

SCHEDULE 6

Regulation 97(2)

CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS

PART 1

MODIFICATIONS TO PRIMARY LEGISLATION

Late Payment of Commercial Debts (Interest) Act 1998

1.—(1) The Late Payment of Commercial Debts (Interest) Act 1998⁽¹⁾ is amended as follows.

(2) In section 4(8)⁽²⁾ (period for which statutory interest runs), in the definition of “public authority” for “regulation 3 of the Public Contracts (Scotland) Regulations 2012” substitute “regulation 2(1) of the Public Contracts (Scotland) Regulations 2015”.

Procurement Reform (Scotland) Act 2014

2.—(1) The Procurement Reform (Scotland) Act 2014⁽³⁾ is amended as follows.

(2) In section 4(1), for “mentioned in paragraph (1) or (2) of regulation 6 of the Public Contract Regulations” substitute “to which Public Contracts Regulations do not apply by virtue of regulation 4 or 7 to 18 of those regulations”.

(3) In section 11(3) for “supported employment programme or supported factory within the meaning regulation 7” substitute “or supported employment programme within the meaning of regulation 21”.

(4) In section 41(1) (the Directive, Public Contracts Regulations and EU regulated procurements)

- (a) In paragraph (a), for “Directive [2004/18/EC](#)” substitute “Directive 2014/24/EU”;
- (b) In paragraph (b) for “Public Contracts (Scotland) Regulations 2012 ([S.S.I. 2012/88](#))” substitute “Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/XX);
- (c) in paragraph (c) omit “by virtue of regulation 5(1)”.

Small Business, Enterprise and Employment Act 2015

3.—(1) The Small Business, Enterprise and Employment Act 2015⁽⁴⁾ is amended as follows.

(2) In section 40(5) (investigation of procurement functions) in the definition of “a relevant function relating to procurement”, in paragraph (c)—

- (a) for “Public Contracts (Scotland) Regulations 2012 ([S.I. 2012/88](#))” substitute “Public Contracts (Scotland) Regulations 2015”; and
- (b) for “regulation 8” substitute “regulation 5”.

(1) [1998 c.20](#).
(2) Section 4 relevantly amended by [S.S.I. 2013/77](#), regulation 2(6).
(3) [2014 asp. 12](#).
(4) [2015 c.26](#).

PART 2

MODIFICATIONS TO SUBORDINATE LEGISLATION

Bathing Waters (Scotland) Regulations 2008

4.—(1) The Bathing Waters (Scotland) Regulations 2008(5) are amended as follows.

(2) In regulation 2(6) (interpretation), in the definition of “public body”, for the “Public Contracts (Scotland) Regulations 2012” substitute “Public Contracts (Scotland) Regulations 2015”.

Cleaner Road Transport Vehicles (Scotland) Regulations 2010

5.—(1) The Cleaner Road Transport Vehicles (Scotland) Regulations 2010(7) are amended as follows.

(2) In regulation 2(8) (interpretation) in the definition of—

- (a) “contracting authority” for “regulation 3 of the Public Contracts (Scotland) Regulations 2012” substitute “regulation 2(1) of the Public Contracts (Scotland) Regulations 2015”; and
- (b) “operator” for “regulation 8 of the Public Contracts (Scotland) Regulations 2012” substitute “regulation 5 of the Public Contracts (Scotland) Regulations 2015”.

(3) In regulation 6(1)(a)(9) (enforcement of duties) for “Part 9 of the Public Contracts (Scotland) Regulations 2012” substitute “Chapter 6 of Part 3 of the Public Contracts (Scotland) Regulations 2015”.

Defence and Security Public Contracts Regulations 2011

6.—(1) The Defence and Security Public Contracts Regulations 2011(10) are amended as follows.

(2) In regulation 3(1)(11) (interpretation), in the definition of “central purchasing body”, for “regulation 3 of the Public Contracts (Scotland) Regulations 2012” substitute “regulation 2(1) of the Public Contracts (Scotland) Regulations 2015”.

(3) In regulation 4(b)(12) (contracting authorities), for “regulation 3 of the Public Contracts (Scotland) Regulations 2012” substitute “regulation 2(1) of the Public Contracts (Scotland) Regulations 2015”.

(4) In regulation 6(13) (application), for “the Public Contracts (Scotland) Regulations 2012”, in each place it occurs, substitute “the Public Contracts (Scotland) Regulations 2015”.

