

# Procurement Policy Note – Changes to Public Procurement Obligations Arising from the Australia and New Zealand Free Trade Agreements

Action PPN 05/23

May 2023

## Issue

1. This Procurement Policy Note (PPN) sets out changes to public procurement obligations which arise out of the UK's new Free Trade Agreements (FTAs) with Australia and New Zealand. Although the amendments arise from these particular agreements, they apply to all procurements going forward, not just those involving Australian and New Zealand suppliers.
2. These changes will affect the treatment of contracts whose value cannot be estimated, the use of Prior Information Notices and Periodic Indicative Notices, and the circumstances in which termination of contracts is permissible.

## Dissemination and Scope

3. This PPN is relevant to all contracting authorities which come within the scope of UK public procurement regulations, including Central Government Departments, their Executive Agencies and Non-Departmental Public Bodies, the wider public sector, local authority and NHS bodies and utilities. Together, these are referred to in this PPN as 'contracting authorities'. Please circulate this PPN within your organisation, drawing it to the attention of those with a commercial and procurement role.
4. This PPN does not apply to contracting authorities whose functions are wholly or mainly Scottish, Welsh and Northern Irish devolved functions as defined by regulation 1(7) and 1(8) Public Contracts Regulations 2015 (PCRs). The Devolved Administrations will issue guidance separately for these contracting authorities to reflect the same changes.
5. Contracting authorities should take action to ensure they comply with the amendments to which this PPN relates where it is relevant to do so. This means procurements above the thresholds set out in the PCRs, Utilities Contracts Regulations 2016 (UCRs) and Concession Contracts Regulations 2016 (CCRs).

## Timing

6. The provisions of this PPN should be applied to new procurements once the relevant secondary legislation comes into force on 25 May 2023.

## Action

7. All contracting authorities should act in accordance with the changes to UK procurement regulations once the relevant secondary legislation comes into force. The Cabinet Office has made a statutory instrument (SI) that amends the UK's public procurement regulations to implement new obligations contained in this FTA. The SI can be viewed [here](#).

## Background

8. The FTA was signed in December 2021 and contains new obligations that require amendment to UK public procurement regulations in order to ensure full compliance.
9. The Government has made a statutory instrument under powers available in the Trade (Australia and New Zealand) Act 2023 to fully implement these obligations. Among other things, the SI amends the PCRs, UCRs and CCRs so as to:
  - a. Require contracting authorities who are unable to estimate the value of a procurement to treat it as being valued at the relevant threshold and therefore subject to the full regime;
  - b. Remove the option for sub-central contracting authorities and utilities of using a Prior Information Notice or Periodic Indicative Notice as a call for competition; and
  - c. Make it explicit that contracting authorities must not terminate a contract to avoid international obligations.
10. It is expected that these new requirements will only result in minor technical changes to how practitioners carry out procurements.

## What will change for contracting authorities?

### Unknown contract value

11. Current procurement regulations provide various methods for estimating the value of contracts in order to determine whether the relevant thresholds apply.
12. Once the SI comes into effect, contracts whose value cannot be estimated must be treated as being equal to the relevant threshold by contracting authorities, and thus subject to the full regime.

### Removal of the option of using a Prior Information Notice or Periodic Indicative Notice in certain circumstances

13. Currently, procurement regulations permit sub-central contracting authorities and utilities to use a Prior Information Notice or Periodic Indicative Notice as a call for competition instead of a standard contract notice where certain requirements are met. Once the statutory instrument comes into effect, sub-central contracting authorities and utilities will no longer be permitted to do this.
14. Prior Information Notices and Periodic Indicative Notices may otherwise continue to be used for any other purpose as permitted under the relevant regulations.

### Termination of contracts

15. Current procurement regulations contain provisions which ensure that procuring entities cannot use options, cancel a covered procurement, or modify awarded contracts in order to circumvent regulations. The FTA imposes the additional requirement that contracting authorities should not terminate awarded contracts to avoid international obligations.
16. Once the SI comes into effect, practitioners should note this additional statutory restriction.

### **Contact**

17. Enquiries about this PPN should be directed to the Crown Commercial Service Helpdesk on 0345 410 2222 or [info@crowncommercial.gov.uk](mailto:info@crowncommercial.gov.uk).