



Llywodraeth Cymru
Welsh Government

Welsh Mutual Investment Model

EPEC / Eurostat Guide
Clause Reference Document

Version 1.0: October 2016

EPEC / Eurostat Guide: Clause Reference Document

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Version Control

Version Number	Description / Changes	Author	Date
1.0	ONS discussion document	Aled Huxtable	October 16

Eurostat / EPEC Guide						WMIM Documents		
Item	Chapter 3 Reference	Automatically on balance sheet	Very High Importance	High Importance	Moderate Importance	Roads PA	Accommodation PA	User Guide
Theme 2: Design and construction of the asset								
Responsibility for design: issues with Authority taking risk as described in Theme 2.1	2.1			✓		Clauses 12, 12.3	Clauses 12, 12.3	
Construction completion: issues with completion criteria as described in Theme 2.3	2.3			✓		Clause 14 & Schedule 10	Clause 14 & Schedule 10	
Construction completion: issues with phased completion and phased Operational Payments as described in Theme 2.3	2.3			✓		Clause 14 & Schedule 10	Clause 14 & Schedule 10	Phasing drafting for batches of schools; Equipment for Health and PTUs for Roads (Cl.17) – User Guide
Snagging works: issues described in Theme 2.4	2.4			✓		Clauses 17.10; 34.1	Clauses 17.14 ; Cl.34.1	
Reimbursement of Authority costs: issues described in Theme 2.5	2.5			✓		N/A	N/A	

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Theme 3: Operation and maintenance of the asset								
Responsibility for operation and maintenance: issues with Authority responsibility for maintenance as described in Theme 3.1	3.1			✓		Clauses 22, 22A & 23	Clauses 22 & 23	
Operation and maintenance standards: issues described in Theme 3.2	3.2	✓				Clause 23 & Schedules 12 & 14	Clause 23 & Schedules 12 & 14	
Maintenance plan: issues with Authority approval reducing Partner risk as described in Theme 3.3	3.3			✓		Clauses 23, 23.6, 23.11	Clauses 23, 23.6, 23.11 Schedule 8)
Maintenance plan: issues with requiring Partner to incur costs as described in Theme 3.3	3.3				✓	Clause 23	Clause 23	
Maintenance funds: issues with the Authority taking risk on a maintenance fund as described in Theme 3.4	3.4			✓		Clause 23A	Clause 23A	
Maintenance fund: issues with						N/A	N/A	

the Authority taking reward on a maintenance fund as described in Theme 3.4	3.4	✓						
Maintenance: issues with the Authority taking benefit of maintenance cost savings as described in Theme 3.4	3.4	✓				Clause 23A	Clause 23A	

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Theme 4: The Payment Mechanism								
Adjustments for unavailability and poor service performance: issues described in Theme 4.2	4.2	✓				Schedule 14 Section 3	Schedule 14, Section 2	
Defining availability / unavailability: provisions that fail to define availability / unavailability as described in Theme 4.3	4.3	✓				Schedule 14 Appendix 1-4	Schedule 14, definitions, Section 3 plus, App.2 etc.	
Measuring availability and performance: issue described in Theme 4.5	4.5			✓		Schedule 14 section 4.4	Schedule 14, Section 5	
Unavailability deductions: failure to apply the principle of proportionality as described in Theme 4.6.1	4.6.1	✓				Schedule 14,	Schedule 14, section 3,	
Unavailability deductions: inappropriate use of area and time weightings as described in Theme 4.6.1	4.6.1			✓		Schedule 14, Section App.1 etc)	Schedule 14, section 3, App.2	
Rectification periods: provision for unreasonably long repair or rectification periods as described in Theme 4.6.3	4.6.3				✓	Schedule 14 Definitions: Remedial Period ; temporary repairs 5.5.3	Schedule 14, definitions: Rectification Periods; temporary repairs section 4	

Unavailable but used: provisions that reduce deductions by more than 50% as described in Theme 4.6.6	4.6.6				✓	Principle will be applied	Schedule 14, Definitions and section 3 4.2	
Excusing causes: issues with provisions for excusing causes as described in Theme 4.7.1	4.7.1			✓		Clause 51, Schedule 14, Definitions: Exceptions	Clause 51; Schedule 14	
Grace periods: provision for unreasonably long grace periods as described in Theme 4.7.2	4.7.2				✓	N/A NB. Step in permitted	N/A NB. Step in permitted	
Tolerances / de minimis exceptions: provision for tolerances with a non- negligible impact as described in Theme 4.7.3	4.7.3			✓		Cl.51; Schedule 14 Exceptions	Cl.51; Schedule 14, Section 3,	
Caps on deductions: provisions that undermine the proportionality principle as described in Theme 4.7.4	4.7.4	✓				Schedule 14 paragraph 4.1.4 (<i>Pages 325</i>)	Schedule 14, section 3, paragraph 1	
Adjustments for use: provision for downward adjustment of Operational Payments as described in Theme 4.8	4.8			✓		N/A	N/A	
Banding of demand-based Operational Payments: highest-use band unit price set at zero or close to it as described in Theme 4.10.2	4.10.2	✓				N/A	N/A	
Banding of demand-based Operational Payments: issues with upper-use and lower-use bands as described in Theme 4.10.2	4.10.2			✓		N/A	N/A	
Minimum use or minimum						N/A	N/A	

