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## **THE PUBLIC CONTRACTS REGULATIONS 2015**

### **GUIDANCE ON THE NEW LIGHT TOUCH REGIME FOR HEALTH, SOCIAL, EDUCATION AND CERTAIN OTHER SERVICE CONTRACTS**

**Updated October 2015**

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## **PART 1. The New Light-Touch Rules Regime for Health, Social, Education and certain other Service Contracts: Overview, Key Points and FAQs**

### OVERVIEW

#### **What is the new light-touch rules regime?**

The new light-touch regime (LTR) is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, defined by Common Procurement Vocabulary (CPV) codes. The list of services to which the Light-Touch Regime applies is set out in Schedule 3 of the Public Contracts Regulations 2015 (Annex A).

#### **Why is this helpful/necessary?**

The European Commission was concerned that some Part B Service contracts would be of cross-border interest, but were not being exposed to EU wide competition, which led to the Commission proposing to abolish the Part B Services rules and replace them with a new regime. Although the UK preferred to preserve the existing Part B rules, for simplicity and convenience, the Commission gained enough support to implement the change, albeit subject to certain concessions for those Member States who opposed including the UK.

#### **What has changed?**

The former distinction between Part A and Part B service contracts has been abolished, and a new rules regime has been introduced for certain health, social and other services. This is a significant and fundamental change that all procurement staff and many other stakeholders will need to understand.

There is one temporary exception for certain clinical commissioning contracts: procurement by NHS England or Clinical Commissioning Groups of NHS healthcare services should not be subject to the new rules until the transposition deadline of April 2016, to allow service commissioners the necessary time to adapt. Such procurements will continue to be governed by the pre-existing regulations<sup>1</sup> until that time.

#### **Which rules do I need to refer to?**

The light-touch regime rules - see Regulations 74 to 77.

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<sup>1</sup> This includes: The rules on Part B Services in the Public Contracts Regulations 2006; and the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 (see guidance at <https://www.gov.uk/government/publications/procurement-patient-choice-and-competition-regulations-guidance>)

## **KEY POINTS**

### *Scope of the LTR rules*

**There are fewer services in LTR than Part B** (particularly due to the absence of the broad “other services” category that existed in Part B), meaning that some contracts formerly subject to the Part B services rules will now be subject to the full rules. The list of services is contained in Schedule 3 of the Public Contracts Regulations 2015 (Annex A).

**A relatively high threshold** (when compared with the threshold for Part A Services) has been applied to this light-touch regime – 750,000 euros (the current sterling equivalent is £625,050).

**Below the LTR threshold**, contracts do not normally need to be advertised in the OJEU. The Directive recognises that only services above a threshold of 750,000 euros covered by the LTR would normally be likely to be of cross border interest. Following from this, services below this threshold do not need to be advertised in the OJEU, unless there are concrete indications of cross-border interest.

### *Mandatory Requirements*

**A small number of new procedural rules for above these thresholds.** Contracting authorities now have to follow a new light-touch set of procurement rules for LTR contracts above the relevant threshold. The main mandatory requirements are:

- i) **OJEU Advertising:** The publication of a contract notice (CN) or prior information notice (PIN). Except where the grounds for using the negotiated procedure without a call for competition could have been used, for example where there is only one provider capable of supplying the services required.
- ii) The publication of a **contract award notice (CAN)** following each individual procurement, or if preferred, group such notices on a quarterly basis.
- iii) **Compliance with Treaty principles** of transparency and equal treatment.
- iv) **Conduct the procurement in conformance with the information provided in the OJEU advert (CN or PIN)** regarding: any conditions for participation; time limits for contacting/responding to the authority; and the award procedure to be applied.
- v) **Time limits imposed by authorities on suppliers, such as for responding to adverts and tenders, must be reasonable and proportionate.** There are no stipulated minimum time periods in the LTR rules, so contracting authorities should use their discretion and judgement on a case by case basis.

