

THIS DOCUMENT HAS BEEN PREPARED BY THE GOVERNMENT TO SHOW HOW THE PROCUREMENT BILL WOULD BE AMENDED BY THE GOVERNMENT AMENDMENTS TABLED ON 27 JUNE 2022, SHOULD THEY BE APPROVED BY PEERS.

SCHEDULES

SCHEDULE 1

Section 2

Threshold amounts

1 (1) The threshold amount for a contract of a type referred to in the second column of the table below is as set out in the corresponding row of the third column.

Type of contract Threshold amount

1 Defence and security contract that is a works contract	3 Defence and security contract not within row 1, 2 or 8 £5,336,937 £5,336,937 £426,955
2 Defence and security contract that is a concession contract	
4 Utilities contract that is a works contract	£5,336,937 5 Utilities contract that is a light touch contract £884,720
6 Utilities contract not within row 3, 4 or 5	£426,955 £5,336,937
7 Light touch contract that is a concession contract	
8 Light touch contract not within row 5 or 7	£663,540 9 Concession contract not within row 2, 6 or 7 £5,336,937 10 Works contract not within row 1, 4 or 9 £5,336,937
11 Contract for the supply of goods, services or works to a central government authority not within any other row	sub-central government authority not within any other row £138,760 £213,477
12 Contract for the supply of goods, services or works to a	

(2) See section 6(3) in relation to the application of the thresholds in the table to

certain contracts concerning defence and security.

- 2 An appropriate authority may by regulations amend this Schedule for the purpose of amending the threshold amount for—
- (a) a type of contract in any of rows 4, 6 or 9 to 12 of the table in order to reflect an amendment to the corresponding threshold for contracts of that type in the United Kingdom's Coverage Schedule to the GPA;
 - (b) the type of contract in row 1 in order to reflect an amendment to the threshold amount for the type of contract in row 10;
 - (c) the type of contract in row 2, in order to reflect an amendment to the threshold amount for the type of contract in row 9;
 - (d) the type of contract in row 3, in order to reflect an amendment to the threshold amount for the type of contract in row 6.

3 An appropriate authority may by regulations amend this Schedule for the purpose of amending the threshold amount for —

- (a) any type of light touch contract in row 5, 7 or 8 of the table;
- (b) any type of defence and security contract in rows 1 to 3 where the amendment is not within paragraph 2.

- 4 A contract is a “works contract” if its main purpose is—
- (a) the carrying out of works under the contract (whether or not resulting in a complete work), or
 - (b) to facilitate the carrying out of works otherwise than under the contract, where those works are intended to result in a complete work that complies with specifications set out in, or determined under, the contract.

5 In this Schedule—

“central government authority” means a contracting authority specified, or of a description specified, in regulations made by an appropriate authority;

“complete work” means a functioning structure that results from the carrying out of works;

the “GPA” means the Agreement on Government Procurement signed at Marrakesh on 15 April 1994, as amended from time to time;

“sub-central government authority” means a contracting authority that is not—

- (a) a central government authority, or
- (b) a private utility or a public undertaking; “works” has the meaning given by regulations made by an appropriate authority.

SCHEDULE 2

General

1 (1) A contract is an exempted contract if it is a contract of a kind listed in this Schedule.

(2) But a contract is not an exempted contract if—

(a) the goods, services or works representing the main purpose of the contract could reasonably be supplied under a separate contract, and

(b) that contract would not be a contract of a kind listed in this Schedule.

Vertical arrangements

2 (1) A contract between a contracting authority and a person that is controlled by—

(a) the contracting authority,

(b) the contracting authority acting jointly with one or more other contracting authorities,

(c) another contracting authority, where that authority also controls the contracting authority referred to in paragraph (a), or

(d) another contracting authority acting jointly with one or more other contracting authorities, where the authorities acting jointly also control the contracting authority referred to in paragraph (a).

(2) A contracting authority, or a contracting authority acting jointly with one or more other contracting authorities, controls a person if—

(a) the contracting authority is a parent undertaking, or the contracting authorities are parent undertakings, in relation to the person;

(b) no person other than the authority, or authorities, exerts a decisive influence on the activities of the person (either directly or indirectly),

(c) more than 80 per cent of the activities carried out by the person are carried out for or on behalf of—

(i) the contracting authority or authorities, or

(ii) another person that is, or other persons that are, controlled by the authority or the authorities acting jointly, and

(d) in the case of joint control—

(i) each of the contracting authorities is represented on the person's board, or equivalent decision-making body, and the person's board, or any equivalent

decision-making body, is composed of representatives of each of the contracting authorities and ¶

(ii) the person does not carry out any activities that are contrary to the interests of one or more of the contracting authorities.

(2A) A person is not to be regarded as controlled by a contracting authority, or a contracting authority acting jointly with other contracting authorities, if any person that is not a public authority holds shares in the person.

(2B) In subsection (2)(a)—

“parent undertaking” has the meaning given in section 1162 of the Companies Act 2006, save that an “undertaking” includes any person;

“parent undertakings” means two or more contracting authorities acting jointly that would, if they were a single undertaking, be a parent undertaking.

(1) A contract between a contracting authority (“A”) and—¶ (a) a controlled person in relation to A,¶

(b) another contracting authority (“B”) in relation to whom A is a controlled person, or¶

(c) another controlled person in relation to B.¶

(2) A person is a “controlled person” in relation to a contracting authority if—¶ (a) the person is in the position of a subsidiary undertaking of that authority within the meaning given in section 1162 of

the Companies Act 2006, whether or not either the authority or the person is an undertaking within the meaning given in section 1161(1) of that Act,¶

(b) no person other than the authority exerts, or can exert, a decisive influence on the activities of the person (either directly or indirectly),¶

(c) there are no shares in the person that are held directly by a person other than a public authority, and¶

(d) more than 80 per cent of the activities carried out by the person are carried out for or on behalf of the contracting authority, or for or on behalf of other controlled persons in relation to the authority.¶

(3) For the purposes of sub-paragraph (2)(b), a person does not exercise a decisive influence on the activities of a person only by reason of being a director, officer or manager of the person acting in that capacity.

(4) An appropriate authority may by regulations make provision about how a calculation as to the percentage of activities carried out by a person is to be made for the purposes of sub-paragraph (2)(c)(2)(d).

(5) For the purposes of subsection (2)(d)(i), one representative may represent more

than one contracting authority.

(6) In this paragraph, references to a contracting authority do not include references to a public undertaking or a private utility.

Horizontal arrangements

3 (1) A contract between contracting authorities only that relates to a horizontal arrangement between those authorities.

(2) A “horizontal arrangement” means an arrangement—

(a) entered into—

(i) with the aim of achieving objectives the authorities have in common in connection with the exercise of their public functions;

(ii) solely in the public interest;

(b) in which no more than 20 per cent of the activities contemplated by the arrangement are intended to be carried out other than for the purposes of the authorities’ public functions.

(3) An appropriate authority may by regulations make provision about how a calculation as to the percentage of activities carried out by a person is to be made for the purposes of sub-paragraph(2)(b).

(4) In this paragraph, references to a contracting authority do not include references to a public undertaking or a private utility.

Land and buildings etc

4 (1) A contract—

(a) for the acquisition, by whatever means, of land, buildings or any other complete work, or of an interest in or right over any of them, or

(b) which concerns an interest in or right over any of them. (2) In this paragraph

“complete work” has the meaning given in Schedule 1.

Broadcasting

5 A contract for the acquisition, development, production or co-production of material intended for broadcast (by any means) by a contracting authority to the general public.

6 A contract for the broadcast (by any means) by a contracting authority to the general public of material (including, for example, a programme or an advertisement) supplied by the supplier.

Electronic communications services

7 A contract the main purpose of which is facilitating the provision by a contracting authority to the general public of an electronic communications service (within the meaning given in section 32 of the Communications Act

2003).

8 A contract the main purpose of which is permitting a contracting authority to provide, maintain or use a public electronic communications network (within the meaning given in section 151 of the Communications Act 2003).

Alternative dispute resolution

9 A contract for the provision to a contracting authority of arbitration, mediation or conciliation services, or of any other similar services.

Legal services

10 (1) A contract for the provision of exempt legal services to a contracting authority.

(2) The following services are “exempt legal services”—

- (a) legal representation by a lawyer in judicial proceedings or other dispute resolution proceedings, whether in or outside the United Kingdom;
- (b) the giving of legal advice by a lawyer in connection with, or in contemplation of, any such proceedings;
- (c) document certification or authentication services provided by a notary in circumstances where the certification or authentication is required under an enactment or other rule of law to be performed by a notary;
- (d) services involving the carrying out of any legal **services** activity provided by a person required to provide them under an enactment or an order of a court or tribunal.

(3) In this paragraph—

“judicial proceedings” includes proceedings before a court, tribunal or public authority;

“lawyer” means—

- (a) a person who is an authorised person or an exempt person in relation to a reserved legal activity for the purposes of the Legal Services Act 2007 (see sections 18 and 19 of that Act);
- (b) a solicitor or advocate in Scotland;
- (c) a solicitor or barrister in Northern Ireland;
- (d) a person who is a member, and entitled to practise as such, of a legal profession regulated in a jurisdiction outside the United Kingdom;

“legal activity” has the same meaning as in the Legal Services Act 2007 (see section 12 of that Act);

“other dispute resolution proceedings” includes arbitration, mediation and

conciliation.

