Infrastructure and Projects Authority

Reporting to Cabinet Office and HM Treasury

Preparing for PFI contract expiry

Practical guidance for contracting authorities on managing expiry and service transition

Contents

Foreword

‘To ensure the delivery of these vital public services and protect value for money, these contracts need to be managed effectively throughout their life.’

**Matthew Vickerstaff,
Deputy CEO of the IPA**

I am delighted to provide the foreword for the Infrastructure and Projects Authority’s guidance on Preparing for PFI Contract Expiry.

This document has been produced as part of the PFI Contract Management Programme, which was set up in 2020 by the PFI Centre of Excellence within the IPA with the core objectives to manage the risks in operational PFI contracts and build the capability, knowledge and tools needed within the public sector to manage those contracts effectively.

PFI contracts provide critical public services, including schools, hospitals, social care services, waste services, roads, housing, prisons and military capability. To ensure the delivery of these vital public services and protect value for money, these contracts need to be managed effectively throughout their life.

The expiry phase of PFI contracts, including asset handback and the transition to future services provision, presents additional risks, including potential operational disruption, lack of service continuity, financial loss and reputational damage. The effective management of the expiry process is therefore of particular importance. The National Audit Office (NAO) found in its June 2020 report on PFI contract expiry that public sector bodies risk underestimating the time, resources and complexity involved in managing the end of PFI contracts.

With an increasing number of PFI contracts reaching their expiry phase, building knowledge and capability within the public sector is essential. This document has been prepared to support the aims of the programme, help build capability and mitigate the risks of the expiry and transition process. Preparing for PFI Contract Expiry aims to provide practical guidance on management of the expiry of PFI contracts for public sector bodies, incorporating lessons learned from contracting authorities with experience of the expiry process and reflecting findings from the IPA’s process of expiry health checks.

I encourage everyone involved in the management of PFI contracts, from senior leaders to PFI contract management teams, to read this guidance and incorporate the lessons learned into their expiry and transition planning processes.

Introduction

1.1 Purpose

The purpose of this document is to provide practical guidance on managing the expiry of Private Finance Initiative (PFI) contracts and the transition to future services provision. It has been developed with support from a number of other government departments and authorities that have responsibility for the expiry process of PFI contracts. It shares the lessons learned from expiring and expired contracts and outlines best practice.

It sets out why managing the expiry process is vital for ensuring value for money and continuity of public services; recommendations on how to prepare for and manage the expiry process; and detailed guidance on how these expiry activities might be undertaken.

This document is part of the suite of support offered by the Infrastructure and Projects Authority's (IPA's) PFI Centre of Excellence as set out in the Managing the Risks of PFI Contract Expiry – Support Plan.

1.2 Audience

This guidance is aimed at PFI contracting authorities, including Senior Responsible Owners (SROs) and PFI contract management teams. Procurement leaders, too, will benefit from understanding the specific challenges involved in exiting a PFI contract and moving seamlessly into the future services provision. In setting shared expectations around the contract expiry and handback process, the guidance should also be useful to private sector investors, funders, asset managers and market suppliers.

1.3 Scope

This guidance applies to PFI contracts[1] in England across all sectors. It does not seek to be prescriptive, as the activities required to exit from a PFI contract vary considerably based on the nature of the assets and services provided, the form of contract, and the future requirements of the authority. Instead, it offers a framework for approaching PFI contract expiry and transition, based on practical experience.

It is expected that this document will be updated periodically to reflect the growing body of experience in PFI contract expiry and transition. It is anticipated that this guidance will be complemented by sector-specific guidance from sponsoring departments where necessary.

This document has been prepared by the IPA's PFI Centre of Excellence. The IPA is the government's centre of expertise for infrastructure and major projects. It works across government to support the successful delivery of all types of major projects, and reports to the Cabinet Office and HM Treasury.

'In setting shared expectations around the contract expiry and handback process, the guidance should also be useful to private sector investors, funders, asset managers and market suppliers.'

1 The responsibility for projects outside of England resides with the devolved administrations.

1.4 Document structure

The document is presented in three parts:

Part A – Why expiry matters – How to approach expiry

An overview of why managing the expiry and transition process is vital for ensuring value for money and continuity of public services, with recommendations on how to prepare for and manage the expiry and transition process.

In particular, this section aims to ensure that senior decision-makers responsible for allocating resources understand the strategic case for managing PFI contract expiry and transition, and the need to plan and manage the expiry phase of a PFI contract as a long-term project.

Part B – How to implement expiry

Recommendations and detailed guidance on actions that can be undertaken to ensure a successful PFI contract expiry and transition to future services provision.

This section is primarily aimed at contract and expiry management practitioners but will also be of relevance to all executives who will benefit from understanding the scale and complexity of expiry, the associated resourcing requirements, and the requirement for expert support and advice.

Part C – Reference section

A summary section that provides a quick reference 'grab guide' for users, drawing together key recommendations on actions and processes.

1.5 Supporting expiry toolkit

This guidance is supplemented by an expiry toolkit, which provides additional tools and materials to support authorities in managing expiry. It is intended that this toolkit will be added to over time to reflect the growing expiry experience in the market and so provide a practical reference base that stays relevant as this experience develops. The expiry toolkit is located on the PFI Centre of Excellence webpage of the IPA on gov.uk.

Part A	**Section 2** Why PFI contract expiry matters	The strategic context and imperative for expiry and the benefits of managing the process effectively.
	Section 3 How to approach PFI contract expiry	How to set yourself up effectively for the expiry process and identify the journey needed for your PFI contract.
Part B	**Section 4** How to implement PFI contract expiry	Detailed support and guidance on how to execute each aspect of the expiry project.
Part C	**Section 5** Reference summary	A summary of key guidance recommendations for quick reference.

Part A

Introductory note for senior leaders

Part A sets out why active management of PFI contract expiry is essential, and why it is necessary to plan and approach this process as a long-term project.

This understanding is required of senior leaders, who allocate resources and approve the decisions that will enable an effective PFI contract expiry process to be set up and implemented.

Part A highlights the importance and urgency of getting PFI expiry right, and these introductory comments are intended to help expiry teams make that case to senior decision-makers.

The need for senior leadership in expiry

Every PFI project supports the provision of an essential service within a community or organisation. Preparing for PFI contract expiry requires fundamental decisions to be made regarding the handback and future use of assets, and strategic vision of future services provision, to which PFI expiry must be aligned.

Significant risks will need to be managed, diverse expertise and resources will need to be applied, and additional budgets will likely need to be made available. What is certain is that the whole expiry process will require more and different senior management support than is currently being provided to the PFI project.

Strong leadership with clear accountability is key to successful project delivery. The requirement to appoint a Senior Responsible Owner (SRO) is mandated in the government functional standard for project delivery and is expected in managing PFI contract expiry and transition.

Risks

The National Audit Office (NAO) has found that public sector bodies risk underestimating the time, resources and complexity involved in managing the end of PFI contracts. The risks of failure to manage the expiry of PFI projects are significant. These include:

- Operational disruption.
- Lack of service continuity.
- Financial loss.
- Reputational damage.

The financial impact of future remedial maintenance and lifecycle works if assets are not handed back in line with contractual standards can be substantial. Early executive action in advance of PFI contract expiry is required to quantify and mitigate that risk.

The cliff-edge nature of PFI contract expiry means that all required follow-on services have to be in place before PFI services end. Early executive actions and decisions are required to enable such services to be scoped and procured.

Opportunities

PFI expiry creates an opportunity for the future shape of assets and services to be reconsidered. Service needs and policy priorities will have changed since the PFI project was established. Underlying technology, structures and standards will have evolved. Early executive consideration of these factors will allow the PFI expiry process to dovetail with plans for a better future.

Requirements

In all cases, the expiry process will require:

- Strong senior leadership from the outset.
- Recognition of the complexity of PFI expiry.
- A commitment to providing appropriate resources.
- A clear plan for expiry, underpinned by a vision and plan for future services delivery.
- Governance and decision-making, including an SRO appointment, that allows the expiry team to take the lead, rather than be led by the PFI project company (PFI Co).

Urgency

The IPA expects that senior leaders will commence planning for PFI expiry at least seven years prior to the contract end. Early but cost-effective steps will need to be taken to increase awareness and active management of the contract in advance of expiry, understand the assets, systems and people involved in the exit and transition process, build supportive relationships with other parties, and obtain information from the PFI project needed to shape and plan the future provision of services.

It is only by initiating this early work that senior leadership can meet its core obligations to deliver value for money through to expiry of the PFI contract and ensure that this process fully supports the plans for assets and services following PFI contract expiry.

Why expiry matters

2.1 Why expiry matters for every PFI project

The risks to the public sector of a failure to manage the expiry of PFI contracts are significant. These include:

- Operational disruption.
- Lack of service continuity.
- Financial loss.
- Reputational damage.

The National Audit Office (NAO) found in its June 2020 report[2] on PFI contract expiry that public sector bodies risk underestimating the time, resources and complexity involved in managing the end of PFI contracts.

Every PFI contract, however large or small, supports the provision of an essential service within a community or organisation.

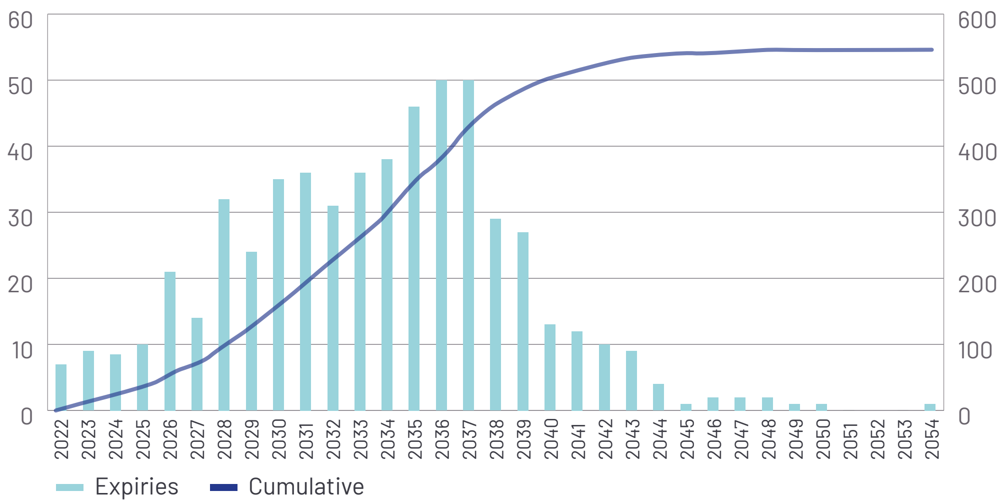
The effective management of the expiry process, including asset handback and the transition to future services provision, is therefore essential to help protect value for money and ensure the continuity of vital public services.

National context

As of summer 2021, there were over 550 PFI contracts operational in England[3], providing or supporting essential public services across a wide range of sectors, including hospitals, prisons, schools and waste.

These contracts, which expire over the next two decades, represent assets with an initial capital expenditure of £46 billion and total unitary charge payments of £244 billion, half of which are yet to be paid.

Expiries by year



'The risks to the public sector of a failure to manage the expiry of PFI contracts are significant.'

2 www.nao.org.uk/report/managing-pfi-assets-and-services-as-contracts-end/

3 Overall, there are some 700 UK PFI projects. The responsibility for projects outside of England resides with the devolved administrations.

2.2 Expiry objectives

PFI contracts are designed to deliver services as well as assets. Except in rare circumstances where an authority has no ongoing need for the services covered by the PFI contract, the process of exiting from the contract must consider service continuity. The core objectives for an authority should be:

- Ensure that the PFI project company (PFI Co) meets its contractual obligations for contract exit and transition, so that full value for money is obtained for the residual period of the contract until expiry.
- Ensure that the expiry and transition process fully support the authority's plans for assets and services following PFI contract expiry, so that the required services continue to be delivered.

Essential questions in the expiry process

If my PFI expires in seven years' time:

Value for money

- Do I understand the contract, service specifications, assets and costs of the PFI?
- Am I managing the contract effectively and holding the PFI Co to account?
- What are the key risks around expiry?
- How do I assess what should be handed back and in what condition?
- Are the contractual arrangements for expiry and transition adequate and practical?

Life after the PFI contract

- What is the vision for future services provision and how does that differ from those provided under the PFI contract?
- How do I manage the process of change?
- What information do I need and how do I secure the transfer of that knowledge?
- What assets, people and systems will I need?
- How do I build the right relationships to support this process?
- Do I have the required decision-making and approvals processes?

If my PFI expires tomorrow:

Value for money

- Has full service delivery been maintained through to expiry?
- Have all the contractual handback terms been met?
- Are the assets in the condition I expect?
- Has the PFI Co helped me transition efficiently?

Life after the PFI contract

- Is continuity of public services assured?
- Do I have all the required contracts in place?
- Do I understand my assets and know how to run and maintain them?
- Do I have the information and systems I need?
- Do I have the necessary people and budgets in place?

2.3 Risks and opportunities

Risks

The risks involved in failing to manage PFI contract expiry are mainly related to inaction:

- Value can be wasted through actions being missed or deadlines for the exercise of optional rights being ignored.
- Failure to enforce obligations for major maintenance can lead to double payment – first through the unitary charge payment and again through rectification costs after PFI contract expiry.
- Inadequate understanding of asset condition can endanger future services provision, with health and safety risk having been transferred to the authority.
- PFI Co may be a shell entity after contract end, meaning there is no simple corporate recourse to existing funds to address issues that may arise after expiry.
- Expiry may not be given sufficient priority within wider business plans, resulting in delayed decision-making and resourcing of activity.
- The fixed end date of a PFI contract means that failure to anticipate timely re-provision of services will at best lead to costly interim solutions, and at worst to service disruption.
- The compression of significant activity at the tail end of the contract may result in the failure to address issues fully, with liability falling back to the authority.

Opportunities

The end of such a long-term arrangement provides the opportunity – in fact, the imperative – to rethink the future:

- Technology, digitalisation and standards will have evolved since the PFI contract was set up.
- New areas of strategic policy focus, such as carbon net zero, will have emerged.
- Underlying service needs may well have changed.
- Lessons will have been learnt from use and monitoring of services during the PFI contract which can be used to drive improvement and efficiency in follow-on services.
- The market for services and basis of risk allocation will have changed.

These considerations will inform how you approach expiry. For example:

- Which assets does the authority need, in what condition and for how long?
- What information and skills are required?
- What need or obligation is there to transfer people?

Such fundamental questions require considerable time to be worked through at operational and senior leader level, so early planning is imperative.

Challenges

When it comes to managing expiry, the contractual complexity of PFI creates some inherent challenges. This is particularly true of PFI contracts that were negotiated before the introduction of Standardisation of PFI Contracts (SoPC) in 1999.

All PFI contracts are based on the transfer of construction and operational risk to the private sector and are structured around outputs not methods of delivery, so the authority may have spent many years distanced from how the service is being delivered. As a result:

- There will often be a lack of information available to the authority, and the contractual right to information may be restricted or ambiguous.
- There may be a lack of people, skills and experience to manage expiry.
- There may be adversarial relationships between the PFI parties and a lack of effective contract management from both sides.
- There may be a lack of detail or practicality within the contract around the conditions and processes for expiry and handback.
- There may be a limited, or no, horizon beyond the end date of the PFI contract for key aspects to be considered, such as residual life of assets or future operational costs.
- Follow-on services must be in place by the expiry dates to ensure continuity of services. Contractual rights to extend are unusual and were only included in early contracts.
- The authority's understanding and experience of the relevant markets for future services may also be limited.

Implications

After around 20 years or more of an authority not being directly involved in managing the assets and services covered by a PFI contract, the implications of the contract's expiry will be significant, particularly where the authority is not managing similar assets and services outside of the PFI contract. There may be a need to:

- Relearn how to be an 'intelligent client', managing the assets and services previously covered by the PFI contract.
- Extract information and operational knowledge from the PFI Co prior to expiry.
- Transfer the people and rebuild the skills needed to manage services from the point of expiry.
- Consider whether any databases and operating systems that will migrate to the authority are compatible with existing systems.
- Reappraise the specification, performance and delivery of services.
- Build an understanding of the market for future services.
- Fundamentally revisit the basis and build-up of budgets.

2.4 Fundamentals of a successful PFI contract expiry

The fundamentals of successfully managing PFI contract expiry are, however, reassuringly anchored in common-sense actions and in principles familiar to all project and contract managers:

Approach to expiry	■ Recognise the complexity of managing PFI contract expiry and take the lead, rather than being led by the PFI Co. ■ Develop a clear plan for expiry and do so as early as possible – the IPA recommends this planning starts at least seven years before expiry. ■ Seek and obtain senior level buy-in. This is essential given the nature of the decisions that may be required. ■ Organise and manage the expiry process as a project. ■ Commit appropriate additional expert resources – the expiry process will require specialist commercial, technical and legal support.
Contract awareness and management	■ Understand your PFI contract fully and assess the adequacy and practicality of the exit and handover provisions. ■ Ensure good operational contract management is in place enabled by appropriately experienced and skilled staff.
Relationship management	■ Look to build effective relationships and governance, as the expiry process will create new dynamics and pressures. ■ Tackle the awkward and frictional aspects of expiry early and seek to resolve ambiguity. ■ Aim for agreed expiry processes with the PFI Co based on a single shared set of documentation.
Assets	■ Understand the assets and the systems required to maintain and operate them. ■ Be proactive and take early actions to ensure asset condition is as required at handover.
Commercial approach	■ Understand the commercial issues. ■ Establish your commercial goals. ■ Factor in the goals of the PFI Co. ■ Identify and deploy your negotiating leverage.
Future services	■ Understand the requirements for assets and services after the PFI contract ends and begin planning their delivery. ■ Understand and plan for people-related issues. ■ Allow sufficient time for the future services provision to be fully functional at the point of PFI contract expiry.

The recommended approach to expiry is explored further in Section 3, How to approach PFI expiry. Other recommended actions are detailed in Section 4, How to implement PFI expiry.

2.5 Lessons from experience

The IPA asked for 'top tips' from three authorities with experience of undertaking major PFI expiry programmes. The messages are consistent and compelling.

Nationals Highways Eight DBFO projects expiring in an 11-month period	**MoJ PFI Prisons** Three PFI projects expiring in a six-month period	**HMRC STEPS** Estate-wide property PFI
Plan! Plan! Plan!	Get senior level buy-in immediately.	Establish good senior governance early.
Be clear on end goals.	Set out the vision to help guide future decision-making.	Know what you want to achieve – be clear on post-PFI strategy.
Plan the route to these goals.	Be clear about the risks, challenges and opportunities at the start.	Robustly project manage the expiry process.
Allow enough time – start earlier than you think.	Establish end-to-end timelines – leave room to navigate shocks (for example, Covid).	Closing out risks may take you beyond contract expiry – plan and resource accordingly.
Resource the programme.	Break the programme into manageable chunks.	Create a dedicated expiry team with expertise that can flex.
Collaborate, partner, communicate.	Create positive relationships to facilitate information sharing – a stakeholder lead is essential.	Create a single dataset jointly with the PFI Co – this builds credibility and trust.
Build and sustain internal PFI expertise.	Make an honest assessment of resource requirements.	Look after your team – the expiry process can be demanding and frustrating.
Understand the commercial drivers.	Use the business case process to help focus decision-making and information needs throughout expiry.	Understand early the commercial and legal world you are really in – not just the contract.
Follow the money! Focusing on money at risk will help you manage all stakeholders.	Don't underestimate issues around assets and contract ambiguity – early surveys needed.	Early surveys and statutory compliance work will de-risk expiry.

How to approach PFI expiry

3.1 Introduction

The aim of this section is to set out a suitable approach to preparing for PFI contract expiry. While all parties working on PFI contract expiry need to share this understanding, the principal audience is those involved in making and approving decisions and allocating resources, whether that's the expiry manager making the case or the senior leaders making the decisions.

3.2 PFI expiry is not a distant event

Expiry is not a distant future 'event' that will just happen successfully. Instead, it is something that needs to be:

- Recognised as a complex process.
- Planned as a long-term project.
- Subject to good governance and senior leadership.
- Structured and resourced appropriately.
- Understood as a journey over time.

Dealing with PFI contract expiry demands that the authority make some fundamental decisions. As a result, it is important that its leadership has a strong sense of its objectives and a clear strategic vision of future service delivery.

Significant risks will need to be managed, diverse expertise and resources will need to be applied, and additional budgets will likely need to be made available. What is certain is that the whole process will require more and different contract management support than is currently being provided to the PFI project.

3.3 PFI expiry is a complex process

Managing the transition from a PFI contract involves overseeing numerous interlinked and interdependent decisions and activities over an extended period. There is no set template for this:

- The expiry process will vary from project to project as contract drafting will often vary according to each authority's specific circumstances.
- This process will not be set out in full in any contract. Where elements are contractually set out (for example, in asset handback provisions), these arrangements are unlikely to be adequately or unambiguously expressed.
- The expiry process needs to dovetail precisely with new arrangements for managing assets and providing services following the date of PFI contract expiry.

This means that an authority should not simply devolve management of the PFI contract expiry process onto an operational contract management team. Ongoing senior leadership will be required to provide decision-making and governance and to allocate budgets, involve additional staff and create committed access to internal and external subject matter experts.

Why is exiting a PFI contract different from the ending of an outsourced contract – we procure services all the time?

