

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION

PUBLIC PROCUREMENT

The Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019

Made - - - - - ***

Coming into force - - - - - ***

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), as read with paragraph 1A(b) of Schedule 2 to that Act, and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(c).

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to public procurement(d).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Secretary of State that it is expedient for a reference to the Common Military List of the European Union to be construed as a reference to that List as amended from time to time.

In accordance with paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019.

(2) Regulation 2 comes into force on the day after the day on which these Regulations are made.

(3) Regulations 3 and 4 come into force on exit day.

(a) 1972 c. 68; section 2(2) was amended by the European Union (Amendment) Act 2008 (c. 7), Part 1 of the Schedule.

(b) Paragraph 1A was inserted by the Legislative and Regulatory Reform Act 2006 (c. 51), section 28, and was amended by the European Union (Amendment) Act 2008, Part 1 of the Schedule.

(c) 2018 c 16.

(d) S.I. 2009/2743.

Pre-exit amendments of the Defence and Security Public Contract Regulations 2011

2.—(1) The Defence and Security Public Contracts Regulations 2011(a) are amended as follows.

- (2) In regulation 3 (interpretation), in paragraph (1)—
- (a) omit the definition of “Commission Regulation (EC) No 1564/2005”;
 - (b) in the definition of “contract notice”—
 - (i) in paragraph (a)—
 - (aa) omit “subject to sub-paragraph (b),”;
 - (bb) after “specified” insert “for that notice”;
 - (ii) omit paragraph (b) and the preceding “or”;
 - (c) after the definition of “life cycle” insert—
““member State”, except in regulation 2(2), also includes Iceland and Norway;”;
 - (d) in the definition of “military equipment”, in paragraph (a), after “Union” insert “adopted by the Council on 26th February 2018(b)”;
 - (e) in the definition of “prior information notice”—
 - (i) in paragraph (a)—
 - (aa) omit “subject to sub-paragraph (b),”;
 - (bb) after “specified” insert “for that notice”;
 - (ii) omit paragraph (b) and the preceding “or”.
- (3) In regulation 14 (prior information notices)—
- (a) in paragraph (3), after “form of a notice” insert “of publication”;
 - (b) in paragraph (4)—
 - (i) in the words before paragraph (a), after “notice” insert “of publication”;
 - (ii) in sub-paragraph (a)—
 - (aa) omit “subject to sub-paragraph (b),”;
 - (bb) after “specified” insert “for that notice”;
 - (iii) omit sub-paragraph (b) and the preceding “or”.
- (4) In regulation 17 (the restricted procedure), in paragraph (20)(b), omit the words from “or, if” to “therein specified,”.
- (5) In regulation 32 (contract award notice)—
- (a) in paragraph (1)—
 - (i) in sub-paragraph (a)—
 - (aa) omit “subject to sub-paragraph (b),”;
 - (bb) after “specified” insert “for that notice”;
 - (ii) omit sub-paragraph (b) and the preceding “or”;
 - (b) in paragraph (2), in the words before sub-paragraph (a)—
 - (i) for “in the form of the” substitute “for a”;
 - (ii) omit the words from “or, if” to “notice”.
- (6) In regulation 42 (thresholds and rules on advertising), in paragraph (2)—
- (a) in sub-paragraph (a), omit “subject to sub-paragraph (b),”;

(a) S.I. 2011/1848, amended by S.I. 2015/102, 2016/275, 696 and by S.S.I. 2015/446, 2016/49; there are other amending instruments but none is relevant.

(b) OJ No C 98, 15.3.2018, p 1.

(b) omit sub-paragraph (b) and the preceding “or”.

(7) In regulation 48 (publication of notices), in paragraph (1)(a), for the words from “the necessary” to “and contain” substitute “, in addition to the information required by these Regulations in respect of that notice,”.

(8) In regulation 60 (grounds for ineffectiveness), in paragraph (4), omit sub-paragraph (b) and the preceding “and”.

Exit-related amendments of the Defence and Security Public Contracts Regulations 2011

3.—(1) The Defence and Security Public Contracts Regulations 2011 (as amended by regulation 2) are further amended as follows.

