
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Scottish public procurement regulations for the purpose of implementing two trade agreements entered into by the United Kingdom, one with Australia and the other with New Zealand. The amendments have broadly four effects.

In this note, references to the “contracts Regulations” are to:

- the Public Contracts (Scotland) Regulations 2015
- the Utilities Contracts (Scotland) Regulations 2016
- the Concession Contracts (Scotland) Regulations 2016

First, references to the trade agreements with Australia and New Zealand are added to the contracts Regulations so that certain rules apply to procurements covered by those agreements.

Second, a rule is added to the contracts Regulations stating that contracts to which they apply cannot be terminated in a way that would circumvent the requirements of those Regulations.

Third, provision is added to the contracts Regulations so that they will apply to procurements where the estimated value of the procurement cannot be calculated. Whether or not those Regulations apply to a procurement is determined, in part, by whether the estimated value of the procurement exceeds a particular amount. The contracts Regulations lay down methodologies for calculating a procurement’s estimated value. The effect of the new rule added to each of the contracts Regulations is that, in cases where it is not possible to calculate a value using the methodology laid down, the estimated value is to be deemed to be equal to the threshold that causes the Regulations in question to apply to the procurement.

A similar amendment is made to the Procurement (Scotland) Regulations 2016, which deal with estimating the value of a procurement in order to determine whether the Procurement Reform (Scotland) Act 2014 applies to it.

Fourth, the ways in which a person carrying out a procurement can issue a call for competition are reduced by:

- the removal from the Public Contracts (Scotland) Regulations 2015 of the possibility of using a prior information notice as a call for competition
- the removal from the Utilities Contracts (Scotland) Regulations 2016 of the possibility of using a periodic indicative notice as a call for competition

The changes made by these Regulations do not affect any procurements that were already underway before they came into force.