

**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC PROCUREMENT (AMENDMENTS, REPEALS AND**  
**REVOCATIONS) REGULATIONS 2016**

**2016 No. 275**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by Cabinet Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument makes consequential amendments, repeals and revocations to primary and secondary legislation as a result of implementing the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016. This instrument also provides corrections and amendments to the Public Contracts Regulations 2015, including amendments to transpose Commission Implementing Regulation (EU) 2015/1986 establishing standards forms for publication of notices in the field of public procurement.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The EU Public Procurement Directives regulate procurement by public authorities, and have been modified several times since their inception in 1971. By guaranteeing transparent and non-discriminatory procedures, these Directives principally aim to ensure that economic operators from across the Single Market benefit fully from the basic freedoms in competing for public contracts.
- 4.2 Three new Procurement Directives, which replace the 2004 Public and Utilities Directives and provide separate provision for Concession Contracts, were published in the Official Journal of the EU on 28 March 2014 and came into force on 17 April 2014.
- 4.3 The three new Directives are:
- a) Directive 2014/24/EU on public procurement, replacing the 2004 Directive for Public Sector Contracts;
  - b) Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors, replacing the 2004 Directive for Utilities Contracts;
  - c) Directive 2014/23/EU on the award of concession contracts.

- 4.4 The Public Contracts Regulations 2015 which transpose Directive 2014/24/EU came into force in England, Wales and Northern Ireland on 26 February 2015. The Utilities Contracts Regulations 2016 and Concession Contracts Regulations 2016 which transpose Directive 2014/25/EU and Directive 2014/23/EU respectively will be laid concurrent with this instrument.
- 4.5 This instrument is required to:
- a) Make amendments, repeals and revocations consequent to the introduction of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016;
  - b) Make amendments to the Public Contracts Regulations 2015 to transpose Commission Implementing Regulation (EU) 2015/1986 establishing standard forms for publication of notices in the field of public procurement; and
  - c) Make some further amendments and corrections to the Public Contracts Regulations 2015.

## **5. Extent and Territorial Application**

- 5.1 This extent of this instrument is the United Kingdom. The amendments, repeals and revocations made by this instrument have the same extent as the provisions to which they relate.
- 5.2 The territorial application of this instrument is the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 The Minister for the Cabinet Office has made the following statement regarding Human Rights:

“In my view the provisions of the Public Procurement (Amendment, Repeals and Revocations) Regulations 2016 are compatible with the Convention rights.”.

## **7. Policy background**

- 7.1 The Government is committed to a strategy of reforming UK public procurement processes, to stimulate economic growth. The Government negotiated in Brussels between 2011 and 2013 to simplify and modernise the existing framework of EU procurement directives, to make public procurement faster, less costly and enable better value outcomes for government and industry.
- 7.2 The Regulations that implement that new framework of EU Procurement Directives is considered in separate Explanatory Memoranda for those Regulations, the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016.
- 7.3 The first of that set of Regulations was the Public Contracts Regulations 2015 which came into force on 26 February 2015. As a result of internal observation, stakeholder feedback and the issuance of forms by the European Commission, it has become necessary to make some changes to the Public Contracts Regulations 2015.
- 7.4 The Public Contracts Regulations 2015 implement the removal of Part B services in line with the Public Procurement Directive 2014. The scope of the Public Services (Social Value) Act 2012 over such services was determined, in part, by reference to the previous legislation, the Public Contracts Regulations 2006. The changes made in

this instrument provide a longer term correlation between the Public Services (Social Value) Act 2012 and the Public Contracts Regulations 2015.

- 7.5 Regulation 72(1)(b) (modification of contracts) has been amended to correct an error by means of the substitution of "and" for "or" at the end of paragraph 1.
- 7.6 The Scottish Government has made legislation that comes into force in April 2016 to transpose the three new Directives in Scotland.
- 7.7 The second and third sets of Regulations, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 will come into force on 18 April 2016. The changes brought about by those Regulations require consequential amendments to existing legislation.
- 7.8 In addition it is expedient to repeal and revoke certain legislation which becomes redundant upon the commencement of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016.
- 7.9 Because the consequential amendments, revocations and repeals apply, in many cases, in respect of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 it is expedient to make these changes in a single, separate instrument rather than separately for each of the sets of Regulations.

## **8. Consultation outcome**

- 8.1 Cabinet Office engaged with other Government Departments in respect of consequential amendments, repeals and revocations which affected legislation for which those other Departments are responsible. Departments are satisfied with the amendments proposed.

## **9. Guidance**

- 9.1 The Government has developed a blended learning package to support the transition to the new rules. This includes face to face training, e-learning, and a handbook with Q&A alongside a suite of topic specific guidance. These will be updated to reflect any pertinent amendments. These documents and training materials can be found at: <https://www.gov.uk/transposing-euprocurement-directives>.
- 9.2 The Government has developed guidance specifically covering the award of concession contracts. The guidance will be published on Gov.uk.
- 9.3 A Procurement Policy Note to cover updates on the Public Services (Social Value) Act 2012 will be issued.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is that the Public Services (Social Value) Act 2012 realigns commissioning practice to better capture social value opportunities. This has opened the way for increased third sector engagement with public services.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 There is a programme of work to support the effective implementation of the Public Services (Social Value) Act 2012 and a clear commitment to continue to share best practice (as outlined in the Single Departmental Plan).
- 12.2 There is no further requirement for monitoring and review due to these being isolated amendments.

## **13. Contact**

- 13.1 Cassie Clifford-Wareham at the Cabinet Office Telephone: 07917 172481 or email: [cassie.wareham@crownccommercial.gov.uk](mailto:cassie.wareham@crownccommercial.gov.uk) can answer any queries regarding the instrument.