### *Significant Flexibilities*

**Authorities have the flexibility to use any process or procedure they choose to run the procurement**, as long as it respects the other obligations above. There is no requirement to use the standard EU procurement procedures (open, restricted and so on) that are available for other (non-LTR) contracts. Authorities can use those procedures if

helpful, or tailor those procedures according to their own needs, or design their own procedures altogether.

**The LTR rules are flexible on the types of award criteria that may be used**, but make clear that certain considerations can be taken into account, including (this is not an exhaustive list):

- the need to ensure quality, continuity, accessibility, affordability availability and comprehensiveness of the services;
- the specific needs of different categories of users<sup>2</sup>, including disadvantaged and vulnerable groups;
- the involvement and empowerment of users; and
- innovation.

**Reserved contracts for certain services in the light-touch regime.** The new rules permit for certain LTR contracts to be “reserved” for organisations meeting certain criteria e.g. public service mutuels and social enterprises. These provisions are covered separately in Part 2 of this guidance.

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<sup>2</sup> The rules refer to “users” in the context of services provided “to the person” ie where the contracted services are delivered to members of the public. Examples of such users might include the parents of children receiving education services, patients receiving certain health services, and those in receipt of social care services.

## **FAQs**

### **Why do clinical commissioning contracts stay on the Part B Services rules until April 2016?**

Implementation has been delayed because NHS England and Clinical Commissioning Groups are currently subject to domestic procurement requirements through the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013. The Department of Health wishes to use the additional time to work with commissioners and help them adapt to the new requirements of the light-touch regime.

### **Does the higher threshold in the new Light-Touch Regime imply that the Social Value Act no longer applies to procurements valuing less than 750,000 Euros?**

No – the former threshold for Part B Services contracts continues to apply for the purposes of the Social Value Act.

### **Do the provisions in Regulation 12, which cover the conditions where, if met, in-house contracts fall outside the scope of the rules, extend to the Light Touch Regime?**

Yes. Where the conditions for meeting the in-house test in Regulation 12 are met, such a contract, including those for LTR services, would fall outside the scope of the procurement rules.

### **Do I need to publish a contract notice if I have already published a PIN as a call for competition?**

No. The choice is to either publish a PIN as a call for competition, or publish a contract notice. Providing the PIN respects the requirements in regulation 75, there is no need to publish a separate contract notice. Regulation 75 requires that the PIN shall:

- be published continuously;
- contain the information required on the form;
- refer specifically to the types of services that will be the subject of the contracts to be awarded;
- indicate that the contracts will be awarded without further publication and invite interested suppliers to express their interest in writing.

### **How can I publish quarterly groups of contract award notices?**

Contracting Authorities are free to undertake the grouping at whatever level they choose, eg a buyer of social services contracts can group all their notices together and send to OJEU as a batch, or all the social services buyers can group their notices, or the whole authority can group all of its notices.

CCS interprets the phrase “within 30 days of the end of each quarter” as meaning the groups of notices must be sent within 30 days *after* the end of each quarter, not *before* the end of each quarter.

**Isn't it safer just to use the standard procedures in the main rules, rather than design our own process, to avoid the risk of legal challenge?**

The new LTR rules are deliberately designed to give as much flexibility to contracting authorities as possible, and so do not lay down detailed procedural rules. Routinely using similar procedures to those in the main rules would deprive the contracting authority of the many flexibilities that the LTR rules provide.

CCS recommends that authorities take advantage of the various flexibilities where possible, to maximise the possible benefits from the lighter rules regime, such as reduced process burdens on procurers and suppliers. The key things are to be clear about what your process will involve, making sure the process ensures transparency and equal treatment of suppliers, and sticking to the process that you decide to run.

