

## SCHEDULE

Section 3(4)

### AMENDMENTS TO PROCUREMENT REGULATIONS

#### PART 1

##### AMENDMENTS TO PROCUREMENT REGULATIONS FOR ENGLAND AND WALES AND NORTHERN IRELAND

###### *The Public Contracts Regulations 2015*

- 1 The Public Contracts Regulations 2015 ([S.I. 2015/102](#)) are amended as follows.
  - 2 (1) Regulation 9 (public contracts awarded, and design contests organised, pursuant to international rules) is amended as follows.
    - (2) In paragraph (1)—
      - (a) in the words before sub-paragraph (a), omit “any of the following”;
      - (b) omit sub-paragraph (b).
    - (3) For paragraph (2) substitute—

“(2) This Part does not apply to a relevant international public contract or design contest in a case where the applicable procurement rules restrict the participation of economic operators in the procedure.

(2A) In the case of a relevant international public contract or design contest where the applicable procurement rules do not restrict the participation of economic operators in the procedure, the only provision of this Part that applies is regulation 25B (equal treatment of economic operators).”
    - (4) Omit paragraph (3).
    - (5) In paragraph (4), omit “paragraphs (1) to (3) of”.
    - (6) At the end insert—

“(5) In this regulation, “relevant international public contract or design contest” means a public contract or design contest that—
      - (a) the contracting authority awards or organises in accordance with procurement rules provided by an international organisation or international financing institution, and
      - (b) is fully financed, or co-financed for the most part, by that organisation or institution.”
- 3 In regulation 50 (contract award notices), in paragraph (2)(a), after paragraph (ii) insert—

“(iia) in paragraph 13, the words “or the highest tender and lowest tender taken into consideration” were omitted;”.
- 4 In Schedule 4A (international trade agreements), at the end insert—

“Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Santiago on 8 March 2018, including the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive

and Progressive Agreement for Trans-Pacific Partnership, signed at Auckland and Bandar Seri Begawan on 16 July 2023.”

#### *The Concession Contracts Regulations 2016*

5 The Concession Contracts Regulations 2016 ([S.I. 2016/273](#)) are amended as follows.

6 (1) Regulation 10 (general exclusions) is amended as follows.

(2) In paragraph (5)—

- (a) in the words before sub-paragraph (a), omit “any of the following”;
- (b) omit sub-paragraph (b).

(3) For paragraph (6) substitute—

“(6) These Regulations do not apply to a relevant international concession contract in a case where the applicable procurement rules restrict the participation of economic operators in the procedure.

(6A) In the case of a relevant international concession contract where the applicable procurement rules do not restrict the participation of economic operators in the procedure, the only regulation that applies is regulation 8 (equal treatment of economic operators).”

(4) Omit paragraph (7).

(5) In paragraph (8), for “(7)” substitute “(6A)”.

(6) After paragraph (8) insert—

“(8A) In this regulation, “relevant international concession contract” means a concession contract that—

- (a) the contracting authority or utility awards in accordance with procurement rules provided by an international organisation or international financing institution, and
- (b) is fully financed, or co-financed for the most part, by that organisation or institution.”

7 In Schedule 4 (international trade agreements), at the end insert—

“Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Santiago on 8 March 2018, including the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Auckland and Bandar Seri Begawan on 16 July 2023.”

#### *The Utilities Contracts Regulations 2016*

8 The Utilities Contracts Regulations 2016 ([S.I. 2016/274](#)) are amended as follows.

9 (1) Regulation 20 (contracts awarded and design contests organised pursuant to international rules) is amended as follows.

(2) In paragraph (1)—

- (a) in the words before sub-paragraph (a), omit “any of the following”;
- (b) omit sub-paragraph (b).

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(3) For paragraph (2) substitute—

“(2) These Regulations do not apply to a relevant international contract or design contest in a case where the applicable procurement rules restrict the participation of economic operators in the procedure.

