
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 49

The Utilities Contracts (Scotland) Regulations 2016

PART 6

**REVOCATIONS, CONSEQUENTIAL AMENDMENTS,
SAVINGS AND TRANSITIONAL PROVISIONS**

Interpretation of Part 6

109. In this Part “the 2012 Regulations” means the Utilities Contracts (Scotland) Regulations 2012⁽¹⁾.

Revocations and consequential amendments

110.—(1) Subject to regulation 111 (transitional provision and saving where procurement commenced before 18th April 2016), the 2012 Regulations are revoked.

(2) The consequential and miscellaneous amendments set out in Schedule 3 (consequential and miscellaneous amendments to subordinate legislation) have effect.

Transitional provision and saving: where procurement commenced before 18th April 2016

111.—(1) Nothing in these Regulations affects any contract award procedure or design contest commenced before 18th April 2016 which continues to be subject to the application of the 2012 Regulations as if those Regulations had not been revoked.

(2) For that purpose, a contract award procedure or design contest has commenced if, before that date—

- (a) a contract notice, or as the case may be, design contest, has been sent to the Official Journal in accordance with the 2012 Regulations in order to invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract, framework agreement or dynamic purchasing system;
- (b) a periodic indicative notice has been sent to the Official Journal in accordance with the 2012 Regulations, in which case the contract award procedure which is not affected by these Regulations and which will continue to be subject to the application of the 2012 Regulations is the procedure for the award of any proposed contract the intention to award which was indicated in the notice, but only if the requirements in regulation 16(3)(a) or (b) of the 2012 Regulations are satisfied;
- (c) the utility has had published any form of advertisement seeking offers or expressions of interest in a proposed contract, framework agreement or dynamic purchasing system; or
- (d) the utility has contacted any economic operator in order to—

⁽¹⁾ S.S.I. 2012/89.

- (i) seek expressions of interest or offers in respect of a proposed contract, framework agreement or dynamic purchasing system; or
- (ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed contract, framework agreement or dynamic purchasing system.

(3) Nothing in these Regulations affects the award of a specific contract based on a framework agreement where the framework agreement was concluded—

- (a) before 18th April 2016; or
- (b) on or after that date following a contract award procedure which, by virtue of paragraph (1), was not affected by these Regulations,

which continues to be subject to the application of the 2012 Regulations as if those Regulations had not been revoked.

(4) Nothing in these Regulations affects the award of a specific contract under a dynamic purchasing system where the system was established—

- (a) before 18th April 2016; or
- (b) on or after that date following a contract award procedure which, by virtue of paragraph (1), was not affected by these Regulations,

which continues to be subject to the application of the 2012 Regulations as if those Regulations had not been revoked.

(5) Nothing in these Regulations, except regulations 86 (modification of contracts during their term) and 87(1)(a), (2) and (3) (termination of contracts), affects a contract awarded—

- (a) before 18th April 2016; or
- (b) on or after that date, where the award itself was not, by virtue of paragraphs (1) to (4), affected by these Regulations,

which continues to be subject to the application of the 2012 Regulations as if those Regulations had not been revoked.

(6) In this regulation, “contract”, “contract notice”, “design contest”, “dynamic purchasing system”, “economic operator”, “framework agreement”, “periodic indicative notice” and “utility” have the same meanings as in the 2012 Regulations.

Transitory provision: prior to full commencement of regulation 38(1) to (7)

112.—(1) This regulation applies during the period beginning on 18th April 2016 and ending immediately before 18th October 2018.

(2) During that period, a utility may choose between the following means of communication for the purposes mentioned in paragraph (3)—

- (a) electronic means in accordance with regulation 38 (rules applicable to communication);
- (b) post or other suitable carrier;
- (c) fax; or
- (d) a combination of those means.

(3) That choice is available for all communication and information exchange in respect of which both the following criteria are met—

- (a) the use of electronic means would, in accordance with regulation 38(1) to (7) (rules applicable to communication), have been required if those provisions had been in force;

- (b) the use of electronic means is not required by any provision of these Regulations other than regulation 38(1) (rules applicable to communication).

Transitory provision: temporary exemption

113.—(1) Notwithstanding paragraphs (3) and (4) of regulation 1, nothing in the provisions commenced by those paragraphs affect—

- (a) any procurement or design contest that has commenced before the dates respectively mentioned in those paragraphs; or
- (b) any contract awarded as a result of such procurement or following such contest.

(2) For that purpose, a procurement or design contest has commenced before the dates mentioned if, before such date—

- (a) a contract notice or, as the case may be, contest notice, has been sent to the Official Journal in accordance with regulation 69 (form and manner of sending notices for publication at EU level) in order to invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract, framework agreement or dynamic purchasing system;
- (b) where a periodic indicative notice has been sent to the Official Journal, in which case the contract award procedure that has commenced is the procedure for the award of any proposed contract the intention to award which was indicated in the notice, but only if the requirements in regulation 65(3)(a) to (c) (periodic indicative notices) are satisfied;
- (c) the utility has dispatched any form of advertisement seeking offers or expressions of interest in a proposed contract, framework agreement or dynamic purchasing system; or
- (d) the utility has contacted any economic operator in order to—
 - (i) seek expressions of interest or offers in respect of a proposed contract, framework agreement or dynamic purchasing system; or
 - (ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed contract, framework agreement or dynamic purchasing system.