**How much flexibility do authorities really have? For instance, presumably we would still have to seek a tender, even though the rules don't say so explicitly?**

There is a considerable amount of flexibility to design the procurement process in the way the authority chooses, though some of the basics of any well run procurement exercise would of course need to be respected. Generally, the “permissive” aspects of the main rules (i.e. where the rules permit authorities to do certain things, by stating that “contracting authorities may...”) are also permitted in LTR without the LTR rules needing to repeat the same details. So there should be no concern that things are ever *less* flexible in LTR. Whilst most of the mandatory and permissive provisions in the main rules do not have any binding effect on LTR contracts (except for those exceptions that are explained in this guidance), as discussed below some provisions are obviously necessary in any significant procurement exercise.

For instance, it would normally be necessary to at the very least acquire tenders before awarding the contract, in order to ensure that a transparent and competitive procurement has been undertaken, despite the absence of a specific LTR regulation requiring that. It would also be necessary to be transparent about any award criteria to be used, and the weightings for the criteria and sub-criteria, to comply with the general transparency obligations.

But following the initial OJEU advertisement, there is significant flexibility to decide how to get to the contract award stage. For example, authorities wanting to run a straightforward process and go straight to the final tenders stage, could use a “pseudo”<sup>3</sup> Open Procedure. The Open Procedure has very few prescriptive rules anyway, which mainly cover time

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<sup>3</sup> At various points in this guidance note we use the term “pseudo” before referring to a provision that is available in the main rules. This is to make clear that we are describing a practice in the LTR that inevitably looks and feels similar to the provision prescribed in the main rules, but is not actually a defined provision in the UK's LTR regulations, and so actually none of the formal procedural rules have any direct application when this is practiced in LTR contracts. It is important to make this distinction by the seemingly laborious repeat references to “pseudo” to avoid implying that we are talking about the actual provision prescribed in the main rules.

periods for responding to adverts and which do not apply in the LTR. So authorities could simply seek tenders from all interested parties by a date of the authority's choosing (ensuring the time is reasonable and proportionate, determined on a case-by-case basis, which might be relatively short for a straight-forward off-the-shelf purchase, or longer for a more complex or bespoke purchase or where the authority wants to allow more time to encourage SMEs to participate, for example).

Alternatively the authority might decide there was a need to run some sort of selection process before seeking tenders, and they would have flexibility in deciding how that worked. Authorities need not follow the detailed selection rules laid down in the Regulations for non-LTR contracts, though many of these rules are permissive and just make clear that authorities may do one thing or another. Should authorities wish to design their own bespoke selection process and criteria, again the key tests are to be certain that the process is transparent and ensures equal and fair treatment.

The authority could decide that it wanted to involve some sort of dialogue or negotiation with suppliers at some stage during the formal procurement exercise, and could design that aspect of the process according to its own needs. The rules on the competitive procedure with negotiation and competitive dialogue need not be followed to the letter, but authorities could use relevant elements of either procedure if useful. It would always be necessary for authorities to avoid giving away sensitive information owned by one company to a competitor.

The grounds for mandatory and discretionary exclusion do not apply as a matter of law, but authorities would still normally exclude suppliers that had been found guilty of the mandatory exclusion offences (corruption, terrorism and so on) as a matter of routine and sensible business practice. The discretionary grounds for exclusion would still be available, but authorities could use additional grounds for exclusion providing the authority: used conditions that were fair and reasonable; communicated those conditions clearly from the outset; and treated suppliers fairly when applying those conditions. However, CCS recommends sticking to the grounds for exclusion in the Regulations, as these grounds are sufficiently broad to cover most concerns, and this practice will help avoid unnecessary legal risks.

### **Do the aggregation rules apply to personal care contracts and other LTR contracts?**

Yes. The methods for determining the value of a contract and the relevant threshold have to be undertaken in a consistent manner regardless of whether the contract is covered by the main rules or the LTR. The rules on the methods of calculation are covered at Regulation 6. Further information on the aggregation rules and thresholds is covered in the handbook<sup>4</sup> on the new rules.

