
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations consolidate the Public Contracts (Scotland) Regulations 2006 and all subsequent amendments (for a list of all amendments, see Schedule 7 to these Regulations). The Regulations also contain further amendments.

These Regulations implement, for Scotland, Directive [2004/18/EC](#) of the European Parliament and Council of 31st March 2004 on the co-ordination of procedures for the award of public works contracts, public supply contracts and public services contracts (OJ No L 134, 30.4.2004, p.114) and Council Directive [89/665/EEC](#) on the co-ordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ L 395, 30.12.1989, p.33) as amended.

These Regulations also implement, for Scotland, Directive [2007/66/EEC](#) of the European Parliament and Council of 11th December 2007 amending Council Directives [89/665/EEC](#) and [92/13/EEC](#) with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ L 353, 20.12.2007).

These Regulations specify the procedures to be followed in relation to the award of public works contracts, public supply contracts and public services contracts by public bodies called contracting authorities.

An amendment to regulation 23 changes the list of criminal offences relevant to the rejection of economic operators. These amendments include updating the list to include relevant offences created or consolidated since those Regulations were made. In particular, new bribery offences under the Bribery Act 2010 are incorporated and the relevance of previously existing bribery offences is limited to offences relating to active bribery as required by the applicable Directive. Regulation 23(5) is also amended to take account of debt relief orders and debt relief restriction orders, and to bring the provisions relating to misrepresentation closer into line with the wording of the Directive.

An amendment to regulation 47 changes the general time limit within which economic operators must start any Court proceedings which they wish to take under these Regulations. The new limit is 30 days beginning with the date when the economic operator first knew or ought to have known that grounds for starting the proceedings had arisen, but the Court may extend this to up to 3 months where it considers that there is a good reason for doing so. These changes result from the judgment of the Court of Justice of the European Union in Case C-406/08 (Uniplex) which held certain features of the limits formerly applicable under the Public Contracts (Scotland) 2006 to be incompatible with EU Law.

There are further amendments to reflect machinery of Government changes. These amendments include replacing references to the Office of Government Commerce with references to the Cabinet Office, and references to the Treasury with references to the Minister for the Cabinet Office and updating certain treaty references to reflect changes made by the Treaty of Lisbon.

A full regulatory assessment of the effect that this Instrument will have on the costs of business has been prepared and placed in Scottish Parliament Information Centre. Copies may be obtained from the Scottish Procurement Directorate's website at www.scotland.gov.uk/topics/government/spd.