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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No. 468**

**The Public Procurement etc. (EU Exit)  
(Scotland) (Amendment) Regulations 2020**

**PART 3**

**AMENDMENT OF SECONDARY LEGISLATION**

**CHAPTER 2**

**THE UTILITIES CONTRACTS (SCOTLAND) REGULATIONS 2016**

**Amendments commenced on IP completion day**

- 6.—**(1) The Utilities Contracts (Scotland) Regulations 2016<sup>(1)</sup> are amended as follows.
- (2) In regulation 2 (interpretation)—
- (a) in paragraph (1)—
- (i) in the definition of “commenced”—
- (aa) in sub-paragraphs (a) and (b) for “sent to the Official Journal” substitute, “submitted to the UK e-notification service”,
- (bb) in sub-paragraph (e) for “sent a notice to the Official Journal” substitute “submitted a notice to the UK e-notification service”,
- (ii) omit the definition of “the Commission”,
- (iii) in the definition of “common technical specification”, after “standardisation” insert “as it has effect in EU law”,
- (iv) after the definition of “contracting authority” insert—
- “covered by regulation 3(2)”, in relation to an activity, an element, a part of a contract or a procurement, means that regulation 3(2)—
- (a) applies to that activity, element, part or procurement, or
- (b) would do so if these Regulations applied,”
- (v) omit the definition of “ESPD” and in the appropriate alphabetical order insert—
- ““SPD” means the standard procurement document referred to in regulation 60 of the Public Contracts (Scotland) Regulations,”
- (vi) omit the definition of “EU Publications Office”,
- (vii) in the definition of “GPA”, after “amended” insert “before IP completion day”,
- (viii) in the definition of “innovation”, omit “the Europe 2020 strategy for smart,”,
- (ix) omit the definition of “Official Journal”,
- (x) after the definition of “Public Contracts (Scotland) Regulations” insert—

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<sup>(1)</sup> S.S.I. 2016/49 as last relevantly amended by S.S.I. 2019/173.

“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 IP completion day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section,”

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

“the UK e-notification service” has the meaning mentioned in regulation 69(5), 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 69(5),”

(b) omit paragraphs (2) and (3).

(3) In regulation 3 (subject-matter and application of these regulations)—

(a) for paragraph (2) substitute—

“(2) Parts 1 to 4—

(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 of 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.

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

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

(2C) 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 Parts 1 to 4 of the Utilities Contracts Regulations 2016<sup>(3)</sup>.”

(4) In regulation 5(1) (mixed procurement covering the same activity), for “Article 346 of the TFEU” substitute “regulation 3(2)”.

(5) In regulation 6(1) (procurement covering several activities), for “Article 346 of the TFEU” substitute “regulation 3(2)”.

(6) In regulation 15 (thresholds)—

(a) in paragraph (1)(a), for “the amount specified in Article 15(a) of the Utilities Contracts Directive” substitute “£378,660”,

(b) in paragraph (1)(b), for “the amount specified in Article 15(b) of the Utilities Contracts Directive” substitute “£4,733,252”,

(c) in paragraph (1)(c), for “the amount specified in Article 15(c) of the Utilities Contracts Directive” substitute “£884,720”,

(d) in paragraph (2)(a)—

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(2) [2018 c.16](#) (“the 2018 Act”). Section 4 of the 2018 Act was amended by section 25 of the European Union (Withdrawal) Agreement Act 2020 (c.1).

(3) [S.I. 2016/274](#), amended by [S.I. 2016/696](#).

- (i) in sub-paragraph (i), for “80,000 Euros” substitute “£70,778”,
- (ii) in sub-paragraph (ii), for “1 million Euros” substitute “£884,720”.
- (e) omit paragraph (3).
- (7) After regulation 15 insert—

**“Review and amendment of certain thresholds**

**15A.**—(1) Every two years the Scottish Ministers must review the thresholds specified in regulation 15(1)(a) and (b) (“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 31 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 15(1) in respect of that threshold, the Scottish Ministers must make regulations amending regulation 15(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 2021.”.

