



Procurement Act 2023

2023 CHAPTER 54

PART 1

KEY DEFINITIONS

PROSPECTIVE

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.

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Procurement Act 2023, PART 1. (See end of Document for details)

- (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.

Commencement Information

- II** S. 1 not in force at Royal Assent, see [s. 127\(2\)](#)

PROSPECTIVE

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—

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- (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.

Commencement Information

I2 S. 2 not in force at Royal Assent, see [s. 127\(2\)](#)

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.

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- (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.

Commencement Information

- I3** S. 3 not in force at Royal Assent, see [s. 127\(2\)](#)
I4 [S. 3\(1\)\(5\)\(6\)](#) in force at 12.3.2024 by [S.I. 2024/361](#), [reg. 2\(a\)](#)

PROSPECTIVE

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.

Commencement Information

- I5** S. 4 not in force at Royal Assent, see [s. 127\(2\)](#)

PROSPECTIVE

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.

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- (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.

Commencement Information

16 S. 5 not in force at Royal Assent, see [s. 127\(2\)](#)

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—

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- (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.

Commencement Information

- 17** S. 6 not in force at Royal Assent, see [s. 127\(2\)](#)
18 S. 6 in force at 12.3.2024 by [S.I. 2024/361](#), [reg. 2\(b\)](#)

PROSPECTIVE

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).

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Changes to legislation: There are currently no known outstanding effects for the Procurement Act 2023, PART 1. (See end of Document for details)

- (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

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- (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.

Commencement Information

I9 S. 7 not in force at Royal Assent, see [s. 127\(2\)](#)

PROSPECTIVE

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.

Commencement Information

I10 S. 8 not in force at Royal Assent, see [s. 127\(2\)](#)

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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).

Commencement Information

- I11** S. 9 not in force at Royal Assent, see [s. 127\(2\)](#)
I12 S. 9 in force at 12.3.2024 by [S.I. 2024/361, reg. 2\(c\)](#)

PROSPECTIVE

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

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- (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.

Commencement Information

I13 S. 10 not in force at Royal Assent, see [s. 127\(2\)](#)

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Procurement Act 2023, PART 1.