



Cabinet Office

# **Transforming Public Procurement**

## Government response to consultation on draft regulations implementing the Procurement Act 2023

22 March 2024

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# Procurement Act 2023

## Government response to consultation on draft implementing regulations

### Introduction

This document sets out the Government's response to a consultation published by Cabinet Office in two separate parts over the summer of 2023, covering draft regulations to implement certain aspects of the Procurement Act<sup>1</sup>. These consultations continued the ongoing process of stakeholder engagement in the process of *Transforming Public Procurement*<sup>2</sup>.

The first part of the consultation<sup>3</sup> referred predominantly to areas of the Act which require lists, calculations or further definitions to be used in practice and covered the following subjects:

- Scope of Light Touch and Reservable Light Touch Services;
- Exempt Contracts: Vertical and Horizontal Activities Calculations;
- Exempt Contracts: Utilities Intra-group Turnover Calculations;
- Utility Turnover and Supply Tests;
- Intra-UK Procurement;
- Definitions of 'Central Government Authority' and 'Works' for Thresholds;
- Disapplication of section 17 of the Local Government Act 1988; and
- Disapplication in regard to certain NHS healthcare services

Questions sought to understand to what extent the draft secondary legislation provisions implement the policy intent as established in the Bill. The consultation opened on 19 June and closed on 28 July.

The second part of the consultation<sup>4</sup> mainly addressed matters relating to transparency, such as the various draft notices that will be used to communicate opportunities and details about forthcoming, in-train and completed procurements. It

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<sup>1</sup> At the time these consultations were published, the Procurement Act was still in draft form as a Bill progressing through the various Parliamentary stages. Following agreement by both Houses on the text of the Bill it received Royal Assent on 26 October 2023. The Bill is now an Act of Parliament (law). For convenience and simplicity this document refers consistently now to the Act rather than the Bill, except where reference is explicitly being made to a stage when the Act was in draft form as a Bill, or where referring to questions or statements made in previous consultation documents that themselves referred to the Bill.

<sup>2</sup> <https://www.gov.uk/government/collections/transforming-public-procurement>

<sup>3</sup> <https://www.gov.uk/government/consultations/part-1-consultation-on-draft-regulations-to-implement-the-procurement-bill>

<sup>4</sup> <https://www.gov.uk/government/consultations/part-2-consultation-on-draft-regulations-to-implement-the-procurement-bill>

included coverage on related matters such as the Central Digital Platform and the provision of certain Supplier Information, and some other technical matters such as proposals for transitioning to the new regime and consequential amendments. The consultation opened on 17th July and closed on 25th August.

These regulations will apply to all reserved procurement in the UK, and procurement by transferred Northern Ireland authorities. We have worked closely with the Devolved Authorities in developing and drafting the provisions in the Act and the draft SI. The UK Government will follow the formal process to seek consent from the relevant NI Department to make regulations on their behalf. The draft SI will be updated as appropriate before being made. The Welsh Government has consulted separately in respect of regulations for devolved Welsh procurement.

## Background to the Legislation

One in every three pounds of public money, some £300 billion a year, is spent on public procurement. By improving the way public procurement is regulated, the Government can save the taxpayer money and drive benefits across every region of the country.

Following the UK's exit from the EU, we now have an opportunity to develop and implement a new procurement regime. The new regime helps deliver the Prime Minister's promise to grow the economy by creating a simpler and more transparent system that will deliver better value for money, reducing costs for business and the public sector.

Under the new regime, everyone will have access to more public procurement data. Citizens will be able to scrutinise spending decisions. Suppliers will be able to identify new opportunities to bid and collaborate sooner in the process, and this will improve competition because suppliers will find it easier to plan and gear up. Contracting authorities will be able to analyse the market and benchmark their performance against others, for example on their spend with small and medium-sized enterprises (SMEs).

More detailed background is provided in the earlier consultation documents.

## Consultation Process

This public consultation is the latest step in an ongoing process of stakeholder engagement during the reform of UK public procurement regulation. Both parts of this consultation were published on gov.uk and were open to any interested parties to respond. The consultation documents invited respondents to complete an electronic survey, or by providing written comments on email if preferred. They sought feedback on the secondary legislation that will sit under the Procurement Act and bring many of its provisions to life.

The nature of this consultation was detailed and technical. Generally, views were not sought on the policy intent itself which has already been subject to previous consultation and has now been established by the Act, but on whether the policy

intent has been reflected in the drafting of the regulations. This is with the exception of a small number of issues in the 2<sup>nd</sup> part of the consultation, which did probe the policy intent as set out in the consultation document. Questions asked respondents to state to what extent they agree or disagree with the question posed under each section. Where respondents disagree or strongly disagree that the policy intent as stated is delivered through the drafting, they have the opportunity to explain why they believe this to be the case.

The Cabinet Office has now analysed the consultation responses. We are very grateful to all those who took the time to respond and for their ongoing support in developing and refining the reformed scheme.

This document summarises: general information about the volume and sectoral origins of respondents; figures on the extent to which respondents agreed or disagreed with the questions posed; key themes and reasons for those views; and our conclusions having reflected on these matters. It aims to reflect the range of views offered though it is not feasible in a summary of this nature to discuss individual responses in detail. A list of respondents that provided their organisation's name is attached at Appendix 1 for Part 1 and Appendix 2 for Part 2.

Some respondents commented on already established policies and provisions contained within the Act rather than focusing on the secondary legislation which was the subject of the consultation. The policies and provisions of the Act have already been settled, therefore such comments are outwith the scope of this government response.

## Next Steps

Various adjustments will be made to improve the drafting of the SI, both as a result of this consultation and the parallel process of internal reviews and checks. In due course, the final version of the secondary legislation will be laid in Parliament, combining the provisions contained within the two consultations parts into one single statutory instrument (SI).

The Government has committed to providing a minimum of 6 months' advance notice of go-live of the new regime and the laying of the secondary legislation would be the earliest point that this notice would be given. We expect that the regime will come into force from October 2024. The Cabinet Office is providing a comprehensive, funded package of learning and development, together with formal technical guidance which will be published, to help everyone operating within the new regime understand how to apply the new rules correctly.

## Headline Figures & Key Themes

### Consultation Part 1 – Headline Figures




We received 154 responses to the main electronic survey, plus 11 additional responses by email. All responses have been properly considered but only responses to the e-survey feature in our statistical analysis. Just over half of these (64%) were from contracting authorities; suppliers accounted for around 17% of the responses; with a further 19% from 'other parties' (such as legal firms, trade bodies and others). The remainder did not reveal these details.

## Charts by respondent type (Part 1)

Chart 1-1: Responses by respondent type - CA, suppliers, other

24. Is your organisation primarily interested as:				
Answer Choices			Response Percent	Response Total
1	A contracting authority		64.23%	88
2	A supplier		16.79%	23
3	Another interested party (legal firm, academic, trade group/professional body, regulator, campaign group/think tank, charity/voluntary sector organisation, other)?		18.98%	26
			answered	137
			skipped	17

Chart 1-2 - CAs by type

25. Please specify what type of contracting authority				
Answer Choices			Response Percent	Response Total
1	Central Government		5.68%	5
2	Local Government		55.68%	49
3	Higher or Further Education		7.95%	7












4	Other education		2.27%	2
5	Health/NHS		7.95%	7
6	Utility		2.27%	2
7	Housing		3.41%	3
8	Police/Fire/Rescue		6.82%	6
9	Centralised Purchasing Authority/Buying Organisation		6.82%	6
10	Other (please specify):		6.82%	6
			answered	88
			skipped	66

Chart 1-3: Responses from Industry

26. Please specify if you are also...				
Answer Choices			Response Percent	Response Total
1	A strategic supplier to government		30.43%	7
2	A Small or Medium Sized Enterprise (SME)		43.48%	10
3	A Voluntary, Charitable or Social Enterprise (VCSE)		4.35%	1
4	None of these		26.09%	6
			answered	23
			skipped	131

## Consultation Part 1 – Key Themes

In general, the responses confirmed stakeholders agreed that the proposed regulations effectively implement the policy objectives set out in the consultation document and significant changes should not be required. For example:

- 64% of respondents confirmed that the list of Light Touch services was appropriate
- 58% agreed with the list of services reservable to public service mutuals.
- 69% were agreeable that the methodology of calculating the percentages of the activity thresholds meets the policy intent to exempt horizontal and vertical procurement from the main provisions in the Act.
- 68% confirmed that the regulations achieve the policy objective of ensuring a clear and familiar approach to the defining central government authorities and works.

A relatively large proportion of respondents to the questions on utilities related matters tended to neither agree nor disagree, which may be a result of the specialist nature of these questions not affecting all respondents. The same can be said of trends in responses to other ‘specialist’ questions, such as the healthcare disapplication mechanism and intra-UK procurement. There were no questions that attracted disagreement from a majority of respondents; those disagreeing tended to be relatively small numbers, with those offering no view being much more common than those not agreeing outright.

