



Oifig um Sholáthar Rialtais  
Office of Government Procurement

## Information Note

# Brexit and Public Procurement

Update – October 2019



Rialtas na hÉireann  
Government of Ireland

## National Public Procurement Policy Framework

Public procurement is governed by EU and national rules. The National Public Procurement Policy Framework sets out the overarching policy framework for public procurement in Ireland and comprises five strands.

1. Legislation (Directives, Regulations)
2. Government Policy (Circulars etc.)
3. Capital Works Management Framework for Public Works
4. General Procurement Guidelines for Goods and Services
5. More detailed technical guidelines, template documentation and information notes as issued periodically by the Policy Unit of the Office of Government Procurement

The framework sets out the procurement procedures to be followed by Government Departments and State Bodies under national and EU rules. The framework supports contracting authorities, including the Office of Government Procurement, the four key sectors (Health, Education, Local Government and Defence), individual Departments, Offices, commercial and non-commercial State bodies, and private entities which are subsidised 50% or more by a public body, when awarding contracts for works, goods and services. It supports and enables public bodies to adopt procedures to meet their public procurement obligations and facilitates compliance with EU and national procurement rules.

This information note is dynamic in nature and will be subject to amendment and review periodically. Therefore, the Office of Government Procurement would encourage officials to check our website [www.ogp.gov.ie](http://www.ogp.gov.ie) for the most up-to-date version.

It should be noted that this information note is not intended as legal advice or a legal interpretation of Irish or EU law on public procurement.

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## 1. Brexit Negotiations

On 29 March 2017, the United Kingdom notified the European Council of its intention to leave the European Union, in accordance with Article 50 of the Treaty on European Union. This triggered the start of a two year negotiation, also known as the Article 50 process. The objective of the negotiations is to agree the terms of the UK's departure from the EU in an orderly manner.

A draft Withdrawal Agreement was finalised and endorsed by the European Council on 25 November 2018. The Withdrawal Agreement sets out agreement on the withdrawal issues in a legally binding manner. In parallel, discussions on the framework for the future EU-UK relationship resulted in a Political Declaration on these issues also being endorsed by the European Council on 25 November 2018.

The EU and the UK agreed an extension to 31 October 2019, so that the political process in the UK can continue, with the aim of ensuring an orderly withdrawal of the UK from the EU.

## 2. Getting Ireland Brexit Ready

Brexit, in whatever form it takes, will have a significant impact on Ireland, and requires planning by Government, business and citizens, as well as at the EU level.

Government Departments and key Agencies have been preparing for Brexit for three years now – and will continue to do so, through extensive contingency planning and stakeholder engagement.

On 12 June, the European Commission issued its fifth Contingency Communication which updates and reinforces the necessary no deal Brexit preparedness measures at EU level.

In July, the Government published an updated Contingency Action Plan, outlining the work that has taken place since the publication of the December Action Plan, and further actions to be taken before the end of October.

## 3. The Withdrawal Agreement

The Withdrawal Agreement provides for a transition period during which the EU will treat the UK as if it were a Member State, with the exception of participation in the EU institutions and governance structures. This is hugely important in giving certainty to citizens and businesses. The whole of the EU acquis will apply to the UK during the transition, which means that the status quo will be preserved with the aim of avoiding any gaps or cliff edge effects between the UK leaving the EU and when a future relationship agreement enters into force.

## 4. Brexit and Public Procurement

In terms of public procurement, the Withdrawal Agreement deals with ongoing public procurement during the proposed transition period. The Agreement effectively provides legal certainty on public procurement procedures that are pending before the end of the transition period. These should be completed in accordance with EU law, hence under the same procedural and substantive rules as the ones under which they were launched.

Should there be a 'no deal' Brexit, the EU Treaties will cease to apply to the UK on 31 October 2019 and consequently all guarantees associated with the EU procurement law will

cease to apply to economic operators interested or participating in public procurement procedures in the UK.

