

2021 No. 573

PUBLIC PROCUREMENT

**The Public Procurement (Agreement on Government
Procurement) (Amendment) Regulations 2021**

Made - - - - at 2.00 p.m. on 12th May 2021

Laid before Parliament at 4.00 p.m. on 12th May 2021

Coming into force - - 11th June 2021

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

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Public Procurement (Agreement on Government Procurement) (Amendment) Regulations 2021 and come into force on 11th June 2021.

(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 2 (definitions), in paragraph (1)—

(a) in the definition of “GPA”, for “between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before IP completion day” substitute “signed at Marrakesh on 15th April 1994, as amended on or before the United Kingdom’s accession”;

(b) after the definition of “GPA” insert—

““GPA party” means any country, state or separate customs territory that is—

(a) 2021 c. 10. See the definition of “appropriate authority” in section 5(1).

(b) S.I. 2015/102, as amended by S.I. 2016/275 and S.I. 2020/1319; there are other amending instruments but none is relevant.

- (a) listed in Schedule 1A; or
 - (b) a member State of the EU;”.
- (3) In regulation 25 (conditions relating to the GPA and other international agreements)—
- (a) in the heading, for “the GPA and other international agreements” substitute “international agreements by which the EU is bound, other than the GPA”;
 - (b) in paragraph (1), for “Annexes 1, 2 and 4 to 7 to the EU’s Appendix 1 to the GPA and by the other international agreements” substitute “the international agreements, other than the GPA,”;
 - (c) for paragraph (2) substitute—

“(2) Paragraph (1) is to be applied as if the United Kingdom were a member State.”.
- (4) After regulation 25 insert—

“Conditions relating to the GPA

25A. Where a contracting authority is covered by Annexes 1 or 2 to the United Kingdom’s Appendix 1 to the GPA in respect of a procurement that is covered by Annexes 4 to 7 to that Appendix, the contracting authority shall accord to the works, supplies, services and economic operators of any GPA party treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the United Kingdom.”.

- (5) In regulation 90 (duty owed to economic operators from certain other states)—
- (a) in the heading, for “certain other states” substitute “countries with whom the EU has an international agreement, other than the GPA”;
 - (b) in paragraph (1)(a), omit “Condition 1, Condition 2 or”;
 - (c) omit paragraphs (2), (2A) and (4).
- (6) After regulation 90 insert—

“Duty owed to economic operators from GPA parties

90A.—(1) The duty owed in accordance with regulation 89 is a duty owed also to an economic operator from a GPA party, but only where the agreement applies to the procurement concerned.

- (2) For the purposes of paragraph (1), the GPA applies to a procurement if—
- (a) the procurement may result in the award of a contract of any description; and
 - (b) at the relevant time—
 - (i) a GPA party has agreed with the United Kingdom that the GPA shall apply to a contract of that description; and
 - (ii) the economic operator is from that GPA party.
- (3) In this regulation, “relevant time” means the date on which the contracting authority submitted a call for competition in respect of the contract to the UK e-notification service or would have done so if it has been required by Part 2 to do so.”
- (7) After Schedule 1 (central government authorities) insert—

**“SCHEDULE 1A
PARTIES TO THE GPA**

Regulation 2(1)

Armenia

Australia

Canada
European Union
Hong Kong, China
Iceland
Israel
Japan
Korea, Republic of
Liechtenstein
Moldova, Republic of
Montenegro
Netherlands with respect to Aruba
New Zealand
Norway
the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu
Singapore
Switzerland
Ukraine
United States”.

Amendments to the Concession Contracts Regulations 2016

- 3.—**(1) The Concession Contracts Regulations 2016^(a) are amended as follows.
- (2) In regulation 2 (interpretation), in paragraph (1)—
- (a) in the definition of “GPA”, for “between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before IP completion day” substitute “signed at Marrakesh on 15th April 1994, as amended on or before the United Kingdom’s accession”;
- (b) after the definition of “GPA” insert—
- ““GPA party” means any country, state or separate customs territory that is—
- (a) listed in Schedule 1A; or
- (b) a member State of the EU;”.
- (3) In regulation 51 (duty owed to economic operators from certain other states)—
- (a) in the heading, for “certain other states” substitute “countries with whom the EU has an international agreement, other than the GPA”;
- (b) in paragraph (1)(a), omit “Condition 1, Condition 2 or”;
- (c) omit paragraphs (2), (2A) and (4).
- (4) After regulation 51 insert—

^(a) S.I. 2016/273, as amended by S.I. 2019/624 and S.I. 2020/1319.

