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STATUTORY INSTRUMENTS

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**2019 No. 560**

**EXITING THE EUROPEAN UNION  
PUBLIC PROCUREMENT**

**The Public Procurement (Amendment  
etc.) (EU Exit) Regulations 2019**

*Made - - - - 13th March 2019*

*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<sup>(1)</sup>. In accordance with paragraph 1(1) 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.

**PART 1**

**GENERAL**

**Citation, commencement and transitional and saving provision**

1.—(1) These Regulations may be cited as the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019.

(2) Except for regulations 6, 8, and 10, these Regulations come into force on exit day.

(3) Regulations 6, 8 and 10 come into force eight months after the day on which exit day falls.

(4) The amendments and modifications made by these Regulations are subject to the transitional and saving provision made by the Schedule.

## PART 2

## AMENDMENT OF PRIMARY LEGISLATION

**The Greater London Authority Act 1999**

- 2.—(1) The Greater London Authority Act 1999(2) is amended as follows.
- (2) In section 355 (duties of waste collection authorities etc), in subsection (8)—
- (a) in paragraph (b)—
    - (i) for “sends” substitute “submits”;
    - (ii) for “Publications Office of the European Union” substitute “UK e-notification service”;
  - (b) in paragraph (c), for “sends” substitute “submits”.
- (3) In section 356 (directions by the Mayor), in subsection (3A)(b)—
- (a) for “sent” substitute “submitted”;
  - (b) for “Publications Office of the European Union” substitute “UK e-notification service”.
- (4) In section 358 (information about new waste contracts)—
- (a) in subsection (1ZA)(a)—
    - (i) for “send” substitute “submit”;
    - (ii) for “Publications Office of the European Union” substitute “UK e-notification service”;
  - (b) in subsection (1A), in the words before paragraph (a) and in paragraph (a), for “send” substitute “submit”;
  - (c) in subsection (1BA)—
    - (i) in paragraph (a), for “send” substitute “submit”;
    - (ii) in paragraph (b)—
      - (aa) for “send” substitute “submit”;
      - (bb) for “Publications Office of the European Union” substitute “UK e-notification service”;
  - (d) in subsection (1C), in the words before paragraph (a) and in paragraph (a), for “send” substitute “submit”.
- (5) In section 360 (interpretation of sections 353 to 359), in subsection (2), after the definition of “treatment” insert—
- ““the UK e-notification service” has the same meaning as in the Public Procurement Regulations”.

**The Equality Act 2010**

- 3.—(1) The Equality Act 2010(3) is amended as follows.
- (2) In section 155 (power to impose specific duties: supplementary)—
- (a) in subsection (2), for “Public Sector Directive” substitute “Public Contracts Regulations”;

(2) 1999 c. 29; sections 355(8), 356(3A) and 358(1ZA) and (1BA) were inserted by [S.I. 2015/102](#) and amended by [S.I. 2016/275](#); section 358(1A) and (1C) were respectively substituted and inserted by the Greater London Authority Act 2007 (c. 24), section 39(1) to (3) and amended by [S.I. 2015/102](#).

(3) 2010 c. 15; section 155(3) was amended by [S.I. 2016/275](#).

(b) in subsection (3), for the definitions substitute—

““Public Contracts Regulations” means the Public Contracts Regulations 2015 (S.I. 2015/102) or, in Scotland, the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), as amended from time to time;

“public procurement functions” means functions the exercise of which is regulated by Part 2 of the Public Contracts Regulations 2015 (S.I. 2015/102) or by the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), as amended from time to time.””.

### **The Public Services (Social Value) Act 2012**

4.—(1) The Public Services (Social Value) Act 2012(4) is amended as follows.

(2) In section 1 (contracts of relevant authorities)—

(a) in subsection (2)(a), for “sending a notice to the Publications Office of the European Union” substitute “submitting a notice to the UK e-notification service”;

(b) in subsection (15), after the definition of “sub-central contracting authority” insert—

““the UK e-notification service” has the same meaning as in the Regulations (whether or not the Regulations apply)”.

## **PART 3**

### **AMENDMENT OF SECONDARY LEGISLATION**

#### **CHAPTER 1**

#### **THE PUBLIC CONTRACTS REGULATIONS 2015**

#### **Amendments commenced on exit day**

5.—(1) The Public Contracts Regulations 2015(5) are amended as follows.

(2) In regulation 2 (definitions), in paragraph (1)—

(a) omit the definition of “the Commission”;

(b) after the definition of “Contracts Finder” insert—

““covered by regulation 3(2)”, in relation to an element, a part of a contract, or procurement, means that regulation 3(2)—

(a) applies to that element, part or procurement, or

(b) would do so if this Part applied;”;

(c) after the definition of “design contests” insert—

““devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998(6));

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(4) 2012 c. 3; section 1(2)(a) was amended by S.I. 2015/102; in section 1(15), the definition of “sub-central contracting authority” was inserted by S.I. 2016/275.

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

(6) 1998 c. 47; section 6 was amended by S.I. 2011/1053, article 6(2)(a) and by the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”), section 12(5); section 6A was inserted by the 2018 Act, section 12(6); section 7 was amended by the Justice (Northern Ireland) Act 2002 (c. 26), section 84(1) and Schedule 13, by the Northern Ireland (Miscellaneous Provisions)

- “devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006(7);”;
- (d) omit the definitions of “ESPD” and “EU Publications Office”;
- (e) in the definition of “GPA”, after “amended” insert “before exit day”;
- (f) in the definition of “innovation”, omit “the Europe 2020 strategy for smart.”;
- (g) after the definition of “qualified certificate for electronic signature” insert—
- ““the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before exit day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;
- “SPD” means the Single Procurement Document referred to in regulation 59(1);”;
- (h) omit the definition of “the Treaties”;
- (i) before the definition of “VAT” insert—
- ““the UK e-notification service” has the meaning given by regulation 51(5), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with regulation 51(7);”.
- (3) In regulation 3 (subject-matter and scope of Part 2), for paragraph (2) substitute the following—
- “(2) This Part—
- (a) does not oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;
- (b) does 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 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.
- (3) The arms, munitions and war material to which paragraph (2)(b) applies are, subject to paragraph (5), those included in the 1958 List.
- (4) Subject to the effect of any regulations made under paragraph (5), any measures which, if they had been taken immediately before exit day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (2).
- (5) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of this Part as if it were changed in respects specified in the regulations.
- (6) 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 15th April 1958.”.
- (4) In regulation 4 (mixed procurement), in paragraph (3), for “Article 346 of TFEU” substitute “regulation 3(2)”.
- (5) In regulation 5 (threshold amounts)—
- (a) in paragraph (1)—

Act 2006 (c. 33) and by the 2018 Act, Schedule 3, paragraphs 50 and 51; section 7A was inserted by the Northern Ireland (Miscellaneous Provisions) Act 2014 (c. 13), section 6(1) and (3).

(7) 2006 c. 32; section 157A was inserted by the Wales Act 2017 (c. 4), section 4(1).

- (i) in sub-paragraph (a), for “the sum specified in Article 4(a) of the Public Contracts Directive” substitute “£4,551,413”;
- (ii) in sub-paragraph (b), for “the sum specified in Article 4(b) of the Public Contracts Directive” substitute “£118,133”;
- (iii) in sub-paragraph (c), for “the sum specified in Article 4(c) of the Public Contracts Directive” substitute “£181,302”;
- (iv) in sub-paragraph (d), for “the sum specified in Article 4(d) of the Public Contracts Directive” substitute “£615,278”;
- (b) in paragraph (2), for “Article 4(c) of the Public Contracts Directive” substitute “paragraph (1)(c)”;
- (c) omit paragraphs (3) and (4).
- (6) After regulation 5 insert—

**“Review and amendment of certain thresholds**

**5A.**—(1) Every two years the Minister for the Cabinet Office must review the thresholds mentioned in regulation 5(1)(a), (b) and (c) (“the reviewable thresholds”) to verify whether they correspond with the thresholds established for those purposes in the GPA.

(2) The Minister 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 31st August.

(3) The Minister 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 mentioned in regulation 5(1) in respect of that threshold, the Minister must make regulations amending regulation 5(1) so as to substitute for that sum the sum equal to that value.

(5) Such regulations—

- (a) must be made and laid before Parliament before 1st 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 1st January.

(6) The first review under this regulation must relate to the 24 month period ending with 31st August 2019.”

(7) In regulation 6 (methods for calculating the estimated value of procurement)—

- (a) in paragraph (7), for “sent” substitute “submitted”;
- (b) in paragraph (14)(a), for “80,000 euro” substitute “£65,630”;
- (c) in paragraph (14)(b), for “1 million euro” substitute “£820,370”.

(8) In regulation 9 (public contracts awarded, and design contests organised, pursuant to international rules), in paragraph (1)(a)—

- (a) before “Treaties” insert “Retained”;
- (b) for “a member State and one or more third” substitute “the United Kingdom and one or more other”.

(9) In regulation 10 (specific exclusions for service contracts), in paragraph (1)(d)—

- (a) in paragraph (i)—

- (i) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;
  - (ii) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;
  - (b) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”.
- (10) In regulation 11 (service contracts awarded on the basis of an exclusive right), for “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 TFEU had immediately before exit day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section”.
- (11) In regulation 12 (public contracts between entities within the public sector), in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.
- (12) In regulation 13 (contracts subsidised by contracting authorities)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (a), for “Article 13(a) of the Public Contracts Directive” substitute “regulation 5(1)(a)”;
    - (ii) in sub-paragraph (b), for “Article 13(b) of the Public Contracts Directive” substitute “regulation 5(1)(c)”;
  - (b) omit paragraph (2).
- (13) In regulation 15 (defence and security), in paragraph (2)(a), omit “or another member State”.
- (14) In regulation 16 (mixed procurement involving defence or security aspects)—
- (a) in paragraphs (1) and (5)(a), for “Article 346 of TFEU” substitute “regulation 3(2)”;
  - (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 3(2)”.
- (15) In regulation 17 (public contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules), in paragraph (1)—
- (a) in sub-paragraph (a)—
    - (i) before “Treaties” insert “Retained”;
    - (ii) for “a member State” substitute “the United Kingdom”;
    - (iii) for “third” substitute “other”;
  - (b) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”.
- (16) In regulation 19 (economic operators), omit paragraph (1).
- (17) In regulation 20 (reserved contracts), in paragraph (2), for “Article 20 of the Public Contracts Directive” substitute “this regulation”.
- (18) In regulation 22 (rules applicable to communication)—
- (a) in paragraph (15)(a)(i)—
    - (i) for “in the Official Journal” substitute “on the UK e-notification service”;
    - (ii) for “sent” substitute “submitted”;
  - (b) in paragraph (20), for the words from “the Public” to the end substitute “this Part”.
- (19) After regulation 22 insert—

## **“Powers to amend regulation 22**

### *Exceptions to obligation to require use of electronic means of communication*

#### *Exceptions to obligation to require use of electronic means of communication*

**22A.**—(1) The Minister for the Cabinet Office may make regulations amending paragraph (3) of regulation 22 by—

- (a) omitting any of the situations described in that paragraph where the Minister considers 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, exceptionally, the Minister considers that it must become a new exception because of technological developments.

(2) Where the Minister considers that technological developments render it inappropriate for there to continue to be any exceptions from the obligation to require electronic means of communication, the Minister may make regulations omitting paragraph (3) from regulation 22.

