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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2019 No.**

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

**PART 3**

**AMENDMENT OF SECONDARY LEGISLATION**

**CHAPTER 1**

**THE PUBLIC CONTRACTS (SCOTLAND) REGULATIONS 2015**

**Amendments commenced on exit day**

- 3.—**(1) The Public Contracts (Scotland) Regulations 2015<sup>(1)</sup> are amended as follows.
- (2) In regulation 2 (interpretation), in paragraph (1)—
- (a) omit the definition of the “Commission”,
  - (b) after the definition of “contracting entity” insert—
    - “covered by regulation 3(2)”, in relation to an element, a part of a contract, or procurement, means that regulation 3(2)—
    - (a) applies to that element, part or procurement, or
    - (b) would do so if Part 2 applied,”
  - (c) omit the definition of “ESPD”,
  - (d) in the definition of “GPA”, after “amended” insert “before exit day”,
  - (e) in the definition of “innovation”, omit “the Europe 2020 strategy for smart,”,
  - (f) after the definition of “public works contract” insert—
    - “the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018<sup>(2)</sup> because of the effect which the Treaty on European Union or 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,”
  - (g) after the definition of “selection criteria” insert—
    - “SPD” means the Single Procurement Document referred to in regulation 60(1),”,
  - (h) after the definition of “TFEU” insert—
    - “the UK e-notification service” has the meaning given by regulation 52(5), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with regulation 52(6),”.
- (3) In regulation 2, omit paragraphs (2) and (3).

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

(2) 2018 c.16.

(4) In regulation 3, (subject-matter and application of these regulations), for paragraph (2) substitute the following—

“(2) This Part—

- (a) does not oblige any contracting authority to supply information the disclosure of which it considers contrary to the essential interests of the security of the United Kingdom,
- (b) does not preclude any contracting authority from taking such measures as it considers necessary for the protection of the essential interests of the security of the United Kingdom and 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.

(3) The arms, munitions and war material to which paragraph (2)(b) applies are those included in the 1958 List.

(4) Any measures which, if they had been taken immediately before exit day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (2)(b).

(5) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15 April 1958 as that list is to be treated for the purpose of Part 2 of the Public Contracts Regulations 2015(3).”.

(5) In regulation 4 (mixed procurement)—

- (a) in paragraph (1), for “Article 346 of the TFEU” substitute “regulation 3(2)”,
- (b) in paragraph (2)—
  - (i) for “Utilities Directive” substitute “Utilities Contracts (Scotland) Regulations 2016(4)”,
  - (ii) for “Art 5 and 6 of the Utilities Directive” substitute “regulations 5 and 6 of those Regulations”.

(6) In regulation 5 (thresholds)—

- (a) in paragraph (1)—
  - (i) in sub-paragraph (a), for “the amount specified in Article 4(a) of the Directive” substitute “£4,551,413”,
  - (ii) in sub-paragraph (b), for “the amount specified in Article 4(b) of the Directive” substitute “£118,133”,
  - (iii) in sub-paragraph (c), for “the amount specified in Article 4(c) of the Directive” substitute “£181,302”,
  - (iv) in sub-paragraph (d), for “the amount specified in Article 4(d) of the Directive” substitute “£615,278”,
- (b) in paragraph (3)(a)(i) for “80,000 euros” substitute “£65,630”,
- (c) in paragraph (3)(a)(ii) “1 million euros” substitute “£820,370”,
- (d) omit paragraph (5).

(7) After regulation 5 insert—

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(3) S.I. 2015/102, amended by S.I.s 2016/275 and 696; there are other amendments that are not relevant to this instrument.

(4) S.S.I. 2016/49.

**“Review and amendment of certain thresholds**

**5A.**—(1) Every two years the Scottish Ministers must review the thresholds specified in regulation 5(1)(a), (b) and (c) (“the reviewable thresholds”) to verify whether they correspond with the thresholds established for those purposes in the GPA.

(2) The Scottish Ministers must do so by calculating the sterling value of each of the reviewable thresholds on the basis of the average daily value of sterling in terms of the special drawing rights mentioned in the GPA over a period of 24 months ending with 31st August.

