

**PUBLIC CONTRACTS AND UTILITIES
CONTRACTS (SCOTLAND) AMENDMENT
REGULATIONS 2007**

CONSULTATION REPORT

Scottish Procurement Directorate



Introduction

1. This report contains a summary and analysis of comments received in response to the consultation on the draft Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2007.

Background

2. The consultation invited comments on the draft Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2007¹, attached at Annex A. The amendments are necessary to take account of the accession of Bulgaria and Romania to the European Union, as well as minor technical clarifications that have been identified since the Public Contracts (Scotland) Regulations 2006 and the Utilities Contracts (Scotland) Regulations 2006 came into force. Further amendments to Schedule 1 of the Public Contracts (Scotland) Regulations 2006 are necessary to reflect changes to the status of a number of bodies listed in Annex 1 to the Government Procurement Agreement.

3. The consultation also invited comments on a proposed amendment to regulation 8(21) of the Public Contracts (Scotland) Regulations 2006 and regulation 11(20) of the Utilities Contracts (Scotland) Regulations 2006. These regulations require contracting authorities to ensure a degree of advertising which is sufficient to enable open competition and meet the requirements of the principles of equal treatment, non-discrimination and transparency. They give effect in Scots law to rulings of the European Court of Justice (ECJ) that, even where the European Procurement Directives (and hence the Scottish Regulations) do not require an advertisement to be placed in the Official Journal of the European Union (OJEU), there will usually be a need for contract opportunities to be subject to some form of publicity so as to meet basic EC Treaty requirements.

4. The proposed amendment is intended to confirm that the above Treaty principles require not only adequate publicity of the contract to be awarded, the contract itself must be awarded in line with the principles of the EC Treaty. For example, contracting authorities must ensure that all potential bidders know in advance how the contract will be awarded and are given sufficient time to express their interest. The amendment is a clarification of existing law and does not, therefore, represent an additional burden on contracting authorities.

The consultation process

5. The consultation document was published on the Scottish Government website² on 28 September 2007 and a copy was placed in the Scottish Government

¹ Given the timing of the consultation, the amendment regulations will now be made in 2008. They should not be confused with the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2007 (SSI 2007/565) which amended the contract threshold values in the Public Contracts (Scotland) Regulations 2006 and the Utilities Contracts (Scotland) Regulations 2006 and which came into force on 1 January 2008.

² <http://www.scotland.gov.uk/Consultations/Current>

library³. It was also publicised via a Scottish Procurement Policy Note⁴ which was distributed to public sector procurement organisations and to others with an interest in public procurement. The consultation ended on 21 December 2007.

6. Seven responses were received. We are very grateful to all those who responded. Responses from the following organisations were published on the Scottish Government website⁵ on 11 January 2008 and copies have been placed in the Scottish Government library:

- Advanced Procurement for Universities and Colleges
- Institute of Commissioning Professionals
- Highland Council
- Maclay, Murray & Spens, Solicitors
- McGrigors, Solicitors
- Millstream Associates

A further response was received on a confidential basis and, as a result, has not been published. This report contains a summary and analysis of all the responses received.

Analysis of comments

General comments

7. Both Advanced Procurement for Universities and Colleges and Highland Council indicated that they were content with the amending regulations.

Technical clarifications

8. McGrigors, Solicitors alerted us to an error in section 32(2) of the Public Contracts (Scotland) Regulations 2006. Section 32(2) reads:

“The notice referred to in paragraph (1) shall include-

- (a) the criteria for the award of the contract; **or**
- (b) where practicable, the score obtained by-
 - (i) the economic operator which is to receive the notice; and
 - (ii) the economic operator-
 - (aa) to be awarded the contract; or
 - (bb) to become a party to the framework Agreement; and ...”

McGrigors pointed out that the requirements of section 32(2)(a) and (b) should be read conjunctively and not disjunctively, as indicated by the Office for Government Commerce (OGC) guidelines and in the UK wide regulations.

