

POLICY NOTE

THE PUBLIC CONTRACTS (SCOTLAND) AMENDMENT REGULATIONS 2013

S.S.I. 2013/282

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to the negative resolution procedure.

Policy Objectives

The purpose of the instrument is to amend the Public Contracts (Scotland) Regulations 2012 (“the 2012 Regulations”) which give effect to EU Procurement Directive 2004/18/EC in Scots law. This amendment is required by reason of the accession to the European Union (“EU”) of the Republic of Croatia on 1st July 2013. As a consequence of Croatia’s accession, the EU adopted Directive 2013/16/EU, amending certain Directives in the field of public procurement, including Directive 2004/18/EC.

Schedule 6 of the 2012 Regulations lists the relevant professional and trade registers for each member State. This makes Scottish procurers aware of the applicable register for an economic operator from another member State. Directive 2013/16/EU formally identifies the relevant Croatian professional and trade registers. Regulation 2 of this instrument adds the relevant Croatian registers to the pre-existing list in Schedule 6 of the 2012 Regulations.

This instrument is only relevant if and where Scottish contracting authorities receive expressions of interest or bids from Croatian economic operators. Contracting authorities must accept the Croatian professional or trade registers as appropriate registers for the purposes of the 2012 Regulations. Where the economic operator is not registered on the relevant Croatian professional or trade register, the contracting authority may treat that economic operator as ineligible or decide not to select that economic operator for a public contract in terms of Regulation 23(4)(j) of the 2012 Regulations.

Directive 2013/16/EC has other provisions, but those do not need to be transposed into Scots law.

Consultation

The purpose of this instrument is to add details of the relevant professional and trade registers of companies that exist in Croatia to the existing legislation. Consultation on this instrument is not considered necessary.

Impact Assessment

This is a purely technical instrument required to reflect the accession of Croatia to the EU. It has no policy implications and does not affect the material scope of the EU Public Procurement Directives. This instrument has no impact on business, charities or voluntary bodies and no Business and Regulatory Impact Assessment has been produced. Furthermore, this instrument will not affect different sections of the population in different ways and no Equality Impact Assessment has been produced.

Financial Effects

The purpose of this instrument is to add to the existing legislation details of the relevant professional and trade registers of companies that exist in Croatia. It does not impose any obligations on businesses in Scotland and is not, therefore, expected to result in any increased costs or expenditure for businesses, or indeed for public bodies. It will help public bodies identify more quickly the relevant professional and trade registers they may wish to consult if they receive, as part of public procurement exercise, an expression of interest from a Croatian company.