



Infrastructure UK

PF2: A User Guide

PF2: A USER GUIDE

1 INTRODUCTION

1.1.1 HM Treasury have issued a new policy document and new contract standardisation guidance for PF2 as follows:

- (a) “A New Approach to Public Private Partnerships” (“PF2 Policy”) (http://www.hm-treasury.gov.uk/infrastructure_ppp_contractual.htm) and
- (b) “Standardisation of PF2 Contracts” (“PF2 Guidance”) ((http://www.hm-treasury.gov.uk/infrastructure_ppp_contractual.htm)).

PF2 Guidance replaces the old PFI guidance named “Standardisation of PFI Contracts Version 4” which was issued in March 2007 (“SoPC 4”).

1.1.2 The purpose of this User Guide is to assist practitioners to identify how the new PF2 Policy has been translated into PF2 Guidance and to show how the new PF2 Guidance differs from the old SoPC4. The PF2 Policy Document should however be referred to for full details of the new policy.

1.1.3 The chapter order of the PF2 Guidance is different to that of SoPC4 and reflects more closely the different stages of development of a PF2 project and the way in which PF2 contracts are characteristically structured.

1.1.4 This User Guide has three tables as follows:

- (a) Table 1 is a “derivations table” showing, where relevant, how old SoPC 4 Chapters relate to the new PF2 Guidance.
- (b) Table 2 shows how the different chapters from the PF2 Policy are reflected in the new PF2 Guidance.
- (c) Table 3 describes, in slightly more detail, the principal changes that have been made and groups them into two categories:
 - (i) changes arising from the new PF2 Policy, and
 - (ii) changes required as a result of changes in law and market practice since SoPC 4 was produced in 2007.

1.1.5 Users are referred, in particular, to:

- (a) Chapter 7 (Efficiency and Value for Money) of PF2 Policy which explains when PF2 should be used, and
- (b) Chapter 2 (Assurance and Standardisation) of PF2 Guidance which explains how it should be used,¹ and
- (c) Schedule 1 to the PF2 Guidance, which is a new compendium of all the definitions used in PF2.²

¹ As was the case with SoPC4, some drafting in PF2 Guidance is expressed as being “required” and some as only “suitable” or “recommended”.

1.1.6 This User Guide does not show every change from old SoPC4 drafting. It is merely a reference tool for the practitioner, and is, of course, no substitute for the experience which a full reading of PF2 Guidance can offer.

² As before however, most definitions are introduced and explained in the relevant chapter in the PF2 Guidance where they first appear. Where this applies the compendium also cross refers to the relevant chapter for context.

TABLE1 : DERIVATION TABLE

This table shows the Chapter order of PF2 Guidance against equivalent SoPC4 Chapters where applicable.

PF2 CHAPTER	SOPC4 DERIVATION
A Introduction Chapter 1: Introduction	New Chapter
B Assurance and Standardisation Chapter 2: Assurance and Standardisation	Extensively redrafted, but parts taken from SoPC4 Chapter 1 and parts moved to Schedule 1 (Definitions and Interpretation)
C Structuring the Contract Chapter 3: Duration Chapter 4: Land, Equipment and Property Interest	From SoPC4 Chapter 2 From SoPC4 Chapter 19
D Public Sector Equity and Joint Ventures Chapter 5: Public Sector Equity Chapter 6: Change of Ownership	New Chapter From SoPC4 Chapter 18
E Services Chapter 7: Services and Service Commencement Chapter 8: Late Service Commencement Chapter 9: Hard FM Maintenance Services Chapter 10: Surveys on Expiry and Termination	New Chapter From SoPC4 Chapter 4 From SoPC4 Chapter 11 From SoPC4 Chapter 23
F Flexibility and Change Chapter 11: Change in Service Chapter 12: Change to Documents	New Section on Flexibility and part from SoPC4 Chapter 13 From SoPC4 Section 16.4 and Clause 22.3
G Risk allocation principles Chapter 13: Warranties and Undertakings Chapter 14: Indemnities, Guarantees and Contractual Claims Chapter 15: Supervening Events Chapter 16: Change in Law Chapter 17: Insurance Chapter 18: Authority Step in	From SoPC4 Chapter 6 From SoPC4 Chapter 24 From SoPC4 Chapter 5 From SoPC4 Chapter 14 From SoPC4 Chapter 25 From SoPC4 Chapter 29
H Paying for Services Chapter 19: Price and Payment, Availability and Performance Mechanism Chapter 20: Payment Mechanism and Monitoring Chapter 21: Capital Contributions Chapter 22 Set-off and VAT	Extensively redrafted. Parts from SoPC4 Chapters 7,8,9, and Sections 16.1 to 16.3 From SoPC4 Chapter 10 From SoPC4 Section 3.9 From SoPC4 Chapter 12

