
DRAFT STATUTORY INSTRUMENTS

2020 No.

**The Defence and Security Public Contracts
(Amendment) (EU Exit) Regulations 2020**

Amendments of The Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019

3.—(1) The Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019⁽¹⁾ are amended as follows.

(2) In regulation 3 (exit-related amendments of the Defence and Security Public Contracts Regulations 2011)—

- (a) in paragraph (3), in both places it occurs, for “exit day” substitute “IP completion day”;
- (b) in paragraph (5)—
 - (i) in sub-paragraph (c)(i), for “£65,630” substitute “£70,778”;
 - (ii) in sub-paragraph (c)(ii), for “£820,700” substitute “£884,720”.

(3) For regulation 4 (transitional and saving provision in relation to amendments made by regulation 3), substitute—

“Transitional and saving provision in relation to the amendments made by regulation 3

4.—(1) In this regulation, “relevant amendments to the 2011 Regulations” means—

- (a) amendments made by regulation 3; and
- (b) any other amendments, including future amendments, to the 2011 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, 7C, 8B and 8C of the European Union (Withdrawal) Act 2018⁽²⁾.

(2) Relevant amendments to the 2011 Regulations do not affect any procedure launched by a contracting authority under the 2011 Regulations if the procedure—

- (a) was launched before IP completion day; and
- (b) was not yet finalised by IP completion day.

(3) For the purposes of paragraph (2), a procedure is launched—

- (a) when a call for competition or any other invitation to submit applications has been made in accordance with the 2011 Regulations; or
- (b) where the 2011 Regulations do not require such a call or invitation, when the contracting authority contacted economic operators in relation to the specific procedure.

⁽¹⁾ S.I. 2019/697.

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

- (4) For the purposes of paragraph (2), a procedure is finalised—
- (a) upon publication of a contract award notice in accordance with the 2011 Regulations;
 - (b) where the 2011 Regulations do not require the publication of such a notice, upon conclusion of the relevant contract; or
 - (c) where the contracting authority 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.

(5) If the condition in paragraph (6) is met, the relevant amendments to the 2011 Regulations do not affect any procedure relating to the performance of a framework agreement, including the award of contracts based on such an agreement, under regulations 20(3) to (5), (7) to (9), (11) and (12) of the 2011 Regulations.

- (6) 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 paragraphs (2) to (4) applied.

(7) The amendments made by regulation 3(30) do not apply in relation to a voluntary transparency notice that was published in the Official Journal if the notice was sent before IP completion day to be so published.

(8) In relation to a procedure to which paragraphs (2) to (6) apply, the 2011 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 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 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 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 to the territory of the EU included the United Kingdom;
 - (d) 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; and
 - (e) 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 purposes or otherwise from those provisions.
- (9) In paragraph (8), “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).

(10) In this regulation—

“the 2011 Regulations” means the Defence and Security Public Contracts Regulations 2011;

“amendment” includes modification, revocation and substitution.

(11) In this regulation, “contract”, “contracting authority”, “contract award notice”, “economic operator”, “framework agreement”, “Official Journal”, “prior information notice”, “tenderer” and “voluntary transparency notice” have the same meaning as in the 2011 Regulations.

(12) None of the savings in this regulation implies any limitation of the scope of any of the other savings in this regulation⁽³⁾.”

⁽³⁾ For example, paragraph (7) saves the previous wording of regulation 60(3) of the 2011 Regulations in certain cases, but that does not prevent a more general saving in paragraph (2) from applying to save the previous wording of regulation 60(3) in other cases.