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# Certificate of Credit in Commissioning & Purchasing for Public Care

## MODULE 3 SESSION 1

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# Welcome back…

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# Tuning In

- **Share any example of good practice you have been able to apply since we last met, or since the course started**

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# Working online – hints/tips

Everyone enters on mute. Mostly stay on mute so we are not all talking at once

Use the chat to ask questions and make comments. This will be a dynamic learning experience

Turn on your video camera, please!

Unless you have a shaky connection! In that case, switch off your video

You will be going into breakout rooms, be prepared to be in rooms with 6 - 8 people

Raise your hand or click the hands up symbol if you want to speak in discussions

Be on time for breaks

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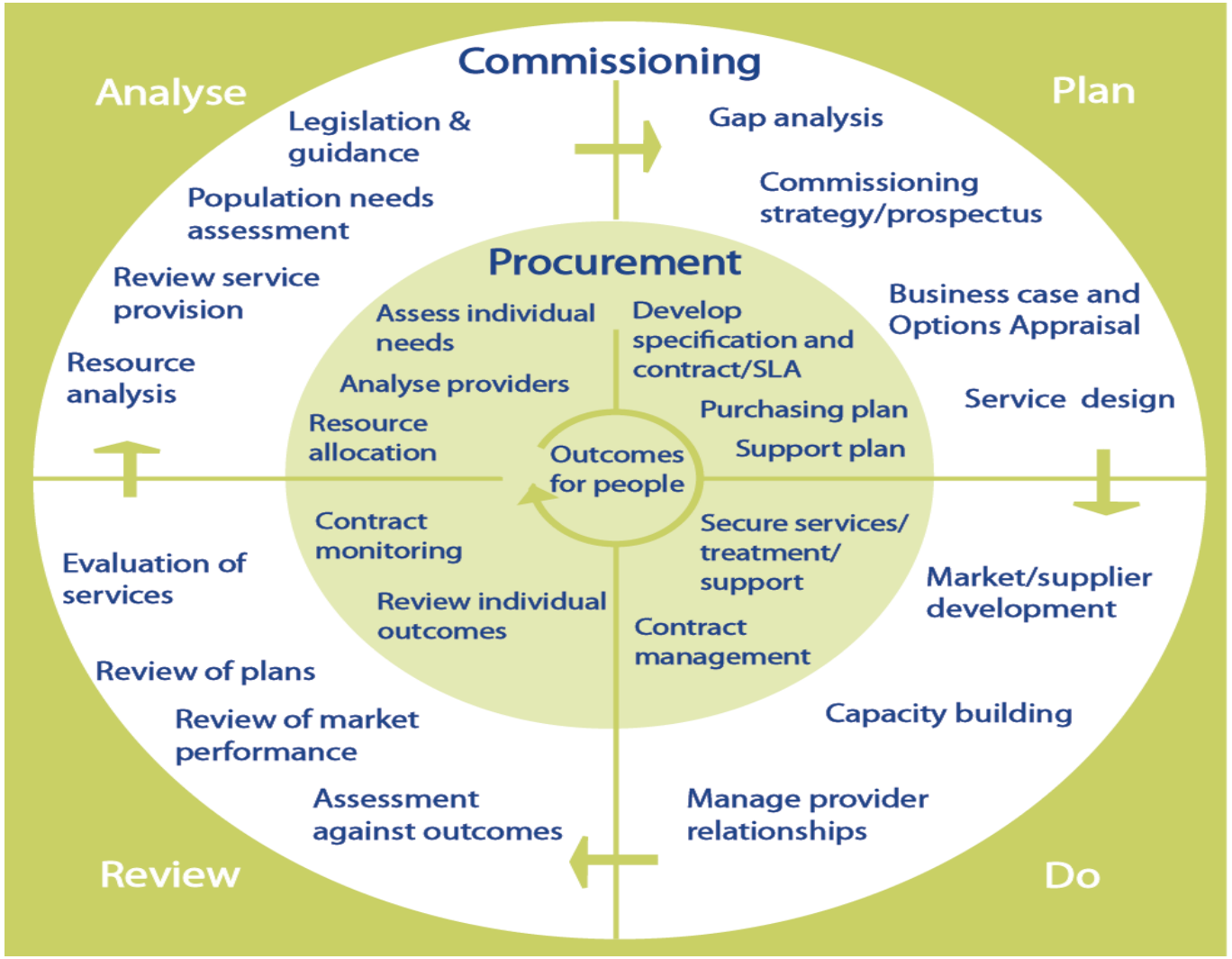


