EXPLANATORY MEMORANDUM TO

THE PUBLIC PROCUREMENT (AGREEMENT ON GOVERNMENT PROCUREMENT) (AMENDMENT) REGULATIONS 2023

2023 No. 1169

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument will give effect in domestic regulations to the accession of the Republic of North Macedonia to the World Trade Organisation's (WTO) Agreement on Government Procurement (GPA). It requires contracting authorities and utilities to give effect to the new obligations under the GPA to suppliers from North Macedonia when carrying out their procurements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument is England, Wales and Northern Ireland. The Scottish Parliament have amended their respective regulations to implement North Macedonia's accession to the GPA via S.S.I. 2023/287[1].

5. European Convention on Human Rights

5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The UK currently gives effect to its obligations under the GPA in six sets of regulations, specifically, the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 and the Utilities Contracts Regulations 2016 (the UK procurement regulations), and the Public Contracts (Scotland) Regulations 2015, the Concession Contracts (Scotland) Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016 (the Scottish procurement regulations).

6.2 These six sets of procurement regulations each provide the same definition of the GPA and detail that duties owed by contracting authorities under the regulations are extended to economic operators from GPA parties where the procurement in question

[1] The Public Procurement (Agreement on Government Procurement (Miscellaneous Amendments) (Scotland) Regulations 2023 available at: https://www.legislation.gov.uk/ssi/2023/287/contents/made.

is covered by the UK's GPA obligations. A schedule to each set of the regulations details the relevant GPA parties.

6.3 This instrument amends the UK procurement regulations to implement the accession of the Republic of North Macedonia to the GPA. The Scottish Parliament have made similar amendments to the Scottish procurement regulations via S.S.I 2023/287.

6.4 This instrument is made under section 1(1)(b)(i) of the Trade Act 2021, which allows an appropriate authority (in this case a Minister of the Crown) to make such provision as considered appropriate as a result of the accession of another party to the GPA. This is the first use of this power.

7. Policy background

What is being done and why?

7.1 The GPA is a plurilateral agreement between 21 parties (covering 48 WTO members) including the UK, which joined as an independent member in January 2021.

7.2 The purpose of the GPA is to allow its members to mutually access each other's government procurement markets, estimated to be worth £1.3tn in total. Accordingly, the non-discrimination obligations in the GPA provide that the goods and services of any other party, and suppliers of any other party offering the goods and services, are accorded treatment no less favourable than the goods, services and suppliers of another party (including that accorded domestically).

7.3 In March 2017, North Macedonia began the process of acceding to the GPA. This was followed by a revised Market Access offer in September 2022. Final approval was achieved at the GPA Committee on 7th June 2023. North Macedonia deposited their instrument of accession on 30th September 2023, which triggered the requirement for the UK to implement the accession of the new GPA party into our domestic regulations. The GPA enters into force for North Macedonia on 30th October 2023, being the 30th day following deposit of its instrument of accession.

7.4 The UK has an existing Partnership, Trade and Cooperation Agreement with the Republic of North Macedonia (as signed on 3rd December 2020) which includes public procurement obligations. However, North Macedonia's accession to the GPA will allow British suppliers access to North Macedonia's government procurement markets under the standards set by the GPA rules.

7.5 The UK Parliament was informed of final approval of North Macedonia's accession to the GPA via a letter from the Minister of State for International Trade to the Parliamentary Chair of the Business and Trade Committee in June 2023.

7.6 This instrument amends the UK procurement regulations by updating the effective date of the GPA in the definition so that it captures North Macedonia's accession. It also adds North Macedonia to the list of GPA parties in the relevant schedule to each set of regulations, ensuring that suppliers from North Macedonia receive the same benefits under the regulations as suppliers from other GPA parties.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 The law on public procurement in England, Wales and Northern Ireland is about to undergo significant reform via the Procurement Act 2023, which received Royal Assent on 26th October 2023. When this Act comes into force, it will replace the existing sets of procurement regulations amended by this instrument (as well as the Defence and Security Public Contracts Regulations 2011, which are not being amended by this instrument) with a new regime that, among other things, gives effect to the UK's international procurement obligations, including those contained in the GPA. The new procurement regime is expected to take effect in Autumn 2024.

10. Consultation outcome

10.1 There has been no consultation on this instrument. The amendments being made are minor, technical amendments and go no further than to give effect to North Macedonia's accession to the GPA.

10.2 Regular discussions on the content of this instrument have been held with the devolved administrations throughout the drafting process, in accordance with the principles contained within the Devolution Memorandum of Understanding, dated October 2013.

11. Guidance

11.1 A Procurement Policy Note will be published reminding UK contracting authorities of the procurement obligations which result from the accession of the Republic of North Macedonia to the GPA.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the framework and principles underlying the regulations being amended have not been substantially amended. Modifications contained in this instrument have been made to ensure the regulations function effectively and are minor technical amendments. Therefore, any impact is expected to be low and below the threshold required to carry out a full impact assessment.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The impact on small businesses arising from this instrument is expected to be low.

14. Monitoring & review

14.1 As this instrument is amending provisions in connection with procurement only, the duty to review in section 28 of the Small Business, Enterprise and Employment Act 2015 does not apply and no review clause is required.

15. Contact

15.1 Julie Bremner at the Cabinet Office Telephone: 07771 957 746 or email: Julie.bremner@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Edward Green, Deputy Director for the International and Reform Team, at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Alex Burghart MP, Parliamentary Secretary at the Cabinet Office at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.