EXPLANATORY MEMORANDUM TO

THE PROCUREMENT ACT 2023 (CONSEQUENTIAL AND OTHER AMENDMENTS) REGULATIONS 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Georgia Gould MP, Parliamentary Secretary at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Edward Green, Deputy Director for Commercial Policy - International and Reform, at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Charlie Skinner at the Cabinet Office email: charlie.skinner@cabinetoffice.gov.uk Mob: 07745106146 can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Procurement Act 2023 (Consequential and Other Amendments) Regulations 2025 are part of a group of SIs that will implement the Procurement Act 2023 ("the 2023 Act"), which is coming into force in February 2025.[1]

4.2 The instrument makes consequential amendments to update references to existing procurement regulations within domestic legislation to ensure that the legislation aligns with the updated terminology and requirements within the 2023 Act.

4.3 This instrument also makes changes to ensure ongoing compliance with the UK's international obligations in respect of public procurement. It implements the changes required to update the financial thresholds which govern the procedures for the award of public contracts for goods, works and services. These changes are required to ensure the UK complies with its obligations under the World Trade Organisation's Agreement on Government Procurement (GPA).

[1] Certain provisions of the Procurement Act 2023 were brought into force for the power of making implementing regulations by the Procurement Act 2023 (Commencement No. 1) Regulations 2023 and Procurement Act 2023 (Commencement No. 2) Regulations 2024. The Act generally will be brought into force in accordance with the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) 2024 (as amended by the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) (Amendment) 2024).

4.4 The instrument also updates Schedule 9 to the 2023 Act to reflect that six of the international agreements listed in Schedule 9 have been amended.

4.5 The instrument also amends the Procurement Regulations 2024 ("the 2024 Regulations") to include provisions relating to calculations for the exemption of certain contracts listed in Schedule 2 to the Act and whether an operator's activities are utility activities in accordance with Schedule 4 to the Act.

4.6 This instrument makes changes to the 2024 Regulations in order to include additional measures promoting transparency in public procurement and to clarify certain points in those Regulations.

4.7 The instrument will also amend the UK's domestic list of Central Government Authorities in Schedule 2 to the 2024 Regulations to reflect a number of changes to the names and functions of departments.

Where does the legislation extend to, and apply?

4.8 The extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.9 The territorial application of this instrument (that is, where the instrument produces a practical effect) varies between provisions. Regulations 3 and 8, which amend the 2023 Act and 2024 Regulations, apply in England, Northern Ireland and Scotland, other than in respect of procurement carried out under a devolved Welsh procurement arrangement[2]. Regulations 3 and 8 also apply to devolved Welsh authorities in relation to procurement under a reserved procurement arrangement or a transferred Northern Ireland procurement arrangement[3].

4.10 Regulations 4 to 7, and 9 to 32, contain consequential amendments the application of which follows that of the provisions to which they relate.

4.11 Regulations 33 and 34 contain transitional provisions in respect of legislation that only applies in England and as such the provisions extend to England and Wales and apply in relation to England only.

5. Policy Context

What is being done and why?

Amendments to references to procurement regulations in existing UK legislation

5.1 Regulations 4 to 7, and 9 to 32, update references to the existing procurement regulations (being repealed by the 2023 Act) in primary legislation, secondary legislation and assimilated law. These provisions will ensure that the amended instruments are in line with the updated terminology and requirements within the 2023 Act. This is necessary to ensure that legislation which refers to existing procurement regulations continues to function effectively.

5.2 An example of this is the amendments to the Health Care Services (Provider Selection Regime) Regulations 2023. These amendments ensure the Provider Selection Regime's exclusions requirements are aligned with those set out in the 2023 Act (instead of the Public Contracts Regulations 2015).

[2] A devolved Welsh procurement arrangement is defined at section 114 of the 2023 Act.
[3] A reserved procurement arrangement and a transferred Northern Ireland procurement arrangement are defined at section 114 of the 2023 Act.

Other Amendments

Threshold Amounts Update

5.3 Regulation 3(2) updates the threshold amounts set out in Schedule 1 to the 2023 Act which establish the contract value threshold beyond which the majority of provisions of the Act apply. These thresholds are established under the GPA and updated every two years. These amendments reflect updates which took effect on 1 January 2024. The thresholds applicable under other free trade agreements to which the UK is a party either align with or are higher than those set out under the GPA, so this amendment also ensures compliance with those agreements.

Free Trade Agreements

5.4 Regulation 3(3) updates Schedule 9 to the 2023 Act. Schedule 9 lists international agreements containing procurement obligations, six of which (Ukraine, Moldova, Georgia, Kosovo, North Macedonia and Albania) have been amended since the 2023 Act received Royal Assent to remove access to certain healthcare services to providers from these states. The amendments to Schedule 9 reflect the date of those amendments.

