

#BETTER
ForUs 2020-4

Placing people at the
heart of procurement

A guide to the Procurement Act 2023

February 2024



#BetterForUs is a campaign to provide good work through procurement. It is run by Aspire Community Works on behalf of its employees and supported by Trust for London

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The Procurement Act received Royal Assent in October 2023. It is anticipated to come into force no earlier than October 2024.

Good procurement promotes public value and benefit.

The implementation of the Act provides a unique opportunity for commissioning bodies to collaborate with local communities to promote community well-being.

Progressive procurement makes a difference to ordinary lives by addressing growing inequalities and the cost-of-living crisis.

The Act will replace the current legislation in England, Wales and Northern Ireland. Scotland will largely retain its current procurement regime. As much of the structure of both sets of legislation is based on international legislation, the systems will continue to be largely aligned.

This guide provides information on the main parts of the Act. It is not intended to be a comprehensive analysis of the Act but draws out key elements for promoting good procurement. Further briefings are to follow.

Our interest in procurement law has arisen from our own lived experience of the procurement system while trying to maintain our pledge to the Real Living Wage and Good Employment. Our commitment is to making the procurement system better for us all.

Principles of reform

The reforms are guided by clear principles.

These were outlined in the government's Green Paper 'Transforming public procurement' which was published at the end of 2020.

Key principles

- public good
- value for money
- transparency
- integrity
- equal treatment
- non-discrimination

Public good and public benefit

Public procurers **must** have regard to the importance of "maximizing public benefit".

The incorporation of public good into procurement law in the UK is of major significance. It provides an opportunity to really focus on using the public purse to address inequality and disadvantage within local communities.

Public good and benefit are kept deliberately wide so that commissioning bodies and local authorities are free to ensure that procurement fits in with their wider policy objectives.

Every public spending decision can create wider public good.

Public good will need to be considered in every purchasing decision.

If principles can be translated into practical action, this could provide an open door for commissioning and social innovation to collaborate in creating thriving local economies that address growing poverty and inequality through progressive public procurement.

The Procurement Act – the journey



The procurement bill was introduced following the exit of the UK from the European Union. The government's objective was to create a simplified and streamlined system of procurement to save time and improve the quality of procurement. The Act received Royal Assent in October 2023. You can find a full copy of the Act [here](#).

The government has consulted on secondary legislation (regulations) which includes the scope of the disapplication of the Act to NHS procurement of certain healthcare services. These have been taken out of the existing procurement system, and a separate system for procuring healthcare services will sit alongside the new Procurement Act. Copies of the consultation documentations are available here: [Part 1](#) and [Part 2](#). There is a commitment to providing a six-month timeframe between passing of the secondary legislation and the Act coming into force. The earliest date for the Act to come into force has been put at October 2024.

Official learning and raising awareness of the Act has commenced. "Knowledge drops" for contracting authorities, suppliers and small business are available. You can access these [here](#). There are also short guides to the Act. These are available [here](#).

Key elements of the Procurement Act 2023

Under the Act contracting authorities (those who purchase public services) will:

- be required to consider maximizing public benefit in procurement requiring them to consider individual procurements within broader social, economic and environmental frameworks [Section 12](#)
- have wide powers to address fundamental flaws in current labour markets through reserving contracts for organisations that are addressing disability and/or disadvantage in the labour market [Section 32](#)
- have more flexibility to negotiate with suppliers to deliver innovative solutions through a “competitive flexible procedure” enabling them to shape local markets in the interests of local people [Section 20](#)
- be required to evaluate procurement based on the Most Advantageous Tender enabling them to link procurement processes to broader social, economic and environmental policies and objectives [Section 19](#)
- have a duty to consider whether contracts can be divided into lots and to give reasons for not doing so where it would be reasonable to consider lots [Section 18](#)
- have regard to the fact that SMEs face particular barriers to participation and consider whether such barriers can be removed or reduced [Section 12](#)
- have powers to reserve “light touch contracts” with a maximum term of five years to public services mutuals [Section 33](#)

Contents of the Procurement Act

The legislation contains thirteen parts with eleven schedules. The guide goes through the legislation as it appears in the Act. We highlight areas we consider important and any comments are made in italics.