(5) In regulations 16(2)(b)(14) (use of the negotiated procedure without prior publication of a contract notice), 31(9)(b)(15) (criteria for the award of a contract) and 33(14)(b)(16) (information about contract award procedures) for heads (ii) and (iii), in each place they occur, substitute—

(5) S.S.I. 2008/170.

(6) Regulation 2 relevantly amended by S.S.I. 2012/88, schedule 7(B), paragraph 1.

(7) S.S.I. 2010/390.

(8) Regulation 2 relevantly amended by S.S.I. 2012/88, schedule 7(B), paragraph 1.

(9) Regulation 6(1)(a) amended by S.S.I. 2012/88, schedule 7(B), paragraph 1.

(10) S.I. 2011/1848.

(11) Regulation 3(1) relevantly amended by S.S.I. 2012/88, schedule 7(B), paragraph 1.

(12) Regulation 4(b) amended by S.S.I. 2012/88, schedule 7(B), paragraph 1.

(13) Regulation 6 relevantly amended by S.S.I. 2012/88, schedule 7(B), paragraph 1.

(14) Regulation 16(2)(b) relevantly amended by S.I. 2015/102, schedule 6(2), paragraph 19(8).

(15) Regulation 31(9)(b) relevantly amended by S.I. 2015/102, schedule 6(2), paragraph 19(8).

(16) Regulation 33(14)(b) relevantly amended by S.I. 2015/102, schedule 6(2), paragraph 19(8).

- “(ii) a “body governed by public law” within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015 and the Secretary of State for Defence is the authority referred to in any of the sub-paragraphs (a) to (c) of that definition for that body or the financing, supervisory or appointing body, or
- (iii) an association formed by either the Secretary of State for Defence or one or more bodies governed by public law within the meaning of (i) or (ii).”.
- (6) In regulation 46(3)(17) both paragraphs (b) substitute—
- “(b) a “body governed by public law” within the meaning of regulation 2(1) of the Public Contracts (Scotland) Regulations 2015 and the Secretary of State for Defence is the authority referred to in any of the sub-paragraphs (a) to (c) of that definition for that body or the financing, supervisory or appointing body, or
- (c) an associated formed by either the Secretary of State for Defence or one or more bodies governed by public law within the meaning of (a) or (b).”.

Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012

7.—(1) The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012(18) are amended as follows.

(2) In regulation 9(4) (duty to consider award criteria and conditions in relation to public procurement), for both references to “Public Contracts (Scotland) Regulations 2012” substitute “Public Contracts (Scotland) Regulations 2015”.

Utilities Contracts (Scotland) Regulations 2012

8.—(1) The Utilities Contracts (Scotland) Regulations 2012(19) are amended as follows.

(2) In regulation 2(1) (interpretation), in the definition of “contracting authority” for “regulation 3 of the Public Contracts (Scotland) Regulations 2012” substitute “regulation 2(1) of the Public Contracts (Scotland) Regulations 2015”

(3) In regulation 5 (application) for the “Public Contracts (Scotland) Regulations 2012”, in each place it occurs, substitute “Public Contracts (Scotland) Regulations 2015”.

(4) In regulation 21(2) (central purchasing bodies) for the “Public Contracts (Scotland) Regulations 2012” substitute “Public Contracts (Scotland) Regulations 2015”.

Energy Efficiency (Eligible Buildings) Regulations 2013

9.—(1) The Energy Efficiency (Eligible Buildings) Regulations 2013(20) are amended as follows.

(2) In regulation 2 (interpretation), in the definition of “public bodies”, in paragraph (b), for ““contracting authorities” as defined in regulation 3 of Public Contracts (Scotland) Regulations 2012” substitute “any ‘contracting authority’ as defined in regulation 2(1) of the Public Contracts (Scotland) Regulations 2015”.

(17) Regulation 46(3) relevantly amended by [S.I. 2015/102](#), schedule 6(2), paragraph 19(10).

(18) [S.S.I. 2012/162](#).

(19) [S.S.I. 2012/89](#).

(20) [S.I. 2013/3220](#).

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013

10.—(1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(21) is amended as follows.