- Putting in place the PFI contract is likely to have taken three to five years of planning and procurement, involving multiple contractual parties and stakeholders. Exiting a PFI contract and re-providing the asset maintenance and services it covers will be similarly complex and time-consuming.
- There is unlikely to be an option to simply roll forward the contract arrangements on a similar basis, so the contractual approach for managing assets and services will need to be rethought.
- PFI contracts typically involve the handback of significant capital assets, so the long-term management of those assets will need to be planned.
- Specification of the assets and services will have taken place around 20-plus years ago, and it is likely that the authority's requirements will have changed significantly in that time.
- There may be a need to negotiate the provision of basic information from the PFI Co to enable the underlying services to be re-procured or re-provided.
- The exit and transition to the future services provision will involve negotiations with multiple parties, including financial investors.

3.4 Managing PFI contract expiry as a project

As it involves the integration of multiple activities and processes, the input of numerous stakeholders and a need for advanced planning, it is essential that PFI contract expiry be treated as a project, which should be set up in accordance with best practice guidelines[4].

The benefits of establishing PFI contract expiry as a project cover:

- **Strategy** – Helps formalise organisational thinking on specific aims and objectives.
- **Structure** – Provides a clear and familiar framework for establishing tasks, responsibilities, work structures and programmes.
- **Governance** – Pushes the organisation to revise its governance arrangements from those appropriate only to operational management to those that also support strategic decision-making around expiry and new service arrangements.
- **Planning** – Supports forward-planning processes to ensure the right resources and budgets are available.
- **Stakeholders** – Provides a basis for structured stakeholder engagement plans.
- **Wider alignment** – Ensures expiry-related activities are aligned with the overall strategic plans of the authority for the long-term management of assets and the provision of services after the PFI ends.

4 www.gov.uk/guidance/project-and-programme-management

Lesson from experience

Robust project management of the expiry process includes:

- Regular engagement with the whole team – it is important they understand the whole expiry piece and not just their area (for example, through weekly project meetings).
- Creation of a dashboard pack to manage all elements of the expiry from one place.
- Close management of the relationships between different workstreams.
- Creation and rigorous use of detailed project plans.
- Strong risk management.
- Agreement of a team RACI (responsibility matrix).

It is also essential to get the administration right early, including putting in place good records management and IT.

HMRC STEPS PFI expiry team

3.5 Governance

In line with best practice, an appropriately resourced project team and governance structure, including a project board, should be established. Clear responsibilities should be allocated to individuals in the team, including an identified lead project manager. The board should provide appropriate reporting to an appointed Senior Responsible Owner (SRO) and the authority's wider governing structures.

The pivotal importance of the SRO

Strong leadership with clear accountability is key to successful project delivery. The requirement to appoint an SRO for projects has been established in government for over two decades and is mandated in the government functional standard for project delivery[5].

The authority will need to appoint an SRO with responsibility for managing the PFI contract expiry and the transition to the future services provision. Engagement at a senior level from functional areas in the authority will also help resolve issues and support the SRO.

The SRO becomes the owner of the project's business case and the primary risk owner, with responsibility for ensuring that the project meets its objectives, delivers the required outcomes and realises the required benefits[6].

5 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002673/1195-APS-CCS0521656700-001-Project-Delivery-standard_Web.pdf

6 www.gov.uk/government/publications/the-role-of-the-senior-responsible-owner

The SRO is responsible for ensuring that the core objectives of the PFI contract expiry process are achieved:

- The PFI Co meets its contractual obligations for expiry and transition, so that full value for money is obtained for the residual period of the contract until expiry.
- The expiry and transition process fully supports the authority's plans for assets and services following PFI contract expiry, so that the required services continue to be delivered.

Wider governance

Each authority will have a wider management, assurance and governance structure into which the SRO will report and the project board for the PFI contract expiry project will fit.

The IPA recommends that reporting of the PFI contract expiry project is highlighted within the authority's corporate governance arrangements and that the progress of the project is subject to review by the board, audit and risk assurance committee, or another delegated body.

Lesson from experience

- Get senior level buy-in from the start.
- Establish clear governance arrangements that provide escalation routes to senior leaders for key decisions on project delivery and organisational commitment.

MoJ PFI Prisons expiry team

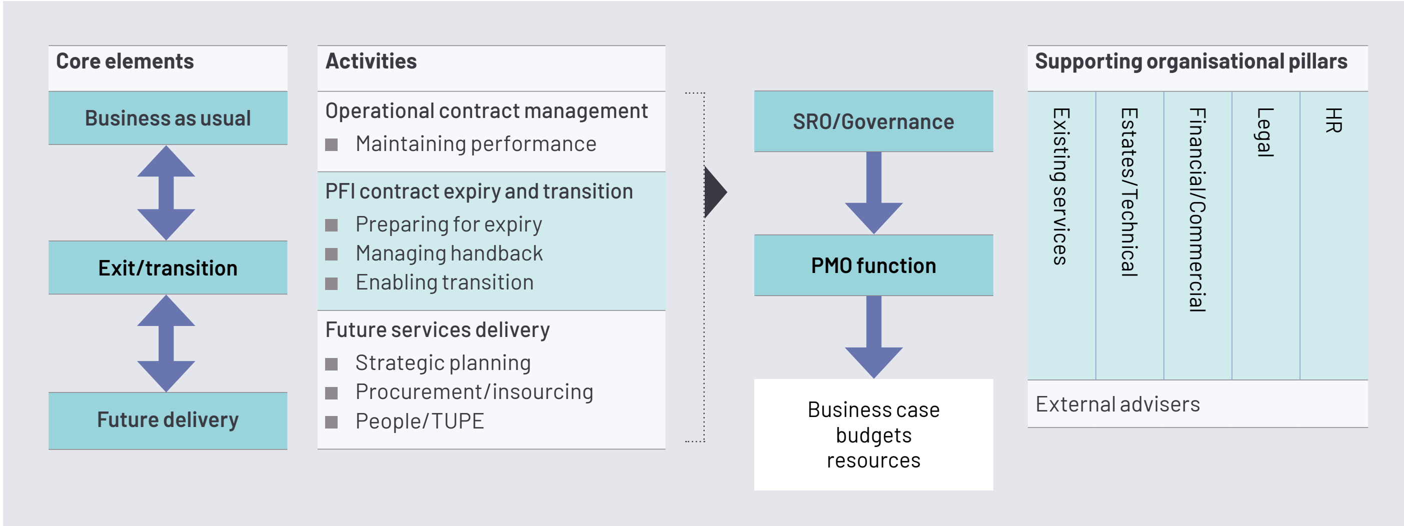
3.6 Organisational structure and resourcing considerations

Three distinct core activities

The PFI contract expiry process involves three distinct core activities, which must be closely aligned and managed:

- **Operational contract management** – Ongoing business as usual (BAU) contract management that ensures that PFI assets are managed by the PFI Co in line with contractual obligations and that operational services are provided to the required performance specifications.
- **PFI contract expiry and transition** – Forward-focused project activity that ensures that the current contractual relationships are ended efficiently, contractual obligations relating to expiry and handback are fulfilled, and a smooth transition is achieved.
- **Future services delivery** – Wider activity that establishes the arrangements, including procurement activity, for delivering and managing assets and services following PFI contract expiry.

This structure is illustrated opposite:



Why this division?

The benefits of this type of division are:

- The existing operational contract management team is likely to be fully engaged with the operational management of the PFI contract and it would be counterproductive to divert resources from this.
- Expiry preparation is essentially forward-looking and requires the management of a wide arc of specialist support to implement, during which process operational contract management must keep its focus on day-to-day service provision.
- The planning and procurement of new services (or the transfer of assets and services into an authority's existing business) is also likely to be a considerable undertaking. This may well involve a different operating model to that under PFI, with the related planning and procurement undertaken by specialist personnel.

It is essential that these interlinked activities be closely coordinated through a single project. The activities will naturally start to merge as expiry draws closer.

Lesson from experience

From the outset of the PFI prisons exit and transition project, there was recognition by senior management of the importance of establishing a separate project team to manage contract expiry, thereby enabling operational and commercial contract management to focus on day-to-day business as usual activities.

MOJ PFI prisons expiry team

3.6 Organisational structure and resourcing considerations

Resource planning

The authority may have limited in-house specialist resources, including technical, property, commercial, financial and legal, to support expiry, or they may only be required at specific points in time, for example, to assess survey results. There is also a risk that these specialist skills may be difficult to source from the market due to the volume of PFI contracts expiring.

Planning of resource requirements is therefore essential to ensure there is appropriate flexibility, but with specialist resources available when required, whether in-house or externally engaged.

Networking

The IPA strongly encourages authorities to network with each other to share and build PFI resources and expertise. The IPA works with sponsoring departments and individual authorities to help develop such initiatives. Contact your sponsoring department to find out the latest initiatives on expiry networks.

Lesson from experience: making the business case for expiry resource

The IPA worked with a government department that was seeking to make the business case for establishing a programme to manage the expiry of three small PFI contracts. To help make this business case, it was important to identify and cost the incremental resources required to manage the expiry process, rather than present the total cost of operational contract management and future procurement services, as these were existing funded activities.

Once PFI contract expiry activities and the associated staffing needs were separately broken out, this was identified as a relatively modest incremental cost and resource requirement. This could then be compared to the risks and costs of failing to manage the expiry effectively, which established a clear value-for-money basis for those additional resources

Networking initiatives

Current examples of networking initiatives include:

Health: PFI Forum for NHS Trusts co-ordinated by the DHSC Centre for Best Practice.

Transport: PFI street lighting network promoted by DfT.

Waste: Networking meetings for PFI projects to share knowledge and best practice, organised by Defra (WIDP).

3.7 A time-based journey

The IPA recommends that expiry and transition planning should commence at least seven years before the expiry date. A generic timeline for expiry is set out below.

Generic expiry timeline

7+ years — Building a good base for expiry:
- Know and manage your contract.
- Understand your asset base, its condition and forward maintenance plans.
- Understand the exit provisions and requirements.

7-5 years — Expiry initiation:
- Establish and resource your expiry workstream activities.
- Engage with the PFI Co to initiate joint expiry planning.
- Develop your future services strategy.
- Initiate an early asset condition survey.

5-3 years — Expiry planning and decision-making:
- Develop and implement detailed plans and strategies.
- Agree processes and contract interpretations with the PFI Co.
- Ensure full integration with future procurement plans.

3-0 years — Delivering:
- Deliver final asset survey, final remediation and handback.
- Review and transfer data, TUPE and systems.
- Run future service procurement.
- Conduct transition planning and mobilisation.

0+ years — Post-transition and close:
- Complete all handback certification.
- Finalise accounts and close out residual PFI contract issues.
- Bed in new services.

Why start so early?

This recommendation to commence planning at least seven years before expiry is based on several considerations:

- This timeframe is needed to ensure that good contract management is in place, so that ongoing contract requirements for the maintenance and renewal of assets are being complied with.
- The major maintenance lifecycle profile on buildings is typically such that significant works are to be anticipated in the period five to seven years before expiry, so the risks and costs associated with these need to be understood.
- The planning approval and works cycle for replacement buildings can take several years. Early assessment of asset condition and costs helps inform timely strategic decisions on the future of assets and services.
- For large and complex operational buildings (for example, major acute hospitals), it takes considerable time to undertake surveys and complete remedial works in advance of the contractual final condition survey processes.
- By engaging early with the PFI Co there will still be funding available through project reserves and future payments, and PFI Co investors will have financial incentives to seek mutually beneficial outcomes.
- There is likely to be significant project debt outstanding seven years from expiry, so lenders will have interest in and influence over the PFI Co as a borrower meeting its contractual obligations.

It is only by initiating early work to understand the contract, the underlying assets and services, handback considerations and the likely future requirements that an authority can establish the relevant timeline for a PFI contract expiry project.

This is why the IPA, through its expiry health check process, undertakes an initial review of an authority's preparations seven years from PFI contract expiry.

Further detail on the IPA's expectations of readiness is set out within Section 4, How to implement PFI expiry.

3.8 Recap on approach to PFI expiry

Key messages recap

- Recognise that managing PFI contract expiry successfully is a complex process that will involve significant planning and resource commitment, which requires ownership at the strategic and senior level of the organisation.
- Be clear on your underlying objectives:
  - Ensuring value for money.
  - Transitioning to asset and service delivery after the PFI contract ends.
- Approach PFI contract expiry as a project, not an event, and so establish:
  - A governance structure with an SRO and a clear pathway for decision-making, approvals and assurance.
  - An appropriate project team, programme and workstream structure.
- Have a rounded understanding of PFI contract expiry that identifies the specific exit requirements and links these to both operational contract management and the implementation of future services.
- Planning of resource requirements is essential to ensure there is appropriate flexibility, but with specialist resources available when required.
- Start early, ensure a sound base of operational contract management.
- Understand the timeline for your project, and know where you are on that journey.

Part B

User guide

Part B provides recommendations and guidance on actions to be undertaken to ensure a successful PFI expiry and transition to future services.

This part of the guidance is aimed primarily at expiry project teams who are, or will be, involved in the day-to-day implementation of the expiry process.

The focus is on PFI expiry and transition activities. This guidance looks at activities that complement operational contract management (business as usual) and which will help achieve a successful transition to follow-on services.

It does not address how follow-on services should be defined, procured, financed or delivered. Where applicable wider guidance is available, this is signposted.

The guidance is structured around five topics:

- Contract awareness and management
- Relationship management
- Assets
- Commercial approach
- Future services

This topic-based approach is designed to help break down a complex process and allow you to dip into the guidance more easily.

Each of these sections follows a broadly common format. Each is designed to be reasonably self-standing, so some of the underlying core messages will be repeated within the sections.

A summary sequencing and phasing of recommended actions is indicated within each topic section. The expectation of the IPA is that preparation for expiry should commence no later than seven years prior to expiry. Other than a high-level indication of the timeframes involved, there is – deliberately – no precise timing set out for specific actions. This is because detailed programmes of activity will necessarily be driven by project specifics.

This is not a step-by-step handbook. The diverse nature of PFI projects means that there can be no one-size-fits-all approach to expiry. This guidance and the recommended actions are therefore necessarily generic.

This guidance focuses on getting the basics right. In undertaking health checks on the readiness of PFI projects for expiry, the IPA has found that it is the failure to plan and undertake basic actions, rather than a failure in the detailed implementation of those actions, that typically causes projects to face problems in the expiry phase.

The approach is to identify what good looks like by providing a high-level framework of actions, questions and lessons learnt. We want you to be equipped and confident in your readiness for expiry.

How to implement PFI expiry

4.1 Introduction

Purpose

The purpose of this section is to provide insight into how to implement expiry. It provides an overview of the activities that could be taken and how these might be executed, and considers relevant risks.

This section is primarily aimed at contract and expiry management teams but will also help all executives understand the scale and complexity of expiry, the associated resourcing requirements, and the requirement for involvement of expert resources.

Recap on objectives

Successfully implementing the expiry process can:

- Ensure that the PFI Co meets its contractual obligations for expiry and transition, so that full value for money is obtained for the residual period of the contract until expiry.
- Ensure that the expiry and transition process fully support the authority's plans for assets and services following PFI contract expiry, so that the required services continue to be delivered.

Recap on organisational approach

As detailed in Section 3.6 Organisational structure and resourcing considerations, the PFI contract expiry and transition process involves three core activities:

- **Operational contract management.**
- **PFI contract expiry and transition.**
- **Future services delivery.**

This section primarily discusses the steps to be undertaken for the PFI contract expiry and transition activity, recognising that authorities are likely to have experience in managing contracts and procuring services.

However, it does focus on the interlinkage of expiry with operational contract management and future services delivery, as it is essential that these are closely coordinated through a single project.

Recap on timings

The IPA recommends that planning starts at least seven years before expiry, so examples of the sequencing of events has been based on this timeline. However, the timelines and activities for expiry planning are project specific and will vary depending on a range of factors such as:

- Overall size and scale of the project.
- Complexity of the asset and services.
- Ambiguity and/or lack of definition within the PFI contract.
- Requirements for and complexity of the procurement of future services.
- Likelihood of lengthy disputes.
- Current expertise and capability within the authority or sponsoring department and the need to procure external advice and support.
- Level of proactive contract management throughout the contract.
- Availability of resources.
- Other wider corporate priorities.

4.1 Introduction

Topic-based implementation guidance

The implementation guidance is structured into five topic areas:

Contract awareness and management	Ensuring the completeness of contract documentation, achieving a full understanding of the expiry-related provisions of the PFI contract and assessing the adequacy and practicality of the exit and handover provisions.
Relationship management	Developing the relationship with the PFI contract parties to address the additional dynamics and pressures created by the expiry process.
Assets	Taking actions, such as early condition surveys, to ensure that asset condition and asset information at handback meet all contractual requirements.
Commercial approach	Defining the key objectives and decisions to be made by the authority and identifying the commercial levers that will help the authority achieve those objectives.
Future services	Addressing the PFI-specific challenges and requirements in developing a future services strategy and ensuring that the expiry process supports the timely delivery of future services.

Rationale

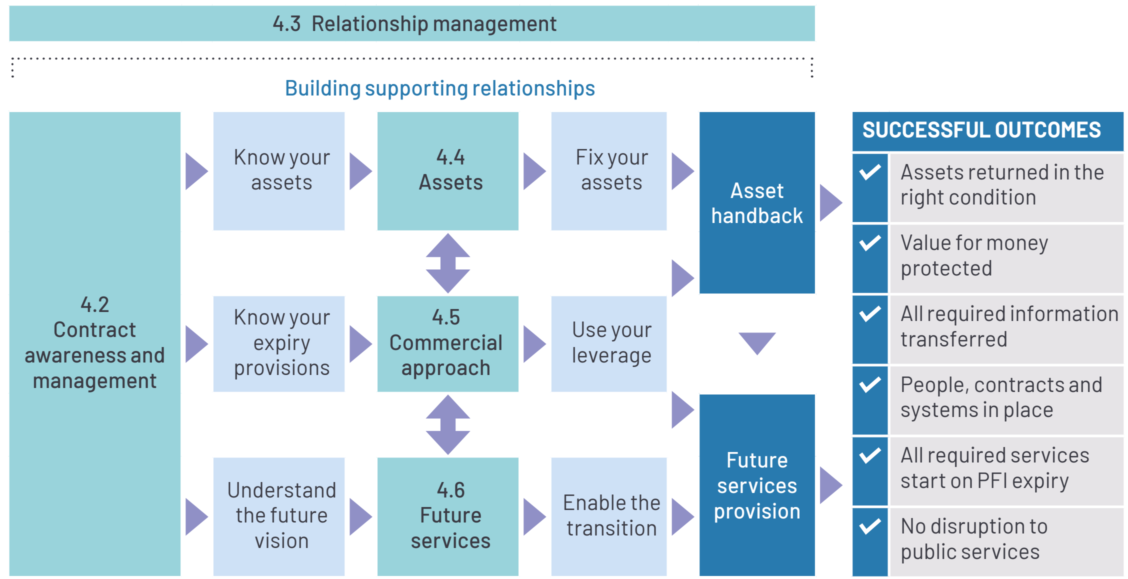
The topic-based approach is intended to help break down a complex overall process and allow users to dip into the guidance more easily.

Links between topics

These topics and the underlying activities are interconnected. For example, consideration of asset handback is necessarily connected to an understanding of the likely future use of those assets.

A simplistic representation of how these topics fit together is shown below.

Summary representation of how the five implementation topics fit together



4.1 *Introduction*

Project management

Strong project management is fundamental to ensuring a successful expiry and transition process. Information and data will need to flow between various teams, and activities will need to be sequenced to ensure sufficient knowledge is in place before taking actions and making decisions. Wider guidance on project management is available on the IPA website on gov.uk

A summary representation of the main project components mentioned in this guidance is shown opposite.

