

Economy, Energy and Fair Work Committee

Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019 [draft]

At its meeting on 29 January 2019 the Committee agreed to write to invite stakeholders to submit any comments to the Committee. We have received the following responses.

Scottish Council for Voluntary Organisations

Having read the Committee's letter to the Minister, we can see the Committee will be asking Derek Mackay some interesting questions, particularly around the living wage and procuring at a local level.

Here at SCVO, we have always believed procurement can be used to benefit local communities here in Scotland more than is currently the case; and we, alongside Unison and others, were disappointed that the ability to mandate living wage payments was not placed within the Procurement Reform (Scotland) Act 2014. Therefore, we look forward to hearing the Minister's responses regarding both local procurement and the living wage, and welcome the committee asking these questions.

South Lanarkshire Council

The Council is pleased to provide comments on the Public Procurement etc. (Scotland) (Amendment) (EU Exit) regulations 2019 as requested by the Economy, Energy and Fair Work Committee on 30 January.

The draft changes being proposed to the procurement rules are welcome which will ensure so far as possible that the current procurement legislation will continue to apply in the event of the UK leaving the EU without a deal which covers procurement.

The Council notes from SPPN 1/2009 (Procurement Legislation in Scotland in the event of a 'no-deal' Brexit) that the Scottish Ministers powers under the European Union (Withdrawal) Act 2018 are limited and do not provide an opportunity to undertake a wholesale review of the procurement legislation.

Currently there are three sets of rules applying to procurement within Scotland depending on the estimated value of the contract.

Examples of the current inconsistencies include:

EU Regulated Procurement	Regulated Procurement
Mandates use of the ESPD	Encourages use of the ESPD
Mandates application of a standstill period (where appropriate)	No requirement to apply a standstill period
Light touch rules apply to 'social and other specific services to the people'	Light touch rules limited to 'health and social care services' only
Sets out rules applying to modification of contracts	No equivalent provisions

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EU Regulated Procurement	Regulated Procurement
Sets out detailed requirements on reporting and documentation requirements	No equivalent provisions
Ineffectiveness Orders available as remedy	Ineffectiveness Orders not available

The current inconsistencies in the rules applying to Regulated and EU Regulated procurements can lead to confusion for bidders and procuring officers especially in those areas where the Scottish Government recommends, via guidance, adopting in a Regulated Procurement some of the provisions applicable to an EU Regulated Procurement rather than incorporating in legislation. It would improve the open and transparent nature of procurement processes if there was a consistent set of procurement rules for Regulated and EU Regulated procurements.

NHS Tayside and NHS Lothian

UK e-notification service

Bids received are now likely to extend to the wider WTO GPA member states. These states' compliance on technical and quality regulations will not necessarily comply with that of the EU regime and as such will involve a higher level of local Procurement scrutiny and time.

Transfer of Functions

The EU provided a consistent set of tender value thresholds. Will there be a similar set post-withdrawal?

Abnormally Low Tenders

Regarding submission of an abnormally low bid where state aid support is suspected. Further guidance on consistency of state aid regulations between EU and WTO GPA members would be required for local Procurement to make a more informed assessment.

Transitional Provisions

Whilst these provisions are noted, there will be additional pressure on local Procurement resources to maintain and build skills and knowledge across two regulatory regimes. Given the legislation is prospective, a cut-off deadline of when the EU regime and new regime will apply to a contract is required.

North Lanarkshire Council

Thank you for the opportunity to participate in the consultation. The changes proposed to the legislation are clear, we do not anticipate any significant internal procedural issues arising from implementation.

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NHS Greater Glasgow and Clyde

Background

NHS Greater Glasgow and Clyde reviewed the potential impact on Procurement Legislation in its Post Brexit Options Summary paper of 28th November 2017, attached for reference.

It concluded that, in any of the potential outcomes, the current Scottish Procurement legislation is likely to remain relatively unchanged as it will require to reflect at least WTO requirements, if not EU requirements. In any event, the current EU regulations are adopted into Scots Law by the Public Contracts (Scotland) Regulations 2015 and have been underpinned by the Procurement (Scotland) Regulations of 2016. Both these and the originating EU regulations support an open, transparent and fair approach to procurement. They encourage engagement from local and SME suppliers, the use of supported businesses and sustainability. All of these are best practice and should be retained whether Scotland is in the EU or not.

