

2021 No. 378

PUBLIC PROCUREMENT

**The Public Procurement (Agreement on Government
Procurement) (Thresholds etc.) (Amendment) (Scotland)
Regulations 2021**

<i>Made</i>	- - - -	<i>27th October 2021</i>
<i>Laid before the Scottish Parliament</i>		<i>29th October 2021</i>
<i>Coming into force</i>	- -	<i>1st January 2022</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by regulations 5A(4) and 83A(2) of the Public Contracts (Scotland) Regulations 2015(a), regulation 15A(4) and 108A(2) of the Utilities Contracts (Scotland) Regulations 2016(b), regulations 8A(4) and 60ZA(2) of the Concession Contracts (Scotland) Regulations 2016(c) and sections 1(1) and 4(1) of the Trade Act 2021(d) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Public Procurement (Agreement on Government Procurement) (Thresholds etc.) (Amendment) (Scotland) Regulations 2021.

(2) These Regulations come into force on 1 January 2022.

(3) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“the 2015 Regulations” means the Public Contracts (Scotland) Regulations 2015;

“the Concession Regulations” means the Concession Contracts (Scotland) Regulations 2016;
and

“the Utilities Regulations” means the Utilities Contracts (Scotland) Regulations 2016.

Amendment of the Public Contracts (Scotland) Regulations 2015

3.—(1) The 2015 Regulations(e) are amended as follows.

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- (a) S.S.I. 2015/446. Regulations 5A and 83A were inserted by regulation 4(6) and (57) of the Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468) (“the 2020 Regulations”).
- (b) S.S.I. 2016/49. Regulations 15A and 108A were inserted by regulation 6(7) and (59) of the 2020 Regulations.
- (c) S.S.I. 2016/65. Regulations 8A and 60ZA were inserted by regulation 8(6) and (31) of the 2020 Regulations.
- (d) 2021 c. 10.
- (e) S.S.I. 2015/446 as amended by regulation 4(5) and (6) of the 2020 Regulations and regulation 5(3) and Schedule 2 of the Public Procurement (Agreement on Government Procurement) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/872).

- (2) In regulation 5 (thresholds), in paragraph (1)—
- (a) for “not including value added tax” substitute “inclusive of value added tax, where appropriate”,
 - (b) in sub-paragraph (a), for “£4,733,252” substitute “£5,336,937”,
 - (c) in sub-paragraph (b), for “£122,976” substitute “£138,760”,
 - (d) in sub-paragraph (c), for “£189,330” substitute “£213,477”.
- (3) In regulation 6 (methods for calculating the estimated value) in paragraph (1), for “not including value added tax” substitute “inclusive of value added tax, where appropriate”.
- (4) In regulation 14 (specific situations: contracts subsidised by a contracting authority) in paragraph (1)—
- (a) in sub-paragraph (a), for “net of value added tax” substitute “inclusive of value added tax, where appropriate”,
 - (b) in sub-paragraph (b), for “net of value added tax” substitute “inclusive of value added tax, where appropriate”.
- (5) In Part 2 of Schedule 2 omit “Regional Development Scotland”.

Amendment of the Utilities Contracts (Scotland) Regulations 2016

- 4.**—(1) The Utilities Regulations^(a) are amended as follows.
- (2) In regulation 15 (thresholds), in paragraph (1)—
- (a) for “not including VAT” substitute “inclusive of VAT, where appropriate”,
 - (b) in sub-paragraph (a), for “£378,660” substitute “£462,955”,
 - (c) in sub-paragraph (b), for “£4,733,252” substitute “£5,336,937”.
- (3) In regulation 16 (methods for calculating the estimated value), in paragraph (1) for “not including VAT” substitute “inclusive of VAT, where appropriate”.
- (4) In regulation 91 (scope of chapter), in heads (a) and (b) in each place it occurs, for “net of VAT” substitute “inclusive of VAT, where appropriate”.

Amendment of the Concession Contracts (Scotland) Regulations 2016

- 5.** In regulation 8 (thresholds and methods for calculating the estimated value of the concession contract) of the Concession Regulations^(b)—
- (a) in paragraph (1)—
 - (i) for “£4,733,252” substitute “£5,336,937”,
 - (ii) for “not including value added tax” substitute “inclusive of value added tax, where appropriate”,
 - (b) in paragraph (3) for “net of value added tax” substitute “inclusive of value added tax, where appropriate”.

Transitional provision and saving where public contract procurement procedures commenced before 1 January 2022

- 6.**—(1) In this Regulation—
- (a) “the Procurement Regulations” means the following and, in relation to any procedure, means whichever of the following applies to that procedure—
 - (i) the 2015 Regulations,

(a) S.S.I. 2016/49 as amended by regulation 6(6) and (7) of the 2020 Regulations.

(b) S.S.I. 2016/65 as amended by regulation 8(5) and (6) of the 2020 Regulations.

- (ii) the Utilities Regulations,
- (iii) the Concession Regulations,
- (b) the following have the same meaning as in the Procurement Regulations—
 - (i) concession contract,
 - (ii) contract,
 - (iii) contracting authority,
 - (iv) design contest
 - (v) dynamic purchasing system
 - (vi) economic operator,
 - (vii) framework agreement
 - (viii) public contract,
 - (ix) utility,
- (c) “procedure” means all processes undertaken by the contracting authority in accordance with the Procurement Regulations, with the intention of awarding a contract, concession contract or public contract but does not include procedures taken for the purposes of modifying a contract, concession contract or public contract.

(2) Nothing in these Regulations affects any procedure or design contest that commenced under the Procurement Regulations before 1 January 2022.

(3) For that purpose, a procedure or design contest has been commenced before 1 January 2022 if, before that date—

- (a) a notice has been sent to the Official Journal or submitted for publication on the UK e-notification service in accordance with the Procurement Regulations, in order to—
 - (i) invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract, concession contract, public contract, framework agreement or dynamic purchasing system, or
 - (ii) advertise an intention to carry out a design contest,
- (b) the contracting authority or utility has had published any form of advertisement seeking offers or expressions of interest in a proposed contract, concession contract, public contract, framework agreement or dynamic purchasing system, or
- (c) the contracting authority or utility has contacted any economic operator in order to—
 - (i) seek expressions of interest or offers in respect of a proposed contract, concession contract, public 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, concession contract, public contract, framework agreement or dynamic purchasing system.

IVAN McKEE

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
27th October 2021

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the thresholds that apply in the field of public procurement that are specified in the Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446) (“the 2015 Regulations”), the Utilities Contracts (Scotland) Regulations 2016 (S.S.I. 2016/49) and the Concession Contracts (Scotland) Regulations 2016 (S.S.I. 2016/65) respectively in accordance with the obligations of the United Kingdom under the Agreement on Government Procurement (“the GPA”) and as required by each Regulation which is amended. The Regulations change the calculation of the estimated value of a procurement based on the total amount payable, from a calculation exclusive of value added tax to one inclusive of value added tax where applicable, in order to fully comply with the GPA. The Regulations also remove “Regional Development Scotland” from Part 2 of Schedule 2 of the 2015 Regulations.

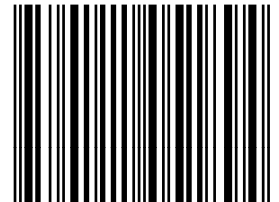
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