

COUNTDOWN

TO THE NEW PROCUREMENT
ACT 2023

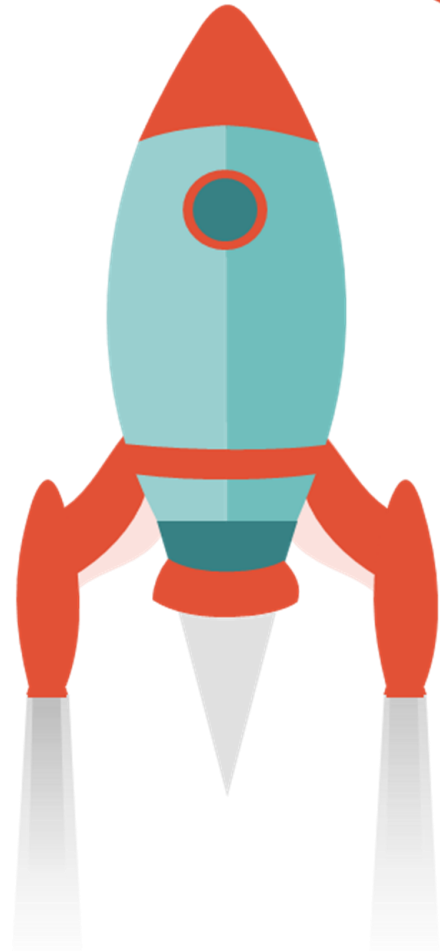
Lunchtime Byte #4

Performance, exclusions
and Debarment



Quick session over lunchtime (25 mins)

- Quick trip through 3 top areas to be aware of in relation to Performance under the Procurement Act
- Go to CHIC CHAT and download the fuller guides to the Procurement Act 2023, jargon buster, flowcharts and other insights
- If you really want to, read the Procurement Act 2023
- Watch the Cabinet Office's Knowledge Drops
- Any tricky questions put them in the Q&A – 5 mins today but will arrange Deep Dive session on specific areas on request

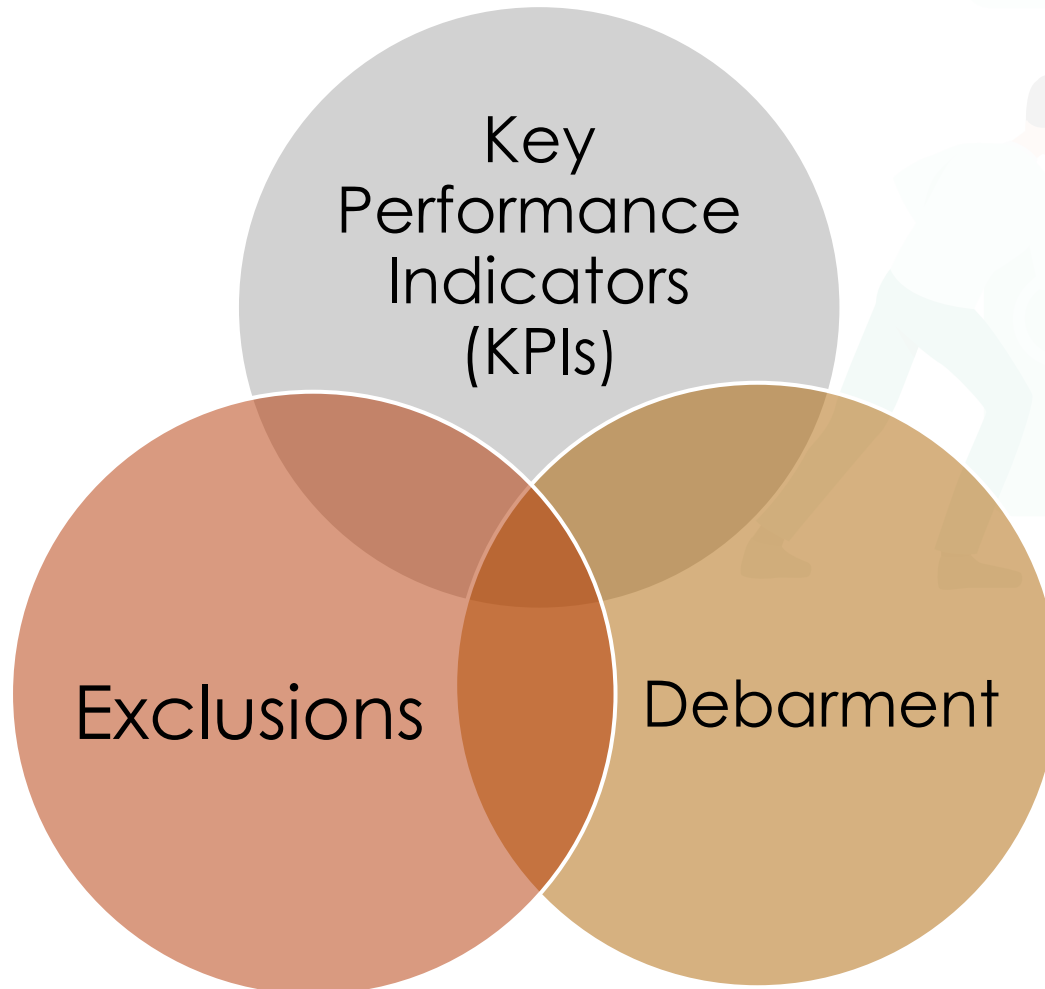


04

Performance, Exclusion & Debarment

Measuring, monitoring and penalty

The forthcoming changes under the Procurement Act in October 2024 introduce significant reforms focusing on:



to enhance the efficiency, transparency, and accountability of public procurement processes.

Key Performance Indicators

These indicators will measure performance against predefined benchmarks such as:





*'KPI's should be **S**pecific, **M**easurable, **A**chievable, **R**ealistic and **T**imebound (**SMART**), including:*

- a) a clear and realistic target linked to one or more contract objectives*
- b) a scoring mechanism to determine the supplier's performance under that KPI, and;*
- c) a "minimum score" that, if not met, could trigger performance improvement measures*

Equally, the advice is to review KPIs which do not add value or are immeasurable which may incur unnecessary additional costs.'

Source: Government Commercial College

The Act mandates the establishment of at least **3 KPI's** for all major public procurement contracts with a contract value of over **£5 million GBP**.

