

2008 No. 291

PUBLIC PROCUREMENT

**The Public Contracts and Utilities Contracts (Common
Procurement Vocabulary Codes) Amendment (Scotland)
Regulations 2008**

Made - - - - *28th August 2008*

Laid before the Scottish Parliament *1st September 2008*

Coming into force - - *23rd September 2008*

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

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Public Contracts and Utilities Contracts (Common Procurement Vocabulary Codes) Amendment (Scotland) Regulations 2008 and come into force on 23rd September 2008.

(2) These Regulations extend to Scotland only.

(3) In these Regulations—

“contracting authority” has the meaning given to it by regulation 3 of the Public Contracts Regulations;

“economic operator” has the meaning given by regulation 4 of the Public Contracts Regulations;

“framework agreement” means an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies;

“Public Contracts Regulations” means the Public Contracts (Scotland) Regulations 2006(b);

“Utilities Contracts Regulations” means the Utilities Contracts (Scotland) Regulations 2006(c); and

“utility” has the meaning given in regulation 3 of the Utilities Contracts Regulations.

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15 and the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1). 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.

(b) S.S.I. 2006/1, as amended by S.S.I. 2007/565, 2007/2157 and 2008/94.

(c) S.S.I. 2006/2, as amended by S.S.I. 2007/565, 2007/2157 and 2008/94.

Amendment of the Public Contracts Regulations

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

(2) In regulation 2(1)(interpretation), in the definition of “Common Procurement Vocabulary”, after “and of the Council on the Common Procurement Vocabulary” insert “as amended by Commission Regulation (EC) No. 213/2008 amending Regulation (EC) No. 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV(a)”.

(3) For Schedule 2 (activities constituting works) substitute the Schedule contained in Schedule 1 to these Regulations.

(4) For Schedule 3 (categories of services) substitute the Schedule contained in Schedule 2 to these Regulations.

Amendment of the Utilities Contracts Regulations

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

(2) In regulation 2(1)(interpretation), in the definition of “Common Procurement Vocabulary”, after “and of the Council on the Common Procurement Vocabulary” insert “as amended by Commission Regulation (EC) No 213/2008 amending Regulation (EC) No. 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV”.

(3) For Schedule 2 (activities constituting works) substitute the Schedule contained in Schedule 1 to these Regulations.

(4) For Schedule 3 (categories of services) substitute the Schedule contained in Schedule 2 to these Regulations, but as adapted for this purpose by the substitution of the words “a utility” for the words “a contracting authority” in both places where they appear in the second column of the entry for category 8.

Transitional provision

4.—(1) A contracting authority, or as the case may be a utility, in relation to any contract awarded by it or framework agreement concluded by it prior to the coming into force of these Regulations, may treat the references to Schedules 2 and 3 in the regulations specified in paragraph (2) as references to those Schedules before their amendment by these Regulations.

(2) The specified regulations are—

- (a) regulation 40(1)(f) (statistical and other reports) of the Public Contracts Regulations; and
- (b) regulation 38(3) and (4) (statistical and other reports) of the Utilities Contracts Regulations.

JOHN SWINNEY

A member of the Scottish Executive

St Andrew’s House,
Edinburgh
28th August 2008

(a) O.J. L 74, 15.3.2008, p.1.

SCHEDULE 1

Regulations 2(3) and 3(3)

“SCHEDULE 2

Regulation 2(1)

ACTIVITIES CONSTITUTING WORKS

<i>Section F</i>			<i>Construction</i>		
<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>Subject</i>	<i>Notes</i>	<i>CPV Code</i>
45			Construction	Construction of new buildings and works, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	Demolition of buildings and other structures	45110000
				Clearing of building sites	
				Earth moving: excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc.	
				Site preparation for mining:	
				overburden removal and other development and preparation of mineral properties and sites	
				Building site drainage	
				Drainage of agricultural or forestry land	

