**EXPLANATORY MEMORANDUM TO**

**THE PUBLIC PROCUREMENT (REVOCATION) REGULATIONS 2025**

**[Year] No. [XXXX]**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament in accordance with the Retained EU Law (Revocation and Reform) Act 2023.

1.2 This memorandum contains information for the Sifting Committees.

## 2. Declaration

1.3 Georgia Gould MP, Parliamentary Secretary at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

1.4 Edward Green, Deputy Director for Commercial Policy (International and Reform), at the Cabinet Office confirms that this Explanatory Memorandum meets the required standard.

## 3. Contact

1.5 Rebecca Gledhill at the Cabinet Office: telephone: 07745 545513 or email: procurement.reform@cabinetoffice.gov.uk can be contacted with any queries regarding the instrument.

## Part One: Explanation, and context, of the Instrument

## 4. Overview of the Instrument

***What does the legislation do?***

1.6 This statutory instrument (SI) revokes four items of assimilated law in their entirety, those being: three European Commission Decisions (the "EC decisions") related to the public procurement of utilities and a Commission Implementing Regulation, which established a standard form for companies participating in a procurement procedure.

The SI also partially revokes one item of assimilated law; a set of regulations, which made consequential amendments, repeals and revocations that were required following the implementation of three key statutory instruments that govern the current procurement regime; the Public Contracts Regulations 2015 (PCR 2015), the Utilities Contracts Regulations 2016 (UCR 2016) and the Concession Contracts Regulations 2016 (CCR 2016).

The five items of legislation being revoked or partially revoked through this SI are redundant from 24 February 2025, with the Procurement Act 2023 (PA 2023) in force and the implementation of a new procurement regime in England, Wales and Northern Ireland.

***Where does the legislation extend to, and apply?***

1.7 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales and Northern Ireland.

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1.8 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Northern Ireland.

## 5. Policy Context

***What is being done and why?***

1.9 The five pieces of legislation to which this instrument relates are no longer required in England, Wales and Northern Ireland with the new public procurement regime, brought about by the PA 2023, in effect from 24 February 2025. As the legislation will be obsolete, the five items are being revoked or partially revoked to ensure the statute book only consists of legislation on public procurement that is current and in effect.

1.10 The Retained EU Law (Revocation and Reform) Act 2023 provides the Government with powers to amend, revoke, restate or replace secondary retained EU law ("REUL") and to remove the special status it has in the UK legal system, amongst other changes. Under section 5(1) of the Act, all REUL became assimilated law from 1 January 2024 onwards. As a result, this instrument takes the opportunity to revoke or partially revoke five items of assimilated law in accordance with the intention of the Act.

The three EC decisions

1.11 The three EC decisions were originally made to exempt certain utility activities in England, Scotland and Wales from being regulated through legislation which transpose an EU directive, on public procurement utility contracts. Those utility activities were:

- the generation of electricity
- the supply of electricity and gas
- the exploration for exploitation of oil and gas

1.12 The exemptions were requested by the UK, as while many utilities in the EU are public entities, the UK utilities affected by this legislation are (in the main) privatised and subject to market competition; as such, it would not have been appropriate to include them in legislation on public procurement contracts. The exemptions were consequently incorporated into the UCR 2016 and the three EC decisions were directly referenced in regulation 34 of that instrument.

1.13 While the UCR 2016 is replaced by the PA 2023, Schedule 4, Part 2 of the Act maintains the effect of three exempting EC decisions; it is not necessary however, to retain the decisions themselves.

The Commission Implementing Regulation

1.14 Commission Implementing Regulation (EU) No 2016/07 of 5 January 2016 established a standard form for companies wishing to take part in a public procurement process, known as the Single Procurement Document (SPD). The Decision was transcribed by the UK into regulation 59 of the PCR 2015. The SPD is replaced by a questionnaire in the new procurement regime and the regulation can be revoked.

