
STATUTORY INSTRUMENTS

2019 No. 697

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

Exit-related amendments of the Defence and Security Public Contracts Regulations 2011

3.—(1) The Defence and Security Public Contracts Regulations 2011 (as amended by regulation 2) are further amended as follows.

(2) In regulation 3 (interpretation), in paragraph (1)—

(a) before the definition of “aircraft” insert—

““the 1958 List” means, subject to regulation 65A, 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;”;

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

(c) in the definition of “contract notice”—

(i) in the words before paragraph (a), for “sent to the Official Journal” substitute “submitted to the UK e-notification service”;

(ii) in paragraph (a), at the beginning insert “ subject to paragraph 2 of Schedule A1, ”;

(d) in the definition of “contractor”, in paragraph (b), for “and established in a member State” substitute “ the United Kingdom and is established in the United Kingdom or Gibraltar ”;

(e) in the definition of “military equipment”, in paragraph (b), for the words from “list” to the end substitute “ 1958 List ”;

(f) for the definition of “national of a member State” substitute the following—

““national of the United Kingdom” means—

(a) in the case of a person who is not an individual, a person formed in accordance with the laws of—

(i) any part of the United Kingdom, or

(ii) Gibraltar,

and which has its registered office, central administration or principal place of business in the United Kingdom or in Gibraltar;

(b) in the case of an individual—

(i) a British Citizen, or

(ii) a person who is a British Overseas Territories Citizen by virtue of a connection with Gibraltar;”;

(g) in the definition of “prior information notice”—

(i) for “sent to the Official Journal” substitute “ submitted to the UK e-notification service ”;

(ii) in paragraph (a), at the beginning insert “ subject to paragraph 3 of Schedule A1, ”;

- (h) in the definition of “services provider”, in paragraph (b), for “and established in a member State” substitute “ the United Kingdom and is established in the United Kingdom or Gibraltar ”;
 - (i) in the definition of “supplier”, in paragraph (b), for “and established in a member State” substitute “ the United Kingdom and is established in the United Kingdom or Gibraltar ”;
 - (j) after the definition of “the TFEU” insert—
 - “the UK e-notification service” has the meaning mentioned in regulation 48(9), 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 48(9);”.
- (3) In regulation 6 (application)—
- (a) in paragraphs (1) and (3) for “Articles 36, 51, 52, 62 and 346 of the TFEU” substitute “ specified retained EU law ”;
 - (b) after paragraph (3) insert—
 - “(3A) 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.
 - (3B) The arms, munitions and war material to which paragraph (3A)(b) applies are those included in the 1958 List.
 - (3C) Subject to the effect of any regulations made under regulation 65A, any measures which, if they had been taken immediately before [F¹IP completion day], would have been covered by Article 346 of the TFEU shall be regarded as measures covered by paragraph (3A).”;
 - (c) after paragraph (6) insert—
 - “(7) In this regulation, “specified retained EU law” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which Article 36, 51, 52 or 62 of the TFEU had immediately before [F¹IP completion day] in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section.”.
- (4) In regulation 7 (general exclusions), in paragraph (1)—
- (a) in sub-paragraph (c), for “at least two member states” substitute “ the United Kingdom and a member State ”;
 - (b) in sub-paragraph (d)—
 - (i) for “which is not a member State” substitute “ other than the United Kingdom or Gibraltar ”; and
 - (ii) for “territory of the EU” substitute “ United Kingdom and Gibraltar ”;
 - (c) in sub-paragraph (e)(i), for “a State which is not a member State” substitute “ another State ”;
 - (d) in sub-paragraph (f), for “a member State” substitute “ the United Kingdom ”.
- (5) In regulation 9 (thresholds)—