I Termination Chapter 23 Early Termination Chapter 24 Calculation and Payment of Early Termination Payments Chapter 25 Treatment of Assets on Termination and Expiry	From SoPC4 Chapter 21 From SoPC4 Chapter 22 From SoPC4 Chapter 20
J Finance Chapter 26 Funders' Direct Agreement Chapter 27 Due Diligence over Sub-Contracts and Financing Documents Chapter 28 Refinancing Chapter 29 Bond Finance Chapter 30 Corporate Finance	From SoPC4 Chapter 31 From SoPC4 Chapter 33 From SoPC4 Chapter 34 From SoPC4 Chapter 36 From SoPC4 Chapter 37
K Transparency and information Chapter 31 Transparency and Information	From SoPC4 Chapter 26
L Ancillary Chapter 32 Assignment Chapter 33 Intellectual Property Rights Chapter 34 Dispute Resolution	From SoPC4 Chapter 17 Largely new with some part from SoPC4 Chapter 27 From SoPC4 Chapter 28
SCHEDULES	
1 Definitions and Interpretation	New Schedule taking some parts from SoPC 4 Chapter 1
2 Market-Testing and Benchmarking	From SoPC4 Chapter 15
3 Hard FM Specification (to follow)	New
4 Draft Shareholders' Agreement (to follow)	New
5 Payment Mechanism (to follow)	New

TABLE 2 : CORRELATION OF PF2 POLICY AND GUIDANCE CHAPTERS

This shows where the different Chapters from PF2 Policy are primarily dealt with in PF2 Guidance

PF2 Policy Document Chapter	PF2 Guidance Chapter
1 Review of the Private Finance Initiative	No direct equivalent
2 Equity	Chapter 5 Public Sector Equity
3 More Efficient Delivery	No direct equivalent
4 Flexible Service Provision	Section F Flexibility and Change
5 Greater Transparency	Chapter 31 Transparency and Information
6 Appropriate Risk Allocation	Throughout
7 Efficiency and Value for Money	No direct equivalent
8 Future Debt Finance	Chapter 29 Bond Finance

TABLE 3 : A PRACTITIONER'S GUIDE TO CHANGES MADE BY PF2 GUIDANCE

This table shows the principal changes to old SoPC4 guidance and drafting which are introduced by ***Standardisation of PF2 Contracts*** (and indicates, where relevant, the source of change).

Section numbers refer to Sections of Guidance and Clause numbers (which are independently numbered) refer to Clauses in Guidance.

Important Notice: The notes set out below are indicative, not comprehensive, have no binding force and may not be taken into account when interpreting PF2 Contracts.

STANDARDISATION OF PF2 CONTRACTS PROVISION	SOURCE OF CHANGE WHERE RELEVANT	EXPLANATION OF HOW PROVISION HAS CHANGED THE SoPC4 POSITION
Chapter 1: Introduction		
Chapter 1	Policy	Introduces the new PF2 policy and outlines its key elements.
Chapter 2: Assurance and Standardisation		
Section 2.1.1 (Application and Implementation)		Identifies locations of all the required drafting contained in Standardisation of PF2 Contracts (in a similar way to SoPC4).
Section 2.3.1 (Terminology)		Provides that all the definitions used in the text are repeated in a new Schedule 1 for ease of reference,
Chapter 3: Duration		
Section 3.1 (Introduction)	Policy	Specifies that PF2 contracts should not be for periods of less than ten years.

