

## TRANSPOSITION NOTE

The table below sets out how the Utilities Contracts (Scotland) Regulations 2016 transpose the relevant articles of Directive 2014/25/EU of the European Parliament and of the Council on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (the “Utilities Directive”).

Article	Requirement	Provision
TITLE I: SCOPE, DEFINITIONS AND GENERAL PRINCIPLES		
<i>Chapter I: Subject-matter and definitions</i>		
Article 1	Subject matter and scope	Regulation 3
Article 2	Definitions	Regulation 2 Regulation 17(3) Regulation 54(9)
Article 3	Contracting authorities	Regulation 2
Article 4	Contracting entities	Regulation 4
Article 5	Mixed procurement covering the same activity	Regulation 5
Article 6	Procurement covering several activities	Regulation 6
<i>Chapter II: Activities</i>		
Article 7	Common provisions	Regulation 7
Article 8	Gas and heat	Regulation 8
Article 9	Electricity	Regulation 9
Article 10	Water	Regulation 10
Article 11	Transport services	Regulation 11
Article 12	Ports and airports	Regulation 12
Article 13	Postal services	Regulation 13
Article 14	Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels	Regulation 14

<b>Article</b>	<b>Requirement</b>	<b>Provision</b>
<i>Chapter III: Material scope</i>		
Section 1: Thresholds		
Article 15	Threshold amounts	Regulation 15
Article 16	Methods for calculating the estimated value of procurement	Regulation 15(3) Regulation 16
Article 17	Revision of the thresholds	No transposition required
Section 2: Excluded contracts and design contests: special provisions for procurement involving defence and security aspects		
Subsection 1: Exclusions applicable to all contracting entities and special exclusions for the water and energy sectors		
Article 18	Contracts awarded for purposes of resale or lease to third parties	Regulation 17
Article 19	Contracts and design contests awarded or organised for purposes other than the pursuit of a covered activity or for the pursuit of such an activity in a third country	Regulation 18
Article 20	Contracts awarded and design contest organised pursuant to international rules	Regulation 19
Article 21	Specific exclusions for service contracts	Regulation 20
Article 22	Service contracts awarded on the basis of an exclusive right	Regulation 21
Article 23	Contracts awarded by certain contracting entities for the purchase of water and for the supply of energy or of fuels for the production of energy	Regulation 22
Subsection 2: Procurement involving defence and security aspects		
Article 24	Defence and security	Regulation 23
Article 25	Mixed procurement covering the same activity and involving defence or security aspects	Regulation 24
Article 26	Procurement covering several activities and	Regulation 25

<b>Article</b>	<b>Requirement</b>	<b>Provision</b>
	involving defence or security aspects	
Article 27	Contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules	Regulation 26
Subsection 3: Special relations (cooperation, affiliated undertakings and joint ventures)		
Article 28	Contracts between contracting authorities	Regulation 27
Article 29	Contracts awarded to an affiliated undertaking	Regulation 28
Article 30	Contracts awarded to a joint venture or to a contracting entity forming part of a joint venture	Regulation 29
Article 31	Notification of information	Regulation 30
Subsection 4: Specific situations		
Article 32	Research and development services	Regulation 31
Article 33	Contracts subject to special arrangements	No transposition required
Subsection 5: Activities directly exposed to competition and procedural provisions relating thereto		
Article 34	Activities directly exposed to competition	Regulation 32
Article 35	Procedure for establishing whether Article 34 is applicable	Regulation 33
<i>Chapter IV: General principles</i>		
Article 36	Principles of procurement	Regulation 34
Article 37	Economic operators	Regulation 35
Article 38	Reserved contracts	Regulation 36
Article 39	Confidentiality	Regulation 37
Article 40	Rules applicable to communication	Regulation 38
Article 41	Nomenclatures	Regulation 39