- (a) in paragraph (2)—
 - (i) in the words before sub-paragraph (a), after “sum” insert “ for the time being ”;
 - (ii) in sub-paragraph (a), for the words from “Article” to “Directive” substitute “ regulation 16(1)(a) of the Utilities Contracts Regulations 2016 ^{M1} ”;
 - (iii) in sub-paragraph (b), for the words from “Article” to “Directive” substitute “ regulation 16(1)(b) of those Regulations ”;
 - (b) omit paragraphs (3) and (4);
 - (c) in paragraph (10)—
 - (i) in sub-paragraph (a), for “80,000 euro” substitute “[^{F2}£70,778]”;
 - (ii) in sub-paragraph (b), for “1,000,000 euro” substitute “[^{F3}£884,720]”;
 - (d) in paragraph (18), for “sent to the Official Journal” substitute “ submitted to the UK e-notification service ”.
- (6) In regulation 12 (technical specifications in the contract documents)—
- (a) in paragraph (1), in the definition of “recognised bodies”, after “inspection bodies” insert “ established in the United Kingdom or Gibraltar ”;
 - (b) in paragraph (4), in the words after sub-paragraph (b), before “EU obligations” insert “ retained ”;
 - (c) omit paragraph (14).
- (7) In regulation 14 (prior information notices)—
- (a) in paragraph (1), for the words from “send” to “Commission” substitute “ submit a prior information notice to the UK e-notification service ”;
 - (b) in paragraph (3), for the words from “send” to the end substitute “ submit a notice of publication on a buyer profile to the UK e-notification service ”;
 - (c) in paragraph (4)—
 - (i) in the words before sub-paragraph (a), for “sent to the Commission” substitute “ submitted to the UK e-notification service ”;
 - (ii) in sub-paragraph (a), at the beginning insert “ subject to paragraph 4 of Schedule A1, ”.
- (8) In regulation 16 (use of the negotiated procedure without prior publication of a contract notice)—
- (a) in paragraph (1)(e), for “a member State” substitute “ the United Kingdom ”;
 - (b) omit paragraph (2).
- (9) In regulation 17 (the restricted procedure)—
- (a) in paragraph (2)—
 - (i) for “sending to the Official Journal” substitute “ submitting to the UK e-notification service ”;
 - (ii) for the words “a notice, in the form of the contract notice,” substitute “ a contract notice ”;
 - (b) in paragraph (3)—
 - (i) omit “subject to paragraph (5),”;
 - (ii) for “37” substitute “ 30 ”;
 - (iii) for “of the despatch of the notice” substitute “ on which the notice was submitted to the UK e-notification service ”;

- (c) omit paragraph (5);
 - (d) in paragraph (6)—
 - (i) in the words before sub-paragraph (a), for “37” substitute “ 30 ”;
 - (ii) for the words from “that time limit” in the words before sub-paragraph (a) to the end of the paragraph substitute “ that time limit a time limit of not less than 10 days from the date on which the contract notice was submitted to the UK e-notification service ”;
 - (e) in paragraph (20)—
 - (i) in sub-paragraph (b), after “Directive” insert “ as modified by paragraph 2 of Schedule A1 ”;
 - (ii) in sub-paragraph (c), for “sent to the Official Journal” substitute “ submitted to the UK e-notification service ”.
- (10) In regulation 18 (the negotiated procedure)—
- (a) in paragraph (3)—
 - (i) for “sending to the Official Journal” substitute “ submitting to the UK e-notification service ”;
 - (ii) for the words “a notice, in the form of the contract notice,” substitute “ a contract notice ”;
 - (b) in paragraph (5)—
 - (i) for “paragraphs (7) and (8)” substitute “ paragraph (8) ”;
 - (ii) for “37” substitute “ 30 ”;
 - (iii) for “of despatch of the notice” substitute “ on which the notice was submitted to the UK e-notification service ”;
 - (c) omit paragraph (7);
 - (d) in paragraph (8)—
 - (i) in the words before sub-paragraph (a), for “37” substitute “ 30 ”;
 - (ii) omit sub-paragraph (a);
 - (iii) in sub-paragraph (b)—
 - (aa) omit the words from “where” to “paragraph (7)”;
 - (bb) for “of despatch of the contract notice” substitute “ on which the contract notice was submitted to the UK e-notification service ”.
- (11) In regulation 19 (the competitive dialogue procedure)—
- (a) in paragraph (4)—
 - (i) for “sending to the Official Journal” substitute “ submitting to the UK e-notification service ”;
 - (ii) omit “a notice, in the form of”;
 - (b) in paragraph (7)—
 - (i) omit “Subject to paragraph (9),”;
 - (ii) for “37” substitute “ 30 ”;
 - (iii) for “of the despatch of the notice” substitute “ on which the notice was submitted to the UK e-notification service ”;
 - (c) omit paragraph (9).

