

POLICY NOTE

THE PUBLIC PROCUREMENT (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2023

SSI 2023/124

The above instrument was made in exercise of the powers conferred by section 1(2) of the Trade (Australia and New Zealand) Act 2023 and section 5(2) of the Procurement Reform (Scotland) Act 2014. The instrument is subject to negative procedure.

This instrument makes amendments to Scottish public procurement regulations for the purpose of implementing the procurement chapters of the free trade agreements between the UK and Australia and the UK and New Zealand.

Policy Objectives

This instrument implements the public procurement chapters of the UK's free trade agreements (FTAs) with Australia and New Zealand.

Suppliers from Australia and New Zealand will be entitled to the same treatment as Scottish suppliers when bidding for contracts which are covered by these FTAs. They will also be able to bring legal action on the same basis as Scottish suppliers.

In addition, there need to be three minor changes to the public procurement rules in Scotland to implement the FTA with Australia.

First, authorities will be prohibited from terminating contracts for the purposes of avoiding procurement rule obligations.

Second, when an authority is unable to estimate the value of a contract that contract will be explicitly made subject to the procurement rules. Rules on how to estimate the value of a contract which is regulated by the Procurement Reform (Scotland) Act 2014, though not covered by these FTAs, will also be amended to ensure consistency.

Third, sub-central contracting authorities will no longer be able to use a Prior Information Notice, and utilities will no longer be able to use a Periodic Indicative Notice, as calls for competition instead of publishing a contract notice. These notices will still be able to be used, but a contract notice will also need to be published.

The UK and Welsh Governments are expected to make similar provisions.

Consultation

There has been no consultation on this instrument as this is an international obligation which must be implemented. The Scottish Government does not have any substantive discretion in the matter.

Impact Assessments

Impact assessments have not been carried out in relation to this instrument, as any impacts are brought about by the FTAs concluded by the UK Government, rather than this instrument which merely implements some technical provisions of those FTAs.

The procurement rule changes described in this policy note are nonetheless expected to have minimal impact on public purchasers and businesses.

Financial Effects

The Minister for Community Wealth and Public Finance 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 Property Directorate

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