9. We agree that the inclusion of the word “or” in section 32(2)(a) is an error which should be corrected by the amending regulations.

³ Scottish Government Library, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD Tel: 0131 244 5726 Fax: 0131 244 4545

⁴ SPPN 5/2007: <http://www.scotland.gov.uk/Resource/Doc/1265/0053184.pdf>

⁵ <http://www.scotland.gov.uk/Resource/Doc/209175/0055388.pdf>

10. Maclay, Murray & Spens, Solicitors suggested that new paragraphs 8A and 8B in regulation 2(6)(c) of the amending regulations would be clearer and avoid unnecessary repetition if, in the last line of each paragraph, the State in question was simply named. For example, in 8A the paragraph would read as follows:

“In relation to the procedures for the award of a public services contract an economic operator established in Hungary shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if the economic operator is certified as being entitled to be engaged in the trade in question in Hungary”.

Maclay, Murray & Spens also pointed out that for Hungary, the phrase used is “in the State in which he is established” whereas for Spain the wording used is “in the State in which it is established”.

11. We propose to clarify new paragraphs 8A and 8B along the lines suggested by Maclay, Murray & Spens.

Comments on the proposed amendment to regulation 8(21) of the Public Contracts (Scotland) Regulations 2006 and regulation 11(20) of the Utilities Contracts (Scotland) Regulations 2006

12. Maclay, Murray and Spens agreed that the proposed amendment to regulation 8(21) is appropriate to fully reflect the obligations incumbent upon contracting authorities.

13. Millstream Associates recommended the inclusion of a specific financial threshold above which contracts would have to be openly advertised. Millstream suggested that a threshold set at £50,000 would set a reasonable balance between any additional administrative burden and the opening up of the public procurement market to effective competition.

14. In our view, there is no precedent for setting a threshold figure and to do so would not provide legal certainty. The European Court of Justice (ECJ) declined to set a threshold value in the “*TelAustria*” case (ECJ C-324/98). It is possible that contracts below any threshold introduced by Scottish Government might still meet the requirements of the *TelAustria* judgment and could therefore be open to challenge in court if not openly advertised.

15. The European Commission has published an Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives⁶. In paragraph 1.3 of its Communication, the Commission confirmed that:

“It is the responsibility of the individual contracting entities to decide whether an intended contract award might potentially be of interest to economic operators located in other member States. In the view of the Commission, this decision has to be based on an evaluation of the individual circumstances of the case, such as the

⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:179:0002:0007:EN:PDF>

subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographic location of the place of performance.”

16. In addition, it would be extremely difficult to agree on an appropriate threshold value. The Scottish Procurement Directorate (SPD) has recently established a Procurement Policy Forum, with representation from each sector and the procurement centres of expertise. Forum members have advised that the threshold for competition adopted by different organisations and/or sectors varies. In their view, decisions on competition should continue to be based on the availability of a market for the commodity/service in question rather than a specific financial threshold.

17. We do not propose to amend regulation 8(21) to include a specific financial threshold at this stage. However, we propose to keep this under review in light of developing caselaw.

18. Millstream also suggested that we should consider specifying the Scottish Public Sector Advertising Portal as the required method of advertising. SPD issued guidance (Scottish Procurement Policy Note 3/2006⁷) in March 2006 on advertising contracts that are exempt from the Scottish Procurement Regulations. That guidance confirmed that:

“It is for individual contracting bodies to determine the form and the means of publication, taking into account the value of the contract and the extent to which it is likely to be of interest to the market”.

19. We will be recommending use of the Advertising Portal, once established, for all public contracts. However, we recognise the need for a degree of flexibility and do not consider it appropriate to specify, in legislation, that contracting bodies must use the Portal to advertise contracts.

20. The Institute of Commissioning Professionals commented on the applicability of regulation 8(21) to the contracting of Part B services and underlined the importance of promoting open competition and greater transparency in the contracting of health and social care services.

