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STATUTORY INSTRUMENTS

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**2021 No. 573**

**The Public Procurement (Agreement on Government Procurement) (Amendment) Regulations 2021**

**PART 3**

**AMENDMENT OF SCOTTISH SECONDARY LEGISLATION**

**Amendment to the Public Contracts (Scotland) Regulations 2015**

- 5.—**(1) The Public Contracts (Scotland) Regulations 2015<sup>(1)</sup> are amended as follows.
- (2) In regulation 2 (interpretation), in paragraph (1)—
- (a) in the definition of “GPA”, for “between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before IP completion day” substitute “signed at Marrakesh on 15th April 1994, as amended on or before the United Kingdom’s accession”;
  - (b) after the definition of “GPA” insert—
    - ““GPA party” means any country, state or separate customs territory that is—
    - (a) listed in Schedule 1A; or
    - (b) a member State of the EU.”
- (3) In regulation 26 (conditions relating to the GPA and other international agreements)—
- (a) in the heading, for “the GPA and other international agreements” substitute “international agreements by which the EU is bound, other than the GPA”;
  - (b) in paragraph (1), for “Annexes 1, 2 and 4 to 7 to the EU’s Appendix 1 to the GPA and by the other international agreements” substitute “the international agreements, other than the GPA,”;
  - (c) for paragraph (2) substitute—
    - “(2) Paragraph (1) is to be applied as if the United Kingdom were a member State.”
- (4) After regulation 26 insert—

**“Conditions relating to the GPA**

**26A.** Where a contracting authority is covered by Annexes 1 or 2 to the United Kingdom’s Appendix 1 to the GPA in respect of a procurement that is covered by Annexes 4 to 7 to that Appendix, the contracting authority shall accord to the works, supplies, services and economic operators of any GPA party treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the United Kingdom.”

- (5) In regulation 87 (duty owed to economic operators)—

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<sup>(1)</sup> S.S.I. 2015/446, as amended by S.S.I. 2016/47 and S.S.I. 2020/468.

- (a) in the heading, after “operators” insert “, including those from countries with whom the EU has a relevant international agreement other than the GPA”;
  - (b) in paragraph (2), omit “Condition 1, Condition 2 or”;
  - (c) omit paragraphs (3), (3A) and (5).
- (6) After regulation 87 insert—

**“Duty owed to economic operators from GPA parties**

**87A.**—(1) The duty owed in accordance with regulation 87(1) (duty owed to economic operators, including those from countries with whom the EU has a relevant international agreement other than the GPA) is a duty owed also to an economic operator from a GPA party, but only where the agreement applies to the procurement concerned.

(2) For the purposes of paragraph (1), the GPA applies to a procurement if—

- (a) the procurement may result in the award of a contract of any description; and
- (b) at the relevant time—

- (i) a GPA party has agreed with the United Kingdom that the GPA shall apply to a contract of that description; and
- (ii) the economic operator is from that GPA party.

(3) In this regulation, “relevant time” means the date on which the contracting authority submitted a call for competition in respect of the contract to the UK e-notification service or would have done so had it been required by these Regulations to do so.”.

- (7) After Schedule 1 (central government authorities) insert—

“SCHEDULE 1A

Regulation 2(1)

PARTIES TO THE GPA

Armenia  
Australia  
Canada  
European Union  
Hong Kong, China  
Iceland  
Israel  
Japan  
Korea, Republic of  
Liechtenstein  
Moldova, Republic of  
Montenegro  
Netherlands with respect to Aruba  
New Zealand  
Norway  
the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu  
Singapore  
Switzerland

Ukraine  
United States”.

## **Amendments to the Utilities Contracts (Scotland) Regulations 2016**

- 6.—(1) The Utilities Contracts (Scotland) Regulations 2016(2) are amended as follows.
- (2) In regulation 2 (interpretation), in paragraph 1—
- (a) in the definition of “GPA”, for “between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before IP completion day” substitute “signed at Marrakesh on 15th April 1994, as amended on or before the United Kingdom’s accession”;
  - (b) after the definition of “GPA” insert—
    - ““GPA party” means any country, state or separate customs territory that is—
    - (a) listed in Schedule A1 (parties to the GPA); or
    - (b) a member State of the EU;”.
- (3) In regulation 41 (conditions relating to the GPA and other international agreements)—
- (a) in the heading, for “the GPA and other international agreements” substitute “international agreements by which the EU is bound, other than the GPA”;
  - (b) in paragraph (1), for “Annexes 3 to 7 to the EU’s Appendix 1 to the GPA and by the other international agreements” substitute “the international agreements, other than the GPA;”;
  - (c) for paragraph (2) substitute—
    - “(2) Paragraph (1) is to be applied as if the United Kingdom were a member State.”.
- (4) After regulation 41 insert—

### **“Conditions relating to the GPA**

**41A.**—(1) Where a utility within the meaning of regulation 4(1)(a) (utilities) is covered by Annex 3 to the United Kingdom’s Appendix 1 to the GPA in respect of a procurement that is covered by Annexes 4 to 7 to that Appendix, the utility must accord to the works, supplies, services and economic operators of any GPA party treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the United Kingdom.”.

