


Procurement Act 2023: Light Touch Regime

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Scope of the Light Touch Regime under the Procurement Act 2023

One of the main drivers of the [Procurement Act 2023](#) is to increase flexibility in [public procurement](#), so it is unsurprising that the light touch regime, which applies to contracts for certain social, [health](#) and other [public services](#), and exists with fewer restrictions under the current procurement regime, has been maintained in the Procurement Act 2023.

In summary, the Light Touch Regime largely replicates its current format in the Procurement Act 2023. The list of light touch services is included at Schedule 1 of the Procurement Regulations 2024 and is slightly more comprehensive, but the scope is similar to the Light Touch Regime under the current procurement regime.

In addition to the types of services, the higher threshold for its application (currently £663,540 including VAT) has also been retained.

This article explores other aspects of the Light Touch Regime and how it will operate under the Procurement Act 2023 when it goes live in October this year. Importantly, we have set out where the Light Touch Regime process differs from other “covered procurements” (i.e. above-threshold, non-exempt contracts).

New procedures under the Procurement Act 2023 and relevance to the Light Touch Regime

A Light Touch Regime procurement is commenced through publication of a tender notice on the central digital platform (unless a direct award justification applies). As procurement of a Light Touch Regime contract is a “covered procurement”, it is subject to the procurement objectives at section 12.

Under the Procurement Act 2023, contracting authorities may design appropriate competitive tendering procedures for Light Touch Regime contract awards, just like under the current procurement regime. There are two competitive procedures, under the Procurement Act 2023:

1. Open procedure, which is a single stage tendering procedure without a restriction on who may submit tenders; and
2. Competitive flexible procedure, which is a “design-your-own” procedure based on the contract requirements and what a contracting authority considers appropriate for the purposes of awarding the [public contract](#).

Contracting authorities will, therefore, have flexibility to design processes to reflect their requirements.

Time limits

In line with the enhanced flexibility afforded to Light Touch Regime procurement, there are no minimum time limits for either the participation stage or the tender stage of Light Touch Regime procurements. Bidders should still be given a reasonable time to prepare responses but there are no mandated minimum periods to adhere to.

Duty to consider lots

When procuring a Light Touch Regime contract, contracting authorities must consider whether to divide the contract into lots for supply under separate contracts. The rationale behind this duty is to support the objective of having regard to SME participation. The consideration of lots provides more opportunities for SMEs to participate in [public procurements](#), particularly in the case of Light Touch Regime contracts where there may be a number of small local services providers.

The duty to consider lots is a new requirement as the current procurement regime did not require this for the award of Light Touch Regime contracts. However, unlike other covered procurements, there is no requirement to provide a justification in the tender notice if a contracting authority does not divide the contract.

Modifying a Light Touch Regime procurement

There is greater flexibility to make any necessary modifications to a live procurement of a Light Touch Regime contract. While there are limitations for modifying other live procurement, section 31(2)(b) allows modifications to Light Touch Regime procurements, even where such modifications are substantial. Contracting authorities must still have regard to the section 12 objectives but this affords them a great deal of flexibility.

No standstill period

Awards made for Light Touch Regime contracts require assessment summaries to be issued to suppliers prior to a contract award notice being published. However, there is no requirement to observe a standstill period for LTR contracts, though a voluntary eight-day standstill period may be observed.

Contract details notice

Whilst the current procurement regime allows contract award notices for Light Touch Regime contracts to be grouped and published within 30 days of the end of each quarter, the Procurement Act 2023 requires a contract details notice to be published within 120 days of the Light Touch Regime contract being entered into (and where the contract has a value over £5m, a copy of the contract must also be published within 180 days of the contract being entered into).

Contract governance

Light Touch Regime contracts are exempt from the following contract governance obligations under the Procurement Act 2023:

- **Key Performance Indicators:** (KPIs) – Light Touch Regime contracts are exempt from the new requirement, which applies elsewhere, to set at least three KPIs for contracts with a value exceeding £5m.
- **Assessment of Contract Performance:** There is similarly no requirement to assess and publish performance information. As such, contracting authorities are also not required to publish information relating to a supplier breach or failure to perform the contract.
- **Modifying Public Contracts:** Light Touch Regime contracts may be modified during their term without any of the usual restrictions which apply to contract modifications. Therefore, substantial or above-threshold modifications may be made compliantly, providing the contracting authorities give regard to the procurement objectives. Light Touch Regime contracts are also exempt from the requirement to publish a contract change notice.

However, a contract termination notice must be published by a contracting authority within 30 days of termination of a Light Touch Regime contract.

Direct Award of Light Touch Regime contracts

There is a new direct award justification for “user choice contracts”, which allows contracting authorities to directly award contracts where the services consider views of service users (e.g. carers) in respect of which supplier should provide services.

Otherwise, the direct award grounds apply equally to Light Touch Regime contract, i.e. a transparency notice must be published before the direct award of a Light Touch Regime contract.

Frameworks and dynamic markets

Under the Procurement Act 2023, the definition of a “light touch contract” includes a framework for the future award of contracts wholly or mainly for Light Touch Regime services. Light Touch Regime contracts are generally subject to the framework rules prescribed under the

Procurement Act 2023, i.e. when establishing a framework. However, there are a number of exceptions from the general rules such as removal of the requirement for competition between suppliers on a LTR framework in all circumstances, provided the framework terms and conditions allows for this.

In addition, there is no maximum term for a Light Touch Regime framework (whereas other frameworks are capped at four years or eight years if an open framework).

Remedies

The remedies set out in Part 9 of the Procurement Act 2023 apply to Light Touch Regime contracts but contracting authorities should note the following:

1. The automatic suspension of the entry into or modification of contracts (section 101) only applies to Light Touch Regime contracts where a voluntary standstill period is being observed.

2. When considering the set aside conditions, the following must be considered in the context of Light Touch Regime:

- “A **required** contract award notice was not published” – where a direct award is made under the ground of “user choice”, this set aside condition is not applicable, as the publication of a contract award notice is not mandatory.
- “Contract was entered into or modified before end of any applicable standstill period)” – this will **only** apply to Light Touch Regime contracts where a voluntary standstill is notified in the contract award notice.
- “In the case of a modification under section 74, the breach became apparent only on publication of a contract change notice” – this would only apply where a voluntary contract change notice is published, as a contract change notice is not mandatory for Light Touch Regime contracts.

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