

UKUPC

## PROCUREMENT ACT WEBINAR SERIES

# Procurement Act 2023 – Transparency Obligations, Risks and Opportunities for Universities

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UK Universities Purchasing Consortia

# Procurement Act 2023 – Transparency Obligations, Risks and Opportunities for Universities

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UK Universities Purchasing Consortia

# Procurement Act 2023 – Transparency Obligations, Risks and Opportunities for Universities

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# Overview

Aims and implementation

Legislative structure /  
what is changing?

Procurement Principles  
and Objectives under the  
PA 2023

Key new notices and  
requirements

How suppliers may make  
use of the new notices and  
the likely impact on  
procurement in practice

Challenges for Universities  
around resourcing and  
technology

Legal risk to Universities  
around the publication of  
new notices

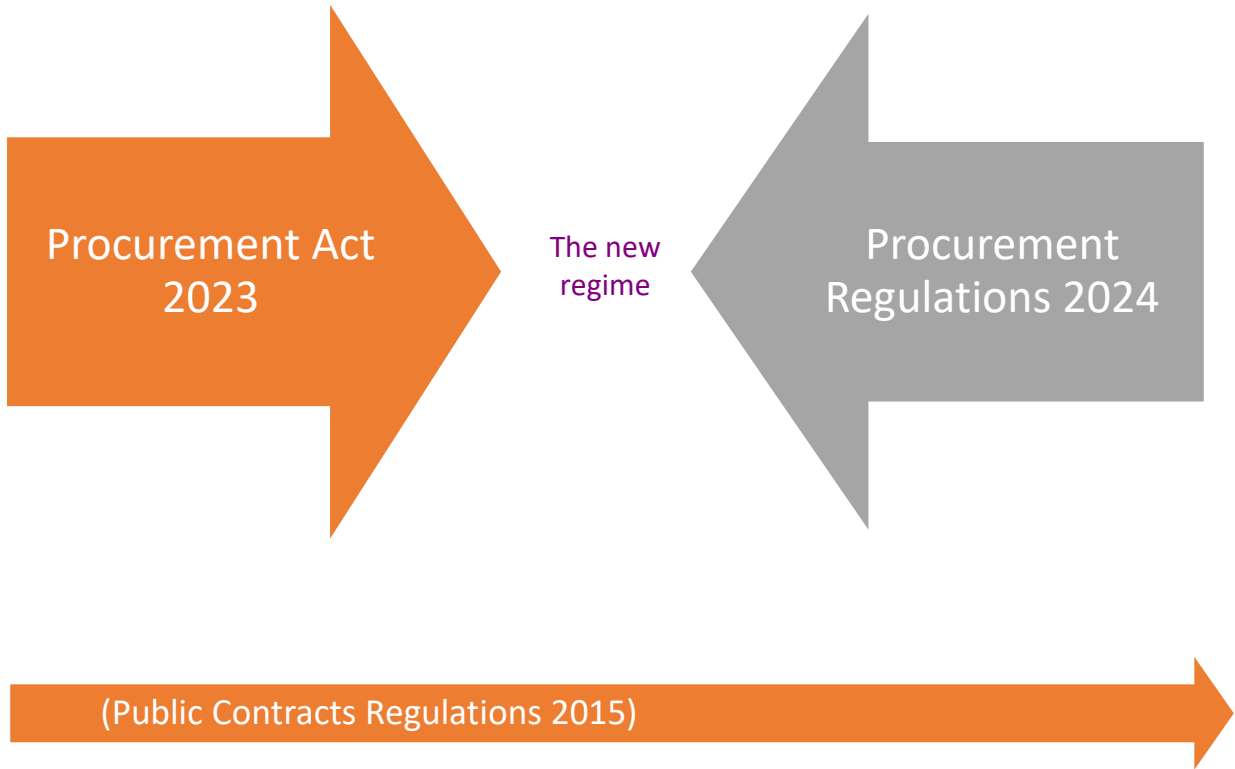
Opportunities for  
Universities to use the  
transparency regime to  
drive best and fearless  
practice

The essential link required  
between procurement and  
contract management  
teams, in order to comply  
with the Act

# Policy aims in the new Procurement Act

- Simplify public procurement
- Mark a departure from the EU procurement directives
- A new transparency drive around public contracts
- Extending the reach of procurement law to the whole lifecycle
  - Greater transparency through the life cycle, from premarket engagement to contract management and termination
- Greater flexibilities for authorities
  - (but flexibility does not equal simplicity!)

# Legislative Structure



This block contains overlapping images of the Procurement Act 2023 and The Procurement Regulations 2024. The Procurement Act 2023 (2023 CHAPTER 54) is the top document, and The Procurement Regulations 2024 (2024 No. PUBLIC PROCUREMENT) is the bottom document. The regulations document includes sections on 'Contracting authorities', 'Part 1 Introductory', and 'Extent and application'.

**Top tip:** if it says “**section X**, or **s. X** – it is in the Procurement Act 2023. If it says “**regulation Y**, or **reg. Y**, it is in the Procurement Regulations 2024

# Timeline to implementation ...



# Transitional implementation

- Any contract where the procurement was “commenced” before 28 October 2024 remains under the Public Contracts Regulations 2015
  - including any modifications made to that contract on or after 28 October 2024
- Any call-off contract where the procurement of the framework agreement or DPS was “commenced” before 28 October 2024 remains under the PCR 2015
  - including call-offs made after 28 October 2024
  - including modifications made after 28 October 2024
- A DPS set up prior to 28 October 2024 must terminate by **the earlier of:**
  - the date provided for its termination, or
  - 27th October 2028

# What will be different (1) ?

- Concept of “procurement” itself
- New procurement principles and objectives
- New procurement “language”
- Transparency duties
  - Many more notices required
- Using the new “central digital platform”
  - Unique identifiers
  - Expanded FTS – no more Contracts Finder
  - Supplier Information Service – no more CCS SQ

Standstill Letters ➡ *Assessment Summaries*

Selection Criteria ➡ *Conditions of Participation*

Contract Award Notice ➡ *Contract Details Notice*

... and many more!