revenue guarantees as described in Themes 4.10.2 and 4.10.3	4.10.2 and 4.10.3	✓						
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Theme 5: Other payment arrangements								
Commencement of Operational Payments: provision for payments to commence before completion of the asset as described in Theme 5.1	5.1	✓				Clause 34.1	Clauses 34.1, 17.12, 22.3	Pg 15,
Benchmarking and market testing: provisions that apply to maintenance services as described in Theme 5.2	5.2	✓				N/A	N/A	
Benchmarking and market testing: provisions that do not meet the second and third conditions described in Theme 5.2	5.2			✓		N/A	N/A	
Utilities costs: issues with provisions for risk sharing as described in Theme 5.3	5.3				✓		Schedule 14, Sections 2.1, 6, Paragraph 1.1 -2	
Indexation: issues described in Theme 5.4	5.4				✓	Schedule X, Definitions (page 371)	Schedule 1, Schedule 14, Section 2.2, Paragraph 1	
Third party revenues: Authority revenues equal or exceed the 20% threshold as described in Theme 5.5	5.5			✓		N/A	N/A	52, 103

Third party revenues: Authority revenues equal or exceed the 5% threshold as described in Theme 5.5	5.5				✓	N/A	N/A	52, 103
Payment mechanism reviews designed to change the risk and reward allocation under the PPP contract	5.10	Specific analysis required				N/A	N/A	

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Theme 6: Compensation, relief and force majeure events								
Scope and nature of events: provisions that do not meet the conditions described in Theme 6.1	6.1			✓		Clauses 29-31	Clauses 29-31, 41 Schedule 1	
Quantifying compensation/relief: provisions that do not meet the conditions described in Theme 6.1.4	6.1.4			✓		Clauses 29.9 – 31	Clauses 29.9 – 31	
Compensation, relief and force majeure events that are dealt with through public law provisions as described in Theme 6.2	6.2	Specific analysis required				N/A	N/A	

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Theme 7: Changes to the PPP contract								
Authority changes: issues with Partner compensation/relief as described in Theme 7.1	7.1			✓		Clause 33 Schedule 16	Clause 33 Schedule 16	137
Partner changes: obligation on the Authority to accept changes as described in Theme 7.2	7.2			✓		Clause 33 Schedule 16	Clause 33 Schedule 16	

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Theme 8: Changes in law								
Change in law: issues with Authority taking change in law risk as described in Theme 8	8				✓	Clause 32	Clause 32	

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Theme 9: Insurance								
Reinstatement of the asset: provision for an economic reinstatement test as described in Theme 9.2	9.2			✓		Clause 53 Schedule 15	Clause 53 Schedule 14, Section 6, part 3 Schedule 15	
Insurance costs: provisions for the Authority to take/share risk/benefit of insurance cost changes that do not meet the conditions described in Theme 9.3	9.3			✓		Clause 53 Schedule 15	Clause 53 Schedule 14, Section 6, part 3 Schedule 15	
Uninsurability: issues identified in Theme 9.4	9.4			✓		Clause 53 Schedule 15	Clause 53 Schedule 14, Section 6, part 3 Schedule 15	

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Theme 10: Warranties and indemnities								
Warranties: warranties that relate to risks and rewards as described in Theme 10.1	10.1	Specific analysis required				Clause 50	Clause 50	
Indemnities given by the Partner: limits or exclusions on indemnities that do not meet the conditions described in Theme 10.2	10.2			✓		Clauses 50, 49.1	Clauses 50, 49.1	
Indemnities given by the Authority: indemnities for risks other than those described in Theme 10.3	10.3			✓		Clause 49.1	Clause 49.1	

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Theme 11: Early termination of the PPP contract								
Authority default termination: issues with Authority default termination triggers as described in Theme 11.2	11.2			✓		Clauses 39, 40, 41	Clauses 39, 40, 41	42

