

Title: Utilities Contracts Regulations 2016 PIR No: CO 2022 Original IA/RPC No: 1021 Lead department or agency: Cabinet Office Other departments or agencies: Not applicable Contact for enquiries: Peter Bennett	Post Implementation Review
	Date: 29/06/2021
	Type of regulation: EU
	Type of review: Statutory
	Date measure came into force: 18/04/2016
	Recommendation: Keep
	RPC Opinion: Green

1. What were the policy objectives of the measure? (Maximum 5 lines)

1. Accelerating timescales and reducing costs through streamlined procedures;
2. Allowing the use of modern, flexible electronic tools to speed up and take costs out of the procurement process;
3. Removing regulatory burdens by, for example, ending the supply of annual statistics to the European Commission; and
4. Lowering the costs to business of bidding for public contracts, encouraging more suppliers into the public procurement market and increasing competition as a result

2. What evidence has informed the PIR? (Maximum 5 lines)

Various organisations were contacted to get an understanding of how the Utilities Contracts Regulations 2016 (2016 UCRs) have worked in practice. These include: the Cabinet Office, the Crown Commercial Service (CCS), individual utilities in the energy, water and transport sectors, a commercial provider of a qualification system service which works with 48 regulated utilities and about 7.000 suppliers, a leading academic in the field of public procurement and contacts in the European institutions and the EU Member States.

3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

Evidence provided showed that:

- there had been an impact on costs and timescales. The use of qualification systems, central framework agreements and dynamic purchasing systems had helped to speed up processes and reduce costs;
- there had been increased use of flexible IT enhanced procurement, such as platforms and other electronic tools;
- Utilities and the Cabinet Office have benefitted from the removal of the regulatory burden of not being required to supply annual statistics to the European Commission since 2014; and
- the costs to businesses of bidding for contracts have been reduced. Greater use has been made of the new procedures, such as dynamic purchasing systems, which means that there have been more bidders for these approaches, although the evidence provided was not sufficient to demonstrate changes to the number of suppliers bidding generally.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***Riccardo Zecchinelli***

Date: 31/03/2021

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?(Maximum 5 lines)

The 2016 Utilities Contracts Regulations were considered to have a very low impact on businesses. As a result, detailed monitoring has not been carried out. A limited number of individual utilities have been contacted to complete this review, as has the provider of an online service to help Utilities and their suppliers to conduct their procurement processes. Utilities have pointed out where they have benefitted from the changes to the rules. Utilities operate in a commercial environment and it is in their interest to operate efficiently.

5. Were there any unintended consequences? (Maximum 5 lines)

The Cabinet Office (CO) is not aware of any unintended consequences. The utilities which were contacted did not comment on any unintended consequences.

6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

The evidence has not indicated any specific opportunities. This, however, has to be seen in the context that the utilities are fully aware that post-Brexit all the public procurement regulations are going to be replaced in the next couple of years following the publication of the Green Paper on Transforming Public Procurement in December 2020. In responses to the Green Paper, Utilities have set out that the current flexibilities provided by the rules, such as the use of qualification systems and databases which enable efficient procurement should be maintained.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)

The UK was keen to implement the package of 2014 public procurement Directives into national law, so that public sector bodies and utilities could obtain the benefits of the new rules as soon as possible. The UK was the first EU member state to implement the public sector rules in the Public Contracts Regulations 2015 and transposed the 2014 Utilities Directive in advance of most other EU member states. The Cabinet Office is not aware of major differences in how other EU member have implemented the 2014 Utilities Directive. There is a dearth, however, of published information on the impact of the 2014 Utilities Directive.

Further Evidence

Chapter 1 “What were the policy objectives of the measure?”

These have been set out above.

Chapter 2 “What evidence has informed the PIR?”

The primary evidence on the four policy objectives was provided by individual utilities and by a commercial company which provides a database to make the procurement process for utility purchasers and the suppliers they service quicker, more efficient and compliant with the rules. This approach is provided for under the 2016 Utilities Contracts Regulations. The company will be indicated by a reference to the CQSP, Company Qualification Service Provider.

Individual utilities were approached in each of the energy, water and transport sectors. They were asked the same questions seeking information relating to the policy objectives. The CQSP was also asked the same set of questions. The evidence from individual utilities in the energy, water and transport sectors was mainly qualitative, as they commented that detailed quantitative information was not readily available.

The Government’s Green Paper on Transforming Public Procurement was published in December 2020. It included a number of consultation questions. Various utilities and industry bodies have replied to the consultation. These include 7 utilities/bodies in the energy sector, 5 in the ports sector, 7 in the water sector and 5 in the rail and transport sector. The replies from these utilities and bodies has provided background information for this review.

The 2016 Utilities Contracts Regulations transposed the 2016 Utilities Directive (2014/25/EU). An online search revealed little information on the impact of the Directive and the national implementing regulations. Contacts in 2 member states and officials in the European Parliament were contacted to see if any other information was available.

Chapter 3. To what extent have the policy objectives been achieved?

The aim of the 2014 Utilities Directives and the 2016 Utilities Contracts Regulations, which transposed the Directive was to simplify the procurement rules, to improve the processes and provide for the greater use of e-procurement and e-communication. Timely transposition in the UK allowed utilities to make use of the improved rules and procurement processes.

The following paragraphs provide information on the extent to which the policy objectives have been met.

The 2016 Utilities Contracts Regulations provided for the use of qualification systems. These provisions have allowed for the development of the CQSP database, which has enabled the outcomes evidenced below.