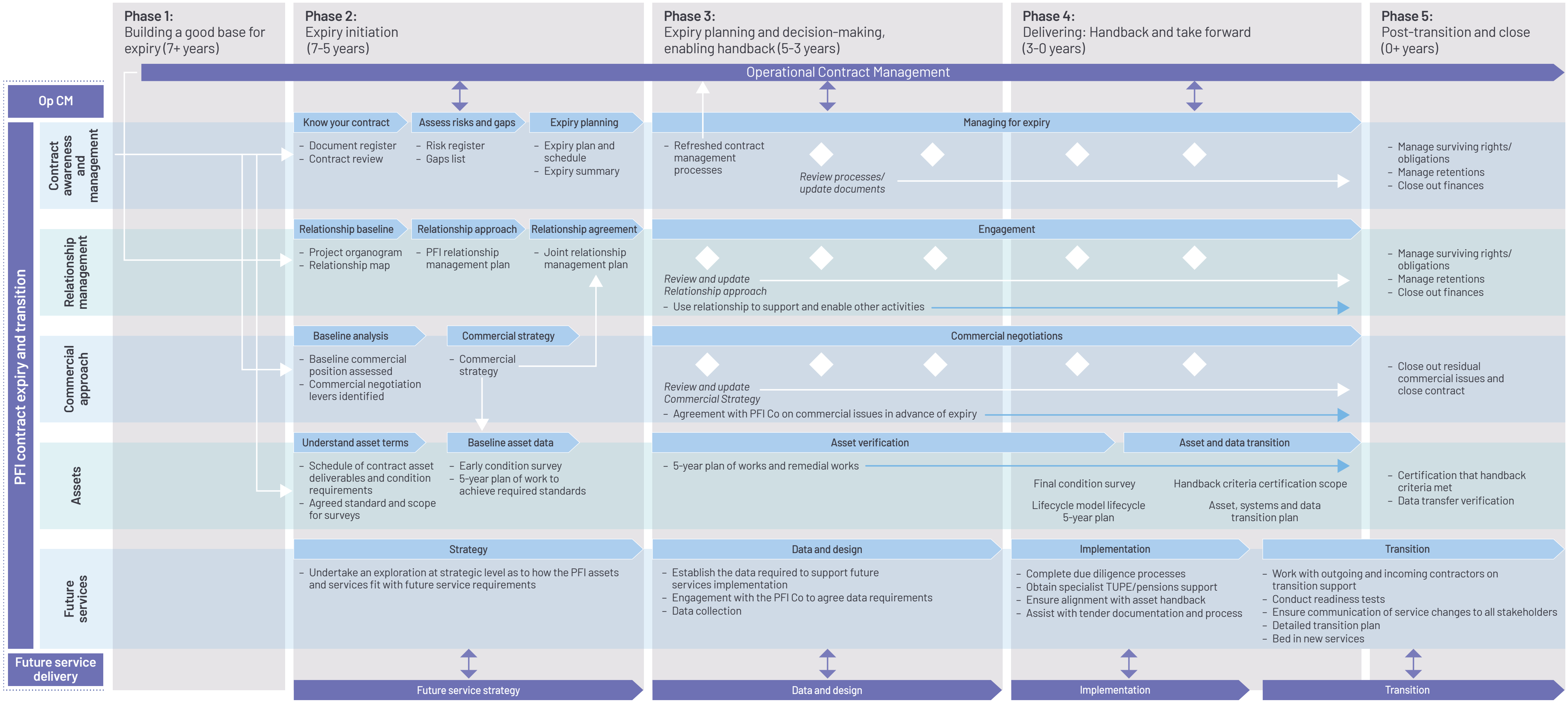
Expiry planning components

Master documents	Key plans and strategies	Principal supporting analysis
Expiry plan and schedule	Governance and assurance	Contract review
Expiry risk register	Future services strategy	Gaps and risks analysis
Detailed programme and work breakdown structure	Commercial strategy	Stakeholder/relationship analysis
	Relationship management plan	Asset surveys
		Transition plan

4.1 Introduction

Expiry activities plan on a page

The diagram below provides a high-level summary of the topic-based actions within this guidance. The phasing is indicative. Each authority should carefully consider the specific features of each PFI contract when considering the activities, outputs and timelines that will apply.



4.2 Contract awareness and management

4.2.1 Why is this important in the expiry and transition process?

Put simply, knowing your contract is the necessary starting point for PFI contract expiry and transition planning. Good PFI contract expiry management is always founded on good ongoing operational contract management.

Preparing for and managing PFI contract expiry creates contract management requirements that are additional to steady-state operational contract management:

- Operational contract management is naturally focused on day-to-day delivery of operational requirements and the fulfilment by the PFI Co of its immediate contractual obligations.
- Contract management for expiry requires a forward-looking focus anticipating contractual processes and obligations related to expiry and transition.

This means that existing contract management arrangements will need to expand and evolve to support a successful PFI contract expiry and transition process.

4.2.2 When do I start?

Contract awareness and management are the fundamental starting points for the expiry process and will determine key actions, milestones and decisions. There is a natural link to other aspects of PFI contract expiry detailed in this guidance.

While the IPA recommends that expiry planning should commence at least seven years prior to expiry, the expectation of the IPA is that every authority is practising good contract management throughout the PFI contract's lifecycle. Good contract management will support the authority in obtaining the required performance and value during the operational phase and should mean that the transition to expiry management is smoother.

Key contract elements to understand:

- The exact date of expiry and the timings of all related contractual milestones.
- The rights to future use of land, assets and information after the contract end.
- The processes around handover.
- The required condition of assets at contract end.
- The provisions around disclosing and transferring information required to support future services provision or procurement.

Key contract management actions for a successful exit:

- Identifying risks around expiry and managing these operationally to ensure contractual obligations at expiry will be met.
- Tracking information that supports the commercial negotiations around expiry.
- Obtaining the contract and project information required to support future services provision.

4.2 Contract awareness and management

4.2.3 Recommended approach to contract awareness and management

Contract awareness and management

EXPIRY

INPUTS

- PFI contract
- Contract variations
- Stakeholder information
- Project financial model
- Information provision by PFI Co
- Operational contract management process
- Authority's business case process

	Know your contract	Assess risks and gaps	Expiry planning	Managing for expiry
ACTIVITY	Gather all PFI contract documentation Undertake a legal review of the expiry related provisions in the contract	Assess the practical adequacy of the expiry provisions in the contract	Summarise and capture the key actions, milestones and decision points in the expiry process	Bolster operational contract management to meet the additional challenges of the expiry phase
OUTPUT	Document register Contract review	Risk register Expiry gaps list	Expiry plan and schedule Expiry summary	Refreshed contract management processes
OUTCOMES	A detailed understanding of the provisions relating to contract expiry	An understanding of the risks and uncertainties that may impact the expiry process	The PFI contract expiry process can be easily communicated to stakeholders	Proactive contract management that supports the achievement of the expiry objectives

CRITICAL SUCCESS FACTORS

- ✓ Full contract Information held
- ✓ Detailed understanding of the contract and its performance
- ✓ Forward looking contract management processes that anticipate expiry
- ✓ Appropriate resources are applied to ensure good contract management

TOOLS

PFI expiry toolkit (see section 1.5)

4.2.3.1 Know your contract

Document stocktake
Ensure you have all key project documents and list these in a document register that can be updated. This will include:

- The full PFI contract including all schedules. Ideally you should have the original 'Project Bible' issued at financial close, which will also include all sub-contracts and financing documents relating to the PFI contract. All project variations and amendments should either be documented via a conformed (updated) project agreement or the individual variation agreements must be held.
- The project financial model. This should be the version issued at financial close plus the latest updated version reflecting refinancing or variations.
- Up-to-date PFI Co information. This should include the latest financial statements of PFI Co, the identity of its investors and its directors, the management arrangements relating to the project, similar corporate level information on the PFI service providers, for example, hard FM and soft FM service providers. Most of this information is available via a Companies House search.
- Project level reporting. Check that you are receiving and hold all the management reporting that is required under the project contract. This is likely to include as a minimum:
  - Monthly performance reports.
  - Management accounts.
  - Annual maintenance plans.
  - Lifecycle plans and reports.

Contract review
Following the collation of your project documents, you should:

- Undertake a clause-by-clause review of the project agreement to assess all the expiry-related terms and conditions in the contract. In practice, this requires careful review of the full contract, not simply clauses titled 'Handover' or 'Expiry', as relevant information on information provision, asset maintenance, record keeping and IPR will be scattered across the contract. This may require specialist legal or commercial support.
- Know your rights to information. Using the contract review, you should check how the contract provisions may help you gain additional information. For example:
  - Standard form (SoPC) contracts and many earlier contracts include general provisions relating to record keeping by the PFI Co and entitle the authority to be provided with information it may reasonably require.
  - There may be an entitlement to see all information provided to project lenders, such as compliance reports, financial tests, condition surveys, insurance claims and technical reviews. This can be a very helpful source of independent information and may be more comprehensive than summary reporting by the PFI Co.

4.2.3.2 Assess contract risks and gaps

Using the detailed contract review, you should assess the clarity and practicality of the expiry and handover clauses within the contract. For example:

- Is asset ownership at expiry clear? Does the asset revert at nil cost automatically, or is there a final payment? Does the authority have the right to purchase if the asset remains with the private sector?
- Are the handover provisions clear and workable in practice?
- Is the window of time in which to undertake a final condition survey (see Assets section) appropriate and workable?
- Is asset condition on handover clearly defined and how can this be assessed or tested in practice?
- Are the provisions relating to transfer of TUPE information adequate for service transfer or re-procurement?
- Are the contractual communication processes sufficient to support constructive dialogue between the parties on expiry?

Expiry gaps list
Where there are concerns about a lack of workability or a lack of clarity that would need to be bridged through dialogue with the PFI Co or other PFI parties, these should be captured in an expiry gaps list or similar log. These gaps can then feed into the commercial negotiations with the PFI Co.

Expiry risk register
The risks represented by such gaps should also be captured in the overall expiry risk register for the project (see Commercial approach section).

4.2 Contract awareness and management

4.2.3.3 Expiry planning

Expiry summary
It will be important to convert the knowledge you have gained from the contract review into a high-level summary document (expiry summary) that can be used to brief internal and external stakeholders.

> **Lesson from experience**
>
> Have a summary that provides the expiry story for senior management that gets across the key actions, timelines and messages. Have a similar one that you can use to articulate this also to PFI Co senior management.
>
> *National Highways DBFO (PFI) expiry team*

The expiry summary should be prepared in plain language and in relatively short form to summarise the key actions, deadlines and contractual processes relating to expiry in the PFI contract.

This will include a summary of the obligations of the PFI Co to provide key information, any notice periods for exercise of property options, the timing of handover actions, such as asset surveys, and the final expiry date (which is sometimes less than clearly defined). It may be helpful to:

- Create a supporting timeline to capture required action points and deadlines under the contract and add all required authority actions and decision points relating to expiry and future services provision, for example, business case approval points and re-procurement timelines.
- Use a 'project on a page' form of presentation to help impart key processes and milestone events.

The expiry summary is likely to be a valuable briefing resource when preparing business cases and general project communications.

> **Lesson from experience**
>
> We learnt from the process of exiting PRIME the importance of the whole team understanding the contract. At the outset of the STEPS expiry process, we instructed a leading firm of project lawyers to undertake a detailed **contract review** and then to convert this into a plain language **expiry summary**.
>
> This document proved invaluable and has remained a core reference document throughout the expiry process.
>
> *HMRC STEPS expiry team*

The expiry summary should partner with the summary commercial strategy (see Commercial approach section), which explores the underlying objectives, decisions and choices for the authority. Together they will enable an overarching expiry plan and schedule to be drawn up.

4.2.3.4 Managing the contract towards expiry

> **Recap from Section 3 – Prerequisites for a successful expiry process**
>
> - Be clear on your overall expiry objectives.
> - Manage PFI contract expiry as a project.
> - Work within appropriate governance and decision-making structures.
> - Understand the timeline to expiry and where you are on that journey.

Whereas operational contract management focuses on day-to-day performance and metrics, contract management for expiry requires an additional focus on processes that support future events and requirements, such as:

- Ensuring the condition of assets will meet contractual requirements on handover.
- Ensuring that all information required to support the future operation of assets and services is available and transferred.
- Providing project-based information that supports the commercial negotiation of the authority's expiry objectives.

Contract management refresh
You should assess your operational contract management processes and how they may need to evolve to reflect the management of expiry. For example, there may need to be more extensive monitoring of maintenance and lifecycle works in the expiry phase.

4.2 Contract awareness and management

It will be important to check and use all information-reporting mechanisms within the PFI contract. The right to information often requires positive requests by the authority, as PFI contracts are structured around self-reporting of performance by the PFI Co. These factors make it vital for authorities in the expiry phase to:

- Proactively utilise all contractual rights to information.
- Challenge the completeness and accuracy of received data.
- Make appropriate use of payment and performance mechanisms to incentivise the right behaviours in the run-up to expiry.
- Set up additional processes to systematically gather, assess and track contract information required to support the expiry process.

Tracking asset-based metrics

PFI reporting is typically based on output-based metrics and ongoing performance measures, for example, whether the assets are functional today, not whether they will be functional tomorrow or after expiry. This means that proactive tracking of information over time is required.

- Are you actively monitoring the implementation of maintenance plans and lifecycle (asset renewal) programmes?
- Are you actively tracking the level of maintenance and lifecycle investment over time?
- Are you comparing the level of maintenance spend and the level, timing and breakdown of lifecycle spend with those set out in the project financial model?
- Are you cross-checking this analysis with asset surveys and technical reports produced for the PFI Co and/or lenders to pick up warning signs of under-investment and asset deterioration?
- Are you aware of whether maintenance/sinking fund reserves are fully funded and being used periodically to fund maintenance works?

This information is essential for the consideration of asset condition and risk at expiry (see Assets section).

Ensuring statutory compliance

The risk of statutory compliance will rest fully with the authority from the moment the PFI contract ends. By tracking that the PFI Co is maintaining statutory compliance, the authority can de-risk expiry and help ensure that all maintenance obligations are fulfilled. However, detailed reporting by the PFI Co of its statutory maintenance works may need to be specifically requested.

- Are you proactively monitoring and ensuring statutory compliance?

This is also an essential supporting input for the consideration of asset and future services risk (see Assets and Future services sections).

Lesson from experience

Start undertaking asset condition and statutory compliance audits as part of your routine contract management – this will de-risk expiry issues.

HMRC STEPS expiry team

Tracking financial performance

Understanding and tracking the financial performance of the PFI contract, not just the operational performance, will help inform commercial negotiations. Is the project performing well from the perspective of the PFI Co's investors and meeting their expectations in terms of cash generation, or is it underperforming, with pressures on debt service and thus on budgets for maintenance and renewals?

- Are you reviewing the PFI Co management reports and the statutory accounts of the PFI Co and the service providers?
- If applicable, have you requested sight of the financial reporting by the PFI Co to its lenders?
- Are you tracking dividends and other cash flows from the PFI Co to investors, levels of cash held, and the level of maintenance and other reserves?
- Are you comparing these to the project financial model to assess, in summary terms, how the project is performing compared to the base case investor expectations at project outset?
- Are you alert to the application, or triggering, of financial sharing arrangements – for example, in respect of energy savings, insurance premiums, third-party revenues or profit-sharing above hurdle rates of return in the run-up to expiry?
- Has market testing and/or benchmarking of soft services been carried out periodically as contemplated under the contract?

Some of this analysis may require specialist financial input but much of it is based on basic data collation, which will then facilitate more detailed financial and commercial analysis if needed. This information will help shape and inform the commercial consideration of expiry (see Commercial approach section).

Lesson from experience

The accounts of the PFI Co can be rather opaque and can report revenue and costs on a completely different accounting basis to the cash-based payments and deductions under a PFI contract, making it difficult to reconcile amounts back to the financial model. Obtain specialist advice if required.

Local Partnerships

4.2 Contract awareness and management

Operational information
The authority may be moving from a position of having a fully outsourced provision of assets and services under the PFI contract, which will typically have been in place for 20 to 30 years, to taking operational responsibility from the day of contract expiry. The contract management team has a vital role to play in ensuring that, in preparation for that transfer, there is an understanding of the staff, sub-contracts, management systems and ancillary assets that together make up service delivery. This becomes increasingly important as expiry approaches.

- Are you using your information rights to access and understand the information required to put the future services provision in place?

This is essential to shaping and implementing future service delivery (see Future services section).

What might you be taking back responsibility for?

- Statutory and mandatory appointments, and planning of relevant tasks to support compliance.
- Planning of future maintenance and lifecycle works.
- Securing maintenance and lifecycle funding.
- Provision of helpdesk services.
- Management of service provision.
- Sub-contractor procurement and management.
- Maintenance of CAFM and other buildings information systems.
- Asset registers.
- Ongoing renewal and approval of operational manuals, risk assessments and method statements.

4.2.4 What does good look like?

You have a detailed understanding of the PFI contract, particularly the provisions relating to contract expiry:

- You can reference the contractual position on information and processes relating to expiry, having undertaken a detailed, bespoke legal/commercial contract review.
- You can communicate to senior leaders and the expiry team the PFI contract expiry and transition process, key decision points and deadlines for your project through a high-level expiry plan and schedule.
- You have oversight of the contract-based information available to the authority, captured in a document register.
- You have assessed the adequacy of the contractual information rights and processes relating to the practical requirements of handover, future asset management and future services re-provision.
- You have used this assessment to feed into an expiry risk register (see Commercial approach section) that is regularly reviewed and updated.
- You have identified specific information gaps and process requirements and captured these in an expiry gaps list that is regularly reviewed and actioned.

You are actively managing the contract with a view to expiry:

- You are proactively utilising your contractual rights to information.
- You are reviewing and challenging the completeness and accuracy of the data you receive.
- You are utilising the available contractual levers, such as the payment and performance mechanism, to incentivise the right behaviours in the run-up to expiry.
- You have processes in place to track asset maintenance and renewals metrics and compare these to the baseline of the project financial model.
- You are actively monitoring and enforcing statutory compliance.
- You understand and are tracking the financial performance of the project through reviewing project reports and statutory accounts.
- You are actively assessing the adequacy of information and management data available under the contract in the context of supporting the future operation of assets and services post PFI contract expiry.

4.2 Contract awareness and management

4.2.5 Sequencing of events

This diagram provides an indication of how the recommended actions within this Contract awareness and management section might be sequenced over time.

Contract awareness and management

Phase		Action
Phase 1	**Building a good base for expiry** (7+ years)	■ Actively manage your contract, utilise rights to information. ■ Review the contract to understand terms, rights and obligations. ■ Critically assess all data and reports. ■ Address any quality issues.
Phase 2	**Expiry initiation** (7–5 years)	■ Plan expiry project and resources. ■ Refresh all contract management processes to support expiry. ■ Create and populate a full **Document Register.** ■ Undertake a detailed legal **Contract Review.** ■ Develop an **Expiry Gaps List** and input in the **Expiry Risk Register.** ■ Summarise actions and milestones in an **Expiry Summary.** Agree these with the PFI Co.
Phase 3	**Expiry planning and decision-making, enabling handback** (5–3 years)	■ Continue to actively monitor the contract. ■ Refine Expiry Plan and Schedule, Summary, Gaps List and Risk Register as issues emerge and knowledge increases. ■ Refreshed operational contract management processes to remain in line with developing expiry plans. ■ Plan and operate exit and handback processes per contract.
Phase 4	**Delivering: Handback and take forward** (3–0 years)	
Phase 5	**Post-transition and close** (0+ years)	■ Manage any 'surviving clause' rights and obligations. ■ Manage any retentions. ■ Close out contract finances, including payment for transition support

The necessary timeline of actions will vary depending on the context and complexity of each PFI contract. Authorities must review their requirements for the expiry and transition process as a whole to determine their individual timelines.

4.2.6 Recap on contract awareness and management

Key messages recap

Why it matters

- Good contract awareness is the starting point for all PFI contract expiry and transition activity.
- Good PFI contract expiry management is always founded on good underlying operational contract management.
- The start time for good contract awareness and management is always now!

Recommended actions include

- Know your contract. What does it say? Undertake a legal review of the contract's expiry terms (contract review).
- Assess risks and gaps. What are the gaps in the contract and what are the risks of this? How will this impact handover? Produce an expiry gaps list and input into the expiry risk register (see Commercial approach section).
- Expiry planning. What are the key processes, milestones and steps, based on the contract, and how do these feed into expiry planning? Produce an expiry summary to help explain the expiry process to all stakeholders.

Good contract awareness for expiry requires you to

- Hold the complete project documents, updated for variations and other contractual changes, such as refinancing.
- Have a detailed understanding of the contractual terms, actions and processes relating to expiry that you can communicate to others.
- Understand your rights and obligations under the contract and how these impact the expiry process.
- Recognise where there are information gaps, contractual ambiguities or a lack of definitions that will need to be managed.
- Understand if there are any unresolved commercial issues that will need to be addressed before expiry.

Good contract management for expiry requires you to

- Set up processes to systematically gather, assess and track contract information.
- Review and challenge the information you get, especially information that the PFI Co self-reports.
- Understand how the asset base is being managed.
- Understand the performance of the contract from the perspective of the PFI Co, its investors and its service providers.
- Address the risks that will transfer on expiry, such as statutory compliance, as early as possible.
- Focus on ensuring the availability and transfer of information necessary to support the operation of assets and services post PFI contract expiry.

4.3 Relationship management

Introductory note – Wider stakeholders

This guidance focuses on management of the relationship with the private sector parties directly engaged in the PFI contract – principally the PFI Co, its investors, managers and lenders, and its sub-contractors such as the facilities management (FM) companies that are delivering the PFI service on behalf of the PFI Co.

The authority will also need to consider the management of relationships with a wide range of other stakeholders, including service users, employees subject to TUPE, authority staff, regulators and future suppliers.

4.3.1 Why is this important in the expiry and transition process?

Instinctively, we know that good relationships create more value than poor relationships. The nature of a PFI contract means that effective relationship management is both difficult and essential:

- There are multiple parties with diverse interests.
- The contractual obligations on all parties under PFI contracts are complex and can lack clarity, leading to the risk of disputes and the need for negotiated outcomes.

The expiry process brings specific relationship challenges:

- Parties with different objectives look to maximise their outcomes and minimise liabilities prior to contract expiry, creating additional tensions.
- The specific processes and conditions relating to expiry as documented within the PFI project agreement are unlikely to be appropriately detailed or fully practical in every aspect.

The focus of relationships will also expand from day-to-day operational performance to encompass a much broader range of expiry-related topics, with a requirement to engage with a much wider set of issues and organisations.

There is, therefore, a need to revisit and refresh existing operational relationship management plans and structures as part of planning for expiry and transition.

Shifting objectives

As expiry approaches, the focus of PFI contract relationships is likely to expand beyond the horizon of day-to-day operational service performance. It is essential to analyse these changes to understand how parties will approach expiry. For example:

- The authority will focus increasingly on final asset condition, information transfer and future services.
- The PFI Co and its investors will focus on securing financial returns, managing major maintenance (lifecycle) risk and minimising post-PFI contract liabilities.
- The PFI service providers, for example, the FM sub-contractors to the PFI Co, may wish to bid for successor contracts and may be concerned about competitive data transfer.

