



# Procurement Act 2023

## CHAPTER 54

### PROCUREMENT ACT 2023

#### PART 1

##### KEY DEFINITIONS

- 1 Procurement and covered procurement
- 2 Contracting authorities
- 3 Public contracts
- 4 Valuation of contracts
- 5 Mixed procurement: above and below threshold
- 6 Utilities contracts
- 7 Defence and security contracts
- 8 Concession contracts
- 9 Light touch contracts
- 10 Mixed procurement: special regime contracts

#### PART 2

##### PRINCIPLES AND OBJECTIVES

- 11 Covered procurement only in accordance with this Act
- 12 Covered procurement: objectives
- 13 The national procurement policy statement
- 14 The Wales procurement policy statement

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## **PART 3**

### **AWARD OF PUBLIC CONTRACTS AND PROCEDURES**

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##### **PRELIMINARY STEPS**

- 15 Planned procurement notices
- 16 Preliminary market engagement
- 17 Preliminary market engagement notices
- 18 Duty to consider lots

#### **CHAPTER 2**

##### **COMPETITIVE AWARD**

###### *Terms of a procurement*

- 19 Award of public contracts following a competitive tendering procedure
- 20 Competitive tendering procedures
- 21 Tender notices and associated tender documents
- 22 Conditions of participation
- 23 Award criteria
- 24 Refining award criteria
- 25 Sub-contracting specifications

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- 26 Excluding suppliers from a competitive award
- 27 Excluding suppliers from a competitive flexible procedure
- 28 Excluding suppliers by reference to sub-contractors
- 29 Excluding a supplier that is a threat to national security
- 30 Excluding suppliers for improper behaviour
- 31 Modifying a section 19 procurement

###### *Reserving contracts to certain suppliers*

- 32 Reserving contracts to supported employment providers
- 33 Reserving contracts to public service mutuals

###### *Awarding contracts by reference to dynamic markets*

- 34 Competitive award by reference to dynamic markets
- 35 Dynamic markets: establishment
- 36 Dynamic markets: membership
- 37 Dynamic markets: removing members from the market
- 38 Dynamic markets: fees
- 39 Dynamic market notices
- 40 Qualifying utilities dynamic market notices: no duty to publish a tender notice

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- 54 Time limits
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- 56 Technical specifications

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- 58 Considering whether a supplier is excluded or excludable

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- 63 Debarment decisions: interim relief
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- 66 Debarment proceedings and closed material procedure

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- 72 Sub-contracting: directions  
73 Implied payment terms in sub-contracts

###### *Modifying public contracts*

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75 Contract change notices  
76 Voluntary standstill period on the modification of contracts  
77 Publication of modifications

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- 78 Implied right to terminate public contracts  
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- 120 Power to disapply this Act in relation to procurement by NHS in England
- 120A Power to disapply this Act in relation to procurement by NHS in Wales
- 121 Power to amend this Act in relation to private utilities
- 122 Regulations
- 123 Interpretation
- 124 Index of defined expressions
- 125 Power to make consequential, etc, provision
- 126 Extent
- 127 Commencement
- 128 Short title

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## SCHEDULES

### SCHEDULE 1 — Threshold amounts

- 1 (1) The threshold amount for a contract of a type...
- 2 An appropriate authority may by regulations amend this Schedule for...
- 3 An appropriate authority may by regulations amend this Schedule for...
- 4 A contract is a “works contract” if its main purpose...
- 5 (1) In this Schedule— “central government authority” means a contracting...

### SCHEDULE 2 — Exempted contracts

#### PART 1 — COUNTERPARTY EXEMPTED CONTRACTS

- 1 General
- 2 Vertical arrangements
- 3 Horizontal arrangements
- 4 Defence and security contracts
- 5 Utilities contracts
- 6 (1) A utilities contract awarded for the supply of goods,...

#### PART 2 — SUBJECT-MATTER EXEMPTED CONTRACTS

- 7 General
- 8 Land and buildings etc
- 9 Broadcasting
- 10 A contract for the broadcast (by any means) by a...
- 11 Electronic communications services
- 12 A contract the main purpose of which is permitting a...
- 13 Alternative dispute resolution
- 14 Legal services
- 15 Financial services
- 16 (1) A contract for the provision or carrying out of...
- 17 A contract for the provision of services by the Bank...
- 18 Employment
- 19 Any other contract between a contracting authority and an individual...
- 20 Emergency services
- 21 Public passenger transport services
- 22 Research and development services
- 23 International agreements and organisations

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- 24 A contract awarded under a procedure— (a) adopted by an...
- 25 National security
- 26 Intelligence activities
- 27 Defence and security contracts
- 28 A defence and security contract where— (a) the supplier is...
- 29 A defence and security contract awarded under a procedure adopted...
- 30 A defence and security contract awarded under an arrangement between...
- 31 Utilities contracts
- 32 A utilities contract for the supply of water to a...
- 33 A utilities contract for the supply of energy, or fuel...
- 34 A contract for the supply of goods, services or works...
- 35 Concession contracts
- 36 (1) A concession contract that— (a) confers an exclusive right...
- 37 A concession contract for the provision of public passenger transport...
- 38 Commercial contracts of the City of London

