Draft Regulations laid before Parliament under paragraph 4(1) of Schedule 2 to the Trade Act 2021, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2022 No.

PUBLIC PROCUREMENT

The Public Procurement (International Trade Agreements) (Amendment) Regulations 2022

Made - - - -	***
Coming into force	***

The Minister for the Cabinet Office makes these Regulations in exercise of the powers conferred by sections 2(1) and (2), 4(1)(c) and (d) and 5(1) of the Trade Act 2021(**a**).

In accordance with paragraph 4(1) of Schedule 2 to the Trade Act 2021, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Public Procurement (International Trade Agreements) (Amendment) Regulations 2022 and come into force on the day after the day they are made.

(2) The amendments made by these Regulations have the same extent as the provisions to which they relate.

PART 2

AMENDMENT OF UNITED KINGDOM SECONDARY LEGISLATION

Amendments to the Public Contracts Regulations 2015

2.—(1) The Public Contracts Regulations 2015(**b**) are amended as follows.

(2) In regulation 69(2) (abnormally low tenders), after sub-paragraph (e) insert—

"(g) whether the price or costs take into account the grant of subsidies.".

(**a**) 2021 c. 10. See the definition of "international trade agreement" in section 2(2) and the definitions of "appropriate authority" and "free trade agreement" in section 5(1).

(**b**) S.I. 2015/102, as amended by S.I. 2020/1319 and S.I. 2021/787; there are other amending instruments but none is relevant.

(3) In Schedule 4A (international trade agreements), after the last entry (for the Government of the Republic of Serbia), insert—

> "Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, signed at London on 8th July 2021.".

Amendments to the Concession Contracts Regulations 2016

3.—(1) The Concession Contracts Regulations 2016(**a**) are amended as follows.

(2) In Schedule 4 (international trade agreements), after the last entry (for the Government of the Republic of Serbia), insert—

> "Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, signed at London on 8th July 2021.".

Amendments to the Utilities Contracts Regulations 2016

4.—(1) The Utilities Contracts Regulations 2016(**b**) are amended as follows.

(2) In regulation 84(2) (abnormally low tenders), after sub-paragraph (e) insert—

> "(g) whether the price or costs take into account the grant of subsidies.".

(3) In Schedule 3 (international trade agreements), after the last entry (for the Government of the Republic of Serbia), insert—

> "Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, signed at London on 8th July 2021.".

PART 3

AMENDMENT OF SCOTTISH SECONDARY LEGISLATION

Amendments to the Public Contracts (Scotland) Regulations 2015

5.—(1) The Public Contracts (Scotland) Regulations 2015(**c**) are amended as follows.

(2) In regulation 69(2) (abnormally low tenders), after sub-paragraph (e) insert—

> "(g) whether the price or costs take into account the grant of subsidies.".

(3) In Schedule 4A (international trade agreements), after the last entry (for the Government of the Republic of Serbia), insert—

> "Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, signed at London on 8th July 2021.".

Amendments to the Utilities Contracts (Scotland) Regulations 2016

6.—(1) The Utilities Contracts (Scotland) Regulations 2016(**d**) are amended as follows.

(**a**) S.I. 2016/273, as amended by S.I. 2019/624, S.I. 2020/1319, S.I. 2021/573, S.I. 2021/787, S.I. 2021/872 and S.I. 2021/1221.
(**b**) S.I. 2016/274, as amended by S.I. 2016/696, S.I. 2019/624, S.I. 2020/1319 S.I. 2021/573, S.I. 2021/787, S.I. 2021/872 and S.I. 2021/1221.
(**c**) S.S.I. 2015/446, as amended by S.S.I 2016/47, S.S.I. 2020/468, S.I. 2021/573, S.I. 2021/787, S.I. 2021/872 and S.S.I. 2021/378.
(**d**) S.S.I. 2016/49, as amended by S.S.I. 2020/468, S.I. 2021/573, S.I. 2021/787, S.I. 2021/872 and S.S.I. 2021/378.

