
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 446

The Public Contracts (Scotland) Regulations 2015

PART 2

RULES IMPLEMENTING THE PUBLIC CONTRACTS DIRECTIVE

CHAPTER 1

SCOPE AND GENERAL PRINCIPLES

SECTION 1

Scope

Mixed Procurement

4.—(1) Where a procurement has as its subject a mixed contract any part of which is covered by [^{F1}regulation 3(2)] or the Defence and Security Regulations ^{M1} regulation 17 (mixed procurement involving defence or security aspects) shall apply.

(2) Where a procurement has as its subject a mixed contract including works, supplies or services for the pursuit of an activity within the scope of the [^{F2}Utilities Contracts (Scotland) Regulations 2016] the applicable rules shall be determined by [^{F3}regulations 5 and 6 of those Regulations].

(3) The application of these Regulations to a procurement which has as its subject a mixed contract, other than one to which paragraphs (1) or (2) apply, shall be determined by that part of the mixed contract that characterises the main subject of the contract in question. In the case of a mixed contract—

- (a) consisting partly of services of a kind referred to in regulation 74 (award of contracts for social and other specific services) and partly of other services; or
- (b) consisting partly of services and partly of supplies,

the main subject shall be determined by reference to which of the respective services or supplies has the highest estimated value.

(4) Where a contract includes different parts which are objectively separable and the procurement of which, if separate, includes matters that would be subject to the application of these Regulations and matters that would not, a contracting authority may choose to award—

- (a) separate contracts for the separate parts; or
- (b) a single contract.

(5) Where a contracting authority decides to award separate contracts under [^{F4}paragraph (4)(a)] the application or otherwise of these Regulations to the procurement of each separate part shall be determined by reference to the characteristics of such part.

Status: Point in time view as at 31/12/2020.

Changes to legislation: The Public Contracts (Scotland) Regulations 2015, Section 4 is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(6) Where a contracting authority decides to award a single contract under [^{F5}paragraph (4)(b)] these Regulations shall apply to the procurement of the single contract irrespective of the value of any parts that would, if separated, have not been subject to the application of these Regulations.

(7) Where a single contract referred to in [^{F6}paragraph (4)(b)] combines a public contract together with a concession contract the procurement shall be subject to the application of these Regulations where the estimated value of that part of the contract that would be a public contract is equal to or greater than the applicable threshold determined in accordance with regulation 5 (thresholds).

(8) Where a contract includes different parts which are objectively not separable the application or otherwise of these Regulations to the procurement of that contract shall be determined by reference to the main subject-matter of that contract.

Textual Amendments

- F1** Words in [reg. 4\(1\)](#) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(4\)\(a\)](#) (with sch. paras. 1-5)
- F2** Words in [reg. 4\(2\)](#) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(4\)\(b\)\(i\)](#) (with sch. paras. 1-5)
- F3** Words in [reg. 4\(2\)](#) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(4\)\(b\)\(ii\)](#) (with sch. paras. 1-5)
- F4** Words in [reg. 4\(5\)](#) substituted (18.4.2016) by [The Public Contracts \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/47\)](#), regs. 1, [2\(4\)\(a\)](#)
- F5** Words in [reg. 4\(6\)](#) substituted (18.4.2016) by [The Public Contracts \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/47\)](#), regs. 1, [2\(4\)\(b\)](#)
- F6** Words in [reg. 4\(7\)](#) substituted (18.4.2016) by [The Public Contracts \(Scotland\) Amendment Regulations 2016 \(S.S.I. 2016/47\)](#), regs. 1, [2\(4\)\(b\)](#)

Marginal Citations

- M1** [S.I. 2011/1848](#), amended by [S.S.I. 2012/88](#), [S.S.I. 2012/89](#) and [S.I. 2015/102](#).

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