EXPLANATORY MEMORANDUM TO

THE LOCAL GOVERNMENT (EXCLUSION OF NON-COMMERCIAL CONSIDERATIONS) (ENGLAND) ORDER 2026

2026 No. 94

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Housing, Communities and Local Government and the Cabinet Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Alison McGovern, Minister of State for Local Government and Homelessness at the Ministry of Housing, Communities and Local Government confirms that this Explanatory Memorandum meets the required standard.

2.2 Edward Green, Deputy Director for Commercial Policy, at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Rebecca Gledhill at the Cabinet Office can be contacted by email at the following address with any queries regarding the instrument: rebecca.gledhill@cabinetoffice.gov.uk. Alternatively, the department can be contacted by telephone: 020 7276 1234.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 In specific circumstances, the Local Government (Exclusion of Non-commercial Considerations) (England) Order 2026 ("the SI") removes the restriction in section 17(5)(e) of the Local Government Act 1988 ("the 1988 Act") that prevents local authorities, "best value authorities"[1] and parish councils (collectively referred to in this memorandum as "relevant authorities") from considering the location of contractors[2] as a relevant consideration when awarding below-threshold contracts (those being contracts that have a total value below the applicable threshold amount set out in Schedule 1 to the Procurement Act 2023 ("the 2023 Act")). The specific circumstances are that the authority reserves the procurement of a below-threshold contract to contractors either based within the UK or a defined local area.

4.2 In addition to this, the SI also makes amendments to regulation 24 of the Procurement Regulations 2024 ("the 2024 Regulations") in respect of notifiable below-threshold

[1] "Best value authorities" is defined in section 1 of the Local Government Act 1999.

[2] The definition of "contractor" in section 17(8) of the Local Government Act 1988 includes a "supplier" as referred to in the Procurement Act 2023. This is distinct from the defined terms "suppliers or customers" and "sub-contractors" that are defined in section 17(8) of the 1988 Act.

contracts[3] to update the list of information which must be included in a below-threshold tender notice published in accordance with section 87(1) of the 2023 Act. A relevant authority relying on either reservation must include a statement that sets out that it is reserving a contract in accordance with the SI, including whether the reservation is in respect of the UK or a defined local area.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of), other than article 4, is England and Wales. The extent of the amendments made in article 4 is England and Wales, Scotland and Northern Ireland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Contracts that are valued above the threshold amounts set out in Schedule 1 to the 2023 Act are subject to obligations contained in specified international agreements, which means that contracting authorities cannot discriminate against suppliers, goods, services or works from those countries by treating them less favourably than UK suppliers, goods, services or works. On the other hand, contracts that fall below the applicable threshold amount in Schedule 1 to the 2023 Act are not subject to these same constraints and contracting authorities have more flexibility in the design of any procurement procedure for those contracts.

5.2 The Government wants to help authorities support local and UK businesses and the policy being implemented by this SI will enable relevant authorities to reserve competitions for below-threshold contracts to either UK-based businesses or businesses based in their local area.

5.3 Relevant authorities can already reserve competitions for below-threshold contracts to Small and Medium-sized Enterprises (SMEs) and Voluntary and Community Social Enterprises (VCSEs) (as there is no restriction preventing them from doing so in the 1988 Act). Therefore, once the SI comes into force an authority will, if it so chooses, be able to go a step further to reserve below-threshold contracts to only SMEs and/or VCSEs within the UK or their local area.

5.4 To implement the policy, this SI removes the restriction in section 17(5)(e) of the 1988 Act but only in relation to the award of below-threshold contracts. A relevant authority can only take account of a contractor's location where it does so to reserve competitions for below-threshold contracts to only those contractors that are either based within the UK or based within a defined local area. In such circumstances, the relevant authority, before inviting the submission of tenders, would need to determine whether it wishes to prevent contractors that are not based within the chosen area from participating in the procurement, and make a statement to this effect when advertising the procurement in question.