Financial services

11 A contract for the lending of money in any currency to a contracting authority.

12 (1) A contract for the provision or carrying out of an investment service or activity, or of an ancillary service, in relation to a financial instrument by an investment firm or a qualifying credit institution.

(2) In this paragraph—

“ancillary service” means a service listed as such in Part 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544);

“financial instrument”, “investment firm” and “qualifying credit institution” have the meanings given in Article 3 of that Order;

“investment service or activity” means a service or activity listed as such in Part 3 of Schedule 2 to that Order.

13 A contract for the provision of services by the Bank of England.

Employment

14(1) A contract of employment or a worker’s contract (each as defined in section 230 of the Employment Rights Act 1996).

(2) In this paragraph, the expressions “contract of employment” and “workers contract” —

(a) in the case of a contract awarded by a transferred Northern Ireland contracting authority or awarded as part of a procurement under a transferred Northern Ireland procurement arrangement, have the meanings given in Article 3 of the Employment Rights (Northern Ireland) Order 1996 (S.I. 1996/1919 (N.I. 16));

(b) in any other case, have the meanings given in section 230 of the Employment Rights Act 1996.

15 Any other contract between a contracting authority and an individual for the remuneration or compensation of that individual where they are appointed to a public office by the contracting authority, including as a— (a) non-executive director of a public authority, or

(b) member of a public inquiry.

Emergency services

16 A contract for the provision by an organisation or association not run for profit of one or more of the following services—

(a) services relating to the promotion of fire safety;

(b) fire extinguishing services;

(c) services for the protection of life and property in the event of fires;

(d) search and rescue services;

- (e) civil defence services;
- (f) nuclear safety services;
- (g) ambulance services provided in respect of medical emergencies.

Public passenger transport services

17 A contract for the provision of public passenger transport services of a kind specified in regulations made by an appropriate authority.

Research and development services

18 (1) A contract for the provision of research and development services to a contracting authority, where—

- (a) the services are intended by the authority to be for, or to result in, benefit to the public, and
- (b) the contract does not also provide for the provision of goods or works.

(2) In this paragraph, “research and development services” means services that consist of one or more of the following activities—

- (a) research to acquire new scientific or technical knowledge without any particular application or use in view;
- (b) research directed mainly at generating scientific or technical knowledge for the purposes of a particular objective;
- (c) development which uses existing knowledge to initiate the manufacture of new materials or products, establish new processes, systems or services, or to achieve a substantial improvement in existing materials, products, processes, systems or services;
- (d) the manufacture and testing of prototypes.

(3) But services are not “research and development services” if they include—

- (a) the production of tools for manufacture, or
- (b) the development of industrial processes to manufacture goods or works arising from research or development.

International agreements and organisations

19 A contract awarded under a procedure specified in an international agreement of which the United Kingdom is a signatory relating to—

- (a) the stationing of military personnel, or
- (b) the implementation of a joint project between the signatories to that agreement.

20 A contract awarded under a procedure—

- (a) adopted by an international organisation of which the United Kingdom is a member, and
- (b) that is inconsistent in any material respect with the procedure for the award of the contract in accordance with this Act.

But this paragraph does not apply to a defence and security contract (as to which, see paragraph 26).

National security

21 A contract that the contracting authority determines should not, in the interests of national security, be subject to this Act or a part of this Act.

Intelligence activities

22 A contract for the purposes of carrying out, facilitating or supporting intelligence activities.

Defence and security contracts

23 A defence and security contract where—

- (a) the supplier is located in an area outside the United Kingdom in which the armed forces are deployed, and
- (b) the operational needs of the armed forces require the contract to be awarded to that supplier.

24 A defence and security contract where—

- (a) the supplier is located in a state or territory outside the United Kingdom in which the armed forces maintain a military presence,
- (b) that state or territory requires, in connection with that presence, that the supplier supplies the goods, services or works to which the contract relates.

25 (1) A defence and security contract where the supplier is the government of another state or territory.

(2) In this Schedule “government” includes—

- (a) any governing authority;
- (b) the government of a region or locality within a state or territory.

26 A defence and security contract awarded under a procedure adopted by an international organisation of which the United Kingdom is a member.

27 A defence and security contract awarded under an arrangement between the United Kingdom and one or more other states or territories, where the purpose of that arrangement is, or is in connection with—

- (a) the joint development of a new product by or on behalf of the parties to the arrangement, or
- (b) the exploitation of that product once developed.

Utilities contracts

28 (1) A utilities contract for the supply of goods, services or works to a utility other than one acting as a centralised procurement authority, where— (a) the purpose of the contract is to allow the further sale or lease of those goods, services or works

to a third party,

(b) the utility does not have a special or exclusive right, within the meaning given by section 5(5), to sell or lease those goods, services or works, and

(c) other persons may sell or lease those goods, services or works under the same conditions as the utility.

(2) In this Schedule, “utility” means—¶

(a) a public authority, or public undertaking, that carries out a utility activity;¶

(b) a private utility.

29 A utilities contract for the supply of water to a utility carrying out a utility activity referred to in paragraph 3(1)(a) or (b) of Schedule 4.

30 A utilities contract for the supply of energy, or fuel for the production of energy, to a utility carrying out a utility activity referred to in paragraph 1, 2, or 6 of Schedule 4.

31 (1) A utilities contract between a utility and a relevant joint venture to which that utility is party, where—

(a) the joint venture was formed for the purpose of carrying out a utility activity for at least three years, and

(b) the parties to the joint venture are committed, by way of a written agreement, to continue to be parties to the joint venture for a period of three years following the date of that agreement.

(2) In this Schedule, “relevant joint venture” means a joint venture— (a) formed for the purpose of carrying out a utility activity; (b) where each party to the joint venture is a utility.

32 (1) A utilities contract awarded for the supply of goods, services or works— (a) by a utility to a person affiliated with the utility, or

(b) where the utility in question is a relevant joint venture, by the utility to a person affiliated with any member of the joint venture,

but only if the turnover test is met by the affiliated person in relation to goods, services or (as the case may be) works.

(2) A person is “affiliated” with another if the person is in the position of a group undertaking of the other person, within the meaning given in section 1161(5) of the Companies Act 2006, whether or not either of them is an undertaking within the meaning given in section 1161(1) of that Act.

(3) The “turnover test” is met in relation to goods, services or works if the affiliated person’s turnover deriving from the supply of goods, services or (as the case may be) works to the utility and other persons affiliated with the utility (their “affiliated turnover amount”) exceeds 80 per cent of their total turnover amount deriving from the supply of goods, services or works.

(4) An appropriate authority may by regulations make provision about how to

calculate a person's affiliated turnover amount and total turnover amount for the purposes of sub-paragraph (3).

- (5) The regulations may, in particular, make provision—
- (a) for those amounts to be calculated by reference to— (i) an average amount for a period specified in the regulations;
 - (ii) another reasonable method so specified;
 - (b) to secure that, in calculating those amounts in relation to a person (“A”), turnover of a person who is an affiliated person in relation to A is to be treated as part of A's turnover.

Concession contracts

33 A concession contract for the carrying out of a utility activity within paragraph 3(1) or (2) of Schedule 4 (water services), ignoring for this purpose the effect of paragraph 3(4) of that Schedule.

34 (1) A concession contract for air services provided by a qualifying air carrier.

(2) In sub-paragraph (1)—

- (a) “air services” means a flight, or a series of flights, carrying passengers or cargo (including mail);
- (b) “qualifying air carrier” has the meaning given by regulations made by an appropriate authority.

35 A concession contract for the provision of public passenger transport services.

SCHEDULE 3

Section 3

Estimating the value of a contract

General rule

1 (1) A contracting authority must estimate the value of a contract as the maximum amount it could expect to pay under the contract including, where applicable, amounts already paid.

(2) The amount a contracting authority could expect to pay includes the following—

- (a) the value of any goods, services or works provided by the contracting authority under the contract other than for payment;
- (b) amounts that would be payable if an option in the contract to supply additional goods, services or works were exercised;

- (c) amounts that would be payable if an option in the contract to extend or renew the term of the contract were exercised;
 - (d) amounts representing premiums, fees, commissions or interest that could be payable under the contract;
 - (e) amounts representing prizes or payments that could be payable to participants in the procurement.
- (3) In estimating the value of a contract, a contracting authority must take into account all of the facts which are material to the estimate and available to the authority at the time it makes the estimate.
- (4) This paragraph is subject to the rest of this Schedule.

Frameworks

- 2 (1) A contracting authority must estimate the value of a framework as the sum of the estimated values of all the contracts that have or may be awarded in accordance with that framework.
- (2) In the case of a framework awarded under an open framework, the value of the framework is to be treated as including the value of all frameworks awarded, or to be awarded, under the open framework.
- (3) In this Schedule, “framework” has the meaning given in section 44(2).

Concession contracts

- 3 (1) Paragraph 1 does not apply to the estimation of the value of a concession contract.
- (2) A contracting authority must estimate the value of a concession contract as the maximum amount the supplier could expect to receive under or in connection with the contract including, where applicable, amounts already received.
- (3) The amount a supplier could expect to receive includes the following— (a) amounts representing revenue (whether monetary or non-monetary) receivable pursuant to the exploitation of the works or services to which the contract relates (whether from the contracting authority or otherwise);
- (b) the value of any goods, services or works provided by the contracting authority under the contract other than for payment;
 - (c) amounts that would be receivable if an option in the contract to supply additional services or works were exercised;
 - (d) amounts that would be receivable if an option in the contract to extend or renew the term of the contract were exercised;
 - (e) amounts representing premiums, fees, commissions or interest that

- could be receivable under the contract;
- (f) amounts received on the sale of assets held by the supplier under the contract.