See our Procurement Phrasebook for help:  
[procurement-act-2023-legal-phrasebook.pdf](https://procurementportal.com/procurement-act-2023-legal-phrasebook.pdf)  
([procurementportal.com](https://procurementportal.com))

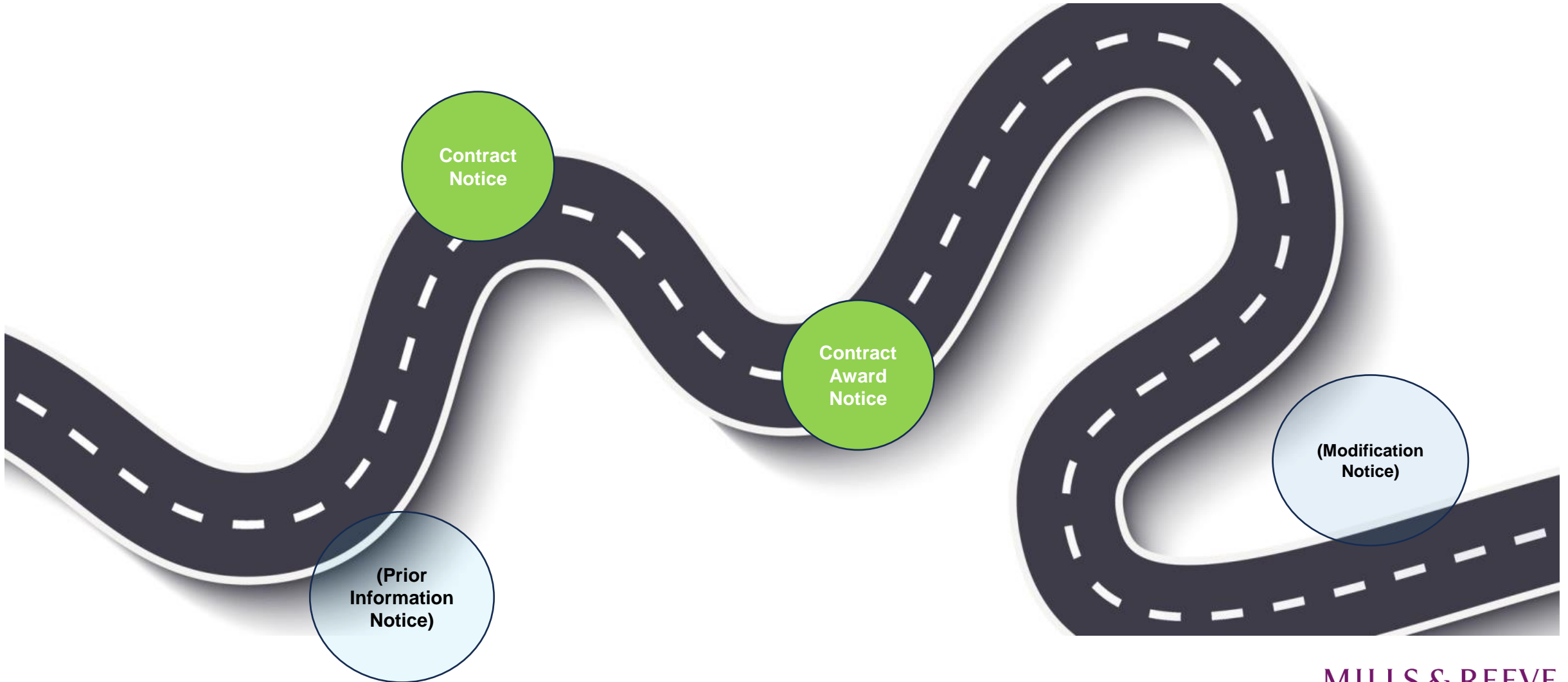
# What will be different (2) ?

- Greater visibility of how each procurement turns out
  - role of the “unique identifier”
- New opportunities
  - establish/use more flexible frameworks and dynamic markets
  - “create your own” competitive flexible procedure
- Procurement Oversight
- Link with contract management
  - effect on suppliers?
- Universities become subject to obligations currently only affecting central government, e.g.
  - Pipeline spend
  - KPI reporting for larger contracts
  - Obligations to publish copies of contracts over £5m

