

UNITED KINGDOM

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I OVERVIEW

i Background

Public-private partnerships (PPPs) are infrastructure delivery models based upon joint working and risk sharing between the public and private sectors. Generally, these are long-term models, with the United Kingdom's Private Finance Initiative (PFI) structure (until recently the UK government's preferred PPP model; see below) typically existing over a concession period of 25 to 30 years.

There are many forms of PPP, from private contracting as part of a state business through concession-based PPPs to regulated private sector entities. These are described in greater detail in Section III.

In respect of PFI, the Chancellor of the Exchequer announced at the 2018 Budget that PF2 (the updated PFI model) would no longer be used to procure infrastructure. This announcement did not affect existing projects procured under these models. A new preferred model is yet to be consulted on or announced by the UK government. In the absence of a replacement preferred model, this chapter concentrates on the prevailing PFI/PF2 models.

PFI projects can arguably be characterised as having been a continuation of the privatisation programme pursued by the UK government under Prime Minister Margaret Thatcher, where publicly owned utility companies such as gas, electricity, water and telecommunications were privatised with the intention of both facilitating new capital investment in these sectors and reducing (on the balance sheet) government liabilities.

However, while certain sectors, in particular prisons, hospitals, schools and the Ministry of Defence estate, were not considered practically or politically suitable for full privatisation, the intention to reduce government liabilities and increase capital investment through private sector financing could still be fulfilled through the use of PFI projects.

The UK government first adopted the PFI model of contracting in 1992 (pre-PFI examples of the United Kingdom using PPP procurement models include the Dartford Crossing and Severn Bridge, commissioned in 1987 and 1990 respectively). The PFI model was generally a design–build–finance–operate or design–build–finance–maintain PPP structure. While, as with PFI, most UK PPPs are funded through availability payments made by the public sector, a minority of PPPs (mainly road projects and bridges) are funded by the end user (for example, through road tolls). PFI projects were generally structured so that no demand risk is taken by the private sector contractor.

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By contractually transferring delivery, cost and performance risk to the private sector, the government sought to protect the public sector from delays, cost overruns and poor performance in the delivery of infrastructure,² while utilising private sector depth of expertise, management and commercial skills and procurement experience (arguably problematic deficiencies in the public procurement of infrastructure).

However, as a fundamental tenet of PPP, best practice dictates that risks should be allocated to those parties best able to manage their occurrence and impact. Some commentators argue that PFI attempted to transfer too much risk to the private sector, with the private sector pricing projects accordingly to cover this inefficient transfer of risk – resulting in projects that were more expensive for the public sector than if the public sector had retained certain risks (and the costs associated with those risks). This, among other factors, has led to the increased questioning of whether PFI represents value for money.

Uptake from the first PFI project, the Skye Bridge, was initially slow both in the number and value of projects, but accelerated with the election of Tony Blair's New Labour government in 1997 and the standardisation of the contracting approach (the current approach being Standardisation of Procurement Contracts, Version 4 (SOPC4)).³ The number of PFI projects rose from no more than one a year up to 1995, to a peak of 68 in 2004 (with at least 45 projects a year between 1999 and 2007).⁴ Since the global financial crisis of 2008 and the implementation of Basel III (making long-term debt more expensive as a result of creating stricter capital adequacy regulations), the number and capital value of PFI projects fell steeply, and no projects have reached financial close since 2016.

ii PFI to PF2

PFI, then being the UK government's preferred approach to PPPs, was updated in a second generation of the PFI model, PF2, in 2012. Since 2012, more than £1 billion of capital investment has been made in 46 schools and one hospital. However, no PF2 investment has reached financial close since the Midlands Metropolitan Hospital project reached financial close in 2016.

As a result of PFI and PF2, PPPs have delivered in excess of £59 billion of private sector capital investment in over 722 UK infrastructure projects since 1992.⁵ These projects included new schools, hospitals, roads, housing, prisons, and military equipment and accommodation.

PF2 involved a number of structural changes to the PFI model. The key changes included:

- a* the public sector taking a minority equity interest in PFI vehicles alongside the private sector (typically a 10 per cent interest);
- b* the introduction of funding competitions for part of the private sector equity interest in PFI vehicles;

2 'Public Private Partnerships' HM Treasury, <https://www.gov.uk/government/collections/public-private-partnerships> (last accessed 29 January 2018).

3 'Private Finance 2 (PF2)' HM Treasury, <https://www.gov.uk/government/publications/private-finance-2-pf2> (last accessed 29 January 2018).

4 'Private Finance Initiative and Private Finance 2 projects: 2016 summary data' HM Treasury, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/579271/PFI_and_PF2_projects_2016_summary_data.pdf (last accessed 29 January 2018).

5 *ibid.*

- c* accelerating delivery by reducing the length of the tendering process;
- d* the removal of soft facilities management services (e.g., cleaning) from the scope of services, and flexibility on the potential exclusion of minor maintenance services;
- e* open-book approach and gain share mechanism for surplus life-cycle funding;
- f* greater transparency, including in relation to private sector equity return; and
- g* risk reallocation, with the public sector taking additional risk allocation, including the risk of additional capital expenditure arising from an unforeseeable general change in law, utilities costs, site contamination and insurance.⁶

While no PFI projects have reached financial close since early 2016, the 2016 Autumn Statement⁷ provided that the government would develop a new pipeline of projects suitable for delivery through PF2 (it was stated these projects would likely focus on roads, education, defence and primary care). This pipeline was initially expected to be revealed in 2017, but tightened government departmental budgets combined with increasing political antipathy (see below) raised the question of whether this pipeline would actually appear. While some elements of the pipeline were announced, the cancellation of PF2 has brought into question how these projects will be financed (see below).

iii Political antipathy

Throughout the history of PFI, but with increasing frequency since the global financial crisis and the re-emergence of 'old' Labour, left-wing politics in the United Kingdom, there has been a growing political antipathy towards PFI, both from ideological and value-for-money perspectives. Combined with the recent coalition and current Conservative governments' austerity policies since the global financial crisis, PFI has increasingly been characterised in the media as providing for excessive private profit at public expense (most often in relation to National Health Service hospital PFI projects).

In particular, Labour MP Stella Creasy's rejected proposal for a windfall tax on the profits of PFI projects⁸ (proposed to be equivalent to removing any decrease in corporation tax the relevant companies have been subject to since the relevant PFI project reached financial close) exemplified the increase in political antipathy towards PFI/PF2.

