

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4794 GIBRALTAR Thursday 17th December 2020

LEGAL NOTICE NO. 453 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019

PUBLIC PROCUREMENT (AMENDMENT ETC) (EU EXIT) REGULATIONS 2020

In exercise of the powers conferred upon him by sections 11 and 11B and paragraph 1(b) of Schedule 3 of the European Union (Withdrawal) Act 2019, the Chief Minister has made the following Regulations-

PART 1

Title.

1. These Regulations may be cited as the Public Procurement (Amendment etc) (EU Exit) Regulations 2020.

Commencement.

2. These Regulations come into operation on 1 January 2021.

PART 2

Amendment of the Public Finance (Control and Audit) Act.

3.(1) The Public Finance (Control and Audit) Act is amended in accordance with this regulation.

(2) In section 75-

(a) in subsection (1) for “Community law relating to public procurement” substitute the “Procurement (Public Sector Contracts) Regulations 2016, the Procurement (Concession Contracts) Regulations 2016 or the Procurement (Utilities Contracts) Regulations 2016”;

(b) In subsection (3)-

(i) delete “for the purpose of transposing into the law of Gibraltar Community law”;

(ii) delete paragraphs (j) and (k).

Amendment of the Procurement (Public Sector Contracts) Regulations 2016.

4.(1) The Procurement (Public Sector Contracts) Regulations 2016 are amended in accordance with this regulation.

(2) In regulation 2, in subregulation (1)-

- (a) delete the definition of “the Commission”;
- (b) in the definition of “common technical specification”, for “as amended from time to time” substitute “as it has effect in EU law;”;
- (c) delete the definition of “ESPD”;
- (d) delete the definition of “GPA”;
- (e) in the definition of “innovation”, delete “the Europe 2020 strategy for smart,”;
- (f) delete the definition of “Official Journal”;
- (g) delete the definition of “official list”;
- (h) in the definition of “prior information notice”, for “sent to the Official Journal” substitute “submitted to the UK e-notification service”
- (i) delete the definition of “qualified certificate for electronic signature”;
- (j) before the definition of “ship” insert-

““the Retained Treaties” means anything which is retained by EU law by virtue of section 7 of the European Union (Withdrawal) Act 2019 because of the effect which the Treaty on European Union or TFEU had immediately before 1 January 2021 in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;

- (k) before the definition of “standard” insert-

“SPD” means the Single Procurement Document referred to in regulation 59(1);”;

- (i) delete the definition of “the Treaties”;

- (j) before the definition of “Utilities Directive” insert-
- ““the UK e-notification service” has the meaning given by regulation 51(6) and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with that regulation;”.
- (3) Delete regulation 4(2).
- (4) In regulation 5(2)-
- (a) in paragraph (b) delete “the European Union”;
- (b) delete paragraph (c).
- (5) Before regulation 6, insert-
- “A6.(1) This Part –
- (a) does not oblige Gibraltar to supply information the disclosure of which it considers contrary to the essential interests of its security;
- (b) does not preclude Gibraltar from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures doo not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.
- (2) The arms, munitions and war material to which subregulation (1)(b) applies are, subject to subregulation (5), those included in the 1958 List.
- (3) Subject to the effect of any regulations made under subregulation (4), any measures which, if they had been taken immediately before 1 January 2021, would have been covered by Article 346 of TFEU shall be regarded as measures covered by aubregulation (1).
- (4) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.
- (6) In regulation 6(3) for “Article 346 of TFEU” substitute “regulation A6(1)”.
- (7) In regulation 7-
- (a) in subregulation (1)-

- (i) in paragraph (a), for “the sum specified in Article 4(a) of the Public Sector Directive” substitute “£4,733,252”;
 - (ii) in paragraph (b), for “the sum specified in Article 4(b) of the Public Sector Directive” substitute “£122,976”;
 - (iii) in paragraph (c), for “the sum specified in Article 4(c) of the Public Sector Directive” substitute “£189,330”;
 - (iv) in paragraph (d), for “the sum specified in Article 4(d) of the Public Sector Directive” substitute “£663,540”;
- (b) in subregulation (2), for “Article 4(c) of the Public Contracts Directive” substitute “subregulation (1)(c)”;
- (c) delete subregulation (3).
- (8) In regulation 8-
- (a) in subregulation (7) for “sent” substitute “submitted”;
 - (b) in subregulation (14)-
 - (i) in paragraph (a), for “80,000 euro” substitute “£70,778”,
 - (ii) in paragraph (b), for “1 million euro” substitute “£884,720”.
- (9) In regulation 11-
- (a) in subregulation (1)-
 - (i) before “Treaties” insert “Retained”;
 - (ii) for “third” substitute “other”;
 - (b) delete subregulation (2).
- (10) In regulation 12-
- (a) in subregulation (1)(d)-
 - (i) in paragraph (i)-
 - (aa) in the words before subparagraph (aa), delete the words from “within” to “to time,”;
 - (bb) in subparagraph (aa), for “a Member State, a third” substitute “or another”;

- (cc) in subparagraph (bb), for a “Member State, a third” substitute “or another”;
 - (ii) in paragraph (ii), delete the words from “within” to “to time”;
 - (b) in subregulation (2), after paragraph (a) insert-
 - “(aa) “lawyer” means a person practising as an advocate, barrister or solicitor in any part of Gibraltar or the United Kingdom;”
- (11) In regulation 13, for “TFEU” substitute “anything which is retained EU law by virtue of section 7 of the European Union (Withdrawal) Act 2019 because of the effect which TFEU had immediately before 1 January 2021 in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section”.
- (12) In regulation 14, in subregulations (1)(c), 3(b) and 4(c), before “Treaties” insert “Retained”.
- (13) In regulation 15-
- (a) in subregulation (1)-
 - (i) in paragraph (a), for “Article 13(a) of the Public Sector Directive” substitute “regulation 7(1)(a)”;
 - (ii) in paragraph (b), for “Article 13(b) of the Public Sector Directive” substitute “regulation 7(1)(c)”;
 - (b) delete subregulation (2).
- (14) In regulation 17(2)(a), delete “or a Member State”.
- (15) In regulation 18-
- (a) in subregulations (1) and (5)(a), for “Article 346 of TFEU” substitute “regulation A6(1)”;
 - (b) in subregulation (8), for “to which Article 346 of TFEU applies” substitute “covered by regulation A6(1)”.
- (16) In regulation 19-
- (a) in subregulation (1)(a)-
 - (i) before “Treaties” insert “Retained”;
 - (ii) “one or more third country” substitute “other countries”;

- (b) in subregulation (1)(b) for “a third” substitute “another”.
 - (c) delete subregulation (2).
- (17) In regulation 20, in subregulation (4) delete “European Union law”.
- (18) In regulation 21, delete subregulation (1).
- (19) In regulation 23-
- (a) in subregulation (15)(a)(i)-
 - (i) for “in the Official Journal” substitute “on the UK e-notification service”;
 - (ii) for “sent” substitute “submitted”;
 - (b) in subregulation 16(c), for the words from “accept” up to and including paragraphs (i) and (ii) substitute “act in accordance with Article 27 of that Regulation (and for this purpose the submission of the tender or request is to be treated as the use of an online service to which that Article applies)”;
 - (c) delete subregulation (17);
 - (d) in subregulation (20)-
 - (i) in the words before paragraph (a), for the words from “in accordance” to “Decision 2011/130/EU” substitute “in a format other than those referred to in Article 1 of Commission Implementing Decision (EU) 2015/1506 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies”;
 - (ii) in paragraph (b), for the words from “allow” to “non-native speakers.” substitute “comply with the requirements of Article 2(1)(b) of that Decision (or would comply with those requirements if the person seeking to validate the signature were a public sector body within the meaning of that Article)”.
- (20) In regulation 28-
- (a) in subregulation (2), for “sent” substitute “submitted”;
 - (b) in subregulation (4)-
 - (i) in paragraph (a), for “for the contract notice in section I of Part B of Annex to the Public Sector Directive” substitute “by regulation 48(2)”;
 - (ii) in paragraph (b), for “sent” (in both places) substitute “submitted”;

