

UK public procurement post-Brexit

What are the potential implications of Brexit for the UK procurement process, particularly for charities receiving or applying for UK or EU public funding?



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Lawrie Simanowitz and Sung-Hyui Park consider whether Brexit will be a ‘whole new world’ or more of the same

The immediate impact

A House of Commons briefing paper (September 2018) stated that, immediately after Brexit (and most likely until the end of 2020), existing UK regulations on procurement – which implement the main EU treaty and specific EU directives – will continue to apply. Recent government guidance (dated 14 January 2019) has confirmed that, in a ‘no-deal’ scenario, the UK public procurement regime will remain broadly unchanged. As a practical point, post-Brexit, UK contracting authorities will need to publish procurement notices on a new UK service if the EU-based portals become unavailable.

There is some uncertainty on the immediate post-Brexit status of aspects of EU law that are not covered by specific UK regulations. For example, it is unclear whether it will be possible to bring procurement challenges based on violations of general principles that underpin the EU Treaty, such as transparency, as these are not specific rights under UK regulations.

The longer term

Following the initial transitional period after Brexit, the UK will have more freedom to set or change its own procurement rules. The UK’s trade relationship with the EU – and other jurisdictions and key multinational bodies – after Brexit will be a key factor in the longer-term procurement landscape.

In the meantime, the UK government is taking steps to maintain the UK’s membership of the World Trade Organisation’s (WTO) Agreement on Government Procurement (GPA). The specific terms of the UK’s membership are currently being negotiated.

In addition to the GPA, additional rules may apply for certain countries with which the UK sets up specific bilateral and/or multi-lateral trade agreements (which may include additional trade agreements with the EU), to cover certain types of contracts or sectors which fall out of the scope of the GPA.

EU funding

The UK government’s August 2018 guidance *Delivering humanitarian aid programmes if there’s no Brexit deal* considers the status of EU funding in the event of a ‘no-deal’ Brexit. It states that European Civil Protection and Humanitarian Aid Operations (ECHO) could potentially either require UK organisations to leave their projects, or in a worst-case scenario terminate funding to UK organisations while still requiring them to implement the relevant ECHO project in full. The guidance sets out the UK’s proposed protections to UK humanitarian aid organisations to guard against this.

European public contracting bodies or European donors may also already be restricting (or planning to restrict) their funding recipients to organisations established in the EU, and may try to restrict transfers of funding to the UK. Charities that are likely to be affected should review their existing funding agreements and discuss them with relevant funders individually as soon as possible (if they have not already started this process). Local legal advice may be appropriate.

The Brexit situation is fast-moving and – at the time of writing – still unclear. The information in this article was accurate at the time of going to press, but please get in touch with your BWB contact for advice on the latest position – and any potential impact on your procurement contracts (and/or tenders) or funding arrangements.

Find out more

The Government’s most recent guidance on public procurement on a ‘no deal’ Brexit is available at: <https://www.gov.uk/guidance/public-sector-procurement-after-a-no-deal-brexit>

The House of Commons briefing is available at <http://researchbriefings.files.parliament.uk/documents/CBP-8390/CBP-8390.pdf>

The guidance on delivering humanitarian aid programmes in the event of no deal is at <https://www.gov.uk/government/publications/deliveringhumanitarian-aid-programmes-if-theres-no-brexitdeal/delivering-humanitarian-aid-programmes-iftheres-no-brexit-deal>