Anti-avoidance

- 4 (1) Sub-paragraph (2) applies where—
- (a) a contracting authority estimates the value of two or more contracts, and
 - (b) the goods, services or works to be supplied under the contracts could reasonably be supplied under a single contract.
- (2) The contracting authority must estimate the value of each of the contracts as including the value of all of the contracts, unless the authority has good reasons not to do so.

Cases where estimate not possible

- 5 If a contracting authority is unable to estimate the value of a contract in accordance with this Schedule (for example because the duration of the contract is unknown), the authority is to be treated as having estimated the value of the contract as an amount of more than the threshold amount for the type of contract.

SCHEDULE 4

Section 5

Utility activities

Gas and heat

- 1 (1) The following are utility activities—
- (a) the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of gas or heat;
 - (b) the supply of gas or heat to such a network.
- (2) But the supply of gas or heat to a network is not a utility activity if—
- (a) the person supplying it (the “operator”) is a private utility or a public undertaking,
 - (b) the production of gas or heat by the operator is a necessary consequence of carrying out an activity other than a specified activity, and
 - (c) the amount of gas or heat supplied to the network represents not more than 20 per cent of the operator’s turnover amount.
- (3) An appropriate authority may by regulations make provision about how to

calculate an amount referred to in sub-paragraph (2)(c).

- (4) The regulations may, in particular, make provision for such an amount to be calculated by reference to—
- (a) an average amount for a period specified in the regulations;
 - (b) another reasonable method so specified.

Electricity

2 (1) The following are utility activities—

- (a) the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of electricity;
- (b) the supply of electricity to such a network.

- (2) But the supply of electricity to a network is not a utility activity if—
- (a) the person supplying it (the “operator”) is a private utility or a public undertaking,
 - (b) the operator produces electricity because it needs electricity to carry out an activity other than a specified activity,
 - (c) the supply consists only of electricity that was produced by the operator as mentioned in paragraph (b) but which it has not consumed, and
 - (d) the amount of electricity supplied represents not more than 30 per cent of the amount of energy produced by the operator.

(3) An appropriate authority may by regulations make provision about how to calculate an amount referred to in sub-paragraph (2).

- (4) The regulations may, in particular, make provision for such an amount to be calculated by reference to—
- (a) an average amount for a period specified in the regulations;
 - (b) another reasonable method so specified.

Water

3 (1) The following are utility activities—

- (a) the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of drinking water;
- (b) the supply of drinking water to such a network.

- (2) The following are utility activities to the extent that they are carried out by a person who also carries out activities within sub-paragraph (1)—
- (a) any activity connected with a hydraulic engineering project, irrigation or land drainage in circumstances where the condition in sub-paragraph (3) is met;
 - (b) any activity connected with the disposal or treatment of sewage.

- (3) The condition is that a person carrying out the activity would reasonably expect that more than 20 per cent of the water made available by the project, irrigation or land drainage is to be supplied as drinking water to a network within sub-paragraph (1)(a).
- (4) The supply of drinking water as mentioned in sub-paragraph (1)(b) is not a utility activity if—
 - (a) the person supplying it (the “operator”) is a private utility or a public undertaking,
 - (b) the operator produces drinking water because it needs drinking water to carry out an activity that is not a specified activity,
 - (c) the supply consists only of drinking water that was produced by the operator as mentioned in paragraph (b) but which it has not consumed, and
 - (d) the amount of drinking water supplied represents not more than 30 per cent of the amount of drinking water produced by the operator.
- (5) An appropriate authority may by regulations make provision about how to calculate an amount referred to in sub-paragraph (4).
- (6) The regulations may, in particular, make provision for such an amount to be calculated by reference to—
 - (a) an average amount for a period specified in the regulations;
 - (b) another reasonable method so specified.

Transport

- 4 (1) An activity is a utility activity if it relates to the provision or operation of a network for the provision of a service to the public for transport, whether by rail, tram, bus or other means.
- (2) There is a network for the purposes of sub-paragraph (1) if the provision of a service on the network is subject to requirements imposed by a regulator, including requirements as to—
 - (a) the routes to be served;
 - (b) the capacity of the service;
 - (c) the frequency of the service.

Ports and airports

- 5 (1) An activity relating to the exploitation of a geographical area for the following purposes is a utility activity—
 - (a) the provision of an airport to carriers of passengers or goods by air;
 - (b) the provision of a port or other terminal facilities to carriers of passengers or goods by sea or inland waterway.
- (2) In this paragraph “airport” has the same meaning as in Part 1 of the Civil Aviation Act 2012 (see section 66 of that Act).

Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels

- 6 An activity relating to the exploitation of a geographical area for the following purposes is a utility activity—
- (a) extracting oil or gas;
 - (b) searching for or extracting coal or other solid fuels.

Utility activities exposed to competition

- 7 (1) An activity is not to be treated as within any of paragraphs 1 to 6 if an exemption determination has been made in relation to the activity.
- (2) An “exemption determination” is a determination made in accordance with regulations made by an appropriate authority that—
- (a) there is fair and effective competition in the market in which the activity is carried out, and
 - (b) entry to that market is unrestricted.
- (3) The regulations may, in particular, make provision—
- (a) specifying who is responsible for making exemption determinations (the “decision-maker”);
 - (b) about the amendment or revocation of exemption determinations by the decision-maker;
 - (c) about who can apply for an exemption determination, or its amendment or revocation, and the procedure for making an application;
 - (d) about the evidence and other information that must accompany any such application (including the form in which it must be provided);
 - (e) for circumstances in which the decision-maker may, of their own motion, make, amend or revoke an exemption determination;
 - (f) about the factors to be taken into account in, and the procedure for, making, amending or revoking exemption determinations;
 - (g) in relation to the publication of applications and decisions as to whether or not to make, amend or revoke exemption determinations;
 - (h) for appeals in relation to decisions of the decision-maker.
- (4) A reference in this paragraph to an activity includes a reference to an activity so far as it is carried out only in a particular part of a sector or a particular part of the United Kingdom.
- 8 (1) Sub-paragraph (2) applies to an activity that was, immediately before the coming into force of this paragraph, covered by any of the following Commission Decisions (which are revoked by this Act)—
- (a) Commission Decision 2006/211/EC (electricity generation in England, Scotland and Wales);

- (b) Commission Decision 2007/141/EC (supply of electricity and gas in England, Scotland and Wales);
- (c) Commission Decision 2010/192/EU (exploration for and exploitation of oil and gas in England, Scotland and Wales).

(2) An exemption determination is to be treated as having been made in relation to the activity on the coming into force of this paragraph and, accordingly, such a determination may be amended or revoked in accordance with regulations under paragraph 7.

Interpretation of Schedule

9 In this Schedule—

“specified activity” means an activity specified in paragraph 1(1), 2(1), 3(1) or 4(1);

“supply” includes—

- (a) production, but not the production of gas in the form of extraction (as to which, see paragraph 6), and
- (b) generation and wholesale or retail sale.

SCHEDULE 5

Section 40

Direct award justifications

1 This Schedule contains the direct award justifications.

Prototypes and development

2 The public contract concerns the production of a prototype, or supply of other novel goods or services, for the purpose of—

- (a) testing the suitability of the goods or services,
- (b) researching the viability of producing or supplying the goods or services at scale and developing them for that purpose, or
- (c) other research, experiment, study or development.

3 In paragraph 2, “novel goods or services” means goods or services designed or developed at the request of the contracting authority.

Single suppliers

4 The public contract concerns the creation or acquisition of a unique work of art or artistic performance.

5 The following conditions are met in relation to the public contract— (a) due to a particular supplier having intellectual property rights or other exclusive rights, only that supplier can supply the goods, services or works required, and
(b) there are no reasonable alternatives to those goods, services or works.

6 The following conditions are met in relation to the public contract— (a) due to an absence of competition for technical reasons, only a particular supplier can supply the goods, services or works required, and
(b) there are no reasonable alternatives to those goods, services or works.

Additional or repeat goods, services or works

7 The public contract concerns the supply of goods, services or works by the existing supplier which are intended as an extension to, or partial replacement of, existing goods, services or works in circumstances where—

(a) a change in supplier would result in the contracting authority receiving goods, services or works that are different from, or incompatible with, the existing goods, services or works, and

(b) the difference or incompatibility would result in disproportionate technical difficulties in operation or maintenance.

8 The public contract concerns the supply of goods, services or works by the existing supplier that are similar to existing goods, services or works where—

(a) the existing goods, services or works were supplied under a public contract that was awarded in accordance with a competitive tendering procedure within the period of five years ending with the day on which the transparency notice is published, and

(b) the tender notice or any tender document in respect of that earlier contract set out—

(i) the contracting authority's intention to carry out a subsequent procurement of similar goods, services or works in reliance on this direct award justification, and

(ii) any other information specified in regulations under section 86.

9 In paragraphs 7 and 8 —

“existing goods, services or works” means goods, services or works already supplied, or contracted to be supplied, to the contracting authority;

“existing supplier” means the supplier that has already supplied, or

contracted to supply, the existing goods, services or works.