(2A) In the case of a relevant international contract or design contest where the applicable procurement rules do not restrict the participation of economic operators in the procedure, the only regulation that applies is regulation 43B (equal treatment of economic operators).”

(4) Omit paragraph (3).

(5) In paragraph (4), omit “paragraphs (1) to (3) of”.

(6) At the end insert—

“(5) In this regulation, “relevant international contract or design contest” means a contract or design contest that—

(a) the utility awards or organises in accordance with procurement rules provided by an international organisation or international financing institution, and

(b) is fully financed, or co-financed for the most part, by that organisation or institution.”

10 In regulation 70 (contract award notices), in paragraph (2)(a), after paragraph (iii) insert—

“(iiia) in paragraph 12, for the words from “or the prices” to the end there were substituted “for the contract awarded”.”

11 In Schedule 3 (international trade agreements), at the end insert—

“Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Santiago on 8 March 2018, including the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Auckland and Bandar Seri Begawan on 16 July 2023.”

## PART 2

### AMENDMENTS TO PROCUREMENT REGULATIONS FOR SCOTLAND

#### *The Public Contracts (Scotland) Regulations 2015*

12 The Public Contracts (Scotland) Regulations 2015 ([S.S.I. 2015/446](#)) are amended as follows.

13 (1) Regulation 10 (exclusions: public contracts awarded, and design contests organised, pursuant to international rules) is amended as follows.

(2) In paragraph (1), omit sub-paragraph (b) (and the “or” preceding it).

(3) For paragraph (2) substitute—

“(2) These Regulations do not apply to procurement for the award of a relevant international public contract or the organisation of a relevant international design contest in a case where the applicable procurement rules restrict the participation of economic operators in the procedure.

(2A) In the case of procurement for the award of a relevant international public contract or relevant international design contest where the applicable procurement rules do not restrict the participation of economic operators in the procedure, the only regulation that applies to the procurement is regulation 26B (equal treatment of economic operators).”

(4) At the end insert—

“(4) In this regulation, “relevant international public contract” and “relevant international design contest” mean a public contract or design contest that—

- (a) the contracting authority awards or organises in accordance with procurement rules provided by an international organisation or international financing institution, and
- (b) is fully financed, or co-financed for the most part, by that organisation or institution.”

14 In regulation 51 (contract award notices), in paragraph (2)(a), after paragraph (ii) insert—

“(iia) in paragraph 13, the words “or the highest tender and lowest tender taken into consideration” were omitted,”.

15 In Schedule 4A (international trade agreements), at the end insert—

“Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Santiago on 8 March 2018, including the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Auckland and Bandar Seri Begawan on 16 July 2023.”

#### *The Utilities Contracts (Scotland) Regulations 2016*

16 The Utilities Contracts (Scotland) Regulations 2016 ([S.S.I. 2016/49](#)) are amended as follows.

17 (1) Regulation 19 (exclusion: contracts awarded and design contests organised pursuant to international rules) is amended as follows.

(2) In paragraph (1), omit sub-paragraph (b) (and the “or” preceding it).

(3) For paragraph (2) substitute—

“(2) These Regulations do not apply to procurement for the award of a relevant international contract or the organisation of a relevant international design contest in a case where the applicable procurement rules restrict the participation of economic operators in the procedure.

(2A) In the case of procurement for the award of a relevant international public contract or relevant international design contest where the applicable procurement rules do not restrict the participation of economic operators in the procedure, the only regulation that applies to the procurement is regulation 41B (equal treatment of economic operators).”

(4) At the end insert—

“(4) In this regulation, “relevant international contract” and “relevant international design contest” mean a contract or design contest that—

- (a) the utility undertakes or organises in accordance with procurement rules provided by an international organisation or international financing institution, and
- (b) is fully financed, or co-financed for the most part, by that organisation or institution.”

18 In regulation 68 (contract award notices), in paragraph (2)(a), after paragraph (iii) insert—

“(iiia) in paragraph 12, for the words from “or the prices” to the end there were substituted “for the contract awarded”.”

