

## SCHEDULE 1

Regulation 21

### Permitted modifications

#### **Provided for in the public service contract**

1. A modification is a permitted modification if—
  - (a) the possibility of the modification is unambiguously provided for in—
    - (i) the public service contract as awarded, and
    - (ii) a notice for the award of that contract published under regulation 22 or 23, and
  - (b) the modification would not change the overall nature of the public service contract.

#### **Emergency**

2. A modification is a permitted modification if its purpose could otherwise be achieved by the direct award of a public service contract under regulation 16.

#### **Unforeseeable consequences**

3. A modification is a permitted modification if—
  - (a) the circumstances giving rise to the modification could not reasonably have been foreseen by the competent authority before the award of the public service contract,
  - (b) the modification would not change the overall nature of the public service contract, and
  - (c) the modification would not increase the estimated value of the public service contract by more than 50%.

#### **Materialisation of a known risk**

4. A modification is a permitted modification if—
  - (a) the competent authority considers that—
    - (i) a known risk has materialised otherwise than as a result of any act or omission of the competent authority or the operator,
    - (ii) because of that fact, the public service contract cannot be performed to the satisfaction of the competent authority,
    - (iii) the modification goes no further than necessary to remedy that fact, and
    - (iv) awarding a further public service contract under these Regulations, instead of modifying the contract, would not be in the public interest in the circumstances, and
  - (b) the modification would not increase the estimated value of the public service contract by more than 50% ignoring, for the purpose of estimating the value of the public service contract, the fact that the risk has materialised.
5. In paragraph 4, a “known risk” means a risk that—
  - (a) the competent authority considered—
    - (i) could jeopardise the satisfactory performance of the public service contract, but
    - (ii) because of its nature, could not be addressed in the public service contract as awarded, and
  - (b) was identified in a notice for the award of the public service contract published under regulation 22, including by reference to—

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- (i) its meeting the description in sub-paragraph (a), and
- (ii) the possibility of modification under paragraph 4.

**6.** In considering whether awarding a new public service contract would be in the public interest for the purposes of paragraph 4, a competent authority—

- (a) must consider whether a new public service contract could provide more value for money, and
- (b) may consider technical and operational matters.

#### **Additional services**

**7.** A modification is a permitted modification if—

- (a) the modification provides for the provision of services in addition to the services already provided for in the public service contract,
- (b) using a different operator would result in the provision of services that are different from, or incompatible with, those already provided for in the public service contract,
- (c) the competent authority considers that the difference or incompatibility would result in—
  - (i) disproportionate technical difficulties in operation or maintenance or other significant inconvenience, and
  - (ii) the substantial duplication of costs for the authority, and
- (d) the modification would not increase the estimated value of the public service contract by more than 50%.

#### **Transfer on corporate restructuring**

**8.** A novation or assignment (or in Scotland, assignation) of a public service contract to an operator is a permitted modification if it is required following a corporate restructuring or similar circumstance.