Carillion insolvency events

The January 2018 insolvency of key PFI contractor Carillion plc (the second-largest construction group in the UK before its liquidation) has further hardened public sentiment towards PFI. In particular, Midlands Metropolitan Hospital and other projects such as the new Royal Liverpool Hospital and Aberdeen Bypass, the latter being a non-profit-distributing (NPD) project (see Section I.iv.), were heavily behind schedule and over budget at the point of Carillion plc's collapse.⁹ In addition to political antipathy towards PFI, major contractors

⁶ See footnote 2.

⁷ 'Autumn Statement 2016' HM Treasury, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571559/autumn_statement_2016_web.pdf (last accessed 29 January 2018).

⁸ 'Stella Creasy wants windfall tax on PFI companies to recover taxpayers money' BBC, www.bbc.co.uk/news/av-uk-politics-42732922/stella-creasy-wants-windfall-tax-on-pfi-companies-to-recover-taxpayers-money (last accessed 29 January 2018).

⁹ 'The collapse of an over-stretched Carillion' *Financial Times*, <https://www.ft.com/content/0e29ec10-f925-11e7-9b32-d7d59aace167> (last accessed 29 January 2018).

have increasingly moved away from large fixed-price construction contracts (a key risk transfer aspect of PFI) because of their often wafer-thin margins and the systemic risk they represent to these contractors.

Further, the Leader of the Opposition in the United Kingdom, Jeremy Corbyn, and the Shadow Chancellor of the Exchequer, John McDonnell, made statements following the insolvency of Carillion plc to reinforce their opposition to PFI, with current Labour policy proposing that there will be no new PFI projects and most existing PFI projects will be brought 'back in-house' if a Labour government is elected, although the detail provided to date on these proposed policies goes little further than refinancing some PFI projects and passing some form of statutory instrument to set a price for the nationalisation of equity in some existing PFI projects.¹⁰

As of the time of writing, there remain significant questions as to the financial health of a number of major PFI contractors.

iv Varying approaches to PPP across the United Kingdom

The devolved administrations in Wales, Scotland and Northern Ireland have the capability to follow alternative PPP models. The Scottish and Welsh governments have previously used the NPD model, a model whereby there is no dividend bearing equity and capped return for private sector participants (any excess return is retained by the public sector). However, the extent of control and profit retained by the public sector under the NPD model has meant that these projects have been reclassified as 'on balance sheet' (increasing public sector debt) as a result of changes to EU rules (further below). This reclassification has reduced the attractiveness of procuring through the NPD model.

The Welsh government also has a mutual investment model structure, whereby the private sector builds and maintains assets, and in return the Welsh government pays a fee to the private sector to compensate for construction, maintenance and financing. At the end of a MIM contract, the asset is then transferred to public ownership.¹¹

v New models for PPP

With the PF2 model cancelled, and the MIM and NPD models currently being subject to significant (if differing) questions over their future viability, the question arises as to what future role PPPs might have in the future infrastructure procurement in the United Kingdom. As exemplified in Section III, there is a range of PPP models that the United Kingdom could explore to procure infrastructure.

While one route may be to increase government borrowing through issuing gilts (currently relatively cheap by historical comparison), this may potentially create problems if it would result in the UK exceeding its 3 per cent and 60 per cent deficit-to-GDP and debt-to-GDP ratios respectively (under the Treaty on the Functioning of the European Union). Though the United Kingdom is set to leave the European Union in March 2019, significant divergence from European law is (at least initially) unlikely, and breach of these thresholds may lead to a sovereign debt rating downgrade (making government borrowing more expensive and potentially reducing the finance available for infrastructure investment) or be problematic in the context of any future UK–EU trading relationship.

¹¹ 'The Mutual Investment Model' Welsh Government, <http://gov.wales/funding/wales-infrastructure-investment-plan/mutual-investment-model/?lang=en> (last accessed 29 January 2018).

Given the likely implications of any new large-scale government borrowing programme (with the government intending to spend between 1 per cent and 1.2 per cent of GDP on infrastructure between 2020 and 2050),¹² there would, however, appear to be a continuing opportunity for private finance in delivering infrastructure in the United Kingdom, with Her Majesty's Treasury announcing an infrastructure investment programme of around £600 billion up to 2028, of which the UK government anticipate almost half will be privately financed.¹³ For nearly £300 billion of investment to be privately financed over a 10-year period, it has been suggested that public sector support for private sector infrastructure investment will be continued, including through Contracts for Difference (a subsidy mechanism for low-carbon energy investment that guarantees a certain price for energy), the UK Guarantee Scheme (see Section VI.ii), and the Regulated Asset Base (RAB) model (see Section III.i).

Another possible solution may be for the government to increase the use of direct procurement (currently used for regulated utility infrastructure provision, for example, the Thames Tideway Tunnel) in the wider provision of infrastructure. Increased competition and innovation through competitive tendering of project financings (combined with minimum stipulated government contractual protections) certainly has the potential to address any value-for-money concerns over PFI/PF2.

It is not clear how exactly the role of private finance will develop in the provision of UK infrastructure, but it is clear that new models and risk allocations are needed. If the government wants to increase infrastructure investment, PPP innovation will be required. Delay to consulting on or announcing a new preferred model may delay decisions on and construction of new infrastructure, and while the government may consult on a new preferred model in 2019, the reduction in civil service bandwidth as a result of the United Kingdom's decision to leave the European Union could mean that a new model is not settled on by the UK government for a significant period of time.

II THE YEAR IN REVIEW

i Brexit

The United Kingdom gave notice of its intention to leave the European Union on 30 March 2017. The notice period for withdrawal is two years, during which time the United Kingdom remains a full EU member with all its existing rights and obligations. At the end of the notice period, the United Kingdom will automatically leave the European Union unless it agrees alternative transition arrangements. The proposed date for withdrawal is 29 March 2019. As at the time of writing there is some debate as to whether (as a consequence of the inability of the UK government to pass legislation in respect of a withdrawal deal) the withdrawal will be delayed or, in the extreme, cancelled. Discussions have identified the likelihood of a two-year transition period to allow the parties to move to a post-Brexit trading model, but it is not yet clear what this will entail.