As the consultation questions were tightly focussed on a particular subject, responses to those questions tended to be similarly tight in focus. However there were some instances where there was a thematic commonality between responses to different questions. Some respondents to the questions on Light Touch services and the healthcare disapplication mechanism probed the interplay between the Act and the Healthcare Services (Provider Selection Regime) Regulations 2023. A few respondents queried the extent to which CPV codes could be included, excluded, or amended, in response to various questions and in different contexts.

Given the breadth and depth of support, we have concluded that significant changes to the draft regulations should therefore not be necessary. However, in a number of instances set out in the detail of responses further below, we have decided to make some adjustments to address the helpful comments made.

## Consultation Part 2 – Headline Figures

There were 171 responses to the main electronic survey plus 16 additional responses by email Part 2 of the consultation.

All responses have been properly considered but only responses to the e-survey feature in our statistical analysis. From these there were 118 responses from contracting authorities, 17 from suppliers and 22 from other interested parties such as academics, legal professionals and members of the public.



## Charts by respondent type (Part 2)

Chart 2-1: Responses by respondent type - CA, suppliers, other








56. Is your organisation primarily interested as:				
Answer Choices			Response Percent	Response Total
1	A contracting authority		75.16%	118
2	A supplier		10.83%	17
3	Another interested party (legal firm, academic, trade group/professional body, regulator, campaign group/think tank, charity/voluntary sector organisation, other)?		14.01%	22
			answered	157
			skipped	14

Chart 2-2: CAs by type

57. Please specify what type of contracting authority				
Answer Choices			Response Percent	Response Total
1	Central Government		11.02%	13
2	Local Government		44.92%	53
3	Higher or Further Education		6.78%	8
4	Other education		2.54%	3
5	Health/NHS		6.78%	8









6	Utility		4.24%	5
7	Housing		7.63%	9
8	Police/Fire/Rescue		5.08%	6
9	Centralised Purchasing Authority/Buying Organisation		10.17%	12
10	Other (please specify):		8.47%	10
			answered	118
			skipped	53

Chart 2-3: Responses from Industry

58. Please specify if you are also...				
Answer Choices			Response Percent	Response Total
1	A strategic supplier to government		41.18%	7
2	A Small or Medium Sized Enterprise (SME)		58.82%	10
3	A Voluntary, Charitable or Social Enterprise (VCSE)		0.00%	0
4	None of these		11.76%	2
			answered	17
			skipped	154

## Consultation Part 2 – Key Themes

In general terms the responses confirmed stakeholders agreed that the proposals achieved what they sought to achieve, and significant changes should not be necessary. For example:

- 57% were agreeable that the pipeline notice will usefully provide advance notice of future opportunities;
- 73% were agreeable that the planned procurement notice contains the right information required by suppliers to determine their interest
- 78% were agreeable that proposed tender notice enables authorities to effectively advertise and commence a competitive procedure
- 66% were agreeable that the transparency notice provides visibility of procurements to be awarded using the direct award procedure
- 67% were agreeable that the contract change notice will provide greater transparency of proper contract management

There were no questions that attracted disagreement from a large minority or majority of respondents; those disagreeing tended to be relatively small numbers, with those offering no view being more common for those not agreeing outright. As individual consultation questions generally focussed on a particular notice, responses to those questions tended to be similarly tight in focus.

Some respondents used the opportunity to question the rationale for certain notices at all, but the policy on what notices would exist was settled at much earlier stages of consultation and cannot be reopened now the Act has become law. A number of contracting authorities wanted to raise the threshold for certain notices, in order to reduce their administrative burden, but similarly this policy has been settled by Parliament.

Some questions were raised around how certain administrative matters will work in practice, such as the interface between the notices and existing policy guidance such as the Sourcing Playbook; these matters will be covered in guidance and training. There was some evidence of a general misunderstanding about why private utilities are treated differently.

## Analysis of Responses – Consultation Part 1

### Light Touch – scope of light touch contracts

QUESTION 1: To what extent do you agree or disagree that CPV codes set out in the draft SI accurately capture those services which can be supplied via a light touch contract under the new regime?

QUESTION 2: If you disagree or strongly disagree, please indicate which services should be included or excluded, or clarify any other perceived issues with the list such as inconsistencies with other areas of the Bill or draft SI.

### Summary of Responses

There were 164 replies to this section. The majority of the responses to question 1 were positive with 64% being either agree or strongly agree, a further 19% neither agree or disagree or did not respond. With 16% replying disagree or strongly disagree. 44 respondents provided comments in response to Q2.

A few queries probed the interaction with the Provider Selection Regime<sup>5</sup> (PSR), such as why there are healthcare codes listed in the schedule that will also appear in the PSR, and the need for guidance on the interface between the two schemes.

A few respondents felt the scope of services covered is too wide, conversely a few respondents felt the scope should be broader. Two respondents queried whether light touch contracts were needed at all. There were a number of other high level responses which indicated broad agreement, especially if the scope of similar services in the current Public Contracts Regulations 2015 (PCR) was maintained (as is the intention).

A few respondents perceived an issue around potential ambiguity of CPV codes. Suggestions were made for more granular detail or better descriptions.

One respondent suggested that certain light touch contracts such as care services should be exempt where choice of an individual citizen or carer is a determinant of the award decision.

## Government Response

Analysis has concluded, in line with the majority of respondents' views, that the draft regulations meet the policy objective and further changes are not required.

We are satisfied that some healthcare codes listed in the schedule also appear in the PSR. This is necessary because the PSR only regulates certain bodies (ie those defined in the PSR as 'relevant authorities' such as NHS Trusts, and only when they buy 'relevant health care services' as defined in the PSR (such as physiotherapy services or optician services). Other contracting authorities will still be regulated by the Procurement Act when buying such healthcare services. The schedule therefore provides a list of all relevant light touch services covered by the Procurement Act, whereas the PSR contains a much shorter list of healthcare services that will only be in scope of the PSR (and consequently disappplied from the scope of the Procurement Act) when certain criteria are met. Guidance will be provided on the interface between the two schemes.

In respect of comments on the scope of light touch contracts, the policy objective and general stakeholder preference is that the existing scope of similar services in the PCR should be retained. Any broadening of the scope would also be inconsistent with our commitments under international agreements.

There are no immediate plans to reform the Common Procurement Vocabulary, and doing so is outside the scope of implementation of the Procurement Act. Comments

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<sup>5</sup> <https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/>

suggesting ways in which this could be improved are noted for future reference, should this scheme be reviewed in due course.

In respect of comments about flexibility for care services contracts where the choice of an individual or carer is a factor, the new 'user choice' direct award ground in schedule 5 of the Act appropriately addresses this.

## Light touch: Reservable Light Touch Services

QUESTION 3: To what extent do you agree or disagree that the draft SI accurately captures those services which should be 'reservable' to public service mutuals under the new regime?

QUESTION 4: If you disagree or strongly disagree, please indicate which services should be included or excluded, or clarify any other perceived issues with the list such as inconsistencies with other areas of the Bill or draft SI.

## Summary of responses

151 responses were received to question 3. The majority were positive with 57% agreeing or strongly agreeing, 34% did not agree or disagree, while 9% disagreed or strongly disagreed. Most responses were therefore positive and most of the remainder were neutral. 20 respondents provided narrative comments addressing question 4.

A few respondents suggested broadening the policy in various ways. These included allowing all light touch services to be reservable, allowing other types of social enterprise to benefit from a reserved procurement for light touch services, and to permit reservation based upon location. Some requests were made for guidance on application of the mutuals provisions. Some respondents queried whether the mutuals provisions indicated whether these provisions were indicative of Government intent to put in place a new programme to support mutuals. A few respondents highlighted a perceived issue with the interpretation of CPV codes that are reservable.

## Government Response

Analysis has concluded, in line with the majority of respondents' views, that the draft regulations meet the policy objective and significant changes are not required. In respect of suggestions to broaden the scope of these provisions, the policy intent as set out in the consultation documents is to preserve the scope of services allowed by the exhaustive list set out in regulation 77 of the PCR.

We acknowledge the concerns around possible interpretation of which services can be reserved. This stems from uncertainty around whether the exhaustive nature of the list of services means that literally only those codes listed are included, or alternatively whether the inclusion of a parent CPV code on the list implies that child CPV codes of that parent are also included. We therefore intend to adjust the regulations to make the position clear, ie that the latter, broader interpretation is the correct one.

## Exempt Contracts: Vertical and horizontal activities calculations

QUESTION 5: To what extent do you agree or disagree that the methodology of calculating the percentages of the activity thresholds set out in the draft SI is clear and meets the policy intent to exempt horizontal and vertical procurement from the requirements of the Bill?

QUESTION 6: If you disagree or strongly disagree, please explain why you believe the calculation is not clear or does not otherwise meet the policy intent.

