
STATUTORY INSTRUMENTS

2021 No. 573

The Public Procurement (Agreement on Government Procurement) (Amendment) Regulations 2021

PART 3

AMENDMENT OF SCOTTISH SECONDARY LEGISLATION

Amendments to the Utilities Contracts (Scotland) Regulations 2016

- 6.**—(1) The Utilities Contracts (Scotland) Regulations 2016⁽¹⁾ are amended as follows.
- (2) In regulation 2 (interpretation), in paragraph 1—
- (a) in the definition of “GPA”, for “between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before IP completion day” substitute “signed at Marrakesh on 15th April 1994, as amended on or before the United Kingdom’s accession”;
 - (b) after the definition of “GPA” insert—
 - ““GPA party” means any country, state or separate customs territory that is—
 - (a) listed in Schedule A1 (parties to the GPA); or
 - (b) a member State of the EU.”.
- (3) In regulation 41 (conditions relating to the GPA and other international agreements)—
- (a) in the heading, for “the GPA and other international agreements” substitute “international agreements by which the EU is bound, other than the GPA”;
 - (b) in paragraph (1), for “Annexes 3 to 7 to the EU’s Appendix 1 to the GPA and by the other international agreements” substitute “the international agreements, other than the GPA,”;
 - (c) for paragraph (2) substitute—
 - “(2) Paragraph (1) is to be applied as if the United Kingdom were a member State.”.
- (4) After regulation 41 insert—

“Conditions relating to the GPA

41A.—(1) Where a utility within the meaning of regulation 4(1)(a) (utilities) is covered by Annex 3 to the United Kingdom’s Appendix 1 to the GPA in respect of a procurement that is covered by Annexes 4 to 7 to that Appendix, the utility must accord to the works, supplies, services and economic operators of any GPA party treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the United Kingdom.”.

- (5) In regulation 100 (duty owed to economic operators)—

⁽¹⁾ S.S.I. 2016/49, as amended by S.S.I. 2020/468.

- (a) in the heading, after “operators” insert “, including those from countries with whom the EU has a relevant international agreement other than the GPA”;
 - (b) in paragraph (2)(a), omit “Condition 1, Condition 2 or”;
 - (c) omit paragraphs (3), (3A) and (5).
- (6) After regulation 100 insert—

“Duty owed to economic operators from GPA parties

100A.—(1) The duty owed in accordance with regulation 100(1) (duty owed to economic operators, including those from countries with whom the EU has a relevant international agreement other than the GPA) is a duty owed also to an economic operator from a GPA party, but only where the agreement applies to the procurement concerned.

- (2) For the purposes of paragraph (1), the GPA applies to a procurement if—
- (a) the procurement may result in the award of a contract of any description; and
 - (b) at the relevant time—
 - (i) a GPA party has agreed with the United Kingdom that the GPA shall apply to a contract of that description; and
 - (ii) the economic operator is from that GPA party.
- (3) In this regulation, “relevant time” means—
- (a) if the utility selects economic operators to tender for or to negotiate the contract in accordance with a qualification system established in accordance with regulation 75 (qualification systems), the date on which the selection commences;
 - (b) if the utility satisfies the requirement that there be a call for competition by indicating the intention to award the contract in a periodic indicative notice in accordance with regulations 65 (periodic indicative notices) or 89(1)(b) (publication of notices), the date on which the notice is submitted to the UK e-notification service; or
 - (c) in any other case, the date on which the utility submitted a contract notice (or design contest notice) to the UK e-notification service or would have done so if the requirement that there be a call for competition applied and the utility decided to satisfy that requirement by submitting such a notice.”.

- (7) Before Schedule 1 (activities constituting works) insert—

“SCHEDULE A1

Regulation 2(1)

PARTIES TO THE GPA

Armenia
Australia
Canada
European Union
Hong Kong, China
Iceland
Israel
Japan
Korea, Republic of
Liechtenstein

Moldova, Republic of
Montenegro
Netherlands with respect to Aruba
New Zealand
Norway
the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu
Singapore
Switzerland
Ukraine
United States”.