

SCOTTISH STATUTORY INSTRUMENTS

2016 No. 49

The Utilities Contracts (Scotland) Regulations 2016

PART 3

PARTICULAR PROCUREMENT REGIMES

CHAPTER 2

RULES GOVERNING DESIGN CONTESTS

Modifications etc. (not altering text)

- C1** Pt. 3 Ch. 2 modified (18.4.2016) by [S.S.I. 2013/50, Sch. 3 para. 10\(2\)\(b\)](#) (as substituted by [The Utilities Contracts \(Scotland\) Regulations 2016 \(S.S.I. 2016/49\)](#), reg. 1, [sch. 3 para. 3\(2\)\(b\)](#))

Scope of Chapter

91. This Chapter applies to—

- (a) design contests organised as part of a procedure leading to the award of a service contract provided that the estimated value [^{F1}inclusive of VAT, where appropriate] of the service contract including any possible prizes or payments to participants is equal to or greater than the threshold referred to in regulation 15(1)(a) (thresholds); and
- (b) design contests where the total estimated value [^{F2}inclusive of VAT, where appropriate] of contest prizes and payments to participants, including the estimated value [^{F2}inclusive of VAT, where appropriate] of the service contract which might subsequently be concluded in accordance with regulation 48(4)(f) (use of the negotiated procedure without prior call for competition) if the utility does not exclude such an award in the contest notice, is equal to or greater than the threshold referred to in regulation 15(1)(a) (thresholds).

Textual Amendments

- F1** Words in [reg. 91\(a\)](#) substituted (1.1.2022) by [The Public Procurement \(Agreement on Government Procurement\) \(Thresholds etc.\) \(Amendment\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/378\)](#), regs. 1(2), [4\(4\)](#) (with [reg. 6](#))
- F2** Words in [reg. 91\(b\)](#) substituted (1.1.2022) by [The Public Procurement \(Agreement on Government Procurement\) \(Thresholds etc.\) \(Amendment\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/378\)](#), regs. 1(2), [4\(4\)](#) (with [reg. 6](#))

Commencement Information

- I1** [Reg. 91](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Utilities Contracts (Scotland) Regulations 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Notices

92.—(1) A utility that intends to carry out a design contest must call for competition by means of a contest notice which includes the information set out in Annex XIX to the Utilities Contracts Directive^{F3}, but as if, in paragraph 15, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations].

(2) Where a utility intends to award a subsequent service contract under regulation 48(4)(f) (use of the negotiated procedure without prior call for competition) this must be indicated in the contest notice.

(3) A utility that has held a design contest must—

(a) make the results known by means of a notice which must include the information set out in Annex XX to the Utilities Contracts Directive^{F4}, but as if, in paragraph 11, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations]; and

(b) ^{F5}submit] such notice to the ^{F6}UK e-notification service] within 30 days of the closure of the design contest.

(4) A utility may withhold from publication information on the result of the contest where the release of the information—

(a) would impede law enforcement or otherwise be contrary to the public interest;

(b) would prejudice the commercial interests of any person; or

(c) might prejudice fair competition between economic operators.

(5) The utility must ^{F7}submit] the notices referred to in this regulation for publication in accordance with regulation 69 (^{F8}publication on the UK e-notification service]).

Textual Amendments

F3 Words in reg. 92(1) inserted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **6(52)(a)** (with sch. paras. 1-5)

F4 Words in reg. 92(3)(a) inserted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **6(52)(b)(i)** (with sch. paras. 1-5)

F5 Word in reg. 92(3)(b) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **6(52)(b)(ii)(aa)** (with sch. paras. 1-5)

F6 Words in reg. 92(3)(b) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **6(52)(b)(ii)(bb)** (with sch. paras. 1-5)

F7 Word in reg. 92(5) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **6(52)(c)(i)** (with sch. paras. 1-5)

F8 Words in reg. 92(5) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **6(52)(c)(ii)** (with sch. paras. 1-5)

Commencement Information

I2 Reg. 92 in force at 18.4.2016, see **reg. 1(2)**

Rules on the organisation of design contests and the selection of participants and the jury

93.—(1) When organising a design contest, a utility must apply procedures which are adapted to the provisions of Part 1 and this Chapter.