21. A further respondent to the consultation questioned the potential cost to contracting bodies of demonstrating that contracts not or not fully subject to the provisions of the Public Procurement Directives (and hence the Scottish Regulations) have been publicised and awarded in line with the principles of the EC Treaty. The respondent recommended that SPD should produce guidance on the degree of evidence required for very low value orders.

22. We believe that it is for individual contracting bodies to decide if a contract should be advertised and to include in the decision making process an assessment of how they would justify their decision if called upon to do so. Contracting

⁷ <http://www.scotland.gov.uk/Resource/Doc/1265/0023351.pdf>

authorities should develop their own internal procedures, tailored to the commodities/services which they purchase.

23. The same respondent also asked whether SPD has fully considered the consequences of giving effect to the ECJ ruling in the “*Te/Austria*” case in regulation 8(21) of the Public Contracts (Scotland) Regulations 2006 and regulation 11(20) of the Utilities Contracts (Scotland) Regulations 2006.

24. The consequences were indeed fully considered as part of the consultation on the draft Public Contracts (Scotland) Regulations 2006 and Utilities Contracts (Scotland) Regulations 2006.

Comments on proposed amendments to Schedule 1 of the Public Contracts (Scotland) Regulations 2006

25. We were asked by a respondent to the consultation to clarify whether the new national and sectoral centres of procurement expertise should be included in Schedule 1.

26. Schedule 1 of the Public Contracts (Scotland) Regulations 2006 incorporates the UK contracting authorities listed in Annex 1 to the World Trade Organisation (WTO) Government Procurement Agreement (GPA). Contracting authorities (or their successor bodies) are therefore included in Schedule 1 only if listed in Annex 1 to the GPA.

Conclusions

27. We propose to adopt the changes suggested by McGrigors and Maclay, Murray & Spens in relation to section 32(2) of the Public Contracts (Scotland) Regulations 2006 and new paragraphs 8A and 8B in regulation 2(6)(c) of the amending regulations respectively. We intend to proceed, without further change, with the proposed amendment to regulation 8(21) of the Public Contracts (Scotland) Regulations 2006 and regulation 11(20) of the Utilities Contracts (Scotland) Regulations 2006.

28. During the period of this consultation, we have been notified of a request from the European Commission to update the list of central bodies in Annex 1 to the GPA. Annex 1 will be updated to reflect any machinery of government changes or name changes; new bodies will be added only where they are undertaking a function previously undertaken by an Annex 1 body.

29. In light of this exercise, we do not propose to use the current amending regulations to amend Schedule 1 of the Public Contracts (Scotland) Regulations 2006. Instead, we plan to wait until any changes to Annex 1 to the GPA have been confirmed and to update Schedule 1 at the same time as parallel changes are made to the UK Regulations.

Next steps

30. Having considered all of the comments received as part of the consultation, we will now finalise the amending regulations, which are likely to be in force by the end of March 2008.

Scottish Procurement Directorate
January 2008

SCOTTISH STATUTORY INSTRUMENTS

2007 No.

PUBLIC PROCUREMENT

The Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2007

<i>Made</i> - - - -	2007
<i>Laid before the Scottish Parliament</i>	2007
<i>Coming into force</i> - -	2007

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽⁸⁾.

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2007 and come into force on [] 2007.

(2) In these Regulations the “Public Contracts Regulations” means the Public Contracts (Scotland) Regulations 2006⁽⁹⁾ and the “Utilities Contracts Regulations” means the Utilities Contracts (Scotland) Regulations 2006⁽¹⁰⁾.

(3) These Regulations extend to Scotland only.

Amendments to the Public Contracts Regulations

2.—(1) The Public Contracts Regulations are amended as follows.

(2) In regulation 5 (application)—

(a) in paragraph (1) delete “and regulation 8(21)”; and

(b) after paragraph (2) insert—

“(2A) For the purposes of paragraph (2)—

(a) a framework agreement; or

(b) a dynamic purchasing system,

in respect of which only Part B services contracts can be based or awarded is a proposal in relation to a Part B services contract.”.

