



# Managing the Risks of PFI Contract Expiry

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**IPA support plan for contracting authorities**

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PFI Centre of Excellence - Briefing



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## Introduction

**The Infrastructure and Projects Authority (IPA) is the government's centre of expertise for infrastructure and major project delivery and supports continuous improvement across government in the successful delivery of all types of infrastructure.**

**The PFI Centre of Excellence, run by the IPA, provides expert support and advice to departments and contracting authorities in respect of PFI projects in order to drive value for money across the government private finance portfolio.**

In 2020 the IPA set up a specific ***PFI Contract Management Programme***. The aim of the programme is to ensure that contracting authorities have the capabilities, knowledge and tools they need to manage their PFI contracts effectively and to engage confidently with their private sector partners.

The programme comprises four linked elements:

- **Contract Expiry** - managing the risks of contract expiry and ensuring value for money as contracts end;
- **Operational Contracts** - improving the performance and efficiency of operational contracts;
- **Capability** - building capability through systems learning, guidance and training;
- **Advice & Support** - providing expert support and advice to departments and contracting authorities.

## This document

**This document focuses on PFI contract expiry** and sets out in summary how the IPA, through the PFI Contract Management Programme, provides support to authorities in managing the risks of PFI contract expiry.

The National Audit Office and the Public Accounts Committee have taken a keen interest in the risks to value for money as PFI contracts end. The NAO published a [report](#) "Managing PFI assets and services as contracts end" on 5 June 2020 and there was a subsequent Public Accounts Committee hearing on 8 February 2021.

This document forms part of our response to the issues and recommendations within the NAO and PAC reports: it responds specifically to the PAC recommendation that IPA should publish a plan for how it will support all public bodies with expiring PFI contracts, beyond those expiring in the immediate short-term, including what IPA will deliver and by when.



## Managing the Risks of PFI Contract Expiry

### Background

There are over 550 current PFI contracts (excluding those in the devolved administrations) in respect of which the PFI Centre of Excellence, run by the IPA, provides expert support and advice to departments and contracting authorities. As the PFI programme matures an increasing number of projects are approaching expiry. Some 78 projects will expire between April 2021 and December 2027 and a further 91 projects in 2028-30.

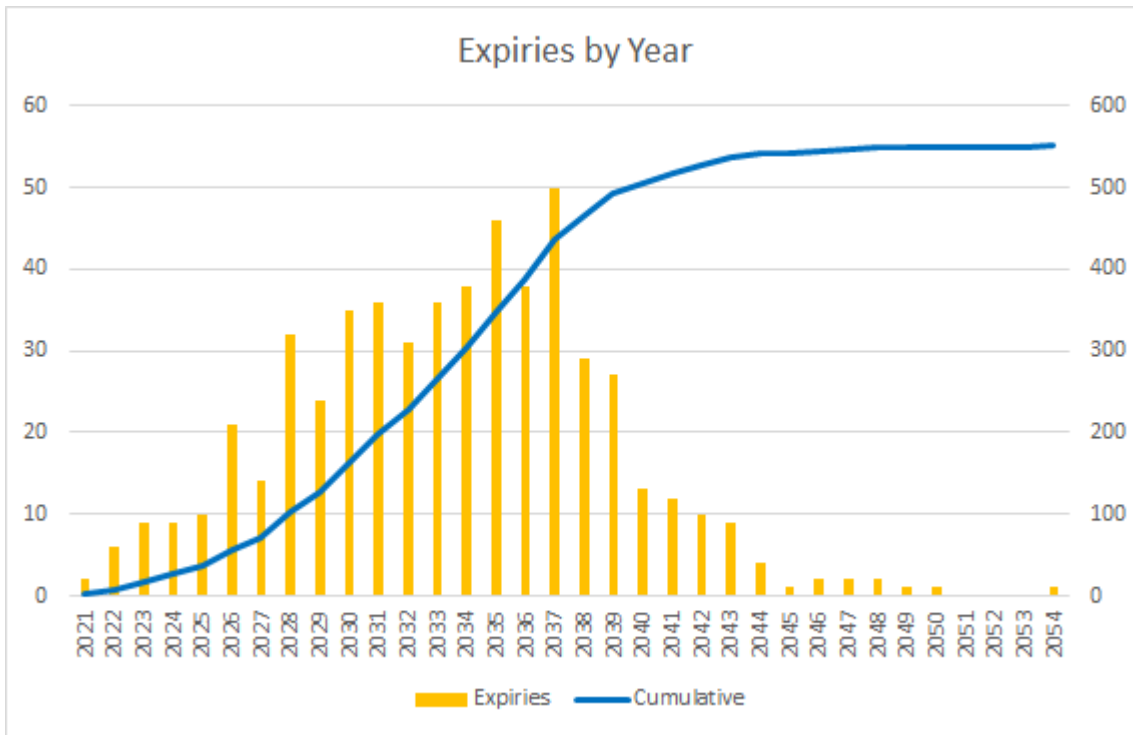


Figure 1: PFI expiries by calendar year (excl devolved administrations)

