
DRAFT STATUTORY INSTRUMENTS

2023 No.

The Health Care Services (Provider Selection Regime) Regulations 2023

PART 1

General

Citation, commencement, extent and territorial application

1.—(1) These Regulations may be cited as the Health Care Services (Provider Selection Regime) Regulations 2023 and come into force on 1st January 2024.

(2) These Regulations extend to England and Wales and apply in relation to England only.

Interpretation

2.—(1) In these Regulations—

“basic selection criteria” means the selection criteria determined by the relevant authority⁽¹⁾ in accordance with regulation 19 and Schedule 16;

“Competitive Process” means the process set out in regulation 11 for the award of a contract with a competition;

“contract or framework award criteria” means the criteria on which the award of a contract, or conclusion of a framework agreement, is based;

“CPV” means the Common Procurement Vocabulary, as adopted by Regulation (EC) No. 2195/2002 of the European Parliament and of the Council⁽²⁾;

“Direct Award Process A” means the process set out in regulation 7 for the award of a contract without a competition;

“Direct Award Process B” means the process set out in regulation 8 for the award of a contract without a competition;

“Direct Award Process C” means the process set out in regulation 9 for the award of a contract without a competition;

“existing provider”—

- (a) means a provider with whom a relevant authority has a contract for the provision of relevant health care services which has not expired or otherwise been terminated; and
- (b) in a case where the identity of a provider with whom a relevant authority has such a contract is expected to change due to succession into the position of provider following

(1) “Relevant authority” is defined in section 12ZB(7) of the National Health Service Act 2006. It means a combined authority, an integrated care board, a local authority in England, NHS England, an NHS foundation trust or an NHS trust established under section 25 of that Act.

(2) EUR 2002/2195. The codes have been amended by S.I. 2023/601.

corporate changes including takeover, merger, acquisition or insolvency, includes the provider in its changed identity;

“framework agreement” means an agreement between one or more relevant authorities and one or more providers concluded and operated in accordance with Part 3;

“health-related services” has the same meaning as in section 13N of the National Health Service Act 2006(3);

“key criteria” means the criteria set out in regulation 5;

“Most Suitable Provider Process” means the process set out in regulation 10 for the award of a contract without a competition;

“procurement principles” means the principles in regulation 4;

“provider” means a person who provides, or offers to provide, relevant health care services for the purposes of the health service(4) in England;

“relevant health care services” means health care services(5) which fall within one or more of the CPV codes specified in the table in Schedule 1, to the extent described in that table (and see regulation 3(5));

“social care services” has the same meaning as in section 13N of the National Health Service Act 2006;

“standstill period” has the meaning given by regulation 12;

“UK e-notification service” means a single web-based portal which is provided, for purposes which include the purposes of these Regulations, by or on behalf of the Cabinet Office.

(2) Nothing in these Regulations prevents the award of a contract to more than one provider, either jointly or otherwise.

Application

3.—(1) These Regulations apply where a relevant authority procures relevant health care services for the purposes of the health service in England, whether alone or as part of a mixed procurement.

(2) In this regulation, “mixed procurement” means the procurement of—

- (a) relevant health care services for the purposes of the health service in England, and
- (b) other goods or services that are procured together with those health care services,

where both the criteria in paragraph (3) are met.

(3) The criteria are that—

- (a) the main subject-matter of the procurement is relevant health care services for the purposes of the health service in England; and
- (b) the relevant authority is of the view that the other goods or services could not reasonably be supplied under a separate contract.

(4) For the purposes of the criteria in paragraph (3)—

- (a) the main subject-matter is determined by which of—
 - (i) the estimated lifetime value of the relevant health care services in paragraph (2)(a); or
 - (ii) the estimated lifetime value of the other goods or services in paragraph (2)(b),

(3) Section 13N was inserted by section 23 of the Health and Social Care Act 2012 and relevant amendments made by section 3(6) of the Care Act 2014 (c. 23) and Schedules 1 and 4 to the Health and Care Act 2022.

(4) “The health service” is defined in section 275(1) of the National Health Service Act 2006 as the health service continued under section 1(1) of that Act.

(5) “Health care service” is defined in section 122B(7) of the National Health Service Act 2006 as having the same meaning as in Part 3 of the Health and Social Care Act 2012 (c. 7; see section 150 of that Act).

is the higher;

- (b) a relevant authority may only determine that the other goods or services could not reasonably be supplied under a separate contract where the relevant authority is of the view that procuring the relevant health care services and the other goods and services separately would, or would be likely to, have a material adverse impact on the relevant authority's ability to act in accordance with the procurement principles.

(5) Where a relevant authority procures relevant health care services as part of a mixed procurement, the term "relevant health care services" in these Regulations, except this regulation, includes any goods or services procured together with those relevant health care services.

Procurement principles

4.—(1) When procuring relevant health care services, a relevant authority must act—

- (a) with a view to—
 - (i) securing the needs of the people who use the services,
 - (ii) improving the quality of the services, and
 - (iii) improving efficiency in the provision of the services;
- (b) transparently, fairly and proportionately.

(2) When acting with a view to the matters in paragraph (1)(a), the relevant authority may consider the value of providing services in an integrated way, including with other health care services, health-related services or social care services.

Key criteria

5. The key criteria are—

- (a) quality and innovation, that is the need to ensure good quality services and the need to support the potential for the development and implementation of new or significantly improved services or processes that will improve the delivery of health care or health outcomes,
- (b) value, that is the need to strive to achieve good value in terms of the balance of costs, overall benefits and the financial implications of a proposed contracting arrangement,
- (c) integration, collaboration and service sustainability, that is the extent to which services can be provided in—
 - (i) an integrated way (including with other health care services, health-related services or social care services),
 - (ii) a collaborative way (including with providers and with persons providing health-related services or social care services), and
 - (iii) a sustainable way (which includes the stability of good quality health care services or service continuity of health care services),so as to improve health outcomes,
- (d) improving access, reducing health inequalities and facilitating choice, that is ensuring accessibility to services and treatments for all eligible patients, improving health inequalities and ensuring that patients have choice in respect of their health care, and
- (e) social value, that is whether what is proposed might improve economic, social and environmental well-being in the geographical area relevant to a proposed contracting arrangement.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory
Instrument: The Health Care Services (Provider Selection Regime) Regulations 2023 No. 1348