Procurement Act 2023

Part 1: Key Definitions (sections 1 to 10)

This section provides for key definitions including:

- procurement and covered procurement
- contracting authorities
- public contracts
- valuation of contracts
- mixed procurement above and below threshold
- utilities contracts
- defence and security contracts
- concession contracts
- light touch contracts

Section 1 – Meaning of procurement and covered procurement

The Act makes it clear that procurement is to be understood in its widest sense including steps taken prior to contract award such as market engagement and the management of the contract thereafter.

Section 9 – Light Touch Contracts

Light touch contracts exist under current legislation and are exempted from parts of the Act. They include health and education services and services where user choice is important. The government is currently consulting on the categories of organisations that should be excluded (as at 31 January 2024).

Part 2: Principles and Objectives

This section provides that:

- contracting authorities should have regard to the procurement objectives when carrying out covered procurement
- provides that government ministers can publish a national policy statement in relation to procurement
- public authorities are required to have regard to the national policy procurement statement

Section 12 – Covered procurement objectives

In carrying out procurement a contract authority must have regard to the importance of

- delivering value for money
- maximizing public benefit
- sharing information to enable suppliers to understand the authority's procurement policies and decisions
- acting and being seen to act with integrity

Section 12 – Equal treatment

A public authority must treat suppliers the same unless a difference between suppliers justifies different treatment and where different treatment is justified it must take all reasonable steps to ensure it does not put a supplier at a disadvantage.

Section 12 – Small and medium sized businesses

In carrying out a covered procurement a contracting authority must have regard to the fact that SMEs face particular barriers to participation and consider whether such barriers can be removed or reduced

Section 13 – National Policy Statement

Before publishing a policy statement the Minister must carry out any consultation they consider appropriate, make changes as a response and must keep the statement under review.

Public authorities are required to have regard to the national policy statement (with a number of exceptions most notably Wales, private utilities and framework contracts (more about framework contracts below).

The Act provides that Welsh Ministers can make their own statement following consultation.

Part 3: Award of public contracts and procedures

This section contains six chapters dealing with

- preliminary steps
- competitive award
- direct award
- awards under frameworks
- after award, standstill periods and notices
- general provisions

Chapter 1 – Preliminary steps

This section provides for

- planned procurement notices prior to the procurement
- preliminary market engagement and notices
- the duty to consider lots

Section 15 – Planned procurement notices

Contracting authorities are given new powers to publish a planned procurement notice which will enable them to reduce the time periods that apply to award notices (see below) so long as they publish it at least 40 days and not more than 12 months before the publication of the tender notice. The minimum period for participation for tendering will be reduced to ten days.

Section 16 – Preliminary market engagement

This section enables contracting authorities to engage with suppliers and others e.g. consultants to help **develop the authority's requirements and approach to the procurement**, design a procedure and conditions of participation and award criteria, prepare the tender, identify suppliers and likely contractual terms and build capacity within the market.

Suppliers should not be given unfair advantage and should be excluded from tender if the advantage cannot be avoided.

Section 17 – Notices

Where a contracting authority carries out market engagement it must publish a preliminary market engagement notice or if it does not do so, it must explain the reason why when it does publish the tender notice.

Section 18 – Duty to consider lots

Before publishing a tender notice a contracting authority must consider **whether breaking a contract into smaller chunks known as lots is reasonable and appropriate**. If it decides that it is reasonable and appropriate it should arrange for lots or where it does not provide reasons for doing so.

This is particularly important in the light of the new duty to consider barriers to small business contained within section 12.

Chapter 2 – Competitive Award

This section provides for

- terms of procurement
- exclusions and modifications
- reserving contracts
- dynamic markets

Award of contract

Section 19 – Most advantageous tender

A public contract may be awarded to the supplier who submits the **most advantageous tender**.

This is the tender that the authority consider best satisfies the requirements and best satisfies the award criteria by reference to the assessment methodology (see below).