## Summary of Responses

148 responses were received for this section. 69% of respondents agreed or strongly agreed, 14% neither agreed nor disagreed, and 17% disagreed or strongly disagreed. Most respondents were therefore supportive.

Whilst respondents generally agreed with the proposed methodology, some respondents felt that the methodology could be clearer and that would ensure consistent application of the exemption. One respondent thought that the provision was unclear because it does not state the time period during which the turnover should be calculated, and because “average” is unnecessary and ambiguous. Other respondents asked for more clarity on how contracting authorities calculate the turnover amount against which the percentage is to be calculated in the “relevant period”. There was also a request to clarify what was meant by “credible business projections” and “public functions” in the regulations.

## Government Response

Analysis has concluded, in line with the large majority of respondents’ views, that the draft regulations meet the policy intent to exempt horizontal and vertical procurement from the main provisions of the Act. However, some of the suggestions for improving the clarity of the SI provisions have been accepted and we will revise the provisions about how the vertical and horizontal arrangements calculations are carried so it is clear how the calculation of the percentage of activities carried out by a person in a vertical arrangement or contemplated by the horizontal arrangement has to be carried out, including by specifying the relevant time period.

In order to adequately address all comments received and provide sufficient time to draft and review the revisions, we have decided to remove these calculation provisions from this statutory instrument. Instead we will incorporate these provisions into our next statutory instrument which we plan to lay in June or July.

Other concerns related to how the exemptions are applied and the calculations are undertaken in practice are acknowledged and will also be addressed in guidance and training materials. The guidance will also explain what is meant by “credible business projections” and “public functions” in the regulations, and treatment of child subsidiaries in the calculation.

## Exempt Contracts: Utilities intra-group turnover calculations

QUESTION 7: To what extent do you agree that the methodology of calculating the percentages of the affiliated turnover test as set out in the draft SI is clear and meets the policy intent to exempt contracts to affiliates as described in Schedule 2, paragraph 6?

QUESTION 8: If you disagree or strongly disagree, please explain why you do not believe that the calculation will deliver the policy intent.

### Summary of Responses

141 responses were received for this section. 46% of respondents agreed or strongly agreed, 47% neither agreed nor disagreed, and 7% disagreed or strongly disagreed. Therefore almost half agreed, almost half were neutral, with a small minority in disagreement.

Some respondents did repeat their requests for clarification of the SI provisions that were originally made for Question 5 and 6, as the draft provisions are similar. In particular, they requested clarity on how contracting authorities calculate the turnover amount against which the percentage is to be calculated in the “relevant period”. One respondent noted the use of “affiliated turnover amount” in the Act and “turnover amount” in the draft SI was inconsistent

One respondent commented that in order to calculate an affiliated person’s turnover in regulation 3(3) then would it also then need to take into account the turnover of the utility that it is supplying, as that utility is, by virtue of paragraph 6(2) of Schedule 2 an affiliate. The respondent noted that they “did not believe this is the intent, particularly as Regulation 6(3) of Schedule 2 suggests the turnover should be calculated by reference to the goods, services or works being supplied to that utility and that utility’s affiliates to which it provides the relevant goods, services or works”.

### Government Response

Analysis has concluded, in line with the majority of respondents’ views, that the draft regulations meet the policy objective. However, in line with Questions 5 and 6 some of the suggestions for improving the clarity of the SI provisions are accepted and we will revise the provisions on the turnover test in the affiliated persons’ calculations to clarify how the calculation will be carried out that will include a new definition of “equivalent turnover”.

In order to adequately address all comments received and provide sufficient time to draft and review the revisions, we have decided to remove these calculation provisions from this statutory instrument. Instead we will incorporate these provisions into our next statutory instrument which we plan to lay in June or July.

We have also reviewed draft regulation 3(3), which covers the scenario where more than one affiliated undertaking from the same company group provides the same or similar services, goods or works. The revised wording and the new definition of “equivalent turnover” ensures the turnover from the supply of goods, services or works to the company group includes those relevant affiliated undertakings, and removes any ambiguity.

## Utility Turnover and Supply Tests

QUESTION 9: To what extent do you agree or disagree that the methodology to make the appropriate calculations for the relevant exemptions in paragraphs 1(2), 2(2) and 3(4) of Schedule 4 is clear and meets the policy intent to exempt the supply of gas, heat, electricity and drinking water where the relevant conditions apply?

QUESTION 10: If you disagree or strongly disagree, please explain you believe the calculation is not clear or does not otherwise meet the policy intent.

## Summary of Responses

140 responses were received for this section. 37% agreed or strongly agreed, 59% neither agreed nor disagreed, and 4% disagreed or strongly disagreed. A majority of respondents were therefore neutral, with just over a third being agreeable while a small minority disagreed.

Some respondents did repeat their requests for clarification of the SI provisions that were originally made for Question 5, 6, 7 and 8 as the draft provisions are similar. Once again, the comments focussed on how contracting authorities calculate the turnover amount against which the percentage is to be calculated in the “relevant period”. One respondent suggested that the definition of “three-year production amount” was incorrect, as an operator who was created one year ago will nonetheless have a three-year production amount because they will have some amount of production during that period.

## Government Response

Analysis has concluded, in line with the majority view of those who expressed a preference, that the draft regulations meet the policy objective. However, any changes or guidance to improve the clarity of the SI provisions discussed at Questions 5, 6, 7 and 8 will also be applied to these provisions where they use similar wording. This ensures a consistent approach.

The revised wording clarifies the percentage of:

- a. Gas or heat is to be calculated using the total operator’s turnover generated by the sale of gas and heat over the relevant period as a percentage of its total turnover generated over that period; and



- b. Electricity or drinking water is to be calculated using the total amount of electricity or drinking water supplier over the relevant period as a percentage of its total amount produced over that period.

In order to adequately address all comments received and provide sufficient time to draft and review the revisions, we have decided to remove these calculation provisions from this statutory instrument. Instead we will incorporate these provisions into our next statutory instrument which we plan to lay in June or July.

## Intra-UK Procurement

QUESTION 11: To what extent do you agree or disagree that the regulation meets the policy intent of permitting Scottish devolved authorities to undertake joint procurement or collaborate with other authorities across the UK under the auspices of the Procurement Bill?

QUESTION 12: If you disagree or strongly disagree, please explain why you do not think that the regulation will provide Scottish devolved authorities with this opportunity.

## Summary of Responses

There were 143 responses to this section. 54% of respondents agreed or strongly agreed, 42% were neutral, while 4% disagreed or strongly disagreed.

The majority therefore were supportive that the regulation meets the policy intent as set out in the consultation documents, with a large minority being neutral. Only 6 of the 143 respondents disagreed or strongly disagreed. These answers were mostly seeking clarity on how the intra-UK procurement policy would work in practice. There were some suggestions that the draft SI would be clearer if it explicitly listed the sections that affect devolved Scottish bodies, rather than listing the sections that are disapplied.

## Government Response

Analysis has concluded, in line with the majority of respondents' views, that the draft regulations meet the policy objective and significant changes are not required. The suggestions for improving the clarity of the SI presentation are accepted and will be amended accordingly. As a result of further consideration of the drafting, and in order to ensure better usability, the SI will now amend the Procurement Act to insert these provisions. Concerns related to how the policy is applied in practice are acknowledged and will be addressed in guidance and training materials.

## Definitions of 'Central Government Authority' and 'Works' for thresholds

QUESTION 13: To what extent do you agree or disagree that this approach achieves the policy objective of ensuring a clear, consistent and familiar approach to defining Central Government Authorities and Works?

QUESTION 14: If you disagree or strongly disagree, please explain why you do not believe that the definitions are clear, consistent and/or familiar.

## Summary of Responses

There were 147 responses to this section. 69% agreed or strongly agreed, 26% neither agreed nor disagreed, and 5% disagreed. More than two thirds of respondents were therefore supportive that the draft regulation effectively implements the policy intent, and most of the minority that did not expressly agree were neutral on the matter.

The most common theme from the 12 respondents that commented explicitly, was around whether the list of Central Government Authorities could be modified or updated to reflect various recent developments, such as changes in the names of certain bodies, or whether certain bodies such as Integrated Care Boards could be added to the list.

Two respondents appeared to conflate the list of Central Government Authorities with the list of classified public sector bodies published by the ONS. However, these lists have different purposes, contexts and drivers and there is no direct relationship between them.

One law firm believed that six construction codes that were expressly excluded in the PCR had now been brought in scope by Schedule 4, and questioned the rationale.