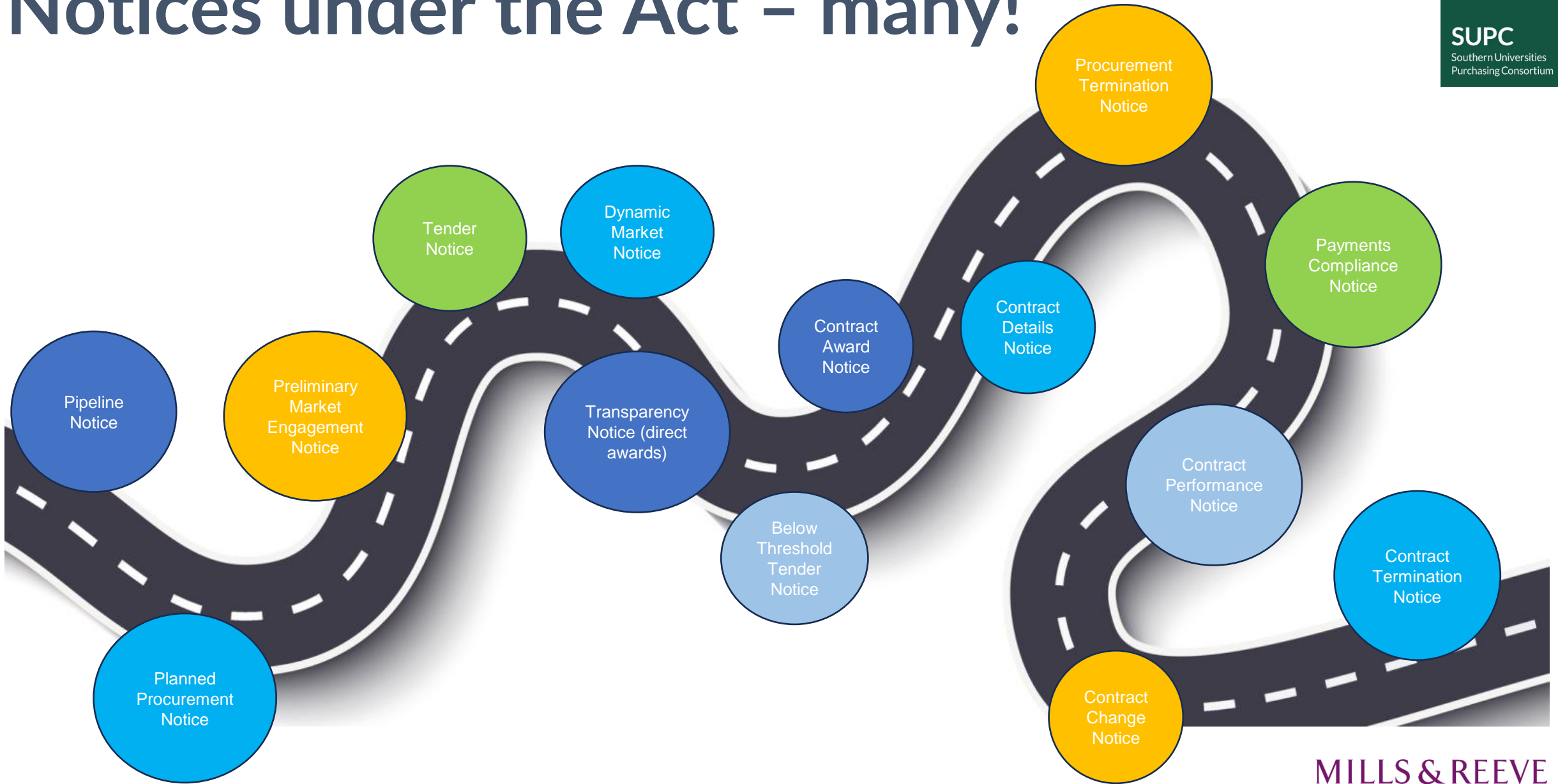
# What will be similar/unchanged?

- Definition of a contracting authority
- Value thresholds (continue to update every two years)
- Types of contracts
  - goods, works and services
- Exempt contracts
- Route to review/challenge for suppliers
- Minimum time limits to run a procurement process little changed

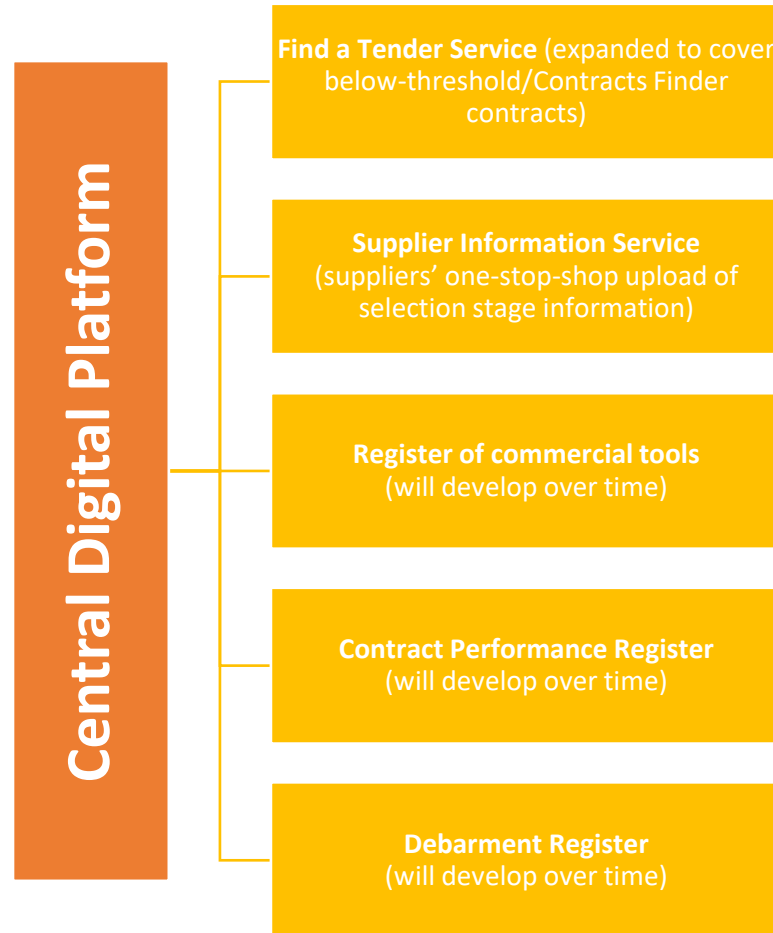
# Notices under the PCR 2015 – few!



