

Scottish Procurement

Scottish Procurement Policy Note

SPPN 1/2020

31 January 2020



Scottish Government
Riaghaltas na h-Alba
gov.scot

Public procurement rules after EU Exit on 31 January 2020

Purpose

1. This SPPN sets out the arrangements which will apply to public procurement after the UK leaves the European Union on 31 January 2020.

Key Points

- Whilst the UK will leave the EU on 31 January, EU law, including on procurement, will continue to apply in the UK until 31 December 2020.
- There will therefore be no immediate changes to public procurement law in Scotland, and public buyers should continue their normal purchasing activity. This includes advertising in the Official Journal of the EU (OJEU), normally through the Public Contracts Scotland website as at present.
- We will provide further guidance later this year on the expected situation after 31 December 2020.

Withdrawal agreement

2. The [Withdrawal agreement](#) reached between the EU and UK in October 2019 is implemented in the UK by the European Union (Withdrawal Agreement) Act 2020. This agreement provides that EU law will continue to apply in the UK during a transition, or implementation, period, which is scheduled to come to an end on 31 December 2020. This means that there will be no immediate changes to the rules on public procurement after 31 January 2020.
3. Articles 75 to 78 of the withdrawal agreement cover public procurement rules. Article 76 deals with transitional arrangements, and sets out that contract award procedures which start before the end of the transition period, but which are not

complete before that date, will continue to be subject to EU law even after the end of the transition period. EU law will also continue to apply after the end of the transition period to the award of call-off contracts from framework agreements which were either established before the end of the transition period, or which were established following a procedure which started before the end of the transition period. This means that EU law will potentially continue to apply in respect of call-off contracts for several years.

After the transition period

4. The [political declaration](#) agreed between the UK and EU sets out the basis on which the two parties will negotiate the terms of the future relationship. It should be noted that the Political Declaration is not a binding legal document. Therefore there is nothing to prevent the UK and the EU agreeing looser or closer arrangements than those set out by the declaration. The Scottish Government remains concerned however that the limited negotiating time, set by the UK Government's opposition to extending the transition period, may result in only a very limited agreement being reached.
5. Paragraphs 46 and 47 of the political declaration set out the intention of each party to reach an agreement on public procurement which builds on their obligations under the World Trade Organisation's Government Procurement Agreement. Should such an agreement be reached before the end of the transition period, it will need to be reflected in domestic legislation.
6. If there is no agreement reached before the end of the transition period, then the legislation which the Scottish Government had previously introduced in preparation for a no-deal exit from the EU will take effect. The effects of this legislation was discussed in [SPPN 1/2019](#) and [SPPN 2/2019](#). This legislation will need to be further amended, however, including to reflect the transitional arrangements in the withdrawal agreement, which are set out in paragraph 3.
7. We will provide a further update later in the year when there is greater clarity on the arrangements which will apply after 31 December 2020.

Dissemination

8. 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

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