



# Procurement Act 2023

## 2023 CHAPTER 54

PROSPECTIVE

### PART 10

#### PROCUREMENT OVERSIGHT

#### 108 Procurement investigations

- (1) An appropriate authority may investigate a relevant contracting authority's compliance with requirements of this Act.
- (2) An appropriate authority conducting a procurement investigation may by notice require a relevant contracting authority—
  - (a) to provide such relevant documents as the appropriate authority may reasonably require for the purposes of the procurement investigation, in the form or manner specified in the notice;
  - (b) to give such other assistance in connection with the procurement investigation as is reasonable in the circumstances and is specified in the notice.
- (3) The relevant contracting authority must comply with a notice under subsection (2) before the end of—
  - (a) the period specified in the notice (which must be at least 30 days beginning with the day on which the notice is given), or
  - (b) such longer period as the appropriate authority may agree to.
- (4) The appropriate authority may publish the results of a procurement investigation, including any section 109 recommendation issued.
- (5) In this section—
  - “procurement investigation” means an investigation under subsection (1);
  - “relevant contracting authority” means a contracting authority other than—
    - (a) a Minister of the Crown or a government department;

*Status:* This version of this part contains provisions that are prospective.  
*Changes to legislation:* There are currently no known outstanding effects for the Procurement Act 2023, PART 10. (See end of Document for details)

- (b) the Welsh Ministers;
  - (c) a Northern Ireland department;
  - (d) the Corporate Officer of the House of Commons;
  - (e) the Corporate Officer of the House of Lords;
  - (f) the Senedd Commission;
  - (g) the Northern Ireland Assembly Commission;
  - (h) a private utility;
- “relevant documents” means documents or other information that—
- (a) are specified or described in a notice under subsection (2), and
  - (b) are in the possession or control of the relevant contracting authority to which the notice is given;
- “section 109 recommendation” has the meaning given in section 109.

#### Commencement Information

- II** S. 108 not in force at Royal Assent, see [s. 127\(2\)](#)

### 109 Recommendations following procurement investigations

- (1) This section applies where an appropriate authority—
  - (a) has conducted a procurement investigation under section 108, and
  - (b) considers, in light of the results of that procurement investigation (whether alone or in conjunction with the results of other such investigations), that a relevant contracting authority is engaging in action giving rise, or that is likely to give rise, to a breach of any requirement of this Act.
- (2) The appropriate authority may issue a recommendation (a “section 109 recommendation”) to the relevant contracting authority as to—
  - (a) the action the relevant contracting authority should take with a view to ensuring that it complies with the requirements of this Act specified in the recommendation;
  - (b) the timing of such action.
- (3) A section 109 recommendation must not relate to how the relevant contracting authority should—
  - (a) comply with section 12 (procurement objectives);
  - (b) have regard to the national procurement policy statement (see section 13) or the Wales procurement policy statement (see section 14);
  - (c) comply with section 86 (regulated below-threshold contracts: duty to consider SMEs);
  - (d) exercise a discretion in relation to a particular procurement.
- (4) In considering how to comply with the requirements of this Act, a relevant contracting authority must have regard to a section 109 recommendation issued to it.
- (5) A relevant contracting authority to which a section 109 recommendation has been issued must, where the recommendation so specifies, submit a progress report to the appropriate authority at such intervals as may be specified.
- (6) A “progress report” is a report setting out—

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- (a) what action (if any) the relevant contracting authority has taken as a result of the recommendation, or
  - (b) if the authority has taken no such action, a statement to that effect.
- (7) Where the relevant contracting authority has taken no action as a result of the section 109 recommendation, or has taken different action to that recommended, the progress report must also include the authority’s reasons for doing so.
- (8) The appropriate authority may publish a progress report or, where the relevant contracting authority fails to submit one, notice of that fact.
- (9) In this section—  
“action” includes acts and omissions;  
“procurement investigation” and “relevant contracting authority” have the meanings given in section 108.

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**Commencement Information**

**I2** S. 109 not in force at Royal Assent, see [s. 127\(2\)](#)

## **110 Guidance following procurement investigations**

- (1) Where an appropriate authority has conducted a procurement investigation under section 108, the authority may publish guidance setting out what the authority considers to be the lessons of the matters considered in the procurement investigation for compliance with the requirements of this Act by contracting authorities generally.
- (2) In considering how to comply with the requirements of this Act, a contracting authority must have regard to relevant guidance published under subsection (1).
- (3) In subsection (2), the reference to relevant guidance is a reference to guidance that could, in light of Part 11, be addressed to the contracting authority.

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**Commencement Information**

**I3** S. 110 not in force at Royal Assent, see [s. 127\(2\)](#)

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Procurement Act 2023, PART 10.