(3) The Scottish Ministers must make that calculation using the applicable conversion rates in the monthly International Financial Statistics published from time to time by the International Monetary Fund.

(4) If the sterling value of a reviewable threshold so calculated differs from the sum for the time being set by regulation 5(1) in respect of that threshold, the Scottish Ministers must make regulations amending regulation 5(1) so as to substitute for that sum the sum equal to that value.

(5) Such regulations—

(a) must be made and laid before the Scottish Parliament before 1 November following the end of the 24 month period covered by the review, and

(b) must provide for the substitution to come into force on the following 1 January.

(6) The first review under this regulation must relate to the 24 month period ending with 31 August 2019.”.

(8) In regulation 7 (exclusions: utilities)—

(a) in paragraph (a) for “Articles 8 to 14 of the Utilities Directive” substitute “regulations 8 to 14 of the Utilities Contracts (Scotland) Regulations 2016,

(b) in paragraph (b)—

(i) for “Utilities Directive” substitute “Utilities Contracts (Scotland) Regulations 2016,

(ii) for sub-paragraph (i) substitute—

“(i) under regulation 17 (exclusion: contracts awarded for the purpose of resale of lease to third parties), 22 (exclusion: contracts awarded for the purchase of water and for the supply of energy or of fuels for the production of energy) or 32 (activities directly exposed to competition), or”

(iii) in paragraph (ii), for “Article” substitute “regulation”,

(iv) for “that Directive” substitute “those Regulations”.

(c) in paragraph (c)—

(i) for “paragraph (b) of Article 13(2) of the Utilities Directive as amended from time to time” substitute “regulation 13(2) of the Utilities Contracts (Scotland) Regulations 2016”,

(ii) in sub-paragraph (ii) for “paragraph (d) of Article 21 of the Utilities Directive” substitute “paragraph (1)(e) of regulation 20 of the Utilities Contracts (Scotland) Regulations 2016”.

(9) In regulation 8 (exclusions: concessions)—

(a) in paragraph (1)—

(i) for “works or services concessions” substitute “a works concession contract or a services concession contract”,

(ii) for sub-paragraph (a) substitute—

- “(a) is subject to the application of the Concession Contracts (Scotland) Regulations 2016(5),”
- (iii) in sub-paragraph (b) for “that Directive” substitute “those Regulations”,
- (b) for paragraph (2) substitute “(2) In this regulation “works concession contract” and “services concession contract” have the meaning given in regulation 3 (meaning of “concession contract”) of the Concession Contracts (Scotland) Regulations 2016.”.
- (10) In regulation 10 (exclusions: public contracts awarded, and design contests organised, pursuant to international rules), in paragraph (1)(a)—
- (a) before “Treaties” insert “Retained”,
- (b) for “one or more third” substitute “one or more other”.
- (11) In regulation 11 (exclusions: specific service contracts), in paragraph (1)(e)—
- (a) in paragraph (i)—
- (i) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”,
- (ii) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”,
- (b) in both paragraphs (iv) and (v), for “member State concerned” substitute “United Kingdom”.
- (12) In regulation 12 (exclusions: service contracts awarded on the basis of an exclusive right), for the “TFEU” substitute “anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which 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”.
- (13) In regulation 13 (exclusions: public contracts between entities within the public sector), in paragraphs (2)(c) and (5)(c), before “Treaties” insert “Retained”.
- (14) In regulation 14 (specific situations: contracts subsidised by a contracting authority)—
- (a) in paragraph (1)—
- (i) in sub-paragraph (a), for “Article 13(a) of the Directive” substitute “regulation 5(1)(a)”,
- (ii) in sub-paragraph (b), for “Article 13(b) of the Directive” substitute “regulation 5(1)(b)”.
- (15) In regulation 16 (specific situations: defence and security), in paragraph (2)(a), omit “or another member State”.
- (16) In regulation 17 (mixed procurement involving defence or security aspects), in paragraphs (1) and (5)(a), for “Article 346 of the TFEU” substitute “regulation 3(2)”.
- (17) In regulation 18 (public contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules), in paragraph (1)—
- (a) in sub-paragraph (a)—
- (i) before “Treaties” insert “Retained”,
- (ii) for “third” substitute “other”,
- (b) in sub-paragraph (b), for “a third” substitute “another”.
- (18) In regulation 19 (principles of procurement)—

