

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT DEFENCE AND SECURITY PUBLIC  
CONTRACTS (AMENDMENT) (EU EXIT)  
REGULATIONS 2020

*Monday 9 November 2020*

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**Friday 13 November 2020**

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**The Committee consisted of the following Members:**

*Chair:* SIR DAVID AMESS

- |  |   |
|--|---|
| † Afriyie, Adam ( <i>Windsor</i> ) (Con)                   | † Richards, Nicola ( <i>West Bromwich East</i> ) (Con)      |
| † Bailey, Shaun ( <i>West Bromwich West</i> ) (Con)        | † Richardson, Angela ( <i>Guildford</i> ) (Con)             |
| † Charalambous, Bambos ( <i>Enfield, Southgate</i> ) (Lab) | Sharma, Mr Virendra ( <i>Ealing, Southall</i> ) (Lab)       |
| † Docherty, Leo ( <i>Aldershot</i> ) (Con)                 | Sheerman, Mr Barry ( <i>Huddersfield</i> ) (Lab/Co-op)      |
| † Elphicke, Mrs Natalie ( <i>Dover</i> ) (Con)             | † Stevenson, Jane ( <i>Wolverhampton North East</i> ) (Con) |
| Evans, Chris ( <i>Islwyn</i> ) (Lab/Co-op)                 | Thompson, Owen ( <i>Midlothian</i> ) (SNP)                  |
| † Healey, John ( <i>Wentworth and Dearne</i> ) (Lab)       | † Williams, Craig ( <i>Montgomeryshire</i> ) (Con)          |
| Huq, Dr Rupa ( <i>Ealing Central and Acton</i> ) (Lab)     | Elektra Garive-Adams, <i>Committee Clerk</i>                |
| † Johnson, Gareth ( <i>Dartford</i> ) (Con)                |   |
| † Quin, Jeremy ( <i>Minister for Defence Procurement</i> ) | † <b>attended the Committee</b>                             |

# First Delegated Legislation Committee

Monday 9 November 2020

[SIR DAVID AMESS *in the Chair*]

## Draft Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2020

4.30 pm

**The Minister for Defence Procurement (Jeremy Quin):**

I beg to move,

That the Committee has considered the draft Defence and Security Public Contracts (Amendment) (EU Exit) Regulations 2020.

It is a pleasure, Sir David, to move that the regulations, which were laid before the House on 7 October, be approved.

Our departure from the European Union has opened up the opportunity to review how we procure in the defence and security sector, and how we improve pace and become agile. That work is under way, but it does not inform these particular regulations. Other than some technical updating, the regulations are designed as permitted under the European Union (Withdrawal) Act 2018 to provide legal certainty to defence suppliers as we leave the transition period on 31 December.

I would like to draw to the Committee's attention a minor error in the heading of regulation 2, which currently reads:

"Pre-exit amendments of the Defence and Security Public Contract Regulations 2011".

As the Committee will be aware, regulation headings are not an operative part of the instrument, and regulation 2 is clearly stated to come into force on the day after the day on which these regulations are made. It has been confirmed by the laying offices and the legal counsel to the Joint Committee on Statutory Instruments that the deletion of the words, "pre-exit", can and shall be made editorially prior to signature.

Before we consider the detail of the statutory instrument, which I shall refer to as the 2020 regulations, I would highlight that this is a second EU exit amendment to the Defence and Security Public Contracts Regulations 2011. The first amendment was debated by both Houses and signed by the Secretary of State for Defence last year. The 2019 regulations, as amended by the 2020 regulations, will now enter into force on "IP completion day" which is the end of the transition period. The instrument ensures that the procurement provisions of the withdrawal agreement and the EEA-EFTA separation agreement are correctly applied to the procurement of those public contracts and framework agreements launched but not finalised under the defence and security public contracts regulations before the end of the transition period. These transitional procurements will be regulated under that version of the defence and security public contracts regulations which meets our current European obligations. Businesses, and indeed Government, will continue to have legal certainty beyond transition period completion day. Defence and security procurements will be underpinned by solid legal bedrock.