4.3.2 When do I start?

Constructive relationships at all levels between the parties are key to managing a successful expiry and transition. This is also true for ongoing contract management, so it is never too early to establish strong relationships based on mutual trust, respect and understanding. However, it is likely that different people will be involved in expiry-related activities, when some more contentious or complex issues may have to be resolved. It also naturally takes time to build trust.

The recommendation of the IPA is that expiry and transition planning should start at least seven years before the scheduled contract expiry. Relationship management plans should align with overall expiry planning from the outset, so that:

- The objectives of all PFI parties can be explored, with issues and contractual ambiguities identified early, allowing time for these to be resolved.
- Expectations are set early and the baseline for how the parties will work together on expiry can be established.

To align with overall expiry and transition planning, relationship management needs to reflect a detailed knowledge of the contract and the proposed objectives and options for assets and future services after expiry.

The approach to relationships has to be structured in a way that helps negotiate the underlying commercial issues, including efficient escalation mechanisms to facilitate early resolution.

4.3 Relationship management

4.3.3 Recommended approach to relationship management

Relationship management

EXPIRY

INPUTS

- Contract review
- Commercial strategy
- Future services strategy
- Stakeholder information
- Historical performance reports
- Relationship history
- Contract change/ dispute history
- Existing governance structure

	Relationship analysis	Relationship approach	Relationship engagement
ACTIVITY	Conduct stakeholder analysis Relationship stocktake	Review existing relationship approach to develop a structured plan to support the processes of contract expiry and transition Ensure alignment with the commercial strategy	Early engagement on expiry to understand issues and set expectations Establish an agreed approach to how the parties will work together on PFI contract expiry and transition
OUTPUT	Project organogram Relationship map Relationship stocktake	PFI relationship management plan	Joint PFI relationship management plan
OUTCOMES	An understanding of the parties, their interests and objectives at expiry, and the relationship issues to be addressed	A practical routemap exists for engaging with PFI parties to achieve the commercial objectives for expiry	A positive, practical relationship basis (ways of working) based on trust and mutual understanding that minimises disputes and optimises contract compliance and information transparency

CRITICAL SUCCESS FACTORS

- Proactive leadership fosters mutual trust, respect and understanding
- Informed conversations about expiry start early
- Expectations and requirements are set out clearly
- Issues are addressed rather than avoided
- Effective escalation and dispute avoidance procedures are in place
- Dialogue is framed constructively to target a positive, collaborative approach to expiry

TOOLS

PFI expiry toolkit (see section 1.5)

4.3 Relationship management

4.3.3.1 Relationship analysis

Ensure that you have a full understanding of all the PFI parties, as well as the other internal and external stakeholders involved in the expiry and transition process:

Stakeholder analysis:

- **Project organogram** – Create, refresh or expand your project organogram to identify not just the PFI Co and its first-tier service providers but also the underlying investors and relevant PFI Co directors, the management services company and its representatives, the lenders to the PFI Co, all relevant second-tier service providers, and appropriate lead representatives.
- **Relationship map** – Complete a wider stakeholder mapping that includes other internal and external stakeholders that will need to be involved. Identify who has responsibility for what (for example, lifecycle risk, TUPE information) and who has specific interests or concerns relating to expiry (for example, follow-on contracts), and map the formal mechanisms for interacting with the parties (for example, through partnering boards).

Relationship stocktake

Review your existing relationship with all key parties but particularly the PFI Co and the main service providers, for example, FM contractors. Factors to consider include:

- Relationship history, including any current disputes.
- Current and historic service performance levels and issues.
- Financial performance of the project for the PFI Co and its main service providers.
- Effectiveness of existing communication channels, including the use of partnering boards or similar mechanisms within the PFI contract.
- Effectiveness of escalation channels.
- Factors that have helped or hindered information sharing and contract change.

The following inputs will help inform this baseline analysis and allow this to be developed further into an appropriate PFI relationship management plan:

- A detailed contract review (see Contract awareness and management section) that identifies the respective rights and obligations of the authority and the PFI Co (and its service providers) relating to expiry.
- An analysis of the expiry gaps list and expiry risk register (Contract awareness and management section and Commercial approach section) to highlight issues that are likely to need managing in the relationship process.
- The emerging commercial strategy (see Commercial approach section) of the authority that identifies the commercial levers and the proposed negotiation approach.
- The known or emerging future services strategy of the authority (see Future services section) that will define how current service relationships will relate to future requirements after PFI contract expiry and transition.

This baseline analysis phase should equip the authority with a full understanding of:

- The identity and roles of all relevant PFI parties, including the PFI Co, its investors, its lenders and its service providers.
- The concerns, influence and objectives of those parties relating to the PFI project overall and expiry in particular.
- How the objectives of those parties align or differ from each other as well as those of the authority.
- The quality of existing relationships and what needs to be managed or changed to facilitate a successful exit and transition from the PFI contract.
- How these understandings can be captured in a forward-looking PFI relationship management plan.

4.3.3.2 Relationship approach

Refreshed PFI relationship plan
Based on the above analysis, the authority should consider the extent to which the existing relationship management approach should be amended to support the contract expiry and transition.

The existing approach may naturally be focused on day-to-day operational matters or on monthly performance monitoring. Existing contractual provisions (for example, for partnering boards) may not be adequate for specific discussions with investors. Additional working-level interactions (for example, at technical level around asset condition) will need to be planned for.

The expiry phase will require a similar intensity of relationship interaction to that required in the PFI procurement and construction phases, or in the negotiation and implementation of major contract variations.

In revisiting and revising relationship management plans, authorities should:

- Be realistic about how existing relationships will support or constrain relationship development.
- Consider if there are blocks to relationship development, such as existing disputes, which it would be beneficial to resolve early in the expiry process.
- Consider the risks and gaps to be managed (see Contract awareness and management section).
- Align the PFI relationship management plan with the developing commercial strategy (see Commercial approach section).
- Consider the future service strategy (see Future services section), as this can impact on the relationship position of both the authority and the PFI Co and service providers, as well as on the timing and nature of information requirements underpinning the PFI relationship management plan.

In its detail, the PFI relationship management plan for expiry should:

- Identify an SRO to oversee the expiry and transition process and establish joint relationship leadership with the private stakeholder parties.
- Appoint a day-to-day project lead to manage the expiry and transition process, including the tracking of agreed actions and information flows.
- Ensure the resourcing of the PFI contract expiry and transition team is adequate in both numbers and competence.
- Establish the communication channels to be used.
- Set out the proposed engagement structure, such as monthly meetings.
- Identify the key priorities to be discussed.
- Determine the optimal route and timing for raising issues.
- Ensure that the authority's internal governance structure provides appropriate links to the joint decision-making bodies and required escalation routes.

By developing its PFI relationship management plan, the authority is creating a practical route map for engaging with the PFI parties, which will help it achieve its commercial objectives for contract expiry and transition. The core elements should be shared with the PFI Co and its service providers as the proposed basis for an agreed joint relationship management plan.

While good plans can facilitate productive relationships, the most successful relationships are built upon the behaviours of the people involved, with mutual trust, respect and understanding developed over time.

4.3.3.3 Relationship engagement

Once the authority has done its groundwork on the expiry provisions of the contract, assessed its relationships and considered its own relationship management strategy, it should be in a better position to engage with the PFI Co and all other PFI parties on contract expiry:

- These discussions should start early.
- The authority should set out upfront its objectives and expectations for the expiry process (for example, for asset handback condition) and agree these with the PFI Co.
- Contractual ambiguities should be clarified and agreements documented.
- Awkward and frictional aspects of expiry and transition should be tackled, not avoided.
- A collaborative approach to expiry and transition (both sides wish to exit smoothly and cleanly) is likely to be the most effective.
- A contractual dispute resolution procedure (DRP), or another mutually agreed mechanism such as a dispute avoidance board, should be used where significant disagreements remain unresolved. This is not inconsistent with a collaborative approach and can actually prevent issues festering.

4.3 Relationship management

Creating a formal joint relationship management plan: The authority should seek to formalise the relationship approach to expiry and transition with the PFI Co through an agreed joint relationship management plan. The scope of this plan may be minimal (agreed meeting structures) or more comprehensive depending on the scale of the expiry challenge and the type of relationship that the parties are able to agree.

Components of an effective joint relationship management plan

- Aligned joint governance and escalation arrangements.
- Identification of individual objectives and any differences that exist.
- Clear roles and responsibilities.
- Identified stakeholder leads and other key decision-makers.
- Agreed communication channels.
- Multi-tiered joint working arrangements (for example, workstreams and project level).
- Joint expiry risk/issues log.
- Information sharing protocols
- A joint repository (for example, Microsoft SharePoint site) for key documents.
- A behaviours or 'ways of working' charter, which, while legally non-binding, sets out how the parties expect to behave and engage with each other.
- Effective processes to address and resolve disagreements.

Lesson from experience

Create positive relationships through structured engagement with the PFI Co, develop collaborative relationships to facilitate information sharing. On asset remediation issues, use your rights to make retentions and use DRP to shortcut unproductive negotiations around this.

HMPPS PFI prisons expiry team

Collaboration as a strength: Wider project experience has demonstrated that a collaborative culture with a shared understanding of each other's objectives and constraints will make commercial issues easier to resolve. However, this does not mean making sub-optimal compromises. Authorities that are managing expiry well promote collaboration and are able to benefit from this because they also understand their contractual rights and commercial levers and are willing and able to apply these if necessary.

Relationships are never static and will evolve over time. The authority should review its PFI relationship management plans routinely to ensure:

- The plans are being implemented as intended.
- Revisions are made when changes to the relationship or context merit it.

4.3.4 What good looks like

- You know the identity and roles of all relevant parties, including the PFI Co, its investors, its lenders and its sub-contractors (the service providers).
- You understand their interests, concerns and objectives and how these align with or differ from those of the authority.
- You have assessed the quality of existing relationships and what needs to be managed or changed to facilitate a successful expiry and transition from the PFI contract.
- You have captured this understanding in a forward-looking PFI relationship management plan, which serves as a practical route map for engaging with the PFI parties up until expiry.
- Your PFI relationship management plan aligns with and supports the commercial strategy (see Commercial approach section) for contract expiry and future services provision.
- Your preparations have enabled you to start expiry and transition discussions early and to set out your expectations for how that process will be managed and the outcomes that you will achieve.
- You are targeting a constructive and collaborative relationship approach, backed by a knowledge of the PFI contract and your available commercial levers.
- You have sought to formalise the relationship approach with the PFI Co through an agreed joint relationship management plan.
- You are keeping all relationship management plans under regular review.

4.3 Relationship management

4.3.5 Sequencing of events

Relationship management

Phase		Action
Phase 1	**Building a good base for expiry** (7+ years)	■ Use commercial understanding to assess the various contractors' interests. ■ Identify stakeholders and check contract managers experience with them.
Phase 2	**Expiry initiation** (7-5 years)	■ Conduct stakeholder and relationship review to develop a **Project Organogram** and **Relationship Map**, and undertake a **Relationship Stocktake.** ■ Develop a **PFI Relationship Management Plan** that aligns with the Commercial Strategy. ■ Establish expiry communication channels with the PFI Co. ■ Reach an agreement, where possible, on expiry governance, roles and responsibilities, and information sharing protocols with PFI Co through a **Joint Relationship Management Plan**.
Phase 3	**Expiry planning and decision-making, enabling handback** (5-3 years)	■ Manage relationships through commercial negotiations. ■ Review and update the PFI Relationship Management Plan as the expiry process progresses.
Phase 4	**Delivering: Handback and take forward** (3-0 years)	
Phase 5	**Post-transition and close** (0+ years)	■ Close out PFI relationship ■ Transition to new relationships (as appropriate)

4.3.6 Recap on relationship management

Key messages recap

Why it matters

- The move from steady-state operations to the expiry phase requires existing relationship management plans to be refreshed or expanded to address the increased criticality and complexity.

Recommended actions include

- Undertake a full baseline stakeholder review and relationship stocktake.
- Create a refreshed PFI relationship management plan, including appropriate governance and escalation procedures.
- Engage constructively with the PFI Co to achieve expiry objectives, developing a joint relationship management plan where appropriate.

Good relationship management requires

- Early discussion at the right level.
- Setting clear expectations and requirements for the expiry process.
- Targeting a constructive and collaborative relationship approach to expiry and transition, backed by a knowledge of the PFI contract and the commercial levers available to you.
- Identifying and addressing issues and ambiguities early, combined with an effective approach to resolving disagreements.
- Keeping all relationship plans under regular review.

4.4 Assets

4.4.1 Why is this important in the expiry and transition process?

When assets are being returned to the authority, their condition at handback and the completeness of associated data are vital to the core objectives of achieving value for money and continuity of service.

The PFI contract will define the contractual PFI Co's obligations relating to handback and transfer. The authority should ensure that these criteria are met because:

- The authority will have paid for the assets to meet the handback criteria as part of the unitary charge payment, so this secures value for money.
- If handback criteria are not met, the authority will have to fund additional maintenance after the PFI contract has expired, in effect paying twice, and there will be an increased risk of asset failure and disruption, which may impact on public services.
- The data and information are required to manage and operate safe and compliant assets after expiry so that public services can be provided effectively and efficiently.
- The condition of the assets at expiry and the availability of information required to manage those assets will materially impact the ability of the authority to procure follow-on contracts.

4.4.2 When do I start?

The IPA recommends that expiry and transition planning should start at least seven years before scheduled contract expiry. This is largely due to the building assets within PFI contracts:

- The major maintenance lifecycle profile on buildings is typically such that significant works are to be anticipated in the period five to seven years before expiry, so the risks and costs associated with these need to be understood at the outset of that timeframe.
- The planning approval and works cycle for replacement buildings can take many years. Early assessment of asset condition and costs helps inform timely strategic decisions on the future of assets and services.
- For large and complex operational buildings (for example, major acute hospitals) it takes considerable time to undertake surveys and complete remedial works.

On track for handback

The implementation of an early asset condition survey at least five years before expiry can ensure asset condition is on track for handover and so de-risk the expiry process for both the public and private sector parties.

This is in addition to a final condition survey that is typically specified in the PFI contract as having to occur 18-24 months prior to expiry.

The assessment of asset condition and management of asset handback is likely to sit on the critical path of the expiry project because of the time required to perform final condition and asset verification surveys and complete applicable work programmes. These elements are also at risk of taking longer than initially envisaged because:

- Assets are likely to be the biggest cause of commercial tension in the expiry process due to the financial amounts at stake and the lack of specificity in handback criteria that is typical within PFI contracts (see Contract awareness and management section).
- The underlying issues are likely to require negotiation and potentially give rise to disputes (see Commercial approach section).

This makes it essential to undertake early and careful planning of all processes associated with asset handback, whether physical assets or data assets. It is also essential for the authority to consider at an early stage the technical capability that will be required, including the potential appointment of specialist advisors.

Some of these risks can also be mitigated by active monitoring of assets throughout the operational phase, not just in the expiry phase, as set out in the Commercial approach section (tracking asset-based metrics and tracking and enforcing statutory compliance).

> 'A key recommendation in this section is that an early asset condition survey should be conducted at least 5 years before expiry.'

Assets are not just buildings

'Assets', as defined in PFI contracts under SoPC, means all assets and rights to enable the authority or a successor contractor to own, operate and maintain the project, including:

- Any land or buildings.
- Any equipment.
- Any books and records (including operating and maintenance manuals, health and safety manuals and other knowhow).
- Any spare parts, tools and other assets (together with any warranties in respect of assets being transferred).
- Any revenues and any other contractual rights.
- Any intellectual property rights.

4.4 *Assets*

4.4.3 Recommended approach to assets

Assets

EXPIRY

INPUTS

- Contract review
- Commercial strategy
- Future services strategy
- Base asset data and performance
- Asset condition requirements
- Historical maintenance records
- Condition survey scope
- Estate strategy

	Understand asset terms	Baseline asset data	Asset verification	Asset and data transition
ACTIVITY	■ Use the contract review to ensure full understanding of asset provisions in contract ■ Agree scope and standards for asset condition and surveys with PFI Co	■ Develop an approach to the management of asset condition that aligns with the commercial strategy ■ Gather necessary data to identify contractual compliance with asset condition obligations	■ Undertake survey to assure asset compliance at handback and agree handback criteria ■ Consider wider authority objectives when reviewing and agreeing replacement and remedial works	■ Review requirements for transfer of asset data, system integration and retention of key personnel/ sub-contractors
OUTPUT	■ Schedule of contract asset deliverables and condition requirements	■ Early condition survey ■ Agreed 5-year plan of work (to achieve the handback standards)	■ Final condition survey ■ Remedial works (as necessary) ■ Handback certification	■ Input into transition plan ■ Future maintenance and 5-year lifecycle plans prepared
OUTCOMES	■ An understanding of contractual obligations for assets ■ Compliance with asset contractual requirements	■ Practical risks and uncertainties within the contract that may impact the expiry process are well understood	■ Contractual asset value is secured ■ Asset-related risks are managed effectively	■ Assets and data transfer seamless to support future service arrangements

CRITICAL SUCCESS FACTORS

- ✓ Clarity on broader estate strategy
- ✓ Good contract knowledge and strong leadership within authority
- ✓ Early engagement at the right levels within PFI Co
- ✓ Expectations and requirements for condition standards upon expiry set out early and clearly
- ✓ Sufficient time allowed to undertake works or agree commercial settlement

TOOLS

PFI expiry toolkit (see section 1.5)

4.4 Assets

4.4.3.1 Review all asset terms and provisions

Drawing on the contract review (see Contract awareness and management section), it is recommended that all contractual provisions are drawn together into a schedule of contract asset deliverables and condition requirements.

This schedule should be reviewed for ambiguity and sufficiency. Any gaps should be added to the gaps list and expiry risk register to inform the development of the overall commercial strategy for expiry (see Contract awareness and management section).

The following actions are recommended:

Determine which assets will be transferred: Review the contract and associated variation documents to obtain a clear list of the assets to be transferred upon expiry. There may be a significant range of assets, including new and existing (retained estates) buildings, mechanical and electrical plant and infrastructure, fixed and loose furniture fixtures and equipment (FF&E), and medical equipment. Information assets might come in the form of systems (for example, computer-aided facilities management or business information systems), digital data, or hard copies, such as operating manuals.

Identify the applicable asset standards: Review the contract to determine the asset standards (condition, residual life and performance) to be achieved now and at expiry. These are typically found in the services specification, the payment mechanism and handback condition standards and/or residual life of assets.

Understand the contractual mechanisms relating to asset compliance: Consider the contractual provisions that relate to how condition standards are being met now and how compliance with the handback criteria is to be demonstrated. Understand the payment mechanism and any retention rights and mechanisms.

Identify the provisions for asset condition information: PFI contracts typically require the PFI Co to produce annual maintenance schedules and five-year lifecycle schedules, sometimes with supporting condition survey requirements. Project lenders may require annual technical reports, with the project agreement providing the authority with the right to be copied into all such information. The authority may have the right to undertake its own condition survey if it considers that standards are not being met. There should be a final condition survey, typically 18 to 24 months prior to expiry, and a handback certification process.

Establish how handback completion will be agreed: The contract may or may not have a formal handback certification process. Consider how to determine that the handback criteria have been met, for example in respect of asset condition and residual life and the sufficiency of provision of systems and data.

Review for ambiguity and sufficiency: Consider the sufficiency and ambiguity of the contractual provisions, including the handback criteria to be achieved. Consult with experts to interpret these standards, especially terms such as 'good industry practice'. This information will also feed into the development of your commercial approach (see Commercial approach section).

Seek agreement with the PFI Co: Engage with the PFI Co to ensure that the contractual provisions are being met and determine how the condition and residual life of the assets will be demonstrated at handback. Use your commercial strategy to negotiate over areas of insufficiency and ambiguity (see Commercial approach section).

At this stage, the authority and the PFI Co may wish to agree the standards and scope of surveys to avoid delays later in the expiry and transition process.

4.4.3.2 Baseline asset data

Asset data
Baseline asset data should be maintained by the PFI Co throughout the contract term and transferred across to the authority upon expiry. This should include the following information:

- Schedule of accommodation.
- As-built drawings.
- Asset register.
- Planned preventative maintenance schedules.
- Maintenance records.
- Inspection and testing reports.
- Helpdesk records.
- Lifecycle and maintenance plans.
- Lifecycle replacement records.
- Room data sheets.
- Previous condition surveys.
- Layout drawings.
- Variation details.
- Operation and maintenance manuals.
- Warranties.
- User manuals.

Reviewing these documents will help the authority understand the assets and the quality of associated data. It may also be necessary to use the authority's audit and assurance rights to verify asset condition and data. This data will also be an essential input into future service development – for example, to populate due diligence data rooms for future service procurement (see Future services section).

4.4 Assets

What if I do not have these documents?

The PFI Co and service providers may be reluctant to provide information. In these circumstances:

- Review and enforce all rights to information set out in the contract.
- Explain why you need the information and why this is reasonable.
- Use your relationship management and governance structures to escalate as necessary.
- Make the case that early provision of data and early identification of any issues in data quality or asset condition will mitigate risk for all parties later in the expiry phase.
- Make use of the available incentive mechanisms under the contract (performance deductions, service failure points, ratchets for continued reporting failures).
- Step up routine monitoring and the application of inspection and audit rights.
- Ask your sponsoring department or the IPA for advice and assistance.

Early condition surveys

An early condition survey, either instructed by the authority or on an agreed joint basis with the PFI Co, will allow the authority to confirm that the PFI Co is meeting its obligations on asset condition and performance and the quality of the associated data. Such an early (or 'initial') survey also allows time for any remedial works to be completed ahead of the final condition survey, and for any such works to be factored into revised lifecycle plans, reducing the risk of significant rectification works being required at the end of the contract.

