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Policy paper

The Procurement Bill - a summary guide to the provisions

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Keeping up to date



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Introduction

One in every three pounds of public money, some £300 Billion a year, is spent on public procurement.

The reforms proposed within the Procurement Bill are important, because they will shake up our outdated procurement system, so that every pound goes further for our communities and public services. They will place value for money, public benefit, transparency and integrity at the heart of our procurement system; they will modernise and unify our systems and processes; and they will get tough on the poor performers and fraudsters.

The Bill will reform the UK's public procurement regime, making it quicker, simpler, more transparent and better able to meet the UK's needs while remaining compliant with our international obligations. It will introduce a new regime that is based on value for money, competition and objective criteria in decision-making. It will create a simpler and more flexible, commercial system that better meets our country's needs. And it will more effectively open up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts. It will strengthen the approach to excluding suppliers where there is clear evidence of their involvement in Modern Slavery practices, and running throughout each part of the Bill is the theme of transparency. We want to deliver world-leading standards of transparency in public procurement and this Bill paves the way for that.

Leaving the EU has provided the UK with the responsibility and opportunity to overhaul the public procurement regulations. There are currently over 350 different procurement regulations spread over a number of different regimes for different types of procurement including defence and security. The Procurement Bill will consolidate these into a single regime that is quicker, simpler and better meets the needs of the UK. We have removed the duplication and overlap in the current four regimes to create one rule book which everyone can use.

The Bill will enable the creation of a digital platform for suppliers to register their details once for use in any bids, while a central online transparency platform will allow suppliers to see all opportunities in one place. This will accelerate spending with SMEs.

The Bill - summary of Provisions

This is a large and technical Bill. It includes a number of regulation-making powers which are necessary to ensure that the legislation will continue to facilitate a modern procurement structure for many years to come and will allow us to keep pace with technological advances, new trade agreements and ahead of those who may try to use procurement improperly.

Devolved administrations

We have delivered this Bill with other nations of the United Kingdom. The result is a piece of legislation whose general scope applies to all contracting authorities in England, Wales and Northern Ireland. This will ensure contracting authorities and suppliers can benefit from the efficiencies of having a broadly consistent regime operating across the constituent parts of the UK.

The Scottish Government has opted not to join the UK Government Bill and will retain their own procurement regulations in respect of devolved Scottish authorities. This is similar to how the current regulations operate, with the Scottish Government having transposed the EU Directives into their own statute book.

Coverage

Part one of the Bill sets out which authorities and contracts the Bill applies to. It covers contracts awarded by most central government departments, their arms length bodies and the wider public sector including local government and health authorities. This also includes contracts awarded by utilities companies operating in the water, energy and transport sectors and concession contracts.

The Bill also sets out a small number of simpler rules which apply to lower value contracts. And the Bill makes provision to carve out those procurements regulated by the Health and Care Act, to ensure clarity about which regime applies.

Defence and security

This Bill consolidates the current procurement regimes and, therefore, extends to defence and security contracts. Defence procurement will benefit from the simplification and increased flexibility of the core regime.

There are a limited number of derogations that meet the specific needs of defence and security procurements and will support delivery of the Defence and Security Industrial Strategy published in March 2021. A national security exemption has also been retained to protect our national interest.

The Bill also includes a separate Schedule to enable reforms to the Single Source Contract Regulations 2014. The proposed reforms seek to ensure these regulations fully support the delivery of the Defence and Security Industrial Strategy by supporting a more strategic relationship between Government and the defence and security industries.

Principles and objectives

Part two of the Bill is focussed on the principles and objectives that must underlie the awarding of a public contract.

Contracting authorities must have regard to delivering value for money, maximising public benefit, transparency and acting with integrity. Integrity must sit at the heart

of the process. It means there must be good management, prevention of misconduct, and control in order to prevent fraud and corruption.

Part five of the Bill sets out the particular requirements on contracting authorities to identify and manage conflicts of interest.