Reflecting the fact that regulations 3 and 4 of the 2019 regulations will now come into effect at the end of the transition period, the 2020 regulations replace references to "exit day" in the 2019 regulations, with "IP completion day" where necessary. The opportunity has also been taken to update certain references to financial thresholds in the 2019 regulations, which were revised during the transition period.

As well as amending the 2019 regulations, the new legislation updates and corrects the original 2011 regulations. Hon. Members will wish to note that these changes are not related to EU exit. In regulation 12, which covers technical specifications, an outdated reference to "European technical approval" is replaced with "European technical assessment". Care has been taken when drafting the instrument to ensure that it is as consistent as possible with other Government public procurement legislation. This change to regulation 12 brings defence and security procurement legislation into alignment with the Public Contracts Regulations 2015. *[Interruption.]* The opportunity has also been taken to update the reference to the common military list of 2018 with the common military list of 2020.

Together, the 2019 regulations and the instrument before us reflect the UK's new status outside the EU. The 2019 regulations, agreed by this House over 18 months ago, restrict automatic legal access to the UK's defence procurements to suppliers from the UK and Gibraltar only. However, the framework and principles underlying the procurement regime remain unchanged. This is in accordance with the powers given to amend retained EU law in the European Union (Withdrawal) Act 2018. That Act does not allow major policy changes or the introduction of new legal frameworks. Amendments to the DSPCR made under the powers given by the 2018 Act are limited to dealing with the effect and consequences of EU exit.

As I mentioned at the outset, a comprehensive review of the DSPCR is under way, with a view to improving the pace and agility of acquisition. This is a significant piece of work which will require the introduction of new legislation. In the meantime, the amendments that these regulations make will ensure public procurement business conducted under the umbrella of the defence and security procurement legislation will continue to flow smoothly and confidently. I commend the 2020 regulations to the Committee.

**The Chair:** Not a good start—my mobile phone went off just now, and I was so quick at the start of the sitting that I didn't allow the Clerk to read out the title of the regulations. That having been done, I call Mr John Healey.

4.35 pm

**John Healey (Wentworth and Dearne) (Lab):** Thank you, Sir David. It is a pleasure to serve under your chairmanship. It is some time since I have had that pleasure, but it is a pleasure nevertheless.

I thank the Minister for his technical explanation of this technical set of regulations, and I welcome the level of interest on the Government Benches. As he knows, my hon. Friend the Member for Birmingham, Perry Barr (Mr Mahmood) has been working from home since March, otherwise he might have been in his place as the shadow Minister. My hon. Friend the Member

for Portsmouth South (Stephen Morgan) is one of the few people who seems to have been traced by the Government's system to deal with the covid virus; he has been advised to isolate for the next two weeks, but is keeping very well. Of course, I am glad that my hon. Friend the Member for Enfield, Southgate is here to support me.

The statutory instrument is indeed a largely technical set of propositions which ensure that the procurement provisions of both the withdrawal agreement and the European economic area and European Free Trade Association separation agreement are properly transposed into UK legislation, and correctly applied at the same time to those procurement contracts that have already been launched but not yet finalised.

As the Minister said, the regulations obviously update the 2011 regulations. First, can he confirm how many contracts the regulations apply to? In other words, how many contracts will have been launched but not yet concluded before the end of the transition period? Secondly, can he confirm that the transition period or implementation period will end on 31 December?

The Minister said a couple of other things that I think are of wider interest. He said, as his counterpart in the upper House did when the upper House considered the regulations, that a comprehensive review is under way on the defence and security public contracts regulations. Given that it is more than four years since the Brexit vote, more than two years since the European Union (Withdrawal) Act 2018 reached the statute book and almost one year since this country's exit date from the European Union, why has this work not been undertaken already? Why are we dealing with these temporary, interim, make-do and make-and-mend measures rather than considering a full set of new regulations that should govern our procurement of defence and security needs for the future?

In addition to the number of contracts or framework agreements covered by the regulations, can the Minister confirm how many applications are expected to be launched between now and the end of the implementation period, or in other words that will fall in future within the remit of the regulations? I also note that the de minimis threshold has been increased by some £65,000. Can the Minister explain why there has been such a big leap? Does it simply update the 2011 levels, or has some other factor come into the calculations made by the Ministry of Defence?