This reinforces the fact that broader social, economic and environmental issues can be considered by contractors authorities when taking decisions and at all stages of the procurement process.

Where a supplier submits an abnormally low tender, the tender can be disregarded by the authority so long as they have notified the tenderer and given them a reasonable opportunity to demonstrate whether they would be able to perform the contract. If they do, their bid must not be disregarded.

Competitive tendering procedures

Section 20 (2) – Open and Competitive flexible procedures

Before awarding a contract a contracting authority is required to carry out a tendering process in accordance with tender notices and documents. This can be one of two procedures:

- **open** – a single stage procedure with no restriction on participants. *This is the most common form currently used*
- **competitive flexible procedure** (such other procedure as the authority decides is appropriate) so long as it adheres to the Procurement Act 2023. *This is a new procedure which could be used creatively to promote community collaboration*

Section 20 (4)-(10) – Selection

A contracting authority can limit the number of participants generally or through tendering rounds and selection processes and award criteria can be amended during the process. It can also limit the number of lots available that any one supplier can tender for.

This is an area where imagination could be used on larger traditional contracts which could be combined with smaller neighbourhood or local lots to promote new methods of service delivery and community business.

Tender notices

Section 21 – Tender notices

Contracting authorities are required to send out tender notices to invite suppliers to submit a tender as part of the open procedure or inviting suppliers to participate in a tender or to submit their tender in the case of the competitive flexible procedure. The tender notice should be accompanied by appropriate tender documentation which has information sufficient to enable suppliers to prepare a tender and has **sufficiently clear and specific requirements**.

Conditions of participation

Section 22 – Conditions

Contracting authorities can set conditions relating to supplier's participation which must be proportionate of ensuring that the supplier has the legal and financial capacity and technical ability to perform the contract. These relate to (a) the legal and financial capacity and (b) the technical ability.

*During the passage of the Bill the Minister made **clear that pay and conditions could be part of the conditions stipulated**.*

As authorities now have wider duties to take public benefit into account when drawing up contracts wider social, economic and environmental conditions will be able to be stipulated by authorities.

*Drawing up tenders which recognize the public good could, for example, include **a requirement that Real Living Wage and Good Worker accreditation verified by third parties is a condition reasonably required by the authority within the contexts of its wider policies for tackling inequality and disadvantage**.*

A contracting authority cannot require audited accounts except where these are required under the Companies Act 2006 or the necessary insurance to be in place before the award of the contract.

This was included for smaller business as a means of removing some of the barriers to procurement.

Award criteria

Section 23-4 – Award criteria

Authorities must **set award criteria** which amongst other things relate to the subject matter of the contract, are **sufficiently clear, measurable and specific** and are a proportionate means of assessing tenders.

In setting the award criteria a contracting authority must describe how tenders are to be assessed by reference to them and specify whether a failure to meet one or more criteria would disqualify a tender and if there is more than one criterion indicate their relative importance by weighting each as a representing a percentage of total importance, ranking them in order of importance or by describing it in another way.

Contracting authorities have the power to refine award criteria during the process so long as the right is indicated in the original tender notice or tender documentation.

Refinements cannot be made after final tenders have been submitted nor can they be made if they are so significant that one or more suppliers who did not make it through an earlier round would have done so.

Exclusions and modifications

Section 26 – Exclusions and excludable suppliers

The Act makes provisions for mandatory exclusions and excludable suppliers. These are set out in Schedule 6 and 7 of the Act respectively.

The Act broadens the discretionary exclusion for poor performance enabling authorities to exclude suppliers who have not performed to the authority's satisfaction, been given an opportunity to improve and have failed to do so or where another authority has published information about poor performance of a supplier.

Section 31 – Modifications

The Act enables authorities to make “non-substantial” modifications before the deadline for submitting tenders. If a modification is made then authorities must consider extending the deadline for tenders and if changes are made this should be reflected in the tender documentation.

