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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 5**

**AMENDMENT OF OTHER SUBORDINATE LEGISLATION**

**The Public Contracts (Scotland) Regulations 2012**

**10.**—(1) To the extent that the Public Contracts (Scotland) Regulations 2012(1) (“the 2012 Public Contracts Regulations”) continue to have prospective effect, their effect is modified as follows.

- (2) The 2012 Public Contracts Regulations have prospective effect as if—
- (a) all references in them to a “member State” continued to include the United Kingdom,
  - (b) all requirements to send any notice to the Official Journal of the European Union were instead a requirement to submit the notice to the UK e-notification service for publication,
  - (c) all provisions relating or referring to such a requirement, or to the publication of such a notice in that Journal, were instead references to that requirement as modified by sub-paragraph (b) and to the publication of that notice on the UK e-notification service,
  - (d) in regulation 9(5) (which provides for the definition of certain technical specifications), the words “and to the extent that those provisions are compatible with EU obligations” were omitted,
  - (e) regulation 14(2) (which requires certain reports to be supplied to the European Commission on request) were omitted,
  - (f) in regulation 25(4)(a) (which provides for evidence of certain environmental management measures)—
    - (i) in paragraph (i), sub-paragraph (aa) were omitted, and
    - (ii) in paragraph (ii), the words “EU law or” and “European or” were omitted,
  - (g) regulation 30(7)(e), (8) and (9) (which relate to State aid) were omitted,
  - (h) regulation 32(13) (which provides for the provision of certain reports requested by the European Commission) were omitted,
  - (i) regulation 40(2) (which requires certain information to be provided for the European Commission) were omitted,
  - (j) in regulation 47(1)(a) (which makes compliance with certain obligations a duty owed to economic operators), the words “any enforceable EU obligation” referred instead to any

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(1) *S.S.I. 2012/88*. The regulations were revoked by *S.S.I. 2015/446* subject to transitional provision and saving specified in *S.S.I. 2015/446* regulation 98.

retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018.

(3) In paragraph (2)(b) and (c), “the UK e-notification service” has the meaning given by regulation 52(5) of the Public Contracts (Scotland) Regulations 2015.

(4) Where—

- (a) immediately before exit day, a procurement has been commenced,
- (b) on or after exit day, a contract is awarded or any other act is done, pursuant to that procurement, and
- (c) that award or other act would, if it had occurred before exit day, have been covered by an exemption from requirements of the 2012 Public Contracts Regulations by virtue of any provision in those Regulations,

that award or other act is covered by that exemption on and after exit day regardless of whether the terms used to define that exemption in the 2012 Public Contracts Regulations would otherwise have been apt to continue to achieve that effect on and after exit day.

(5) Paragraph 1 of the schedule applies for the purposes of paragraph (4) as it applies for the purposes of the schedule.

### **The Utilities Contracts (Scotland) Regulations 2012**

**11.**—(1) To the extent that the Utilities Contracts (Scotland) Regulations 2012(2) (“the 2012 Utilities Regulations”) continue to have prospective effect, their effect is modified as follows.

(2) The 2012 Utilities Regulations have prospective effect as if—

- (a) all references in them to a “member State” continued to include the United Kingdom,
- (b) all requirements to send any notice to the Official Journal of the European Union were instead a requirement to submit the notice to the UK e-notification service for publication,
- (c) all provisions relating or referring to such a requirement, or to the publication of such a notice in that Journal, were instead references to that requirement as modified by sub-paragraph (b) and to the publication of that notice on the UK e-notification service,
- (d) regulation 7(7) (which relates to information requested by the European Commission) were omitted,
- (e) in regulation 8(3) (which provides for certain information to be sent to or for the European Commission)—

(i) in sub-paragraph (a), the words from “5,000,000 euro” in the words before sub-paragraph (i) to “documents” at the end of paragraph (xiii) read “£4,101,850, submit, within 48 days of the award, a contract award notice to the UK e-notification service for publication, containing the information referred to in regulation 68(2)(a) of the Utilities Contracts (Scotland) Regulations 2016”,

(ii) in sub-paragraph (b)—

(aa) “400,000 euro” read “£328,150”,

(bb) “5,000,000 euro” read “£4,101,850”,

(cc) paragraph (ii) read as follows—

“(ii) if the Minister requests that information in relation to any such contract, forthwith send it to the Minister,”

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(2) [S.S.I. 2012/89](#). The Regulations were revoked by [S.S.I. 2016/49](#) subject to transitional provision and saving specified in [S.S.I. 2016/49](#) regulation 111.

- (f) in regulation 12(5) (which provides for the definition of certain technical specifications), the words “and to the extent that those requirements are compatible with EU obligations” were omitted,
  - (g) in regulation 24(3)(a) (which provides for evidence of certain environmental management measures)—
    - (i) in paragraph (i), sub-paragraph (aa) were omitted, and
    - (ii) in paragraph (ii), the words “EU law or” and “European standard or” were omitted,
  - (h) regulation 30(7)(e), (8) and (9) (which relate to State aid) were omitted,
  - (i) in regulation 31(2) (which provides for determining the country of origin of goods for certain purposes), the words from “in accordance” to the end read “as it would be determined for the purposes of Part 1 of the Taxation (Cross-Border Trade) Act 2018 if the products were chargeable goods within the meaning of that Part”,
  - (j) regulation 38(2) (which provides for the provision of certain reports requested by the European Commission) were omitted,
  - (k) regulation 39(5) (which makes provision about reports for onward transmission to the European Commission) were omitted,
  - (l) in regulation 44(1) (which makes compliance with certain obligations a duty owed to economic operators), the words “any enforceable EU obligation” referred instead to any retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018.
- (3) In paragraph (2)(b), (c) and (e), “the UK e-notification service” has the meaning given by regulation 52(5) of the Public Contracts (Scotland) Regulations 2015.
- (4) Where—
- (a) immediately before exit day, a procurement has been commenced,
  - (b) on or after exit day, a contract is awarded or any other act is done, pursuant to that procurement, and
  - (c) that award or other act would, if it had occurred before exit day, have been covered by an exemption from requirements of the 2012 Utilities Regulations by virtue of any provision in those Regulations,
- that award or other act is covered by that exemption on and after exit day regardless of whether the terms used to define that exemption in the 2012 Utilities Regulations would otherwise have been apt to continue to achieve that effect on and after exit day.
- (5) Paragraph 1 of the schedule applies for the purposes of paragraph (4) as it applies for the purposes of the schedule.