Commodities

10 The public contract concerns goods purchased on a commodity market.

Advantageous terms on insolvency

11 The award of the public contract to a particular supplier will ensure terms particularly advantageous to the contracting authority due to the fact that a supplier, whether or not the one to whom the contract is to be awarded, is undergoing insolvency proceedings.

12 A supplier is “undergoing insolvency proceedings” if it has—

- (a) become bankrupt or, in Scotland, the estate of the supplier has been sequestered,
- (b) become subject to insolvency or winding-up proceedings, (c) had its assets subject to administration or receivership, including by a liquidator or court,
- (d) entered into an arrangement with its creditors,
- (e) become subject to a petition or application for any such procedures or arrangements, or
- (f) in any jurisdiction, been subject to a procedure or an application that corresponds to any procedure or application mentioned in paragraphs (a) to (e).

Urgency

13 Where—

- (a) the goods, services or works to be supplied under the public contract are strictly necessary for reasons of extreme and unavoidable urgency, and
- (b) as a result the public contract cannot be awarded on the basis of a competitive tendering procedure.

14 For the purpose of paragraph 13, urgency is unavoidable if it— (a) is not attributable to any act or omission of the contracting authority, and (b) could not have been foreseen by the contracting authority. *Necessary to protect life, etc*

to protect life, etc

15 The public contract falls within regulations made under section 41. *User*

choice contracts

16 The public contract is a contract for the supply of user choice services and the conditions in paragraph 18 are met.

17 In paragraph 16, “user choice services” means services—

- (a) that are of a kind specified in regulations under section 8 (light touch

- contracts),
- (b) that are supplied for the benefit of a particular individual, and
 - (c) in respect of which a contracting authority would, in awarding a contract for their supply, be required under an enactment to have regard to the views of the individual, or a person providing care to the individual (their “carer”), in relation to who should supply the services.

18 The conditions are that—

- (a) the individual to whom the services are to be supplied or their carer has expressed a preference as to who should supply the services, or the nature of the services to be supplied is such that only one supplier is capable of providing them, and
- (b) the contracting authority considers that it is not in the best interests of the individual to award the contract under section 18.

Defence and security

19 The following conditions are met in relation to the public contract— (a) the contract is a defence and security contract,

- (b) the contract relates to the supply of air or maritime transport services to the armed forces or the security services—
 - (i) while they are deployed outside the United Kingdom, or
 - (ii) in order for them to be so deployed, and
- (c) the nature of the services is such that no reasonable supplier would be able to guarantee that all of the terms that would be contained in a tender submitted for the supply of those services by such a supplier would remain in effect for the period of 10 days beginning with the day of submission.

20 (1) The following conditions are met in relation to the public contract (the “new contract”)—

- (a) there is another contract between the contracting authority and the supplier (the “existing contract”),
- (b) either of the conditions in sub-paragraphs (2) and (3) is met in relation to the new contract, and
- (c) the new contract would, if awarded directly, be a “qualifying defence contract” under section 14(2) of the Defence Reform Act 2014 (regulations relating to qualifying defence contracts).

(2) The condition in this sub-paragraph is met if, treating the new contract as a modification of the existing contract, the new contract would not be a substantial modification of the existing contract within the meaning given

in section 69(2).

(3) The condition in this sub-paragraph is met if, treating the new contract as a modification of the existing contract, the new contract would be a modification of the existing contract of a kind described in—

- (a) paragraph 4 of Schedule 8 (unforeseeable circumstances), or
- (b) paragraph 8 of that Schedule (additional goods, services or works).

21 The following conditions are met in relation to the public contract— (a) the contract is a defence authority contract,

(b) the contract is not a defence and security contract only by virtue of section 6(1)(g) (or, in the case of a framework, section 6(1)(g) and (2)), and

(c) it is necessary for the contract to be awarded directly in order to enhance or maintain the operational capability, effectiveness, readiness for action, safety or security of the armed forces.

SCHEDULE 6

Section 54

Mandatory exclusion grounds

Part 1

Offences

1 A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been convicted of an offence referred to in this Part of this Schedule.

Corporate manslaughter or corporate homicide

2 An offence under section 1 of the Corporate Manslaughter and Corporate Homicide Act 2007 (corporate manslaughter or corporate homicide).

Terrorism

3 An offence listed in section 41 or 42 of the Counter-Terrorism Act 2008 (terrorism offences, and offences having a terrorist connection, in respect of which the notification requirements under Part 4 of that Act apply), **other than an offence under section 54 of that Act.**

Theft, fraud, bribery etc

4 An offence at common law in Scotland of theft, fraud, extortion, robbery, theft by housebreaking, housebreaking with intent to steal, or reset.

4A An offence at common law of conspiracy to defraud.

- 5 An offence under any of the following sections of the Theft Act 1968— (a) sections 7 to 13 (theft, robbery, burglary, etc);
(b) sections 17 to 21 (fraud and blackmail);
(c) sections 22 and 23 (offences relating to stolen goods); (d) section 24A (dishonestly retaining a wrongful credit);
(e) section 25 (going equipped for stealing etc).
- 6 An offence under any of the following sections of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.))—
(a) sections 7 to 13 (theft, robbery, burglary, etc);
(b) sections 17 to 20 (fraud and blackmail);
(c) sections 21 and 22 (offences relating to stolen goods); (d) section 23A (dishonestly retaining a wrongful credit);
(e) section 24 (going equipped for stealing etc).
- 7 An offence under section 3 of the Theft Act 1978 (making off without payment).
- 8 An offence under section 5 of the Theft (Northern Ireland) Order 1978 (S.I. 1978/1407 (N.I. 23)) (making off without payment).
- 8A An offence under Article 172 or 172A of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)) (taking vehicle without authority etc).
- 9 An offence under section 58 of the Civic Government (Scotland) Act 1982 (convicted thief in possession).
- 10 An offence under section 113 of the Representation of the People Act 1983 (bribery of electors).
- 11 An offence under section 178 of the Road Traffic Act 1988 (taking motor vehicle without authority etc).
- 12 An offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002 (money laundering offences).
- 13 An offence under section 2, 3, 4, 6 or 7 of the Fraud Act 2006 (fraud offences).
- 14 An offence under section 993 of the Companies Act 2006 (fraudulent trading).
- 15 An offence under section 1, 2 or 6 of the Bribery Act 2010 (bribery offences).
- 16 An offence under section 49 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (offences relating to articles for use in fraud).

Labour market, slavery and human trafficking offences

- 17 An offence under the Employment Agencies Act 1973 (offences relating to employment agencies) other than an offence under section 9(4)(b) of that Act.
- 18 An offence under the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (S.I. 1981/839) (N.I. 20)) (offences relating to employment agencies) other than an offence under Article 7B(11) of that

Order.

- 19 An offence under section 31(1) of the National Minimum Wage Act 1998 (refusal or wilful neglect to pay the national minimum wage).
- 20 An offence under the Gangmasters (Licensing) Act 2004 (offences relating to gangmasters).
- 21 An offence under section 1, 2, 4 or 30 of the Modern Slavery Act 2015 (slavery and human trafficking offences).
- 22 An offence under section 1, 4 or 32 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) (slavery and human trafficking offences).
- 23 An offence under section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2) (N.I.), or paragraph 16 of Schedule 3 to that Act (slavery and human trafficking offences).
- 24 An offence under section 27 of the Immigration Act 2016 (failure to comply with labour market enforcement order).

Organised crime

- 25 An offence under section 28 of the Criminal Justice and Licensing (Scotland) Act 2010 (agreeing to become involved in serious organised crime).
- 26 An offence under section 45 of the Serious Crime Act 2015 (participating in activities of organised crime group).

Tax offences

- 27 An offence at common law of cheating the public revenue.
- 28 An offence under section 170 of the Customs and Excise Management Act 1979 (fraudulent evasion of duty etc).¶¶
- 29 An offence under section 72 of the Value Added Tax Act 1994 (fraudulent evasion of VAT etc).
- 28 (1) An offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.
- (2) In this paragraph, “tax” means a tax imposed under the law of any part of the United Kingdom, including national insurance contributions under— (a) Part 1 of the Social Security Contributions and Benefits Act 1992, or (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- 30 An offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent facilitation of tax evasion).

Cartel offence

31 An offence under section 188 of the Enterprise Act 2002 (cartel offence).

Ancillary offences

32 In relation to an offence otherwise referred to in this Part, any of the following offences—

- (a) aiding, abetting, counselling or procuring the commission of the offence;
- (b) in Scotland, being art and part in the commission of the offence;
- (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence;
- (d) inciting a person to commit the offence;
- (e) attempting or conspiring to commit the offence.

Offences committed outside the United Kingdom

33 (1) An offence under the law of a country or territory outside the United Kingdom which would be an offence otherwise referred to in this Part of this Schedule if the conduct constituting that offence was carried out in any part of the United Kingdom.

(2) For the purposes of this paragraph, an act punishable under the law of a country or territory outside the United Kingdom constitutes an offence under that law, however it is described in that law.

Part 2

Other mandatory exclusion grounds

Misconduct in relation to tax

34 (1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been liable to a penalty under—

- (a) section 69C of the Value Added Tax Act 1994 (transactions connected with VAT fraud) except where the penalty is reduced under section 70 of that Act, or
- (b) section 25 of the Finance Act 2003 (evasion of tax or duty).

