

Procurement Policy Note 10/20: key changes and considerations for contracting authorities post the UK-EU transition period

What is the current impact for contracting authorities of the PPN?

16 December 2020

On the 10th December 2020, the Cabinet Office published Procurement Policy Note 10/20 titled 'Public Procurement after the Transition Period ends on 31 December 2020' (the "PPN"), together with a set of FAQs providing further guidance. Copies of both can be found [here](#).

The PPN aims to outline how public procurement will be affected from the 1 January 2021 and is largely a consolidated reminder of what has previously been notified in earlier PPNs (notably PPN 08/20) and the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020.

When does the PPN apply?

The PPN applies to all contracting authorities, including Central Government Bodies, Executive Agencies, Non-Departmental Public Bodies, wider public sector, local authority, NHS bodies and utilities.

In essence, the PPN applies to all [public procurements](#) for goods, services or works which would currently be caught by the existing OJEU/TED regime pursuant the Public Contracts Regulations 2015, Utilities Contracts Regulations 2016 and Concession Contracts Regulations 2016

What action must be taken?

From 11pm on 31 December 2020 (the end of the UK-EU transition period), all new procurements are to be advertised through the UK's new e-notification 'Find a Tender' service ("FTS"), which effectively replaces notifications through OJEU/TED.

Other existing notification portals such as Contracts Finder and MOD Defence Contracts Online, are unaffected by this change and will continue to operate in the same way as they do now.

What are the implications for procurements still ongoing at 1 January 2021?

All procurements which are planned to start before 1 January 2021, or which have already been commenced but will not be concluded before the 1 January 2021, must continue to follow the existing regime. This means that notices must continue to be published in the OJEU/TED, even after the FTS goes live. Similarly, contracting authorities must also continue to send details of contract awards to Contracts Finder (and the like) as required.

Additionally, the PPN advises that notices sent to OJEU/TED should subsequently be sent to FTS as well so that suppliers only have one place to look for UK opportunities. However, contracting authorities are not obliged to do so (for existing procurements) and in any event, publication must first be made in OJEU/TED.

Are future changes to the UK public procurement regime planned?

From the 1 January 2021, the UK is to accede to the WTO's Agreement on Government Procurement ("GPA") as an independent member and so for procurement purposes, UK companies will continue to have access to EU markets on similar terms to now, to the extent that procurement in the EU remains covered by the GPA's coverage schedules.

The PPN also indicates that the UK has negotiated international trade agreements with non-EU countries which largely replicate the current rights and obligations that are in place with those countries with regards to public procurement.

However, the UK Government is considering whether further reforms should be made to the public procurement regulations and a Green Paper on the subject was published earlier this week. You can [read our update on the Green Paper here](#).

The consultation on procurement reforms is open until 10 March 2021 and therefore, at least in the immediate short-term, there should be little difference for contracting authorities to adjust to when considering and running public procurement processes.

What is the current impact for contracting authorities of the PPN?

Other than the change to notifications mentioned in this article, the basic principles of the public procurement rules will remain the same after the UK-EU transition period for now.

A few of the other key points to note from the PPN are outlined below:

- Threshold values have not changed, other than to represent the value in pounds sterling as opposed to euros. The values will continue to be aligned with the GPA, with the next scheduled review due to take place by January 2022.
- If not already done so, contracting authorities who currently use a third-party provider to publish notifications (i.e. an eSender) should check that their provider will be ready and able to switch to FTS from 1 January 2021. A list of providers confirmed as ready can be found [here](#).
- The PPN confirms that contracting authorities cannot simply choose to "Buy British". All suppliers should continue to be treated equally and fairly through open competition.
- The use of Voluntary Ex-Ante Transparency Notices is still permitted and will be built into FTS.

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