- (c) in subregulation (5), for “sent” substitute “submitted”.
- (21) In regulation 29-
- (a) in subregulation (2)(a) for “sent” substitute “submitted”.
 - (b) in subregulation (6)-
 - (i) in paragraph (a), for “in section I of part B of Annex V to the Public Sector Directive” substitute “by regulation 48”;
 - (ii) in paragraph (b), for “sent” (in both places) substitute “submitted”;
 - (c) in subregulation (9)(a), for “sent” substitute “submitted”.
- (22) In regulation 30-
- (a) in subregulation (4)(a), for “sent” substitute “submitted”;
 - (b) in subregulation (6)-
 - (i) in paragraph (a), for “in section 1 of part B of Annex V to the Public Contracts Directive” substitute “by regulation 48”;
 - (ii) in paragraph (b), for “sent” (in both places) substitute “submitted”;
 - (c) in subregulation (9)(a), for “sent” substitute “submitted”.
- (23) In regulation 31, in subregulation (2) for “sent” substitute “submitted”.
- (24) In regulation 32, in subregulation (5) for “sent” substitute “submitted”.
- (25) In regulation 34-
- (a) in subregulation (8)(a), for “sent” substitute “submitted”;
 - (b) in subregulation (22), for “ESPD” substitute “SPD”;
 - (c) for subregulation (25) substitute the following-
 - “(25) Where the period of validity is changed without terminating the dynamic purchasing system, the contracting authority shall submit for publication on the UK e-notification service a notice of the kind used initially for the call for competition for the dynamic purchasing system.

(25A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under subregulation (24) or (25), the contracting authority shall submit for publication on the UK e-notification service a contract award notice under regulation 50.”.

(26) Delete regulation 39.

(27) In regulation 42-

- (a) in subregulation (5), for “adopted by a legal act of the European Union” substitute “imposed by retained EU law”;
- (b) in subregulation (7), in the words before paragraph (a), after “compatible with” insert “retained”.

(28) In regulation 48-

(a) after Annex V to the Public Sector Directive insert-

“, but as if-

- (a) in paragraph 2, “the second and third subparagraph of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations; and
- (b) in paragraph 9, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;

(b) delete “and meet the necessary features listed in Annex VIII to the Public Sector Directive.”.

(29) For regulation 49 substitute-

“49. Contract notices-

- (a) shall contain the information set out in part C of Annex 5 to the Public Contracts Directive, but as if-
 - (i) in paragraph 2, “the second and third subparagraphs of Article 53(1)” were a reference to regulation 53(3) and 54(2) of these Regulations;
 - (ii) paragraph 24 (financing by EU funds) were deleted;
 - (iii) in paragraph 26, “in the Official Journal of the European Union” read “on the UK e-notification service (within the meaning of the Procurement (Public Sector Contracts) Regulations 2016; and

(iv) in paragraph 28, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and

(b) shall be submitted for publication in accordance with regulation 51.”.

(30) In regulation 50-

(a) in subregulations (1), (4), (5)(a) and (b), for “send” substitute “submit”;

(b) for subregulation (2) substitute-

“(2) Such notices-

(a) shall contain the information sent out in part D of Annex to the Public Contracts Directive, but as if-

(i) in paragraph 9, “Article 67” were a reference to regulation 67 of these Regulations;

(ii) in paragraph 11 (b), the words “Member State or from a third” were deleted;

(iii) paragraph 15 (financing by EU funds) were deleted;

(iv) in paragraph 17, “in the Official Journal of the European Union” read “on the UK e-notification service (within the meaning of the Procurement (Public Sector Contracts) Regulations 2016)”;

(v) in paragraph 18, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and

(b) shall be submitted for publication in accordance with regulation 51.”.

(31) In regulation 51-

(a) for the heading, substitute “Publication on the UK e-notification service.”;

(b) for subregulation (2) substitute “The notices required by regulations 34, 48,49, 50, 72, 75 and 78 must be submitted to the UK e-notification service for publication.”.

(c) in subregulation (3), for “sent to the European Union Publications Office” substitute “submitted to the UK e-notification service.”

- (d) in subregulation (4)-
 - (i) for “European Union Publications Office” substitute “provider of the UK e-notification service”;
 - (ii) delete “the receipt of the notice and of”
 - (iii) for “sent” substitute “submitted”;
- (e) in subregulation (5)-
 - (i) for “send” substitute “submit”;
 - (ii) for “European Union Publications Office” substitute “UK e-notification service”;
 - (iii) delete the words from “provided” to “Public Sector Directive”;
- (f) after subregulation (5) insert-
 - “(6) In these Regulations, “the UK e-notification service” means a single web-based portal which is provided, for purposes which include the purposes of this Part, by or on behalf of the Cabinet Office, and to which access by Gibraltar has been extended.
 - (7) For the purposes of these Regulations, a notice of any description is submitted to the UK e-notification service if the information comprising the notice is entered in the portal in such form or manner as the portal may elicit it and in compliance with any specific instructions that are given within the portal about how the information, or any particular element of it, is to be entered.”.

(32) For regulation 52 and the heading substitute-

“Publication of notices otherwise than on the UK e-notification service.

- 52.(1) In addition to the publication of the notices referred to in regulations 34, 48, 49, 50, 75 and 78 on the UK e-notification service, contracting authorities may publish information contained in them on the internet on a buyer profile.
- (2) The notices referred to in regulations 34, 48, 49, 50, 72 and 78, and the information contained in them, must not be published otherwise than on the UK e-notification service before they are published on that service.
 - (3) Notwithstanding subregulation (2), publication may in any event take place otherwise than on the UK e-notification service where contracting authorities have not been notified of the publication on that service within 48 hours after the notice was submitted to that service.

(4) Notices published otherwise than on the UK e-notification service must not contain information other than that contained in the notices submitted to that service or published on a buyer profile, but must indicate the date of submission of the notice to that service or its publication on the buyer profile.

(5) Where a prior information notice is to be published on a buyer profile-

(a) the prior information notice may not be so published before the notice is submitted to the UK e-notification service; and

(b) the prior information notice must indicate the date of that submission.”.

(33) In regulation 53, in subregulation (1), for “in the Official Journal of a notice sent” substitute “on the UK e-notification service of a notice submitted”.

(34) In regulation 56(2), for “regulation 20(4)” substitute “in the fields of environmental, social and labour law established by national law, collective agreements subject to subregulations (2A) and (2B) or by the international environmental, social and labour law provisions listed in Annex X to the Public Sector Directive,”;

(35) In regulation 58, delete subregulation (4).