(2) The supplier or connected person is not to be treated as having been liable to such a penalty unless HMRC has assessed the amount of the penalty and the time for any appeal or further appeal relating to the penalty has expired or, if later, any appeal or final appeal relating to it has been finally determined.

35 (1) A mandatory exclusion ground applies to a supplier if a penalty has been payable by the supplier or a connected person under—

- (a) Schedule 24 to the Finance Act 2007 (errors in tax documentation), or
- (b) Schedule 41 to the Finance Act 2008 (failure to notify and certain VAT and excise wrongdoing),

but only where the conduct giving rise to that penalty was deliberate.

- (2) Such a penalty is not to be treated as having been payable unless— (a) if the penalty has been assessed, the time for any appeal or further appeal relating to the penalty has expired or, if later, any appeal or final appeal relating to it has been finally determined, or
- (b) a contract has been made between HMRC and the supplier or connected person, under which HMRC undertook not to assess the penalty or (if it was assessed) not to take proceedings to recover it.

36 (1) A mandatory exclusion ground applies to a supplier if—

- (a) the supplier or a connected person has entered into or carried out a tax arrangement that is abusive tax arrangements that are abusive (within the meaning given in section 207 of the Finance Act 2013), and
- (b) an adjustment has accordingly been made by HMRC under section 209 of the Finance Act 2013 adjustments have accordingly been made under section 209 of that Act (countering tax advantages), including as it applies under section 10 of the National Insurance Contributions Act 2014.

(2) Adjustments are not to be treated as having been made until they The adjustment is not to be treated as having been made by HMRC until it can no longer be challenged, whether on appeal or otherwise.

37 (1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been found by HMRC, in exercise of its powers in respect of VAT, to have engaged in an abusive practice.

(2) The supplier or connected person is not to be treated as having been found by HMRC to have engaged in those arrangements or practices until the finding can no longer be challenged, whether on appeal or otherwise.

38(1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has incurred a defeat in respect of notifiable tax arrangements they have entered into.

(2) In this paragraph—

“defeat” means that—

(a) Condition A in paragraph 5 of Schedule 16 to the Finance (No. 2) Act 2017, or

(b) Condition B in paragraph 6 of that Schedule,

is met in respect of the arrangements (where “T” in those paragraphs is taken to mean the supplier or connected person entering into the arrangements);

“notifiable tax arrangements” means tax arrangements in respect of which a reference number—

(a) has been notified to the supplier or connected person under section 311A, 312 or 312ZA of the Finance Act 2004 (disclosure of tax avoidance schemes) or paragraph 22A, 23 or 23A of Schedule 17 to the Finance (No. 2) Act 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes), and

(b) has not been withdrawn;

“tax arrangements” has the meaning given in paragraph 3(1) of Schedule 16 to the Finance (No. 2) Act 2017. abusive tax arrangements, within the meaning given by paragraph 4 of Schedule 16 to the Finance (No. 2) Act 2017.

Competition law infringements

39 (1) A mandatory exclusion ground applies to a supplier if the CMA has made a decision under the Competition Act 1998 that the Chapter I prohibition (within the meaning given by section 2 of that Act) has been infringed by an agreement or concerted practice—

(a) to which the supplier or a connected person was party, and

(b) which was a cartel (within the meaning given by paragraph 4(1) of Schedule 8A to that Act).

(2) Sub-paragraph (1) does not apply if—

(a) the CMA did not impose a penalty on the supplier or connected person in respect of the infringement because the supplier or connected person was an immunity recipient (within the meaning given by paragraph 14 of Schedule 8A to the Competition Act 1998), or

(b) the CMA gave written notice to a connected person under section 190(4) of the Enterprise Act 2002 (immunity from prosecution for cartel offences) in connection with the infringement.¶

(3) In this paragraph, references to the CMA include references to a regulator referred to in section 54(1) of the Competition Act 1998 in circumstances where it exercises functions concurrently with the CMA in accordance with that Act.

Equivalents outside the United Kingdom

40 A mandatory exclusion ground applies to a supplier if the supplier or a connected person—

(a) has been subject to a penalty or a decision by a regulator, court or other authority outside the United Kingdom, where the conduct giving rise to that penalty or decision is conduct that would give rise to a penalty or decision referred to in any of paragraphs 34 to 39 if committed in

- the United Kingdom, in circumstances where the penalty or decision would be a mandatory exclusion ground, or
- (b) has had a tax advantage counteracted outside the United Kingdom, in circumstances where the supplier or connected person would have incurred a defeat of the kind referred to in paragraph 38 had the tax advantage arisen in respect of tax payable in the United Kingdom.

Failure to cooperate with investigation

41 A mandatory exclusion ground applies to a supplier if—

- (a) an appropriate authority has given the supplier or a connected person notice under section 57(6) (requests for documents or other assistance in connection with investigation),
- (b) the supplier or connected person has failed to comply with the notice to the satisfaction of the authority before the end of the period specified in the notice, and
- (c) a Minister of the Crown has made a determination that the failure to do so was sufficiently serious so as to warrant constituting a mandatory exclusion ground.

Part 3

General

Excluded matters

- 42 (1) In determining whether a mandatory exclusion ground applies to a supplier, the decision-maker must ignore any event that occurred before the five-year period ending with the date on which the determination is made. This is subject to sub-paragraphs (2) to (4).
- (2) In determining whether a mandatory exclusion ground listed in any of the following paragraphs applies to a supplier, sub-paragraph (1) applies whether the event occurred before or after the coming into force of this Schedule—
- (a) paragraph 3 (terrorism offences);
- (b) paragraph 10 or 15 (bribery);
- (c) paragraph 12 (money laundering offences);
- (d) paragraph 21, where the ground in that paragraph applies by virtue of an offence under section 1, 2 or 4 of the Modern Slavery Act 2015 (slavery and trafficking offences);
- (e) paragraph 22, where the ground in that paragraph applies by virtue of an offence under section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (slavery and trafficking offences);

- (f) paragraph 23, where the ground in that paragraph applies by virtue of an offence under section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (slavery and trafficking offences);
 - (g) paragraph 25 or 26 (organised crime);
 - (h) paragraph 32 or 33, so far as relating to any offence that constitutes a mandatory exclusion ground listed in any of the paragraphs within paragraph (a) to (g) above (inchoate offences and corresponding offences outside the United Kingdom).
- (3) In determining whether a mandatory exclusion ground listed in any of the following paragraphs applies to a supplier, the decision-maker must also ignore any event that occurred before the coming into force of this Schedule—
- (a) paragraph 2 (corporate manslaughter or homicide);
 - (b) paragraph 4, 5(a) or (c) to (e), 6(a) or (c) to (e), 7 to 9 or 11 (theft, robbery, burglary etc);
 - (c) paragraph 32 or 33, so far as relating to any offence that constitutes a mandatory exclusion ground listed in any of the paragraphs within paragraph (a) and (b) above (inchoate offences and corresponding offences outside the United Kingdom).
- (4) In determining whether a mandatory exclusion ground listed in any of the following paragraphs applies to a supplier, the decision-maker must also ignore any event that occurred before the three-year period ending with the coming into force of this Schedule—
- (a) paragraph 5(b) or 6(b) (blackmail);
 - (b) paragraph 13, 14 or 16 (fraud and fraudulent trading); (c) paragraphs 17 to 20 (labour market offences);
 - (d) paragraph 21, where the ground in that paragraph applies by virtue of an offence under section 30 of the Modern Slavery Act 2015 (breach of orders under that Act);
 - (e) paragraph 22, where the ground in that paragraph applies by virtue of an offence under section 32 of the Human Trafficking and Exploitation (Scotland) Act 2015 (breach of orders under that Act);
 - (f) paragraph 23, where the ground in that paragraph applies by virtue of an offence under paragraph 16 of Schedule 3 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (breach of orders under that Act);
 - (g) paragraph 24 (breach of labour market enforcement order);
 - (h) paragraphs 27 to 30 (tax offences);
 - (i) paragraph 31 (cartel offence);
 - (j) paragraph 32 or 33, so far as relating to any offence that constitutes a

- mandatory exclusion ground listed in any of the paragraphs within paragraphs (a) to (i) above;
- (k) paragraphs 34 to 38 (tax misconduct);
- (l) paragraph 39 (competition law infringements);
- (m) paragraph 40 (equivalents to tax misconduct and competition law infringements outside the United Kingdom).

Definitions

43 In this Schedule—

the “CMA” means the Competition and Markets Authority;

“conduct” includes acts and omissions;

“connected person”, in relation to a supplier, means any of the following—

- (a) a person with “significant control” over the supplier (within the meaning given by section 790C(2) of the Companies Act 2006 (“CA 2006”));
- (b) a director or shadow director of the supplier;
- (c) a parent undertaking or a subsidiary undertaking of the supplier;
- (d) a predecessor company;
- (e) any other person who it can reasonably be considered stands in an equivalent position in relation to the supplier as a person within paragraph (a) to (d);
- (f) any person with the right to exercise, or who actually exercises, significant influence or control over the supplier;
- (g) any person over which the supplier has the right to exercise, or actually exercises, significant influence or control;

“court” includes a tribunal;

“decision-maker”, in relation to a supplier, means a contracting authority or an appropriate authority that is considering whether a mandatory exclusion ground applies to the supplier;

“director” has the meaning given in section 250 of CA 2006; “event” means a conviction, decision, ruling, failure or other event by virtue of which a mandatory exclusion ground would apply to a supplier; “HMRC” means Her Majesty’s Revenue and Customs;

“parent undertaking” and “subsidiary undertaking” have the meanings given in section 1162 of CA 2006;

“predecessor company” means a company which—

- (a) became insolvent and ceased to trade, (b) before it ceased to trade, carried on the same or substantially the same business as the supplier,

- (c) has transferred all or substantially all of its assets to the supplier,
and
 - (d) had at least one director or shadow director who is or has been
a director or
shadow director of the supplier;
- “shadow director” has the meaning given in section 251 of CA 2006.

