

Economy and Fair Work Committee

29th Meeting 2023, (Session 6), Wednesday 22 November 2023

SSI cover note

Title of Instrument:	Public Procurement (Agreement on Government Procurement) (Miscellaneous Amendments) (Scotland) Regulations 2023
Relevant Dates:	laid 18 October 2023 and came into force on 30 October 2023
Reporting deadline:	27 November 2023
Type of instrument:	Negative

Parliamentary procedure

1. An instrument subject to negative procedure comes into force on the date specified in the instrument, unless a motion to annul is agreed to by the Parliament.
2. Under [Rule 10.4](#) of Standing Orders, any motion to annul must be lodged within 40 days of the date the instrument was laid. Any member (whether a member of the lead committee or not) may lodge a motion. Further information on the negative procedure can be found on the [Parliament's website](#).
3. No motion to annul has been lodged.
4. The Interpretation and Legislative Reform (Scotland) Act 2010 requires that an SSI, subject to negative procedure, is laid before the Scottish Parliament at least 28 days before coming into force.
5. In the case of this instrument, the Scottish Government wrote to the Presiding Officer stating that it had breached the 28 day rule because the Republic of North Macedonia deposited its instrument of accession to join the Agreement on Government Procurement (GPA) earlier than expected on 30 September, meaning the GPA came into effect 30 days later.

Background to the regulations

6. The Republic of North Macedonia has acceded to the World Trade Organisation's Agreement on Government Procurement. Since its exit from the

EU, the UK has been a signatory and was previously a signatory as part of EU membership.

7. The Republic of North Macedonia becomes the 49th member of the GPA, although the EU is also a member, so the number of countries bound by these rules is actually greater than 49.

Purpose of the regulations

8. The Regulations are attached at **Annexe A**, the Policy Note is attached at **Annexe B**. The purpose of the regulations is to add the Republic of North Macedonia into Schedules that list parties to the World Trade Organisation's (WTO) Agreement on Government Procurement.
9. Economic operators from the Republic of North Macedonia will be afforded the same rights as economic operators from the United Kingdom for contracts covered by the United Kingdom's Appendix 1 to the GPA. This applies to procurements that start on or after 30 October 2023.
10. The regulations also change the date in Scottish procurement regulations to reflect the most recent version of the GPA which now includes The Republic of North Macedonia.

Delegated Powers and Law Reform Committee consideration

11. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 31 October 2023 and made two observations—
 - it drew the instrument to the attention of the Parliament under reporting ground (j) for failure to comply with laying requirements, as it was not laid 28 days before it comes into force (as it is required to do).
 - stated it was content with the Scottish Government's explanation for the breach of laying requirement.

For decision

12. **The Committee is invited to note the DPLRC observations and to note the instrument.**

**Economy and Fair Work Committee Clerks
17 November 2023**

SCOTTISH STATUTORY INSTRUMENTS

2023 No. 287

PUBLIC PROCUREMENT

**The Public Procurement (Agreement on Government
Procurement) (Miscellaneous Amendments) (Scotland)
Regulations 2023**

Made - - - - at 10.38 a.m. on 18th October 2023

Laid before the Scottish Parliament at 2.30 p.m. on 18th October 2023

Coming into force - - - - 30th October 2023

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 1(1)(b)(i) of the Trade Act 2021(a) and all other powers enabling them to do so.

Citation and commencement

1.—(1) These Regulations may be cited as the Public Procurement (Agreement on Government Procurement) (Miscellaneous Amendments) (Scotland) Regulations 2023.

(2) These Regulations come into force on 30 October 2023.

Amendment of the Public Contracts (Scotland) Regulations 2015

2.—(1) The Public Contracts (Scotland) Regulations 2015(b) are amended as follows.

(2) In regulation 2(1) (interpretation) in the definition of “GPA”, for “16th May 2021” substitute “30 October 2023”.

(3) In the list in schedule 1A (parties to the GPA), after “New Zealand” insert —

“North Macedonia, Republic of”.

Amendment of the Utilities Contracts (Scotland) Regulations 2016

3.—(1) The Utilities Contracts (Scotland) Regulations 2016(c) are amended as follows.

(2) In regulation 2(1) (interpretation) in the definition of “GPA”, for “16th May 2021” substitute “30 October 2023”.

(3) In the list in schedule A1 (parties to the GPA), after “New Zealand” insert—

“North Macedonia, Republic of”.

(a) 2021 c. 10.

(b) S.S.I. 2015/446. These Regulations were relevantly amended by S.I. 2021/573.

(c) S.S.I. 2016/49. These Regulations were relevantly amended by S.I. 2021/573.

Amendment of the Concession Contracts (Scotland) Regulations 2016

4.—(1) The Concession Contracts (Scotland) Regulations 2016^(a) are amended as follows.

(2) In regulation 2(1) (interpretation) in the definition of “GPA”, for “16th May 2021” substitute “30 October 2023”.

(3) In the list in schedule 1A (parties to the GPA), after “New Zealand” insert—
“North Macedonia, Republic of”.

TOM ARTHUR

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
At 10.38 a.m. on 18th October 2023

^(a) S.S.I. 2016/65. These Regulations were relevantly amended by S.I. 2021/573.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations insert the Republic of North Macedonia into the list of parties to the Agreement on Government Procurement (“the GPA”) specified in the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 and the Concession Contracts (Scotland) Regulations 2016 in accordance with the obligations of the United Kingdom under the GPA.

These Regulations also amend the definition of the GPA set out in each of the three sets of Regulations being amended.

POLICY NOTE

**THE PUBLIC PROCUREMENT (AGREEMENT ON GOVERNMENT
PROCUREMENT) (MISCELLANEOUS AMENDMENTS) (SCOTLAND)
REGULATIONS 2023**

SSI 2023/287

The Scottish Ministers made the above instrument in exercise of the powers conferred by section 1(1)(b)(i) of the Trade Act 2021 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

<p>This instrument makes amendments to Scottish procurement regulations for the purpose of reflecting the Republic of North Macedonia's accession to the World Trade Organisation's (WTO) Agreement on Government Procurement (GPA).</p>
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Policy Objectives

This instrument gives effect in Scotland to international obligations.

The Republic of North Macedonia will accede to the WTO's GPA and this instrument amends Scottish procurement regulations to reflect this change. Following normal protocol, the Republic of North Macedonia has six months to deposit its instrument of accession. Once its instrument has been deposited, the GPA enters into force for the acceding party 30 days later, which is when this instrument comes into effect.

This instrument inserts the Republic of North Macedonia into Schedules that list parties to the GPA in the Public Contracts (Scotland) Regulations 2015, the Concession Contracts (Scotland) Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016.

Economic operators from the Republic of North Macedonia will be afforded the same rights as economic operators from the United Kingdom for contracts covered by the United Kingdom's Appendix 1 to the GPA. The equal treatment duty in respect of economic operators from the Republic of North Macedonia applies to procurements that start on or after the date on which the GPA enters into force for the Republic of North Macedonia.

The UK Government is expected to make similar changes.

EU Alignment Consideration

Fundamentally, this instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU. The EU, like the UK is a party to the GPA and will be updating its regulations to fulfil this international obligation.

Consultation

There has been no consultation on this instrument as this is an international obligation which must be implemented. The Scottish Government does not have any substantive discretion in the matter.

Impact Assessments

Impact assessments have not been carried out in relation to this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

Financial Effects

The Minister for Community Wealth and Public Finance confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Scottish Procurement and Property Directorate

18 October 2023