

Draft Regulations laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and sections 39(10) and 161(4) of the Small Business, Enterprise and Employment Act 2015, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

PUBLIC PROCUREMENT

**The Public Procurement (Electronic
Invoices etc.) Regulations 2019**

Made - - - - 0000

Coming into force in accordance with regulation 1

The Minister for the Cabinet Office makes these Regulations in exercise of the powers conferred by section 2(2) of, read with paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽¹⁾ and by sections 39(1) and (5)(d) and 161(2) of the Small Business, Enterprise and Employment Act 2015⁽²⁾.

The Minister for the Cabinet Office is designated for the purposes of the European Communities Act 1972 in relation to public procurement⁽³⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Minister for the Cabinet Office that it is expedient for certain references to Commission Implementing Decision (EU) 2017/1870⁽⁴⁾ to be construed as references to that instrument as amended from time to time.

In accordance with section 39(6) of the Small Business, Enterprise and Employment Act 2015, the Minister for the Cabinet Office has undertaken such consultation as the Minister considers appropriate.

In accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972⁽⁵⁾ and sections 39(10) and 161(4) of the Small Business, Enterprise and Employment Act 2015, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

(1) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) (“the 2006 Act”) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7) (“the 2008 Act”). Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and amended by paragraph 1 of Schedule 1 to S.I. 2007/1388 and the Schedule to the 2008 Act. By virtue of the amendment to section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51), regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L1, 3.11.1994, p.3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L1, 3.1.1994, p.572). Both sections 2(2) and paragraph 1A of Schedule 2 are prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16), from exit day (see section 20 of that Act).

(2) 2015 c. 26; section 39 was amended by paragraph 108 of Schedule 6 to the Wales Act 1917 (c. 4).

(3) S.I. 2010/2473.

(4) OJ No L 266, 17.10.2017, p.19-21.

(5) Paragraph 2(2) of Schedule 2 was amended by section 27(2)(a) of the 2006 Act.

Citation and commencement

1.—(1) These Regulations may be cited as the Public Procurement (Electronic Invoices etc.) Regulations 2019.

(2) Subject to paragraph (3), these Regulations come into force on 18th April 2019.

(3) Regulation 5 comes into force on 18th April 2020.

Amendments to the Defence and Security Public Contracts Regulations 2011

2.—(1) The Defence and Security Public Contracts Regulations 2011(6) are amended as follows.

(2) Before Part 10 insert—

“PART A10

PROCESSING OF INVOICES SUBMITTED ELECTRONICALLY

Contractual provisions relating to the processing of electronic invoices

A66.—(1) Subject to paragraph (2), this regulation applies in respect of any contract which has been awarded, or which is to be awarded, in accordance with these Regulations.

(2) This regulation does not apply in respect of a particular contract if—

(a) the performance of that contract is classified as secret or must be accompanied by special security measures; and

(b) the essential security interests of the United Kingdom are such that those interests cannot be guaranteed if the contracting authority is required to accept and process electronic invoices submitted for payment under that contract.

(3) A contracting authority must ensure that every contract which it awards contains a provision requiring the contracting authority to accept and process an electronic invoice submitted for payment by or on behalf of the contractor where the conditions in paragraph (4) are met.

(4) The conditions are that—

(a) the invoice is undisputed; and

(b) the invoice complies with the standard on electronic invoicing.

(5) A failure to comply with paragraph (3) does not, of itself, affect the validity of a contract that has been entered into.

(6) To the extent that a contract which has been awarded does not contain express provision requiring the contracting authority to accept and process an electronic invoice where the conditions in paragraph (4) are met, a term to that effect is to be implied into the contract.

(7) For the purposes of this regulation, an electronic invoice complies with the standard on electronic invoicing where it complies with—

(a) the European standard, and

(b) any of the syntaxes,

(6) [S.I. 2011/1848](#), amended by [S.I. 2015/102](#), [2016/275](#) and [S.S.I. 2015/446](#), [2016/49](#); there are other amending instruments but none is relevant.

published in Commission Implementing Decision (EU) 2017/1870 as amended from time to time.

(8) In this regulation, “electronic invoice” means an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing.

Application of regulation A66 to utilities and sub-central contracting authorities

B66.—(1) Regulation A66 does not apply until 18th April 2020 in respect of a contract awarded by—

- (a) a utility; or
- (b) a sub-central contracting authority.

(2) But paragraph (1) does not apply where—

- (a) in the case of a contract that has been awarded, the utility or sub-central contracting authority was acting as a central purchasing body;
- (b) in the case of a contract that is to be awarded, the utility or sub-central contracting authority is to award it acting as a central purchasing body.

(3) In this regulation—

“sub-central contracting authority” has the meaning given by—

- (a) regulation 2(1) of the Public Contracts Regulations 2015(7);
- (b) regulation 2(1) of the Public Contracts (Scotland) Regulations 2015(8);

“utility” means—

- (a) a utility within the meaning of regulation 5 of the Utilities Contracts Regulations 2016(9);
- (b) a utility within the meaning of regulation 4 of the Utilities Contracts (Scotland) Regulations 2016(10).”.