EU Exit Regulations Consultation Feedback

The organisation welcomes the policy note's intention of maintaining, as far as possible, the current legislative and policy framework for the reasons highlighted above (fair, open, transparent, encouraging local and SME engagement, etc); also the intention to ensure legislation complies with GPA requirements and decouples it from EU Membership.

The UK e-notification service

NHS Greater Glasgow and Clyde welcomes the provision of this service, however, is concerned that the 'market' for new contract opportunities is now likely to extend to the wider WTO GPA member states. These states will not necessarily comply with an overarching technical and quality regime such as those maintained by the single EU market and, as such, will involve a much higher level of buyer assessment and compliance confirmation to UK standards and NHS Greater Glasgow and Clyde specifications. The worldwide geography of WTO GPA members may also add additional difficulty to procurement processes in terms of language, bidder site visits if required to confirm offer content and post award contract management. This concern needs to be balanced against the extent of cross border trade seen by NHS Greater Glasgow and Clyde within the EU single market which was not significant and it is unclear whether this will change when trade is opened up to WTO GPA member states. NHS Greater Glasgow and Clyde would welcome feedback on this issue from the consultation process.

Transfer of functions

The EU provided a consistent set of thresholds for the UK. There is no mention of how such consistency would be maintained within the UK as powers transfer to Scottish Ministers. Is there an intention to establish a UK wide level of consistency? We would be concerned that a lack of consistency would introduce confusion for suppliers and may limit our ability in future to use UK wide frameworks if different access rules have been established.

Article 346 of the Treaty on the Functioning of the European Union (TFEU)

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This is not in scope for NHS Greater Glasgow and Clyde as it relates to defence and security matters.

Scope of duty owed by contracting authorities

NHS Greater Glasgow and Clyde notes these reasonable amendments.

The GPA and other international agreements

As above, and repeated for clarity - NHS Greater Glasgow and Clyde is concerned that the 'market' for new contract opportunities is now likely to extend to the wider WTO GPA member states. These states will not necessarily comply with an overarching technical and quality regime such as those maintained by the single EU market and, as such, will involve a much higher level of buyer assessment and compliance confirmation to UK standards and NHS Greater Glasgow and Clyde specifications. The worldwide geography of WTO GPA members may also add additional difficulty to procurement processes in terms of language, bidder site visits if required to confirm offer content and post award contract management. This concern needs to be balanced against the extent of cross border trade seen by NHS Greater Glasgow and Clyde within the EU single market which was not significant and it is unclear whether this will change when trade is opened up to WTO GPA member states. NHS Greater Glasgow and Clyde would welcome feedback on this issue from the consultation process.

Exclusion grounds

NHS Greater Glasgow and Clyde notes these reasonable amendments.

Consequential amendments to primary and secondary legislation

NHS Greater Glasgow and Clyde notes these reasonable amendments.

Specific amendments

NHS Greater Glasgow and Clyde notes these reasonable amendments.

The 2012 Regulations

NHS Greater Glasgow and Clyde notes these reasonable amendments.

Abnormally low tenders and State aid

NHS Greater Glasgow and Clyde notes this and the need for clarity in the event a UK or non-UK entity submits an abnormally low bid where State aid support is suspected. This may be more problematic when WTO GPA members are able to bid for NHS Greater Glasgow and Clyde contract opportunities and State aid regulations are not consistent.

E-Certis

The guidance provides no alternative to the online database for eligibility evidence. NHS Greater Glasgow and Clyde would welcome feedback on the proposed alternative arrangements.

Joint procurement

Proposal noted. NHS Greater Glasgow and Clyde has had little experience or need for such cross EU border arrangements.