(2) In regulation 3 (interpretation), in paragraph (1)—

(a) before the definition of “aircraft” insert—

““the 1958 List” means, subject to regulation 65A, the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958;”;

(b) omit the definition of “the Commission”;

(c) in the definition of “contract notice”—

(i) in the words before paragraph (a), for “sent to the Official Journal” substitute “submitted to the UK e-notification service”;

(ii) in paragraph (a), at the beginning insert “subject to paragraph 2 of Schedule A1,”;

(d) in the definition of “contractor”, in paragraph (b), for “and established in a member State” substitute “the United Kingdom and is established in the United Kingdom or Gibraltar”;

(e) in the definition of “military equipment”, in paragraph (b), for the words from “list” to the end substitute “1958 List”;

(f) for the definition of “national of a member State” substitute the following—

““national of the United Kingdom” means—

(a) in the case of a person who is not an individual, a person formed in accordance with the laws of—

(i) any part of the United Kingdom, or

(ii) Gibraltar,

and which has its registered office, central administration or principal place of business in the United Kingdom or in Gibraltar;

(b) in the case of an individual—

(i) a British Citizen, or

(ii) a person who is a British Overseas Territories Citizen by virtue of a connection with Gibraltar;”;

(g) in the definition of “prior information notice”—

(i) for “sent to the Official Journal” substitute “submitted to the UK e-notification service”;

(ii) in paragraph (a), at the beginning insert “subject to paragraph 3 of Schedule A1,”;

(h) in the definition of “services provider”, in paragraph (b), for “and established in a member State” substitute “the United Kingdom and is established in the United Kingdom or Gibraltar”;

(i) in the definition of “supplier”, in paragraph (b), for “and established in a member State” substitute “the United Kingdom and is established in the United Kingdom or Gibraltar”;

(j) after the definition of “the TFEU” insert—

“the UK e-notification service” has the meaning mentioned in regulation 48(9), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with the provisions applied (and adapted) by regulation 48(9);”

(3) In regulation 6 (application)—

(a) in paragraphs (1) and (3) for “Articles 36, 51, 52, 62 and 346 of the TFEU” substitute “specified retained EU law”;

(b) after paragraph (3) insert—

“(3A) These Regulations—

(a) do not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) do not preclude the United Kingdom from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.

(3B) The arms, munitions and war material to which paragraph (3A)(b) applies are those included in the 1958 List.

(3C) Subject to the effect of any regulations made under regulation 65A, any measures which, if they had been taken immediately before exit day, would have been covered by Article 346 of the TFEU shall be regarded as measures covered by paragraph (3A).”;

(c) after paragraph (6) insert—

“(7) In this regulation, “specified retained EU law” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which Article 36, 51, 52 or 62 of the TFEU had immediately before exit day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section.”.

(4) In regulation 7 (general exclusions), in paragraph (1)—

(a) in sub-paragraph (c), for “at least two member states” substitute “the United Kingdom and a member State”;

(b) in sub-paragraph (d)—

(i) for “which is not a member State” substitute “other than the United Kingdom or Gibraltar”; and

(ii) for “territory of the EU” substitute “United Kingdom and Gibraltar”;

(c) in sub-paragraph (e)(i), for “a State which is not a member State” substitute “another State”;

(d) in sub-paragraph (f), for “a member State” substitute “the United Kingdom”.

(5) In regulation 9 (thresholds)—

(a) in paragraph (2)—

(i) in the words before sub-paragraph (a), after “sum” insert “for the time being”;

(ii) in sub-paragraph (a), for the words from “Article” to “Directive” substitute “regulation 16(1)(a) of the Utilities Contracts Regulations 2016(a)”;

(iii) in sub-paragraph (b), for the words from “Article” to “Directive” substitute “regulation 16(1)(b) of those Regulations”;

(a) S.I. 2016/274, amended by [the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019] (which amend regulation 16(1)(a) and (b) so that they mention the sums of £363,424 and £4,551,413 respectively, and insert a new regulation 16A under which those sums must be reviewed every two years and, if certain criteria are met, be changed by amending regulations made under that new regulation 16A); there are other amending instruments but none is relevant.