“Duty owed to economic operators from GPA parties

51A.—(1) The duty owed in accordance with regulation 50 is a duty owed also to an economic operator from a GPA party, but only where the agreement applies to the procurement concerned.

(2) For the purposes of paragraph (1), the GPA applies to a procurement if—

(a) the procurement may result in the award of a contract of any description; and

(b) at the relevant time—

(i) a GPA party has agreed with the United Kingdom that the GPA shall apply to a contract of that description; and

(ii) the economic operator is from that GPA party.

(3) In this regulation, “relevant time” means the date on which the contracting authority submitted a call for competition in respect of the contract to the UK e-notification service or would have done so if it has been required by these Regulations to do so.”.

(5) After Schedule 1 (activities constituting works) insert—

“SCHEDULE 1A

Regulation 2(1)

PARTIES TO THE GPA

Armenia

Australia

Canada

European Union

Hong Kong, China

Iceland

Israel

Japan

Korea, Republic of

Liechtenstein

Moldova, Republic of

Montenegro

Netherlands with respect to Aruba

New Zealand

Norway

the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

Singapore

Switzerland

Ukraine

United States”.

Amendments to the Utilities Contracts Regulations 2016

- 4.**—(1) The Utilities Contracts Regulations 2016(a) are amended as follows.
- (2) In regulation 2 (definitions), in paragraph (1)—
- (a) in the definition of “GPA”, for “between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before IP completion day” substitute “signed at Marrakesh on 15th April 1994, as amended on or before the United Kingdom’s accession”;
 - (b) after the definition of “GPA” insert—
 - ““GPA party” means any country, state or separate customs territory that is—
 - (a) listed in Schedule A1; or
 - (b) a member State of the EU;”.
- (3) In regulation 43 (conditions relating to the GPA and other international agreements)—
- (a) in the heading, for “the GPA and other international agreements” substitute “international agreements by which the EU is bound, other than the GPA”;
 - (b) in paragraph (1), for “Annexes 3 to 7 to the EU’s Appendix 1 to the GPA and by the other international agreements” substitute “the international agreements, other than the GPA,”;
 - (c) for paragraph (2) substitute—
 - “(2) Paragraph (1) is to be applied as if the United Kingdom were a member State.”.
- (4) After regulation 43 insert—

“Conditions relating to the GPA

43A. Where a utility within the meaning of regulation 5(1)(a) is covered by Annex 3 to the United Kingdom’s Appendix 1 to the GPA in respect of a procurement that is covered by Annexes 4 to 7 to that Appendix, the utility shall accord to the works, supplies, services and economic operators of any GPA party treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the United Kingdom.”.

- (5) In regulation 105 (duty owed to economic operators from certain other states)—
- (a) in the heading, for “certain other states” substitute “countries with whom the EU has an international agreement, other than the GPA”;
 - (b) in paragraph (1)(a), omit “Condition 1, Condition 2 or”;
 - (c) omit paragraphs (2), (2A) and (4).
- (6) After regulation 105 insert—

“Duty owed to economic operators from GPA parties

105A.—(1) The duty owed in accordance with regulation 104 is a duty owed also to an economic operator from a GPA party, but only where the agreement applies to the procurement concerned.

- (2) For the purposes of paragraph (1), the GPA applies to a procurement if—
- (a) the procurement may result in the award of a contract of any description; and
 - (b) at the relevant time—
 - (i) a GPA party has agreed with the United Kingdom that the GPA shall apply to a contract of that description; and
 - (ii) the economic operator is from that GPA party.
- (3) In this regulation, “relevant time” means—

(a) S.I. 2016/274, as amended by S.I. 2016/696, S.I. 2019/624 and S.I. 2020/1319.

