EU Exit

The transition period following the UK's exit from the EU ended on 31 December 2020.

This will result in some changes to the way that procurement notices are published from 11 pm on that date.

These changes are outlined below, with the key message being that Scottish public sector buyers should continue to use Public Contracts Scotland.

ESPD change to SPD (Scotland)

Open or close

The UK has left the EU and the Transition Period ended on 31 December 2020. As a result there are some minor changes to the ESPD which are in effect from that date.

Very little is changing in practical terms, however, there are some things that you should be aware of for **procurement exercises commencing after the end of the transition period**. From 11p.m. on 31 December 2020:

1) The title of the ESPD (Scotland) will be changing to SPD (Scotland).

2) The exclusion criterion concerning fraud relating to European Communities' funds will no longer be a valid ground for excluding bidders. This criterion must not be used in any procurement exercises that commence after the end of the transition period.

This exclusion criterion will be removed from the SPD (Scotland) templates available in the Procurement Journey and PCS-Tender. However, it will still be visible in the SPD module within PCS, defaulted to 'not selected', pending it's removal when the next upgrade is carried out. It must not be selected, or used to evaluate any SPD responses for procurement exercises commencing after the end of the transition period.

3) There will be minor updates to the wording of standard SPD questions containing references to EU 'Member States'. This will not change the meaning of the questions.

Please refer to the SPD **guidance**, **documents** and **FAQs** for further information.

If you have any queries about the SPD, please contact: **procurementbestpractice@gov.scot**

Publishing Public Procurement Notices

Open or close

Buyers should continue to use **Public Contracts Scotland** (PCS) as normal to create and publish their contract notices. PCS will then automatically transfer notices to:

- OJEU/TED for public contracts (above threshold) which commence before 11 pm on 31 December 2020
- The UK **Find a Tender Service** (FTS) for public contracts (above threshold) which commence on or after 11pm on 31 December 2020 [FTS is new and replaces the role of Tenders Electronic Daily, the Official Journal of the EU (OJEU/TED) in the procurement process]

PCS users should continue to contact the PCS helpdesk using the **Contact Us** button or by calling 0800 222 9003

Public Contracts Scotland – Tender (PCS-T)

Open or close

Buyers should continue to use PCS-Tender as normal.

PCS-T users should continue to contact the helpdesk using the **Contact Us** button or by calling 0800 069 8630

Standard Documentation and Guidance

Open or close

Standard documentation, templates and guidance within the Procurement Journey and Supplier Journey have been updated to reflect any changes as a result of the EU transition period ending.

If you have any queries regarding changes to the Procurement Journey or Supplier Journey please email: **procurementbestpractice@gov.scot**

Thresholds

Open or close

Threshold values were updated and are relevant to procurement exercises which commence on, or after, 1 January 2024.

Scottish Ministers must revise the threshold values of the procurement regulations every two years to ensure that they remain aligned to thresholds set out in the World Trade Organisation’s (WT0)Government Procurement Agreement (GPA).

Please refer to **SPPN 5/2023** for further information.

The obligations for the calculation and treatment of VAT when considering threshold values remain in place and SPPN08/2021 provides detail on this.

More information can be found at Procurement Threshold and Contract Value Estimation and in Frequently Asked Questions.

EU Funding

Open or close

All notices above threshold relating to EU funded procurement exercises (even when the original contract notice is published after December 2020) need to be published via OJEU to ensure compliance. The publication of notices will be managed automatically by Public Contracts Scotland (PCS). If you are in doubt whether your procurement exercise is or is not EU Funded please seek legal advice.

Please note that the information and guidance provided in the Procurement Journey routes are not designed to cover the specifics that are often applicable to such procurement exercises and we would always advise you to seek specific legal guidance where you need further support.

FAQs

Publishing Notices

If I have already started my procurement before the end of the Transition Period (31 December 2020) will I have to republish all of my previous notices on the new UK portal, 'Find a Tender Service (FTS)?

Open or close

PCS remains the main advertising portal for Scottish public bodies.

This means that at the practical level, there should be no changes in the way that public bodies submit contract opportunity notices, they should still be submitted to PCS in the first instance. PCS will then route the notices automatically, as appropriate.

For some procurements (i.e. those that have started but not concluded before the end of the Transition Period), notices will still require to be published on Tenders Electronic Daily (OJEU/TED) and will be routed there via PCS. In all other cases, PCS will transfer those notices to the new Find a Tender Service (FTS).

When publishing to both Public Contracts Scotland and Find a Tender, do I have to publish to FTS first?

Open or close

The publication of notices for relevant procurements launched after 11pm on the 31st December 2020 must be published on FTS before Public Contracts Scotland.

However, as is the case with notices published on OJEU/TED, buyers only need to ensure their notice is submitted to PCS; PCS will handle the timing of publication on both PCS and FTS.

What will happen to any OJEU notices currently in progress / live as at 11pm on 31 December 2020?

Open or close

PCS will continue to meet buyers' advertising obligations.

Where procurement procedures have been launched but are not yet finalised, any notice submitted to PCS will be published on PCS and also forwarded on to both FTS ad OJEU/TED for publication there also.

Who do I contact, if I have a problem publishing a notice?

Open or close

Users should continue to contact the PCS help desk as they would normally.

Which procurement exercises count as commencing before the end of the transition period?

Open or close

Any EU regulated procurement exercise where either a contract notice or a PIN, acting as a call for competition, has been published on TED /OJEU before 11.00pm on 31st December 2020, count as commencing before the end of the transition period.

For regulated procurements exercises below the EU threshold, any procurement exercise where a contract notice been published on Public Contracts Scotland before 11.00 p.m. on 31st December 2020 count as commencing before the end of the transition period.

What should I do if I have published a PIN prior to 31 December 2020?

Open or close

If you have used a PIN as a call for competition before 31 December 2020, you should continue to use the ESPD request that you issued at the time of publication, as the procurement exercise is classed as beginning prior to the end of the transition period. In this instance, you should ensure that the exclusion criterion concerning fraud relating to European Communities funds is included in your request.

Will the suppliers answers be impacted?

Open or close

Whilst some of the wording of the questions will have minor updates, all ESPD answers that suppliers have saved in the PCS module are still relevant and will not be impacted by the changes

The Supplier Journey provides help and guidance for suppliers

General FAQ

If I receive an abnormally low tender and I think it might be because the bidder has received EU State Aid - what action should I take since the facility to exclude just on the grounds of State Aid has been omitted?

Open or close

We cannot refer to the EU state aid regime after EU-Exit but state aid issues can still be considered when deciding whether a tender is abnormally low, as part of broader commercial capability checks.

How do I know which services or goods are covered by the WTO GPA rules?

Open or close

The coverage schedules for the WTO’s Agreement on Government Procurement (GPA) can be found **here**.

The schedule of each party contains several annexes which define the concerned party's commitment with respect to the following areas of coverage:

- the procuring entities covered by the GPA
- the goods, services and construction services covered by the GPA
- the threshold values above which procurement activities are covered by the GPA
- exceptions to the coverage.

All suppliers should continue to be treated equally and fairly through open competition.