- (b) omit paragraphs (3) and (4);
 - (c) in paragraph (10)—
 - (i) in sub-paragraph (a), for “80,000 euro” substitute “£65, 630”;
 - (ii) in sub-paragraph (b), for “1,000,000 euro” substitute “£820,700”;
 - (d) in paragraph (18), for “sent to the Official Journal” substitute “submitted to the UK e-notification service”.
- (6) In regulation 12 (technical specifications in the contract documents)—
- (a) in paragraph (1), in the definition of “recognised bodies”, after “inspection bodies” insert “established in the United Kingdom or Gibraltar”;
 - (b) in paragraph (4), in the words after sub-paragraph (b), before “EU obligations” insert “retained”;
 - (c) omit paragraph (14).
- (7) In regulation 14 (prior information notices)—
- (a) in paragraph (1), for the words from “send” to “Commission” substitute “submit a prior information notice to the UK e-notification service”;
 - (b) in paragraph (3), for the words from “send” to the end substitute “submit a notice of publication on a buyer profile to the UK e-notification service”;
 - (c) in paragraph (4)—
 - (i) in the words before sub-paragraph (a), for “sent to the Commission” substitute “submitted to the UK e-notification service”;
 - (ii) in sub-paragraph (a), at the beginning insert “subject to paragraph 4 of Schedule A1,”.
- (8) In regulation 16 (use of the negotiated procedure without prior publication of a contract notice)—
- (a) in paragraph (1)(e), for “a member State” substitute “the United Kingdom”;
 - (b) omit paragraph (2).
- (9) In regulation 17 (the restricted procedure)—
- (a) in paragraph (2)—
 - (i) for “sending to the Official Journal” substitute “submitting to the UK e-notification service”;
 - (ii) for the words “a notice, in the form of the contract notice,” substitute “a contract notice”;
 - (b) in paragraph (3)—
 - (i) omit “subject to paragraph (5),”;
 - (ii) for “37” substitute “30”;
 - (iii) for “of the despatch of the notice” substitute “on which the notice was submitted to the UK e-notification service”;
 - (c) omit paragraph (5);
 - (d) in paragraph (6)—
 - (i) in the words before sub-paragraph (a), for “37” substitute “30”;
 - (ii) for the words from “that time limit” in the words before sub-paragraph (a) to the end of the paragraph substitute “that time limit a time limit of not less than 10 days from the date on which the contract notice was submitted to the UK e-notification service”;
 - (e) in paragraph (20)—
 - (i) in sub-paragraph (b), after “Directive” insert “as modified by paragraph 2 of Schedule A1”;

- (ii) in sub-paragraph (c), for “sent to the Official Journal” substitute “submitted to the UK e-notification service”.
- (10) In regulation 18 (the negotiated procedure)—
 - (a) in paragraph (3)—
 - (i) for “sending to the Official Journal” substitute “submitting to the UK e-notification service”;
 - (ii) for the words “a notice, in the form of the contract notice,” substitute “a contract notice”;
 - (b) in paragraph (5)—
 - (i) for “paragraphs (7) and (8)” substitute “paragraph (8)”;
 - (ii) for “37” substitute “30”;
 - (iii) for “of despatch of the notice” substitute “on which the notice was submitted to the UK e-notification service”;
 - (c) omit paragraph (7);
 - (d) in paragraph (8)—
 - (i) in the words before sub-paragraph (a), for “37” substitute “30”;
 - (ii) omit sub-paragraph (a);
 - (iii) in sub-paragraph (b)—
 - (aa) omit the words from “where” to “paragraph (7)”;
 - (bb) for “of despatch of the contract notice” substitute “on which the contract notice was submitted to the UK e-notification service”.
- (11) In regulation 19 (the competitive dialogue procedure)—
 - (a) in paragraph (4)—
 - (i) for “sending to the Official Journal” substitute “submitting to the UK e-notification service”;
 - (ii) omit “a notice, in the form of”;
 - (b) in paragraph (7)—
 - (i) omit “Subject to paragraph (9),”;
 - (ii) for “37” substitute “30”;
 - (iii) for “of the despatch of the notice” substitute “on which the notice was submitted to the UK e-notification service”;
 - (c) omit paragraph (9).
- (12) In regulation 23 (criteria for the rejection of economic operators)—
 - (a) in paragraph (1)—
 - (i) omit sub-paragraph (g);
 - (ii) in sub-paragraph (m)—
 - (aa) for “39(1)” substitute “39(1)(a), (b), (d), or (e)”;
 - (bb) for “the national law of any member State”, substitute “the law of any part of the United Kingdom or of Gibraltar”;
 - (b) in paragraph (4)—
 - (i) in sub-paragraphs (g) and (h), for “the member State in which the economic operator is established” substitute “Gibraltar”;
 - (ii) in sub-paragraph (i), for “25, 26 or 27” substitute “25 or 26”;
 - (iii) in sub-paragraph (j)—
 - (aa) for “member State in which the economic operator is established” substitute “United Kingdom or Gibraltar”;

