POLICY NOTE

THE PUBLIC PROCUREMENT (INTERNATIONAL TRADE AGREEMENTS) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2024

SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by section 91 of the Procurement Act 2023. The instrument is subject to affirmative procedure.

Summary Box

This instrument makes amendments to Scottish public procurement regulations for the purpose of fulfilling international obligations and reflecting updates to various International Trade Agreements (ITA).

Policy Objectives

This instrument gives effect in Scotland to international obligations.

This instrument amends the schedules of the Scottish public procurement regulations (the Public Contracts (Scotland) Regulations 2015, the Concession Contracts (Scotland) Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016) as a consequence of amendments made to the United Kingdom's ITAs with Georgia, the Republic of Kosovo, Ukraine, the Republic of North Macedonia, the Republic of Moldova and the Republic of Albania. The ITAs with these countries have been amended to remove access to bidders from those countries to the procurement of certain health care services.

In practice, these Regulations update the list of ITAs to reflect the date and location of the amended agreements.

The Republic of Kazakhstan and the UK signed a Strategic Partnership and Cooperation Agreement in April 2024. This instrument inserts the procurement chapter of this agreement into the International Trade Agreement Schedules of the Public Contracts (Scotland) Regulations 2015, the Concession Contracts (Scotland) Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016.

Suppliers from the Republic of Kazakhstan will be afforded the same rights as economic operators from the United Kingdom for relevant contracts. The equal treatment duty in respect of economic operators from the Republic of Kazakhstan applies to procurements that start on or after the date on which the agreement enters into force.

The UK Government is expected to make similar changes to procurement legislation in the rest of the UK.

This instrument relies on an enabling power in section 91 of the UK Government's Procurement Act 2023. At the time of laying this instrument, section 122 of the Act, which sets out the parliamentary procedures to which regulations made using powers in the Act are subject, erroneously refers at paragraph (14)(a) to an enabling power in section 90, rather than in section 91. There is no enabling power in section 90; this is an error which occurred during renumbering of the Bill's clauses during its passage.

The UK government is currently assessing available options for correcting this error and has provided reassurance that it will be amended in due course.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:

"In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, The Public Procurement (International Trade Agreements) (Miscellaneous Amendments) (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of the Act."

EU Alignment Consideration

This SSI is not directly relevant to the Scottish Government's policy to maintain alignment with the EU, since the SSI is purely consequential and means Scotland can fulfil international obligations.

Consultation

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

Impact Assessments

The procurement rule changes described in this policy note are expected to have minimal impact on public purchasers and businesses.

Financial Effects

The Minister for 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

September 2024