## 5. Risks in relation to public procurement

In common with other sectors, the primary risks that will emerge will be through the application of WTO tariffs and regulatory divergence (non-tariff barriers). These could affect supply chains and imports from the UK resulting in increased costs, administrative burden, delays and availability of some goods and services.

Key risks arising:

- Integration of UK and Irish market

Distribution networks across the UK and Ireland are highly integrated. This is most evident in the retail sector where distribution hubs serving the UK and Ireland are located in the UK. However, it is not exclusive to supermarkets and consumer goods and applies to other areas also including construction materials, pharmaceuticals and chemicals. In a no deal scenario, goods originating from a third country will have to undergo clearance with regards to standards and regulations, customs and excise necessitating changes to these distribution networks.

- Regulatory divergence

The EU has established regulations, standards, certifications and accreditations. Even the most benign Brexit will result in significant changes. In the event of a no deal Brexit, certificates, licences, standards etc. issued by UK bodies may no longer be valid in the EU.

- UK manufactured goods

Certain goods will still have to be imported from the UK and could be subject to a range of WTO tariffs on such products. This will impact on value for money and, over time, these materials may have to be sourced elsewhere. In a no-deal scenario, delays at the point of entry and the increased administrative burden associated with customs, etc. – the so-called non-tariff barriers – may force suppliers to source alternatives.

- Exchange rate volatility

In the short term, there is likely to be volatility in the exchange rate between the Euro and Sterling. This will lead to significant uncertainty from the point of view of UK businesses undertaking contracts in the EU and EU businesses undertaking contracts in the UK.

- Transport – UK Landbridge

Supplies coming from within the EU into Ireland via the UK Landbridge. Customs clearance (in the early stages) may be extremely disruptive and bring added cost, long delays and have serious implications for perishables and medical supplies particularly.

- Security of the supply chain

Disruption of supplies which has implications for delivery of services.

## 6. Legal Framework

The public procurement framework is set out in a number of instruments. According to the Treaty on the Functioning of the European Union (TFEU), public procurement in the EU is subject to the basic principles of transparency, equal treatment and non-discrimination. The public procurement directives<sup>1</sup> set out minimum harmonised public procurement rules. These rules govern the way public authorities and certain public utility operators purchase goods, works and services. These rules are transposed into national legislation and apply to tenders whose monetary value exceeds a certain amount. The procedural rules apply to each individual procurement regardless of the origin of a bidder.

In the international context, the treaties concluded by the EU define who has secured access to the EU procurement market. The main relevant treaty is the Agreement on Government Procurement (GPA) which opens up the EU procurement market to the other parties to the agreement. In addition, several of the EU's FTAs contain chapters on procurement. **A trade agreement with the UK has yet to be negotiated.**

Sector and project specific rules and agreements

- Inter-governmental agreements

International agreements with third countries may contain specific procurement rules provided that they comply with the Treaty principles of transparency, equal treatment and non-discrimination.

- Utilities sector

Public buyers operating in the water, energy, transport and postal services sectors may reject tenders for supply contracts, if the proportion of the products originating in a third country exceeds 50 % of the total value of the products constituting the tender.

- Defence and security

Purchases of goods and services in the defence and security sectors are often of a sensitive nature. Specific requirements for such purchases are laid down in Directive 2009/81/EC<sup>2</sup> in the context of Member States' need to ensure security of supply as well as the protection of classified information.

For purchases made under the defence and security procurement directive, it is up to each Member State to define in its national rules whether or not their public buyers may allow economic operators from third countries<sup>3</sup> to participate in tender

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<sup>1</sup> <https://ogp.gov.ie/publications/page/7/>

<sup>2</sup> OJ No. 216 of 20.8.2009, p. 76.

