

Impact of COVID-19 on operational UK Private Finance (PFI) and Public Private Partnership (PPP) projects

The Infrastructure and Projects Authority (IPA) published a guidance note on 2 April 2020, which applies with immediate effect regarding continuing [service provision in PFI/PF2 \(and related\) contracts during the COVID-19 emergency](#).

The guidance is to be read alongside the Cabinet Office's recently published Procurement Policy Note [PPN 02/20 notes on Model Interim Payment Terms](#).

In summary, IPA's guidance sets out:

1. PFI contractors should consider themselves to be part of the public sector response to the current COVID-19 emergency.
2. PFI contracting counterparties should co-operate to ensure the continued delivery of public services (the COVID-19 emergency is not, and is not to be, regarded as an event of force majeure).
3. PFI contractors should ensure contingency plans are up to date and have been reviewed and discussed with contracting authorities to enable continuity of full services as far as possible to respond to the emergency and maintain vital public services, particularly across the NHS.
4. Contracting authorities should work closely with PFI contractors to use all available options to maintain public services during the emergency period. This will include maintaining unitary charge payments (enabling PFI contractors to pay their workforce and suppliers), revising contract requirements/ standards (including scope changes where necessary) and moderating payment and performance mechanism regimes where appropriate.

There are around 700 PFI/PF2 projects in operation within the UK, across numerous sectors including health, education, emergency services, custodial, social care, waste, accommodation, and economic infrastructure. Whilst such projects have been impacted by the current COVID-19 crisis (due to, for example, potential staff shortages, and restrictions due to health and safety), it is clear that PFI assets form part of the critical UK infrastructure which needs to remain open.

Contracting Authorities should recognise that PFI contractors may not be able to achieve full performance under the PFI contract due to the on-going COVID-19 emergency. Where this is the case, it should be agreed locally to moderate contract requirements and standards and payment and performance mechanism arrangements to a point where they support the stable delivery of vital services for the duration of the emergency.

PFI contractors are to ensure that contingency plans are up to date (and have been reviewed and discussed with Contracting Authorities) to enable, as far as possible, continuity of full service and to maintain vital public services, particularly across the NHS, to the agreed requirements and performance standards.

The IPA guidance confirms that "As a matter of contract, Government does not regard COVID-19 as an event of force majeure".

The IPA guidance is scheduled to end on 30 June 2020.

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