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Theme 12: Compensation on early termination								
Provisions that do not preserve pre-termination liabilities as described in Theme 12	12			✓		Clause 45 Schedule 17	Clause 45 Schedule 17	Appendix 2
Partner default termination compensation: issues with no contract provision as described in Approach 2 of Theme 12.1	12.1	Specific analysis required				Clause 45 Schedule 17	Clause 45 Schedule 17	Appendix 2
Partner default termination compensation: re-tendering provisions that do not take into account the Partner's performance of the project as described in Approach 3 in Theme 12.1 (first condition listed)	12.1	✓				Clause 45 Schedule 17	Clause 45 Schedule 17	Appendix 2
Partner default termination compensation: issues with the methodology for estimating the market value of the contract not meeting the conditions described in Approach 3 in Theme 12.1 (second condition listed)	12.1	✓				Clause 45 Schedule 17	Clause 45 Schedule 17	Appendix 2
Partner default compensation: provisions that do not meet the remaining conditions listed in Approach 3 in Theme 12.1	12.1			✓		Clause 45 Schedule 17	Clause 45 Schedule 17	Appendix 2
Partner default termination compensation: provisions that do not						Clause 45 Schedule 17	Clause 45 Schedule 17	Appendix 2

take into account the Partner's performance of the project as described in Approach 4 in Theme 12.1	12.1	✓						
Partner default termination compensation: provisions that only partially take into account the Partner's performance of the project as described in Approach 4 in Theme 12.1	12.1			✓		Clause 45 Schedule 17	Clause 45 Schedule 17	Appendix 2
Force majeure termination compensation: issue of compensation calculation as described in Theme 12.4	12.4				✓	Clause 45 Schedule 17	Clause 45 Schedule 17	Appendix 2

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Theme 13: Expiry of the PPP contract								
Allocation of the asset on expiry: allocation of the asset to the Authority (with or without payment) where the conditions described in Theme 13.2 are not met	13.2				✓	Clause 43 Schedule 18	Clause 43 Schedule 18	
Condition of the asset on expiry: issue described in Theme 13.3	13.3			✓		Clause 43 Schedule 18	Clause 43 Schedule 18	

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Theme 14: Financing arrangements								
Interest rate adjustments: issues described in Theme 14.2	14.2			✓				Pg 16 36 36.1 re. capital contributions (if any)
Authority/government financing at or above the 50% threshold as described in Theme 14.4	14.4	✓						Pg 16 36
Authority/government financing above the one third threshold as described in Theme 14.4	14.4		✓					Pg 16 36
Authority/government financing above the 10% threshold as described in Theme 14.4	14.4			✓		See shareholders' agreement	See shareholders' agreement	Pg 16 36
Authority/government financing up to (and including) the 10% threshold as described in Theme 14.4	14.4				✓			Pg 16 36
Provision of minimum revenue/minimum use guarantees as described in Theme 14.5	14.5	✓						
Refinancing: Authority's right to withhold approval for proposed						Clauses 4.2 – 4.6 Schedule 23	Clauses 4.2 – 4.6 Schedule 23	

refinancing on unlimited grounds as described in Theme 14.6.1	14.6.1			✓				
Refinancing: provisions that allow a refinancing to increase the Authority's liabilities under the PPP contract without its consent as described in Theme 14.6.1	14.6.1			✓		Clauses 4.2 – 4.6 Schedule 23	Clauses 4.2 – 4.6 Schedule 23	
Refinancing: a right for the Authority to require the Partner to proceed with a refinancing as described in Theme 14.6.1	14.6.1	✓				Clauses 4.2 – 4.6 Schedule 23	Clauses 4.2 – 4.6 Schedule 23	
Refinancing: gain-sharing provisions that do not align with either approach as described in Theme 14.6.2	14.6.2	✓				Clauses 4.2 – 4.6 Schedule 23	Clauses 4.2 – 4.6 Schedule 23	
Lenders' step-in rights: issues with liabilities as described in Theme 14.8	14.8				✓	Schedule 4	Schedule 4	

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Theme 15: Government influence								
Authority/government entitlement to a share of profit at or above the 50% threshold as described in Theme 15.1	15.1	✓				Shareholders' Agreement Cl.4		
Authority/government entitlement to a share of profit above the one third threshold as described in Theme 15.1	15.1		✓					
Authority/government entitlement to a share of profit above the 20% threshold (up to and including a one third share) as described in Theme 15.1	15.1			✓				
Authority/government entitlement to a share of profit above the 10% threshold (up to and including 20%) as described in Theme 15.1	15.1				✓			
Authority step-in rights: issues described in Theme 15.3	15.3				✓		Schedule 4, Schedule 9; Cl.24.5; Cl.57.9	Schedule 4, Schedule 9 ; Cl.24.5; Cl.57.9
Caps on Partner profit or revenue: provisions that cap Partner profit or revenue as described in Theme 15.4	15.4	✓				N/A	N/A	