

Presentation to: Audit & Standards Committee

To be held on: Tuesday 25th March 2025

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Presentation Title:	The Procurement Act 2023				
Presented by:	Ian Turner & Paul Timmins				
Prepared by:	As above				
Recommendation:	Steer Required		For Discussion	X	For Information
Objectives of presentation: - 1. Advise Audit & Standards Committee of the Procurement Act 2023, the Council implementation and any resultant council impacts. 2. Gain support for any subsequent actions to assist a successful implementation and ongoing management of the requirements of the Procurement Act 2023. 3. Specifically, be aware of the new noticing requirements and likely noncompliance initially.					
Brief Presentation Summary: The Procurement Act entered UK law on the 24 th February. It is the largest step-change in UK procurement law. This presentation will inform Audit & Standards Committee of the Council implementation, salient features and observations which impact the Council.					
SLT Lead:	John Tradewell	Cabinet Member Lead:	Cllr Ian Parry		

The Procurement Act 2023

The Commercial Team

Ian Turner – Assistant Director for Commercial and Assets
Paul Timmins – Head of Procurement

Audit & Standards Committee 25th March 2025



Purpose of Session



Advise Audit & Standards Committee of the Procurement Act 2023, the Council implementation and any resultant council impacts.



Gain support for any subsequent actions to assist a successful implementation and ongoing management of the requirements of the Procurement Act 2023. Specifically, be aware of the new noticing requirements and likely noncompliance initially.

Previous Presentations

Senior Leadership Team - 3 July 2023

Informal Cabinet - 10 July 2024

Business Brief - 18 March 2025

(Senior Leadership Team / Wider Leadership Team - 12 May 2025)

What is the Procurement Act?

The UK statutory instrument governing the process of public sector procurement and contract management

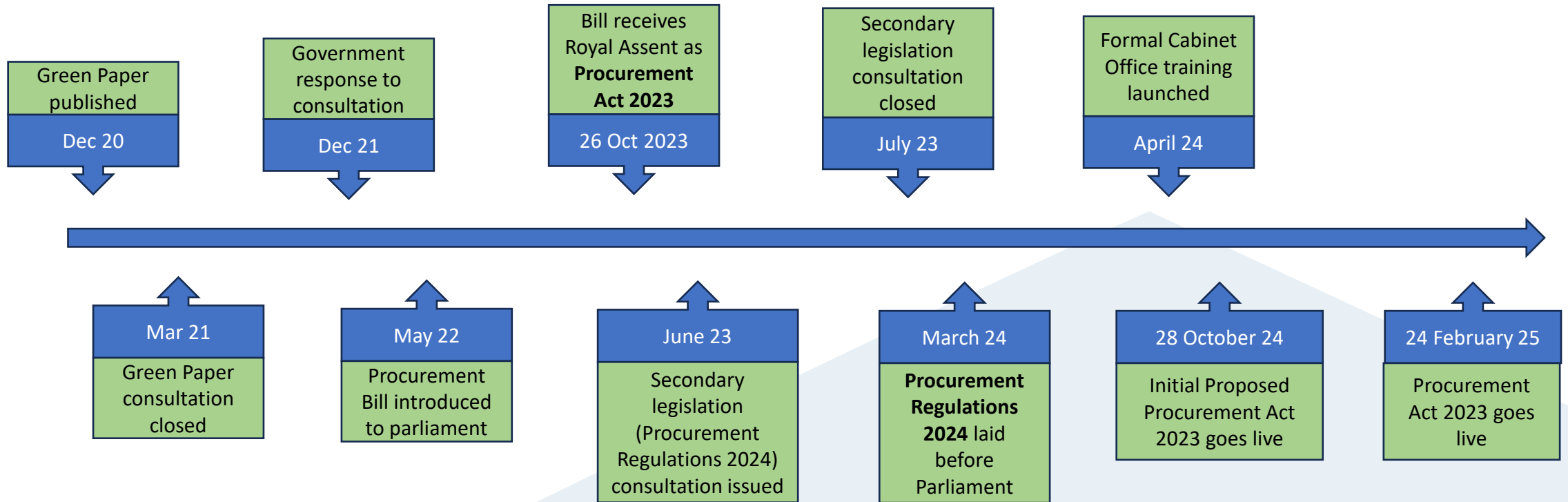
Comprises of the Procurement Act 2023 and Procurement Regulations 2024

A replacement to the current Public Contracts Regulations 2015

Came into force on the 24th February 2025 (delayed from 28th October 2024)

[NOTE - the new health provider selection regime ('PSR') is separate and enables certain health contracts to operate on a direct award basis. This is separate and went live in January 2024]

Timeline



Objectives of the Act

“The Government’s goal is to speed up and simplify our procurement processes, place value for money at their heart, and unleash opportunities for small businesses, charities and social enterprises to innovate in public service delivery.”
Transforming Public Procurement, Cabinet Office, December 2020

It aims to improve the way public procurement is regulated in order to:

- create a simpler and more flexible, commercial system that better meets our country’s needs while remaining compliant with our international obligations
- open up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts
- embed transparency throughout the commercial lifecycle so that the spending of taxpayers’ money can be properly scrutinised.