(36) In regulation 59-

(a) in the heading, delete “European”;

(b) in each of subregulations (1) to (6), for “ESPD” substitute “SPD”;

(c) in subregulation (10)(a), for “a Member State” substitute “Gibraltar”;

(d) delete subregulations (11), (12) and (13).

(37) In regulation 60-

(a) in subregulation (4)(a) and (b), delete “Member State or”;

(b) in subregulation (5) delete “Member State or” every time it appears;

(c) delete subregulations (10) and (11).

(38) Delete regulation 61.

(39) In regulation 62 –

(a) delete subregulation (2);

- (b) in subregulation (4) –
 - (i) delete paragraphs (a) and (b);
 - (ii) in paragraph (c), delete “other”;
 - (iii) delete the words after paragraph (c);
 - (c) delete subregulation (6).
- (40) Delete regulation 64.
- (41) In regulation 68-
- (a) in subregulation (4(c))-
 - (i) delete “third”;
 - (ii) for “is bound” substitute “was, immediately before 1 January 2021, bound”;
 - (b) delete subregulations (5) and (6).
- (42) In regulation 69-
- (a) in subregulation (2), delete paragraph (f);
 - (b) delete subregulations (6), (7) and (8).
- (43) In regulation 71, in subregulation (5), for “ESPDs” substitute “SPDs”.
- (44) In regulation 72-
- (a) in subregulation (3)-
 - (i) for “send” substitute “submit”;
 - (ii) after “Directive” insert-
 - “, but as if-
 - (a) paragraph 9 (financing by EU funds) were deleted;
 - (b) in paragraph 11, “in the Official Journal of the European Union” read “on the UK e-notification service (within the meaning of the Procurement (Public Sector Contracts) Regulations 2016)”;

(c) in paragraph 12, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.”.

(45) In regulation 73-

- (a) after paragraph (a), insert “or”;
- (b) after paragraph (b), delete “or”;
- (c) delete paragraph (c).

(46) In regulation 75-

- (a) in subregulation (3), for “sending” substitute “submitting”;
- (b) in subregulation (4), for “send” substitute “submit”.

(47) In regulation 78-

(a) in subregulation (2)-

(i) in paragraph (a), after “Directive” insert-

“, but as if-

(i) in paragraph 2, “the second and third subparagraphs of Article 53(1)” were a reference to regulation 53(3) and (4) of these Regulations;

(ii) in paragraph 16, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.”;

(ii) in paragraph (b), for “sent” substitute “submitted”;

(b) in subregulation (3) –

(i) for “send” substitute “submit”;

(ii) for “of dispatch” substitute “on which the notice was submitted to the UK e-notification service”;

(c) in subregulation (4), after “Directive” insert-

“, but as if-

(a) paragraph 12 (financing by EU funds) were deleted;

(b) in paragraph 13, “in the Official Journal of the European Union” read “on the UK e-notification service (within the meaning of the Procurement (Public Sector Contracts) Regulations 2016”;

(c) in paragraph 14, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.”.

(48) In regulation 82-

(a) in subregulation (1)-

(i) in paragraph (a), for “1,000,000 euros” substitute “£884,720”;

(ii) in paragraph (b), for “10,000,000 euros” substitute “£8,847,200”;

(b) in subregulation (2), for “applicable European Union or Gibraltar law, on access to documents and data protection” substitute “rules on access and data protection applicable in Gibraltar.”.

(49) In regulation 83-

(a) for subregulation (4) substitute-

“(4) A contracting authority shall communicate the report, or its main elements to the Chief Minister if he so requests.”.

(b) in subregulation (10), delete “and also communicated to the Commission”.

(c) delete subregulation (11).

(50) Delete regulations 84 and 85.

(51) In regulation 89-

(a) in the heading, for “or Member States” substitute “and the United Kingdom”;

(b) in subregulation (1)(b), for “enforceable European Union obligation” substitute “retained EU obligation that is enforceable by virtue of section 7 of the European Union (Withdrawal) Act 2019.”.

(c) in subregulation (2) for “a Member State” substitute “the United Kingdom”.

(52) In regulation 93, in subregulation (3), for “in the Official Journal”, substitute “on the UK e-notification service”.

(53) In regulation 99-

- (a) in subregulations (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
- (b) delete subregulation (4)(b).

Amendment of the Procurement (Concession Contracts) Regulations 2016.

5.(1) The Procurement (Concession Contracts) Regulations 2016 are amended in accordance with this regulation.

(2) In regulation 2, in subregulation (1)-

- (a) delete the definition of “Commission”;
- (b) in the definition of “exclusive right” before “Treaties” insert “Retained”;
- (c) delete the definition of “GPA”;
- (d) in the definition of “innovation” delete “the Europe 2020 strategy for smart,”
- (e) after the definition of “Public Sector Directive” insert-

“the Retained Treaties” means anything which is retained EU law by virtue of section 7 of the European Union (Withdrawal) Act 2019 because of the effect which the Treaty on European Union or TFEU had immediately before 1 January 2021 in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;”;

- (f) delete the definition of “the Treaties”;
- (g) before the definition of “Utilities Directive” insert-

“UK e-notification service” has the meaning mentioned in regulation 31(5);”.

(3) In regulation 4-

- (a) delete subregulation (2);
- (b) after subregulation (6) insert-

“(7) These Regulations-

- (a) do not oblige Gibraltar to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) do not preclude Gibraltar from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended for specifically military purposes.

(8) The arms, munitions and war material to which subregulation 7(b) applies are, subject to subregulation (10), those included in the 1958 List.

(9) Subject to the effect of any regulations made under subregulation (10), any measures which, if they had been taken immediately before 1 January 2021, would have been covered by Article 346 of TFEU shall be regarded as measures covered by subregulation (7).

(10) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.

(4) In regulation 8-

- (a) in subregulation (1), for the words from “the sum” to the “time” substitute “£4,733,252”;
- (b) delete subregulation (2);
- (c) in subregulation (4), for “sent” substitute “submitted”.

(5) In regulation 9-

- (a) in subregulation (2), for the words from “in accordance” to “applicable to” substitute “for the exercise of”;
- (b) in subregulation (3), for the words from “European Union” to “for” substitute “exclusive right was not granted following the application of”;
- (c) in subregulation (5)(a), for “granting of an operating licence” substitute “economic operator’s status as a qualifying air carrier”;
- (d) in subregulation (6)(a)-
 - (i) before “Treaties” insert “Retained”;
 - (ii) for “third” substitute “other”;

- (e) in subregulation (11)-
 - (i) in paragraph (a), after Gibraltar insert “or the United Kingdom” and for “third” substitute “other”;
 - (ii) in paragraph (b) for “a third” substitute “another”;
 - (iii) in paragraph (g)-
 - (aa) for “third country” substitute “country other than the United Kingdom or Gibraltar”;
 - (bb) for “territory of the European Union” substitute “United Kingdom and Gibraltar”;
- (f) in subregulation (12) delete “or a Member State”;
- (g) in subregulation 13(d)-
 - (i) in paragraph (i)-
 - (aa) in the words before subparagraph (aa), delete the words from “within to “to time,”;
 - (bb) in paragraph (aa), for “, a Member State, a third” substitute “or another”;
 - (cc) in paragraph (bb), for “a Member State or a third” substitute “or another”;
 - (ii) in paragraph (ii), in the words after paragraph (bb), delete the words from “within” to “to time”;
- (h) before subregulation (14) insert-

“(13A) In this regulation, “lawyer” means a person practising as an advocate, barrister or solicitor in any part of the United Kingdom or Gibraltar.”

