

## SCHEDULE

### TRANSITIONAL AND SAVINGS PROVISIONS

#### PART 2

#### PROCUREMENTS PENDING ETC. ON IP COMPLETION DAY

##### **Meaning of “steady state amendments”**

- 2.** In this Part, “steady state amendments” means—
- (a) amendments made by these Regulations, and
  - (b) any other amendments, including future amendments, to the Procurement Regulations that—
    - (i) come into force on, or begin to apply from, IP completion day or any time after IP completion day, and
    - (ii) are not made by or under any of sections 7A, 7B and 7C and paragraphs 11G and 11M of Schedule 2 of the European Union (Withdrawal) Act 2018(1).

##### **Saving for procedures launched, but not finalised, before IP completion day**

- 3.—**(1) Steady state amendments do not affect any procedure launched by a contracting authority or a utility under the Procurement Regulations if the procedure—
- (a) was launched before IP completion day, and
  - (b) was not yet finalised by IP completion day.
- (2) But regulation 62 (recourse to e-Certis) of the Public Contracts (Scotland) Regulations 2015 (which is omitted by regulation 4(44) of these Regulations) ceases to be saved at the beginning of the day that is 9 months after the day on which IP completion day falls.

##### *Meaning of ‘procedure’*

- (3) In sub-paragraph (1), “procedure” includes—
- (a) a procedure using a dynamic purchasing system,
  - (b) a procedure for which the call for competition takes the form of—
    - (i) a prior information notice,
    - (ii) a periodic indicative notice, or
    - (iii) a notice on the existence of a qualification system.

##### *Meaning of ‘launched’*

- (4) For the purposes of sub-paragraph (1), a procedure is launched—
- (a) when a call for competition or any other invitation to submit applications has been made in accordance with the Procurement Regulations,
  - (b) where the Procurement Regulations do not require such a call or invitation, when the contracting authority or utility contacted economic operators in relation to the specific procedure.

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(1) 2018 c.16. Sections 7A, 7B, 7C, 8B and 8C were inserted by the European Union (Withdrawal Agreement) Act 2020 (c.1), sections 5, 6, 26(2), 18 and 21 respectively.

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*Meaning of 'finalised'*

- (5) For the purposes of sub-paragraph (1), a procedure is finalised—
- (a) upon publication of a contract award notice in accordance with the Procurement Regulations,
  - (b) where the Procurement Regulations do not require the publication of such a notice, upon conclusion of the relevant contract,
  - (c) where the contracting authority or utility decided not to award a contract, upon informing the tenderers, or persons otherwise entitled to submit applications, of the reasons why the contract was not awarded.

**Saving for call-off procedures under certain framework agreements**

4.—(1) If the condition in sub-paragraph (2) is met, steady state amendments do not affect any procedure relating to the performance of a framework agreement, including the award of contracts based on such an agreement, under—

- (a) regulation 34(3) to (10) of the Public Contracts (Scotland) Regulations 2015,
  - (b) regulation 49(3) to (6) of the Utilities Contracts (Scotland) Regulations 2016.
- (2) The condition is that the framework agreement—
- (a) was concluded before IP completion day and had neither expired nor been terminated before IP completion day, or
  - (b) was concluded after IP completion day in accordance with a procedure to which paragraph 3 applied.

**Transitional modification of the Procurement Regulations**

5.—(1) In relation to a procedure to which paragraphs 3 or 4 apply, the Procurement Regulations are to be read, on and after IP completion day, and so far as the context permits or requires, as if—

- (a) any reference (however expressed) to a member State or EEA state included the United Kingdom,
- (b) any reference (however expressed) to—
  - (i) EU law,
  - (ii) any particular EU Treaty or any part of it,
  - (iii) any EU instrument, or other document of an EU entity or of the EU, or any part of any such instrument or document,
  - (iv) any part of EU law not falling within sub-paragraph (ii) or (iii),
  - (v) any tax, duty, levy or interests of the EU, or
  - (vi) any arrangements involving, or otherwise relating to, the EU of a kind not falling within sub-paragraph (i), (ii), (iii), (iv) or (v),were a reference to any such thing (including any such thing as may have existed previously) so far as it is applicable to and in the United Kingdom by virtue of the relevant withdrawal provisions,
- (c) any reference (however expressed) to the area of the EU or of the EEA included the United Kingdom,
- (d) any reference (however expressed) to a citizen of the EU or a national of the EEA included a United Kingdom national (within the meaning given by Article 2(d) of the withdrawal agreement),

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- (e) any reference to an enforceable EU obligation were a reference to an obligation that is enforceable by virtue of section 7A or 7B of the European Union (Withdrawal) Act 2018(2), and
  - (f) such other modifications were made as are necessary for any purpose of the relevant withdrawal provisions and are capable of being ascertained from any such purpose or otherwise from those provisions.
- (2) In sub-paragraph (1), “relevant withdrawal provisions” means—
- (a) Title 8 of Part 3 of the withdrawal agreement (ongoing public procurement and similar procedures),
  - (b) Title 5 of Part 3 of the EEA EFTA separation agreement (ongoing public procurement and similar procedures).

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(2) 2018 c.16. Sections 7A and 7B were inserted by the European Union (Withdrawal Agreement) Act 2020 (c.1), sections 5 and 6 respectively.