



Procurement Act 2023

2023 CHAPTER 54

PART 13

GENERAL

120 Power to disapply this Act in relation to procurement by NHS in England

- (1) A Minister of the Crown may by regulations make provision for the purpose of disapplying any provision of this Act in relation to regulated health procurement.
- (2) In this section—

“regulated health procurement” means the procurement of goods or services by a relevant authority that is subject to provision made under section 12ZB of the National Health Service Act 2006 (procurement of healthcare services etc for the health service in England), whether or not that provision is in force;

“relevant authority” has the meaning given in that section.

121 Power to amend this Act in relation to private utilities

- (1) An appropriate authority may by regulations amend this Act for the purpose of reducing the regulation of private utilities under this Act.
- (2) The regulations may, for example, make provision—
 - (a) disapplying requirements under this Act in relation to private utilities;
 - (b) modifying requirements under this Act as they apply in relation to private utilities so as to reduce any burden, or the overall burdens, for private utilities resulting directly or indirectly from this Act.
- (3) Before making regulations under this section an appropriate authority must consult—
 - (a) persons appearing to the authority to represent the views of private utilities, and
 - (b) such other persons as the authority considers appropriate.

Status: This is the original version (as it was originally enacted).

- (4) In this section “burden” includes—
- (a) a financial cost;
 - (b) an administrative inconvenience;
 - (c) an obstacle to efficiency, productivity or profitability.

122 Regulations

- (1) Any power to make regulations under this Act—
- (a) so far as exercisable by a Minister of the Crown or the Welsh Ministers is exercisable by statutory instrument;
 - (b) so far as exercisable by a Northern Ireland department, is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (2) For regulations made under this Act by the Scottish Ministers, see also section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)) (Scottish statutory instruments).
- (3) Regulations under this Act may—
- (a) make different provision for different purposes or areas;
 - (b) make provision generally or only in relation to specified cases;
 - (c) make incidental, supplementary or consequential provision;
 - (d) make transitional, transitory or saving provision.
- (4) A statutory instrument containing (whether alone or with other provision) regulations made by a Minister of the Crown under any of the following provisions may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament—
- (a) section 6 (utilities contracts);
 - (b) section 7 (defence and security contracts);
 - (c) section 9 (light touch contracts);
 - (d) section 33 (reserving contracts to public service mutuels);
 - (e) section 52 (key performance indicators);
 - (f) section 53 (publication of contracts);
 - (g) section 69 (payment compliance notices);
 - (h) section 70(3)(a) (information about payments: financial thresholds);
 - (i) section 75 (contract change notices and publication of modifications);
 - (j) section 87 (regulated below-threshold contracts: notices);
 - (k) section 89 (treaty state suppliers: international agreements);
 - (l) section 91 (treaty state suppliers: non-discrimination in Scotland);
 - (m) section 92 (trade disputes);
 - (n) section 93 (pipeline notices);
 - (o) section 95 (notices, documents and information);
 - (p) section 97 (information relating to a procurement);
 - (q) section 115 (powers relating to procurement arrangements);
 - (r) section 116 (disapplication of section 17 of Local Government Act 1988);
 - (s) section 120 (disapplication of Act: NHS procurement in England);
 - (t) section 121 (amendment of Act in relation to private utilities);

- (u) section 123 (interpretation);
 - (v) section 125 (power to make consequential, etc, provision), if the regulations made under it modify primary legislation;
 - (w) section 127(6) (exclusion of devolved Welsh authorities);
 - (x) paragraph 3 or 5 of Schedule 1 (threshold amounts);
 - (y) Schedule 2 (exempted contracts);
 - (z) Schedule 4 (utility activities).
- (5) A statutory instrument containing regulations made by a Minister of the Crown under section 42 (direct award to protect life, etc) must be laid before Parliament after being made.
- (6) Any other statutory instrument containing regulations made by a Minister of the Crown under any provision of this Act, except section 127 (commencement), is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Regulations contained in a statutory instrument laid before Parliament under subsection (5) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (8) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—
- (a) Parliament is dissolved or prorogued, or
 - (b) either House of Parliament is adjourned for more than four days.
- (9) If regulations cease to have effect as a result of subsection (7), that does not—
- (a) affect the validity of anything previously done under the regulations, or
 - (b) prevent the making of new regulations.
- (10) A statutory instrument containing (whether alone or with other provision) regulations made by the Welsh Ministers under any of the following provisions may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru—
- (a) section 6 (utilities contracts);
 - (b) section 9 (light touch contracts);
 - (c) section 33 (reserving contracts to public service mutuals);
 - (d) section 52 (key performance indicators);
 - (e) section 69 (payment compliance notices);
 - (f) section 70(3)(a) (information about payments: financial thresholds);
 - (g) section 75 (contract change notices and publication of modifications);
 - (h) section 87 (regulated below-threshold contracts: notices);
 - (i) section 89 (treaty state suppliers: international agreements);
 - (j) section 92 (trade disputes);
 - (k) section 93 (pipeline notices);
 - (l) section 95 (notices, documents and information);
 - (m) section 97 (information relating to a procurement);
 - (n) section 116 (disapplication of section 17 of Local Government Act 1988);
 - (o) section 121 (amendment of Act in relation to private utilities);
 - (p) section 123 (interpretation);