KPI's will be subject to the publication on the central digital platform for performance monitoring via the following notices throughout the lifecycle of a contract:



Contract
Details
(within 30 days)




Contract
Performance
(12 monthly)



Payment
Compliance
(Payment within
30 days
Over £30k)



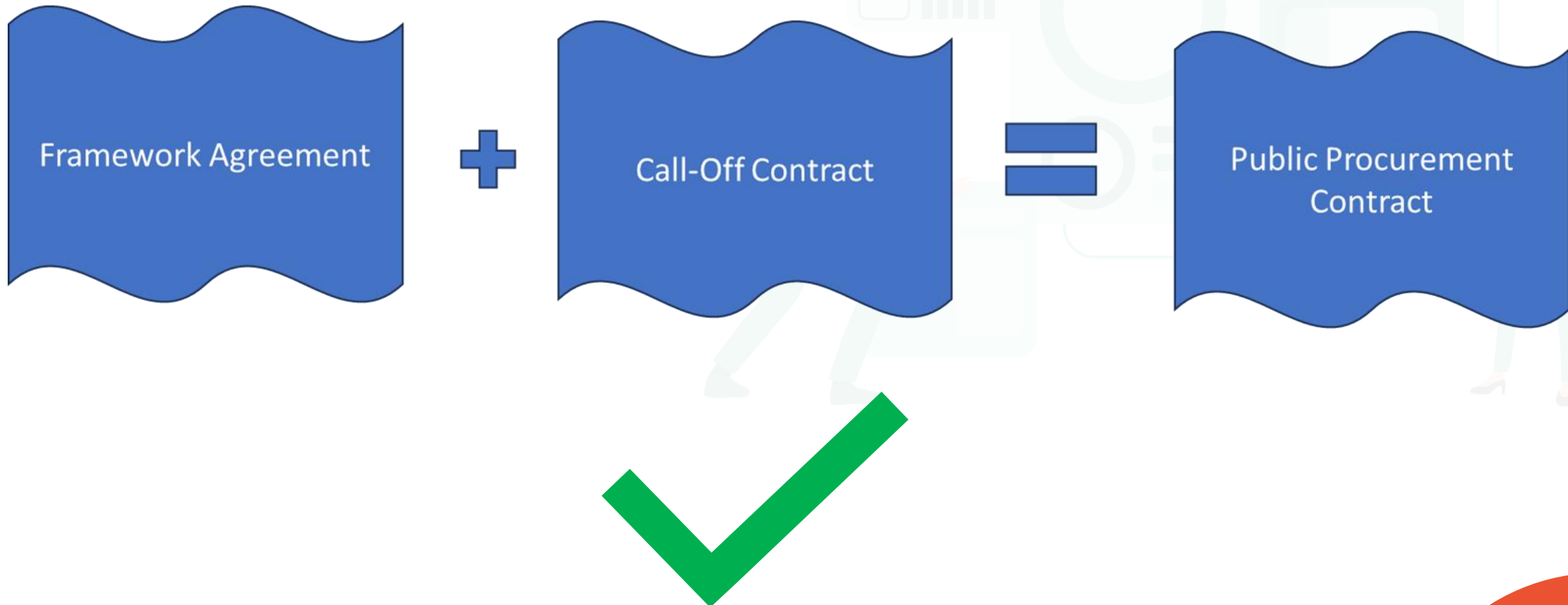
Contract
Change
(Detail of impact
on KPI's)



Termination
(Reason
associated with
performance?)

The requirement to publish KPI details in notices does not apply to an establishment of a Framework or a Dynamic Market!

Does it apply to a Call-off?



Framework Agreement

A clear set of KPI's or a mechanism which enables the setting of KPI's at call-off.

Terms to support the enabling of KPI's to be set at Call-off and published through-out its lifecycle.

A mechanism by which the Authority (Member) can inform the framework provider should issues arise with performance for remedial action.



ARK Contract Performance Notice Requirements



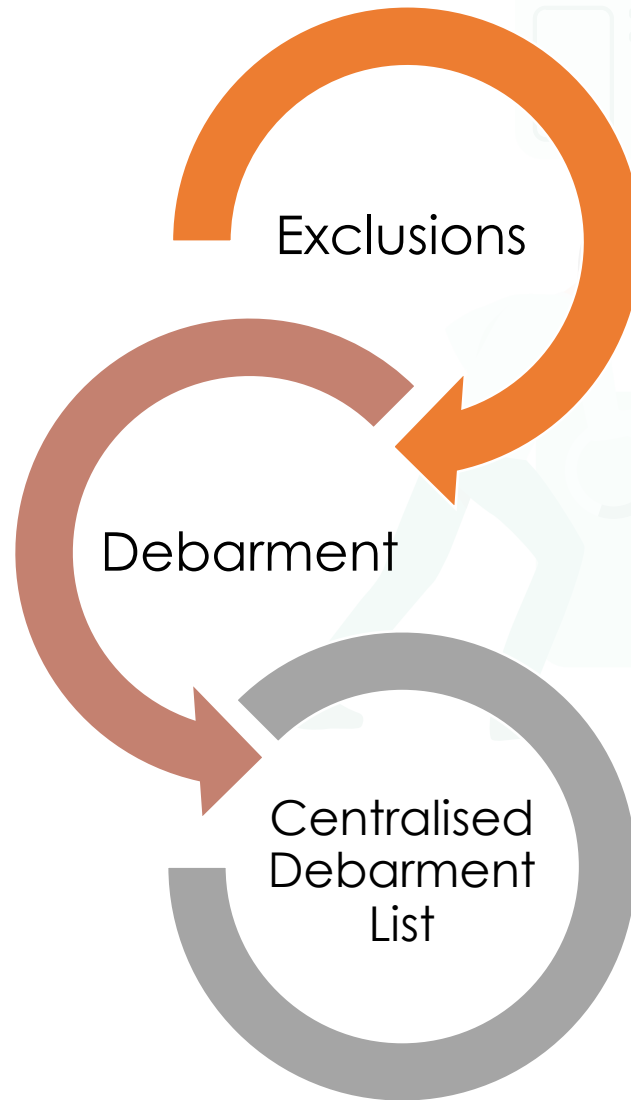
The standardised rating system:

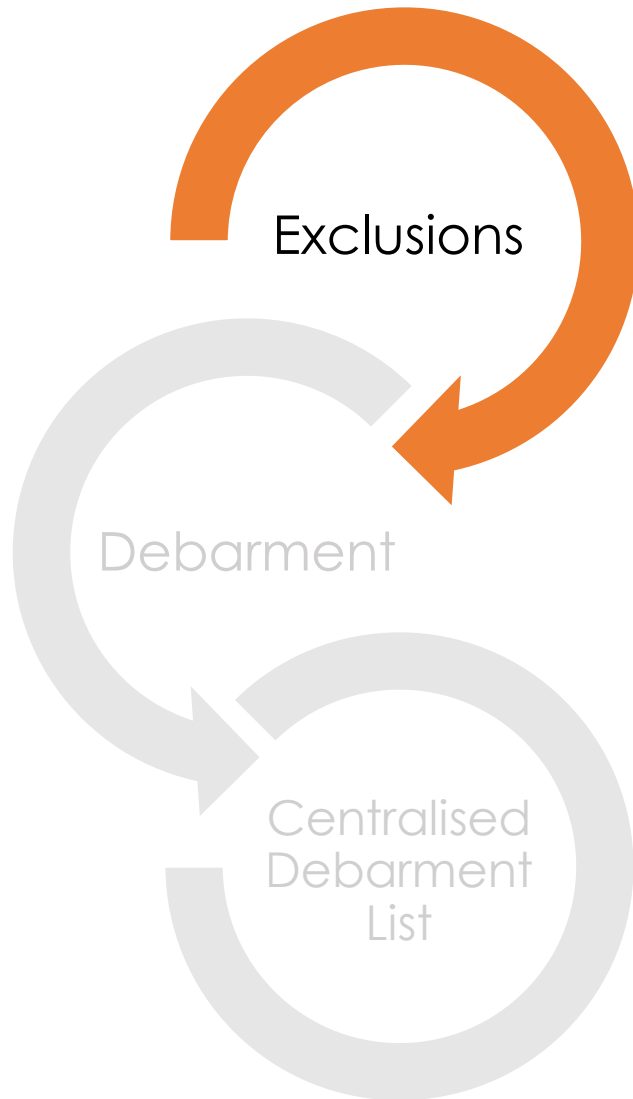
- **Good:** Performance is meeting or exceeding the key performance indicators
- **Approaching target:** Performance is close to meeting the key performance indicators
- **Requires improvement:** Performance is below the key performance indicators
- **Inadequate:** Performance is significantly below the key performance indicators
- **Other:** Where performance cannot be described as good, approaching target, requires improvement or inadequate (e.g. where no data is available or where relevant service delivery has not taken place)

What happens when KPI's fail?

How do we avoid failure in future contracts?

Exclusions and Debarment

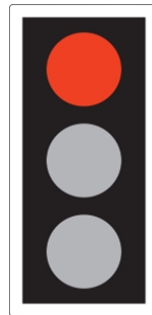
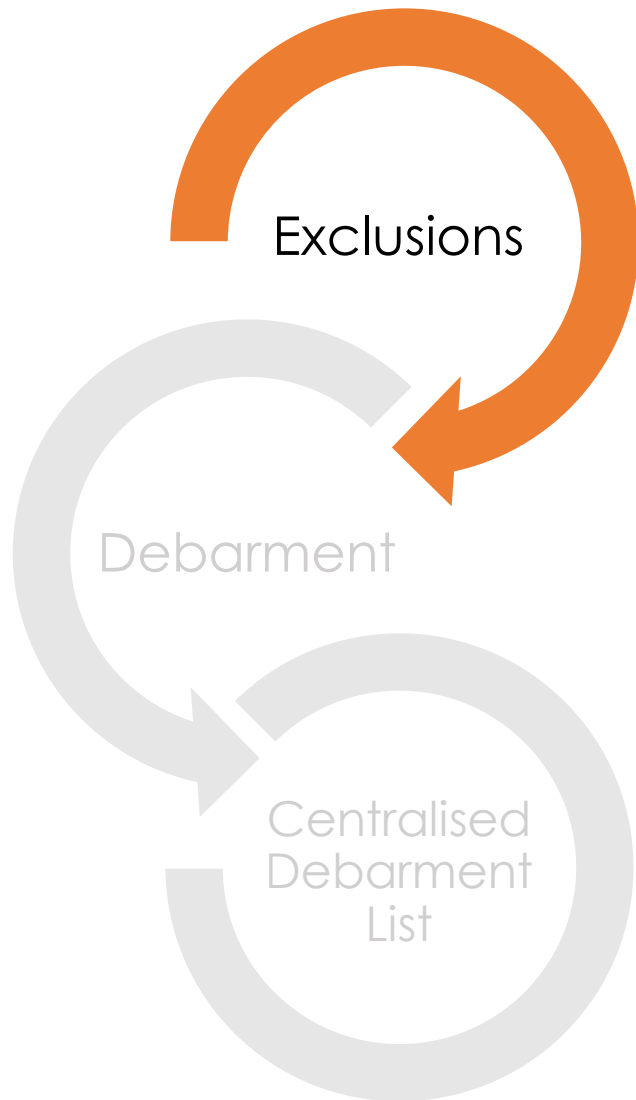




regulatory breach
 practice
 legal breach
 non-compliance
 past performance
 corruption fraud
 poor past performance
 unethical practice
 contractual obligation

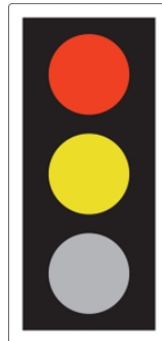


There are two types of classification of suppliers:



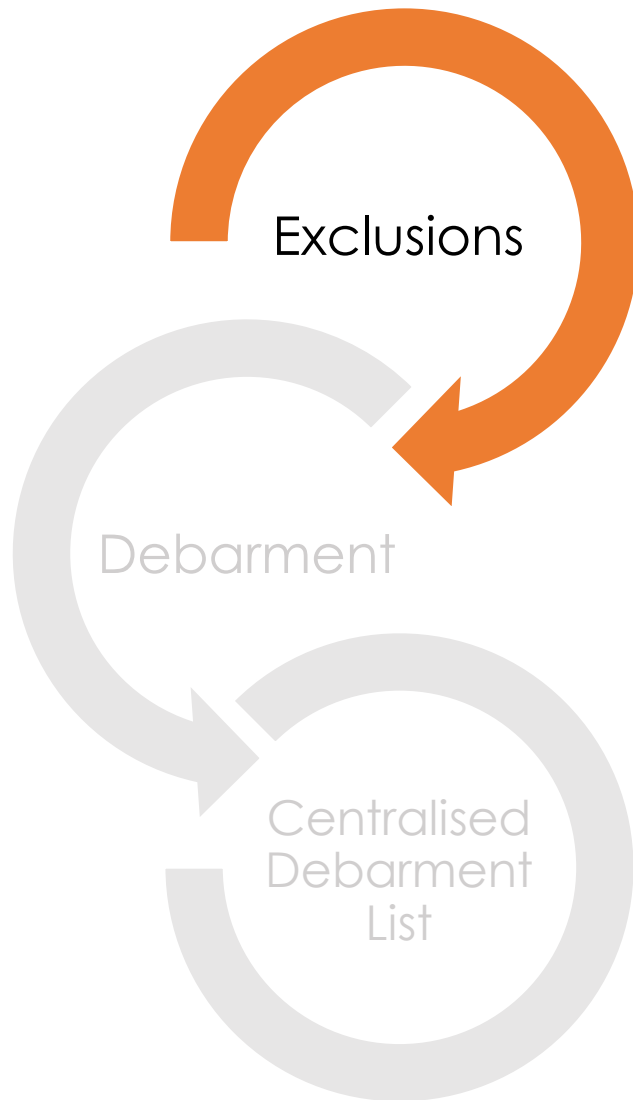
Excluded (Mandatory)

as per Schedule 6 of the Act
Contracting Authorities have a duty to exclude suppliers from Tendering activities



Excludable (Discretionary)

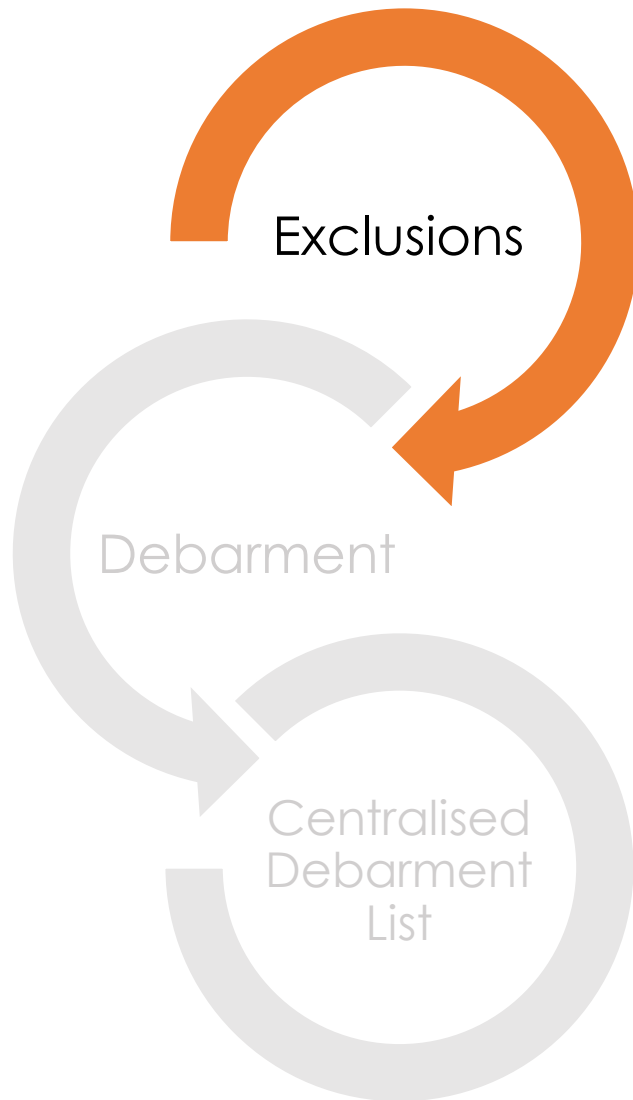
as per Schedule 7 of the Act
Contracting Authorities have discretion as to whether to exclude suppliers from Tendering activities



Must be reported to the Debarment Review Service within **30 days** from the date of exclusion

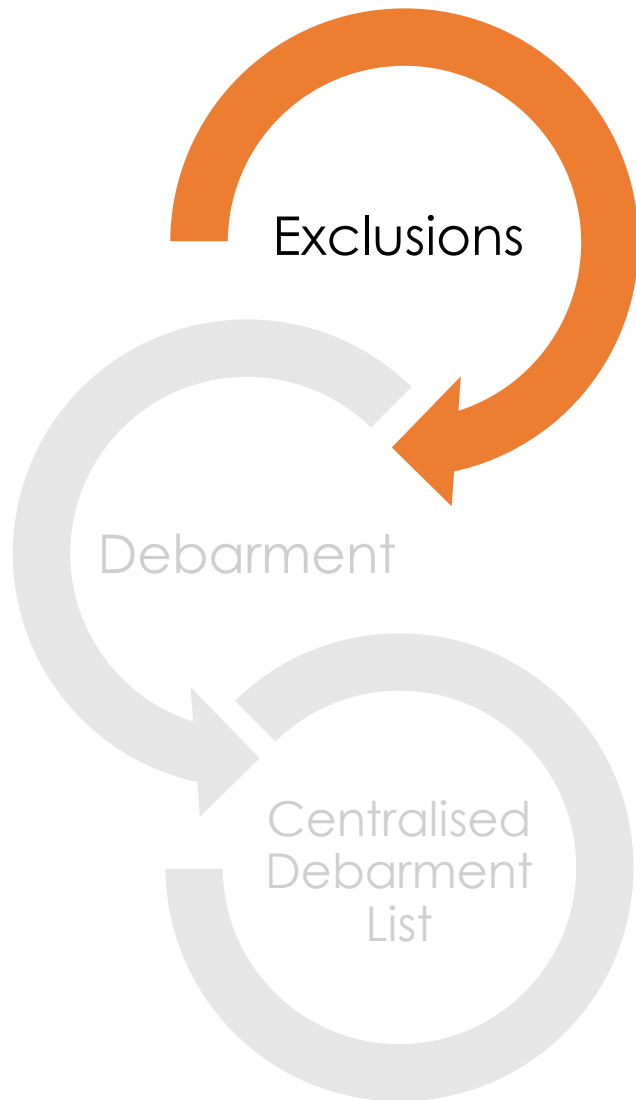
A **5-year** time limit will apply for all exclusions