<sup>3</sup> Member States should take that decision on grounds of value for money, recognising the need for globally competitive European Defence Technological and Industrial Base, the importance of open and fair markets and the goal to obtain mutual benefits. That decision could also be selective, i.e. allowing only economic operators from all or some GPA countries, but not from other third countries (non-EEA countries which are not members of GPA and with which the EU has no bilateral agreements on opening of public procurement markets).

procedures<sup>4</sup>. If public buyers decide not to allow economic operators or goods from third countries, they may already indicate such a general restriction in the contract notice and the tender documents. Alternatively, they may opt to reject these offers individually in the award decision. In the latter case, public buyers should indicate in the tender documents that they reserve the right to reject offers on defence and security grounds.

## 7. European Commission Advice

In January 2018, the European Commission issued a stakeholders notice<sup>5</sup> on the withdrawal of the UK and EU rules in the field of public procurement. This stated that as of the withdrawal date the EU rules in the field of public procurement no longer apply to the UK. This has consequence for public procurement procedures launched by EU Member States as of the withdrawal date as the UK will become a third country. They will then have the same status as all other economic operators based in a third country with which the EU does not have any agreement providing for the opening of the EU procurement market. They shall therefore be subject to the same rules as any third country tenderer.

## 8. Participation of Third Country bidders in the EU Procurement market

Should the UK leave the EU without an agreement it will become a third country. In July, the European Commission issued guidance<sup>6</sup> as part of providing practical advice to public buyers on the participation of third country bidders in the EU procurement market. The guidance provides practical advice to public buyers in the Member States to help them identify which third country bidders have secured access to the EU procurement market. The guidance further aims to raise awareness among contracting authorities of the different instruments in the EU public procurement toolbox. These includes measures that may be taken in case of abnormally low-priced tenders, as well as measures to ensure that third country bidders respect the same quality as EU bidders in areas such as security, labour and environmental standards.

## 9. Agreement on Government Procurement (GPA)

The main international agreement related to public procurement is the World Trade Organisation's (WTO) plurilateral Agreement on Government Procurement (GPA). The GPA indicates which market access opportunities must be open to international tendering. It applies to contracts worth more than specified threshold values. Twenty parties are currently part of the GPA: the EU with regard to its 28 Member States, Armenia, Australia, Canada, Chinese Taipei, Hong Kong (China), Iceland, Israel, Japan, Liechtenstein, Montenegro, Moldova, the Netherlands with respect to Aruba, Norway, New Zealand, South Korea, Singapore, Switzerland, Ukraine, and the United States. Other WTO Members, including China, the Russian Federation, North Macedonia, the Kyrgyz Republic, and Tajikistan are negotiating accession to the GPA.

After Brexit, procurement obligations will be governed by international agreements to which the UK is party. The UK Government has taken steps in agreement with the EU to ensure the UK preserves its involvement in the GPA by securing independent membership on the same terms that currently apply. While the GPA is expected to apply, mutually opening up much of the larger public procurement opportunities in the UK and EU, it covers only some

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<sup>4</sup> Cf. second paragraph of Recital 18 of Directive 2009/81/EC.

<sup>5</sup> [https://ec.europa.eu/info/sites/info/files/file\\_import/public\\_procurement\\_en.pdf](https://ec.europa.eu/info/sites/info/files/file_import/public_procurement_en.pdf)

<sup>6</sup> [https://europa.eu/rapid/press-release\\_IP-19-4491\\_en.htm](https://europa.eu/rapid/press-release_IP-19-4491_en.htm)

of the EU access that the UK currently enjoys and vice versa. Under the GPA, many large public sector procurement opportunities must be opened up to suppliers in countries party to the Agreement. Its focus is on larger procurement opportunities above certain thresholds – covering the procurement of goods and services by government as well as other public sector bodies (coverage can vary by party, depending on the commitments made by that party under the Agreement). This procurement must be subject to open, fair and transparent conditions of competition.

The GPA provides for equal treatment of potential suppliers from countries party to the Agreement as well as setting minimum standards regarding national procurement procedures and providing for transparency of procurement related information. Parties to the agreement must have a “*domestic review mechanism*” allowing suppliers to take a challenge where they believe the GPA has been breached. Such challenges are currently brought in the High Court under the UK and Irish Regulations. At international level, parties may avail of the WTO dispute settlement mechanism, where they believe another party has violated their obligations under the Agreement.