- (a) in paragraph (4) after “agreements or” insert, “, subject to paragraphs (4A) and (4B),”;
- (b) after paragraph (4), insert—
  - “(4A) Where—
    - (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (4), and
    - (b) the agreement is not already referred to,  
the Scottish Ministers may make regulations providing that paragraph (4) is to have effect as if agreement were referred to.
  - (4B) Where the United Kingdom has ceased to ratify an international agreement that is already referred to, the Scottish Ministers may make regulations providing that paragraph (4) is to have effect as if the agreement were not referred to.
  - (4C) In paragraphs (4A) and (4B)—
    - (a) “referred to” means referred to in Annex X mentioned in paragraph (4), and
    - (b) where paragraph (4) already has effect as if an agreement were referred to, “already referred to” includes that agreement.”.
- (19) In regulation 20 (economic operators), omit paragraph (1).
- (20) In regulation 21 (reserved contracts), in paragraph (3), for “Article 20 of the Directive” substitute “this regulation”.
- (21) In regulation 23 (rules applicable to communication)—
  - (a) in paragraph (15)—
    - (i) for “in the Official Journal” substitute “on the UK e-notification service”;
    - (ii) for “sent” substitute “submitted”;
    - (iii) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”.
  - (b) in paragraph (23), for the word “member” substitute “other”.
- (22) After regulation 23 insert—

**“Powers to amend regulation 23**

**23A.—**(1) The Scottish Ministers may make regulations amending paragraph (3) of regulation 23 by—

- (a) omitting any of the situations described in that paragraph where the Scottish Ministers consider that technological developments render it inappropriate for that situation to continue to be an exception from the obligation to require electronic means of communication, or
  - (b) inserting a description of a new situation where the Scottish Ministers consider that it should become a new exception because of technological developments.
- (2) Where the Scottish Ministers consider that technological developments render it inappropriate for there to continue to be any exceptions from the obligation to require electronic means of communication, the Scottish Ministers may make regulations omitting paragraph (3) from regulation 23.
- (3) Where regulations have been made under paragraph (2) and the Scottish Ministers consider that a new exception should be provided for because of technological developments, the Scottish Ministers may make regulations re-inserting paragraph (3) into regulation 23 in terms which give effect to that new exception (and the powers conferred by paragraphs (1) and (2) of this regulation may subsequently be exercised in relation to paragraph (3) as re-inserted).

- (4) The Scottish Ministers may make regulations amending the technical details and characteristics set out in regulation 23(17) if the Scottish Ministers consider it appropriate to do so to take account of technical developments.”.
- (23) In regulation 26 (conditions relating to the GPA and other international agreements)—
- (a) In the heading for “relation” substitute “relating”,
  - (b) in the heading, omit “and other international agreements”,
  - (c) in the body of the regulation, the text of the existing regulation becomes paragraph (1) and is amended as follows—
    - (i) omit “and by the other international agreements by which the EU is bound”,
    - (ii) for “those agreements” substitute “the GPA”,
    - (iii) for “EU” substitute “United Kingdom”,
  - (d) after that paragraph (1) insert—
    - “(2) For the purposes of paragraph (1)—
      - (a) each country that was a member State immediately before exit day is deemed to be a signatory to the GPA, and
      - (b) the EU’s Appendix 1 to the GPA has effect as if each such country were referred to in the same way that Iceland is referred to in the following places in that Appendix—
        - (i) paragraph 2(a) of Annex 1,
        - (i) Annex 6.”.
- (24) In regulation 28 (open procedure)—
- (a) in paragraph (3), for “sent” substitute “submitted”,
  - (b) in paragraph (4)—
    - (i) in sub-paragraph (a), for “for the contract notice in section I of part B of Annex V to the Directive” substitute “by regulation 49(2)”,
    - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”,
  - (c) in paragraph (5), for “sent” substitute “submitted”.
- (25) In regulation 29 (restricted procedure)—
- (a) in paragraph (3)(a), for “sent” substitute “submitted”,
  - (b) in paragraph (7)—
    - (i) in sub-paragraph (a), for “in section I of part B of Annex V to the Directive” substitute “by regulation 49(2)”,
    - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”,
  - (c) in paragraph (11)(a), for “sent” substitute “submitted”,
- (26) In regulation 30 (competitive procedure with negotiation)—
- (a) in paragraph (5)(a), for “sent” substitute “submitted”,
  - (b) in paragraph (7)—
    - (i) in sub-paragraph (a), for “in section I of part B of Annex V” substitute “by regulation 49(2)”,
    - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”,
  - (c) in paragraph (11)(a), for “sent” substitute “submitted”.