12 'National Infrastructure Commission Autumn Statement Response: Government acceptance of NIC recommendations most welcome – Armit' National Infrastructure Commission, <https://www.gov.uk/government/news/national-infrastructure-commission-autumn-statement-response-government-acceptance-of-nic-recommendations-most-welcome-armitt> (last accessed 29 January 2018).

13 'Written questions and answers' Parliament.uk, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons&keywords=%22private+finance+initiative%22>.

The UK government intends to legislate for withdrawal in the European Union (Withdrawal) Bill, which, in summary, will seek to repeal and then immediately re-introduce all EU-derived law into UK law at the date of exit. Decisions will then be made at the nation's leisure as to whether to keep or amend each law. The key issue is that many EU laws cannot be repealed and reintroduced to the UK as they are, as many sections will not make sense without full EU membership. Most EU-derived laws must be amended in some way prior to being included again on 29 March 2019, and the scale of this task is vast in the time available. As mentioned above, the UK government has not currently been able to obtain support for its proposed withdrawal legislation. This opens the possibility of either a second referendum on the United Kingdom exiting the European Union, withdrawal without a deal in place or a general election.

It is the intention to retain all EU-derived procurement law in the United Kingdom immediately following Brexit. Procurement law that is compatible with Europe's will be vital to ensure that cross-border trade is encouraged, and the United Kingdom is still considered not only 'open for business', but likely to treat non-UK based companies on a level playing field. It is also likely to be a requirement of any future UK–EU trade deal.

Continued uncertainty over the future relationship between the United Kingdom and European Union has negatively impacted and, at least in the short term, is likely to negatively impact inbound investment by overseas infrastructure investors in UK-based infrastructure projects. The United Kingdom may take the opportunity outside the European Union to consider its wider procurement laws and labour law standards, which could have a positive effect on the United Kingdom's competitiveness.

ii Future role of the European Investment Bank in UK infrastructure

One key impact on UK infrastructure from Brexit may be the United Kingdom's withdrawal as a shareholder from the European Investment Bank (EIB) and what may have to be paid on leaving the EIB. In the short term, post-Brexit UK projects have been warned¹⁴ that they may have to insure against the risks of Brexit, and in the long-term, lending from the EIB may reduce or end completely, cutting off an important source of funding. Addressing this concern, the joint report on preliminary matters released on 8 December 2017 expresses the United Kingdom's hope that a relationship with the EIB can be maintained, saying: 'The UK considers that there could be mutual benefit from a continuing arrangement between the UK and the EIB. The UK wishes to explore these possible arrangements in the second phase of the negotiations.'¹⁵ There has been little by way of further clarification of the potential role of the EIB in a post-Brexit United Kingdom.

iii The National Infrastructure Commission

The National Infrastructure Commission (NIC) was established in 2015 with the remit of providing expert and impartial advice on infrastructure to the government, in part, by providing a report on the long-term infrastructure requirements once in each parliamentary

14 'EU infrastructure bank warns of Brexit hit to UK', *Financial Times*, 16 October 2017, www.ft.com/content/aaaaa9cc-b1b2-11e7-aa26-bb002965bce8 (last accessed 29 January 2018).

15 'Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of the negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union', 8 December 2017, European Commission, https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf (last accessed 29 January 2018).

term. The NIC's reports, when coupled with the United Kingdom's government's commitment to spend between 1 per cent and 1.2 per cent of UK GDP on infrastructure,¹⁶ should ensure that a 'short-termist' approach can be avoided for a more beneficial, long-term vision of what infrastructure the United Kingdom needs.

The NIC has published some important studies on, for example, new technologies, the Cambridge–Oxford Growth Corridor and the future of freight.¹⁷ It is expected later this year to publish a report on the regulation of the United Kingdom's energy, telecoms and water industries, including in respect of ensuring the necessary levels of investment in these infrastructure sectors. The NIC's long-term approach to infrastructure makes the institution an important part of United Kingdom's infrastructure industry.

iv Green Investment Bank sale

The government sold the Green Investment Bank to Macquarie in April 2017. The government justification for the sale was that the Green Investment Bank could not raise further capital while constrained by public sector ownership and as such it needed to be privately controlled to grow.¹⁸ Since its sale, the Green Investment Bank has rebranded as the Green Investment Group. The government is in the process of disposing of the residual assets retained from the sale of the Green Investment Bank.

v Secondary market

The UK PFI market has benefited from an active secondary market in equity stakes in PFI projects. The United Kingdom, by volume, is the most active secondary market for the trade in PPP equity stakes. However, the number of secondary market trades has been reduced as the number of newly originated greenfield PFI projects has halted. When coupled with the desire of close-ended equity infrastructure funds holding their equity stakes to maturity, we anticipate the volume of sales of PFI equity stakes on the secondary market to continue to reduce. While the volume of equity trades is reducing (due in part to long-term investors holding assets to maturity), equity holders have an opportunity to take advantage of historically low interest rates and significant debt liquidity, including the use of holding company leverage in their acquisitions.

vi Budget 2018

The 2018 Budget announced the cancellation of the PF2 model, and subsequent ministerial answers to questions in parliament have clarified that the key elements of the existing infrastructure investment pipeline which were anticipated to be financed by PF2 (specifically Glen Parva prison, the A303 Stonehenge tunnel and the Lower Thames Crossing tunnel) will not be privately financed, but will be financed using public financing.¹⁹

16 'Autumn Statement 2016' HM Treasury, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571559/autumn_statement_2016_web.pdf (last accessed 29 January 2018).

17 See <https://www.nic.org.uk/our-work/> (last accessed 29 January 2018) for further information.

18 'Sale of Green Investment Bank', Department for Business, Energy and Industrial Strategy (BEIS), the Rt Hon Nick Hurd MP, 20 April 2017 (<https://www.gov.uk/government/speeches/sale-of-green-investment-bank>) (last accessed 29 January 2018).

19 'Written questions and answers' Parliament.uk, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-questions-answers/?page=1&max=20&questiontype=AllQuestions&house=commons&keywords=%22private+finance+initiative%22>.

vii Preferred PPP Model review

In October 2017, the government commissioned a review of SOPC⁴ with the intention that a new generation of PFI projects could be developed to revitalise the infrastructure sector. However, the National Audit Office's recent review of PFI dampened the government's plans by suggesting that PFI has not provided value for money for the taxpayer. The subsequent cancellation of the PF2 model means that any updated SOPC may coincide with the government consulting on or announcing a new preferred model for private investment in PPPs.