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# Sessions 1 – 8 will cover

- The national and local agenda
- What is commissioning and how well are we doing it?
- Needs and resource analysis
- Planning and options appraisal
- Accreditation – overview
- Market shaping
- Commissioning for outcomes
- *Service Specifications -* ✔
- *Procurement -* ✔
- Monitoring and review
- Contract management and procurement
- Person centred approach to commissioning
- Delivering change
- Commissioning skills

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# Service Specifications – what does good look like?

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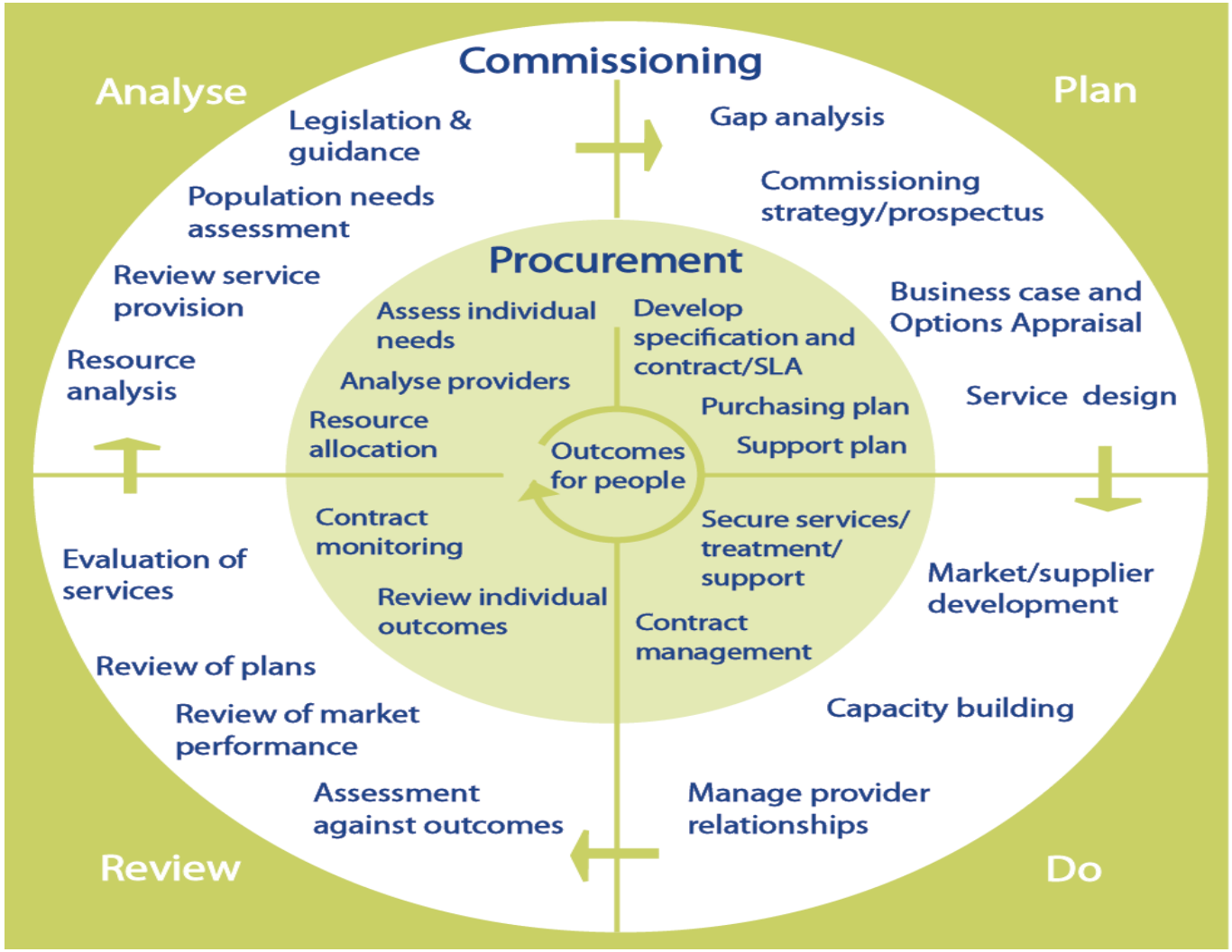


