



NORTH LONDON PARTNERS
in health and care

North Central London's sustainability
and transformation partnership

NHS Provider Selection Regime

Consultation on Proposals

June 2021

Current Regime

Current procurements are governed by the Health & Social Care Act 2012 and Public Contract Regulations (PCR) (including historic references to EU Regulations). This creates an expectation that nearly all contracts will be reprocured even where they are working well.

In turn this creates an environment of perpetual competition and uncertainty for providers as well as imposing procurement costs on the NHS.

Proposed Regime

Decision Making Bodies would have more flexibility to extend contracts where arrangements are working well and there is no value in seeking alternative provision. A new duty would be created for Decision Making Bodies to demonstrate that services are arranged in the best interests of patients, taxpayers and the population.

Where changes to contracts are required the current processes will be replaced with a transparent but proportionate process for decision making allowing for shared responsibility rather than competitive tendering.

Who does the regime apply to?

The new regime will apply to all NHS Bodies (NHSE, ICS's, NHS Foundation Trusts) and Local Authorities for certain healthcare services.

Note: Healthcare services purchased from the VCS, Independent Sector (including AQP Contracts) are all included in the new regime.

What is not covered by the new regime?

The new regime will not apply to Social Care, non NHS Services, non Clinical Services (ie Consultancy, Catering etc), Community Pharmacy nor the Procurement of Goods and Medicines.

Decision Making Bodies will need to demonstrate that they have considered all of the following:

- **Quality & Innovation**
- **Value**
- **Integration/Collaboration**
- **Access**
- **Inequalities & Choice**
- **Service Sustainability**
- **Social Value**

Decision Making Bodies must show how they have made decisions in a structured way, been proportionate to reflect the scale, cost and significance of the service and show all criteria have been considered

Note: The Patient right to choice for Consultant Led 1st Outpatient Appointments are not affected.

- The government's approach is to ensure transparency throughout the process and limit remedies as much as possible after the contract has been awarded:
- Intentions as to approach must be published *in advance*; a record must be kept of all decisions and reasoning and notices of the successful provider published again prior to contract award. There will also be requirements to publish a list of awarded contracts and annual audit processes.
- There will be no remedies available, similar to those currently available under the current PCRs but there will be an informal process for making representations to the decision making body.
- NHS England may also use powers of intervention under the NHS Act 2006 but for a claimant, the last resort will be judicial review.

Scenario 1

Is the decision maker looking to continue existing arrangements without a new tender process? If so, continuation will be permitted if:

- there is no reasonable alternative provision; **or**
- the alternative provision is already available to patients through patient choice mechanisms; **or**
- the incumbent is “doing a good job” and delivering against the Key Criteria defined in the regime and the service is not changing; so there is considered no value in seeking another provider.

Scenario 2

Are arrangements substantially changing or is a new service needed? Can the incumbent no longer continue? Does the decision maker wish to make a direct award? If so it can now do so without a full tender process if it “reasonably believes” that one or more providers are the most suitable to deliver the service provided that all of the following apply:

- it is transparent about this choice of process;
- it is satisfied that the “key Criteria” will be met. In this regard there will be criteria specified in the legislation but it is not limited and can be applied in any order of priority or weightings;
- it has carefully considered other potential options providers within the geographical footprint;
- it publishes its intention to make an award with a 4-6 week notice period; and
- there are no credible representations/challenges during the notice period.

Scenario 3

The decision maker wishes to run a competitive process and/or there is a failure to satisfy the Key Criteria and it would not be possible to identify a suitable provider without a competitive process. In this circumstance, a lightly regulated procurement process must be undertaken which can be structured in accordance with the decision maker's own preferences provided the opportunity is formally advertised and the principles of transparency, openness and fairness are adhered to; as well as any relevant best practice and guidance.

If this route is chosen there will also be a need to advertise the award and allow a notice period for representations as for a direct award.

