

The Procurement Act

What is it & what does it mean for you?

The Procurement Act is a new piece of legislation aimed at reforming public procurement procedures in the UK.

The Act is intended to make public procurement more efficient, transparent, deliver better value for money, and address national priorities.

With new mechanisms to bar poor-performing or risky suppliers from the market, and plans to standardise how procurement data is managed, the Act also aims to even out the playing field for smaller suppliers, and drive integrity.

This guidebook provides a comprehensive overview of what the Procurement Act is, its key aims, and the changes it has introduced - helping you to prepare for its 'go-live' date in 2024, and make the most of the reforms.



Key Aims

4 core ambitions underpin the Procurement Act.

1. To make the procurement process simpler, more efficient and deliver clearer objectives
2. Ensure procurement delivers better value for money for contracting authorities and citizens
3. Improve transparency and accountability throughout the procurement process
4. Increase market accessibility for smaller suppliers



Who's it for?

The Procurement Act will impact any organisation either buying within, or supplying into, the public sector.

The Act's provisions cover nearly all contracting authorities - including Central Government, Local Government, the NHS, certain devolved administrations and ALBs.

The Act is equally pertinent to suppliers: it changes how contracting authorities can choose successful bidders, what grounds suppliers can be excluded on, and what information can be reported on them throughout a contract's lifecycle.

However, the Procurement Act only impacts contracting authorities in England, Wales and Northern Ireland - Scottish authorities will remain under their own procurement regulations.



What key changes is the Act introducing?

The Procurement Act brings several substantive reforms to how public procurement operates.

We've pin-pointed 10 key changes being introduced by the Act.

It's imperative that buyers and suppliers alike understand these changes, and consider how each might impact how you conduct or engage in public procurement.



Procurement Objectives

The Act redefines the core objectives public procurement should look to fulfil.

Instead of primarily adhering to European Directives that required equal and non-discriminatory treatment of economic operators and transparent and proportionate actions, the Act a new set of objectives.

Public procurement should now prioritise delivering value for money, maximising public benefit, and integrity.

Contracting authorities must also consider how their procurement can promote 'national priority outcomes', as defined under [PPN 05/21](#).

It is important for contracting authorities to stay up to date with these changes and give feedback on the impact of the Procurement Act through subsequent feedback sessions and consultations for [secondary legislation](#).



Greater Flexibility

The Act looks to boost flexibility for contracting authorities in the UK's procurement process, addressing the challenge of rigid and prescriptive procedures.

Contracting authorities will have greater discretion over what type of procurement procedure they want to use when going out to market, offering more adaptability in their approach. This includes new procedure types like 'Dynamic Markets' and 'Competitive Flexible' processes.

The Act also allows contracting authorities to modify the terms of procurement even after it has commenced, as long as these changes are made before certain critical deadlines and are publicised correctly.

Another key change is the flexibility in selecting award criteria, with contracts now being awarded based on the "most advantageous tender" instead of the previous "most economically advantageous tender." This should allow contracting authorities greater freedom when deciding how to evaluate and choose suppliers, outside the standard lense of pricing.



New Notices

The Act introduces several new notice types they can - or must - publish throughout the procurement process.

These new notice types include: planned procurement notices, preliminary market engagement notices, pipeline notices, transparency notices for direct contract awards, contract change notices, and termination notices upon the conclusion of a public contract.

These new notices aim to improve transparency and awareness throughout the procurement process.

To ensure they're on-top of these new notices, contracting authorities will need to understand when each is required to be published.



Standstill Periods

The Act shortens the 'standstill period', addressing the challenge of prolonged delays in the procurement process.

The Act reduces the period between when a contract award decision is made and a contract concludes from 10 to 8 working days.

However, there are exceptions where the standstill does not apply, such as in cases of extreme or unavoidable urgency for direct awards or when contracts are awarded through a framework.

This change aims to expedite the procurement process while maintaining fairness and transparency.



Award criteria

The Act allows contracting authorities to award contracts to bidders who submits the "most advantageous" tender.

As under PCR 2015, contracting authorities should still use a weighted point system to evaluate bidders against a set of criteria.

Unlike under PCR 2015, however, pricing no longer has to be figured into this equation. If it's deemed appropriate, contracts can be evaluated based purely on non-financial criteria.

The Act also grants increased authority to directly award contracts in specific situations. For example, when directed by a Minister of the Crown to protect human, animal, or plant life or health, or to maintain public order and safety.

These provisions have been influenced by lessons learned during the COVID-19 pandemic and are designed to enhance procurement flexibility while addressing urgent needs for public health and safety.