We recommend that an early condition survey be conducted at least five years before expiry, though the exact timing will depend upon:

- The size, scale and complexity of the asset base.
- The timing of major asset downtime.
- The authority's knowledge of the assets.
- Concerns or known issues over asset condition and performance, or the related quality and completion of planned maintenance regimes.

We recommend that the authority seeks to agree a joint process for undertaking this early condition survey as its implementation should de-risk the expiry process for all parties. The PFI contract may already contain provisions for the PFI Co to undertake periodic condition surveys. It may include a specific right for the authority to instigate a condition survey if there is reason to believe that contract obligations are not being met (see your contract review in the Contract awareness and management section) and to recover the costs of the survey from the PFI Co should the survey confirm this. However, the absence of such provisions, or the absence of evidence of a contract breach, should not deter the authority from instigating an early condition survey at its own cost – an action that a PFI Co is unlikely to frustrate if it is appropriately scoped and relates to buildings that the authority occupies.

Early condition survey considerations

- Identify key issues and areas of concern.
- Consider whether 100 per cent of assets are to be surveyed, or a sample of assets. This will depend on the size, type and technical complexity of the PFI estate.
- For large estates that contain a mixture of assets of different ages, it is important that each asset type is surveyed if a 100 per cent survey is not feasible.
- All internal and external areas should be included in the survey. Access to these areas may impact the extent of the survey required.
- Inaccessible spaces (for example, ceiling voids) should be surveyed by exception and where appropriate (for example, if other assets are located in those spaces).
- For non-accessible areas such as drainage systems, intrusive surveys using CCTV should be allowed for.
- Asset data should be considered for inclusion within the scope of the survey so that the quality of these vital records can be checked.
- Survey outputs should be in an agreed, editable format (for example, Excel) and to a suitable level of detail.
- Consider following a standard coding methodology such as the RICS new rules of measurement, through which the item being surveyed is detailed to either system, element or component level, depending on what is appropriate – for example, floor coverings detailed to an element level (NRM level 3), an air handling unit detailed to a component level (NRM level 6).
- Condition categories should be clearly defined and aligned to the contract standards, with the outputs tested for consistency between surveyors. Ensure mechanical, electrical and other specialist assets are assessed by a surveyor with specific experience.

4.4 Assets

Once the early condition survey is completed, the authority should anticipate a period of technical negotiation with the PFI Co concerning the implementation of the findings. This is likely to be a valuable preparation for the final condition survey and handback process and is likely to help flush out differences in interpretation between the parties.

The recommended output from this process is the production by the PFI Co of a five-year plan of works (to expiry) that reflects the agreed criteria for the condition of assets up to and at PFI contract expiry, the implementation of which can then be monitored by the authority.

4.4.3.3 Asset verification

Final condition survey
In most contracts there is an obligation that a final condition survey be undertaken, typically 18 to 24 months prior to expiry, though in some contracts this might be a right that the authority must actively exercise. This survey is an important contractual protection for the authority in assuring asset compliance at handback. However, it is important to appreciate that this occurs at a very late stage in the contract. If the assets are in poor condition and significant remedial works are required to meet the handback criteria, there may simply be insufficient time for these works to be planned and completed. Furthermore, the financial levers that allow the authority to deduct or withhold payments may be limited, and the financial capacity of the PFI Co to undertake such works may also be limited. For these reasons, it is essential that action, including early asset survey work, is taken well before the contractual final survey process.

Final condition survey considerations

Timing – Contractually, typically 18 to 24 months prior to expiry

Basis of appointment – The pros and cons of a joint appointment for the final condition survey are discussed below

Scope – The scope should be specific to the contract and include:

- An assessment of the condition of the assets against the contractual condition standards and residual life required at handback. Obsolescence should be factored into asset life expectancy.
- Identification of elements that require visual or intrusive surveys.
- Assessment of the performance of mechanical and electrical assets.
- Assessment of the sufficiency of documentation and performance data.
- Estimated price and duration of the works required to achieve the handback criteria.

The case for joint appointments for surveys

When planning a condition survey, consider a joint appointment with the PFI Co. As long as the right terms are agreed, this has a number of advantages:

- Joint appointment is an approach recommended by the NAO.
- Survey costs may be shared.
- The surveyor has a duty of care to both the authority and the PFI Co, so both parties can rely on the outputs.
- Impact on building users is reduced, compared to the parties both undertaking a survey.
- Consistency of approach and shared outputs reduces the likelihood of disputes.
- Both parties receive the same data, resulting in an agreed position on the condition of the assets and the work required to achieve the handback criteria.

The case for separate authority appointment with a joint walk-round process

- It can be time-consuming to agree a joint appointment.
- If the authority has previously appointed a surveyor to undertake an early condition survey, it may make commercial sense to extend that appointment to the final condition survey.
- An authority appointment can allow the survey scope to be extended to cover authority requirements beyond expiry (for example, a five-year look-forward cost analysis).
- There can be negotiation benefits in the authority having its own survey.
- An authority appointment provides the authority with an expert resource for the technical negotiations with the PFI Co (for example, around remaining or remedial works), which will inevitably be required even if there is a joint survey with agreement on asset condition.

'In most contracts there is an obligation that a final condition survey be undertaken, typically 18 to 24 months prior to expiry.'

4.4 *Assets*

Achieving handback compliance
On completion of the final condition survey, the authority will have to negotiate with the PFI Co the replacement and remedial works required to achieve the contractual criteria for the condition of assets at handback. The authority will then need to ensure that access to undertake these works is granted in line with the agreed programme.

Agreeing replacement and remedial works

The authority should consider the following issues when reviewing and agreeing replacement or remedial works identified in the survey:

- Specification of the works, which should at a minimum meet the criteria in the contract, including design life.
- The maintenance and lifecycle impact of the works, post expiry.
- Compatibility and consistency of any replacements with other PFI and non-PFI systems.
- Obsolesce of systems that the authority will not be able to support after expiry.
- Whether the replacements meet the authority's future needs and policies.
- The ability of the PFI Co to access the area to complete works, and relocation of authority operations, where necessary, for the period.
- The authority's rights to retain payments until the works are completed, noting that the effectiveness of this right is limited by how much of the unitary charge is yet to be paid.

PFI contracts developed under SoPC should contain a specific obligation for rectification and maintenance works identified in the final condition survey to be completed to the reasonable satisfaction of the authority prior to expiry, but the process for determining this may not be explicitly defined.

Some contracts will have a requirement for formal certification process that the handback criteria have been met. In those that do not, it is in both parties' interest to agree a certification process to confirm that the works have been completed to the necessary standard, to minimise the risk of subsequent dispute. As with surveys, it may be appropriate that an independent certifier be jointly appointed; this could be the same party that completed the final asset survey. It is important that the certification process is programmed into the expiry process.

Handback certification

- Certifies that the completion of works is to the required specification and standard and warranties are in place.
- Certifies that handover of asset information and documentation has been completed.
- Certifies that the operational systems have been transferred and that there has been training for authority staff.
- Certifies that all handback criteria have been met.

Where works cannot be completed, because there is insufficient time before the end of the contract or access cannot be provided, the authority will need to refer to the contract provisions and, for example, discuss whether alternative works can be funded, or agree a commercial settlement based on the value of the deferred works.

4.4.3.4 Asset and data transition

The transition from the PFI contract to the future services provision is discussed further in the Future services section. This deals with transition as it relates to assets, including:

- Physical assets.
- Data transfer and system integration.
- Key personnel and sub-contractors.
- Certification of handback criteria.
- Continuation of programmed maintenance activities.

Moveable equipment and spares
A schedule of all moveable fittings, equipment, spares and consumables subject to transfer will need to be agreed. The availability and serviceability of spares essential to maintaining service continuity after PFI contract expiry will need to be assessed and this assessment brought into the planning for future services.

Data related to assets
Upon expiry, the PFI Co will be required to transfer over the asset data and documentation that has been maintained over the contract term – typically 20 to 30 years. The authority will need to assure the quality of the data and the transfer process.

Ideally, the authority will have undertaken data quality reviews during the operational phase and at the survey points mentioned above. In any event, the authority will need to ensure that sufficient audits are completed to verify the completeness of data before transfer.

To minimise risk and allow time for any corrective action to be taken, the authority, PFI Co and service providers should, at an early stage, plan and test the process for transferring the data to the authority's system.

Key personnel/service providers
The authority should engage with the PFI Co and service providers to identify personnel who are statutory duty holders (for example, water management and asbestos) or hold specific permits and certifications. These personnel may transfer to the authority under TUPE processes, but this should not be assumed. The potential need to train or recruit people to cover any gaps should be identified in the expiry risk register (see Commercial approach section).

4.4 Assets

In addition, the authority should obtain from the PFI CO a list of specialist service providers and begin engaging with them. Their knowledge and capability should be part of risk mitigation plans even though they may not be part of the future services provision.

Continuation of maintenance activities
During transition, the authority will need to plan maintenance activity following expiry, particularly where there is a statutory requirement for testing and inspection. The future forward maintenance plan should include:

- Planned preventive maintenance (PPM) activities.
- Statutory testing and inspection.
- Lifecycle replacement.

PPM and statutory inspections can typically be planned by referring to the existing schedule of programmed maintenance produced by the PFI Co. Lifecycle replacement must be planned based on the condition of the assets from the surveys and the expected service life (design requirements).

It is recommended that in advance of PFI expiry the authority develop its own forward-looking lifecycle model and five-year lifecycle plan for the period after asset handback. Production of this plan, or the analysis required to produce it, could be an additional authority-specified element in the scope of the final condition survey.

	Lifecycle model	Lifecycle five-year plan
Purpose	Used as a long-term budgeting tool and to inform the content of the lifecycle five-year plan.	Used as a maintenance planning tool and to ensure correct funds are reserved.
Base information	Asset register, industry data regarding asset life and replacement costs.	Lifecycle model, asset condition, maintenance records.
Content	Costs in year for all elements.	Specific replacement projects based on condition. Years one to three are likely to be based on condition, and years four and five based on a model. Year one to have accurate costs for set projects.
Review	Typically, every five years to ensure content matches the performance of the assets.	Annually, with year one forming the upcoming annual plan.

Key terms relating to assets

Asset standards	The standard against which the asset condition and performance will be assessed.
Asset condition	The physical state of the asset, which may or may not impact on its performance.
Asset performance	The ability of the asset to provide the level of service required, including in respect of environmental impact, irrespective of the asset condition.

4.4 Assets

4.4.3.5 Other considerations

Do the handback criteria align with the future services strategy? (see Future services section) At the point of contract expiry, the assets will typically be 20 to 30 years old. It is inevitable that the authority's requirements, guidance (for example, Building Bulletins) and policy/legislation (for example, net zero carbon obligations) will have changed in this period. The authority should therefore review the handback criteria to determine whether they align with future needs.

To comply with the handback criteria, it is likely that the PFI Co will need to complete a wide range of lifecycle works in the latter years of the contract. However, the handback requirements, and thus also the focus of lifecycle spend, may need to be reconsidered in order to reflect any changes to the authority's needs.

Why the authority's requirements may have changed

- Changes to public service needs or delivery methods.
- Changes in technology.
- Updates to sector-specific guidance (for example, HTMs or Building Bulletins).
- Changes to legislations (for example, carbon net zero obligations).
- New authority policies (for example, office space provisions).

These changes present an opportunity for the authority to negotiate different outcomes with the PFI Co, depending on whether it wishes the asset to meet the original handback criteria, reflect new requirements, or be disposed of.

Options	Asset consideration
Retain	Ensure condition is fully understood and that assets will meet the handback criteria. Challenge the PFI Co if deferred replacement works are evident.
Alter	If a change to the asset is required to meet future needs, consider whether altering planned replacement works might achieve best value for money. Consider the risks around this (See example to the right).
Dispose	Discuss changing the handback criteria to remove the need for any replacement works through to expiry, and negotiate a commercial settlement with the PFI Co. Ensure that the risk of asset failure and consequential service disruption is assessed before replacement works are halted.

Example of altering the handback criteria or lifecycle works

The PFI Co proposes the replacement of three gas boilers prior to expiry at a cost of £40k. The authority, which is making plans to meet a carbon neutrality target that will apply at a date after PFI contract expiry, has undertaken a review of net zero carbon technologies and wants to install heat pumps at a cost of £60k.

Option 1 – The PFI Co replaces the boilers, meeting the handback criteria. The authority then changes the gas boilers for heat pumps four years after expiry to meet its net zero target. The full cost of the heat pumps is borne by the authority.

Option 2 – The authority instructs the PFI Co to defer the replacement and negotiates a commercial settlement (reduction in the unitary charge), which will be used to part-fund the heat pump project following expiry. The risk of any disruption to services and additional maintenance costs due to failure of the old gas boilers reverts to the authority unless otherwise agreed. These risks are considerable, including in a worst-case scenario a building that is unavailable due to boiler failure but with continued full-service payment obligation.

Option 3 – The authority negotiates a variation, including a change to the handback conditions, to replace the gas boilers with heat pumps prior to expiry. The estimate shows that the heat pumps add £60k to the project costs, but the £40k for boiler replacement is omitted. The authority pays the extra over-cost (£20k), with the work completed by the PFI Co. The cost benefit of this option would need to include the legal and technical costs of negotiating the variation, which could be considerable, particularly if lender consent is required.

4.4.4 What good looks like

- You understand the contract handback criteria and provision for surveys. You have assessed these for sufficiency and ambiguity and have engaged with the PFI Co to agree how these will be interpreted.
- You have gathered and reviewed all asset data to inform your understanding of the assets at the start of the expiry process.
- You have reviewed the asset handback criteria against your future needs and negotiated with the PFI Co any changes to the handback criteria and/or works programme.
- Early condition surveys have been undertaken and any replacement or remedial works agreed with PFI Co. Implementation of these works to the required standard has been independently certified.
- The final condition survey is completed on time. Replacement and remedial works and any retentions are agreed between parties. The works are subject to independent certification.
- Asset data has been verified and a tested data transfer process agreed prior to transition.
- There is agreement of the transfer of moveable equipment and spares, and strategies to mitigate risks around future availability and obsolescence have been implemented.
- In advance of PFI expiry, you have developed your own future maintenance plan and a forward five-year lifecycle plan and model.

4.4 Assets

4.4.5 Sequencing of events

Assets

Phase		Action
Phase 1	**Building a good base for expiry** (7+ years)	Understand and actively utilise contractual rights to conduct surveys, access data, and enforce lifecycle works. Assess sufficiency of annual and 5-year programmed maintenance/lifecycle plans against contract standards. Actively engage in lifecycle spending decisions (per contract).
Phase 2	**Expiry initiation** (7-5 years)	Develop schedule of contract asset deliverables and condition requirements. Carry out an **Early Condition Survey** in line with **Commercial Strategy.** Agree 5-year plan of work to achieve required handback standards with the PFI Co, based on findings of early condition survey.
Phase 3	**Expiry planning and decision-making, enabling handback** (5-3 years)	Agree handback strategy with PFI Co. Actively monitor lifecycle and maintenance works in line with 5-year plan of work to achieve handback condition. Ensure access is available to facilitate works programme.
Phase 4	**Delivering: Handback and take forward** (3-0 years)	Review Final Condition Survey requirement and agree scope and timing. Determine asset data transfer requirements. PFI Co completes 5-year plan of work. Conduct **Final Condition Survey** and agree **Remedial Works** to achieve required handback standards. Agree **Handback Criteria Certification Scope** with PFI Co. Develop **Future Maintenance Plan**, and **Forward Lifecycle Model & 5-year Plan** for assets after PFI expiry. **Input into Transition Plan** (see Future Services) to support handover of assets, systems and data.
Phase 5	**Post-transition and close** (0+ years)	Certification that the handback criteria has been met. Data fully transferred verified.

4.4.6 Recap on commercial approach

Key messages recap

Why it matters

- The assets are required to support future services provision.
- The authority has already paid for the assets to meet the handback criteria. If they don't meet those criteria, you will likely have to pay again.
- Asset data is required to manage and operate the assets after expiry.

Recommended actions include

- Reviewing the criteria for asset condition and asset data at handback.
- Understanding the assets and data available.
- Undertaking early condition surveys and ensuring replacement works are scheduled.
- Agreeing the final condition survey and independently certifying the completion of all required remedial works.
- Auditing asset data quality and testing the data transfer process.
- Creating forward plans for maintenance and lifecycle requirements after handback.

A good asset handback involves

- Understanding what you need from the assets after expiry.
- Understanding the contract terms relating to asset condition and data.
- Close links with your commercial strategy (see Commercial approach section) and PFI relationship management plans (see Relationship management section).
- Engaging early with the PFI Co at the right level to establish a process to manage asset condition to expiry that can de-risk handback for all parties.
- Bringing the right technical expertise to bear.
- Allowing sufficient time for remedial works and any associated commercial negotiations.

4.5 Commercial approach

4.5.1 Why is this important in the expiry and transition process?

The commercial aspects of PFI contracts are typically complex, with multiple parties and numerous contractual interfaces. The standardisation of PFI contracts from 1999 onwards created some consistency and agreement of contractual terms, but until 2004 there was no formal requirement to use these standardised terms. Knowing your contract is essential and having positive relationships is helpful, but ultimately a considerable level of commercial negotiation will be required in the PFI contract expiry process.

It is essential, therefore, that the authority is clear about its own specific aims, recognises the goals and incentives driving the actions of its project counterparties, and understands the negotiating levers it can use to help it achieve its objectives.

4.5.2 When do I start?

All other aspects of the expiry and transition process – such as operational contract management, relationship management, the handback of assets and the transition to the future services provision – need to be bound together by an understanding of what the authority is seeking to achieve through the expiry and transition process and how this can best be achieved.

It is therefore vital that an understanding of commercial objectives and processes is in place from the outset of the process and is shared across the expiry project team.

Commercial strategy

The development of a comprehensive commercial strategy should be at the heart of the PFI expiry planning process. This is the glue that binds together underlying work on contract management, relationship management, asset knowledge and future services preparation.

The commercial strategy will draw together for authority stakeholders the key commercial issues and map out the process through which the authority's objectives will be negotiated with the private sector.

4.5 Commercial approach

4.5.3 Recommended approach to commercial

Commercial approach

EXPIRY

INPUTS

- Contract review
- Expiry summary
- Expiry gaps list
- Expiry risk register
- PFI relationship management plan
- Future services strategy
- Contract change/ dispute history

	Baseline analysis	Commercial strategy	Commercial negotiations
ACTIVITY	Identify contractual mechanisms from the contract review Conduct analysis of future landscape, risks and opportunities, PFI Co's financial and commercial position, market factors and potential ambiguity/disputes	The expiry objectives, commercial decisions and issues, and the proposed negotiation approach are drawn together in a commercial strategy	Undertake negotiations with the PFI Co to implement the commercial strategy Resolve any areas of contention through contractual escalation and dispute procedures, or contract variations, as appropriate
OUTPUT	Baselined commercial position Commercial negotiation levers identified Expiry risk register updated	Commercial strategy	Agreement with PFI Co on commercial issues in advance of expiry
OUTCOMES	An understanding of the parties, their interests at expiry, differing objectives, and the relationship issues to be addressed	A practical routemap exists for engaging with PFI parties to achieve the commercial objectives for expiry	The commercial objectives of the authority are achieved in the expiry process with risks mitigated

CRITICAL SUCCESS FACTORS

- ✓ Understanding the PFI contract
- ✓ Identifying the commercial levers
- ✓ Awareness of private sector drivers
- ✓ A proactive, rather than a reactive, commercial approach
- ✓ Appropriate skilled resource is in place in the project (Commercial, Financial, Legal and Technical)

TOOLS

PFI expiry toolkit (see section 1.5)

4.5.3.1 Baseline analysis

Developing the commercial approach to expiry requires an understanding of the specific objectives of the authority (for example, the shape of future services provision), the decisions it will need to make, and the commercial issues that will need to be addressed.

To conduct this baseline analysis, you need to understand:

- The PFI contract and contractual mechanisms, having undertaken a detailed contract review with analysis of the expiry gaps list and expiry risks register (see Contract awareness and management section).
- The priorities of the various parties and their likely approach to working with the authority on expiry (see Relationship management section).
- The authority's requirements for assets and services after the PFI contract expires (see Future services section).
- The history of contract changes and disputes and whether these have been fully resolved (see Contract awareness and management and Relationship management section).

Commercial levers: A key output from this analysis should be the identification of the negotiating levers that the authority can utilise. Factors to consider include:

- What are the contractual rights to make retentions and withhold unitary charge payment in the run-up to expiry? How does the quantum of such potential retentions compare to the anticipated scale of rectification works?
- Can early condition surveys be undertaken while there is still time, and is there financial leverage and potential lender support for the resolution of any significant issues?
- Is there any dependency of the PFI Co and its investors on market value payments or purchase options?
- What aspects of active contract management, including the application of the payment mechanism and performance framework, will incentivise the right behaviours in the run-up to expiry?
- Are there follow-on contract opportunities (for example, future FM services) that can help incentivise the right behaviours in the run-up to expiry?
- Are there wider stakeholder interests (for example, the interest of lenders in ensuring that assets are appropriately maintained) that can provide leverage?
- Are there wider corporate or organisational relationships that can help positively influence outcomes or result in reputational issues?