(27) In regulation 33 (use of the negotiated procedure without prior publication), in paragraph (1) (a), for “to the Commission where it so requests” substitute “to the Scottish Ministers if they so request”.

(28) In regulation 35 (dynamic purchasing systems)—

- (a) in paragraph (8)(a), for “sent” substitute “submitted”,
- (b) in paragraph (24), for “ESPD” substitute “SPD”,
- (c) in paragraph (25), for “ESPD” substitute “SPD”,
- (d) for paragraph (27) substitute—

“(27) Where the period of validity is changed without terminating the dynamic purchasing system, the contracting authority shall submit for publication on the UK e-notification service a notice of the kind used initially for the call for competition for the dynamic purchasing system.

(27A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under paragraph (26) or (27), the contracting authority shall submit for publication on the UK e-notification service a contract award notice under regulation 51 (contract award notices).”

(29) Omit regulation 40 (procurement involving contracting authorities from different member States).

(30) In regulation 43 (technical specifications)—

- (a) in paragraph (8), for “adopted by a legal act of the EU” substitute “imposed by retained EU law”,
- (b) in paragraph (10), in the words before sub-paragraph (a), omit “to the extent that they are compatible with EU law,”.

(31) In regulation 49 (prior information notices)—

- (a) in paragraph (2), after “Directive” insert—  
“, but as if—

(a) in paragraph 2, “the second and third sub-paragraph of Article 53(1)” were a reference to regulation 54(3) and (4) of these Regulations, and

(b) 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)(a)—

(i) for “send” substitute “submit”,

(ii) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”,

(c) in paragraph (3)(b) for “at national level” substitute “otherwise than on the UK e-notification service”,

(d) in paragraph (4)—

(i) for “send” substitute “submit”,

(ii) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”,

(e) in paragraph (5) after “Directive” insert “, but as if, in paragraph 6, “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”,

- (f) in paragraph (6)—
    - (i) in sub-paragraph (c)—
      - (aa) for “set out in section 1 of Part B of Annex V to the Directive” substitute “required by paragraph (2)”,
      - (bb) for “that Part” substitute “Part B of Annex V to the Directive, but as if paragraph 12 of that Part (financing by EU funds) were omitted”,
    - (ii) in sub-paragraph (d)—
      - (aa) for “sent” substitute “submitted”,
      - (bb) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”,
  - (g) in paragraph (7)—
    - (i) for “sending” substitute “submitting”,
    - (ii) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”,
    - (iii) for “at national level” substitute “otherwise than on the UK e-notification service”.
- (32) For regulation 50 (contract notices) substitute—

**“Contract notices**

**50. Contract notices—**

- (a) must contain the information set out in part C of Annex V to the Public Contracts Directive, but as if—
    - (i) in paragraph 2, “the second and third sub-paragraphs of Article 53(1)” were a reference to regulation 54(3) and (4) of these Regulations,
    - (ii) paragraph 24 (financing by EU funds) were omitted,
    - (iii) in paragraph 26, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts (Scotland) Regulations 2015)”, and
    - (iv) in paragraph 28, “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, and
  - (b) must be submitted for publication in accordance with regulation 52 (publication on the UK e-notification service).”.
- (33) In regulation 51 (contract award notices)—
- (a) in paragraph (1), for “send” substitute “submit”,
  - (b) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”,
  - (c) for paragraph (2) substitute—
    - “(2) Such notices—
      - (a) must contain the information set out in part D of Annex V to the Public Contracts Directive, but as if—
        - (i) in paragraph 9, “Article 67” were a reference to regulation 67 of these Regulations,
        - (ii) in paragraph 11(b), the words “Member State or from a third” were omitted,