 - (i) in subregulation (15)-
 - (i) for “third country” substitute “another country”;
 - (ii) for “the European Union” substitute “Gibraltar”.

(6) In regulation 12, in subregulation (5)-

- (a) in paragraph (a), for the words from “as may be amended from time to time” substitute “as it had effect immediately before 1 January 2021”;
- (b) in paragraph (b), in the words before paragraph (1), for “Directive” substitute “Part”.

(7) Delete regulation 14.

(8) In regulation 16, in subregulations (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.

(9) In regulation 19, in subregulation (5), for “Article 346 of TFEU substitute “regulation 4(7)”;

(10) In regulation 20-

- (a) in subregulation (1), for “Article 346 of TFEU” substitute “regulation 4(7)”;
- (b) in subregulation (2), for “Article 346 of TFEU” substitute “regulation 4(7)”;
- (c) in subregulation (6)(a), for “Article 346 of TFEU” substitute “regulation 4(7)”
- (d) in subregulation (8), for “Article 346 of TFEU” substitute “regulation 4(7)”.

(11) In regulation 21(6), for “Article 346 of TEFU” substitute “regulation 4(7)”.

(12) In regulation 22-

- (a) in subregulation (1), for “Article 346 of TFEU” substitute “regulation 4(7)”;
- (b) in subregulation (5)(a), for “Article 346 of TFEU” substitute “regulation 4(7)”;
- (c) in subregulation (7), for “Article 346 of TFEU” substitute “regulation 4(7)”.

(13) In regulation 24, delete subregulation (1).

(14) In regulation 29-

- (a) in subregulation (2)(a), after “Directive,” insert-

“but as if-

- (i) in paragraph 3, Article 32(2) were a reference to regulation 32(3) of these Regulations;

- (ii) in paragraph 10, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
 - (iii) paragraph 15 were deleted.”,
- (b) in subregulation (5)(a), for the words “and that” to “where it so requests” substitute “and that a report is sent to the Chief Minister if the Chief Minister so requests;”.
- (15) In regulation 30-
- (a) in subregulations (1) and (2), for “send” substitute “submit”;
 - (b) in subregulation (3), for “A concession award” substitute “Subject to subregulation (4), a concession award”;
 - (c) after subregulation (3) insert-
 - “(4) In subregulation (3), the reference to Annex VII is a reference to that Annex, but as if-
 - (i) in paragraph 7, “Article 41” were a reference to regulation 39 of these Regulations;
 - (ii) in paragraph 11(c), “Article 8(3)” were a reference to regulation 8(6) and (7) of these Regulations;
 - (iii) paragraph 12 were deleted;
 - (iv) in paragraph 14, “in the Official Journal of the European Union” read “on the UK e-notification service (within the meaning of the Procurement (Concession Contracts) Regulations 2016)”;
 - (v) in paragraph 15, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.”.
- (16) In regulation 31-
- (a) for subregulation (1) substitute-
 - “The notices required by regulations 29, 30 and 41(3) to be submitted for publication and any corrigenda to the notices must be submitted to the UK e-notification service for publication”

- (b) in subregulation (2)-
 - (i) for “European Union Publications Office” substitute “provider of the UK e-notification service”;
 - (ii) delete “the receipt of the notice and of”;
- (c) in subregulation (3) –
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for “by the European Union Publications Office” substitute “on that service”;
 - (iii) or “by that Office” substitute “on that service”;
 - (iv) for the words from “it confirms” to “Directive” substitute “the notice was submitted to that service.”;
- (d) in subregulation (4)-
 - (i) for “at national level” substitute “otherwise than on the UK e-notification service”;
 - (ii) for “sent to the European Union Publications Office” substitute “submitted to that service”;
 - (iii) for “sending of the notice to that Office” substitute “submission of the notice to that service”;
 - (iv) delete “and must be published” to “sent”.
- (e) after subregulation (4) insert-

“(5) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(6) of the Procurement (Public Sector Contracts) Regulations 2016.”.

(17) In regulation 32, in regulation (1), for “in the Official Journal” substitute “on the UK e-notification service”.

(18) In regulation 36(15)(a), delete “European Union law,”;

(19) In regulation 37, in subregulation (3), for “sent” substitute “submitted”.

(20) In regulation 41-

(a) in subregulation (3), for “send” substitute “submit”;

(b) in subregulation (4), after “Directive” insert-

“, but as if-

(a) paragraph 9 (financing by EU funds) were deleted;

(b) in paragraph 11, “in the Official Journal of the European Union” read “on the UK e-notification service (within the meaning of the Procurement (Concession Contracts) Regulations 2016”;

(c) in paragraph 12, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”.

(21) In regulation 42-

(a) after paragraph (a), insert “or”;

(b) after paragraph (b), delete “or”;

(c) delete paragraph (c).

(22) In regulation 43, in subregulation (5)(a) for “in the Official Journal” substitute “on the UK e-notification service”;

(23) In regulation 46-

(a) in the heading, for “Member States” substitute “the United Kingdom”;

(b) in subregulation (1)(b), for “enforceable European Union obligation” substitute “retained EU obligation that is enforceable by virtue of section 7 of the European Union (Withdrawal Act) 2019”;

(c) in subregulation (2), for “a Member State” substitute “the United Kingdom”.

(24) In regulation 50, in subregulation (3) for “in the Official Journal” substitute “on the UK e-notification service”.

(25) In regulation 56-

(a) in subregulations (2) and (3)(a),(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;

- (b) in subregulation (4)-
 - (i) in the words before paragraph (a), delete the words from “is in” to “and which”;
 - (ii) in paragraph (c), for “in the Official Journal” substitute “on the UK e-notification service.”.

Amendment of the Procurement (Utilities Contracts) Regulations 2016.

6.(1) The Procurement (Utilities Contracts) Regulations 2016 are amended in accordance with this regulation.

(2) In regulation 2, in subregulation (1)-

- (a) delete the definition of “Commission”;
- (b) In the definition of “Common Procurement Vocabulary” for “as amended from time to time” substitute “as it has effect in EU law;”;
- (c) In the definition of “common technical specification” for “as may be amended from time to time” substitute “as it has effect in EU law;”;
- (d) delete the definition of “ESPD”;
- (e) delete the definition of “GPA”;
- (f) in the definition of “innovation”, delete “the Europe 2020 strategy for smart,”;
- (g) delete the definition of “Official Journal”;
- (h) delete the definition of “qualified certification for electronic signature”;
- (i) before the definition of “service contracts” insert-
 - ““the Retained Treaties” means anything which is retained EU law by virtue of section 7 of the European Union (Withdrawal) Act 2019 because of the effect which the Treaty on European Union or TFEU had immediately before 1 January 2021 in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;”;
- (j) delete the definition of “Treaties”;
- (k) before the definition of the “Utilities Directive” insert-
 - ““the UK e-notification service” has the meaning set out in regulation 69(6);”.

(3) In regulation 4, after subregulation (3) insert-

“(4) These Regulations-

- (a) do not oblige Gibraltar to supply information the disclosure of which it considers contrary to the essential interests of its security;
- (b) do not preclude Gibraltar from taking such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production or trade in arms, munitions and war material, provided that such measures do not adversely affect the conditions of competition regarding products which are not intended specifically for military purposes.