<b>Article</b>	<b>Requirement</b>	<b>Provision</b>
Article 42	Conflicts of interests	Regulation 40
<b>TITLE II: RULES APPLICABLE TO CONTRACTS</b>		
<i>Chapter I: Procedures</i>		
Article 43	Conditions relating to the GPA and other international agreements	Regulation 41
Article 44	Choice of procedures	Regulation 42
Article 45	Open procedure	Regulation 43
Article 46	Restricted procedure	Regulation 44
Article 47	Negotiated procedure with prior call for competition	Regulation 45
Article 48	Competitive dialogue	Regulation 46
Article 49	Innovation partnership	Regulation 47
Article 50	Use of the negotiated procedure without prior call for competition	Regulation 48
<i>Chapter II: Techniques and instruments for electronic and aggregated procurement</i>		
Article 51	Framework agreements	Regulation 49
Article 52	Dynamic purchasing systems	Regulation 50
Article 53	Electronic auctions	Regulation 51
Article 54	Electronic catalogues	Regulation 52
Article 55	Centralised purchasing activities and central purchasing bodies	Regulation 53
Article 56	Occasional joint procurement	Regulation 54
Article 57	Procurement involving contracting entities from different Member States	Regulation 55
<i>Chapter III: Conduct of the procedure</i>		
<b>Section 1: Preparation</b>		
Article 58	Preliminary market consultation	Regulation 56
Article 59	Prior involvement of candidates or tenderers	Regulation 57

<b>Article</b>	<b>Requirement</b>	<b>Provision</b>
Article 60	Technical specifications	Regulation 58
Article 61	Labels	Regulation 59
Article 62	Test reports, certification and other means of proof	Regulation 60
Article 63	Communication of technical specifications	Regulation 61
Article 64	Variants	Regulation 62
Article 65	Division of contracts into lots	Regulation 63
Article 66	Setting time limits	Regulation 64
<b>Section 2: Publication and transparency</b>		
Article 67	Periodic indicative notices	Regulation 65
Article 68	Notices on the existence of a qualification system	Regulation 66
Article 69	Contract notices	Regulation 67
Article 70	Contract award notices	Regulation 68
Article 71	Form and manner of publication of notices	Regulation 69
Article 72	Publication at national level	Regulation 70
Article 73	Electronic availability of procurement documents	Regulation 71
Article 74	Invitations to candidates	Regulation 72
Article 75	Informing applicants for qualification, candidates and tenderers	Regulation 73
<b>Section 3: Choice of participants and award of contracts</b>		
Article 76	General principles	Regulation 74
<b>Subsection 1: Qualification and qualitative selection</b>		
Article 77	Qualification systems	Regulation 75
Article 78	Criteria for qualitative selection	Regulation 76

<b>Article</b>	<b>Requirement</b>	<b>Provision</b>
Article 79	Reliance on the capacities of other entities	Regulation 77
Article 80	Use of exclusion and selection criteria provided for under Directive 2014/24/EU	Regulation 78
Article 81	Quality assurance standards and environmental management standards	Regulation 79
<b>Subsection 2: Award of the contract</b>		
Article 82	Contract award criteria	Regulation 80
Article 83	Life-cycle costing	Regulation 81
Article 84	Abnormally low tenders	Regulation 82
<b>Section 4: Tenders comprising products originating in third countries and relations with those countries</b>		
Article 85	Tenders comprising products originating in third countries	Regulation 83
Article 86	Relations with third countries as regards works, supplies and service contracts	Carried out administratively
<b><i>Chapter IV: Contract performance</i></b>		
Article 87	Conditions for performance of contracts	Regulation 84
Article 88	Subcontracting	Regulation 85
Article 89	Modification of contracts during their term	Regulation 86
Article 90	Termination of contracts	Regulation 87
<b>TITLE III: PARTICULAR PROCUREMENT REGIMES</b>		
<b><i>Chapter I: Social and other specific services</i></b>		
Article 91	Award of contracts for social and other specific services	Regulation 88
Article 92	Publication of notices	Regulation 89
Article 93	Principles of awarding contracts	Regulation 90
Article 94	Reserved contracts for certain services	No transposition required

