

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

SERVICE DIRECTOR LEGAL AND GOVERNANCE
REPORT TO

Council
21 January 2026

Report Title: **Legislative Updates to the Council Constitution – Procurement Regulations**

Submitted by: **Service Director Legal & Governance**

Portfolios: **All**

Ward(s) affected: **All**

Purpose of the Report

To inform Council of legislative updates that will impact on the Borough Council of Newcastle-under-Lyme Constitution including and relating to the Procurement Act 2023

Recommendation

That Council

1. Acknowledges the changes introduced as part of the Procurement Act 2023 and its impacts on the delivery of future procurement exercises delivered throughout the authority.
2. Acknowledges the required changes to the Council's current constitution particularly under section(s): F5 Finance and Contract Procedural Rules – Section F5F – Contract Procedure Rules and F5 Finance and Contract Procedural Rules – Section F5H – Glossary
3. Notes the ongoing work for the Constitution Working Group by officers for a full constitution review to be brought to Annual Council.

Reasons

On 24 February 2025, the Procurement Act 2023 (PA 2023) came into effect, revoking and replacing the previous regime. Despite this revocation, the previous regime continues to apply in certain instances, due to transitional and savings arrangements set out in the Procurement Act 2023 (Commencement No 3 and Transitional and Saving Provisions) Regulations 2024 (SI 2024/716) (TSR 2024); all procurements "commenced" before 24 February 2025 will therefore continue to be regulated under the previous regime. Procurements commenced on or after that date will be regulated by the PA 2023.

It should be noted that the Procurement Act 2023 (Commencement No 4) Regulations 2025 (SI 2025/1316) will bring into force in early 2026 the remaining publications obligations under the Procurement Act 2023 (PA 2023) relating to the payment's compliance notice, significant payment notice and contract performance notice, where and when publication of each notice becomes obligatory.

1. Background

- 1.1 The Procurement Act 2023 provides a major overhaul of UK public procurement, replacing complex, EU-derived rules with a simpler, more transparent, and flexible system focused on better value, fairness, and competition, especially for SMEs, by consolidating previous

regimes, strengthening transparency, introducing new exclusion grounds for poor performing and non-compliant suppliers, and embedding social value.

- 1.2 The Act represents the biggest shake-up of UK procurement laws for over thirty years. Until recently, the existing procurement regime in the UK has been derived from EU rules on public procurement and EU law, dating from 2014. The Act will consolidate various existing public procurement rules into one regime based on national priorities and certain objectives seen as key by the Government – for example, overcoming the barriers faced by smaller businesses to taking part in public procurement.
- 1.3 Some of the changes are significant, will open up new opportunities for greater competition, and provide scope for a much more flexible procurement process and approach to contract management. And with certain sector-specific provisions made and exclusions applied, it will be important for organisations to determine how the Act will apply to them and ensure they are well equipped to respond.
- 1.4 A number of pieces of secondary legislation (Regulations) are now in place to deal with particular aspects of the Act and its implementation.

These principally concern commencement and transition and also deal extensively with the "machinery" around the Act – providing the detail on matters such as the precise contents of the numerous transparency notices that authorities must publish in connection with procurements and procured contracts.

Other aspects covered by the secondary legislation include: the governance of the new Central Digital Platform (including what happens if a supplier can't register details because the platform is not working); the sharing of core supplier information through the Central Digital Platform; the contents of assessment summaries; the list of light-touch and reservable light-touch service types; the list of central government contracting authorities; and the disapplication of the Act in relation to regulated health procurement in England.