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/407236/A\\_Brief\\_Guide\\_to\\_the\\_EU\\_Public\\_Contract\\_Directive\\_2014\\_-\\_Feb\\_2015\\_update.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407236/A_Brief_Guide_to_the_EU_Public_Contract_Directive_2014_-_Feb_2015_update.pdf)



## What do the LTR rules say about award criteria?

The LTR regulations do not prescribe any rules on award criteria, so contracting authorities have the same flexibilities on use of award criteria that they have always had ie to decide for themselves: this could mean using the Best Price/Quality Ratio, in a similar (or modified) way to the provisions in the main rules; or using lowest-price award criteria where appropriate. Of course, authorities should always have regard to relevant national and local policies e.g. the Government's longstanding procurement policy of obtaining value for money (as set out in the HM Treasury Publication *Managing Public Money*<sup>5</sup>), and the value and nature of the services being procured, to inform decisions on the choice of award criteria. The key factor is whole life cost, not lowest purchase price. Using the Best Price/Quality Ratio criteria is likely to be particularly important when service quality is paramount e.g. services delivered to end users such as social care. That can involve setting a high minimum quality standard, and then accepting the lowest cost bid to meet that standard.

## Can user/carer/parent choice be used as award criteria when evaluating tenders?

CCS has received several questions about this, from procurers and other stakeholders active in the health, social services and education services sectors. As CCS understands it, the concern is that on the one hand the procurement rules require equal treatment of suppliers, transparent award criteria and so on. Whilst on the other hand, the nature of service provision in these service sectors where the end user is a citizen, necessitates that those end users can influence or even choose the eventual provider of the services<sup>6</sup>. How can these two apparently competing objectives be resolved?

The new Directive, and the UK's implementing regulations, make specific provisions for this. In particular the UK's regulations state that (regulation 76(8)) "...contracting authorities may take into account any relevant considerations, including...the specific needs of different categories of users; [and] the involvement and empowerment of users". The Directive actually *requires* Member States to include these provisions in their national laws, so it is clear that this is not only allowed but actively encouraged under EU law.

As CCS understands, pseudo framework agreements or pseudo dynamic purchasing systems would often be used by authorities, involving a number of suppliers capable of delivering the services needed, to be "called-off" as and when the authority needs those services. In practice, some authorities engage user representatives in tender evaluation panels.

Furthermore, where necessary for the delivery of certain services, it may be possible to incorporate an element of user choice at the call-off stage. For instance, the authority

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<sup>5</sup> <https://www.gov.uk/government/publications/managing-public-money>

<sup>6</sup> For example, the Care Act 2014 introduces wide reaching reforms to adult social care in England, and gives specific rights to users to choose their accommodation and/or care provider. Further information is available at: <https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation>

might consider that more than one of the providers could deliver a satisfactory, value for money service to the end-user, and proffer options to the user. As there are no specific procedural rules in the LTR that cover the awarding of call-offs from pseudo frameworks or pseudo-DPSs, there is a great deal of flexibility in awarding such call-off contracts. A key reference point is whether the possibility of allowing users to choose the provider gives rise to a problem with the general requirements around transparency and treating suppliers equally<sup>7</sup>. Assuming all the providers were treated equally, e.g. by ensuring that all end-users were offered the same rights to influence the choice of final provider, and that this mechanism for end-user choice was made clear to providers transparently from the outset, it is difficult to see on what basis a provider would have grounds for a grievance.

### **How can the Light Touch Regime be reconciled with the unfettered right of individual choice of accommodation under the Care Act?**

The Department of Health (DH) has policy responsibility for the Care Act 2014, under which people with care and support needs have the right to choose their accommodation, subject to specified conditions<sup>8</sup>. Some Local Authorities (LAs) have queried how they can procure these services in compliance with the Light Touch Regime (LTR) under the Public Contracts Regulations 2015 (PCR 2015) whilst also honouring the preference of the end user.

CCS and DH do not believe there is a strategic tension between the requirements of the Care Act 2014 and the PCR 2015, because the aim of these regulations is to ensure authorities award contracts fairly and competitively, not to deny people choice about where they live. LAs are free to contract with a wide range of providers to ensure that they have access to a range of care settings available to meet the variety of needs of the people living in its area. How authorities choose to proceed with procuring care contracts will depend on the local circumstances, and the approach tailored as appropriate. Some considerations are below.