## Government Response

Analysis has concluded, in line with the majority of respondents' views, that the draft regulations meet the policy objective and no changes are required. Cabinet Office acknowledges the comments made about the need to update the list of bodies, and whilst these comments have merit in the general sense, they are not relevant to the scope of this exercise, the objective of which is to replicate the bodies captured in Schedule 1 of the PCR. The consultation document set out the intention to update the list of bodies in the relevant UK schedules to the WTO Government Procurement Agreement (GPA) Schedules in due course, and to amend this SI at the same time. The draft regulation has been amended to include language which will have the effect of ensuring that changes which have already taken place are recognised, albeit the titles of bodies will not be updated until updates are made to our GPA Schedules.

We have considered a respondent's assertion that the new list of CPV codes contains some previously excluded codes for construction, but we do not agree. The PCR list simply mirrored the (then corresponding) EU Directive's much more complicated approach of using various complex sub-divisions, and then expressly included or excluded certain codes within those subdivisions exactly as the Directive

did, using a copy-out approach in line with the Government's transposition policy. In schedule 4 we have simplified the approach, removing all the unnecessary subdivisions (this new approach was praised by one respondent). This means there is no longer a need to include or exclude codes within subdivisions. The new list is consistent that all relevant construction codes are covered, including the six codes queried by the respondent.

## Disapplication of Section 17 of Local Government Act

QUESTION 15: To what extent do you agree or disagree that the regulations permit local authorities and other bodies subject to the Local Government Act 1998 to take advantage of policy on reserving below-threshold contracts for suppliers that are UK-based or located in a specific county or borough and (if the contracting authority chooses) are SMEs or VCSEs?

QUESTION 16: If you disagree or strongly disagree please explain why you do not think the regulations will allow the below-threshold policy to be applied by authorities subject to the LGA 1988.

## Summary of Responses

We received 145 responses to this section. 56% agreed or strongly agreed, 23% neither agreed nor disagreed, and 21% disagreed or strongly disagreed.

Most respondents agree that the regulations do permit relevant bodies to take advantage of the policy on reserving below-threshold contracts. The principles behind the policy are generally welcomed.

In general terms those respondents who were not agreeable and made comments on their position, questioned the scope of the policy itself (as set out in PPN 11/20<sup>6</sup>) rather than contesting the extent to which the draft regulations meet the policy objective as set out in the consultation questions. Some respondents felt the SI should be more permissive to enable contracting authorities to restrict bidders to the geography that makes sense for the service they are procuring.

## Government Response

Analysis has concluded, in line with the majority of respondents' views, that the draft regulations meet the policy objective and no changes are required. Points made about the scope of the policy in PPN 11/20 are outside the scope of this consultation. This consultation question is to check and confirm that the draft SI enables local authorities and other contracting authorities subject to the LGA 1988 to make use of the policy set out in that PPN.

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<sup>6</sup><https://www.gov.uk/government/publications/procurement-policy-note-1120-reserving-below-threshold-procurements>

This consultation question is to check and confirm that the draft SI enables local authorities and other contracting authorities subject to the LGA 1988 to make use of the policy set out in PPN 11/20.

We wish to reassure stakeholders that the government is committed to removing the barrier within section 17(5)(e) of the LGA 1988 before the new procurement regime comes into force, to enable authorities subject to that Act to take advantage of the policy in PPN 11/20, and place them on a level playing field with central government departments. However, provision for that removal will now be brought about by other legislative instruments and the disapplication of section 17(5)(e) is no longer required in this SI.

## Disapplication of the Act for certain NHS healthcare services

QUESTION 17: To what extent do you agree or disagree that these regulations effectively disapply the Bill in respect of health care services procured by bodies that are in scope of DHSC's Provider Selection Regime (PSR) regulations.

QUESTION 18: If you disagree or strongly disagree, please explain why you do not believe that these regulations effectively disapply those services.

## Summary of Responses

There were 147 responses to this question in total. 47% agreed or strongly agreed, 42% neither agreed nor disagreed, and 11% disagreed or strongly disagreed. The relatively high number of neutral responses (in comparison to certain other more universally applicable questions) may be attributable to the relatively niche nature of this question, as it relates to a particular sub-sector of public procurement.

30 of the 147 respondents supplemented their response with narrative comments. Some of these comments reaffirmed that the drafted regulation was fit for purpose. Most of the comments raised broader concerns around the relationship between the Procurement Act and the PSR regulations for certain healthcare authorities/services. These concerns included: the potential for confusion in having two schemes; ensuring clarity around which scheme is applicable; the views of some respondents that a single set of rules covering all procurement would be more desirable; the possibility of mixed contracts with some elements in scope of the PSR and other elements in scope of the Procurement Act.

A few respondents suggested including the list of healthcare CPV codes that are in scope of the disapplication. A few respondents felt the heading of draft Regulation 18 wasn't sufficiently clear, as it reads "Disapplication in regard to NHS procurement in England", whereas the Provider Selection Regime will apply to any relevant healthcare authority as defined in the PSR, when purchasing in-scope healthcare services.

## Government Response

Analysis has concluded, in line with the majority of respondents' views, that the draft regulations meet the policy objective and significant changes are not required.

We recognise stakeholders will want to fully understand the relationship and interface between procurements regulated by this legislation and certain healthcare services procurements regulated by Provider Selection Regime. These points are noted and will be mitigated by guidance and training provided by both Cabinet Office and the Department of Health and Social Care, including on mixed procurement. Fundamental points around the pros and cons of having a separate scheme for healthcare have already been publicly consulted upon and responded to by DHSC. Further information about the status of the Provider Selection Regime is available here.

<https://www.england.nhs.uk/commissioning/how-commissioning-is-changing/nhs-provider-selection-regime/>

We do not consider, as suggested by some respondents, that it would be helpful to list in Cabinet Office regulations those healthcare CPV codes that are in scope of the disapplication mechanism. Were this approach adopted, there is a risk that contracting authorities not in scope of the PSR (ie authorities that are not healthcare authorities) wrongly consider that the Act does not apply when they procure healthcare services. Those healthcare CPV codes are not being disapplied wholesale, rather they are disapplied only in respect of procurements by 'relevant healthcare authorities' (as defined in the PSR) in England. All other authorities procuring such healthcare services will still be caught by the Procurement Act. The appropriate place for CPV codes setting out what is in scope of the PSR regulations, is within the PSR regulation (hyperlinked above).

We accept the points made regarding the clarity of the heading of Regulation 18. We intend to address this by amending both the header and the regulation itself to be expressed in terms of the Act disapplying in relation to '*regulated healthcare procurement*' (as defined in section 120 of the Act).

## Analysis of Responses – Consultation Part 2

### Pipeline Notice

QUESTION 1: To what extent do you agree or disagree that the pipeline notice, as described in the draft SI, will usefully provide advance notice to suppliers of forthcoming contracting opportunities?

QUESTION 2: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

### Summary of Responses

There were 166 replies to this section. The majority of the responses were positive with 57% being either agree or strongly agree, a further 16%, neither agreeing or disagreeing, and 27% replying disagree or strongly disagree.

Majority of responses came from contracting authorities who questioned the support this notice will provide to SME/VCSEs as they are typically not looking at contracts valued at £2m and above.

Some contracting authorities also raised concerns over being held to proposed procurements identified in this notice if they did not subsequently materialise.

Finally, respondents raised questions about how this pipeline notice interacts with the existing minimum viable pipeline requirements within central government's commercial pipeline guidance.

## Government Response

Analysis has concluded, in line with the majority of respondents' views, that the draft regulations meet the policy objective and further changes are not required.

The Cabinet Office is satisfied that the threshold of £2m was set following the determination that this was the best balance of realising the benefits of transparency against the effort made by contracting authorities in providing this information. Contracting authorities are free to go further than required by the Procurement Act by publishing pipelines below the applicable threshold, and/or for a period that is longer than 18 months.

In respect of concerns about being held to proposals set out in the pipeline notice it should be noted that whilst the procurement pipeline is intended to provide suppliers with an indication of contracting authorities' plans for the following 18 months, contracting authorities are not held to the information in the notice which could change over time as plans for the procurements become clearer. They are also not under any legal obligation to indicate that such a contract will not be procured. Guidance can elaborate on this matter.

In respect of questions about how the new pipeline notice interacts with the existing minimum viable pipeline requirements within the government's commercial pipeline guidance, the Cabinet Office will complete a review of existing policy and ensure consistency with the new legislation but the Sourcing Playbook will remain in place.

## Planned Procurement Notice

QUESTION 3: To what extent do you agree or disagree that the contents of the notice described in the draft SI provides the information needed by suppliers to determine their interest in the upcoming procurement that is the subject of the notice?

QUESTION 4: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses were positive with 73% being either agree or strongly agree, a further 12% neither agreeing or disagreeing and 15% replying disagree or strongly disagree.

Some respondents asked for clarification about the distinction between the Pipeline and Planned Procurement Notices.

Some respondents questioned if a 10 day period was sufficient for a tendering period.

A few respondents questioned the level of detail required in the SI under the planned procurement notice and whether this detail will be known at this early stage in the procurement process.