2. Issues

- 2.1 The new UK Procurement Act 2023 brings challenges like increased transparency demands (performance notices, Preliminary Market Engagement (PME)), which risk more supplier disputes over subjective metrics and data accuracy, requiring better systems for authorities.
- 2.2 Issues also include managing new mandatory exclusions, implementing robust conflicts of interest policies, navigating shorter standstill periods (8 working days), and adapting to new digital platforms, potentially straining local authorities' fragmented technology and data infrastructure.
- 2.3 For Contracting Authorities (Public Bodies):
 - Data & Digital Overhaul: Need for new systems to manage more notices (e.g. Preliminary Market Engagement, performance), publish detailed data, and link spend to contracts, not just suppliers.
 - Performance Transparency: Publishing KPI reports risks challenges from suppliers claiming unfairness or inaccuracy, requiring objective metrics.
 - Conflict Management: Strict new rules on identifying and managing conflicts of interest to maintain integrity.
 - Resource Strain: Smaller authorities with fragmented systems may struggle with new digital platforms and compliance.
- 2.4 The Procurement Act 2023 introduces a wide range of reporting examples which include:

- Payment's compliance notice (section 69): the obligation to publish a payments compliance notice commences on 1 January for England,
- Significant payments notice (section 70): The obligation to publish a notice when a payment exceeding £30,000 is made under a public contract commences on 1 April 2026 in England,
- Contract performance notice (section 71): The obligation to publish a contract performance notice commences on 1 January 2026,

The volume of transparency and notices or information generally, that contracting authorities are expected to publish has increased under the PA 2023, spanning the whole of the procurement cycle from pre-procurement planning to expiry or termination of the contract. Most of the detail relating to notices, including their prescribed content and where they must be published, is set out in the Procurement Regulations 2024. Broadly, contracting authorities must:

- Publish notices or information (including in relation to below-threshold contracts) on the government's online central digital platform. Where certain conditions are met, contracting authorities can use an appropriate alternative online system provided that they follow-up on the central digital platform afterwards.
- Obtain confirmation from suppliers (by the tender submission deadline or before entry into the contract, depending on whether it is a competitive or direct award) that they have registered with the platform, entered up-to-date core supplier information (including their details and information on exclusion grounds and financial standing) and shared this with the contracting authority.
- Ensure that the notice contains the information specified.

2.5 Language and terminology: although many of the concepts and rules from the previous procurement regime remain, these have been extensively rewritten to move away from the language of the EU directives on procurement. Terminology changes need to flow through into the dialogue of contracting authorities and their documentation.

But there is also the possibility that the shift in language may raise issues of interpretation in the courts; how far will judges deviate from established UK case law, or choose not to have regard to ECJ procurement case law? Assessing the procurement risk of challenge may be difficult, at least until there are some early judgments from the courts.

3. Recommendation

That Council

3.1 Acknowledge the changes introduced as part of the Procurement Act 2023 and its impacts on the delivery of future procurement exercises delivered.

3.2 Acknowledges the required changes to the Council's current constitution particularly under:

- F5 Finance and Contract Procedural Rules – Section F5F – Contract Procedure Rules and F5 Finance and Contract Procedural Rules – Section F5H – Glossary

3.3 Notes the ongoing work for the Constitution Working Group by officers for a full constitution review to be brought to Annual Council.

4. Reasons

4.1 To deliver compliance with the Procurement Act 2023,

4.2 To enable the Borough Council to react promptly to secondary legislation and future developments and changes,

4.3 Consideration(s) to the National Procurement Policy Statement Strategy (authorities must consider the NPPS priorities in their procurement decisions and document how they have done so, particularly for significant contracts).

5. **Options Considered**

- 5.1 To move to a centrally managed procurement (rather than a devolved) function introducing additional resources to strengthen, support and deliver the increased administrative requirements and compliance within the Procurement Act, this will however come at an increased cost to the Council.
- 5.2 To collectively work with neighbouring authorities to offer a more collaborative approach and solution to addressing the increased the resourcing needs.
- 5.3 Local Government Reorganisation (LGR) is likely to offer a more robust approach in addressing the resourcing needs under the new act and is likely to result in greater aggregation across the works, goods and services procured by those authorities involved in the consolidation processes.