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Transitional provisions

The prospective nature is noted. NHS Greater Glasgow and Clyde relies on local and national contracts which are currently in place or whose procurement is underway. Many are multi-year agreements and usually at least 3 years in duration. NHS Greater Glasgow and Clyde is concerned that we will continue to be required to adhere to the regulatory regime of the EU for some considerable time. With no guillotine point, EU regulations and legal recourse will continue to apply to NHS Greater Glasgow and Clyde for many years to come requiring staff to maintain dual regulatory skills and knowledge.

NHS Greater Glasgow and Clyde's Briefing Paper on BREXIT Impact on Purchased Goods/ Services Post Brexit Options can be found in Annexe A.

Scottish Trades Union Congress

The Scottish Trades Union Congress has over a number of years placed a focus on the functioning of procurement legislation, policy and practice. Public procurement plays a central role in the functioning of our economy. It has the potential to drive up standards and ensure that Scottish workers in a range of industries enjoy fair work. In this respect procurement should be used to support Scottish business, to encourage a higher degree of collective bargaining and to ensure that the Living Wage becomes the minimum that workers can expect to be paid. However, this can only be achieved if procurement rules are well designed and allow a proper degree of weight to be placed on the interests of Scottish communities and businesses.

The STUC understands that the draft instrument would not remove the current restrictions on contracting authorities requiring the payment of the real Living Wage in public contracts. These restrictions arise in significant part from the Posting of Workers Directive and subsequent case law which the European Union (Withdrawal) Act 2018 will retain. Nonetheless, the STUC seeks continued commitment from the Scottish Government that payment of the real Living Wage will be promoted in all relevant public contracts, including via arms-length and subsidiary companies.

The STUC continues to believe that public procurement must be actively used to secure collective (including sectoral) bargaining and hopes that the Scottish Government will vigorously advocate collective bargaining particularly in the care, construction and hospitality sectors as part of its commitment to 'workers voice' in the National Performance Framework.

In relation to many industries, not least rail, transport, ferries, manufacturing, and energy production and sale, the STUC has consistently maintained that a range of measures, including state aid, are necessary to ensure high quality outcomes in the interests of Scottish people and the public purse.

The STUC would be concerned if UK business, or nationalised industry, was put at a disadvantage in terms of state aid rules. While consideration should be placed in the longer term on facilitating greater localism within state aid provisions, taking steps now to ensure that UK firms are not disadvantaged in the event of a 'no deal' scenario seems both positive and necessary.

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The STUC remains committed to the devolution of employment law. Regardless of where the power resides however, the STUC will continue to insist that worker and employee rights, including the enforcement thereof, are not slashed, decreased or depressed as a result of EU Withdrawal. The STUC maintains that EU law has provided minimum standards of workers' rights, although some UK rights are set at a higher level than the EU minimum. However, we continue to be concerned that in the long-term workers in the UK will see their rights and protections fall behind those of their European neighbours, increasing the UK's risk of becoming a low road, low skilled and low regulation economy. The STUC therefore believes that ensuring non-regression on EU protections for employment, the environment and consumers must be a priority.

Scotland Excel

Clearly the proposed changes are technical in nature and many of the proposed changes are about renaming and redirecting e.g. European Single Procurement Document (ESPD) would be re- the Single Procurement Document and reports would not ultimately go to the European Commission. One noticeable change is that we would no longer be required to publish notices in the OJEU and there would be a new UK e-notification system. In practice we use PCS to send notices to the OJEU and the intention is that we would be able to continue to use PCS to send notices to the new UK e notification system. In short, Procurement procedures would be fundamentally unchanged – financial thresholds, the basic requirements to advertise contacts, observe minimum timescales, and follow rules on technical specifications and award criteria, for example, would remain in place.

From our perspective given the changes would not fundamentally change the processes undertaken in the tendering/ awarding public contracts and that the changes made are intended to maintain the current legislative and policy framework in so far as this is possible after exit, we would agree that the provisions outlined are a sensible and reasonable course of action.

Stirling Council

Stirling Council would point out from a strategic perspective that there is a potential concern that the move from the existing OJEU advertising system to a UK-only advertising system could result in a cost pressure for local authorities when purchasing items which would routinely be most cost-effectively purchased from non-UK suppliers currently, if the system is not easily accessible to the non-UK supply base.