Chapter 4: Land, Equipment and Property Interest		
Section 4.1.4 (Introduction)	Policy	Specifies that Authorities should ordinarily warrant title to land which they provide to the project.
Section 4.2.3 (Property transfer)	Market up-date	Specifies that, for property interests, the generally preferred approach is for the Authority to grant a licence to the Contractor which should be co-terminous with the PF2 Contract (unless it is a residual value project)
Section 4.3.5 (Property purchase and disposal)	Market up-date	Notes that the approach in housing projects tends to differ from that of other sectors and that DCLG provides detailed guidance on transfers of residual value interests.
Chapter 5: Public Sector Equity		
Chapter 5	Policy	New Chapter providing guidance on public sector equity to be invested by a new central government unit within HM Treasury, and provides for a Shareholders' Agreement to be inserted In Schedule 4 following consultation.
Chapter 6: Change of Ownership		
Clause 6	Policy	Chapter 6 now contains required drafting (instead of suitable).
Clause 6.1(b) and (c)	Policy	Provides for additional Contractor notification and disclosure obligations covering details of share sale price and quicker notification provisions.
Section 6.4.2 (Transfer of interests: flexibility and restrictions)	Policy	Recognises that where the public sector has an interest in shares in the Contractor (see Chapter 5) the Change of Ownership restriction will not apply to it.
Clause 6.4(b)(iii) and additional drafting at end of	Market up-date	Allows transfers within a shareholder's group during the lock-in period. This has for some

6.4(b) (Change of Ownership)		time been incorporated in PFI contracts.
Clause 6.4(b)(iv) (Change of Ownership)	Policy	Excludes public sector shareholders in the Contractor or Holdco from change of ownership restrictions during the lock-in period.
Chapter 7: Services and Service Commencement		
Sections 7.1.1 to 7.1.6 (Introduction)	Policy	This chapter is largely new. These sections recognise that soft services will now be excluded from most Contracts and that the Authority may retain (or appoint third parties to carry out) certain minor maintenance activities. Concepts are introduced of Authority Services, minor maintenance services and Elective Services. These Sections recognise (a) that the Authority may itself carry out or appoint a third party to carry out the soft and other services not included in the PF2 Contract and (b) the need to address interface issues.
Section 7.1.7 (Introduction)	Policy	Points to the need for a services output specification, a template for which will be provided in Schedule 3 following consultation..
Clause 7.1.8 (Authority Services)	Policy	Provides suitable drafting for Authority Services and interface measures, including the need for an Interface Protocol.
Section 7.2 (Authority's role - general)	Policy	Explains the need for the Contractor and the Authority Service Provider to liaise in developing an Interface Protocol and stresses the importance of the Handover Date.
Section 7.6 (The Development Period)	Policy	Explains the need for the Authority and/or the Authority Service Provider to work closely with the Contractor during the construction (or development) phase where there are to be Authority Services. Note the need to distinguish between the Handover Date (largely dealing with construction acceptance) and Service Commencement Date.
Section 7.7 (Handover period)	Policy	It is recommended that the Contract provide for a Handover Period between completion of the construction and the start of the services to enable the Authority or Authority Service Provider to mobilise for the provision of the Authority Services.
Section 7.8 (Handover,	Policy	Guidance is provided on the way to perform and combine these activities.

Commissioning, Mobilisation, Acceptance and Service Commencement).		
Clause 7.8. (Notification of Handover, Services Availability)	Policy	Suitable drafting is inserted to provide for separate deliveries of the Handover Certificate and the Acceptance Certificate and the role here of the Independent Certifier.
Section 7.8.7 (Soft Services Mobilisation)	Policy	Addresses the need for Authority to be on site for soft services mobilisation.
Section 7.9.2 (Existing Services)		Explains that where the Contractor will not be providing soft services TUPE is less likely to arise.
Sections 7.10 to 7.16 (Interface)	Policy	Addresses interface issues arising from soft services and some minor maintenance services being performed by the Authority or its service provider rather than the Contractor. It further specifies that all parties need to cooperate with each other when providing services and, specifically when carrying out rectification works, maintenance and lifecycle works.
Section 7.18 (Annual Contract Reviews)	Policy	Provides for annual contract reviews.
Section 7.19 (Continuous Improvement and Efficiency Reviews)	Policy	Provides for continuous improvement and efficiency reviews.
Section 7.23 (Employment and Skills)	Policy	Addresses the need to comply with Cabinet Office requirements for employment and skills, including suitable drafting.
Clause 7.24 (Equality Requirements)	Market up-date	Suitable drafting is provided to deal with the requirements of Equalities legislation.
Section 7.25 (Control of Sub Contractors and Employees)		This has been taken from Chapter 16 of SoPC 4.