## Government Response

Analysis has concluded, in line with the majority of respondents' views, that the draft regulations meet the policy objective and significant changes are not required. Guidance will address the range of practical questions raised.

In respect of comments about the distinction between Pipeline and Planned Procurement Notices, it should be noted that the Pipeline and Planned Procurement Notices only overlap partially and have distinct differences. Specifically, the latter is the only type of notice that, when used correctly, can be used to provide a reduction in the minimum time.

In respect of comments about reduced timescales for tendering periods, it should be noted that having published a qualifying Planned Procurement Notice, a contracting authority does not have to take advantage of the reduced timescales. Guidance will highlight that in deciding whether to do so, contracting authorities should consider whether their Planned Procurement Notice together with the tender notice have provided enough information to enable suppliers to effectively bid for the procurement during any reduced tendering period.

## Preliminary Market Engagement Notice (4 Questions)

QUESTION 5: To what extent do you agree or disagree that the notice as set out in the draft SI delivers the policy intention of encouraging the use of preliminary market engagement in an open and transparent way?

QUESTION 6: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

QUESTION 7: To what extent do you agree or disagree that private utilities should be exempted from the preliminary market engagement notice requirements in clause 17 of the Bill?

QUESTION 8: If you wish to explain why you do not agree that private utilities should be provided with this exemption please do so.

## Summary of Responses

The majority of the responses to Question 5 were positive with 65% being either agree or strongly agree, a further 14% neither agreeing or disagreeing and 21% replying disagree or strongly disagree.

The majority of the responses to Question 7 were neutral with 65% neither agreeing or disagreeing with this question. 21% agreed or strongly agreed, while 14% disagreed or strongly disagreed.

A number of contracting authorities questioned the reasoning for making this notice non-mandatory, and asked for further guidance to the level of justification needed for not using a PME notice.

Additionally, objections were received in relation to the amendment to section 17 in relation to private utilities (question 8), this included questions as to why private utilities should be treated differently to other contracting authorities; concerns over transparency and competition for private utility procurements; comments on the usefulness of preliminary market engagement; and the importance of improving infrastructure.

Some respondents also questioned the application of the PME notice if not all of the information required to be published will have been agreed at this stage. Other respondents felt the information required in the PME notice was too minimal, for example the absence of financial information.

## Government Response

Analysis has concluded, in line with the majority of respondents' views that expressed a preference, that the draft regulations meet the policy objective and significant changes are not required.

Whilst contracting authorities are not obliged to publish a PME notice, we anticipate that where the procurement includes preliminary market engagement, it will be common and good practice to do so. Where engagement has been undertaken and a PME notice is not published, the Act requires that the contracting authority must provide reasons for not doing so in their tender notice.

In respect of the private utilities exemption, it should be noted that private utilities are covered by the Procurement Act to ensure the UK meets its international trade obligations, such as the UK-EU Trade and Co-operation Agreement. However, the Government does not wish to regulate the procurement of private utilities any more than is necessary. Private utilities will already come under utility



statutory frameworks and regulators (such as OFGEM, OFWAT, etc.) and/or will be accountable to their board, investors or shareholders on their spending. This is sufficient to drive efficient and effective procurements.

The amendment to section 17 would not prevent private utilities from conducting preliminary market engagement. Rather, the amendment to section 17 reflects that a preliminary market engagement notice could be unnecessary for many procurements conducted by private utilities, as private utilities often have a detailed understanding of the market in which they operate.

We can reassure stakeholders concerned about fields being minimalistic and certain information perhaps not being finalised at this stage, that there is flexibility for authorities to seek more information if they require it in certain cases, and to update the information in future notices.

During the consultation process, we have continued to work to improve the SI. This includes the removal of draft Regulation “12(3)(e) the estimated date when the following will be published— (i) the tender notice for the public contract, or (ii) the transparency notice for the public contract.” Guidance will expand on further practical matters.

## Tender Notice

QUESTION 9: To what extent do you agree or disagree that the tender notice as set out in the draft SI enables a contracting authority to effectively advertise and commence a competitive procedure?

QUESTION 10: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses were positive with 78% agreeing or strongly agreeing, a further 10% neither agreeing or disagreeing, and 12% replying disagree or strongly disagree.

Some responses suggested a need to identify if variant bids are permitted within the tender notice as it is not always clear when procurements are designed what could be possible, allowing additional variant offers encourages innovation and should be encouraged. Several responses sought clarification on the meaning of “high value below threshold contracts”.

Several responses questioned why the below threshold tender notice was set separately from the other tender notices within the draft SI.

Some respondents sought clarity around the split of information between the tender notice and associated tender documents. Additionally, respondents requested more

clarity on the level of detail of award criteria and whether or not this needs to be set out in full in this notice or can reference be made to the procurement documents.

Some respondents suggested the notice should require contracting authorities to state whether or not they consider the contract or any lots would be particularly suitable for SMEs and VCSEs.

## Government Response

Analysis has concluded, in line with the majority of respondents' views, that the draft regulations meet the policy objective and significant changes are not required.

In general terms, many concerns raised by respondents are practical matters that will be addressed in guidance. For example, on variant bids, contracting authorities can include this information in the free text box within the digital fields of the tender notice on their own accord. Guidance will also clarify the split of information between the tender notice and associated tender documents.

We agree with comments on the numbering of the tender notices, and the structure will be amended to align them after one another.

We agree with comments suggesting the identification of SME/VCSE suitability within the tender notice, and will amend the regulations accordingly.

## Utilities Dynamic Market Notice (4 Questions)

QUESTION 11: To what extent do you agree or disagree that the DM notice as set out in the draft SI permits a contracting authority to effectively create a dynamic market (including a utilities dynamic marketplace) for the future award of public contracts?

QUESTION 12: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

QUESTION 13: To what extent do you agree or disagree that the QUDM notice as set out in the draft SI permits a contracting authority to effectively create a utilities dynamic marketplace that maintains the effect of a qualification system under the existing rules?

QUESTION 14: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses to Question 11 were positive with 58% being either agree or strongly agree, a further 35% neither agreeing or disagreeing, and 7% replying disagree or strongly disagree.

The majority of the responses to Question 13 were neutral with 69% neither agreeing or disagreeing with this question. 25% agreed or strongly agreed, while 6% disagreed or strongly disagreed.

Some contracting authorities raised resource concerns over the requirement to provide information when a supplier is being admitted to the market.

Several respondents requested clarification regarding the times a Dynamic Market (DM) notice is required to be published.

## Government Response

Analysis has concluded, in line with the majority of respondents' views that expressed a preference, that the draft regulations meet the policy objective and further changes are not required.

Regarding the requirement to provide information when a supplier is being admitted to the market, the new regulations maintain the flexibility on the number of suppliers for DMs that exist today (as per Regulation 34(6) of PCR). There is no obligation to set one up or use a DM as there could be other commercial tools that are more suitable to meet individual needs.

Regarding concerns about timing of publication, this notice is required to be published at various points in a procurement process as outlined in the draft SI and under Section 39 of the Procurement Act 2023 i.e. at the stage a contracting authority intends to establish a dynamic market, as soon as reasonably practicable after establishing a dynamic market, modifying a dynamic market and after a dynamic market ceases to operate.

## Transparency Notice

QUESTION 15: To what extent do you agree or disagree that the transparency notice as set out in the draft SI will provide visibility of upcoming procurements to be awarded using the direct award procedure?

QUESTION 16: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses were positive with 66% being either agree or strongly agree, a further 18% neither agreeing or disagreeing and 16% replying disagree or strongly disagree.

Some respondents questioned matters that were settled as a result of earlier consultations such as the role of the notice and why it was mandatory. Many respondents asked for further clarification on timings for publishing the Transparency notice.

## Government Response

Analysis has concluded, in line with the majority of respondents' views, that the draft regulations meet the policy objective and further changes are not required.

Cabinet Office will publish guidance on relevant practical aspects such as timings for publication. In general terms, publishing at an earlier stage will ensure that, if there is a legitimate claim on the basis of the decision to directly award the contract, it is raised early when the claim is less disruptive to the procurement.

## Procurement Termination Notice

QUESTION 17: To what extent do you agree or disagree that the contents of the termination notice, as set out in the draft SI, provide greater transparency about procurement processes that have not resulted in a contract?

QUESTION 18: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses were positive with 74% being either agree or strongly agree, a further 12% neither agreeing or disagreeing and 14% replying disagree or strongly disagree.

Written comments tended to focus on matters that have already been settled in previous consultations, such as the rationale for the notice. Several respondents requested clarification around the purpose and benefits of this notice. Some suggested adding a requirement to provide reasons for cancellation or further information.

## Government Response

Analysis has concluded, in line with the majority of respondents' views, that the draft regulations meet the policy objective and significant changes are not required.

