

## Scope and remit of the Procurement Review Unit's (PRU) - Debarment Review Service (DRS)

### What is the service?

The purpose of the Debarment Review Service (DRS) is to protect public procurement from suppliers that pose risk, by carrying out a centralised process of considering suppliers for possible debarment.

The DRS is one of the services provided by the Procurement Review Unit (PRU) which was established following the passing of the Procurement Act 2023 (the "Act").

The Act enables the DRS to undertake investigations of suppliers (on behalf of a Minister of the Crown) to establish whether they are an **excluded or excludable\*** supplier for the purpose of subsequently considering whether the supplier should be added to the debarment list. The decision to add a supplier to the debarment list can only be taken by a Minister of the Crown.

To understand more about debarment under the Act, please refer to the [Procurement Act guidance on debarment](#). You may also wish to refer to the [policy guidance on exclusions](#), which gives information relating to the exclusion grounds.

The DRS may investigate suppliers in relation to all exclusion grounds, except the two national security-related exclusion grounds (para 35 of Schedule 6 and para 14 of Schedule 7). The National Security Unit for Procurement (NSUP) has the remit of investigating suppliers in relation to the two national security-related grounds. Referrals should be made to the appropriate team using the forms below.

\*A supplier is an **excluded** supplier if any of the **mandatory exclusion grounds**, outlined in Schedule 6 of the Act, apply and the circumstances giving rise to the relevant exclusion ground are continuing or are likely to occur again.

A supplier is an **excludable** supplier if any of the **discretionary exclusion grounds**, outlined in Schedule 7 of the Act, apply and the circumstances giving rise to the relevant exclusion ground are continuing or are likely to occur again.

## What do contracting authorities need to know?

Contracting authorities should familiarise themselves with the debarment policy guidance. The following are reminders of some key points, but are not a substitute for reference to the [published guidance](#).

**Debarment list** - Contracting authorities must check the debarment list before:

1. allowing any supplier to participate in or bid for a covered procurement; and
2. at any other point in the procurement procedure that requires a decision about which suppliers continue in the procedure (e.g. interim assessment stages in a multi stage competitive flexible procedure); and
3. before deciding to award a public contract to a supplier.

Contracting authorities must check whether the supplier's name, or the names of any associated persons or intended sub-contractors, are on the debarment list. Contracting authorities should also check whether the names of any connected persons of the supplier are on the debarment list, as this may be grounds for considering taking exclusion action against the supplier on the basis of the contracting authority's own assessment.

**Discretionary grounds** - Where a supplier is on the debarment list as a result of a discretionary ground, it is still possible for a contracting authority to permit the supplier to bid for and be awarded a public contract. Contracting authorities should use caution and only do so after careful review, having considered any relevant investigation report relating to the debarment list entry, and undertaken appropriate additional due diligence. Contracting authorities should only proceed if they have good reasons for doing so. In making decisions on exclusions, contracting authorities may wish to review relevant debarment decision reports.

It should be noted that the DRS is not an advisory unit and is unable to assist contracting authorities that are undertaking supplier due diligence.

**Mandatory grounds** - When a supplier is on the debarment list in relation to a mandatory exclusion ground, a contracting authority must not allow the supplier to bid in a competitive flexible procedure or be awarded a public contract in any competitive tendering procedure or by way of direct award, and must disregard any tender submitted by them. The following exceptions apply:

- a. procurements by private utilities (who should treat the supplier as an excludable supplier);
- b. where a supplier is on the debarment list on national security grounds and the contract in question does not fall within the description of contract included in the debarment list entry; or
- c. procurements by direct award where there is an overriding public interest in awarding the contract to that supplier. These include certain defence and security reasons and in certain cases where there is an extreme and unavoidable urgency.

**Excluding a supplier that is not on the list** - If a supplier (or an associated person or intended sub-contractor) is not included on the debarment list, contracting authorities may

only exclude that supplier from procurements or disregard their tenders if they are satisfied, on their own assessment, that the supplier is an excluded or excludable supplier. The [exclusions policy guidance](#) provides more information to help with this assessment.

If the contracting authority is aware that a supplier is being investigated for debarment, it should not be assumed that the supplier is an excluded or excludable supplier and normal due diligence is still required by the contracting authority.

**Assisting debarment** - Contracting authorities may be required to provide information and assistance during an investigation of a supplier for potential debarment. As part of an investigation, contracting authorities may be asked to supply relevant information about suppliers they have contracts with or have had contracts with in the past, or where they hold information about suppliers in the exercise of their functions. Unlike suppliers, contracting authorities are under a legal duty to comply with such requests.

## What do suppliers need to know?

**Co-operating with an investigation** - Suppliers do not have a legal duty to comply with requests for information or other assistance, however, failure to do so could result in the supplier being added to the debarment list by virtue of the mandatory exclusion ground: failure to co-operate with an investigation.

**Interim Relief** - Suppliers will have eight working days beginning with the day on which notification of the decision to add them to the debarment list is given ('the debarment standstill period'), to apply to the court for a temporary suspension of the decision.