(3) Where regulations have been made under paragraph (2) and, exceptionally, the Minister considers that a new exception must be provided for because of technological developments, the Minister may make regulations re-inserting paragraph (3) into regulation 22 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).

#### *Requirements relating to tools and devices for electronic receipt of documents*

(4) The Minister for the Cabinet Office may make regulations amending the technical details and characteristics set out in regulation 22(16) if the Minister considers it appropriate to do so to take account of technical developments.”.

(20) In regulation 25 (conditions relating to the GPA and other international agreements)—

- (a) in the heading, omit “and other international agreements”;
- (b) in the body of the regulation, the text of the existing regulation becomes paragraph (1) and is amended as follows—

- (i) omit “and by the other international agreements by which the EU is bound”;
- (ii) for “those agreements” substitute “the GPA”;
- (iii) for “of the EU” substitute “of the United Kingdom”;

(c) after that paragraph (1) insert—

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

- (a) each country that was a member State immediately before exit 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;
  - (ii) Annex 6.”.

(21) In regulation 26 (choice of procedures), in paragraph (2), omit “and the Public Contracts Directive”.

(22) In regulation 27 (open procedure)—

- (a) in paragraph (2), for “sent” substitute “submitted”;

- (b) in paragraph (4)—
  - (i) in sub-paragraph (a), for “for the contract notice in section I of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48(2)”;
  - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
- (c) in paragraph (5), for “sent” substitute “submitted”.
- (23) In regulation 28 (restricted procedure)—
  - (a) in paragraph (2)(a), for “sent” substitute “submitted”;
  - (b) in paragraph (6)—
    - (i) in sub-paragraph (a), for “in section I of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48(2)”;
    - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
  - (c) in paragraph (10)(a), for “sent” substitute “submitted”.
- (24) In regulation 29 (competitive procedure with negotiation)—
  - (a) in paragraph (4)(a), for “sent” substitute “submitted”;
  - (b) in paragraph (6)—
    - (i) in sub-paragraph (a), for “in section I of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48(2)”;
    - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
  - (c) in paragraph (10)(a), for “sent” substitute “submitted”.
- (25) In regulation 30 (competitive dialogue), in paragraph (2), for “sent” substitute “submitted”.
- (26) In regulation 31 (innovation partnership), in paragraph (5), for “sent” substitute “submitted”.
- (27) In regulation 32 (use of the negotiated procedure without prior publication), in paragraph (2) (a), for the words from “and that” to the end substitute—
 

“and that—

  - (i) a report is sent to the Cabinet Office if it so requests;
  - (ii) where the contracting authority is a devolved Welsh authority, a report is sent to the Welsh Ministers if they so request (whether or not the Cabinet Office also makes a request under paragraph (i));
  - (iii) where the contracting authority is a devolved Northern Ireland authority, a report is sent to a Northern Ireland department if that department so requests (whether or not the Cabinet Office also makes a request under paragraph (i));”.
- (28) In regulation 34 (dynamic purchasing systems)—
  - (a) in paragraph (9)(a), for “sent” substitute “submitted”;
  - (b) in paragraph (25), for “ESPD” substitute “SPD”;
  - (c) for paragraph (28) substitute the following—
 

“(28) Where the period of validity is changed without terminating the dynamic purchasing system, the contracting authority shall 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.

(28A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under paragraph (27) or (28), the contracting authority shall submit for publication on the UK e-notification service a contract award notice under regulation 50.”.



(29) Omit regulation 39 (procurement involving contracting authorities from other member States).

(30) In regulation 42 (technical specifications)—

- (a) in paragraph (9), for “adopted by a legal act of the EU” substitute “imposed by retained EU law”;
- (b) in paragraph (11), in the words before sub-paragraph (a), omit “to the extent that they are compatible with EU law,”.

(31) In regulation 48 (prior information notices)—

- (a) in paragraph (2), after “Directive” insert—
  - “, but as if—
  - (a) in paragraph 2, “the second and third subparagraph of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations; and
  - (b) in paragraph 9, “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)(a), for “send” substitute “submit”;
- (c) in paragraph (4)—
  - (i) for “send” substitute “submit”;
  - (ii) after “Directive” insert “, but as if, in paragraph 6, “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”;
- (d) in paragraph (5)—
  - (i) in sub-paragraph (c)—
    - (aa) for “set out in section 1 of part B of Annex V to the Public Contracts Directive” substitute “required by paragraph (2)”;
    - (bb) for “that part” substitute “part B of Annex 5 to the Public Contracts Directive, but as if paragraph 12 of that part (financing by EU funds) were omitted”;
  - (ii) in sub-paragraph (d), for “been sent” substitute “been submitted”.

(32) For regulation 49 (contract notices) substitute—

**“Contract notices**

**49.** Contract notices—

- (a) shall contain the information set out in part C of Annex 5 to the Public Contracts Directive, but as if—
  - (i) in paragraph 2, “the second and third subparagraphs of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations;
  - (ii) paragraph 24 (financing by EU funds) were omitted;
  - (iii) in paragraph 26, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”;
  - (iv) in paragraph 28, “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; and

- (b) shall be submitted for publication in accordance with regulation 51.”.
- (33) In regulation 50 (contract award notices)—
- (a) in paragraphs (1), (4) and (5)(a) and (b), for “send” substitute “submit”;
  - (b) for paragraph (2) substitute—
    - “(2) Such notices—
    - (a) shall contain the information set out in part D of Annex 5 to the Public Contracts Directive, but as if—
      - (i) in paragraph 9, “Article 67” were a reference to regulation 67 of these Regulations;
      - (ii) in paragraph 11(b), the words “Member State or from a third” were omitted;
      - (iii) paragraph 15 (financing by EU funds) were omitted;
      - (iv) in paragraph 17, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”;
      - (v) in paragraph 18, “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; and
    - (b) shall be submitted for publication in accordance with regulation 51.”.
- (34) In regulation 51 (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) in the words before sub-paragraph (a)—
      - (aa) after “regulations” insert “34,”;
      - (bb) for “sent” substitute “submitted”;
      - (cc) after “notices)” insert “shall be submitted to the UK e-notification service for publication.”;
    - (ii) omit sub-paragraphs (a) and (b);
  - (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”;
  - (e) in paragraph (4)—
    - (i) for “send” substitute “submit”;
    - (ii) for “EU Publications Office” substitute “UK e-notification service”;
    - (iii) omit the words from “, provided” to the end;
  - (f) after paragraph (4) insert—
    - “(5) In these Regulations, “the UK e-notification service” means a single web-based portal which is provided, for purposes which include the purposes of this Part, by or on behalf of the Cabinet Office.
    - (6) The Minister for the Cabinet Office must make arrangements under which—

- (a) notices that are submitted to the UK e-notification service for publication are published in an area of the portal that is freely accessible to the public; and
- (b) confirmations are issued for the purposes of paragraph (3).

(7) 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 may elicit it and in compliance with any specific instructions that are given within the portal about how the information, or any particular element of it, is to be entered.”

(35) In regulation 52 (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 “34,”;
  - (ii) for “by the EU Publications Office” substitute “on the UK e-notification service”;
- (c) in paragraph (3)—
  - (i) after “regulations” insert “34,”;
  - (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 “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
  - (ii) in sub-paragraph (b), for “sending” substitute “submission”.

(36) In regulation 53 (electronic availability of procurement documents), in paragraph (1), for “in the Official Journal of a notice sent” substitute “on the UK e-notification service of a notice submitted”.

(37) In regulation 56 (general principles in awarding contracts etc)—

- (a) in paragraph (2)—
  - (i) omit “EU law,”;
  - (ii) after “agreements or” insert “, subject to paragraphs (2A) and (2B),”;
- (b) after paragraph (2) insert—
  - “(2A) Where—
    - (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (2), and
    - (b) the agreement is not already listed,

the Minister for the Cabinet Office may make regulations providing that paragraph (2) is to have effect as if the agreement were listed.

(2B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (2) is to have effect as if the agreement were not listed.

(2C) In paragraphs (2A) and (2B)—

(a) “listed” means listed as described in paragraph (2); and

(b) where paragraph (2) already has effect as if an agreement were listed, “already listed” includes that agreement.”.

(38) In regulation 57 (exclusion grounds), in paragraph (1)—

(a) omit sub-paragraph (e);

(b) in sub-paragraph (n), in the words before paragraph (i), for “Article 57(1)” substitute “Article 57(1)(a), (b), (d), (e) or (f)”.

(39) In regulation 58 (selection criteria), omit paragraph (5).

(40) In regulation 59 (European Single Procurement Document)—

(a) in the heading, omit “European”;

(b) in paragraph (1), omit “European”;

(c) in each of paragraphs (2) to (7), for “ESPD” substitute “SPD”;

(d) in paragraph (11)(a), for “any member State” substitute “the United Kingdom”.

(41) In regulation 60 (means of proof)—

(a) in paragraph (4)(a) and (b), omit “member State or”;

(b) in paragraph (5)—

(i) omit “member State or” in both places;

(ii) omit “member States or”.

(42) Omit regulation 61 (recourse to e-Certis).

(43) In regulation 62 (quality assurance standards and environmental management standards)—

(a) omit paragraph (2);

(b) in paragraph (4)—

(i) omit sub-paragraphs (a) and (b);

(ii) in sub-paragraph (c), omit “other”;

(iii) omit the words after sub-paragraph (c).

(44) Omit regulation 64 (recognition of official lists of approved economic operators and certification by certification bodies).

(45) In regulation 68 (life-cycle costing)—

(a) in paragraph (3)(c)—

(i) omit ‘third’;

(ii) omit the words from “or other” to the end;

(b) omit paragraphs (5) and (6).

(46) In regulation 69 (abnormally low tenders)—

(a) in paragraph (2), omit sub-paragraph (f);

(b) omit paragraphs (6) and (7).

