



Procurement Act 2023

2023 CHAPTER 54

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—

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- (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

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- (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,

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- (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.

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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.

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- (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.

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- (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).