EXPLANATORY MEMORANDUM TO

THE PROCUREMENT ACT 2023 (SPECIFIED INTERNATIONAL AGREEMENTS AND SAVING PROVISION) (AMENDMENT) 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 and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Chris Ward 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 Ursula Tebbet-Duffin at the Cabinet Office can be contacted by email at the following address with any queries regarding the instrument: u.tebbet-duffin@cabinetoffice.gov.uk. Alternatively, the department can be contacted by telephone: 020 7276 1234.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Procurement Act 2023 (Specified International Agreements and Saving Provision) (Amendment) Regulations 2025 ("the instrument") updates Schedule 9 to the Procurement Act 2023 ("the 2023 Act") to implement in domestic law the United Kingdom's ("UK") procurement obligations under the Strategic Partnership and Cooperation Agreement between the UK and Kazakhstan ("the UK-Kazakhstan SPCA") and the Agreement on Partnership and Cooperation between the UK and Iraq ("the UK-Iraq PCA") (together referred to as "the agreements").

4.2 Before the relevant chapters of each of these agreements can take effect, the agreements must be implemented in domestic legislation and only after that can they be ratified in accordance with the process laid out in the Constitutional Reform and Governance Act 2020. This process also requires treaties to be laid before Parliament for scrutiny before ratification. In order to implement the procurement chapters in domestic legislation, Schedule 9 to the 2023 Act is to be updated in relation to procurement carried out in accordance with that Act. In addition, the Procurement Act 2023 (Commencement No. 3 and Transitional and Saving Provisions) Regulations 2024 ("the 2024 Regulations") are to be amended in relation to relevant procurement

carried out in accordance with the regime(s) that were in force prior to the commencement of the 2023 Act.[1]

4.3 Following the ratification of these agreements, contracting authorities will be required to give effect to those obligations when carrying out their procurements and suppliers, goods, services and works entitled to the benefits of the agreements will be afforded the same rights as suppliers, goods, services and works from the UK and other countries with whom the UK has a trade agreement relevant to procurement. In addition, suppliers benefiting under the agreement will have access to remedies under the 2023 Act and the former regime(s) in respect of procurements covered by their respective agreements.

Where does the legislation extend to, and apply?

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

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) in relation to the amendments made to the 2023 Act (regulation 2 of the instrument), is England and Wales (but not in respect of procurement regulated by the Welsh Ministers), Scotland (but only in respect of reserved procurement) and Northern Ireland. The Welsh Ministers are making a separate statutory instrument to implement these agreements as they apply to procurement carried out in accordance with the 2023 Act that is regulated by the Welsh Ministers. The Scottish Government will be implementing these agreements separately under its own legislation in respect of procurement carried out by devolved Scottish authorities in accordance with the Scottish procurement legislation.[2]

4.6 The territorial application of the amendments made to the 2024 Regulations (regulation 3 of the instrument) relating to procurement carried out in accordance with the former regime(s) is England and Wales, and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 Government procurement is a key chapter in many international trade agreements and consists of rules, standards and commitments. Implementation of the government procurement chapters of these agreements requires the amendment of the domestic procurement legislation. Such implementation needs to be in place before the formal entry into force of the agreements in order to ensure that the UK is not in breach of its international obligations under the agreements.

5.2 Regulation 2 of the instrument updates Schedule 9 to the 2023 Act. Schedule 9 lists international agreements containing procurement obligations. Those international agreements set out the suppliers, goods, services and works entitled to the benefits of the agreement and they are provided with access, rights and remedies in respect of public procurement (and equivalent access is provided to UK suppliers, goods, services and works in respect of public procurement by authorities of the other signatories to those agreements). The UK-Kazakhstan SPCA and the UK-Iraq PCA need to be added to Schedule 9 in order to implement the obligations contained within

[1] Prior to the commencement of the 2023 Act from 24th February 2025, UK public procurement was carried out in accordance with the Defence and Security Public Contracts Regulations 2011, the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 and the Utilities Contracts Regulations 2016.
[2] The devolved Scottish procurement legislation is the Public Contracts (Scotland) Regulations 2015, the Concession Contracts (Scotland) Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016.

the procurement chapters of these agreements in respect of procurement carried out in accordance with the 2023 Act.

5.3 Following the commencement of the 2023 Act, the former regime(s) were revoked save in certain circumstances as set out in the 2024 Regulations. In limited circumstances procurement may still be carried out and managed in accordance with the former regime(s), and consequently regulation 3 of the instrument updates the relevant saving provisions contained in the 2024 Regulations to enable suppliers, goods, services and works entitled to the benefits of the agreements equal access in relation to contracts based on a framework agreement, and in the operation and use of dynamic purchasing systems and qualification systems, established in accordance with the Public Contracts Regulations 2015 ("PCRs") and the Utilities Contracts Regulations 2016 ("UCRs").

What was the previous policy, how is this different?

5.4 This instrument does not change the current policy that is, where the UK enters into an international trade agreement that includes public procurement obligations, then those obligations must be implemented into domestic law. Therefore, this instrument is implementing the procurement obligations contained in two trade agreements (with Kazakhstan and Iraq).