- (47) In regulation 71 (subcontracting), in paragraph (5), for “ESPDs” substitute “SPDs”.
- (48) In regulation 72 (modification of contracts during their term)—
- (a) in paragraph (3), for “send” substitute “submit”;
  - (b) in paragraph (4), after “Directive” insert—
    - “, but as if—
    - (a) paragraph 9 (financing by EU funds) were omitted;
    - (b) in paragraph 11, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”; and
    - (c) in paragraph 12, “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”.
- (49) In regulation 73 (termination of contracts), in paragraph (1)—
- (a) after paragraph (a), insert “or”;
  - (b) after paragraph (b), omit “or”;
  - (c) omit paragraph (c).
- (50) In regulation 75 (publication of notices)—
- (a) in paragraph (4), for “sending” substitute “submitting”;
  - (b) in paragraph (5), for “send” substitute “submit”.
- (51) In regulation 77 (reserved contracts for certain services), in paragraph (5), for “Article 77 of the Public Contracts Directive” substitute “this regulation”.
- (52) In regulation 79 (notices)—
- (a) in paragraph (2)—
    - (i) in sub-paragraph (a), after “Directive” insert—
      - “, but as if—
      - (i) in paragraph 2, “the second and third subparagraphs of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations;
      - (ii) in paragraph 16, “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), for “sent” substitute “submitted”;
  - (b) in paragraph (3)—
    - (i) for “send” substitute “submit”;
    - (ii) for “of dispatch” substitute “on which the notice was submitted to the UK e-notification service”;
  - (c) in paragraph (4), after “Directive” insert—
    - “, but as if—
    - (a) paragraph 12 (financing by EU funds) were omitted;
    - (b) in paragraph 13, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)”; and

- (c) in paragraph 14, “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”.
- (53) In regulation 80 (rules on the organisation of design contests and the selection of participants), omit paragraph (2).
- (54) In regulation 83 (retention of contract copies)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (a), for “1,000,000 EUR” substitute “£820,370”;
    - (ii) in sub-paragraph (b), for “10,000,000 EUR” substitute “£8,203,700”;
  - (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 84 (reporting and documentation requirements)—
- (a) for paragraph (4) substitute—
 

“(4) A contracting authority shall communicate the report, or its main elements—

    - (a) to the Cabinet Office if it so requests;
    - (b) where the contracting authority is a devolved Welsh authority, to the Welsh Ministers if they so request (whether or not the Cabinet Office also makes a request under sub-paragraph (a));
    - (c) where the contracting authority is a devolved Northern Ireland authority, to a Northern Ireland department if that department so requests (whether or not the Cabinet Office also makes a request under sub-paragraph (a)).”;
  - (b) omit paragraph (5);
  - (c) omit paragraph (6) and the italic heading preceding it.
- (56) After regulation 84 insert—

#### “CHAPTER 4A

#### REGULATIONS UNDER THIS PART

#### **General provisions about regulations under this Part**

- 84A.**—(1) Regulations under this Part are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under regulation 3(5) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (3) Any other statutory instrument containing regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subject to paragraph (5), Regulations may not be made under regulations 22A or 56 without the consent of the Welsh Ministers and a Northern Ireland Department.
- (5) Regulations (“the amending regulations”) may be made under regulation 22A or 56 without such consent, but in such cases the amending regulations must amend regulation 22 or, as the case may be, make provision under regulation 56, in such a way as to avoid altering the effect of that regulation in so far as it applies to—
- (a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;

- (b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.
- (6) Without prejudice to paragraph (7), to the extent that the amending regulations are being made under regulation 22A, the duty imposed by paragraph (5) may be complied with by—
  - (a) restructuring regulation 22 (so that, for example, different paragraphs apply to devolved Welsh authorities and other contracting authorities or utilities respectively, where the Welsh Ministers have not consented to the making of the amending regulations); and
  - (b) amending the powers conferred by regulation 22A so that they refer to the relevant provisions in regulation 22 as so restructured.
- (7) Regulations under this Part may make supplementary, incidental, transitional, transitory or saving provision.”.
- (57) In regulation 89 (duty owed to economic operators from EEA states)—
  - (a) in the heading, for “EEA states” substitute “the United Kingdom and Gibraltar”;
  - (b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;
  - (c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.
- (58) In regulation 90 (duty owed to economic operators from certain other states)—
  - (a) in paragraph (1)—
    - (i) in sub-paragraph (a)—
      - (aa) for “GPA state” substitute “country other than the United Kingdom”;
      - (bb) for “the GPA” substitute “Condition 1 or Condition 2”;
    - (ii) omit sub-paragraph (b) and the preceding “and”;
  - (b) for paragraph (2) substitute—
    - “(2) 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 exit day that GPA state had agreed with the EU that the GPA shall apply to a contract of that description.
    - (2A) Condition 2 is that—
      - (a) at the relevant time the economic operator is from a country which, immediately before exit 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 exit day the EU had agreed with a GPA state that the GPA shall apply to a contract of that description.”;
  - (c) omit paragraph (3);
  - (d) in paragraph (4)—
    - (i) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “which immediately before exit day was”;
    - (ii) in the definition of “relevant time”—
      - (aa) for “sent” substitute “submitted”;
      - (bb) for “EU Publications Office” substitute “UK e-notification service”.

(59) In regulation 93 (special time limits for seeking a declaration of ineffectiveness), in paragraph (3), for “in the Official Journal”, substitute “on the UK e-notification service”.

(60) In regulation 99 (grounds for ineffectiveness)—

- (a) in paragraphs (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
- (b) in paragraph (4), in the words before sub-paragraph (a), omit the words from “is in” to “and which”.

(61) In regulation 106 (publication of information on Contracts Finder where contract notices are used)—

- (a) in paragraph (1)—
  - (i) for “sends” substitute “submits”;
  - (ii) for “EU Publications Office” substitute “UK e-notification service”;
- (b) in paragraph (4), for “by the EU Publications Office” substitute “on the UK e-notification service”;
- (c) in paragraph (5)—
  - (i) for “sending” substitute “submitting”;
  - (ii) for “EU Publications Office” substitute “UK e-notification service”.

(62) In regulation 108 (publication of information on Contracts Finder about contracts awarded)

- (a) in paragraph (1)(a)—
  - (i) for “sends” substitute “submits”;
  - (ii) for “EU Publications Office” substitute “UK e-notification service”;
- (b) in paragraph (5)—
  - (i) for “sends, or intends to send” substitute “submits, or intends to submit”;
  - (ii) for “EU Publications Office” substitute “UK e-notification service”;
  - (iii) for the words from “earlier than” to the end substitute “before the notice is published on the UK e-notification service”;
- (c) in paragraph (7), for “by the EU Publications Office” substitute “on the UK e-notification service”;
- (d) in paragraph (8)—
  - (i) for “sending” substitute “submitting”;
  - (ii) for “EU Publications Office” substitute “UK e-notification service”.

(63) In regulation 112 (publication of information on Contracts Finder about contracts awarded), in paragraph (4), in the definition of “SME”, for the words from “the Commission” to the end substitute “Annex 1 to Regulation (EU) No 651/2014”.

(64) Omit Schedule 5 (professional and trade registers etc.).

### **Amendments commenced eight months after exit day**

6.—(1) The Public Contracts Regulations 2015 (as amended by regulation 5) are further amended as follows.

(2) Omit regulation 25 (conditions relating to the GPA).

(3) In regulation 68 (life-cycle costing), in paragraph (3)(c), omit the words from “, including” to the end.



- (4) Omit regulation 90 (duty owed to economic operators from certain other states).

## CHAPTER 2

### THE CONCESSION CONTRACTS REGULATIONS 2016

#### Amendments commenced on exit day

- 7.—(1) The Concession Contracts Regulations 2016<sup>(8)</sup> are amended as follows.
- (2) In regulation 2 (definitions), in paragraph (1)—
- (a) omit the definition of “the Commission”;
  - (b) after the definition of “contracting authorities” insert—

“covered by regulation 7(3)”, in relation to an activity, an element, a part of a contract, or procurement, means that regulation 7(3)—

    - (a) applies to that activity, element, part or procurement, or
    - (b) would do so if these Regulations applied;”;
  - (c) after the definition of “CPV” insert—

“devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);

“devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006;”;
  - (d) in the definition of “exclusive right”, before “Treaties” insert “Retained”;
  - (e) after the definition of “execution of works” insert—

“GPA” means the Agreement on Government Procurement between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before exit day<sup>(9)</sup>;”;
  - (f) after the definition of “prior information notice” insert—

“the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before exit day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;”;
  - (g) omit the definition of “the Treaties”;
  - (h) before the definition of “utilities” insert—

“the UK e-notification service” has the meaning mentioned in regulation 33(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 33(5);”.
- (3) In regulation 5 (meaning of “utilities”), in paragraph (4)(b), before “Treaties” insert “Retained”.
- (4) In regulation 7 (subject-matter and scope of these Regulations), for paragraph (3) substitute—

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<sup>(8)</sup> [S.I. 2016/273](#).

<sup>(9)</sup> All the substantive provisions of the Agreement were substituted by the Protocol which was approved, on behalf of the EU, by Council [Decision 2014/115/EU](#) (OJ No L 68, 7.3.2014, p 1), to which the text of the Protocol is attached (at OJ No L 68, 7.3.2014, p 2).

“(3) These Regulations—

- (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 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.

(4) The arms, munitions and war material to which paragraph (3)(b) applies are, subject to paragraph (6), those included in the 1958 List.

(5) Subject to the effect of any regulations made under paragraph (6), any measures which, if they had been taken immediately before exit day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (3).

(6) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of these Regulations as if it were changed in respects specified in the regulations.

(7) 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 15th April 1958.”.

(5) In regulation 9 (threshold amounts and methods for calculating the estimated value of concession contracts)—

- (a) in paragraph (1), for the words from “the sum” to the end substitute “£4,551,413”;
- (b) omit paragraph (2);
- (c) in paragraph (4), for “sent” substitute “submitted”.

(6) After regulation 9 insert—

**“Review and amendment of the threshold in regulation 9(1)**

**9A.—**(1) Every two years the Minister for the Cabinet Office must review the threshold mentioned in regulation 9(1) to verify whether it corresponds with the threshold established in the GPA for works concessions.

(2) The Minister must do so by calculating the sterling value of the threshold 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 31st August.

(3) The Minister 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 the threshold so calculated differs from the sum for the time being mentioned in regulation 9(1) in respect of the threshold, the Minister must make regulations amending regulation 9(1) so as to substitute for that sum the sum equal to that value.

(5) Such regulations—

- (a) must be made and laid before Parliament before 1st 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 1st January.

(6) The first review under this regulation must relate to the 24 month period ending with 31st August 2019.”.

(7) In regulation 10 (general exclusions)—

- (a) in paragraph (2), omit the words from “that has” to the end;
  - (b) in paragraph (5)(a)—
    - (i) before “Treaties” insert “Retained”;
    - (ii) for “a member State and one or more third” substitute “the United Kingdom and one or more other”;
  - (c) in paragraph (9)—
    - (i) in sub-paragraph (a)—
      - (aa) for “one or more member States” substitute “the United Kingdom”;
      - (bb) for “third” substitute “other”;
    - (ii) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”;
    - (iii) in sub-paragraph (c), for “a member State” substitute “the United Kingdom”;
    - (iv) in sub-paragraph (g)—
      - (aa) for “third country” substitute “country other than the United Kingdom or Gibraltar”;
      - (bb) for “territory of the EU” substitute “United Kingdom and Gibraltar” ;
  - (d) in paragraph (10), omit “or another member State”;
  - (e) in paragraph (11)(d)—
    - (i) in paragraph (i)—
      - (aa) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;
      - (bb) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;
    - (ii) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”;
  - (f) in paragraph (14)—
    - (i) for “third country” substitute “country other than the United Kingdom”;
    - (ii) for “EU” substitute “United Kingdom”.
- (8) In regulation 13 (concession contracts awarded to an affiliated undertaking), in paragraph (5)
- 
- (a) in sub-paragraph (a), for the words from “Directive” to “Council” substitute “Part 15 of the Companies Act 2006<sup>(10)</sup>”;
  - (b) in sub-paragraph (b), in the words before paragraph (i), for “Directive” substitute “Part”.
- (9) Omit regulation 15 (notification of information by utilities).
- (10) In regulation 17 (concession contracts between entities within the public sector) in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.
- (11) In regulation 20 (mixed contracts), in paragraph (5), for “Article 346 of TFEU” substitute “regulation 7(3)”.
- (12) In regulation 21 (mixed procurement contracts involving defence or security aspects)—
  - (a) in paragraphs (1), (2) and (in both places in) (6)(a), for “Article 346 of TFEU” substitute “regulation 7(3)”;

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(10) 2006 c. 46.