(8) In regulation 17 (exclusion: contracts awarded for the purpose of resale or lease to third parties), omit paragraph (2).

(9) In regulation 18 (exclusion: contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country)—

- (a) in the heading, for “in a third country” substitute “outside the United Kingdom”,
- (b) in paragraph (1)(b)—
  - (i) for “in a third country” substitute “outside the United Kingdom”,
  - (ii) for “EU” substitute “United Kingdom”,

(c) omit paragraph (2).

(10) In regulation 19(1)(a) (exclusion: contracts awarded and design contests organised pursuant to international rules)—

- (a) before “Treaties” insert “Retained”,
- (b) for “third” substitute “other”.

(11) In regulation 20 (exclusion: specific exclusions for service contracts)—

- (a) in paragraph (1)(d)—
  - (i) in sub-paragraph (i)—
    - (aa) in the words before (aa), omit the words from “within” to “Lawyers’ Services Directive”,

- (bb) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”,
  - (cc) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”,
  - (ii) in sub-paragraph (ii) before (aa), omit the words from “within” to “Lawyers’ Services Directive”,
  - (iii) in sub-paragraph (iv) omit “in the member State concerned”,
  - (iv) in sub-paragraph (v), omit “, in the member State concerned”,
  - (b) in paragraph (2), for the definition in sub-paragraph (b) substitute ““lawyer” means a person practising as an advocate, barrister or solicitor in any part of the United Kingdom or in Gibraltar;”.
- (12) In regulation 21 (exclusion: 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 IP completion day in giving rise to any of the powers, rights etc. mentioned in that section”.
- (13) In regulation 23(2)(a) (defence and security), omit “or another member State”.
- (14) In regulation 24 (mixed procurement covering the same activity and involving defence and security aspects), in paragraphs (1) and (5)(a), for “Article 346 of the TFEU” substitute “regulation 3(2)”.
- (15) In regulation 25 (procurement covering several activities and involving defence or security aspects), in paragraphs (1) and (5)(a), for “Article 346 of the TFEU” substitute “regulation 3(2)”.
- (16) In regulation 26(1) (contracts and design contests involving defence and security aspects which are awarded or organised pursuant to international rules)—
- (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”.
- (17) In regulation 27 (exclusion: contracts between contracting authorities), in paragraphs (2)(c) and (5)(c), before “Treaties” insert “Retained”.
- (18) In regulation 28(5) (exclusions: contracts awarded to an affiliated undertaking)—
- (a) for sub-paragraph (a), substitute “any undertaking the annual accounts of which are consolidated with those of the utility in accordance with the requirements of Part 15 of the Companies Act 2006(4)”,
  - (b) in sub-paragraph (b), in the words before paragraph (i), for “Directive” substitute “Part”.
- (19) Omit regulation 30 (notification of information).
- (20) In regulation 32(2) (activities directly exposed to competition), omit sub-paragraph (b) and the preceding “or”.
- (21) Omit regulation 33 (procedure for establishing whether regulation 32(2)(b) is applicable).
- (22) In regulation 34(4) (principles of procurement), omit from “or international law measures” to the end.
- (23) In regulation 35 (economic operators) omit paragraph (1).
- (24) In regulation 36(2) (reserved contracts), for “Article 38 of the Utilities Contracts Directive” substitute “this regulation”.