A procurement termination notice is a new concept to provide information to the market and suppliers so they understand the intentions of the authority have changed, and the procurement is to be discontinued, reducing bid costs for suppliers and providing increased market certainty. We are considering an optional field for contracting authorities to provide reasons for termination.

## Assessment Summaries

QUESTION 19: To what extent do you agree or disagree that the contents of the assessment summary (along with the provision of the successful supplier's assessment summary) will provide adequate information to suppliers so that they can reasonably understand why they did or did not win the contract while reducing the time it takes for contracting authorities to provide this information?

QUESTION 20: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses to Q19 were positive with 59.88% being either agree or strongly agree, a further 13.17% neither agreeing or disagreeing and 26.95% replying disagree or strongly disagree.

The major themes raised by respondents related to the need to explain to the supplier why they did not achieve the next score available (e.g. why they scored a 4 and not a 5) as required by regulation 21(g)(ii) and the need to provide information relating to the successful supplier's assessment (and the perceived burden it brings). Respondents also raised queries relating to the assessment summary's applicability to certain types of contracts, e.g. call-offs from frameworks, and interim assessments.

## Government Response

Analysis has concluded, in line with the majority of respondents' views, that the draft regulations meet the policy objective. We will make some adjustments discussed below in relation to the helpful comments made.

It was evident from feedback that explicitly requiring an explanation of why the next score available was not achieved was being interpreted as requiring a separate statement, when it was intended to be something included in the overall explanation for the score. It has been removed from the SI and guidance will highlight that it is best practice to include this information when providing the reasons for the score.

The regulations relating to the assessment summary have been reviewed and some changes made to the structure and terminology to increase clarity and better meet the policy intent.

The obligation to provide information relating to the Most Advantageous Tender remains, as it is required to maintain compliance with the UK's obligations under international agreements and is included in the assessment summary's definition in The Act. This approach is still less burdensome than the previous practice, and guidance will assist contracting authorities to avoid provision of commercially sensitive information. Guidance will also address the other major queries.

## Contract Award Notice (4 Questions)

QUESTION 21: To what extent do you agree or disagree that the contract award notice as set out in the draft SI will be a suitable vehicle for alerting the market to the contracting authority's intent to enter into a public contract and triggering the standstill period?

QUESTION 22: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

QUESTION 23: To what extent do you agree or disagree that it is appropriate for private utilities to publish a reduced version of the contract award notice for contracts awarded under a framework?

QUESTION 24: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses to Question 21 were positive with 68% being either agree or strongly agree, a further 13% neither agreeing or disagreeing and 19% replying disagree or strongly disagree.

The majority of the responses to Question 23 were neutral with 65% neither agreeing or disagreeing with this question. 22% were either agreeing or strongly agreeing, while 13% disagreed or strongly disagreed.

Written comments tended to focus on matters that have already been settled in previous consultations, such as the timing of publishing the Contract Award Notice (CAN) prior to award, standstill timings prior to award, and similar questions on requirements for private utilities to those arising on other relevant notices. Several respondents questioned the requirement to publish the names of unsuccessful bidders in the CAN.

## Government Response

Analysis has concluded, in line with the majority of respondents' views that expressed a preference, that the draft regulations meet the policy objective.

Queried matters that have been subject to previous consultation are not revisited here, but guidance will recap and elaborate on all relevant practical aspects.

We have considered the concerns about the publication of unsuccessful bidder names. Naming an unsuccessful supplier(s) in lower value contracts could disproportionately affect a small business or new entrant in the circumstance where they are continually unsuccessful. This may be perceived negatively which could impact their reputation. We have concluded that the requirement should be limited for public contracts valued at £5m or above.

In relation to question 23 regarding private utilities, various requirements in the CAN are appropriate for contracting authorities, which are spending taxpayer money or subject to public authority oversight. However, to help ensure that the procurement of private utilities is not regulated beyond what is necessary, whilst maintaining compliance with international trade obligations, it is our intention to have separate CAN notices for these procurements. These will include fewer mandatory fields to complete.

## Contract Detail Notice

QUESTION 25: To what extent do you agree or disagree that the contents of the contract details notice, as set out in the draft SI, will give the required level of transparency of the existence and substance of public sector contracts?

QUESTION 26: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses were positive with 54% being either agree or strongly agree, a further 19% neither agreeing or disagreeing and 27% replying disagree or strongly disagree.

Written comments tended to focus on matters that have already been settled in previous consultations, such as whether certain notices could be combined and the threshold for KPIs.

## Government Response

Analysis has concluded that the draft regulations meet the policy objective. Queried matters that have been subject to previous consultation are not revisited here, but guidance will recap and elaborate on all relevant practical aspects.

Since the consultation, amendments have been made to improve the SI so that it can be clear whether the contract has been reserved to supported employed providers or public service mutuals.

## Payment Compliance Notice

QUESTION 27: To what extent do you agree or disagree that the payments compliance notice provides the transparency necessary to hold the public sector to account for its performance in paying suppliers on time?

QUESTION 28: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses were positive with 58% being either agree or strongly agree, a further 19% neither agreeing or disagreeing and 23% replying disagree or strongly disagree.

Written comments often focussed on matters that have already been settled in previous consultations, such as the principle of reporting from receipt rather than validation.

Several respondents sought further information on various practical matters, such as: how to calculate the date an invoice is received and the date an invoice is received; how disputed and invalid invoices are factored into calculations; and how to treat invoice arrivals.

## Government Response

Analysis has concluded that the draft regulations meet the policy objective. Queried matters that have been subject to previous consultation are not revisited here, but guidance will recap and elaborate on all relevant practical aspects, including those raised specifically.

In respect of comments on the principle of reporting from receipt rather than validation, this exists to align reporting in the public sector with private companies, and remove the challenge that ignoring the validation period sets different goalposts and creates perverse incentives to slow validation.

## Contract Performance Notice (4 Questions)

QUESTION 29: To what extent do you agree or disagree that the Contract Performance notice will provide adequate information about a supplier's performance on a contract?

QUESTION 30: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

QUESTION 31: To what extent do you agree or disagree that the Contract Performance notice will provide adequate information relating to a serious breach of contract by a supplier?

QUESTION 32: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses to Question 29 were positive, with 47% being either agree or strongly agree, a further 24% neither agreeing or disagreeing and 29% replying disagree or strongly disagree.



The majority of the responses to Question 31 were positive, with 50% being either agree or strongly agree, a further 27% neither agreeing or disagreeing and 23% replying disagree or strongly disagree.

Most written comments addressed matters of practical detail and application. Some were concerned about the publication of information within the Contract Performance Notice (CPN) without clearance from suppliers. Others queried the ability to redact information could make this notice ineffective.

Some were concerned that publication of information could artificially affect the market by suppliers agreeing to less stringent performance standards to ensure records are positive. There were concerns that irrelevant information could be used to affect their scoring and prior knowledge should not inform the procurement process. Several responses questioned the ratings structure set out in the draft SI. Other responses asked for clarity between this notice and the discretionary exclusion grounds in Schedule 7 of the Act. Finally, some responses argued publishing three KPIs provides a selective view of contract performance.

## Government Response

Analysis has concluded that the draft regulations meet the policy objective and further changes to the draft regulations should not be necessary. However, there are various practical concerns that we note, and on which we will elaborate in guidance.

In respect of concerns about the ratings structure of KPIs, the rating structure is already public. We are using the scale in the Playbooks so that departments won't be required to use two different ratings for the same KPI.

## Contract Change Notice

QUESTION 33: To what extent do you agree or disagree that the contents of the contract change notice will provide greater transparency of the proper management of public sector contracts?

QUESTION 34: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses were positive with 67% being either agree or strongly agree, a further 20% neither agreeing or disagreeing and 13% replying disagree or strongly disagree.

Some written comments questioned the policy intent of the notice itself, which is out of the scope of this consultation as set out earlier, such as:

- The exclusion of publication requirements for utilities, light touch contracts and defence and security.

- concerns this requirement to publish a Contract Change Notice (CCN) could be difficult to manage particularly in relation to a high-volume change control activity in a complex delivery across a range of areas.
- concerns publishing this notice before the change is implemented could cause delay in making the modification.

## Government Response

Analysis has concluded that the draft regulations meet the policy objective and further changes to the draft regulations should not be necessary. However, there are various practical concerns that we note, and on which we will elaborate in guidance.

Contracting authorities will publish contract change notices for the majority of permitted contract modifications and this is a change in contract administration. Earlier consultations concluded that publication of these notices bring much-needed transparency to what happens during the life of a public contract.

## Contract Termination Notice

QUESTION 35: To what extent do you agree or disagree that the contents of the contract termination notice, as set out in the draft SI, will give greater clarity and transparency about which public sector contracts are still in force?

QUESTION 36: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses were positive with 60% being either agree or strongly agree, a further 20% neither agreeing or disagreeing and 20% replying disagree or strongly disagree.