Public procurement should also support the delivery of strategic national priorities and this part of the Bill makes provision for a National Procurement Policy Statement and a Wales Procurement Policy Statement to support this.

Undertaking a procurement

In Part three, the Bill sets out how a contracting authority can undertake a procurement and award a contract. Competition is at the heart of the regime.

The Bill introduces a new procedure for running a competitive tendering process, colloquially known as the competitive flexible procedure, ensuring for the very first time that contracting authorities can design a competition to best suit the particular needs of their contract and market.

There will continue to be a special regime for certain social, health and education services, specifically identified by secondary legislation, which may be procured as 'Light Touch Contracts', leaving room for authorities to design procurement procedures that are more appropriate for these types of services. These Light Touch Contracts are still subject to the necessary safeguarding requirements.

And the Bill also continues the existing ability to reserve certain contracts for public service mutuals and for supported employment providers.

There are a limited number of circumstances in which it may be necessary to award a contract without competition. The Bill sets these out including new rules governing the award of contracts to protect life and public order.

Exclusions and debarment

Part three also sets out the circumstances in which a supplier may be excluded from a procurement due to serious misconduct, unacceptably poor performance, or other circumstances which make the supplier unfit to bid for public contracts.

Contracting authorities will be able more easily to reject bids from suppliers which pose unacceptable risks. Part three also legislates for the introduction of a public debarment list for serious cases of misconduct. For too long, too many unscrupulous suppliers have continued to win public sector contracts due to the ambiguity of the rules, multiplicity of systems and lack of central effective oversight.

Contract management

The important work on procurement does not stop once a contract has been awarded. Part four of the Bill sets out steps that must be taken to manage a contract. This includes the strengthening of rules ensuring that suppliers are paid on time and new requirements to assess and publish information about how suppliers are performing.

Transparency notices

Running throughout the Bill are requirements to publish notices. These are the foundations for the new standards of transparency which will play such a crucial role in the new regime. Our ambitions are high and we want to ensure that procurement information is publicly available not only to support effective competition, but to provide the public with insight into how their money is being spent.

Part eight of the Bill provides for regulations which will require contracting authorities to publish these notices, resulting in more transparency and greater scrutiny.

Remedies

Part nine details what remedies are available to suppliers for breach of the new regime by contracting authorities, where that has resulted in loss or damage. Having an effective and well functioning remedies regime is essential to the successful operation of any public procurement regime.

Any claims made during an applicable standstill period (between the award decision and the entering into of the contract) will result in the procurement being automatically suspended. We will introduce a new test for the court to consider when hearing applications for the automatic suspension to be lifted better suited to procurement than the one currently applied.

Oversight

Part ten of the Bill gives an appropriate authority oversight over contracting authorities and the power to investigate their compliance with this new Act, as part of a new Procurement Review Unit.

International trade agreements

The UK is already party to a number of international agreements which guarantee valuable market access for UK suppliers. For example, our membership of the World Trade Organisation's Agreement on Government Procurement gives British businesses access to £1.3 trillion in public procurement opportunities overseas.

Access to these markets is a two-way street and requires the UK to ensure that treaty state suppliers have equivalent access to UK markets. Part seven prohibits a contracting authority from discriminating against suppliers from those states.

This Part also contains a power to make regulations specifying the agreements listed in that Schedule. This provides greater flexibility to be able to extend the procurement regime to cover matters covered by the UK's international procurement agreements, both current and future.

This is a well-defined and tightly-restricted power which will enable the procurement aspects of future trade agreements to be enacted efficiently.

It is not an open door to changing UK procurement regulations to meet international commitments. This power only allows for the extension of the UK procurement regime to cover overseas suppliers, covered by such agreements. Amendment of the UK's procurement rules is outside the scope of this power, even if it were to be required as part of an international agreement.

This power would not, for example, allow the opening up of NHS clinical healthcare procurements to private providers from the United States of America or any other State. To do so would require broader legislative changes and this power has been carefully drafted so as not to allow for that.

Keeping up to date

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