
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 114

**EXITING THE EUROPEAN UNION
PUBLIC PROCUREMENT**

**The Public Procurement etc. (Scotland) (Amendment)
(EU Exit) Amendment Regulations 2019**

Made - - - - 21st March 2019

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018⁽¹⁾ and all other powers enabling them to do so.

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

Citation and commencement

1.—(1) These Regulations may be cited as the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Amendment Regulations 2019.

(2) These Regulations come into force immediately before exit day.

Amendment of the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019

2.—(1) The Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019⁽²⁾ are amended as follows.

(2) In regulation 1 paragraph (3) (citation, commencement and transitional and savings provisions) for “eight” substitute “18”.

(3) In regulation 3 (amendments to the Public Contracts (Scotland) Regulations 2015⁽³⁾ that are commenced on exit day)—

(a) in paragraph (23) (amendment of regulation 26 which concerns conditions relating to the GPA and other international agreements)—

(1) 2018 c.16.

(2) S.S.I. 2019/112.

(3) S.S.I. 2015/446, relevantly amended by S.S.I. 2016/47.

- (i) omit sub-paragraph (b),
- (ii) in sub-paragraph (c)—
 - (aa) for paragraph (i) substitute—
 - “(i) for “is bound” substitute “was, immediately before exit day, bound”,”,
 - (bb) omit paragraph (ii),
 - (cc) for paragraph (iii) substitute—
 - “(iii) for “EU” where it last appears substitute “United Kingdom”,”,
- (b) in paragraph (46) (amendment of regulation 68 which concerns life-cycle costing), in sub-paragraph (a), for paragraph (ii) substitute—
 - “(ii) for “is bound” substitute “was, immediately before exit day, bound”,”,
- (c) in paragraph (57) (amendment of regulation 87 which concerns the duty owed to economic operators)—
 - (i) in sub-paragraph (b), for “Condition 1 or Condition 2” substitute “Condition 1, Condition 2 or Condition 3”,
 - (ii) for sub-paragraph (d) substitute—
 - “(d) in paragraph (4)—
 - (i) for “For the purpose of paragraph (2)(b), a relevant bilateral agreement applies if” substitute “Condition 3 is that”,
 - (ii) in sub-paragraph (a)—
 - (aa) for “there is” substitute “immediately before exit day there was”,
 - (bb) for “is bound” substitute “was bound”,
 - (da) after paragraph (4) insert—
 - “(4A) Paragraph (4)(b) is to be applied as if the United Kingdom were a member State.”,”.
- (4) In the heading to regulation 4 (amendments commenced eight months after exit day), for “eight” substitute “18”.
- (5) In regulation 5 (amendments to the Utilities Contracts (Scotland) Regulations 2016(4) that are commenced on exit day)—
 - (a) in paragraph (27) (amendment of regulation 41 which concerns conditions relating to the GPA and other international agreements)—
 - (i) omit sub-paragraph (a),
 - (ii) in sub-paragraph (b)—
 - (aa) for paragraph (i) substitute—
 - “(i) for “is bound” substitute “was, immediately before exit day, bound”,”,
 - (bb) omit paragraph (ii),
 - (cc) for paragraph (iii) substitute—
 - “(iii) for “EU” where it last appears substitute “United Kingdom”,”,

- (b) in paragraph (47) (amendment of regulation 81 which concerns life-cycle costing), in sub-paragraph (a), for paragraph (ii) substitute—
 - “(ii) for “is bound” substitute “was, immediately before exit day, bound”,
- (c) in paragraph (58) (amendment of regulation 100 which concerns the duty owed to economic operators)—
 - (i) in sub-paragraph (b)(i)(bb), for “Condition 1 or Condition 2” substitute “Condition 1, Condition 2 or Condition 3”,
 - (ii) for sub-paragraph (d) substitute—
 - “(d) in paragraph (4)—
 - (i) for “For the purpose of paragraph (2)(b), a relevant bilateral agreement applies if” substitute “Condition 3 is that”,
 - (ii) in sub-paragraph (a)—
 - (aa) for “there is” substitute “immediately before exit day there was”,
 - (bb) for “is bound” substitute “was bound”,
 - (da) after paragraph (4) insert—
 - “(4A) Paragraph (4)(b) is to be applied as if the United Kingdom were a member State.”.
- (6) In the heading to regulation 6 (amendments commenced eight months after exit day), for “eight” substitute “18”.
- (7) In regulation 7 (amendments to the Concession Contracts (Scotland) Regulations 2016(5) that are commenced on exit day), in paragraph (28) (amendment of regulation 51 which concerns the duty owed to economic operators)—
 - (a) in paragraph (b), for “Condition 1 or Condition 2” substitute “Condition 1, Condition 2 or Condition 3”,
 - (b) for sub-paragraph (d) substitute—
 - “(d) in paragraph (4)—
 - (i) for “For the purpose of paragraph (2)(b), a relevant bilateral agreement applies if” substitute “Condition 3 is that”,
 - (ii) in sub-paragraph (a)—
 - (aa) for “there is” substitute “immediately before exit day there was”,
 - (bb) for “is bound” substitute “was bound”,
 - (da) after paragraph (4) insert—
 - “(4A) Paragraph (4)(b) is to be applied as if the United Kingdom were a member State.”.
- (8) In the heading to regulation 8 (amendment commenced eight months after exit day), for “eight” substitute “18”.
- (9) In the schedule (transitional and savings provisions)—
 - (a) in paragraph 5(2)—
 - (i) in paragraph (a), omit sub-paragraph (ii),
 - (ii) in paragraph (c), omit sub-paragraph (i),
 - (b) omit paragraph 11.

St Andrew's House,
Edinburgh
21st March 2019

DEREK MACKAY
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union.

These Regulations amend the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019 (S.S.I. 2019/112) (“the first SSI”) before the first SSI comes into force.

Regulation 2 affects the amendments which the first SSI will, if made, make to various statutory instruments on exit day. These Regulations will be made only if the first SSI is made.

Among other things, the first SSI would have amended the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49) and the Concession Contracts (Scotland) Regulations 2016 (S.S.I. 2016/65) (collectively “the principal public procurement Regulations”) to remove from them, on exit day, certain provisions which gave effect to, or referred to, international agreements by which the EU is bound. Before exit day, those provisions required, in particular, that economic operators from third country signatories to such agreements be treated no less favourably than economic operators from the EU when they participate in public procurements within the scope of any of the principal public procurement Regulations, and made certain remedies available to them. These Regulations amend the first SSI so that, instead of removing those provisions on exit day, the first SSI removes them 18 months after exit day and modifies them so that, during the 18 months from exit day, they continue to have the effect that they had before the UK’s withdrawal from the EU.

Regulation 2(2) of these Regulations also amends the first SSI so that provisions relating to the Government Procurement Agreement between certain parties to the World Trade Organisation which the first SSI would have removed from the principal public procurement Regulations eight months after exit day are removed instead 18 months after exit day.