EXPLANATORY MEMORANDUM TO

THE PROCUREMENT ACT 2023 (SPECIFIED INTERNATIONAL AGREEMENTS AND SAVING PROVISION) (AMENDMENT) REGULATIONS 2026

2026 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 on: 0207 276 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 2026 ("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 Comprehensive Economic and Trade Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India ("the UK-India CETA").

4.2 Before the relevant chapter of this agreement can take effect, the agreement must be implemented in domestic legislation and only after that can it be ratified in accordance with the process laid out in the Constitutional Reform and Governance Act 2020 ("the CRAG Act"). This process also requires treaties to be laid before Parliament for scrutiny before ratification. In order to implement the procurement chapter 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 this agreement, 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 agreement 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 benefitting under the agreement will have access to remedies under the 2023 Act and the former regime(s) in respect of procurements covered by the agreement.

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 3 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 the agreement as it applies to procurement carried out in accordance with the 2023 Act that is regulated by the Welsh Ministers. The Scottish Government will be implementing the agreement 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 4 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 chapter of this agreement requires the amendment of domestic procurement legislation. Such implementation needs to be in place before the formal entry into force of the agreement in order to ensure that the UK is not in breach of its international obligations under the agreement.

5.2 Regulation 3 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 of those agreements). The UK-India CETA needs to be added to Schedule

[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.

9 in order to implement the obligations contained within the procurement chapter of this agreement 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 4 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 UK-India CETA equal access in relation to contracts based on a framework agreement, and in the operation and use of dynamic purchasing systems ("DPSs") and qualification systems, established in accordance with the Public Contracts Regulations 2015 ("the PCRs") and Utilities Contracts Regulations 2016 ("the 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. This instrument seeks to implement the international obligations relating to public procurement contained in the UK-India CETA.

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 agreement to Schedule 9 to the 2023 Act, those who benefit from the agreement (following its ratification) are "treaty-state suppliers" within the meaning of section 89 of the 2023 Act (but only become a treaty state supplier upon ratification). 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 in relation to procurement covered by the agreement.

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 DPSs 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 UK-India CETA had been inserted. In accordance with regulation 25B of the PCRs and regulation 43B of the UCRs, where an international agreement is listed within 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.

respective schedule and applies to a procurement, then economic operators[4] that benefit from the 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 the agreement equal access to relevant procurement carried out in accordance with the former regime(s).

6.5 Transitional provisions have been included in regulations 5 to 7 of the instrument, which set out how the amendments to the 2023 Act and the 2024 Regulations (as they relate to the PCRs and UCRs) do not affect procurements commenced on, or after, the day on which the UK-India CETA enters into force where certain steps have been taken as set out in regulations 5(2), 6(3) and 7(3) of the instrument. In relation to the PCRs and UCRs, the amendments do however affect an economic operator's request to participate in a DPS, and (in respect of the UCRs only) a qualification system, if that request is made on or after the date the UK-India CETA enters into force.

6.6 Once the agreement is in force, it will be published in the Treaty Series Collection of Command Papers.[5] The draft agreement is currently available to view as an Unnumbered Command Paper.[6]

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 in relation to this instrument has taken place as it has not been necessary to do so.

7.3 The Government's negotiation strategy for the UK-India CETA was informed by a comprehensive consultation process, having spoken to businesses and interest groups in every part of the UK. On 25 May 2021, the Department for International Trade (as it was then) launched a public consultation seeking views on the potential trade agreement with India from individuals, businesses, business associations, NGOs, and public sector bodies. The consultation response, containing a summary of the 283 responses, was published in January 2022.[7]

7.4 Throughout negotiations the Department for Business and Trade ("DBT") engaged extensively with a range of stakeholders and experts through technical and strategic discussions to inform the negotiations and ensure these were representative of the views of sectors across the UK economy. DBT has also continually worked with stakeholders to understand concerns and ensure that the negotiations led to an agreement that benefits businesses and consumers across the UK.

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[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] https://www.gov.uk/government/collections/bilateral-and-multilateral-treaties-published-in-the-treaty-series-2018.

[6] https://www.gov.uk/government/collections/comprehensive-economic-and-trade-agreement-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-india. The date on which the agreement was signed is available at https://www.gov.uk/government/collections/uk-india-trade-deal.

[7] A copy of the consultation of the UK approach to negotiating a free trade agreement with India can be found here: https://www.gov.uk/government/publications/uk-approach-to-negotiating-a-free-trade-agreement-with-india

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.

9.2 A full Impact Assessment for the UK-India CETA was published at signature of the agreement.[9]

Impact on businesses, charities and voluntary bodies

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

9.4 The legislation does not impact on small or micro businesses.

9.5 There is no, or no significant, impact on the public sector because the new obligations on authorities are merely to treat suppliers, goods, services and works entitled to the benefits of the agreement 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 other 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; because the instrument is amending provisions in connection with procurement only, the duty in section 28 of the Small Business, Enterprise and Employment Act 2015 does not apply and no review clause is required.

10.3 DBT will monitor the UK-India CETA, and its implementation, through the mechanisms within the agreement itself. DBT will undertake a review of the agreement within five years after the deal enters into force, and every five years subsequently, or as agreed by the UK and India. This review will consider the work of subsidiary bodies such as subcommittees and working groups, including chapter specific reviews, and as part of that review process, DBT will take account of whether future updates need to be made to improve the implementation of the UK-India CETA.

[8] https://www.gov.uk/government/publications/procurement-act-2023-guidance-documents-define-phase/guidance-treaty-state-suppliers-html.

[9] https://www.gov.uk/government/publications/uk-india-free-trade-agreement-impact-assessment.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Under the process set out in the CRAG Act, the Government is required to lay a relevant treaty (alongside an explanatory memorandum) for 21 sitting days before it can be ratified (unless either House adopts a motion that the treaty should not be ratified) subject to any additional procedural steps required by the treaty also being concluded.

11.2 It is not a legal requirement for treaties to have completed the process set out in the CRAG Act prior to its implementation in domestic law. However, it has been an informal convention to lay implementing legislation before Parliament after the treaty in question has undergone the initial 21 sitting days.

11.3 Generally, international trade agreements require that domestic implementation is concluded prior to the agreement entering into force (and therefore the agreement cannot be ratified until after the CRAG Act process and these additional steps have taken place). In the case of the UK-India CETA, article 30.6 requires that the agreement can only enter into force 60 days after the date on which the parties exchange written notifications confirming that they have completed their respective domestic legal requirements necessary for the entry into force of the agreement.

11.4 Exceptionally in this case, the UK-India CETA will be laid in Parliament and formally enter the CRAG Act process shortly after this draft instrument is laid before Parliament in accordance with the affirmative procedure. This approach has been necessary due to the Government's desire to bring the UK-India CETA into force as quickly as possible, whilst allowing for the necessary Parliamentary scrutiny, to allow businesses to take advantage of the agreement, and deliver growth across the country. As set out above in paragraphs 4.2, 4.3 and 6.2, relevant suppliers will only be entitled to the benefits of the agreement after the agreement has formally entered into force following its ratification and in accordance with article 30.6 of the UK-India CETA.

12. European Convention on Human Rights

12.1 Chris Ward MP, Parliamentary Secretary at the Cabinet Office has made the following statement regarding Human Rights:

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