Amendments to the Public Contracts Regulations 2015

3.—(1) The Public Contracts Regulations 2015 are amended as follows.

(2) In regulation 1—

- (a) in paragraph (8), before the words “Part 4” insert “Subject to paragraph (8A).”;
- (b) after paragraph (8) insert—

“(8A) The following provisions of Part 4 apply to a contracting authority with functions that are wholly or mainly Northern Ireland devolved functions or Welsh devolved functions—

- (a) regulation 113A;
- (b) regulation 113B;
- (c) regulation 114.”;

- (c) in paragraph (9), before the words “Part 4” insert “Except for regulations 113A, 113B and 114.”.

(3) In regulation 57(1), omit sub-paragraph (la).

(7) S.I. 2015/102, amended by S.I. 2015/1472, 2016/275, 696; there are other amending instruments but none is relevant.

(8) S.S.I. 2015/446, amended by S.S.I. 2016/47; there are other amending instruments but none is relevant.

(9) S.I. 2016/274, amended by S.I. 2016/696.

(10) S.S.I. 2016/49, amended by S.I. 2016/696.

(4) After regulation 113 insert—

“Contractual provisions relating to the processing of electronic invoices

113A.—(1) This regulation applies in respect of any public contract which has been awarded, or which is to be awarded, in accordance with Part 2.

(2) A contracting authority must ensure that every contract which it awards contains a provision requiring the contracting authority to accept and process an electronic invoice submitted for payment by or on behalf of the contractor where the conditions in paragraph (3) are met.

(3) The conditions are that—

- (a) the invoice is undisputed; and
- (b) the invoice complies with the standard on electronic invoicing.

(4) To the extent that a contract which has been awarded does not contain express provision requiring the contracting authority to accept and process an electronic invoice where the conditions in paragraph (3) are met, a term to that effect is to be implied into the contract.

(5) For the purposes of this regulation, an electronic invoice complies with the standard on electronic invoicing where it complies with—

- (a) the European standard, and
- (b) any of the syntaxes,

published in Commission Implementing Decision (EU) 2017/1870 as amended from time to time.

(6) In this regulation, “electronic invoice” means an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing.

Application of regulation 113A to sub-central contracting authorities

113B.—(1) Regulation 113A does not apply until 18th April 2020 in respect of a contract awarded by a sub-central contracting authority.

(2) But paragraph (1) does not apply where—

- (a) in the case of a contract that has been awarded, the sub-central contracting authority was acting as a central purchasing body;
- (b) in the case of a contract that is to be awarded, the sub-central contracting authority is to award it acting as a central purchasing body.”.

Amendments to the Concession Contracts Regulations 2016

4.—(1) The Concession Contracts Regulations 2016(**11**) are amended as follows.

(2) In regulation 38(8)(m), for “section 2 or 4” substitute “sections 1, 2 or 4”.

(3) After regulation 64 insert—

“PART 5A

Processing of invoices submitted electronically

Contractual provisions relating to the processing of electronic invoices

64A.—(1) This regulation applies in respect of any concession contract which has been awarded, or which is to be awarded, in accordance with these Regulations.

(2) A contracting authority or utility must ensure that every concession contract which it awards contains a provision requiring the contracting authority or utility to accept and process an electronic invoice submitted for payment by or on behalf of the contractor where the conditions in paragraph (3) are met.

(3) The conditions are that—

- (a) the invoice is undisputed; and
- (b) the invoice complies with the standard on electronic invoicing.

(4) A failure to comply with paragraph (2) does not, of itself, affect the validity of a contract that has been entered into.

(5) To the extent that a concession contract which has been awarded does not contain express provision requiring the contracting authority or utility to accept and process an electronic invoice where the conditions in paragraph (3) are met, a term to that effect is to be implied into the contract.

(6) For the purposes of this regulation, an electronic invoice complies with the standard on electronic invoicing where it complies with—

- (a) the European standard, and
- (b) any of the syntaxes,

published in Commission Implementing Decision (EU) 2017/1870 as amended from time to time.

(7) In this regulation, “electronic invoice” means an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing.

Application of regulation 64A to utilities and sub-central contracting authorities

64B.—(1) Regulation 64A does not apply until 18th April 2020 in respect of a concession contract awarded by—

- (a) a utility; or
- (b) a contracting authority which is a sub-central contracting authority.

(2) In this regulation, “sub-central contracting authority” has the meaning given by regulation 2(1) of the Public Contracts Regulations 2015.”.

Amendments to the Utilities Contracts Regulations 2016

5.—(1) The Utilities Contracts Regulations 2016 are amended as follows.

(2) Before Part 6 insert—

“PART A6

PROCESSING OF INVOICES SUBMITTED ELECTRONICALLY

Contractual provisions relating to the processing of electronic invoices

A120.—(1) This regulation applies in respect of any contract which has been awarded, or which is to be awarded, in accordance with Parts 1 to 4.

(2) A utility must ensure that every contract which it awards contains a provision requiring the utility to accept and process an electronic invoice submitted for payment by or on behalf of the contractor where the conditions in paragraph (3) are met.