The expiry phase of a PFI project brings new challenges as the contracting authority not only has to manage business as usual (BAU) in terms of PFI contract management but also has to plan for the hand-back of assets and services under the contract and to ensure service provision post expiry.

There are specific risks in the expiry phase, for example around the quality of assets on hand-back and the availability of data and information to manage assets and services post PFI expiry. In addition, there can be relationship pressures as PFI investors look to optimise returns prior to expiry.

A 2020 survey of contracting authorities by the NAO that formed the basis of its June 2020 Report 'Managing PFI assets & services as contracts end' found that a significant proportion



of authorities felt unprepared for PFI expiry and anticipated significant issues in managing the expiry process.

The IPA's PFI Contract Management Programme, which was established in 2020 in advance of the NAO report, has PFI contract expiry as a central work-stream within its programme. This document sets out in summary our overall approach to expiry support for authorities.

## PFI Contract Expiry - IPA Support

### Purpose

To enable contracting authorities to manage effectively the risks of PFI expiry through the provision by the IPA of a structured programme of review, guidance, advice and support to sponsoring departments and authorities for PFI projects that are within 7 years of expiry.

### Objectives

To ensure that:

- private sector counterparties meet their contractual obligations through to the expiry of the PFI project; and that
- there is an efficient and effective hand-back and take-forward process allowing for continuity of all required services on PFI expiry.

### Summary of IPA Support

The IPA provides PFI expiry related review, guidance, advice and support for public bodies in England that is integrated within our wider programme of PFI training, contract management support & advice. Linked to this is a market engagement programme on expiry with private sector participants.

**Expiry Health Checks:** The IPA offers all PFI projects within 7 years of expiry an initial expiry health check. The health check involves a review by the IPA of key project documentation and a structured interview process with the authority. The review process uses a diagnostic tool to help assess and benchmark the project's readiness for expiry. The health check looks at:

- Contract awareness and management
- Relationships
- Asset condition
- Commercial planning
- Future service provision



The output from the health check is a short-form commercial report which uses a 5 tier RAG rating to risk-assess the project by theme and by overall readiness for expiry. The report identifies key issues and action recommendations for the authority to consider. The report is discussed and agreed with the authority and action follow-ups are agreed as appropriate.

The process allows the IPA to identify underlying components of expiry risk, including inherent project risk (factors such as complexity, service sensitivity and time to expiry), contract-based risk (such as non-standard terms) and authority readiness. For individual contracting authorities and sponsoring departments, the review provides an objective external assessment of relative gaps in knowledge, management, resourcing and planning for PFI expiry and can act as a catalyst for action

Within the current year, the IPA expects that all PFI projects within scope expiring before March 2028 will have been reviewed and is contacting authorities to achieve this. Any authority that has a PFI project reaching the 7 year to expiry mark can on its part initiate this review process with the IPA. The roll forward of the programme will see the health check process align with our forthcoming expiry guidance, with an initial touch-point against guidance at the 7 year to expiry mark and health checks at key milestone points of 5 year and 3 years to expiry.

**Assurance of Action Reviews:** All projects risk-rated by the IPA as red or red-amber in terms of readiness for expiry, or where significant remedial action or planning requirements have been identified, are subject to a follow-up IPA assurance of action review ('AAR'), typically within 6 months of the expiry health check.

The AAR focuses on whether actions taken and/or plans developed since the previous review have significantly improved the readiness for expiry. The AAR is a repeatable process designed to assist authorities to ensure that their projects are on a pathway to green (target readiness) prior to expiry.

**Expiry Guidance:** Specific expiry guidance is under development for publication in autumn 2021. This will reflect the practical lessons and learnings from the programme of expiry health checks undertaken to date. It is intended that this central guidance will provide a basis for departments to develop further sector specific guidance as appropriate.