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# A specification is….

A document describing a buyer's needs, which enables providers to propose an appropriate, costed solution to meet those needs.

A Service Level Agreement (or SLA defines what services a service provider will provide and the required level or standard for those services.

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# Key functions of a specification

- To describe the nature and scope of the service to be bought.
- To define the people for whom that service should be provided.
- To set the outcomes that are required.
- To set the value base within which the service should be provided.
- To describe the monitoring arrangements to determine whether or not all the requirements are being met.

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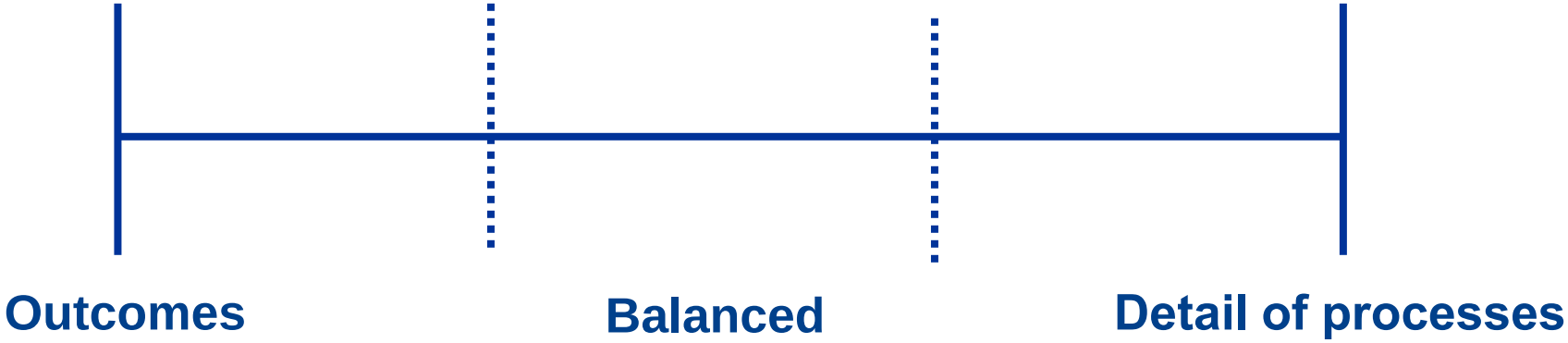
# Spectrum of specifications

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# Develop a model specification

- In two groups, drawing on your experience of service specifications, develop the outline of a model service specification template, identifying key headings.

- Agree a single outline model service specification

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# Developing a specification

- Who should be involved in the team and who should take the lead in writing the specification?
- How are values to be agreed and defined?
- What outcomes be defined and written down?
- How else is quality to be specified?
- How are the outputs to be specified?
- How much detail will be written about the processes?
- Where does the service fit in the care and support pathway?
- How will we ensure that changes can be made over time to reflect national and local policy priorities?
- How are inputs to be specified e.g. numbers and qualifications of staff?
- How will it be measured and monitored?