(3) The conditions are that—

- (a) the invoice is undisputed; and
- (b) the invoice complies with the standard on electronic invoicing.

(4) A failure to comply with paragraph (2) does not, of itself, affect the validity of a contract that has been entered into.

(5) To the extent that a contract which has been awarded does not contain express provision requiring the utility to accept and process an electronic invoice where the conditions in paragraph (3) are met, a term to that effect is to be implied into the contract.

(6) For the purposes of this regulation, an electronic invoice complies with the standard on electronic invoicing where it complies with—

- (a) the European standard, and
- (b) any of the syntaxes,

published in Commission Implementing Decision (EU) 2017/1870 as amended from time to time.

(7) In this regulation, “electronic invoice” means an invoice which has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing.”

Saving, in relation to a concession contract award procedure commenced before 18th April 2019, of exclusion grounds relating to modern slavery offences

6.—(1) The amendment made by regulation 4(2) does not affect any concession contract award procedure commenced before 18th April 2019.

(2) For the purposes of this regulation, a concession contract award procedure has been commenced before 18th April 2019 if, before that date—

- (a) the contracting authority or utility has sent a concession notice or prior information notice to the Publications Office of the European Union in order to invite offers or requests to be selected to tender for or to negotiate in respect of a proposed concession contract;
- (b) the contracting authority or utility has had published any form of advertisement seeking offers or expressions of interest in a proposed concession contract; or
- (c) the contracting authority or utility has contacted any economic operator in order to—
 - (i) seek expressions of interest or offers in respect of a proposed concession contract; or
 - (ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed concession contract.

(3) In this regulation, the following have the same meaning as in regulation 2 of the Concession Contracts Regulations 2016—

- (a) concession contract;
- (b) concession notice;
- (c) contracting authority;
- (d) prior information notice;
- (e) utility.

Date

Name
Minister for Implementation
Cabinet Office

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations implement the requirements of [Directive 2014/55/EU](#) of the European Parliament and of the Council of 16th April 2014 on electronic invoicing in public procurement (OJ No L 133, 6.5.2014, p.1-11)(“the Directive”) which extends the EEA by virtue of the Decision of the EEA Joint Committee No. 166/2015 of 11 June 2015 (OJ No L 341, 15.12.2016, p.65). These Regulations also make minor amendments to the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016.

The Directive requires Member States to adopt the necessary provisions to ensure that contracting authorities and other contracting entities are precluded from refusing electronic invoices issued as a result of the performance of contracts which fall within the scope of the EU procurement directives, where those electronic invoices comply with certain technical requirements. That obligation can be found in Article 7 of the Directive.

Regulations 2, 3(4), 4(3) and 5 give effect to Article 7 by inserting into the Defence and Security Public Contracts Regulations 2011 ([S.I. 2011/1848](#))(“the DSPCRs”), the Public Contracts Regulations 2015 ([S.I. 2015/102](#))(“the PCR”), the Concession Contracts Regulations 2016 ([S.I. 2016/273](#))(“the CCRs”) and the Utilities Contracts Regulations 2016 ([S.I. 2016/274](#))(“the UCRs”) respectively a provision requiring contracting authorities and utilities to include within contracts to which those regulations apply an express term obliging them to accept electronic invoices which comply with the European Standard on electronic invoicing. In the absence of such express provision, a term to that effect is to be implied into the contract.

Article 11(2) of the Directive confers on Member States the discretion to defer the application of its requirements with regard to sub-central contracting authorities and contracting entities (described for these purposes as ‘utilities’). The provisions to be inserted into the DSPCRs, PCR and CCRs by regulations 2, 3(4) and 4(3) make clear that the new obligations relating to contractual terms do not apply in respect of certain contracts concluded by utilities and sub-central contracting authorities until 18th April 2020. In respect of the amendments to the UCRs, which only apply to utilities, the same effect is achieved by regulation 1(3), which defers the coming into force of the newly inserted regulation A120 until 18th April 2020.

Regulations 3(3) and 4(2) make corrections to references to the Modern Slavery Act 2015 in the PCR and CCRs respectively. Regulation 3(3) omits sub-paragraph (la) from regulation 57(1) of the PCR. Sub-paragraph (la) specifies that a conviction for an offence under section 2 or 4 of the Modern Slavery Act 2015 constitutes a mandatory ground for exclusion from participation in a procurement. Those offences are, however, already covered by sub-paragraph (ma) of regulation 57(1) of the PCR. Regulation 3(3) therefore removes these superfluous references in sub-paragraph (la). The amendment made by regulation 4(2) is to ensure that offences under section 1 of the Modern Slavery Act 2015 are included within the mandatory grounds for exclusion from participation in a concession contract award procedure and to ensure that the mandatory grounds for exclusion in the CCRs are consistent with those in the PCR. Regulation 6 makes clear that the inclusion of offences under section 1 of the Modern Slavery Act 2015 as a mandatory ground for exclusion (for the purposes of the CCRs) does not apply in respect of a concession contract award procedure commenced before the coming into force of these Regulations.

A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

A transposition note for the Directive has not been prepared. The Directive contains only one substantive obligation for Member States, transposition of which is described above.