SCOTTISH STATUTORY INSTRUMENTS

2024 No. 338

PUBLIC PROCUREMENT

The Public Procurement (Miscellaneous Amendment) (Scotland) Regulations 2024

Made - - - -	*12th November 2024*
Laid before the Scottish Parliament	*14th November 2024*
Coming into force - -	*10th January 2025*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 23(3) of the Procurement Reform (Scotland) Act 2014(**a**), section 19(1) of the Retained EU Law (Revocation and Reform) Act 2023(**b**) and all other powers enabling them to do so.

PART 1

Introductory

Citation and Commencement

1. These Regulations may be cited as the Public Procurement (Miscellaneous Amendment) (Scotland) Regulations 2024 and come into force on 10 January 2025.

Saving

2.—(1) The amendments made by these Regulations do not apply to a procurement commenced before 10 January 2025.

(2) For the purposes of paragraph (1)—

(a) a procurement commences when the person carrying out the procurement, or a person acting on that person's behalf—

(i) publishes an advertisement seeking expressions of interest or offers in relation to the contract to be awarded at the conclusion of the procurement,

(ii) contacts another person to seek an expression of interest or offer in relation to the contract, or

(iii) responds to an unsolicited expression of interest or offer in relation to the contract,

(b) nothing done in the course of holding a design contest is to be regarded as commencing a procurement in relation to the subject matter of the contest.

(**a**) 2014 asp 12.
(**b**) 2023 c. 28.

(3) In this regulation—

"2014 Act" means the Procurement Reform (Scotland) Act 2014,

"contract" includes—

(a) a framework agreement (as defined by section 6 of the 2014 Act, the Public Contracts Regulations, or the Utilities Contracts Regulations (as the case may be)), and references to a contract's award include conclusion of a framework agreement,

(b) a dynamic purchasing system (as defined by section 7 of the 2014 Act, the Public Contracts Regulations, or the Utilities Contracts Regulations (as the case may be)), and references to a contract's award include the establishment of a dynamic purchasing system,

"design contest" means any process treated as a design contest by the Public Contracts Regulations or the Utilities Contracts Regulations (as the case may be),

"procurement" means the process leading to the award of a contract,

"Public Contracts Regulations" means the Public Contracts (Scotland) Regulations 2015(**a**),

"Utilities Contracts Regulations" means the Utilities Contracts (Scotland) Regulations 2016(**b**).

PART 2

Amendments

Amendment of the Public Contracts (Scotland) Regulations 2015

3.—(1) The Public Contracts (Scotland) Regulations 2015 are amended in accordance with paragraphs (2) to (7).

(2) In regulation 2(1) (interpretation), omit the definition of "the Retained Treaties".

(3) In regulation 10(1)(a) (exclusions: public contracts awarded, and design contests organised, pursuant to international rules), omit ", concluded in conformity with the Retained Treaties,".

(4) In regulation 12 (exclusions: service contracts awarded on the basis of an exclusive right), omit from the words "which is compatible" to the end.

(5) In regulation 13(2)(c) and (5)(c) (exclusions: public contracts between entities within the public sector), omit ", in conformity with the Retained Treaties,".

(6) In regulation 18(1)(a) (public contracts and design contests involving defence or security aspects etc.), omit ", concluded in conformity with the Retained Treaties,".

(7) In regulation 87(1) (duty owed to economic operators etc.), omit ", and with any retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal Act 2018 in respect of a contract, framework agreement dynamic purchasing system or design contest falling within the scope of these Regulations,".

Amendment of the Utilities Contracts (Scotland) Regulations 2016

4.—(1) The Utilities Contracts (Scotland) Regulations 2016 are amended in accordance with paragraphs (2) to (7).

(**a**) S.S.I. 2015/446, relevantly amended by S.S.I. 2020/468 and S.I. 2021/573.
(**b**) S.S.I. 2016/49, relevantly amended by S.S.I. 2020/468 and S.I. 2021/573.

(2) In regulation 2(1) (interpretation), omit the definition of "the Retained Treaties".

(3) In regulation 19(1)(a) (exclusion: contracts awarded and design contests organised pursuant to international rules), omit ",concluded in conformity with the Retained Treaties,".

(4) In regulation 21 (exclusion: service contracts awarded on the basis of an exclusive right), omit from the words "which is compatible" to the end.

(5) In regulation 26(1)(a) (contracts and design contests involving defence and security aspects etc.), omit ", concluded in conformity with the Retained Treaties,".

(6) In regulation 27(2)(c) and (5)(c) (exclusion: contracts between contracting authorities), omit ", in conformity with the Retained Treaties,".

(7) In regulation 100(1) (duty owed to economic operators etc.), omit ", and with any retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018 in respect of a contract, framework agreement, dynamic purchasing system or design contest falling within the scope of these Regulations,".

Amendment of the Concession Contracts (Scotland) Regulations 2016

5.—(1) The Concession Contracts (Scotland) Regulations 2016(**a**) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) (interpretation)—

(a) in the definition of "exclusive right", omit "which is compatible with the Retained Treaties",

(b) omit the definition of "the Retained Treaties".

(3) In regulation 5(4)(b) (meaning of "utility"), omit "which is compatible with the Retained Treaties".

(4) In regulation 10(1)(a) (exclusions: concession contracts awarded pursuant to international rules), omit ", concluded in conformity with the Retained Treaties,".

(5) In regulation 19(2)(c) and (5)(c) (exclusions: concession contracts between entities within the public sector), omit ", in conformity with the Retained Treaties,".

(6) In regulation 51(1) (duty owed to economic operators etc.), omit ", and with any retained EU obligation that is enforceable by virtue of section 4 of the European Union (Withdrawal) Act 2018 in respect of a concession contract falling within the scope of these Regulations,".

Amendment of the Procurement (Scotland) Regulations 2016

6.—(1) The Procurement (Scotland) Regulations 2016(**b**) are amended in accordance with paragraphs (2) to (3).

(2) In regulation 2 (interpretation)—

(a) omit the definition of "prior information notice",

(b) in the definition of "procurement document", omit "the prior information notice where it is used as a means of calling for competition,",

(3) In regulation 7 (publication of contract notices, prior information notices and award notices on the Public Contracts website)—

(a) for paragraph (2) substitute—

(**a**) S.S.I. 2016/65, relevantly amended by S.S.I. 2020/468 and S.I. 2021/573.
(**b**) S.S.I. 2016/145, relevantly amended by S.S.I. 2020/468.

"(2) A contracting authority must publicise its intention to seek offers by publishing a contract notice.",

(b) omit paragraph (3),

(c) omit paragraph (5),

(d) in paragraph (7), after sub-paragraph (b) insert—

"(ba) in paragraph 13, the words "or the highest tender and lowest tender taken into consideration" were omitted,",

(e) omit paragraph (9),

(f) the heading of regulation 7 becomes "Publication of contract notices and award notices on the Public Contracts website".

IVAN MCKEE
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
12th November 2024

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 and the Concession Contracts (Scotland) Regulations 2016 to remove references to "Retained Treaties" and "retained EU law" in consequence of section 2 of the Retained EU Law (Revocation and Reform) Act 2023.

These Regulations also amend the Procurement (Scotland) Regulations 2016 for two purposes. The first purpose is to remove the option for contracting authorities to list in a contract award notice the value of the highest and lowest tenders taken into consideration. The second purpose is to remove the option for sub-central contracting authorities to use a prior information notice as a call for competition.

Regulation 2 makes saving provision so that none of the amendments in these Regulations apply to a procurement commenced before 10 December 2024, which is the date on which these Regulations come into force.

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