We understand that the government's review of SOPC will identify changes to reflect recent EUROSTAT regulatory changes. In addition, as a result of recent political events, the government may also take the opportunity to incorporate additional changes to the SOPC, reflecting upon lessons learnt from the Carillion insolvency and other incidents associated with PFI/PF2 service delivery. But it is not clear, and there has been no current indication from government, as to exactly what form the new model will take. We would, on balance, suggest that it may be a model where the private sector participants received a capped return.

III CONTRACTUAL FRAMEWORK

i Types of public-private partnership

Outside of PFI/PF2, there are several other forms of PPP used in the United Kingdom, considered below.

Concessions

Under a concession, a private entity is granted an exclusive right to build, maintain and operate specific assets for a period of time. These projects are financially free-standing and usually the contractor is paid through usage charges, availability fees or a combination of both to ensure the operating model can encourage both ongoing capital expenditure and service delivery innovation. This structure is often used for projects such as tolled roads and river crossings.²⁰ The United Kingdom's rail franchise model is also a form of concession operating in a highly regulated industry.

Strategic infrastructure partnerships

In a strategic infrastructure partnership, a public sector body enters an arrangement with a private sector partner as a joint venture or under a contract. This structure is usually suitable where there may be several phases of works or where several similar small projects are bundled together.

Public delivery organisation (integrator)

The public sector appoints a contractor to adopt a 'client-side' role and manage the delivery of a project from preparation to operation. The contractor will usually only manage rather than deliver the project. This approach may be suitable where the project is long-term and requires a flexible approach.

20 For example, the M6 toll road, the Second Severn Crossing and the QE2 Bridge at Dartford.

Regulated asset base structures

The regulated asset base model structure is used to license out a commercial activity, and the licensee will recover returns on expenditure used to develop and operate the assets. Competitions are held for the award of the licence, and the activity and returns on investment are usually subject to independent regulation. The regulated asset base model has been used successfully in the regulated water, power distribution and airport sectors.

With a regulated asset base model, the initial value of assets (often at privatisation) is added to the cost of further investment allowed by the regulator (each subject to depreciation) and the value realised from any disposal is subtracted. This regulated asset base (RAB) (also known as a regulated asset value) is then subject to indexation, creating a net invested capital value.

While models vary dependent on industry, the RAB (i.e., CAPEX) is, in basic terms, then used to calculate the required revenue for the provider through a (risk-weighted) allowed return (which will take account of a number of factors including the provider's weighted average cost of capital) being applied to the RAB. This allowed return is then (subject to an amortisation allowance) added to allowable OPEX costs to calculate a total required revenue. This required revenue is then raised from customers (subject to provision of any grants or other funds from the public sector) through their usage or bills.

Direct procurement

Ofwat, the water sector regulator, and Ofgem, the electricity regulator, exemplify a further procurement option. Ofwat has used direct procurement to deliver large-scale assets. This model encourages partnership arrangements for the delivery of an asset to increase competition for financing with the hope of driving down financing costs. Thames Water's Thames Tideway Tunnel project is an example of the use of direct procurement in the regulated water sector. In the case of the energy sector, Ofgem has used direct procurement methodology for Offshore Transmission Operators and had previously intended to use direct procurement for its Competition in Onshore Transmission programme (a programme that has now been suspended).²¹

Joint ventures

The government may adopt a joint venture model to deliver a project utilising limited companies or partnerships. Joint ventures may be adopted to operate a public service where the revenue does not cover the operational costs, or to realise development potential in publicly owned real estate.

Government-owned, contractor-operated companies

An authority may want to retain control of a strategic asset but will need a contractor to operate it for the duration of the services. Once in operation, the asset will be transferred back to the government.

21 See, for example, 'Competition in onshore transmission', Ofgem, <https://www.ofgem.gov.uk/electricity/transmission-networks/competition-onshore-transmission> (last accessed 31 January 2018).

Hybrid projects

Structures may develop that combine together aspects of the above structures and these may be used for specific one-off projects that have special requirements.

ii The authorities

The following public bodies are responsible for PPP in the United Kingdom:

- a* the European Commission, which sets the regulatory framework for public procurement in the European Union. Post Brexit, much of the existing framework will remain in UK law but the extent of future application of EU rules will depend on any final agreement;
- b* Her Majesty's Treasury, which controls public spending and sets the general direction and policy on PPP. It also approves the project business cases;
- c* the Cabinet Office, which oversees the standards and efficiency of government functions and procurement and approves procurement structures;
- d* the Infrastructure and Projects Authority (IPA), which helps translate long-term planning into successful projects. The IPA publishes National Infrastructure Delivery Plans to cover infrastructure policy over a five-year period;²²
- e* procuring bodies: the authorities that structure and procure projects. They are the contracting party and manage the project and pay the contractor;
- f* independent regulators: some areas of activity are regulated by a specific body, for example, gas and electricity, large airports, water, and environment;
- g* planning authorities that decide whether to grant development consent for a project. The size and location of the project will define who the relevant planning authority is; and
- h* the Comptroller and National Audit Office, which scrutinises government spending. The Comptroller and National Audit Office recently published a report on the costs and benefits of PFI/PF2.²³

iii PPP project requirements

In the United Kingdom there is no PPP law as such, unlike in many other jurisdictions outlined in this book. UK PPP projects are promoted under the general legislative powers of government and public bodies. A PPP concession is granted by government under English contract law (or under Scottish law where the concession is granted by the Scottish government using devolved powers), although in some sectors of government, primary legislation has been passed to enable PPP projects to be financeable. The powers of central government departments are mainly unfettered unless limited by common law or legislation. Local government and other public bodies will have more restricted powers conferred by legislation.²⁴

22 'National Infrastructure Delivery Plan 2016-2021', Infrastructure and Projects Authority, www.gov.uk/government/publications/national-infrastructure-delivery-plan-2016-to-2021 (last accessed 29 January 2018).

23 'PFI and PF2', National Audit Office, <https://www.nao.org.uk/wp-content/uploads/2018/01/PFI-and-PF2.pdf> (last accessed 29 January 2018).

24 For example, the National Health Service (Private Finance) Act 1997 which allows the NHS to enter into development finance agreements. Also, the Localism Act 2011 extended the powers of local governments.

The choice of what PPP model to use on each project is up to the procuring body to decide and there is no standard approach or correct structure when procuring a project. The Cabinet Office and Her Majesty's Treasury will oversee any decision on the structure of the project and ultimately (and most importantly) the source of funding for the project.