Early termination: The authority should also understand and evaluate its early termination options. Being able to articulate this position will help internal decision-making and, if appropriate, discount this as a strategic option in order to focus the authority's expiry management activity.

Expiry risk register: At the conclusion of this baseline analysis, the expiry risk register for the expiry project should also be revisited and, as appropriate, updated.

4.5.3.2 Commercial strategy

Following baseline analysis, the commercial approach to expiry can be developed. Ideally, this will be expressed in a single commercial strategy document, which summarises:

- The commercial objectives for expiry.
- The commercial decisions in the expiry process.
- The proposals for addressing any gaps or lack of clarity in the contract.
- The principal expiry risks for the authority.
- The levers available in negotiations.
- Alternate routes, including dispute resolution procedure (DRP), to resolve issues that cannot be concluded through timely negotiation.

> Drawing together the commercial approach to expiry will also assist with the preparation of the business cases that may be required for additional resources to implement expiry

It is likely to be extremely helpful to all authority stakeholders to have these key commercial considerations captured in a single, reasonably concise document.

- This will be a natural accompaniment to the expiry summary (see Contract awareness and management section), which sets out the key contractual steps, deadlines and processes relating to expiry. Together, these documents will enable an overarching expiry plan and schedule to be drawn up.

Throughout the expiry process, the commercial strategy should be reviewed and revised to reflect changing objectives and updated information (for example, the results of an asset condition survey).

4.5 *Commercial approach*

4.5.3.3 Commercial negotiations

Based on experiences to date in PFI contract expiry and transition, there are several points that may be helpful to consider.

Typical areas of contention
Specific topics where contract clarification or negotiation may be required include:

- The definition of asset condition or residual life on expiry.
- The basis of asset valuations.
- The timing and scope of key process steps such as asset condition surveys.
- The timing and extent of information release, particularly TUPE information.

These issues are discussed in more detail in the Assets and Future services sections.

Escalation and disputes
The authority should consider whether the escalation and DRP outlined in the contract is appropriate for the expiry phase and how this should be applied. Because contract provisions relating to expiry are often open to interpretation, it makes sense to get all parties around the table to talk these through, rather than seeking resolution late in the expiry process when the authority's commercial leverage may be limited. As in any commercial process, it is important for both the authority and the PFI Co to set out and manage expectations early.

Lesson from experience

The authority should not be afraid to use DRP. The procedure is relatively simple and can be cost effective. It is regularly used in construction contracts where the DRP is accepted as normal practice and often preserves the relationship between the parties rather than damaging it.

Local Partnerships

Adjudication panels

It may be that the DRP provision references adjudicator panels. Have they been selected properly and are they up to date?

Access to QC advice

QC advice can be crucial when trying to determine the meaning of contractual provisions that are not clear. It can provide strength and certainty in commercial negotiations, effectively resulting in cost savings.

Legal departments should be consulted before external legal advice is sought.

Variations
The potential benefits of contract change (for example, to reshape a renewals programme to focus on updating certain assets, or to achieve longer-term energy efficiency or low carbon objectives) are considered in the Assets section.

However, the cost and time implications of implementing major variations need to be considered carefully, particularly in the final expiry phase. Variations may be easier to negotiate once all project debt has been repaid (thus removing the requirement to obtain lender consent). Variations that impose additional obligations and risk on the PFI Co at a very late point in the project cycle, when the PFI Co will be looking to lock down its expiry obligations, could be difficult to implement.

Central government procuring authorities will need to consider the relative impact of any changes on the classification of the project (i.e. whether the project is classified as on or off the government's balance sheet). In the case of local authorities or NHS Trusts, the sponsoring department should undertake the classification analysis of any proposed variation to confirm the budgetary treatment of the contractual payments following the variation.

Extensions
Unless the original PFI contract includes clear provisions for an extension to the scheduled contract term, this should be viewed with great caution and appropriate procurement advice must be sought. PFI contracts are hard to extend at a value-for-money price. An extension would mean a negotiation on the transfer of whole-life costing risk in the absence of price competition. It is very difficult to successfully extract just the service contract from the rest, as this would effectively be a new contract and would require competition. So, for a PFI contract, the end is the end. The corollary is that new service arrangements must be ready to start on (or before) the final day of the PFI contract.

Lifecycle risk
It is not always clear which party holds lifecycle risk and it is important to establish this. Typically, the PFI Co will hold lifecycle (major renewals) risk, while the hard FM sub-contractor, who is the visible on-site contractor, is simply undertaking agreed works on behalf of the PFI Co.

This means that the equity investors controlling the PFI Co will probably be the parties with the principal commercial and financial interest in the negotiation and implementation of asset renewals or rectification in the expiry phase, not the hard FM contractor with whom you may mainly interact under BAU.

The contractual position on sharing of residual lifecycle reserves or sinking funds on expiry varies considerably in contracts and needs to be established in the initial contract review (see Contract awareness and management section).

4.5 Commercial approach

Lessons from experience – Do's and don'ts for expiry negotiations

The IPA asked authority teams engaged in negotiating expiry for their top tips:

- Utilise existing governance frameworks to conduct structured engagement.
- Do not dive in before you know your full obligations, or those of the other party.
- Understand what your goal is and your preferred position. Share your authority's vision for the expiry process with the PFI Co at the outset of engagement.
- The strength of your relationships firmly plays into negotiations. You should understand what the other party is seeking to achieve. Becoming an intelligent customer requires market intelligence, insight and understanding of all parties' motivations, and driving an outcome from there.
- Identify what limits there are in the contract and whether these may need to be accepted. Focus on matters that can be influenced, as this can be a more effective means of getting priorities sorted.
- Be very cautious about relaxing contractual mechanisms in the belief it will aid negotiations, as this is not always the case. Always ensure that performance requirements are met throughout the life of the contract.
- Ensure there are no legacy issues or unresolved matters that may reduce your leverage in commercial negotiations. Ideally there needs to be a clean slate to work from.
- Factor in sufficient time and obtain expert advice when negotiating on the condition of assets, especially if the authority is not experienced in managing exits.
- Seek support from technical, financial, commercial and legal colleagues. They may have experiences that will help you solve issues quickly and be able to support you in developing a strategy or approach. A joined-up approach will help you to cover all bases.

The financial model

The authority should hold the project financial model as it was at contract start (financial close), updated for the financial impact of variations and any debt refinancing (see Contract awareness and management section). The commercial benefit of this is:

- The financial model sets the baseline against which the private sector has invested and expects the project to perform financially through to expiry.
- The model typically includes or reflects the originally expected maintenance and lifecycle spend profiles for the project so acts as evidence that spend in this area has been priced in.
- It provides the authority with a baseline against which to assess the periodic financial reporting by the PFI Co.
- It is also the formal financial tool through which variations, refinancing and termination payments are assessed.

Understanding the project financial model provides an informed basis on which to hold commercial negotiations with the PFI Co. For example, in considering in advance the potential financial risks for the authority at the point of the final asset condition survey, the project financial model will indicate:

- Expected project costs to be spent on lifecycle, which can be assessed against likely renewal and dilapidation costs.
- The amount of debt left in the project, to ascertain whether lenders have any financial interest in the condition of the asset.
- The size of dividends expected to be paid to the investors, indicating funds that could be diverted to meet excess dilapidation costs.
- The size of any lifecycle fund and remaining unitary payments, which the authority may have contractual rights to use or withhold.

This financial information can help in assessing the likely commercial position of each party and the financial leverage the authority may hold – or need – to mitigate the risk of non-compliance with the required asset condition standard at handover.

4.5 Commercial approach

'Single source of truth'
As established in the Contract awareness and management section, it is essential that the authority holds full project documentation. With PFI contracts that have undergone numerous variations and change orders over a long period, this is easier said than done. Commercial negotiations are likely to be simpler if all parties are working from agreed base documents. It is therefore worth establishing a shared platform, such as a SharePoint site, for all reference documentation.

The power of commercial networking
There may well be an imbalance of PFI contract expiry expertise between an authority with a single PFI contract and those private sector investors and service providers with interests in multiple PFI contracts. This can be rebalanced through the use of expert advisers and the sharing of knowledge and resources between authorities, sponsoring departments and the IPA. Such networking can also create a consistency of approach to the private sector in expiry preparations.

4.5.4 What good looks like

- You have a comprehensive understanding of the commercial issues to be addressed in the expiry and transition process because:
  - You understand the strategic vision of the authority and the future options for the assets and services covered by the PFI contract.
  - You have captured the key project expiry risks and mitigation actions in an expiry risk register that is regularly reviewed and updated.
  - You understand the commercial and financial position of your private sector counterparties.
  - You have identified the areas of potential dispute and have a process to address these.
  - You have assessed the commercial levers available to you.
- The key commercial aspects of the PFI contract expiry and transition process are understood within your expiry project team, senior management and other authority stakeholders because you have documented a commercial strategy that sets out:
  - The objectives of the expiry and transition process.
  - The significant underlying risks and issues.
  - The key decisions to be made.
  - The levers and required actions to achieve the desired expiry outcomes.
- You are able to engage with the PFI Co and other PFI parties early and effectively based on your understanding of the contract, wider commercial context of the project and your commercial strategy.

Lesson from experience

PFI Co's and service providers managing multiple PFI contracts may seek consistency in positions across their various contracts – either referencing precedents or looking to avoid creating precedents – which can add complexity to individual exit preparations.

Ministry of Justice PFI expiry team

4.5 Commercial approach

4.5.5 Sequencing of events

Commercial

Phase		Action
Phase 1	**Building a good base for expiry** (7+ years)	■ Use networks to understand other's expiry experience with PFI Co investors. ■ Actively engage in lifecycle data, plan, works, and surveys to understand issues and available funding. ■ Monitor and understand potential areas of dispute. ■ Review financial model and PFI Co financial information, to understand how these can be used in managing expiry.
Phase 2	**Expiry initiation** (7-5 years)	■ Undertake analysis to understand your baseline commercial position covering the future landscape, risks and opportunities, PFI Co's financial and commercial position, market factors, and potential ambiguity/disputes. ■ Build on contract understanding from contract review to identify all commercial levers available and plan how to use them. ■ Update **Expiry Risk Register** with commercial issues. ■ Define expiry **Commercial Strategy** and work with the operational contract management and future services teams to identify issues to be addressed.
Phase 3	**Expiry planning and decision-making, enabling handback** (5-3 years)	■ Continue to use commercial levers to meet objectives up until expiry. ■ Undertake commercial negotiations to agree handback condition and any other unclear terms in contract, and resolve areas of contention. ■ Use knowledge and available levers to enforce lifecycle commitments, monitor lifecycle fund, and agree 5-year programme of works as delivered. ■ Use knowledge and available levers to obtain full detail of how the service operates, incentivise co-operation on transition planning, ensure requirements are met until/on expiry. ■ Review and update Commercial Strategy as negotiations progress.
Phase 4	**Delivering: Handback and take forward** (3-0 years)	
Phase 5	**Post-transition and close** (0+ years)	■ Close out residual commercial issues and close contract.

4.5.6 Recap on commercial approach

Key messages recap

Why it matters

- Considerable commercial negotiation will be required in the expiry phase.
- It is essential that the authority has clarity as to its own objectives and the negotiating levers it can use to achieve these.

Recommended actions include

- Identifying the commercial levers available to support the achievement of the authority's objectives in contract exit and transition to future services.
- Drawing together a commercial strategy that summarises the commercial basis for engaging with the PFI Co.
- Establishing an expiry risk register that is regularly reviewed and updated.

A successful commercial process involves

- Clarity of vision within the authority as to its objectives for the assets and services following PFI expiry.
- Having an in-depth understanding of the PFI contract and the areas of likely commercial contention.
- Having a common understanding across the expiry team as to the commercial strategy.
- Early, informed discussions on expiry with the PFI Co to flush out and help resolve specific issues of contention.
- Ensuring that the documentation and interpretation of standards that the parties are working from represent a 'single source of truth'.
- Using public sector networking to share best practice and lessons learned across projects.

4.6 Future services

Introductory note

This expiry guidance does not address how follow-on services should be defined, procured, financed or delivered. Wider guidance is available to authorities elsewhere, including the Sourcing Playbook and Delivery Model Assessment Framework[7] that provide guidance on designing a service specification and the most appropriate delivery model for future services delivery.

This section focuses on the features of the PFI expiry process that can affect this activity and, therefore, what needs to be focused on to enable a successful transition to follow-on services.

There is enormous diversity in PFI services and in requirements after the PFI contract. In some sectors and projects (for example, waste PFI projects) determining follow-on services may be highly complex. In others, the requirements may be limited and easier to define and implement. To achieve the widest relevance, this guidance is based upon a simplified working assumption that there is a requirement for follow-on services that will continue to use the PFI assets that revert to the authority on expiry.

4.6.1 Why is this important in the expiry and transition process?

The end of a PFI contract, which has covered a mix of asset and service provision for so long, provides the opportunity to build a new model of service delivery. However, because there is unlikely to be the flexibility to extend the PFI contract, the transition to the future services provision must be well planned and executed. New services need to be ready to start on or before the date of contract expiry.

The development of and transition to future services is likely to be more difficult when the current contract is a PFI. Recognising the differences between a PFI contract expiry and a non-PFI services contract expiry is key to this transition being smooth, on time and value for money:

- The full outsourcing of assets and services over 20 to 30 years may mean that the authority has to rebuild its ability to act as owner and operator.
- The nature of risk transfer in the specification of PFI contract services, and the operational and technical changes that have occurred since the original PFI contract was created, make it unlikely that service arrangements can be simply repackaged and rolled forward.
- PFI contracts are focused on outputs, so can be a 'black box' when it comes to the information required for the authority's planning.
- Sharing information over and above the contractual entitlement may be a negotiation point, along with other aspects of expiry.
- It is the sub-contractors to the PFI Co that will hold most of the information needed to understand current and future services delivery, not your contractual counterparty, the PFI Co.
- All delivery risk has been borne by the PFI Co, making it difficult for the risks to future services to be identified and planned for.
- The bundling of assets and service in a PFI contract makes a de-bundled package of services difficult to cost.

Managing PFI contract exit and future services:

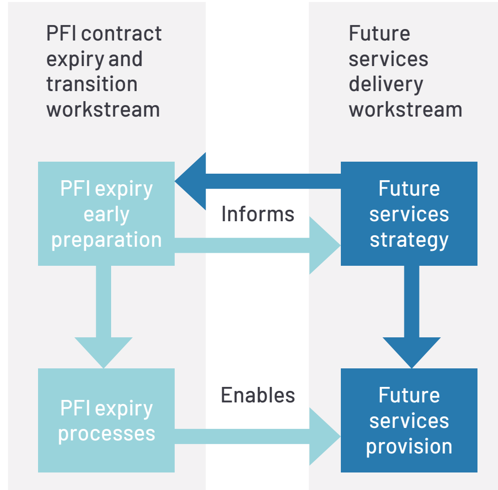
Within this guidance it is assumed that the PFI contract expiry and transition and future services delivery are managed as separate workstreams (see Managing PFI expiry as a project). However, these two activities are necessarily interlinked at both strategic level and practical workstream level.

At a strategic level, it is critical that the objectives of present and future service arrangements are aligned and understood. The process of exiting the PFI contract is a key enabler for the implementation of future services provision – the conceptual relationship between these two activities is summarised in the diagram on next page. In any event, close engagement with users and the procurement team will be essential.

7 www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks

4.6 *Future services*

This section focuses on activities within the PFI contract expiry and transition workstream and how this supports the strategic determination and implementation of future services.



The overriding objective is ensuring continuity of service:

In whatever way the activities of an authority around PFI contract expiry and future services delivery are organised, the core objective must be:

- To ensure that the expiry process fully supports the authority's plans for assets and services following PFI contract expiry, so that the required services continue to be delivered.

4.6.2 When do I start?

For reasons set out more fully in Section 3 of this guidance, which include the timings associated with building lifecycle programmes and remedial works, the IPA recommends that expiry and transition planning commence at least seven years from expiry. This timeframe may be longer or shorter depending on project specifics.

It follows that strategic planning for the future use of PFI assets and related follow-on services should also commence in this timeframe. As will be explored further in this section, it may take considerable time to prepare for follow-on services, with a further two to three years to complete business case and procurement processes.

The broad approach to timings adopted within this guidance is:

7-5 years
Consider strategy

5-3 years
Data and design

3-0 years
Solution implementation

4.6 Future services

4.6.3 Recommended approach to future services

Future services

EXPIRY

INPUTS

- Contract review
- Commercial strategy
- Contract and current service awareness
- Future demand
- Authority's wider strategies and policies
- Authority's approvals processes

	Strategy	Data and design	Implementation	Transition
ACTIVITY	■ Undertake an exploration at strategic level as to how the PFI assets and services fit with future service requirements	■ Establish the data required to support future services implementation ■ Engagement with the PFI Co to agree data requirements ■ Data collection	■ Complete due diligence processes ■ Obtain specialist TUPE/ pensions support ■ Ensure alignment with asset handback ■ Assist with tender documentation and process	■ Work with outgoing and incoming contractors on transition support ■ Conduct readiness tests ■ Ensure communication of service changes to all stakeholder
OUTPUT	■ A future services strategy to which the PFI contract expiry and transition process can be aligned	■ Identification of required information held/not held ■ An agreed authority/PFI Co approach to data provision	■ Timeline and programme integrated into expiry plan ■ Populated data room ■ Competitive procurement of future services	■ Transition support by outgoing PFI service providers agreed ■ Transition plan ■ Fully mapped out 'expiry day'
OUTCOMES	■ Clarity on the requirements for PFIc contract assets and services following expiry, providing direction to the expiry process	■ Sufficient information transfer from the PFI Co to allow for business case approvals ■ Readiness to move to procurement of the preferred future service solution	■ New contracts signed in advance of PFI contract expiry ■ Readiness to begin the transition from the PFIc contract to the new future services provision	■ Completion of transfer of assets, people and data ■ No interruption to authority services

CRITICAL SUCCESS FACTORS

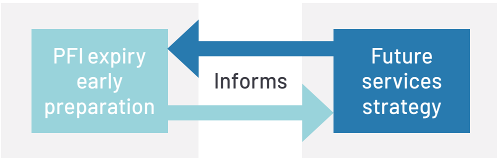
- ✔ Clear vision within the authority as to its future service needs
- ✔ A detailed understanding as to the PFI services that are ending
- ✔ Project processes that ensure that PFI contract expiry links perfectly with future service implementation
- ✔ Starting early and recognising the time and relationship investment necessary to get data needed for business case and procurement processes

TOOLS

PFI expiry toolkit (see section 1.5)

4.6 Future services

4.6.3.1 Strategic options for future services



From the very outset of the expiry and transition planning process, it is essential that the authority's long-term strategic intentions for the delivery of services and the proposed approach to PFI contract expiry are aligned, as the two processes inform each other.

Successful expiry requires understanding the future services strategy: To manage a contract exit process, including asset handover and transition of services, the PFI expiry team needs to understand the authority's requirements for the future use of those assets and services, which may differ from those that are currently provided. This future services strategy may still need to be formally determined – for example, through an outline business case (OBC) – but it is important that the strategic options are identified early enough to provide a focus for the expiry process.

The future services strategy requires the PFI service to be understood: The formulation of the authority's strategy for delivery of future services will be informed by an understanding of:

- What is presently being delivered under the PFI contract
- How that delivery is being undertaken
- The costs involved
- The assets, systems, information and people that will come back to the authority on contract expiry.

Key inputs to defining and aligning the future services strategy and the approach to PFI expiry include:

- The detailed scope of the PFI contract and the position regarding handback, including handback of assets (see Contract awareness and management section).
- The current and targeted future condition of assets on handback and the likely future costs of maintaining and operating these (see Assets section).
- Existing estates and wider service-delivery strategies and policies of the authority.
- The realistic timelines required to achieve approvals and undertake procurements related to the future services provision.

Key actions by the expiry team

- Assessing and communicating where the PFI service or delivery is outdated and needs to change (for example, meeting technical standards or end-customer service needs). Equally, communicating what works well and needs to be preserved.
- Understanding the underlying service elements covered by the PFI contract, including the delivery parties and service scopes at sub-contract level (see Relationship management section), so that the full scope of the required future services is understood.
- Assessing the effectiveness or otherwise of the PFI service specifications, incentive mechanisms and other elements that could provide a basis for defining future services.

Key outputs

- A refined future services strategy – Consolidation of strategic inputs and analysis (for example, contract review (see Contract awareness and management section), underlying service requirements, wider estate and service strategy considerations, technical and legislative aspects, procurement timelines) into a future services strategy that can inform the overall expiry plan and schedule.
- Future services planning – The information basis for a formal strategic outline business case (SOBC), or equivalent approval process, that will be required to drive future services planning.

Lessons from experience

- Know what you want to achieve – what is your post PFI contract strategy?
  – HMRC STEPS expiry team
- Be clear on end goals
  – National Highways DBFO expiry team
- Set out the vision to help guide future decision-making
  – MoJ PFI prisons expiry team

Lesson from experience

National Highways made an early strategic decision, more than eight years before contract expiry, that on expiry the DBFO-managed roads (10 per cent of the overall strategic road network) would be brought back within its overall network management arrangements.

This clarity has allowed National Highways to focus on the quality of the assets that it will be managing after handback, through a final five-year remedial asset improvement programme, and ensuring that the handback process provides the necessary data and systems interoperability to align with its own proposed operational and asset delivery model.