## 10. Actions taken by the OGP

The OGP, as part of the Department of Public Expenditure and Reform, has been addressing the implications of Brexit through its governance structures, the Interim Public Sector Procurement Reform Board and the Procurement Executive, and also at stakeholder forums such as the SME Advisory Group. The OGP issued the Information Note on Brexit and Public Procurement for public sector bodies in December 2017 which it updated in December 2018, June and again now in October 2019 to take account of developments in the interim. The Chief Procurement Officer also wrote to Government Departments on 23 September advising them to identify and manage any potential risks and to put in place the necessary detailed contingency plans.

## 11. Framework Agreement Companies

The OGP has assessed the Framework Agreements (FWA) it has put in place to identify the risks associated with a no-deal Brexit. OGP has been in contact with the companies on the FWAs to assess continuity of supply in the event of a no-deal Brexit. These companies rely on both private and public sector contracts and in many cases the private sector contracts are more lucrative and have higher contractual obligations than the public sector contracts. As such, these companies are hugely motivated to keep those contracts intact by adopting Brexit-ready strategies. The main risks identified are increases in input costs arising from tariffs and increases in transport and storage costs due to alternative supply routes, as well as delays.

## 12. SMEs

The Government advises companies to avail of the wide range of supports available. For local businesses or a major multinational, there are a number of steps that should be taken to get Brexit Ready. The latest practical advice<sup>7</sup> from the Irish Government explains the different ways that the UK decision to leave the EU may impact your business. Unprecedented events are unfolding and outcomes are far from clear. What is clear, however, is that, Brexit will directly or indirectly affect most if not all transactions between

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<sup>7</sup> <https://www.gov.ie/en/publication/16638f-brexit-and-business/> and [https://www.gov.ie/en/publication/a7ba02-brexit-info/?utm\\_source=google&utm\\_medium=phdpaid&utm\\_campaign=gibr&gclid=CjwKCAiw8ZHsBRA6EiwA7hw\\_sXPW0hyQp6O8snsvKHABuA2-TOoV2OTiGYe40kGT7TbAyg2hIsjsMRoCU60QAvD\\_BwE](https://www.gov.ie/en/publication/a7ba02-brexit-info/?utm_source=google&utm_medium=phdpaid&utm_campaign=gibr&gclid=CjwKCAiw8ZHsBRA6EiwA7hw_sXPW0hyQp6O8snsvKHABuA2-TOoV2OTiGYe40kGT7TbAyg2hIsjsMRoCU60QAvD_BwE)



Irish and UK businesses or Irish businesses doing business in the UK (including Northern Ireland).

Suppliers need to consider not just events which may directly impact them, but also their supply chain. An audit of contracts, both in the pipeline and already in place, as well as a high awareness within businesses as to any contractual relationships which are already under pressure due to Brexit related events, is advisable. This should be stress tested in the context of both no-deal and negotiated Brexit outcomes. Ultimately, there is no one single solution and each contract and solution needs to be tailored for each individual business.

### 13. Office of Government Procurement Advice

The OGP has advised that public bodies examine their supplier bases to assess their exposure to the UK market. This information-gathering exercise should have identified the extent to which they are relying on this market. The potential impact on their business if there is a disruption to this market should also be considered. Public bodies should then be in a position to conduct a risk assessment and to consider and implement possible mitigation steps to ensure the continuation of services, including early engagement with suppliers where necessary.