- (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 7(3)”.
- (13) In regulation 22 (contracts covering both activities listed in Schedule 2 and other activities), in paragraph (6), for “Article 346 of TFEU” substitute “regulation 7(3)”.
- (14) In regulation 23 (contracts covering both activities listed in Schedule 2 and activities involving defence or security aspects), in paragraphs (1), (5)(a) and (7), for “Article 346 of TFEU” substitute “regulation 7(3)”.
- (15) In regulation 24 (reserved concession contracts), in paragraph (2), for “Article 24 of the Concessions Directive” substitute “this regulation”.
- (16) In regulation 26 (economic operators), omit paragraph (1).
- (17) In regulation 31 (concession notices)—
- (a) in paragraph (2)(a), after “Directive,” insert—
    - “but as if—
    - (i) in paragraph 3, “Article 34(2)” were a reference to regulation 34(3) of these Regulations;
    - (ii) in paragraph 10, “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; and
    - (iii) paragraph 15 (financing by EU funds) were omitted”;
  - (b) in paragraph (5), for “send” substitute “submit”;
  - (c) in paragraph (6)(a), for the words from “and that” to the end substitute—
    - “and that—
    - (i) a report is sent to the Minister for the Cabinet Office if the Minister so requests;
    - (ii) where the contracting authority or utility is a devolved Welsh authority, a report is sent to the Welsh Ministers if they so request (whether or not the Minister for the Cabinet Office also makes a request under paragraph (i));
    - (iii) where the contracting authority or utility is a devolved Northern Ireland authority, a report is sent to a Northern Ireland department if that department so requests (whether or not the Minister for the Cabinet Office also makes a request under paragraph (i));”.
- (18) In regulation 32 (concession award notices)—
- (a) in paragraphs (1) and (2), for “send” substitute “submit”;
  - (b) in paragraph (3), for “A concession award” substitute “Subject to paragraph (4), a concession award”;
  - (c) after paragraph (3) insert—
    - “(4) In paragraph (3), the reference to Annex VII is a reference to that Annex, but as if—
    - (i) in paragraph 7, “Article 41” were a reference to regulation 41 of these Regulations;
    - (ii) in paragraph 11(c), “Article 8(3)” were a reference to regulation 9(6) and (7) of these Regulations;
    - (iii) paragraph 12 (financing by EU funds) were omitted;

- (iv) in paragraph 14, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Concession Contracts Regulations 2016)”; and
  - (v) 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.”.
- (19) In regulation 33 (form and manner of publication of notices)—
  - (a) in paragraph (1)—
    - (i) in the words before sub-paragraph (a)—
      - (aa) for “sent” substitute “submitted”;
      - (bb) after “notices)” insert “shall be submitted to the UK e-notification service for publication.”;
    - (ii) omit sub-paragraphs (a) and (b);
  - (b) in paragraph (2)—
    - (i) for “EU Publications Office” substitute “the provider of the UK e-notification service”;
    - (ii) omit “the receipt of the notice and of”;
  - (c) in paragraph (3)—
    - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
    - (ii) for “by the EU Publications Office” substitute “on that service”;
    - (iii) for “by that Office” substitute “on that service”;
    - (iv) for the words from “it confirms” to the end substitute “the notice was submitted to that service”;
  - (d) in paragraph (4)—
    - (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 that Office” substitute “submission of the notice to that service”;
  - (e) after paragraph (4) insert—

“(5) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6) and (7) of those Regulations apply for the purposes of these Regulations as if the reference to “paragraph (3)” in regulation 51(6)(b) were a reference to paragraph (2) of this regulation.”.
- (20) In regulation 34 (electronic availability of concession documents), in paragraph (1), for “in the Official Journal” substitute “on the UK e-notification service”.
- (21) In regulation 38 (selection of and qualitative assessment of candidates)—
  - (a) in paragraph (8)—
    - (i) omit sub-paragraph (e);
    - (ii) in sub-paragraph (o), in the words before paragraph (i), for “Article 38(4)” substitute “Article 38(4)(a), (b), (d), (e) or (f)”;
  - (b) in paragraph (16)(a)—
    - (i) omit “EU law,”;

- (ii) after “agreements or” insert “, subject to paragraphs (26) and (27),”;
- (c) after paragraph (25) insert—
  - “Power to modify effect of paragraph (16)(a)
  - (26) Where—
    - (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (16)(a), and
    - (b) the agreement is not already listed,
 the Minister for the Cabinet Office may make regulations providing that paragraph (16)(a) is to have effect as if it the agreement were listed.
  - (27) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (16)(a) is to have effect as if it the agreement were not listed.
  - (28) In paragraphs (26) and (27)—
    - (a) “listed” means listed as described in paragraph (16)(a); and
    - (b) where paragraph (16)(a) already has effect as if an agreement were listed, “already listed” includes that agreement.”.
- (22) In regulation 39 (time limits for receipt of applications and tenders for the concession contract), in paragraph (3), for “sent” substitute “submitted”.
- (23) In regulation 41 (award criteria), in paragraph (9), omit “the Europe 2020 strategy for smart,”.
- (24) In regulation 43 (modification of concession contracts during their term)—
  - (a) in paragraph (3), for “send” substitute “submit”;
  - (b) in paragraph (4), after “Directive” insert—
    - “, but as if—
    - (a) paragraph 9 (financing by EU funds) were omitted;
    - (b) in paragraph 11, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Concession Contracts Regulations 2016)”;
    - (c) in paragraph 12, “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”.
- (25) In regulation 44 (termination of concession contracts), in paragraph (1)—
  - (a) after paragraph (a), insert “or”;
  - (b) after paragraph (b), omit “or”;
  - (c) omit paragraph (c).
- (26) In regulation 47 (notices of decisions to award a concession contract), in paragraph (5)(a), for “in the Official Journal” substitute “on the UK e-notification service”.
- (27) In regulation 50 (duty owed to economic operators from EEA states)—
  - (a) in the heading, for “EEA states” substitute “the United Kingdom and Gibraltar”;
  - (b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;
  - (c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.

- (28) In regulation 51 (duty owed to economic operators from certain other states)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (a)—
      - (aa) for “GPA state” substitute “country other than the United Kingdom”;
      - (bb) for “the GPA” substitute “Condition 1 or Condition 2”;
    - (ii) omit sub-paragraph (b) and the preceding “and”;
  - (b) for paragraph (2) substitute—
    - “(2) 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 concession contract of any description; and
      - (c) immediately before exit day that GPA state had agreed with the EU that the GPA shall apply to a concession contract of that description.
    - (2A) Condition 2 is that—
      - (a) at the relevant time the economic operator is from a country which, immediately before exit day, was a member State other than the United Kingdom;
      - (b) the procurement may result in the award of a concession contract of any description; and
      - (c) immediately before exit day the EU had agreed with a GPA state that the GPA shall apply to a concession contract of that description.”;
  - (c) omit paragraph (3);
  - (d) in paragraph (4)—
    - (i) omit the definition of “GPA”;
    - (ii) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “which immediately before exit day was”;
    - (iii) in the definition of “relevant time”—
      - (aa) for “sent” substitute “submitted”;
      - (bb) for “Publications Office of the European Union” substitute “UK e-notification service”.
- (29) In regulation 54 (special time limits for seeking a declaration of ineffectiveness), in paragraphs (3) and (4)(a) and (b), for “in the Official Journal” substitute “on the UK e-notification service”.
- (30) In regulation 60 (grounds for ineffectiveness)—
- (a) in paragraphs (2) and (3)(a), (b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
  - (b) in paragraph (4), in the words before sub-paragraph (a), omit the words from “is in” to “and which”.
- (31) In Part 6, before regulation 65 insert—

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

**65ZA.**—(1) Regulations under these Regulations are to be made by statutory instrument.

(2) A statutory instrument containing regulations under regulation 7(6) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Any other statutory instrument containing regulations under these Regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subject to paragraph (5), Regulations may not be made under regulation 38 without the consent of the Welsh Ministers and a Northern Ireland Department.

(5) Regulations (“the amending regulations”) may be made under regulation 38 without such consent, but in such cases the amending regulations must make provision in such a way as to avoid altering the effect of that regulation in so far as it applies to—

- (a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;
- (b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.

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

#### **Amendment commenced eight months after exit day**

**8.—**(1) The Concession Contracts Regulations 2016 (as amended by regulation 7) are further amended as follows.

- (2) Omit regulation 51 (duty owed to economic operators from certain other states).

### CHAPTER 3

#### THE UTILITIES CONTRACTS REGULATIONS 2016

#### **Amendments commenced on exit day**

**9.—**(1) The Utilities Contracts Regulations 2016<sup>(11)</sup> are amended as follows.

(2) In regulation 2 (definitions), in paragraph (1)—

- (a) omit the definition of “the Commission”;
- (b) after the definition of “contracting authorities” insert—
  - ““covered by regulation 3(2)”, in relation to an activity, an element, a part of a contract, or procurement, means that regulation 3(2)—
  - (a) applies to that activity, element, part or procurement, or
  - (b) would do so if these Regulations applied;”;
- (c) after the definition of “design contests” insert—
  - ““devolved Northern Ireland authority” means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);
  - “devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006;”;
- (d) omit the definition of “EU Publications Office”;
- (e) in the definition of “GPA”, after “amended” insert “before exit day”;

<sup>(11)</sup> S.I. 2016/274, amended by S.I. 2016/696.



- (f) in the definition of “innovation”, omit “the Europe 2020 strategy for smart.”;
- (g) after the definition of “qualified certificate for electronic signature” insert—
  - ““the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before exit day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section.”;
- (h) omit the definition of “the Treaties”;
- (i) before the definition of “Utilities Contracts Directive” insert—
  - ““the UK e-notification service” has the meaning mentioned in regulation 71(6), 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 71(6).”.
- (3) In regulation 3 (subject-matter and scope), 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 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, subject to paragraph (2C), those included in the 1958 List.
      - (2B) Subject to the effect of any regulations made under paragraph (2C), any measures which, if they had been taken immediately before exit day, would have been covered by Article 346 of TFEU shall be regarded as measures covered by paragraph (2).
      - (2C) The Secretary of State may make regulations providing that the 1958 List is to be treated for the purposes of Parts 1 to 4 as if it were changed in respects specified in the regulations.
      - (2D) 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 15th April 1958.”.
- (4) In regulation 6 (mixed procurement covering the same activity), in paragraph (3), for “Article 346 of TFEU” substitute “regulation 3(2)”.
- (5) In regulation 7 (procurement covering several activities), in paragraph (4), for “Article 346 of TFEU” substitute “covered by regulation 3(2)”.
- (6) In regulation 16 (threshold amounts)—
  - (a) in paragraph (1)(a), for “the sum specified in Article 15(a) of the Utilities Contracts Directive” substitute “£363,424”;
  - (b) in paragraph (1)(b), for “the sum specified in Article 15(b) of the Utilities Contracts Directive” substitute “£4,551,413”;
  - (c) in paragraph (1)(c), for “the sum specified in Article 15(c) of the Utilities Contracts Directive” substitute “£820,370”;
  - (d) omit paragraphs (3) and (4).
- (7) After regulation 16 insert—

**“Review and amendment of certain thresholds**

**16A.**—(1) Every two years the Minister for the Cabinet Office must review the thresholds mentioned in regulation 16(1)(a) and (b) (“the reviewable thresholds”) to verify whether they correspond with the thresholds established for those purposes in the GPA.

(2) The Minister 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 31st August.

(3) The Minister 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 mentioned in regulation 16(1) in respect of that threshold, the Minister must make regulations amending regulation 16(1) so as to substitute for that sum the sum equal to that value.

(5) Such regulations—

(a) must be made and laid before Parliament before 1st 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 1st January.

(6) The first review under this regulation must relate to the 24 month period ending with 31st August 2019.”.