# Notices under the Act – many!



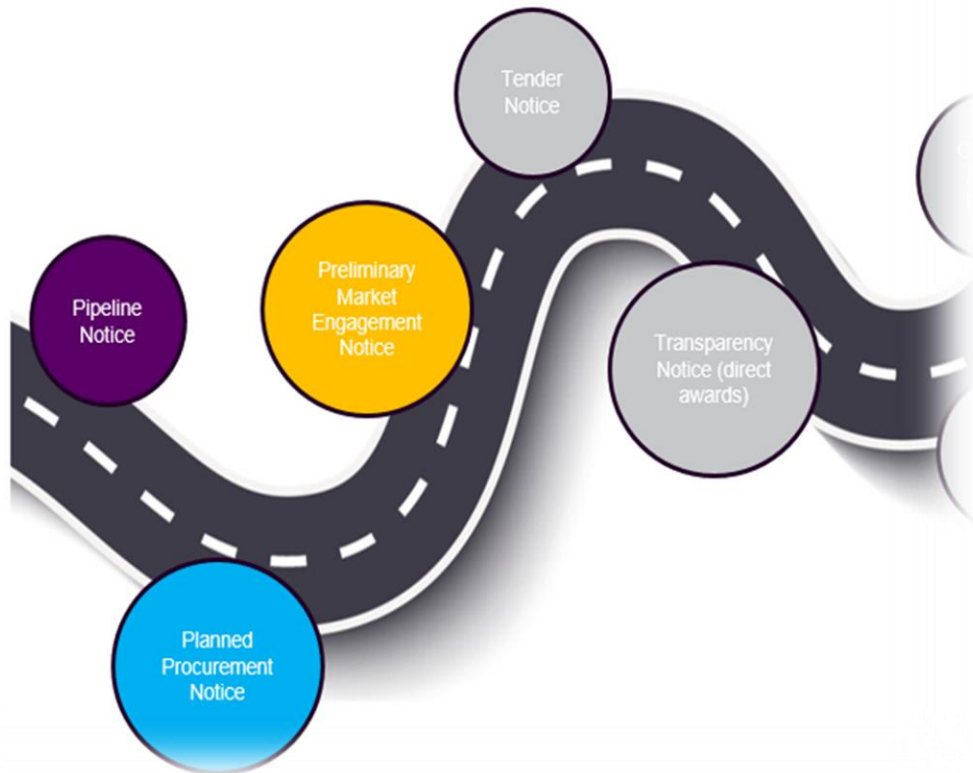
# Central Digital Platform



## Unique Identifiers:

- each University
- each Supplier
- each Procurement
- each Contract

# Pre-procurement notices – the supplier view



## Pipeline Notice

- What is the University intending to procure?
- What direct relationships does the University have with my competitors?

## Planned Procurement Notice

- Is there any opportunity to tender to the University coming up?

## Preliminary Market Engagement Notice

- How did the University run the PME, with whom, and how?
- Did this give my competitors an advantage?

# Pipeline Notices – s.93

## Scope

- Applies to all contracting authorities spending £100m+ in financial year from 1 April

## Form

- Details of all planned contracts valued £2m+ which the authority intends to advertise (**or directly award**) in the “reporting period”
- Presume each £2m+ contract will be separately itemised in a single Pipeline Notice

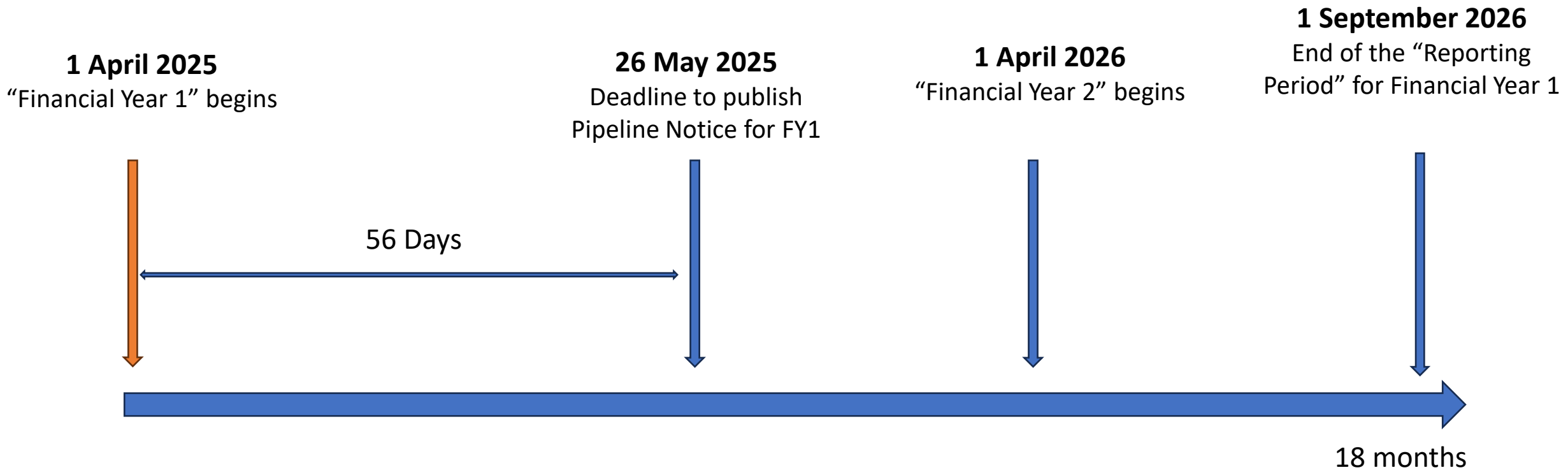
## Timing

- Must be published within 56 days of 1 April i.e. by **26 May 2025 and every year thereafter**
- Reporting period is 18 months from 1 April

