



Government
Commercial
Agency

Debarment Review Service: Protocol

September 2026

Update Schedule

This document will be reviewed at least annually or whenever business requirements, legislation or regulations change, or as a result of lessons learned. The protocol is formally approved by the Director of Markets, Sourcing and Suppliers. Any Interim changes remain party to this approval process or equivalent sign off.

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Definitions

Case Management System (“CMS”) - the DRS’s records management tool. It will hold details of all cases, investigated or not. It will assign a unique number to each and serve as the official record of the case and, if progressed, investigation.

Central Digital Platform (“CDP”) - is where all UK contracting authorities publish information relating to procurement and suppliers to input their commonly used information.

Commercial Policy Team - responsible for the UK Government’s policies on public procurement, both internationally and domestically, including Procurement Reform Implementation.

Debarment Review Service (“DRS”) - A service which was established following the passing of the Procurement Act 2023 (“**PA23**”). DRS manages the debarment regime, a distinct role from the investigation team. It includes any SCS1 and above that may be involved in approving or making decisions relating to the investigation. DRS personnel will not usually form part of an investigation team.

Devolved Governments (“DGs”) - devolved Welsh authorities and transferred Northern Ireland authorities.

In-scope - means there is a reasonable possibility that one of the grounds outlined in the Procurement Act in Schedule 6 or 7 applies to the supplier and the time of the event appears to be within the parameters of the Act.

Investigation Lead - an individual who is responsible for directly leading a debarment investigation and manages the investigation team.

Investigation team - personnel from the Government Commercial Agency or the Government Commercial Organisation who have been assigned to carry out an individual debarment investigation.

Markets, Sourcing and Suppliers (“MSS”) - a directorate within the Government Commercial Agency that, alongside housing the Debarment Review Service, manages the government’s relationships with its strategic suppliers. The directorate’s work includes: supplier relationship management, the Crown Representative program, market and sector intelligence and systemic risk and sector performance.

Out-of-scope - means the event in question does not constitute a ground for exclusion or is not otherwise within scope of the Act.

Self-cleaning - this term is commonly used to describe the actions a supplier has, or will take, to remedy or prevent the recurrence of an exclusion ground which was applicable to them.

Self-cleaning evidence - documentation to evidence the actions a supplier has, or will take, to remedy or prevent the recurrence of an exclusion ground which was applicable to them.

Self-cleaning representations - representations the supplier might make which can be about anything but are most likely to be about whether an exclusion ground applies. For example, this might involve the correction of factual inaccuracies.

Significantly impacted contracting authorities - contracting authorities that regard the supplier as critical for providing goods, works or services for them. These contracting authorities will only be contacted where it is necessary and proportionate to gather information and insight from them in order to inform our recommendation. It is also assumed that contracting authorities hold supplier related data when the supplier is of critical importance to operations.

Subject Matter Expert (“SMEx”) - personnel from a public body that is considered to have specialised knowledge on the topic the exclusion ground relates to.

Supplier - an organisation or an individual that provides goods, services or works.

The Minister - for the purposes of the debarment protocol, references to the Minister are to the nominated deciding Minister: Parliamentary Secretary for the Cabinet Office. However, in extraordinary circumstances the case may, prior to an investigation commencing, be escalated to the Chancellor of the Duchy of Lancaster (“CDL”) to be the decision-maker and in this instance, the reference to the Minister will mean CDL.

Threshold for investigation - the DRS has agreed criteria to help indicate when an investigation is appropriate (see content of [Test 2](#)). The minimum assessment against these criteria, as well as consideration of other compelling reasons associated with a case, are referred to as the threshold for investigation. This threshold may vary over time, depending on capacity.

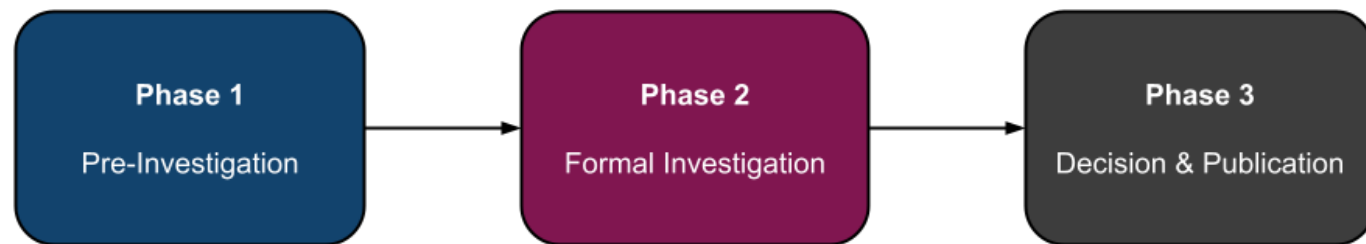
Contents

1. Preface.....	6
2. Debarment Operational Protocol Overview.....	7
3. Phase 1: Pre-investigation.....	8
Overview.....	8
Pre-Investigation Phase Summary Flowchart.....	9
Receipt of a referral and assessment by the DRS.....	10
Triage Overview.....	11
Test 1: CAN the supplier be investigated for debarment?.....	11
Test 2: SHOULD the supplier be investigated for debarment?.....	12
Test 3: WHEN should the supplier be investigated?.....	14
Recommendation to investigate and investigation preparatory steps.....	15
Advance notification for investigation resource.....	16
4. Phase 2: Formal Investigation.....	17
Overview.....	17
Formal Investigation Phase Summary Flowchart.....	18
Notify the supplier that a debarment investigation has commenced.....	19
Notify relevant stakeholders that a debarment investigation has commenced.....	20
The investigation team stand up.....	21
Supplier response to formal notice of investigation.....	21
Liaise with appropriate stakeholders that the investigation indicates have information on whether the supplier is excluded or excludable.....	22
Determine whether an exclusion ground applies.....	22
Consideration of self-cleaning evidence.....	22
Self-cleaning process.....	23
Debarment assessment - relevant factors.....	25
Conclusion.....	26
Complete draft investigation findings report.....	26
Share draft investigation findings case summary report at external senior case meeting... 27	
Ministerial submission - to seek initial ministerial view in regards to a debarment decision 27	
Consult with the DGs before entering a supplier's name on the debarment list.....	29
Ministerial submission.....	29
5. Phase 3: Decision & Publication.....	30
Overview.....	30
Decision & Publication Phase Summary Flowchart.....	31
Ministerial decision & consequential actions.....	32
Ministerial decision - debarment.....	33
Debarment standstill period.....	33
Interim relief.....	33
Supplier is added to the debarment list.....	34
Supplier Appeal (where applicable).....	34
Monitoring period (where required).....	35
Application for removal (where applicable).....	35

1. Preface

- 1.1. This guidance document is published to provide contracting authorities, suppliers and interested parties with a clear, detailed overview of the operational processes the Debarment Review Service (DRS) employs when exercising, or considering the exercise of, its powers under the Procurement Act 2023 (PA23) to conduct debarment investigations.
- 1.2. This protocol has been prepared for publication by redacting personal data, internal administrative details and legally privileged information for ease of reading and to ensure compliance with privacy requirements.
- 1.3. This guidance details the journey of a debarment referral, from its initial receipt and triage through to the potential addition of a supplier to the debarment list, and outlines subsequent activities, including the supplier's right to appeal. As this is an operational protocol, it is structured as a flexible guide, acknowledging the need to adapt to the unique circumstances of each case rather than representing a rigid, inflexible procedure.
- 1.4. This document is concerned exclusively with the non-national security exclusion grounds outlined in PA23. It does not cover how contracting authorities should apply their own procurement level exclusion decisions nor does it cover debarment investigations related to national security, these are dealt with by the National Security Unit for Procurement (NSUP).
- 1.5. All workflow and documentation related to debarment referrals will be recorded and managed on the Case Management System (CMS), which serves as the single point of entry and exit for all referrals.
- 1.6. This guidance should be read alongside both the [Exclusions Guidance](#) and [Debarment Guidance](#).