The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 ('the 2016 Regulations')

1.15 The 2016 Regulations made consequential amendments to primary and secondary legislation that were required following the implementation of three key statutory instruments that govern the current procurement regime: the PCR 2015, the UCR 2016 and the CCR 2016. As these instruments are revoked by the Procurement Act 2023, the majority of the consequential amendments made to them, have no effect.

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1.16 Revocation of the 2016 Regulations however is not in full but in part, as the following provisions need to be retained:

- transitional provisions within Regulation 5 that are being kept to ensure that procurements commenced under the previous procurement regime can continue until they conclude.
- certain provisions in Schedule 2, Part 2 which contain definitions of key procurement terms in the Cleaner Road Transport Vehicles Regulations 2011.

## Legal Context

***How has the law changed?***

1.17 The PA 2023 creates a new regulatory framework for public procurement and replaces a series of statutory instruments which implemented the EU Procurement Directives.

***Why was this approach taken to change the law?***

1.18 The power in Section 14(1) of the Retained EU Law (Revocation and Reform) Act 2023 was considered to be the most appropriate power to revoke these items of law.

## 6. Consultation

***Summary of consultation outcome and methodology***

1.19 A formal public consultation was not undertaken on this statutory instrument specifically as there are no policy changes involved in the removal or partial revocation of these five items of assimilated law from the UK statute book. However, a full public consultation on replacing procurement legislation that was derived from EU directives with the PA 2023, was conducted from December 2020 to March 2021.

1.20 As Scotland continues to follow the procurement legislation that was derived from the EU the five items are not being revoked in so far as they extend to Scotland. The Welsh Government and Northern Ireland Executive have given consent for this SI to extend to Wales and Northern Ireland.

## 7. Applicable Guidance

1.21 This instrument does not require guidance.

# Part Two: Impact and the Better Regulation Framework

## 8. Impact Assessment

1.22 A full Impact Assessment has not been prepared for this instrument because there is no cost to businesses; this instrument simply revokes redundant assimilated law from the UK statute book.

***Impact on businesses, charities and voluntary bodies***

1.23 There is no, or no significant, impact on business, charities or voluntary bodies because this instrument will revoke redundant assimilated law from the UK statute book.

1.24 The legislation does not impact small or micro businesses.

1.25 There is no, or no significant, impact on the public sector because this instrument will revoke redundant assimilated law from the UK statute book.

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## 9. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

1.26 The approach to monitoring this legislation is that because the instrument simply revokes or partially revokes items of redundant assimilated law, it does not require monitoring.

1.27 As this instrument is made under the Retained EU Law (Revocation and Reform) Act 2023, no review clause is required.

## Part Three: Statements and Matters of Particular Interest to Parliament

## 10. Matters of special interest to Parliament

1.28 This instrument is being laid for sifting by the Sifting Committees.

## 11. European Convention on Human Rights

1.29 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

## 12. The Relevant European Union Acts

***European Union Withdrawal, Future Relationship and Assimilated Law Reform***

1.30 ***This instrument does not relate to withdrawal from the European Union or trigger the statement requirements under the European Union (Withdrawal) Act 2018.***

1.31 This instrument does however relate to the reform of assimilated law under section 14 of the Retained EU Law (Revocation and Reform) Act 2023 because it revokes or partially revokes five items of assimilated law that will be redundant when the new public procurement regime, brought about by the Procurement Act 2023, comes into force on 24 February 2025. The Minister has made the relevant sifting statement required by that Act in the Annex to this Explanatory Memorandum.

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# Annex

## Statement required under the Retained EU Law (Revocation and Reform) Act 2023

**1. Sifting statement**

1.1 Georgia Gould MP, Parliamentary Secretary at the Cabinet Office has made the following statement regarding use of legislative powers in the Retained EU Law (Revocation and Reform) Act 2023:

"In my view The Public Procurement (Revocation) Regulations 2025 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because: the instrument revokes or partially revokes five minor items of assimilated law that are without effect.

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