

POLICY NOTE

The Public Procurement etc. (Miscellaneous Amendments) (Scotland) Regulations 2019

SSI 2019/173

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 negative procedure.

Purpose of the instrument

This instrument makes minor corrections to the transposition of European Directives 2014/23/EU and 2014/25/EU, which regulate the award of concession contracts and utilities contracts respectively.

Policy Objectives

1. The overall objective of this instrument is to ensure that these European Directives are faithfully and correctly transposed into the law of Scotland. Although the corrections are minor in nature, it is important that they are made so as to ensure that the Directives are properly implemented in Scotland.

Explanation of the law being amended by this instrument

2. Regulation 2 amends the Utilities Contracts (Scotland) Regulations 2016, which implement Directive 2014/25/EU. The amendments made by this regulation are largely to ensure a consistent approach to use of terminology concerning service contracts, whilst regulation 2(3) corrects a typographical error.
3. Regulation 3 amends the Concession Contracts (Scotland) Regulations 2016, which implement Directive 2014/23/EU. Regulation 3(2) ensures the scope of the exclusion at regulation 9(1)(a) is limited to service concession contracts, as required by Article 10(1) of the Directive. Regulation 3(3) corrects a typographical error.
4. Regulation 4 amends the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019. With a view to limiting the burden on Parliamentary time, the amendments set out in regulations 2 and 3 of this instrument were originally included in the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019 which were being laid before Parliament in any case. This would have meant that in the event of a no deal exit from the EU, these errors would have been corrected. With the future of those regulations uncertain, however, we consider it necessary to make these amendments in their own right. Regulation 4 of this instrument therefore omits these amendments from the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019.

Consultation

5. Given that these amendments are corrections of minor errors in the transposition of the Directive, there has been no specific consultation on these.

Impact Assessments

6. Impact assessments have not been prepared for this instrument because the amendments contained in it are very minor in nature, and are designed solely to ensure full compliance with the relevant EU Directives.

Financial Effects

7. The Cabinet Secretary for Finance, Economy and Fair Work confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Scottish Procurement and Commercial Directorate

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