

EXPLANATORY MEMORANDUM TO

THE PUBLIC PROCUREMENT (AGREEMENT ON GOVERNMENT PROCUREMENT) (THRESHOLDS) (AMENDMENT) REGULATIONS 2023

2023 No. 1117

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Cabinet Office and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument implements the changes required to update the United Kingdom's (UK) public procurement reviewable financial thresholds which govern the procedures for the award of public contracts for good, works and services. These changes are required to ensure the UK complies with its obligations under the Agreement on Government Procurement (GPA).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument amends the Public Contracts Regulations 2015 (PCR), the Concession Contracts Regulations 2016 (CCR) and the Utilities Contracts Regulations 2016 (UCR) – the Procurement Regulations. The SI will be made under the negative procedure using powers in regulation 5A and 84A(7) of the Public Contracts Regulations 2015, regulation 9A and 65ZA(6) of the Concession Contracts Regulations 2016 and regulation 16A and 119A(7) of the Utilities Contracts Regulations 2016.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is England, Wales and Northern Ireland. Although it should be noted that the thresholds being amended by regulation 4(2) (that is the thresholds in the Utilities Contracts Regulations 2016) are applicable to procurement carried out under the Defence and Security Public Contracts Regulations 2011, which applies to the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument amends the Procurement Regulations to provide for the biennial revision of the thresholds in regulation 5(1)(a), (b) and (c) of the PCR, regulation 9(1) of the CCR and regulation 16(1)(a) and (b) of the UCRs (the reviewable financial thresholds) in accordance with the UK's obligations under the GPA.
- 6.2 The last update to the reviewable financial thresholds came into effect on 1 January 2022. Pursuant to regulation 5A of the PCR (and parallel provisions in the UCR and

CCR), the Minister for the Cabinet Office must review and revise the reviewable financial thresholds every two years to verify whether they correspond with the thresholds established for those purposes in the GPA. This must be done by calculating their sterling value in terms of the special drawing rights mentioned in the GPA. If the sterling value differs from the current financial thresholds, the Minister must make regulations amending the thresholds which must be made and laid before Parliament before 1 November to come into force on 1 January.

- 6.3 The reviewable financial thresholds amended by this instrument therefore apply to all procurement regulated by the Procurement Regulations. The thresholds for small lots and light touch regime services are not reviewable financial thresholds and these remain the same. The thresholds in the UCR also apply to procurement regulated by the Defence and Security Public Contracts Regulations 2011 (see regulation 9 of those Regulations).

7. Policy background

What is being done and why?

- 7.1 The Agreement on Government Procurement (GPA) is a plurilateral agreement within the World Trade Organisation framework between 22 parties (covering 49 WTO members) including the US, Canada, the EU and Japan. The GPA mutually opens government procurement markets among its parties, and seeks to address trade barriers, such as preferential treatment of domestic goods and services, in the government procurement sector.
- 7.2 Participation in the GPA provides UK businesses with legally guaranteed access to procurement opportunities covered by the GPA, collectively worth an estimated £1.3 trillion per annum. It also supports securing value for money in UK public services through increased competition. The UK acceded to the GPA as an independent member following its withdrawal from the EU.
- 7.3 The reviewable financial thresholds in the Procurement Regulations are the financial levels at which public procurement opportunities are subject to the full suite of regulations governing public contracts. These reviewable thresholds are revised every two years to take account of currency fluctuations, and to ensure the UK complies with its obligations under the GPA.
- 7.4 This instrument will come into force on 1 January 2024 and will result in these thresholds increasing by 0.7%.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union as it implements the UK's obligations in respect of the reviewable financial thresholds to reflect the UK's independent membership of the GPA.

9. Consolidation

- 9.1 Legislation to reform public procurement has been introduced in Parliament.

10. Consultation outcome

- 10.1 There has been no consultation on this instrument. The main change is to implement the biennial update to the reviewable financial thresholds and reflect the UK's obligations as an independent member of the GPA. Section 39(6) of the Small Business, Enterprise and Employment Act 2015 is clear that there is no need to consult for procurement SIs.
- 10.2 Regular discussions on the content of this instrument have been held with the devolved administrations throughout the drafting process in accordance with the principles contained in the Devolution Memorandum of Understanding, dated October 2013.

11. Guidance

- 11.1 A Procurement Policy Note will be published and issued to practitioners to notify them of the changes ahead of them coming into effect.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the framework and principles underlying the regulations being amended have not been substantially amended. Modifications contained in this instrument have been made to ensure the Procurement Regulations function effectively and accord with the UK's international obligations. Therefore, any impact is expected to be low and are below the threshold required to carry out a full impact assessment.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The impact on small businesses arising from this instrument is expected to be low.

14. Monitoring & review

- 14.1 As this instrument is amending provisions in connection with procurement only, the duty to review in section 28 of the Small Business, Enterprise and Employment Act 2015 does not apply and no review clause is required.

15. Contact

- 15.1 Julie Bremner at the Cabinet Office, telephone: 07771 957 746 or email: Julie.bremner@cabinetoffice.gov.uk with any queries regarding the instrument.
- 15.2 Edward Green, Deputy Director for the International and Reform Team, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Alex Burghart, Parliamentary Secretary for the Cabinet Office, can confirm that this Explanatory Memorandum meets the required standard.