2. Debarment Operational Protocol Overview

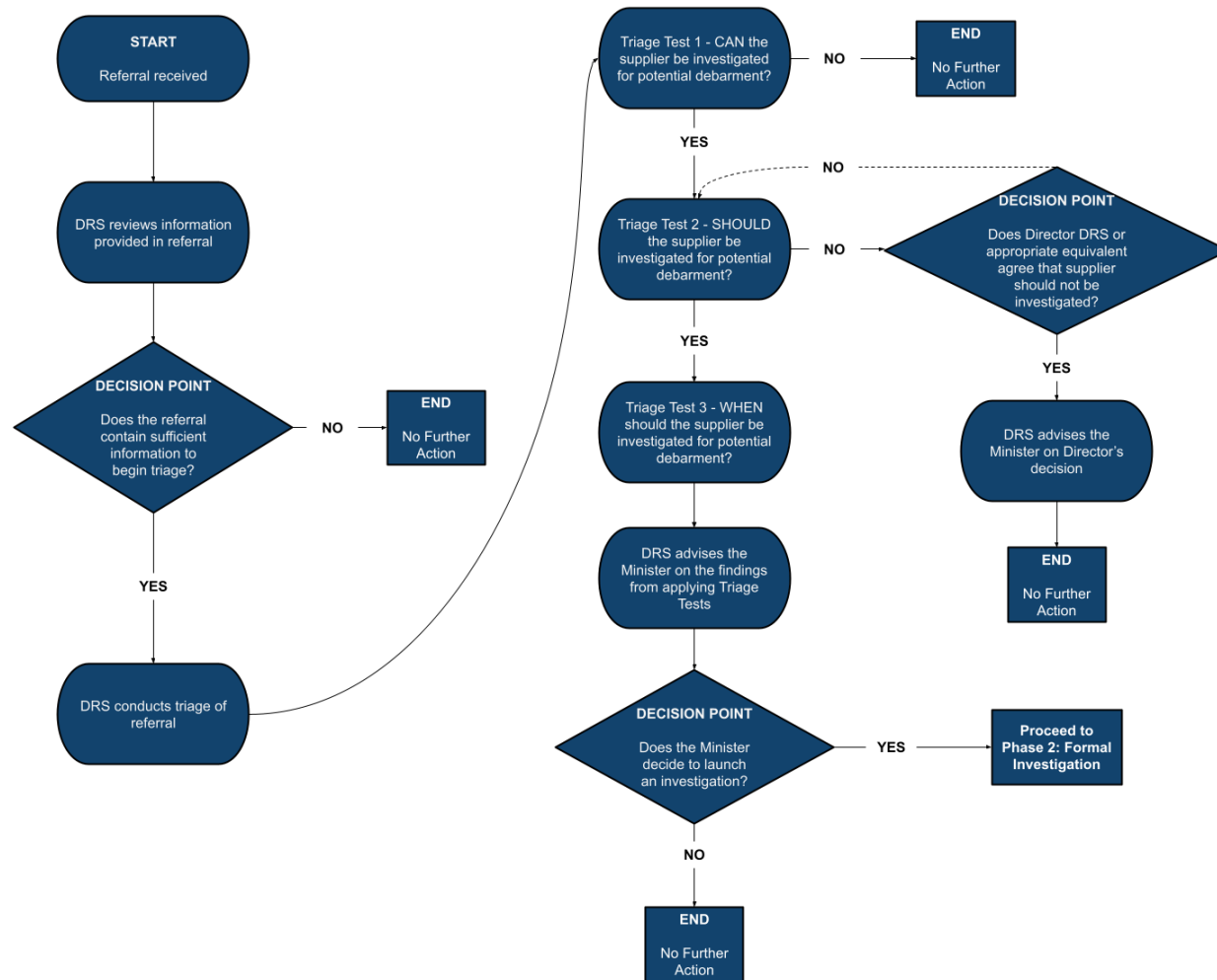


3. Phase 1: Pre-investigation

Overview

- 3.1. Phase 1: Pre-investigation allows the DRS to manage the referral process and undertake the triage process to establish if a debarment investigation is appropriate based on the evidence provided from a referral.
- 3.2. During Phase 1, it is anticipated that there will be no contact with the supplier as these steps are conducted prior to the initiation of a formal investigation (Phase 2) and any contact will be on an exceptional basis.
- 3.3. Where the referral relates to a [cross government strategic supplier](#), the DRS and the wider Markets, Sourcing and Suppliers (“MSS”) team will work together whilst ensuring a clear separation of roles during a debarment investigation; other MSS teams will usually provide resource for the investigation team while the DRS will provide the role of oversight and support to ensure consistency and compliance with established debarment processes, advising on the appropriate procedures and mechanisms. Consideration will need to be given to any on-going engagement and/or monitoring of the strategic supplier that other MSS teams may be undertaking, and mitigations put in place, as required, to ensure the probity of the debarment investigation.
- 3.4. Prior to the debarment triage commencing, conflicts of interest associated with DRS and any supporting personnel, will be reviewed, recorded and stored, and any appropriate mitigations put in place.

Pre-Investigation Phase Summary Flowchart



Receipt of a referral and assessment by the DRS

- 3.5. In most circumstances the DRS will have received a referral from the online forms¹ on gov.uk. An acknowledgement confirming receipt of the referral via these online forms will be automated on submission. These forms are the primary method for submitting referrals and stakeholders are encouraged to use this site as the default process.
- 3.6. Other anticipated sources of referrals may include, but are not limited to: a notification of exclusion action from contracting authorities per section 59 of the Act; direct communication from a central government team; a parliamentary question, ministerial direction, or a 'self referral' as a result of media interest or pro-active market monitoring on the Central Digital Platform (CDP) etc. A Devolved Government (DG) may also notify the DRS that it has carried out a debarment investigation².
- 3.7. In circumstances such as those listed in para 3.6, the DRS will endeavour to gather and consolidate the relevant information, particularly where minimal information has been received. If sufficient information isn't available in order to carry out the triage phase, the referral will be rejected and no further action will be taken.
- 3.8. The DRS will also have reviewed the CMS to determine if the supplier in question (or a related supplier) has previously been, or is currently, the subject of a referral or debarment investigation, either for the same issue or unrelated, to determine the best approach.
- 3.9. If it is confirmed that the same supplier is the subject of the referral, DRS will determine the best course of action, on a case-by-case basis, which could include:
 - 3.9.1. Duplication of case (i.e. the same exclusion ground applies on the basis of the same circumstances), with or without additional information;
 - 3.9.2. Timing of new referral (e.g. a different exclusion ground, or different circumstances apply) allows future or on-going investigation to incorporate the referral;
 - 3.9.3. Timing of new referral means any on-going investigation must not expand to incorporate the other exclusion grounds/circumstances. This would usually only apply where the investigation has progressed past the self-cleaning assessment ([Consideration of self-cleaning evidence](#));

¹ Either form (1) "[raise a referral for debarment with the DRS](#)" and/or form (2) "[notify the DRS that a supplier has been excluded, replaced or removed from a public sector procurement](#)" as per section 59 of the PA23, requirement for contracting authorities when conducting a covered procurement.

² If they do so, they must provide the Minister with all information relevant to their findings as per section 61(2)(b) of the PA23. A referral of this nature is not subject to the full protocol, it is anticipated that paragraph 4.57 onwards would apply (excluding [Ministerial submission - to seek initial ministerial view in regards to a debarment decision](#)).

- 3.9.4. New/existing referral relates to national security: DRS and NSUP will need to determine the best course of action and priority of cases.

