

EXECUTIVE NOTE

The Public Contracts (Scotland) Regulations 2006 S.S.I. 2006/1

1. Background

The Public Contracts (Scotland) Regulations 2006 gives effect in Scots law to the European Directive on procurement in the public sector (Directive 2004/18/EC). Directive 2004/18/EC was adopted by the EU's Council of Ministers and the European Parliament on 31 March 2004. It came into force on the day it was published in the Official Journal of the European Union on 30 April 2004 and must be implemented within 21 months of that date, which means it must be fully implemented in the UK by 31 January 2006. We propose to achieve this by the making of Regulations under section 2(2) of the European Communities Act 1972. This instrument is subject to the negative resolution procedures.

2. Policy Objectives

Public procurement legislation seeks to ensure that public sector bodies award contracts in an efficient and non-discriminatory manner. The Regulation sets out the procedures to be followed at each stage of the procurement process leading to the award of contracts above certain financial thresholds for works, services and supplies by contracting authorities as defined (state, regional or local authorities and bodies governed by public law). This Instrument brings together the three separate existing UK Statutory Instruments, for public works, supplies and services contracts into a single text. To take account of modern procurement techniques, there are new provisions facilitating the use of e-procurement, providing for competitive dialogue in the award of complex contracts, and explicitly providing for the use of framework agreements. There is also greater clarity on the extent to which social and environmental issues can be considered during the procurement process.

3. Consultation

In developing policy and negotiating lines leading up to the agreement of the new Directive, there was wide consultation led by the Office of Government Commerce ("OGC"), the part of HM Treasury which was responsible for the negotiation of the directive at the UK level. Those consulted included the Chartered Institute of Purchasing and Supply, Confederation of British Industry, Department for Environment, Food and Rural Affairs, the Welsh Assembly Government, Northern Ireland, Heads of Procurement in other Government Departments, Office of the Deputy Prime Minister, Small Business Service, Trade Union Congress and, of course, the Scottish Ministers.

Once the Directive was adopted at European level, Scottish Ministers consulted, independently from OGC, on the policy approach to implementation in Scotland. This consultation process ended in October 2004, and resulted in a total of 40 responses being received from a range of interested parties including Government departments, local authorities, law firms, suppliers, trade unions and pressure groups.

Further to this, Scottish Ministers undertook a second round of public consultation, seeking views on the text of the draft Scottish Statutory Instrument, resulting in 20 responses being received.

4. Financial Effects

As the Regulation clarifies, simplifies and modernises legislation that already exists, it should not cause any additional costs for public sector bodies, nor should it affect front line delivery of services. Similarly, there is unlikely to be any compliance costs for businesses.