



Department
for Education

Interactions between the Procurement Act 2023 and the Children and Families Act 2014

**Guidance for local authorities on how the
Procurement Act 2023 interacts with the
Children and Families Act 2014**

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Summary

This publication provides non-statutory guidance from the Department for Education. It has been produced to help local authorities to understand how the Procurement Act 2023 (“**PA 2023**”) interacts with the Children and Families Act 2014 (“**CFA 2014**”) and sets out the circumstances in which the PA 2023 may or may not apply in respect of agreements for the provision of education services. It also highlights provisions that may be relevant to local authorities where a contract is subject to the PA 2023.

Who this publication is for

This guidance is for:

- local authorities
- all education providers

Main points

The [PA 2023](#) governs the way public sector procurement must be carried out for procurements that are commenced after the PA 2023 is scheduled to go live on 24 February 2025. The majority of education provision is either maintained by local authorities or through a funding agreement with the Secretary of State for Education, and providers are reimbursed for the costs of providing public education. The agreements which establish those arrangements are generally not public contracts for the purposes of the PA 2023 and will not be in scope of the PA 2023. There are however exceptions to note, in particular when local authorities contract with independent specialist providers to make placements.

The new regime introduced by the PA 2023 will apply to agreements made between a local authority and an education provider where the agreement in question amounts to a public contract as defined in section 3 of the PA 2023, namely being “any contract for the supply, for pecuniary interest, of goods, services or work to a contracting authority”. A local authority will be a contracting authority for the purposes of the PA 2023 if it enters into such an agreement.

Contracts for education provision which may be in scope of the Procurement Act 2023

Local authorities will need to consider carefully whether a contract for education provision amounts to a public contract under the PA 2023. The PA 2023 does not exempt providers based on their designation, character or tax status. It is the nature of the agreement that will determine whether or not the PA 2023 will apply. Therefore, any contract under which an education provider is providing services to a local authority for pecuniary interest (i.e. for profit or some other financial benefit) is likely to be in scope of the PA 2023. For example, the PA 2023 may apply where a local authority enters into an agreement with the following providers for the provision of placements for named individual children or young people for education services:

- independent schools (including independent special schools)
- non-maintained special schools
- special post-16 institutions
- post-16 independent training providers
- unregistered alternative provision ("**unregistered AP**")

Contracts for education provision not in scope of the Procurement Act 2023

Education provision will not be in scope of the PA 2023 where the agreement between the local authority and the education provider does not amount to a contract for the provision of services for pecuniary interest. This might be because the agreement is exclusively entered into in performance of the parties' public functions and statutory obligations. For this to apply, it will be important that the education provider does not receive pecuniary interest (or other financial benefit) beyond any funding provided to it for the purpose of performing its public function. See the guidance on [covered procurement](#).

Whether or not the agreement is in scope of the PA 2023 will ultimately depend on the nature of the contractual relationship. For example, the PA 2023 may not apply where a local authority enters into an agreement for the provision of education services with the following providers, because they are part of the public sector and prohibited from charging for the education provided:

- schools maintained by a local authority
- academies (including free schools and 16-19 Academies)
- general further education colleges

Placements made under the Children and Families Act 2014

The [CFA 2014](#) and [SEND Regulations 2014](#) set out the statutory requirements and process whereby a local authority determines which education institution to name on a child's or young person's Education, Health and Care (EHC) plan. The local authority must secure the special educational provision it specifies in an EHC plan. The [SEND Code of Practice](#) sets out statutory guidance on the SEND system in England.

The CFA 2014 may require special educational provision to be delivered by a particular supplier and require that a local authority names a particular educational institution in a child's or young person's EHC plan. The agreement between the local authority and provider over the delivery of this special educational provision may be in scope of the PA 2023. The local authority would need to consider whether the contract will be a light touch contract and whether a direct award could be made under the PA 2023.

Light touch contracts and contract value thresholds

Section 9 of the PA 2023 defines light touch contracts as contracts wholly or mainly for the supply of services as listed by Common Procurement Vocabulary (CPV) code in Schedule 1 to the [Procurement Regulations 2024](#). A number of CPVs relating to education services are included in this list and may be relevant depending on the particular services to be provided.

Contracts with an estimated total value below the relevant threshold (contained in Schedule 1 to the PA 2023) are only subject to a small number of the duties and provisions set out in the PA 2023. The threshold for light touch contracts is £663,540 until at least 31 December 2025.

