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Legal Insights Post-Procurement Act: The Power of Procurement in Action

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UNIVERSITY OF LIVERPOOL | 17TH JUNE 2026

Introduction



Kieran McGaughey

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Procurement lawyer and training provider | Providing legal advice and training on UK public procurement law | Helping organisations to apply the new Procurement Act

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Agenda

Today's agenda:

1. Trends since the Act went live
2. Staying on the right side of the rules: opportunities and pitfalls to avoid
3. Managing a dual regime where PCR2015 still applies to existing contracts
4. What's next? Key developments to look out for in the coming year
5. Audience Q&A

Agenda

- 1. Trends since the Act went live...**

Trends so far...

- PCR 2015 frameworks remain very popular
- For new PA 2023 frameworks, closed more popular than open
- Focus on need for “objective mechanism” re PA 2023 direct award call-offs (ranked etc)

- Dynamic markets haven't taken off at all (and won't unless the rules change...)
- Open procedure used more than competitive flexible
- BUT... competitive flexible procedure steadily rising in use
- Some apparent confusion at times about which regime applies

Trends so far...

- Lots more information in the public domain via the new notices
- First legal judgment has recently been published (although not a full trial)
- Various other legal challenges are in motion
- Nobody on the debarment list, no live investigations – a paper tiger?

- Admin burden has increased
- Degree of cynicism as to what the Act has/will achieve the stated objectives (faster/simpler/SME friendly etc)
- People have finally stopped posting their training badges on LinkedIn

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2. **Staying on the right side of the rules:
opportunities and pitfalls to avoid**

Staying on the right side of the rules

The competitive flexible procedure

- Statistics from Tussell earlier this year suggest 20% of above threshold procurements using competitive flexible procedure (“CFP”)
- Usage likely to increase further as authorities become more confident with the new rules and re-procurements come up
- CFP stages could include, for example: negotiation, dialogue, site visits, presentations, best and final offers (BAFO) etc
- Helpful flexibility, particularly for complex projects
- Does require careful planning and resource however

Staying on the right side of the rules

The competitive flexible procedure: 5 steps to success?

Remember: The CFP is DIY (Design it Yourself) not Make-It-Up-As-You-Go-Along...

1. Consider whether CFP is appropriate (see next slide)
2. If so, take time to carefully plan the process
3. Tell the market what you're going to do
4. Do it (and do it the way you've said you will do it)
5. Be able to evidence you've done it that way (noting the new feedback and transparency obligations)

Open or CFP? Indicative factors

Open procedure	Competitive flexible procedure (“CFP”)
Straightforward requirement	Complex requirement
Known solution	Known problem
Lower contract value	Higher contract value
Smaller number of bidders	Larger number of bidders
Limited time available	Significant time available
Small budget for the procurement	Higher budget for the procurement
Limited internal capacity/capability	Higher level of internal capacity/capability
Standard contract terms	Complex contractual structure
Minimal legal support available	Legal support available (internal and/or external)

*(Note: It is likely most procurements will include some factors from **both** lists. As such, suitability of procedure should be considered from an **overall** perspective)*

Staying on the right side of the rules

Plan ahead (and start early)

- New focus on pre-market engagement (including new notice)
- PME not mandatory, but encouraged
- Also new pipeline notices (contracts > £2million)
- And new procurement termination notices – **1,362** so far (as at 15th June)
- Would appear to be link between some failed procurements and lack of planning/engagement with the market (no bids, no suitable bids, mistakes in documents etc)
- Encourage your client departments to approach procurement **early**

Staying on the right side of the rules

General tips

- Record keeping and audit trail increasingly important – “have regard”/“have regard to the importance of” duties
- Ensure your templates are robust and up-to-date. Do they contain guidance and drafting notes?
- Do your contract managers know the rules? They need to... (particularly where KPI publication rules apply >£5million)

Staying on the right side of the rules

General tips

- Make sure notices are carefully populated and reflect the law and guidance. Give **reasons** - many notices offer little justification as to precisely **why** the direct award ground/modification ground etc apply
- Seek prior legal advice, particularly on higher risk matters
- Get a hold of your evaluation processes – likely to continue to be a fertile source of challenge. Get the right evaluators/moderator/training/scoring matrix/template assessment summary etc etc.

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- 3. Managing a dual regime where PCR2015 still applies to existing contracts**

Which regime applies?

- Something you should check for **every** procurement/contract that lands in your inbox
- Remember: **existing** contracts (i.e. procurement* commenced before the Act went live on 24th Feb 2025) continue to be governed by PCR 2015
- This is true of frameworks also
- Which regime applies affects, for example, what notices you need to publish, the rules on what contract changes are allowed (variations, extensions) etc

**Don't work off the contract date – for example, a contract dated 1st May 2025 could well have been procured under PCR!*

Contract value and thresholds

- Also, check contract value
- Works contract threshold is £5,193,000, goods/services £207,720 (sub-central authorities)
- Note these figures are now *inclusive* of VAT
- Below threshold, there are fairly limited rules under the Act
- **BUT...** don't forget your university's own *internal* rules (see for example Peterborough City Council report earlier this year re governance failings)

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4. **What's next? Key developments to look out for in the coming year**

What next? The year ahead...

- Actions from government consultation response on potential reforms to the Act?
- New definition of social value? (will it make any difference?)
- Contract performance notices now live (8 published as at 15th June 2026)

What next? The year ahead...

- The Procurement Compliance Service (PCS) now accepting referrals
- Further legal judgments? *(further applications to lift the automatic suspension seem more likely than full trials, but we shall see)*

Keeping in touch

Thank you for listening!

Feel free to keep in touch – you can connect on LinkedIn here:
<https://uk.linkedin.com/in/kieran-mcgaughey-29383b66>

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Happy to provide a free “no obligation” quote for any procurement law training needs at your university

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5. Audience questions

The background of the image is a blurred photograph of a library. On the left side, there are wooden bookshelves filled with books. In the center and right, several incandescent light bulbs are hanging from above, some in focus and some blurred, creating a bokeh effect. The overall color palette is muted, with a dark blue overlay on the right side.

THANK YOU