Triage Overview

- 3.10. The DRS will complete three Tests to determine if a supplier meets the requirements to initiate a debarment investigation.
- 3.11. These Tests are conducted prior to the start of a formal investigation, thus there is no contact with the supplier throughout triage.
- 3.12. There may, on occasion, be a need for stakeholder and ministerial engagement and/or media handling at the triage stage, due to the nature of the referral. This will usually be undertaken by DRS.
- 3.13. The Triage process consists of the following Tests:
- 3.13.1. **CAN** the supplier be investigated for debarment?
 - 3.13.2. **SHOULD** the supplier be investigated for debarment?
 - 3.13.3. **WHEN** should the supplier be investigated for debarment?

Test 1: CAN the supplier be investigated for debarment?

- 3.14. The DRS will undertake a preliminary assessment of the information provided in the referral to determine if the supplier is and the circumstances in question are within scope for investigation, in accordance with the PA23 by taking into account; the exclusion ground(s), time parameters of PA23, and appropriate entity.
- 3.15. To fulfil the requirements of Test 1, the referral will need to indicate that at least one of the exclusion grounds in PA23 applies to the supplier. DRS must consider:
- 3.15.1. **Mandatory/Discretionary ground(s) for exclusion** - Is there a reasonable possibility that one of the exclusion grounds in Schedule 6 or 7 of PA23 apply? Referral information received will need to be relevant to the applicable exclusion ground(s) in question to determine whether that/those exclusion ground(s) could apply, however, information at this stage is likely to be limited. Depending on the circumstances, the DRS may request additional information from the referrer in order to be able to undertake its assessment.
 - 3.15.2. **Timeframe** - The relevant time limits vary depending on the specific exclusion ground being applied. Generally, to assess whether the event (as defined in PA23 Schedule 6, paragraph 45 and repeated in Schedule 7, paragraph 16) is within the time parameters of PA23, DRS will need to establish when the event occurred (including whether it was before or after the commencement of the Act). In some cases, DRS will also need to assess when the UK Government

became aware of the event and when a reasonably well-informed decision maker in its position would have been aware of the event.

- 3.15.3. **Identification of supplier subject to any investigation** - DRS will need to establish which supplier or suppliers would be subject to investigation. Consideration will need to be given to any connected persons (as defined by paragraph 45 of Schedule 6 of PA23), and organisational structure, e.g. if the supplier identified in the referral is a subsidiary company, it may be appropriate that the parent company is also investigated. DRS will also identify any international considerations for example, if the supplier is based in the UK but ultimately owned by an overseas supplier or government to help inform whether engagement with Foreign, Commonwealth and Development Office (FCDO) or other relevant stakeholders may be appropriate.
- 3.16. To establish the supplier (or suppliers) that should be subject to any approved investigation, the DRS will use specific software tools such as Sayari, and the Companies House website to enable an assessment of the corporate 'family' structure (which may include identifying company directors and other suppliers that individual is also influential over).
- 3.17. DRS may also submit requests to the Companies House Intelligence Team, for more in depth information on a supplier. However, this should only be used if the DRS considers it necessary in the circumstances.
- 3.18. If the outcome is that the referral is in-scope³ of PA23 the decision will be recorded on the CMS. It is at this stage the referral is considered a "case" for the purposes of the debarment protocol.
- 3.19. If it is determined that the referral is out-of-scope⁴ of PA23, the decision will be recorded on the CMS and no further action will be taken, unless the DRS considers it appropriate to update the relevant stakeholders. E.g. If it is determined that the referral in question might be better suited to another authority, such as the National Crime Agency or beneficial to bring to the attention of another central commercial team.

Test 2: SHOULD the supplier be investigated for debarment?

- 3.20. DRS will undertake Test 2 which will determine whether it is appropriate to recommend a debarment investigation. Although a case may be in-scope of PA23 based on the outcome of Test 1 above, it does not necessarily follow that an investigation is appropriate. There are multiple steps to Test 2.

³ There is a reasonable possibility that one of the grounds outlined in the Procurement Act in Schedule 6 or 7 applies to the supplier and the time of the event appears to be within the parameters of PA23.

⁴ The event in question does not constitute a ground for exclusion or is not otherwise within scope of PA23.

Consideration of compelling reasons NOT to investigate

- 3.21. In consultation with Commercial Policy and other MSS teams (as applicable), DRS will consider if the nature of the case indicates that a debarment investigation is not appropriate.
- 3.22. Compelling reasons not to investigate could include that the referral does not relate to a supplier, external factors such as current ongoing/future legal actions which could be prejudiced by a debarment investigation, another authority being better placed to take or consider appropriate action, immunity granted under a leniency regime, six months or less remaining of the time limit associated with the applicable exclusion ground or any other commercial or public interests' reasons (for example, on-going significant negotiations; acquisitions and mergers).
- 3.23. If DRS considers that there are compelling reasons not to investigate, the decision not to investigate will be taken by the Director with responsibility for the DRS. Consideration should be given to the content of [Recommendation to investigate and investigation preparatory steps](#) at this stage, as, for example, it may be appropriate to hold a triage recommendation meeting, even though the decision is not at ministerial level.
- 3.24. As part of the recommendation to the Director with responsibility for the DRS, DRS will take a view as to whether the decision not to investigate may be contentious.
- 3.25. If the Director with responsibility for the DRS deems the decision to be contentious, for any reason, they will advise that the decision is escalated to the Minister. See the content of [Recommendation to investigate and investigation preparatory steps](#).
- 3.26. If the decision is not to investigate, the CMS is updated and no further action will be taken.

Application of Risk Criteria

- 3.27. In the absence of compelling reasons not to investigate, DRS must assess whether the case is HIGH, MEDIUM or LOW risk against each of the criteria in the Risk Assessment Framework, using the information known at this time. In exceptional circumstances the DRS may need to approach Other Government Departments (OGDs) to be able to effectively apply the criteria.
 - 3.27.1.1. The primary information sources to enable completion of the assessment are CaSIE, Contracts Finder and the supplier's information in the public domain.
 - 3.27.1.2. DRS may also use information from central commercial teams (e.g. the major contracts portfolio) as required.
 - 3.27.1.3. In exceptional circumstances the DRS may need to consult OGDs.

- 3.28. For a case to go forward to investigation it must at least meet the threshold for investigation. The current threshold is that at least one criterion is assessed as HIGH risk for the case.
- 3.29. However, if the case falls below threshold there is a final step to Test 2, to ensure that any unforeseen or unusual circumstances associated with the case can be taken into account:
- 3.29.1. **Compelling reasons to investigate** - in consultation with Commercial Policy and other MSS teams (as applicable), DRS will consider if the nature of the case indicates that a debarment investigation is appropriate, on an exceptional basis.
 - 3.29.2. Compelling reasons to investigate could include commercial or public interest considerations that are not captured by the risk criteria.
 - 3.29.3. DRS may also take into account any notifications it has received from contracting authorities, that the supplier has been excluded from procurements.
- 3.30. If the threshold for investigation is met, or there are other compelling reasons to proceed with an investigation on an exceptional basis, DRS will recommend that the supplier is subject to investigation, in accordance with the content of [Recommendation to investigate and investigation preparatory steps](#). The policy intent is that all cases meeting these criteria will be investigated, but ultimately the decision sits with the Minister.
- 3.31. If the case does not meet the threshold or have compelling reasons to investigate, the decision to not investigate will be taken by the Director with responsibility for the DRS. Consideration should be given to the content of [Recommendation to investigate and investigation preparatory steps](#) at this stage, as, for example, it may be appropriate to hold a triage recommendation meeting, even though the decision is not at ministerial level.
- 3.32. As part of the recommendation to the Director with responsibility for the DRS, DRS will take a view as to whether the decision not to investigate may be contentious.
- 3.33. If the Director with responsibility for the DRS deems the decision to be contentious, for any reason, they will advise that the decision is escalated to the Minister and in accordance with the content of [Recommendation to investigate and investigation preparatory steps](#).

Test 3: WHEN should the supplier be investigated?

