

*SHARPE PRITCHARD*

# **BREXIT AND THE PUBLIC PROCUREMENT RULES**

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# PUBLIC PROCUREMENT AFTER BREXIT

The Public Procurement Regulations (Amendment) (EU Exit) Regulations 2020 (SI 2020 No. 1319):

- Amend the existing UK public procurement regime: Public Contracts Regulations 2015, Concession Contracts Regulations 2016, Utilities Contracts Regulations 2016, and others.
- Revoke and replace the Public Procurement (EU Exit) Regulations 2019 and the Public Procurement (EU Exit) (No.2) Regulations 2019.

IP Completion Day was 11pm on 31<sup>st</sup> December 2020.

## What has changed?

The following terminology is amended:

Old Regulations	New Regulations
Official Journal of the European Union	UK e-notification service*
Treaties	Retained Treaties**
Member States	The United Kingdom

\* Find a Tender Service (FTS).

\*\* A reference to any rights, obligations etc that are retained in UK law.

Financial thresholds are now incorporated into the UK procurement regulations in £ together with other UK replacements of other EU bodies and terms.



## What effect do the Exit Regulations have on existing procurements?

- The Schedule to the 2020 Exit Regulations deals with transitional procedures, i.e. procurements launched but not yet finalised before 23:00 31<sup>st</sup> December 2020
- No substantive changes
- Continue to publish subsequent notices to OJEU
- A procurement is launched when a contract has been advertised (e.g. contract notice)
- A procurement is finalised:
  - On publication of contract award notice;
  - When contract is entered into; or
  - When bidders are informed why the contract was not awarded.
- Government suggests also publishing to FTS after OJEU

## What effect do the Exit Regulations have on future procurements?

- Procurements commenced after 31<sup>st</sup> December 2020 are bound by the relevant procurement regulations as amended by the 2020 Exit Regulations
- No substantive changes but some practical ones...
- Publish to FTS instead of OJEU
- Use of Contracts Finder continues as before
- Can still use third party provider ('eSender') if they are FTS-ready
- Cabinet Office website provides details on signing up to FTS

## TCA and GPA?

- WTO Government Procurement Agreement: UK became independent signatory of the GPA on 1<sup>st</sup> January 2021
- Trade and Co-operation Agreement: incorporates but goes further than GPA requirements
- The current UK public procurement rules comply with the GPA and are largely consistent with the requirements in the TCA
- Watch this space: Government's proposed procurement reforms



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