(8) In regulation 17 (methods for calculating the estimated value of the procurement)—

(a) in paragraph (7), for “sent” substitute “submitted”;

(b) in paragraph (14)—

(i) in sub-paragraph (a), for “EUR 80,000” substitute “£65,630”;

(ii) in sub-paragraph (b), for “EUR 1 million” substitute “£820,370”.

(9) In regulation 18 (contracts awarded for the purpose of resale or lease to third parties), omit paragraph (2).

(10) In regulation 19 (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).

(11) In regulation 20 (contracts awarded and design contests organised pursuant to international rules), in paragraph (1)(a)—

(a) before “Treaties” insert “Retained”;

(b) for “a member State and one or more third” substitute “the United Kingdom and one or more other”.

(12) In regulation 21 (specific exclusions for service contracts), in paragraph (1)(c)—

(a) in paragraph (i)—

(i) in sub-paragraph (aa), for “a member State, a third” substitute “the United Kingdom, another”;

- (ii) in sub-paragraph (bb), for “a member State or a third” substitute “the United Kingdom or another”;
  - (b) in both paragraph (iv) and (v), for “member State concerned” substitute “United Kingdom”.
- (13) In regulation 22 (service contracts awarded on the basis of an exclusive right), for “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 TFEU had immediately before exit day in giving rise to any of the powers, rights etc mentioned in that section”.
- (14) In regulation 24 (defence and security), in paragraph (2)(a), omit “or another member State”.
- (15) In regulation 25 (mixed procurement covering the same activity and involving defence or security aspects)—
- (a) in paragraphs (1) and (5)(a), for “Article 346 of TFEU” substitute “regulation 3(2)”;
  - (b) in paragraph (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation 3(2)”.
- (16) In regulation 26 (procurement covering several activities and involving defence or security aspects), in paragraphs (5)(b) and (7), for “Article 346 of TFEU” substitute “regulation 3(2)”.
- (17) In regulation 27 (contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules), in paragraph (1)—
- (a) in sub-paragraph (a)—
    - (i) before “Treaties” insert “Retained”;
    - (ii) for “a member State” substitute “the United Kingdom”;
    - (iii) for “third” substitute “other”;
  - (b) in sub-paragraph (b), for “a member State or a third” substitute “the United Kingdom or another”.
- (18) In regulation 28 (contracts between contracting authorities), in paragraphs (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.
- (19) In regulation 29 (contracts awarded to an affiliated undertaking), in paragraph (5)—
- (a) in sub-paragraph (a), for the words from “Directive” to “Council” substitute “Part 15 of the Companies Act 2006”;
  - (b) in sub-paragraph (b), in the words before paragraph (i), for “Directive” substitute “Part”.
- (20) Omit regulation 31 (notification of information).
- (21) In regulation 33 (contracts subject to special arrangements)—
- (a) in paragraph (b), for the words from “EUR” in the words before sub-paragraph (i) to the end of sub-paragraph (xiii) substitute “£4,101,850, submit, within 48 days of the award, a contract award notice for publication, and regulation 70(2) shall apply in relation to such a notice as it applies to notices under regulation 70(1)”;
  - (b) in paragraph (c)—
    - (i) in the words before sub-paragraph (i)—
      - (aa) for “400,000 euro” substitute “£328,150”;
      - (bb) for “5,000,000 euro” substitute “£4,101,850”;
    - (ii) in sub-paragraph (i), for the words from “the information “ to the end substitute “, for not less than 4 years from the date on which the contract is awarded, the information that would have been required to be included in a contract award notice if paragraph (b) had applied”;

- (iii) in sub-paragraph (ii)—
  - (aa) omit “, either”;
  - (bb) for the words from “Commission” to the end substitute “Minister for the Cabinet Office”.
- (22) In regulation 34 (activities directly exposed to competition), in paragraph (2), omit sub-paragraph (b) and the preceding “or”.
- (23) Omit regulation 35 (procedure for establishing whether regulation 34(2)(b) is applicable).
- (24) In regulation 37 (economic operators), omit paragraph (1).
- (25) In regulation 38 (reserved contracts), in paragraph (2), for “Article 38 of the Utilities Contracts Directive” substitute “this regulation”.
- (26) In regulation 40 (rules applicable to communication)—
  - (a) in paragraph (15)(a)(i)—
    - (i) for “in the Official Journal” substitute “on the UK e-notification service”;
    - (ii) for “sent” substitute “submitted”;
  - (b) in paragraph (20), in the words after sub-paragraph (b), for the words from “Utilities” to the end substitute “these Regulations”.
- (27) After regulation 40 insert—

**“Powers to amend regulation 40**

*Exceptions to obligation to require use of electronic means of communication*

*Exceptions to obligation to require use of electronic means of communication*

**40A.**—(1) The Minister for the Cabinet Office may make regulations amending paragraph (3) of regulation 40 by—

- (a) omitting any of the situations described in that paragraph where the Minister considers 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, exceptionally, the Minister considers that it must become a new exception because of technological developments.

(2) Where the Minister considers that technological developments render it inappropriate for there to continue to be any exceptions from the obligation to require electronic means of communication, the Minister may make regulations omitting paragraph (3) from regulation 40.

(3) Where regulations have been made under paragraph (2) and, exceptionally, the Minister considers that a new exception must be provided for because of technological developments, the Minister may make regulations re-inserting paragraph (3) into regulation 40 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).

*Requirements relating to tools and devices for electronic receipt of documents*

(4) The Minister for the Cabinet Office may make regulations amending the technical details and characteristics set out in regulation 40(16) if the Minister considers it appropriate to do so to take account of technical developments.”.

- (28) In regulation 43 (conditions relating to the GPA and other international agreements)—

- (a) in the heading, omit “and other international agreements”;
  - (b) in the body of the regulation, the text of the existing regulation becomes paragraph (1) and is amended as follows—
    - (i) omit “and by the other international agreements by which the EU is bound”;
    - (ii) for “those agreements” substitute “the GPA”;
    - (iii) for “of the EU” substitute “of the United Kingdom”;
  - (c) after that paragraph insert—
    - “(2) For the purposes of paragraph (1)—
      - (a) each country that was a member State immediately before exit 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;
        - (ii) Annex 6.”.
- (29) In regulation 44 (choice of procedures), in paragraph (2), omit “and the Utilities Contracts Directive”.
- (30) In regulation 45 (open procedure)—
  - (a) in paragraph (2), 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” substitute “regulation 67(2) and (5)(c)”;
    - (ii) in sub-paragraph (b), for “sent” (in both places) substitute “submitted”;
  - (c) in paragraph (5), for “sent” substitute “submitted”.
- (31) In regulation 46 (restricted procedure), in paragraph (2)(a), for “sent” substitute “submitted”.
- (32) In regulation 47 (negotiated procedure with prior call for competition), in paragraph (2)(a), for “sent” substitute “submitted”.
- (33) In regulation 48 (competitive dialogue), in paragraph (2)(a), for “sent” substitute “submitted”.
- (34) In regulation 49 (innovation partnership), in paragraph (5), for “sent” substitute “submitted”.
- (35) In regulation 52 (dynamic purchasing systems)—
  - (a) in paragraph (9)(a), for “sent” substitute “submitted”;
  - (b) for paragraph (29) substitute the following—
    - “(29) Where the period of validity is changed without terminating the dynamic purchasing system, the utility shall 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.
    - (29A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under paragraph (28) or (29), the utility shall submit for publication on the UK e-notification service a contract award notice under regulation 70.”.
- (36) Omit regulation 57 (procurement involving utilities from other member States).
- (37) In regulation 60 (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), omit “to the extent that they are compatible with EU law,”.
- (38) In regulation 67 (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), for “send” substitute “submit”;
  - (c) in paragraph (4)—
    - (i) for “send” substitute “submit”;
    - (ii) after “Directive” insert “, but as if “date of dispatch” in paragraph 5 were a references to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
  - (d) in paragraph (5)—
    - (i) in sub-paragraph (c)—
      - (aa) for “set out section I of Part A of Annex VI to the Utilities Contracts Directive” substitute “required by paragraph (2)”;
      - (bb) after “II of Part A” insert—
        - “of Annex 6 to the Utilities Contracts Directive, but as if—
          - (i) in paragraph 7, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 73(4) and (5) of these Regulations”; and
          - (ii) in paragraph 21—
            - (aa) “Article 82” were a reference to regulation 82 of these Regulations; and
            - (bb) “point (b) of Article 67(2)” were a reference to regulation 67(5)(b) of these Regulations”;
      - (ii) in sub-paragraph (d), for “been sent” substitute “been submitted”.
- (39) In regulation 68 (notices on the existence of a qualification system)—
- (a) in paragraph (1), omit the words from “which” to “Directive,”;
  - (b) after paragraph (1) insert—
    - “(1A) Such a notice shall include the information set out in Annex 10 to the Utilities Contracts Directive, but as if, in paragraph 10, “Article 82” were a reference to regulation 82 of these Regulations.”;
  - (c) in paragraph (3)—
    - (i) in the words before sub-paragraph (a)—
      - (aa) for “notify the EU Publications Office” substitute “give notice”;
      - (bb) for “, using the following standard forms” substitute “by submitting to the UK e-notification service”;
    - (ii) in sub-paragraph (a), for “the form for notices” substitute “a notice”.
- (40) For regulation 69 (contract notices) substitute—

**“Contract notices**

69.—(1) Contract notices shall contain the information set out in the relevant part of Annex 11 to the Utilities Contracts Directive, but as if—

(a) in paragraph 10 of Part A, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 73(4) and (5) of these Regulations;

(b) in—

(i) paragraph 19 of Part A,

(ii) paragraph 16 of Part B, and

(iii) paragraph 15 of part C,

“Article 82” were a reference to regulation 82 of these Regulations;

(c) in—

(i) paragraph 20 of Part A,

(ii) paragraph 18 of Part B, and

(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 Regulations 2016)”; and

(d) in—

(i) paragraph 22 of Part A,

(ii) paragraph 20 of Part B, and

(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 shall be submitted for publication in accordance with regulation 71.”.