- (12) In regulation 23 (criteria for the rejection of economic operators)—
- (a) in paragraph (1)—
 - (i) omit sub-paragraph (g);
 - (ii) in sub-paragraph (m)—
 - (aa) for “39(1)” substitute “ 39(1)(a), (b), (d), or (e) ”;
 - (bb) for “the national law of any member State”, substitute “ the law of any part of the United Kingdom or of Gibraltar ”;
 - (b) in paragraph (4)—
 - (i) in sub-paragraphs (g) and (h), for “the member State in which the economic operator is established” substitute “ Gibraltar ”;
 - (ii) in sub-paragraph (i), for “25, 26 or 27” substitute “ 25 or 26 ”;
 - (iii) in sub-paragraph (j)—
 - (aa) for “member State in which the economic operator is established” substitute “ United Kingdom or Gibraltar ”;
 - (bb) for “in that member State” substitute “ in the United Kingdom or Gibraltar ”;
 - (cc) for “of that member State” substitute “ of the relevant part of the United Kingdom or, as the case may be, of Gibraltar ”;
 - (iv) for sub-paragraph (k) substitute the following—
 - “(k) is not—
 - (i) certified, by the Registrar of Companies in the United Kingdom or Gibraltar, as incorporated; or
 - (ii) certified as having declared on oath that it is carrying on business in the trade in question in the United Kingdom, or in Gibraltar, at a specific place of business and under a specific trading name.”;
 - (c) in paragraph (5)—
 - (i) in sub-paragraph (a)(ii), for the words from “in” to “record” substitute “ where such a judicial record is not maintained in respect of the relevant place ”;
 - (ii) in sub-paragraph (c)—
 - (aa) omit “in a member State”;
 - (bb) after “issued” insert “ in respect of the relevant place ”;
 - (d) for paragraph (6) substitute—
 - “(6) In this regulation—
 - “relevant”, in relation to a judicial, administrative or competent authority, notary public or Commissioner for oaths means an authority designated in respect of the relevant place, or a notary public or Commissioner for oaths in the relevant place;
 - “relevant place” means whichever of the following the context requires—
 - (a) the United Kingdom;
 - (b) the relevant part of the United Kingdom;
 - (c) Gibraltar.”;
 - (e) omit paragraphs (7) to (14).
- (13) In regulation 24 (information as to economic and financial standing)—
- (a) in paragraph (1), in the words before sub-paragraph (a), omit “regulation 27 and”;

- (b) in paragraph (6)(b), for “member State in which the economic operator is established” substitute “relevant part of the United Kingdom or of Gibraltar”.
- (14) In regulation 25 (information as to technical or professional ability)—
 - (a) in paragraph (1), at the beginning, omit “Subject to regulation 27,”;
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (f), for “of the member State in which the economic operator is established” substitute “in the United Kingdom or Gibraltar”;
 - (ii) in sub-paragraph (j), for “territory of the EU” substitute “United Kingdom and Gibraltar”;
 - (iii) in sub-paragraph (n)(ii), for “any member State” substitute “the United Kingdom or Gibraltar”;
 - (c) in paragraph (4)(a)—
 - (i) in paragraph (i), omit sub-paragraph (aa);
 - (ii) for paragraph (ii) substitute the following—
 - “(ii) from either—
 - (aa) an independent body established in the United Kingdom conforming to retained EU law or the relevant European or international standards concerning certification; or
 - (bb) an independent body established in Gibraltar conforming to the law of Gibraltar or the relevant European or international standards concerning certification; or”.
- (15) In regulation 26 (supplementary information), omit “Subject to regulation 27,”.
- (16) Omit regulation 27 (official lists of approved economic operators).
- (17) In regulation 29 (corporations), omit paragraph (1).
- (18) In regulation 31 (criteria for the award of a contract)—
 - (a) in paragraph (1), in the words before sub-paragraph (a), for “paragraphs (6) and (9)” substitute “paragraph (6)”;
 - (b) in paragraph (7)—
 - (i) after sub-paragraph (c) insert “or”;
 - (ii) omit sub-paragraph (e) and the preceding “or”;
 - (c) omit paragraphs (8) and (9).
- (19) In regulation 32 (contract award notice)—
 - (a) in paragraph (1)—
 - (i) in the words before sub-paragraph (a), for the words from “send” to “award notice” substitute “submit a contract award notice to the UK e-notification service”;
 - (ii) in sub-paragraph (a), at the beginning insert “subject to paragraph 5 of Schedule A1,”;
 - (b) in paragraph (2), in the words before sub-paragraph (a), after “Directive” insert “as modified by paragraph 5 of Schedule A1”;
 - (c) in paragraph (3), for “send” substitute “submit”.
- (20) In regulation 33 (information about contract award procedures), omit paragraph (14).
- (21) In regulation 36 (conditions for performance of contracts), in paragraph (1), before “EU law” insert “retained”.