⁽⁸⁾ 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15. The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

⁽⁹⁾ S.S.I. 2006/1.

⁽¹⁰⁾ S.S.I. 2006/2.

- (3) In regulation 8 (thresholds)–
- (a) in paragraph (1) after “These Regulations” insert “, except paragraph (21) of this regulation,”;
 - (b) in paragraph (21) after “advertising” insert “and follow a procedure leading to the award of the contract”.
- (4) In regulation 13(a)(ii) (Use of negotiated procedure with prior publication of a contract notice) for “or 16(7)” substitute “, 16(7) or 18(10)”.
- (5) In regulation 14 (Use of negotiated procedure without prior publication of a contract notice)–
- (a) for paragraph (1)(a)(i) substitute–
 - “(i) when a contracting authority is using the negotiated procedure in accordance with regulation 13(a) and invites to negotiate the contract all of, and only, those economic operators which submitted a tender following an invitation made during the course of the discontinued open procedure, restricted procedure or competitive dialogue procedure (not being a tender which was excluded in accordance with regulation 15(11), 16(7) or 18(10));”;
 - (b) in paragraph (5)(b) for “regulation 11” substitute “regulation 8”.
- (6) In regulation 23 (criteria for the rejection of economic operators)–
- (a) in paragraph (4)(j) for “(7), (8) and (9)” substitute “(7), (7A), (7B), (8), (8A), (8B) and (9)”;
 - (b) after paragraph (7) insert–
 - “(7A) An economic operator established in Cyprus shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if–
 - (a) in relation to procedures for the award of a public services contract or a public supply contract the economic operator is either–
 - (i) certified as incorporated by the Registrar of Companies and Official Receiver (Εφορος Εταιρειών και Επίσημος Παραλήπτης); or
 - (ii) certified as having declared on oath that he is carrying on business in the trade in question in the State in which he is established at a specific place of business and under a specific trading name; or
 - (b) in relation to procedures for the award of a public works contract the economic operator is certified by the Council for the Registration and Audit of Civil Engineering and Building Contractors (Συμβούλιο Εγγραφής και Ελέγχου Εργοληπτών Οικοδομικών και Τεχνικών Έργων) according to the Registration and Audit of Civil Engineering and Building Contractors Law of Cyprus.”;
 - “(7B) An economic operator established in Malta shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if–
 - (a) the economic operator supplies his “numru ta' reġistrazzjoni tat- Taxxa tal- Valur Miżjud (VAT) u n- numru tal-licenzja ta' kummerċ”;
 - (b) where the economic operator is a member of a partnership or is a company, it supplies the relevant registration number as issued by the Malta Financial Services Authority”.
 - (c) after paragraph (8) insert–
 - “(8A) In relation to procedures for the award of a public services contract an economic operator established in Hungary shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if the economic operator is certified as being entitled to be engaged in the trade in question in the State in which he is established.
 - (8B) In relation to procedures for the award of a public supply contract an economic operator established in Spain shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if the economic operator is certified as having declared on oath that it is entitled to be engaged in the trade in question in the State in which it is established.”;
- (7) In regulation 37 (sub-contracting the work or works to be carried out under a public works concession contract)–
- (a) for paragraph (4)(b) substitute–

“(b) which the concessionaire does not intend to enter into with an economic operator–

- (i) who is a member of the group of economic operators which acted jointly for the purpose of obtaining the public works concession contract; or
- (ii) related to it or any member of that group; and”.

(b) for paragraph (13) substitute–

“(13) A contracting authority shall require applicants for a public works concession contract to submit with the application a list of–

- (a) all economic operators which are related to the applicant, and
- (b) all economic operators which are related to the economic operators referred to in sub-paragraph (a),

and to update the list from time to time to take account of any changes in the economic operators referred to in sub-paragraphs (a) and (b).”.

