

Is this a support plan you can work with on PFI contract expiry? Handover assistance from the Infrastructure and Projects Authority

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We recently discussed [key actions](#) for public authorities in managing a [private finance initiative \(PFI\) project handover](#) following a report on the process issued by the National Audit Office (NAO).

The Infrastructure and Projects Authority has since published a 'support plan' titled '[Managing the Risks of PFI Contract Expiry](#)'. In this article we consider the key areas of support offered by the Infrastructure and Projects Authority under this plan to aid public bodies on expiring PFI contracts.

What is the purpose behind the support plan?

The Infrastructure and Projects Authority's purpose behind this element of its PFI Contract Management Programme is to provide a structured programme of review, guidance, advice and support to public authorities that are within 7 years of contract expiry.

Given there is a general feeling of lack of preparedness and resources amongst public authorities in relation to expiring PFI contracts, this apparent structured and proactive approach from the Infrastructure and Projects Authority is a welcome resource for guidance and assistance.

What are the key areas of support being offered by the Infrastructure and Projects Authority?

Expiry health checks

A check is offered on all contracts within seven years of expiry looking at factors such as:

- contract awareness and management;
- the relationships (e.g. between the public authority and the private sector investors);
- condition of the assets;
- commercial planning; and
- future service provision (i.e. the ability of the public authority to ensure continuity of service following expiry).

The guidance suggests that preparations should commence at least 7 years in advance of expiry. It is important to get your house in order as soon as possible on an expiring contract and this data gathering exercise is the first essential limb of a lengthy handover process. This process can help identify any ambiguity in the contractual provisions regarding handover, important key dates and assess the resources required to provide services post-handover. A health check can be performed again closer to expiry.

Assurance of Action Reviews

Following a health check, a short-form report is issued with a "traffic light" style rating risk assessment. For example, a project may be rated as red or red-amber due to:

- lack of readiness for expiry;
- significant remedial action requirements; or
- planning requirements.

If so, the Infrastructure and Projects Authority aims to follow up with an Assurance of Action Review within six months of the health check. The Assurance of Action Review assesses any subsequent actions taken by the public authority and the success of any plans developed and implemented since the previous review. This is an ongoing review process until a green rating has been issued to indicate the project is ready for expiry.

Actions could involve negotiating specific handover arrangements with the private sector counterparty early on in order to agree a process where a historic contract is not clear or safeguarding resources now for use at handover. This is another proactive step in which to keep the handover of the project at the forefront on the contracting parties' minds. The plans of action and frequent reviews to check on progress should enable the focus on achieving a smooth handover.

Expiry guidance and expiry training

New guidance and training are due to be released by the Infrastructure and Projects Authority during Autumn 2021.

The guidance will be based on experience from the current health check system, comprising learnings and practical lessons. The training module to be provided will be the first of a number of modules and is set to be aligned with the expiry guidance.

Private sector engagement and expiry protocol

The Infrastructure and Projects Authority is already involved in structured engagement with market counterparties (such as the private investors and SPVs (Special Purpose Vehicles) managers). The intention behind this is to share knowledge between the parties and build better relationships.

In line with this, a working "public-private" expiry protocol is due to be released in Autumn 2021. This will set out the expected behaviours of the parties in managing the expiry process. A draft is to be issued to the market counterparties with the Infrastructure and Projects Authority hoping to obtain market agreement to the protocol within six months of issue.

Combined with the structured private sector engagement already being undertaken by the Infrastructure and Projects Authority, the protocol should further enhance collaborative working relationships and encourage resolution of disputes between the contracting parties. Whilst co-operation cannot be guaranteed, this additional transparency offered at the outset with an industry accepted protocol should help guide the parties, lessen the risk of disputes, enable more efficient compromises resulting, preserve funds for the actual handover and service provision itself.

The support plan currently available, alongside the imminent Autumn 2021 additions appear to be invaluable tools available at the disposal of public bodies. Whether the Infrastructure and Projects Authority has the resource to maintain this intense level of management and assistance remains to be seen but it is certainly a positive reinforcement that should provide public authorities with a comfort blanket of support in the complex PFI handover process.

Please contact us if you have any questions or concerns regarding the support available and its application or if you need more specific help with your handover plan.

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