



## Frequently Asked Questions (FAQs) - Procurement Policy Note 02/20

Before reviewing this document, please read:

- Procurement Policy Note 01/20 – Responding to COVID-19
- Procurement Policy Note 02/20 – Supplier relief due to COVID-19
  - Model Interim Payment Terms
  - Paying Suppliers of Contingent Workers
  - Guidance notes for Construction Contracts

### Purpose of the FAQs

Cabinet Office has published three Procurement Policy Notes ([PPN 01/20](#), [PPN 02/20](#) and [PPN 03/20](#)) to support public bodies in their response to COVID-19. This document brings together a set of frequently asked questions (FAQs) regarding the scope and application of PPN 02/20 on supplier relief. The FAQs will be updated regularly and published on GOV.UK.

### Who should use the FAQs?

These FAQs are relevant to any contracting authority in scope of PPN 01/20 and PPN 02/20

### Contact

Enquiries should be directed to the Crown Commercial Service Helpdesk on [info@crowncommercial.gov.uk](mailto:info@crowncommercial.gov.uk)

## **Frequently Asked Questions.**

### **Q1 - What organisations are in scope of this PPN 02/20?**

A - PPN 02/20 is applicable to all contracting authorities, including central government departments, executive agencies, non-departmental public bodies, local authorities, NHS bodies and the wider public sector. It covers procurements carried out under the Public Contract Regulations 2015, Defence and Security Public Contracts Regulations 2011, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016

### **Q2 - Does PPN 02/20 apply to grants? In particular those allocated to VCSEs/ NGOs?**

A - No. PPN 02/20 is for contracted goods, services and works contracts only.

### **Q3 - Is PPN 02/20 applicable to devolved administrations?**

A - Devolved administrations will publish their own guidance apart from the Welsh Government, who have implemented PPN 02/20 with immediate effect and issued it across the Welsh public sector on 26 March, encouraging public bodies to do likewise (PPN 02/20 does apply to Welsh public bodies but the Welsh Government cannot mandate its use - adoption across Wales will be a matter for the Accounting Officers in each authority).

### **Q4 - What is the definition of an 'at risk' supplier in PPN 02/20? Who determines this?**

A: This is at the discretion of the contracting authority and should be taken on a case by case basis. We anticipate the majority of suppliers will be at risk and authorities do not need to undertake a detailed assessment of suppliers' financial viability but clearly suppliers that are not impacted by COVID-19 do not need to benefit from advantageous terms. The key point is that we expect authorities to apply this as broadly as possible to ensure service continuity and protect infrastructure, supply chains and jobs. The contracting authority has the final decision on whether it deems a supplier is at risk or not.

### **Q5 - A supplier is unable to continue fully delivering their contract due to the COVID-19 outbreak - does the contracting authority still pay them?**

A - If the contracting authority has determined that the supplier is at risk then they should continue to pay them as normal for the next 3 months, even if they are not able to fulfil all their contractual requirements. If the supplier is able to continue delivering their contract as normal, then the contracting authority should pay them as normal.

### **Q6 - Can I pay suppliers delivering any type of contracts?**

A - Yes. Contracting authorities can pay suppliers delivering goods, services and works contracts during this time. Further guidance has been published on GOV.UK to cover construction contracts.

**Q7 - Can contracting authorities ask to see evidence from suppliers at any point that the payments made result in staff and supply chain businesses being paid on time?**

A - To qualify for payment, suppliers should operate an 'open book' approach. Contracting authorities can agree with suppliers how frequently to undertake a review of their payments. Contracting authorities do not need to wait until the end of the outbreak of COVID-19 before this happens. The Model Interim Payment Terms provide provisions for this.

**Q8 - Should contracting authorities continue to pay suppliers where the contract does not have a volume commitment?**

A - Payment should not normally be made to suppliers where the contract does not commit any volumes of business to the supplier - for example, where a supplier is on a framework but does not have a regular contracted amount - this is because in these cases the supplier is not reliant on a set amount of regular business to maintain their cash flow. However, contracting authorities should review their contract portfolio for such contracts and make a decision on a case by case basis.

**Q9 - If a supplier will continue to be paid in full, even where they are not able to deliver their contract in the usual way, can they make staff on the contract redundant?**

A - No. Any supplier continuing to be paid in full under these circumstances must ensure staff on the contract are retained and paid in full, including full sick pay, as set out in the contract. Evidence of this may be required by the contracting authority.

Any supplier intending to make staff cuts and redundancies on the contract should set this out to the contracting authority in advance of taking any action as this may affect payments being made during this period. The Model Interim Payment Terms provide provisions for this.

