

EXPLANATORY MEMORANDUM TO
THE PUBLIC CONTRACTS AND DEFENCE AND SECURITY PUBLIC
CONTRACTS (CROATIA ACCESSION AMENDMENTS) REGULATIONS 2013

2013 No. 1431

1. This explanatory memorandum has been prepared by the Cabinet Office, and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument amends the Public Contracts Regulations 2006 (SI 2006 No.5) (“PCR”) and the Defence and Security Public Contracts Regulations 2011 (SI 2011 No.1848) (“DSPCR”). The amendments are required by reason of the accession to the European Union (“EU”) of the Republic of Croatia on 1 July 2013.

- 2.2 The amendments update the list of professional and trade registers contained in the PCR and the DSPCR.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 Rationale for breaching the 21 day rule: This instrument implements Council Directive 2013/16/EU adapting certain directives in the field of public procurement, by reason of the accession of Croatia (“the Directive”). The Directive was adopted on 13 May 2013 and Article 2 requires that Member States adopt national implementing provisions to come into force by the date of accession of the Republic of Croatia, i.e 1st July 2013. The Directive was subsequently published in the Official Journal of the European Union (“OJEU”) on 10th June 2013 and only then was it given a number and OJEU reference. The Directive is referred to in the Explanatory Note to the instrument and until such time the number and OJEU reference is given, the instrument cannot go through the process of registration and printing. As a consequence, it was not possible to lay the instrument on or before the 10th June 2013, which is the last date by which compliance with the 21 day rule would have been possible. The date of publication in the OJEU of the Directive was beyond the control of the Cabinet Office but every effort has been made to ensure that the instrument was laid soon after such publication.

4. **Legislative Context**

- 4.1 The consolidated EU Public Procurement Directive (2004/18/EC) and the revised Defence and Security Procurement Directive (2009/81/EC) were implemented respectively by the PCR and the DSPCR following two extensive consultations.
- 4.2 On 9 December 2011, the Treaty concerning the accession of the Republic of Croatia to the EU was signed by all Member States and the Republic of Croatia. Article 3(3) of the Treaty of Accession provides that it shall enter into force on 1 July 2013.
- 4.3 As a consequence of Croatia's accession, the EU adopted Directive 2013/16/EU making amendments to certain Directives in the field of public procurement, including Directive 2004/18/EC and Directive 2009/81/EC. These amendments are implemented through the amendments to the PCR and DSPCR made by this instrument.
- 4.4 Under the EU public procurement rules, businesses (economic operators in the parlance of the rules) must, or may, be rejected by contracting authorities for various specified misdeeds, failures, or shortcomings (eg Regulation 23 of the PCR). Some (not all) Member States maintain professional or trade registers, and non-registration in an economic operator's home Member State is one (permissible, not mandatory) ground for rejection (eg Reg 23(4)(j) of the PCR).
- 4.5 The PCR and DSPCR list the professional and trade registers in other Member States; UK public procurers may thereby be aware of the relevant registers for an economic operator from another Member State. Directive 2013/16/EU formally identifies the relevant Croatian professional and trade registers, and the current SI therefore simply adds these Croatian trade and professional register to the pre-existing lists of registers in the PCR and DSPCR.
- 4.6 Therefore this new SI is only relevant if and where UK contracting authorities receive expressions of interest or bids from Croatian economic operators.
- 4.7 Directive 2013/16/EU has other provisions, but those do not need to be transposed into UK law.
- 4.8 A transposition note is attached as an Annex to this Explanatory Memorandum.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.
- 5.2 The amendments to the PCR apply to England, Wales and Northern Ireland; Scotland has implemented separate Regulations. The amendments to the DSPCR apply to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 This is a purely technical instrument to reflect the recent EU developments described in section 4 above.

7.2 There are no consolidation implications.

8. Consultation outcome

8.1 The approach to transposition has not included a consultation with stakeholders; the amendment is purely technical and has no impact on current UK procurement policy or practice.

9. Guidance

9.1 The Cabinet Office will publicise these changes to interested parties (primarily public procurers) using established communication channels.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector: it will require public bodies that invite tenders for works, supply or service contracts to accept the Croatian professional or trade registers as appropriate registers for the purposes of the PCR and DSPCR, if and when receiving expressions of interest or bids from Croatian economic operators on those registers. It has no policy, operational, or financial impacts.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 No proactive monitoring is envisaged. A replacement for Directive 2004/18/EC is currently being renegotiated. This is expected to lead to the replacement and repeal of the current PCR, including relevant aspects of this instrument, before it is due for review. With respect to the DSPCR the review of this instrument will be subsumed within the review required under Regulation 2 of the DSPCR.

13. Contact

The Service Desk at the Cabinet Office (Tel: 0845 000 4999 or e-mail: servicedesk@cabinet-office.gsi.gov.uk) can answer any queries regarding the instrument.

TRANSPOSITION NOTE

This is a transposition note for Council Directive 2013/16/EU adapting certain directives in the field of public procurement, by reason of the accession of Croatia.

As described in paragraph 4.3 of the Explanatory Memorandum, the Regulations that this transposition note accompanies, implement Directive 2103/16/EU. The provisions implemented are as follows:-

Directive Article/Annex	Implementation
Annex, paragraph 2, sub-paragraphs (c), (d) and (e)	Regulation 2, amending Schedule 6 of the Public Contracts Regulations 2006
Annex, paragraph 3, subparagraphs (a), (b) and (c)	Regulation 3, amending Schedule 3 in the Defence and Security Public Contract Regulations 2011