

**1 Almost a one-stop shop!**

The existing regime is set out in four sets of regulations but the Procurement Act 2023 consolidates those into one act. Don't be fooled – secondary legislation, statutory and non-statutory guidance will also need to be taken into consideration. The act is almost (but not quite) a one-stop shop.

**2 Full procurement lifecycle**

Where the current regulations are principally concerned with the process of awarding a public contract, the Procurement Act 2023 takes a cradle to grave approach, covering pre-market engagement, termination and everything in between, including a much greater emphasis on contract management.

**3 Refocused procurement objectives**

The traditional European principles of proportionality, transparency and equal treatment are sidelined and replaced with new procurement objectives: delivering value for money, maximising public benefit, sharing information and acting and being seen to act with integrity.

**4 A more flexible procedure**

The procurement procedures available under the Procurement Act 2023 are streamlined and less prescriptive. There will be three options to choose from: competitive flexible procedure, open procedure and limited tendering procedure. The competitive flexible procedure affords the contracting authority very wide discretion in how they want to design a procurement, so watch out for this one!

**5 An expanded notice regime**

Transparency is no longer an overarching principle but it remains a core part of the Procurement Act 2023 through the expanded notice regime.

Some of the notices are brand new but many will be familiar, just with new names or amended purposes. Watch out for some previously voluntary notices becoming mandatory; for example, contract change notices will be mandatory in respect of a wider range of modifications.

**6 KPIs and reporting**

The Procurement Act 2023 requires that all public contracts with a value over £5 million have at least three published key performance indicators (KPIs). Performance against these KPIs must then be monitored and reported on at least annually. This all means heightened transparency of ongoing supplier performance.

**7 New supplier registration system**

The Procurement Act 2023 requires the creation of a digital platform for suppliers to register their details once rather than repeating them in each bid. This central online transparency platform will also allow suppliers to see all opportunities in one place. The intention is to simplify engagement with a procurement for suppliers and accelerate spending with small and medium-sized enterprises.

**8 Enhanced grounds for exclusion**

The current exclusion grounds get a refresh in the Procurement Act 2023. New grounds for exclusion have been introduced, including for suppliers who are assessed to be a threat to national security.

There are expanded and updated grounds covering exclusion in a range of areas including for poor performance in the past of a public contract and environmental misconduct.

**9 Introduction of a debarment list**

A debarment list is a new feature, unseen in the EU but present in the US.

Grounds for a supplier to be placed on the list are the same as the grounds for exclusion from bidding. Once a supplier has been excluded for a mandatory or discretionary ground, the information is passed to the central authority for investigation into whether the supplier should be included on the debarment list. Once a bidder is on the list for a mandatory ground, their exclusion will be binding on all authorities. If a supplier is on the list for a discretionary ground, authorities retain discretion to exclude the supplier.

**10 Procurement challenges**

There are some changes you need to be aware of when considering bringing a procurement legal challenge: the mandatory standstill period preventing a contracting authority from entering into a public contract is now eight working days (not 10 calendar days), and if you want to overturn a decision not to award a public contract to your organisation, you will need to issue a claim during that standstill period (not just before contract signature).

There are new conditions on set aside remedies and it appears there is a change to the legal test to be applied by the court when considering whether to lift the automatic suspension on contract signature. The full extent of these changes will become clearer once the Procurement Act 2023 is in force and being applied by the courts.

## Get in touch

For more information, visit our [Procurement Act website](#), or get in touch with one of our experts:



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