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# Good practice specifications

- Take a shared approach to risk and equity of benefits.
- Outline the channels of communication.
- Set clear targets and say how the success of the service will be measured.
- Specify the monitoring arrangements, which are proportionate.
- Build in flexibility and ability to change.
- Have sensible, do-able timescales.
- Use plain language.

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# Procurement
# Pre and post Brexit

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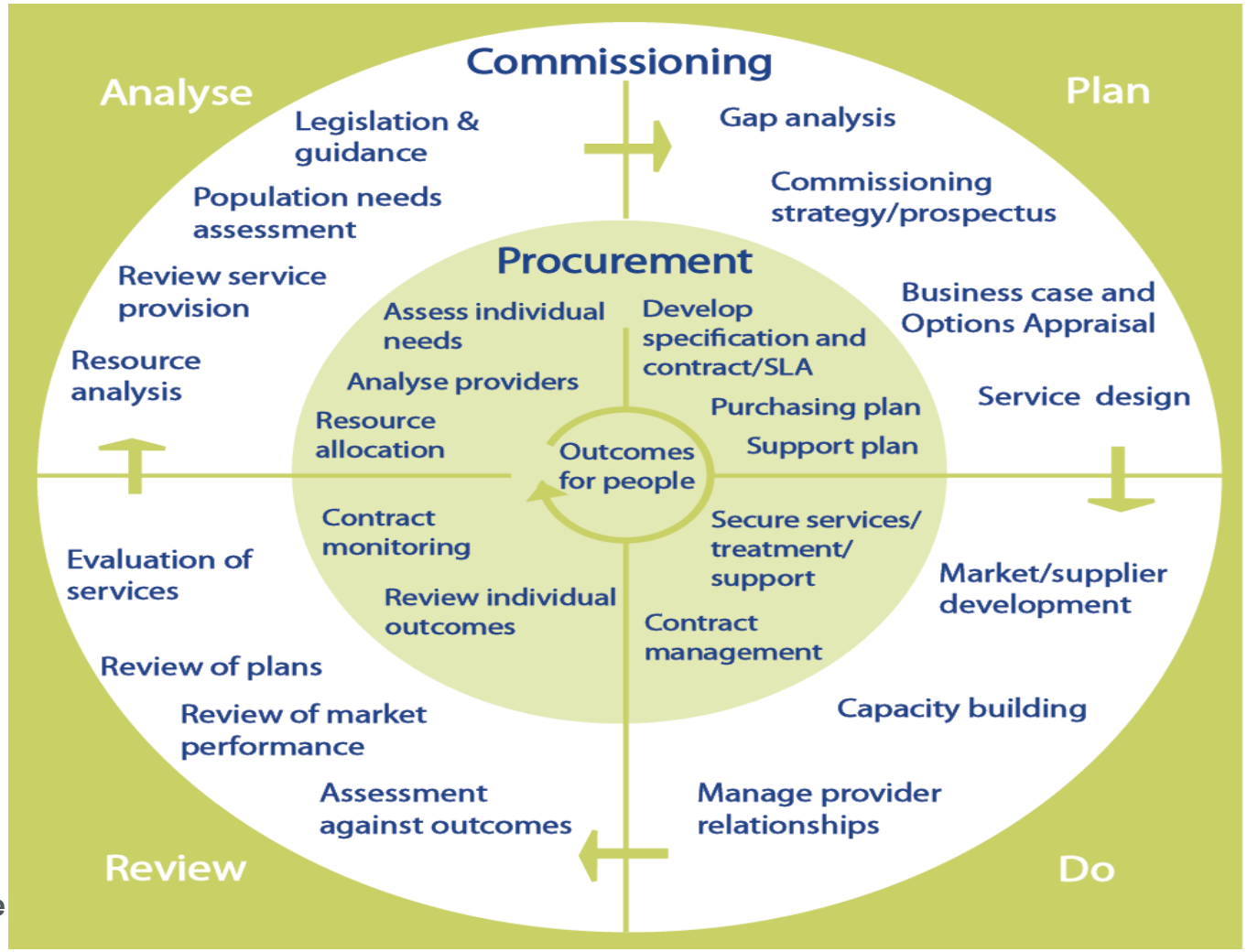


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# Procurement and contracting are…

**Procurement** is the process of acquiring goods, works or services from (usually) external providers/suppliers and managing these through to the end of contract.