- (iii) paragraph 15 (financing by EU funds) were omitted,
    - (iv) in paragraph 17, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”, and
    - (v) in paragraph 18, “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, and
  - (b) must be submitted for publication in accordance with regulation 52 (publication on the UK e-notification service),”
  - (d) in paragraphs (5)(a) and (b), for “send” substitute “submit”.
- (34) In regulation 52 (form and manner of sending notices for publication at EU level)—
  - (a) for the heading, substitute “Publication on the UK e-notification service”,
  - (b) in paragraph (1)—
    - (i) for “sent” (in both places) substitute “submitted”,
    - (ii) for “EU Publications Office” substitute “UK e-notification service”,
    - (iii) omit sub-paragraph (b) and the immediately preceding “and”.
  - (c) in paragraph (2), for “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”,
  - (d) in paragraph (3)—
    - (i) for “EU Publications Office” substitute “UK e-notification service”,
    - (ii) omit “the receipt of the notice and of”,
    - (iii) for “sent” substitute “submitted”,
  - (e) in paragraph (4)—
    - (i) for “send” substitute “submit”,
    - (ii) for “EU Publications Office” substitute “UK e-notification service”,
    - (iii) omit the words from “, provided” to the end,
  - (f) after paragraph (4) insert—
    - (5) In these Regulations, “the UK e-notification service” means a single web-based portal which is provided, for purposes which include the purposes of this Part, by or on behalf of the Cabinet Office.
    - (6) For the purposes of these Regulations, a notice of any description is submitted to the UK e-notification service if the information comprising the notice is entered in the portal in such form or manner as the portal may elicit it and in compliance with any specific instructions that are given within the portal about how the information, or any particular element of it, is to be entered.”.
- (35) In regulation 53 (publication at national level)—
  - (a) in the heading, for “at national level” substitute “otherwise than on the UK e-notification service”,
  - (b) in paragraph (1), for “by the EU Publications Office” substitute “on the UK e-notification service”,
  - (c) in paragraph (3), for the words from “at national level” to “Office” substitute “otherwise than on the UK e-notification service before they are published on that service”,
  - (d) in paragraph (4)—

- (i) for “at national level” substitute “otherwise than on the UK e-notification service”,
  - (ii) for the words from “by the EU” to “Directive” substitute “on that service within 48 hours after the notice was submitted to that service”,
- (e) in paragraph (5)—
- (i) for “at national level” substitute “otherwise than on the UK e-notification service”,
  - (ii) for “sent to the EU Publications Office” substitute “submitted to that service”,
  - (iii) for “sending of the notice to the European Publications Office” substitute “submission of the notice to that service”,
- (f) in paragraph (6)—
- (i) in sub-paragraph (a), for “sends to the EU Publications Office” substitute “submits to the UK e-notification service”,
  - (ii) in sub-paragraph (b), for “sending” substitute “submission”.
- (36) In regulation 54 (electronic availability of procurement documents), in paragraph (1), for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”.
- (37) In regulation 55 (invitations to candidates), in sub-paragraph (5)(d)—
- (a) omit “European”,
  - (b) for “ESPD” substitute “SPD”.
- (38) In regulation 57 (general principles)—
- (a) in paragraph (2)—
    - (i) omit “EU law,”,
    - (ii) after “agreements or” insert “, subject to paragraphs (2A) and (2B),”,
  - (b) after paragraph (2) insert—
    - “(2A) Where—
      - (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (2), and
      - (b) the agreement is not already listed,
 the Scottish Ministers may make regulations providing that paragraph (2) is to have effect as if the agreement were listed.
    - (2B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Scottish Ministers may make regulations providing that paragraph (2) is to have effect as if the agreement were not listed.
    - (2C) In paragraphs (2A) and (2B)—
      - (a) “listed” means listed as described in paragraph (2), and
      - (b) where paragraph (2) already has effect as if an agreement were listed, “already listed” includes that agreement.”.
- (39) In regulation 58 (exclusion grounds)—
- (a) in paragraph (1)—
    - (i) omit sub-paragraph (e),
    - (ii) in sub-paragraph (k) for “Article 57(1)” substitute “Article 57(1)(a), (b), (d), (e) or (f)”,
  - (b) in paragraph (8)(i)—

