

Scottish Procurement

Scottish Procurement Policy Note

SPPN 1/2019

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Scottish Government
Riaghaltas na h-Alba
gov.scot

Procurement legislation in Scotland in the event of a 'no-deal' Brexit

Purpose

1. This SPPN is to tell you that the [Scottish Government has proposed changes to public procurement legislation](#) in case the UK exits the European Union without an agreement (a 'no deal' Brexit).

Key Points

- The Scottish Government believes that the prospect of a 'no-deal' Brexit would be highly damaging, but that we must prepare for it in case it happens.
- Much of Scotland's public procurement legislation comes from European Directives. It contains references and requirements which will no longer make any sense if we leave the EU without a deal. These need to be changed.
- These changes would not fundamentally change the process of advertising and awarding public contracts.

Summary of proposed changes

2. These changes are being proposed under powers set out in the European Union (Withdrawal) Act 2018. These allow Scottish Ministers to propose changes which 'fix' deficiencies in legislation caused by the UK's exit from the EU. The powers are limited, and do not provide an opportunity to undertake a wholesale review of procurement legislation.
3. Most of the proposed changes are, therefore, technical in nature. For example, removing references to "member States" which no longer make sense, and

deleting requirements to send reports to the European Commission, or changing them to be requirements to send reports to the Scottish Ministers, as appropriate.

4. Procurement procedures would be fundamentally unchanged – financial thresholds, the basic requirements to advertise contacts, observe minimum timescales, and follow rules on technical specifications and award criteria, for example, would remain in place. The European Single Procurement Document (ESPD) would also remain, but be re-named the Single Procurement Document.
5. The requirement to afford equal treatment to bidders from countries which are signatories to the World Trade Organisation's Government Procurement Agreement (the GPA) (including the EU) would remain in place for a period of eight months after exit day, for contracts currently described as being worth at least the EU thresholds. This is at the request of the UK Government, and is in anticipation of the UK joining the GPA in its own right.
6. The biggest change would be that contracting authorities would no longer be required to publish notices in the Official Journal of the European Union (OJEU). Instead, these notices would need to be published on a new UK e-notification system. This is to meet the requirements of the GPA. The requirement to publish notices on Public Contracts Scotland (PCS) which comes from the Procurement Reform (Scotland) Act 2014 would not be affected. In practice, many contracting authorities currently use PCS to send notices to the OJEU and we are working to ensure that they would be able to continue to use PCS to send notices to the new UK e-notification system.
7. The requirement to have recourse to e-Certis, the EU's online database of documentary evidence required in each member State, would be removed, as would the references to the EU's state aid regime. Contracting authorities would no longer be required to exclude companies which have been convicted of fraud affecting the European Communities' financial interests.

Next steps

8. The Scottish Parliament will consider these proposed changes to legislation over coming weeks. If the Parliament approves the draft legislation, and if the UK exits the EU without an agreement which covers procurement, these changes would take effect. In that case, we would publish more detailed guidance on transitional arrangements, for example, as exit day approaches.

9. The UK Government has proposed similar draft changes to the procurement legislation covering the rest of the UK.

Dissemination

10. Please bring this SPPN to the attention of all relevant staff, including those in agencies, non-departmental public bodies and other sponsored public bodies within your area of responsibility.

Contact

11. If you have any questions about this SPPN, please contact us at scottishprocurement@gov.scot.

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