Section 7.26 (Replacement of Sub-Contractors)		Provides guidance (from SoPC 4) on replacement of Sub-Contractors.
Section 7.27 (Control of Sub-Contractors)		Provides guidance (from SoPC 4) on control of Sub-Contractors.
Chapter 8: Late Service Commencement		
Section 8.1.3 (Introduction)	Policy	This refers to the policy decision that Authority Services (ie soft services and a few minor maintenance services) should not ordinarily be provided by the Contractor but by the Authority or a third party contracted by the Authority.
Section 8.1.4 (Introduction)	Policy	This addresses the impact of delay by the Contractor in achieving Completion or Handover Dates and the need for the Authority to deal with this in agreements for the provision of Authority Services.
Chapter 9: Hard FM Maintenance Services		
Chapter 9	Policy	This Chapter is largely new and builds on Chapter 7 (Services and Service Commencement) by separating out the hard FM services to be provided by the Contractor from the Authority Services.
Section 9.1.5 (Accelerated or Deferred Maintenance)	Policy	This is guidance and suitable drafting for accelerating or deferring programmed maintenance which allows the Authority some flexibility around timing of maintenance. If savings result these would be shared on expiry as provided for in Clause 9.2.10.
Section 9.2 (Lifecycle Fund)	Policy	This addresses Lifecycle savings and the requirement that they be shared at expiry (or allocated on any early termination) and includes suitable drafting.
Clauses 9.2.10 and 9.2.11 (Lifecycle profile and Lifecycle Spend)	Policy	This is suitable drafting relating to lifecycle spend and leading to the sharing of surplus of budgeted spend over actual spend. The Authority may start deducting its share from the unitary charge [12-24] months prior to expiry.

Section 9.6 (Relaxation of Handback Requirements)	Policy	The Authority may agree to a relaxation of hand-back requirements . If this is done the savings will be shared (see also Section 10.1.2 below).
Chapter 10: Surveys on Expiry and Termination		
Section 10.1.2 (Introduction)	Policy	The Authority may agree to receive the Assets in less than the required condition (and share the saving).
Section 10.3.3 (Retention fund)	Policy	Provides for retention of Authority share of surplus over the final period of the Contract (post Final Survey).
Chapter 11: Flexibility and Change		
Section 11.1 (Flexibility)	Policy	New guidance on greater service flexibility. And in particular pre-priced Elective Services which can be moved in or out of the Contract easily without triggering a rerun of the financial model.
Section 11.3.1 (Change Protocols) and 11.3.9 (Documentation and Monitoring)		The generic pro-forma protocol produced by HMT should be the basis for protocols produced for different sectors.
Section 11.3.3 (Change protocols)	Policy	Pre-agreed mechanics and pricing may be specified for some minor maintenance activities.
Section 11.3.8.4 (Due diligence)	Policy	Particular care needed with regard to the effect a partial closure of facilities or partial termination has on equity return, with different treatments for anticipated and unanticipated changes.
Section 11.4.4.2 (Pricing Issues)	Policy	Provision may be needed in change protocol where minor maintenance to be done by Authority or its own contractor.
Chapter 12: Changes to Documents		

Chapter 12		This is a Chapter containing what was in SoPC4 sections 16.4 and Clause 22.3.
Clause 12.2 (No Increased Liability from Changes to Project Documents or Financing Agreements)	Market up-date	Reference to “Ancillary Document” replaced with “Project Document”, “additional” deleted in limb (b) and conflict drafting added at end.
Chapter 13: Warranties and Undertakings		
Section 13.2.4 (Due diligence)	Policy	Authorities should ordinarily warrant title to land provided by them.
Section 13.3 (Benefit of Surveys and Reports)	Policy	Authorities should commission and assign to Contractor the benefit of technical reports and surveys (eg ground contamination and asbestos) on land which they provide. See also Section 15.1.5 below.
Clause 13.4 (Authority Warranties)	Policy	Contains new required drafting for Authority warranties and in particular deals with title.
Section 13.6 (Contractor Warranties and Undertakings)	Policy	Suitable drafting for certain Contractor warranties is provided.
Chapter 14: Indemnities, Guarantees and Contractual Claims		
Clause 14.3 (Indemnity)	Market up-date	Some technical changes and changes in detail are made to this suitable drafting for a Contractor indemnity, incorporating market update changes. “Authority Related Party” defined.
Section 14.3.10 (Indemnities)	Policy	Considers which party should bear vandalism risk.
Chapter 15: Supervening Events		

