

ICB Primary Care Commissioning Committee

Date of meeting	14 December 2023
Title of paper	Provider Selection Regime Briefing Note
Presented by	Peter Tinson, Director of Primary Care
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Agenda item	5
Confidential	No

Executive summary

This paper provides a summary of the new Provider Selection Regime (PSR) that is intended to come into force on the 1st January 2024 subject to parliamentary scrutiny and agreement.

This is a new procurement regime for selecting providers of healthcare services in England that will replace current legislation (Public Contracts Regulations (PCR) 2015 and National Health Service (Procurement, Patient Choice and Competition) Regulations 2013). For the procurement of non-healthcare services and goods, the current relevant legislation (PCR 2015) will still apply.

The ICB is planning the relevant changes to its Scheme of Reservation and Delegation and Procurement Rules and processes to commission healthcare services.

Advise, Assure or Alert

The purpose of the paper is to:

Advise the committee:

- of the PSR changes

Assure the committee:

- that the ICB is planning the relevant changes to its policies and processes

Recommendations

The Committee is asked to receive this update for information.

Which Strategic Objective/s does the report contribute to		Tick
1	Improve quality, including safety, clinical outcomes, and patient experience	X
2	To equalise opportunities and clinical outcomes across the area	
3	Make working in Lancashire and South Cumbria an attractive and desirable option for existing and potential employees	
4	Meet financial targets and deliver improved productivity	

5	Meet national and locally determined performance standards and targets	X
6	To develop and implement ambitious, deliverable strategies	

Implications

	Yes	No	N/A	Comments
Associated risks			X	
Are associated risks detailed on the ICB Risk Register?			X	
Financial Implications			X	

Where paper has been discussed (list other committees/forums that have discussed this paper)

Meeting	Date	Outcomes

Conflicts of interest associated with this report

Not applicable.

Impact assessments

	Yes	No	N/A	Comments
Quality impact assessment completed			X	
Equality impact assessment completed			X	
Data privacy impact assessment completed			X	

Report authorised by:

Craig Harris, Chief Operating Officer

ICB Primary Care Commissioning Committee

14 December 2023

Provider Selection Regime Briefing Note

1. Purpose of the paper

- 1.1 This paper provides a summary of the new Provider Selection Regime (PSR) that is intended to come into force on the 1st January 2024 subject to parliamentary scrutiny and agreement.

2. Background

- 2.1 Subject to parliamentary scrutiny and agreement, the Department of Health and Social Care intends for the PSR to come into force on the 1st of January 2024.
- 2.2 This is a new procurement regime for selecting providers of healthcare services in England that will replace current procurement legislation specifically when commissioning healthcare services. Therefore, from the 1st of January 2024 the ICB will have to comply with the new regime when commissioning all healthcare services (of any value).
- 2.3 For the procurement of non-healthcare services and goods, the current legislation (currently the PCR 2015, although this is due to be replaced by the new Procurement Act 2023 due to come into force in October 2024) will still apply.
- 2.4 The relevant authorities required to follow the PSR when commissioning and procuring healthcare services are;
- NHS England
 - Integrated Care Boards (ICBs)
 - NHS trusts and NHS foundation trusts
 - Local authorities or combined authorities
- 2.5 The PSR was created as part of wider measures to promote greater integration of health and care services and to:
- provide a flexible and proportionate process for selecting providers of healthcare services so that all decisions are made in the best interest of people who use the services,
 - allow greater integration and enhanced collaboration across the system, whilst ensuring that all decisions about how healthcare is arranged are made transparently and

- provide opportunities to reduce bureaucracy and cost associated with the current rules.

2.6 However this new legislation is not removing competition from the healthcare market and relevant authorities will have to justify the route they choose to award a contract whether this is a non-competitive or competitive route.

2.7 Until the PSR comes into force relevant authorities must continue to follow the current legislation and rules.

2.8 The offset of increased flexibility in procurement decision making is that there will be a much sharper focus on transparency around award of contracts and scrutiny on decision making well beyond the current governance in place.

3. Key Points regarding the Provider Selection Regime

3.1 There will be five routes in which healthcare contracts can be awarded via the Provider Selection Regime:

PSR Route	Description
Direct award process A	Where there is an existing provider for the services and that provider is the only capable provider.
Direct award process B	Where people have a choice of providers, and the number of providers is not restricted by the relevant authority.
Direct award process C	Where there is an existing provider for the services and that existing provider is satisfying the original contract, will likely satisfy the proposed new contract and the services are not changing considerably.
Most suitable provider process	Where the relevant authority is able to identify the most suitable provider without running a competitive process.
Competitive process	Where the relevant authority wishes to run a competitive exercise, or if they wish to establish a framework agreement.

3.2 Key criteria and basic selection criteria are set out in the new regime and must be considered when assessing providers under direct award process C, the most suitable provider process, or the competitive process.

3.3 The key principles of the PSR are acting transparently, fairly, and proportionately with a strong focus on the following:

- Record keeping is essential: the ICB must keep records of their considerations throughout the award process to justify the route that has

been chosen. These records may be requested as part of a review during the standstill period.

- Transparency is paramount;
 - A standstill period will be required for all contracts awarded either via the direct award process C, the most suitable provider process or the competitive process.
 - A contract award notice should be published (within the [Find a Tender Service](#) website) for all contracts awarded via all five routes.
 - There are also other transparency notice requirements for direct award process C, the most suitable provider process or the competitive process.
 - Relevant authorities must make publicly available an annual summary of its contracting activity for the provision of relevant healthcare services.
- Decisions need to be defensible. During the standstill period a provider can make a representation (challenge) to the ICB if they believe that the ICB has failed to apply the PSR correctly and are able to set out reasonable grounds to support their belief. The ICB then must consider these representations and respond as appropriate. The ICB must leave five working days for the provider to consider their decision before the standstill period can close and the contract can be awarded. Providers will be able to make representations to an NHS England PSR Review Panel (that is currently being established) if they are not satisfied with the outcome from the ICB. If a provider continues to remain unsatisfied, they can take their concerns to a Judicial Review.

4. Recommended changes to the ICB's Scheme of Reservation and Delegation and governance arrangements

- 4.1 The ICB's Scheme of Reservation and Delegation will need to be amended to reflect the new legislation from the 1st January 2024.

5. Identifying contracts due to expire between January and March 2024 that will be subject to the new regime

- 5.1 The ICB is identifying which contracts are in scope for the new PSR. This includes all healthcare contracts (including primary care and CHC) due to expire imminently between 1st January 2024 and 31st March 2024 that will be subject to the new regime.

6. Establishing new processes to comply with the new regime and responsibilities and support required within the ICB and CSU Partners

6.1 NHS England have provided statutory guidance and an extensive toolkit to support relevant authorities with the implementation of the new regime. The toolkit includes process maps for all five PSR routes and process maps to cover awarding contracts in urgent circumstances and contract modifications. It also includes templates to record contract award decisions that are made in line with the PSR.

8. Recommendations and next steps

8.1 The Primary Care Commissioning Committee is asked to receive this update for information and note that work is underway to update ICB policies and commissioning processes via the appropriate governance arrangements.

Joanne Sherborne

30 November 2023