- (bb) for “in that member State” substitute “in the United Kingdom or Gibraltar”;
- (cc) for “of that member State” substitute “of the relevant part of the United Kingdom or, as the case may be, of Gibraltar”;
- (iv) for sub-paragraph (k) substitute the following—
 - “(k) is not—
 - (i) certified, by the Registrar of Companies in the United Kingdom or Gibraltar, as incorporated; or
 - (ii) certified as having declared on oath that it is carrying on business in the trade in question in the United Kingdom, or in Gibraltar, at a specific place of business and under a specific trading name.”;
- (c) in paragraph (5)—
 - (i) in sub-paragraph (a)(ii), for the words from “in” to “record” substitute “where such a judicial record is not maintained in respect of the relevant place”;
 - (ii) in sub-paragraph (c)—
 - (aa) omit “in a member State”;
 - (bb) after “issued” insert “in respect of the relevant place”;
- (d) for paragraph (6) substitute—
 - “(6) In this regulation—
 - “relevant”, in relation to a judicial, administrative or competent authority, notary public or Commissioner for oaths means an authority designated in respect of the relevant place, or a notary public or Commissioner for oaths in the relevant place;
 - “relevant place” means whichever of the following the context requires—
 - (a) the United Kingdom;
 - (b) the relevant part of the United Kingdom;
 - (c) Gibraltar.”;
- (e) omit paragraphs (7) to (14).
- (13) In regulation 24 (information as to economic and financial standing)—
 - (a) in paragraph (1), in the words before sub-paragraph (a), omit “regulation 27 and”;
 - (b) in paragraph (6)(b), for “member State in which the economic operator is established” substitute “relevant part of the United Kingdom or of Gibraltar”.
- (14) In regulation 25 (information as to technical or professional ability)—
 - (a) in paragraph (1), at the beginning, omit “Subject to regulation 27.”;
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (f), for “of the member State in which the economic operator is established” substitute “in the United Kingdom or Gibraltar”;
 - (ii) in sub-paragraph (j), for “territory of the EU” substitute “United Kingdom and Gibraltar”;
 - (iii) in sub-paragraph (n)(ii), for “any member State” substitute “the United Kingdom or Gibraltar”;
 - (c) in paragraph (4)(a)—
 - (i) in paragraph (i), omit sub-paragraph (aa);
 - (ii) for paragraph (ii) substitute the following—
 - “(ii) from either—
 - (aa) an independent body established in the United Kingdom conforming to retained EU law or the relevant European or international standards concerning certification; or