The guidance will be complemented by a supporting toolkit, for example practical checklists and best practice help-sheets. It is expected that this toolkit will evolve over time to provide a practical reference base that both reflects the growing expiry experience in the market and stays relevant as this experience develops.

**Expiry Training:** A specific PFI expiry training module is under development and is expected to be launched in autumn 2021. The training will align with the expiry guidance and will be offered to contracting authorities. This expiry training is the first of a number of PFI training modules under development by the IPA.



**Private Sector Engagement:** The IPA is actively involved in structured engagement on expiry with market counterparties such as investors, SPV managers and service contractors and with wider participants including trade bodies, advisers and consultants. A primary objective of this engagement is to ensure that the IPA can share knowledge and build better relationships on behalf of individual contracting authorities and their projects, recognising that private sector counterparties work across multiple sectors and projects.

**Expiry Protocol:** A public-private PFI protocol is under development and a draft is expected to be shared with the private sector in autumn 2021 for discussion. The protocol will set out the behaviours expected of investors and authorities in managing the expiry process. The aims are to foster collaborative working, ensure transparency by investors, promote the effective resolution of disputes, and achieve the sharing of lessons learned and best practice. The target is to obtain market agreement to the protocol within 6 months of draft issue.

**Expiry Advice:** The IPA provides strategic advice and assistance to government departments on PFI expiry. In addition, the IPA provides expert practical support to contracting authorities at project level. In this, the IPA works closely with Local Partnerships and with central commercial functions including the Cabinet Office Complex Transactions Team and the Crown Commercial Service.

**Systems Learning & Improvement:** Underpinning the IPA's PFI Contract Management Programme is collaboration between the centre, departments and functions. The programme reports to a cross-departmental Programme Board and under the strategic direction of an Oversight Committee at Permanent Secretary level. A strong emphasis is placed on systems learning and information sharing to assist departments to recognise sector specific PFI expiry challenges and formulate appropriate departmental action responses.

A detailed analysis of the first 52 expiry health checks reviews undertaken in the second half 2020/21 has already been undertaken to identify common themes and issues and to draw out key learnings in relation to managing PFI expiry. That work is currently being assessed at cross-departmental level following presentation to the programme's Oversight Committee with the publication of a final report anticipated in late summer 2021.



## PFI Contract Expiry - Vision and Outcomes

By supporting authorities and working with the private sector on PFI contract expiry, the IPA is aiming to achieve a sustained position whereby authorities have the capabilities, knowledge and tools they need to manage PFI expiry; value for money for the public sector is preserved through the expiry process; and continuity of required services post PFI expiry is achieved:

### Underpinning IPA Vision

- The IPA to be a world class centre of expertise in supporting PFI expiry, delivering a sustainable support programme for PFI projects in England within 7 years of expiry
- Guidance on expiry supported by an appropriate expiry toolkit, for example a readiness self-assessment checklist, outline expiry plan, best practice examples and specialist help-sheets
- Linkage to the availability of expiry related training under the Capability Building programme
- Support for authorities via an established IPA assurance/review pathway with focus on key milestone checks, for example at 7 year, 5 year and 3 year to expiry points
- Linkage to the availability of a full suite of expiry-related advisory services by IPA, Departments, other agencies such as Local Partnerships, CO Complex Transactions Team and the Crown Commercial Service, or via specialist frameworks
- Structured engagement and knowledge share with market counterparties, such as investors, SPV managers and FM contractors, and with wider participants including advisers and consultants
- The availability of good quality expiry data for better planning, training and commercial engagement
- Continuous improvement loops and a learnings culture embedded within the IPA expiry programme





## Sustained Outcomes

- All authorities to start planning for expiry at least 7 years ahead of expiry, on the basis of project specific contract expiry plans that are progressively developed and implemented
- All authorities to have access to appropriate training and tools and to feel confident that they have, can develop, or can access the required capability to manage PFI expiry
- Authorities and sponsoring departments to allocate appropriate resources to managing PFI expiry
- Positive collaboration between private and public sector participants at project level, leading to minimisation of disputes and the full performance by the private sector of its contractual obligations in relation to expiry and hand back.
- Early identification of 'at risk' projects allowing for timely corrective action in advance of expiry
- The authority readiness assessment of all projects within 3 years of expiry to be assessed at green (at target readiness) or otherwise actively supported to be on a pathway to green prior to expiry
- The PFI expiry process supports the timely transition to future services delivery



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