(2) In regulation 82(2) (abnormally low tenders), after sub-paragraph (e) insert—

"(g) whether the price or costs take into account the grant of subsidies.".

(3) In Schedule 2A (international trade agreements), after the last entry (for the Government of the Republic of Serbia), insert—

"Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, signed at London on 8th July 2021.".

Amendments to the Concession Contracts (Scotland) Regulations 2016

7.—(1) The Concession Contracts (Scotland) Regulations 2016(**a**) are amended as follows.

(2) In Schedule 5 (international trade agreements), after the last entry (for the Government of the Republic of Serbia), insert—

"Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, signed at London on 8th July 2021.".

PART 4

TRANSITIONAL ARRANGEMENTS

Interpretation of Part 4

8.—(1) In this Part—

"Procurement Regulations" means the following and, in relation to any procedure, means whichever of the following applies to that procedure—

(a) the Public Contracts Regulations 2015;

(b) the Public Contracts (Scotland) Regulations 2015;

(c) the Utilities Contracts (Scotland) Regulations 2016;

(d) the Concession Contracts (Scotland) Regulations 2016;

(e) the Concession Contracts Regulations 2016;

(f) the Utilities Contracts Regulations 2016.

(2) In this Part, the following have the same meaning as in the applicable Procurement Regulations—

(a) contracting authority;

(b) design contest;

(c) dynamic purchasing system;

(d) economic operator;

(e) framework agreement;

(f) procurement;

(g) UK e-notification service;

(h) utility.

(**a**) S.S.I. 2016/65, as amended by S.S.I. 2016/125, S.S.I. 2020/468, S.I. 2021/573, S.I. 2021/787, S.I. 2021/872 and S.S.I. 2021/378.

Transitional provisions

9.—(1) Nothing in these Regulations affects any procurement commenced before these Regulations come into force.

(2) For the purposes of paragraph (1), a procurement is commenced before these Regulations come into force if, before that date, in accordance with the applicable Procurement Regulations—

(a) a notice has been sent to the UK e-notification service in order to—

(i) invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract, framework agreement or dynamic purchasing system; or

(ii) publicise an intention to hold a design contest;

(b) the contracting authority or utility has had published any form of advertisement seeking offers or expressions of interest in a proposed contract, framework agreement or dynamic purchasing system; or

(c) the contracting authority or utility has contacted any economic operator in order to—

(i) seek expressions of interest or offers in respect of a proposed contract, framework agreement or dynamic purchasing system; or

(ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed contract, framework agreement or dynamic purchasing system.

(3) For the purposes of this regulation, a procurement covers the whole of the procedures which, in accordance with the applicable Procurement Regulations, stem from that commencement.

(4) Procedures taken for the purpose of modifying a contract or framework agreement are not to be regarded, for the purposes of paragraph (3), as stemming from the commencement of the procurement from which the award of that contract or framework agreement had itself stemmed.

(5) A procedure commenced as described in paragraph (2)(a)(i), (b) or (c) is not to be regarded, for the purposes of paragraph (3), as stemming from the commencement of any design contest that had previously been held in relation to the subject-matter of the procurement.

Name
Minister of State
Cabinet Office

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to various United Kingdom and Scottish public procurement regulations for the purpose of implementing the Free Trade Agreement between Iceland, Liechtenstein and Norway and the United Kingdom ("EEA EFTA Agreement"). This includes consequential amendments.

The amendments made by these Regulations implement the EEA EFTA Agreement generally, as well as a provision contained in the Agreement with respect to abnormally low tenders. To ensure contracting authorities take a consistent approach, the abnormally low tenders amendment has been made applicable to all procurements and economic operators as a consequential amendment to the EEA EFTA Agreement implementation under section 4(1)(c) of the Trade Act 2021.

These Regulations also make provision for transitional arrangements, in exercise of the power conferred by section 4(1)(d) of the Trade Act 2021.

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