(8) In Schedule 1 (GPA Annex 1 Contracting Authorities)–

(a) under the entry for the Department for Culture, Media and Sport, for “National History Museum” substitute “Natural History Museum”,

(b) under the entry for the Scottish Ministers–

- (i) for “The NHS Education for Scotland Board” substitute “Special Health Boards constituted under section 2 of the National Health Service (Scotland) Act 1978⁽¹¹⁾,
- (ii) delete “Scottish Council for Postgraduate Medical and Dental Education”,
- (iii) for “Scottish National Health Service Authorities and Trusts” substitute “Health Boards constituted under section 2 of the National Health Service (Scotland) Act 1978,
- (iv) for “Parole Board for Scotland and Local Review Committees” substitute “Parole Board for Scotland”,
- (v) for “Scottish Criminal Record Office” substitute “Scottish Police Services Authority”,
- (vi) for “Scottish Crime Squad” substitute “Scottish Crime and Drug Enforcement Agency”,
- (vii) for “Scottish Fire Training Squad” substitute “Scottish Fire Services College”, and
- (viii) for “Rent Assessment Panel and Committees” substitute “The private rented housing panel and private rented housing committees constituted under Schedule 4 to the Rent (Scotland) Act 1984⁽¹²⁾”.

(9) In Schedule 3 (categories of service) in category 24 of Part B for “Educational and vocational health services” substitute “Educational and vocational educational services”.

(10) In Schedule 4 (extension to non-member states) in the table omit the following entries–

- (a) 1. Bulgaria, and
- (b) 5. Romania.

(11) For Schedule 6 (professional or trade registers), substitute the Schedule set out in the Schedule to these Regulations.

Amendments to the Utilities Contracts Regulations

3.—(1) The Utilities Contracts Regulations are amended as follows.

(2) In regulation 2(1) (interpretation) in the definition of “central purchasing body” for “a utility which is a contracting authority” substitute “a contracting authority, including a contracting authority which is a utility,”.

⁽¹¹⁾ 1978 c.29. Section 2 was amended by the National Health Service and Community Care Act 1990 (c.19), section 28(a)(i) and (ii) and (b). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

⁽¹²⁾ 1984 c.58.

(3) In regulation 5(1) (application) for “Subject to regulation 11(20), these Regulations” substitute “These Regulations”.

(4) In regulation 7(4) (Exclusion of contracts awarded to affiliated undertakings or joint ventures) for “a utility may calculate” substitute “a utility shall calculate”.

(5) In regulation 9 (exemption of contracts where activity is directly exposed to competition) after paragraph (3) add–

“(4) For the purposes of this regulation, and as at [insert date] the Commission has adopted the following decisions–

(a) Commission Decision of 8 March 2006 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to electricity generators in England, Scotland and Wales⁽¹³⁾;

(b) Commission Decision of 26 February 2007 establishing that Article 30(1) of Directive 2004/17/EC of the European Parliament and of the Council coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors applies to the supply of electricity and gas in England, Scotland and Wales⁽¹⁴⁾.”.

(6) In regulation 11 (thresholds)–

(a) in paragraph (1) after “These Regulations” insert “, except paragraph (20) of this regulation,”;

(b) in paragraph (20) after “advertising” insert “and follow a procedure leading to the award of the contract”.

(7) In Schedule 4 (extension to non-member states), in the table omit the following entries–

(a) 1. Bulgaria, and

(b) 5. Romania.

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh

2007

⁽¹³⁾ 2006/211/EC, O.J. No. L 76, 15.3.2006, p.6.

⁽¹⁴⁾ 2007/141/EC, O.J. No. L 62, 1.3.2007, p.23.