NHS Ayrshire and Arran

Background

Information currently supplied by the Scottish Government indicates that the current Scottish Procurement legislation is likely to remain relatively unchanged as it will require reflecting at least WTO requirements if not EU requirements. In any event the current EU regulations are adopted into Scots law by the Public Contracts (Scotland) Regulations 2015 and have been underpinned by the Procurement (Scotland)

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Regulations of 2016. Both these and the originating EU regulations support an open, transparent and fair approach to procurement.

EU Exit Regulations Consultation Feedback

NHS Ayrshire & Arran welcomes the policy notes intention of maintaining as far as possible the current legislative and policy framework as they encourage engagement from local and SME suppliers, the use of supported businesses and sustainability. All of these are best practice and should be retained whether Scotland is in the EU or not.

UK e-notification service: NHS Ayrshire & Arran welcomes the provision of this service however is concerned that the 'market' for new contract opportunities is now likely to extend to the wider WTO GPA member states. These states will not necessarily comply with an overarching technical and quality regime such as those maintained by the single EU market and as such will involve a much higher level of buyer assessment and compliance confirmation to UK standards and NHS Ayrshire & Arran specifications.

The worldwide geography of WTO GPA members may also add additional difficulty to procurement processes both in terms of bidder site visits if required to confirm offer content and post award contract management.

This concern needs to be balanced against the extent of cross border trade seen by NHS Ayrshire & Arran within the EU single market which was not significant and it is unclear whether this will change when trade is opened up to WTO GPA member states.

Transfer of Functions: The EU provided a consistent set of thresholds for the UK. There is no mention of how such consistency would be maintained within the UK as powers transfer to Scottish Ministers.

NHS Ayrshire & Arran would be concerned that a lack of consistency would introduce confusion for suppliers and may limit our ability in future to use UK wide frameworks if different access rules have been established.

Article 346: Is noted as not in scope for NHS Ayrshire & Arran as it relates to defence and security matters.

Scope of Duty Owed: NHS Ayrshire & Arran notes these reasonable amendments.

GPA and Other International Agreements: As **UK e-notification service** above

Exclusion Grounds: NHS Ayrshire & Arran notes these reasonable amendments.

Consequential Amendments: NHS Ayrshire & Arran notes these reasonable amendments.

Specific Amendments: NHS Ayrshire & Arran notes these reasonable amendments

2012 Regulations: NHS Ayrshire & Arran notes these reasonable amendments

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Abnormally Low Tenders: NHS Ayrshire & Arran notes this and the need for clarity in the event a UK or non-UK entity submits an abnormally low bid where state aid support is suspected. This maybe more problematic when WTO GPA members are able to bid for NHS Ayrshire & Arran contract opportunities and state aid regulations are not consistent.

E-Certis: The guidance provides no alternative to the online database for eligibility evidence. Would the ESPD format be maintained?

Joint Procurement: Proposal noted. NHS Ayrshire & Arran has had little experience or need for such cross EU border arrangements.

Transitional Provisions: The prospective nature is noted. NHS Ayrshire & Arran relies on local and national contracts which are currently in place or whose procurement is underway. Many are multi-year agreements and usually at least 3 years in duration. NHS Ayrshire & Arran is therefore concerned that we will continue to be required to adhere to the regulatory regime of the EU for some considerable time.

With no definitive cut off point EU regulations and legal recourse will continue to apply to NHS Ayrshire & Arran for some time to come requiring staff to maintain dual regulatory skills and knowledge.

UNISON Scotland

We would contend that the Draft Instrument represents a missed opportunity to maintain and improve the public realm in Scotland, to develop an alternative and more sustainable model of economic development and to increase the value obtained from public spending.

The Policy memorandum accompanying the draft instrument is explicit that the

...instrument is drafted with the intention of maintaining, as far as possible, the current legislative and policy framework for public procurement.

Taking this approach means that there will be no assessment of how well served we are by the current procurement regime. We believe there is great scope for making the procurement better serve the public, and the public purse. Rather than, as is being proposed simply transferring administration of the current regime – improvements should be made.

