

EXECUTIVE NOTE

THE PUBLIC CONTRACTS AND UTILITIES CONTRACTS (SCOTLAND) AMENDMENT (AMENDMENT) REGULATIONS 2009 (S.S.I 2009/439)

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to the negative resolution procedure.

Legislative context

The purpose of this instrument is to correct errors in the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2009 (S.S.I. 2009/428). Regulation 2(4)(b) and (5)(b) of the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2009 amends regulations 17(23) and 18(23) of the Public Contracts (Scotland) Regulations 2006 (S.S.I. 2006/1) with effect from 20 December 2009. These provisions contain errors in that they refer to the word "ensure" where it *second* appears in regulations 17(23) and 18(23); the references should be to the word "ensure" where it *first* appears in those regulations. It is necessary to correct amending regulation 2(4)(b)(i) and (5)(b)(i) so that the Public Contracts (Scotland) Regulations 2006 are amended correctly on 20 December 2009.

Policy Objectives

The Executive Note for the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2009 explained the need to amend the Public Contracts (Scotland) Regulations 2006 by 20 December 2009 to implement Directive 2007/66/EC of the European Parliament and Council of 11th December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (the "Remedies Directive").

Regulations 17(23) and 18(23) of the Public Contracts (Scotland) Regulations 2006 should be amended in consequence of the Remedies Directive to require contracting authorities to notify economic operators when they are excluded from a negotiated procedure or competitive dialogue procedure prior to the final contract award decision. It is necessary that these regulations be amended correctly to achieve the desired policy position and support the implementation of the Remedies Directive.

Consultation

The purpose of this instrument is to correct drafting errors in the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2009, which were themselves subject to extensive consultation. Consultation on this instrument is not considered necessary.

Financial Effects

The corrections made in this instrument have no financial effect beyond those noted in the Executive Note for the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2009.

Scottish Procurement Directorate
Scottish Government
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