Section 32 – Reserving contracts for supported employment

Authorities can provide for contracts to be reserved to organisations that support disabled people or people who are disadvantaged by excluding suppliers from the tendering process because they are not a supported employment provider.

A supported employment provider is defined in the Act as an organisation that operates wholly or partly for the purpose of providing employment, or employment related support to disabled or disadvantaged individual where:

- a) disabled or disadvantaged individuals represent at least 30 percent of the organisation
- b) if a particular part of the organisation is to perform the contract then at least 30% of the workforce is represented by disabled or disadvantaged individuals
- c) where more than one organisation is to perform the contract at least 30% of the workforce of those organisations or the part or parts of the organisation that is to perform the contract.

Along with the duty to consider public good, the barriers to business facing small and medium enterprises and the introduction of more flexible procedures, this important clause is likely to provide authorities with new and extended powers to shape the market to provide more support for people who are disadvantaged by existing labour markets and to provide more opportunities for social enterprises and community businesses in developing community wealth policies and practices.

Reserving contracts to public sector mutuals

Section 33 – Light touch contracts

Where there are light touch services of a **maximum of five years** or less, contracting authorities can reserve these to qualifying public service mutuals. A qualifying public sector mutual is one that has not entered into a comparable contract.

Dynamic markets

Section 38-40 – Dynamic markets

The Act extends the powers of local authorities to establish dynamic markets for the procurement of services excluding suppliers that are not members of the market subsequent to publishing a “dynamic market notice”.

Organisations that are not members of the market can apply to become members of the market and a tender should not be awarded until their application has been considered.

To become a member of a dynamic market suppliers will need to demonstrate that they meet the conditions set by the contracting authority similar to those required by Section 22 (above).

Suppliers are able to apply to become members of dynamic markets at any time and authorities are required to deal with applications in a reasonable time.

The conditions for membership must remain constant throughout the life of the dynamic market.

Where suppliers have been placed on the debarment list (see below) for a mandatory exclusion they must be removed from the market.

Fees may be charged to suppliers that are awarded a contract at a fixed percentage of the contract.

Chapter 3 – Direct awards

This section provides for direct awards to be made in certain circumstances and *even* to an excluded supplier if there is an overriding interest in doing so.

Section 41 – Direct awards and overriding interest

The Act outlines where there is an overriding interest: to construct, maintain or operate national infrastructure; to ensure the proper functioning of a sector on which the defence, security or economic stability of the UK relies; failure to do so would prejudice the conduct of military or security operations, or the effective operation of the armed forces or intelligence services; the contract is being awarded because of extreme and unavoidable urgency and cannot be awarded by a supplier who is not excluded in the necessary time frame.

Section 42 – Contracts that can be treated as direct awards

Under this section a Minister of the Crown may provide that a public contract be treated as a direct award where they consider it **necessary to do so to protect human, animal or plant life health or to protect public order or safety**.

Schedule 5 – Direct award justifications

The justifications for carrying out a direct award include the following –

- the public service concerns the **production of a prototype, or supply of novel goods and services** for the purpose of testing the suitability and researching their viability *this is an area where social innovation could be explored in the development of local services*
- the creation of unique pieces of art or artistic performance
- to existing suppliers where an extension or partial replacement of their services would create goods, services or works which are different from or incompatible with the existing services and this would result in disproportionate technical difficulty
- to existing suppliers where the work is similar to that already being supplied and the contract was accorded within a period of five years and the contracting authority had indicated that they would rely on a direct award justification.

Section 43 – Direct awards where no suitable tenders

Where an authority has carried out a tender and it has not received any suitable tenders it may make a direct award.

Chapter 4 – Awards under frameworks

This section provides for awards to be made under Framework contracts. *A framework agreement is a general phrase for agreements with providers that set out terms and conditions under which agreements for specific purchases (known as call-off contracts) can be made throughout the term of the agreement.*

Section 46-49 – Framework contracts

To get on to a framework suppliers will need to demonstrate that they meet the conditions set by the contracting authority similar to those required by Section 22 (above).

There is a **maximum term of frameworks of 4 years** (8 years for defence and security and utilities), although authorities can state reasons for extending this period.