Some written comments questioned the policy intent of the notice itself, which is out of the scope of this consultation as set out earlier, such as concern around increased administrative burdens.

## Government Response

Analysis has concluded that the draft regulations meet the policy objective and further changes to the draft regulations should not be necessary. However, there are various practical concerns that we note, and on which we will elaborate in guidance and training.

## Central Digital Platform (4 Questions)

QUESTION 37: To what extent do you agree or disagree that the SI drafting provides clarity about the operation of the central digital platform?

QUESTION 38: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

QUESTION 39: To what extent do you agree or disagree that the workaround procedure provides a viable alternative in the event of a failure in the central digital platform?

QUESTION 40: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so

## Summary of Responses

The majority of the responses to Question 37 were positive with 51% being either agree or strongly agree, a further 21% neither agreeing or disagreeing and 28% replying disagree or strongly disagree.

Responses to Question 39 were spread fairly evenly. 38% either agreed or strongly agreed, a further 31% neither agreed or disagreed, and 31% disagreed or strongly disagreed.

Most comments proposed various technical amendments to the Central Digital Platform regulations, in order to simplify the process and ensure operability. This included concerns over contracting authorities not having a viable way to publish notices on an alternative online system if the platform is down and certain conditions in the regulations are met. Several responses questioned the requirement for a 48-hour delay before meeting these conditions for scenarios such as directly awarding under urgency.

## Government Response

We have considered and in various cases adopted the helpful suggestions made. In addition to feedback from consultees, we have continually sought to find ways to refine and improve the SI to ensure all necessary provisions were both achievable and functional. Some of those adjustments include:

- We will amend the SI to remove the suggestion that confirmation of submission can be received without the notice actually being public.
- Guidance will clarify various alternative platform options in the event that the central platform is temporarily unavailable (such as local portals).
- Regarding concerns that waiting 48-hours to publish a notice on an alternative online system could cause delays to procurements being direct awarded under paragraph 13 of Schedule 5 (urgency), we have provided for a shortened time frame in this scenario.

The Cabinet Office is engaged with eProcurement systems providers to assist them in understanding the changes they will need to make to support the new noticing regime. This will enable eProcurement system providers to start work to align their systems to the new regime, test the publication of these new notices in *Find a Tender* and provide useful feedback to the development team.

Work continues to develop functionality to allow suppliers to submit their common data more efficiently and effectively when they bid for opportunities. Currently the Cabinet Office is working with suppliers, contracting authorities and e-procurement system providers, to understand their requirements

## Central Digital Platform: Supplier Information (4 Questions)

QUESTION 41: To what extent do you agree or disagree that the information required by the draft SI to be obtained via the central digital platform will save duplication and re-submission time by suppliers bidding for multiple public sector contracts?

QUESTION 42: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

QUESTION 43: To what extent do you agree or disagree that use of the Central Digital Platform: Supplier Information should be mandatory during the tendering period and that, until the end of the tendering period, contracting authorities may only use the registered core supplier information submitted to the platform?

QUESTION 44: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses to Question 41 were positive with 62% being either agree or strongly agree, a further 20% neither agreeing or disagreeing and 18% replying disagree or strongly disagree.

The majority of the responses to Question 43 were positive with 55% being either agree or strongly agree, a further 21% neither agreeing or disagreeing and 23% replying disagree or strongly disagree.

A number of responses questioned the operation of supplier information and mechanism of the platform. Whilst respondents saw the benefits of the approach, successful deliverability of this function was noted as being a significant challenge.

There were various practical concerns raised, such as:

- contracting authorities were concerned about having to rely on suppliers to keep their supplier information up to date
- concerns on the implementation of the approach to supplier information. How could contracting authorities ensure suppliers have registered on the platform and submitted their core information to the platform.

## Government Response

Analysis has concluded that, in line with the majority of responses, the draft regulations meet the policy objectives set out. We note the practical concerns raised and intend to elaborate in guidance, though further changes to the regulations should not be necessary.

Work continues to develop functionality of the platform to ensure it meets the required standards for implementation. This work involves close collaboration with contracting authorities, suppliers and eProcurement systems.

In respect of concerns raised over reliance on suppliers updating their information, the process is very similar to the current regime where contracting authorities are responsible for verifying supplier information they receive. The supplier will have to provide a declaration that the data they have submitted is up to date and correct. The supplier may replace and update information until the tender window closes. The core information does not change regularly between procurements. Procurement specific questions are covered in conditions of participation.

In relation to concerns from contracting authorities on ensuring a supplier completes its required action, we are reconsidering the drafting of regulation 6 in order to address the functionality concerns raised by respondents.

## Unique Identifiers

QUESTION 45: To what extent do you agree or disagree that the provisions on unique identifiers will enable tracking of procurement data?

QUESTION 46: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses were positive with 73% being either agree or strongly agree, a further 18% neither agreeing or disagreeing and 9% replying disagree or strongly disagree.

Respondents submitting written comments tended to raise practical matters where they would welcome further information.

## Government Response

We have noted the helpful comments raised and where relevant these points will be addressed in guidance. We also offer some reassurance on the following points raised.

In respect of concerns over suppliers submitting multiple identifiers, we can confirm our intention that the central digital platform will incorporate assurance processes for identifiers.

In respect of comments requesting clarity over the definition of 'person' in the draft SI, the notion of a 'person' is used throughout the Procurement Act as a more legal precise way of referring to any entity, whether it be a single person, corporation, public authority, supplier etc. Like much legislation, both the Act and these regulations rely on the concept of a "person" as defined in Schedule 1 to the Interpretation Act 1978.

## Transitional Provisions

QUESTION 47: To what extent do you agree or disagree with the approach to transitional arrangements set out in this consultation?

QUESTION 48: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses were positive with 73% being either agree or strongly agree, a further 16% neither agreeing or disagreeing and 11% replying disagree or strongly disagree.

Most of the comments sought clarity on whether call offs from frameworks and DPSs would continue to be made under the old rules if the original framework/DPS was procured under the old rules

Three contracting authorities were concerned that the length of the implementation period was too short and two responses questioned to what extent the eSenders will be ready for the change.

The remaining seven responses covered a range of issues from general support to questioning why the Scottish regulations were not included in the transitional arrangements

## Government Response

We note the helpful comments and the practical questions raised, and can confirm our intention to address these matters in guidance. We do not consider any further changes will be necessary for the transitional regulations.

The length of the implementation period was settled in earlier consultation stages, and overall contracting authorities are content with the length of time allocated. There is work underway with the eSenders, who have been consulted throughout the process, to ensure that they are all ready for when the Act goes live in October 2024.

In respect of comments on the approach to Scottish regulations, the Cabinet Office will work with the devolved administrations to ensure that any local guidance explains the policy position from their point of view, including Scotland.

## Defence

QUESTION 49: To what extent do you agree or disagree that the list of defence authorities in the draft SI accurately captures the organisations that should be included within the definition?

QUESTION 50: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

## Summary of Responses

The majority of the responses were neutral with 70% neither agreeing or disagreeing with this question. 25% were either agreeing or strongly agreeing with 5% replying disagree or strongly disagree.

Respondents who identified as engaging in defence and security contracts raised security concerns over publishing of notice requirements under the new regime.

Several responses questioned whether the definition should be broadened to include security elements of the Home Office, the Department for Transport and other relevant authorities.

## Government Response

In respect of comments regarding requirements for security and defence contracts, all authorities that fall within the scope of defence and security the rules outlined in the Procurement Act 2023 will apply. The national security exemption under section 94 is available to all contracting authorities and there is provision for information not to be published for national security reasons.

In respect of comments regarding the widening of the defence authorities definition, significant review of the definition of defence authorities was conducted when defining these groups of authorities. As such the Security Agencies are exempt from the Procurement Act 2023. It is not considered that other authorities such as Home Office satisfy the requirements of clause 7(6) as having functions wholly or mainly for the purposes of national security.