The Act also allows contracting authorities to reserve certain competitions for UK-based suppliers, SMEs and social enterprises. More broadly, the Act also places a greater obligation on authorities to consider SMEs throughout the procurement process.

The changes brought by the Procurement Act aim to strike a balance between transparency, efficiency, and flexibility in the procurement process. While they have the potential to enhance procurement practices, contracting authorities will need to navigate administrative challenges and adapt their processes to leverage these improvements effectively. Suppliers will also need to ensure they're adhering to these new regulations to remain competitive.



New KPIs

The Act introduces a new requirement for contracting authorities to publish contract key performance indicators (KPIs) to evaluate supplier performance, addressing the need for greater accountability and transparency within the procurement process.

When contract KPIs are published, contracting authorities are obligated to assess supplier performance against these indicators at least once every twelve months and make this assessment information public.

This change aims to improve supplier performance monitoring and provide valuable insights into the effectiveness of procurement contracts.

However, this is only required for contracts with an estimated value above £5 million, and excludes certain contract types, such as those awarded through framework agreements.



Terminating Contracts

The Act broadens the implied rights of contracting authorities to terminate public contracts, addressing the challenge of ensuring contract compliance and integrity.

Grounds for termination now include instances where the contract was awarded or materially modified in breach of the Act.

Termination is also permitted when a supplier becomes an excluded or excludable supplier, and, under specific conditions, when a sub-contractor of the supplier falls into the excluded or excludable category.

These changes enhance the authority's ability to maintain contractual compliance and protect the integrity of the procurement process.



Remedies

The current procurement regime will not change too much in this area – just some adjustments in terminology.

For instance, declarations of ineffectiveness are now called "set aside" proceedings.

Additionally, a new test is introduced for interim orders, affecting automatic suspensions regarding contract entry or modification.

These changes aim to streamline and clarify the remedy process within the procurement system.



Supplier Registry

The Act will introduce a new supplier registration system to centralise information on suppliers.

The Act seeks to address a common situation whereby suppliers were required to submit information on themselves across multiple platforms and websites if they intend to bid on work spanning different contracting authorities and sectors. This was a particular time-suck for smaller suppliers.

The new supplier registration system will mean suppliers should only need to submit basic profile information once; this information will be stored securely, and be made accessible to other procurement systems.

The system will also make it clearer what information they need to keep up to date.





Supplier Exclusion

The Act addresses the management of excluded and excludable suppliers for contracting authorities, aiming to enhance the integrity of the procurement process and ensure responsible supplier selection.

The Act largely retains the existing grounds for mandatory exclusion, such as modern slavery (as outlined in PPN 02/23), but adds new offences for environmental misconduct and improper behaviour in relation to a procurement (such as theft, corporate manslaughter, and competition law infringements).

A notable change is the inclusion of prior poor performance as a basis for exclusion, extending to cases where a supplier has failed to improve their performance despite opportunities to do so.

Moreover, the Act allows suppliers to be excluded based on the status of their associated suppliers and subcontractors, not just their individual performance.

The Act also establishes a central Debarment List, where a Minister of the Crown may include the names of excluded or excludable suppliers. Suppliers on this list will be temporarily barred from bidding for public contracts. However, they have the option to seek removal if there is a significant change in circumstances.

Even if a supplier is not on the Debarment List, contracting authorities must consider these exclusion grounds during tender exercises. This, combined with transparency obligations for reporting poor performance and breaches, increases the likelihood that a supplier's past conduct will impact their bidding eligibility. Suppliers may also inform authorities about their competitors' negative reports.

As a supplier, being aware of changes to supplier exclusion is critical. You must understand what the new rules are and ensure that you abide by them.

The new debarment list allows a supplier to be excluded based on a subcontracted supplier further down the chain - make sure you pick your subcontractors wisely.

UK public procurement is set to go through some major changes. As your organisation adapts, don't get held back by a poor understanding of your market or categories. [Tussell](#) provides a 360° view of the public sector marketplace, providing unparalleled insights on suppliers, frameworks, competitors and more.

Interested? [Click here to book in a chat with our team.](#)

What does this mean for you?

On the whole, the Procurement Act is intended to make public procurement more accessible, flexible and transparent.

Reflecting on the outlined changes, we've highlighted the potential benefits the Procurement Act may provide for buyers and suppliers.

