

# Procurement – The Legal Framework

Ceri Delemore  
Partner

Monday 1<sup>st</sup> July 2013



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## Healthcare procurement

### A brief overview

- The economic and political backdrop
- The internal framework
- The legal framework

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## The legal framework

- The public procurement rules
- The National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013

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### What are the public procurement rules?

- EC Directive 2004/18/EC
- The Public Contracts Regulations 2006
- Decisions of the European Court of Justice and of the domestic courts

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### What are the public procurement rules?

- EU Treaty: general principles
  - Transparency
  - Equality, non-discrimination
  - Mutual recognition
  - Proportionality

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### When do the procurement rules apply?

#### The current position

- Whenever
  - A contracting authority
  - Seeks offers in relation to public contracts
  - The value of which exceed the relevant threshold values
  - Which are not expressly excluded

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## Contracting authorities

### Includes

- Central government departments such as the Department of Health
- Local authorities
- Local Health Boards
- NHS Trusts

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## What is a public contract?

### The current position

- Contract in writing and for consideration for:
  - Supply or hire of goods
  - Services: distinction between Part A services and Part B services
    - Works

**Note:** *concession contracts*

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## What are the current threshold values?

- Works - £4,348,350
- Supplies - £113,057 or £173,934
- Services - £113,057 or £173,934

**Note:** *complex aggregation rules and limited exemptions for small lots*

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## The Procedures

### The current position

- Open
- Restricted
- Negotiated
- Competitive dialogue

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## Why are the rules changing?

- Criticisms of the current rules
- Europe 2020

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## Key objectives of the new Directive

- Simplification
- Modernisation
- “Flexibilisation”

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### Some of the proposed changes

- Abolition of the Part A/Part B services distinction
- Special treatment for social services
- A lighter touch for “sub-central” contracting authorities

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### Some of the proposed changes

#### New procedures

- competitive procedure with negotiation
- innovation partnership procedure

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### Some of the proposed changes

#### Express provisions relating to

- contracts awarded to ‘in-house’ organisations
- contracts between two or more authorities

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## Some of the proposed changes

### Easier tendering for SMEs

- Simpler information obligations
- Lots
- Limits on requirements

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## Some of the proposed changes

### Concessions

- New directive proposed

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## Timescale for the proposed changes

- **Original plan:** directive early in 2013, transposition by 30 June 2014
- **Current plan:** directive end of 2013, transposition 2014-2015
- **In reality:** anyone's guess!

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## National Health Service Regulations 2013

- Adopted pursuant to section 75 of the Health and Social Care Act 2012
- Only apply to England
- Overlap with the procurement rules

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Thank You

Any Questions?



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## Contact details



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