

*Draft Regulations laid before Parliament under section 272(6)(zzf) of the National Health Service Act 2006 (c. 41), for approval by resolution of each House of Parliament.*

---

D R A F T   S T A T U T O R Y   I N S T R U M E N T S

---

**2024 No. \*\*\*\***

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (Procurement, Slavery and Human  
Trafficking) Regulations 2024**

*Made* - - - -

*Coming into force* - -

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 12ZC and 272(7) and (8) of the National Health Service Act 2006(a).

A draft of this instrument has been laid before, and approved by, a resolution of each House of Parliament.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the National Health Service (Procurement, Slavery and Human Trafficking) Regulations 2024.

(2) They come into force on [commencement date].

(3) They extend to England and Wales, and apply to England.

**Interpretation**

2. In these Regulations—

“dynamic market” means arrangements established by a public body for the purpose of a public body awarding contracts by reference to suppliers’ participation in the arrangements, and “membership of a dynamic market” means participation in those arrangements;

“framework” is a contract between a public body and one or more suppliers that provides for the future award of contracts by a public body to the supplier or suppliers;

“modern slavery risk” in relation to a good or service means the risk that slavery and human trafficking takes place in relation to any person involved in the supply chain for that good or service;

---

(a) 2006 c. 41. Section 12ZC was inserted by section 81(2) of the Health and Care Act 2022 (c. 31).

“NHS England” means the body established by section 1H of the National Health Service Act 2006(a);

“procurement” means the award, entry into and management of a contract, and cognate expressions are to be understood accordingly;

“the Procurement Act” means the Procurement Act 2023(b);

“public body” means—

- (a) a public authority within the meaning given in section 2(2) of the Procurement Act,
- (b) a public undertaking within the meaning given in section 2(2) of the Procurement Act, or
- (c) a relevant authority within the meaning given in section 12ZB of the National Health Service Act 2006(c).

### **Application**

**3.—**(1) These Regulations apply to a public body procuring goods or services other than excluded goods and services for the purposes of the health service in England.

(2) The following goods and services are excluded goods and services for the purpose of these Regulations—

- (a) services provided pursuant to—
  - (i) a contract of employment or a worker’s contract, within the meaning of section 230 of the Employment Rights Act 1996(d), or
  - (ii) any other contract or arrangement between a public body and an individual for the remuneration or compensation of that individual where they are appointed to a public office by the public body, including as—
    - (aa) a non-executive director of a public authority, or
    - (bb) a member of a public inquiry;
- (b) an interest in, or right over, any land, buildings or part of a building.

### **Procurement: risk assessment**

**4.—**(1) A public body undertaking a procurement of any good or service for the purposes of the health service in England must first assess the extent of the modern slavery risk in relation to the good or service in question.

(2) The risk assessment required by paragraph (1) must be completed—

- (a) where a competitive tendering procedure is being followed, before the public body publishes a notice for the purpose of inviting suppliers to participate in a competitive tendering procedure;
- (b) in any other case, unless paragraph (3) applies, before the contract is awarded to any supplier.

(3) A public body need not carry out a risk assessment under paragraph (1)—

- 
- (a) 2006 c. 41. Section 1H was inserted by section 9(1) of the Health and Social Care Act 2012 (c. 7), and amended by section 37 of, and paragraph 1 of Schedule 1 and paragraph 87 of Schedule 4 to, the Health and Care Act 2022.
  - (b) 2023 c. 54.
  - (c) Section 12ZB was inserted by section 79 of the Health and Care Act 2022 (c. 31).
  - (d) 1996 c. 18. Section 230 has been amended by section 15(1) of the Public Interest Disclosure Act 1998 (c. 23), section 149(3) of the Small Business, Enterprise and Employment Act 2015 (c. 26) and paragraph 41 of Schedule 7 to the Children and Families Act 2014 (c. 6).