19 In Schedule 2A (international trade agreements), at the end insert—

“Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Santiago on 8 March 2018, including the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Auckland and Bandar Seri Begawan on 16 July 2023.”

*The Concession Contracts (Scotland) Regulations 2016*

20 The Concession Contracts (Scotland) Regulations 2016 ([S.S.I. 2016/65](#)) are amended as follows.

21 (1) Regulation 10 (exclusions: concession contracts awarded pursuant to international rules) is amended as follows.

(2) In paragraph (1), omit sub-paragraph (b) (and the “or” preceding it).

(3) For paragraph (2) substitute—

“(2) These Regulations do not apply to procurement for the award of a relevant international concession contract in a case where the applicable procurement rules restrict the participation of economic operators in the procedure.

(2A) In the case of procurement for the award of a relevant international concession contract where the applicable procurement rules do not restrict the participation of economic operators in the procedure, the only regulation that applies to the procurement is regulation 28 (equal treatment of economic operators).”

(4) At the end insert—

“(4) In this regulation, “relevant international concession contract” means a concession contract that—

- (a) the contracting entity undertakes or organises in accordance with procurement rules provided by an international organisation or international financing institution, and
- (b) is fully financed, or co-financed for the most part, by that organisation or institution.”

22 In Schedule 5 (international trade agreements), at the end insert—

“Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Santiago on 8 March 2018, including the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, signed at Auckland and Bandar Seri Begawan on 16 July 2023.”

### PART 3

#### TRANSITIONAL PROVISION

- 23 The amendments made by this Schedule do not apply to a procurement commenced before the day on which this Schedule comes into force (the “Schedule commencement date”).
- 24 (1) For the purposes of [paragraph 23](#), a procurement is commenced before the Schedule commencement date if any of sub-paragraphs (2) to (4) apply in relation to the procurement.
- (2) This sub-paragraph applies if, before the Schedule commencement date, a notice has been sent to the UK e-notification service in order to—
- (a) invite offers or requests to be selected to tender for or negotiate in respect of a proposed contract, framework agreement or dynamic purchasing system, or
  - (b) publicise an intention to hold a design contest.
- (3) This sub-paragraph applies if, before the Schedule commencement date, the contracting authority or utility has had published any form of advertisement seeking offers or expressions of interest in respect of a proposed contract, framework agreement or dynamic purchasing system.
- (4) This sub-paragraph applies if, before the Schedule commencement date, the contracting authority or utility has contacted any economic operator in order to—
- (a) seek expressions of interest or offers in respect of a proposed contract, framework agreement or dynamic purchasing system, or
  - (b) respond to an unsolicited expression of interest or offer received from that economic operator in respect of a proposed contract, framework agreement or dynamic purchasing system.
- 25 Procedures taken for the purposes of modifying a contract or framework agreement are not to be treated as affecting the date on which the procurement for the award of that contract or agreement commenced.
- 26 In this Part of this Schedule—
- (a) the following terms have the same meaning as in the applicable Procurement Regulations—
    - (i) contracting authority;
    - (ii) design contest;
    - (iii) dynamic purchasing system;
    - (iv) economic operator;
    - (v) framework agreement;
    - (vi) procurement;
    - (vii) UK e-notification service;
    - (viii) utility, and

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- (b) “the applicable Procurement Regulations” means whichever of the following applies to the procurement in question—
- (i) the Public Contracts Regulations 2015 ([S.I. 2015/102](#));
  - (ii) the Concession Contracts Regulations 2016 ([S.I. 2016/273](#));
  - (iii) the Utilities Contracts Regulations 2016 ([S.I. 2016/274](#));
  - (iv) the Public Contracts (Scotland) Regulations 2015 ([S.S.I. 2015/446](#));
  - (v) the Utilities Contracts (Scotland) Regulations 2016 ([S.S.I. 2016/49](#));
  - (vi) the Concession Contracts (Scotland) Regulations 2016 ([S.S.I. 2016/65](#)).