For suppliers

Greater visibility of KPIs and procurement pipelines should enable suppliers to better anticipate upcoming opportunities, and strategise their angle of approach

Clearer rules for contracting authorities on pre-market engagement should provide better visibility on when and how you can engage with buyers pre-tender

Simplified registration through the centralised supplier registry information should save time during the bid submission process - particularly beneficial for smaller suppliers

More diversity in the types of procurement procedures available to contracting authorities should make it easier for them to award work under unique circumstances

More consistent feedback post bid will help you better understand when you're unsuccessful in a bid, enabling you to make better submissions in the future

For buyers

More diversity in the types of available procurement procedures should provide more avenues for contracting authorities to procure what they need

Enhanced autonomy under the 'most advantageous tender' clause means contracting authorities have more freedom when deciding how to award a contract outside of pricing

Greater transparency via the supplier Dashboard can should provide greater visibility over poorer performing suppliers, helping to inform award decisions

More consistent reporting over high-value contracts' KPIs should enforce better oversight and monitoring over contract delivery performance

Expanded capabilities to reserve certain competitions for SMEs or social enterprises should enable contracting authorities to better promote social value in their supply chains

To learn more about the potential benefits of the Procurement Act, [click here](#) to read the government's 'Benefits for Prospective Suppliers to the Public Sector' explainer.

To help your procurement team prepare, [we've produced a flowchart](#) showing you all the new notices being introduced by the Act, and where they fit into the procurement lifecycle.

This is a **REDACTED** version of this guidebook. Tussell customers can access the [full guidebook](#).

[Book a demo](#)

What's next?

With the Procurement Act finally enacted into law, it is time to start preparing for its enforcement in October 2024.

Whether you're a buyer or supplier, we recommend getting your head around the new Act sooner rather than later - preparation resources are already available, with further training due to be released over the course of 2024.



Procurement Bill receives Royal Assent, becoming the Procurement Act 2023

26th October 2023

Gov't "Knowledge Drops" expected - videos & resources on key changes

November 2023

Gov't e-learning product launched with Skilled Practitioner Certification

March 2024

Gov't "Deep Dives" launched through a 3 day virtual course

May 2024

Procurement Act 2023 comes in to force through a potentially staggered launch

October 2024

What you can do to get prepared

Read through the Act itself

Reading through legislation can be challenging, but setting time aside to work through the Act is a great way to start understanding how it functions, and the changes it has introduced.

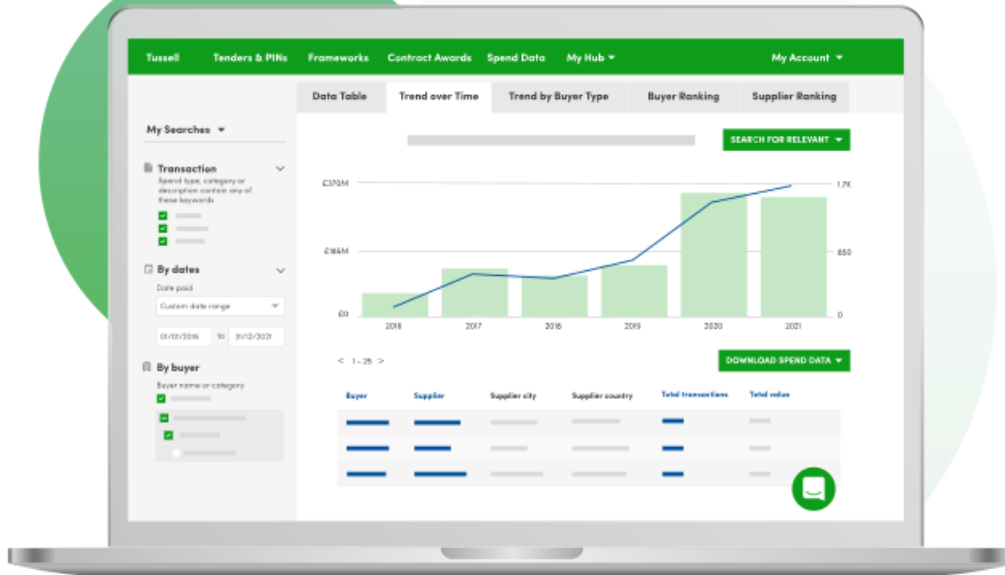
Get your head around the key documents

The government has already produced a few documents to help you understand the Act's key elements. These documents include [Guidance Notes for Suppliers/Contractors/ECs](#), [Guidance Notes for Buyers/ECs/ECAs](#), and a [Summary Guide](#). Reading these in conjunction with the Act itself will give you a solid understanding of the legislation.

Sign up for learning & development

The government is currently preparing a range of training services to help you prepare for the Act. These will be aimed at different audiences and meet a range of professional requirements, from basic awareness to a full Practitioner's Certification. Keep your eyes open for when these are available. To find out more about the training options, [click here](#).

The Procurement Act makes clear the importance of clear data when buying or selling into government - [Tussell](#) can help you with this. [Book a personalised demo](#) to see what insights we can provide into the UK public procurement marketplace.



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