(2) For paragraph 10 (public procurement) of schedule 3 (exclusions of section 4(2)(a) and (b) of the act), substitute—

“(1) Any question asked by or on behalf of a contracting authority or contracting entity in relation to a conviction specified in regulation 58 of the Public Contracts (Scotland) Regulations 2015 which is a spent conviction (or any circumstances ancillary to such a conviction) for the purpose of determining whether or not a person is to be excluded—

- (a) for the purposes of regulation 58 of the Public Contracts (Scotland) Regulations 2015 or regulation 26 of the Utilities Contracts (Scotland) Regulations 2012; or
- (b) from participation in a design contest for the purposes of regulation 80 of the Public Contracts (Scotland) Regulations 2015 or regulation 34 of the Utilities Contracts (Scotland) Regulations 2012,

where the person questioned is informed at the time the question is asked that, by virtue of this Order, convictions within the meaning of regulation 58 of the Public Contracts (Scotland) Regulations 2015, which are spent convictions, are to be disclosed.

(2) For the purposes of contract award procedures or design contests commenced before 18th April 2016 and on or after 1st May 2012, the references in sub-paragraph (1) to regulations 58 and 80 of the Public Contracts (Scotland) Regulations 2015 are to be read as references to regulations 23 and 33 of the Public Contracts (Scotland) Regulations 2012(22).

(3) For the purposes of sub-paragraph (2), the commencement of a contract award procedure or design contest is to be interpreted in accordance with—

- (a) regulation 98(2) (transitional provision and savings where procurement procedure commenced before 18th April 2016) and 99(2) (transitional provision and saving where utilities procurement procedures commenced before 18th April 2016) of the Public Contracts (Scotland) Regulations 2015;
- (b) regulation 52(2) of the Public Contracts (Scotland) Regulations 2012; and
- (c) regulation 49(2) of the Utilities Contracts (Scotland) Regulations 2012.

(4) For the purposes of contract award procedures or design contests commenced before 1st May 2012—

- (a) the references in sub-paragraph (1) to regulations 58 and 79 of the Public Contracts (Scotland) Regulations 2015 are to be read as references to regulations 23 and 33 of the Public Contracts (Scotland) Regulations 2006(23); and
- (b) the references in sub-paragraph (1) to regulations 26 and 34 of the Utilities Contracts (Scotland) Regulations 2012 are to be read as references to regulations 26 and 34 of the Utilities Contracts (Scotland) Regulations 2006(24).

(21) S.S.I. 2013/50.

(22) S.S.I. 2012/88, repealed by regulation 98 of these Regulations, subject to the savings and transitional provisions in regulations 99 and 100 of these Regulations.

(23) S.S.I. 2006/1, repealed by S.S.I. 2012/88, schedule 7(A), paragraph 1, subject to savings and transitional provisions in regulation 52 of those Regulations. Regulation 23 amended by S.I. 2007/2157, schedule 6(2), paragraph 12; S.S.I. 2008/94 regulation 2(7)(a)(b) and (c); S.S.I. 2009/428 regulation 2(8)(a) and (b). Regulation 33 amended by S.S.I. 2007/565, regulation 2(5)(a), (b) and (c); S.S.I. 2008/94, regulation 2(1); S.S.I. 2009/428 regulation 2(10)(a) and (b).

(24) S.S.I. 2006/2, repealed by S.S.I. 2012/89, schedule 5(A), paragraph 1, subject to savings and transitional provisions in regulation 49 of those Regulations. Regulation 26 amended by S.I. 2007/2157, schedule 6(2), paragraph 13; S.S.I. 2009/428, regulation 4(5)(a) and (b). Regulation 34 amended by S.S.I. 2008/94, regulation 3(6)(a)(b) and (c); S.S.I. 2009/428 regulation 4(9)(a) and (b); S.I. 2011/2053, regulation 30(2)(c) and (d).

(5) For the purposes of sub-paragraph (4), the commencement of a contract award procedure or design contest is to be interpreted in accordance with—

- (a) regulation 52(2) of the Public Contracts (Scotland) Regulations 2012; and
- (b) regulation 49(2) of the Utilities Contracts (Scotland) Regulations 2012.”

Energy Savings Opportunity Scheme Regulations 2014

11.—(1) The Energy Saving Opportunity Scheme Regulations 2014⁽²⁵⁾ are amended as follows.

(2) In regulation 16(2)(b)(ii)⁽²⁶⁾ (excluded undertakings) for “regulation 3 of the Public Contracts (Scotland) Regulations 2012” substitute “regulation 2(1) of the Public Contracts (Scotland) Regulations 2015”.

⁽²⁵⁾ S.I. 2014/1643.

⁽²⁶⁾ To which there are amendments not relevant to these Regulations.