

# UK adds debarment list to procurement regime for 2025

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## What you need to know

**Key takeaway #1:** On 24 February 2025, the Procurement Act 2023 came into force. From that date, the UK will publish a debarment list of suppliers who are excluded from bidding for public awarded contracts.

**Key takeaway #2:** Suppliers should assess the risks of being placed on this list, based on the mandatory and discretionary grounds that could apply to them, any sub-contractors or connected parties.

**Key takeaway #3:** Suppliers should also ensure they are familiar with the authority's investigation process and the deadlines to appeal a decision. These are short and require you to issue a challenge promptly.

## Introduction

As a result of the Procurement Act 2023, the UK procurement regime changed on 24 February 2025. To read about the key changes, please see our article *Understanding the UK's New Procurement Regime in 2025* (<https://bit.ly/4bBeGzb>).

In this short read, we focus on the introduction of a published list of excluded and excludable suppliers, known as the debarment list. The list has the potential to be a powerful tool for competition and enforcing procurement standards in the UK.

Inclusion on the list for falling foul of a mandatory exclusion ground prohibits suppliers from participating in any competitive tendering procedures or from receiving a direct award from a contracting authority.

Inclusion for a discretionary exclusion ground will also significantly damage a contractor's prospects of being successful, as contracting authorities are warned to exercise caution and refrain from awarding contracts to such suppliers unless there are good reasons to do so.

## The debarment list

The debarment list<sup>1</sup> has the potential to be an innovative response to the perceived failures in government procurements since Covid-19. The perception is that public trust in the process has declined as taxpayers fear their money is being misspent

and contracts undelivered. The debarment process and list are aimed at improving transparency and accountability.

The debarment list acts as a threat that an unfit supplier or a supplier with poor conduct, could be subject to an investigation by a government minister, or the Procurement Review Unit (PRU). If a decision is made to place a supplier on the debarment list on certain mandatory grounds, then authorities must exclude that supplier from bidding for public contracts.<sup>2</sup>

The Act is very broad in scope and includes both current suppliers and potential suppliers. It also applies to sub-contractors. A foreign supplier may also be added to the debarment list.

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Once the list is operational, suppliers should regularly review this to ensure it does not include any connected parties or associates who would otherwise be expected to help deliver the contract.

The public nature of the list, as well as the commercial impact of an investigation, are clear incentives to ensure that a supplier meets the requisite standards and obligations expected under the Act.

## The grounds for being added to the debarment list

Two categories of grounds are included in the Act to ensure competition between reliable suppliers:

- **Statutory mandatory grounds:** these are serious higher-risk offences that will result in a supplier's inclusion on the

debarment list.<sup>3</sup> Among others, these are the offences of: theft, fraud and bribery, labour market slavery and human trafficking offences, certain tax violations, cartel and other competition law infringements, and failure to co-operate with an investigation.

- **Discretionary grounds:** are engaged where a supplier's conduct is poor but does not amount to a criminal offence.<sup>4</sup> Among other things, that could include: labour market misconduct, environmental misconduct, potential competition infringements, breach of contract/poor performance, and acting improperly in a procurement.

If a mandatory or discretionary ground applies, the supplier will be subject to a secondary assessment on whether that supplier is likely to continue or repeat the behaviour. This is referred to as a "self-cleaning assessment". A supplier will need to submit evidence that it has reformed, for example if it has paid compensation or any imposed fines or if it is making business changes to address the identified failing.

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The PRU may take referrals from government ministers, contracting authorities and the public. This could open the process up to a sizeable number of complaints from users of the services, the media and other suppliers.

One potential development we foresee is that the PRU and other related agencies will seek to become more joined up with other regulatory bodies to ensure consistent notification of regulatory findings in the UK. This then raises the question of whether such notifications have the potential to be recognised by foreign contracting authorities and, if so, what weight will be given by them, or a foreign court, when making or challenging contract awards.

### The investigation process

When the PRU is investigating a supplier, that supplier will receive a notification to that effect along with an explanation of the suspected grounds. While there is no legal duty to participate in the investigation, providing responses to the PRU's requests for information offers an early opportunity to submit self-cleaning evidence.

A supplier should also consider the public nature of the process and the reputational risk of failing to engage. Reports relating to debarment investigations are publishable, except in certain circumstances where there are national security

implications or risks of sensitive commercial information being published.