- (a) where a contract is awarded in accordance with a framework, provided that—
    - (i) a risk assessment has been conducted in relation to the framework as required by regulation 5, and
    - (ii) that risk assessment is still an appropriate reflection of the extent of the modern slavery risk in relation to the good or service in question;
  - (b) where a contract is awarded by reference to a dynamic market, provided that—
    - (i) a risk assessment has been conducted in relation to the dynamic market as required by regulation 6, and
    - (ii) that risk assessment is still an appropriate reflection of the extent of the modern slavery risk in relation to the good or service in question.
- (4) Where a public body has previously carried out a risk assessment and that risk assessment is no longer appropriate, the public body may not rely on that risk assessment for the purposes of paragraph (3).
- (5) In this regulation, “competitive tendering procedure” means—
- (a) a “competitive tendering procedure” as defined in section 20 of the Procurement Act, or
  - (b) a “Competitive Process” as defined in regulation 2(1) of the Health Care Services (Provider Selector Regime) Regulations 2023(a).

**Framework: risk assessment**

5.—(1) A public body proposing to enter into a framework for the supply of any good or service for the purposes of the health service in England must first assess the extent of the modern slavery risk in relation to any goods or services which may be supplied under a contract awarded in accordance with the framework.

(2) The risk assessment required by paragraph (1) must be completed before the public body advertises the opportunity to participate in the framework.

**Dynamic market: risk assessment**

6.—(1) A public body proposing to establish a dynamic market must first assess the extent of the modern slavery risk in relation to any goods or services which may be supplied under a contract awarded to a supplier by reference to the supplier’s membership of the dynamic market.

(2) The risk assessment required by paragraph (1) must be completed before the public body establishes the dynamic market.

**Requirement to take reasonable steps**

7.—(1) When a public body has carried out the risk assessment required under regulation 4, 5 or 6, the public body must take the reasonable steps required to address and where possible eliminate the modern slavery risk identified in that assessment—

- (a) when designing the procurement procedure for the purposes of—
  - (i) awarding the contract or framework, or
  - (ii) establishing the dynamic market;
- (b) when setting—
  - (i) the terms of the contract or framework, or

---

(a) S.I. 2023/1348.

- (ii) the conditions for membership of the dynamic market;
- (c) in managing—
  - (i) any contract awarded as a result of the procurement, including contracts awarded in accordance with a framework, or awarded by reference to the dynamic market,
  - (ii) the framework, or
  - (iii) the dynamic market,
 for the duration of the term of the contract, framework, or dynamic market, as applicable.
- (2) The reasonable steps taken in response to the requirement in paragraph (1) must be—
  - (a) proportionate to the level of the assessed risk, and
  - (b) relevant to the contract, the framework or to the dynamic market, as the case may be.

**Reasonable steps: procurement process**

- 8.—(1) Reasonable steps for the purposes of regulation 7(1)(a) and (b) include—
- (a) the application of the exclusion grounds in relation to a supplier, including at least the grounds set out in paragraphs 1 to 3 of Schedule 7 to the Procurement Act;
  - (b) setting—
    - (i) the conditions of participation in the procurement process,
    - (ii) the criteria against which tenders may be assessed for the purpose of awarding a contract or framework, or admitting a supplier to membership of a dynamic market;
  - (c) providing for—
    - (i) appropriate terms in any contract awarded as a result of the procurement or any framework, and
    - (ii) appropriate conditions for membership of the dynamic market,
 to monitor and address the modern slavery risk.
- (2) Appropriate terms for the purposes of paragraph (1)(c) include requirements for the supplier—
- (a) to undertake due diligence in relation to any sub-contractor or other participant in the supply chain which the supplier intends to use;
  - (b) to include specified terms requiring measures to address the modern slavery risk in any contract entered into by the supplier with a sub-contractor or other participant in the supply chain to fulfill the supplier’s obligations under the contract awarded to the supplier;
  - (c) to report to the public body the names and contact details for any such sub-contractor or other participant in the supply chain;
  - (d) to keep records enabling the supply chain of the goods or services in question to be traced;
  - (e) to make those records available to the public body, or any person authorised by the public body on request;
  - (f) to take any necessary corrective action or reasonable steps to remedy identified incidences of modern slavery;
  - (g) to co-operate with any investigation into an offence referred to in paragraphs 19 to 26 of Schedule 6 to the Procurement Act, or a potential breach of the terms of the contract.
- (3) Any conditions of participation selected under paragraph (1)(b)(i), or criteria selected under paragraph (1)(b)(ii) must comply with—
- (a) sections 22 or 23 respectively of the Procurement Act, and