<b>Article</b>	<b>Requirement</b>	<b>Provision</b>
<i>Chapter II: Rules governing design contests</i>		
Article 95	Scope	Regulation 91
Article 96	Notices	Regulation 92
Article 97	Rules on the organisation of design contests, the selection of participants and the jury	Regulation 93
Article 98	Decisions of the jury	Regulation 94
<b>TITLE IV: GOVERNANCE</b>		
Article 99	Enforcement	Regulation 95
Article 100	Individual reports on procedures for the award of contracts	Regulation 96
Article 101	National reporting and statistical information	Carried out administratively
Article 102	Administrative cooperation	Carried out administratively
<b>TITLE V: DELEGATED POWERS, IMPLEMENTING POWERS AND FINAL PROVISIONS</b>		
Article 103	Exercise of the delegation	No transposition required
Article 104	Urgency procedure	No transposition required
Article 105	Committee procedure	No transposition required
Article 106	Transposition and transitional provisions	Regulation 1 Regulation 111
Article 107	Repeal	Regulation 110
Article 108	Review	No transposition required
Article 109	Entry into force	No transposition required
Article 110	Addressees	No transposition required

## ANNEXES

Annex I	List of activities as set out in point (a) of point 2 of Article 2	Regulation 2(1) Schedule 1
Annex II	List of Union legal acts referred to in Article 4(3)	Cross references to the Utilities Directive in regulation 4(6)(b)
Annex III	List of Union legal acts referred to in Article 34(3)	Cross references to the Utilities Directive in regulation 33(1)(b)(ii)
Annex IV	Deadlines for the adoption of the implementing acts referred to in Article 35	Cross references to the Utilities Directive in:  - regulation 33(2)  - regulation 33(8)
Annex V	Requirements relating to tools and devices for the electronic receipt of tenders, requests to participate, applications for qualification as well as plans and projects in contests	Regulation 38 (17)
Annex VI – Part A	Information to be included in the periodic indicative notice (as referred to in Article 67)	Cross references to the Utilities Directive in:  - regulation 43(4)(a)  - regulation 65(2) and (6)(c)
Annex VI – Part B	Information to be included in notices of publication of a periodic indicative notice on a buyer profile not used as a means of calling for competition (as referred to in Article 67(1))	Cross references to the Utilities Directive in regulation 65(5)
Annex VII	Information to be included in the procurement documents relating to electronic auctions (Article 53(4))	Regulation 51(7)
Annex VIII	Definition of certain technical specifications	Regulation 2(1)  Regulation 58
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		Regulation 70
Annex X	Information to be included in the notice on the existence of a qualification system (as referred to in point (b) of Article 44(4) and in Article 68)	Cross reference to the Utilities Directive in regulation 66(2)
Annex XI	Information to be included in contract notices (as referred to in Article 69)	Cross reference to the Utilities Directive in regulation 67
Annex XII	Information to be included in the contract award notice (as referred to in Article 70)	Cross reference to the Utilities Directive in regulation 68(2)
Annex XIII	Contents of the invitations to submit a tender, participate in the dialogue, to negotiate or to confirm interest provided for under Article 74	Regulation 72(5) and (6)
Annex XIV	List of International Social and Environmental Conventions referred to in Article 36(2)	Cross reference to the Utilities Directive in: - regulation 34(4) - regulation 74(6)
Annex XV	List of Union legal acts referred to in Article 83(3)	Cross reference to the Utilities Directive in regulation 81(6)
Annex XVI	Information to be included in notices of modifications of a contract during its term (as referred to in Article 89(1))	Cross reference to the Utilities Directive in regulation 86(3)
Annex XVII	Services referred to in Article 91	Chapter 1 of Part 3  Schedule 2
Annex XVIII	Information to be included in notices concerning contracts for social and other specific services (as referred to in Article 92)	Cross reference to Directive in regulation 89(5)
Annex XIX	Information to be included in the design contest notice (as referred to in Article 96(1))	Cross reference to the Utilities Directive in regulation 92(1)

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Annex XX	Information to be included in the results of design contest notices (as referred to in Article 96(1))	Cross reference to the Utilities Directive in regulation 92(3)
Annex XXI	Correlation table	No transposition required