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“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 His 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 57

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

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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 has suspended or ceased carrying on all or a substantial part of its business.

Potential competition infringements

- 7 (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—
- (a) the supplier or connected person is an immunity recipient (within the meaning given by paragraph 14 of Schedule 8A to that Act), or

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- (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.
- 8 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.
- 9 (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.
- 10 (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

- 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 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).

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Breach of contract and poor performance

- 12 (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 71(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

- 13 (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

- 14 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

- 15 (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 and 6 (insolvency, bankruptcy etc);
 - (b) paragraphs 7 to 10 (potential competition infringements);
 - (c) paragraph 11 (professional misconduct);
 - (d) paragraph 12(1) or (2) (breach of contract);
 - (e) paragraph 12(4) (adverse information about supplier published by contracting authority), where the information is published in relation to a breach of contract;
 - (f) paragraph 13 (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 12(3) (poor performance);
 - (d) paragraph 12(4) (adverse information about supplier published by contracting authority), where the information is not published in relation to a breach of contract;
 - (e) paragraph 14 (national security).

Definitions

- 16 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;

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“event” means a conviction, decision, ruling, failure or other event by virtue of which a discretionary exclusion ground would apply to a supplier;

“information” includes evidence verifying that information.

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

SCHEDULE 8

Section 74

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 41, 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 42 (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 3.

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,