
EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations implement the requirements of [Directive 2014/55/EU](#) of the European Parliament and of the Council of 16th April 2014 on electronic invoicing in public procurement (OJ No L 133, 6.5.2014, p.1-11)(“the Directive”) which extends the EEA by virtue of the Decision of the EEA Joint Committee No. 166/2015 of 11 June 2015 (OJ No L 341, 15.12.2016, p.65). These Regulations also make minor amendments to the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016.

The Directive requires Member States to adopt the necessary provisions to ensure that contracting authorities and other contracting entities are precluded from refusing electronic invoices issued as a result of the performance of contracts which fall within the scope of the EU procurement directives, where those electronic invoices comply with certain technical requirements. That obligation can be found in Article 7 of the Directive.

Regulations 2, 3(4), 4(3) and 5 give effect to Article 7 by inserting into the Defence and Security Public Contracts Regulations 2011 ([S.I. 2011/1848](#))(“the DSPCRs”), the Public Contracts Regulations 2015 ([S.I. 2015/102](#))(“the PCR”), the Concession Contracts Regulations 2016 ([S.I. 2016/273](#))(“the CCR”) and the Utilities Contracts Regulations 2016 ([S.I. 2016/274](#))(“the UCR”) respectively a provision requiring contracting authorities and utilities to include within contracts to which those regulations apply an express term obliging them to accept electronic invoices which comply with the European Standard on electronic invoicing. In the absence of such express provision, a term to that effect is to be implied into the contract.

Article 11(2) of the Directive confers on Member States the discretion to defer the application of its requirements with regard to sub-central contracting authorities and contracting entities (described for these purposes as ‘utilities’). The provisions to be inserted into the DSPCRs, PCR and CCR by regulations 2, 3(4) and 4(3) make clear that the new obligations relating to contractual terms do not apply in respect of certain contracts concluded by utilities and sub-central contracting authorities until 18th April 2020. In respect of the amendments to the UCRs, which only apply to utilities, the same effect is achieved by regulation 1(3), which defers the coming into force of the newly inserted regulation A120 until 18th April 2020.

Regulations 3(3) and 4(2) make corrections to references to the Modern Slavery Act 2015 in the PCR and CCR respectively. Regulation 3(3) omits sub-paragraph (la) from regulation 57(1) of the PCR. Sub-paragraph (la) specifies that a conviction for an offence under section 2 or 4 of the Modern Slavery Act 2015 constitutes a mandatory ground for exclusion from participation in a procurement. Those offences are, however, already covered by sub-paragraph (ma) of regulation 57(1) of the PCR. Regulation 3(3) therefore removes these superfluous references in sub-paragraph (la). The amendment made by regulation 4(2) is to ensure that offences under section 1 of the Modern Slavery Act 2015 are included within the mandatory grounds for exclusion from participation in a concession contract award procedure and to ensure that the mandatory grounds for exclusion in the CCR are consistent with those in the PCR. Regulation 6 makes clear that the inclusion of offences under section 1 of the Modern Slavery Act 2015 as a mandatory ground for exclusion (for the purposes of the CCR) does not apply in respect of a concession contract award procedure commenced before the coming into force of these Regulations.

A full impact assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

A transposition note for the Directive has not been prepared. The Directive contains only one substantive obligation for Member States, transposition of which is described above.