

# Peering into the fog – or...

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# Questions



- Do the EU provisions still apply?
- Where are you obliged to advertise, e.g. OJEU?
- What about contractors and supplies from the EU: prices, extensions, supply chains and new contracts?

- **European Union (Withdrawal) Act 2018**
  - Repeals European Communities Act 1972
  - EU law ceases to apply:
    - On Exit Day if no WA *or*
    - At end of transition period if so amended by EU (Withdrawal Agreement) Act 2019 if WAB approved
  - *But*
  - Creates “retained EU law” whether or not a deal is agreed
  - Procurement law continues largely unchanged, with technical corrections – nomenclature etc.



**NO DEAL**

- On Exit Day (currently 31 October 2019), Brexit SI's provide:
  - Most existing EU law (including procurement legislation) converted into UK law
  - Post E-day amendments of EU law n/a in UK
  - End of jurisdiction of CJEU in UK
  - Retained EU law construed in accordance with pre-E-day CJEU cases
  - UK courts may take notice of post-exit CJEU cases

# Amendments to procurement legislation



- Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 SI 2019/560 as amended by the Public Procurement (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 (SI 2019/623) make technical and substantive amendments, coming into force on exit day
- Provisions include:
  - “e-notification service” replaces “Official Journal”
  - No change to Contracts Finder etc. requirements
  - Pro-forma OJEU notices abolished

# Amendments continued



- Minister for Cabinet Office (instead of EC) has power to change:
  - financial thresholds
  - rules about electronic communications
  - grounds for exclusion of EOs for non-compliance with international environmental/social/labour obligations
- Delete “enforceable EU obligations” (but duty to comply with *retained EU law* persists)
- From 18 months after exit day, obligation to comply with duties owed only to EOs in UK and Gibraltar



# Amendments continued



- Access and rights of economic operators in countries party to GPA (inc EEA states) preserved for 18 months (i.e. to allow time for UK accession to GPA in own right)
- ALT due to state aid provision deleted
- E-Certis references deleted
- Provisions about joint procurement between CAs in different member states deleted

# Amendments continued



- Mostly applies from E-day, including to procurements under way, but with fairness provisos, e.g. duty to EEA EOs where participating in procurements under way
- Consequential technical amendments to other legislation, e.g. Greater London Authority Act 1999, Public Services (Social Value) Act 2012, Equality Act 2010
- Defence and Security Regulations add Norway and Iceland as “member states”

➤ **Explanatory Note:**

*A full impact assessment has not been produced for this Instrument as no, or no significant, impact on the private or voluntary sector is foreseen.*

- Subject to saving for procurements/call-offs as below, UK free to reform procurement law
- Unlikely to see radical change: GPA
- But some simplification of procedures and changes to remedies possible
- EU procurement rules continue to apply to
  - Any procedure started before end of transition period and not yet finalised on the last day of it (draft WA Article 76(1)(a))
  - Any call off procedure where procurement of framework agreement launched before end of transition period until framework agreement expires / is terminated) (draft WA Article 76(1)(b))

- No deal, E-day + 1: no GPA agreements in place, WTO tariffs kick in on, £ slides even further...
- Allocation of customs delay risk
- Contractual provision – no better no worse?
- Amendments now? Reg. 72(1):
  - (c) not foreseeable by diligent CA
  - (e) not substantial
  - (f) value within limits
- Review contracts/seek advice!



DEAL

**NB!**



- Brextremist government could (seek to) change these provisions such that all EU law just ceases to apply from E-day

- EU (Withdrawal Agreement) Bill becomes law, implementing terms of the Withdrawal Agreement
- E-day postponed for...??? (cf CETA: 5 years + 2 transition; EU/Japan: 4 years + 2)
- Transition (“implementation”) period
- UK ≠ member state: no vote, commissioners nor judge at CJEU, but EU law continues to apply (inc amendments etc.), with CJEU supervision; UK continues in GPA and EU international trade agreements

## In short...



- Probably very little substantive change for at least 2½ years
- And not that much thereafter: GPA differs in detail but not in basic principle (although note Schedules!)
- Administrative changes: UK e-notification and forms, perhaps gradual changes in thresholds
- Opportunity for reform: procedures, remedies, tribunal...probably not a priority



# Economic effects



## GIBLET SOUP (8 or 10 people)

4 sets giblets.	2 oz. fat.
1 carrot.	1 blade mace.
1 onion, stuck with	1 bunch herbs.
3 cloves.	Juice of half lemon.
1 turnip.	2 qt. stock.
$\frac{1}{2}$ head celery.	2 oz. flour.

Seasoning.

Wash the giblets and cut them up. Slice the vegetables and put them with the giblets into a pan with the stock. Simmer 2 or 3 hours till cooked. Make a roux with the fat and flour. Add some of the soup to this. Boil and return this to the rest of the soup. Stir and skim for 20 minutes. Strain, re-heat; add a glass of sherry if wished; season to taste, and add the giblets cut into neat dice.

## NETTLES

Young nettles are very wholesome. Follow the directions for Spinach. Old nettles are too strong in flavour to use.

# Explanations and guidance – *Caution: may go out of date surprisingly quickly!*



- HoC library:  
<https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-8453>
- European Commission:  
[http://europa.eu/rapid/press-release MEMO-18-6422\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-6422_en.htm)
- BBC: <https://www.bbc.co.uk/news/uk-46237012>

- Procurement Policy Note – Preparing for the UK Leaving the EU Action Note PPN 02/19(2)  
<https://www.gov.uk/government/publications/procurement-policy-note-0219-preparing-for-the-uk-leaving-the-eu>
- Frequently asked Questions on No-deal Exit  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/800661/20190508-FAQ-on-no-deal-exit.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800661/20190508-FAQ-on-no-deal-exit.pdf)

- Public-sector procurement after a no-deal Brexit  
<https://www.gov.uk/guidance/public-sector-procurement-after-a-no-deal-brexite>
- Explanatory Memorandum to the Public Procurement (Amendment Etc.) (EU Exit) Regulations 2019 2019 No. 560  
[https://www.legislation.gov.uk/uksi/2019/560/pdfs/uksiem\\_20190560\\_en.pdf](https://www.legislation.gov.uk/uksi/2019/560/pdfs/uksiem_20190560_en.pdf)

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