- (a) in the definition of “GPA”, for “between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before IP completion day” substitute “signed at Marrakesh on 15th April 1994, as amended on or before the United Kingdom’s accession”;
- (b) after the definition of “GPA” insert—
 - ““GPA party” means any country, state or separate customs territory that is—
 - (a) listed in Schedule A1 (parties to the GPA); or
 - (b) a member State of the EU;”.
- (3) In regulation 41 (conditions relating to the GPA and other international agreements)—
 - (a) in the heading, for “the GPA and other international agreements” substitute “international agreements by which the EU is bound, other than the GPA”;
 - (b) in paragraph (1), for “Annexes 3 to 7 to the EU’s Appendix 1 to the GPA and by the other international agreements” substitute “the international agreements, other than the GPA,”;
 - (c) for paragraph (2) substitute—
 - “(2) Paragraph (1) is to be applied as if the United Kingdom were a member State.”.
- (4) After regulation 41 insert—

“Conditions relating to the GPA

- 41A.**—(1) Where a utility within the meaning of regulation 4(1)(a) (utilities) is covered by Annex 3 to the United Kingdom’s Appendix 1 to the GPA in respect of a procurement that is covered by Annexes 4 to 7 to that Appendix, the utility must accord to the works, supplies, services and economic operators of any GPA party treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the United Kingdom.”.
- (5) In regulation 100 (duty owed to economic operators)—
 - (a) in the heading, after “operators” insert “, including those from countries with whom the EU has a relevant international agreement other than the GPA”;
 - (b) in paragraph (2)(a), omit “Condition 1, Condition 2 or”;
 - (c) omit paragraphs (3), (3A) and (5).
 - (6) After regulation 100 insert—

“Duty owed to economic operators from GPA parties

- 100A.**—(1) The duty owed in accordance with regulation 100(1) (duty owed to economic operators, including those from countries with whom the EU has a relevant international agreement other than the GPA) is a duty owed also to an economic operator from a GPA party, but only where the agreement applies to the procurement concerned.
- (2) For the purposes of paragraph (1), the GPA applies to a procurement if—
 - (a) the procurement may result in the award of a contract of any description; and
 - (b) at the relevant time—
 - (i) a GPA party has agreed with the United Kingdom that the GPA shall apply to a contract of that description; and
 - (ii) the economic operator is from that GPA party.
 - (3) In this regulation, “relevant time” means—
 - (a) if the utility selects economic operators to tender for or to negotiate the contract in accordance with a qualification system established in accordance with regulation 75 (qualification systems), the date on which the selection commences;
 - (b) if the utility satisfies the requirement that there be a call for competition by indicating the intention to award the contract in a periodic indicative notice in

- (a) in the definition of “GPA”, for “between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended before IP completion day” substitute “signed at Marrakesh on 15th April 1994, as amended on or before the United Kingdom’s accession”;
- (b) after the definition of “GPA” insert—
 - ““GPA party” means any country, state or separate customs territory that is—
 - (a) listed in Schedule 1A; or
 - (b) a member State of the EU;”.
- (3) In regulation 51 (duty owed to economic operators)—
 - (a) in the heading, after “operators” insert “, including those from countries with whom the EU has a relevant international agreement other than the GPA”;
 - (b) in paragraph (2), omit “Condition 1, Condition 2 or”;
 - (c) omit paragraphs (3), (3A) and (5).
- (4) After regulation 51 insert—

“Duty owed to economic operators from GPA parties

51A.—(1) The duty owed in accordance with regulation 51(1) (duty owed to economic operators, including those from countries with whom the EU has a relevant international agreement other than the GPA) is a duty owed also to an economic operator from a GPA party, but only where the agreement applies to the procurement concerned.

- (2) For the purposes of paragraph (1), the GPA applies to a procurement if—
 - (a) the procurement may result in the award of a contract of any description; and
 - (b) at the relevant time—
 - (i) a GPA party has agreed with the United Kingdom that the GPA shall apply to a contract of that description; and
 - (ii) the economic operator is from that GPA party.

(3) In this regulation, “relevant time” means the date on which the contracting authority submitted a call for competition in respect of the contract to the UK e-notification service or would have done so if it has been required by these Regulations to do so.”.

- (5) After Schedule 1 (activities constituting works) insert—

“SCHEDULE 1A

Regulation 2(1)

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 Australia
 Canada
 European Union
 Hong Kong, China
 Iceland
 Israel
 Japan
 Korea, Republic of