Where a person with care and support needs contracts directly with the accommodation provider instead of using council-procured services, the contract will not fall within the definition of a "public contract" within the scope of the EU procurement rules because no contracting authority (as defined in the PCR 2015) is party to the contract.

Where people with care and support needs choose to use council-procured accommodation, then it seems likely that the contract would be a public contract within the

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<sup>7</sup> The case of *AJ v The Borough Council of Calderdale* [2012] EWHC 3552 considered a situation in which service users and their carers had previously been involved in an evaluation panel but the Council had decided stop the practice believing it constituted a breach of regulation 4 of the Public Contracts Regulations 2006 (transparency and equal treatment). The Court found that the Council had erred in law and there was nothing to suggest that inclusion of service users or their carers on evaluation panels would constitute a breach of reg.4. However the case did not look at the wider issue of whether service users and their carers should be included on evaluation panels.

<sup>8</sup> Section 30 of the Care Act 2014 (c.23) and the Care and Support and After-care (Choice of Accommodation) Regulations 2014 (S.I. 2014/2670).

scope of the PCR 2015. However, individual care contracts are almost certain to be well below the LTR threshold (and so could be "spot-purchased"), although the aggregation rules<sup>9</sup> might apply in some circumstances.

There are various ways of addressing this, but one pragmatic solution would be for an LA to set up an overarching agreement with multiple providers to cater for the majority of placements, such as a pseudo dynamic purchasing system, to contract with a wide range of providers, and call-off those arrangements as the need arises. The call-off contract could be awarded directly to one provider without further competition where the terms of the overarching agreement provided for awards to be made in this way. (Also see the above FAQ on use of user choice as an award criterion). New providers can be added to a DPS, which may be helpful if users choose accommodation from a provider that is not already on the DPS. This could include adding care homes from outside the local authority area.

**Do I have to make the procurement documents electronically available, as is the case in the main rules?**

Yes.

**Is it necessary to inform candidates and tenderers of the award decision in the same way as the main rules, and have a standstill period?**

Although this may not strictly be required (particularly where a PIN has in fact been used to call for competition), the position is not wholly clear. Therefore, CCS suggests that contracting authorities will usually wish to send award notices and observe the standstill period (in the same way as in procurements governed by the main rules), as this will avoid the risk that the contract (or framework agreement) might be subject to the draconian remedy of ineffectiveness if the case law does clarify that these requirements do apply to the LTR. But where particular circumstances make it important to award the contract urgently, contracting authorities may want to weigh the urgency against the risks of proceeding without a standstill.

These issues (which apply equally to those procurements by sub-central authorities which are permitted to be commenced by PIN) will be covered in separate guidance on standstill and remedies.

It is also good practice to inform participants as soon as possible when they are excluded from a procurement exercise, and the reasons for that exclusion.

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<sup>9</sup> See Regulation 6 of the Public Contracts Regulations 2015.

General guidance is also given on the aggregation rules in paragraph 13 of CCS' guide to the EU Public Contracts Directive

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/449295/A\\_Brief\\_Guide\\_to\\_the\\_EU\\_Public\\_Contract\\_Directive\\_2014\\_-\\_July\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/449295/A_Brief_Guide_to_the_EU_Public_Contract_Directive_2014_-_July_2015.pdf)

## **Are there any circumstances in which it is permissible not to publish an OJEU contract notice or PIN in respect of an above-threshold LTR procurement?**

Yes, but only where the main rules would permit use of the negotiated procedure without prior publication (see Regulation 75(2)).

