)(b) and (c) are defined in section 57(1) and (2) of the Act. Section 78(11) clarifies what is meant by a supplier becoming an excludable supplier, which is where:
  - a. a discretionary exclusion ground did not apply before the contract was awarded, but applies afterwards (section 78(11)(a)(i) of the Act);
  - b. a discretionary exclusion ground that applied before the contract was awarded continues to apply, but it applies to different circumstances, for example, a different episode of poor performance, or professional misconduct arises before and after the contract was awarded (section 78(11)(a)(ii) of the Act); and
  - c. the contracting authority only discovers after awarding the contract that the supplier was an excludable supplier before the contract was awarded (section 78(11)(b) of the Act).
13. This ensures that the implied term in section 78(2)(b) does not apply where the supplier was excludable during the procurement but the contracting authority

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<sup>2</sup> Section 78(12) of the Act defines a 'material breach' as a breach that the contracting authority considers could reasonably result in a successful legal challenge under Part 9 of the Act or otherwise.

<sup>3</sup> An 'associated person', as defined in section 26(4) of the Act, is someone who the supplier is relying upon to satisfy the conditions of participation (that is not a guarantor), for example, a key sub-contractor. More information may be found in the guidance on exclusions.



exercised their discretion so as not to exclude them. In other words, contracting authorities cannot re-visit that decision without there being any change in circumstances.

### Using the implied term

14. The Act sets out, in sections 78(3-7), a number of restrictions on and provisions relating to the use of the implied term in section 78.
15. In all scenarios, before terminating a contract by reference to the implied term, section 78(7) requires that a contracting authority must:
  - a. notify the supplier of its intention to terminate;
  - b. specify which of the grounds in 78(2)(a-c) applies and why it has decided to terminate the contract; and
  - c. give the supplier reasonable opportunity to respond to the contracting authority on whether a termination ground applies and its decision to terminate.
16. There are restrictions on the use of the termination ground in section 78(2)(c) of the Act (which relates to a sub-contractor being an excluded or excludable supplier, which includes both where this was the case prior to contract award and where the sub-contractor becomes an excluded or excludable supplier after contract award). Section 78(3-6) of the Act provides that contracting authorities may only rely on this implied term if they requested information about subcontractors under section 28(1)(a) (information about subcontractors). It also provides that one of the following conditions must be met (section 78(3)):
  - a. before awarding the contract, the contracting authority was not aware that the supplier intended to sub-contract all or part of the contract (section 78(4) of the Act);
  - b. before awarding the contract, the contracting authority sought to determine<sup>4</sup> if the sub-contractor was an excluded or excludable supplier by virtue of being on the debarment list<sup>5</sup> (see guidance on debarment), but did not know that in fact it was (section 78(5) of the Act);
  - c. the contracting authority requested information about the sub-contractor as part of a competitive tendering procedure in order to determine whether any intended subcontractor is an excluded or excludable supplier<sup>6</sup>, but before awarding the contract did not know that this was in fact the case (section 78(6) of the Act).

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<sup>4</sup> under section 28(1)(b) (Excluding suppliers by reference to sub-contractors) of the Act

<sup>5</sup> under section 57(1)(b) or (2)(b) (Meaning of excluded and excludable supplier) of the Act

<sup>6</sup> under section 28(2) (Excluding suppliers by reference to sub-contractors) of the Act



17. The Act also requires at section 78(8) that when termination is on the grounds of a subcontractor being an excluded or excludable supplier (whether under section 78(2)(b) or (c)), the contracting authority must give the supplier a reasonable opportunity to cease its arrangement with that sub-contractor and, if necessary, find a replacement. This includes associated persons that are sub-contractors as well as other sub-contractors that the contracting authority sought information about during the procurement.
18. Contracting authorities should always set out in the contract what happens when the contract is terminated, including under the implied term in section 78 of the Act. There will be practical considerations, for example, how long after serving notice the contract will terminate; transfer of assets, data, etc.; assistance with re-procuring; payment of money owed and whether there are any 'breakage costs' for early termination (for example, for costs the supplier is committed to pay to its suppliers). The Act does not prevent contracting authorities from replicating the implied term expressly in their public contracts, and also expressly permits public contracts to contain ancillary provisions about restitution and other matters relating to termination of a contract by reference to the implied term (section 78(9) of the Act).
19. If the contracting authority and the supplier include a term in the public contract that purports to restrict or override the implied term, this will have no effect and the implied term will remain valid (section 78(10) of the Act). For example, if the contracting authority sought to provide that there were no termination rights in the circumstances set out in section 78 of the Act, or to narrow those termination rights. Contracting authorities are able to provide for termination on other grounds than those implied by section 78 of the Act.

#### National security

20. Whilst contracting authorities are able to terminate a public contract on one of the termination grounds in section 78 of the Act, section 79 of the Act sets out specific provisions that apply to relevant contracting authorities when terminating a contract under the implied term on the basis of the discretionary or mandatory exclusion grounds relating to national security. These requirements apply irrespective of whether the contracting authority has replicated the implied term expressly in their contract.
21. Relevant contracting authorities are defined in section 79(3) of the Act as any contracting authority other than:
  - a. a Minister of the Crown or a government department;



- b. the Corporate Officer of the House of Commons; or
  - c. the Corporate Officer of the House of Lords.
22. Section 79(1) of the Act provides that a relevant contracting authority may not terminate a contract by reference to the implied term in section 78 on the discretionary exclusion ground of the threat to national security (Schedule 7, paragraph 14) unless:
- a. the contracting authority has notified a Minister of the Crown of its intention; and
  - b. the Minister agrees that the supplier or sub-contractor is an excludable supplier under Schedule 7, paragraph 14 and that the contract should be terminated.
23. In regards to termination on the basis of the mandatory exclusion ground of the threat to national security (Schedule 6, paragraph 35), the contracting authority may only terminate a contract by reference to the implied term in section 78 of the Act if they have notified a Minister of the Crown of its intention (section 79(2) of the Act).