The public sector in Scotland spends around £11 billion annually on goods and services – spending which we believe should be consistent with social, economic and environmental policy aims. Disappointingly, the Procurement Reform (Scotland) Act 2014 was largely about making processes more “business friendly” rather than the original hoped for focus on sustainability. This legislation and the Procurement Scotland Regulations (2015) which followed them were driven by a need to comply with relevant EU directives.

At the time UNISON – along with other Trade Unions and civic society groups - urged that even within the strictures imposed by European Directives there could have been stronger social and environmental protections within the regulations. If these regulations are being revisited then so should the idea of using them to

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enhance protection, particularly in a context where a strict adherence to EU directives is no longer required.

For example, while the Scottish Government has supported the extension of the Living Wage to contractors – we believe this should be a mandatory requirement. Existing regulations are not nearly strong enough on excluding companies with a track record of aggressive tax avoidance, or on blacklisting workers. Procurement Regulations should be amended to further the public interest in these areas rather than simply replicating current arrangements.

It is proposed that Scottish Ministers are allowed the power to treat the list of international agreements in the field of environmental, social and labour law set out in the annexes to the EU Directives as though certain international agreements were removed and others that are not covered were listed. (ie the power that currently rests with the commission)

This is relevant to the ability of a contracting authority to refuse to award a contract to the bidder submitting the most economically advantageous tender where the contracting authority has established that the bidder does not comply with certain applicable obligations in the field of social, environmental and labour law. Whilst these provisions exist there is the capacity now for Scottish Ministers to broaden the scope of the obligations that those looking to benefit from public contracts must adhere to.

In short, we believe that there are several respects in which the current procurement regime could do more to further the public interest – in terms of commitments to Fair Work and sustainability in particular. If powers are to be transferred from the European Commission to Scottish Ministers then there is a potential increase in the level of democratic accountability and a capacity for those ministers to act for the public good. It is our belief that they should do so.

NHS GG&C BRIEFING PAPER – BREXIT IMPACT ON PURCHASED GOODS/ SERVICES POST BREXIT OPTIONS

The UK Government is currently negotiating the basis of the UK's withdrawal from the European Union.¹ In November 17 the Prime Minister announced plans to include in law that withdrawal will come at 11pm on Friday 29 March 2019.

Once the UK is no longer covered by the EU's international trading arrangements there are a number of potential scenarios which may directly impact on NHS GG&Cs SFIs (via procurement legislation changes) and the cost of purchased goods and services. Four scenarios are described below:

No International Agreement – UK will need to trade across existing international borders and be subject to the trade tariffs applied by individual trading nations / blocks. These tariffs can be set independently by each trading entity and could be set to prevent UK businesses from being competitive with indigenous or other 'favoured nations' to that trading entity. Conversely UK can apply their own tariffs to protect UK business, encourage imports from specific countries and protect UK economic interests (import or export). The impact on prices paid could be significant with either a loss of supply base as businesses fail, increased costs of exports being passed onto domestic customers and likely increases in import costs.

UK would be under no obligation in terms of procurement rules to other nations. However to support best value for public services and promote access to public service markets it would be expected the current domestic UK legislation would remain broadly as is but potentially with the removal of the obligation to open tendering opportunities up to non UK businesses.

World Trade Organisation (WTO) Membership – WTO members must offer other members the 'Most Favourable Nation' (MFN) tariff e.g. the lowest tariff a trading entity applies to an importing country. The acronym MFN is used in this respect by WTO. There is an argument that the UK is already a member of the WTO via EU so would acceded to WTO in its own right post Brexit and gain MFN tariff trading with other members (including EU, USA, Canada).

As well as the EU being a significant market for UK (buying and selling) commentators expect the UK to adopt the EU tariffs on BREXIT. It is therefore

¹ The EU (Withdrawal) Bill (formerly known as the Great Repeal Bill) would have the effect of retaining and freezing EU law as it currently stands on exit day, and will also reserve to the UK Government and UK

Parliament control over all matters currently covered by EU law, including public procurement (i.e. the Scottish Parliament and Scottish Ministers will not have any power to change procurement law in Scotland, despite procurement currently being a devolved power).