4.6.3.2 Data and services design

The process of determining the scope and designing the delivery of services following PFI contract expiry is similar to the process that would be undertaken in respect of non-PFI contract services. However, the features of a PFI contract that need to be considered include:

- The contractual structure and output-based nature of PFI can make it difficult to extract detailed service level information.
- Contractual rights to information on how individual service elements are delivered and costed may be restrictive or less that explicit.
- Key information is likely to be held by service providers to the PFI Co rather than by the PFI Co that is your direct counterparty under the PFI contract.
- If the PFI contract reflects SoPC terms, it will provide that the PFI Co assists the authority as required, but this provision is unlikely to specify exactly what can be sought.

It is important, therefore, to have an early and proactive approach to data gathering in support of the future services provision. This will be based on understanding your contract (see Contract awareness and management section), understanding the relevant commercial levers you can apply (see Commercial approach section), and creating a constructive relationship with the PFI Co and its service providers (see Relationship management section).

Key actions

- Early coordination between the PFI contract expiry and transition workstream and the future services delivery workstream to establish the full data set required to support the design of future services.
- Close working with the operational contract management team to understand the staff, sub-contracts, systems, ancillary assets and contractor management teams that together make up existing service delivery.
- Early engagement with the PFI Co to agree an approach to obtaining the data required to support future services implementation.

Specific factors to consider

- **TUPE and pensions** information is highly sensitive in GDPR terms. The timings set out in PFI contracts for the release of this information are typically too late to help business planning or inform procurement processes. This can be overcome by seeking higher-level anonymised data, but specialist HR advice is likely to be needed.
- **Should cost modelling** is likely to require cost information to be gleaned on a piecemeal basis from diverse financial sources (for example, PFI Co performance reporting, management accounts, statutory accounts, lender technical reports, historic project models), as granular operational cost data is unlikely to be available under the PFI contract. This painstaking process will be much easier if good operational contract management has led to all information rights being utilised and key financial metrics being tracked (see Contract awareness and management section).
- **Back office systems and costs:** the challenge is to understand not just the individual services, which may be benchmarked, but the less visible parts of the PFI activity that will revert to the authority, including management of contracts, management of equipment, processing of work orders and invoicing. In some projects and for some authorities, these aspects may simple be rolled forward into existing wider management systems, but for others the requirements will be considerable and must be catered for before PFI contract expiry.

Key outputs

- **Information requirements list (held/not held)** to support the development of the future services provision. This may be shaped by what is needed for an OBC or other business case approval to progress from future services design to future services implementation.
- **An agreed authority/PFI Co approach to information:** A robust approach to obtaining that information with an agreement (at least in principle) with the PFI Co, including joint working processes at project level to address the reasonable information requirements of the authority.

Lessons from experience

Key lessons from project teams that are procuring follow-on services are:

- It is easy to underestimate how difficult and time-consuming it is to extract the information and populate the data room necessary for business approvals, tender preparation and competition.
- The handback and exit provisions in the contract will have been drafted in abstract 20-plus years ago and will need constructive interpretation by the contract parties to be practical, particularly when it comes to service transition.
- Contractors' concerns about the release of information considered as competitive or proprietary will need to be addressed with care.
- The interaction between assets and services is complex and the alignment between asset survey and verification activities and procurement activities needs very careful management.
- It takes more time than you think.

4.6.3.3 Implementation phase

It is likely that the PFI contract expiry will be followed by the procurement of some services, whether operational or in connection with maintaining and operating assets, and in-house provision of other supporting service elements (for example, overall contract management). The mix will vary widely by project, of course: some assets may not be transferred, and some services can be fully insourced.

The underlying processes required to procure or insource services following a PFI contract will not differ in substance from those following a non-PFI contract expiry. However, the specific PFI contract challenges and considerations previously described will continue to apply.

Key actions that will support implementing future services include:

- Ensuring the timeline for all procurement and transition activities is clearly understood and integrated into the overall expiry plan and schedule.
- Creating at the earliest possible stage a data room/data requirement index that can guide the process of PFI contract data gathering to support procurement.
- Establishing an engagement plan with the PFI Co and its service providers to obtain the information needed on services, assets, people and their management. This will fall within the overall PFI relationship management plan (see Relationship management section).
- Undertake a discovery review (see below) to ensure a full understanding of how the current service is being delivered and what is needed to continue service provision after PFI contract expiry.
- Negotiate a transition plan (see below) with the PFI Co to ensure a seamless transition between the PFI contract and future services provision.

Specific factors to consider include:

- **Negotiating information sharing:** PFI contacts are often vague on exactly what is covered, so a constructive relationship with the contractor will be key. The authority will have to invest time to explain how it interprets the provisions in the contract, being explicit about the grounds for a "reasonable requirement" or similar, while also showing how it will protect the contractor's commercial interests in competitive use of that information.
- **Discovery review:** However well a PFI contract is managed, the arm's length, output-based nature of its service provision (usually by service sub-contractors) makes it difficult to gain a view on the detailed data systems, direct resources, back office resources, supporting equipment, intellectual property, sub-contract arrangements and associated risk allocation that will be involved in follow-on procurement or insourcing. Negotiations around handback, information sharing and transition should therefore be approached by the authority and its technical and legal advisers as a due diligence process that will support the implementation of the future services strategy and related procurements.
- **TUPE:** It has already been highlighted that obtaining TUPE data on a timely basis is likely to be problematic. The implementation of TUPE is complex, particularly under PFI, where multiple contractors as well as the authority are likely to be involved and contractual requirements cannot simply be rolled forward. Specialist advice must be sought early in the implementation phase.

Lesson from experience – Sub-contract reviews

PFI prisons have a single top operational service contract, but underneath are multiple sub-contracts managed by the PFI Co and its main service contractor to deliver the required services. To prepare for future services delivery, the MoJ PFI prisons expiry team undertook a review of all sub-contracts within each PFI to identify:

- Contracts that would need to be replaced (for example, catering).
- Contracts that would need to be renegotiated or novated, but could not easily be replaced (for example, proprietary specialist maintenance services).
- Contracts for service elements not needed after PFI expiry.

There were typically over 50 sub-contracts to be considered in each PFI. It took three months to obtain and evaluate this base-level information.

Key outputs from the PFI contract expiry and transition processes and activity that will help enable future services implementation include:

- A timeline and programme that integrates and aligns the activities of the PFI contract expiry and transition workstream and the future services delivery workstream.
- A shared PFI contract expiry and transition and future services delivery data room with a common approach to information requirements and validation.
- An engagement plan or approach agreed with the PFI Co and its service providers regarding information required for implementing the future services provision.
- A discovery review that gives due diligence on existing service delivery and methods, including risk management, to inform future delivery requirements and procurement.
- Scopes and briefings for specialist advisers, including TUPE.
- PFI expiry team to provide input into procurement documentation and offer procurement support (for example, providing RFI responses).

4.6 *Future services*

4.6.3.4 Transition

Transition planning aims to ensure that everything is in place to accomplish the transfer of people, assets and data, and establish the revised authority management and client roles, such that services are ready to operate seamlessly following expiry.

The planning and activities are similar to those for a non-PFI contract expiry but, once again, there will be special features of a PFI contract that need to be considered:

- PFI contracts typically do not provide clear obligations and requirements, nor guidance on how transition should be supported.
- PFI contract arrangements are relatively complex, and the contract is held by a PFI Co that will effectively dissolve after PFI contract expiry, so follow-on contractors require greater comfort from transition support arrangements than they would for non-PFI contracts.
- The PFI Co is unlikely to be providing services directly, so it is the service providers to the PFI Co, with whom the authority has only indirect contractual relationships, that are key to this process.

Is a formal transition process needed? For PFI contracts where the service element is limited to property services (hard FM) and the authority has wider property management experience, a 'big bang' cutover approach that transfers service responsibility from the outgoing PFI Co to a follow-on contractor on a given date may be appropriate. However, even in such circumstances, considerable work is likely to be needed in advance of the expiry date to mitigate risks to service continuity (for example, new staff familiarisation and training, checking the validity of data transfer, ensuring the interoperability of the FM systems of the new contractor with existing building management, authority and end-user systems).

For projects that involve the replacement of complex or extensive operational services, an extended period of transition, even dual running, may be required. It may also be appropriate to agree formal support by the existing contractors for a period after PFI contract expiry.

Parties and timing: Whether extensive or limited, the transition arrangements will need to be formalised and agreed between the authority, the PFI Co, the existing service providers and the incoming service contractors. The outline of these arrangements will need to be detailed in procurement documents, so will need to be agreed in principle potentially two or more years in advance of the expiry date. The final transition support agreement between the new contractors and the existing PFI contract service providers and the authority should ideally be in place no later than six months before the date of PFI contract expiry.

Key actions

- Work with the relevant outgoing PFI service providers to agree what is required of them and the support they will offer.
- Consider the risk allocation that will apply (particularly if service providers are working alongside each other during transition), being mindful of the overall risk allocation within the PFI contract, which cannot easily be amended.
- Consider how expiry and transition should be reflected in the new contractor requirements (for example, transition related costs might be included in the new arrangements).
- Consider conducting readiness reviews or process walkthroughs across all transition workstreams at an appropriate point before the cutover day, addressing any resulting gaps.
- Communicate to staff, users and wider stakeholders about forthcoming changes to processes, service specifications and risk management. Incoming contractors will have an important role to play in communications – supporting this could be part of their scope of work.

Key outputs

- Transition support agreement reached with outgoing PFI service providers, containing scope of work and any payment provisions.
- Detailed joint transition plan agreed with the PFI Co and outgoing and incoming service providers no later than six months prior to PFI contract expiry, including:
  - Detailed steps for the transition of staff, assets and data, as well as testing of the authority's own operating readiness.
  - Communications.
  - Timeline, phases and readiness milestones.
  - Testing (for example dry runs, walkthroughs).
- Fully mapped 'day of expiry' handback and transfer processes, including completion sign-off processes.

4.6 *Future services*

4.6.4 What good looks like

- The authority's vision for future services delivery, and its strategy (or strategic options) for the future of the assets and services that comprise the PFI contract, are understood from the outset of the PFI contract expiry and transition process.
- You have ensured through your project management and governance arrangements that there is alignment between the processes of PFI contract expiry and the processes for implementing future services.
- You have ensured that a detailed and realistic timeline and programme for future services implementation is integrated into the overall PFI expiry plan and schedule.
- You have identified the data required from the PFI contract to support the design and implementation of the future services provision.
- You have the detailed contract knowledge, constructive relationships and understanding of your applicable commercial levers, which allows you to engage early and effectively with the PFI Co and its service providers on accessing the data you need.
- You have ensured that specialist advisers have been brought in to assess PFI-specific aspects of critical matters such as TUPE.
- You have mitigated the risks of service disruption on PFI contract expiry through detailed transition planning with the outgoing and incoming service providers, including appropriate formal transition support arrangements.

4.6.5 Sequencing of events

Future services

Phase		Action
Phase 1	**Building a good base for expiry** (7+ years)	■ Ensure through active contract management a good base understanding of how the PFI contract services are delivered. ■ Remain aware of the evolving external marketplace for services and evolving technical standards.
Phase 2	**Expiry initiation** (7–5 years)	■ Establish a **Future Services Strategy** to which the PFI contract expiry and transition process can be aligned. ■ Achieve clarity on the requirements for PFI contract assets and services following expiry. ■ **Identify data that you hold/don't hold** required to enable future services arrangements. ■ **Agree authority/ PFI Co approach to data provision** during expiry. ■ Future service **timeline and programme integrated with expiry plan.**
Phase 3	**Expiry planning and decision-making, enabling handback** (5–3 years)	■ **Populate the data room** by gathering data from the PFI Co to support the definition of the future services and to support related business case and procurement processes.
Phase 4	**Delivering: Handback and take forward** (3–0 years)	■ Undertake the required **procurement** in alignment with asset handback. ■ Support transition with a detailed **Transition Plan** with agreed **Transition Support by the PFI Co/Service Provider.** ■ **Fully map out the 'expiry day'.**
Phase 5	**Post-transition and close** (0+ years)	Bedding in of new services with existing contractor transition support as appropriate.

4.6 Future services

4.6.6 Recapon future services

Key messages recap

Key lessons from project teams that are procuring follow-on services are:

Why it matters

- To ensure continuity of authority services, the processes of PFI contract expiry and future services implementation must be fully aligned.
- The nature of PFI contracts means that extracting information to support the definition and implementation of follow-on services can be a significant challenge.

Recommended actions include

- Early formulation of the authority's vision and strategy for future services to give direction to the PFI contract expiry and transition process.
- Early engagement with the PFI Co and its service providers to agree a process for obtaining the data needed for future service implementation.
- Production of a timeline and programme that integrates and aligns the activities required to exit the PFI contract with the implementation of future services provision.
- Creation of a single data room to support PFI contract expiry and future services delivery, providing clarity as to data and due diligence on existing PFI services.
- Development of a detailed transition plan, agreed with existing service providers and incoming contractors, with negotiation of formal transition support agreements if appropriate.

Successful preparation for future services involves

- Starting early – this takes more time and planning than you might expect.
- Having the detailed contract awareness and constructive relationships to be able to work proactively with the PFI Co and its service providers on data gathering.
- Being clear on the information you need, and why and when you need it.
- Considering the unseen aspects of the PFI service: management, risk mitigation, back office – all will have to be replicated.
- Ensuring new contract arrangements are agreed early enough to allow for detailed transition planning to minimise risks to authority service continuity.

Part C

Reference section

This section provides a quick reference summary of key messages within this guidance including:

- Overall approach to expiry
- Recommended outputs and actions
- Summary recaps on implementation
- What good looks like
- Indicative phasing of activities

Reference summary

5.1 Approach to expiry

Core expiry objectives

Ensure that the PFI Co meets its contractual obligations for contract exit and transition, so that full value for money is obtained for the residual period of the contract.

Ensure that the expiry and transition process fully supports the authority's plans for assets and services following PFI contract expiry, so that the required services continue to be delivered.

Timing

Expiry and transition planning should commence at least seven years before the expiry date.

Senior leadership and governance

Strategic leadership with a vision for future services will drive success.

A senior responsible officer (SRO) should be appointed.

Governance, clear decision-making routes, senior relationship management and escalation paths must all be in place.

Manage expiry as a project

Manage and structure as a long-term project not an event.

Organise around three core activities of:

- Operational BAU.
- Expiry and transition.
- Future services delivery.

Ensure you have budgets for and committed access to specialist resources (for example, technical, property, commercial, financial and legal) required to implement contract expiry.

Core elements

Contract management business as usual

↕

PFI expiry and transition

↕

Future services delivery

Generic expiry timeline

7+ years — Building a good base for expiry:

- Know and manage your contract.
- Understand your asset base, its condition and forward maintenance plans.
- Understand the exit provisions and requirements.

7-5 years — Expiry initiation:

- Establish and resource your expiry workstream activities.
- Engage with the PFI Co to initiate joint expiry planning.
- Develop your future services strategy.
- Initiate an early asset condition survey.

5-3 years — Expiry planning and decision-making:

- Develop and implement detailed plans and strategies.
- Agree processes and contract interpretations with the PFI Co.
- Ensure full integration with future procurement plans.

3-0 years — Delivering:

- Deliver final asset survey, final remediation and handback.
- Review and transfer data, TUPE and systems.
- Run future service procurement.
- Conduct transition planning and mobilisation.

0+ years — Post-transition and close:

- Complete all handback certification.
- Finalise accounts and close out residual PFI contract issues.
- Bed in new services.

Key considerations in PFI expiry

Value for money

- Do I understand the contract, service specifications, assets and costs of the PFI?
- Am I managing the contract effectively and holding the PFI Co to account?
- What are the key risks around expiry?
- How do I assess what should be handed back and in what condition?
- Are the contractual arrangements for expiry and transition adequate and practical?

Life after the PFI contract

- What is the vision for future services provision and how does that differ from those provided under the PFI contract?
- How do I manage the process of change?
- What information do I need and how do I secure the transfer of that knowledge?
- What assets, people and systems will I need?
- How do I build the right relationships to support this process?
- Do I have the required decision-making and approvals processes?

5.2 Essential building blocks – recommended outputs and actions

Section	Recommended outputs	Description	Reference
Contract awareness and management	Document register	A listing of the PFI contract documentation held.	4.2.3.1 Know your contract – Document stocktake
	Contract review	A clause-by-clause legal review of the project agreement to assess all the expiry-related terms and conditions in the contract.	4.2.3.1 Know your contract – Contract review
	Expiry gaps list	A summary of the information and documentation gaps, ambiguities and/or lack of definition in the PFI contract identified through the contract review or wider operational management experience.	4.2.3.2 Assess contract risks and gaps
	Expiry risk register	A risk register setting out the risks and mitigations for the expiry process.	4.2.3.2 Assess contract risks and gaps
	Expiry plan and schedule	The overarching master plan and workstream activities for managing the expiry process. This master plan will be informed and enabled by key sub-plans including the expiry summary, the commercial strategy and the future services strategy.	4.2.3.3 Expiry planning
	Expiry summary	A high-level plain language summary document drawing on the contract review, gaps list, risk register, plan and schedule, which can be used to brief stakeholders.	4.2.3.3 Expiry planning – Expiry summary
	Refreshed contract management process	An updated operational contract management process to support expiry.	4.2.3.4 Managing the contract towards expiry
Relationship management	Project organogram	A structure diagram showing the relevant parties involved in the PFI contract and their roles.	4.3.3.1 Relationship analysis – Stakeholder analysis
	Relationship map	A wider stakeholder mapping exercise that covers internal and external stakeholders involved in the expiry process, identifying which party has responsibility for what and the connections between them.	4.3.3.1 Relationship analysis – Stakeholder analysis
	Relationship stocktake	An assessment of the relationship with each stakeholder and how this may be impacted by expiry.	4.3.3.1 Relationship analysis – Relationship stocktake
	PFI relationship management plan	An internally agreed approach to the structured management of PFI relationships that aligns with the commercial strategy for expiry and transition.	4.3.3.2 Relationship approach – Refreshed relationship plan
	Joint relationship management plan	An agreement with the PFI Co setting out the approach to relationship management during the expiry phase. The scope of this plan may be minimal (for example, agreed meeting structures) or more comprehensive depending upon the scale of the challenge and the type of relationship that the parties are able to agree.	4.3.3.3 Relationship engagement

5.2 Essential building blocks – Recommended outputs and actions

Section	Recommended outputs	Description	Reference
Assets	Schedule of contract asset deliverables and condition requirements	A schedule developed from the contract review to outline the provisions in the contract relating to assets at expiry.	4.4.3.1 Understand asset terms
	Agreed standards and scope of surveys	An agreement between the authority and the PFI Co on the standards and scope for condition surveys.	4.4.3.2 Baseline asset data – Early condition survey
	Early condition survey	An asset condition survey which is conducted earlier than the final condition survey. This guidance recommends that an early condition survey be undertaken around five years before expiry.	4.4.3.2 Baseline asset data – Early condition survey
	Five-year plan to achieve handback standards	An agreed plan of maintenance and lifecycle works with the PFI Co following the findings of the early condition survey.	4.4.3.2 Baseline asset data – Early condition survey
	Final condition survey	An asset condition survey, usually required under the PFI contract as part of the handover process, typically 18 months before expiry.	4.4.3.3 Asset verification – Final condition survey
	Remedial handback works	Works to be undertaken by the PFI Co to meet the handback criteria following the findings of the final condition survey.	4.4.3.3 Asset verification – Achieving handback compliance
	Handback certification	A process undertaken at expiry to certify that handback criteria have been met, for example, that any remedial works identified in the final condition survey have been completed and the handover of all required asset information and documentation and systems has occurred.	4.4.3.3 Asset verification – Achieving handback compliance
	Future maintenance plan	A plan for maintenance activity following expiry, particularly where there is a statutory requirement.	4.4.3.4 Asset and data transition – Continuation of maintenance activities
	Forward lifecycle model and five-year plan	A look-forward assessment of the lifecycle works, budget and programme that will be the responsibility of the authority (or its new contractors) following the PFI expiry.	4.4.3.4 Asset and data transition – Continuation of maintenance activities
	Input to transition plan to support handover of assets, systems and data	A plan for the transition and handover of assets, systems and data to the incoming provider.	4.4.3.4 Asset and data transition

5.2 Essential building blocks – Recommended outputs and actions

Section	Recommended outputs	Description	Reference
Commercial approach	Assessment of commercial baseline	An initial assessment of the authority's commercial position for expiry based on expiry objectives, the contract review, relationship plan, and future services strategy.	4.5.3.1 Baseline analysis
	Identification of commercial levers	The contractual and commercial negotiating levers that are available to the authority in the expiry process.	4.5.3.1 Baseline analysis – Commercial levers
	Risk assessment	The ongoing application of best practice risk assessment and management, including live management of the expiry risk register.	4.5.3.1 Baseline analysis – Expiry risk register
	Commercial strategy	A document that sets out for authority stakeholders the commercial approach to expiry, summarising aspects such as commercial objectives, decisions, proposals for addressing any gaps or lack of clarity in the contract, the principal expiry risks for the authority, the levers available to the authority in negotiations, and alternate routes to resolve issues that cannot be concluded through timely negotiation.	4.5.3.2 Commercial strategy
Future services	Future services strategy	The authority's strategy for the procurement and delivery of future service arrangements, which is informed and enabled by the PFI contract expiry process.	4.6.3.1 Strategic options for future services
	Identification of information held/not held	Early identification of the information held or not held by the authority that is required for the implementation of future services arrangements.	4.6.3.2 Data and services design
	Agreed approach to data provision	An agreement with the PFI Co as to the provision and timing of information transfer required to support future services provision.	4.6.3.2 Data and services design
	Aligned plans	Actions to ensure that timelines and actions in connection with expiry and future services are aligned and integrated.	4.6.3.3 Implementation phase
	Data room	Actions to ensure that the data room supporting procurement and transfer of services is populated on a full and timely basis with information from the PFI.	4.6.3.3 Implementation phase
	Procurement support	Actions to ensure that operational contract management and expiry processes support procurement processes for future services.	4.6.3.3 Implementation phase
	Transition plan	A plan for the transfer of people, assets and data in such a way that services are ready to operate seamlessly following expiry.	4.6.3.4 Transition
	Transition support	Committed support for the transition process by the PFI Co or service providers.	4.6.3.4 Transition
	Fully-mapped expiry day	A detailed plan for the expiry day.	4.6.3.4 Transition