In relation to policy objective 1, *accelerated timescales and reducing costs through streamlined procedures*, the CQSP stated that based on customer feedback, the use of their service saves approximately 15 to 30 days for each procurement process. In addition, it has been calculated that a company with a supply chain of approximately 300 suppliers would need to employ 5 full time employees to manage

this or a similar process. If the average cost of a procurement professional is £50k, this would add or divert or £250k of spend.

The 2016 UCRs allow utilities to make use of the arrangements operated by central purchasing bodies (CPBs). One of the utilities contacted, reported that they had successfully used the framework agreements run by the Crown Commercial Service, the main UK CPB and that this had saved time and reduced their costs.

Policy objective 2 refers to allowing the use of modern, flexible electronic tools to speed up and take costs out of the procurement process. It should be noted that the use of electronic tools was made easier under the 2014 Utilities Directive, which explicitly allowed the use of electronic catalogues for the first time, the improved approach to dynamic purchasing systems and the move to mandatory e-communication.

The use of qualification systems run on platforms, such as provided by the CQSP, has enabled the speeding up of processes and hence a decrease in costs for utility buyers. For instance, the CQSP has estimated that the validation of supplier data takes about 2.4 hours, which in total over a month would take about 6,420 hours. Without this option, individual utilities would be conducting their own processes.

For suppliers, the use of the platform run by the CQSP means that information common to all bids only has to be provided once up-front. As a result, a supplier will save about 32 hours effort per year. As there are over 6,000 suppliers on the database, the total saving is significant.

In responses to the Government's Green Paper on Transforming Public Procurement (December 2020), the purchasers and suppliers who use the commercial database run by the CQSP, estimated that its use saved utilities about £30m a year. This was based on the estimated savings of each individual buyer's supply chain, multiplied by the number of buyers on the database.

Policy objective 3 concerned removing regulatory burdens by, for example, ending the supply of annual statistics to the European Commission;

It was reported that when, up until 2014, utilities were required to report statistics on the procurement covered by the 2006 Utilities Contracts Regulations (2006 UCRs), they needed to conduct a bespoke exercise following a request from the Cabinet Office. It was estimated that it would have taken five-man days to complete this form with information collated by senior buyers. This burden applied to all the utilities covered by the 2006 UCRs.

From 2015 this information has been collected by the European Commission from information posted on Tenders Electronic Daily, so saving time and cost for utilities and Cabinet Office officials.

Policy objective 4 refers to lowering the costs to business of bidding for public contracts, encouraging more suppliers into the public procurement market and increasing competition as a result

The answers given on policy objectives 1 and 2 above demonstrate some of the cost savings for businesses bidding for public contracts, such as the use of platforms allowing

common data to be only supplied once and for questionnaires and other information to be processed automatically.

In 2013 there was no recorded use of dynamic purchasing systems (DPSs). Following the changes to DPSs in the 2016 UCRs, greater use of this approach has been made, because utility purchasers only have to advertise their requirement once and can go to the qualified suppliers when they need to make a purchase, rather than repeat the advert. This has led to 5 adverts for DPSs in 2019, which means that more suppliers are being brought into the market.

There is evidence that new suppliers are coming into the market, as over 22% of the suppliers on the database run by the CQSP are less than 10 years old. However, no evidence has been provided to show that the average number of bidders has changed since the 2016 UCRs came into effect.

Chapter 4. What were the original assumptions?

The 2016 Utilities Contracts Regulations were considered to have a very low impact on businesses. As a result, detailed monitoring has not been carried out. A limited number of individual utilities have been contacted to complete this review, as has the provider of an online service to help Utilities and their suppliers to conduct their procurement processes. Utilities have pointed out where they have benefitted from the changes to the rules. Utilities operate in a commercial environment and it is in their interest to operate efficiently.

Chapter 5. Were there any unintended consequences?

The utilities have not indicated any unintended consequences. The responses by utilities to the Green paper on Transforming Public procurement have not indicated any unintended consequences either.

Chapter 6. Has the evidence identified any opportunities for reducing the burden on business?

In the responses to the Green Paper on Transforming Public Procurement, utilities have set out that the current flexibilities provided by the rules, such as the use of qualification systems and databases which enable efficient procurement should be maintained. The responses from utilities have not indicated any particular opportunities for reducing burdens.

Chapter 7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?

As set out above, the UK was keen to transpose the 2014 Utilities Directive in a timely manner, so that utilities could benefit from the improvements in the rules. The UK was one of the first of the EU member states to transpose the 2014 Utilities Directive. In a paper published in June 2016, DLA Piper set out that the UK was one of only 9 EU member States

out of 28 which had transposed the Utilities Directive (Implementation of the 2014 procurement directives across the EU Member States).

An online search has not revealed much information on the impact of the national regulations which implement the 2014 Utilities Directive. As far as it is possible to establish, the European Commission has not published any material on the impact of the 2014 Utilities Directive. Contacts in two of the EU Member States, Austria and Sweden have confirmed the lack of any analysis of the impact of the rules on utilities. The European Parliament produced a report in 2019 on Contribution to Growth; European Public Procurement. Chapter 2.3 covered the Utilities Procurement Reforms, but it did not address the impact of the rules.

The European Commission asked Member States to provide information of how they had implemented the various options in the 2014 Utilities Directive. This has not been published, but the results showed that the UK followed the approach of most Member States in how it chose to implement the options.