Government Commercial Function

Key Changes

Consolidates the separate regulations of utilities, concessions and defence/security

VAT will apply to all contract value calculations and notices

Moving from 6 procurement procedures to 3

A newly formed Procurement Review Unit ('PRU')

Introduces an Exclusions & Debarment list

New supplier Central Digital Platform ('CDP')

More focus on Preliminary Market Engagement ('PME')

A greater emphasis on consideration of SMEs in a procurement process

A requirement to annually publish a pipeline of public tenders upcoming where over £2m

Publish several new transparency notices

Publishing copies of contracts (redacted) over £5m

Separation of duties for contract managers

Publishing of a minimum of 3 KPI's on contracts over £5m & reporting them annually

Revised rigour on the modification of contracts

See later in presentation

Council Implementation

- Procurement Managers and the Senior Procurement Team completed formal Cabinet Office training (additional 3rd party training may still be required)
- Provider-facing Council Internet updated.
- Internal StaffSpace '[Procurement Act](#)' segment introduced
- Functions of the council, inc. Legal, Business Support, Finance, and Audit necessary for implementation (already engaging)
- Continued update (re-write!) of tender documentation and procedures
- LGA and regional councils (Heads of Procurement) already in a collaborative 'training' effort
- Terminology in the Councils own Standing Orders/Procurement Regulations now updated
- Council Governance training already updated with elements of the Procurement Act
- General council awareness to be further deployed, e.g. Business Brief, Managers Forum etc
- Full assistance from HOP to South Staffordshire, Stafford and Cannock partners as part of procurement SLAs

Council Observations

- A great deal of the current procurement principles are retained in the new Act
- Public Contracts Regulations ('PCRs') will still apply to legacy contracts procured under the PCR's
- The Act enables a separate National Procurement Policy Statement, which outlines further national policy to be followed in procurement processes. This will always be subject to change.
- A new approach required to capture council-wide contract management
- Assimilating the information of the new Act is not a simple task as the new requirements have been dispersed within the Procurement Act 2023, the Procurement Regulations 2024, the Consequential Regulations 2015, Procurement Policy Notes, the **47** x Cabinet Office Guidance, a plethora of additional Gov guidance documents, online modular training and follow-up Deep Dive training.
- **Three** significant changes: -

Council Observations

(1) Preliminary Market Engagement ('PME') (i.e. soft market testing)

- The process of engaging with suppliers / markets and other persons for the purpose of
 - “developing” the requirements, procurement approach, criteria; notices & tender documents;
 - “identifying” suppliers, & likely contractual terms;
- More rigorous, prescriptive and integral to advertised procurements
- New process looks to councils to engage with the ‘entire’ market first and manage PME accordingly on a fair and transparent basis. Clear risk where PME is not managed in this manner
- Requires Council / Procurement Advisor oversight



Council Observations

(2) Contract Modifications

- Public Contracts Regulations ('PCRs') will still apply to legacy contracts procured under the PCR's
- New regime only applies to new above-threshold procurements under the Act
- The rules around allowable modifications has changed and council contract managers need to be aware of these changes
- The types of modifications allowed may be more restrictive
- More contract changes are required to be notified by public advert
- Our new self-serve online tool and guidance to assist the majority contract managers, though Commercial Team to help navigate modifications to all GOLD status contracts



Council Observations

(3) Publication of New Notices

- New regime only applies to new procurements under the Act
- Most of the requirements to publish notices under the Act will continue to be met by the Council, though new requirements present a ‘volume’ issue
- Specifically - for a few areas of Social Care, the volume of notices required to compete, award and terminate contracts could be over 1,000 per month
- New (contracts) payments notices may run into the hundreds per month to publish
- There is a high risk of remaining perfectly compliant with the requirements to publish all the notices
- Representations have already been made directly with the Cabinet Office (‘CO’) by the Council regarding such issues, and we continue to work alongside the CO
- We will continue look to all methods / work-arounds of ensuring the requisite data is in the public domain, e.g. use of the council internet, AI etc



Conclusions

- The Act went live on the 24th February 2025
- The ‘process’ of procurement has not fundamentally changed under the Act
- The increase in transparency / notices may create an additional administrative burden (i.e. the Notices)
 - It is likely that the council (and many others) will not be fully compliant with the noticing requirements
- The Act does carry more risk for the council, in particular, around: -
 - new challenges by SMEs regarding barriers to procurement;
 - ensuring preliminary market engagement processes are correctly administered;
 - ensuring the new contract modifications process is runs compliantly;
 - the failure to remain compliant with the new transparency requirements
- The Commercial Team will continue to lead the implementation of the Procurement Act and compile guidance and process for all council buyers, though it has been clear that the UK procurement fraternity generally have echoed the constraints on resource to deliver this new change of Law