- 3.34. DRS should give an indication of when an investigation is likely to commence, as part of the submission to the Minister, considering the PA23 timescales and current demand.

- 3.35. It will consider a relative priority for cases, if required. It will be guided by the principles outlined below, which consider the circumstances of the case and the outcome of Test 2, but ultimately, DRS has discretion to prioritise cases as it deems appropriate, in agreement with the Minister.
- 3.35.1. **Impact on national priorities:** Highest priority are those cases that at least met the threshold for investigation and the assessment against criterion 3 (circumstances of the case has led to an impact on national priorities) is either HIGH or MEDIUM.
 - 3.35.2. **A case that exceeds the threshold for investigation:** A case that exceeds the threshold is higher priority than a case that has only met the threshold.
 - 3.35.3. **Compelling reasons:** Cases that fell short of the threshold but have compelling reasons to investigate associated with it, are the lowest priority.
 - 3.35.4. DRS will complete all cases in the highest priority group before it proceeds to the lower priority groups.
 - 3.35.5. DRS will not pause an on-going investigation to accommodate a new case, even if that new case is assigned a higher priority.
- 3.36. The decision to investigate ultimately sits with the Minister, who may override the DRS's proposed prioritisation.

Recommendation to investigate and investigation preparatory steps

- 3.37. Prior to the submission of advice to the Minister, DRS will ensure that conflicts of interest are considered in relation to a) senior approving personnel that could influence the advice and b) the Minister responsible for making the decision.
- 3.38. DRS will consider if there are any extraordinary reasons why the decision to investigate and future decisions in relation to the case, should be escalated to the CDL and engage with the Ministers' private office, accordingly.
- 3.39. DRS will draft a submission to the Minister setting out any recommendation to investigate.
- 3.40. DRS will also submit regular information notes (where applicable) to the Minister in relation to decisions that have been made to **not** investigate a supplier including advice, to keep the Minister informed.
- 3.41. To support approval of the advice and if deemed necessary, DRS may convene a triage recommendation meeting where it will present its proposed recommendation to senior leadership and discuss any risks associated with the case.

- 3.42. The triage recommendation meeting may be called at any time prior to submission of the advice to the Minister. The ultimate decision on the recommendation and whether it goes to the Minister sits with the Director with responsibility for the DRS.

Advance notification for investigation resource

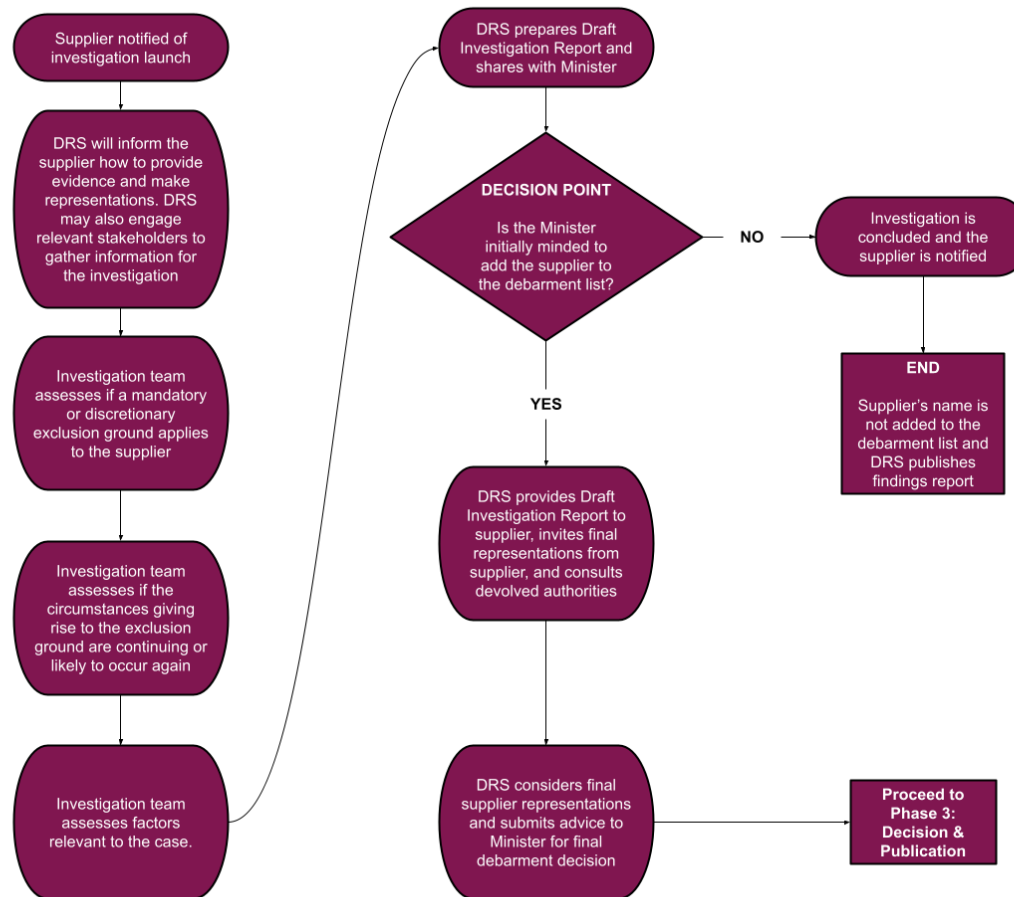
- 3.43. DRS may alert the appropriate Subject Matter Experts (SMEx) that the investigation may require their support and establish their availability, consider any conflicts of interest and undertake any other planning required.

4. Phase 2: Formal Investigation

Overview

- 4.1. Following completion of Phase 1 and approval to investigate, Phase 2 (Formal Investigation) will commence. All debarment investigations (excluding national security) will work to this DRS protocol.
- 4.2. An investigation team has been stood up and a lead investigator assigned to the case.
- 4.3. A supplier is an excluded or excludable supplier if:
 - 4.3.1. A mandatory exclusion, in accordance with section 57(1) of the PA23, or a discretionary exclusion in accordance with section 57(2) of the PA23, applies to the supplier. This may include by reference to a connected person depending on the description of the particular exclusion grounds.
 - 4.3.2. the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again.
- 4.4. The investigation team must test section 57(1) and section 57(2) of the PA23 to determine if a supplier is excluded/excludable by undertaking the investigation and assessment of evidence, supported by DRS. As per PA23, both of these tests must be met in order for a supplier to be added to the debarment list.
- 4.5. The main elements of Phase 2, and which constitutes the core of the debarment investigation are:
 - 4.5.1. consideration of self-cleaning evidence and representations;
 - 4.5.2. consideration of relevant factors to determine whether the supplier should be added to the debarment list.
- 4.6. Self-cleaning evidence allows suppliers to demonstrate that they have taken corrective actions to address issues that might otherwise lead to the circumstances giving rise to the application of the exclusion ground to continue or are likely to occur again.
- 4.7. Assessment of relevant factors is the assessment of additional considerations (over and above the supplier being excluded/excludable) to inform the recommendation to the Minister as to whether the supplier should be added to the debarment list.

Formal Investigation Phase Summary Flowchart



Notify the supplier that a debarment investigation has commenced

- 4.8. PA23 requires the supplier to be notified that an investigation has launched⁵. The formal notice will need to clearly identify any information being requested from suppliers at this early stage. DRS or the lead investigator⁶ will lead this activity, depending on availability and complexity.
- 4.9. The formal notice should be addressed to a sufficiently senior position within the organisation (the work in Phase 1, to establish the corporate structure should have identified an appropriate position/individual).
- 4.10. The notice **must** contain the following information:
- 4.10.1. The relevant exclusion ground(s) in respect of which the investigation is being conducted⁷;
 - 4.10.2. How and when the supplier may make representations to the appropriate authority⁸;
 - 4.10.3. Any other information specified in regulations made under section 95 of the PA23⁹
- 4.11. The formal notice **may**:
- 4.11.1. Request such relevant documents from the supplier as may reasonably be required for the purposes of the investigation (e.g., financial information, or relevant emails/communications), specifying the form/manner of docs and the deadline by which they should be provided¹⁰;
 - 4.11.2. Request the supplier gives such other assistance in connection with the investigation as is reasonable in the circumstances and specifying the deadline by which it should be provided¹¹;
 - 4.11.3. If the formal notice includes either 4.11.1 or 4.11.2, then it **must** also set out the potential consequences for the supplier of non-compliance with such requests, including making clear that failing to comply with any requests under 4.11.1 and 4.11.2 above is itself potentially a ground for mandatory exclusion¹²;

⁵ As required by section 60(3) of PA23.