Accordingly, the OGP advises public bodies to continue to manage their risks and to develop a clear understanding of how any change in trading arrangements will impact on the contracts that underpin them. Each public body is best placed to gauge its level of exposure to UK suppliers either directly or indirectly. While it is acknowledged that each organisation will have different supply needs, the following are some areas that should be considered when carrying out new procurement procedures and managing current contracts:

- Consult the Government's information sources for updates on Brexit including:
  - Getting Ireland Brexit Ready website<sup>8</sup> and
  - Department of Business, Enterprise and Innovation's Brexit Preparedness website<sup>9</sup>.
- Consult the OGP website for the latest information on public procurement rules. The current position is that there is no change to public procurement rules and, as such, suppliers from the UK must be treated in the same manner as all potential suppliers from the EU.
- Departments / public bodies should continue work on Brexit Preparedness and Contingency planning and prepare Action Plans to be updated regularly with ongoing progress on planning.
- In the context of being prepared for the impact of Brexit, planning is key in the development of a new public procurement procedure or renewal of a contract. Check what public procurement frameworks are in place through the five Central Purchasing Bodies (the Office of Government Procurement, Education Procurement Service, Defence, the Health Service Executive and Local Government).
- Tender and contract documents should take account of the possibility of new taxes or tariffs and whom is liable (buyer or supplier). Revenue is the main information source in this area.
  - Preparing for new Customs Arrangements - In addition to the advice about changes in customs arrangements which is offered through Bord Bia, Skillnet

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<sup>8</sup> <https://www.gov.ie/en/publication/a7ba02-brexit-info/?referrer=/brexit/>

<sup>9</sup> <https://dbei.gov.ie/en/splash/>

Ireland, InterTrade Ireland, Enterprise Ireland and the Local Enterprise Offices, information relating to Customs formalities is available at: [www.revenue.ie/brexit](http://www.revenue.ie/brexit)

- In relation to changes in Legislation and Standards - The Health and Safety Authority (HSA) provides a support service for Irish chemical companies and SMEs on meeting legislative duties and ensuring they can source chemicals and sell in the EU. The National Standards Authority of Ireland (NSAI) provides advice on how best to ensure businesses are certified to appropriate standards to access markets.
- Examine all categories and sub-categories for the following:
  - Location of suppliers and sub-suppliers;
  - Current delivery time and the transport route of the goods or supplies concerned;
  - If there is the possibility of inconsistent or delayed delivery of goods, how might this impact on your organisation's ability to deliver public services;
  - If necessary you may need to plan or develop your organisations capacity to buy in bulk (cash-flow implications) and hold stock (warehousing options should be examined) or manage supply to take account of possible delays in delivery; and
  - Examine the market to gain knowledge of alternative sources or routes of supply.

In short, public bodies should continue to analyse their suppliers to understand each supplier's relative importance, how these products arrive into Ireland, where they come from and what borders they cross. Those with existing UK contractual arrangements should continue to review their existing contracts and consider the potential impact on future contracts in light of what legal changes Brexit may bring.

## 14. Government Brexit Contingency Planning

The clear message from Government is that all public sector organisations should work intensively on Brexit Preparedness and Contingency planning. The impact of Brexit has the potential of adding substantial disruptions to supply routes through tariffs, non-tariff barriers, custom delays and the additional costs of customs procedures.

The Department of Foreign Affairs and Trade, in their role coordinating the whole of Government response to Brexit, continues to seek to deepen contingency planning and preparedness across Departments and agencies.

Further information and details regarding trading with the UK is available at [www.gov.ie/Brexit](http://www.gov.ie/Brexit).

The OGP has established a dedicated Brexit contact point. For Brexit related queries please email [Brexit@ogp.gov.ie](mailto:Brexit@ogp.gov.ie)

**Note: Please check the OGP website to ensure that this is the latest information note on this issue.**

## General Questions and Answers relating to issues that may arise in the event of the UK withdrawing from the EU without agreement (no deal).

Procurement rules are not changing as a result of Brexit. In effect, Brexit is about changing the trading relationship between the UK and the rest of the EU. In the short term this will be somewhat complicated for existing contracts and for live tender processes, but in the longer term the position will become clearer. In this regard, contracting authorities should ensure that interim arrangements are in place as necessary to ensure the continuity of public services as part of their overall Brexit contingency planning. The questions below deal with the general issues but the particular circumstances of each tender and contract have to be considered very carefully including seeking legal advice where appropriate. It should be emphasised that any interim arrangements should be for appropriate timelines and the position regularised as appropriate after the adjustment period.