Under Section 49, authorities will be able to establish **Open Frameworks which enable suppliers to be added at set periods of time**. The maximum term of an open framework is 8 years unless there is only one supplier on the framework and the maximum is then 4 years.

Fees can be chargeable at a fixed percentage of the estimated value of any contract awarded.

Chapter 5 – After award, standstill period and notices

This section deals with the procurement process immediately after the decision to award the tender.

Section 50-53

Before entering into an award a contracting authority has to publish a contract award notice.

The contracting authority **must also provide an “assessment summary” to each supplier that submitted a tender.** This means an assessment of the supplier’s tender and, if the supplier did not win, the winning tender.

The contracting authority cannot enter into the contract before the end of the “standstill” period. *A standstill period is a pause between notification to bidders and the contract signature.* The standstill period does not apply to framework contracts, dynamic markets, light touch contracts or some direct awards. **The mandatory standstill period is 8 working days.**

Voluntary standstill periods may be used and the contracting authority can extend the period of the standstill.

Where contracts are more than £5 million (excluding Framework and Light Touch Contracts) a contracting authority must set out at least three Key Performance Indicators (KPIs,) unless the authority thinks that the contract could not be assessed in this way.

Before entering into an award a contracting authority has to publish a contract details notice within 30 days of commencing the contract (120 days for light touch contracts).

Where a contract is £5 million or more the contracting authority must publish the contract within 90 days of the commencement of contract and 180 days if the contract is light touch (excluding Wales with certain exceptions).

Chapter 6 – General provisions about award and procedures

This section deals with time limits, procurement notices, technical specifications, excluded suppliers and debarment.

Section 54-66 – Time limits, excluded suppliers and debarment

Minimum time limits are established for the time limits for submission of tenders and different circumstances.

Where a contracting authority decides not to award a tender it must issue a notice as soon as reasonably practicable.

Under the Act, **a new central debarment list will be created.**

Where an authority rejects a tender from an excluded supplier or an excludable supplier it must notify the **Minister (or Welsh Ministers or Northern Ireland Department) within thirty days who have new powers to investigate whether an exclusion ground applies and whether the circumstances giving rise to it are likely to reoccur or are continuing.** These powers are for the purpose of considering whether the supplier should go on the debarment list.

If a conclusion is made that the supplier should go on the debarment list, notice will be given to the supplier and an eight day “standstill period” will come into effect.

Where a supplier is placed on the debarment list for a mandatory exclusion ground they are excludable from future contracts.

Where a supplier is placed on **the debarment list for a discretionary exclusion ground, authorities maintain discretion whether to exclude them from future competitions.**

The lists of mandatory and discretionary exclusions are contained within Schedule 6 and 7 of the Act respectively.

Suppliers have the right to appeal to the High Court against inclusion.

The debarment list must be published.

Where the Minister is satisfied that the grounds for debarment no longer exist the supplier can be removed from the list.

Where a supplier applies to be removed from the list it only needs to be considered by the Minister if there has been a material change of circumstances or new information provided. There is a right of appeal for the supplier on the basis of a mistake in law.

Given the high profile cases of poor procurement over recent years, there is likely to be a high level of activity around this new introduction of the debarment list.

Part 4 – Management of public contracts

This section deals with

- implied terms in contracts
- notices about payments and performance
- sub-contracting
- modifying contracts
- terminating contracts

Section 67-68 – E-invoicing and prompt payment

Contracting authorities are to accept an undisputed e-invoice issued in compliance with the e-standards laid down in the Act. Payments due for most public contracts (excluding schools) **must be paid within thirty days** or by the date specified on the invoice where they are valid and not in dispute. The contracting authority must notify the supplier promptly if it considers the invoice is invalid or if it is disputed.

Section 69-70 – Publishing information about prompt payment and expenditure

Most authorities (excepting schools) are required to publish payment compliance notices every six months about their obligation to make payments within thirty days. Most authorities (excepting schools) are required to publish specified information about payments of £30,000 or more.

