POLICY NOTE

THE PUBLIC PROCUREMENT (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2024

SSI 2024/338

The above instrument was made in exercise of the powers conferred by section 19(1) of the Retained EU Law (Revocation and Reform) Act 2023 and section 23(3) of the Procurement Reform (Scotland) Act 2014. The instrument is subject to negative procedure.

Summary Box

The two purposes of the instrument are to: replicate for domestically-regulated contracts minor amendments to the procurement regulations which were necessary in order to fulfil international agreements; and to make technical amendments to the procurement regulations in consequence of section 2 of the Retained EU Law (Revocation and Reform) Act 2023 ("REUL Act").

Policy Objectives

The UK's membership of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and its trade agreement with Australia necessitated some minor procedural amendments to the rules governing the award of contracts subject to those agreements. These changes were implemented by way of amendments to the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 and the Concession Contracts (Scotland) Regulations 2016.

In order to ensure consistency and to prevent confusion, this instrument amends the Procurement (Scotland) Regulations 2016 to ensure that the same procedural amendments apply to the rules governing the award of lower value contracts which are subject to the Procurement Reform (Scotland) Act 2014. It removes the option for contracting authorities to list in a contract award notice the value of the highest and lowest tenders taken into consideration in lieu of the value of the successful tender. It also removes the option for sub-central bodies to use a prior information notice as a call for competition.

This instrument also deletes wording made redundant by section 2 of the REUL Act from the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 and the Concession Contracts (Scotland) Regulations 2016.

This follows a number of terminological updates made by the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (SSI 2023/374), in consequence of section 5 of the REUL Act. More directly similar provision, consequential on section 2 of the REUL Act, was made to procurement regulations falling outside devolved competence in the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Provision) Regulations 2024 (SI 2024/80).

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

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 (Miscellaneous Amendment) (Scotland) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

The references to the retained treaties in this legislation are now redundant as a result of section 4 of European Union Withdrawal Act 2018 having been repealed by section 2 of the REUL Act on 1 January 2024.

These references functioned in the context of EU membership, as they largely sought to curtail the ability of individual member states' governments to depart from the EU procurement regime. The purpose of such restrictions was to prevent EU member states from legislating in a way contrived to reduce the access to contracts offered to bidders from other member states. Now outside of the EU, these particular restrictions are no longer necessary, albeit it remains necessary for the UK (including Scotland) to otherwise ensure that it continues to respect relevant international agreements in the field of procurement.

Repealing these references is therefore a 'tidying up' exercise and will not impact on the policy of EU alignment.

Consultation

There has been no consultation on this instrument as its effect is minor and technical in nature.

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

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