Section 15.1.5 (Introduction)	Policy	This recognises (as does Section 13.3 (Benefit of Surveys and Reports) above) that, where they are providing land, Authorities should bear title risk, and contamination risk to the extent contamination cannot be surveyed.
Section 15.2.1.2 Compensation Events – Purpose and Scope)	Policy	The definition of “Compensation Event” has been amended to specify breach of warranty as well as of obligation. This is in recognition of the likelihood of there being Authority warranties in the Contract.
Clause 15.2 (Delays in Service Commencement Due to a Compensation Event)	Policy	Reference is made to delays to the Handover Date as well as to the Service Commencement Date. This is because, with soft services now to be left to the Authority, the Authority may need additional time after construction Handover, to mobilise soft services before Service Commencement.
Clause 15.2 (c) (Delays in Service Commencement Due to a Compensation Event)	Market up-date	An addition has been made at Clause 15.2(c) for the supply by the Contractor of information relating to the delay.
Section 15.3.3.2 (Consequences)	Market up-date	While there should generally be no extension of the term of the Contract if there is a delay, it has been recognised (particularly in waste projects) that where delays (such as for planning) are expected, special provisions for relief or termination may be needed.
Clause 15.3 (Consequences of a Relief Event)	Policy	Reference is made to Handover as well as Service Commencement. See Clause 15.2 above.
Clause 15.3(c) (Consequences of a Relief Event)	Market up-date	An addition has been made at Clause 15.3 (c) for the supply by the Contractor of information relating to the delay.
Clause 15.3(e) (Consequences of a Relief Event)	Market update	In Clause 15.3(e) it is made clear that deductions made during a Relief Event shall be disregarded for the purpose of the Authority’s right to terminate this Agreement for a Contractor Default.
Chapter 16: Change in Law		
Chapter 16	Policy	Liability for costs of capital work required in the operational period (for a change in law which was not reasonably foreseeable) should now lie with the Authority.

Section 16.1.1 (Introduction)	Market up-date	Suitable drafting has been inserted requiring the Contractor to comply with all relevant legislation .
Section 16.1.3 (Introduction)	Policy	It is recognised that the Contractor will often not be in a position to price the full cost of prospective changes in law in the operational phase effectively.
Section 16.1.4 (Introduction)	Policy	The general position is that where the change was foreseeable at the time the Contract was signed the risk will lie with the Contractor save that (a) during the construction phase, whether it was foreseeable or not, the Contractor will bear the risk of a General Change in Law and (b) at all times the Contractor will bear the risk of a General Change in Law which does not involve Capital Expenditure.
Section 16.3.2 (Exceptions)	Policy	Some sectors have developed change in law provisions that are suited to their particular circumstances and these may need derogation from the approach adopted in this Chapter. Waste is an example.
Section 16.6.1 (Allocation of Risk)	Clarification	Costs arising from Discriminatory and Specific Changes in Law which were not foreseeable at the time of the signing of the Contract, and whether involving Capital Expenditure or not, should be borne by the Authority during both the construction and the operating phases of the Contract.
Section 16.6.3 (Allocation of Risk)	Clarification	Costs arising from General Changes in Law should, during the construction phase, be a Contractor risk, whether or not the Contractor was or should have been aware of the Change in Law at the time of the signing of the Contract.
Section 16.6.4 (Allocation of Risk)	Policy	General Changes in Law which come into effect during the Service Period and which were not foreseeable at the date of the Contract should be an Authority risk if they involve Capital Expenditure and a Contractor Risk if they do not.
Section 16.6	Clarification	Where there are extended build periods (as with some waste projects) some sharing of construction delays arising from change of law may be suitable.
Chapter 17: Insurance		

Section 17.1.4 (Introduction)	Policy	Allows the possibility , in particular cases, for the Authority itself to cover some risks by way of indemnity rather than require the Contractor to insure them in the market.
Section 17.1.6 (Introduction)	Policy	Notes that the usual required insurance should always be taken out in the construction phase, but allows for Authority Indemnity as an alternative for material damage and business interruption cover during the service phase, for projects with particular risk characteristics where it offers VfM. Any Authority wishing to pursue this must prepare a business case and seek approval from HMT.
Section 17.1.8 (Introduction)	Policy	During the service period the risk of insurance premiums change can, as under SoPC4, be shared but this Chapter now allows the Authority to choose the amount of the “nil change” band (of Contractor risk); the Authority must specify the nil-change band (of increase and decrease of premium where the Contractor takes the risk in full) in the tender documentation This band must be an amount equal to between 5% and 30% (previously it was 30% only) of the original insurance premium. As before, any increase above or reduction below the nil -change band is to be shared 15% by Contractor and 85% by Authority. See Section 17.8.5 below.
Section 17.2.9 (Authority’s Requirements) and Section 17.11 (Standard Required Insurance Schedule)		This points to the need for an Insurance Schedule. In SoPC4 suitable drafting for the Schedule was provided. This is no longer provided. Reference can be made to the SoPC4 Insurance Schedule ,however part of the detail of this may be out of date and Authorities should accordingly seek their own specialist insurance advice.
Clause 17.2(a) (Insurance)	Market up-date	Specifies the need for the required insurances for the build phase to be in place before building or demolition starts.
Clause 17.6 (a) (Economic Test)	Market up-date	Specifies that the test applies to those destroyed Assets which are buildings and equipment on a site and not all Assets.
Section 17.8.5 (Insurance Premium Risk Sharing Schedule)		See comment on Section 17.1.8 above.
Section 17.8.15 (Insurance premium Risk Sharing)	Market up-date	Definition of Insurance Cost Differential amended to remove the plus/minus sign before PIC as built into the definition of PIC. See amended definition of Project Insurance

