

Draft Regulations laid before Parliament under paragraph 1(3) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No.

**EXITING THE EUROPEAN UNION
PUBLIC PROCUREMENT**

**The Public Procurement (Amendment
etc.) (EU Exit) (No. 2) Regulations 2019**

Made - - - - *******

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 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018⁽¹⁾. In accordance with paragraph 1(3) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Public Procurement (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 and come into force immediately before exit day⁽²⁾.

Amendment of the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019

2.—(1) The Public Procurement (Amendment etc.) (EU Exit) Regulations 2019⁽³⁾ are amended as follows.

(2) In regulation 1 (citation, commencement and transitional and saving provision)—

- (a) in paragraph (2), for “and 10” substitute “10 and 21”;
- (b) in paragraph (3)—
 - (i) for “8 and 10” substitute “8, 10 and 21”;
 - (ii) for “eight” substitute “18”.

⁽¹⁾ 2018 c. 16.

⁽²⁾ Accordingly, regulation 2 affects the amendments which the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 will, if made, make to various statutory instruments on exit day.

⁽³⁾ These Regulations have not yet been made, but were laid in draft before both Houses of Parliament on 13th December 2018. These Regulations will be made only if those Regulations are made.

(3) In regulation 5 (amendments to the Public Contracts Regulations 2015⁽⁴⁾ that are commenced on exit day)—

(a) in paragraph (20) (amendment of regulation 25 which concerns conditions relating to the GPA and other international agreements)—

(i) omit sub-paragraph (a);

(ii) in sub-paragraph (b)—

(aa) for paragraph (i) substitute—

“(i) for “is bound” substitute “was, immediately before exit day, bound”;;

(bb) omit paragraph (ii);

(b) in paragraph (45) (amendment of regulation 68 which concerns life-cycle costing), in sub-paragraph (a), for paragraph (ii) substitute—

“(ii) for “is bound” substitute “was, immediately before exit day, bound”;;

(c) in paragraph (58) (amendment of regulation 90 which concerns the duty owed to economic operators from certain states)—

(i) in sub-paragraph (a)(i)(bb), for “Condition 1 or Condition 2” substitute “Condition 1, Condition 2 or Condition 3”;

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

“(c) in paragraph (3)—

(i) for the words from the beginning to “applies if” substitute “Condition 3 is that”;

(ii) in sub-paragraph (a)—

(aa) for “there is” substitute “immediately before exit day there was”;

(bb) for “is bound” substitute “was bound”;

(ca) after paragraph (3) insert—

“(3A) Paragraph (3)(b) is to be applied as if the United Kingdom were a member State.”;

(4) In the heading to regulation 6 (amendments commenced eight months after exit day), for “eight” substitute “18”.

(5) In regulation 7 (amendments to the Concession Contracts Regulations 2016⁽⁵⁾ that are commenced on exit day), in paragraph (28) (amendment of regulation 51 which concerns the duty owed to economic operators from certain states)—

(a) in sub-paragraph (a)(i)(bb), for “Condition 1 or Condition 2” substitute “Condition 1, Condition 2 or Condition 3”;

(b) for sub-paragraph (c) substitute—

“(c) in paragraph (3)—

(i) for the words from the beginning to “applies if” substitute “Condition 3 is that”;

(ii) in sub-paragraph (a)—

(aa) for “there is” substitute “immediately before exit day there was”;

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

(5) S.I. 2016/273.

- (bb) for “is bound” substitute “was bound”;
- (ca) after paragraph (3) insert—
 - “(3A) Paragraph (3)(b) is to be applied as if the United Kingdom were a member State.”;
- (6) In the heading to regulation 8 (amendment commenced eight months after exit day), for “eight” substitute “18”.
- (7) In regulation 9 (amendments to the Utilities Contracts Regulations 2016(6) that are commenced on exit day)—
 - (a) in paragraph (28) (amendment of regulation 43 which concerns conditions relating to the GPA and other international agreements)—
 - (i) omit sub-paragraph (a);
 - (ii) in sub-paragraph (b)—
 - (aa) for paragraph (i) substitute—
 - “(i) for “is bound” substitute “was, immediately before exit day, bound”;
 - (bb) omit paragraph (ii);
 - (b) in paragraph (47) (amendment of regulation 83 which concerns life-cycle costing), in sub-paragraph (a), for paragraph (ii) substitute—
 - “(ii) for “is bound” substitute “was, immediately before exit day, bound”;
 - (c) in paragraph (60) (amendment of regulation 105 which concerns the duty owed to economic operators from certain states)—
 - (i) in sub-paragraph (a)(i)(bb), for “Condition 1 or Condition 2” substitute “Condition 1, Condition 2 or Condition 3”;
 - (ii) for sub-paragraph (c) substitute—
 - “(c) in paragraph (3)—
 - (i) for the words from the beginning to “applies if” substitute “Condition 3 is that”;
 - (ii) in sub-paragraph (a)—
 - (aa) for “there is” substitute “immediately before exit day there was”;
 - (bb) for “is bound” substitute “was bound”;
- (8) In the heading to regulation 10 (amendments commenced eight months after exit day), for “eight” substitute “18”.
- (9) In regulation 21 (cessation of rights etc under certain international agreements), in paragraph (1), in the words after sub-paragraph (b), for “on exit day” substitute “when this regulation comes into force”.
- (10) In the Schedule (transitional and saving provision)—
 - (a) in paragraph 3(2)—
 - (i) in paragraph (a), omit sub-paragraph (ii);

- (ii) in paragraph (c), omit sub-paragraph (i);
- (b) omit paragraph 9.

Date

Name
Title of signing Minister

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under paragraphs (d) and (e) of section 8(2)) arising from the withdrawal of the UK from the European Union.

These Regulations amend the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/****) (“the first SI”) before the first SI comes into force.

Among other things, the first SI would have amended the Public Contracts Regulations 2015 (S.I. 2015/102), the Concession Contracts Regulations 2016 (S.I. 2016/273) and the Utilities Contracts Regulations 2016 (S.I. 2016/274) (collectively “the principal public procurement Regulations”) to remove from them, on exit day, certain provisions which gave effect to, or referred to, international agreements by which the EU is bound. Before exit day, those provisions required, in particular, that economic operators from third country signatories to such agreements be treated no less favourably than economic operators from the EU when they participate in public procurements within the scope of any of the three principal public procurement Regulations, and made certain remedies available to them. These Regulations amend the first SI so that, instead of removing those provisions on exit day, the first SI removes them 18 months after exit day and modifies them so that, during the 18 months from exit day, they continue to have the effect that they had before the UK’s withdrawal from the EU.

Regulation 2(2)(b)(ii) of these Regulations also amends the first SI so that provisions relating to the Government Procurement Agreement between certain parties to the World Trade Organisation which the first SI would have removed from the principal public procurement Regulations eight months after exit day are instead removed 18 months after exit day.