^{F9}(2)

(3) Where a design contest is restricted to a limited number of participants, the utility must—

- (a) lay down clear and non-discriminatory selection criteria; and
 - (b) ensure that the number of candidates invited to participate is sufficient to ensure genuine competition in so far as there are enough qualified candidates.
- (4) A utility must appoint a jury which must be composed exclusively of natural persons who are independent participants in the contest.
- (5) Where a particular professional qualification is required of participants in a contest at least a third of the jury members must have that qualification or an equivalent qualification.

Textual Amendments

F9 [Reg. 93\(2\)](#) omitted (31.12.2020) by virtue of [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), **6(53)** (with sch. paras. 1-5)

Commencement Information

I3 [Reg. 93](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

Decisions of the jury

- 94.**—(1) The jury must be autonomous in its decisions and opinions.
- (2) The jury must examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.
- (3) The jury must record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.
- (4) Anonymity must be observed until the jury has reached its opinion or decision.
- (5) Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspects of the projects.
- (6) Complete minutes must be drawn up of the dialogue between jury members and candidates.

Commencement Information

I4 [Reg. 94](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

Changes to legislation:

There are outstanding changes not yet made by the [legislation.gov.uk](https://www.legislation.gov.uk) editorial team to The Utilities Contracts (Scotland) Regulations 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

- Regulations applied by [2023 c. 54 s. 119\(2\)\(b\)](#)
- Regulations power to amend conferred by [2023 c. 54 s. 115\(3\)\(4\)](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Pt. 5A inserted by [S.S.I. 2019/112 reg. 5\(61\)](#) (This amendment not applied to [legislation.gov.uk](https://www.legislation.gov.uk). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 3(2)-(2C) substituted for reg. 3(2) by [S.S.I. 2019/112 reg. 5\(3\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](https://www.legislation.gov.uk). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 15A inserted by [S.S.I. 2019/112 reg. 5\(7\)](#) (This amendment not applied to [legislation.gov.uk](https://www.legislation.gov.uk). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 20(1)(d)(i)(aa) words substituted by [S.S.I. 2019/112 reg. 5\(11\)\(a\)\(i\)](#) (This amendment not applied to [legislation.gov.uk](https://www.legislation.gov.uk). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 20(1)(d)(i)(bb) words substituted by [S.S.I. 2019/112 reg. 5\(11\)\(a\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](https://www.legislation.gov.uk). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 38A inserted by [S.S.I. 2019/112 reg. 5\(26\)](#) (This amendment not applied to [legislation.gov.uk](https://www.legislation.gov.uk). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) reg. 41 renumbered as reg. 41(1) by [S.S.I. 2019/112 reg. 5\(27\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](https://www.legislation.gov.uk). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words omitted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(i\)](#) (This amendment not applied to [legislation.gov.uk](https://www.legislation.gov.uk). Reg. 5(27)(b)(i) substituted by S.S.I. 2019/114, reg. 2(5)(a)(ii)(aa) and then S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words substituted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](https://www.legislation.gov.uk). Reg. 5(27)(b)(ii) omitted by virtue of S.S.I. 2019/114, reg. 2(5)(a)(ii)(bb))
- reg. 41(1) words substituted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(iii\)](#) (This amendment not applied to [legislation.gov.uk](https://www.legislation.gov.uk). Reg. 5(27)(b)(iii) substituted by S.S.I. 2019/114, reg. 2(5)(a)(ii)(cc) and then S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words substituted by S.S.I. 2019/112, reg. 5(27)(b)(i) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(a\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](https://www.legislation.gov.uk). S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))
- reg. 41(1) words substituted by S.S.I. 2019/112, reg. 5(27)(b)(iii) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(a\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](https://www.legislation.gov.uk). S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))

- reg. 41(2) inserted by [S.S.I. 2019/112 reg. 5\(27\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 50(25)(25A) substituted for reg. 50(25) by [S.S.I. 2019/112 reg. 5\(33\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 66(2A) inserted by [S.S.I. 2019/112 reg. 5\(38\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 69(5)(6) inserted by [S.S.I. 2019/112 reg. 5\(41\)\(f\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 74(6A)-(6C) inserted by [S.S.I. 2019/112 reg. 5\(44\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 100(3)(3A) substituted for reg. 100(3) by [S.S.I. 2019/112 reg. 5\(58\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 100(4A) inserted by S.S.I. 2019/112, reg. 5(58)(da) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(c\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))