Schedule)		Change (PIC).
Chapter 18: Authority Step-in		
Sections 18.1.3 and 18.1.4 (Introduction)	Market up-date	The need for the Authority to indemnify the Contractor when stepping in where the Contractor is not at fault is clarified.
Clause 18.2 (Authority Step-in)	Policy	The circumstances where the Authority is entitled to step in have been expanded to include Emergencies. Also the need for the Authority to use Good Industry Practice when it has stepped in (other than on Contractor breach) is added as required drafting. Definitions are inserted of both Emergency and Good Industry Practice.
Clause 18.3 (Step-in without Contractor breach)	Clarification	Drafting to recognise that step-in where Contractor is not at fault could occur while the building works are still in progress.
Clause 18.4 (Step-in on Contractor breach)	Clarification	Drafting to recognise that step-in where the Contractor is at fault could occur while the building works are still in progress.
Section 18.5 (Rights of Access)	Clarification	Authority's rights of access (required drafting) are restated with explanation.
Chapter 19: Price and Payment, Availability and Performance Mechanism		
Chapter 19	Policy	The price, payment and performance regime (Chapters 7, 8 and 9 of SoPC4) has been overhauled and restated with additional guidance.
Section 19.1.5 (Introduction)	Policy	A pro forma Payment Mechanism (Schedule 5) will be issued shortly and added to Guidance after consultation.
Section 19.2.1 (Features of the Payment Mechanism)	Policy	A key feature of the Payment Mechanism has been added, namely that it must be fully auditable with sufficient information provided by the Contractor to allow the Authority to validate the calculation of the monthly Unitary Charge.
Section 19.3.1 (Structuring the	Policy	The overall approach has been changed to make it clear that a simpler mechanism that leads directly to cash deductions for failure is preferable to a complex two stage system

Payment Mechanism)		whereby failure leads firstly to points which in turn lead to cash implications (eg once a certain number of points has been reached).
Section 19.4 (Usage-based Systems)	Policy	A presumption has been introduced against transferring usage risk unless there is a clear rationale for doing so.
Section 19.5.2 (Definition of Availability)	Policy	Changes have been made to reflect the presumption that soft FM services will be excluded from the scope of the Services.
Section 19.5.7 (Rectification of Unavailability)	Market up-date	Draws attention to the fact that the market position for deductions for Unavailable but Used areas is commonly 50% of the full unavailability deduction.
Section 19.5.10 (Enforcement)	Market up-date	A change to specify that if the Authority and Contractor disagree over whether an incident of unavailability has arisen, or whether it has been rectified, then the Authority's decision shall prevail for the purposes of calculating unavailability deductions. If this is not reflected in the calculation of the monthly Unitary Charge then the Authority is entitled to withhold payment of the amount of the relevant alleged deduction and if the Contractor so wishes it can refer the matter to Dispute Resolution.
Section 19.8 (Flexibility)	Policy	The concept of Elective Services has been introduced.
Section 19.9 (Utility Costs)	Policy	Shifts the emphasis of Utility consumption risk towards the Authority from the point two years after the buildings have been accepted and demonstrated that they exhibit required utility efficiency characteristics. The Authority should also take tariff risk.
Section 19.11 (Indexation)		Guidance on indexation (which was in SoPC4 Chapter 15 and Section 1.7.2(c)) is included here.
Chapter 20: Payment Mechanism and Monitoring		
Chapter 20	Policy	Based on Chapter 10 of SOPC4, with various changes to reflect the greater focus on information disclosure and transparency now required by Chapter 31.
Section 20.7 (Qualitative	Policy	This is new guidance on user satisfaction.