- (b) regulation 19 of, and Schedule 16 to, the Health Care Services (Provider Selection Regime) Regulations 2023,

so far as those provisions apply.

- (4) In this regulation—

“condition of participation” means a condition that a supplier must satisfy if the supplier is to be awarded the contract;

“exclusion ground” means—

- (a) a mandatory exclusion ground set out in Schedule 6 to the Procurement Act, or
- (b) a discretionary exclusion ground set out in Schedule 7 to the Procurement Act.

### **Reasonable steps: contract management**

- 9.—(1) Reasonable steps for the purposes of regulation 7(1)(c) and regulation 10(4) include—

- (a) monitoring the supplier’s compliance with—
  - (i) the terms of the contract or framework, or
  - (ii) the conditions of membership of the dynamic market;
- (b) ensuring that there is a response to any instance of slavery and human trafficking which is brought to the public body’s attention;
- (c) reassessing the extent of the modern slavery risk;
- (d) taking action to address any new risks which are identified by the reassessment carried out under sub-paragraph (c) or regulation 10.

(2) If a public body chooses to reassess the extent of the modern slavery risk under paragraph (1)(c) in relation to a framework or a dynamic market, it must comply with the requirements in regulation 10.

### **Re-assessment of risk**

- 10.—(1) The public body must regularly re-assess the extent of the modern slavery risk in relation to—

- (a) any framework the public body has entered into, and
- (b) any dynamic market the public body has established.

(2) In deciding how often to carry out a reassessment under paragraph (1), the public body must have regard to—

- (a) the subject matter of the framework or dynamic market, and
- (b) the proportionality of such an assessment.

(3) The public body must carry out a reassessment under paragraph (1) as soon as practicable if—

- (a) there is reason to suspect that the most recent risk assessment is no longer valid,
- (b) there has been a significant change in the framework or the dynamic market to which the risk assessment relates, or
- (c) any steps taken in relation to the management of the framework or dynamic market show it to be necessary.

(4) When a public body has re-assessed the modern slavery risk under this regulation, the public body must review the steps it is taking to address that risk to ensure that it is taking reasonable

steps to address and where possible eliminate the extent of the modern slavery risk identified by the reassessment.

### **Guidance**

- 11.** A public body must have regard to any relevant guidance issued by NHS England—
- (a) in making a risk assessment as required by regulations 4, 5, 6 and 10, and
  - (b) in taking any reasonable steps to address modern slavery risk, as required by regulations 7, 8, 9 and 10(4).

Date *Name*  
Secretary of State  
Department of Health and Social Care

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations require public bodies in England to undertake an assessment of the risk that modern slavery or human trafficking is taking place in relation to the supply of any good or service which is being procured for the health service in England (see regulations 4, 5 and 6), and which is not excluded from the scope of the Regulations by regulation 3(2).

When a public body has carried out that assessment, the public body is required to take reasonable steps to address the risk identified by the assessment, and if possible eliminate it (regulation 7). The Regulations identify reasonable steps in relation to the procurement (regulation 8), and in relation to the management of the contract (regulation 9). They also require public bodies to undertake a re-assessment of the risk in certain circumstances (see regulation 10) and to have regard to any relevant guidance issued by NHS England (regulation 11).

A full impact assessment of the effect that this draft instrument will have on the public sector is available from [www.legislation.gov.uk](http://www.legislation.gov.uk) and from the Department of Health and Social Care, 39 Victoria Street, London SW1H 0EU.