### Q. Will contracts with UK suppliers remain valid?

A. In general terms yes, but fulfilling the contract may be compromised due to risks to supply chain such as costs, delays and increased administrative burden. The template RFT and contracts for goods and services should not in general terms be impacted by Brexit to the extent that Brexit would cause the validity of the contracts to be called into question.

### Q. Can I award a contract to a UK firm in the event of no deal?

A. Yes. The OGP understands that the UK is set to become a member of the WTO and GPA in their own right<sup>10</sup>. Therefore, once the UK becomes a member of the GPA, UK businesses will have an explicit right to equal treatment with EU businesses to the extent that the GPA applies to the subject of the tender.

### Q. What should Irish contracting authorities do if they are currently running a tender procedure?

A. There are a number of important considerations

- Contracting authorities should assess the market to determine whether delaying the procurement procedure would make sense particularly if the bulk of the suppliers or the goods/services are from or transiting the UK. Contracting authorities should also consider where Irish suppliers source their goods and services as this is likely to give rise to the same problems the contracting authority is trying to avoid by delaying.
- The nature of the commercial agreement – for example, if the contracting authority pays a fixed price or if it pays on a costs plus margin basis, the latter may expose the contracting authority to cost increases due to tariffs, shortage costs or delays in the supply chain.

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<sup>10</sup> [https://www.wto.org/english/news\\_e/news19\\_e/gpro\\_27feb19\\_e.htm](https://www.wto.org/english/news_e/news19_e/gpro_27feb19_e.htm)

- Liability for taxes/customs tariffs – tender documentation and contracts should make it clear where the liability for any new taxes or tariffs lies. The degree to which the contracting authority can reasonably seek a contractor to absorb some if not all of these will greatly depend on the level of competition in the market and the degree to which there are alternative sources for the same good or service.
- Data protection – in the event of no-deal Brexit, the UK is likely to be treated as a ‘third country’ and, therefore, personal data transfers to the UK will be a breach of the General Data Protection Regulation (GDPR) unless certain steps are taken<sup>11</sup>.
- Location – the contracting authority should identify as far as possible its contractor’s supply chain to determine any potential issues (for example, contractors using the UK as a landbridge to reach Ireland from continental Europe).
- Contracting authorities should ensure that delivery dates and milestones are clearly included in their contracts. Contracting authorities need to keep communicating with suppliers to understand their supply chain.
- Certifications – contracting authorities should review their contracts in relation to any references to British standards and that their contractor does not rely upon UK certifications (see NSAI<sup>12</sup> website).
- Delivery, risk and payment – contracting authorities may need to consider purchasing items in bulk or alternatively requiring the contractor to hold a certain level of stock within Ireland for the contracting authority. Contracting authorities are reminded that prompt payment rules will not change and still apply.
- Jurisdiction and governing law – contracting authorities should ensure that their contracts should be subject to Irish law and the Irish courts.

Q. Are suppliers entitled to costs associated with Brexit?

A. Suppliers may seek to recoup such additional costs arising and other additional transport or storage costs. This will depend on the contracts in place. The level of competition or access to alternative supplies will be factors to be considered on whether to hold suppliers to the price agreed. It is important to keep in mind that if a contract isn’t profitable to a supplier, they may cease supply of the good or service. Contracting authorities should examine these issues as soon as possible.

Q. In cases where a UK supplier or Irish supplier reliant on a UK supplier fails to supply the goods or services in the event of a no-deal Brexit, can the provisions in the directives to directly award a contract to another supplier to ensure continuity of supply be used?

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<sup>11</sup> <https://www.dataprotection.ie/en/news-media/latest-news/dpc-issues-important-message-personal-data-transfers-and-uk-event-no-deal>

<sup>12</sup> <https://www.nsai.ie/brexit/>

- A. Contracts generally provide for the option of termination for non-performance but the exercise of this option needs to be carefully considered. The important issue in the short term is to ensure the continued provision of public services. Contracts awarded without a competitive procedure should always be the exception and the circumstances where this may be considered are outlined in Regulation 32 of SI 284 of 2016. The reasons for making such a decision should be documented and notified annually to the Comptroller and Auditor General as stipulated under Circular 40/02<sup>13</sup>.