Section 71 – Key performance indicators

An authority that is required to set KPIs (key performance indicators) must carry out an **assessment of these at least once every 12 months during the lifetime of the contract** and publish information in relation to the assessment.

If a contracting authority considers that the supplier is not performing to the authority's satisfaction, that it has been given an opportunity to improve performance and has failed to do so, then it must publish the information.

Section 72-3 – Sub-contracting

An authority can require a supplier to enter into a legally binding agreement with a sub-contractor where a contracting authority has required sub-contracting or where the supplier has indicated that there will be such an arrangement.

If a supplier does not enter into a legally binding agreement, the authority has the right not to go ahead with the tender.

The implied payment terms in Section 68 above are applicable to sub-contractors (except in schools).

Section 74-77 – Modifying a contract

Contracting authorities can modify contracts without running a new procurement process where there are not substantial modifications or the contract is a below-threshold modification (see below).

A substantial modification is one where the modification would **increase or decrease the value of goods and services by greater than 10%**, or **materially change the scope of the contract** or would **materially change the economic balance** of the contract in favour of the supplier.

Where a contract has been modified the authority must normally publish a notice unless the modification would not increase or decrease the value of goods and services by greater than 10%.

Section 78-80 – Terminating contracts

There is an implied right to terminate a contract if a termination ground exists.

A termination ground **includes a material breach of the Act or the supplier or the sub-contractor becomes an excluded or excludable supplier.**

Where a contracting authority seeks to terminate on these grounds it must notify the supplier of its intention to terminate and a reasonable opportunity to make representations and if the contract is terminated must publish a contract termination notice within thirty days beginning with the day the contract was terminated.

Part 5 – Conflicts of interest

This section deals with conflicts of interest.

Section 81-3 – Identifying, mitigating and assessment

Contracting authorities must take all reasonable steps to identify and keep under review any conflicts of interest.

A conflict of interest arises when a **person is in a position to have an influence over the decision and has a direct or indirect interest in, or connection with a supplier or another interest in the procurement.** That interest can be personal, professional or financial.

Where a conflict is not mitigated by steps taken by either the authority or the supplier, then the supplier is to be treated as an excluded supplier in the context of the specific procurement.

An authority must draw up an assessment of conflicts of interest before any tender notice is drawn up.

The obligation to review and update the conflicts assessment continues throughout the life of the procurement.

Part 6 – Below-threshold contracts

This section deals with below threshold contracts.

Section 84-8 – Procedure, duty to consider SMEs, notices, implied payment terms

The rules governing contracts that are below the various thresholds are less complex than for other contracts. The thresholds are laid out in Schedule 1 to the Act. The law does not apply to schools.

Contracting authorities are not permitted to restrict contracts on the basis of suitability (*though they are able to reserve contracts*).

Contracting authorities before inviting submissions of tenders are required to have regard to the barriers facing small and medium businesses and whether those barriers can be removed or reduced. *Under the law authorities are able to reserve contracts for SMEs or sub-sections of SMEs. This area is crucial in market-shaping, as smaller contracts pave the way for larger ones.*

An authority is not bound to publicise a below-threshold contract but may do so. If it does it must first publish a “below-threshold tender notice” unless the authority is advertising to a closed or restricted group of suppliers.

All notifiable contracts must be published *whether or not they have been previously publicised*.

A notifiable below-threshold contract is £12,000 for central government authorities and £30,000 for all others (inclusive of VAT).

The implied terms in relation to **prompt payment within 30 days for valid invoices** apply.

Part 7 –Implementation of international obligations

This section deals with treaty state suppliers, non-discrimination, non-discrimination in Scotland and trade disputes.

Part 8 – Information and notices – general provision

This section deals with issues such as pipeline notices, exemptions from duties to publish information, electronic communications, information, record keeping and data protection.

Section 93-99 – Information notices

Any authority that considers that it will pay more than £100 million under relevant contracts must publish a pipeline notice within 56 days of the first day of its financial year setting out any contract with an estimated value of more than £2 million.