(5) The arms, munitions and war material to which subregulation (4)(b) applies are, subject to subregulation (7), those included in the 1958 List.

(6) Subject to the effect of any regulations made under subregulation (7), any measures which, if they had been taken immediately before 1 January 2021, would have been covered by Article 346 of TFEU shall be regarded as measures covered by subregulation (4).

(7) In this regulation, “the 1958 List” means the list of arms, munitions and war material adopted by the Council of the European Economic Community in its decision 255/58 of 15th April 1958.”.

(4) In regulation 6, in subregulation (3), for “Article 346 of TFEU” substitute “regulation 4(4)”.

(5) In regulation 7, in subregulation (3) for “Article 346 of TFEU” substitute “regulation 4(4)”.

(6) In regulation 16-

- (a) in subregulation (1)(a), for “the sum specified in Article 15(a) to the Utilities Contracts Directive” substitute “£378,660”;
- (b) in subregulation (1)(b), for “the sum specified in Article 15(b) to the Utilities Contracts Directive” substitute “£4,733,252”;
- (c) in subregulation (1)(c), for “the sum specified in Article 15(c) to the Utilities Contracts Directive” substitute “£884,720”;

(7) In regulation 17-

- (a) in subregulation (6), for “sent” substitute “submitted”;

- (b) in subregulation (13)-
 - (i) in paragraph (a), for “80,000 euro” substitute “£70,778”;
 - (ii) in paragraph (b), for “1 million euro” substitute “£884,720”.
- (8) In regulation 18, delete subregulation (2).
- (9) In regulation 19-
 - (a) in the heading, for “in a third country” substitute “outside Gibraltar”;
 - (b) in subregulation (1)(b)-
 - (i) for “in a third country” substitute “outside Gibraltar”;
 - (ii) for “the European Union” substitute “Gibraltar”;
 - (c) delete subregulation (2).
- (10) In regulation 20,
 - (a) in subregulation 1(a)-
 - (i) before “Treaties” insert “Retained”;
 - (ii) for “third” substitute “other”;
 - (b) Delete subregulations (2) and (6).
- (11) In regulation 21-
 - (a) in subregulation (1)(c)-
 - (i) in paragraph (i)-
 - (aa) in the words before paragraph (aa), delete the words from “within” to “to time,”;
 - (bb) in paragraph (aa), for “a Member State, a third” substitute “another”;
 - (cc) in paragraph (bb), for “a Member State or a third” substitute “or another”;
 - (ii) in paragraph (ii), in the words after subparagraph (bb), delete the words from “within” to “to time,”;

(b) after paragraph (v), insert-

“(vi) in this regulation “lawyer” means a person practising as an advocate, barrister or solicitor in any part of Gibraltar or the United Kingdom.”.

(12) In regulation 22, for “TFEU” substitute “anything which is retained EU law by virtue of section 7 of the European Union (Withdrawal) Act 2019 because of the effect which TFEU had immediately before 1 January 2021 in giving rise to any of the powers, rights etc. mentioned in that section.”.

(13) In regulation 24, in subregulation (2)(a), delete “or a Member State”.

(14) In regulation 25, in subregulations (1), (5)(a), and (8) for “Article 346 of TFEU” substitute “regulation 4(4).”

(15) In regulation 26, in subregulations (4)(b) and (6), for “Article 346 of TFEU” substitute “regulation 4(4).”

(16) In regulation 27, in subregulation (1)-

(a) in paragraph (a)-

(i) before “Treaties” insert “Retained”;

(ii) for “third” substitute “other”;

(b) in paragraph (b), for “a third” substitute “another”.

(c) delete subregulation (2).

(17) In regulation 28, in subregulations (1)(c), (2) and (4)(c), before “Treaties” insert “Retained”.

(18) In regulation 29, in subregulation (5)-

(a) in paragraph (a), for “as amended from time to time” substitute “as it had effect immediately before 1 January 2021”;

(b) in paragraph (b), in the words before (i), for “Directive” substitute “Part”.

(19) Delete regulation 31.

(20) Delete regulation 34.

(21) In regulation 36, delete subregulation (1).

(22) In regulation 38-

(a) in paragraph (15)(a)(i)-

(i) for “in the Official Journal” substitute “on the UK e-notification service”;

(ii) for “sent” substitute “submitted”;

(b) in subregulation (16)(c), for the words from “accept” to “signatures by tenderers” substitute “act in accordance with Article 27 of that Regulation (and for this purpose the submission of the tender or request is to be treated as the use of an online service to which that Article applies)”;

(c) in subregulation (20)-

(i) in the words before paragraph (a), for the words from “in accordance” to “as may be amended from time to time” substitute “in a format other than those referred to in Article 1 of Commission Implementing Decision (EU) 2015/1506 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies”;

(ii) in paragraph (b), for the words from “allow” to “non-native speakers” substitute “comply with the requirements of Article 2(1)(b) of that Decision (or would comply with those requirements if the person seeking to validate the signature were a public sector body within the meaning of that Article)”.

(23) In regulation 42, in subregulation (1), delete “and the Utilities Contracts Directive”.

(24) In regulation 43-

(a) in subregulation (2), for “sent” substitute “submitted”;

(b) in subregulation (4)-

(i) in paragraph (a), for “Section I and II of Part A of Annex VI to the Utilities Contracts Directive” substitute “regulation 65(1) and (4)(c)”;

(ii) in paragraph (b), for “sent” (in both places) substitute “submitted”;

(c) in subregulation (5), for “sent” substitute “submitted”.

(25) In regulation 44, in subregulation (2)(a), for “sent” substitute “submitted”.

(26) In regulation 47, in subregulation (5), for “sent” substitute “submitted”.

(27) In regulation 50-

(a) in subregulation (8)(a), for “sent” substitute “submitted”;

(b) for subregulation (26) substitute the following-

“(26) Where the period of validity is changed without terminating the dynamic purchasing system, the utility shall submit for publication on the UK e-notification service a notice of the kinds used initially for the call for competition for the dynamic purchasing system

(26A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under subregulation (25) or (26), the utility shall submit for publication on the UK e-notification service a contract award notice under regulation 68.”.

(28) Delete regulation 55.

(29) In regulation 58-

(a) in subregulation (5), for “adopted by a legal act of the European Union” substitute “imposed by retained EU law”;

(b) in subregulation (7), after “compatible with” insert “retained”;

(30) In regulation 65-

(a) in subregulation (1), after “Directive” insert “, but as if both references to “dispatch of the notice” in paragraph 4 were references to the submission of the notice to the UK e-notification service for the purposes of these Regulations”;

(b) in subregulation (2)(a), for “send” substitute “submit”;

(c) in subregulation (3)-

(i) for “send” substitute “submit”;

(ii) after “Directive” insert “, but as if “date of dispatch” in paragraph 5 were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;

(d) in subregulation (4)-

(i) in paragraph (c)-

(aa) for “set out in section I of Part A of Annex VI to the Utilities Contracts Directive” substitute “required by subregulation (1)”;

(bb) after “II of Part A” insert-

“of Annex 6 to the Utilities Contracts Directive, but as if-

(i) in paragraph 7, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 71(4) and (5) of these Regulations”; and

(ii) in paragraph 21-

(aa) “Article 82” were a reference to regulation 80 of these Regulations; and

(bb) “point (b) of Article 67(2)” were a reference to regulation 65(4)(b) of these Regulations.