⁶ The lead investigator may be drawn from DRS.

⁷ As required by section 60(3)(a) of PA23.

⁸ As required by section 60(3)(b) of PA23.

⁹ As required by section 60(3)(c) of PA23. There are currently no regulations relevant to this obligation, nor are there any planned.

¹⁰ As required by section 60(6)(a) of PA23.

¹¹ As required by section 60(6)(b) of PA23.

¹² As required by section 60(7) of PA23. The consequences being referred to is the supplier being added to the debarment list on a mandatory basis, by virtue of the failure to cooperate with an investigation exclusion ground. This would only apply if the supplier failed to comply with a notice

- 4.11.4. Set out a high-level summary as to why the supplier is being investigated for debarment; and/or
- 4.11.5. Set out next steps.

Notify relevant stakeholders that a debarment investigation has commenced

- 4.12. Only once the supplier has been notified, DRS will notify certain stakeholders of the investigation, on a need-to-know basis, for their awareness and to help prepare them for any assistance required at later stages of the protocol:
 - 4.12.1. The Welsh Government;
 - 4.12.2. The Northern Ireland Executive;
 - 4.12.3. FCDO if the case includes an international element.
- 4.13. The notification will include the supplier's name, address, exclusion ground and any other details particularly relevant to the stakeholder, that are currently known by DRS.
- 4.14. At this stage DRS may request information from the DGs, relating to the potential impact adding the supplier to the debarment list could have on public procurement under their jurisdiction.
- 4.15. DRS will also consider whether any significantly impacted contracting authorities (as indicated by information available) or any other relevant stakeholders should be notified at this stage. As a guiding principle, engagement with significantly impacted contracting authorities will take place when it is necessary and proportionate¹³ but the timing and nature of the engagement will likely differ for each case.
- 4.16. The objective of any engagement will be to gather additional information and insight, in order to effectively complete the investigation and ultimately, inform the recommendation to the Minister regarding the case. It could include requests to provide any evidence that should be assessed, exploring the contracting authority's dependency on the supplier, which contracts it would look to terminate if the supplier is added to the debarment list and any mitigations the contracting authority could implement.
- 4.17. If consulted, relevant stakeholders/departments and/or significantly impacted contracting authorities will be given the opportunity to:
 - 4.17.1. provide further evidence
 - 4.17.2. provide any other data/information that may be relevant.

under section 60(6) to the CO's satisfaction and the Minister considers the failure sufficiently serious to warrant mandatory exclusion.

¹³ In accordance with section 60(4) of the PA23

The investigation team stand up

- 4.18. The investigation team will conduct the investigation, primarily, by reviewing, assessing and documenting the evidence (i.e. self-cleaning) and other information provided throughout the investigation.
- 4.19. The DRS will act as a gateway for recommendations going forward to senior personnel and Ministers and certain actions or decisions, as well as providing general guidance and oversight, as required.
- 4.20. Depending on the exclusion ground(s) that applies (and subject to availability) there may be a SMEx¹⁴ available, who has knowledge and expertise in relation to the topic of the exclusion ground (e.g. fraud). They may be consulted by the investigation team in relation to the case, their key responsibilities are¹⁵:
 - 4.20.1. To assist the lead investigator with the formulation of their proposed recommendation by advising the investigation team on a particular specialist or technical matter within their expertise, relating to the exclusion ground and/or the supplier's self-cleaning evidence and representations;
 - 4.20.2. reviewing pertinent self-cleaning evidence and supporting the investigation team with the self-cleaning assessment at [Consideration of self-cleaning evidence](#).
- 4.21. DRS will advise the investigation lead if there is an SMEx available, relevant to the case.

Supplier response to formal notice of investigation

- 4.22. As a result of the supplier being informed that they are being investigated, it is expected that the supplier will provide a response. This could include the requested documentation and information in the form of the supplier's self-cleaning, and/or representations.
- 4.23. Throughout the investigation, meetings will only be held with the supplier where it is deemed necessary (as agreed by the Director with responsibility for the DRS or above).
- 4.24. If the supplier's initial response so requires, the investigation lead may (subject to agreement) set up an initial meeting with supplier representatives.
- 4.25. To facilitate engagement and co-operation, and manage relations with senior supplier staff, it may also be necessary for DRS and/or the lead investigator to correspond

¹⁴SMEx's have been identified for applicable exclusion grounds.

¹⁵ The role of an SMEx has been detailed further in 'ways of working' documents with each appropriate stakeholder.

and engage with the Government Chief Commercial Officer (GCCO), on a case-by-case basis.

Liaise with appropriate stakeholders that the investigation indicates have information on whether the supplier is excluded or excludable

- 4.26. From engagement with the supplier and/or a referring body/person, it may be discovered that other entities¹⁶ have direct, relevant information in relation to the supplier being excluded or excludable.
- 4.27. The lead investigator may deem it appropriate to consult these other entities and gather further information, if appropriate, to inform whether or not the supplier is excluded/excludable.
- 4.28. This may also include consulting other external stakeholders with particular expertise depending on the case.

Determine whether an exclusion ground applies

- 4.29. At this step the investigation is focused on the first part of the excluded/excludable supplier test, i.e. that a mandatory or discretionary exclusion ground(s) applies to the supplier.
- 4.30. The investigation team must assess any representations provided by a supplier to support the determination as to whether or not a mandatory or discretionary exclusion ground(s) applies to the supplier or their connected persons.
- 4.31. By this stage, the investigation team should have gathered sufficient information from various sources to determine whether or not the exclusion ground is applicable.
- 4.32. The investigation lead will confer with DRS to confirm if one or more grounds apply. The outcome will be recorded on CMS and the investigation will proceed to [Consideration of self-cleaning evidence](#).
- 4.33. If the outcome of this step is that no grounds are found to apply, the supplier is not excluded or excludable, the finding report will need to be drafted in accordance with the content of [Debarment assessment - relevant factors](#) and a submission will be issued to the Minister to advise accordingly.
- 4.34. Following the Minister's agreement, the supplier will be notified in accordance with the content of [Ministerial decision & consequential actions](#), the report published and the case will be closed and CMS updated.

Consideration of self-cleaning evidence

- 4.35. Having **confirmed** that an exclusion ground applies, the investigation team must assess the supplier's self-cleaning evidence to determine if the circumstances giving

¹⁶ includes regulatory, investigatory, professional bodies or other suppliers (connected persons).

rise to the application of the exclusion ground are continuing or likely to occur again and therefore, whether the supplier should be considered for addition to the debarment list.

- 4.36. Cooperation and willingness from the supplier are particularly crucial to this stage of the investigation, as the team may need to request additional documentation/assistance from the supplier over and above that already provided.
- 4.37. The supplier is not required to provide documentation or assistance, however they are likely to consider that doing so is in their best interests. Failure to comply with such a request in accordance with section 60(7), may result in application, in accordance with paragraph 43 of Schedule 6, of the failure to cooperate with an investigation exclusion ground and ultimately could result in the supplier being put on the debarment list on a mandatory basis for such failure.
- 4.38. During this step, the investigation team will also need to consider if a period of monitoring post the debarment decision could be necessary (or was included as part of the supplier's self-cleaning evidence) and engage with the appropriate department/team, as necessary, who will carry out that monitoring of the supplier.