## **What rules apply to below-threshold LTR contracts?**

In the negotiations, the European Commission was clear that contracts below the LTR threshold would not be of cross border interest and so would not need to be advertised in OJEU. Member States only agreed to the new LTR rules on that basis. This is reflected in recital 114 of the Directive, which sets out that it is the services above that threshold which might have a cross border interest. In particular, the recital states that “Services to the person with values below that threshold will typically not be of interest to providers from other Member States, unless there are concrete indications to the contrary, such as Union financing for cross-border projects”

This is different to the position for contracts below the normal thresholds for goods, non-LTR-services and works, where the onus is on the contracting authority to determine whether or not there could be cross-border interest.

## **Do the new rules arising from the “Lord Young” recommendations have to be followed for contracts listed in the light-touch regime?**

Part 4 of the new Regulations implements the Government’s procurement policy to make public sector procurement more accessible to smaller firms. These rules do need to be followed by authorities procuring service contracts listed under the light-touch regime, except where the procurement is undertaken by bodies in Northern Ireland and Wales exercising functions that are wholly or mainly devolved. Furthermore, there are exemptions from these obligations where a procuring entity is commissioning clinical services or where a procuring entity is a maintained school or academy. Separate guidance covers the new requirements to help SMEs get better access to public contracts.

## **What about the threshold for the elimination of PQQs? The LTR threshold is very high.**

The threshold applicable to the elimination of PQQs in the Light Touch Regime is set at the **lower** EU threshold in the main procurement rules for goods and services, so central government authorities would not use PQQs below the lower threshold for goods and services, whereas sub-central authorities would use the goods and services threshold for sub-central authorities.

**Is it necessary, for LTR contracts, to keep records and reports as per Regulation 83 & 84?**

Yes.

**Is it necessary, in LTR procurements, to justify a decision not to split contracts into lots?**

No, it is not mandatory to do so in LTR procurements. However, contracting authorities can still consider the possible benefits of lotting as a matter of good practice.

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## **PART 2. Reserved Contracts for Certain Services in the Light-Touch Regime:** Overview, Key Points and FAQs

### **OVERVIEW**

#### **What are “reserved contracts” for certain services in the light-touch regime?**

Regulation 77 provides for procurements for certain service contracts to be “reserved” to organisations that meet certain criteria. These contracts may run for a maximum period of 3 years. In essence, this means it is now possible to run a competition in compliance with the new light-touch regime of EU procurement rules where participation is limited to qualifying organisations such as mutuals and social enterprises.

#### **Why is this helpful/necessary?**

One of the main UK aims during the negotiations on the new Directives was to allow public service mutuals to become established before they were subject to EU wide competition under the public procurement rules. As the development of public service mutuals was a UK policy initiative, and was generally unfamiliar to other Member States, this was something that needed to be explained to and extensively negotiated with the European Commission, other Member States and the European Parliament. Regulation 77 (Article 77 of 2014/24/EU) reflects a successful outcome of these negotiations. This provision provides extra flexibility for the public sector to encourage mutuals and social enterprises to compete for and gain experience of delivering government contracts before being exposed to full EU-wide competition.

#### **What has changed?**

This is an entirely new provision. It should not be confused with the longstanding provisions around reserved contracts for sheltered workshops (see regulation 20, which is the subject of separate guidance), which allows contracting authorities to reserve participation in a procurement competition to an entirely different set of qualifying economic operators.

#### **Which rules do I need to refer to?**

Regulation 77 covers reserved contracts for certain services and is attached to this guidance at Annex B. Regulation 77 (2) provides an exhaustive list of the CPV codes of the covered services.

Regulations 74-76 (the other provisions in the Light Touch Regime) also apply.

## **KEY POINTS**

The CPV codes to which this provision applies are subject to the Light Touch Regime (LTR) within the public sector Directive (Articles 74 – 77). This means that the procedural rules that apply to other contracts covered by the LTR will also apply to reserved contracts. The section on ‘Which rules do I need to refer to’ in Part 1 of this guidance explains the approach to procedures under the Light Touch Regime.

