Draft Order laid before Parliament under section 19(3) of the Local Government Act 1999 and section 122(4)(o) of the Procurement Act 2023, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2026 No.

LOCAL GOVERNMENT, ENGLAND

PUBLIC PROCUREMENT, ENGLAND

The Local Government (Exclusion of Non-commercial Considerations) (England) Order 2026

Made - - - - ***

Coming into force

The Secretary of State makes this Order in exercise of the powers conferred by section 19(1), (2)(a), (b) and (c) and (2A) of the Local Government Act 1999(**a**) ("the 1999 Act") and sections 95(1) and (2)(a) and 122(3) of the Procurement Act 2023(**b**) ("the 2023 Act").

In accordance with section 19(3) of the 1999 Act(**c**) and section 122(4)(o) of the 2023 Act, a draft of this Order has been laid before, and approved by resolution of, each House of Parliament.

Citation, commencement, extent and application

1.—(1) This Order may be cited as the Local Government (Exclusion of Non-commercial Considerations) (England) Order 2026.

(2) This Order comes into force on the day after the day on which the Order is made.

(3) This article and article 4 extend to England and Wales, Scotland and Northern Ireland, while articles 2 and 3 extend to England and Wales only.

Interpretation

2. In this Order—

"the 1988 Act" means the Local Government Act 1988(**d**);

(**a**) 1999 c. 27. Section 19(1) was amended by paragraph 10(2) of Schedule 3 to the Local Government Act 2003 (c. 26) and paragraphs 2(3)(a) and 2(3)(b) of Schedule 7 to the Local Government and Public Involvement in Health Act 2007 (c. 28).
(**b**) 2023 c. 54. See section 123(1) of the Procurement Act 2023 for the definitions of "appropriate authority" and "Minister of the Crown".
(**c**) Section 19(3) was amended by paragraph 10(3) of Schedule 3 to the Local Government Act 2003.
(**d**) 1988 c. 9.

"below-threshold contract" has the same meaning as in section 5(5) of the Procurement Act 2023(**a**);

"below-threshold tender notice" has the same meaning as in section 87(5) of the Procurement Act 2023(**b**);

"contractor" has the same meaning as in section 17(8) of the 1988 Act(**c**);

"county" means a county established by section 1 of the Local Government Act 1972 (new local government areas in England)(**d**);

"notifiable below-threshold contract" has the same meaning as in section 87(4) of the Procurement Act 2023(**e**);

"procurement" has the same meaning as in section 1 of the Procurement Act 2023;

"relevant authority" means any best value authority(**f**) or parish council;

"relevant contract" means a contract to which section 17 of the 1988 Act(**g**) applies which is a below-threshold contract.

Matters not to be non-commercial matters

3.—(1) In respect of the functions regulated by section 17 of the 1988 Act, the matter specified in section 17(5)(e) of that Act ceases to be a non-commercial matter but only to the extent that either paragraph (2) or (3) applies.

(2) This paragraph applies where, before inviting the submission of tenders, a relevant authority determines that contractors not based within the United Kingdom may not participate in the procurement of a relevant contract.

(3) This paragraph applies where, before inviting the submission of tenders, a relevant authority determines that contractors not based within the local area may not participate in the procurement of a relevant contract.

(4) For the purposes of paragraphs (2) and (3) a contractor is "based within" a location where that contractor is based or has established substantive business operations, not taking account of the location of the corporate ownership or control of the contractor.

