

SCHEDULE 2

Amendments to statutory instruments

PART 1

The Public Contracts Regulations 2015

1. The Public Contracts Regulations 2015⁽¹⁾ are amended as follows.
- 2.—(1) Regulation 1 (citation, commencement, extent and application) is amended as follows.
 - (2) After paragraph (3)(a), insert—
 - “(aa) for the purposes of regulation 29(9), on 18th April 2016;”.
 - (3) In paragraph (7) after “Except for” insert “Part 4 and”.
 - (4) In paragraph (8)—
 - (a) omit “or” at the end of sub-paragraph (a);
 - (b) at the end of sub-paragraph (b) insert—
 - “; or
 - (c) Scottish devolved functions, that is to say functions the exercise of which would be within devolved competence (within the meaning of section 54 of the Scotland Act 1998⁽²⁾)”.
 - (5) After paragraph (8), insert—
 - “(9) Part 4 does not apply to the National Assembly for Wales Commission.”.
- 3.—(1) Regulation 2 (definitions) is amended as follows.
 - (2) In paragraph (1)—
 - (a) in the definition of “innovation” for “Europe 2012” substitute “Europe 2020”;
 - (b) in the definition of “invitation to confirm interest” after “regulation 31(18)” insert “and (19)”;
 - (c) at the end of the definition of “public contracts” add “but does not include concession contracts within the meaning of the Concession Contracts Regulations 2016”;
 - (d) after the definition of “selection criteria” insert—
 - ““sixth form college corporation” has the meaning given by section 90(1) of the Further and Higher Education Act 1992⁽³⁾”.
 - (3) Paragraph (4) is amended as follows—
 - (a) for “In Parts 2 and 3” substitute “In Parts 2, 3 and 4 (except regulation 52(4))”;
 - (b) for “which is expressed otherwise than in hours”, substitute “, however expressed,”.
- 4.—(1) Regulation 4 (mixed procurement) is amended as follows.
 - (2) In paragraph (2)—
 - (a) omit “and” at the end of sub-paragraph (a)(ii);

(1) [S.I. 2015/102](#).

(2) [1998 c.46](#).

(3) [1992 c.13](#); section 90(1) was amended by the Apprenticeships, Skills, Children and Learning Act 2009 ([c.22](#)), Schedule 8, paragraphs 1 and 12(1) and (3).

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(b) at the end of sub-paragraph (a)(iii) insert—

“; and

(iv) where, in the case of mixed contracts containing elements of public contracts covered by this Part and of concession contracts, contracting authorities choose to award a single contract, that contract shall be awarded in accordance with this Part, provided that the estimated value of the part of the contract which constitutes a public contract covered by this Part, calculated in accordance with regulation 6, is equal to or greater than the relevant threshold set out in regulation 5;”.

(3) After paragraph (2) insert—

“(2A) In the case of contracts which have as their subject-matter both procurement covered by this Part and procurement for the pursuit of an activity which is subject to the Utilities Contracts Regulations 2016, the applicable rules shall, despite paragraph (2), be determined by regulations 6 and 7 of those Regulations.”.

(4) In paragraph (3) for “paragraph (1) or (2)” substitute “paragraphs (1) to (2A)”.

5. For regulation 7 (utilities) substitute—

“Contracts in the water, energy, transport and postal services sectors

7.—(1) This Part does not apply to public contracts or design contests which—

(a) under the UCR 2016 are awarded or organised by contracting authorities—

(i) exercising one or more of the activities referred to in regulations 9 to 15 of those Regulations, and

(ii) for the pursuit of those activities;

(b) are excluded from the scope of the UCR 2016 by regulations 18, 23 or 34 of those Regulations; or

(c) are awarded or organised—

(i) by a contracting authority which provides postal services within the meaning of regulation 14 of the UCR 2016, and

(ii) for the pursuit of any of the following activities—

(aa) added value services linked to and provided entirely by electronic means (including the secure transmission of coded documents by electronic means, address management services and transmission of registered electronic mail);

(bb) financial services which are covered by CPV codes 66100000-1 to 66720000-3 and by regulation 21(1)(d) of the UCR 2016, including in particular postal money orders and postal giro transfers;

(cc) philatelic services;

(dd) logistics services (services combining physical delivery and warehousing, or either of them, with other non-postal functions).

(2) In this regulation, “the UCR 2016” means the Utilities Contracts Regulations 2016.”.

6. In regulation 15(3) (defence and security) for “intrusive means” substitute “intrusive measures”.

7. In regulation 17(2) (public contracts and design contests involving defence or security aspects etc.) after “awards” insert “or organises”.