**Appeal** - UK and treaty state suppliers may appeal certain debarment-related decisions on the grounds that, in making the decision, the Minister made a material mistake of law. A supplier must commence an appeal within 30 days of knowing (or from when it should have known) of the Minister's decision.

**Application for removal** - At any time, a supplier can apply to a Minister of the Crown for removal or revision of their entry on the debarment list. Such an application need only be considered where there has been a material change of circumstances or significant new information.

## Debarment process

### Acceptance criteria for debarment cases

Suppliers may be brought to the attention of DRS for potential debarment investigation through any means, including: notification by a contracting authority of exclusion action taken against a supplier during a procurement (via gov.uk), any other referral through gov.uk, an investigation by the Welsh Ministers or a Northern Ireland department, or through information otherwise available. All are considered to be referrals for the purposes of DRS' processes. DRS has a discretion, rather than a duty, to investigate referrals.

Under the Procurement Act 2023, the government has introduced measures to protect the UK from national security threats to the UK public sector supply chain. One of these measures allows members of the public to submit referrals (for consideration) to debar suppliers who may pose a threat to UK national security.

It is essential that referrals are made responsibly and only when there is credible evidence or serious concern regarding a supplier's threat to the national security of the UK. Unfounded referrals could divert resources and attention away from genuine threats, potentially compromising the effectiveness of the system. We urge those interested in submitting a referral to consider the evidence available and the seriousness of their concerns before submitting a referral.

Once a referral is received by the DRS, the details provided will be considered against the scope of the Act and the service. If it is within scope, the referral will be assessed against relevant threshold criteria. Only cases which meet the threshold will be investigated, and if necessary, cases will be prioritised.

Circumstances outside of scope for debarment - Although the Act states that in certain circumstances outside of those listed in Schedule 6, a supplier must be treated as an excluded supplier, these are not grounds for debarment and, if any of these circumstances apply, the supplier must simply be excluded from that particular procurement.

The circumstances are:

- a. where a supplier's participation in preliminary market engagement has put the supplier at an unavoidable unfair advantage (see section 16 (Preliminary market engagement));
- b. where the supplier has acted improperly in a procurement or has failed to provide information about its connected or associated persons (see section 30 Excluding suppliers for improper behaviour); or
- c. where a conflict of interest has put a supplier at an unavoidable unfair advantage (see section 82 Conflicts of interest: duty to mitigate).

## **What happens during an investigation**

Suppliers that are to be investigated will be notified in advance, including which exclusion ground(s) they are being investigated for and when/how they can make representations. During investigations, suppliers will be able to make representations which will be factored into the final recommendation made to the Minister.

An investigation needs to answer certain questions:

1. Does the supplier meet the definition of an excluded or excludable supplier, i.e.
  - a. does an exclusion ground apply; and
  - b. are the circumstances that gave rise to the exclusion ground continuing or likely to occur again.
2. If so, should the supplier be added to the debarment list.

For each new case, the DRS will work with teams across the public sector to ensure these questions are answered during an investigation. This will include a review of any self-cleaning evidence, which will help the DRS to assess whether the circumstances that gave rise to an exclusion ground are continuing or likely to occur again.

If a supplier is found to be an excluded or excludable supplier, the DRS will take into account all the considerations relevant to the case, which may include the potential consequences of adding, or not adding, the supplier to the debarment list, in order to make an appropriate recommendation to the minister.

**What happens once the decision has been taken** - The supplier will be notified of the decision and (after the debarment standstill period of 8 working days) will be added to the debarment list (if appropriate) and the debarment investigation report will be published.

The debarment list can be found [here](#).

The findings of an investigation, including the recommendation to add, or not to add, the supplier to the debarment list will be captured in a debarment investigation report, unless it is necessary to withhold information to:

- a. safeguard national security; and/or
- b. protect sensitive commercial information where there is an overriding public interest in it being withheld.

## **How to contact the service or raise a referral**

There are five referral forms:

**To raise a referral for consideration for a debarment investigation on the basis of an exclusion ground in Schedules 6 and 7 of the Procurement Act (except on the grounds of national security):** [Raise a referral for debarment with the Debarment Review Service](#)

**For Contracting Authorities providing notification that a supplier has been excluded from a procurement procedure, [Procurement Act, section 59 (1)(a) and(2)]:** [Notify the Debarment Review Service that a supplier has been excluded, replaced or removed from a public sector procurement](#)

**For national security debarment investigation [Procurement Act, Section 29]** [Raise a referral for a national security debarment investigation](#)

**For contracting authorities to provide notification that a supplier has been excluded or terminated from a procurement procedure, due to being named on the debarment list on mandatory national security grounds [Procurement Act, Schedule 6]** [Notification of the exclusion of a supplier from a procurement or the intention to terminate a public contract with a supplier named on the debarment list on mandatory national security grounds for public contracts of the same particular description](#)

**For contracting authorities to request Ministerial agreement on whether a supplier should be excluded or a contract terminated on national security grounds [Procurement Act, Chapter 2 para 29 (b)]** [Referral to a Minister of the Crown of intention to exclude a supplier or terminate a public contract with a supplier on grounds of national security](#)

The unit will confirm receipt by an automatic response.

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