SCHEDULE 7

Section 54

Discretionary exclusion grounds

Labour market misconduct

- 1 A discretionary exclusion ground applies to a supplier if any of the following orders has been made against the supplier or a connected person—
 - (a) a slavery and trafficking prevention order, an interim slavery and trafficking prevention order, a slavery and trafficking risk order or an interim slavery and trafficking risk order under Part 2 of the Modern Slavery Act 2015;
 - (b) a trafficking and exploitation prevention order, an interim trafficking and exploitation prevention order, a trafficking and exploitation risk order or an interim trafficking and exploitation risk order under Part 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12);
 - (c) a slavery and trafficking prevention order or an interim slavery and trafficking prevention order under Schedule 3 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c.2 (N.I.));
 - (d) a labour market enforcement order under section 18 of the Immigration Act 2016.
- 2 A discretionary exclusion ground applies to a supplier if the supplier or a connected person has engaged in conduct outside the United Kingdom that the decision-maker considers could result in any such order being made if the conduct occurred in the United Kingdom.
- 3 A discretionary exclusion ground applies to a supplier if the decision-maker considers that there is sufficient evidence that the supplier or a connected person has engaged in conduct (whether in or outside the United Kingdom) constituting (or that would, if it occurred in the United Kingdom, constitute) an offence referred to in—
 - (a) section 1, 2, 4 or 30 of the Modern Slavery Act 2015,
 - (b) section 1, 4 or 32 of the Human Trafficking and Exploitation (Scotland) Act 2015, or
 - (c) section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal

Justice and Support for Victims) Act (Northern Ireland) 2015, or paragraph 16 of Schedule 3 to that Act.

Environmental misconduct

- 4 A discretionary exclusion ground applies to a supplier if—
- (a) the supplier or a connected person has been convicted of an offence (whether in or outside the United Kingdom),
and
 - (b) the conduct constituting the offence caused, or had the potential to cause, significant harm to the environment, including the life and health of plants and animals.

Insolvency, bankruptcy, etc

- 5 A discretionary exclusion ground applies to a supplier if the supplier or a connected person has—
- (a) become bankrupt (or, in Scotland, its estate has been sequestrated),
 - (b) become subject to insolvency or winding-up proceedings, (c) had its assets subject to administration or receivership, including by a liquidator or court,
 - (d) entered into an arrangement with its creditors,
 - (e) become subject to a petition or application for any such procedures or arrangements, or
 - (f) in any jurisdiction, been subject to a procedure or an application the decision-maker considers to correspond to any procedure or application mentioned in paragraphs (a) to (e).
- 6 A discretionary exclusion ground applies to a supplier if the supplier or a connected person is—
- (a) in the case of a company, unable to pay its debts within the meaning given by section 123 of the Insolvency Act 1986 or Article 103 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405) (N.I. 19),
 - (b) in the case of an individual—
 - (i) unable to pay their debts or with no reasonable prospects of paying their debts, each within the meaning given by section 268 of that Act or Article 242 of that Order, or
 - (ii) apparently insolvent within the meaning of section 16 of the Bankruptcy (Scotland) Act 2016 (asp 21), or
 - (c) in a corresponding position in any jurisdiction in the opinion of the decision-maker.

- 7 A discretionary exclusion ground applies to a supplier if the supplier or a connected person has suspended or ceased carrying on all or a

substantial part of its business.

Potential competition infringements

- 8 (1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that an agreement or concerted practice to which the supplier or a connected person is party has infringed—
- (a) the Chapter I prohibition (within the meaning given by section 2 of the Competition Act 1998), or
 - (b) any substantially similar prohibition applicable in a jurisdiction outside the United Kingdom.
- (2) Sub-paragraph (1) does not apply where the supplier or connected person is—
- (a) **the supplier or connected person is** an immunity recipient (within the meaning given by paragraph 14 of Schedule 8A to that Act), or
 - (b) a regulator or other authority outside the United Kingdom has granted the supplier or connected person immunity from penalties in respect of the infringement.
- 9 A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has infringed—
- (a) the Chapter II prohibition (within the meaning given by section 18 of the Competition Act 1998), or
 - (b) any substantially similar prohibition applicable in a jurisdiction outside the United Kingdom.
- 10 (1) A discretionary exclusion ground applies to a supplier if—
- (a) the CMA has made a decision under the Competition Act 1998 that the supplier or a connected person has infringed the Chapter II prohibition, or
 - (b) a regulator or other authority outside the United Kingdom has made a decision that the supplier or a connected person has infringed any substantially similar prohibition.
- (2) In this paragraph the reference to the CMA includes a reference to a regulator referred to in section 54(1) of the Competition Act 1998 in circumstances where it exercises functions concurrently with the CMA in accordance with that Act.
- 11 (1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has engaged in conduct constituting—
- (a) an offence under section 188 of the Enterprise Act 2002 (cartel offence), or
 - (b) a substantially similar offence under the law of a country or territory outside the United Kingdom.
- (2) Sub-paragraph (1) does not apply if—
- (a) the CMA has given written notice to the supplier or connected person under section 190(4) of the Enterprise

- Act 2002 (immunity from prosecution for cartel offences)
in connection with the conduct, or
- (b) a regulator or other authority outside the United Kingdom has determined that the supplier or connected person is immune from prosecution in respect of the conduct.

Professional misconduct

- 12 (1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has engaged in professional misconduct which brings into question the supplier's integrity.
- (2) A discretionary exclusion ground applies to a supplier if a court, regulator or other authority has ruled that the supplier or connected person has engaged in such professional misconduct.
- (3) "Professional misconduct" includes conduct involving—
- (a) dishonesty;
 - (b) impropriety;
 - (c) a serious breach of ethical or professional standards applicable to the supplier (whether those standards are mandatory or not).

Breach of contract and poor performance

- 13 (1) A discretionary exclusion ground applies to a supplier if—
- (a) the supplier has breached a relevant contract, and
 - (b) the breach was sufficiently serious.
- (2) A discretionary exclusion ground applies to a supplier if—
- (a) a court has ruled that the supplier breached a relevant contract, and
 - (b) the breach was sufficiently serious.
- (3) A discretionary exclusion ground applies to a supplier if the supplier— (a) has not performed a relevant contract to the regulated authority's satisfaction, (b) was given proper opportunity to improve performance, and (c) failed to do so.
- (4) A discretionary exclusion ground applies to a supplier if a contracting authority has published information under section 66(5) in respect of the supplier (information concerning either breach or poor performance).
- (5) For the purposes of this paragraph, a breach of a contract is "sufficiently serious" if it results in—
- (a) termination (or partial termination) of the contract,
 - (b) the award of damages,
 - (c) a settlement agreement between the supplier and the regulated authority.
- (6) In this paragraph—

“regulated authority” means—

- (a) a contracting authority,
- (b) another public authority, or
- (c) an authority outside the United Kingdom that the decision-maker considers to be equivalent;

“relevant contract” means a contract to which a regulated authority is party.

Acting improperly in procurement

14 (1) A discretionary exclusion ground applies to a supplier if a decision-maker considers that—

- (a) the supplier has acted improperly in relation to any procurement, and
- (b) in so doing, the supplier put itself at an unfair advantage in relation to the award of a public contract.

(2) A supplier might act improperly in relation to a procurement by— (a) failing to provide information requested by the contracting authority;

- (b) providing information that is incomplete, inaccurate or misleading;
- (c) accessing confidential information;
- (d) unduly influencing the contracting authority’s decision-making.

National security

15 A discretionary exclusion ground applies to a supplier if a decision-maker determines that the supplier or a connected person poses a threat to the national security of the United Kingdom.

Excluded matters

16 (1) For the purpose of determining whether a discretionary exclusion ground applies to a supplier, the decision-maker must ignore any event that— (a) the decision-maker was aware of before the five-year period ending with the date on which the determination is

made, or

- (b) a reasonably well-informed decision-maker in their position would have been aware of before that period.

This is subject to sub-paragraphs (2) and (4).

(2) In determining whether a discretionary exclusion ground within sub-paragraph (3) applies to a supplier, the decision-maker must also ignore any event that—

- (a) the decision-maker was aware of before the three-year period ending with the date on which the determination is made, or

- (b) a reasonably well-informed decision-maker in their position would have been aware of before that period.

(3) The grounds are those listed in—

- (a) paragraphs 5 to 7 (insolvency, bankruptcy etc);
 - (b) paragraphs 8 to 11 (potential competition infringements); (c) paragraph 12 (professional misconduct);
 - (d) paragraph 13 (1) or (2) (breach of contract);
 - (e) paragraph 14 (acting improperly in a procurement).
- (4) In determining whether a discretionary exclusion ground listed in any of the following paragraphs applies to a supplier, the decision-maker must also ignore any event that occurred before the coming into force of this Schedule—
- (a) paragraphs 1 to 3 (labour market misconduct);
 - (b) paragraph 4 (environmental misconduct);
 - (c) paragraph 13(3) (poor performance);
 - (d) paragraph 15 (national security).

