



# Procurement Act 2023

## 2023 CHAPTER 54

### PART 3

#### AWARD OF PUBLIC CONTRACTS AND PROCEDURES

### CHAPTER 6

#### GENERAL PROVISION ABOUT AWARD AND PROCEDURES

PROSPECTIVE

#### *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

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- (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.

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**Commencement Information**

**II** S. 59 not in force at Royal Assent, see [s. 127\(2\)](#)

## 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—

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- (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.

#### Commencement Information

**12** S. 60 not in force at Royal Assent, see s. 127(2)

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## **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.

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### Commencement Information

**I3** S. 61 not in force at Royal Assent, see [s. 127\(2\)](#)

## 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,

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- (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.

#### **Commencement Information**

**I4** S. 62 not in force at Royal Assent, see s. 127(2)

### **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,

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- (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).

#### Commencement Information

**I5** S. 63 not in force at Royal Assent, see [s. 127\(2\)](#)

### 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.

#### Commencement Information

**I6** S. 64 not in force at Royal Assent, see [s. 127\(2\)](#)

### 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

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- (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).

#### **Commencement Information**

**I7** S. 65 not in force at Royal Assent, see s. 127(2)

## **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).



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**18** S. 66 not in force at Royal Assent, see [s. 127\(2\)](#)

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