- (25) In regulation 38 (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 (18)(d), from “accept” to the end substitute “act in accordance with Article 27 of Regulation (EU) No 910/2014<sup>(5)</sup> (and for this purpose the submission of the tender or request is to be treated as the use of an online service to which that Regulation applies)”,
  - (c) in paragraph (23), after sub-paragraph (b), from “the Utilities” to the end substitute “these Regulations”,
  - (d) in paragraph (24)—
    - (i) before sub-paragraph (a), from “in accordance” to “time to time” substitute “in a format other than those referred to in Article 1 of Commission Implementing Decision (EU) 2015/1506<sup>(6)</sup> laying down specification relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies”,
    - (ii) in sub-paragraph (b), from “allow” to the end substitute “comply with the requirements of Article 2(1)(b) of that Decision (or would comply with those requirements if the person seeking to validate the signature were a public sector body for the purpose of that Decision)”,
  - (e) in paragraph (25), omit the definition of “Electronic Signature Commission Decision”.
- (26) After regulation 38 insert—

**“Powers to amend regulation 38**

**38A.**—(1) The Scottish Ministers may make regulations amending paragraph (3) of regulation 38 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 38.

(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 38 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).

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(5) EUR 2014/910 as amended by [S.I. 2019/89](#).

(6) EUDN 2015/1506 as amended by [S.I. 2019/89](#).

- (4) The Scottish Ministers may make regulations amending the technical details and characteristics set out in regulation 38(17) if the Scottish Ministers consider it appropriate to do so to take account of technical developments.”.
- (27) In regulation 41 (conditions relating to the GPA and other international agreements)—
- (a) in the body of the regulation, the text of the existing regulation becomes paragraph (1) and is amended as follows—
    - (i) for “is bound” substitute “was, immediately before IP completion day, bound”,
    - (ii) for “EU” where it last appears substitute “United Kingdom”,
  - (b) after that paragraph (1) insert—
 

“(2) For the purposes of paragraph (1)—

    - (a) each country that was a member State immediately before IP completion 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.”.
- (28) In regulation 43 (open procedure)—
- (a) in paragraph (3), for “sent” substitute “submitted”,
  - (b) in paragraph (4)—
    - (i) in sub-paragraph (a), for “Section I and II of Part A of Annex VI to the Utilities Contracts Directive” to the end substitute “regulation 65(2) and (6)(c)”,
    - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”,
  - (c) in paragraph (5), for “sent” substitute “submitted”.
- (29) In regulation 44(3)(a) (restricted procedure), for “sent” substitute “submitted”.
- (30) In regulation 45(3)(a) (negotiated procedure with prior call for competition), for “sent” substitute “submitted”.
- (31) In regulation 46(3)(a) (competitive dialogue), for “sent” substitute “submitted”.
- (32) In regulation 47(11)(a) (innovation partnership), for “sent” substitute “submitted”.
- (33) In regulation 50 (dynamic purchasing systems)—
- (a) in paragraph (8)(a)(i), for “sent” substitute “submitted”,
  - (b) in paragraph (23) for “ESPD” substitute “SPD”,
  - (c) for paragraph (25) substitute—
 

“(25) Where the period of validity is changed without terminating the dynamic purchasing system, the utility must 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.

(25A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under paragraph (20)(a)(ii) or (25), the utility must submit for publication on the UK e-notification service a contract award notice under regulation 68.”.
- (34) Omit regulation 55 (procurement involving utilities from different member States).
- (35) In regulation 58 (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), after “compatible with” insert “retained”.
- (36) In regulation 65 (periodic indicative notices)—
- (a) in paragraph (2), after “Directive” insert “, but as if both references to “dispatch of the notice” in paragraph 4 were references to the submission of the notice 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 (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”,
  - (d) in paragraph (5), after “Directive” insert “, but as if “date of dispatch” in paragraph 5 were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”,
  - (e) in paragraph (6)—
    - (i) in sub-paragraph (c)—
      - (aa) for “set out in section I of Part A of Annex VI to the Utilities Contracts Directive” substitute “required by paragraph (2)”,
      - (bb) for “section II of that Part; and” substitute—

“section II of Part A of Annex VI to the Utilities Contracts Directive, but as if—

        - (i) in paragraph 7, “the third and fourth sub-paragraph of Article 73(1)” were a reference to regulation 71(4) and (5) of these Regulations, and
        - (ii) in paragraph 21—
          - (aa) “Article 82” were a reference to regulation 80 of these Regulations, and
          - (bb) “point (b) of Article 67(2)” were a reference to regulation 65(6)(b) of these Regulations; and”,
    - (ii) in sub-paragraph (d)—
      - (aa) for “sent” where it first occurs substitute “submitted”,
      - (bb) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”,
  - (f) 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 “publication at national level” substitute “publication otherwise from on the UK e-notification service”,
  - (g) in paragraph (9), for “sent” substitute “submitted”.

