
SCOTTISH STATUTORY INSTRUMENTS

2019 No. 173

PUBLIC PROCUREMENT

The Public Procurement etc. (Miscellaneous Amendments) (Scotland) Regulations 2019

<i>Made</i>	- - - -	<i>16th May 2019</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>20th May 2019</i>
<i>Coming into force</i>	- -	<i>1st July 2019</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement,

1.—(1) These Regulations may be cited as the Public Procurement etc. (Miscellaneous Amendments) (Scotland) Regulations 2019.

(2) These Regulations come into force on 1 July 2019.

Amendment of the Utilities Contracts (Scotland) Regulations 2016

2.—(1) The Utilities Contracts (Scotland) Regulations 2016⁽²⁾ are amended as follows.

(2) In regulation 2(1) (interpretation), in the definition of “contract”, for “supplies or services” substitute “supply or service”.

(3) In regulation 3(1) (subject-matter and application of these regulations), for “to the organisation” substitute “for the organisation”.

(4) In regulation 35(3)(c) (economic operators), for “services” substitute “service”.

(5) In regulation 61(1)(a) (communication of technical specifications), for “services” substitute “service”.

(6) In regulation 77(10) (reliance on capacity of other entities), for “services” substitute “service”.

(7) In regulation 85 (subcontracting)—

(1) [1972 c.68](#). Section 2(2) was amended by the Scotland Act [1998 \(c.46\)](#) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act [2008 \(c.7\)](#), section 3(3) and schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(2) [S.S.I. 2016/49](#), as relevantly amended by [S.S.I. 2019/112](#).

- (a) in paragraph (4)(b), for “services contract” substitute “service contract”,
- (b) in paragraph (8)(a) and (b), for “services contracts” substitute “service contracts”.

Amendment of the Concession Contracts (Scotland) Regulations 2016

3.—(1) The Concession Contracts (Scotland) Regulations 2016⁽³⁾ are amended as follows.

(2) In regulation 9(1)(a) (exclusions: concession contracts awarded on the basis of an exclusive right), for “a concession contract” substitute “a services concession contract”.

(3) In regulation 52(5)(a) (enforcement of duties through the courts), for “form and matter of publication of notices” substitute “form and manner of publication of notices”.

Amendment of the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019

4.—(1) The Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019⁽⁴⁾ are amended as follows.

(2) In regulation 5 (amendments to the Utilities Contracts (Scotland) Regulations 2016 that are commenced on exit day), omit paragraphs (2)(a)(iii), (3)(a), (23)(b), (36), (45) and (50)(a) and (c).

(3) In regulation 7 (amendments to the Concession Contracts (Scotland) Regulations 2016 that are commenced on exit day), omit paragraphs (7)(a) and (29)(c).

St Andrew’s House,
Edinburgh
16th May 2019

DEREK MACKAY
A member of the Scottish Government

⁽³⁾ S.S.I. 2016/65, as relevantly amended by S.S.I. 2016/125 and S.S.I. 2019/112.

⁽⁴⁾ S.S.I. 2019/112.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (c.68). They make a series of minor amendments to the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49) and the Concession Contracts (Scotland) Regulations 2016 (S.S.I. 2016/65) (together “the principal regulations”).

The principal regulations were amended by the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019 (S.S.I. 2019/112) (the “EU Exit Regulations”). The EU Exit Regulations are not yet in force. They were drafted to come into force on Exit Day (as defined in section 20 of the European Union (Withdrawal) Act 2018 (c.16), as amended by S.I. 2019/718 and S.I. 2019/859). The UK’s departure from the EU has been delayed but the amendments to the principal Regulations still require to be effected because they do not depend on Exit Day. These Regulations effect these amendments.

These Regulations also make the necessary consequential amendments to the EU Exit Regulations by removing the reference to the changes now made by these regulations.

No business and regulatory impact assessment has been prepared for these Regulations as no impact upon business, charities or voluntary bodies is foreseen.