It is not possible to use the reserved contracts provision for healthcare commissioning by NHS England or Clinical Commissioning Groups in England. This is to ensure consistency with the general requirements in regulation 3 of the existing NHS (Procurement, Patient Choice and Competition Regulations) (No. 2) 2013 Regulations, in particular the prohibition on favouring types of provider. However, where provided for by Regulation 77 of the 2015 Public Contracts Regulations, these bodies can still use the mutuals reservation for the commissioning of non-healthcare services. The reserved contracts provision is also available to other relevant bodies (such as NHS Trusts and local authorities) for healthcare commissioning.

Contracts for reserved services need to be advertised in OJEU, so this regulation does not permit direct award. The call for competition published in OJEU must explicitly refer to article 77 of the Public Contracts Directive (2014/24/EU).

Participation in any such competition is **reserved** to qualifying organisations that meet the following criteria:

- its objective is the pursuit of a public service mission linked to the delivery of the services covered under the reserved contracts provision;
- its profits are reinvested with a view to achieving the organisation’s objective, and where profits are distributed or redistributed, this should be based on participatory considerations;
- the structures of management and ownership of the organisation performing the contract are (or will be, when it performs the contract) based on employee ownership or participatory principles, or require the active participation of employees, users or stakeholders; and
- the organisation has not been awarded a contract for the services concerned by the contracting authority concerned using the reserved contracts provision within the previous three years.

The first three conditions reflect the Commission’s definition of a ‘social enterprise’ as set out in its Communication on “Creating a favourable climate for social enterprises” (SEC (2011) 1278 final).

The fourth condition makes clear that if an organisation that has won a contract under the reserved contracts provision within the previous three years, it cannot be awarded a contract for the same services under the provision. It could, of course, compete for such a contract if the contract were to be advertised in OJEU without the use of the reserved

contracts provision. The maximum duration of any contract for reserved services is three years. This is to make sure that such contracts are not removed from open competition for too long.

## **FAQs**

**Do the rules for reserved contracts mean that a supplier awarded a contract under this provision cannot be awarded a contract again when it is retendered after the first three years?**

It is not possible to award a contract to the incumbent qualifying organisation after the initial 3 year contract awarded under the reserved contracts provision has expired. The qualifying organisation could, however, compete in an open competition if the contracting authority chose to run an open competition rather than a further competition where participation was restricted to qualifying organisations. Alternatively, the contracting authority could elect to run a further competition for the services under this reserved contracts provision at the end of the initial 3 year period. The contracting authority could award a contract for the same services to another qualified organisation under this competition.

**What is the position for contracts for reserved services below the 750,000 Euro threshold?**

The position below threshold is not different from other below threshold services covered by the Light Touch Regime. Unless there are concrete indications to the contrary, such services would typically be regarded as **not** being of interest to service providers from other Member States, so there is no requirement for them to be advertised in OJEU.



## Annex A - List of Services covered by the new Light-Touch Regime

### SCHEDULE 3 of the Public Contracts Regulations 2015

Regulations 5(1)(d) and 74

#### SOCIAL AND OTHER SPECIFIC SERVICES

CPV Code	Description
75200000-8; 75231200-6; 75231240-8; 79611000-0; 79622000-0 (Supply services of domestic help personnel); 79624000-4 (Supply services of nursing personnel) and 79625000-1 (Supply services of medical personnel) from 85000000-9 to 85323000-9; 98133100-5, 98133000-4; 98200000-5; 98500000-8 (Private households with employed persons) and 98513000-2 to 98514000-9 (Manpower services for households, Agency staff services for households, Clerical staff services for households, Temporary staff for households, Home-help services and Domestic services)	Health, social and related services
85321000-5 and 85322000-2, 75000000-6 (Administration, defence and social security services), 75121000-0, 75122000-7, 75124000-1; from 79995000-5 to 79995200-7; from 80000000-4 Education and training services to 80660000-8; from 92000000-1 to 92700000-8; 79950000-8 (Exhibition, fair and congress organisation services), 79951000-5 (Seminar organisation services), 79952000-2 (Event services), 79952100-3 (Cultural event organisation services), 79953000-9 (Festival organisation services), 79954000-6 (Party organisation services), 79955000-3 (Fashion shows organisation services), 79956000-0 (Fair and exhibition organisation services)	Administrative social, educational, healthcare and cultural services
75300000-9	Compulsory social security services
75310000-2, 75311000-9, 75312000-6, 75313000-3, 75313100-4, 75314000-0, 75320000-5, 75330000-8, 75340000-1	Benefit services
98000000-3; 98120000-0; 98132000-7; 98133110-8 and 98130000-3	Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services
98131000-0	Religious services
55100000-1 to 55410000-7; 55521000-8 to 55521200-0 (55521000-8 Catering services for private households, 55521100-9 Meals-on-wheels services, 55521200-0 Meal delivery service) 55520000-1 Catering services, 55522000-5 Catering services for transport enterprises,	Hotel and restaurant services