Amendments to contract details notice and contract performance notice

5.5 Regulations 8(8) and (11) make amendments to the 2024 Regulations in respect of the detailed information required in relation to the publication of key performance indicators and performance against them in contract details and contract performance notices. This change is being made to ensure that contracting authorities are not incurring additional burden by having to report against every performance indicator used to manage a contract throughout its life, but instead against those most material to the performance of the key obligations of the contract at the time the relevant notice is published. This is in line with the original policy intent as communicated to stakeholders through the passage of the Bill.

Transparency requirements

5.6 Regulation 8(2) amends regulation 11(6) of the 2024 Regulations to require the Companies House registration number, where available, of connected persons who are relevant legal entities to support digital information drawdown from Companies House. This amendment aims to reduce administrative burden for suppliers by improving the pull-down of information into the supplier information service.

5.7 Regulation 8(3) amends regulation 12 of the 2024 Regulations to expand the information contracting authorities must gather in respect of the connected persons of a supplier (that is to say, directors, parent undertakings and other persons or bodies with control or influence over the supplier). The amendment ensures that information can be collected not only in respect of the actions taken by connected persons in relation to past exclusion events but also the proactive measures implemented by the suppliers themselves. The update aims to deepen the transparency and integrity of procurement processes by requiring a more comprehensive disclosure of self-cleaning efforts and also fills a gap where a supplier has not been involved in an excludable event themselves.

5.8 Regulation 8(4) and (5) amends regulations 18 and 19 of the 2024 Regulations to make clear that the ability to provide associated tender documents following publication of a tender notice under section 21 of the 2023 Act is only available in respect of the competitive selective procedure, and not the open procedure. This is

because the open procedure can only involve a single tendering stage, meaning that potential bidders must be able to access all relevant information at the same time and in accordance with section 21(5) of the 2023 Act, in order to enhance the transparency and efficiency of that procedure.

5.9 Paragraph 8 of Schedule 5 to the 2023 Act permits direct award of a contract where the tender or transparency notice published in relation to an earlier contract for the same goods, services or works indicated the contracting authority's intention to rely on the justification. Regulation 8(6)(a) amends regulation 26 of the 2024 Regulations to require contracting authorities relying on this direct award justification to publish the unique identifier for the original procurement and subsequent contract, in order to increase accountability and traceability in direct award processes.

5.10 Regulation 8(6)(b) and (c), (7) and (9) amends regulations 26(2)(k), 29(2)(g), and 35(2) of the 2024 Regulations respectively, to require direct award justifications where a direct award is to be made to an excluded supplier. Section 41(2) of the 2023 Act allows for a contracting authority to award a contract to a supplier that is an excluded supplier if the contracting authority considers that there is an overriding public interest in awarding the contract to that supplier. This amendment ensures comprehensive transparency around direct award justifications in these scenarios.

5.11 Regulation 8(6)(d) amends regulation 26 of the 2024 Regulations to ensure that contracting authorities can publish information relating to an anticipated contract modification within the transparency notice by including details of any options contained within the contract. Publishing the information in the transparency notice means that contracting authorities can, if necessary, rely on exercise of the option being a permitted contract modification within paragraph 1 of Schedule 8 to the 2023 Act.

5.12 Regulation 8(10) amends regulation 38 of the 2024 Regulations in respect of payments compliance notices, in order to better align with private sector reporting requirements and to generate data on compliance with the implied payment term set out at section 68 of the Act.

Calculation provisions

5.13 Regulation 8(12) inserts provisions into the 2024 Regulations which set out how certain calculations under the 2023 Act are to be carried out. The calculations relate to whether certain contracts are exempted contracts under the 2023 Act and whether an operator's activities are utility activities.

5.14 The calculations which must be carried out in order to determine whether a contract is an exempted contract arise where there is a vertical or horizontal relationship or, in the case of utilities, a relationship of affiliation, between the contracting authority and the supplier.

5.15 Vertical arrangements are where one or more contracting authorities contract "in-house" with a person over which they have a form of control, as set out in the 2023 Act. One example of such a controlled person is a local authority trading company that the public authority has set up to provide services such as household waste collection. Horizontal arrangements are where public authorities cooperate to achieve common goals in connection with the exercise of their public functions. Again, these provisions seek to ensure consistency with the current regime.

5.16 The calculations in respect of whether an operator's activities are utility activities relate to the supply of electricity, gas, heat and drinking water where it is a by-product of non-utility activity and the operator wishes to sell the excess amount to a network.