- (22) In regulation 39 (security of supply)—
- (a) in paragraph (2)(a), omit “from the member State concerned”;
 - (b) omit paragraph (3).
- (23) In regulation 42 (thresholds and rules on advertising)—
- (a) in paragraph (2)(a), after “Directive,” insert “ but as if 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)—
 - (i) in the words before sub-paragraph (a), for “published in accordance with regulation 48(1)(b) and (3)” substitute “ submitted to the UK e-notification service ”;
 - (ii) in sub-paragraphs (a) and (b), for “despatched in accordance with regulation 48(1)(b)” substitute “ submitted to the UK e-notification service ”;
 - (c) omit paragraph (9).
- (24) In regulation 43 (award of a sub-contract without publication of a sub-contract notice), in paragraph (1)(e), for “a member State” substitute “ the United Kingdom ”.
- (25) In regulation 46 (statistical and other reports), omit paragraph (2).
- (26) In regulation 48 (publication of notices)—
- (a) in paragraph (1)—
 - (i) in the words before sub-paragraph (a), for “sent to the Official Journal” substitute “ submitted to the UK e-notification service ”;
 - (ii) omit sub-paragraph (b) and the preceding “and”;
 - (b) omit paragraphs (2) and (3);
 - (c) in paragraph (4)(a) and (b), for “despatched in accordance with paragraph (1)(b) or (2)” substitute “ submitted to the UK e-notification service ”;
 - (d) in paragraph (5), for “of despatch of that notice to the Official Journal” substitute “ on which that notice was submitted to the UK e-notification service ”;
 - (e) in paragraph (6)—
 - (i) for “despatched to the Commission” substitute “ submitted to the UK e-notification service ”;
 - (ii) for “that despatch” substitute “ that submission ”;
 - (f) in paragraph (7), for “despatch to the Official Journal” substitute “ submission to the UK e-notification service ”;
 - (g) in paragraph (8)—
 - (i) for “send” substitute “ submit ”;
 - (ii) for “Official Journal” substitute “ UK e-notification service ”;
 - (h) after paragraph (8) insert—

“(9) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(5) of the Public Contracts Regulations 2015 ^{M2}, and regulation 51(6) and (7) of those Regulations apply for the purposes of these Regulations as if the confirmations referred to in regulation 51(6)(b) were confirmations to contracting authorities (within the meaning of these Regulations) that notices submitted by them for publication on the UK e-notification service have been so published and confirming the date of publication in respect of each such notice.”.

- (27) In regulation 49 (means of communication), in paragraph (7), for “25, 26 and 27” substitute “25 and 26”.
- (28) In regulation 51 (duty owed to economic operators), in paragraph (1)—
- (a) in sub-paragraph (a), omit “31(9),”;
 - (b) in sub-paragraph (b), for “enforceable EU obligation” substitute “retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018”.
- (29) In regulation 54 (special time limits for seeking a declaration of ineffectiveness), in paragraph (3), for “in the Official Journal”, substitute “on the UK e-notification service”.
- (30) In regulation 60 (grounds for ineffectiveness), in paragraphs (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”.
- (31) After regulation 65 insert—

“PART 9A

REGULATION-MAKING POWERS

Modification of the 1958 List for the purposes of these Regulations

65A. 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.

Requirements relating to equipment for electronic receipt of documents

65B. The Secretary of State may make regulations amending any or all of the technical details and characteristics of the equipment for electronic receipt set out in sub-paragraphs (a), (e) and (f) of regulation 49(6).

General provisions about regulations under this Part

65C.—(1) Regulations under this Part are to be made by statutory instrument.

(2) A statutory instrument containing regulations under regulation 65A (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) Regulations under this Part may make supplementary, incidental, transitional, transitory or saving provision.”.

- (32) Before Schedule 1 insert the Schedule set out in the Schedule to these Regulations.
- (33) Omit Schedule 3.

F1	Words in reg. 3(3) substituted (31.12.2020 immediately before IP completion day) by The Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1450) , regs. 1(3), 3(2)(a)
F2	Sum in reg. 3(5)(c)(i) substituted (31.12.2020 immediately before IP completion day) by The Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1450) , regs. 1(3), 3(2)(b)(i)

- F3** Sum in reg. 3(5)(c)(ii) substituted (31.12.2020 immediately before IP completion day) by [The Defence and Security Public Contracts \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1450\)](#), regs. 1(3), 3(2)(b)(ii)

Commencement Information

- I1** Reg. 3 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1](#), [Sch. 5 para. 1\(1\)](#)), see [reg. 1\(3\)](#)

Marginal Citations

- M1** [S.I. 2016/274](#), amended by [S.I. 2019/560](#) (which, with effect from exit day, amends regulation 16(1) (a) and (b) so that they mention the sums of £363,424 and £4,551,413 respectively, and inserts a new regulation 16A under which those sums must be reviewed every two years and, if certain criteria are met, be changed by amending regulations made under that new regulation 16A); there are other amending instruments but none is relevant.
- M2** [S.I. 2015/102](#), amended by [S.I. 2019/560](#) (which inserts paragraphs (5) to (7) into regulation 51 with effect from exit day); there are other amending instruments but none is relevant.

Changes to legislation:

There are currently no known outstanding effects for the The Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2019, Section 3.