Similarly, the approach to PPP contracts will depend on the structure of the project. However, the contracts for PFI/PF2 projects have been standardised by Her Majesty's Treasury in SOPC4. SOPC4 sets out recommended and required provisions that should feature in the contract.

By way of example, in the United Kingdom, PFI/PF2 projects had to be approved before procurement and a typical framework for approval is:

- a* the Cabinet Office approves the procurement route. The IPA operates a staged assurance process that the project must go through when proceeding to procurement; and
- b* the strategic outline case, outline business case and final business case must be approved by Her Majesty's Treasury. The strategic outline case will be approved at the beginning of the project, the outline business case at the pre-market stage and the final business case before any final negotiations begin.

Each procuring body must follow its relevant approval process. Local government bodies and other public bodies usually require sign-off from their sponsoring department.

All of these approvals are obtained by the procuring body and not the contractor. Once it has successfully bid for the project, the contractor will have to obtain various consents such as planning consents and environmental permits. The contractor is not required to obtain any PPP-specific consents.

IV BIDDING AND AWARD PROCEDURE

The procurement of works, goods and service contracts by public bodies in the United Kingdom is governed by the Public Contracts Directive 2014/24/EU (the Directive) as implemented in UK law in the Public Contracts Regulations 2015 (the Regulations).²⁵

The Directive applies when works, services or supply contracts are procured that have a value in excess of the published thresholds for that year and they are not excluded contracts.²⁶ It describes three regimes. The primary regime requires fully regulated procurement, and this applies to most contracts above the thresholds. It involves advertisement of the opportunity in the Official Journal of the European Union (OJEU) and compliance with detailed rules when carrying out the competition. This regime applies to the majority of PPPs.

The second regime describes a 'light touch' procurement process that must apply to a limited number of specific types of contract referred to as 'social and other specific services'.²⁷ There is a higher financial threshold, and while advertisement in OJEU is still required, the process itself is less prescribed. This process may be used, for example, in the procurement of medical equipment or social services.

Finally, there is very limited regulation in respect of 'below threshold' contracts that are between a *de minimis* threshold (£10,000) and the main threshold. The below-threshold regime requires advertisement on a national website, though not the OJEU. In the United

25 This covers only procurements commenced after 26 February 2015.

26 Thresholds can be found at: www.ojec.com/thresholds.aspx (last accessed 29 January 2018).

27 These include contracts in the field of health, education and law.

Kingdom this website is Contracts Finder,²⁸ and will include most, if not all, contracts, whether above or below the thresholds. It is familiar to most contractors in the United Kingdom and the preferred source of contract opportunities.

There are two ancillary Directives that may apply in specific circumstances:

- a* The Concessions Contracts Directive 2014/23/EU applies when public bodies procure concession contracts, that is, contracts where the contractor receives remuneration from third parties by exploiting the relevant asset or concession (e.g., toll roads). This came into force in the United Kingdom in 2016 under the Concession Contract Regulations 2016.
- b* The Defence and Security Directive 2009/81/EC applies to the procurement of contracts that require a higher degree of confidentiality and data security because of their sensitive nature.

Though an OJEU notice is still required, the Concessions Contract Directive offers less-onerous rules of competition. Though it could apply to many infrastructure projects and PPPs, the public sector has been slow to make use of it in the United Kingdom, preferring the familiarity of the main Directive.

All of the Directives require the application of overriding principles of fair procurement, namely: the equal treatment of all bidders; transparency of the procurer's requirements and decision-making processes to bidders; and non-discrimination.

Where the full regime applies; there is a choice of five procedures:

- a* the open procedure;
- b* the restricted procedure;
- c* the competitive dialogue procedure;
- d* the competitive procedure with negotiation (often referred to as the 'negotiated procedure'); and
- e* the innovation partnership procedure.

In summary, the open and restricted procedures do not allow any form of negotiation or discussion between the bidder and the authority (although clarification of proposals is allowed). They are generally considered unsuitable for procuring complex PPPs. Innovation partnerships are a new feature of the 2014 Directives but do not appear to have gained much traction. They are appropriate where the authority is looking to the market to develop a new product to meet its needs and be the 'first customer' of such product.

Common practice in the United Kingdom for PPPs has oscillated over the years between the negotiated procedure and the competitive dialogue procedure. An earlier version of the negotiated procedure was preferred until 2006, being extremely flexible and allowing the deselection of one bidder early in the process. However, the United Kingdom was heavily criticised for this and it was generally felt that the lack of competition during the key contract negotiations prolonged the award of the contract rather than facilitated it, as all terms were often erroneously considered up for negotiation by the 'preferred' bidder and the authority. By 2006, the United Kingdom had worked with the EU Commission to devise the competitive dialogue procedure as an alternative, which enabled negotiation with multiple bidders until the submission of final tenders only, after which there would be no further discussion. Between 2006 and 2015, the UK government championed this new process, but

28 See <https://www.gov.uk/contracts-finder> (last accessed 29 January 2018).

it was generally considered the worst of all worlds in practice. It required significant resources and time (for bidders and authorities) to negotiate more than one contract to the stage where a final tender could be capable of acceptance without further discussion.

The 2014 Directives dealt with this criticism by amending the competitive dialogue procedure to allow some negotiation with the preferred supplier post-final tenders, provided there is no material modification. Meanwhile, the negotiated procedure in the Public Contracts Directive²⁹ no longer allows negotiation post-final tender.³⁰ Competitive dialogue is arguably now the more flexible procedure. Perhaps for this reason, the UK government has relaxed its policy prohibition on the use of the negotiated procedure and, ironically, public bodies have flocked back to it, perhaps in the belief that it still provides its previous flexibility. It is once again the most common procedure for large PPPs.

Whichever process is chosen, lack of government resources and a tightening of legal budgets has led to a focus on reducing procurement timetables. To do this, public bodies tend to limit which areas they are prepared to discuss or negotiate. Often, the main terms and conditions may not be debated at all, only the technical solutions. As much as possible of any negotiations are also now conducted electronically by use of web-based applications. The days of PPPs taking three years to negotiate are long gone.

EU procurement law provides a number of remedies to disgruntled bidders such as a right to damages and in some circumstances a right to have a contract rendered ineffective. These remedies can be found in the Directives and Regulations, though are subject to very short limitation periods. Courts in England and Wales have in the past arguably been unsympathetic to procurement law challenges, and litigation levels remain relatively low compared with the rest of Europe (and with a comparatively low success rate, though it has been steadily increasing over the past decade).