## What notices are linked to this aspect of the Act?

### The contract termination notice

24. Section 80(1) of the Act requires contracting authorities to publish a contract termination notice following 'termination', as defined in section 80(3) of the Act (see paragraph 8) of all public contracts with the exception of (as defined in section 80(4) of the Act):
- a. contracts entered into by private utilities; and
  - b. contracts for 'user choice services' that have been directly awarded under Schedule 5, paragraph 15.
25. Devolved Welsh authorities (DWAs) must publish a contract termination notice on the Welsh Digital Platform, Sell2Wales. Sell2Wales will subsequently forward the notice to the central digital platform, thereby fulfilling the legal requirement to publish a contract termination notice on the central digital platform in the circumstances set out in the Act.
26. Publication of a contract termination notice is used to inform stakeholders that a public contract has been terminated, the reason for that termination and the date of the termination<sup>7</sup>. It provides visibility of whether the contract has been

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<sup>7</sup> See regulation 42 'Contract termination notices' of the Regulations for further information



extended beyond its planned term, or where options have been exercised. Where a termination has resulted from a supplier breaching a contract, the termination notice also provides information about that breach, including the events leading up to it and the result of that breach. The contract termination notice also serves to end the record on the Welsh Digital Platform (Sell2Wales) and the central digital platform. It is the last notice published in the sequence of notices relating to a procurement.

27. The notice must be published before the end of the period of 30 days beginning with the day on which the public contract is terminated (section 80(1) of the Act).
28. There may be occasional instances when a contract is terminated before a contract details notice for that contract has been published, particularly in the case of light touch contracts, where the contracting authority has 120 days to publish the notice (as opposed to 30 days for other contracts) (see the guidance on the contract details notice for further information). In such circumstances, contracting authorities should publish both the contract details notice and then the contract termination notice before the end of the 30 day period required for publication of a contract termination notice.
29. In instances where procurements are terminated before a contract is entered into, the publication of a procurement termination notice is required instead. See the guidance on the procurement termination notice for more information.

#### Information required to be included in the contract termination notice

30. Regulation 42 of the Regulations sets out the information that contracting authorities are required to set out in the contract termination notice.
31. This includes the reasons for terminating the public contract, the date when the public contract was terminated, and the estimated value of the public contract inclusive of VAT. The value figure must be estimated in accordance with Schedule 3 of the Act.
32. As section 80(3) of the Act is a non-exhaustive list of circumstances that may amount to termination, the contract termination notice allows contracting authorities to either indicate that the contract was terminated by one of the means set out in section 80(3) of the Act or for other reasons.
33. Where termination arises as a result of a breach of contract, regulation 42(2)(h) of the Regulations provides that the contract termination notice must include the following information:



- a. a statement that section 71(5) of the Act applies because the supplier breached the contract;
  - b. in cases where the supplier did not perform to the contracting authority's satisfaction, the date when the contracting authority considered the supplier had failed to improve performance; and
  - c. an explanation of the nature of the breach or failure to perform, the impact and duration of the breach or failure to perform, any steps taken by the contracting authority to notify the supplier of the breach/failure to perform and encourage them to improve the situation, (including any warning notices given under the public contract or other opportunity to improve performance pursuant to section 71(4)(b) of the Act), and what steps the supplier took to mitigate the impact of the breach and why these were not sufficient.
34. In situations where there was an award of damages following the breach or failure to perform, contracting authorities must provide details of any settlement agreement or award of damages, if this happened prior to the deadline for publishing the contract termination notice. In such circumstances, the contract termination notice must include confirmation that this is the case, the amount of damages or other monies paid, the basis on which damages were awarded (for example, in accordance with the public contract, a decision of a court or tribunal, or a negotiated settlement). Where there is a recorded decision of a court or tribunal finding that there is a breach, contracting authorities must also include a link to the web page where the decision can be accessed or a copy of the decision.
35. If damages are awarded or agreed after a contract termination notice has been published, the Act does not require the contracting authority to retrospectively update the notice with information concerning damages or settlement agreement. It would, however, be good practice to do so.
36. In circumstances where breach or failure to perform results in partial termination of the contract, contracting authorities should publish information using the contract performance notice (within 30 days of a breach occurring) rather than the contract termination notice (see guidance on the contract performance notice).
37. The purpose of publishing information about a breach of contract or failure to perform that results in termination of the contract is to provide a public record of occasions when this occurred. Contracting authorities have the discretion to exclude suppliers for breach or poor performance (on the ground in Schedule 7, paragraph 12), where it can be demonstrated that they have not performed one or more contracts to a satisfactory level, and have failed to improve their performance (subject to self-cleaning). Information published in contract



termination notices serves to provide evidence to enable authorities to apply the ground. See guidance on exclusions for more information.

38. Given the need for transparency and the potential for suppliers to be subject to discretionary exclusion, there is a high bar for withholding information from publication in the contract termination notice. For example, if the basis for the award of damages was in accordance with the public contract, and that contract had been published, then there would be little justification for withholding that information. Similarly, where there has been a decision by a court or tribunal and that information is publicly available there would be no justification for failing to include a link to the judgement in this notice.

### What other guidance is of particular relevance to this topic?

- Guidance on exclusions
- Guidance on contract details notice and contract documents
- Guidance on the contract performance notice
- Guidance on the publication of information
- Guidance on debarment
- Guidance on procurement termination notice
- Guidance on notice sequencing and flowcharts
- Guidance on the Welsh digital platform (Sell2Wales)



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