Status: This is the original version (as it was originally enacted).

- (q) section 125 (power to make consequential, etc, provision), if the regulations made under it modify primary legislation;
 - (r) paragraph 3 or 5 of Schedule 1 (threshold amounts);
 - (s) Schedule 2 (exempted contracts);
 - (t) Schedule 4 (utility activities).
- (11) Any other statutory instrument containing regulations made by the Welsh Ministers under this Act is subject to annulment in pursuance of a resolution of Senedd Cymru.
- (12) Regulations of a Northern Ireland department under any of the following provisions (whether alone or with other provision) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly—
- (a) section 6 (utilities contracts);
 - (b) section 9 (light touch contracts);
 - (c) section 33 (reserving contracts to public service mutuals);
 - (d) section 52 (key performance indicators);
 - (e) section 89 (treaty state suppliers: international agreements);
 - (f) section 92 (trade disputes);
 - (g) section 95 (notices, documents and information);
 - (h) section 97 (information relating to a procurement);
 - (i) section 121 (amendment of Act in relation to private utilities);
 - (j) section 123 (interpretation);
 - (k) section 125 (power to make consequential, etc, provision), if the regulations made under it modify primary legislation;
 - (l) paragraph 3 or 5 of Schedule 1 (threshold amounts);
 - (m) Schedule 2 (exempted contracts);
 - (n) Schedule 4 (utility activities).
- (13) Any other regulations of a Northern Ireland department under this Act are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.
- (14) Regulations of the Scottish Ministers under any of the following provisions are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010)—
- (a) section 90 (treaty state suppliers: non-discrimination);
 - (b) section 92 (trade disputes);
 - (c) section 115 (powers relating to procurement arrangements).

123 Interpretation

(1) In this Act—

“appropriate authority” means—

- (a) a Minister of the Crown,
- (b) the Welsh Ministers, or
- (c) a Northern Ireland department;

“enactment” includes primary legislation and legislation made under primary legislation;

Status: This is the original version (as it was originally enacted).

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“modify”, in relation to enactments, includes amend, repeal or revoke;

“Northern Ireland legislation” has the meaning given in section 24(5) of the Interpretation Act 1978;

“primary legislation” means—

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) an Act or Measure of Senedd Cymru, or
- (d) Northern Ireland legislation;

“pupil referral unit” means—

- (a) in England, a pupil referral unit within the meaning given by section 19 of the Education Act 1996;
- (b) in Wales, a pupil referral unit within the meaning given by section 19A of the Education Act 1996;

“school” means—

- (a) the governing body of a maintained school (see section 19(1) of the Education Act 2002);
- (b) the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of an Academy within the meaning given by that section;
- (c) the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of a school that has been approved under section 342 of that Act;
- (d) the governing body, within the meaning given by section 90 of the Further and Higher Education Act 1992, of an institution within the further education sector within the meaning given by section 91 of that Act;
- (e) the Board of Governors of a grant-aided school within the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3));

“small and medium-sized enterprises” means suppliers that—

- (a) have fewer than 250 staff, and
- (b) have a turnover of an amount less than or equal to £44 million, or a balance sheet total of an amount less than or equal to £38 million;

“VAT” means value added tax;

“working day” means a day other than—

- (a) a Saturday or Sunday, or
- (b) a day which is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971.