Procuring authorities are also subject to freedom-of-information laws and concluded contracts are generally published (usually with redactions of particularly sensitive information).

i Expressions of interest

All above threshold contracts to which the Directives apply must be advertised in the OJEU. The name, description and value of the contract is given together with the link or contact details for obtaining further information. This information usually consists of an information memorandum detailing the opportunity and background information, together with anticipated timescales and selection criteria for the initial shortlisting of those who will be invited to tender. It may also include a draft contract and evaluation criteria to apply to the tenders at the next stage.

Vitaly, the information pack will also include a selection questionnaire to be completed by interested parties and returned within a 30-day period (other than in cases of urgency where this period may be reduced). Most public bodies now use the UK government's standard form questionnaire.³¹ It asks a series of questions aimed at identifying the bidding organisation or bidding consortium, its financial strength and experience, and whether

29 The negotiated procedure in the Utilities Contracts Directive remains flexible allowing negotiations with one preferred supplier from an early stage.

30 See Regulation 29(13).

31 See <https://www.gov.uk/government/publications/procurement-policy-note-816-standard-selection-questionnaire-sq-template> (last accessed 29 January 2018).

there are any mandatory or discretionary grounds for exclusion (e.g., a history of criminal conviction, fraudulent activity, tax evasion or poor performance on previously awarded public sector contracts).

Respondents will be assessed against their ability to meet the minimum thresholds with regard to financial standing, and technical ability or experience. Only those that meet the minimum requirements shall be scored, and a shortlist of usually between three and five respondents will be invited to the tender stage of the competition.

ii Requests for proposals and unsolicited proposals

Private parties often liaise with public bodies in an effort to persuade them to enter into PPP arrangements with them. These discussions more often than not take place in the context of official pre-market engagement exercises, which are now specifically allowed under the Directive and promoted by the government. Care must be taken by the authority to ensure they are transparent about these discussions and provide the same level of information to all interested parties (though information received in return should be kept confidential). Sometimes, however, discussions are entered into on an exclusive basis but an authority may not accept any unsolicited offer without considering whether the contract in question would be subject to the Directives. If it is, the body may not accept such offer without the risk of procurement law challenge, and the potential contract must be advertised in OJEU.

Assuming a contract has been advertised and pre-qualified respondents shortlisted as described in Section IV.i, then the shortlisted bidders will be provided with a suite of documents referred to as the 'Invitation to Participate in Competitive Dialogue', or 'Invitation to Negotiate' (as applicable to the chosen procedure). The documents will include: details of the timetable and process for negotiation, including whether it will take place in successive stages and whether bidders may be rejected at each stage; the technical requirements and specification; the draft terms and conditions; the evaluation criteria that shall be applied to each tender and the final tender; and the deadline by which initial tenders must be submitted.

iii Evaluation and grant

Following the receipt of initial tenders, there is a period of negotiation with each bidder. The authority may, in theory, discuss and negotiate all aspects of the tenders but must have regard to the core principles of equal treatment. This means that they cannot agree to change to their requirements with one bidder and not others. However, they must balance this against maintaining the confidentiality of each bidder's technical solutions.

As set out above, the scope of matters that are likely to be negotiated has decreased drastically over the years. Mark-ups of the draft terms and conditions are often not allowed at all and may result in exclusion, be limited to some clauses only, or be heavily penalised in the scoring. As a result of this, public bodies have ensured that by the time final tenders are requested, the contract has been largely accepted and there is minimal negotiation thereafter. Only time will tell whether this will produce long-term contracts that are truly fit for purpose.

Once the final tenders are received, the authority shall apply the evaluation criteria to the tenders. Evaluation criteria must be set out at the outset in the procurement documents and have the objective of identifying the 'most economically advantageous tender'. This means there must be a price-to-quality ratio applied to the weighting of scores. The contract may only be awarded to the bidder that receives the highest-weighted score. Following award,

final negotiations may be carried out to finalise details of the contract if the competition dialogue process is used. In practice, it also takes place where the negotiated procedure is used, though this is now prohibited by Regulation 29(13).

Public bodies must notify all bidders of their intention to enter into the contract and refrain from signing the contract until a period of at least 10 days has elapsed from the date of the notification to give unsuccessful bidders an opportunity to issue a claim before the contract is signed.

V THE CONTRACT

This section focuses on SOPC4, which provides guidance and drafting for PF2 contracts. The SOPC4 was first released in 2012 and is currently being reviewed. Some PPP contracts use the PF2 position as a starting point but use their own template documents, for example, the Education and Skills Funding Agency and the Ministry of Defence. As mentioned above, it is understood that, in due course, a new preferred PPP model for the UK government will be announced; however, for the time being, the following note concentrates on the mechanics of existing PF2 contracts.

i Payment³²

Under PFI/PF2, contractors are generally paid with a single unitary charge, which should not be paid until the commencement of the service. The payments will be linked to the 'availability' and performance of the service, and the contractor should be incentivised to provide quality services to the authority for value for money. Irregular payment profiles are not recommended as this may mean the project is more difficult to finance, and ultimately more expensive for the government.

Payment mechanisms are monitored and payments are indexed so that they can adjust for inflation and changes of law over the project term.

The payment and performance regime gives financial effect to the project's risk allocation. It is unusual for the contractor to take demand risk in PFI/PF2; however, in certain projects this may be appropriate.

ii Asset and land ownership³³

The authority will usually own the land and lease or licence it to the contractor. However, where a project is equipment-based (rather than building-based), the contractor usually acquires the assets and the authority should be given the ability to use and, in certain cases, obtain ownership of the assets to fulfil its statutory duties.

iii Amendments and variation³⁴

As PF2 projects are long term, the contract should allow flexibility to account for any changes in requirements; this includes the introduction of the small value change regime in PF2. In

32 Part H, 'Standardisation of PF2 Contracts' (2012), HM Treasury.

33 Chapter 4, *ibid.*

34 Part F, *ibid.*

addition, PF2 model contracts seek to exclude certain auxiliary services such as cleaning and catering, as these were considered better value for money when delivered over significantly shorter and more flexible contract terms.

PF2 project contracts usually cover for three main changes, namely use or functionality of the asset, changes in capacity of the asset or service, and change in the specification and standards of the service.