**Contracting** is the process of negotiating and agreeing the terms of a contract for services, and on-going management of the contract including payment and monitoring.

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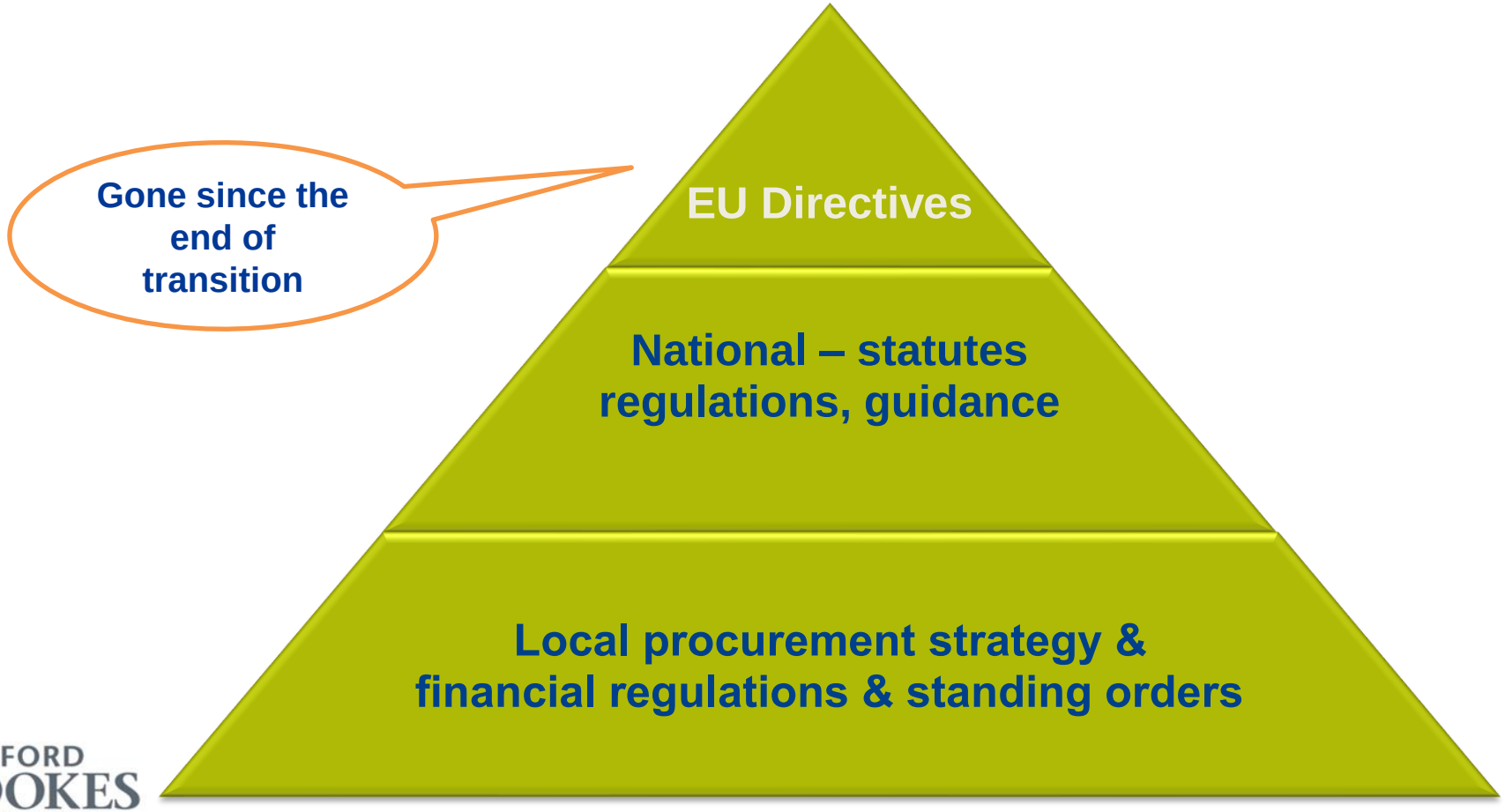
# The legal procurement framework