(ii) in paragraph (d), for “sent” substitute “submitted”.

(31) In regulation 66-

(a) in subregulation (1), delete the words from “which” to “Directive,”;

(b) after subregulation (1) insert-

(1A) Such a notice shall include the information set out in Annex 10 to the Utilities Contracts Directive, but as if, in paragraph 10, “Article 82” were a reference to regulation 80 of these Regulations.”;

(c) in subregulation (3)-

(i) in the words before paragraph (a)-

(aa) for “notify the European Union Publications Office” substitute “give notice”;

(bb) for “, using the following standard forms” substitute “by submitting to the UK e-notification service”;

(ii) in paragraph (a), for the “form for notices” substitute “a notice”.

(32) For regulation 67 substitute-

“Contract notices.

67(1) Contract notices shall contain the information set out in the relevant part of Annex II to the Utilities Contracts Directive, but as if-

- (a) in paragraph 10 of Part A, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 71(4) and (5) of these Regulations;
- (b) in-
 - (i) paragraph 19 of Part A,
 - (ii) paragraph 16 of Part B, and
 - (iii) paragraph 15 of Part C,“Article 82” were a reference to regulation 80 of these Regulations;
- (c) in-
 - (i) paragraph 20 of Part A,
 - (ii) paragraph 18 of Part B, and
 - (iii) paragraph 18 of Part C,“in the Official Journal of the European Union” read “on the UK e-notification service (within the meaning of the Procurement (Utilities Contracts) Regulations 2016)”; and
- (d) in-
 - (i) paragraph 22 of Part A,
 - (ii) paragraph 20 of Part B, and
 - (iii) paragraph 20 of Part C,“date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.

(2) Such notices shall be submitted for publication in accordance with regulation 69.”.

(33) In regulation 68-

- (a) in subregulation (1), for “send” substitute “submit”;
- (b) in subregulation (2) substitute-
 - “(2) Such notices shall-

- (a) contain the information set out in Annex 12 to the Utilities Contracts Directive, but as if-
 - (i) in paragraph 5(b), “in the Official Journal of the European Union” read “on the UK e-notification service (within the meaning of the Procurement (Utilities Contracts) Regulations 2016)”;
 - (ii) in paragraph 5(c), “Article 50” were a reference to regulation 48(1) of these Regulations;
 - (iii) in paragraph 9, “Article 50(h)” were a reference to regulation 48(1)(h) of these Regulations;
 - (iv) in paragraph 17, the words in brackets were deleted;
 - (v) in paragraph 19, “Article 64(1)” were a reference to regulation 62(1) of these Regulations;
 - (vi) in paragraph 20, “Article 84” were a reference to regulation 82 of these Regulations; and
 - (vii) in paragraph 21, “date of transmission” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations; and
 - (b) be submitted for publication in accordance with regulation 69.”.
 - (c) in subregulations (4) and (5)(a) and (b), for “send” substitute “submit”;
 - (d) in subregulation (6) for “annex Ix to the Utilities Contracts Directive” substitute “regulation 69”.
- (34) In regulation 69-
- (a) for the heading substitute “Publication on the UK e-notification service”;
 - (b) delete subregulation (1);
 - (c) in subregulation (2)-
 - (i) after “regulations” insert “50,”;
 - (ii) for “sent” (in both places) substitute “submitted”;
 - (iii) for “by electronic means to the EU Publications Office” substitute “to the UK e-notification service”;

- (c) in subregulation (3) for “European Union Publications Office” substitute “the UK e-notification service”;
- (d) in subregulation (4)-
 - (i) for “European Union Publications Office” substitute “UK e-notification service”;
 - (ii) delete “the receipt of the notice and of”;
- (e) in subregulation (5)-
 - (i) for “European Union Publications Office” substitute “UK e-notification service”;
 - (iii) delete the words from “, provided” to the end;
- (f) after subregulation (5) insert-
 - “(6) In these Regulations, “the UK e-notification service” has the meaning given by regulation 51(6) of the Procurement (Public Sector Contracts) Regulations 2016.”.

(35) For regulation 70 substitute-

“Publication of notices otherwise than on the UK e-notification service.

- 70.(1) In addition to the publication of the notices referred to in regulations 50, 65 to 68, 89 and 92 by the UK e-notification service, utilities may publish the information contained in them on a buyer profile.
- (2) The notices referred to in regulations 50, 65 to 68, 89 and 92, and the information contained in them must not be published otherwise than on the UK e-notification service before they are published on that service.
- (3) Notwithstanding subregulation (2), publication may in any event take place where utilities have not been notified of the publication on the UK e-notification service within 48 hours after the notice was submitted to that service;
- (4) Notices published must not contain information other than that contained in the notices sent to the UK e-notification service or published on a buyer profile, but must indicate the date the notice was submitted to the UK e-notification service or its publication on the buyer profile.
- (5) Where a periodic indicative notice is to be published on a buyer profile for the purposes of regulation 65(2)(b)-

- (a) the periodic indicative notice may not be so published before the notice referred to in regulation 65(3)(a) is submitted to the UK e-notification service; and
- (b) the periodic indicative notice must indicate the date of that submission.”.

(36) In regulation 71, in subregulation (1), for “in the Official Journal” substitute “on the UK e-notification service”.

(37) In regulation 74-

- (a) for subregulation (6) substitute-

“Utilities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply with applicable obligations in the fields of environmental, social and labour law established by Gibraltar law, collective agreements or by the international environmental, social and labour law provisions listed in Annex XIV to the Utilities Contracts Directive.”

(38) In regulation 79-

- (a) delete subregulation (2);
- (b) in subregulation (4)-
 - (i) delete paragraphs (a) and (b);
 - (ii) in paragraph (c), delete “other”;
 - (iii) delete the words after paragraph (c)
- (c) delete subregulation (6).

(39) In regulation 81-

- (a) in subregulation (4)(c) for “third countries” to “bound” substitute “countries party to international agreements by which Gibraltar is bound.”
- (b) delete subregulations (5) and (6).

(40) In regulation 82-

- (a) in subregulation (2), delete paragraph (f);
- (b) delete subregulations (6) and (7).

- (41) In regulation 83-
- (a) in subregulation (1), after “has not” insert “, before 1 January 2021,”;
 - (b) delete subregulation (6).
- (42) In regulation 85, in subregulation (5), for “ESPDs” substitute “SPDs”.
- (43) In regulation 86-
- (a) in subregulation (2), for “send” substitute “submit”;
 - (b) in subregulation (3), after “Directive” insert “, but as if paragraph 10 (financing by EU funds) were deleted)”.
- (44) In regulation 87, delete paragraph (c).
- (45) In regulation 89-
- (a) in subregulation (4), for “send” substitute “submit”;
 - (b) in subregulation (5), for the words after “Directive” substitute “, but as if, in paragraph 4 of part D, “in the Official Journal of the European Union” read “on the UK e-notification service (within the meaning of the Procurement (Utilities Contracts) Regulations 2016)”;
 - (c) in subregulation (6), for “send” substitute “submit”.
- (46) In regulation 92-
- (a) in subregulation (2)-
 - (i) in paragraph (a), after “Directive” insert “, but as if, in paragraph 15, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations”;
 - (ii) in paragraph (b), for “sent” substitute “submitted”;
 - (b) in subregulation (3)
 - (i) in the words before paragraph (a), for “sent” substitute “submitted”;
 - (ii) in paragraph (c), after “Directive” insert “, but as if, in paragraph 11, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.”.