The framework that we are considering is an interim one, as the Minister said, but will apply to contracts that will be in place well into the future. Could he indicate how long the contracts to which the draft regulations will apply may be extant? Finally, the Minister called our departure from the European Union an opportunity for Britain. As a result of the draft regulations, the new system and our departure from the European Union, how many more defence and security public contracts will be placed with British firms over the next year, rather than with EU firms, as the previous regulations would have implied?

4.40 pm

**Jeremy Quin:** First, as I am sure the whole Committee does, I wish the hon. Member for Portsmouth South (Stephen Morgan) a safe period, having been traced. I trust that it is no more than being traced, and that he will soon be back among us.

I am honoured that the shadow Secretary of State has joined us this afternoon. It is good to see him in fine form. I thank him for translating into English my technical description of the regulations and the pith of our attempt to provide legal certainty; he was absolutely right. He raised several technical questions that I will try to assist with. Inevitably, I cannot give him the exact number of additional contracts that will flow under the draft regulations between now and year end, but in a typical year we would expect between 2,000 and 2,500 contracts and frameworks to be awarded within the Ministry of Defence overall. On 8 November, we were running at 2,104—slightly below the average for the year, I suppose—of which 35% would normally be awarded under the DSPCR, so that gives an indication of the numbers.

The right hon. Gentleman is absolutely right that some of the contracts may run on for some time. As he well knows, I cannot be definitive about how long that will be; it depends on contract negotiations, but it may last for a period of time. However, that is the value of the draft regulations: suppliers will know with certainty the legal basis under which they will operate. They will know that for however long the period lasts, the contract was awarded under the DSPCR, which currently prevails as per the draft regulations.

**John Healey:** I am grateful for the Minister's attempt to provide specific answers to my questions. Under the DSPCR—if he cannot confirm the answer this afternoon, perhaps he would write to me—how many of the contracts or the framework agreements to which the draft regulations are designed specifically to apply have been launched but not concluded?

**Jeremy Quin:** I can inform the right hon. Gentleman that that is the exact question that I have asked. I have yet to be enlightened with the answer; I wanted to come armed with the statistic to share with him in case he asked me a direct question, but I cannot do it on my feet right now. Given the number of contracts and frameworks that we are discussing—there had been some 2,104 by 8 November—he will appreciate that finding an exact number may be a bit of a compilation exercise, but I appreciate why he asked the question. I will research the answer and write to him, and if I cannot enlighten him fully I will explain why and put a date to it.

The right hon. Gentleman also asked about the shift in the thresholds. We have introduced the correct number as of 1 January 2020; the main change will have been currency movements over that time, because the DSPCR is set out in euros and clearly we have put down a sterling number.

Perhaps the most important aspect that the right hon. Gentleman asked about is when we can expect the excitement of new regulations, which will be how we procure in future. As he is aware, we have launched DSIS, the defence and security industrial strategy. That work is ongoing, and we look forward to announcing it in due course. It looks very closely at how we can embrace new regulations in future, and how we can ensure that strategic industries remain and flourish in the UK that meet the needs of our defence requirements.

**John Healey:** I am quite attracted to the picture that the Minister paints. Could he give some indication of when he expects the comprehensive review of the regulations to conclude?

**Jeremy Quin:** I would not wish to excite the Committee by giving an exact date at this moment; it would not be appropriate to do so. The work is ongoing and I look forward to its being presented. I fear that I cannot share an exact date with the right hon. Gentleman, as it is not known to me at the present moment, but I look forward to its being presented to the House and, hopefully, to his welcoming what I trust will be a new way forward to ensure that we maintain our partnerships and help to secure an extremely prosperous and flourishing British sector. As the right hon. Gentleman knows, the Department

spends more than £19 billion a year with UK suppliers, but there is more that we can do to ensure that people know the vision going forward, where they should be investing and where they should be working with us to ensure that they meet the needs of our future defence requirements.

*Question put and agreed to.*

4.46 pm

*Committee rose.*