- (i) omit “European”,
  - (ii) for “ESPD” substitute “SPD”.
- (40) In regulation 59 (selection criteria), omit paragraph (5).
- (41) In regulation 60 (European Single Procurement Document: use, content and form of the ESPD)—
  - (a) in the heading—
    - (i) omit “European”,
    - (ii) for “ESPD” substitute “SPD”,
  - (b) in each of paragraphs (1) to (7), for “ESPD” substitute “SPD”,
  - (c) in paragraph (11)(a), for “any member State” substitute “the United Kingdom”.
- (42) In regulation 61 (means of proof)—
  - (a) in paragraph (4)(a) and (b), omit “member State or”,
  - (b) in paragraph (5)—
    - (i) omit “member State or” in each place it occurs,
- (43) Omit regulation 62 (recourse to e-certis).
- (44) In regulation 63 (quality assurance standards and environmental management standards)—
  - (a) omit paragraph (2),
  - (b) in paragraph (4)—
    - (i) omit sub-paragraphs (a) and (b),
    - (ii) in sub-paragraph (c), omit “other”,
    - (iii) omit the words after sub-paragraph (c).
- (45) Omit regulation 65 (recognition of official lists of approved economic operators and certification by certification bodies).
- (46) In regulation 68 (life-cycle costing)—
  - (a) in paragraph (3)(c)—
    - (i) omit ‘third’,
    - (ii) omit the words from “or other” to the end.
  - (b) omit paragraphs (5) and (6).
- (47) In regulation 69 (abnormally low tenders)—
  - (a) in paragraph (2), omit sub-paragraph (f),
  - (b) omit paragraphs (6) and (7).
- (48) In regulation 71 (subcontracting)—
  - (a) in paragraph (7), for “ESPDs” substitute “SPDs”,
  - (b) in paragraph (9), for “regulations 60” to “e-Certis)” substitute “regulations 60 (single procurement document: use, content and form of the SPD) and 61 (means of proof)”.
- (49) In regulation 72 (modification of contracts during their term)—
  - (a) in paragraph (3)—
    - (i) for “send” substitute “submit”,
    - (ii) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”,

- (b) in paragraph (4), after “Directive” insert—
  - “, but as if—
    - (a) paragraph 9 (financing by EU funds) were omitted,
    - (b) in paragraph 11, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts (Scotland) Regulations 2015)”, and
    - (c) in paragraph 12, “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”.
- (50) In regulation 73 (termination of contracts), in paragraph (1)—
  - (a) after paragraph (a), insert “or”,
  - (b) after paragraph (b), omit “or”,
  - (c) omit paragraph (c).
- (51) In regulation 75 (publication of notices)—
  - (a) in paragraph (4), for “send” substitute “submit”,
  - (b) in paragraph (5)—
    - (i) for “send” substitute “submit”,
    - (ii) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”.
- (52) In regulation 78 (notices)—
  - (a) in paragraph (1) after “Directive” insert—
    - “, but as if—
      - (i) in paragraph 2, “the second and third sub-paragraphs of Article 53(1)” were a reference to regulation 54(3) and (4) of these Regulations,
      - (ii) in paragraph 16, “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) for “send” substitute “submit”,
    - (ii) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”,
  - (c) in paragraph (4)—
    - (i) in sub-paragraph (a), for “send” substitute “submit”,
    - (ii) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”,
  - (d) in paragraph (5), after “Directive” insert—
    - “, but as if in paragraph 14, “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”.
- (53) In regulation 79 (rules on the organisation of design contests and the selection of participants), omit paragraph (2).
- (54) In regulation 82 (retention of contract copies)—
  - (a) in paragraph (1)—
    - (i) in sub-paragraph (a), for “1,000,000 EUR” substitute “£820,370”,

