THE PROCUREMENT ACT 2023

What notices must you publish under the new Act?

trowers & hamlins

Pre-procurement stage notices

Compulsory Notice | Voluntary Notice | Compulsory in specified circumstances

Pipeline Notice – s.93

Compulsory where you consider that you will pay more than £100 million under relevant contracts in the coming financial year.

Within 56 days of the start of the new financial year, this notice must be published, setting out specified information about any public contract with an estimated value of more than £2 million, in respect of which you intend to publish a tender notice or transparency notice during the reporting period.

Not applicable to private utilities or a transferred Northern Ireland authority.

Do you want to conduct pre-market engagement with potential suppliers, pre tender?

Yes

Preliminary Market Engagement Notice – s.17

Compulsory unless you provide reason for not doing so

This notice must set out that you intend to (or already have) engage in preliminary market engagement.

No

Do you want to let suppliers know about an upcoming tender?

Yes

Planned Procurement Notice – s.15

May be published to advertise intention of publishing a tender notice. Will constitute a "qualifying planned procurement notice" (for the purposes of reduced tendering periods) where the notice is published at least 40 days but no more than 12 months before publication of the Tender Notice.

No

Notices for the tendering stage

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Notices for the tendering stage

Compulsory Notice | Voluntary Notice | Compulsory in specified circumstances

Are you planning to make a direct award under s.41?

Yes

No

Tender Notice – s.21

Compulsory where a public contract is advertised as part of a competitive tendering exercise, "associated tender documents" must be provided alongside the Tender Notice.

Will a contract be awarded?

Yes, but no suitable tender or request to participate received.

Yes

No

Transparency Notice – s.44

Compulsory before directly awarding a contract (s41 or s.43), this notice must set out your intention to award the contract directly.

A Transparency Notice is not needed for user choice contracts (Schedule 5, Paragraph 15).

s.43 allows for the switch to a direct award when no suitable tenders or requests to participate are received

Assessment Summary – s.50

Before entering into a public contract, you must provide an assessment summary to each supplier that submitted an assessed tender. This summary must include information about the assessment of the tender and, if different, the most advantageous tender.

Procurement Termination Notice – s.55

If, following a Tender Notice or Transparency Notice, you decide not to award the contract, you must give notice as soon as reasonably possible.

This is not applicable to private utilities tenders.

Contract Award Notice – s.50

Sets out your intention to enter into a contract.

This is not applicable to defence and security public contracts awarded under frameworks, or 'user choice' direct awards.

s.51 Mandatory standstill period of 8 working days, beginning with the day on which the Contract Award Notice is published, must be observed before entering into the contract

Contract Details Notice – s.53

Within 30 days of entering into a public contract (or 120 days for light touch contracts), this notice must be published, setting out that a contract has been entered into.

This is not applicable to private utilities or user choice contracts.

Does the public contract have an estimated value of over £5 million?

Yes

No

Publication of Contract – s.53

A copy of the contract must be published within 90 days of the public contract being entered into (180 days for light touch contracts).

This is not applicable to private utilities, user choice contracts, or to certain devolved administration contracts.

Contract management notices

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Contract management notices

Compulsory Notice | Voluntary Notice | Compulsory in specified circumstances

Is there a Contract Modification?

Yes

Contract Change Notice – s.75

Compulsory where a public contract is modified

A Contract Change Notice must be published where a contract is modified unless modifications:

(a) increase/decrease the value by:

(i) more than 10% for goods/services contracts

(ii) more than 15% for works contracts

(b) increase/decrease the term of the contract by more than 10%, of the maximum term.

Modified Contract Copy – s.77

Compulsory for qualifying modification

Within 90 days of a qualifying modification (caught by s.75) being made, a copy of the modified contract or details of the modification must be published.

Any modification to a contract with an estimated value of (or modified to be) over £5 million where a Contract Change Notice is required will be a qualifying modification.

No

Payment Compliance Notices – s.69

Compulsory where a payment has been made or a sum has become payable under a public contract

Within 30 days of the last 'reporting period', this notice must be published if a payment has been made under a current public contract, or that a sum owed by the authority became payable.

Setting out specified information about your compliance with the term set out in s.68(2) (payment within 30 days), and any other specified information.

A number of different contract types are excluded from this requirement (listed in s.69(6)(a) to (d))

Has the contract been terminated?

Yes

Contract Termination Notice – s.80

Compulsory whenever a public contract comes to an end

Within 30 days of the contract's termination, this notice must be published.

Termination includes: discharge, expiry, termination by any party, rescission or being set aside.

Not applicable to private utilities or 'user choice' direct awards.

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What notices must you publish under the new Act?

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For "notifiable below-threshold contracts"

Compulsory Notice

Compulsory in specified circumstances

Below-threshold Tender Notice – s.87(1)

This notice must be published before "advertising" to invite tenders for a "notifiable below-threshold contract".

A below-threshold tender notice is not required where the opportunity is only advertised to particular or pre-selected suppliers.

A notifiable below-threshold contract is a regulated below threshold contract (see Schedule 1 of the Act) with an estimated value of:

(a) £12,000 (for central government)

(b) £30,000 (for all other contracting authorities)

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Below-threshold Contract Details Notice – s.87(3)

A Contract Details Notice must be published as soon as reasonably practicable after entering into a notifiable below-threshold contract.

Regulated below-threshold contracts do not require assessment summaries, procurement termination notices, contract termination notices or payments compliance notices.

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Would a modification during the contract's lifetime make it a "convertible" contract? (ie. Does the value of the modified contract exceed the relevant threshold at Schedule 1?)

Yes ↓

No — No further publication requirements

Contract Change Notice – s.75

Compulsory where a convertible contract is modified

A Contract Change Notice must be published where a contract becomes a convertible contract unless modifications:

(a) increase/decrease the value by

(i) less than 10% for goods/services contracts

(ii) less than 15% for works contracts

(b) increase/decrease the term of the contract by less than 10% of the maximum term.

Modified Contract Copy – s.77

Compulsory for qualifying modification

Within 90 days of a qualifying modification (caught by s.75) being made, a copy of the modified contract, or details of the modification must be published.

Any modification to a contract with an estimated value of (or modified to be) over £5 million where a Contract Change Notice is required will be a qualifying modification.

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The following notices will also apply to convertible contracts

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Payments Compliance Notices – s.69

Compulsory when payment conditions are met

Within 30 days of the last 'reporting period', this notice must be published if a payment has been made under a current public contract, or that a sum owed by the authority became payable.

Setting out specified information about your compliance with the term set out in s.68(2) (payment within 30 days), and any other specified information.

A number of different contract types are excluded from this requirement(listed in s.69(6)(a) to (d)).

↓

Has the contract been terminated?

↓

Contract Termination Notice – s.80

Compulsory whenever a convertible contract comes to an end

Within 30 days of the contract's termination, this notice must be published.

Termination includes: discharge, expiry, termination by any party, rescission or being set aside.

Not applicable to private utilities or 'user choice' direct awards.