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useful to consider these in particular and their impact. Trading into the EU has an average MFN tariff of 2.9%. It is low as the EU has established advantageous trading deals with many countries and this has generally reduced their MFN tariffs to these low levels. There are exceptions such as motor vehicles with a MFN tariff of 10% and food which has many high tariffs (up to 24%).

To be a member of the WTO members must apply procurement rules around open, fairness and transparency, again this would likely mean little change to the basics of our procurement laws. In this case however international trade between members would need to be accounted for and systems put in place to allow countries who would have the right to bid for NHS GG&C tenders.

WTO Procurement Agreement for Government (GPA) – WTO members can also enter into a GPA agreement which regulates government spending requirements between WTO members who are GPA signatories. This is much more akin to the EU procurement regulations and sets thresholds and specific procedural requirements for government procurement.

NHSS Health Bodies are currently named in the WTO GPA agreement and again on the basis of WTO membership continuing it would be expected that the UK would accede to WTO GPA membership². Only specified goods, services and civil construction procurements are subject to the trading rules. These are set for each individual member. The UK could establish their own scope of goods/ services or accede based on the current EU in scope ones.

The current EU and therefore Scottish procurement regulations fully comply with the requirements of WTO GPA obligations. To remain a member of WTO GPA the UK would need to continue to comply with these requirements and maintain the current legislation. The changes would be a slightly higher threshold and ensuring all WTO GPA members have the right to bid for our tenders.

Free Trade Areas – Whether a WTO member or not countries can agree bilateral Free Trade Area agreements, these are allowed under WTO rules and do not impact on the MFN tariffs which still apply to those WTO members not in the free trade area. The EU is an example of the biggest WTO Free Trade Area (Custom Union). The UK would be at liberty to establish Free Trade Area agreements with the EU and other countries and trade tariff free. It is suspected there may be exceptions to tariff free trading for specific products / services and there would be set rules and procurement procedures to underpin the agreement. Currently UK imports £27b more from Germany than it exports to her. Commentators conclude that there are clear economic interests to establish a free trade arrangement from powerful EU members however the EU may insist on free movement of people and that was a key reason for UK exiting the EU.

² On 11 October, the UK and EU wrote to the other members of the World Trade Organisation. The letter confirmed that it was the policy of the UK and the EU that the EU27 would remain party to the Government Procurement Agreement, and that the UK would seek to remain party to it on the same basis as the EU.

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It would be expected that any Free Trade Area agreement would require open, fairness and transparency rules built into UK procurement legislation and therefore the current legislation would remain substantially unchanged. Thresholds and tender access rules may alter to reflect the trading partner countries and the specifics of the deals.

OPERATING WITH TARIFFS

Broadly NHS GG&C trades within the EU. Producers of goods manufactured outwith the EU area will typically import into the EU area via local distributors / selling divisions and manage all import duties/ tariffs and include these within their offer prices. Offer prices are also typically in Pounds Sterling (GBP)

NHS GG&C is probably similar to most UK public procuring bodies in that we have limited experience in understanding, managing and negotiating the impact of import / export tariffs and currency exchange.

Other than in the case of the Free Trade Area option above, post BREXIT the UK purchasing bodies will need to be able to cope with tariffs and manage them to avoid negative commercial impacts. It may be the case that UK based distributors will be able to manage the majority of the impact, particularly where there are new tariffs between the UK and EU members. Where we buy from suppliers based outwith the UK then this requirement will fall to the UK buyers. Currency management will fall into a similar position.

EU WTO TARIFFS

As described above commentators suggest that it is likely that the UK would accede to the WTO based on current EU MFN Tariffs. The UK would also be liable to pay the EU MFN Tariff when importing goods from the EU. It is highlighted that the supply chains for many of our suppliers include distribution hubs in the EU zone. These may incur tariff duties when servicing the UK post BREXIT.