- (ii) in sub-paragraph (b), for “10,000,000 EUR” substitute “£8,203,700”,
  - (b) in paragraph (2), for “applicable EU or national rules on access to documents and data protection” substitute “rules on access to documents and data protection applicable in the relevant part of the United Kingdom”.
- (55) In regulation 83 (reporting and documentation requirements)—
- (a) omit paragraph (4),
  - (b) in paragraph (5), omit the words from “or to such” to the end,
  - (c) omit paragraph (6).
- (56) After regulation 83 insert—

#### “CHAPTER 4A

#### REGULATIONS UNDER THIS PART

##### **General provisions about regulations under this Part**

**83A.**—(1) Regulations under this Part are to be made by statutory instrument, subject to annulment in pursuance of a resolution of the Scottish Parliament.

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

- (57) In regulation 87 (duty owed to economic operators)—
- (a) in paragraph (1)—
    - (i) for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”,
    - (ii) for “an EEA state” substitute “the United Kingdom or Gibraltar”.
  - (b) for paragraph (2) substitute—

“(2) The duty owed in accordance with paragraph (1) is a duty owed also to an economic operator from a country other than the United Kingdom, but only where Condition 1 or Condition 2 applies to the procurement concerned.”,
  - (c) for paragraph (3) substitute—

“(3) Condition 1 is that—

    - (a) at the relevant time the economic operator is from a GPA state,
    - (b) the procurement may result in the award of a contract of any description, and
    - (c) immediately before exit day that GPA state had agreed with the EU that the GPA shall apply to a contract of that description.

(3A) Condition 2 is that—

    - (a) at the relevant time the economic operator is from a country which, immediately before exit day, was a member State other than the United Kingdom,
    - (b) the procurement may result in the award of a contract of any description, and
    - (c) immediately before exit day the EU had agreed with a GPA state that the GPA shall apply to a contract of that description.”,
    - (d) omit paragraph (4),
    - (e) in paragraph (5)—
      - (i) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “which immediately before exit day was”,

- (ii) in the definition of “relevant time”—
  - (aa) for “sent” substitute “submitted”,
  - (bb) for “EU Publications Office” substitute “UK e-notification service”.
- (58) In regulation 88 (enforcement of duties through the courts) in paragraph (5)(a)—
  - (a) for “sent” substitute “submitted”,
  - (b) for “Official Journal” substitute “UK e-notification service”,
  - (c) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”,
  - (d) for “publication of the notice in the Official Journal” substitute “ submission to the UK e-notification service”.
- (59) In regulation 91 (ineffectiveness orders)—
  - (a) in paragraph (6)—
    - (i) for “sending” substitute “submitting”,
    - (ii) for “Official Journal” substitute “UK e-notification service”,
  - (b) for paragraph (7)(a) substitute—
    - “(a) the contracting authority submitted to the UK e-notification service for publication a voluntary ex ante transparency notice expressing its intention to enter into the contract or to conclude the framework agreement and containing—
      - (i) the name and contact details of the contracting authority,
      - (ii) a description of the object of the contract or framework agreement,
      - (iii) a justification of the decision of the contracting authority to award the contract or conclude the framework agreement without prior publication of a contract notice,
      - (iv) the name and contact details of the economic operator to be awarded the contract or to become party to the framework agreement, and
      - (v) any other information which the contracting authority considered useful, and”,
    - (c) in paragraph (7)(b) for “in the Official Journal” substitute “on the UK e-notification service”.
- (60) In schedule 2 (activities constituting works), after “[Council Regulation \(EEC\) No 3037/90](#) on the statistical classification of economic activities in the European Community” insert “as that Regulation had effect in EU law immediately before exit day”.
- (61) Omit schedule 5 (professional and trade registers etc.).