SCHEDULE

Regulation 2(9)

SCHEDULE TO BE SUBSTITUTED FOR SCHEDULE 6 TO THE PUBLIC CONTRACTS REGULATIONS

“SCHEDULE 6

Regulation 23(4)(j)

PROFESSIONAL OR TRADE REGISTERS

PUBLIC SERVICES CONTRACTS

1. In relation to procedures for the award of a public services contract, the following are the appropriate professional or trade registers for the purposes of regulation 23(4)(j)–

in Austria, the Firmenbuch, Gewerberegister or Mitgliederverzeichnisse der Landeskammern;

in Belgium, the Registre du commerce/Handelsregister or the ordres professionnels/ Beroepsorden;

in Bulgaria, Търговски регистър;

in the Czech Republic, the obchodní rejstřík;

in Denmark, the Erhvervs- og Selskabsstyrelsen;

in Estonia, the Keskäriregister;

in Finland, the Kaupparekisteri or Handelsregistret;

in France, the Registre du commerce et des sociétés or the Répertoire des métiers;

in Germany, the Handelsregister, the Handwerksrolle, the Vereinsregister, Partnerschaftsregister or the Mitgliedsverzeichnisse de Berufskammern der Ländern;

in Hungary, the Cégnyilvántartás, the egyéni vállalkozók jegyzői nyilvántartása, or a szakmai kamarák nyilvántartása;

in Iceland, the Firmaskrá or Hlutafélagaskrá;

in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato, the Registro delle commissioni provinciali per l'artigianato and the Consiglio nazionale degli ordini professionali;

in Latvia, the Uzņēmumu reģistrs (Enterprise Register);

in Lithuania, the Juridinių asmenų registras;

in Luxembourg, the Registre aux firmes and the Rôle de la chambre des métiers;

in the Netherlands, the Handelsregister;

in Norway, the Foretaksregisteret;

in Poland, Krajowy Rejestr Sądowy (National Court Registry);

in Portugal, the Registo nacional das Pessoas Colectivas;

in Romania, Registrul Comerțului;

in Slovakia, the Obchodný register;

in Slovenia, the Sodni register or the obrtni register;

in Spain, the Registro Oficial de Empresas Clasificadas del Ministerio de Hacienda; and

in Sweden, the aktiebolags-, handels- eller föreningsregistren.

PUBLIC WORKS CONTRACTS

2. In relation to procedures for the award of a public works contract the following are the appropriate professional or trade registers for the purposes of regulation 23(4)(j)–

in Austria, the Firmenbuch, Gewerberegister or Mitgliederverzeichnisse der Landeskammern;

in Belgium, the Registre du commerce/Handelsregister;

in Bulgaria, Търговски регистър;

in the Czech Republic, the obchodní rejstřík;

in Denmark, the Erhvervs- og Selskabsstyrelsen;

in Estonia, the Keskäriregister;

in Finland, the Kaupparekisteri or Handelsregistret;

in France, the Registre du commerce et des sociétés or the Répertoire des métiers;

in Germany, the Handelsregister or the Handwerksrolle;

in Greece, the registrar of contractors' enterprises (Μητρώο Εργοληπτικών Επιχειρήσεων) of the Ministry for Environment, Town and Country Planning and Public Works (ΥΠΕΧΩΔΕ);

in Hungary, the Cégnyelvántartás or the egyéni vállalkozók jegyzői nyilvántartása;

in Iceland, the Firmaskrá;

in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato;

in Latvia, the Uzņēmumu reģistrs (Enterprise Register);

in Lithuania, the Juridinių asmenų registras;

in Luxembourg, the Registre aux firmes and the Rôle de la chambre des métiers;

in the Netherlands, the Handelsregister;

in Norway, the Foretaksregisteret;

in Poland, the Krajowy Rejestr Sądowy (National Court Registry);

in Portugal, the Instituto dos Mercados de Obras Públicas e Particulares e do Imobiliário (IMOPPI) (CAEOPP);

in Romania, Registrul Comerțului;

in Slovakia, the Obchodný register;

in Slovenia, the Sodni register or the obrtni register;

in Spain, the Registro Oficial de Empresas Clasificadas del Ministerio de Hacienda; and

in Sweden, aktiebolags-, handels- eller föreningsregistren.