#### SCHEDULE 3 — Estimating the value of a contract

- 1 General rule
- 2 Frameworks
- 3 Concession contracts
- 4 Anti-avoidance
- 5 Cases where estimate not possible

#### SCHEDULE 4 — Utility activities

##### PART 1 — ACTIVITIES THAT ARE UTILITY ACTIVITIES

- 1 Gas and heat
- 2 Electricity
- 3 Water
- 4 Transport
- 5 Ports and airports
- 6 Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels
- 7 Interpretation of Schedule

##### 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...
- 11 Wholesale or retail sale of gas in England, Scotland or...
- 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...
- 17 Development of infrastructure for production of natural gas in England,...

#### SCHEDULE 5 — Direct award justifications

- 1 This Schedule contains the direct award justifications.
- 2 Prototypes and development
- 3 In paragraph 2, “novel goods or services” means goods or...
- 4 Single suppliers

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- 5 The following conditions are met in relation to the public...
- 6 The following conditions are met in relation to the public...
- 7 Additional or repeat goods, services or works
- 8 The public contract concerns the supply of goods, services or...
- 9 In paragraphs 7 and 8— “existing goods, services or works”...
- 10 Commodities
- 11 Advantageous terms on insolvency
- 12 A supplier is “undergoing insolvency proceedings” if it has—
- 13 Urgency
- 14 For the purpose of paragraph 13, urgency is unavoidable if...
- 15 User choice contracts
- 16 In paragraph 15, “user choice services” means services—
- 17 The conditions are that— (a) the individual to whom the...
- 18 Defence and security
- 19 (1) The following conditions are met in relation to the...
- 20 The following conditions are met in relation to the public...

## SCHEDULE 6 — Mandatory exclusion grounds

### PART 1 — OFFENCES

- 1 A mandatory exclusion ground applies to a supplier if the...
- 2 Corporate manslaughter or corporate homicide
- 3 Terrorism
- 4 Theft, fraud, bribery etc
- 5 An offence at common law of conspiracy to defraud.
- 6 An offence under any of the following sections of the...
- 7 An offence under any of the following sections of the...
- 8 An offence under section 3 of the Theft Act 1978...
- 9 An offence under section 5 of the Theft (Northern Ireland)...
- 10 An offence under Article 172 or 172A of the Road...
- 11 An offence under section 58 of the Civic Government (Scotland)...
- 12 An offence under section 113 of the Representation of the...
- 13 An offence under section 178 of the Road Traffic Act...
- 14 An offence under section 327, 328 or 329 of the...
- 15 An offence under section 2, 3, 4, 6 or 7...
- 16 An offence under section 993 of the Companies Act 2006...
- 17 An offence under section 1, 2 or 6 of the...
- 18 An offence under section 49 of the Criminal Justice and...
- 19 Labour market, slavery and human trafficking offences
- 20 An offence under the Employment (Miscellaneous Provisions)  
(Northern Ireland) Order...
- 21 An offence under section 31(1) of the National Minimum Wage...
- 22 An offence under the Gangmasters (Licensing) Act 2004 (offences  
relating...
- 23 An offence under section 1, 2, 4 or 30 of...
- 24 An offence under section 1, 4 or 32 of the...
- 25 An offence under section 1, 2 or 4 of the...
- 26 An offence under section 27 of the Immigration Act 2016...
- 27 Organised crime
- 28 An offence under section 45 of the Serious Crime Act...
- 29 Tax offences
- 30 (1) An offence under the law of any part of...
- 31 An offence under section 45 or 46 of the Criminal...
- 32 Cartel offence



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- 33 Ancillary offences
- 34 Offences committed outside the United Kingdom
  - PART 2 — OTHER MANDATORY EXCLUSION GROUNDS
- 35 National security
- 36 Misconduct in relation to tax
- 37 (1) A mandatory exclusion ground applies to a supplier if...
- 38 (1) A mandatory exclusion ground applies to a supplier if—...
- 39 (1) A mandatory exclusion ground applies to a supplier if...
- 40 (1) A mandatory exclusion ground applies to a supplier if...
- 41 Competition law infringements
- 42 Equivalents outside the United Kingdom
- 43 Failure to cooperate with investigation
  - PART 3 — GENERAL
- 44 Excluded matters
- 45 Definitions

#### SCHEDULE 7 — Discretionary exclusion grounds

- 1 Labour market misconduct
- 2 A discretionary exclusion ground applies to a supplier if the...
- 3 A discretionary exclusion ground applies to a supplier if the...
- 4 Environmental misconduct
- 5 Insolvency, bankruptcy, etc
- 6 A discretionary exclusion ground applies to a supplier if the...
- 7 Potential competition infringements
- 8 A discretionary exclusion ground applies to a supplier if the...
- 9 (1) A discretionary exclusion ground applies to a supplier if—...
- 10 (1) A discretionary exclusion ground applies to a supplier if...
- 11 Professional misconduct
- 12 Breach of contract and poor performance
- 13 Acting improperly in procurement
- 14 National security
- 15 Excluded matters
- 16 Definitions
- 17 Other terms used in this Schedule and defined in Schedule...