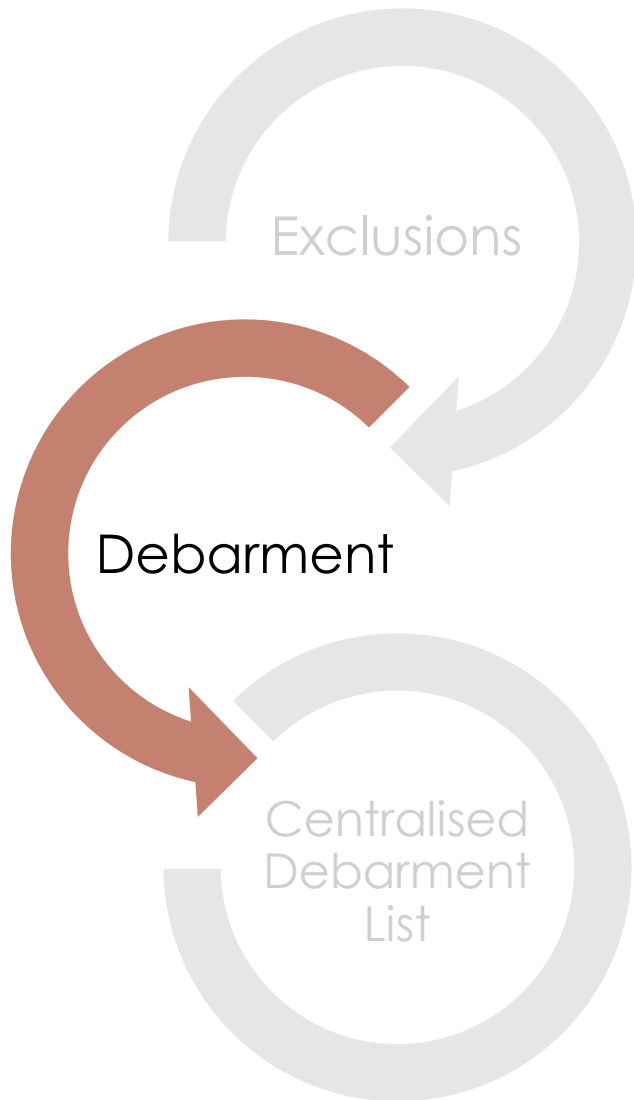
Short-Term and Long-Term Exclusion



Subcontracting and Persons of Significant Control

Poor Performance now covers failure to pay supply chain within **30 days**



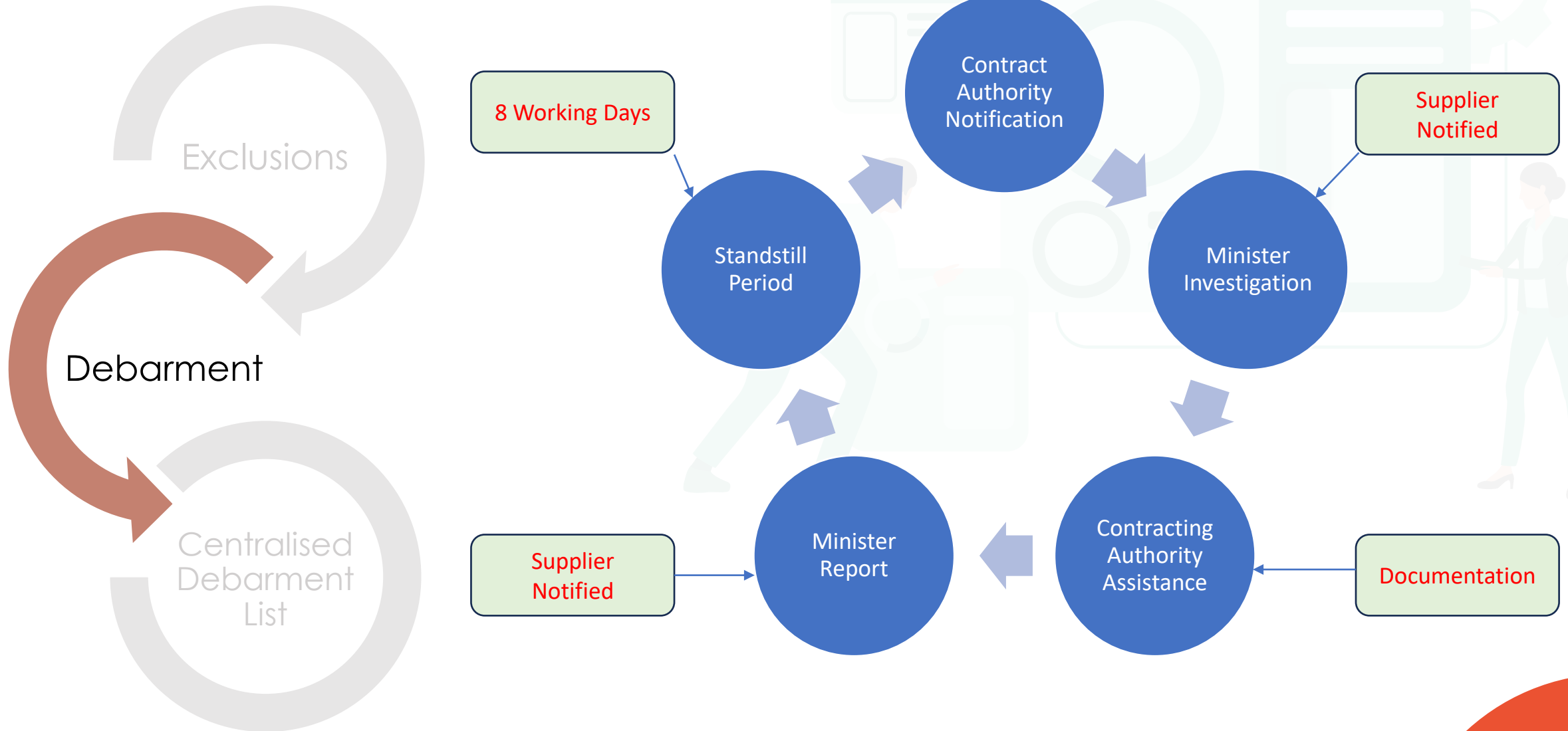


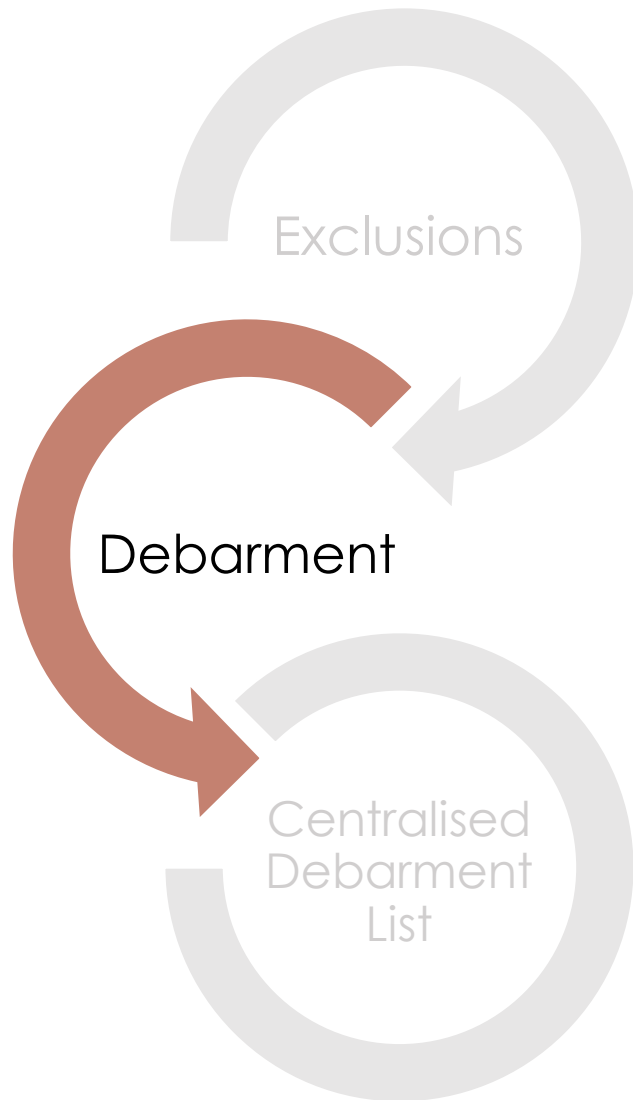