If the contractor wishes to amend project and finance documents, the authority's consent will be required, though certain minor changes may only have to be notified to the authority once they have been amended.

Changes should be priced and agreed in accordance with the provisions of the contract, and it is prudent to allow for independent determination to resolve any disagreements.

iv Risk allocation³⁵

The authority's main contractual protection will be the ability to withhold or reduce payment if the service stops or is not of an appropriate standard. The authority may also be given comfort through parent company guarantees from the contractor, letters of credit and other credit support. The contractor will indemnify the authority against damages resulting from death, personal injury, property damage, third-party claims and breach of statutory duty.

The contractor's main protection will be regarding supervening events, namely:³⁶

- a* compensation events – events whereby the risk should clearly lie with the authority and the contractor should receive compensation on a 'no better, no worse' basis;
- b* relief events – management and financial risk of these events (generally capable of being insured) should remain with the contractor as they are best placed to deal with the events; however, they should not lead to termination (but during operations can lead to payment deductions);
- c* *force majeure* events – limited circumstances (generally not capable of being insured) that are neither party's fault and best managed by the contractor. Termination rights may arise if the event cannot be addressed within a reasonable time frame; and
- d* a change in law – the contract will also provide protection to the contractor for any changes in law that cause the costs of the project to increase.

v Early termination and compensation³⁷

The authority will generally have the ability to terminate the contract for contractor default or persistent breach. The project contract should allow the contractor time to rectify breaches. Authority termination rights will usually be subject to the step-in rights of the project's senior funders. In some circumstances, the authority may have to compensate the contractor on termination if, for example, termination leads to the automatic acquisition of the asset or land necessary for the project. The project contract may include rights for the authority to voluntarily terminate the contract, and in this case the contractor should be fully compensated, including the repayment of project senior debt and the contractor sponsor's equity returns.

35 Part G, *ibid.*

36 Chapter 15, *ibid.*

37 Part I, *ibid.*

The contractor will usually be able to terminate the contract for authority default, which will include non-payment, breaches that frustrate the services and breach of assignment restrictions (including lock-in periods). Usually, the contractor will be fully compensated in these circumstances. Continuing *force majeure* events that cannot be resolved within a reasonable time frame will lead to termination. As these events are neither party's fault, the financial consequence should be shared, and as such, compensation will be on a no-fault basis. So while senior debt will be repaid, the contractor sponsor's equity will be repaid back at 'par' only.

The contract will set out in detail the provisions for calculating any compensation owed under it. This is a fundamental requirement for project's senior funders and equity investors.³⁸

vi Refinancing

Standard form PF2 contracts include provisions for sharing of refinancing gains. The authority should have the right to approve any refinancing, and provisions should be included in the contract to allow the authority to share in any qualifying refinancing gains achieved through refinancing.³⁹

VI FINANCE

PFI/PF2 projects are financed by a mixture of debt provided by lenders on a limited recourse basis (i.e., the lenders' principal recourse is to the project's cash flows only and does not extend to other assets of the project or the project's equity investors, subject to any further credit support, such as construction guarantees or letters of credit, that may be given) and equity. PFI/PF2 projects have a high level of debt-to-equity, typically a ratio of 90:10. Recently, the public and private sectors have been exploring alternatives to the traditional sources of funding, which have become more limited following the 2008 global financial crisis, and innovative solutions to improve the financial models for such projects.

i Equity

PFI projects funding generally comprises approximately 90 per cent of debt and 10 per cent of equity and is set up as a conventional holding company-project company structure. Historically, it was the building contractors bidding for the projects that provided the equity capital investments. More recently, however, equity funding from third-party financial investors (such as equity infrastructure funds) has become more common as a result of market growth and contractors' capital constraints.

One of the fundamental differences between PFI and PF2 is government involvement in the project equity structure. In PF2 projects, the UK government, through an arm's-length HM Treasury unit, is given the opportunity to provide an element of the equity capital into the project vehicle.

In recently financed PF2 projects, Her Majesty's Treasury will, via a wholly owned company, take a minority stake (typically 10 per cent) in the project and are under no obligation to provide further funding to the amount agreed at financial close. It is hoped by

38 Chapter 24, *ibid.*

39 Chapter 28, *ibid.*

the government that taking an equity stake in PF2 projects will strengthen the collaboration between the public and private sectors, and enable the public sector to benefit from increased financial transparency and decision-making capabilities on such projects.

Her Majesty's Treasury also stated⁴⁰ that holding a minority stake in the project would lead to better value for money through its entitlement to a percentage of investment returns, which in turn reduces the cost of funding these projects to the public sector. In practice, the developer, third-party equity provider and Her Majesty's Treasury enter into a shareholders' agreement, under which equity is provided in the form of subscription monies and subordinated debt, the latter issued by way of unsecured loan notes by the holding company SPV to the shareholders. Colloquially, this subordinated debt is regarded as equity for financial 'gearing' ratio purposes.

Another key change that was proposed in Her Majesty's Treasury's PF2 launch document is the higher levels of equity (20–25 per cent) compared with the debt-to-equity ratio commonly found in PFI projects. However, from information publicly available, none of the PF2 projects that have reached financial close have achieved a high level of equity, with debt-to-equity ratios remaining at approximately 90:10. Her Majesty's Treasury's rationale for the proposal was to widen the investor base to attract pension funds, insurance companies and institutional investors (Other Investors) to invest in PF2 equity, and thereby reduce the cost of debt and circumvent the perceived shortage of available debt funding in the market. However, no Other Investors had participated in any of the six PF2 projects as at January 2018 (and the debt-to-equity ratio remained the same as for PFI for all six PF2 projects).⁴¹ This, coupled with the improvements in the conditions of the lending market, led Her Majesty's Treasury and the IPA to ultimately scrap the proposal.

ii Debt

Senior debt from banks and other financial institutions was traditionally the most common type of the majority of the financing for PFI projects.

Another debt financing source is the debt capital markets. Bond finance products have been developed for the financing of projects following the construction phase or the refinancing of completed projects on more favourable borrower terms. With banks having been increasingly reluctant to issue long-term loans because of stricter regulatory requirements and capital constraints as a result of the 2008 financial crisis, public bond financing was seen as a possible source of alternative sources of debt financing to fill the void. The reality, however, was somewhat different as a wide variety of sources of financing from insurance and pension fund investors, private placements and an active monoline insurer has provided a large amount of infrastructure debt liquidity.