- (2) In this Act, a reference to an amount payable or paid, receivable or received, or to be paid or received, under a contract includes a reference to any amount referable to VAT.
- (3) In this Act, a reference to a contract awarded by a school includes a reference to a contract awarded wholly for the purposes of supplying goods, services or works to a pupil referral unit.
- (4) An appropriate authority may by regulations change the definition of “small and medium-sized enterprises”.

Status: This is the original version (as it was originally enacted).

(5) Regulations under subsection (4) may amend this section.

124 Index of defined expressions

In this Act the expressions listed in the left-hand column of the table have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision</i>
appropriate authority	section 123
associated person	section 26
associated tender document	section 21
award criteria	section 23
below-threshold contract	section 5
central government authority	Schedule 1
centralised procurement authority	section 1
competitive flexible procedure	section 20
competitive tendering procedure	section 20
concession contract	section 8
condition of participation	section 22
connected person	Schedule 6
contract award notice	section 50
contract change notice	section 75
contract details notice	section 53
contracting authority	section 2
convertible contract	section 74
covered procurement	section 1
debarment list	section 57
defence and security contract	section 7
defence authority contract	section 7
devolved Scottish authority	section 2
devolved Scottish procurement arrangement	section 114
devolved Welsh authority	section 111
devolved Welsh procurement arrangement	section 114
discretionary exclusion ground	Schedule 7
dynamic market	section 34

Status: This is the original version (as it was originally enacted).

<i>Expression</i>	<i>Provision</i>
enactment	section 123
estimated value	section 4
excludable supplier	section 57
excluded supplier	section 57
exempted contract	Schedule 2
framework	section 45
light touch contract	section 9
mandatory exclusion ground	Schedule 6
Minister of the Crown	section 123
modify	section 123
open framework	section 49
primary legislation	section 123
private utility	section 2
procurement	section 1
public contract	section 3
public undertaking	section 2
publication of a tender notice	section 40
requirements	section 19
reserved procurement arrangement	section 114
school	section 123
Scottish procurement legislation	section 115
small and medium-sized enterprises	section 123
tender notice	section 21
threshold amount	Schedule 1
transferred Northern Ireland authority	section 112
transferred Northern Ireland procurement arrangement	section 114
transparency notice	section 44
treaty state supplier	section 89
United Kingdom supplier	section 90
utilities contract	section 6
utilities dynamic market	section 35
utility	section 35
utility activity	section 6

Status: This is the original version (as it was originally enacted).

<i>Expression</i>	<i>Provision</i>
VAT	section 123
working day	section 123
works	Schedule 1
works contract	Schedule 1

125 Power to make consequential, etc, provision

- (1) An appropriate authority may by regulations make supplementary, incidental or consequential provision in connection with any provision of this Act.
- (2) Regulations under subsection (1) may modify primary legislation.

126 Extent

This Act extends to England and Wales, Scotland and Northern Ireland.

127 Commencement

- (1) This Part comes into force on the day on which this Act is passed.
- (2) The remaining provisions of this Act come into force on such day as a Minister of the Crown may by regulations appoint; and different days may be appointed for different purposes.
- (3) A Minister of the Crown may not make specified regulations under subsection (2) without the consent of the Welsh Ministers.
- (4) In this section, “specified regulations” means regulations to bring into force provisions regulating procurement by a devolved Welsh authority other than procurement under—
 - (a) a reserved procurement arrangement, or
 - (b) a transferred Northern Ireland procurement arrangement,
 but “specified regulations” does not include regulations to bring into force provisions in Part 7 (implementation of international obligations).
- (5) In this section, “devolved Welsh authority” has the meaning given in section 157A of the Government of Wales Act 2006.
- (6) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate for the purpose of ensuring that—
 - (a) Parts 1 to 6 and 8 to 13, or particular provisions in those Parts, so far as not already brought into force under subsection (2) do not regulate procurement by a devolved Welsh authority other than procurement under—
 - (i) a reserved procurement arrangement, or
 - (ii) a transferred Northern Ireland procurement arrangement;
 - (b) existing legislation continues to regulate procurement by devolved Welsh authorities and procurement under devolved Welsh procurement arrangements.
- (7) Regulations under subsection (6) may modify this Act.

(8) In this section—

“existing legislation” means any enactment, other than this Act or regulations made under this Act, that is passed or made before section 11 (covered procurement only in accordance with this Act) comes into force;

a reference to a provision regulating procurement includes a reference to a provision conferring a function exercisable in relation to procurement.

128 Short title

This Act may be cited as the Procurement Act 2023.