## Detail

- All information requirements set out in Procurement Regulations 2024
- Detail of contracting authority
- Title of the procurement
- Unique identifier for the procurement (query if this should be for the contracting authority)
- Contract subject-matter
- Estimated date when a Tender Notice or Transparency Notice will be published
- Estimated contract award date

# Pipeline Notices



# Planned Procurement Notices – s.15

## Scope

- An authority **may** publish one
- Not mandatory

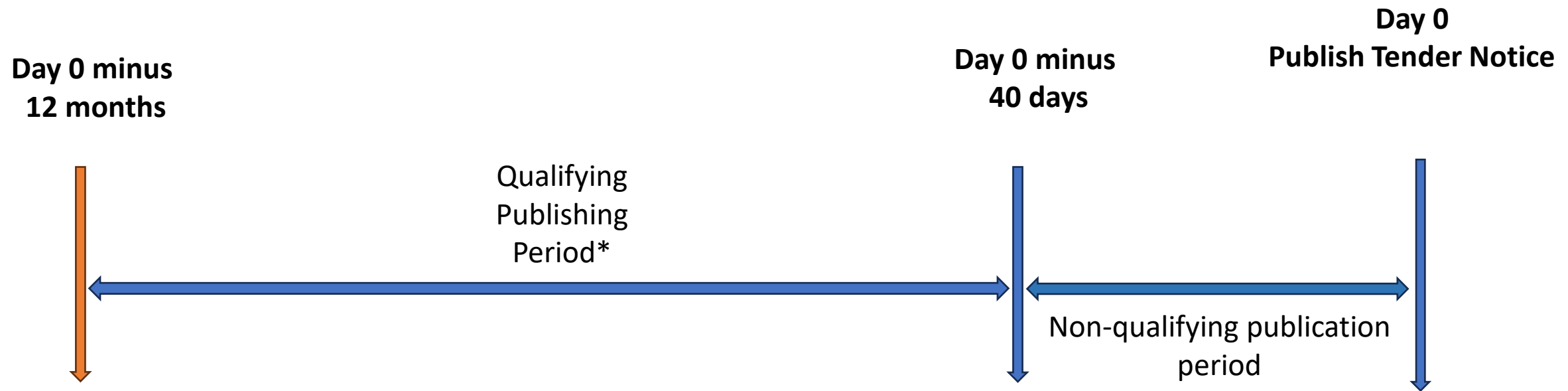
## Detail

- Unique identifiers
- Indicating intention to publish a Tender Notice
- Relates to one procurement only
- Estimated date when a Tender Notice or Transparency Notice will be published

## Timing

- Must be published at least 40 days but not more than 12 months before the day on which the Tender Notice is published to be “qualifying”.
- If “qualifying”, then the “tendering period” for receipt of tenders following the Tender Notice can be reduced to 10 days

# Qualifying Planned Procurement Notices



\* **Minimum Tendering Period is 10 days** rather than 25 days if a qualifying notice is published

# PME Notices – s.17

## Scope

- Must publish if PME has been, or will be, conducted
- Guidance suggests that using the Notice is the default way to engage in PME
- Still no obligation to conduct PME itself
- Option not to publish a PME Notice
  - must publish reasons for this in the Tender Notice (guidance says expectation is this will be rare)