55523000-2 Catering services for other enterprises or other institutions, 55524000-9 School catering services 55510000-8 Canteen services, 55511000-5 Canteen and other restricted-clientele cafeteria services, 55512000-2 Canteen management services, 55523100-3 School-meal services	
79100000-5 to 79140000-7; 75231100-5;	Legal services, to the extent not excluded by regulation 10(1)(d)
75100000-7 to 75120000-3; 75123000-4; 75125000-8 to 75131000-3	Other administrative services and government services
75200000-8 to 75231000-4	Provision of services to the community
75231210-9 to 75231230-5; 75240000-0 to 75252000-7; 794300000-7; 98113100-9	Prison related services, public security and rescue services to the extent not excluded by regulation 10(1)(h)
79700000-1 to 79721000-4 (Investigation and security services, Security services, Alarm-monitoring services, Guard services, Surveillance services, Tracing system services, Absconder-tracing services, Patrol services, Identification badge release services, Investigation services and Detective agency services) 79722000-1(Graphology services), 79723000-8 (Waste analysis services)	Investigation and security services
98900000-2 (Services provided by extra-territorial organisations and bodies) and 98910000-5 (Services specific to international organisations and bodies)	International services
64000000-6 (Postal and telecommunications services), 64100000-7 (Post and courier services), 64110000-0 (Postal services), 64111000-7 (Postal services related to newspapers and periodicals), 64112000-4 (Postal services related to letters), 64113000-1 (Postal services related to parcels), 64114000-8 (Post office counter services), 64115000-5 (Mailbox rental), 64116000-2 (Post-restante services), 64122000-7 (Internal office mail and messenger services)	Postal services
50116510-9 (Tyre-remoulding services), 71550000-8 (Blacksmith services)	Miscellaneous services

## Annex B – Regulation 77

### Reserved contracts for certain services

77.—(1) Contracting authorities may reserve to qualifying organisations the right to participate in procedures for the award of reservable public contracts.

(2) For that purpose, a contract is a reservable public contract only if it is exclusively for one or more of the services which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4, and 98133110-8.

(3) In this regulation, “qualifying organisation” means an organisation which fulfils all of the following conditions:—

- (a) its objective is the pursuit of a public service mission linked to the delivery of services referred to in paragraph (2);
- (b) profits are reinvested with a view to achieving the organisation’s objective, and any distribution of profits is based on participatory considerations;
- (c) the structures of management or ownership of the organisation are (or will be, if and when it performs the contract) —
  - (i) based on employee ownership or participatory principles, or
  - (ii) require the active participation of employees, users or stakeholders; and
- (d) the organisation has not been awarded, pursuant to this regulation, a contract for the services concerned by the contracting authority concerned within the past 3 years.

(4) The maximum duration of a contract awarded under this regulation shall not be longer than 3 years.

(5) Where a contracting authority exercises the power of reservation conferred by paragraph (1), the call for competition shall make reference to Article 77 of the Public Contracts Directive.

(6) This regulation does not apply in relation to the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013<sup>(10)</sup>.

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<sup>(10)</sup> S.I. 2013/500.