

# Regulation HealthTech: What the Provider Selection Regime means for healthcare procurement

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New procurement regulations have come into force as part of the Provider Selection Regime 2023, providing greater flexibility in how healthcare bodies procure health services.

**Clare Auty**, partner, and **Viney Jhalley**, associate, in UK and Ireland law firm Browne Jacobson's [health and life sciences](#) team, explore what this means for [HealthTech](#) companies.

## Regulating tech

For HealthTech suppliers, understanding and adapting to the nuances of Provider Selection Regime (PSR) in the procurement landscape is paramount to their success. While updated regulations enable greater flexibility for healthcare bodies in relation to how they procure health services, the floodgates haven't been opened as far as HealthTech is concerned. Instead, it has created new classifications of solutions used in healthcare environments and systems, and failure to understand these could lead to HealthTech companies missing out on new contracts or falling foul of compliance.

## What is the Provider Selection Regime 2023?

First up, a recap of PSR, which was introduced by regulations made under the Health and Care Act 2022 and came into force on 1 January 2024.

It replaces the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013.

The PSR covers the procurement of healthcare services delivered to patients and service users. It aims to give relevant healthcare authorities, including NHS bodies, integrated care boards and local authorities, greater flexibility in selecting suppliers by streamlining the competitive tendering process.

However, the PSR does not apply to the procurement of goods or non-healthcare services, such as medicines, medical equipment and social care, unless they are part of a mixed procurement.

These items will fall under the regular procurement regime, which means any supplies of such goods and services would be subject to the full, comprehensive procurement process.

## Understanding how a procurement strategy is planned

When planning a procurement strategy, a healthcare body will need to decide whether the solution to be procured is purely a healthcare service or a technology service.

As such, any supplier should consider what the main subject matter of the service will be. This will determine whether the solution can be procured under the PSR or a different regime.

It is common for a solution to contain multiple elements. The healthcare service elements of the service will fall within the scope of the PSR, and some elements would be within the scope of the wider public procurement regulations.

Obvious examples that would not be classed as a healthcare service are electronic patient record systems, telephony infrastructure for health providers such as the 111 service, and wider hospital administration systems.

Less easily distinguished services include AI-assisted online homecare services. It is possible under the PSR to procure a mixture of in-scope healthcare services and out-of-scope services or goods.

This option may only be used where both of the following requirements are met:

- The main subject matter of the contract is in-scope health care services
- The relevant authority believes the other goods or services could not reasonably be supplied under a separate contract

One way to determine whether the main subject matter is 'in-scope' is to look at the value. If the value of the in-scope health services is higher in value than the out-of-scope health technology services or equipment, and it's not possible to provide one without the other being under the same contract, then the PSR could apply in any event.

If not satisfied, the PSR regime will not apply, and the procurement must be undertaken as per the rules on the wider public procurement regime.

## Common pitfalls for HealthTech suppliers

For HealthTech suppliers, understanding and adapting to the nuances of the PSR in the procurement landscape is paramount for their success.

One of the critical considerations is the accurate classification of solutions as either healthcare services or technology services.

This distinction is pivotal in determining the applicable procurement regime and strategy.

As such, failure to correctly classify solutions could lead to missed opportunities or regulatory non-compliance. Additionally, suppliers must update their marketing materials and contracts to reflect the changes brought about by the PSR. For example, by clarifying that it is software as a service with the service itself being an in-scope health care service.

By ensuring alignment with regulatory requirements and demonstrating flexibility in navigating the procurement processes, HealthTech suppliers can position themselves competitively and capitalise on emerging opportunities in the evolving health care sector.

## Advice to HealthTech markets

HealthTech suppliers should prioritise understanding the PSR and in-scope services and what it means for a health body to award a contract amid the recent regulatory shifts.

A diligent review of a HealthTech supplier's marketing materials and standard contracts relating to how they describe their services and products is also crucial.

This will ensure compliance with the PSR's requirements and give an accurate reflection of how its technology can best support healthcare services.

Going forward, there is more scope for direct awards to be made to identified providers under the PSR. Where that is not possible, there is considerably greater flexibility in running a competition before awarding the contract.

This will require health bodies to update their policies and procedures, many of which are publicly available, and it is a sensible step for a supplier to review the information available when tendering for a healthcare services contract.

As we still await more guidance around both the PSR and updated procurement laws, it will be important to keep any eye on developments in relation to the rules applying to both health technology and mixed procurements.

## Key contacts



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