- (37) In regulation 66 (notices on the existence of a qualification system)—
- (a) in paragraph (2), omit the words from “which” to “Directive,”,
  - (b) after paragraph (2) insert—
    - “(2A) Such a notice must include the information set out in Annex X to the Utilities Contracts Directive, but as if, in paragraph 10, “Article 82” were a reference to regulation 80 of these Regulations.”,
  - (c) in paragraph (3) in sub-paragraph (b), for “notify the EU Publications Office” substitute “give notice”,
  - (d) in paragraph (4)—
    - (i) before sub-paragraph (a), for “using the following standard forms” substitute “submitting to the UK e-notification service”,
    - (ii) in sub-paragraph (a), for “the form for notices” substitute “a notice”.
- (38) For regulation 67 (contract notices) substitute—

**“Contract notices**

**67.—**(1) A contract notice must contain the information set out in the relevant part of Annex XI to the Utilities Contracts Directive, but as if—

- (a) in paragraph 10 of Part A, “the third and fourth sub-paragraph of Article 73(1)” were a reference to regulation 71(4) and (5) of these Regulations (electronic availability of procurement documents),
  - (b) in—
    - (i) paragraph 19 of Part A,
    - (ii) paragraph 16 of Part B,
    - (iii) paragraph 15 of Part C,
 “Article 82” were a reference to regulation 80 of these Regulations,
  - (c) in—
    - (i) paragraph 20 of Part A,
    - (ii) paragraph 18 of Part B,
    - (iii) paragraph 18 of Part C,
 “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts (Scotland) Regulations 2016)”, and
  - (d) in—
    - (i) paragraph 22 of Part A,
    - (ii) paragraph 20 of Part B,
    - (iii) paragraph 20 of Part C,
 “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.
- (2) Such notices must be submitted for publication in accordance with regulation 69 (publication on the UK e-notification service).”.
- (39) In regulation 68 (contract award notices)—
- (a) in paragraph (1)—
    - (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) for paragraph (2) substitute—
  - “(2) A contract award notice must—
    - (a) contain the information set out in Annex XII to the Utilities Contracts Directive, but as if—
      - (i) in paragraph 5(b), “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts (Scotland) Regulations 2016)”,
      - (ii) in paragraph 5(c), “Article 50” were a reference to regulation 48 (use of the negotiated procedure without prior call for competition) of these Regulations,
      - (iii) in paragraph 9, “Article 50(h)” were a reference to regulation 48(4)(d) of these Regulations,
      - (iv) in paragraph 17, the words in brackets were omitted,
      - (v) in paragraph 19, “Article 64(1)” were a reference to regulation 62(1) (variants) of these Regulations,
      - (vi) in paragraph 20, “Article 84” were a reference to regulation 82 (abnormally low tenders) of these Regulations,
      - (vii) in paragraph 21, “date of transmission” 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) be submitted for publication in accordance with regulation 69 (publication on the UK e-notification service).”,
  - (c) in paragraphs (4), (5) and (6)(a) and (b), for “send” substitute “submit”,
  - (d) in paragraphs (5) and (6) in each place where it occurs, for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”.
- (40) In regulation 69 (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 “by electronic means to the EU Publications Office” substitute “to the UK e-notification service”,
    - (iii) omit sub-paragraph (b) and the 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 “provider of the 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 “, provided” to the end,
- (f) after paragraph (4) insert—
  - “(5) In these Regulations, “the UK e-notification service” has the meaning given by regulation 52(5) of the Public Contracts (Scotland) Regulations,
  - (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 requires and in compliance with any specific instructions given within the portal about the entry of information or any part of it.”.
- (41) In regulation 70 (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)—
    - (i) after “regulations” insert “50 and”,
    - (ii) for “by the EU Publications Office” substitute “on the UK e-notification service”,
  - (c) in paragraph (3)—
    - (i) after “regulations” insert “50 and”,
    - (ii) from the words from “at national level” to the end 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 the end 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 EU 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”.
- (42) In regulation 71(1) (electronic availability of procurement documents), for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”.
- (43) In regulation 74 (general principles)—
  - (a) in paragraph (6)—
    - (i) omit “EU law,”,
    - (ii) after “agreements or” insert “, subject to paragraphs (6A) and (6B),”,
  - (b) after paragraph (6) insert—
    - “(6A) Where—