5.3 Essential recap by topic

Contract awareness and management	Relationship management
Why it matters ■ Good contract awareness is the starting point for all PFI contract expiry and transition activity. ■ Good PFI contract expiry management is always founded on good underlying operational contract management. ■ The start time for good contract awareness and management is always now! **Recommended actions include** ■ Know your contract. What does it say? Undertake a legal review of the contract's expiry terms (contract review). ■ Assess risks and gaps. What are the gaps in the contract and what are the risks of this? How will this impact handover? Produce an expiry gaps list and input into the expiry risk register (see Commercial approach section). ■ Expiry planning. What are the key processes, milestones and steps, based on the contract, and how do these feed into expiry planning? Produce an expiry summary to help explain the expiry process to all stakeholders. **Successful contract awareness for expiry requires you to:** ■ Hold the complete project documents, updated for variations and other contractual changes, such as refinancing. ■ Have a detailed understanding of the contractual terms, actions and processes relating to expiry that you can communicate to others. ■ Understand your rights and obligations under the contract and how these impact the expiry process. ■ Recognise where there are information gaps, contractual ambiguities or a lack of definitions that will need to be managed. ■ Understand if there are any unresolved commercial issues that will need to be addressed before expiry. **Successful contract management for expiry requires you to:** ■ Set up processes to systematically gather, assess and track contract information. ■ Review and challenge the information you get, especially information that the PFI Co self-reports. ■ Understand how the asset base is being managed. ■ Understand the performance of the contract from the perspective of the PFI Co, its investors and its service providers. ■ Address the risks that will transfer on expiry, such as statutory compliance, as early as possible. ■ Focus on ensuring the availability and transfer of information necessary to support the operation of assets and services post PFI contract expiry.	**Why it matters** ■ The move from steady-state operations to the expiry phase requires existing relationship management plans to be refreshed or expanded to address the increased criticality and complexity. **Recommended actions include** ■ Undertake a full baseline stakeholder review and relationship stocktake. ■ Create a refreshed PFI relationship management plan, including appropriate governance and escalation procedures. ■ Engage constructively with the PFI Co to achieve expiry objectives, developing a joint relationship management plan where appropriate. **Successful relationship management requires** ■ Early discussion at the right level. ■ Setting clear expectations and requirements for the expiry process. ■ Targeting a constructive and collaborative relationship approach to expiry and transition, backed by a knowledge of the PFI contract and the commercial levers available to you. ■ Identifying and addressing issues and ambiguities early, combined with an effective approach to resolving disagreements. ■ Keeping all relationship plans under regular review.

5.3 Essential recap by topic

Assets	Commercial approach	Enabling future services
Why it matters ▪ The assets are required to support future services provision. ▪ The authority has already paid for the assets to meet the handback criteria. If they don't meet those criteria, you will likely have to pay again. ▪ Asset data is required to manage and operate the assets after expiry. **Recommended actions include** ▪ Reviewing the criteria for asset condition and asset data at handback. ▪ Understanding the assets and data available. ▪ Undertaking early condition surveys and ensuring replacement works are scheduled. ▪ Agreeing the final condition survey and independently certifying the completion of all required remedial works. ▪ Auditing asset data quality and testing the data transfer process. ▪ Creating forward plans for maintenance and lifecycle requirements after handback. **Successful asset handback involves** ▪ Understanding what you need from the assets after expiry. ▪ Understanding the contract terms relating to asset condition and data. ▪ Close links with your commercial strategy (see Commercial approach section) and PFI relationship management plans (see Relationship management section). ▪ Engaging early with the PFI Co at the right level to establish a process to manage asset condition to expiry that can de-risk handback for all parties. ▪ Bringing the right technical expertise to bear. ▪ Allowing sufficient time for remedial works and any associated commercial negotiations.	**Why it matters** ▪ Considerable commercial negotiation will be required in the expiry phase. ▪ It is essential that the authority has clarity as to its own objectives and the negotiating levers it can use to achieve these. **Recommended actions include** ▪ Identifying the commercial levers available to support the achievement of the authority's objectives in contract exit and transition to future services. ▪ Drawing together a commercial strategy that summarises the commercial basis for engaging with the PFI Co. ▪ Establishing an expiry risk register that is regularly reviewed and updated. **Successful commercial process involves** ▪ Clarity of vision within the authority as to its objectives for the assets and services following PFI expiry. ▪ Having an in-depth understanding of the PFI contract and the areas of likely commercial contention. ▪ Having a common understanding across the expiry team as to the commercial strategy. ▪ Early, informed discussions on expiry with the PFI Co to flush out and help resolve specific issues of contention. ▪ Ensuring that the documentation and interpretation of standards that the parties are working from represent a 'single source of truth'. ▪ Using public sector networking to share best practice and lessons learned across projects.	**Why it matters** ▪ To ensure continuity of authority services, the processes of PFI contract expiry and future services implementation must be fully aligned. ▪ The nature of PFI contracts means that extracting information to support the definition and implementation of follow-on services can be a significant challenge. **Recommended actions include** ▪ Early formulation of the authority's vision and strategy for future services to give direction to the PFI contract expiry and transition process. ▪ Early engagement with the PFI Co and its service providers to agree a process for obtaining the data needed for future service implementation. ▪ Production of a timeline and programme that integrates and aligns the activities required to exit the PFI contract with the implementation of future services provision. ▪ Creation of a single data room to support PFI contract expiry and future service delivery, providing clarity as to data and due diligence on existing PFI services. ▪ Development of a detailed transition plan, agreed with existing service providers and incoming contractors, with negotiation of formal transition support agreements if appropriate. **Successful preparation for future services involves** ▪ Starting early – this takes more time and planning than you might expect. ▪ Having the detailed contract awareness and constructive relationships to be able to work proactively with the PFI Co and its service providers on data gathering. ▪ Being clear on the information you need, and why and when you need it. ▪ Considering the unseen aspects of the PFI service: management, risk mitigation, back office – all will have to be replicated. ▪ Ensuring new contract arrangements are agreed early enough to allow for detailed transition planning to minimise risks to authority service continuity.

5.4 What good looks like – key success factors

Contract awareness and management	Relationship management
You have a detailed understanding of the PFI contract, particularly the provisions relating to contract expiry: ■ You can reference the contractual position on information and processes relating to expiry, having undertaken a detailed, bespoke legal/commercial contract review. ■ You can communicate to senior leaders and the expiry team the PFI contract expiry and transition process, key decision points and deadlines for your project through a high-level expiry plan and schedule. ■ You have oversight of the contract-based information available to the authority, captured in a document register. ■ You have assessed the adequacy of the contractual information rights and processes relating to the practical requirements of handover, future asset management and future services re-provision. ■ You have used this assessment to feed into an expiry risk register (see Commercial approach section) that is regularly reviewed and updated. ■ You have identified specific information gaps and process requirements and captured these in an expiry gaps list that is regularly reviewed and actioned. **You are actively managing the contract with a view to expiry:** ■ You are proactively utilising your contractual rights to information. ■ You are reviewing and challenging the completeness and accuracy of the data you receive. ■ You are utilising the available contractual levers, such as the payment and performance mechanism, to incentivise the right behaviours in the run-up to expiry. ■ You have processes in place to track asset maintenance and renewals metrics and compare these to the baseline of the project financial model. ■ You are actively monitoring and enforcing statutory compliance. ■ You understand and are tracking the financial performance of the project through reviewing project reports and statutory accounts. ■ You are actively assessing the adequacy of information and management data available under the contract in the context of supporting the future operation of assets and services post PFI contract expiry.	■ You know the identity and roles of all relevant parties, including the PFI Co, its investors, its lenders and its sub-contractors (the service providers). ■ You understand their interests, concerns and objectives and how these align with or differ from those of the authority. ■ You have assessed the quality of existing relationships and what needs to be managed or changed to facilitate a successful expiry and transition from the PFI contract. ■ You have captured this understanding in a forward-looking PFI relationship management plan, which serves as a practical route map for engaging with the PFI parties up until expiry. ■ Your PFI relationship management plan aligns with and supports the commercial strategy (see Commercial approach section) for contract expiry and future services provision. ■ Your preparations have enabled you to start expiry and transition discussions early and to set out your expectations for how that process will be managed and the outcomes that you will achieve. ■ You are targeting a constructive and collaborative relationship approach, backed by a knowledge of the PFI contract and your available commercial levers. ■ You have sought to formalise the relationship approach with the PFI Co through an agreed joint relationship management plan. ■ You are keeping all relationship management plans under regular review.

5.4 What good looks like – Key success factors

Assets	Commercial approach	Enabling future services
■ You understand the contract handback criteria and provision for surveys. You have assessed these for sufficiency and ambiguity and have engaged with the PFI Co to agree how these will be interpreted. ■ You have gathered and reviewed all asset data to inform your understanding of the assets at the start of the expiry process. ■ You have reviewed the asset handback criteria against your future needs and negotiated with the PFI Co any changes to the handback criteria and/or works programme. ■ Early condition surveys have been undertaken and any replacement or remedial works agreed with PFI Co. Implementation of these works to the required standard has been independently certified. ■ The final condition survey is completed on time. Replacement and remedial works and any retentions are agreed between parties. The works are subject to independent certification. ■ Asset data has been verified and a tested data transfer process agreed prior to transition. ■ There is agreement of the transfer of moveable equipment and spares, and strategies to mitigate risks around future availability and obsolescence have been implemented ■ In advance of PFI expiry, you have developed your own future maintenance plan and a forward five-year lifecycle plan and model.	■ You have a comprehensive understanding of the commercial issues to be addressed in the expiry and transition process because: – You understand the strategic vision of the authority and the future options for the assets and services covered by the PFI contract. – You have captured the key project expiry risks and mitigation actions in an expiry risk register that is regularly reviewed and updated. – You understand the commercial and financial position of your private sector counterparties. – You have identified the areas of potential dispute and have a process to address these. – You have assessed the commercial levers available to you. ■ The key commercial aspects of the PFI contract expiry and transition process are understood within your expiry project team, senior management and other authority stakeholders because you have documented a commercial strategy that sets out: – The objectives of the expiry and transition process. – The significant underlying risks and issues. – The key decisions to be made. – The levers and required actions to achieve the desired expiry outcomes. ■ You are able to engage with the PFI Co and other PFI parties early and effectively based on your understanding of the contract, wider commercial context of the project and your commercial strategy.	■ The authority's vision for future services delivery, and its strategy (or strategic options) for the future of the assets and services that comprise the PFI contract, are understood from the outset of the PFI contract expiry and transition process. ■ You have ensured through your project management and governance arrangements that there is alignment between the processes of PFI contract expiry and the processes for implementing future services. ■ You have ensured that a detailed and realistic timeline and programme for future services implementation is integrated into the overall PFI expiry plan and schedule. ■ You have identified the data required from the PFI contract to support the design and implementation of the future services provision. ■ You have the detailed contract knowledge, constructive relationships and understanding of your applicable commercial levers, which allows you to engage early and effectively with the PFI Co and its service providers on accessing the data you need. ■ You have ensured that specialist advisers have been brought in to assess PFI-specific aspects of critical matters such as TUPE. ■ You have mitigated the risks of service disruption on PFI contract expiry through detailed transition planning with the outgoing and incoming service providers, including appropriate formal transition support arrangements.

5.5 Indicative phasing of activities

	Phase 1: Building a good base for expiry (7+ years)	**Phase 2:** Expiry initiation (7–5 years)	**Phase 3:** Expiry planning and decision-making, enabling handback (5–3 years) **Phase 4:** Delivering: Handback and take forward (3–0 years)	**Phase 5:** Post-transition and close (0+ years)
Contract awareness and management	■ Actively manage your contract, utilising contractual provisions. ■ Review the contract to understand terms, rights and obligations. ■ Ensure access to data and reports that are contractually required. ■ Address any quality issues.	■ Plan expiry project and resources. ■ Gather all PFI contract documentation and create a **Document Register.** ■ Undertake a legal review of the expiry related provisions in the contract and summarise it in a **Contract Review.** ■ Develop an **Expiry Gaps List** in expiry contract terms and input in the **Expiry Risk Register.** ■ Summarise actions and milestones in an **Expiry Summary**. Agree these with the PFI Co. ■ Refresh contract management processes to support expiry.	■ Continue to actively monitor the contract. ■ Refresh Expiry Plan and Schedule, Summary, Gaps List and Risk Register as issues emerge and knowledge increases. ■ Refreshed operational contract management processes to remain in line with developing expiry plans. ■ Plan and operate exit and handback processes per contract.	■ Manage any "surviving clause" rights and obligations. ■ Manage any retentions. ■ Close out contract finances, including payment for transition support.
Relationship management	■ Use commercial understanding to assess the various contractors' interests. ■ Identify stakeholders and check contract managers experience with them.	■ Conduct stakeholder and relationship review to develop a **Project Organogram** and **Relationship Map**, and undertake a **Relationship Stocktake.** ■ Develop a **PFI Relationship Management Plan** that aligns with the Commercial Strategy. ■ Establish an expiry communications channel with the PFI Co. ■ Reach an agreement, where possible, on expiry governance, roles and responsibilities, and information sharing protocols with PFI Co through a **Joint Relationship Management Plan.**	■ Manage relationships through commercial negotiations. ■ Review and update PFI Relationship Management Plan as the expiry process progresses.	■ Close out PFI relationship. ■ Transition to new relationships (as appropriate).

5.5 Indicative phasing of activities

	Phase 1: Building a good base for expiry (7+ years)	**Phase 2:** Expiry initiation (7-5 years)	**Phase 3:** Expiry planning and decision-making, enabling handback (5-3 years)	**Phase 4:** Delivering: Handback and take forward (3-0 years)	**Phase 5:** Post-transition and close (0+ years)
Assets	■ Understand and actively utilise contractual rights to conduct surveys, access data, and enforce lifecycle works. ■ Assess sufficiency of annual and 5-year Schedule of Programmed Maintenance/ Lifecycle Plans against contract standards. ■ Actively engage in lifecycle spending decisions (per contract).	■ Develop **schedule of contract asset deliverables and condition requirements.** ■ Gather asset based data. ■ Carry out **Early Condition Survey** in line with Commercial Strategy. ■ Agree **5-year plan of work to achieve required standards** with the PFI Co, based on findings of early condition survey, utilising commercial negotiations where appropriate.	■ Agree handback strategy with PFI Co. ■ Actively monitor lifecycle and maintenance works in line with 5-year plan of work to achieve handback condition. ■ Ensure access is available to facilitate works programme.	■ Review Final Condition Survey requirement and agree scope. ■ Determine asset data transfer requirements. ■ PFI Co completes 5-year plan of work. ■ Conduct **Final Condition Survey** and agree a **Plan of Works** to achieve required handback standards. ■ Agree **Handback Criteria Certification Scope** with PFI Co. ■ Develop **Future Forward Maintenance Plan**, **Lifecycle Model and 5-year Plan** based on current condition. ■ Input into Transition Plan (see Future Services) to support handover of assets, systems and data.	■ Certification that the handback criteria has been met. ■ Data fully transferred verified.
Commercial approach	■ Use network to understand other's expiry experience with the PFI Co investors. ■ Actively engage in lifecycle data, plan, works, and surveys to understand issues and available funding. ■ Monitor and understand potential areas of dispute. ■ Review financial model and PFI Co financial information, to understand how these can be used in managing expiry.	■ Undertake analysis to understand your **baseline commercial position** covering the future landscape, risks and opportunities, PFI Co's financial and commercial position, market factors, and potential ambiguity/disputes. ■ Build on contract understanding from Contract Review to identify all commercial levers available and plan how to use them. ■ Update **Expiry Risk Register** with commercial issues. ■ Define expiry **Commercial Strategy** and work with asset and operational contract management teams to identify issues to be addressed.	■ Continue to use commercial levers to meet objectives up until expiry. ■ Undertake commercial negotiations to agree handback condition and any other unclear terms in contract, and resolve areas of contention. ■ Use knowledge and available levers to enforce lifecycle commitments, monitor lifecycle fund, and agree 5-year programme of works as delivered. ■ Use knowledge and available levers to obtain full detail of how the service operates, incentivise co-operation on transition planning, ensure requirements are met until/on expiry. ■ Review and update Commercial Strategy as negotiations progress.		■ Close out residual commercial issues and close contract.

5.5 Indicative phasing of activities

	Phase 1: **Building a good base for expiry** (7+ years)	Phase 2: **Expiry initiation** (7-5 years)	Phase 3: **Expiry planning and decision-making, enabling handback** (5-3 years)	Phase 4: **Delivering: Handback and take forward** (3-0 years)	Phase 5: **Post-transition and close** (0+ years)
Future services	■ Ensure through active contract management a good base understanding of how the PFI contract services are delivered. ■ Remain aware of the evolving external marketplace for services and evolving technical standards.	■ Establish a **Future Services Strategy** to which the PFI contract expiry and transition process can be aligned. ■ Achieve clarity on the requirements for PFI contract assets and services following expiry. ■ **Identify data that you hold/ don't hold** required to enable future services arrangements. ■ **Agree authority/PFI Co approach to data** provision during expiry. ■ Future service **timeline and program integrated with expiry plan.**	■ **Populate the data room** by gather data from the PFI Co to support the definition of the future services and to support related business case and procurement processes.	■ Undertake the required **procurement** of services in alignment with asset handback. ■ Support transition with detailed **Transition Plan** with agreed **Transition Support by the PFI Co/ Service Provider.** ■ **Fully map out the 'expiry day'.**	■ Bed in new services with existing contractor transition support as appropriate.

Glossary

Term	Definition
Authority	Used throughout this document as the shorthand descriptor for the public sector body that is buying the services under the PFI contract and responsible for managing the contract to expiry
Operational contract management	The day-to-day operations and management of the PFI contract, which is considered business as usual
BAU	Business as usual
CAFM	Computer-aided facilities management
DBFO	Design-build-finance-operate
Defra	Department for Environment, Food and Rural Affairs
DfT	Department for Transport
DRP	Dispute resolution procedure
FF&E	Furniture, fixtures and equipment
FM	Facilities management
Future services provision	The implementation of the future services strategy through procurement and/or transition to the new operating model
GDPR	General Data Protection Regulation 2016/679
HMRC	Her Majesty's Revenue and Customs
HMRC STEPS	A PFI contract under the authority of HMRC that expired in April 2021
HTMs	Health technical memoranda
IPA	Infrastructure and Projects Authority
IPR	Intellectual property rights
MoJ	Ministry of Justice
NAO	National Audit Office
OBC	Outline business case
Partnering board	A liaison board comprising representatives from the authority and PFI Co that is a feature of many PFI contracts. Partnering Board is synonymous with joint boards or liaison committees

Term	Definition
PFI	Private finance initiative
PFI Co	The legal entity that is the formal counterparty to the PFI contract. This company is typically a single purpose company, specifically incorporated to enter into the PFI contract. Often also referred to as the Project Co, the PFI contractor, or the SPV.
PFI contract	The project agreement including all schedules, and any other supporting contracts with the contracting authority as a signatory that are fundamental to the delivery of the PFI (for example, lease agreement)
PFI estate	Land, buildings, infrastructure and other related assets included within the scope of the PFI contract
PFI parties	PFI Co, service providers, other related private sector organisations involved in the PFI and the contracting authority
PPM	Planned preventative maintenance
Project Bible	The full suite of contracts relating to the PFI project
QC	Queen's counsel
RACI	Responsible-Accountable-Consulted-Informed: a system to clarify and define roles and responsibilities in projects and processes
RFI	Request for information
Service providers	Facilities management companies working for the PFI Co on the PFI contract
SOBC	Strategic outline business case
SoPC	Standardisation of PFI contracts
Sponsoring departments	Central government departments that own the PFI contract or provide PFI grants for local authority-managed PFI contracts
SRO	Senior Responsible Owner, The SRO is accountable for a programme or project meeting its objectives, delivering the required outcomes and realising the required benefits. This position will be held by an individual holds a leadership position within the contracting organisation and is able to champion the project
SPV	Special purpose vehicle (special purpose company)
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006
Unitary Charge	The fee the public sector pays for the services it receives under the PFI contract
WIDP	Waste Infrastructure Delivery Programme

Infrastructure
and Projects
Authority

Contact IPA

www.gov.uk/IPA
IPA@ipa.gov.uk
@ipagov

Cabinet Office
Correspondence team
70 Whitehall
London
SW1A 2AS

publiccorrespondence@cabinetoffice.gov.uk

General enquiries: 020 7276 1234

HM Treasury
Correspondence team
1 Horse Guards Road
London
SW1A 2HQ

public.enquiries@hmtreasury.gsi.gov.uk

General enquiries: 020 7270 5000

Produced by the Infrastructure and Projects Authority

Alternative format versions of this report are available on request from ipa@ipa.gov.uk