



Procurement Act 2023

2023 CHAPTER 54

PART 7

IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS

89 Treaty state suppliers

- (1) In this Act, a “treaty state supplier” means a supplier that is entitled to the benefits of an international agreement specified in Schedule 9.
- (2) But a supplier is a treaty state supplier only to the extent that it is entitled to the benefits of an international agreement specified in Schedule 9 in relation to the procurement being—
 - (a) carried out, or
 - (b) challenged.
- (3) An appropriate authority may by regulations amend Schedule 9 for the purpose of—
 - (a) specifying an international agreement to which the United Kingdom is a signatory, or
 - (b) removing, or amending a reference to, an international agreement.
- (4) In subsection (3)(a), the reference to being a signatory to an international agreement includes a reference to having—
 - (a) exchanged instruments, where the exchange constitutes the agreement;
 - (b) acceded to the agreement.
- (5) In this Part a reference to a supplier being entitled to the benefits of a treaty includes a reference to a supplier being entitled by virtue of the place of origin of goods, services or works supplied.
- (6) In this Act—
 - (a) a reference to a treaty state supplier does not include a reference to a supplier that is entitled to the benefits of an international agreement only by reference to the United Kingdom being party to that agreement;

Status: This is the original version (as it was originally enacted).

- (b) a reference to a state or territory being party to an agreement includes a reference to a state or territory being part of an organisation of states or territories that is party to an agreement.

90 Treaty state suppliers: non-discrimination

- (1) A contracting authority may not, in carrying out a procurement, discriminate against a treaty state supplier.
- (2) A contracting authority discriminates against a treaty state supplier if it treats the supplier less favourably than it treats, or would treat, a United Kingdom supplier or other treaty state supplier because of—
 - (a) the supplier’s association with the supplier’s treaty state, or
 - (b) the supplier’s lack of association with—
 - (i) the United Kingdom, or
 - (ii) another treaty state.
- (3) On a comparison of cases for the purposes of subsection (2), there must be no material difference between the circumstances relating to each case.
- (4) In this section, a reference to a supplier’s association with a state includes a reference to the fact that the state is the place of origin of goods, services or works supplied by the supplier.
- (5) In this section, a “treaty state” means a state, territory or organisation of states or territories that is party to an international agreement specified in Schedule 9, other than the United Kingdom.
- (6) And, in subsection (2)(a), a treaty state is a supplier’s treaty state if the supplier is entitled to the benefits of such an international agreement by reference to that treaty state being party to the agreement.
- (7) In this Act, “United Kingdom supplier” means a supplier that is—
 - (a) established in, or controlled or mainly funded from, the United Kingdom, a British Overseas Territory or a Crown Dependency, and
 - (b) is not a treaty state supplier.

91 Treaty state suppliers: non-discrimination in Scotland

- (1) A Minister of the Crown or the Scottish Ministers may by regulations make provision for the purpose of ensuring that treaty state suppliers are not discriminated against in the carrying out of devolved procurements.
- (2) Regulations under subsection (1) may only include provision that is equivalent to provision in—
 - (a) subsection (1), (2), (5) or (6) of section 89 (treaty state suppliers),
 - (b) section 90 (treaty state suppliers: non-discrimination), or
 - (c) Schedule 9 (specified international agreements).
- (3) Regulations under subsection (1) may not be made unless a Minister of the Crown considers, or the Scottish Ministers consider, that the regulations are necessary in order to ratify or comply with an international agreement to which the United Kingdom is a signatory.

- (4) In subsection (3), the reference to being a signatory to an international agreement includes a reference to having—
 - (a) exchanged instruments, where the exchange constitutes the agreement;
 - (b) acceded to the agreement.
- (5) In this section—
 - (a) “devolved procurement” means procurement carried out by a devolved Scottish authority;
 - (b) a reference to discrimination is a reference to discrimination as defined in section 90.
- (6) Regulations under subsection (1) may modify primary legislation (whenever passed).

92 Trade disputes

- (1) This section applies where there is, or has been, a dispute relating to procurement between the United Kingdom and another state, territory or organisation of states or territories in relation to an international agreement specified in Schedule 9.
- (2) An appropriate authority or the Scottish Ministers may by regulations make such provision relating to procurement as the authority considers, or the Scottish Ministers consider, appropriate in consequence of the dispute.
- (3) Any provision made by the Scottish Ministers under subsection (2) must relate to procurement—
 - (a) carried out by devolved Scottish authorities, or
 - (b) under devolved Scottish procurement arrangements.
- (4) Regulations under this section may include provision modifying primary legislation, whenever passed (including this Act).
- (5) In subsection (1), the reference to an international agreement specified in Schedule 9 does not include a reference to the Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part, signed at Brussels and London on 30 December 2020.