

*Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union
(Withdrawal) Act 2018, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2019 No.

EXITING THE EUROPEAN UNION PUBLIC PROCUREMENT

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

Made - - - -

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⁽¹⁾. 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));

(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)—