5.5 The local area is defined in the SI as being the area of the authority (or authorities) carrying out the competition, and can also include the areas of any counties or London boroughs bordering it, as specified by the authority when advertising the procurement. Where an authority is wholly located within a single county or London borough, it

[3] A notifiable below-threshold contract, in the case of a contract awarded by a local authority, is a contract valued at £30,000 or more in accordance with section 87(4)(b) of the Procurement Act 2023.

also has the option to specify that its area is the area of that county or London borough it is situated within for the purposes of specifying the extent of the local area.

5.6 Where a local authority relies on the SI to reserve its procurement, it must include details of this in the procurement advertisement, or if it is being advertised by way of a below-threshold tender notice, in that notice. This will enable contractors to identify whether they are eligible to bid for a relevant contract

What was the previous policy, how is this different?

5.7 A similar (but less flexible) policy has been in place for central government departments and their arm's length bodies (such as executive agencies and non-departmental public bodies) since December 2020. That policy (which is set out in full in Procurement Policy Note PPN 005[4]) permits those authorities to reserve below-threshold contracts to contractors based in a single county or single London borough or UK-wide and (as an additional option that cannot be applied independently of the location reservation) to SMEs and VCSEs.

5.8 However relevant authorities were prevented from taking advantage of this policy because of the restriction in section 17(5)(e) of the 1988 Act. Section 17(5)(e) of the 1988 Act is designed to prevent relevant authorities from implementing boycotts against foreign countries and territories when awarding public contracts. The effect of this SI will not allow such boycotts against specific countries or territories as the restriction in section 17(5)(e) is only removed where authorities reserve the procurement UK-wide or within the authority's local area by providing that, contractors that are not based in the UK or the local area (as applicable) are unable to participate in the procurement procedure. As such, while an authority can exclude all contractors that are not based within the UK, they cannot only exclude suppliers from a specific country.

5.9 This instrument therefore disapplies the restriction in section 17(5)(e) of the 1988 Act to enable relevant authorities to reserve competitions for below-threshold contracts to support local and UK-based businesses, while minimising any risk that authorities engage in boycotts.

5.10 The policy goes further than the central government PPN by providing relevant authorities with greater flexibility to reserve to the local area, which can include bordering counties and London boroughs (as opposed to a single county or borough as is the case for central government). This more flexible approach was taken to reflect the varying composition of relevant authorities covered by the SI and the way in which they conduct their procurements. Like central government authorities, relevant authorities also have the option to apply the policy to reserve by location and (jointly or independently) to SMEs and VCSEs.

5.11 Additionally, relevant authorities are required to include in any procurement advertisement or below-threshold tender notice the extent it is reserving a below-threshold contract in accordance with the SI, including what areas constitute the local area (if relying on that reservation).

6. Legislative and Legal Context

How has the law changed?

6.1 Under section 17 of the 1988 Act, a relevant authority is prevented from considering non-commercial matters (as detailed in section 17(5)) when carrying out procurement

[4] https://www.gov.uk/government/publications/ppn-005-reserving-below-threshold-procurements

functions listed in section 17(4) of that Act (for example, in relation to inviting tenders). One of these non-commercial matters is the location of contractors (section 17(5)(e)), which effectively prevents a relevant authority from reserving a competition for a below-threshold contract to contractors within a specified location (for example, in the UK). Under this SI, the matter specified at section 17(5)(e) of the 1988 Act will cease to be a non-commercial matter (and can therefore be considered by relevant authorities when carrying out their relevant procurement functions), but only in relation to the award of below-threshold contracts and to the extent that the procurement procedure provides that either contractors not based within the UK, or contractors not based within the local area, are unable to participate in the procurement in question (as outlined in section 5 above).

6.2 Where a relevant authority is relying on either of the reservations in the SI and is advertising the contract for the purpose of inviting tenders, then it must state that it is doing so in the below-threshold tender notice (if relevant) or other advertisement. In respect of below-threshold tender notices, regulation 24 of the 2024 Regulations has been amended to include this requirement; where a relevant authority is relying on the SI to reserve its procurement, then it must include a statement to that effect, specify the extent of the reservation (and where relevant the extent of the local area).

Why was this approach taken to change the law?

6.3 This SI is being made in accordance with the power within section 19 of the Local Government Act 1999 ("the 1999 Act") that enables the Secretary of State to make an order providing for a non-commercial matter contained within section 17(5) the 1988 Act to cease to be one to a specified extent and in relation to specified contracts.