PUBLIC SUPPLY CONTRACTS

3. In relation to procedures for the award of a public supply contract the following are the appropriate professional or trade registers for the purposes of regulation 23(4)(j)–

in Austria, the Firmenbuch, Gewerberegister or Mitgliederverzeichnisse der Landeskammern;

in Belgium, the Registre du commerce/Handelsregister;

in Bulgaria, Търговски регистър;

in the Czech Republic, the obchodní rejstřík;

in Denmark, the Erhvervs- og Selskabsstyrelsen;

in Estonia, the Keskäriregister;

in Finland, the Kaupparekisteri or Handelsregistret;

in France, the Registre du commerce et des sociétés or the Répertoire des métiers;

in Germany, the Handelsregister or Handwerksrolle;

in Greece, the Βιοτεχνικό ή Εμπορικό ή Βιομηχανικό Επιμελητήριο;

in Hungary, the Cégyilvántartás or egyéni vállalkozók jegyzői nyilvántartása;

in Iceland, the Firmaskrá;

in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato and the Registro delle Commissioni provinciali per l'artigianato;

in Latvia, the Uzņēmumu reģistrs (Enterprise Register);

in Lithuania, the Juridinių asmenų registras;

in Luxembourg, the Registre aux firmes and the Rôle de la chambre des métiers;

in Norway, the Foretaksregisteret;

in the Netherlands, the Handelsregister;

in Poland, the Krajowy Rejestr Sądowy (National Court Registry);

in Portugal, the Registo Nacional das Pessoas Colectivas;

in Romania, Registrul Comerțului

in Slovakia, the Obchodný register;

in Slovenia, the Sodni register or the obrtni register;

in Spain, the Registro Mercantil; and

in Sweden, aktiebolags-, handels- eller föreningsregistren.”

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Public Contracts (Scotland) Regulations 2006 (S.S.I. 2006/1) (“the Public Contracts Regulations”) and the Utilities Contracts (Scotland) Regulations 2006 (S.S.I. 2006/2) (“the Utilities Contracts Regulations”).

Council Directive 2004/18/EC (OJ L134 30.4.2004, p.114) concerns the co-ordination of the procedures for the award of public works contracts, public supply contracts and public services contracts. Council Directive 2004/17/EC (OJ L134 30.4.2004, p.1) concerns the co-ordination of procurement procedures of entities operating in the water, energy, transport and postal service sectors. Those Directives have been implemented for Scotland by the Public Contracts Regulations and the Utilities Contracts Regulations respectively.

Regulation 2 makes minor amendments to the Public Contracts Regulations to clarify the application of the regulations to a framework agreement or dynamic purchasing system in relation to which only Part B services contracts can be based or awarded; to the use of the negotiated procedure without prior publication of a contract notice; and to the subcontracting of work under a public works concession contract.

There is a minor amendment to regulation 8(21) of the Public Contracts Regulations in order to clarify the Community obligations which are imposed upon contracting authorities even when the estimated value of the contract falls below the thresholds set out in Regulation 8.

There are also amendments made to the lists of professional and trade registers within the Public Contracts Regulations, so as to include professional and trade registers from Member States who joined the European Union in May 2004 (as set out in the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the treaties on which the European Union is founded, OJ L236 23.9.2003, p.33) and January 2007 (as set out in Council Directive 2006/97/EC adapting certain Directives in the field of free movement of goods, by reason of the accession of Bulgaria and Romania, OJ L363 20.12.2006, p.107). There are also amendments made to update the names of various contracting authorities which are listed in Schedule 1 of the Public Contracts Regulations.

Regulation 2 makes a further consequential amendment to the Public Contracts Regulations following the accession of Bulgaria and Romania.

Regulation 3 makes a minor amendment to the Utilities Contracts Regulations to clarify the calculation of turnover by a utility in respect of its affiliated undertakings. It also includes a list of the Commissions decisions for the purposes of the regulations. There is also a further consequential amendment to the Utilities Contracts Regulations following the accession of Bulgaria and Romania.