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# Since then …

- The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 signed into law on 19 November 2020. Ensures that the UK procurement regulations align with the transitional provisions on public procurement as set out in the ratified withdrawal agreement

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# Key points from the Regulations

- Ongoing procurement procedure commenced before the end of the transition period at 11pm GMT on 31 December 2020 unaffected.

- Procurements for framework agreements commenced before the end of the transition period continue to be bound by EU procurement law as transposed into UK law.

- Main change is that procuring bodies are required to publish notices on the new UK e-notification service called Find a Tender (FTS) instead of in the OJEU

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# More key points

- The procurement thresholds remain the same as they were before the end of the transition period given that these thresholds are set under the WTO's Agreement on Government Procurement.
- Below-threshold procurements no longer need to comply with "general EU Treaty principles" irrespective of whether these contracts would be of cross-border interest to suppliers in an EU member state. The only exception relates to Northern Ireland.

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# The EU-UK Trade and Co-operation Agreement (TCA)

- Agreed between  24 December 2020. Provisions binding under European Union (Future Relationship) Act 2020.
- Under the TCA, both the UK and EU committed to offering increased access to each other's procurement markets and to enhance the transparency of public procurement procedures.
- EU and UK suppliers  have access to each other's procurements in gas and heat distribution, contracts awarded by private-sector utilities that act as monopolies, and as services contracts for hospitality, telecoms, real estate and education.
- Public contracts outside the scope of TCA  include healthcare services and defence. This means that UK suppliers do not enjoy guaranteed access to these contracts in EU and vice versa

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# Transforming public procurement December 2020

- Legal principles of public procurement: value for money, the public good, transparency, integrity, efficiency, fairness.
- New flexible procedure
- Open procedure for simpler, 'off the shelf' competitions
- A limited tendering procedure that buyers can use in certain circumstances, such as in crisis or extreme urgency
- Removing the Light Touch Regime as a distinct method of awarding contracts
- Opening up public procurement to a more diverse supply base, making it easier for new entrants
- Bidding to be simpler, with procedures that are quicker and cheaper to participate in and information on contracts easier to find
- Single digital platform for suppliers
- New Dynamic Purchasing System (DPS+) that may be used for all types of procurement

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# But in practice much remains in place for now

£m

- The regulations have 2 levels – a full regime and a light touch regime for other services (Schedule 3).
- Health, adult social care and children's services are Schedule 3 services.
- Pre-Qualification stages only permitted for contracts valued at more than the threshold

£615k

**Threshold of £615,278 (net of VAT)**

- EU principles still apply:
  - Equality of treatment
  - Non discrimination
  - Transparency
  - Proportionality

£0

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# Light Touch Regime (LTR) for Schedule 3 services

**Main mandatory requirements:**

- Advertising of contracts now through Find a Tender
- The publication of a contract award notice (CAN)
- Compliance with Treaty principles
- Conduct the procurement in conformance with the information provided in the OJEU advert
- Time limits imposed by authorities on suppliers must be reasonable and proportionate

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# Light Touch Regime (LTR) for Schedule 3 services

**Significant flexibilities:**

- **Authorities have the flexibility to use any process or procedure they choose to run the procurement**
- **The LTR rules are flexible on the types of award criteria that may be used**
- **Reserved contracts for certain services in the light-touch regime (eg in-house, public to public cooperation)**
- **Prior advertising can be dispensed with if 'negotiated procedure without notice' is used ie where a procurer can legitimately approach one provider direct**