While the PRU will conduct the investigation, the ultimate decision whether to add a supplier's name to the list will be taken by the Minister of the Cabinet Office. If the decision is taken to add a supplier to the list, then a notice will be sent stating the decision, the grounds and reasons for the decision, and how to appeal.

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The PRU must then observe a short standstill period of eight working days before publishing the supplier's name on the debarment list. The debarment list will also provide the relevant grounds for exclusion and the date of removal from the list.<sup>5</sup>

If a supplier is placed on the list for a mandatory exclusion, then it will be unable to be considered for future public contracts until the expiry of their debarment. However, if a supplier is placed on the list for discretionary grounds, then it may still be considered for public contracts, subject to the discretion of the authority.

### How long will a supplier be on the debarment list

It is envisaged that a supplier will typically remain on the debarment list for up to five years.

The date the clock starts running depends on whether the exclusion was on a mandatory or discretionary ground:

- For mandatory grounds it starts from when the relevant event occurred;<sup>6</sup> and
- For discretionary grounds, it starts from when the Minister became aware or, or ought to have been aware of the event.<sup>7</sup>

In theory, the date the Minister became aware of the event might be later than the date of, for example, the date the misconduct occurred for exclusion on mandatory grounds. This means a supplier excluded on discretionary grounds could be restrained for longer than a supplier excluded on mandatory grounds.

It bears emphasising that debarment is not intended to constitute a means of punishment for past misconduct. Rather, it forms part of a risk-based approach by the government to ensure suppliers on the debarment list are not included contracts. In any event, five years is by no means a short

period when it comes to being out of the market for public contracts and so we expect the threat of inclusion on the debarment list will deter poor behaviour.

## How to appeal a decision

The key is to be prepared to act quickly and there are three avenues to challenge debarment:

- **Interim relief:** the supplier must, within the eight working days of receiving the decision, apply to the Court to suspend the supplier's name being published to the list.<sup>8</sup> Appeal proceedings must be issued within thirty days of the supplier's knowledge of the decision (this is an objective test and may run from when a supplier should have known of the decision). Guidance suggests that remedies that could be sought where appeals are successful, include an order to have the decision set aside and/or the award of lost bid costs for not being able to participate.
- **Application for removal:** in circumstances where a material change can be shown, or other significant new information comes to light, then a supplier could apply for removal from the list.<sup>9</sup> The guidance suggests this could include new evidence of self-cleaning steps such as the regulatory ruling being overturned, a change in directors, or new processes in place to address any identified issues.
- **Appeal proceedings:** on the limited ground that the Minister made a material mistake of law when deciding to debar the supplier (or setting the scope for the debarment).<sup>10</sup> The same thirty-day strict time limit applies of when the supplier knew, or ought to have known, of the Minister's decision.

## Our thoughts

The success of the regime may turn on how many referrals for investigations are made and how efficiently these can be

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carried out. There is some concern that lengthy investigations and litigation regarding decisions to be placed on the list may become commonplace. This could easily become a resource intensive and costly process for the government, which may outweigh the good it seeks to do in raising procurement standards.

In light of the recent wave of procurement scandals from the PPE scandal during the Covid-19 pandemic and the now infamous Post Office scandal, an effort to raise procurement standards is welcome. It remains to be seen whether it will be effective.

From a business perspective, we think suppliers will be concerned about a potential scenario where they are being investigated but not put on the debarment list. This interferes with the supplier's ability to take part in a procurement, distracting it from its business operations.

One potential consequence could be self-reporting any potential grounds to the PRU to allow the process to take place outside of any procurement bid, where there are concerns that a mandatory or discretionary grounds could exclude a potential supplier later down the line.

## Notes:

<sup>1</sup> The debarment list as no entries on it at the time of publishing and can be accessed via this link: <https://bit.ly/4iPUI05>.

<sup>2</sup> Procurement Act 2023, Section 59.

<sup>3</sup> Procurement Act 2023, Schedule 6.

<sup>4</sup> Procurement Act 2023, Schedule 7.

<sup>5</sup> Procurement Act 2023, Sections 61 and 62.

<sup>6</sup> Procurement Act 2023, Section 62 and Schedule 6, paragraph 44: the relevant events are (i) the date of being convicted of the offence, (ii) the date the misconduct occurred, or (iii) the date of a regulatory ruling.

<sup>7</sup> Procurement Act 2023, Section 62 and Schedule 7, paragraph 15.

<sup>8</sup> Procurement Act 2023, Section 63.

<sup>9</sup> Procurement Act 2023, Section 64.

<sup>10</sup> Procurement Act 2023, Section 65.