6. Legislative and Legal Context

How has the law changed?

6.1 In relation to the amendments made to the 2023 Act, this instrument uses the power in section 89(3)(a) of the 2023 Act that enables Schedule 9 to be amended to specify an international agreement to which the UK is a signatory.

6.2 By adding the agreements to Schedule 9 to the 2023 Act, those who benefit from them (following ratification of the agreement in question) are "treaty state suppliers" within the meaning of section 89 of the 2023 Act (but only become a treaty state supplier upon ratification or when the procurement chapter of the agreement starts to apply if different). Consequently, contracting authorities cannot discriminate against those suppliers in accordance with section 90(1) of the 2023 Act, and they have the same rights as suppliers in the UK and access to remedies under the Act in relation to procurement covered by the agreements.

6.3 In relation to the amendments made to the 2024 Regulations, this instrument uses the power in section 127(2) of the 2023 Act to modify those saving provisions contained in the 2024 Regulations as they relate to contracts based on a framework agreement, and the operation and use of dynamic purchasing systems and qualification systems established in accordance with the PCRs and UCRs.[3] In accordance with section 127(3) of the 2023 Act, the consent of the Welsh Ministers is required in respect of the amendments made to the 2024 Regulations, which was provided before laying this instrument in draft.

6.4 In the circumstances set out in regulation 5(2) and (3) (when the PCRs continue to apply) and regulation 8(2) and (3) (when the UCRs continue to apply) of the 2024 Regulations, Schedule 4A to the PCRs or, as the case may be, Schedule 3 to the UCRs (both relating to relevant international trade agreements) are to be read as if the

[3] Provision on framework agreements is contained within regulation 33 of the PCRs and regulation 51 of the UCRs. Provision on dynamic purchasing systems is contained within regulation 34 of the PCRs and regulation 52 of the UCRs. Provision on qualification systems is contained within regulation 77 of the UCRs.

agreements had been inserted as relevant. In accordance with regulation 25B of the PCRs and regulation 43B of the UCRs, where an international trade agreement is listed within the respective schedule and applies to a procurement, then economic operators[4] that benefit from that agreement are to be treated no less favourably than economic operators from the UK. This will enable economic operators who are entitled to the benefits of either of the agreements equal access to relevant procurement carried out in accordance with the former regime(s).

6.5 Transitional provisions have been included in regulation 4 of the instrument that set out that these amendments apply only to procurements commenced on or after the day on which the procurement chapter of the relevant agreement to which they relate comes into force. In respect of the UK-Kazakhstan SPCA, the procurement chapter applies either five or eight years after the agreement enters into force (depending on the subject-matter of the procurement in question) in accordance with article 136 of the agreement.[5] Alternatively, the UK-Iraq PCA applies when the agreement enters into force in accordance with article 115 of that agreement.

6.6 Once an agreement is in force, it will be published in the Treaty Series Collection of Command Papers.[6] The draft agreements are currently available to view in the Country Series Collection of Command Papers.[7]

Why was this approach taken to change the law?

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

7. Consultation

Summary of consultation outcome and methodology

7.1 Regular discussions have been held with the Devolved Governments throughout the process of drafting this instrument.

7.2 No further consultation has taken place as it has not been necessary to do so.

8. Applicable Guidance

8.1 Guidance concerning Schedule 9 to the 2023 Act and the meaning of "treaty state suppliers" has been published on gov.uk.[8]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full 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 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.

[4] Economic operator is defined in regulation 2(1) of the PCRs and UCRs and can be likened to the use of "supplier" as contained in the Procurement Act 2023 ("the 2023 Act").
[5] The agreement itself enters into force in accordance with article 271.
[6] https://www.gov.uk/government/collections/bilateral-and-multilateral-treaties-published-in-the-treaty-series-2018.
[7] https://www.gov.uk/government/collections/command-papers-by-country-2013.
[8] https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-define-phase/guidance-treaty-state-suppliers-html.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the framework and principles underlying the legislation being amended have not been substantially amended.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because the new obligations on authorities is merely to treat suppliers, goods, services and works entitled to the benefits of the agreements the same as UK and other treaty state suppliers, goods services and works. There are no new requirements being imposed that authorities do not already extend to others suppliers.

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 which will help inform any updates.

10.2 This instrument does not include a statutory review clause as this instrument is amending provisions in connection with procurement only, therefore the duty to review in section 28 of the Small Business, Enterprise and Employment Act 2015 does not apply.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The international agreements specified in this instrument were laid in Parliament on 9 July 2025 in accordance with the Constitutional Reform and Governance Act 2010. These agreements are available to view in the Country Series Collection of Command Papers.[9]

12. European Convention on Human Rights

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

"In my view the provisions of the Procurement Act 2023 (Specified International Agreements and Saving Provision) (Amendment) 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").

[9] The UK-Iraq PCA is available here: https://www.gov.uk/government/publications/ukiraq-agreement-on-partnership-and-cooperation-cs-iraq-no12025 and the UK-Kazakhstan SPCA is available here: https://www.gov.uk/government/publications/ukkazakhstan-strategic-partnership-and-cooperation-agreement-cs-kazakhstan-no12025.