See the guidance on [valuation of contracts](#) and [light touch contracts](#).

Below-threshold contracts

If the contract value is below £663,540, the contract is a below-threshold contract. Where contracts are below the financial threshold, they are not “public contracts”. This is because they have an estimated value of less than the threshold amount for the type of contract. The contracting authority should refer to Part 6 of the PA 2023 which sets out the rules that apply to the procurement of below-threshold contracts.

See the guidance on [below-threshold contracts](#).

Above-threshold contracts

If the contract is above £663,540, the contract is an above-threshold contract. Where contracts are above the financial threshold, they are "public contracts". This is because they have an estimated value of more than the threshold amount for the type of contract. The contracting authority should refer to the PA 2023 which sets out the rules that apply to the procurement of above-threshold contracts.

Direct award under the Procurement Act 2023

If a direct award justification applies (as set out in section 41 of and Schedule 5 to the PA 2023), a local authority could award a public contract directly to a supplier without carrying out a competitive tendering procedure. This may be particularly relevant where educational placements are made under other statutory arrangements that may require a specific supplier to provide the service.

See the guidance on [direct awards](#).

A single supplier is required

The local authority may determine that a specific school, college or educational provider is required. This may be the case when a specific education provider is named on an EHC plan, the individual or carer has expressed a preference, or the nature is such that only one supplier can provide the service. In this circumstance, one of the direct award justifications under section 41 of the PA 2023 may apply. See paragraphs 5-6 (single suppliers) and 15-17 (user choice contracts) of schedule 5 for more information.

A single supplier is not required

The local authority may determine that a single supplier is not required and there is a range of options. In this circumstance, a light touch contract should be awarded using a competitive tendering procedure or an appropriate existing framework or dynamic market. Section 23(6) of the PA 2023 allows the local authority to set the criteria to determine the most suitable provider, which could include:

- the ability to meet the needs of the child or young person
- the cost of the placement
- its location or transport time
- any views expressed by the child's parents or the young person and the local authority in the exercise of its statutory functions

Mixed procurement: education, health and social care provision

Where children and young people have complex needs, the provision they require can be specified through an EHC plan and may involve elements of health and/or social care as well as educational provision. The local authority is required to secure the special educational provision specified in an EHC plan and the responsible commissioning body (Integrated Care Board) is required to arrange the health care provision specified. If these services were to be provided under one contract, it may be the case that one element of those services is subject to the light touch rules, while another is subject to the general rules regime. In these circumstances, a local authority may be able to rely on section 10 of the PA 2023 and effectively treat the whole contract as being a special regime contract (and therefore apply the relevant special regime thresholds to the entire contract). This provision is available only where the services cannot reasonably be provided under separate contracts. This may apply where education settings also offer residential or boarding services.

There may also be circumstances where a contract makes provision for both education and relevant health care services that fall within the scope of the Health Care Services (Provider Selection Regime) Regulations 2023 (“**PSR**”). Where the relevant health care services form the main subject-matter of the procurement (as determined by the highest value service element under the contract) and could not reasonably be supplied under a separate contract, then the PSR will apply instead of the PA 2023. The PSR applies only to relevant authorities (which includes local authorities in England) and relevant health care services, the details of which are set out in the PSR.

See the guidance on [mixed procurement](#).

Placements in alternative provision

Section 19 of the [Education Act 1996](#) requires local authorities to make arrangements for the provision of suitable education (at school or otherwise) for any child of compulsory school age who, by reason of illness, exclusion from school or otherwise, might not otherwise receive suitable education. The Department has published statutory guidance on [alternative provision](#) (“AP”).

In the majority of cases the local authority will identify a maintained school or academy (most commonly a pupil referral unit or AP academy) which must operate on a not-for-profit basis. The resulting placement will not be subject to the PA 2023 because it is not a public contract for services for a “pecuniary interest” (as detailed above).

In some cases, local authorities will arrange AP through independent AP providers. Many local authorities commission AP services to support a number of schools. When doing so, the local authority will need to consider the estimated value of the contract (including VAT) to establish whether it falls below the relevant threshold in Schedule 1 to the PA 2023 or is subject to the light touch rules. Most AP placements should be temporary, and it is therefore anticipated that, particularly where the light touch rules apply, the contract value would fall below the relevant threshold for the supply of services.



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