(41) In regulation 70 (contract award notices)—

(a) in paragraph (1), for “send” substitute “submit”;

(b) for paragraph (2) substitute—

“(2) Such notices shall—

(a) contain the information set out in Annex 12 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 Regulations 2016)”;

(ii) in paragraph 5(c), “Article 50” were a reference to regulation 50(1) of these Regulations;

(iii) in paragraph 9, “Article 50(h)” were a reference to regulation 50(1)(h) 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 64(1) of these Regulations;

(vi) in paragraph 20, “Article 84” were a reference to regulation 84 of these Regulations; and

- (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 sent for publication in accordance with regulation 71.”;
- (c) in paragraphs (4) and (5)(a) and (b), for “send” substitute “submit”.
- (42) In regulation 71 (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) after “regulations” insert “52,”;
- (ii) for “sent” (in both places) substitute “submitted”;
- (iii) for “by electronic means to the EU Publications Office” substitute “to the UK e-notification service”;
- (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 “the provider of the UK e-notification service”;
- (ii) omit “the receipt of the notice and of”;
- (e) in paragraph (4)—
- (i) for “send” substitute “submit”;
- (ii) for “EU Publications Office” substitute “UK e-notification service”;
- (iii) omit the words from “, provided” to the end;
- (f) omit paragraph (5);
- (g) at the end insert—
- “(6) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6) and (7) of those Regulations apply for the purposes of these Regulations as if the reference to “paragraph (3)” in regulation 51(6)(b) were a reference to paragraph (3) of this regulation.”.
- (43) In regulation 72 (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 “52,”;
- (ii) for “by the EU Publications Office” substitute “on the UK e-notification service”;
- (c) in paragraph (3)—
- (i) after “regulations” insert “52,”;
- (ii) from the words from “at the 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 “sent to the EU Publications Office” substitute “submitted to the UK e-notification service”;
    - (ii) in sub-paragraph (b), for “sending” substitute “submission”.
- (44) In regulation 73 (electronic availability of procurement documents), in paragraph (1), for “in the Official Journal” substitute “on the UK e-notification service”.
- (45) In regulation 76 (general principles), in paragraph (6)—
- (a) omit “EU law.”;
  - (b) after “agreements or” insert “, subject to paragraphs (6A) and (6B)”;
  - (c) 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 Minister for the Cabinet Office may make regulations providing that paragraph (6) is to have effect as if it the agreement were listed.
    - (6B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (6) is to have effect as if it 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.”.
- (46) In regulation 81 (quality assurance standards and environmental management standards)—
  - (a) omit paragraph (2);
  - (b) in paragraph (4)—
    - (i) omit sub-paragraphs (a) and (b);
    - (ii) in sub-paragraph (c), omit “other”;
    - (iii) omit the words after sub-paragraph (c).
- (47) In regulation 83 (life-cycle costing)—
  - (a) in paragraph (3)(c)—
    - (i) omit ‘third’;
    - (ii) omit the words from “or other” to the end;
  - (b) omit paragraphs (5) and (6).
- (48) In regulation 84 (abnormally low tenders)—

- (a) in paragraph (2), omit sub-paragraph (f);
  - (b) omit paragraphs (6) and (7).
- (49) In regulation 85 (tenders comprising products originating in third countries), in paragraph (2) (a), for the words 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<sup>(12)</sup> if the products were chargeable goods within the meaning of that Part”.
- (50) In regulation 87 (subcontracting), in paragraph (5), for “ESPDs” substitute “SPDs”.
- (51) In regulation 88 (modification of contracts during their term)—
- (a) in paragraph (2), for “send” substitute “submit”;
  - (b) in paragraph (3), after “Directive” insert “, but as if paragraph 10 (financing by EU funds) were omitted”.
- (52) In regulation 89 (termination of contracts), in paragraph (1), omit sub-paragraph (c).
- (53) In regulation 91 (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 Regulations 2016)”;
  - (c) in paragraph (6), for “send” substitute “submit”.
- (54) In regulation 93 (reserved contracts for certain services), in paragraph (5), for “Article 94 of the Utilities Contracts Directive” substitute “this regulation”.
- (55) In regulation 95 (notices)—
- (a) in paragraph (2)—
    - (i) in sub-paragraph (a), 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”;
    - (ii) in sub-paragraph (b), for “sent” substitute “submitted”;
  - (b) in paragraph (3), in the words before sub-paragraph (a), for “sent” substitute “submitted”;
  - (c) in paragraph (4), 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”.
- (56) In regulation 96 (rules on the organisation of design contests and the selection of participants and the jury), omit paragraph (2).
- (57) In regulation 98 (retention of contract copies)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (a), for “1,000,000 EUR” substitute “£820,370”;
    - (ii) in sub-paragraph (b), for “10,000,000 EUR” substitute “£8,203,700”;
  - (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”.
- (58) In regulation 99 (information and documentation requirements)—
- (a) in paragraph (3), after “regulation” insert “33(b),”;
  - (b) for paragraph (7) substitute—

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(12) 2018 c. 22. See section 17 (place of origin of chargeable goods).

- “(7) A utility shall communicate the report, or its main elements—
- (a) to the Minister for the Cabinet Office if the Minister so requests;
  - (b) where the utility is a devolved Welsh authority, to the Welsh Ministers if they so request (whether or not the Minister for the Cabinet Office also makes a request under sub-paragraph (a));
  - (c) where the utility is a devolved Northern Ireland authority, to a Northern Ireland department if that department so requests (whether or not the Minister for the Cabinet Office also makes a request under sub-paragraph (a)).”;
- (c) omit paragraph (8);
- (d) omit paragraph (9) and the italic heading preceding it.
- (59) In regulation 104 (duty owed to economic operators from EEA States)—
- (a) in the heading, for “EEA States” substitute “the United Kingdom and Gibraltar”;
  - (b) in paragraph (1)(b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”;
  - (c) in paragraph (2), for “another EEA state” substitute “Gibraltar”.
- (60) In regulation 105 (duty owed to economic operators from certain other States)—
- (a) in paragraph (1)—
    - (i) in sub-paragraph (a)—
      - (aa) for “GPA state” substitute “country other than the United Kingdom”;
      - (bb) for “the GPA” substitute “Condition 1 or Condition 2”;
    - (ii) omit sub-paragraph (b) and the preceding “and”;
  - (b) for paragraph (2) substitute—

“(2) 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 exit day that GPA state had agreed with the EU that the GPA shall apply to a contract of that description.

(2A) Condition 2 is that—

    - (a) at the relevant time the economic operator is from a country which, immediately before exit 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 exit day the EU had agreed with a GPA state that the GPA shall apply to a contract of that description.”;
  - (c) omit paragraph (3);
  - (d) in paragraph (4)—
    - (i) in the definition of “GPA state”, for “, other than an EEA state, which at the relevant time is” substitute “which immediately before exit day was”;
    - (ii) in the definition of “relevant time”—
      - (aa) for “sent” (in both places) substitute “submitted”;
      - (bb) for “EU Publications Office” (in both places) substitute “UK e-notification service”;
      - (cc) for “sending” substitute “submitting”.

- (61) In regulation 108 (special time limits for seeking a declaration of ineffectiveness), in paragraphs (3) and (4)(a), for “in the Official Journal” substitute “on the UK e-notification service”.
- (62) In regulation 114 (grounds for ineffectiveness)—
- (a) in paragraphs (2) and (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
  - (b) in paragraph (4)—
    - (i) in the words before sub-paragraph (a), omit the words from “is in” to “and which”;
    - (ii) in sub-paragraph (c), for “in the Official Journal” substitute “on the UK e-notification service”.
- (63) After regulation 119 insert—

## “PART 5A

### AMENDING THESE REGULATIONS

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

- 119A.**—(1) Regulations under these Regulations are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under regulation 3(2C) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (3) Any other statutory instrument containing regulations under these Regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subject to paragraph (5), Regulations may not be made under regulations 40A or 76 without the consent of the Welsh Ministers and a Northern Ireland Department.
- (5) Regulations (“the amending regulations”) may be made under regulation 40A or 76 without such consent, but in such cases the amending regulations must amend regulation 40 or, as the case may be, make provision under regulation 76, in such a way as to avoid altering the effect of that regulation in so far as it applies to—
- (a) devolved Welsh authorities, where the Welsh Ministers have not consented to the making of the amending regulations;
  - (b) devolved Northern Ireland authorities, where no Northern Ireland Department has consented to the making of the amending regulations.
- (6) Without prejudice to paragraph (7), to the extent that the amending regulations are being made under regulation 40A, the duty imposed by paragraph (5) may be complied with by—
- (a) restructuring regulation 40 (so that, for example, different paragraphs apply to devolved Welsh authorities and other utilities respectively, where the Welsh Ministers have not consented to the making of the amending regulations); and
  - (b) amending the powers conferred by regulation 40A so that they refer to the relevant provisions in regulation 22 as so restructured.
- (7) Regulations under this Part may make supplementary, incidental, transitional, transitory or saving provision.”.

#### **Amendments commenced eight months after exit day**

- 10.**—(1) The Utilities Contracts Regulations 2016 (as amended by regulation 9) are further amended as follows.

- (2) Omit regulation 43 (conditions relating to the GPA).
- (3) In regulation 83 (life-cycle costing), in paragraph (3)(c), omit the words from “, including” to the end.
- (4) Omit regulation 105 (duty owed to economic operators from certain other States).

## CHAPTER 4

### AMENDMENT OF OTHER SUBORDINATE LEGISLATION

#### **The Public Contracts Regulations 2006**

**11.**—(1) To the extent that the Public Contracts Regulations 2006<sup>(13)</sup> (“the 2006 Regulations”) continue to have prospective effect, their effect is modified as follows.

- (2) The 2006 Regulations have prospective effect as if—
  - (a) all references in them to a “member State” continued to include the United Kingdom;
  - (b) all requirements to send any notice to the Official Journal of the European Union were instead a requirement to submit the notice to the UK e-notification service for publication;
  - (c) all provisions relating or referring to such a requirement, or to the publication of such a notice in that Journal, were instead references to that requirement as modified by sub-paragraph (b) and to the publication of that notice on the UK e-notification service;
  - (d) in regulation 9(5) (which provides for the definition of certain technical specifications), the words “and to the extent that those provisions are compatible with EU obligations” were omitted;
  - (e) regulation 14(2) (which requires certain reports to be supplied to the European Commission on request) were omitted;
  - (f) in regulation 25(4)(a) (which provides for evidence of certain environmental management measures)—
    - (i) in paragraph (i), sub-paragraph (aa) were omitted; and
    - (ii) in paragraph (ii), the words “conforming to EU law or” were omitted;
  - (g) regulation 30(7)(e), (8) and (9) (which relate to State aid) were omitted;
  - (h) regulation 32(16) (which provides for the provision of certain reports requested by the European Commission) were omitted;
  - (i) regulation 40(2) (which requires certain information to be provided for the European Commission) were omitted;
  - (j) in regulation 47A(1)(a)(ii) (which makes compliance with certain obligations a duty owed to economic operators), the words “any enforceable EU obligation” referred instead to any retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018.
- (3) In paragraph (2)(b) and (c), “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6)(a) and (7) of those Regulations apply for the purposes of the 2006 Regulations as modified by paragraph 2(b) and (c).
- (4) Where—
  - (a) immediately before exit day, a procurement has been commenced,

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<sup>(13)</sup> [S.I. 2006/5](#). The Regulations were revoked by [S.I. 2015/102](#) but subject to savings. Before being revoked, the Regulations had been amended by [S.I. 2007/3542](#), [2008/2256](#), [2683](#), [2848](#), [2009/1307](#), [2992](#), [2010/133](#), [976](#), [2011/1043](#), [1848](#), [2053](#), [2581](#), [3058](#), [2013/252](#), [1431](#), [2014/834](#) and by the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 20, paragraph 2.

- (b) on or after exit day, a contract is awarded or any other act is done, pursuant to that procurement, and
- (c) that award or other act would, if it had occurred before exit day, have been covered by an exemption from requirements of the 2006 Regulations by virtue of any provision in those Regulations,

that award or other act is covered by that exemption on and after exit day regardless of whether the terms used to define that exemption in the 2006 Regulations would otherwise have been apt to continue to achieve that effect on and after exit day.

(5) Paragraph 1 of the Schedule to these Regulations applies for the purposes of paragraph (4) of this regulation as it applies for the purposes of the Schedule.

### **The Utilities Contracts Regulations 2006**

**12.**—(1) To the extent that the Utilities Contracts Regulations 2006<sup>(14)</sup> (“the 2006 Regulations”) continue to have prospective effect, their effect is modified as follows.

