

2007 No. 565

PUBLIC PROCUREMENT

**The Public Contracts and Utilities Contracts (Scotland)
Amendment Regulations 2007**

Made - - - - - *18th December 2007*

Laid before the Scottish Parliament *19th December 2007*

Coming into force - - - *1st January 2008*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a).

The Regulations make provision for a purpose mentioned in that section and it appears to Scottish Ministers that it is expedient for the references to European Parliament and Council Directives 2004/18/EC concerning the procedure for the award of certain public contracts and 2004/17/EC co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors to be construed as references to those Directives as amended from time to time.

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2007 and come into force on 1st January 2008.

(2) In these Regulations the—

- (a) “Public Contracts Regulations” means the Public Contracts (Scotland) Regulations 2006(b); and
- (b) the “Utilities Contracts Regulations” means the Utilities Contracts (Scotland) Regulations 2006(c).

(3) These Regulations extend to Scotland only.

Amendments to the Public Contracts Regulations

2.—(1) The Public Contracts Regulations are amended as follows.

(2) In regulation 2 (interpretation), after paragraph (1) insert—

“(1A) In these Regulations references to Article 7, 56 or 67 are references to Article 7, 56 or, as the case may be, 67 of the Public Sector Directive as amended from time to time.”.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15. The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(b) S.S.I. 2006/1.

(c) S.S.I. 2006/2.

- (3) In regulation 8 (thresholds)–
- (a) in paragraph (2) for “5,278,000 euro” substitute “the amount set out in Article 7(c)”;
 - (b) in paragraph (3)(a) for “137,000 euro” substitute “the amount set out in Article 7(a)”;
 - (c) in paragraph (3)(b) for “211,000 euro” substitute “the amount set out in Article 7(b)”;
 - (d) in paragraph (4) for “211,000 euro” substitute “the amount set out in Article 7(b)”;
 - (e) in paragraph (5)(a) for “137,000 euro” substitute “the amount set out in Article 7(a)”;
 - (f) in paragraph (5)(b) for “211,000 euro” substitute “the amount set out in Article 7(b)”.
- (4) In paragraph (4)(b) of regulation 11 (prior information notices) for “5,278,000 euro” substitute “the amount set out in article 7(c)”.
- (5) In regulation 33 (design contests)–
- (a) in paragraph (4)(a) for “137,000 euro” substitute “the amount set out in Article 67(1)(a)”;
 - (b) in paragraph (4)(b) for “211,000 euro” substitute “the amount set out in Article 67(1)(b)”;
and
 - (c) in paragraph (5) for “211,000 euro” substitute “the amount set out in Article 67(1)(c)”.
- (6) In paragraph (2) of regulation 36 (public works concession contracts) for “5,278,000 euro” substitute “the amount set out in Article 56”.

Amendments to the Utilities Contracts Regulations

- 3.—(1) The Utilities Contracts Regulations are amended as follows.
- (2) In regulation (2) (interpretation), after paragraph (1) insert–
- “(1A) In these Regulations references to Article 16 or 61 are references to Article 16 or, as the case may be, 67 of the Utilities Directive as amended from time to time.”.
- (3) In regulation 11 (thresholds)–
- (a) in paragraph (2)(a) for “422,000 euro” substitute “the amount set out in Article 16(a)”;
and
 - (b) in paragraph (2)(b) for “5,278,000 euro” substitute “the amount set out in Article 16(b)”.
- (4) In paragraph (4)(b) of regulation 15 (periodic indicative notices) for “5,278,000 euro” substitute “the amount set out in Article 16(b)”.
- (5) In paragraph (4)(a) of regulation 34 (design contests) for “422 000 euro” substitute “the amount set out in Article 61(1)”.

JOHN SWINNEY
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
18th December 2007

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Public Contracts (Scotland) Regulations 2006 (“the Public Contracts Regulations”) and the Utilities Contracts (Scotland) Regulations 2006 (“the Utilities Contracts Regulations”).

Directive 2004/18/EC of the European Parliament and of the Council (O.J. L 134 30.4.2004, p.114) concerns the co-ordination of the procedures for the award of public works contracts, public supply contracts and public services contracts. Directive 2004/17/EC of the European Parliament and of the Council (O.J. L 134 30.4.2004, p.1) concerns the co-ordination of procurement procedures of entities operating in the water, energy, transport and postal service sectors. Those Directives have been implemented for Scotland by the Public Contracts Regulations and the Utilities Contracts Regulations respectively.

Council Directives 2004/18/EC and 2004/17/EC have been amended by Commission Regulation (EC) No. 1422/2007 of 4th December 2007 to amend the contract threshold values set out in the Directives. These changes take effect from 1st January 2008 and further changes will be made at regular intervals in the future.

Regulation 2 amends the Public Contracts Regulations to update the contract threshold values set out in the Public Contracts Regulations so that they attract the values set out in Directive 2004/18/EC as amended from time to time. Regulation 3 makes equivalent amendments to the Public Utilities Contracts Regulations.

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