## **Appendix 1 - eSurvey respondents to Consultation Part 1**

University of Bristol  
Basildon Borough Council  
Royal Borough of Kensington and Chelsea  
Wandle Housing Association  
Outwood Grange Academies Trust  
Hereford and Worcester Fire Authority  
LJMU  
Dorset Council  
Marston Holdings Limited  
Spaces Taylored Ltd  
SAS Software Limited.  
Leeds City Council  
Clifford Chance  
Eakin Healthcare  
Northern Regional College  
The ExtraCare Charitable Trust  
Abbots Labs  
Brodgar Consulting Ltd  
West Yorkshire Fire and Rescue Service  
Bath & North East Somerset Council  
North Lincolnshire Council  
Public Sector Partnership Services Limited  
Risk Management Partners Ltd  
Extend LTD  
Barts Health NHS Trust  
Cheshire East COuncil  
Manchester Metropolitan University  
Nordic Global  
Staffordshire County Council  
Education Authority  
London Borough of Hounslow  
Construction Employers Federation  
Armagh City, Banbridge and Craigavon Borough Council  
Lincolnshire County Council  
North East Lincolnshire Council  
Open Contracting Partnership  
Procurement for Housing  
OCS One Complete Solution  
Trowers & Hamlins LLP  
Nuneaton and Bedworth Borough Council  
Stratford-on-Avon District Council  
Warwick District Council  
Merseyside Waste Disposal Authority  
Southern Health NHS Foundation Trust  
Barnsley Council  
Mid and West Wales Fire and Rescue Service  
Head2Toe Workwear  
AWE  
Gentoo Group  
Essex County Council  
Gloucestershire County Council  
Gateshead College  
London Borough of Enfield  
Belfast metropolitan College  
Futures Housing Group



Belfast City Council  
Hydroklear Services Ltd  
Anita UK LTD  
Lloyds Bank Foundation for England & Wales  
Runnymede Borough Council  
Local Government Association (LGA) England and Wales  
Dukefield Limited  
West Northamptonshire Council  
Bristol City Council  
McWilliams Associates  
West Yorkshire Combined Authority  
Blackpool Council  
Dorset & Wiltshire Fire and Rescue Service  
Prisoner Ombudsman NI  
NHS Shared Business Services  
NHS Cornwall and Isles of Scilly Integrated Care Board  
CPI (Crisis Prevention Institute)  
Derry City & Strabane District Council  
Panacea Applications Limited  
University of Portsmouth  
Buckinghamshire Council  
Anna Barclay Designs  
Social Enterprise NI  
British Healthcare Trades Association (BHTA)  
Womble Bond Dickinson (UK) LLP  
Academies Enterprise trust  
NASS - The National Association of Independent Schools and Non-Maintained Special Schools  
Sheffield Teaching Hospitals  
Saarstahl Rail  
Halton Borough Council  
Denbighshire County Council and Collaborative Procurement Service (Denbighshire and Flintshire)  
Crown Commercial Service  
The Business Services Association (BSA)  
NHS Devon ICB  
Blackburn with Darwen Borough Council  
APUC (Advanced Procurement for Universities and Colleges) Ltd [the centre of procurement expertise for, and jointly owned by all universities and colleges in Scotland]  
AECOM  
Cambridgeshire County Council  
ESPO  
Aspire Community Works Community Interest Company  
The Association of North East Councils trading as NEPO  
Torbay Council  
Attain Health Management Services Ltd  
Sheffield City Council  
Global Commercial Services Group Ltd  
Southampton City Council  
London Borough of Waltham Forest  
Refuge  
NHS Counter Fraud Authority  
Roche Diagnostics Limited  
My company  
Kirklees Council  
Nuclear Decommissioning Authority (NDA) submitting on behalf of NDA and its subsidiaries:  
International Nuclear Services Ltd and Direct Rail Services Ltd trading as Nuclear Transport

Solutions; and LLW Repository Limited (LLWR) and Radioactive Waste Management Limited (RWM) trading as Nuclear Waste Services; and Magnox Limited.  
Turner & Townsend Limited  
London Borough of Merton  
Bevan Brittan LLP  
Gowling WLG (UK) LLP  
NHS Confederation  
Kent Fire and Rescue Service  
UVDB  
NHS England  
NCVO (National Council of Voluntary Organisations)  
Derbyshire County Council  
Johnson & Johnson  
Cornwall Council  
Corserv Ltd  
Hertfordshire County Council  
Business Services Organisation  
Westminster City Council  
Aero Healthcare Ltd  
Social Enterprise UK  
Energia Group  
North Yorkshire Council  
Essex County Fire and Rescue Service  
Deloitte LLP  
Warwickshire County Council  
Anglian Water Services Limited  
Manchester City Council  
Bournemouth, Christchurch and Poole Council  
Cambridge City Council  
NWUPC Ltd  
GovData

## **Appendix 2 - eSurvey respondents to Consultation Part 2**

University of Bristol  
Southern Health NHS Foundation Trust  
Department for education  
Head2Toe Workwear  
East Suffolk Council  
Thames Valley Police  
Gentoo Group  
UK Parliament  
Hafod Housing Association Ltd  
Public Sector Partnership Services Limited  
Academies Enterprise Trust  
A.J. Northern Blitz Limited  
Sperrin Metal Products  
Anita UK Ltd  
Hydroklear Services Ltd  
Runnymede Borough Council  
West Northants Council  
doc2uk  
Royal Borough of Kensington and Chelsea  
Northern Ireland Housing Executive  
Gateshead College  
Healthcare Quality Improvement Partnership

The Havebury Housing Partnership  
Prisoner Ombudsman NI  
East Sussex County Council / Orbis Procurement  
CPI (Crisis Prevention Institute)  
Nuneaton and Bedworth Borough Council  
Niavac Limited  
British Healthcare Trades Association (BHTA)  
Outwood Grange Academies Trust  
Home Office  
Brodgar Consulting Ltd  
Aspire Community Works Community Interest Company  
Somerset Council  
North Lincolnshire Council  
South East Consortium  
Futures Housing Group  
Defra  
University of Central Lancashire  
Bristol City Council  
OCS One Complete Solution Limited  
Mid and West Wales Fire and Rescue Service  
Gloucestershire County Council  
Aero Healthcare Ltd  
British Specialist Nutrition Association  
Bournemouth Christchurch and Poole Council  
STAR Procurement  
AWE  
Exeter City Council  
Northern Ireland Assembly Commission  
Peterborough City Council  
Moat Homes Limited  
Surrey Heartlands ICB  
National Nuclear Laboratory  
Dorset & Wiltshire Fire and Rescue Service  
Swale Borough Council  
Essex County Council  
Buckinghamshire Council  
HM Land Registry  
Staffordshire County Council  
Ofgem  
UK SBS Ltd  
Counselling All Nations Services (CANS)  
Anchor  
NHS Cornwall and Isles of Scilly Integrated Care Board  
Virgin Media O2 Business  
South Cambridgeshire District Council  
Bromford Housing  
Lancashire County Council  
Cambridge City Council  
Lloyds Bank Foundation for England & Wales  
Trowers & Hamblins LLP  
North East Lincolnshire Council  
Cambridgeshire County Council  
Merseyside Waste Disposal Authority  
University of Bedfordshire  
Essity Uk Health Medical  
Open Contracting Partnership

Greater Manchester Combined Authorities, on behalf of the Association of Greater Manchester Authorities Collaborative Procurement Hub, which includes public sector bodies within Greater Manchester and Blackpool and Warrington councils.  
APUC (Advanced Procurement for Universities and Colleges)  
NHS England  
NHS SBS  
NHS London Procurement Partnership  
DAI  
Belfast City Council  
Orbis Procurement  
Social Enterprise NI  
Procurement for Housing  
SUPC  
University of Reading  
ESPO  
Wakefield Council  
Barnsley Metropolitan Borough Council  
Orbit Group  
North of England Commissioning  
Hammersmith and Fulham Council  
Hertfordshire County Council  
Hammersmith Council  
Local Government Association  
Nuclear Decommissioning Authority  
G15 Housing Associations. Clarion, Peabody, London & Quadrant, Southern, MTVH, Sanctuary, Midland Heart, Hyde, Network Homes, Riverside, A2 Dominion, Notting Hill Genesis, Sovereign  
NCVO (National Council of Voluntary Organisations)  
Bevan Brittan LLP  
Crown Commercial Service  
Northern Trains Limited, LNER, Transpennine Trains Ltd, & South Eastern Trains Ltd  
Wates Group  
Department for Education  
Rail Forum  
Kirklees Council  
Anglian Water Services Limited  
UVDB  
Cornwall Council  
The Association of North East Councils trading as the North East Procurement Organisation (NEPO)  
PA Consulting  
Torbay Council  
Energia Group  
The Nationwide Association of Fostering Providers  
Lincolnshire County Council  
Ministry of Defence  
Ministry of Justice  
University of Chester  
Wessex Water Services Limited  
arc21  
National Further Educational Procurement Advisory Group  
North Northamptonshire Council  
Southampton City Council  
Sport England  
Dukefield Procurement Limited  
Communities & Housing Investment Consortium  
Business Services Organisation - Procurement and Logistics Service  
Derry City & Strabane District Council

Warwickshire County Council  
Integrated Corporate Services, part of Department for Energy Security and Net Zero  
SSE plc  
PwC  
Business Services Association (BSA)  
Achilles Information Ltd  
Turner & Townsend Contract Services Limited  
North Yorkshire Council  
Westminster City Council  
Manchester City Council  
TFGM  
LHC Procurement Group  
PSAA  
Social Enterprise UK  
NHS Devon ICB  
Derbyshire County Council  
Kent fire and Rescue Service  
Surrey County Council  
London Borough of Merton  
Royal Borough of Kingston  
GovData