- (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (6), and
  - (b) the agreement is not already listed,
- the Scottish Ministers may make regulations providing that paragraph (6) is to have effect as if the agreement were listed.
- (6B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Scottish Ministers may make regulations providing that paragraph (6) is to have effect as if the agreement were not listed.
- (6C) In paragraphs (6A) and (6B)—
- (a) “listed” means listed as described in paragraph (6), and
  - (b) where paragraph (6) already has effect as if an agreement were listed, “already listed” includes that agreement.”.
- (44) In regulation 79 (quality assurance standards and environmental management standards)—
- (a) omit paragraph (2),
  - (b) in paragraph (4)—
    - (i) omit from “the Eco-Management and Audit Scheme” to the end of sub-paragraph (b),
    - (ii) in sub-paragraph (c), omit “other”,
    - (iii) omit the words after sub-paragraph (c).
- (45) In regulation 81 (life-cycle costing)—
- (a) in paragraph (3)(c)—
    - (i) omit ‘third’,
    - (ii) for “is bound” substitute “was, immediately before IP completion day, bound”,
  - (b) omit paragraphs (5) and (6).
- (46) In regulation 82 (abnormally low tenders)—
- (a) in paragraph (2), omit sub-paragraph (f),
  - (b) omit paragraphs (6) and (7).
- (47) In regulation 83 (tenders comprising products originating in third countries)—
- (a) in paragraph (1), after “has not” insert “, before IP completion day”,
  - (b) in paragraph (2)—
    - (i) from “in accordance” to “time to time” substitute “as it would be determined for the purposes of Part 1 of the Taxation (Cross-Border Trade) Act 2018(7) if the products were chargeable goods within the meaning of that Part”,
    - (ii) in sub-paragraph (c), after “Directive has” insert “, before IP completion day”.
- (48) In regulation 85(7) (subcontracting), for “ESPDs” substitute “SPDs”.
- (49) In regulation 86 (modification of contracts during their term)—
- (a) in paragraph (2)—
    - (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”,

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(7) 2018 c.22. See section 17 (place of origin of chargeable goods).