#### SCHEDULE 8 — Permitted contract modifications

- 1 Provided for in the contract
- 2 Urgency and the protection of life, etc
- 3 Assume, for the purposes of paragraph 2, that the contract...
- 4 Unforeseeable circumstances
- 5 Materialisation of a known risk
- 6 In paragraph 5, a “known risk” means a risk that—...
- 7 In considering whether awarding a new contract would be in...
- 8 Additional goods, services or works
- 9 Transfer on corporate restructuring
- 10 Defence authority contracts
- 11 A modification of a defence authority contract is a permitted...

#### SCHEDULE 9 — Treaty state suppliers (specified international agreements)

- 1 The Agreement on Government Procurement signed at Marrakesh on 15...
- 2 Agreement establishing an Association between the United Kingdom of Great...

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- 3 Trade Agreement between the United Kingdom of Great Britain and...
- 4 Trade and Partnership Agreement between the Government of the United...
- 5 Economic Partnership Agreement between the CARIFORUM States, of the one...
- 6 Trade Agreement between the United Kingdom of Great Britain and...
- 7 Agreement Establishing an Association between the United Kingdom of Great...
- 8 Free Trade Agreement between the United Kingdom of Great Britain...
- 9 Strategic Partnership and Cooperation Agreement between the United Kingdom of...
- 10 Partnership, Trade and Cooperation Agreement between the United Kingdom of...
- 11 Political, Free Trade and Strategic Partnership Agreement between the United...
- 12 Agreement between the United Kingdom of Great Britain and Northern...
- 13 Partnership, Trade and Cooperation Agreement between the United Kingdom of...
- 14 Agreement on Trade Continuity between the United Kingdom of Great...
- 15 Free Trade Agreement between the United Kingdom of Great Britain...
- 16 Trade Continuity Agreement between the United Kingdom of Great Britain...
- 17 Strategic Partnership, Trade and Cooperation Agreement between the United Kingdom...
- 18 Free Trade Agreement between the United Kingdom of Great Britain...
- 19 Trade and Cooperation Agreement between the United Kingdom of Great...
- 20 Partnership, Trade and Cooperation Agreement between the United Kingdom of...
- 21 Partnership, Trade and Cooperation Agreement between the Government of the...
- 22 Free Trade Agreement between Iceland, the Principality of Liechtenstein and...
- 23 Free Trade Agreement between the United Kingdom of Great Britain...
- 24 Free Trade Agreement between the United Kingdom of Great Britain...

#### SCHEDULE 10 — Single source defence contracts

- 1 The Defence Reform Act 2014 is amended as follows.
- 2 Definition of qualifying defence contract
- 3 Pricing of qualifying defence contracts
- 4 (1) Section 16 (pricing of contracts: supplementary) is amended as...
- 5 After section 21(2) (final price adjustment) insert—
- 6 In section 22(1)(a) (recovery of unpaid amounts), after “section” insert...
- 7 (1) Section 42 (single source contract regulations: general) is amended...
- 8 In section 43 (interpretation etc), at the appropriate place insert—...
- 9 Contract profit rate
- 10 (1) Section 18 (contract profit rate: supplementary) is amended as...
- 11 (1) Section 19 (rates etc relevant to determining contract profit...
- 12 Allowable costs
- 13 Reports
- 14 In section 43 (interpretation etc), in the definition of “financial...

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- 15 Qualifying sub-contracts
- 16 In section 30(4)(a) (application of single source contracts regime to...
- 17 In section 31(3) (compliance notices)— (a) in paragraph (e), omit...
- 18 Powers of the Single Source Regulations Office (“SSRO”)
- 19 After section 35 insert— Guidance The SSRO may issue such guidance as it considers appropriate...
- 20 In paragraph 10(3) of Schedule 4 (procedure of the SSRO),...

#### SCHEDULE 11 — Repeals and revocations

- 1 Primary legislation
- 2 Sections 39 and 40 of the Small Business, Enterprise and...
- 3 The Trade (Australia and New Zealand) Act 2023.
- 4 Subordinate legislation
- 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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**Changes and effects yet to be applied to :**

- s. 117 coming into force by [S.I. 2024/61 reg. 2\(2\)\(a\)](#)
- Sch. 10 para. 1 coming into force by [S.I. 2024/61 reg. 2\(2\)\(b\)\(i\)](#)
- Sch. 10 para. 18 coming into force by [S.I. 2024/61 reg. 2\(2\)\(b\)\(ii\)](#)
- Sch. 10 para. 19 coming into force by [S.I. 2024/61 reg. 2\(2\)\(b\)\(iii\)](#)