Factors and User Satisfaction)		
Chapter 21: Capital Contributions		
Chapter 21	Policy	New Chapter on capital contributions (previously covered in Section 3.9 of SoPC 4 as, itself ,updated) but incorporating policy changes to allow for some increased levels of capital contribution in the build phase (provided always that where the actual project time-line changes from the scheduled one, the ratio of capital contribution to private sector finance invested must not be adversely effected).
Chapter 22: Set-off and VAT		
Clause 22.3 (Set-off)	Clarification	Drafting of Clause 12 in SoPC4 clarified.
Clause 22.4 (VAT)	Clarification	Drafting of Clause 12.4 in SoPC4 clarified.
Chapter 23: Early Termination		
Section 23.2.2.1 (Contractor Default definition)	Market up-date	Minor drafting changes to definition of Contractor Default
Section 23.2.2.6 (Events leading to Termination)	Market up-date	This is an additional Contractor Default where health and safety is a particular concern. Contains suitable drafting and definition of Contractor Related Party.
Section 23.2.3.3 (Termination for Persistent Breach by the Contractor)	Policy	A definition of "Information Breach" is needed and is provided.
Clause 23.2.3 (Persistent Breach)	Policy	Repeated Information Breaches will be treated as a Persistent Breach.
Section 23.2.8.9 (Retendering Procedure)	Market up-date	Minor change to definition of "Maximum Unitary Charge".

Clause 23.2.8 (Retendering Procedure)	Policy	Life Cycle Surplus taken into account in determining what is paid on termination.
Section 23.2.9.11 (No Retendering)	Policy	Definition of “Deemed New Contract” amended to include the new concept of Handover. See Sections 7.6, 7.7 and 7.8 above.
Section 23.2.9.11 (No Retendering)	Market up-date	Amendment of definition of “Termination Date Discount Rate”.
Clause 23.2.9 (No Retendering Procedure)	Market up-date	Several changes to give effect more clearly to the purpose of the Clause.
Clause 23.3.2 (Compensation on Termination of Force Majeure)	Policy	Sub-clause (h) added to provide for the sharing of the Life Cycle Surplus.
Section 23.4.1.3 (Termination on Corrupt Gifts and Fraud)	Market up-date	Definition of “Prohibited Act” amended to refer to Bribery Act.
Clause 23.4.3 (Termination for Corrupt Gifts and Fraud)	Market up-date	Amendments at sub-clauses (b), (d), (f) and (h) to take account of Bribery Act requirements.
Clause 23.4.3(h)	Market up-date	Undertaking by Contractor to comply with Bribery Act.
Clause 23.4.4 (Compensation on Termination for Corrupt Gifts and Fraud)	Policy	Sub-clause (d) added to provide for the payment of the Lifecycle Surplus.
Clause 23.5.2 (Compensation on Voluntary Termination)	Policy	Amended to provide for the sharing of the Lifecycle Surplus.
Clause 23.6.1 (Termination by the Authority for Breach of the Refinancing Provisions)	Policy	Sub-clause (e) added to provide for the payment of the Lifecycle Surplus.

Chapter 24: Calculation and Payment of Early Termination Payments		
Section 24.3.9 (Certainty of Compensation Payment Amounts and Changes to Financing Agreements)		Points to Section 12 (Changes in Documents) for the drafting previously at SoPC4 Section 22.3.8.
Clause 24.7.3 (Continuing Obligations)	Market up-date	The continuing obligations drafting in SoPC4 at Clause 30.7 is here (and IP rights added)
Chapter 25: Treatment of Assets on Termination and Expiry		
Section 25.3 (Preserving the Condition of the Assets on Expiry)	Market up-date	This follows SoPC4 section 20.3 save that 20.3.1 has been deleted.
Sections 25.5.7 to 25.5.10 (Transfer of Residual Value Risk)	Market up-date	Guidance on Residual Value has been up-dated.
Chapter 26: Funders' Direct Agreement		
Section 26.3.8 (Required Approach)	Market update	Expansion of guidance on release from security of Assets on termination.
Section 26.6.1 (Funders' Direct Agreement)	Market update	<p>The required drafting for the Funders' Direct Agreement includes the following changes from the version on SoPC4</p> <ol style="list-style-type: none"> 1. Clause 1 - definitions of Authority Direct Agreements, Unrestricted Assets and several definitions taken from the Contract and the Credit Agreement