(2) The 2006 Regulations have prospective effect as if—

- (a) all references in them to a “member State” continued to include the United Kingdom;
- (b) all requirements to send any notice to the Official Journal of the European Union were instead a requirement to submit the notice to the UK e-notification service for publication;
- (c) all provisions relating or referring to such a requirement, or to the publication of such a notice in that Journal, were instead references to that requirement as modified by sub-paragraph (b) and to the publication of that notice on the UK e-notification service;
- (d) in regulation 4(3) (which imposes certain duties on utilities in relation to the treatment of economic operators), the words “(in accordance with Article 10 of the Utilities Directive)” were omitted;
- (e) regulation 7(7) (which relates to information requested by the European Commission) were omitted;
- (f) in regulation 8(3) (which provides for certain information to be sent to or for the European Commission)—
  - (i) in sub-paragraph (a), the words from “5,000,000 euro” in the words before sub-paragraph (i) to the end of paragraph (xiii) read “£4,101,850, submit, within 48 days of the award, a contract award notice to the UK e-notification service for publication, containing the information referred to in regulation 70(2)(a) of the Utilities Contracts Regulations 2016”;
  - (ii) in sub-paragraph (b)—
    - (aa) “400,000 euro” read “£328,150”;
    - (bb) “5,000,000 euro” read “£4,101,850”;
    - (cc) paragraph (ii) read as follows—
      - “(ii) if the Minister requests that information in relation to any such contract, forthwith send it to the Minister;”;
- (g) in regulation 12(5) (which provides for the definition of certain technical specifications), the words “and to the extent that those requirements are compatible with EU obligations” were omitted;

<sup>(14)</sup> S.I. 2006/6. The Regulations were revoked by S.I. 2016/274 but subject to savings. Before being revoked, the Regulations had been amended by S.I. 2007/2157, 3542, 2008/2256, 2848, 2009/3100, 2011/1043, 1441, 2053, 1848, 2012/1659, 2013/610, 2015/102.

- (h) in regulation 24(3)(a) (which provides for evidence of certain environmental management measures)—
    - (i) in paragraph (i), sub-paragraph (aa) were omitted; and
    - (ii) in paragraph (ii), the words “conforming to EU law or” were omitted;
  - (i) regulation 30(7)(e), (8) and (9) (which relate to State aid) were omitted;
  - (j) in regulation 31(2) (which provides for determining the country of origin of goods for certain purposes), the words from “in accordance” to “Code” read “as it would be determined for the purposes of Part 1 of the Taxation (Cross-Border Trade) Act 2018 if the products were chargeable goods within the meaning of that Part”;
  - (k) regulation 38(2) (which provides for the provision of certain reports requested by the European Commission) were omitted;
  - (l) regulation 39(6) (which makes provision about reports for onward transmission to the European Commission) were omitted;
  - (m) in regulation 45A(1)(b) (which makes compliance with certain obligations a duty owed to economic operators), the words “any enforceable EU obligation” referred instead to any retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018.
- (3) In paragraph (2)(b), (c) and (f), “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015, and regulation 51(6)(a) and (7) of those Regulations apply for the purposes of the 2006 Regulations as modified by paragraph 2(b), (c) and (f).
- (4) Where—
- (a) immediately before exit day, a procurement has been commenced,
  - (b) on or after exit day, a contract is awarded or any other act is done, pursuant to that procurement, and
  - (c) that award or other act would, if it had occurred before exit day, have been covered by an exemption from requirements of the 2006 Regulations by virtue of any provision in those Regulations,
- that award or other act is covered by that exemption on and after exit day regardless of whether the terms used to define that exemption in the 2006 Regulations would otherwise have been apt to continue to achieve that effect on and after exit day.
- (5) Paragraph 1 of the Schedule to these Regulations applies for the purposes of paragraph (4) of this regulation as it applies for the purposes of the Schedule.

### **The Service Charges (Consultation Requirements) (England) Regulations 2003**

**13.**—(1) The Service Charges (Consultation Requirements) (England) Regulations 2003(**15**) are amended as follows.

(2) In regulation 2 (interpretation), in paragraph (1), in the definition of “public notice”, for the words from “published” to the end substitute “published, pursuant to the Public Contracts Regulations 2015, on the UK e-notification service (as defined by those Regulations)”.

### **The Provision of Services Regulations 2009**

**14.**—(1) The Provision of Services Regulations 2009(**16**) are amended as follows.

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(15) S.I. 2003/1987, amended by S.I. 2006/5, 2015/102; there are other amending instruments but none is relevant.

(16) S.I. 2009/2999, amended by S.I. 2015/102; there are other amending instruments but none is relevant.

(2) In regulation 31 (certificates and other documents), in paragraph (5)(g), omit “(read with regulation 58(5))”.

### **The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013**

**15.**—(1) The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013<sup>(17)</sup> are amended as follows.

(2) In Schedule 2 (application of the Utilities Contracts Regulations 2016), in Part 1, in the entry relating to regulation 99 (information and documentation requirements), in the second column—

- (a) for ““the Commission”, in the first place it occurs,” substitute ““the Minister for the Cabinet Office” in sub-paragraph (a)”;
- (b) for “, in the second place it occurs,” substitute “as if the subsequent reference to “the Minister” in sub-paragraph (a)”;
- (c) for “(3), (8) and (9)” substitute “(3) and (7)(b) and (c).”

## **PART 4**

### **AMENDMENT OF RETAINED DIRECT EU LEGISLATION**

#### **Regulation 2195/2002 of the European Parliament and of the Council**

**16.**—(1) Regulation 2195/2002 of the European Parliament and of the Council of 5th November 2002 on the Common Procurement Vocabulary (CPV) is amended as follows.

(2) For Articles 2 and 3 substitute the following—

#### *“Article 2*

- 1.** The Minister for the Cabinet Office may make regulations amending the Annexes to this Regulation.
  - 2.** Regulations under this Article are to be made by statutory instrument.
  - 3.** A statutory instrument containing regulations under this Article is subject to annulment in pursuance of a resolution of either House of Parliament.
  - 4.** Regulations under this Article may make consequential, supplementary, incidental, transitional, transitory or saving provision.”.
- (3) In Article 4, omit the second paragraph.

#### **Commission Decision 2006/211/EC**

**17.**—(1) Commission [Decision 2006/211/EC](#) of 8th March 2006 establishing that Article 30(1) of [Directive 2004/17/EC](#) of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to electricity generation in England, Scotland and Wales is amended as follows.

(2) In Article 1, for “[Directive 2004/17/EC](#)” substitute “the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016<sup>(18)</sup>”.

<sup>(17)</sup> [S.I. 2013/1582](#), amended by [S.I. 2016/275](#); there are other amending instruments but none is relevant.

<sup>(18)</sup> [S.S.I. 2016/49](#).



- (3) Omit Articles 2 and 3.

#### **Commission Decision 2007/141/EC**

**18.**—(1) Commission Decision 2007/141/EC of 26th February 2007 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to the supply of electricity and gas in England, Scotland and Wales is amended as follows.

(2) In Article 1, for “Directive 2004/17/EC” substitute “the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016”.

- (3) Omit Articles 2 and 3.

#### **Commission Decision 2010/192/EU**

**19.**—(1) Commission Decision 2010/192/EU of 29th March 2010 exempting exploration for and exploitation of oil and gas in England, Scotland and Wales from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors is amended as follows.

(2) In Article 1, for “Directive 2004/17/EC” substitute “the Utilities Contracts Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016”.

- (3) Omit Article 2.

#### **Commission Implementing Regulation (EU) No 2015/1986**

**20.** Commission Implementing Regulation (EU) No 2015/1986 of 11th November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011 is revoked.

## PART 5

### CESSATION OF RIGHTS ETC.

#### **Cessation of rights etc under certain international agreements**

**21.**—(1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures in the field of public procurement which—

- (a) continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and
- (b) are derived from any of the agreements specified in paragraph (2),

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly) on exit day.

- (2) The agreements are—

- (a) Agreement in the form of an exchange of letters between the European Community and the United States of America on government procurement signed in Washington and Brussels on 30th May 1995<sup>(19)</sup>;

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<sup>(19)</sup> OJ No L 134, 20.6.95, p 26.

- (b) Agreement between the European Community and the State of Israel on government procurement signed in Brussels on 10th July 1997**(20)**;
- (c) Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the United Mexican States, of the other part signed in Brussels on 8th December 1997**(21)**;
- (d) Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement signed in Luxembourg on 21st June 1999**(22)**;
- (e) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part signed by exchange of letters in Luxembourg on 9th April 2001**(23)**;
- (f) Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part signed in Brussels on 11th May 2002**(24)**;
- (g) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part signed in Luxembourg on 12th June 2006**(25)**;
- (h) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part signed in Luxembourg on 15th October 2007**(26)**;
- (i) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part signed in Luxembourg on 29th April 2008**(27)**;
- (j) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part signed in Luxembourg on 16th June 2008**(28)**;
- (k) Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part signed in Bridgetown, Barbados on 15th October 2008**(29)**;
- (l) Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part signed in Brussels on 6th October 2010**(30)**;
- (m) Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part signed in Brussels on 11th May 2012**(31)**;
- (n) Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part signed in Brussels on 21st March 2014**(32)**;

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**(20)** OJ No L 202, 30.7.97, p 85.

**(21)** OJ No L 226, 13.8.98, p 25.

**(22)** OJ No L 114, 30.4.2002, p 430.

**(23)** OJ No L 84, 20.3.2004, p 3 (the exchange of letters begins at p 3, the text of the Agreement begins at p 13).

**(24)** OJ No L 352, 30.12.2002, p 3.

**(25)** OJ No L 107, 28.4.2008, p 166.

**(26)** OJ No L 108, 29.4.2010, p 3.

**(27)** OJ No L 278, 18.10.2013, p 16.

**(28)** OJ No L 164, 30.6.2015, p 2.

**(29)** OJ No L 289/L, 30.10.2008, p 3.

**(30)** OJ No L 127, 14.5.2011, p 6.

**(31)** OJ No L 204, 31.7.2012, p 20.

**(32)** OJ No L 161, 29.5.2014, p 3.

- (o) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part signed in Brussels on 27th June 2014**(33)**;
  - (p) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part signed in Brussels on 27th June 2014**(34)**;
  - (q) Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part signed in Strasbourg on 27th October 2015**(35)**;
  - (r) Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part signed in Brussels on 24th November 2017**(36)**.
- (3) Where applicable, the specification of an agreement by paragraph (2) includes that agreement as amended before exit day.

13th March 2019

*Oliver Dowden*  
Minister for Implementation  
Cabinet Office

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**(33)** OJ No L 261, 30.8.2014, p 4.

**(34)** OJ No L 260, 30.8.2014, p 4.

**(35)** OJ No L 71, 16.3.2016, p 3.

**(36)** OJ No L 23, 26.1.2018, p 4.

## SCHEDULE

Regulation 1(4)

## TRANSITIONAL AND SAVING PROVISION

**Interpretation****1.—(1)** In this Schedule—

“amended”, in relation to a provision, means that provision as amended or substituted by these Regulations;

“amendments” (and cognate expressions) include the modifications made by regulations 11 and 12;

“Official Journal” means the Official Journal of the European Union;

“the Procurement Regulations” means—

- (a) the Public Contracts Regulations 2006;
- (b) the Utilities Contracts Regulations 2006;
- (c) the Public Contracts Regulations 2015;
- (d) the Concession Contracts Regulations 2016;
- (e) the Utilities Contracts Regulations 2016;

“unamended”, in relation to a provision, means that provision in the form in which it existed immediately before it was amended or substituted by these Regulations.