**Q10 - If contracting authorities act to pay suppliers 'immediately' on receipt of invoice, does this mean they can ignore the usual checks?**

A - No. Contracting authorities should still continue to undertake basic due diligence checks as normal before payment is released. However, authorities should exercise more flexibility during this period to minimise payment delays. For example, do not send an invoice back for minor administrative errors when the goods / services have been delivered and it matches the Purchase Order number.

**Q11 - If an authority makes an advanced payment to a supplier, will that supplier still be expected to provide the goods/services/works that it had been contracted for and not get extra money for it?**

A - Yes. Making an advance payment to a supplier would be to ensure service continuity. However, being in receipt of an advance payment does not excuse the supplier from their contractual obligations to deliver. The supplier may subsequently suffer delivery issues due to COVID-19; if this becomes the case then the supplier should discuss next steps with the contracting authority.

**Q12 - What is the best way to agree short term changes to contracts with suppliers?**

A - Changes, or variations, to contracts should be agreed in accordance with the change control clauses contained in the contracts and documented and agreed by both parties. The Model Interim Payment Terms can be used as the basis for agreeing payments.

**Q13 - How should contracting authorities ensure that a supplier receiving relief under PPN 02/20 does not also receive equivalent relief from the Coronavirus Job Retention Scheme (CJRS) or other COVID-19 support schemes from the Government?**

A - The payments to be made under PPN 02/20 are for *continuity and retention*; the supplier must be able to deliver in full as set out in the contract when required by the contracting authority.

Suppliers cannot be paid in full under the contract and claim for some or all of the same employees working on the contract under the Coronavirus Job Retention Scheme (CJRS). This is not only a double funding issue, but staff being recompensed under the CJRS would not be able to work.

Suppliers must ensure that all of the parts of the workforce identified to deliver the contract in full are not furloughed during this period (under CJRS) because the supplier is receiving the continuity and retention payment.

Where staff work a proportion of their time on public contracts and a proportion on private sector contracts, the public contracts will take precedence if they are delivering key or critical services, goods or works. This should be discussed with suppliers before action is taken to furlough staff on those contracts.

Only staff not involved in delivering the contract in full could be furloughed under the CJRS. It should be possible for the supplier to claim CJRS for these staff if they qualify under the scheme. Advice on the CJRS is [here](#) and clarifies that workers on public sector contracts should not be furloughed in the first instance.

In order to qualify for payment under PPN 02/20, suppliers should agree to operate on an 'open book' approach. The Model Interim Payment Terms provide provisions for this. As part of this, contracting authorities should agree with them how frequently to undertake a review of their payments.

Any supplier found to have acted fraudulently by claiming under the CJRS (or other COVID-19 support schemes), for workers that are being paid under a public sector contract, may be excluded from future public contracts on grave professional misconduct grounds under regulation 57(8)(c) of the PCRs. .

**Q14 - PPN 02/20 addresses commercial agreements where the contracting authority is the buyer. What about instances when a private sector organisation is the buyer and paying the public sector organisations, or public bodies are buying services from each other, and ask for payment relief (i.e a flexibility with the 'normal' timescales in which they pay the public sector organisation).**

A - Although the main objective of the PPN is to ensure public sector organisations maintain service continuity from their suppliers during the COVID-19 outbreak we appreciate that there are instances where public sector organisations obtain an income.

Where a public or private sector organisation seeks payment relief due to COVID-19 this should be considered with the same level of flexibility and appropriate payment plans put in place. This should be agreed between both parties on a case by case basis based on the evidence provided by the private sector organisation.

**Q15 - Does the supplier have to pay back any money they are paid during this period?**

A - In many cases, suppliers in receipt of the continuity and retention payments made under PPN 02/20 will not be required to pay back this money, even if they have not been able to deliver any of the goods, services or works required under the contract due to the impact of COVID-19 during the period.

However, in some cases the goods, services or works paid for during this period may be required to be delivered at a later date. In some cases, and following reconciliation of payments made, the contracting authority may consider a future claw-back of monies paid where delivery will not be made in the future. This should be decided on a case by case basis.

Contracting authorities may seek to recover all or some of those monies if the supplier has been found not to be compliant with the terms of the interim contract variation, for example not complying with open book requirements, not paying staff and subcontractors promptly and in full, etc.