The Act introduces a formal debarment mechanism to debar contractors with a history of:

- Poor Performance
- Fraud
- Other serious misconduct

The contracting authority must notify the relevant minister within **30 days** to start the process.

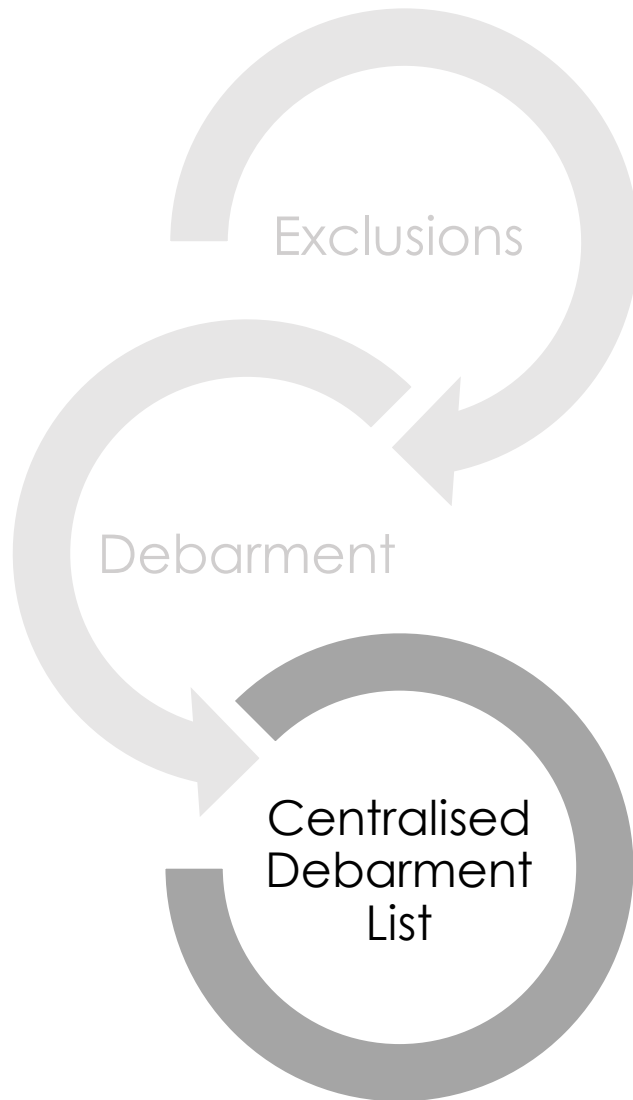
The PRU are also able debar based any court or regularity bodies rulings.