(2) In this Schedule, the following have the same meaning as in whichever of the Procurement Regulations the context requires—

- (a) contracting authority;
- (b) design contest;
- (c) dynamic purchasing system;
- (d) framework agreement;
- (e) utility.

(3) For the purposes of this Schedule, a procurement has been commenced before a particular date if, before that date—

- (a) a notice has been sent to the Official Journal in accordance with applicable Procurement Regulations in order to—
  - (i) invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract, framework agreement or dynamic purchasing system; or
  - (ii) publicise an intention to hold a design contest;
- (b) the contracting authority or utility has had published any form of advertisement seeking offers or expressions of interest in a proposed contract, framework agreement or dynamic purchasing system; 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 contract, framework agreement or dynamic purchasing system; or
  - (ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed contract, framework agreement or dynamic purchasing system.

(4) For the purposes of this Schedule, a procurement covers the whole of the procedures which stem from that commencement.

(5) Accordingly, for example, if a contract notice in relation to a proposed framework agreement under the Public Contracts Regulations 2015 has, before exit day, been sent as described in sub-paragraph (3)(a), paragraph 3(1) applies to the award of any contracts based on that framework agreement regardless of whether the relevant specific procedure for the award of any such contract under regulation 33(7) to (11) of the Public Contracts Regulations 2015 had itself been commenced before exit day.

(6) Procedures taken for the purpose of modifying a contract or framework agreement are not to be regarded, for the purposes of sub-paragraph (4), as stemming from the commencement of the procurement from which the award of that contract or framework agreement had itself stemmed.

(7) A procedure commenced as described in sub-paragraph (3)(a)(i), (b) or (c) is not to be regarded, for the purposes of sub-paragraph (4), as stemming from the commencement of any design contest that had previously been held in relation to the subject-matter of the procurement.

### **General principles**

2.—(1) Subject to the other provisions of this Schedule, the amendments made by these Regulations apply prospectively even in relation to procurements which had commenced before the amendments came into force.

(2) But, subject to the following provisions of this Schedule, an amendment made by these Regulations does not apply to the extent that the provision amended refers or relates (directly or indirectly) to something which in fact occurred before the amendments came into force.

(3) Accordingly, for example—

(a) where, before exit day, a contract notice was published in the Official Journal after being sent for such publication in accordance with unamended regulations 49 and 51 of the Public Contracts Regulations 2015, but exit day occurred before the sending of a contract award notice to the EU Publications Office in accordance with unamended regulations 50 and 51 of those Regulations in relation to that procurement—

(i) the contract award notice is, on or after exit day, to be submitted for publication on the UK e-notification service in accordance with amended regulations 50 and 51 of those Regulations; but

(ii) the information to be included in that notice by virtue of amended regulation 50(2)(a) of those Regulations includes the date and reference of the publication of the contract notice in the Official Journal because that publication occurred before exit day and, accordingly, amended regulation 50(2)(a)(iv) of those Regulations is to be disregarded in relation to that publication;

(b) even in relation to a procurement that is commenced on or after exit day, the amendment made by regulation 5(8)(a) of these Regulations to regulation 9(1)(a) of the Public Contracts Regulations 2015 does not apply if the legal instrument referred to in regulation 9(1)(a) was concluded before exit day (and, in such circumstances, the test laid down by regulation 9(1)(a) accordingly continues to be whether the instrument had been concluded in accordance with “the Treaties” as defined in the unamended regulation 2(1) of those Regulations rather than whether the instrument had been concluded in accordance with “the Retained Treaties” as defined by the amended regulation 2(1) of those Regulations).

### **Savings in relation to procurements commenced before exit day**

3.—(1) The amendments made by these Regulations described in sub-paragraph (2) do not affect any procurement commenced before exit day.

(2) The amendments are—

*Status: This is the original version (as it was originally made).*

- (a) the amendments to the following provisions of the Public Contracts Regulations 2015—
  - (i) the definition of “ESPD” in regulation 2(1) (definitions);
  - (ii) regulation 25 (conditions relating to the GPA and other international agreements);
  - (iii) regulation 34(25) (which, as unamended, refers to a renewed ESPD as a means of proof in relation to dynamic purchasing systems);
  - (iv) regulation 42(9) (which, as unamended, refers to a legal act of the EU in relation to mandatory accessibility requirements in technical specifications);
  - (v) regulation 57 (exclusion grounds);
  - (vi) regulation 58 (selection criteria) and the related omission of Schedule 5 (professional and trade registers etc);
  - (vii) regulation 59 (European Single Procurement Document);
  - (viii) in regulation 62 (quality assurance standards and environmental management standards), paragraph (2) and the words after paragraph (4)(c);
  - (ix) regulation 71(5) (which, as unamended, refers to ESPDs in respect of subcontractors);
- (b) the amendments made to regulation 38 of the Concession Contracts Regulations 2015 (selection of and qualitative assessment of candidates);
- (c) the amendments made to the following provisions of the Utilities Contracts Regulations 2015—
  - (i) regulation 43 (conditions relating to the GPA and other international agreements);
  - (ii) regulation 60(8) (which, as unamended, refers to a legal act of the EU in relation to mandatory accessibility requirements in technical specifications);
  - (iii) in regulation 81 (quality assurance standards and environmental management standards), paragraph (2) and the words after paragraph (4)(c);
  - (iv) regulation 87(5) (which, as unamended, refers to ESPDs within the meaning of regulation 59 of the Public Contracts Regulations 2015).

(3) To the extent that it is saved by paragraphs (1) and (2)(a)(vii), regulation 59(11)(a) of the Public Contracts Regulations 2015 has effect as if the reference in it to “any member State” continued to include the United Kingdom.

#### **Procurement involving contracting authorities or utilities from other member States**

- 4.—(1) This paragraph applies in relation to the omission, by these Regulations, of—
- (a) regulation 39 of the Public Contracts Regulations 2015 (procurement involving contracting authorities from other member States);
  - (b) regulation 57 of the Utilities Contracts Regulations 2016 (procurement involving utilities from other member States).
- (2) Those omissions do not imply—
- (a) any prohibition of the activities authorised by the omitted regulations (which activities might, accordingly, be carried on to any extent that would have been lawful if the omitted regulations had never existed); or
  - (b) that any matters provided for in those regulations are necessarily to have a different effect unless so required by applicable law (including rules for resolving any conflicts between the laws of different jurisdictions).

### **Saving with modification of certain references to compatibility with EU law**

5.—(1) The omission by these Regulations of the words “to the extent that they are compatible with EU law” from—

- (a) regulation 42(11) of the Public Contracts Regulations 2015 (technical specifications), and
- (b) regulation 60(10) of the Utilities Contracts Regulations 2016 (technical specifications),

does not affect any procurement commenced before exit day.

(2) To the extent that those words are saved by paragraph (1), the reference to EU law is to be construed as referring to EU law as it had effect immediately before exit day.

### **Saving of implied power to terminate contracts**

6.—(1) This paragraph applies where—

- (a) a contract was awarded before exit day; and
- (b) immediately before exit day, the contract contained a power—
  - (i) implied by regulation 73(3) of the Public Contracts Regulations 2015 to terminate the contract on the ground mentioned in regulation 73(1)(c) of those Regulations;
  - (ii) implied by regulation 44(3) of the Concession Contracts Regulations 2016 to terminate the contract on the ground mentioned in regulation 44(1)(c) of those Regulations; or
  - (iii) implied by regulation 89(3) of the Utilities Contracts Regulations 2016 to terminate the contract on the ground mentioned in regulation 89(1)(c) of those Regulations.

(2) On and after exit day, that power continues despite the omission, by these Regulations, of regulation 73(1)(c), 44(1)(c) or 89(1)(c), as the case may be.

### **Saving with modification of certain references to design contests in relation to procurements commenced before exit day**

7.—(1) The omission by these Regulations of—

- (a) paragraph (2) of regulation 80 of the Public Contracts Regulations 2015 (rules on the organisation of design contests and the selection of participants), and
- (b) paragraph (2) of regulation 96 of the Utilities Contracts Regulations 2015 (rules on the organisation of design contests and the selection of participants and the jury),

does not affect any procurement commenced before exit day.

(2) To the extent that they are saved by sub-paragraph (1), the omitted paragraphs have effect on and after exit day as if each reference in them to a ‘member State’ continued to include the United Kingdom.

### **Saving, in relation to procurements commenced before exit day, of duty owed to economic operators from EEA states**

8.—(1) The amendments made by these Regulations to—

- (a) paragraph (2) of regulation 89 of the Public Contracts Regulations 2015 (duty owed to economic operators from EEA states) and the heading to that regulation;
- (b) paragraph (2) of regulation 50 of the Concession Contracts Regulations 2016 (duty owed to economic operators from EEA states) and the heading to that regulation;
- (c) paragraph (2) of regulation 104 of the Utilities Contracts Regulations 2016 (duty owed to economic operators from EEA States) and the heading to that regulation,

*Status: This is the original version (as it was originally made).*

do not affect any procurement commenced before exit day.

(2) To the extent that they are saved by sub-paragraph (1), the unamended paragraphs (2) have effect on and after exit day as if the word “another” read “an”.

**Saving, in relation to procurements commenced before exit day, of duty owed to economic operators from states party to certain bilateral agreements**

9.—(1) The omission by these Regulations of—

- (a) paragraphs (1)(b) and (3) of regulation 90 of the Public Contracts Regulations 2015 (duty owed to economic operators from certain other states);
- (b) paragraphs (1)(b) and (3) of regulation 51 of the Concession Contracts Regulations 2015 (duty owed to economic operators from certain other states);
- (c) paragraphs (1)(b) and (3) of regulation 105 of the Public Contracts Regulations 2015 (duty owed to economic operators from certain other States),

do not affect any procurement commenced before exit day.

(2) To the extent that they are saved by sub-paragraph (1) (and, subsequently, by paragraph 10), the unamended provisions referred to in sub-paragraph (1) have effect on and after exit day—

- (a) as if the United Kingdom were still an EEA state; and
- (b) as if, in each unamended paragraph (3)(a)—
  - (i) the words “there is” read “immediately before exit day there was”; and
  - (ii) the words “is bound” read “was bound”.

**Saving in relation to procurements commenced before regulations 6, 8 and 10 come into force**

10. The amendments made by regulations 6, 8 and 10 do not affect any procurement commenced before those regulations come into force.

**Saving in relation to affiliated undertakings**

11. Where—

- (a) a procurement was commenced before exit day, and
- (b) immediately before exit day, an undertaking fell within the definition of “affiliated undertaking” in regulation 13(5) of the Concessions Contracts Regulations 2016 or regulation 29(5) of the Utilities Contracts Regulations 2016,

the amendments made by these Regulations to those regulations do not prevent that undertaking from continuing, on and after exit day, to fall within that definition in relation to that procurement.



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## 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 (a), (b), (d), (e), (f) and (g) of section 8(2)) arising from the withdrawal of the UK from the European Union.

These Regulations make amendments in the field of public procurement. Part 2 amends primary legislation. Part 3 amends subordinate legislation. In particular, Chapters 1, 2 and 3 of Part 3 amend 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), respectively, and Chapter 4 amends other subordinate legislation. Part 4 amends, and in one case revokes, retained direct EU legislation. Part 5 provides for certain rights etc. derived from certain international agreements to cease. The Schedule makes transitional and saving provision.

A full impact assessment has not been produced for this Instrument as no, or no significant, impact on the private or voluntary sector is foreseen.