8. In regulation 25 (conditions relating to the GPA and other international agreements) omit “and the General Notes”.

9. In regulation 29(4) (competitive procedure with negotiation) for “paragraph (6)” substitute “paragraph (10)”.

10. For regulation 35(13) (electronic auctions) substitute—

“(13) For the purposes of paragraph (10)(b), a tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority’s needs and requirements as specified in the procurement documents.”.

11. For regulation 48(4) (prior information notices) substitute—

“(4) Where the prior information notice is published by the contracting authority on its buyer profile, the contracting authority shall send for publication, in accordance with regulation 51, a notice containing the information set out in Part A of Annex V to the Public Contracts Directive.”.

12. For regulation 51(1) (form and manner of sending notices for publication at EU level) substitute—

“(1) The notices required by regulations 48, 49, 50, 72, 75 and 79 to be sent for publication in accordance with this regulation (and any corrigenda to those notices)—

(a) shall be sent by electronic means to the EU Publications Office for publication; and

(b) shall be in the format of the relevant standard forms set out in Commission Implementing Regulation (EU) 2015/1986(4) as amended from time to time.”.

13. In regulation 52(3) (publication at national level) omit “, 72”.

14.—(1) Regulation 57 (exclusion grounds) is amended as follows.

(2) After paragraph (1)(l) insert—

“(1a) an offence under section 2 or 4 of the Modern Slavery Act 2015(5);”.

(3) In paragraph (11) for “paragraphs (1) to (3)” substitute “paragraphs (1) and (2)”.

(4) In paragraph (12) for “cases referred to in paragraphs (4) and (8)” substitute “situations referred to in paragraph (8)”.

15.—(1) Regulation 60 (means of proof) is amended as follows.

(2) In paragraph (4)(b) for “regulation 57(3) to (5)” substitute “regulation 57(3), (4)”.

(3) In paragraph (5) for “regulation 57(1) to (5)” substitute “regulation 57(1) to (4)”.

16. In regulation 72(1)(b) (modification of contracts during their term) at the end of paragraph (i) for “or” substitute “and”.

17. In regulation 88(2) (interpretation of Chapter 6) for “this Part” substitute “this Chapter”.

18. In regulation 89(1)(a) (duty owed to economic operators from EEA states) for “Part 2” substitute “Parts 2 and 3”.

(4) OJ No L 296, 12.11.2015, p1.

(5) 2015 c.30.

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19. In regulation 99(4) (grounds for ineffectiveness) after “a notice which” insert “is in the standard format set out in Annex XII to Commission Implementing Regulation (EU) 2015/1986(6) as amended from time to time and which”.

20. In regulation 105(2)(b) (scope of Chapter 7) for “or an Academy” substitute “, an Academy or a sixth form college corporation”.

21. In regulation 109(5) (scope of Chapter 8) for “or an Academy” substitute “, an Academy or a sixth form college corporation”.

22.—(1) Regulation 113 (payment of undisputed invoices etc.) is amended as follows.

(2) In paragraph (1)(b) for “or an Academy” substitute “, an Academy or a sixth form college corporation”.

(3) In paragraph (6) omit “or subcontract”.

23.—(1) Regulation 118 (general transitional provision and saving where procurement procedure commenced before 26th February 2015) is amended as follows.

(2) For paragraph (5) substitute—

“(5) Paragraphs (5A) to (5D) apply in the case of a contract awarded—

(a) before 26th February 2015; or

(b) after that date but where the award itself was not, by virtue of paragraphs (1) to (4), affected by these Regulations.

(5A) Except in the case of a contract referred to in paragraph (5B) to the extent referred to in paragraph (5C), nothing in these Regulations affects a contract to which paragraph (5) applies.

(5B) This paragraph refers to a contract which was awarded under the 2006 Regulations (other than a public works concession contract).

(5C) A contract referred to in paragraph (5B) is subject to regulations 72 and 73(3) and Chapter 6 of Part 3 (so far as that Chapter applies to regulations 72 and 73(3)).

(5D) For the purposes of paragraph (5C), any reference in regulation 72 or 73(3) or Chapter 6 of Part 3 to a contract or to a public contract includes a contract to which paragraph (5B) applies.”.

(3) In paragraph (6) for “and “public contract”” substitute “, “public contract” and “public works concession contract””.

24.—(1) Schedule 1 (central government authorities) is amended as follows.

(2) For “Education and Library Boards” listed under “Northern Ireland, Department of Education” substitute “Education Authority”.

(3) At the appropriate place insert “Northern Ireland Assembly Commission”.

(4) At the appropriate place insert “The National Assembly for Wales Commission”.

(5) Omit “The Wales Assembly Parliamentary Service”.

(6) OJ No L 296, 12.11.2015, p1.