6. **Legal and Statutory Implications**

- 6.1 The PA 2023 revokes the PCR 2015, UCR 2016, CCR 2016 and Defence and Security Public Contracts Regulations 2011 and consolidates their areas of coverage into one Act of Parliament. Utilities, concessions and defence contracts, as well as ordinary contracts for works, goods and services, are regulated by the same rules, with some sector-specific provisions where appropriate. Contracting authorities will need to refer to supporting secondary legislation and statutory and non-statutory guidance to ensure they fully comply with the PA 2023's requirements.
- 6.2 Treaty state supplier - the UK is party to various international agreements that include obligations on the UK to ensure that contracting authorities extend the rights of access to UK procurement markets to the suppliers of other states. A supplier is a treaty state supplier where it is not a UK supplier and both:
 - It benefits from an international agreement listed in Sch.9 (for example, the WTO Agreement on Government Procurement features, as does the UK-EU trade and cooperation agreement).
 - The individual procurement carried out or being challenged is caught by the relevant international agreement in Schedule 9.
- 6.2.1 Guidance confirms that a supplier may be a treaty state supplier for some procurements, but not others.
- 6.2.2 Contracting authorities must not discriminate against treaty state suppliers in carrying out a procurement (S90, PA 2023). The reference to procurement here, rather than covered procurement, indicates that the requirement extends to below-threshold procurements, where applicable.
- 6.3 Public Contract Regulations 2015 will still apply to procurements started before the Procurement Act 2023 went live (October 28, 2024) and will continue for those existing contracts until they end, even for modifications; however, all new procurements initiated on or after that date fall under the new Procurement Act 2023, replacing PCR 2015 for future activity.
- 6.4 When / where PCR 2015 continues to apply:

- Existing Procurements: Any procurement where a Contract Notice (or similar) was published before October 28, 2024, remains under PCR 2015 rules.
- Existing Contracts: Contracts awarded under PCR 2015 will continue to be governed by those regulations until they expire or are replaced.
- Modifications: Substantial modifications to existing PCR 2015 contracts may trigger application of the new Act, but minor changes continue under PCR 2015.
- Frameworks & DPS: PCR 2015 rules apply to existing Frameworks and Dynamic Purchasing Systems (DPS) until their final call-off or termination.

7. Equality Impact Assessment

The Procurement Act 2023 (PA2023) addresses equalities through several mechanisms, primarily by mandating the "equal treatment of suppliers" and requiring public bodies to consider broader social value, which includes equality, diversity, and inclusion Equality, Diversity and Inclusion (EDI) objectives. Core Principles and Objectives within PA2023 relate to:

- Equal Treatment of Suppliers: The Act explicitly requires contracting authorities to treat suppliers equally, unless a justifiable difference between them warrants different treatment. This foundational principle ensures fairness in the bidding process.
- Maximising Public Benefit/Social Value: While the Act does not make express reference to "social value" in the main text, it places the existing National Procurement Policy Statement (NPPSⁱ) on a stronger statutory footing, requiring authorities to "have regard to" social value. This includes considering how procurement can promote national priorities, which often encompass EDI and community benefits (e.g., job creation, training opportunities for various resident groups).
- Most Advantageous Tender (MAT): The Act shifts the award criterion from "Most Economically Advantageous Tender" (MEAT) to "Most Advantageous Tender" (MAT). This allows public bodies to consider a wider range of non-financial criteria, making it possible to explicitly include a bidder's plans for EDI and ethical practices as part of the tender assessment.
- Supporting SMEs: The legislation includes specific measures to support small and medium-sized enterprises (SMEs), start-ups, and social enterprises, aiming to reduce barriers and make it easier for a wider range of businesses to compete for contracts.
- Transparency: Enhanced transparency provisions are embedded throughout the procurement lifecycle, which helps ensure openness, accountability, and fairness in decision-making processes.

8. Financial and Resource Implications

The Procurement Act 2023 brings significant financial and resource implications, requiring upfront investment in training, new systems, and dedicated time for enhanced transparency (more notices, payment reporting) and strategic contract management (focus on value beyond cost, social value, SME support), but promises long-term savings through better value, reduced supplier risk, quicker issue resolution (feedback, fewer disputes), and innovation, with initial resource drains on legal, procurement, and finance teams to manage new complexities like Freedom of Information Requests (FOIA) requests and Most Advantageous Tender (MAT) evaluations.

8.1 **Financial Implications**

- *Increased Administrative Costs*: More notices (e.g., pipeline, payment data), clearer KPIs, and enhanced supplier feedback mechanisms mean more work and potential system upgrades.
- *Investment in Training*: Staff need training in new procedures, MAT (Most Advantageous Tender) evaluation, social value, and managing FOIA requests.
- *Potential for Savings*: Active contract management and focusing on MAT (not just lowest price) can yield significant savings (around 10%) by embedding value and sustainability.