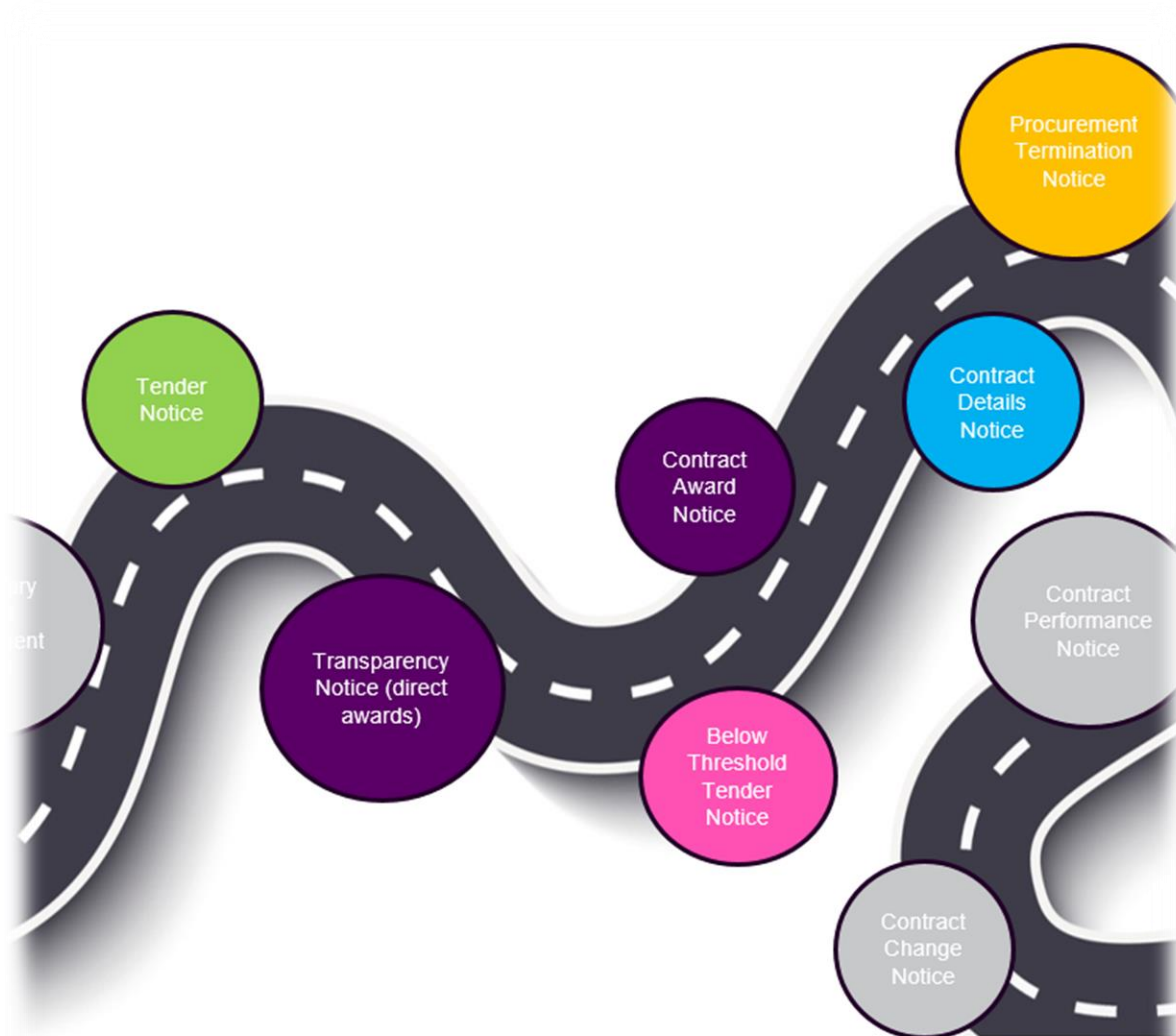
## Detail

- Unique identifier
- Date the PME process closed (or will close)
- Description of the PME process (e.g., events, dates, locations)
- Any period for submission of interest/information by suppliers
- Each notice relates to a single procurement only

## Timing

- Must be published “before” publishing the Tender Notice (no indication of how far in advance this must be)

# Procurement notices – supplier view



## Tender Notice

- What is the opportunity?
- Has the University designed a bespoke process?
- Does the process look like it will work well?

## Transparency Notice

- What direct awards is the University making – and are they lawful?
- Do I want to challenge this direct award?
- Who is benefitting from this direct award?

## Contract Award Notice

- The start of a standstill period is now communicated to whole market
- Any supplier could auto-suspend, not only a tenderer?
- If contract is valued over £5m, unsuccessful suppliers names are included

## Contract Details Notice

- Is the contract the University awarded the same as the one it advertised?

## Procurement Termination Notice

- Does the University have form for abandoning procurements?
- Why is the procurement being abandoned; is there a fair reason or is it to favour a competitor?

# Tender Notices – s.21

## Scope

- Required (as now) for all procurements other than call-offs or direct awards
- Commences the procurement

## Detail

- Unique identifier
- Detail of the procedure being used – especially where CFP
- Whether the University is intending to use minimum time periods for the process
- Whether the contract is suitable for SMEs/VCSEs
- Whether the procurement documents being provided concurrently, and if not, when and how they will be provided

## Timing

- “Participation Period” (i.e. SQ phase)
  - standard timing is 25 days, reduced to 10 for urgency and 0 for an LTR contract
- “Tendering Period” (i.e. ITT phase)
  - standard minimum time period is 25 days, extended to 30 if procurement documents not provided simultaneously with the notice, and further to 35 days if electronic submission of tenders not possible

# Transparency Notices – s.44

## Scope

- Required where making a direct award on one of the grounds listed in s.41/schedule 5, or where “switching” to direct award under s.43
- Commences the procurement

## Detail

- Unique identifier
- Which direct award ground applies, and why
- If a switch to direct award, details of why there were no suitable tenders/requests meaning that a switch to direct award is necessary
- The name of the supplier(s) being direct awarded
- The estimated date of signing the contract

## Timing

- Must be published **prior** to signing the direct award contract
- NB you must **also** publish a Contract Award Notice for direct awards
- Option to hold a voluntary eight working day standstill period beginning on the date of the Contract Award Notice (if no challenge, provides defence to set-aside claim (ineffectiveness))

# Contract Award Notices – s.50

## Scope

- Applies to all contracts, direct awards and call-offs under a framework or DM
- Where an assessment summary is required, confirms that this has been provided
- Publication date is the first day of the eight-working day standstill period

## Detail

- Unique identifier
- Name(s) of successful suppliers
- If over £5m in value, names of unsuccessful suppliers
- Confirmation that assessment summaries delivered where required
- Date of the end of the standstill period

## Timing

- Can not be published until assessment summaries have been sent to suppliers (where these are required)

# Contract Details Notices / publication of contracts – s.53

## Scope

- Applies to all contracts, direct awards and call-offs under a framework or DM
- New name for what we currently call a Contract Award Notice
- Also required for Below Threshold Contracts with more limited information obligations
  - replicates the current Contracts Finder obligations

## Detail

- Unique identifier
- If more than £5m in value, a copy of the contract must also be published
- Successful supplier, term and contract value
- Details of any extension/variation mechanism in the contract
- Details of the KPI regime (for contracts over £5m)
- If a framework:
  - details of any fees payable by suppliers
  - the mini-competition process at call-off

## Timing

- Within 30 days of contract signature
- Or if a light touch contract, within 120 days of contract signature

# Procurement Termination Notices – s.55

## Scope

- If you have published a Tender Notice or Transparency Notice but then abandon/terminate the procurement, need to publish a Procurement Termination Notice
- Also recommended by guidance as good practice to publish if:
  - a contract listed in a Pipeline Notice does not materialise
  - a contract detailed in a Planned Procurement Notice does not proceed

