



APSE Sports and Leisure Seminar 2017

Legal Update - Procurement

9th March 2017

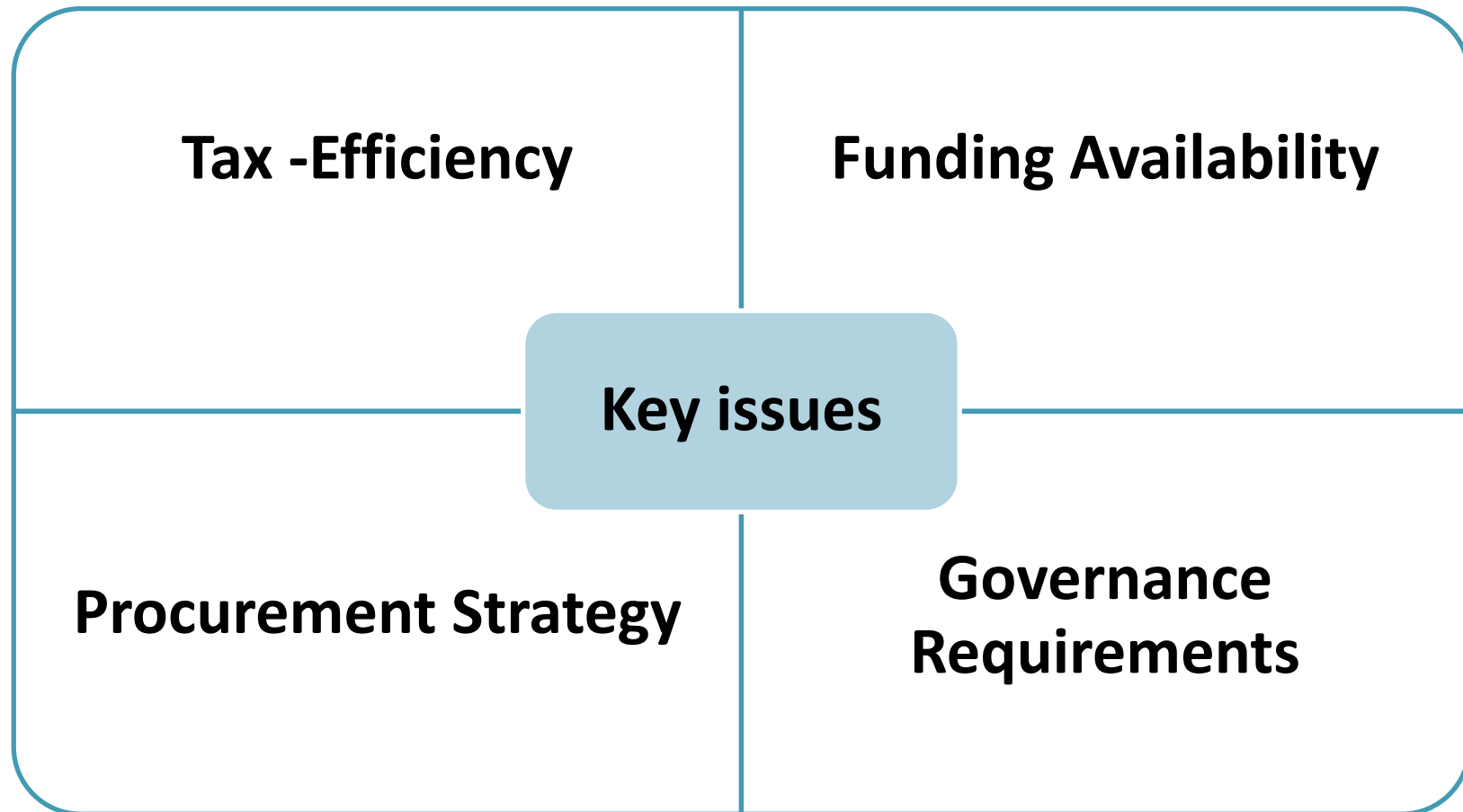
Brexit – What next for procurement?

- What's wrong with the EU system?
 - Overly Complicated
 - Unnecessarily Inflexible
 - Overly Prescriptive
- What are the options?
 - Option 1: the Norwegian Way (EEA).
 - Option 2: GPA rules.
 - Option 3: Bespoke UK rules.