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# Selection stage: tendering

Local authorities must publish details of every invitation to tender for contracts to provide goods and/or services with a value that exceeds £5,000, and also publish details of every contract that exceeds £5,000

Local Government Transparency Code 2015 (31-32)

- The promotion of the tender opportunity, ensuring that all tenderers, and enquiries, are responded to equally and fairly.
- The rejection or selection of candidates based on:
  - legal;
  - financial; or
  - technical grounds.
- A comprehensive record is kept of the procurement activities undertaken and decisions made.

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# Five procurement procedures

**Contracting authority is <u>not obliged</u> to follow one of the 5 procurement processes for the LTR**

1. **Open tendering:** all those interested may respond to the advertisement by submitting a tender for the contract.

2. **Restricted tendering:** a selection is made of those who respond to the advertisement and only they are invited to submit a tender for the contract.

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# ‘Choice’ of procurement procedures

**Allow a degree of negotiation with suppliers**

3. **Competitive dialogue:** a selection is made of those who respond to the advertisement and the contracting authority enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender.

4. **Competitive procedure with negotiation:** a selection is made of those who respond to the advertisement and only they are invited to submit an initial tender for the contract. The contracting authority may then open negotiations with the tenderers to seek improved offers.

5. **Innovation Partnership**: selection is made of those who respond to the advertisement and the contracting authority uses a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing ‘product’ on the market. The contracting authority is allowed to award partnerships to more than one supplier.

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# Public Services (Social Value) Act 2012

***"The contracting authority must consider how what is proposed to be procured might <u>improve the economic, social and environmental well-being</u> of the relevant area, and; how, in conducting the process of procurement, it might act with a view to securing that improvement"*.**

**The Act applies to contracts over the procurement threshold – but the Revised Best Value Statutory Guidance 2015 "*recommends that authorities consider social value for other contracts … where it is relevant to the subject matter of the contract and deemed to be beneficial to do so*".**

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# Social and environmental aspects

**The new Regulations contain improved rules on social and environmental aspects, making it clear that:**

- **Social aspects can now also be taken into account in certain circumstances (in addition to environmental aspects which have previously been allowed);**
- **Contracting authorities can require certification/labels or other equivalent evidence of social/environmental characteristics;**

**The full life-cycle costing can be taken into account when awarding contracts.**

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# Award stage

- Evaluate tenders on an equal footing, based on criteria and relative weighting that was stated in advance.
- The award of contracts is based on the most economically advantageous tender (MEAT), looking at the best price-quality ratio
- Can use full life cycle costing
- Prioritise key local concerns and be innovative about information requested from providers and/or the evidence used.
- Feedback is given to unsuccessful tenderers.
- Take advice if post tender negotiation needed.

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# Abnormally low tenders

**"Contracting authorities shall require tenderers to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services."**

**Public Contract Regulations 2015 (69:1)**

- **The tender may only be rejected where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.**
- **The tender shall be rejected if it is established that the tender is abnormally low because it does not comply with applicable obligations (eg minimum wage).**

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# Exercise

- You are about to tender for a service for your target population :
  - What are the key criteria that you would use to judge the technical competence of potential providers?
  - How would you rank the criteria in order of importance?
  - How would you make that judgement i.e. what information would you ask for or what would you want to see?