- (bb) an independent body established in Gibraltar conforming to the law of Gibraltar or the relevant European or international standards concerning certification; or”.
- (15) In regulation 26 (supplementary information), omit “Subject to regulation 27,”.
- (16) Omit regulation 27 (official lists of approved economic operators).
- (17) In regulation 29 (corporations), omit paragraph (1).
- (18) In regulation 31 (criteria for the award of a contract)—
 - (a) in paragraph (1), in the words before sub-paragraph (a), for “paragraphs (6) and (9)” substitute “paragraph (6)”;
 - (b) in paragraph (7)—
 - (i) after sub-paragraph (c) insert “or”;
 - (ii) omit sub-paragraph (e) and the preceding “or”;
 - (c) omit paragraphs (8) and (9).
- (19) In regulation 32 (contract award notice)—
 - (a) in paragraph (1)—
 - (i) in the words before sub-paragraph (a), for the words from “send” to “award notice” substitute “submit a contract award notice to the UK e-notification service”;
 - (ii) in sub-paragraph (a), at the beginning insert “subject to paragraph 5 of Schedule A1,”;
 - (b) in paragraph (2), in the words before sub-paragraph (a), after “Directive” insert “as modified by paragraph 5 of Schedule A1”;
 - (c) in paragraph (3), for “send” substitute “submit”.
- (20) In regulation 33 (information about contract award procedures), omit paragraph (14).
- (21) In regulation 36 (conditions for performance of contracts), in paragraph (1), before “EU law” insert “retained”.
- (22) In regulation 39 (security of supply)—
 - (a) in paragraph (2)(a), omit “from the member State concerned”;
 - (b) omit paragraph (3).
- (23) In regulation 42 (thresholds and rules on advertising)—
 - (a) in paragraph (2)(a), after “Directive,” insert “but as if in paragraph 9 “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
 - (b) in paragraph (3)—
 - (i) in the words before sub-paragraph (a), for “published in accordance with regulation 48(1)(b) and (3)” substitute “submitted to the UK e-notification service”;
 - (ii) in sub-paragraphs (a) and (b), for “despatched in accordance with regulation 48(1)(b)” substitute “submitted to the UK e-notification service”;
 - (c) omit paragraph (9).
- (24) In regulation 43 (award of a sub-contract without publication of a sub-contract notice), in paragraph (1)(e), for “a member State” substitute “the United Kingdom”.
- (25) In regulation 46 (statistical and other reports), omit paragraph (2).
- (26) In regulation 48 (publication of notices)—
 - (a) in paragraph (1)—
 - (i) in the words before sub-paragraph (a), for “sent to the Official Journal” substitute “submitted to the UK e-notification service”;
 - (ii) omit sub-paragraph (b) and the preceding “and”;

- (b) omit paragraphs (2) and (3);
- (c) in paragraph (4)(a) and (b), for “despatched in accordance with paragraph (1)(b) or (2)” substitute “submitted to the UK e-notification service”;
- (d) in paragraph (5), for “of despatch of that notice to the Official Journal” substitute “on which that notice was submitted to the UK e-notification service”;
- (e) in paragraph (6)—
 - (i) for “despatched to the Commission” substitute “submitted to the UK e-notification service”;
 - (ii) for “that despatch” substitute “that submission”;
- (f) in paragraph (7), for “despatch to the Official Journal” substitute “submission to the UK e-notification service”;
- (g) in paragraph (8)—
 - (i) for “send” substitute “submit”;
 - (ii) for “Official Journal” substitute “UK e-notification service”;
- (h) after paragraph (8) insert—

“(9) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015(a), and regulation 51(6) and (7) of those Regulations apply for the purposes of these Regulations as if the confirmations referred to in in regulation 51(6)(b) were confirmations to contracting authorities (within the meaning of these Regulations) that notices submitted by them for publication on the UK e-notification service have been so published and confirming the date of publication in respect of each such notice.”.

(27) In regulation 49 (means of communication), in paragraph (7), for “25, 26 and 27” substitute “25 and 26”.

(28) In regulation 51 (duty owed to economic operators), in paragraph (1)—

- (a) in sub-paragraph (a), omit “31(9),”;
- (b) in sub-paragraph (b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”.

(29) In regulation 54 (special time limits for seeking a declaration of ineffectiveness), in paragraph (3), for “in the Official Journal”, substitute “on the UK e-notification service”.

(30) In regulation 60 (grounds for ineffectiveness), in paragraphs (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”.

(31) After regulation 65 insert—

“PART 9A

REGULATION-MAKING POWERS

Modification of the 1958 List for the purposes of these Regulations

65A. The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of these Regulations as if it were changed in respects specified in the regulations.

