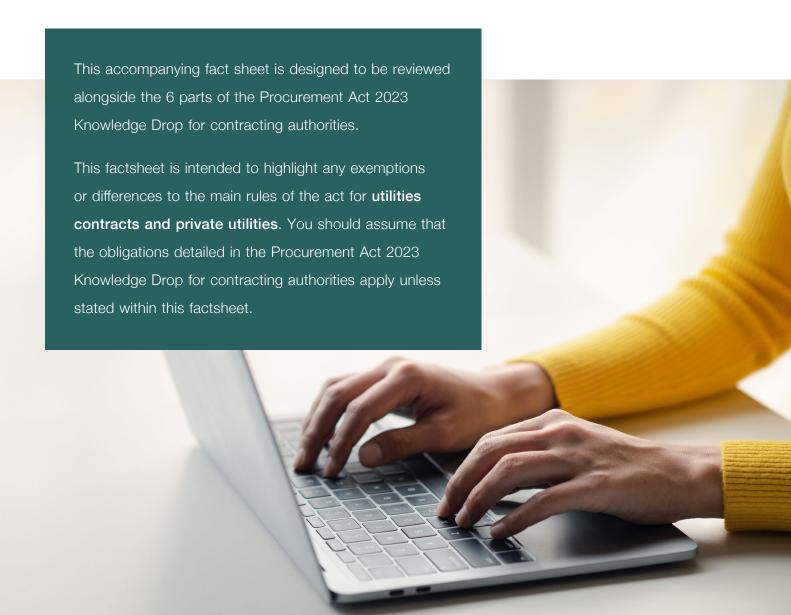




Procurement Act 2023 Knowledge Drop for contracting authorities

Utilities and private utilities



Knowledge Drop 1 part 1:

Understanding the purpose of the Procurement Act

Exemptions

Private utilities (private companies that carry out utility activities in the energy, water and transport sectors) do not have to have regards to the national procurement policy statement or the Wales procurement policy statement.

Various utilities contracts are also fully exempt from the Procurement Act - see **schedule 2** of the act for details. Further information can be found in the e-learning when it is available.

Differences

The contracting authority definition for utilities also includes public undertaking (funded from financial revenue from their activities) and private utilities alongside public authority (funded wholly or mainly out of public funds or subject to public authority oversight).

Utilities contracts have higher thresholds for the following types of contracts:

- 1. non-works
- 2. light touch
- 3. concessions

Knowledge Drop 1 part 2:

Pre procurement considerations under the Procurement Act

Exemptions

The requirement to publish pipeline notices does not apply to private utilities.

The requirement to publish preliminary market engagement notices does not apply to private utilities.

Differences

N/A

Knowledge Drop 1 part 3:

Changes to procurement procedures and routes to market

Exemptions

Contracts procured under a utilities dynamic market established by a qualifying utilities dynamic market notice do not require tender notices to be published for each contract awarded under it but instead they are to be provided to members of the market (or part of the market).

Differences

The maximum term for utilities frameworks let by a public authority or public undertaking is eight years.

There is no maximum term specified for conventional frameworks awarded by private utilities.

Dynamic markets for use by utilities are called utilities dynamic markets.

For utilities contracts no minimum timescales are mandated for tenders from pre-selected suppliers (e.g. suppliers that are members of a utilities dynamic market) where a short tendering period has been agreed by all. In the absence of such agreement, the minimum timescales is 10 days.

Knowledge Drop 1 part 4: Changes to assessment and award

Exemptions

The requirement to observe a standstill period does not apply to private utilities when awarding a direct award (under section 41 direct award in special cases). Examples of special cases include prototypes and development, additional or repeat goods, services or works, commodities, advantageous terms on insolvency and after compliantly switching to a direct award (section 43 switching to direct award).

The requirement to publish a contracts details notice (or a copy of the contract for contracts over £5m) does not apply to private utilities.

Differences

Private utilities have a wider discretion on whether to exclude suppliers and should consider any reference to "excluded" suppliers as "excludable" suppliers.

Knowledge Drop 1 part 5: Greater contract governance

Exemptions

The requirement to publish a contract change notice or a copy of the amended contract/modification does not apply to private utilities.

Setting, assessing and publishing KPIs does not apply to a utilities contract awarded by private utilities.

The requirement to publish contract performance notices for poor performance or breach of contract does not apply to private utilities.

The requirement to publish details of contract payments over £30,000 does not apply to a utilities contract awarded by private utilities.

Additional prompt payment measures (the inclusion by default of implied 30-day payment terms into public contracts and associated subcontracts and the requirement to publish payments compliance notices) do not apply to a utilities contract awarded by private utilities.

The requirement to publish a contract termination notice does not apply private utilities.

Procurement investigations do not apply to private utilities however they are bound by any recommendations issued.

Differences

N/A

Knowledge Drop 1 part 6: Preparing for the Procurement Act

What additional action do you need to take if you will be procuring a **utilities** contract?

Familiarise yourself with the utilities activities in the Procurement Act:

- gas and heat
- electricity
- water
- transport
- ports and airports
- extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels

Note that postal services is no longer a utilities activity.

Familiarise yourself with the exclusion grounds as these now apply to utilities contracts.

Further information and detail is available at

https://www.gov.uk/government/collections/transforming-public-procurement