

UPDATE ON THE UK PUBLIC PROCUREMENT REFORMS (JULY 2023)

The Cabinet Office has announced a revised timeline for, and technical consultations on, the implementation of the Procurement Bill.

The re-opening of consultation provides interested individuals with a further opportunity to influence the UK's future procurement regime.

TIMELINE FOR IMPLEMENTATION

The Procurement Bill's passage through Parliament has been slower than anticipated, and the Cabinet Office has revised its anticipated go-live date to October 2024 (from "late 2023 at the earliest"), following a six-month preparation period.

The Procurement Bill (or the "Procurement Act" as it will be known once enacted) is back before the House of Lords, having completed the Commons Report and Third Reading stages in June, for consideration of amendments proposed by the House of Commons.

Both Houses need to agree on the final text. Therefore, if the Lords disagree with any of the Commons' amendments, the Procurement Bill will continue to go back and forth (known as "ping-pong") until both Houses reach agreement, at which point the Procurement Bill will proceed to Royal Assent. Following Royal Assent and the Procurement Bill's entry into law, the Cabinet Office will give a minimum of six months' notice before the new regime enters into force.

With no date set for the Lords' consideration of Commons amendments before Parliament closes for summer recess on 22 July 2023, we expect Royal Assent will now occur in Autumn. This should not affect revised timescales (the Cabinet Office has until April 2024 to commence the six-month preparation to meet its anticipated go-live date of October 2024).

TECHNICAL CONSULTATIONS

The Cabinet Office has announced a two-part technical consultation process on secondary legislation required to implement the new regime.

Part 1 – The Procurement Act 2023 (Miscellaneous Provisions) Regulations

Part 1 focuses on definitions and threshold tests such as:

Key issues

- The Procurement Bill has reached the final stage of its Parliamentary passage.
- The new regime is now set to take effect from October 2024, following a six-month preparation period.
- A two-part technical consultation process currently underway presents interested individuals with a further opportunity to influence the future procurement regime.

- Scope of light touch contracts and reserved light touch services. This will be of interest to suppliers that operate in sectors which are currently subject to less burdensome compliance requirements under the existing UK procurement regime such as education, health care and legal services.
- Disapplication of NHS procurements. Health care suppliers will also be interested in the carve out for certain NHS health care services provided to individual patients and service users, which will instead be regulated by the Provider Selection Regime regulations.
- Threshold tests for Vertical (*Teckal*) and Horizontal (*Hamburg*) Exemptions. Procurers that rely on public-to-public exemptions to discharge their public functions – whether through subsidiary companies or co-operation agreements with other procurers – should note the proposed tests under the new regime.
- Disapplication of section 17 of the Local Government Act 1988, which currently prevents local government and other authorities from awarding contracts on the basis of ‘non-commercial considerations’ (e.g. location of suppliers) and therefore limits their ability to advance certain policy objectives.

The closing date for responding to Part 1 is 28 July 2023. Further details on how to respond can be found [here](#).

Part 2 – The Procurement (Transparency) Regulations

Part 2 focuses on transparency:

- Transparency Notices. A stated aim of the reform agenda is to embed transparency by default throughout the commercial lifecycle from planning through to procurement, contract award, performance and completion. The consultation seeks feedback on the overhauled “noticing” regime and the new set of transparency notices which now cover the full lifecycle of a procurement process (see table).
- Assessment Summaries (currently known as standstill letters). The draft regulation specifies the information to be included when providing feedback to successful and unsuccessful bidders.

Part 2 also deals with transitional provisions. In particular, the draft regulations propose that only procurements that ‘start’ after the go-live date must be conducted in accordance with the new regime. Procurements that started beforehand must therefore continue to be conducted in accordance with the existing regime. The draft regulation lays out special rules for direct awards, and the test for determining the “start” date of a procurement.

The closing date for responding to Part 2 is 25 August 2023. Further details on how to respond can be found [here](#).

HOW WE CAN HELP

The technical consultation process provides interested individuals with a further opportunity to influence the UK’s future procurement regime.

We are available to assist clients seeking to respond to the consultations or preparing for the new regime more generally. Please contact [Andrew Dean](#) (Director of Public Law) for further information.

New Noticing Regime Planning

- Pipeline Notice
- Planned Procurement Notice
- Preliminary Market Engagement Notice

Procurement and Award

- Tender Notice
- Transparency Notice
- Contract Award Notice
- Contract Details Notice
- Procurement Termination Notice

Contract Performance

- Payment Compliance Notice
- Contract Performance Notice
- Contract Change Notice
- Contract Termination Notice

Dynamic Markets

- Dynamic Market Notice
- Utilities Dynamic Market Notice

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