Definitions

17 In this Schedule—

“decision-maker”, in relation to a supplier, means a contracting authority or an appropriate authority that is considering whether a discretionary exclusion ground applies to the supplier;

“information” includes evidence verifying that information.

18 Other terms used in this Schedule and defined in Schedule 6 have the meanings given in that Schedule.

SCHEDULE 8

Section 69

Permitted contract modifications

Provided for in the contract

1 A modification is a permitted modification if—

- (a) the possibility of the modification is unambiguously provided for in—
 - (i) the contract as awarded, and
 - (ii) the tender or transparency notice for the award of that contract, and
- (b) the modification would not change the overall nature of the contract.

Urgency and the protection of life, etc

2 A modification is a permitted modification if—

- (a) its purpose could otherwise be achieved by the direct award of a contract under section 40, and
- (b) such an award could be made by reference to—

(i) paragraph 13 of Schedule 5 (extreme and unavoidable urgency), or

(ii) regulations under section 41 (direct award to protect life, etc).

3 Assume, for the purposes of paragraph 2, that the contract would be a public contract as defined in section 2.

Unforeseeable circumstances

4 (1) A modification is a permitted modification if—

(a) the circumstances giving rise to the modification could not reasonably have been foreseen by the contracting authority before the award of the contract,

(b) the modification would not change the overall nature of the contract, and

(c) the modification would not increase the estimated value of the contract by more than 50 per cent.

(2) Sub-paragraph (1)(c) does not apply if the contract being modified is a utilities contract.

Materialisation of a known risk

5 (1) A modification is a permitted modification if—

(a) the contracting authority considers that—

(i) a known risk has materialised otherwise than as a result of any act or omission of the contracting authority or the supplier,

(ii) because of that fact, the contract cannot be performed to the satisfaction of the contracting authority,

(iii) the modification goes no further than necessary to remedy that fact, and

(iv) awarding a further contract under Part 3 (instead of modifying the contract) would not be in the public interest in the circumstances, and

(b) the modification would not increase the estimated value of the contract by more than 50 per cent ignoring, for the purpose of estimating the value of the contract, the fact that the risk has materialised.

(2) Sub-paragraph (1)(b) does not apply if the contract being modified is a utilities contract.

6 In paragraph 5, a “known risk” means a risk that—

(a) the contracting authority considered—

(i) could jeopardise the satisfactory performance of the contract, but

- (ii) because of its nature, could not be addressed in the contract as awarded, and
- (b) was identified in the tender or transparency notice for award of the contract, including by reference to—
 - (i) its meeting the description in paragraph (a), and
 - (ii) the possibility of modification under paragraph 5.

7 In considering whether awarding a new contract would be in the public interest for the purposes of paragraph 5, a contracting authority—

- (a) must consider whether a new contract could provide more value for money, and
- (b) may consider technical and operational matters.

Additional goods, services or works

8 (1) A modification is a permitted modification if—

- (a) the modification provides for the supply of goods, services or works in addition to the goods, services or works already provided for in the contract,
- (b) using a different supplier would result in the supply of goods, services or works that are different from, or incompatible with, those already provided for in the contract,
- (c) the contracting authority considers that the difference or incompatibility would result in—
 - (i) disproportionate technical difficulties in operation or maintenance or other significant inconvenience, and
 - (ii) the substantial duplication of costs for the authority, and
- (d) the modification would not increase the estimated value of the contract by more than 50 per cent.

(2) Sub-paragraph (1)(d) does not apply if the contract being modified is a utilities contract.

Transfer on corporate restructuring

9 A novation or assignment (or in Scotland, assignation) of a public contract to a supplier that is not an excluded supplier is a permitted modification if it is required following a corporate restructuring or similar circumstance.

Defence authority contracts

10 A modification of a defence authority contract is a permitted modification where it is necessary to enable the contracting authority to—

- (a) take advantage of developments in technology, or

(b) prevent or mitigate any adverse effect of those developments.

11 A modification of a defence authority contract is a permitted modification where—

- (a) the continuous supply of the goods, services or works supplied under the contract is necessary to ensure the ability of the Armed Forces to maintain their operational capabilities, effectiveness, readiness for action, safety, security, or logistical capabilities, and
- (b) the modification is necessary to ensure there is continuous supply of those goods, services or works.

SCHEDULE 9

Section 81

Treaty state suppliers (specified international agreements)

- 1 The Agreement on Government Procurement signed at Marrakesh on 15 April 1994, as amended on or before the day on which this Schedule comes into force.
- 2 Agreement establishing an Association between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile, signed at Santiago on 30 January 2019.
- 3 Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation, signed at Bern on 11 February 2019.
- 4 Trade and Partnership Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the State of Israel, signed at Tel Aviv on 18 February 2019.
- 5 Economic Partnership Agreement between the CARIFORUM States, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, signed at Castries, Saint Lucia on 22 March 2019.
- 6 Trade Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Colombia, the Republic of Ecuador and the Republic of Peru, of the other part, signed at Quito on 15 May 2019.
- 7 Agreement Establishing an Association between the United Kingdom of Great Britain and Northern Ireland and Central America, signed at Managua on 18 July 2019.
- 8 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Korea, of the other part, signed at London on 22 August 2019.

- 9 Strategic Partnership and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and Georgia, signed at London on 21 October 2019.
- 10 Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Kosovo, signed at Pristina on 3 December 2019.
- 11 Political, Free Trade and Strategic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine, signed at London on 8 October 2020.
- 12 Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership, signed at Tokyo on 23 October 2020.
- 13 Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of North Macedonia, signed at Skopje on 3 December 2020.
- 14 Agreement on Trade Continuity between the United Kingdom of Great Britain and Northern Ireland and Canada, signed at Ottawa on 9 December 2020.
- 15 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Singapore, signed at Singapore on 10 December 2020.
- 16 Trade Continuity Agreement between the United Kingdom of Great Britain and Northern Ireland and the United Mexican States, signed at Mexico City on 15 December 2020.
- 17 Strategic Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Moldova, signed at Chisnau on 24 December 2020.
- 18 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Socialist Republic of Viet Nam, signed at London on 29 December 2020.
- 19 Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part, signed at Brussels and London on 30 December 2020.
- 20 Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Albania, signed at Tirana on 5 February 2021.
- 21 Partnership, Trade and Cooperation Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Serbia, signed at Belgrade on 16 April 2021.
- 22 Free Trade Agreement between Iceland, the Principality of Liechtenstein and

the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, signed at London on 8 July 2021.

23 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, signed at London on 16 December 2021 and at Adelaide on 17 December 2021.

24 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand signed at London on 28 February 2022.

SCHEDULE 10

Section 105

Single source defence contracts

1 The Defence Reform Act 2014 is amended as follows.

Definition of qualifying defence contract

2 (1) Section 14 (regulations relating to qualifying defence contracts) is amended as follows.

(2) In subsection (2)(a), after “goods, works or services” insert “wholly or substantially”.

(3) After subsection (5) insert—

“(5A) Single source contract regulations may specify circumstances in which a contract entered into by the Secretary of State with a primary contractor is or is not to be treated as amending an existing contract between those parties for the purposes of subsection (4) or (5).”

(4) After subsection (8) insert—

“(8A) The regulations may also specify when a contract is to be treated as substantially for defence purposes.”

Pricing of qualifying defence contracts

3 (1) Section 15 (pricing of qualifying defence contracts) is amended as follows.

(2) In subsection (1), after “qualifying defence contract” insert “, and, where the contract is divided into components, each component of that contract,”.

(3) For subsection (2) substitute—

“(2) The regulations must provide for the price payable under the contract, or any component, to be determined—
(a) in accordance with the formula in subsection (4), or

(b) in such circumstances as may be specified in the regulations, in accordance with another method.

(2A) The regulations must only specify circumstances for the purposes of subsection (2)(b) if the Secretary of State is satisfied that the factors referred to in section 13(2) may be ensured in those circumstances if another method is used.

(2B) The regulations may also make provision requiring a particular method specified in the regulations to be used in certain of the circumstances specified for the purposes of subsection (2)(b)."

(4) In subsection (3)(a)—

- (a) after "contract" insert "or each amended component of that contract,";
- (b) for "the formula in subsection (4)" substitute "the method applicable by virtue of subsection (2)".

(5) In subsection (3)(b) for "formula" substitute "method".

(6) In subsection (4)—

- (a) after "for the contract" insert "or component";
- (b) after "under the contract" insert "or component". (7) In

subsection (5), after "contract" insert "or component". (8) After subsection (5) insert—

"(6) In this Part, "component", in relation to a contract, means a part of the contract that the parties to it agree is to be treated distinctly from other such parts in determining the price payable under the contract.

(7) For the purposes of subsection (6), a part of a contract is to be treated distinctly if—

- (a) single source contract regulations contain provision to that effect, or
- (b) the parties to the contract agree that it should."

(78) Single source contract regulations may specify circumstances in which certain make provision about when parts of a qualifying defence contract may or may not be treated distinctly from other parts of the same contract."

4 (1) Section 16 (pricing of contracts: supplementary) is amended as follows.

(2) In subsection (1)(b)(i), after "contract" insert "or, where relevant, a component of that contract".