Q. Will the OGP Standard template documents change to take account of Brexit?

- A. The template RFT and contracts for goods and services should not in general terms be impacted by Brexit to the extent that Brexit would cause the validity of the contracts to be called into question.

The OGP constantly reviews all guidance and template documentation and will be considering any appropriate amendments to take account of Brexit.

Q. For tender opportunities that are below the monetary public procurement thresholds <sup>14</sup> (also GPA thresholds), will the ‘tenders of cross-border interest’ still apply in relation to bids from UK suppliers under the GPA rules?

- A. No – GPA rules relate to above threshold procurement processes. Indeed, that is what dictates the level of thresholds used by the EU. However, contracting authorities can still accept tenders from the UK.

Q. What new obligations arise for contracting authorities with a UK supplier, particularly in terms of tariffs and customs clearance?

- A. The Revenue Commissioners<sup>15</sup> are best placed to provide this information as the answer will depend on the nature of the good or service. Therefore, any queries should be directed to Revenue.

However, in general terms, Irish goods exporters and importers are being advised to expect delays at ports, whatever form of Brexit the British government negotiates, be that soft, hard, or no-deal. Revenue<sup>16</sup> has advised that it is inevitable that Brexit will generate additional costs, administration, and delays at Irish ports but much is being done by Irish authorities to minimise these. After Brexit, full customs declarations will be required for all goods imports and exports shipped between Ireland and the UK. If the UK negotiates a transitional period before full departure, then, in theory, they will be a third country but, essentially, they will operate as a EU member and nothing will change until the end of the transitional period. If the UK does not reach a negotiated settlement, there will be a hard Brexit and WTO tariffs will automatically come into effect.

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<sup>13</sup> <https://ogp.gov.ie/goods/page/3/>

<sup>14</sup> <https://ogp.gov.ie/revision-of-eu-thresholds/>

<sup>15</sup> <https://revenue.ie/en/customs-traders-and-agents/brexit/index.aspx>

<sup>16</sup> <https://www.prepareforbrexit.com/insights/customs-brexit/>

Q. What are the options for Public Bodies in the event of a no deal Brexit?

- **Modify Contract**

It is not generally permitted for a contracting authority and an economic operator to agree to change an existing contract. The terms of the concluded contract should reflect the commitments made in the offer that was selected as the most economically advantageous. Contracting authorities and economic operators might be faced with legitimate situations that require changes in the contract. Practical examples include situations where price indexes have changed, genuine unforeseeable circumstances have occurred, or technical difficulties have arisen during the operation or maintenance phase of a contract. The Public Sector Directive explicitly regulates the circumstances where modifications to a contract or framework agreement while it is being carried out are possible without a requirement to start a new tender process.

- **Terminate existing contracts**

The 2016 Regulations require contracting authorities to include provisions in all contracts that allow them to terminate the contract where the contract has been subject to substantial modification that would have required a new procurement procedure.

- **Directly award a contract**

The Negotiated Procedure without Prior Publication can only be used in very limited and narrowly defined circumstances, e.g. where no tenders or no suitable tenders or no requests to participate or no suitable requests to participate have been submitted in response to an Open or Restricted Procedure, or in so far as strictly necessary cases of extreme urgency not attributable to the contracting authority and brought about by events unforeseeable by the contracting authority when the time limits for the procedures cannot be complied with, or where for technical or artistic reasons, or the protection of exclusive rights, the contract can only be carried out by a particular supplier. The burden of proof is on the contracting authority to justify using this procedure. The reasons for making such a decision should be documented and notified annually to the Comptroller and Auditor General as stipulated under Circular 40/02<sup>17</sup>.

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<sup>17</sup> <https://ogp.gov.ie/goods/page/3/>