(5) For the purposes of paragraph (3), "the local area" is—

(a) where there is one relevant authority which intends to enter into a relevant contract—

(i) the area of that authority, or

(ii) the area specified in (i) and any of the areas of the counties or London boroughs that border that area;

(b) where there are two or more relevant authorities which intend to enter into a relevant contract—

(i) the areas of those authorities, or

(**a**) 2023 c. 54.
(**b**) Regulation 24 of S.I. 2024/692 sets out the information that must be included in a below-threshold tender notice.
(**c**) Section 17(8) was amended by paragraph 38 of Schedule 2 to the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52).
(**d**) 1972 c. 70.
(**e**) Section 87(4) was amended by S.I. 2024/783.
(**f**) "Best value authorities" are defined in section 1 of the Local Government Act 1999 (c. 27).
(**g**) Section 17 was relevantly amended by paragraph 38 of Schedule 2 to the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), paragraph 10 of Schedule 26 to the Equality Act 2010 (c. 15), section 2 of the Public Services (Social Value) Act 2012 (c. 3), section 116 of the Procurement Act 2023 (c. 54) and S.I. 2009/1941.

(ii) the areas specified in (i) and any of the areas of the counties or London boroughs that border those areas.

(6) For the purposes of sub-paragraphs (a)(i) and (b)(i) of paragraph (5), where the relevant authority is wholly located within a single county or London borough, the area of that authority may be either—

(a) the area of the authority, or

(b) the area of the single county or London borough that the authority is located within.

(7) For the purposes of paragraph (5), the area of a relevant authority is determined by reference to where the authority primarily exercises its functions, disregarding any areas outside of the United Kingdom.

(8) Where the relevant authority advertises for the purpose of inviting tenders in accordance with either paragraph (2) or paragraph (3), the authority must specify which paragraph applies, and (where paragraph (3) applies) the extent of the local area for the purposes of paragraph (5)—

(a) in respect of a notifiable below-threshold contract, in the below-threshold tender notice, and

(b) in respect of all other relevant contracts, in the advertisement.

Amendment of the Procurement Regulations 2024

4.—(1) The Procurement Regulations 2024(**a**) are amended as follows.

(2) In regulation 24(2) (below-threshold tender notices)—

(a) omit the "and" after sub-paragraph (i);

(b) after sub-paragraph (j), insert ", and

(k) whether the notice is being used, in accordance with article 3 of the Local Government (Exclusion of Non-commercial Considerations) (England) Order 2025, to reserve a contract—

(i) to suppliers based within the United Kingdom, or

(ii) to suppliers based within the local area, and for that purpose, also specify the areas which constitute the local area for the purposes of article 3(5) of that Order".

NAME
Minister of State
DATE Ministry of Housing, Communities and Local Government

(**a**) S.I. 2024/692.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 17(5) of the Local Government Act 1988 (c. 9) ("the 1988 Act") contains a list of matters (non-commercial matters) by reference to which specified authorities may not exercise the functions listed in section 17(4) of that Act, which include functions in relation to proposed public supply or works contracts with the authority.

This Order applies to all best value authorities within the meaning of section 1 of the Local Government Act 1999 (c. 27) and parish councils in England to which section 17 of the 1988 Act applies. The Order provides that, in relation to below-threshold contracts only (as defined by section 5(5) of the Procurement Act 2023 (c. 53)), the matter contained at section 17(5)(e) of the 1988 Act ceases to be non-commercial matter but only to the extent that either paragraph (2) or (3) of article 3 of the Order applies to the procurement for that contract.

Article 3(2) applies where a relevant authority prevents contractors not based within the United Kingdom from participating in the procurement of a relevant contract, whereas article 3(3) applies where a relevant authority prevents contractors not based within the local area from participating in the procurement of a relevant contract. If an authority is advertising the contract, then it must specify in the advertisement of the tender whether the contract is being reserved for contractors in the United Kingdom or the local area and specify what the local area is.

Article 4 of the Order makes amendments to regulation 24 of the Procurement Regulations 2024 (S.I. 2024/692) in order to reflect the requirement on authorities contained in article 3(8) to provide certain information in a below-threshold tender notice when relying on article 3 in respect of a notifiable below-threshold contract.

A full regulatory impact assessment has not been prepared as this instrument will have no impact on the costs of business and the voluntary sector.

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