

EXPLANATORY MEMORANDUM TO THE NATIONAL PROCUREMENT POLICY STATEMENT

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Georgia Gould MP, Parliamentary Secretary at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Edward Green, Deputy Director for International and Reform, at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Callum Gray at the Cabinet Office Telephone: 07548802245 or email: Callum.Gray@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the statement

4. Overview of the statement

What does the statement do?

- 4.1 The National Procurement Policy Statement (“NPPS”) sets out the Government’s strategic priorities for public procurement. In accordance with section 13(9) of the Procurement Act 2023 (“the Act”), contracting authorities must have regard to the priorities set out in the NPPS when undertaking their procurement activities.

Where does the statement extend to, and apply?

- 4.2 The extent of this statement (that is, the jurisdiction(s) which the statement forms part of) is England and Wales, Northern Ireland and Scotland.
- 4.3 The territorial application of this statement (that is, where the statement produces a practical effect) is that it applies in:
 - England, other than in respect of procurement carried out under a devolved Welsh procurement arrangement (an arrangement which is managed by a devolved Welsh authority), a transferred Northern Ireland procurement arrangement (an arrangement which is managed by a transferred Northern Ireland authority) or a devolved Scottish procurement arrangement (an arrangement which is managed by a devolved Scottish authority)¹;
 - Wales, to contracting authorities which are not devolved Welsh authorities;

¹ “devolved Welsh procurement arrangement”, “transferred Northern Ireland procurement arrangement” and “devolved Scottish procurement arrangement” are defined in section 114 of the Act, and while managed by devolved or transferred authorities, contracting authorities from other jurisdictions, including reserved authorities, are able to participate in those arrangements and carry out procurements under them. “devolved Welsh authority” is defined in section 111 of the Act, “transferred Northern Ireland authority” is defined in section 112 of the Act and “devolved Scottish authority” is defined in section 2 of the Act.

- Wales, to contracting authorities which are devolved Welsh authorities in relation to procurement carried out under a reserved procurement arrangement (an arrangement which is managed by a reserved body);
- Northern Ireland, to contracting authorities which are not transferred Northern Ireland authorities;
- Northern Ireland, to contracting authorities which are transferred Northern Ireland authorities in relation to procurement carried out under a reserved procurement arrangement;
- Scotland, to contracting authorities which are not devolved Scottish authorities;
- Scotland, to contracting authorities which are devolved Scottish authorities in relation to procurement carried out under a reserved procurement arrangement.

5. Policy Context

What is being done and why?

- 5.1 Section 13 of the Act allows the Government to publish an NPPS which sets out their strategic priorities for public procurement. Contracting authorities are required to have regard to the priorities within it in the exercise of their procurement functions. This means that they must consider whether the procurement can contribute to achieving one or more of the policy objectives stated in the NPPS in a manner that is appropriate, proportionate and relevant; and take steps to address this where it can.

What was the previous policy, how is this different?

- 5.2 The first NPPS was released by the previous Government as a non-statutory Procurement Policy Note 05/21 in June 2021 and required, as a matter of policy, that contracting authorities take account of its specified priorities.
- 5.3 An NPPS was published and laid in Parliament under section 13 of the Act in May 2024 by the previous Government and was due to come into effect on 28 October 2024. The Government withdrew this Statement on 12 September 2024 and delayed the commencement of the Act to allow time for a new NPPS to be developed that clearly set out its priorities for public procurement in support of the Government's missions.
- 5.4 This new NPPS ensures that public money spent on public procurement supports delivery of the Government's missions, delivers economic growth, supports small businesses, champions innovation, and creates good jobs and opportunities across the country

6. Legislative and Legal Context

How has the law changed?

- 6.1 There have been no changes to the law. Section 13 of the Act allows a Minister of the Crown to publish an NPPS setting out the Government's strategic priorities in relation to procurement to which contracting authorities must have regard, and this NPPS sets out those priorities. Section 13 also sets out that before publishing an NPPS, the Minister must carry out such consultation as they 'consider appropriate', make necessary changes, and lay the NPPS before Parliament.

Why was this approach taken to change the law?

- 6.2 The Government decided to delay the commencement of the Act to allow time for a new NPPS to be developed that clearly set out the Government's priorities for public procurement in support of the missions.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The consultation requirements for designating the NPPS set out at section 13(3)(a) and (b) of the Act have been satisfied.
- 7.2 The Cabinet Office undertook a comprehensive programme of stakeholder engagement to support the development of the new NPPS. This included an online survey, which received 436 responses, and a series of roundtable discussions with industry leaders and public sector and civil society representatives. This consultation informed the final version of the NPPS.
- 7.3 The Cabinet Office shared a draft of the NPPS with the devolved administrations. The NPPS however does not apply to devolved Welsh authorities, devolved Scottish authorities or transferred Northern Ireland authorities, except as set out in paragraph 4.3 above.

8. Applicable Guidance

- 8.1 The Cabinet Office has also issued guidance on the NPPS² as part of its guidance materials to aid contracting authorities to prepare for the new procurement regime.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full impact assessment has not been prepared for this specific statement. The impact on the public sector in respect of the new public procurement regime is in relation to the Act rather than the NPPS.
- 9.2 An impact assessment in relation to the Act and associated reforms was published in May 2022 and can be found at <https://bills.parliament.uk/publications/46429/documents/1767>.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 Section 13(7) sets out that a Minister of the Crown must keep the NPPS under review. Section 13(8) allows the Minister to amend or replace the NPPS where necessary.

² NPPS guidance is available at <https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-plan-phase/guidance-national-procurement-policy-statement-html>.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 The NPPS is not a statutory instrument. As such it does not come within the provisions of section 122(6) of the Act whereby an instrument is subject to annulment in pursuance of a resolution of either House of Parliament (to which a 40-day annulment period applies by virtue of section 5 of the Statutory Instruments Act 1946). Accordingly, section 13(4) of the Act sets out a specific time period for scrutiny, that if Parliament resolves not to approve the NPPS before the end of a defined 40-day period, it must be withdrawn.
- 11.2 The NPPS is a policy statement that, in accordance with section 13(3) of the Act, can only be published after it has been laid before Parliament. As such, the 21-day laying rule that statutory instruments that are subject to negative resolution are not normally brought into force within 21 days of laying in Parliament, is not applicable. The Statement may come into effect immediately upon being laid or on a date specified within the Statement itself.
- 11.3 To avoid any confusion as to the Statement's applicability to procurements being carried out under the Act it was important that the NPPS came into effect at the same time as the new regime. The statutory requirement to carry out consultation of the draft Statement meant it was not possible to lay the Statement any earlier. Given this consultation, the Government is of the view that the fact there is 13 days from laying the Statement until it comes into force will not negatively impact contracting authorities. In addition, Parliament is still provided with "the 40-day period", via section 13 of the Act, within which to scrutinise the Statement.

12. European Convention on Human Rights

- 12.1 As the NPPS is not subject to the affirmative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

- 13.1 This statement is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").