- (47) In regulation 93, delete subregulation (2);
- (48) In regulation 95-
- (a) in subregulation (1)-
 - (i) in paragraph (a), for “1,000,000 euros” substitute “£884,720”;
 - (ii) in paragraph (b), for “10,000,000 euros” substitute “£8,847,200”;
 - (b) in subregulation (2) for “applicable European Union or national rules on access to documents and data protection” substitute “rules on access to documents and data protection applicable in Gibraltar.”
- (49) In regulation 96-
- (a) for subregulation (4) substitute-

“(4) Where the Chief Minister so requests, utilities must communicate the information and documentation referred to in this regulation, or its main elements, to the Chief Minister.
 - (b) in subregulation (10) delete “and also communicated to the Commission”;
 - (c) delete subregulation (11).
- (50) Delete regulations 97 and 98.
- (51) In regulation 102-
- (a) in the heading for “Member States” substitute “the United Kingdom”;
 - (b) in subregulation (1)(b), for “enforceable European Union obligation” substitute “retained EU obligation that is enforceable by virtue of section 7 of the European Union (Withdrawal) Act 2019”;
 - (c) in subregulation (2) for “a Member State” substitute “the United Kingdom”.
- (52) In regulation 106, in subregulation (3), for “in the Official Journal” substitute “on the UK e-notification service”;
- (53) In regulation 112-
- (a) in subregulations (2) and (3)(b) and (c), for “in the Official Journal” substitute “on the UK e-notification service”;
 - (b) in subregulation (4)-

- (i) in paragraph (a)(iii) for “in the Official Journal” substitute “on the UK e-notification service”;
- (ii) delete paragraph (b).

PART 3

Amendment of retained direct EU legislation.

Annex 16 to the EEA Agreement.

7. In Annex 16 to the EEA Agreement, delete point 6g (application of Commission Implementing Regulation (EU) 2015/1986).

Regulation 2195/2002 of the European Parliament and of the Council.

8.(1) Regulation 2195/2002 of the European Parliament and of the Council of 5th November 2002 on the Common Procurement Vocabulary is amended in accordance with this regulation.

(2) For Articles 2 and 3 substitute the following-

“Article 2

- 1. The Chief Minister may make regulations amending the Annexes to this Regulation.
- 2. Regulations under this Article may make consequential, supplemental, incidental, transitional, transitory or saving provision.”

(3) In Article 4, delete the second paragraph.

Commission Implementing Regulation (EU) 2015/1986.

9. Commission Implementing Regulation (EU) No 2015/1986 of 11th November 2015 establishing standard forms for the publication of notices in the field of public procurement and repealing Implementing Regulation (EU) No 842/2011 is revoked.

Commission Implementing Regulation (EU) 2016/7.

10.(1) Commission Implementing Regulation (EU) No 2016/7 of 5th January 2016 establishing the standard form for the European Single Procurement Document is amended in accordance with this regulation.

(2) In Article 1-

- (a) for the words from the beginning to “2016, the” substitute “The”;
- (b) for “European single procurement document” substitute “Single Procurement Document”;
- (c) for “Article 59 of Directive 2014/24/EU” substitute “regulation 59 of the Procurement (Public Sector Contracts) Regulations 2016”.

Commission Implementing Decision (EU) 2017/1870.

11.(1) Commission Implementing Decision (EU) 2017/1870 of 16th October 2017 on the publication of the reference of the European standard on electronic invoicing and the list of its syntaxes pursuant to Directive 2014/55/EU of the European Parliament and of the Council is amended in accordance with this regulation.

(2) After Article 1 insert-

“Article 1A

- 1. The Chief Minister may make regulations-
 - (a) amending Article 1 so as to substitute-
 - (i) a reference to a different standard;
 - (ii) a different reference to the same standard;
 - (b) amending Article 1 and the Annex so as to substitute, add or remove references to syntaxes.
- 2. Regulations under this Article may make consequential, supplementary, incidental, transitional, transitory or saving provision.”.

(3) Delete Article 2.

(4) In the Annex, for “3(2) of Directive 2014/55/EU” substitute “1”.

PART 4

Cessation of rights etc.

Cessation of certain prohibitions on the grounds of nationality.

12. Any rights, powers, liabilities, obligations, restrictions, remedies and procedures in the field of public procurement which-

- (a) continue by virtue of section 7 of the European Union (Withdrawal) Act 2019; and
- (b) are derived from-
 - (i) Article 18 of the Treaty on the Functioning of the European Union;
 - (ii) Article 4 of the EEA Agreement;
 - (iii) Article 9 of the Agreement establishing an Association between the European Economic Community and Turkey signed in Ankara on 12th September 1963,

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly) when this regulation comes into force.

Cessation of rights etc. under certain international agreements.

13.(1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures in the field of public procurement which-

- (a) continue by virtue of section 7 of the European Union (Withdrawal) Act 2019;
- (b) are derived from any of the agreements specified in paragraph (2),

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly) when this regulation comes into force.

(2) The agreements are-

- (a) Agreement in the form of an exchange of letters between the European Community and the United States of America on government procurement signed in Washington and Brussels on 30th May 1995;
- (b) Agreement between the European Community and the State of Israel on government procurement signed in Brussels on 10th July 1997;
- (c) Interim Agreement on trade and trade-related matters between the European Community of the one part, and the United Mexican States, of the other part signed in Brussels on 8th December 1997;
- (d) Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement signed in Luxembourg on 21st June 1999;
- (e) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of

Macedonia, of the other part signed by exchange of letters in Luxembourg on 9th April 2001;

- (f) Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part signed in Brussels on 11th May 2002;
- (g) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part signed in Luxembourg on 12th June 2006;
- (h) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part signed in Luxembourg on 15th October 2007;
- (i) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part signed in Luxembourg on 29th April 2008;
- (j) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part signed in Luxembourg on 16th June 2008;
- (k) Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part signed in Bridgetown Barbados on 15th October 2008;
- (l) Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part signed in Brussels on 6th October 2010;
- (m) Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part signed in Brussels on 11th May 2012;
- (n) Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part signed in Brussels on 21st March 2014;
- (o) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part signed in Brussels on 27th June 2014;
- (p) Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part signed in Brussels on 27th June 2014;

- (q) Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part, signed in Strasbourg on 27th October 2015;
 - (r) Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part signed in Brussels on 24th November 2017.
- (3) Where applicable, the specification of an agreement by subregulation (2) includes that agreement as amended before 1 January 2021.

SCHEDULE

PART 1

Interpretation.

1.(1) In this Schedule-

“amendment” includes modification and revocation;

“the Procurement Regulations” means any of the following and, in relation to any procedure, means whichever of the following applies to that procedure-

- (a) the Procurement (Public Sector Contracts) Regulations 2016;
- (b) the Procurement (Concession Contracts) Regulations 2016;
- (c) the Procurement (Utilities Contracts) Regulations 2016;

“the second commencement date” is defined by paragraph 9 of this Schedule;

“steady state amendments” is defined by paragraph 2 of this Schedule.

