
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to various United Kingdom public procurement regulations for the purpose of implementing two free trade agreements entered into by the United Kingdom (“the FTAs”), one with Australia (“the UK-Australia FTA”) and the other with New Zealand.

The amendments made by these Regulations do not apply to devolved Welsh authorities. Welsh Ministers are making a separate statutory instrument to implement the FTAs as they apply to those authorities.

The amendments made by these Regulations implement the FTAs generally, as well as making three sets of amendments of general application under section 1(2) of the Trade (Australia and New Zealand) Act 2023. These amendments of general application are required to ensure compliance with commitments made in the UK-Australia FTA.

The first and second amendments of general application are made to the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 and the Utilities Contracts Regulations 2016. The first introduces the rule that, where the value of a procurement cannot be estimated, the procurement is to be treated as having been valued at the relevant threshold for that type of procurement. In the case of the Public Contract Regulations 2015 and the Utilities Contracts Regulations 2016, special provision is made for the situation in which the value of one or more lots cannot be estimated.

The second amendment of general application prohibits contracting authorities and utilities from terminating contracts in a manner that circumvents obligations in the UK-Australia FTA.

The third amendment of general application is made to the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016 only and removes the possibility of using a prior information notice or periodic indicative notice as the call for competition. A number of consequential amendments have been made to both sets of regulations as a result.

These Regulations also make provision for transitional arrangements, in exercise of the power conferred by section 2(1)(d) of the Trade (Australia and New Zealand) Act 2023.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.