- Supplier Costs: While easing entry for SMEs, larger suppliers face compliance costs, though the Act aims for better prompt payment (30 days), helping cash flow.

8.2 Resource Implications

- Staff Time: Budget holders, procurement teams, and legal departments will spend more time on planning, monitoring, and detailed record-keeping initially.
- System & Process Changes: Need to update governance, create new process maps, and potentially implement centralised platforms for managing notices and data.
- Focus on Strategy: Resources shift from purely cost-cutting to strategic sourcing, embedding national priorities (social value, innovation), and proactive risk management.
- Supply Chain: Increased scrutiny and new requirements mean active management of supplier performance and data, with potential for increased disputes as the system matures.

9. Major Risks & Mitigation

9.1 Major Risks:

- Capability & Skills Gaps: Public bodies & suppliers may lack expertise in new processes, digital tools, & social value requirements.
- Compliance & Transparency: Meeting new mandatory reporting (KPIs, performance), transparency notices, and exclusion grounds (e.g., payment terms) is complex.
- Supplier Management: Ensuring suppliers meet new standards, especially smaller ones (SMEs) for payment terms and performance, presents challenges.
- Data & Systems: Integrating new data requirements (performance, sustainability) into existing systems & ensuring robust cybersecurity.
- Risk Management: Identifying & managing new & existing risks (supplier dependency, quality, cyber, ethical) under the new framework.
- Achieving Social Value: Effectively integrating sustainability & social value criteria from the start, not as an afterthought.

9.2 Mitigation Strategies (might include):

- Training & Upskilling: Investing in comprehensive training for staff on new legislation, digital platforms, and strategic procurement.
- Clear Guidance & Documentation: Developing clear, accessible guidance and mandatory tools.
- Technology Adoption: Implementing robust digital systems for spend analysis, supplier management, & performance reporting.
- Proactive Supplier Engagement: Working closely with the supply chain, particularly SMEs, to ensure understanding of new requirements & payment terms.
- Robust Contract Management: Setting clear KPIs, monitoring performance closely, & using the new debarment regime effectively.

10. UN Sustainable Development Goals (UNSDG)

10.1 The Procurement Act 2023 will impact on all goods, works and services procured by all services areas throughout the authority the controlled purchases of such will have due regard to all of the following UNSDG.



11. One Council

11.1 Please confirm that consideration has been given to the following programmes of work:

- **One Commercial Council**
- **One Digital Council**
- **Sustainable One Council**

The Key Goals & Changes established as part of the Procurement Act 2023 (listed below) will impact on all three of the One Council programmes of work in that:

- Simpler & Flexible System: Consolidates various regulations into one regime, reducing bureaucracy.
- Support for SMEs: Mandates actions to remove barriers and promote participation for small businesses.
- Transparency & Scrutiny: Embeds transparency throughout the lifecycle, allowing better scrutiny of spending.
- Central Digital Platform: An enhanced Find a Tender service (launched Feb 2025) for finding opportunities and storing supplier information.
- New Objectives: Focus on value for money, public benefit, integrity, and information sharing.
- Award Criteria: Shifts from 'most economically advantageous' to 'most advantageous tender,' considering wider value.
- Exclusion & Debarment: Stronger rules against underperforming suppliers.

12. Earlier Cabinet/Committee Resolutions

12.1 There are no earlier Cabinet/Committee Resolutions

13. List of Appendices

13.1 F5 Finance and Contract Procedural Rules – Section F5F – Contract Procedure Rules and

13.2 F5 Finance and Contract Procedural Rules – Section F5H – Glossary

14. Background Papers

14.1 Procurement Act 2023 - <https://www.legislation.gov.uk/ukpga/2023/54/contents>

14.2 National Procurement Policy Statement -

<https://www.gov.uk/government/publications/national-procurement-policy-statement>

ⁱ The National Procurement Policy Statement sets out the strategic priorities for public procurement and how contracting authorities can support their delivery.