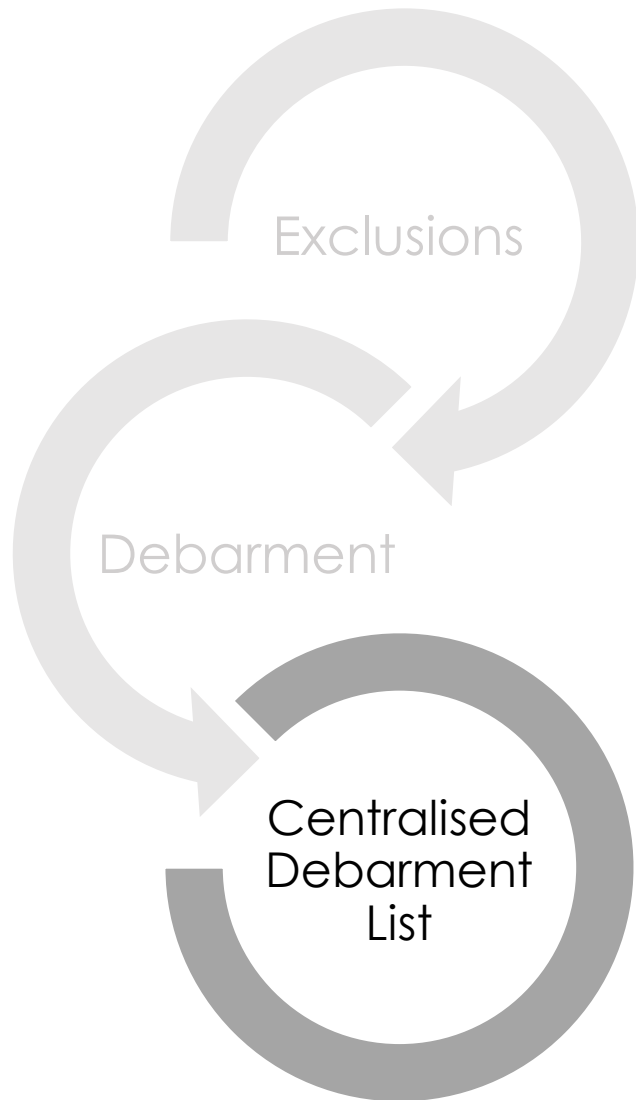
The Act provides a pathway for debarred contractors to be reinstated after demonstrating significant corrective actions '**Self Cleaning**' and compliance with all relevant regulations.

Reinstatement will be subject to a thorough review process.



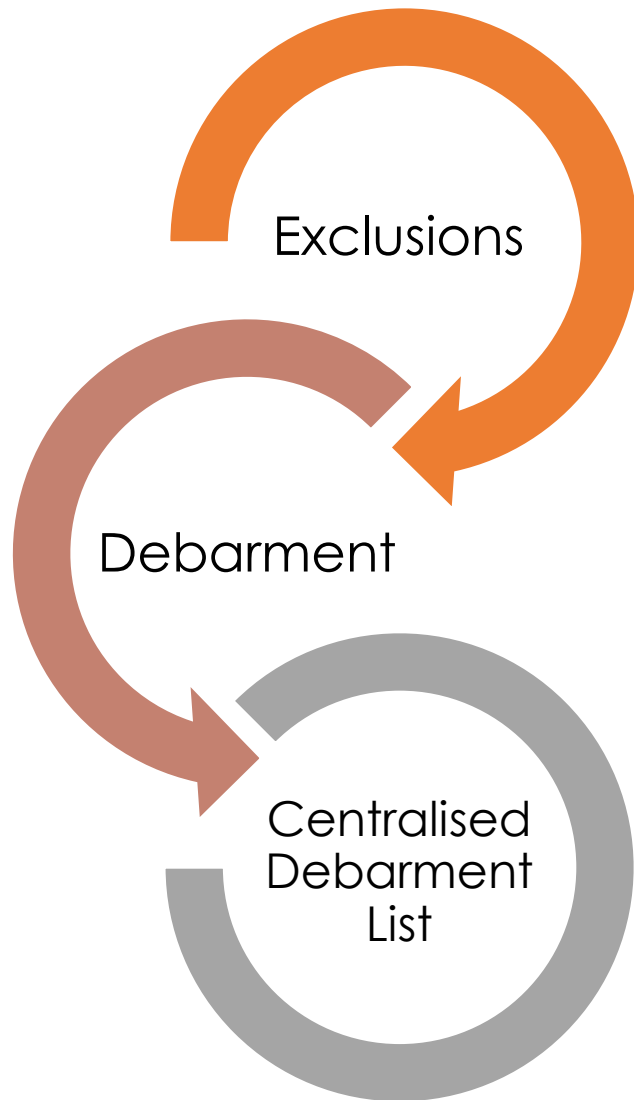
Maintained by the Cabinet Office and the PRU the list will include details of:

- Debarred contractors
- Reasons for their debarment
- Duration of the debarment period
- History of termination and exclusion from previous contracts or tender exercises



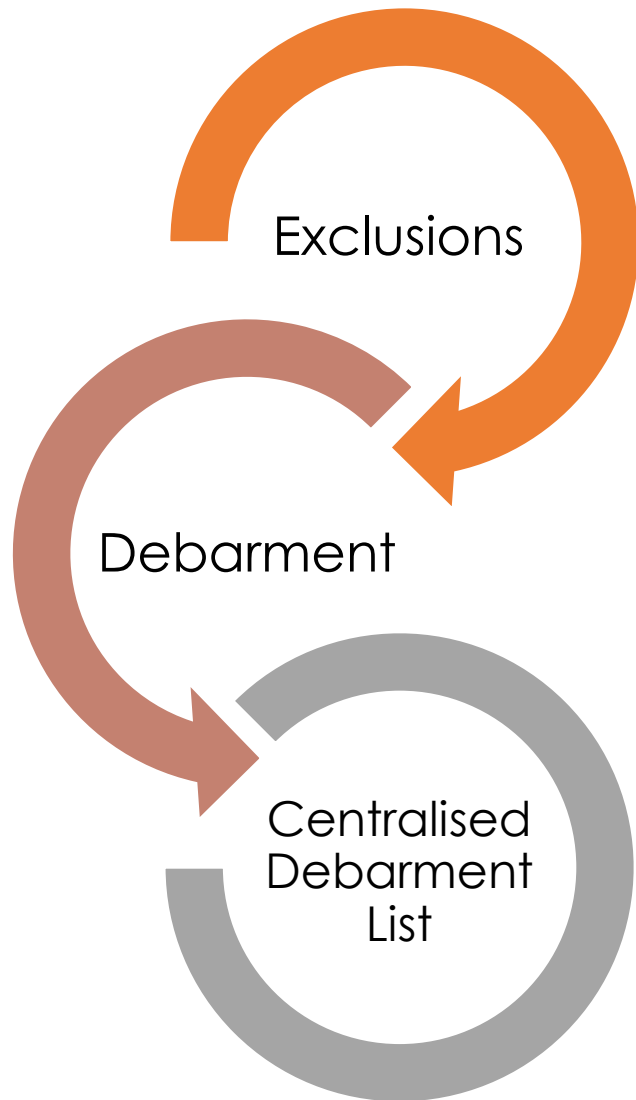
This means that extra checks will need to be undertaken to exclude at tender stage or terminate:

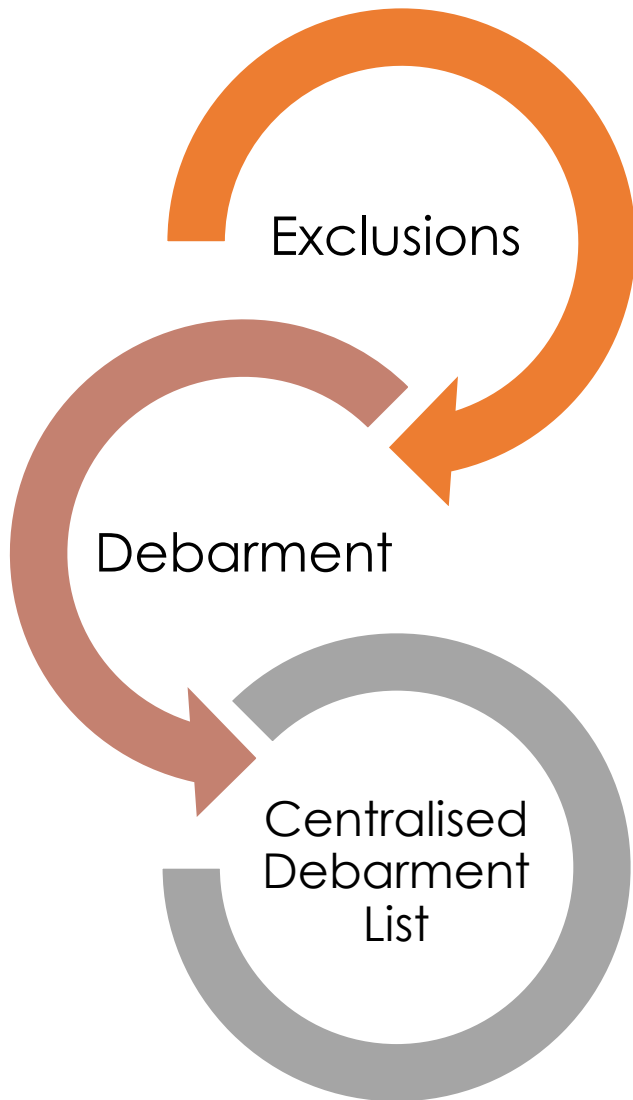
- Prior to award to a Framework or during the framework lifecycle
- At the membership application to a Dynamic Market (DM) or during the DM lifecycle
- At Direct Award or Call-off under a Framework or DM, and during a call-off contract lifecycle.



Although the publishing of KPI data does not legally apply to Frameworks and DM's, Exclusions and Debarment still do.

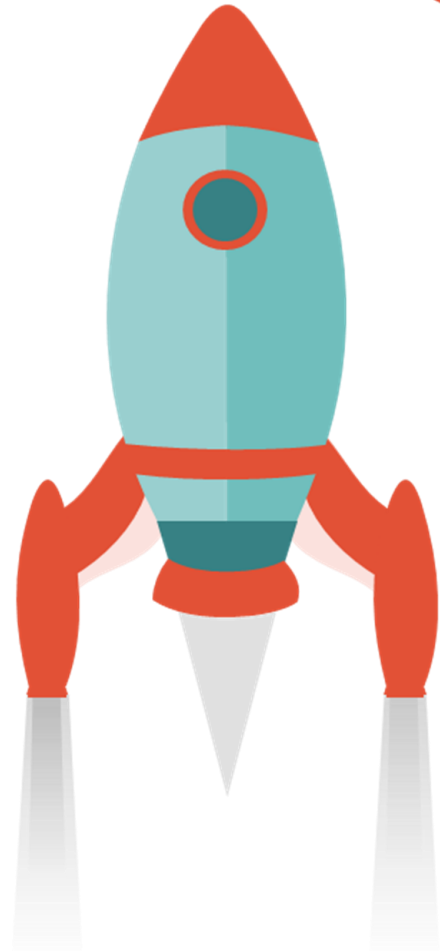
Cabinet office advice is that KPI's should still be applied to all call-offs and direct awards where possible to ensure that Exclusions and Debarment process is robust and that poor performing Contractors do not find a '**backdoor**' around the process.





To support our members CHIC Procurement has developed and will continue to update:

- Draft KPI Schedules for Consultancy and Contractors
- Draft Poor Performance Procurement Advice Notes (PAN-01-23)



01

Notices & Contract Management

Actions to support transparency – Notices and management of supplier's performance at framework level and at call off level

02

Supplier Assessment, call-off & Direct Award

Tender questions, competition and understanding of the term "Direct Award"

03

Frameworks & Dynamic Markets

Old approach vs expectations under the PA2023

04

Performance, Exclusion & Debarment

Measuring, monitoring and penalty

05

Scope & Transparency

Scope, objectives, new terminologies/definitions, changes and it can affect CHIC & ARK.

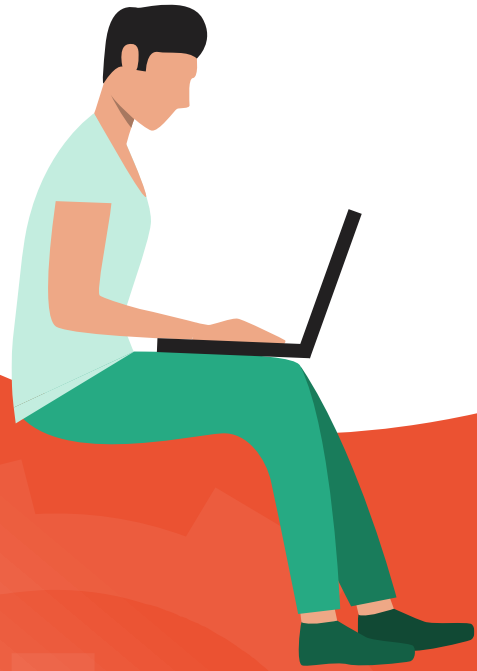
Next Session on
Monday 5th August @ 12:00 Noon

is

03

Frameworks & Dynamic Markets

Old approach vs expectations under the PA2023



Any
Questions?