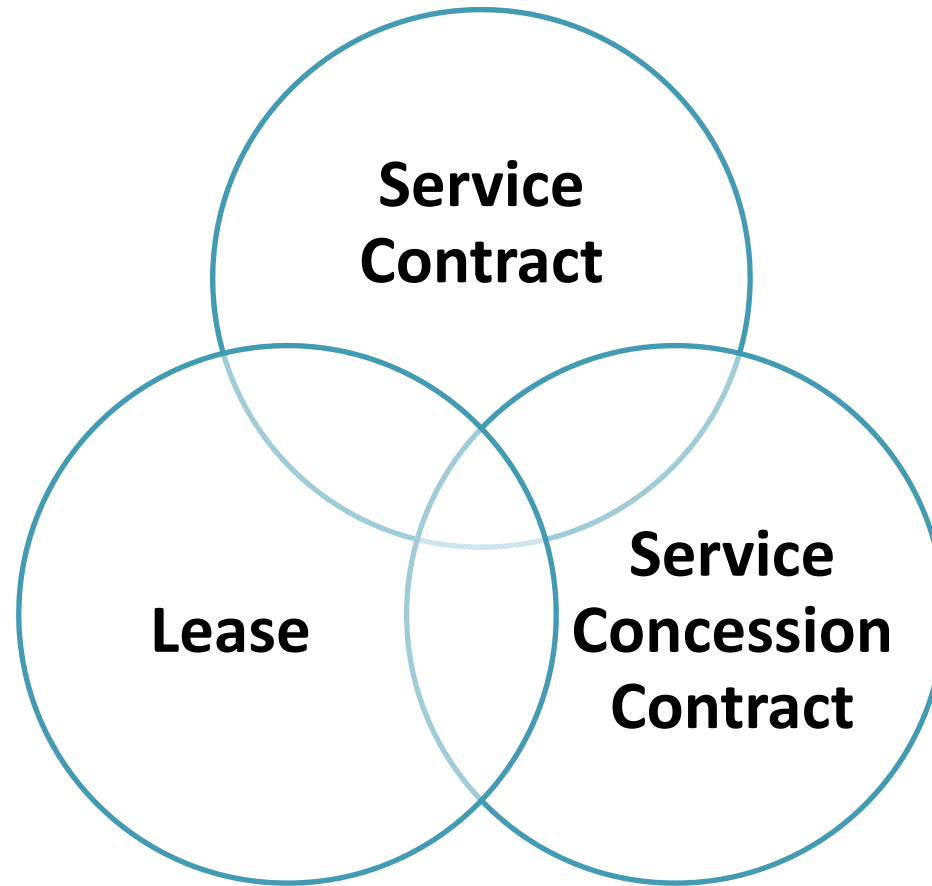
Options for Leisure Services Delivery

- Outsourcing to private sector organisation?
- Charitable Trust?
- Community Interest Company?
- Public-public co-operation?
- Profit making (?) commercial vehicle?

What next for leisure trusts and contracts?



Do you need an OJEU procurement?



Lease Option

- Property transfers do not fall under the Regulations
- But if the contract mixes services provision and land transfer it will be regulated. Take into account -
 - consideration
 - control over what is provided
 - risk
 - funding

Service Contract Option

- Pay someone to deliver a service under a contract
- All services will require procurement under the Regulations if above threshold
- Sports facilities management falls under the “Light Touch Regime”

Social and Other Specific Services

Includes

- Administrative, social, educational, healthcare and cultural services

from 92000000-1 to 92342200-2;

- 92320000-0 Arts-facility operation services
- 92330000-3 Recreational-area services

from 92360000-2 to 92700000-8;

- 92600000-7 Sporting services
- 92610000-0 Sports facilities operation services
- 92620000-3 Sport-related services
- 92621000-0 Sports-event promotion services
- 92622000-7 Sports-event organisation services

Special procedure – Light Touch

Threshold of €750,000

Contract Notice or continuous PIN

Contract Award Notice

- May group quarterly

Light Touch Regime

- No standard procedures but flexibility to decide what to use provided general principles are applied with.
- General principles -
 - at least sufficient to ensure compliance with the principles of transparency and equal treatment
 - time limits to be reasonable and proportionate
 - set out the rules for the tender in the notice and then comply with it
- What to include in the notice -
 - conditions for participation
 - time limits for contacting the contracting authority
 - the award procedure to be applied



Award Criteria

- the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
- the specific needs of different categories of users, including disadvantaged and vulnerable groups;
- the involvement and empowerment of users;
- innovation; and
- any other relevant consideration.

Service Concession Option

- Services the consideration for which consists either in
 - The right to exploit the services that are the subject of the contract
 - Or that right together with payment
 - transfer to the concessionaire of an operating risk
 - real exposure to the vagaries of the market

Concession Contract Regulations 2016

- In force 18th April 2016
- Service Concession no longer exempt
 - Requires procurement under 2016 Regulations
- Threshold of £4,104,394
- “The duration of concession contracts shall be limited.”
- Maximum duration
 - 5 years or
 - the time that a concessionaire could reasonably be expected to take to recoup the investments made

Concession Contract Process

Prior Information Notice/Concession Notice

- Set out qualification process and award criteria
- Concession documents need to be available

Qualification Stage

- Exclusions grounds for tendering for public contracts
- Financial minimum requirements
- Technical selection

Negotiation Stage – design what works best for the services

- Submit initial bids
- Negotiation phase/Possible Down-Selection
- Submit BAFO bids

Award

- Evaluate bids against the published award criteria
- Publish award notices and standstill
- Publish concession award notice

Employment Issues

- New tax rules for contractors working through personal service companies ('Off-Payroll Working')
- Worker status – tribunals questioning whether individuals are entitled to “worker rights” (e.g. Uber)
- Holiday pay – overtime needs to be included in “average pay” to calculate holiday pay
- Termination payments – public sector cap
- Pay equality – gender pay gap reporting

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