(2) In this Schedule, the following have the same meaning as in the Procurement Regulations-

- (a) contracting authority;
- (b) design contest;
- (c) dynamic purchasing system;
- (d) economic operator;
- (e) framework agreement;
- (f) notice on the existence of a qualification system;
- (g) periodic indicative notice;
- (h) prior information notice;
- (i) utility;
- (j) voluntary transparency notice.

(3) None of the savings in this Schedule implies any limitation of the scope of any of the other savings in this Schedule.

PART 2

Procurements pending etc. on 1 January 2021.

Meaning of “steady state amendments”.

2. In this Part, “steady state amendments” means-

- (a) amendments made by these regulations; and
- (b) any other amendments, including future amendments, to the Procurement Regulations that-
 - (i) come into force on, or begin to apply from, 1 January 2021 or any time after that date;
 - (ii) are not made by or under any of sections 10A, 10B, 10C, 11B and 11C of the European Union (Withdrawal) Act 2019.

Saving for procedures launched, but not finalised, before 1 January 2021.

3.(1) Steady state amendments do not affect any procedure launched by a contracting authority or a utility under the Procurement Regulations if the procedure-

- (a) was launched before 1 January 2021;
- (b) was not yet finalised by 1 January 2021.

(2) But regulation 61 (recourse to e-Certis) of the Procurement (Public Sector Contracts) Regulations 2016 (which is deleted by regulation 3(38) of these Regulations) ceases to be saved at the beginning of the day that is 9 months after 1 January 2021.

(3) In paragraph (1), “procedure” includes-

- (a) a procedure using a dynamic purchasing system;
- (b) a procedure for which the call for competition takes the form of-
 - (i) a prior information notice;
 - (ii) a periodic indicative notice; or
 - (iii) a notice on the existence of a qualification system.

- (4) For the purposes of paragraph 1, a procedure is launched-
- (a) when a call for competition or any other invitation to submit applications has been made in accordance with the Procurement Regulations;
 - (b) where the Procurement Regulations do not require such a call or invitation, when the contracting authority or utility contacted economic operators in relation to the specific procedure.
- (5) For the purposes of paragraph 1, a procedure is finalised-
- (a) upon publication of a contract award notice in accordance with the Procurement Regulations;
 - (b) where the Procurement Regulations do not require the publication of such a notice, upon conclusion of the relevant contract;
 - (c) where the contracting authority or utility decided not to award a contract, upon informing the tenderers, or persons otherwise entitled to submit applications, of the reasons why the contract was not awarded.

Saving for call-off procedures under certain framework agreements.

4.(1) If the condition in subparagraph 2 is met, steady state amendments do not affect any procedure relating to the performance of a framework agreement, including the award of contracts based on such an agreement, under-

- (a) regulation 33(3) to (10) of the Procurement (Public Sector Contracts) Regulations 2016;
- (b) regulation 49(3) to (5) of the Procurement (Utilities Contracts) Regulations 2016.

(2) The condition is that the framework agreement-

- (a) was concluded before 1 January 2021 and had neither expired nor been terminated before 1 January 2021; or
- (b) was concluded after 1 January 2021 day in accordance with a procedure to which paragraph 3 applied.

Transitional modification of the Procurement Regulations.

5.(1) In relation to a procedure to which paragraph 3 or 4 of this Schedule applies, the Procurement Regulations are to be read, on and after 1 January 2021, and so far as the context permits or requires, as if-

- (a) any reference (however expressed) to a member State or EEA State included Gibraltar;

- (b) any reference (however expressed) to-
 - (i) EU law;
 - (ii) any particular EU Treaty or any part of it;
 - (iii) any EU instrument, or other document of an EU entity or of the EU, or any part of any such instrument or document;
 - (iv) any part of EU law not falling within sub-paragraph (ii) or (iii);
 - (v) any tax, duty, levy or interests of the EU, or
 - (vi) any arrangements involving, or otherwise relating to, the EU of a kind not falling within sub-paragraph (i), (ii), (iii), (iv) or (v),

were a reference to any such thing (including any such thing as may have existed previously) so far as it is applicable to and in Gibraltar by virtue of the relevant withdrawal provisions;

- (c) any reference (however expressed) to the area of the EU or of the EEA included Gibraltar;
- (d) any reference (however expressed) to a citizen of the EU or a national of the EEA included a United Kingdom national (within the meaning given by Article 2(d) of the withdrawal agreement);
- (e) any reference to an enforceable EU obligation were a reference to an obligation that is enforceable by virtue of sections 10A or 10B of the European Union (Withdrawal) Act 2019; and
- (f) such other modifications were made as are necessary for any purpose of the relevant withdrawal provisions and are capable of being ascertained from any such purpose of otherwise from those provisions.

(2) In sub-paragraph (1), “relevant withdrawal provisions” means-

- (a) Title 8 of Part 3 of the withdrawal agreement (ongoing public procurement and similar procedures);
- (b) Title 5 of Part 3 of the EEA EFTA separation agreement (ongoing public procurement and similar procedures).

PART 3

Provisions commenced on 1 January 2021.

Procurement involving contracting authorities or utilities from other member States.

6.(1) This paragraph applies in relation to the omission, by these Regulations, of-

- (a) regulation 39 of the Procurement (Public Sector Contracts) Regulations 2016;
- (b) regulation 55 of the Procurement (Utilities Contracts) Regulations 2016.

(2) Those omissions do not imply-

- (a) any prohibition of the activities authorised by the omitted regulations (which activities might, accordingly, be carried on to any extent that would have been lawful if the omitted regulations had never existed); or
- (b) that any matters provided for in those regulations are necessarily to have a different effect unless so required by applicable law (including rules for resolving any conflicts between the laws of different jurisdictions).

Saving of regulation 56(2) of the Procurement (Concession Contracts) Regulations 2016.

7. The amendment made by these Regulations to regulation 56(2) of the Procurement (Concession Contracts) Regulations 2016 (application of the first ground of ineffectiveness) does not apply where the contract referred to in regulation 56(2) was awarded before 1 January 2021.

Saving in relation to voluntary transparency notices.

8.(1) This paragraph applies in relation to the amendments made by these Regulations to-

- (a) regulation 99(3) and (4) of the Procurement (Public Sector Contracts) Regulations 2016;
- (b) regulation 112(3) and (4) of the Procurement (Utilities Contracts) Regulations 2016;
- (c) regulation 60(3) and (4) of the Procurement (Concession Contracts) Regulations 2016.

(2) Those amendments do not apply in relation to a voluntary transparency notice that was published in the Official Journal of the European Union if the notice was sent, before IP completion day, to be so published.

Dated: 17th December 2020.

F R PICARDO,
Chief Minister.

EXPLANATORY MEMORANDUM

These Regulations are made partly in exercise of the powers conferred by sections 11 and 11B and paragraph 1(b) of Schedule 3 of the European Union (Withdrawal) Act 2019 in order to address failures of retained EU law to operate effectively and other deficiencies.

These Regulations made amendments in the field of public procurement. Part 2 amends domestic legislation. Part 3 amends and revokes retained direct EU legislation. Part 4 provides for certain rights derived from certain international agreements to cease. The Schedule makes savings and transitional provisions for procedures commenced before 1 January 2021.

These Regulations are also made to implement Title 8 (ongoing public procurement and similar procedures) of Part 3 of the withdrawal agreement and the corresponding Title 5 of Part 3 of the EEA EFTA separation agreement.