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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and replace the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019 (S.S.I. 2019/112 – “the first exit S.S.I.”), the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Amendment Regulations 2019 (S.S.I. 2019/114 – “the second exit S.S.I.”) and the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Amendment (No. 2) Regulations 2019 (S.S.I. 2019/414 – “the third exit S.S.I.”). The second exit S.S.I. and the third exit S.S.I. amend the first exit S.S.I. As a result, the revoked Regulations will not come into force.

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (c.68) and paragraph 1(1) and (3) of Part 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 arising from the withdrawal of the UK from the European Union. Many of the provisions in these Regulations are unchanged from the first S.S.I. (as amended by the second exit S.S.I. and the third exit S.S.I.), but additional deficiencies are addressed and some of the original provisions are changed.

These Regulations make amendments in the field of public procurement. Part 2 amends the Procurement Reform (Scotland) Act 2014 (asp 12). Part 3 amends secondary legislation. In particular, Chapters 1, 2, 3, 4, and 5 of Part 3 amend the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446), the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49), the Concession Contracts (Scotland) Regulations 2016 (S.S.I. 2016/65), the Procurement (Scotland) Regulations 2016 (S.S.I. 2016/145), the Public Contracts (Scotland) Regulations 2012 (S.S.I. 2012/88) and the Utilities Contract (Scotland) Regulations 2012 (S.S.I. 2012/89) respectively. Part 4 amends retained direct EU legislation. The schedule makes transitional and savings provisions.

These Regulations are also made in exercise of the powers conferred by paragraph 11G(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018 in order to implement Title 8 (ongoing public procurement and similar procedures) of Part 3 of the withdrawal agreement and the corresponding Title 5 of Part 3 of the EEA EFTA separation agreement. For the meaning of “withdrawal agreement”, “EEA EFTA separation agreement” and “IP completion day” see section 39(1) of the European Union (Withdrawal Agreement) Act 2020. In particular, the schedule to these Regulations differs markedly from the schedule to the first exit SI in providing for procedures that are ongoing on IP completion day to continue without being subject to any substantive changes in the procurement rules applicable to them. The schedule also contains various other savings that are unconnected with those agreements.

The power contained in section 2(2) of the European Communities Act 1972 has been relied upon for amendments made by regulation 4(8)(a)(i) and (22)(a).

No business or regulatory impact assessment has been prepared in relation to these Regulations as no, or no significant, impact upon business, charities or voluntary bodies is foreseen.