Machinery of Government Changes

5.17 Regulation 8(13) amends the UK's domestic list of Central Government Authorities in Schedule 2 to the 2024 Regulations to reflect a number of Machinery of Government changes, such as changes to departments' titles and functions. This update will make clear to whom obligations under the 2023 Act apply.

What was the previous policy, how is this different?

Amendments to references to procurement regulations in existing UK legislation

5.18 Previously, various legislative instruments referred to the Defence and Security Public Contracts Regulations 2011, the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 and the Utilities Contracts Regulations 2016 and the terminology within them. This was in order to, for example, impose additional duties in relation to government procurement or in order to adopt concepts used in those instruments. The 2023 Act will come into force in February 2025, revoking all of the above instruments and replacing the previous regimes.

5.19 The consequential amendments do not seek to change the policy of existing legislation. Instead, the purpose is to update the legislation to ensure it can continue to function as it does currently.

Free Trade Agreements

5.20 The six agreements, the references to which are amended by regulation 3(3), replicated, as at the date originally entered into, as far as possible the effects of the trade agreements the UK had with these partner countries through its membership of the European Union (EU) prior to EU Exit. They granted access to services contracts including healthcare services to providers from these states. These were the UK's only international trade agreements which granted such access to these healthcare services. The six agreements were subsequently amended in order to remove access to those healthcare services' contracts.

5.21 The amendments at regulation 3(3) ensure that Schedule 9 to the 2023 Act refers to those agreements as amended, ensuring any procurement for relevant healthcare services carried out under the 2023 Act are compliant the amended agreements.

Amendments to the contract details notice and the contract performance notice

5.22 The changes to the 2024 Regulations in respect of the detailed information required in relation to the publication of key performance indicators and performance against them in contract details and contract performance notices reflects the original policy intent as communicated to stakeholders through the passage of the 2023 Act through Parliament.

Transparency Requirements

5.23 The transparency measures supplement the transparency requirements within the 2023 Act to ensure they are applied correctly. The amendments fill gaps in the Regulations to ensure they deliver the original transparency policy intent.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument is part of a series of implementing instruments made under the 2023 Act. It makes necessary updates to reflect changes in the international agreements governing procurement since that 2023 Act received Royal Assent, amends the main implementing Regulations (the 2024 Regulations) to ensure their efficient operation and makes necessary consequential amendments to other pieces of legislation, including a number of repeals and revocations.

6.2 None of these outcomes could be achieved without legislation. This instrument contains the first use of the powers at sections 89(3) and 125 of, and paragraphs 2 and 3 of Schedule 1, paragraphs 2(6), 3(3), 6(4) and (5) of Schedule 2, and paragraphs 1(3), 2(3) and (4), 3(5) and (6) of Schedule 4, to the 2023 Act.

Why was this approach taken to change the law?

6.3 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 Necessary consultation with departments who have ownership of the legislation being amended within this instrument has taken place to ensure the amendments were necessary and do not alter the effect of the legislation.

7.2 The Devolved Administrations have been consulted throughout the process of drafting the instrument.

8. Applicable Guidance

8.1 Guidance has been published to accompany the 2023 Act and the 2024 Regulations which can be found at https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full impact assessment has not been prepared for this specific instrument. The impact on the public sector in respect of the new public procurement regime is in relation to the 2023 Act rather than these, or the 2024 Regulations.

9.2 An impact assessment in relation to the 2023 Act and associated reforms was published in May 2022 and can be found at https://bills.parliament.uk/publications/46429/documents/1767.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies.

9.4 An Impact Assessment has not been prepared for this instrument because the framework and principles underlying the legislation being amended have not been substantially amended. Modifications contained in this instrument have been made to ensure other legislation which refers to procurement legislation functions effectively and that procurement legislation remains aligned with the UK's international

obligations. Therefore, any impact is expected to be low and is below the threshold required to carry out a full impact assessment.

9.5 The legislation does not impact small or micro businesses.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through feedback from contracting authorities, suppliers, industry representatives and professionals using the 2023 Act and 2024 Regulations which will help inform any updates.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Minister Gould has made the following statement:

"In my view the provisions of the Procurement Act 2023 (Consequential and Other Amendments) Regulations 2025 do not require a statutory review clause."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Regulation 8(10)(b) corrects a minor issue in the 2024 Regulations. CO has consulted with the SI Registrar who has advised that in this instance the Regulations can be exempted from the free issue procedure on the basis that their length means it would be disproportionate to apply the procedure given the single correcting provision.

12. European Convention on Human Rights

12.1 Minister Gould has made the following statement regarding Human Rights:

"In my view the provisions of the Procurement Act 2023 (Consequential and Other Amendments) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does however relate to the withdrawal of the United Kingdom from the European Union because it revokes or amends a number of items of assimilated law, consequential on the coming into force of the 2023 Act.