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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Public Contracts (Scotland) Regulations 2006 (the “Public Contracts Regulations”) and the Utilities Contracts (Scotland) Regulations 2006 (the “Utilities Contracts Regulations”). The Public Contracts Regulations and the Utilities Contracts Regulations have been amended by the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2007.

Directive [2004/18/EC](#) of the European Parliament and of the Council (O.J. L134 30.4.2004, p.114) concerns the co-ordination of the procedures for the award of public works contracts, public supply contracts and public services contracts. Directive [2004/17/EC](#) of the European Parliament and of the Council (O.J. L134 30.4.2004, p.1) concerns the co-ordination of procurement procedures of entities operating in the water, energy, transport and postal service sectors. Those Directives have been implemented for Scotland by the Public Contracts Regulations and the Utilities Contracts Regulations respectively.

Regulation 2 amends regulation 3(1) of the Public Contracts Regulations to provide that fire and rescue authorities and joint fire and rescue boards under the Fire (Scotland) Act 2005 are contracting authorities.

Regulation 2 also makes minor amendments to the Public Contracts Regulations to clarify the application of the Regulations to a framework agreement or dynamic purchasing system in relation to which only Part B services contracts can be based or awarded; to the use of the negotiated procedure without prior publication of a contract notice; to the subcontracting of work under a public works concession contract; and to public services contracts for certain telecommunications services which are subject to the same threshold as Part B services contracts.

There is a minor amendment to regulation 8(21) of the Public Contracts Regulations in order to clarify the Community obligations which are imposed upon contracting authorities even when the estimated value of a contract falls below the thresholds set out in regulation 8 (regulation 2(4)(c)). There are also amendments made to the lists of professional and trade registers within the Public Contracts Regulations, so as to include professional and trade registers from Member States who joined the European Union in:

- (i) May 2004 (as set out in the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the treaties on which the European Union is founded, (O.J. L236 23.9.2003, p.33)); and
- (ii) January 2007 (as set out in Council Directive [2006/97/EC](#) adapting certain Directives in the field of free movement of goods, by reason of the accession of Bulgaria and Romania, (O.J. L363 20.12.2006, p.107)).

Regulation 2 makes a further consequential amendment to Schedule 4 to the Public Contracts Regulations following the accession of Bulgaria and Romania.

Regulation 3 makes a minor amendment to the Utilities Contracts Regulations to clarify the calculation of turnover by a utility in respect of its affiliated undertakings. There is also a further consequential amendment to the Utilities Contracts Regulations following the accession of Bulgaria and Romania.

Regulation 3 also amends the Utilities Contracts Regulations to clarify the threshold values in Directive [2004/17/EC](#) which apply to design contests.

**Changes to legislation:**

There are currently no known outstanding effects for the The Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2008.