

NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

EU Exit Legislation about public procurement. The UK Government sought agreement in March 2021 to bring forward a further statutory instrument (The Public Procurement (Agreement on Government Procurement) (Amendment) (No. 2) Regulations 2021), using powers in the Trade Act 2021, to make some limited and technical amendments to UK and Scottish legislation about public procurement.

Is the notification Type 1 or Type 2 This is a Type 1 notification.

As a part of EU Exit, the UK Government acceded to the World Trade Organisation Government Procurement Agreement, or GPA, in its own right. This means that domestic UK and Scottish procurement legislation needs to be amended to reflect the UK's accession to the GPA. The Scottish Parliament already consented to a similar GPA instrument in December 2020 albeit that one was broader in its scope. The UK Government is planning to bring forward this further statutory instrument to amend the following domestic procurement Regulations, and so these will have effect across the whole UK:

- the Public Contracts Regulations 2015;
- the Utilities Contracts Regulations 2016;
- the Concession Contracts Regulations 2016;
- the Public Contracts (Scotland) Regulations 2015;
- the Utilities Contracts (Scotland) Regulations 2016; and
- the Concession Contracts (Scotland) Regulations 2016.

As public procurement is devolved and the amending regulations will make provisions that could, instead, be made by Scottish Ministers, the UK Government is seeking agreement again to legislate on a UK-wide basis. It has confirmed that the UK instrument will only make a limited change to UK and Scottish regulations (to update the list of central bodies that are subject to the procurement rules) so that these can have effect across the whole UK and deliver the UK's procurement obligations under its international obligations.

The UK intended to both lay, and make, the instrument on 14 May 2021. This is now scheduled to happen on 1 July 2021.

Details of the provisions that Scottish Ministers are being asked to consent to.

Summary of the proposals The UK Instrument proposes to make amendments in the following area that falls within devolved competence:

The UK plans to bring forwards a draft Instrument to amend the procurement Regulations for the UK and Scotland, using clause 1 of the Trade Act 2021 and which gives UK and Scottish Ministers the power to make these amendments by negative procedure.

To do this, the UK Government is planning to amend some limited and technical provisions in our Public Contracts (Scotland) Regulations 2015 and equivalent provisions in our Utilities Contracts (Scotland) Regulations 2016 and Concessions Contracts (Scotland) Regulations 2016.

There is no practical advantage to making these amendments separately in Scotland. The UK Government confirms that the only purpose of the Regulations is to update (in our Scottish procurement Regulations and the equivalent UK Regulations) the list of central government bodies.

As part of the UK's accession to the World Trade Organisation's Government Procurement Agreement (GPA), the UK committed to modifications to the UK's Annexes to the GPA to reflect the current configuration of the UK's public sector. This specifically involved removing bodies which no longer exist, adding bodies to which functions had transferred from bodies previously listed and updating the names of bodies to reflect machinery of government changes. The proposed modifications do not represent a change to the bodies covered by the United Kingdom's offer as an independent member of the GPA.

The UK advises that this Instrument is simpler, and will change legislation to a lesser extent than the first GPA SI that the Parliament agreed to on 02 December 2020. They confirm that it provides only for the necessary amendments to this one area of the domestic regulations, via the updated GPA lists of entities, rather than the previous Instrument which addressed the wholesale technical changes required following the UK becoming an independent membership of the GPA. It has previously confirmed that the changes do not represent a substantive change in coverage.

Does the SI relate to a common framework or other scheme?

The procurement framework is being developed jointly by the four administrations to agree working practices in relation to procurement policy. Frameworks will be 3 established where necessary, through agreement between the four UK administrations, to enable the functioning of intra-UK trade, while acknowledging policy divergence, respecting devolution and ensuring compliance with international obligations. So, the UK's international obligations, which the Regulations implement, are part of the background to the framework rather than something to be agreed between the administrations as part of the framework.

Summary of stakeholder engagement/consultation

There has been no specific stakeholder engagement or consultation on these amendments due to their technical nature.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

Scottish Ministers already agreed our updated entries to the Schedule 1 list of bodies and, as Scottish legislation has to be amended to comply with the UK's international obligations, it is entirely sensible for these technical amendments to have

effect across the whole of the UK. Also, the amendments in this instrument, which affect Scotland, applied before at EU level and have effect across the whole of the UK. The UK Government has also confirmed that it acceded to the GPA on substantially the same terms as under former EU membership. The changes should therefore have minimal practical effect on those involved in the procurement process.

Intended laying date (if known) of instruments likely to arise

We understand that the UK Government intends to lay this instrument in draft using the negative procedure and using section 1 in the Trade Act 2021. The UK government expected to lay the instrument in the UK Parliament on 14 May 2021 and make it on the same day. However, the intended laying date is now 1 July 2021.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

Not Applicable – as Scottish Ministers had to consider consenting to the SI directly in the run up to or during the pre-election recess. As agreed with Parliamentary officials the notification was held by PLU in the meantime to be forwarded to the relevant committee of the Scottish Parliament after the Scottish elections.

Information about any time dependency associated with the proposal

We understood that the UK instrument had to be laid by 14 May for the UK to meet its international obligations and so consent from Scottish Ministers was needed 4 before then. The UK Government advised that the SI had to be laid in May in order for it to meet its international obligations. The laying date has since been delayed to 1 July 2021.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

No, these amendments are limited and technical in nature.

Any significant financial implications?

No financial implications are anticipated as a result of these amendments because these are limited and technical in nature.

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SUMMARY NOTIFICATION TO THE SCOTTISH PARLIAMENT

SI NOTIFICATION: SUMMARY

Title of Instrument
The Public Procurement Regulations (Agreement on Government Procurement) (Amendment) (No. 2) Regulations 2021
Proposed laying date at Westminster
1 July 2021

Date by which Committee has been asked to respond

The UK Government was expected to lay the SI on 14 May 2021, meaning Scottish Ministers had to consent during the pre-election recess period. The laying date is now expected to be 1 July 2021.

Power(s) under which SI is to be made

Clause 1 (negative procedure) of the Trade Act 2021.

Categorisation under SI Protocol

TYPE 1

Purpose

To make technical changes to domestic (UK and Scottish) procurement legislation to ensure that these reflect the UK's accession to the World Trade Organisation Government Procurement Agreement, or GPA, in its own right.

Other information

This notification should be read alongside the notifications about the Public Procurement (Government Procurement Agreement) Regulations and the Public Procurement (International Agreements) Regulations that the Parliament consented to on 02 December 2020.

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