
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 65

The Concession Contracts (Scotland) Regulations 2016

PART 2

SCOPE AND PRINCIPLES

CHAPTER 1

CONCESSION CONTRACTS TO WHICH THESE REGULATIONS APPLY

Thresholds and methods for calculating the estimated value of the concession contract

8.—(1) These Regulations apply to a procurement for the award of a concession contract if the estimated value of the contract to be awarded ([F1inclusive of value added tax, where appropriate]) is equal to or greater than [F2£5,372,609].

[F3(1A) The contracting entity must—

- (a) calculate in accordance with the following paragraphs the estimated value of a concession contract; or
- (b) if it is not possible to calculate the estimated value of a contract, take its estimated value to be equal to the threshold mentioned in paragraph (1).]

[F4(2)

(3) The value of a concession contract shall be the total turnover of the concessionaire generated over the duration of the contract, [F5inclusive of value added tax, where appropriate], as estimated by the contracting entity, in consideration for the works and services which are the object of the concession contract and the supplies incidental to such works and services.

(4) That estimate must be calculated as at the moment at which the concession notice is [F6submitted] for publication in accordance with regulation 35 (form and manner of publication of notices) or, in cases where such notice is not provided for, at the moment at which the contracting entity commences the procurement for the award of a concession contract.

(5) If the value as estimated at the time of the award is more than 20% higher than the estimate calculated in accordance with paragraph (4), the former shall be used for the purposes of this regulation.

(6) The estimated value of the concession contract must be calculated using an objective method specified in the concession documents.

(7) When calculating the estimated value of the concession contract, the contracting entity must, if applicable, take into account—

- (a) the value of any form of option and any extension of the duration of the concession contract;
- (b) revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the contracting entity;

Changes to legislation: The Concession Contracts (Scotland) Regulations 2016, Section 8 is up to date with all changes known to be in force on or before 27 May 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) View outstanding changes

- (c) payments or any other financial advantages, in any form, from the contracting entity or any other public authority to the concessionaire, including compensation for compliance with a public service obligation and public investment subsidies;
 - (d) the value of grants or any other financial advantages, in any form, from third parties for the performance of the concession contract;
 - (e) revenue from sales of any assets which are part of the concession contract;
 - (f) the value of all the supplies and services that are made available to the concessionaire by the contracting entity, provided that they are necessary for executing the works or providing the services;
 - (g) any prizes or payments to candidates or tenderers.
- (8) The method used to calculate the estimated value of a concession contract must not be chosen with the intention of excluding it from the scope of these Regulations.
- (9) A concession contract must not be subdivided with the effect of preventing it from falling within the scope of these Regulations, unless justified by objective reasons.
- (10) If a proposed work or proposed provision of services may result in a concession contract being awarded in the form of separate lots, account must be taken of the total estimated value of all such lots.
- (11) If the aggregate value of the lots is equal to or greater than the threshold referred to in paragraph (1), these Regulations apply to the award of each lot.

Textual Amendments

- F1** Words in [reg. 8\(1\)](#) substituted (1.1.2022) by [The Public Procurement \(Agreement on Government Procurement\) \(Thresholds etc.\) \(Amendment\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/378\)](#), regs. 1(2), [5\(a\)\(ii\)](#) (with [reg. 6](#))
- F2** Sum in [reg. 8\(1\)](#) substituted (1.1.2024) by [The Public Procurement \(Agreement on Government Procurement\) \(Thresholds\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/300\)](#), regs. 1(2), [4](#) (with [reg. 5](#))
- F3** [Reg. 8\(1A\)](#) inserted (30.5.2023) by [The Public Procurement \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/124\)](#), regs. 2, [6\(2\)](#) (with [reg. 3](#))
- F4** [Reg. 8\(2\)](#) omitted (31.12.2020) by virtue of [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [8\(5\)\(b\)](#) (with [sch. paras. 1-5](#))
- F5** Words in [reg. 8\(3\)](#) substituted (1.1.2022) by [The Public Procurement \(Agreement on Government Procurement\) \(Thresholds etc.\) \(Amendment\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/378\)](#), regs. 1(2), [5\(b\)](#) (with [reg. 6](#))
- F6** Word in [reg. 8\(4\)](#) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [8\(5\)\(c\)](#) (with [sch. paras. 1-5](#))

Commencement Information

- I1** [Reg. 8](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

Changes to legislation:

The Concession Contracts (Scotland) Regulations 2016, Section 8 is up to date with all changes known to be in force on or before 27 May 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.

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Changes and effects yet to be applied to :

- Regulations applied by [2023 c. 54 s. 119\(2\)\(c\)](#)
- Regulations power to amend conferred by [2023 c. 54 s. 115\(3\)\(4\)](#)
- reg. 8(1) sum substituted by [S.S.I. 2019/112 reg. 7\(5\)\(a\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 8(1) sum substituted by S.S.I. 2019/112, reg. 7(5)(a) (as amended) by [S.S.I. 2019/414 reg. 2\(4\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/414 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(c))
- reg. 8(2) omitted by [S.S.I. 2019/112 reg. 7\(5\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 8(4) word substituted by [S.S.I. 2019/112 reg. 7\(5\)\(c\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 7(2)-(5) substituted for reg. 7(2) by [S.S.I. 2019/112 reg. 7\(4\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 8A inserted by [S.S.I. 2019/112 reg. 7\(6\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 12(1)(e)(i)(aa) words substituted by [S.S.I. 2019/112 reg. 7\(10\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 12(1)(e)(i)(bb) words substituted by [S.S.I. 2019/112 reg. 7\(10\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 33(2)(a)(i)-(iii) and words inserted by [S.S.I. 2019/112 reg. 7\(19\)\(a\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 34(4) inserted by [S.S.I. 2019/112 reg. 7\(20\)\(c\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 35(5)(6) inserted by [S.S.I. 2019/112 reg. 7\(21\)\(e\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 40(19)-(21) inserted by [S.S.I. 2019/112 reg. 7\(23\)\(c\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 46(4)(a)-(c) and words inserted by [S.S.I. 2019/112 reg. 7\(26\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))

- reg. 51(3)(3A) substituted for reg. 51(3) by [S.S.I. 2019/112 reg. 7\(28\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 51(4A) inserted by S.S.I. 2019/112, reg. 7(28)(da) (as substituted) by [S.S.I. 2019/114 reg. 2\(7\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))
- reg. 60ZA inserted by [S.S.I. 2019/112 reg. 7\(31\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))