

Legal Framework

Public Contracts Regulations 2015

1. The EU procurement rules were reformed in 2014 and the changes for councils (goods, services and works contracts) have been implemented in this country in the Public Contracts Regulations 2015 ('PCR 2015').
2. The reform was carried out with a number of objectives in mind:
 - simplify the rules for bidders and contracting authorities and make them more flexible
 - enable 'strategic' use of public procurement (delivering social and environmental objectives, supporting SMEs, stimulating innovation)
 - incorporate European case law (exclusion of 'in house' contracts between public bodies, limits on changes to contracts)
 - introduce stronger measures on conflicts of interest, procurement fraud and corruption etc

(LGA: <https://www.local.gov.uk/sites/default/files/documents/additional-guide-072.pdf>)

Further information is available here: <https://www.gov.uk/guidance/public-sector-procurement-policy#public-contracts-regulations-2015>

3. Under the PCR 2015 it is mandatory to exclude suppliers if convicted of offences relating to fraud, corruption, money laundering or participation in a criminal organisation (amongst other matters).
4. There are also further discretionary exclusions relating to grave professional misconduct, distorting competition, conflicts of interest and serious misrepresentation (amongst others)

Further information is available on mandatory and discretionary exclusions here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf

Public Interest Disclosure Act 1998 (PIDA)

1. The Act protects workers from detrimental treatment or victimisation from their employer if, in the public interest, they blow the whistle on wrongdoing.
2. The Act protects most workers in the public, private and voluntary sectors. The Act does not apply to genuinely self-employed professionals (other than specified professionals in the NHS), voluntary workers (including charity trustees and charity volunteers) or the intelligence services.

<https://www.gov.uk/government/publications/the-public-interest-disclosure-act/the-public-interest-disclosure-act>

Competition Law

1. The Competition & Markets Authority (CMA) is the main UK competition authority. The UK competition regime is the result of the Competition Act 1998, the Enterprise Act 2002 as

amended by the Enterprise and Regulatory Reform Act 2013, the Consumer Rights Act 2015 and sector-specific competition legislation. This national legislation is underpinned by a European framework, with competition authorities across the EU having similar laws and requirements. The legal framework aims to ensure that markets work well, encouraging businesses to compete with each other and protecting consumers from anti-competitive practices such as bid-rigging, price-fixing and abuse of market power.¹

2. The Competition Act 1998 prohibits two main behaviours.
 - Agreements that prevent, restrict or distort competition
 - Abuse of dominant market position
3. Any business found to have infringed the Competition Act 1998 could be fined up to 10% of its worldwide turnover for the previous business year. The CMA also has powers to disqualify directors.

Cartel offences

4. The criminal cartel offence was created by section 188 of the Enterprise Act 2002 (EA02)² and further amended by section 47 of the Enterprise and Regulatory Reform Act 2013.
5. In summary, a person commits the offence if he or she agrees with one or more other persons that two or more undertakings will engage in certain prohibited cartel arrangements, namely price fixing, market sharing, bid-rigging, and limiting output. The offence is subject to certain exclusions and defences. The maximum penalty on conviction on indictment is five years imprisonment and/or an unlimited fine³.

Further information:

Leniency policy <https://www.gov.uk/guidance/cartels-confess-and-apply-for-leniency>

Cartel offence

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/288648/CMA9_Cartel_Offence_Prosecution_Guidance.pdf

Misconduct in public office

1. Misconduct in public office is an offence at common law triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office⁴.
2. The offence is committed when:
 - a public officer acting as such;
 - wilfully neglects to perform his duty and/or wilfully misconducts himself;
 - to such a degree as to amount to an abuse of the public's trust in the office holder;

¹ <https://www.nao.org.uk/wp-content/uploads/2016/02/The-UK-Competition-regime-Summary.pdf>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/288648/CMA9_Cartel_Offence_Prosecution_Guidance.pdf

³ Ibid

⁴ <https://www.cps.gov.uk/legal-guidance/misconduct-public-office>

- without reasonable excuse or justification.⁵

Fraud Act 2006

1. The Fraud Act 2006 came into force on 15 January 2007 and applies in England, Wales and Northern Ireland.
2. Section 1 creates a general offence of fraud and introduces three ways of committing it set out in Sections 2, 3 and 4.
 - Fraud by false representation (Section 2);
 - Fraud by failure to disclose information when there is a legal duty to do so (Section 3); and
 - Fraud by abuse of position (Section 4).
3. In each case:
 - the defendant's conduct must be dishonest;
 - his/her intention must be to make a gain; or cause a loss or the risk of a loss to another.
 - No gain or loss needs actually to have been made.
 - The maximum sentence is 10 years' imprisonment.

Bribery Act 2010

1. The Bribery Act 2010 came into force on 1 July 2011. The Act applies to the whole of the UK and provides for wide extra-territorial jurisdiction to deal with bribery committed outside the UK.
2. The Bribery Act has four main provisions:
 - Section 1: Offences of bribing another person (active bribery)
 - Section 2: Offences of being bribed (passive bribery)
 - Section 6: Offences of bribing foreign public officials
 - Section 7: Failure of commercial organisations to prevent bribery

⁵ <https://www.cps.gov.uk/legal-guidance/misconduct-public-office>