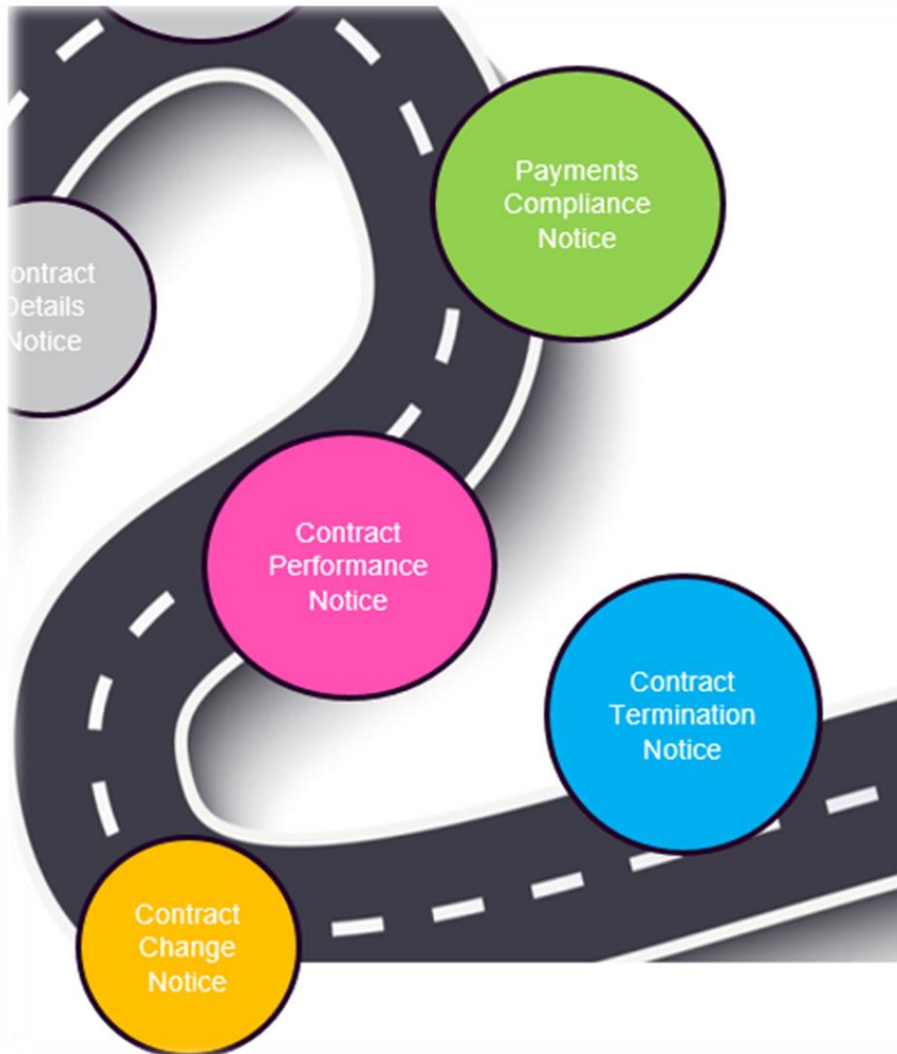
## Detail

- Unique identifier
- A statement that the University has decided not to enter into the contract
- No requirement to give reasons for the abandonment
  - but probably good practice – guidance suggests there will be an optional input where reasons can be given if desired

## Timing

- “As soon as reasonably practicable” after deciding to terminate the procurement

# Contract Management – supplier view



## Payments Compliance Notice

- Is the University a good customer who pays on time?

## Contract Performance Notice

- How well is the supplier/competitors meeting KPIs
- Is the supplier an excludable supplier on the grounds of poor performance (more on this later)?
- Is the University continuing to work with poorly performing suppliers?  
Can the University be persuaded to change its mind?

## Contract Change Notice

- Is the University modifying the contract lawfully?
- Do I want to challenge the modification?

## Contract Termination Notice

- Has this supplier had a termination other than for expiry?
- Is the supplier an excluded supplier?
- Has the University got a record of terminating contracts early?

# Payments Compliance Notices – s.69

## Scope

- Must publish if, in a “reporting period”, a University:
  - made payments over £30,000 to a supplier under a contract, directly awarded contract or call-off contract; or
  - such a payment became due

## Detail

- Unique identifier
- Details of University’s payments (where day 1 is the date of the invoice)
- Average number of days to make payment
- Percentage of payments made in days 1-30, days 31-60, and over 61 days
- Where sums were payable in a reporting period, the percentage of payments that Authorities did not pay in that reporting period

## Timing

- Before the end of 30 days from the end of the most recent “reporting period”
- “Reporting Periods” are 28 October 2024 – 31 March 2025, then 1 April 2025 – 30 September 2025
- And every six months thereafter
- **NB DELAYED IMPLEMENTATION**

# Contract Performance Notices – s.71

## Scope

- Two **separate** reporting obligations in one notice:
  - **KPI reporting**
    - where KPIs have been set as the contract is valued over £5m, reporting on performance against those KPIs
  - **Breach or failure to perform**
    - where a supplier breach of a public contract has led to termination, damages or settlement agreement
    - where Authorities is not satisfied with supplier performance of a public contract and, despite notice to remedy, the poor performance is not remedied

## Detail

- Unique identifier
- For **KPI reporting**:
  - the set KPIs and the authority's ratings for each
- For **serious breach reporting**:
  - the supplier's name
  - date and detail of the associated termination/damages award/settlement agreement
- For **unremedied breach/poor performance**:
  - the supplier's name
  - the impact of the breach/poor performance
  - detail of the notice to remedy and why any steps taken by the supplier were inadequate
  - the date the authority considered that the supplier had "failed to improve" its performance