Self-cleaning process

- 4.39. The lead investigator will nominate appropriate members of the team to individually review the self-cleaning evidence provided by the supplier before coming together to share findings. The lead investigator will also need to consider if it is appropriate that a SMEx (where available/applicable) review some or all of the information. The DRS will advise if there is a mechanism for requesting assistance from established SMEx applicable to the case, and will ultimately action the request, with the team's assistance, if it agrees with the lead investigator's suggestion.
- 4.40. The team will collectively come to a consensus as to whether there are any gaps in evidence or questions left unanswered, and whether any more information is required from the supplier.
- 4.41. There may be a need to engage with (including meetings) or request information from the supplier a number of times and the team will need to continually consider if further engagement and requests are warranted.
- 4.42. Whilst the team is supported by internal procedural documentation regarding self-cleaning, the specific requirements of the investigation, as per section 58 of the PA23, include the following considerations:
 - 4.42.1. evidence that the supplier or connected person has taken the circumstances seriously, e.g. by paying compensation;
 - 4.42.2. steps that the supplier or connected person has taken to prevent the circumstances continuing or occurring again, e.g. by changing staff or management, or putting procedures and training in place;

- 4.42.3. commitments that such steps will be taken, or to provide information or access to allow verification or monitoring of such steps;
 - 4.42.4. the time that has elapsed since the circumstances last occurred;
 - 4.42.5. any other evidence, explanation or factor that the DRS considers appropriate.
- 4.43. The lead investigator is empowered to clarify submitted documentation, make requests of or give actions to the supplier, and engage with the supplier as necessary, except where the:
- 4.43.1. request is for significant additional information;
 - 4.43.2. request is likely to require the supplier to commit significant additional resource;
 - 4.43.3. supplier has previously refused a request, expressed concern or complained about the approach; or
 - 4.43.4. the lead investigator is unsure if the request is proportionate.
- 4.44. In these circumstances the DRS should be consulted before any action is taken. The lead investigator will need to consult with the DRS throughout to ensure that DRS are in attendance at meetings (both internal/external) as appropriate for the case, and to ensure any issues are escalated as necessary.
- 4.45. After receiving new information, the team will again individually review before coming together again to reach a consensus, as to whether the supplier has implemented and/or committed to appropriate measures such that it is satisfied the circumstances leading to the application of the exclusion ground are not continuing or likely to occur again. The lead investigator can determine if this is best addressed in a meeting or by email.
- 4.46. The lead investigator will make a recommendation to the DRS when it is considered appropriate to conclude the self-cleaning assessment. The lead investigator, with the support of the team, will need to set out:
- 4.46.1. the reason for concluding the self-cleaning assessment;
 - 4.46.2. whether or not the supplier, based on the self-cleaning assessment to date, is considered an excluded or excludable supplier; and
 - 4.46.3. proposed next step(s) i.e.:
 - 4.46.3.1. If the supplier is considered excluded or excludable, to proceed to [Debarment assessment - relevant factors](#), to determine the recommendation to the Minister, or

4.46.3.2. to submit advice to the Minister on the basis that the supplier is not an excluded or excludable supplier (end of investigation).

4.47. If 4.46.3.2 applies, the investigation team will draft the findings report in accordance with [Debarment assessment - relevant factors](#) and following the Minister's agreement, the supplier will be notified in accordance with the [Ministerial decision](#) and the case will be closed.

Debarment assessment - relevant factors

4.48. The investigation team will identify relevant factors to be considered to determine whether to add a supplier to the list or not. They will include and build on the considerations and information gathered during Triage at [Test 2](#). Previously available data can be built on through engagement with the supplier directly as well as significantly impacted contracting authorities and other applicable stakeholders. With this in mind, the factors are most likely to fall into/stem from two broad categories:

4.48.1. **The public procurement landscape** - E.g., the supplier's existing contract portfolio and risk arising from that, impact on the market and the impact of contracting authorities' exercising termination rights, costs associated with securing alternative sources of supply and other commercial and economic considerations, including investment in the UK and UK productivity.

4.48.2. **Public interest** - E.g. response from the public, pressure groups, media and members of parliament, risk of impact/harm on society/individuals, and geographical areas, any diplomatic considerations, the potential impact on essential services.

4.49. DRS or the lead investigator (whichever is deemed appropriate) will write to relevant OGDs and the DGs to confirm the procurement landscape and help the investigation team to ascertain any implications on contracting authorities' ability to procure goods/services/works, as required by the investigation team. The investigation team, with support from DRS as required, may approach other stakeholders to explore the relevant factors.

4.50. Engagement with departmental/interested Ministers may be required at this stage, led by DRS and supported by the lead investigator (as required).

4.51. Information/findings will be analysed by the investigation team, in consultation with DRS (and potentially other stakeholders) as appropriate. The analysis must consider the arguments for and against adding the supplier to the debarment list, and the approach and interpretation of findings should be consistent with other past similar cases, when considering how the relevant factors inform the final recommendation.

Conclusion

- 4.52. Based on the analysis of the relevant factors, the lead investigator will present the findings and a recommendation to senior internal stakeholders at the relevant factors conclusion meeting. The presentation will need to include:
- 4.52.1. The recommendation;
 - 4.52.2. The relevant factors and any weightings attributed;
 - 4.52.3. A summary of the findings (explanation/justification for the recommendation);
 - 4.52.4. Any risks associated with the recommendation.
 - 4.52.5. Any opportunities for supplier monitoring by an OGD or Government Commercial Agency and the status of agreement with the relevant department/team.
- 4.53. The attendees will reach a judgement based on the balance of the relevant factors, which will determine the recommendation to the Minister.
- 4.54. Following the meeting, the formal record of decisions will be drafted by the investigation team and agreed by the minimum attendees (plus others as deemed appropriate). It must clearly set out:
- 4.54.1. The assessment of the findings;
 - 4.54.2. The conclusion of the meeting;
 - 4.54.3. The rationale for the conclusion.

Complete draft investigation findings report

- 4.55. Where an investigation has been conducted or considered, the investigation team, with support from DRS, must prepare a report in relation to the findings of the investigation.
- 4.56. The report must set out¹⁷ whether the Minister is satisfied that the supplier is, by virtue of a relevant exclusion ground, an excluded or excludable supplier, and if the Minister is so satisfied:
- 4.56.1. in respect of each applicable relevant exclusion ground:
 - 4.56.1.1. whether it is a mandatory or discretionary ground;

¹⁷ As required by section 61(3)(a) of PA23.

- 4.56.1.2. the date on which the Minister expects the ground to cease to apply (see paragraph 44 of Schedule 6 and paragraph 15 of Schedule 7);
- 4.56.1.3. whether the Minister intends to make an entry to the debarment list; and
- 4.56.1.4. in each case, the Minister's reasons.

Share draft investigation findings case summary report at external senior case meeting

- 4.57. The main purpose of this meeting will be to discuss the draft investigations report with departments (significantly impacted contracting authorities) and other stakeholders with a vested interest in the case, to ensure any risks to them have been appropriately represented, before a recommendation is put to the Minister.
- 4.58. DRS will need to ensure issues extraneous to the investigation are not considered at this stage.
- 4.59. To enable seniors to understand what factors the team have considered when reaching a recommendation, DRS will provide attendees a copy of the draft investigation report.
- 4.60. The GCCO is expected to chair the meeting and other core membership will be limited to the Director with responsibility for the DRS and Director Commercial Policy, supported by representatives from the investigations team and DRS where appropriate.
- 4.61. All other attendees will depend on the supplier being investigated.
- 4.62. The significantly impacted contracting authorities will be represented¹⁸ (at Director level or equivalent) and it is expected that the relevant officials will inform their Ministers of the trajectory of the cases they are briefed on, if their department is heavily impacted. DRS may engage directly with Director Generals and Ministers if so required.
- 4.63. The investigation team will take the points raised during the meeting into account and may amend the draft report accordingly.