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# More information

- Government Outcomes Lab https://golab.bsg.ox.ac.uk/
- Crown Commercial Service: Guidance on the light touch regime
- Crown Commercial Service: Reform of the EU procurement rules – public sector
- Cabinet Office: Public procurement policy notes
- Social Value Hub http://www.socialvaluehub.org.uk/
- LGA: Encouraging innovation in local government procurement
- Procurement Guide for Commissioners of NHS-funded Services
- The National Procurement Strategy for Local Government in England
- Cabinet Office: Transforming Public Procurement: CP 353: December 20

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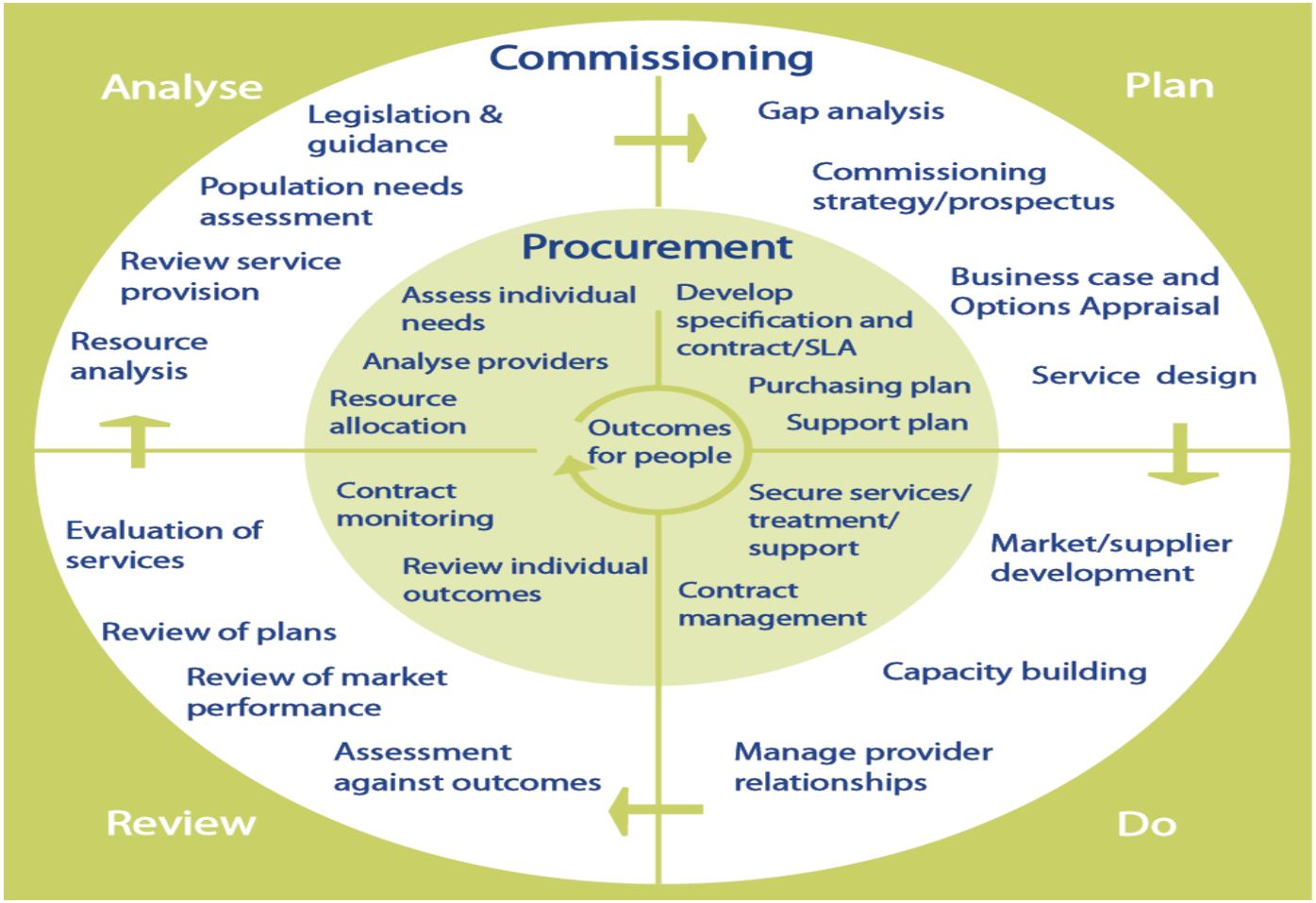


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# Your reflections on today

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