**Q16 - What if the current supplier cannot deliver due to the impact of COVID-19 and the contracting authority needs to seek delivery from an alternative supplier? Should the contracting authority pay twice?**

A - No. In this situation, as the existing supplier is not able to deliver and the contracting authority needs to seek delivery from an alternative supplier, the existing supplier should instead seek support through one of the other COVID-19 support schemes such as the CJRS.

**Q17 - Do advance payments need to be approved by the parent department, or can contracting authorities make their own decisions?**

A - Each contracting authority and Accounting Officer should act in line with their usual duties and governance. All decisions relating to advance payments should be made in line with PPN 02/20 and, for central government departments, HM Treasury approvals and Managing Public Money.

**Q18 - When a supplier accesses government support such as the CJRS, is it necessary also for them to request non-financial contract relief such as relaxation of KPIs or delivery dates?**

A - Yes. If a supplier has accessed the CJRS, they will need to agree with their authority that they will not be delivering against their contract during this time and therefore, they will be able to access non-financial contract relief.

If the contracting authority does continue to pay the supplier under PPN 02/20 for continuity and retention purposes then it must retain staff to be available to work on the contract even if

the services are not required at the moment. In this instance, it would be able to benefit from non-financial relief in addition to payments.

**Q19 - What happens if staff are furloughed and subsequently the contracting authority identifies a requirement where the staff are needed to be re-deployed to deliver different services? Can the staff be re-deployed in this way?**

A - Yes. Suppliers can take employees off furlough after three weeks have elapsed and still claim for that period under the CJRS. Guidance issued by HMRC regarding the CJRS, sets out that the minimum furlough period for employees is 3 weeks. In all cases suppliers should be transparent with their intentions and operate on an open book basis.

**Q20 - Does PPN 02/20 apply to PFI/PF2 contracts?**

A - Yes. PFI and PF2 contracts are included in the scope of PPN 02/20, however PFI contractors may not be able to achieve full performance under the PFI contract due to the on-going COVID-19 emergency, including where due to illness in the workforce, and to the need to introduce revised ways of working to protect health and safety.

Where this is the case, it should be agreed locally to moderate contract requirements and standards and payment and performance mechanism arrangements to a point where they support the stable delivery of vital services for the duration of the emergency. In those circumstances normal unitary charge payments to PFI contractors should be maintained (we would recommend having regard to the net level of unitary charge payments over the last three months as a performance baseline) and there should be a temporary moratorium on related payment and performance mechanism deductions/points so that PFI contractors can continue to operate and pay their workforce and suppliers.

We would expect that bespoke contractual documents will be used to implement these temporary arrangements in PFI contracts rather than by the template set out in the Guidance notes on Model Interim Payment Terms - Procurement Policy Note 02/20.

Further guidance has been published by the Infrastructure and Projects Authority and is available [here](#).

**Q21 - Is the PPN applicable to concessions where the contracting authority may receive an income?**

A - Decision on concessions, such as leisure centres, museums, theatres or other similar arrangements, should be made on a case by case basis. Options include payment of reduced management fees, repurposing services under the agreement, redeployment of staff or use of the space. Contracting authorities are encouraged to pursue arrangements in these circumstances that will maintain value for money through ensuring service continuity. Any concerns about funding shortfalls should be directed to your appropriate finance team.

**Q22 - When should supplier relief be considered, i.e. should authorities use other options such as CJRS first before looking to apply PPN 02/20?**

A - Contracting authorities should take steps to quickly identify their at risk suppliers and make payments to them for continuity and retention purposes under PPN 02/20. The CJRS makes clear that where employers receive public funding for staff costs, and that funding is continuing, employers are expected to use that money to continue to pay staff in the usual fashion – and correspondingly not furlough them. Organisations who are receiving public funding specifically to provide services necessary to respond to COVID-19 are not expected to furlough staff.

However, there may be some organisations and industries where using the CJRS would be better value for money; in these cases the parties should work together to ensure the relevant contingency is in place for when services need to resume.

**Q23 - What happens if the supplier insists they are eligible for contractual relief but the contracting authority disagrees?**

If a supplier is insisting that they should be eligible for relief under PPN 02/20 but the contracting authority has not deemed them at risk and therefore not in scope for relief then the authority should review the case to ensure its decision remains robust. If they are out of scope, the authority should point them towards the financial support schemes available from central government such as the CJRS.

**Sector-specific questions can be directed to:**

**For Local Authority funding queries:** [LGFCovid19Queries@communities.gov.uk](mailto:LGFCovid19Queries@communities.gov.uk)

**For Department for Education queries:** [PPN0220.QUESTIONS@education.gov.uk](mailto:PPN0220.QUESTIONS@education.gov.uk)