6.4 In addition, the SI uses the powers within section 95 of the 2023 Act that enables an appropriate authority (that includes a Minister of the Crown) to make provision, by regulations, about the content of notices to be published or provided under the 2023 Act, including a requirement to contain specified information. By virtue of section 122(3), such regulations can make different provision for different areas, or provision only in relation to specified cases, as this SI does.

6.5 The power under section 95 of the 2023 Act is being exercised by order in accordance with section 105(1) of the Deregulation Act 2015 that provides that any provision that may be made by regulations may be made by any other form of statutory instrument.

7. Consultation

Summary of consultation outcome and methodology

7.1 Consultation on draft legislation that was originally intended to give effect to a similar policy was conducted as part of the 'Transforming Public Procurement Part 1 Consultation on draft regulations to implement the Procurement Bill'[5] in July and August 2023. That particular policy, decided upon by the previous Government, was to give relevant authorities the option to reserve competitions for below-threshold contracts to contractors based in the UK or to a single county or London borough.

7.2 The consultation was conducted electronically and 165 responses were received: 64% of those respondents were contracting authorities, and contractors and other interested parties, such as legal firms, also took part. While the majority of respondents agreed that the draft legislation in the consultation met the policy objective, it was notable

[5] https://www.gov.uk/government/consultations/part-1-consultation-on-draft-regulations-to-implement-the-procurement-bill

that many respondents felt the policy behind the legislation was too narrow. In providing that below-threshold contracts could only be reserved to a single county or London borough, many respondents pointed out that the policy was simply unworkable for combined authorities whose area encompassed several counties, groups of authorities conducting procurements jointly, parish councils and other authorities whose boundaries did not 'match' the single county or London borough requirement.

7.3 On 22 March 2024[6] the previous Government published their response to the consultation: as the draft regulations met the policy objective no changes were required. Ultimately, however, this provision was not included in the 2024 Regulations.

7.4 Nonetheless, findings from the consultation conducted in 2023, that the previous policy was too narrow in limiting the local reservation to a single county or London borough, informed the development of the policy that this instrument gives effect to. An additional, formal consultation was therefore not required.

8. Applicable Guidance

Section 19(4) of the 1999 Act provides that relevant authorities shall have regard to any guidance issued by the Secretary of State in relation to an order made under section 19. Guidance in relation to this SI has been issued and published by reference to section 19(4) of the 1999 Act on Gov.uk[7] and will apply when the SI enters into force.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there are no additional costs to businesses as a result of this legislation. Relevant authorities will be able to reserve competitions for below-threshold contracts for contractors based locally or in the UK, through existing procurement processes.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because relevant authorities are already entitled to reserve below-threshold contracts to SMEs and/or VCSEs and this SI simply provides more flexibility to those authorities to also reserve below-threshold contracts to suppliers in the UK or local area.

9.3 The impact on the public sector is that relevant authorities may reserve competitions for below-threshold contracts to businesses that are based in the UK or locally.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through feedback from relevant authorities and contractors, which will help establish the effectiveness of the policy and inform any updates.

[6] https://www.gov.uk/government/consultations/part-2-consultation-on-draft-regulations-to-implement-the-procurement-bill/outcome/government-response-to-consultation-on-draft-regulations-implementing-the-procurement-act-2023-html

[7] https://www.gov.uk/regional-and-local-government/local-government

10.2 This instrument does not include a statutory review clause as it makes provision in connection with procurement only, therefore the duty to review in section 28 of the Small Business, Enterprise and Employment Act 2015 does not apply.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister of State for Local Government and Homelessness in the United Kingdom has made the following statement regarding Human Rights:

"In my view the provisions of the Local Government (Exclusion of Non-commercial Considerations) (England) (Order) 2026 are compatible with the Convention rights.".

13. The Relevant European Union Acts

13.1 The Minister of State for Local Government and Homelessness in the United Kingdom has made the following statement:

"The Local Government (Exclusion of Non-commercial Considerations) (England) (Order) 2026 does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."