		<ol style="list-style-type: none"> 2. Footnote 13 expands on classes of Suitable/Unsuitable shareholders 3. Clause 6(b) – several changes reflecting market up-date 4. Clause 7(a) – changes reflecting market up-date 5. Clause 8(d) – reflecting market up-date 6. Clause 9 – changes 7. Clause 10 – new clause to provide for release of Assets, including Unrestricted Assets 8. Clause 11(c) – changes to detail of how long the Funders' Direct Agreement continues.
Section 26.7 (Authority Rights under Direct Agreements)	Market update	As release of Assets from security is now dealt with in Clause 10 of the Funders' Direct Agreement, Clause 31.7.6 from SoPC4 is not included in this guidance.
Chapter 27: Due Diligence over Sub-contracts and Financing		
Chapter 27		No substantial change from Chapter 33 in SoPC4, from which this Chapter 27 is derived.
Chapter 28: Refinancing		
Chapter 28	Policy / Market up-date	<p>This incorporates the amalgam of the changes made to the SoPC4 Chapter 34 by Amended Refinancing Provisions issued by HM Treasury in October 2008, April 2009 and April 2012 and Note issued by IUK in June 2012.</p> <p>Included are changes to the definitions of Exempt Refinancing, Notifiable Financing, Limb (b) of "Qualifying Bank Transaction" and "Refinancing Gain" all of which have been used in the market in recent years.</p> <p>The last bullet of Section 28.1.1 requires Authorities to agree with how to classify different categories of debt.</p>

Chapter 29: Bond Finance		
Chapter 29	Policy	The guidance and drafting from Chapter 36 in SoPC4 have not been materially amended save that an introductory section has been added on the global debt market conditions.
Chapter 30: Corporate Finance		
Chapter 30	Policy	This is substantially the same as Chapter 30 of SoPC4.
Chapter 31: Information and Transparency		
Chapter 31		Chapter 26 of SoPC4 has been enhanced to bring it in to line with best practice, clarifying what and how information should be requested and provided to the public sector together with new items of data (including information on IRRs and sale price of share sales) to be made available. Also clarifies the provision of information being part of the Service required and consequences for failures. Also contains updated guidance on relevant legislation and recent changes to Government's transparency requirements.
Chapter 32: Assignment		
Chapter 32		This is substantially the same as Chapter 17 of SoPC4.
Chapter 33: Intellectual Property		
Chapter 33	Market up-date	Chapter 27 of SoPC4 has been comprehensively updated. Definitions of the various categories of IPC have been included and options regarding the treatment of ownership rights are set out.
Chapter 34: Dispute Resolution		
Chapter 34	Market up-date	There is no material change from Chapter 28 of SoPC4, save that the drafting dealing with Housing Grant Act has been moved into this Chapter and footnote 4 now refers to the Construction Contracts (England) Exclusion Order 2011.

Schedule 1: Definitions and Interpretation		
Schedule 1		This is a new schedule designed to provide easy reference to definitions. This contains both the definitions that were in SoPC4 Section 1.7.1 and all other definitions contained in the PF2 Guidance. An asterisk denotes which definitions are required drafting. Also other interpretation provisions from SoPC4 Chapter 1 are included with amendments and additions. Where relevant changes to definitions have been mentioned above in this table.
3. Interpretation		
Clause (a)(iv)	Market up-date	The words “stated to the contrary” in SoPC4 section 1.7.2 have been replaced by “otherwise provided in this Contract”.
4. Definitions		
Affiliate	Market up-date	Transfer of shares by way of security disregarded in determining whether one company is an Affiliate of another.
Associated Company	Market up-date	Transfer of shares by way of security disregarded in determining whether one company is an Associated Company of another.
Contingent Funding Liabilities	Market up-date	Full definition provided.
Financial Close	Market up-date	To specify that it is as defined in the Senior Credit Agreement as at the date of the Contract.
Holding Company	Market up-date	Transfer of shares by way of security disregarded in determining whether one company is the Holding Company of another.
Permitted Borrowing	Market up-date	Clarificatory changes which have been used in the market for several years.
Committed Standby Facility	Market up-date	Term used in SoPC4 and not defined is defined and has been used in the market for some time.

Relevant Authority	Market up-date	Minor change to clarify.
Senior Financing Agreements	Market up-date	Making clear that consent of the Authority is required for certain amendments or for certain amendments to give rise to an increase in the Authority's liability on termination.
Tax	Market up-date	To enable Relevant Authority to be used in the definition as it is defined and referred to above.