## Timing

- **NB DELAYED IMPLEMENTATION**
- For **KPI reporting**
  - at least once every 12-month period of the lifecycle of the contract
  - and on termination
- For **breach or poor performance**
  - before the end of a period of 30 days from the section first applied in relation to a breach or failure to perform

# Contract Change Notices – s.75

## Scope

- Required for any modification to a contract, direct award, call off, or “convertible contract” ...
- ... unless the modification:
  - increases/decreases the value by **less than** 10% (services/supplies) or 15% (works)
  - Increases/decreases the term by **less than** 10% of the max term provided for on award
- **Not required** for Light Touch Regime contracts

## Detail

- Unique identifier
- Detail of the “permitted modification” ground being relied on, where appropriate
- Estimated date that the variation will be signed and when the modification will take effect
- Detail of any voluntary standstill period

## Timing

- Must be published **before the modification is made** – no express time limit given
- Option to hold a voluntary eight working day standstill period beginning on the date of the Contract Change Notice (if no challenge, provides defence to set-aside claim (ineffectiveness))

# Contract Termination Notices – s.80

## Scope

- Required when any public contract, framework, direct award contract, or call off contract is terminated

## Detail

- Unique identifier
- Reason for termination, including:
  - Expiry (the stated term of the contract has been reached)
  - Discharge (all the obligations under the contract have come to an end)
  - Termination by a party
  - Rescission (i.e. contract cancellation)
  - Contract Set Aside (i.e. ineffectiveness)
- Where termination is for breach or failure to perform under s.71(5), details of this

## Timing

- Within 30 days of the contract termination date

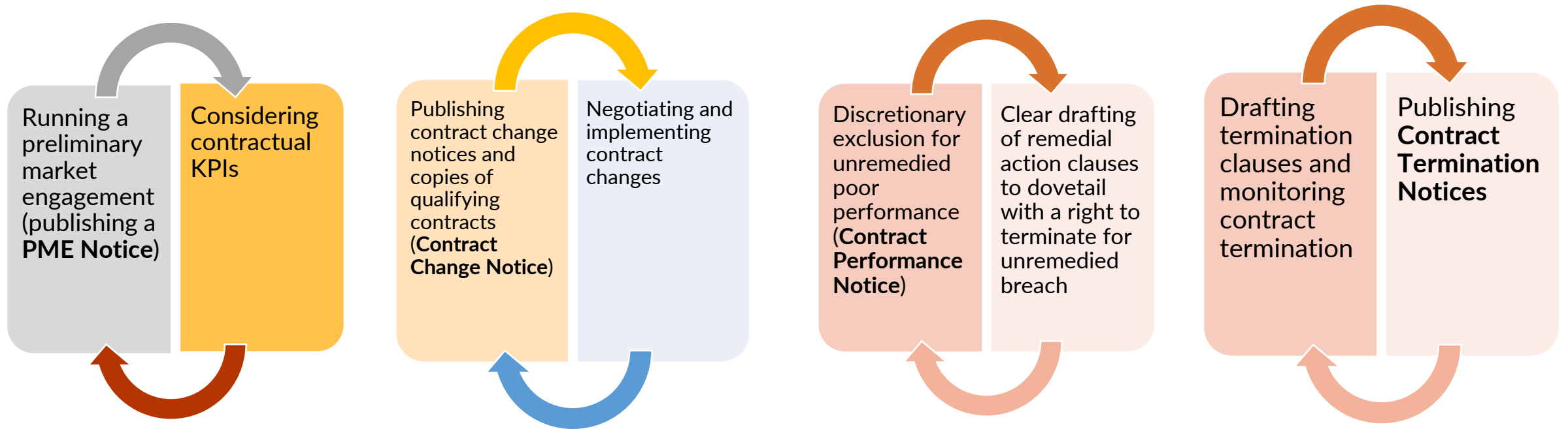
# Light Touch Regime services

- includes Education services
- significant derogations for LTR services
- in relation to transparency notices, these include:
  - no obligation to publish a Contract Performance Notice reporting on KPIs for a £5m+ LTR contract
  - a period of 120 days (rather than 30) to publish a Contract Details Notice
  - no obligation to publish Contract Change Notices for LTR contract modifications

# Legal risk to universities around “getting it wrong”

- Notices obligations are statutory obligations in the Act
  - in relation to each individual notice requirement
  - and generally (see s. 12(1)(c))
- Failure to publish compliantly and within stated time limits is a breach of statutory duty
- Claimant in a formal court challenge would have to demonstrate that the breach had caused it to suffer or risk suffering a loss (see s.100(3)(b))
- It could also complain to the PRU about the failure; PRU could:
  - investigate a university’s compliance with the statutory transparency requirements
  - issue a public report on that investigation
  - create reputational risk to a university

# Procurement and contract management



# Using notices to drive best practice

- Pipeline Notice
  - Universities will need to plan contract spend for the financial year ahead
  - This will drive better procurement planning
- PME Notice
  - will likely drive better PME, especially given the need to consult on:
    - structure and timings of any bespoke CFP
    - detail of any required reportable KPIs
- Contract Performance Notice
  - over time, a potential route to exclusion of poorly performing suppliers
  - Driving closer links with contract management teams
- Contract Change Notice
  - more visibility around contract changes
  - potentially driving more thought upfront?

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**Any questions?**

THANK YOU

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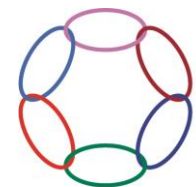
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