- (5) In regulation 100 (duty owed to economic operators)—
- (a) in the heading, after “operators” insert “, including those from countries with whom the EU has a relevant international agreement other than the GPA”;
  - (b) in paragraph (2)(a), omit “Condition 1, Condition 2 or”;
  - (c) omit paragraphs (3), (3A) and (5).
- (6) After regulation 100 insert—

### **“Duty owed to economic operators from GPA parties**

**100A.**—(1) The duty owed in accordance with regulation 100(1) (duty owed to economic operators, including those from countries with whom the EU has a relevant international agreement other than the GPA) is a duty owed also to an economic operator from a GPA party, but only where the agreement applies to the procurement concerned.

- (2) For the purposes of paragraph (1), the GPA applies to a procurement if—
  - (a) the procurement may result in the award of a contract of any description; and
  - (b) at the relevant time—
    - (i) a GPA party has agreed with the United Kingdom that the GPA shall apply to a contract of that description; and
    - (ii) the economic operator is from that GPA party.
- (3) In this regulation, “relevant time” means—
  - (a) if the utility selects economic operators to tender for or to negotiate the contract in accordance with a qualification system established in accordance with regulation 75 (qualification systems), the date on which the selection commences;
  - (b) if the utility satisfies the requirement that there be a call for competition by indicating the intention to award the contract in a periodic indicative notice in accordance with regulations 65 (periodic indicative notices) or 89(1)(b) (publication of notices), the date on which the notice is submitted to the UK e-notification service; or
  - (c) in any other case, the date on which the utility submitted a contract notice (or design contest notice) to the UK e-notification service or would have done so if the requirement that there be a call for competition applied and the utility decided to satisfy that requirement by submitting such a notice.”.
- (7) Before Schedule 1 (activities constituting works) insert—

“SCHEDULE A1

Regulation 2(1)

PARTIES TO THE GPA

Armenia  
Australia  
Canada  
European Union  
Hong Kong, China  
Iceland  
Israel  
Japan  
Korea, Republic of  
Liechtenstein  
Moldova, Republic of  
Montenegro  
Netherlands with respect to Aruba  
New Zealand  
Norway  
the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu  
Singapore  
Switzerland  
Ukraine  
United States”.

## **Amendments to the Concession Contracts (Scotland) Regulations 2016**

7.—(1) The Concession Contracts (Scotland) Regulations 2016(3) are amended as follows.

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

(a) in the definition of “GPA”, for “between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before IP completion day” substitute “signed at Marrakesh on 15th April 1994, as amended on or before the United Kingdom’s accession”;

(b) after the definition of “GPA” insert—

““GPA party” means any country, state or separate customs territory that is—

(a) listed in Schedule 1A; or

(b) a member State of the EU.”.

(3) In regulation 51 (duty owed to economic operators)—

(a) in the heading, after “operators” insert “, including those from countries with whom the EU has a relevant international agreement other than the GPA”;

(b) in paragraph (2), omit “Condition 1, Condition 2 or”;

(c) omit paragraphs (3), (3A) and (5).

(4) After regulation 51 insert—

### **“Duty owed to economic operators from GPA parties**

**51A.**—(1) The duty owed in accordance with regulation 51(1) (duty owed to economic operators, including those from countries with whom the EU has a relevant international agreement other than the GPA) is a duty owed also to an economic operator from a GPA party, but only where the agreement applies to the procurement concerned.

(2) For the purposes of paragraph (1), the GPA applies to a procurement if—

(a) the procurement may result in the award of a contract of any description; and

(b) at the relevant time—

(i) a GPA party has agreed with the United Kingdom that the GPA shall apply to a contract of that description; and

(ii) the economic operator is from that GPA party.

(3) In this regulation, “relevant time” means the date on which the contracting authority submitted a call for competition in respect of the contract to the UK e-notification service or would have done so if it has been required by these Regulations to do so.”.

(5) After Schedule 1 (activities constituting works) insert—

#### “SCHEDULE 1A

Regulation 2(1)

#### PARTIES TO THE GPA

Armenia

Australia

Canada

European Union

Hong Kong, China

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Iceland

Israel

Japan

Korea, Republic of

Liechtenstein

Moldova, Republic of

Montenegro

Netherlands with respect to Aruba

New Zealand

Norway

the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

Singapore

Switzerland

Ukraine

United States".