Ministerial submission - to seek initial ministerial view in regards to a debarment decision

- 4.64. The Minister's decision is taken in two steps:
 - 4.64.1. The first stage ([Ministerial Submission - to seek initial ministerial view in regards to a debarment decision](#)) involves establishing (via a

¹⁸ Dependent on whether or not they have been involved in the investigation.

submission) whether the Minister is minded to add a supplier to the debarment list. Once the minister's intent is established the draft report will be provided to the supplier in order for them to make any final representations and the DGs will be consulted. It should be noted that section 61(3)(b) of the PA23 requires that a copy of the report be sent to the supplier as soon as reasonably practicable, so this element of the decision will be particularly time pressured.

- 4.64.2. The second stage ([Ministerial Submission](#)) involves seeking a final decision from the Minister) in light of the supplier's representations. This is the final debarment decision.
- 4.65. This step is to achieve 4.64.1. The investigation team will lead the drafting of the submission which will provide the draft investigations report to the Minister as well as a summary of the case. The submission will also need to include any proposals for redactions and any options regarding on-going monitoring once the debarment case has closed.
- 4.66. The DRS will submit the submission to the Minister once it has approval, for confirmation of the Minister's intentions.
- 4.67. The Minister will confirm if the intention is to add the supplier to the debarment list or not and whether any longer-term monitoring of the supplier (e.g. to monitor whether self-cleaning steps are successful, any commitments are realised) is required.
- 4.68. If the Minister considers it necessary for the purposes of safeguarding national security or preventing the publication of information that is sensitive commercial information, where there is an overriding public interest in the information being withheld from publication or other disclosure, the Minister may:
 - 4.68.1. remove information from a report before giving it to the supplier concerned;
 - 4.68.2. decide not to give the report to the supplier;
 - 4.68.3. disclose the report only to such persons as the Minister considers appropriate.
- 4.69. DRS will then record the decision on the CMS and draft the notification to the supplier of the Minister's intentions, inviting them to make representations.¹⁹ The Minister's agreed list of redactions should also be provided, for the supplier's comment. As with previous steps, DRS will issue the notice and share the draft investigation report with the supplier.
- 4.70. DRS will review and consider the supplier's representations. An additional external senior case meeting may be held to consider if, on the basis of the supplier's

¹⁹ As required by section 61(3)(b), subject to section 61(5) of PA23.

representations, changes need to be made to the finding report that warrant an additional meeting.

- 4.71. DRS will consider, in consultation with the investigation team, if the recommendation whether to add the supplier to the debarment list, may also need to change, on the basis of the supplier's representations.

Consult with the DGs before entering a supplier's name on the debarment list

- 4.72. The Minister is required to formally consult the Welsh Ministers and the Northern Ireland department regarding the decision to debar, prior to publication of the supplier's name on the debarment list as per section 62(12) of PA23.

- 4.73. DRS will draft a letter on behalf of the Minister to be issued to:

4.73.1. Secretary of State for Northern Ireland; and

4.73.2. Cabinet Minister for Finance in the Welsh Government

- 4.74. DRS will issue the letter once approval has been granted by the Director with responsibility for the DRS.

Ministerial submission

- 4.75. DRS will prepare a submission to the Minister with a recommendation for the final debarment decision, requesting that the Minister either affirm their intention as indicated pursuant to [Ministerial submission - to seek initial ministerial views in regards to a debarment decision](#), or consider a new recommendation, in light of the supplier's representations.

- 4.76. The submission will provide the final investigations report to the Minister for approval, as well as the summary of the case. The submission will also confirm agreed arrangements for any on-going monitoring once the debarment case has closed.

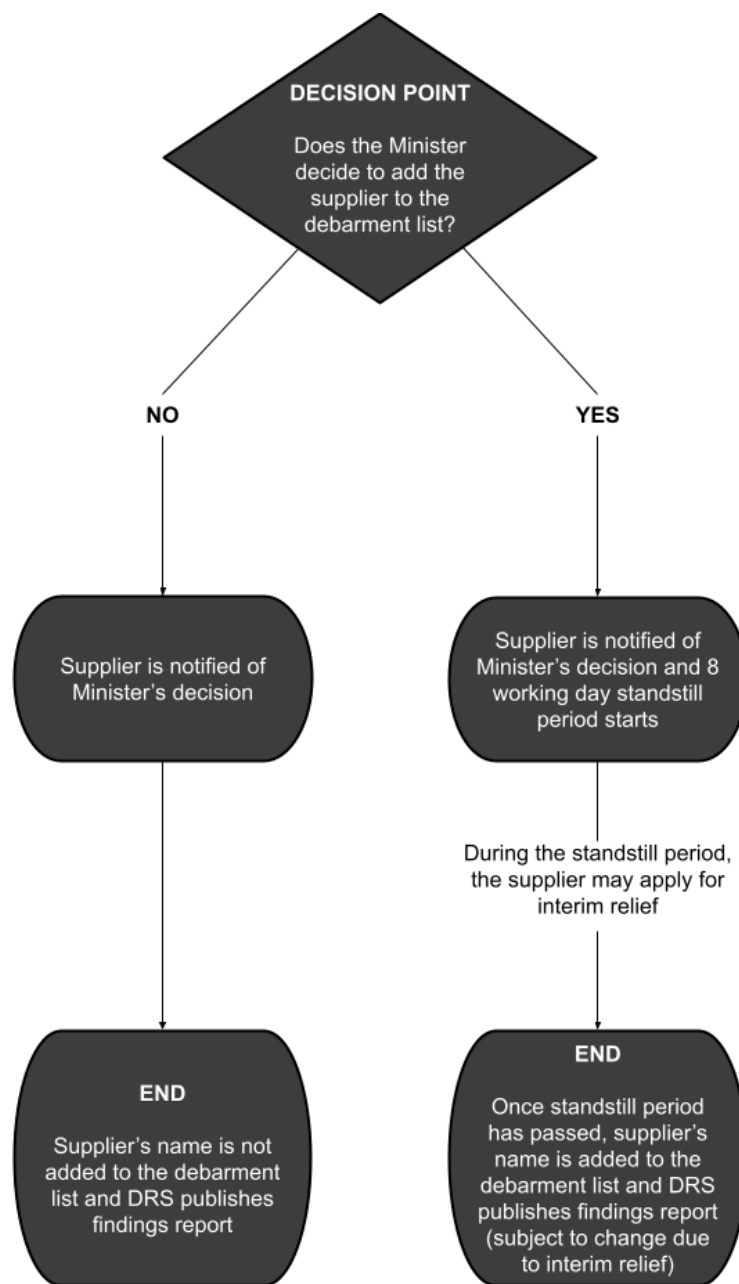
- 4.77. The DRS will submit the submission to the Minister, once it has approval, for confirmation of the Minister's determination as required by section 62 of PA23.

5. Phase 3: Decision & Publication

Overview

- 5.1. This Phase, following the completion of the investigation, encompasses the Minister's decision whether to add the supplier to the debarment list or not and pertains to the processes of notifying the supplier of the outcome, publishing the completed investigation report and adding the supplier to the debarment list, if applicable.
- 5.2. It also outlines the activities that may follow, as a result of the supplier exercising its rights under the PA23 or judicial review.
- 5.3. The lead investigator and the investigation team will be responsible for notifying the outcome of the investigation to the supplier.
- 5.4. The DRS and/or other MSS teams (if a strategic supplier) will be responsible for media interest with support from Commercial Policy.
- 5.5. The DRS will be responsible for updating the debarment list and uploading the findings report to gov.uk.