(a) S.I. 2015/102, amended by [the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019] (which insert paragraphs (5) to (7) into regulation 51 with effect from exit day); there are other amending instruments but none is relevant.

Requirements relating to equipment for electronic receipt of documents

65B. The Secretary of State may make regulations amending any or all of the technical details and characteristics of the equipment for electronic receipt set out in sub-paragraphs (a), (e) and (f) of regulation 49(6).

General provisions about regulations under this Part

65C.—(1) Regulations under this Part are to be made by statutory instrument.

(2) A statutory instrument containing regulations under regulation 65A (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Any other statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Regulations under this Part may make supplementary, incidental, transitional, transitory or saving provision.”.

(32) Before Schedule 1 insert the Schedule set out in the Schedule to these Regulations.

(33) Omit Schedule 3.

Transitional and saving provision in relation to the amendments made by regulation 3

4.—(1) Subject to the other provisions of this regulation, the amendments made by regulation 3 apply prospectively even in relation to procurements which had commenced before exit day.

(2) But, subject to the following provisions of this regulation, an amendment made by regulation 3 does not apply to the extent that the provision amended refers or relates (directly or indirectly) to something which in fact occurred before exit day.

(3) Accordingly, for example, where, before exit day, a contract notice was published in the Official Journal after being sent for such publication in accordance with unamended regulations 17(2) and 48 of the 2011 Regulations (and the unamended definition of “contract notice” in regulation 3(1) of those Regulations), but exit day occurred before the sending of a contract award notice to the Official Journal in accordance with unamended regulations 32 and 48 of those Regulations in relation to that procurement—

- (a) the contract award notice is, on or after exit day, to be submitted for publication on the UK e-notification service in accordance with amended regulations 32 and 48 of the 2011 Regulations; but
- (b) the information to be included in that notice by virtue of amended regulation 32(1)(a) of the 2011 Regulations includes the date of the publication of the contract notice in the Official Journal because that publication occurred before exit day and, accordingly, the modification made by paragraph 5(b) of amended Schedule A1 (introduced by amended regulation 32(1)) is to be disregarded in relation to that publication.

(4) The amendments made by regulation 3 to the following provisions of the 2011 Regulations do not affect any procurement commenced before exit day—

- (a) in regulation 3(1), the definitions of “contractor”, “national of a member State”, “services provider” and “supplier”;
- (b) regulation 7;
- (c) regulation 16(1)(e);
- (d) regulations 23 to 27;
- (e) regulation 29;
- (f) regulation 39;
- (g) regulation 43(1)(e);
- (h) Schedule 3.

(5) The provisions saved by paragraph (4) are to be construed and have prospective effect, on and after exit day, as if the United Kingdom were still a member State.

Interpretation of this regulation

(6) For the purposes of this regulation, a procurement has been commenced before exit day if, before exit day—

- (a) a notice has been sent to the Official Journal in accordance with the 2011 Regulations in order to invite requests to be selected to tender for, to negotiate, or to participate in a competitive dialogue, in respect of a proposed contract or framework agreement;
- (b) the contracting authority has had published any form of advertisement seeking offers or expressions of interest in a proposed contract or framework agreement; or
- (c) the contracting authority has contacted any economic operator in order to—
 - (i) seek expressions of interest or offers in respect of a proposed contract or framework agreement; or
 - (ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed contract or framework agreement.

(7) For the purposes of this regulation, a procurement covers the whole of the procedures which stem from that commencement.

(8) Accordingly, for example, if a contract notice in relation to a proposed framework agreement has, before exit day, been sent as described in paragraph (6)(a), paragraph (4) applies to the award of any contracts based on that framework agreement regardless of whether the relevant specific procedure for the award of any such contract under regulation 20(7) to (9) of the 2011 Regulations had itself been commenced before exit day.

(9) Procedures taken for the purpose of modifying a contract or framework agreement are not to be regarded, for the purposes of paragraph (7), as stemming from the commencement of the procurement from which the award of that contract or framework agreement had itself stemmed.