- (b) in paragraph (3), after “Directive” insert “, but as if paragraph 10 (financing by EU funds) were omitted”.
- (50) In regulation 87(1) (termination of contracts)—
  - (a) at the end of sub-paragraph (a) insert “or”,
  - (b) omit sub-paragraph (c) and the immediately preceding “; or”.
- (51) In regulation 89 (publication of notices)—
  - (a) in paragraph (4), for “send” substitute “submit”,
  - (b) in paragraph (5), after “Directive” insert “, but as if, in paragraph 4 of part D, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts (Scotland) Regulations 2016)”,
  - (c) in paragraph (6)—
    - (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 92 (notices)—
  - (a) in paragraph (1) after “Directive” insert “, but as if, in paragraph 15, “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 sub-paragraph (a) after “Directive” insert “, but as if, in paragraph 11, “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”,
    - (ii) in sub-paragraph (b)—
      - (aa) for “send” substitute “submit”, and
      - (bb) for EU Publications Office” substitute “UK e-notification service”,
  - (c) in paragraph (5)—
    - (i) for “send” substitute “submit”, and
    - (ii) for “form and manner of sending notices for publication at EU level” substitute “publication on the UK e-notification service”.
- (53) In regulation 93 (rules on the organisation of design contests and the selection of participants and the jury), omit paragraph (2).
- (54) In regulation 95 (retention of contract copies)—
  - (a) in paragraph (1)—
    - (i) in sub-paragraph (a), for “1,000,000 Euros” substitute “£884,720”,
    - (ii) in sub-paragraph (b), for “10,000,000 Euros” substitute “£8,847,200”,
  - (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 96 (reporting and documentation requirements)—
  - (a) omit paragraph (7),
  - (b) in paragraph (8), omit from “or to such” to the end,
  - (c) omit paragraph (9).
- (56) In regulation 100 (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) in paragraph (2)—
    - (i) in sub-paragraph (a)—
      - (aa) for “GPA state” substitute “country other than the United Kingdom”,
      - (bb) for “the GPA” substitute “Condition 1, Condition 2 or Condition 3”,
    - (ii) omit sub-paragraph (b) and the preceding “; and”,
  - (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 IP completion 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 IP completion 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 IP completion day the EU had agreed with a GPA state that the GPA shall apply to a contract of that description.”,
  - (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 IP completion day there was”,
      - (bb) for “is bound” substitute “was bound”,
  - (e) after paragraph (4) insert—
    - “(4A) Paragraph (4)(b) is to be applied as if the United Kingdom were a member State.”,
  - (f) in paragraph (5)—
    - (i) omit “except in paragraph (1), references to an “economic operator”, include a reference to a GPA economic operator;”,
    - (ii) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “which immediately before IP completion day was”,
    - (iii) in the definition of “relevant time”—
      - (aa) for “sent” substitute “submitted”,
      - (bb) for “EU Publications Office” substitute “UK e-notification service”.
- (57) In regulation 101(5)(a) (enforcement of duties through the courts)—
- (a) for “sent” substitute “submitted”,
  - (b) for “the Official Journal” where it first occurs substitute “the 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 “in the Official Journal” substitute “on the UK e-notification service”.
- (58) In regulation 104 (ineffectiveness orders)—
- (a) in paragraph (6)—
    - (i) for “sending” substitute “submitting”,
    - (ii) for “Official Journal” substitute “UK e-notification service”,
  - (b) in paragraph (7)—
    - (i) in sub-paragraph (a), for “sent to” to “Implementing Regulation (EU) No 842/2011” substitute “submitted to the UK e-notification service a voluntary ex ante transparency notice”, and
    - (ii) in sub-paragraph (b), for “in the Official Journal” substitute “on the UK e-notification service”.
- (59) After regulation 108 (financial penalties) insert—

## “PART 5A

### AMENDING THESE REGULATIONS

#### **General provisions about regulations under these Regulations**

**108A.**—(1) Regulations under these Regulations are to be made by Scottish statutory instrument subject to the negative procedure.

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

(60) In schedule 1 (activities constituting works), after “[Council Regulation \(EEC\) No 3037/90](#) on the classification of economic activities in the European Community” insert “as that Regulation had effect in EU law immediately before IP completion day”.

#### **Amendments commenced 12 months after IP completion day**

7.—(1) The Utilities Contracts (Scotland) Regulations 2016 (as amended by regulation 6) are further amended as follows.

- (2) Omit regulation 41 (conditions relating to the GPA and other international agreements).
- (3) In regulation 81 (life-cycle costing), in paragraph (3)(c), omit the words from “, including” to the end.
- (4) Omit regulation 83 (tenders comprising products originating in third countries).
- (5) Omit regulation 100(2) to (5) (duty owed to economic operators).