Examples of some EU MFN Tariffs applying to NHS GG&C spend are shown in Annex 1, grouped into broad spend areas. There is a large range from no tariff to 24%. Food products and products used in their production seem to be hardest hit, utilities appear to have no tariffs (UK imports significant quantities of electricity and gas from EU).

The tariffs appear to broadly reflect protection of indigenous EU business sectors (agriculture/ fisheries etc) and more open trading with goods not available within EU or where imports/exports are encouraged.

CUSTOM BORDER IMPACTS

Goods being imported into UK from within the current free trade customs union with the EU move freely across UK borders. Other items require to be customs cleared. Customs clearance can be time consuming due to the administration of ensuring the correct tariffs are applied and the inspections by customs officers etc.

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“Imports of goods into any EU country, including the UK, are subject to 135 different duty rates. Goods from outside the Customs Union also face considerable non-tariff barriers such as customs clearance processes and potentially regulatory challenges, (for example in reviewing import licensing for pharmaceutical and chemical products).³”

Post BREXIT customs clearance will be required for all imported goods unless free trade agreements are established. Goods arriving from the EU will therefore be impacted and this may have significant impacts to product lead times, administrative resources required to be employed by NHS GG&C, costs of employing custom clearance houses and potentially these could create delays which may impact on patient critical deliveries.

FREE MOVEMENT FOR PEOPLE

The potential for restrictions to apply on movement of workers into UK from EU in addition to current ‘Rest of World’ restrictions must be recognised as a potentially significant risk both in terms of direct labour to NHSS and to suppliers of goods and services to us. When NHS GG&C reviewed ‘Living Wage’ impacts the report considered the Bain review⁴ which highlighted low pay sectors impacting on NHSS patient services. Critical sectors included:

- Residential Care (e.g. nursing homes),
- Accommodation Activities (e.g. hotels),
- Food and Drink Activities (e.g. restaurants)
- Social Work Activities (e.g. elderly care and childcare).

It would be reasonable to expect restriction on movement of labour adversely impacting on these sectors.

CONCLUSIONS AND RECOMMENDATIONS

It is too early to predict the outcome of the UK Governments BREXIT negotiations and therefore the basis on the UKs future trading arrangements.

It can be predicted that the UK would likely accede to WTO membership and be a WTP GPA signatory. Therefore the basis for our trading with non-EU countries is clearer and will mean managing tariffs and broadly maintaining our procurement legislation to achieve WTO GPA membership.

What is uncertain is the trading relationship with the EU. This will have the most significant impact not only via our import/exports to EU based producers/markets but additionally through the distributor network based in the EU that currently manages many of the external to EU supply chains which would potentially attract tariff and customs delays when servicing the UK.

³ KPMG Brexit and trade, Jan 17

⁴ More than a minimum The Resolution Foundation Review of the Future of the National Minimum Wage: The Final Report March 2014:

http://www.resolutionfoundation.org/wp-content/uploads/2014/03/More_than_a_minimum.pdf

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NHS GG&C will need to prepare for these changes and develop the capability and capacity to manage this as well as developing new supplier markets for import management and be prepared to increase order lead times to overcome extended import timescales.

It is recommended that NHS GG&C adds this to the corporate risk register, regularly updates this briefing and moves to implement mitigation actions at the appropriate stage.

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Annex 1 EU MFN Tariff Examples:

Tariff Code	% MFN Applied Tariff	Tariff description
<u>MEDICAL EQUIPMENT/ PRODUCTS</u>		
852859	14	Monitors (excl. with TV receiver, CRT and those designed for computer use)
370110	6.5	Photographic plates and film in the flat, sensitised, unexposed, for X-ray (excl. of paper, paperboard and textiles)
382530	6.5	Clinical waste
280440	5	Oxygen
900630	4.2	Cameras specially designed for underwater use, for aerial survey or for medical or surgical examination of internal organs; comparison cameras for forensic or criminological laboratories
701710	3	Laboratory, hygienic or pharmaceutical glassware, whether or not graduated or calibrated, of fused quartz or other fused silica (excl. containers for the conveyance or packing of goods, measuring, checking or medical instruments and apparatus of chapter 90)
841920	0	Medical, surgical or laboratory sterilizers
901831	0	Syringes, with or without needles, used in medical, surgical, dental or veterinary sciences
902214	0	Apparatus based on the use of X-rays, for medical, surgical or veterinary uses (excl. for dental purposes and computer tomography apparatus)
300220	0	Vaccines for human medicine
280429	0	Rare gases (excl. argon)
284440	0	Radioactive elements, isotopes and compounds, and alloys and dispersions, incl. cermets, ceramic products and mixtures, containing these elements, isotopes and compounds; radioactive residues (excl. natural uranium, uranium enriched and depleted in U 235; plutonium, thorium and compounds of these products)
300310	0	Medicaments containing penicillins or derivatives thereof with a penicillanic acid structure, or streptomycins or derivatives thereof, not in measured doses or put up for retail sale
300320	0	Medicaments containing antibiotics, not in measured doses or put up for retail sale (excl. medicaments containing penicillins or derivatives thereof with a penicillanic acid structure, or streptomycins or derivatives thereof)

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300331	0	Medicaments containing insulin, not in measured doses or put up for retail sale
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GENERAL SUPPLIES

392620	6.5	Articles of apparel and clothing accessories produced by the stitching or sticking together of plastic sheeting, incl. gloves, mittens and mitts (excl. goods of 9619)
830590	2.7	Office articles such as letter clips, letter corners, paper clips and indexing tags, of base metal, incl. parts of articles of heading 8305 (excl. fittings for loose-leaf binders or files, staples in strips, drawing pins and clasps for books or registers)
940330	0	Wooden furniture for offices (excl. seats)

FOOD PRODUCTS / FOOD PRODUCTION

160414	24	Prepared or preserved tunas, skipjack and Atlantic bonito, whole or in pieces (excl. minced)
200791	21.6	Citrus fruit jams, jellies, marmalades, purées or pastes, obtained by cooking, whether or not containing added sugar or other sweetening matter (excl. homogenised preparations of subheading 2007.10)
160521	20	Shrimps and prawns, prepared or preserved, not in airtight containers (excl. smoked)
151710	16	Margarine (excl. liquid)
081110	14.4	Frozen strawberries, uncooked or cooked by steaming or boiling in water, whether or not sweetened
200210	14.4	Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid
310559	6.5	Mineral or chemical fertilisers containing the two fertilising elements nitrogen (excl. nitrate) and phosphorus but not nitrates (excl. ammonium dihydrogenorthophosphate "monoammonium phosphate", diammonium hydrogenorthophosphate "diammonium phosphate" in tablets or similar forms, or in packages with a gross weight of ≤ 10 kg)
151219	5.1	Sunflower-seed or safflower oil and their fractions, whether or not refined, but not chemically modified (excl. crude)
090111	0	Coffee (excl. roasted and decaffeinated)

ESTATES / BUILDING PRODUCTS

391890	6.5	Floor coverings of plastics, whether or not self-adhesive, in rolls or in the form of tiles, and wall or ceiling coverings in rolls with a width of ≥ 45 cm, consisting of a layer of plastics fixed permanently on a backing of any material other than paper, the face side of which is grained, embossed, coloured, design-printed or otherwise decorated (excl. coverings of polymers of vinyl chloride)
320910	6.5	Paints and varnishes, incl. enamels and lacquers, based on acrylic or vinyl polymers, dispersed or dissolved in an aqueous medium
251710	0	Pebbles, gravel, broken or crushed stone, for concrete aggregates, for road metalling or for railway or other ballast, shingle and flint, whether or not heat-treated
252020	0	Plasters consisting of calcined gypsum or calcium sulphate, whether or not coloured, with or without small quantities of accelerators or retarders

UTILITIES

270119	0	Coal, whether or not pulverised, non-agglomerated (excl. anthracite and bituminous coal)
270500	0	Coal gas, water gas, producer gas, lean gas and similar gases (excl. petroleum gases and other gaseous hydrocarbons)
271111	0	Natural gas, liquefied
271112	0	Propane, liquefied
271600	0	Electrical energy