(3) After subsection (3) insert—

"(4) Single source contract regulations may provide that the SSRO—

- (a) must, on an application by a person within subsection (5), determine whether the method used to determine the price payable under a qualifying defence contract or a component of that contract was appropriate;
- (b) may, in consequence of a determination under paragraph (a), determine that the price payable under the contract is to be adjusted by an amount specified by the SSRO.

(5) The following persons are within this subsection—

- (a) the Secretary of State,
- (b) an authorised person, and
- (c) the primary contractor.”

5 After section 21(2) (final price adjustment) insert—

“(2A) Provision made under subsection (2) may include provision dealing with how, in the case of a qualifying defence contract divided into components, the components are to be taken into account in determining the amount of any adjustments to the total price payable under such a contract.”

6 In section 22(1)(a) (recovery of unpaid amounts), after “section” insert “16(4),”.

7 In section 43 (interpretation etc), at the appropriate place insert—

““component” has the meaning given by section 15(6).”

Contract profit rate

8 (1) Section 17 (contract profit rate) is amended as follows.

(2) In subsection (1) at the end insert “, or, where the contract is divided into components, any component of that contract”.

(3) In subsection (2)—

- (a) in step 2, for the words from “the risk” to “estimated allowable costs” substitute “the financial risks to the primary contractor of entering into the contract or component, taking into account the particular type of activities to be carried out by the primary contractor under that contract or component.”;
- (b) omit steps 3 and 4 (and, accordingly, renumber steps 5 and 6 as steps 3 and 4);
- (c) in new step 3, after “determines” insert “, having taken into account any factors relevant to the determination specified in the regulations.”;¶
- (d) in new step 3, for “4” substitute “2”;

(e) in new step 3, after “contract” insert “or component”; (ea) in new step 3, before “Any increase” insert “In specifying provisions of the contract or component, the Secretary of State must comply with any requirements imposed by the regulations, and”;

(f) in new step 4, for “5” substitute “3”;

(g) in new step 4, after “contract”, in both places it occurs, insert “or component”.

(4) In subsection (3) for “6”, in both places it occurs, substitute “4”. (5)

In subsection (4)(b), for “6” substitute “4”.

9 (1) Section 18 (contract profit rate: supplementary) is amended as follows.

(2) In subsection (2)(a)—

(a) for “6” substitute “4”;

(b) after “paragraph” insert “, or a component of such a contract”.

(3) In subsection (2)(b), after “contract” insert “or component”.

(4) In subsection (2)(c), after “those contracts” insert “or components of those contracts”.

(5) For subsection (3)(a) substitute—

“(a) may, on an application by a person within subsection (4), determine whether—

(i) the baseline profit rate identified under step 1 in section 17(2) is correct in relation to a qualifying defence contract or a component of such a contract;

(ii) an adjustment agreed under any of steps 2 to 4 in section 17(2) is appropriate;

(iii) an adjustment agreed under step 3 in section 17(2) is in accordance with the regulations.”

10 (1) Section 19 (rates etc relevant to determining contract profit rate) is amended as follows.

(2) In subsection (1) omit “the SSRO funding adjustment”. (3)

In subsection (2)—

(a) omit “and the SSRO funding adjustment”;

(b) omit “or funding adjustment”.

- (4) In subsection (4) omit “, and the SSRO funding adjustment for that year,”.
- (5) In subsection (5)—
 - (a) omit “or the SSRO funding adjustment”;
 - (b) omit “or funding adjustment” in both places it occurs.
- (6) In subsection (6) omit “or the funding adjustment”.

Allowable costs

11 (1) Section 20 (allowable costs) is amended as follows.

- (2) In subsection (2)—
 - (a) after “qualifying defence contract” insert “, or, where the contract is divided into components, a component of that contract”;
 - (b) in paragraph (b), after “contract” insert “or component”. (3) After subsection (2) insert—
 - “(2A) Single source contract regulations may provide that the requirements set out in subsection (2)(a) to (c) are not met in relation to a cost where the cost arises from profits made by a person connected with the primary contractor.
 - (2B) The regulations may specify the circumstances in which a person is connected with the primary contractor.”
- (4) In subsection (4) after “contract” insert “, or where the contract is divided into components, a component of that contract.”.
- (5) For subsection (5) substitute—
 - “(5) Where a person within subsection (5A) applies to the SSRO for such a determination, the SSRO must determine—
 - (a) the extent to which a cost is or would be an allowable cost under a qualifying defence contract or a component of such a contract, or
 - (b) the extent to which a method which is used or may be used to determine a cost under a qualifying defence contract or a component of such a contract would result in that cost being an allowable cost under such a contract or component.
 - (5A) The following persons are within this subsection—
 - (a) the Secretary of State;
 - (b) an authorised person;
 - (c) a primary contractor under a qualifying

defence contract;
(d) a potential primary contractor.”

(6) In subsection (6), for “the contract”, in the first place it occurs, substitute “a qualifying defence contract”.

Reports

12 (1) Section 25 (reports on overheads and forward planning etc) is amended as follows.

(2) For subsection (3)(a) substitute—

“(a) where P is associated with one or more other persons—

(i) the ultimate parent undertaking in relation to P and those other persons, or

(ii) where permitted under the regulations in relation to a report mentioned in subsection (2), another person associated with P which that undertaking and the Secretary of State have agreed is to be a designated person in relation to that report, and”.

(3) After subsection (8) insert—

“(8A) In this section, “financial year” means a year beginning with 1 April or a year beginning with such other date as may be agreed between the Secretary of State and a designated person.”

13 In section 43 (interpretation etc), in the definition of “financial year”, at the end insert “(but see section 25(8A) for the different meaning of “financial year” in that section)”.

Qualifying sub-contracts

14 (1) Section 29 (determining whether a contract is a qualifying sub-contract) is amended as follows.

(2) After subsection (2)(b) insert—

“(c) where the assessment is that the proposed contract would not be a qualifying sub-contract if it were entered into, to give notice in writing of that fact, and of reasons for the assessment, to the Secretary of State, an authorised person and the

prospective sub-contractor.”

(3) After subsection (4)(b) insert—

“(c) where the assessment is that the proposed sub-contract would not be a qualifying sub-contract if it were entered into, to give notice in writing of that fact, and of reasons for the assessment, to the Secretary of State, an authorised person and the prospective sub-contractor.”

(4) In subsection (5), in each of paragraphs (a) and (b), after “would”, insert “or would not”.

15 In section 30(4)(a) (application of single source contracts regime to qualifying sub-contracts)—

(a) after “for the” insert “primary contractor or”;

(b) for “the sub-contractor’s opinion” substitute “their opinion”.

16 In section 31(3) (compliance notices)—

(a) in paragraph (e), omit “, or”;

(b) in paragraph (f), at the end insert “, or

(g) in circumstances where P is required to give the notice mentioned in section 29(2)(c) or (4)(c) in respect of a proposed contract, P fails to give such a notice.”

Powers of the Single Source Regulations Office (“SSRO”)

17 (1) Section 35 (opinions and determinations by the SSRO) is amended as follows.

(2) In subsection (1)(a), omit “qualifying defence” in both places it occurs.

(3) For subsection (2)(c) substitute—

“(c) a person who has entered into a contract with the Secretary of State (a “contractor”);”

(4) In subsection (2)(d)—

(a) for “the”, in the first place it occurs, substitute “a”;

(b) omit “(in the case of a proposed contract)”.

(5) For subsection (3) substitute—

“(3) The SSRO may, on a reference made to it by a person mentioned in subsection (2), give an opinion on any other matter relating to the application or interpretation of this Part or single source contract regulations.”.

(6) In subsection (4)(a), omit “qualifying defence”.

(7) In subsection (5), omit “primary” in both places it occurs.

18 After section 35 insert—

“35A Guidance

The SSRO may issue such guidance as it considers appropriate in relation to the application or interpretation of this Part or single source contract regulations.”

19 In paragraph 10(3) of Schedule 4 (procedure of the SSRO), after “16(2)(b)” insert “or (4)”.

SCHEDULE 11

Section 107

Repeals and revocations

Primary legislation

1 Paragraphs 9(9)(d) and 11(6)(b)(ix) of Schedule 7B to the Government of Wales Act 2006 (as inserted by an Act of Parliament resulting from the Trade (Australia and New Zealand) Bill that was introduced into the House of Commons on 11 May 2022).

2 Sections 39 and 40 of the Small Business, Enterprise and Employment Act 2015.

3 An Act of Parliament resulting from the Trade (Australia and New Zealand) Bill that was introduced into the House of Commons on 11 May 2022.

Subordinate legislation

4 The Defence and Security Public Contracts Regulations 2011 (S.I. 2011/1848).

5 The Public Contracts Regulations 2015 (S.I. 2015/102).

6 The Concession Contracts Regulations 2016 (S.I. 2016/273).

7 The Utilities Contracts Regulations 2016 (S.I. 2016/274).

Retained direct EU legislation

8 Commission Decision 2006/211/EC of 8 March 2006 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to electricity generation in England, Scotland and Wales.

9 Commission Decision 2007/141/EC of 26 February 2007 establishing that Article

30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to the supply of electricity and gas in England, Scotland and Wales.

- 10 Commission Decision 2010/192/EU of 29 March 2010 exempting exploration for and exploitation of oil and gas in England, Scotland and Wales from the application of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.
- 11 Commission Implementing Decision (EU) 2017/1870 of 16 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.