Decision & Publication Phase Summary Flowchart



Ministerial decision & consequential actions

- 5.6. Once the Minister has provided the determination, the DRS (or investigation team, if available, and as deemed appropriate) will:
- 5.6.1. record the decision on the CMS;
 - 5.6.2. draft the notification to the supplier of the Minister's decision (note [Ministerial decision - debarment](#))²⁰;
 - 5.6.3. ensure, if the Minister considers it necessary, in accordance with sections 61(5) and 61(6) of PA23, that any necessary information is removed from the report, in consultation with the Minister; or
 - 5.6.4. if the Minister considers it necessary, ensure the report is not published or shared with the supplier.
- 5.7. The notification to the supplier should include details regarding any agreed system of supplier monitoring, which may include tracking the supplier's self-cleaning activities, however this is not a legislative requirement so it may be deferred until the supplier's entry on the debarment list is made (see [Supplier Appeal \(where applicable\)](#)). The details should include:
- 5.7.1. Naming the leading department/team and a primary contact - where the supplier is a strategic supplier, this will usually be MSS; a primary point of contact for this phase of monitoring should be identified;
 - 5.7.2. Timescales - meeting scheduled with the leading department/team to set out the system of monitoring and tracking of the suppliers self-cleaning activities over an appropriate period of time;
 - 5.7.3. Milestones - to enable the supplier to provide evidence that they are executing their milestones, frequency of progress updates/meetings by the supplier based on the information provided by the supplier during the course of the investigation.
- 5.8. The DRS will issue the notification, including a copy of the final report (pending confirmation that the Minister doesn't find it necessary to redact or not publish the report), once approval is granted by the Director with responsibility for the DRS.
- 5.9. Once notification has been provided to the supplier, the debarment standstill commences (see [Debarment standstill period](#)).
- 5.10. The Minister's decision will be communicated to relevant stakeholders by the DRS or the investigation team.

²⁰ Note that this is only a legal obligation if the decision is to add the supplier to the debarment list.

- 5.11. DRS and/or other MSS teams will manage any media interest with the support of other stakeholders (e.g., commercial policy).

Ministerial decision - debarment

- 5.12. If the Minister's determination is that the supplier WILL be added to the debarment list, the notification to the supplier must set out, in accordance with section 62(5) of the PA23:
- 5.12.1. the decision to enter the suppliers name on the debarment list;
 - 5.12.2. an explanation of the supplier's rights under sections 63 to 65 of the PA23;
 - 5.12.3. any other information specified in regulations made under section 95 of the Procurement Act.²¹

Debarment standstill period

- 5.13. In accordance with section 62(6) of PA23, the Minister must not enter the supplier's name on the debarment list before the end of the period of eight (8) working days (the debarment standstill period). Day one (1) of the standstill period begins with the day on which the supplier is notified in accordance with paragraph 5.8, above.
- 5.14. Ordinarily, the debarment list will be updated and the findings report published once the debarment standstill has passed. However, if the supplier applies for interim relief, the update to the debarment list may be paused for longer, in accordance with section 63(1) of the PA23.

Interim relief

- 5.15. The Minister may not enter a supplier's name on the debarment list if, during the debarment standstill period, proceedings under section 63(1) of the PA23 (interim relief) are commenced, and the Minister is notified of that fact, and the proceedings have not been determined, discontinued or otherwise disposed of.
- 5.16. Alternatively, a supplier may apply to the court, during the debarment standstill period, for suspension of the Minister's decision to add the supplier to the debarment list. The court may make an order to:
- 5.16.1. suspend the Minister's decision to enter the supplier's name on the debarment list until a) the period referred to in subsection (2)(c) of section 65 (appeals) ends without proceedings having been brought, or b) proceedings under that section are determined, discontinued or otherwise disposed of (see [Monitoring period \(where required\)](#)), and

²¹ There are currently no regulations relevant to this obligation, nor are there any planned.

- 5.16.2. if relevant, require that an entry in respect of the supplier be temporarily removed from the debarment list.

Supplier is added to the debarment list

- 5.17. Once the standstill period has passed without proceedings being issued (and/or, if interim relief was granted to the supplier, once the suspension has finished) the DRS will add the supplier to the [debarment list](#) and (unless the Minister has decided it is inappropriate) publish the findings report in parallel.
- 5.18. In accordance with section 62(4) of the PA23, the entry onto the debarment list details must include the following “relevant debarment information”:
 - 5.18.1. the exclusion ground to which the entry relates;
 - 5.18.2. whether the exclusion ground is mandatory or discretionary;
 - 5.18.3. in the case of an entry made on the basis of paragraph 35 of Schedule 6 (threat to national security), a description of the contracts in relation to which the supplier is to be an excluded supplier (note that the DRS will also update the debarment list as a result of a debarment investigation on the basis of national security);
 - 5.18.4. the date on which the Minister expects the exclusion ground to cease to apply (see paragraph 44 of Schedule 6 and paragraph 15 of Schedule 7).
 - 5.18.5. In addition, the debarment list will also identify the supplier’s registration number(s), the exclusion ground(s) that apply, the date the exclusion ground is expected to cease to apply, and a link to the findings report.

Supplier Appeal (where applicable)

- 5.19. Notwithstanding whether the supplier has sought interim relief, the supplier may still appeal the decision to add them to the debarment list. Proceedings must be²²:
 - 5.19.1. brought by a UK or state treaty supplier;
 - 5.19.2. brought on the grounds that the Minister has made a material mistake of law; and
 - 5.19.3. commenced within 30 days of the Minister's decision.
- 5.20. Depending on the outcome of the appeal, the court may either:

²² In accordance with section 65(2) of PA23

5.20.1. if the appeal is successful, make an order setting aside the Minister's decision; or

5.20.2. if the appeal is unsuccessful, reject the appeal.

5.21. If the appeal is successful, the supplier's entry on the list will either be prevented or removed (as applicable) and the debarment decision will need to be re-made.

5.22. If a contracting authority has excluded the supplier from participating in a procurement because of their entry on the debarment list (which is later successfully appealed), the court may also order compensation for any lost bid costs incurred by the supplier in respect of procurements they were excluded from on the basis of featuring on the debarment list.

5.23. If the appeal is unsuccessful, the supplier will now be added to the debarment list or will remain on the debarment list (if they are already entered on to it).

Monitoring period (where required)

5.24. Should the Minister choose to monitor the supplier's commitments in the self-cleaning evidence as opposed to immediately putting the supplier on the debarment list, monitoring will commence in accordance with the agreement reached with the relevant monitoring department/team.

5.25. The monitoring party will monitor and determine whether the supplier's self-cleaning commitments have been successfully implemented.

5.26. If a supplier is added to the debarment list, while not impossible, it is not anticipated that monitoring will be required (rather a supplier will make an application for removal from the list, as set out below, once it has considered it has implemented new/additional self-cleaning).

Application for removal (where applicable)

5.27. A supplier may at any time apply to the Minister for the removal or revision of an entry made on the debarment list in respect of the supplier.

5.28. The Minister is only required to consider such an application²³ if:

5.28.1. in the opinion of the Minister, there has been a material change of circumstances:

5.28.1.1. since the entry was made or, where relevant, revised, or

5.28.1.2. in a case where the supplier has made a previous application to remove or revise the entry, since the most recent application that was considered by the Minister was made, or

²³ In accordance with section 64(2) of PA23

- 5.28.2. the application is otherwise accompanied by significant information that has not previously been considered by the Minister.
- 5.29. DRS will review the evidence and make a recommendation to the Minister for approval based on the evidence provided. The supplier's application will either be granted and their entry removed or revised, or the supplier will remain on the debarment list if the evidence is deemed insufficient.
- 5.30. The DGs will be consulted prior to amending the debarment list, in accordance with the content of [Consult with the DGs before entering a supplier's name on the debarment list](#).
- 5.31. After the Minister's consideration of the application, DRS must notify the supplier of the decision, and give reasons for the decision.