As discussed in Section VI.i, the Other Investors have not been keen to take equity stakes in PFI/PF2 projects. They have, however, taken on a much more active role in relation to the debt financing aspect, both through the PFI/PF2 schemes and direct investment in such projects. Furthermore, greenfield PFI/PF2 projects have seen debt funding from infrastructure debt funds at pre-development and refinancing stages.

Another policy that was established to encourage alternative debt funding is the UK Guarantee Scheme (the Scheme), under which the government guarantees debt raised by

40 Paragraph 3.6, 'PFI and PF2', National Audit Office, <https://www.nao.org.uk/wp-content/uploads/2018/01/PFI-and-PF2.pdf> (last accessed 29 January 2018).

41 *ibid.*

the borrower (i.e., the holding company or project company) of infrastructure projects of national significance. The government announced in November 2016 that the Scheme will continue until at least 2026, and nine projects covering different sectors and deal sizes have already benefited from the Scheme since its inception. Since borrowing guaranteed under the Scheme would in effect render it to be classified as sovereign-backed debt, borrowers are generally able to achieve more favourable funding terms.⁴² While the Scheme has been utilised on a number of projects, many commentators see the Scheme as unnecessary for the majority of well-structured investment-grade infrastructure projects.

VII RECENT DECISIONS

Perhaps the notable PPP/PFI decision in 2018 was *Tees Esk & Wear Valleys NHS Foundation Trust v. Three Valleys Healthcare Limited and Bank of Scotland PLC*, which concerned the ability to terminate a project agreement pursuant to the service of termination notices under a funders' direct agreement (FDA). The FDA provided that two specific notices had to be served by the public authority. The funders disputed the validity of the second notice on the basis that the notice was to detail amounts owed by the project company to the public authority and other obligations of the project company (the public authority having made 'proper enquiry') but did not contain such information and was therefore invalid. The intention of this second notice was to give the funders the opportunity to assess whether it wanted to step into the project, and the funders' argument was that the second notice delivered by the public authority was invalid as it contained insufficient detail (with some heads of claim marked 'TBC'). The funders also argued that there was no evidence that the public authority had made 'proper enquiry'. The judge ruled against the funders, detailing that if the funders had chosen to step into the project following the second notice, it would have only been liable for the quantified liabilities. However, the public authority did not have to quantify the other obligations, and there was no (implicit) obligation on the public authority to provide evidence of its enquiries for the notices to be valid.

Notable procurement law decisions in 2018 include *SRCL Ltd v. The National Health Service Commissioning Board* [2018] EWHC 1985 (TCC), which concerned and summarised a public body's obligations regarding abnormally low tenders. The court confirmed that the public body has the discretion to determine whether a tender gives rise to a suspicion that it is abnormally low. If it does suspect this it must enable the bidder to justify its prices. Moreover, the public body is not obliged to exclude the tender, except in limited circumstances.

Another case, *Ocean Outdoor UK Ltd v. Hammersmith and Fulham LBC* [2018] EWHC 2508 (TCC), gave guidance as to when certain concession arrangements fall within the full scope of the EU procurement regime or whether public bodies are free to negotiate directly. It concerned leases for advertising space granted by a local authority on its land. The court found that concessions that did not include any explicit obligations to build anything or to deliver services to the public body were not covered by the procurement regime, despite rental payments being made on the assumption advertising services would be undertaken and a termination right existing if rent was not paid.

42 'UK Guarantees scheme for infrastructure' (2015), National Audit Office, <https://www.nao.org.uk/wp-content/uploads/2015/01/UK-Guarantees-scheme-for-infrastructure.pdf> (last accessed 29 January 2018).

A similar ruling by the Court of Appeal in *Faraday Development Ltd v. West Berkshire Council and St Modwen Developments Ltd* [2018] EWCA Civ 2532 determined that development agreements that also had an absence of directly or indirectly enforceable obligations to deliver public works or services would also not be covered. However, in that case, the Development Agreement (which had not been tendered in accordance with the EU procurement regime) was the first UK contract to be rendered ineffective; as it had included enforceable obligations to do works within the leases which the developer could call down when certain conditions were met.

The three UK cases above highlight, once more, an increasing tendency to litigate on procurement matters and to challenge public body decisions.

VIII OUTLOOK

It is clear, with the government discontinuing PF2 but outlining an intention to procure nearly £300 billion of infrastructure through private finance up to 2028, that the private sector will continue to play a key role in future infrastructure investment in the United Kingdom. However, what exactly this role will be and what models will be used to procure such investment is not clear.

A new preferred PPP model will invariably seek to address the key political and financial concerns in respect of PFI/PF2. We would tentatively suggest that mechanisms may be introduced into the new model to mitigate against possible private sector windfalls (including in relation to future reductions in tax rates) and there may even be a cap on rates of return. While the government may also seek to create a simpler model, we would expect that the new model may reflect existing models, such as the mutual investment model and even PF2 to some extent (though the political toxicity of the phrase means that ‘private finance’ is unlikely to be used). The model will also likely seek to comply with current Eurostat guidance such that these investments are classified as not being on the government balance sheet for net public sector debt and deficit calculations.

RAB models have been strongly promoted by the government (including as a potential solution to investment in nuclear power),⁴³ but these can inherently only provide a partial solution – RAB models are only of relevance to privatised sectors so it is difficult to see how these structures could be applied in part, if at all, to sectors such as defence or to prisons, hospitals or schools. While investment in utilities and airports (and hence the RAB model) may take up a significant part of the circa £300 billion, a further PPP model is likely to be needed for non-privatised industries: the public sector may be funding previous ‘PF2 projects’ such as Glen Parva prison, the A303 Stonehenge tunnel and the Lower Thames Crossing tunnel, but public finances are still significantly restricted (and unlikely to be significantly increased in the government’s 2019 Comprehensive Spending Review) and, notwithstanding a potential Labour Party government, private investment in PPPs is likely to be necessary to build much-needed infrastructure. Inevitably, the political reality of Brexit may delay consultation on or announcement of a new preferred PPP model, but it is clear that this model is greatly needed and will hopefully be confirmed in 2019.

43 e.g., ‘Regulated asset base model could benefit nuclear industry’, *UtilityWeek* <https://utilityweek.co.uk/regulated-asset-base-model-benefit-nuclear-industry/>.