(10) In this regulation—

“the 2011 Regulations” means the Defence and Security Public Contracts Regulations 2011;

“amended”, in relation to a provision, means that provision as amended, substituted or inserted by regulation 3; and

“unamended”, in relation to a provision, means that provision in the form in which it existed immediately before it was amended or substituted by regulation 3.

(11) In this regulation, “contracting authority”, “contract notice”, “framework agreement” and “Official Journal” have the same meaning as in the unamended 2011 Regulations.

Date _____
Name _____
Post held by the signing minister
Ministry of Defence

SCHEDULE

Regulation 3(32)

“SCHEDULE A1

Regulations 3(1), 14(4),
17(20), and 32(1) and (2)

MODIFICATIONS OF ANNEX 4 TO THE DEFENCE AND SECURITY PROCUREMENT DIRECTIVE FOR THE PURPOSES OF THESE REGULATIONS

1. In this Schedule, “Annex 4” means Annex 4 to the Defence and Security Procurement Directive.

2. The references to Annex 4 in the definition of “contract notice” in regulation 3(1) and in regulation 17(20) have effect as if, in the paragraphs of that Annex under the heading “contract notices”—

- (a) paragraph 9 (subcontracting) were omitted;
- (b) in paragraph 21, “Article 47” were a reference to regulation 31 of these Regulations;
- (c) in paragraph 22, “in accordance with the technical specifications of publication indicated in Annex VI” read “on the UK e-notification service (within the meaning of the Defence and Security Public Contracts Regulations 2011)”;
- (d) in paragraph 23, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.

3. The reference to Annex 4 in the definition of “prior information notice” in regulation 3(1) has effect as if, in paragraph 7 under the heading “prior information notice” in that Annex, “dispatch” (in both places) referred to the submission of the notice to the UK e-notification service for the purposes of these Regulations.

4. The reference to Annex 4 in regulation 14(4)(a) has effect as if paragraph 1 (country of the contracting authority or entity) under the heading “notice of publication of a prior information notice on a buyer profile” in that Annex were omitted.

5. The references to Annex 4 in regulation 32(1) and (2) have effect as if, in the paragraphs of that Annex under the heading “contract award notice”—

- (a) in paragraph 2, “Article 47” were a reference to regulation 31 of these Regulations;
- (b) in paragraph 12, “in accordance with the technical specifications for publication in Annex VI” read “on the UK e-notification service (within the meaning of the Defence and Security Public Contracts Regulations 2011)”;
- (c) in paragraph 13, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Defence and Security Public Contracts Regulations 2011 (S.I. 2011/1848) (“the 2011 Regulations”).

Regulation 2 makes amendments that take effect before the withdrawal of the UK from the European Union. Regulation 2(2)(c) amends the definition of ‘member State’ to include Iceland and Norway. Regulation 2(2)(d) amends the definition of ‘military equipment’ to update a reference to the Common Military List of the European Union so that it refers to the current List (adopted on 26th February 2018) as amended from time to time. The other amendments made by regulation 2 remove references to Commission Regulation (EC) No 1564/2005 (which prescribed the form in which various notices were to be sent for publication in the Official Journal of the European Union) and make minor corrections or adjustments to the description of such notices and the information to be contained in them. That Commission Regulation was repealed in 2011 and its current equivalent is Commission Implementing Regulation (EU) No 2015/1986 (OJ No L 296, 12.11.2015, p 1), which is directly applicable.

Regulation 3 is made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of the 2011 Regulations (as retained EU law) to operate effectively and other deficiencies (in particular under paragraphs (a), (d), (e), (f) and (g) of section 8(2)) arising from the withdrawal of the UK from the European Union. Some of the amendments made by regulation 3 supersede amendments made by regulation 2.

Regulation 4 makes transitional and saving provision in relation to the amendments made by regulation 3.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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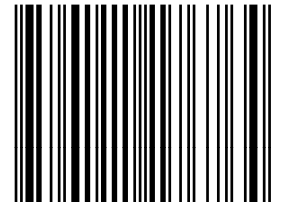
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