An authority is not required to disclose information where it is necessary for the purpose of **safeguarding national security or where the information is sensitive commercial information** and there is an overriding public interest in its being withheld from disclosure.

Sensitive information is information which constitutes a trade secret or where it “would be likely to prejudice the commercial interests of a person if it were published.”

Where information is not disclosed the authority must notify those who would otherwise be informed of the fact that the information is being withheld and under which ground. It is not required to notify anyone if it is satisfied that it would be contrary to national security to do so.

The Act imposes a duty on the Minister of the Crown to **create an online system for the publication of notices** and enables an appropriate authority to make regulations about notices, documents and other information that the Act requires to be published and provided and how they are published, provided or revised.

The Act requires authorities, so far as is practicable, to communicate with suppliers electronically. Communications must be free of charge, generally available and operable with other systems and accessible to people with disabilities.

Authorities must keep records material to decision-making concerning the award or entry into a public contract. These must be kept until the day the authority gives notice of a decision not to award the contract or the end of the period of three years beginning with the day the on which it was awarded.

Part 9 – Remedies for breach of statutory duty

This section deals with remedies for breach of statutory duty, automatic suspension, pre-contractual and post-contractual remedies and time limits on claims

Section 100-107 – Breach of Statutory Duty

A supplier can challenge a contracting authority at any stage of the procurement proceedings if it fails to carry out its statutory duty.

The time limit for bringing the claim is 30 days from the time the supplier knew or ought to have known about the breach.

Where the authority has been notified that a claim has commenced within the 8 day standstill period they are not able to enter into the contract. This is known as automatic suspension.

The Act allows the courts to make interim orders and replaces the application of the common law test in the 1975 American Cyanamid case to automatic suspensions. The court must consider both the public interest and the interests of suppliers and any other issues that the court may wish to consider.

The Act provides wide powers to the Court to make any orders it considers appropriate in pre-contractual cases.

In post-contractual cases the court can set aside the contract or if there is an overriding interest preventing the public contract from being set aside can reduce the scope or duration of the contract.

The Act specifies the set aside criteria including: the contracting authority did not publish a contract award notice and the breach went undiscovered; the standstill period was not complied with by the contracting authority; there was an automatic suspension in place when the contract was entered into; the supplier was prevented by bringing a claim before the contract because there was no standstill period (as in frameworks, dynamic markets, light touch contracts).

Part 10 – Procurement oversight

This section deals with procurement oversight.

Section 109-10 – Investigations, recommendations and guidance

An appropriate body (*currently the Public Procurement Review Service*) may investigate a contracting authority's compliance with the Act and may by notice require a contracting authority to provide documentation and assistance in relation to the investigation.

The authority must comply with the notice required which must be at least 30 days or a longer period. The authority can publish the results and any recommendations issued.

A contracting authority must have regard to recommendations and must if the recommendation requires it to do so submit a progress report to the appropriate body stating what action it has taken, and if the authority has taken no action a statement to that effect and, in the latter case, its reasons for taking no action or taking alternative action.

This report may be published by the appropriate body or where no report has been submitted this fact may be published. The appropriate body may publish guidance arising from its investigations and recommendations.

Government departments are specifically excluded as it is stated that Ministers have the necessary powers to make investigations.

Part 11-13

These sections deal with appropriate authorities and cross-border procurement amendments and repeals and other general issues.

Schedules

The schedules to the Act are as follows:

- Schedule 1 – Threshold amounts
- Schedule 2 – Exempted contracts
- Schedule 3 – Estimating the value of a contract]
- Schedule 4 – Utility Activities
- Schedule 5 – Direct award justifications
- Schedule 6 – Mandatory exclusion grounds
- Schedule 7 – Discretionary exclusion grounds
- Schedule 8 – Permitted contract modifications
- Schedule 9 – Treaty State suppliers (specified international agreements)
- Schedule 10 – Single source defence contracts
- Schedule 11 – Repeals and revocations

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Good work

Public value procurement

Employee voice

**Treat us well, use taxes fairly, invest in local communities
and leave no-one behind**

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Want to know more

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