<i>Section F</i>			<i>Construction</i>		
<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>Subject</i>	<i>Notes</i>	<i>CPV Code</i>
		45.12	Test drilling and boring	Test drilling, test boring and core sampling for construction, geo-physical, geological or similar purposes	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	Construction of all types of buildings Construction of civil engineering constructions Bridges, including those for elevated highways, viaducts, tunnels and subways Long-distance pipelines, urban communication and power lines Ancillary urban works Assembly and erection of prefabricated constructions on the site	45210000 Except: 45213316 45220000 45231000 45232000
		45.22	Erection of roof covering and frames	Erection of roofs Roof covering Waterproofing	45261000
		45.23	Construction of highways, roads, airfields and sport facilities	Construction of highways, streets, roads, other vehicular and pedestrian ways Construction of railways	45212212 and DA03 45230000 Except: 45231000 45232000 45234115

<i>Section F</i>				<i>Construction</i>	
<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>Subject</i>	<i>Notes</i>	<i>CPV Code</i>
				Construction of airfield runways	
				Construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations	
				Painting of markings on road surfaces and car parks	
		45.24	Construction of water projects	Construction of: waterways, harbour and river works, pleasure ports (marinas), locks, etc. dams and dykes dredging subsurface work	45240000
		45.25	Other construction work involving special trades	Construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment Construction of foundations, including pile driving Water well drilling and construction, shaft sinking Erection of non-self-manufactured steel elements Steel bending	45250000 45262000

<i>Section F</i>			<i>Construction</i>		
<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>Subject</i>	<i>Notes</i>	<i>CPV Code</i>
				Bricklaying and stone setting	
				Scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms	
				Erection of chimneys and industrial ovens	
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	Installation in buildings or other construction projects of:	45213316 45310000 Except: 45316000
				electrical wiring and fittings	
				telecommunications systems	
				electrical heating systems	
				residential antennas and aerials	
				fire alarms	
				burglar alarm systems	
				lifts and escalators	
				lightning conductors, etc.	
		45.32	Insulation work activities	Installation in buildings or other construction projects of thermal, sound or vibration insulation	45320000

<i>Section F</i>			<i>Construction</i>		
<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>Subject</i>	<i>Notes</i>	<i>CPV Code</i>
		45.33	Plumbing	Installation in buildings or other construction projects of: plumbing and sanitary equipment gas fittings heating, ventilation, refrigeration or air-conditioning equipment and ducts sprinkler systems	45330000
		45.34	Other building installation	Installation of illumination and signalling systems for roads, railways, airports and harbours Installation in buildings or other construction projects of fittings and fixtures n.e.c.	45234115 45316000 45340000
	45.4		Building completion		45400000
		45.41	Plastering	Application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials	45410000
		45.42	Joinery installation	Installation of non-self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials	45420000

<i>Section F</i>				<i>Construction</i>	
<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>Subject</i>	<i>Notes</i>	<i>CPV Code</i>
		45.43	Floor and wall covering	<p>Interior completion such as ceilings, wooden wall coverings, movable partitions, etc.</p> <p>Laying, tiling, hanging or fitting in buildings or other construction projects of:</p> <p>ceramic, concrete or cut stone wall or floor tiles</p> <p>parquet and other wood floor coverings, carpets and linoleum floor coverings, including of rubber or plastic</p> <p>terrazzo, marble, granite or slate floor or wall coverings</p> <p>wallpaper</p>	45430000
		45.44	Painting and glazing	<p>Interior and exterior painting of buildings</p> <p>Painting of civil engineering structures</p> <p>Installation of glass, mirrors, etc.</p>	45440000
		45.45	Other building completion	<p>Installation of private swimming pools</p> <p>Steam cleaning, sand blasting and similar activities for building exteriors</p> <p>Other building completion and finishing work n.e.c.</p>	45212212 and DA04 45450000

<i>Section F</i>			<i>Construction</i>		
<i>Division</i>	<i>Group</i>	<i>Class</i>	<i>Subject</i>	<i>Notes</i>	<i>CPV Code</i>
	45.5		Renting of construction or demolition equipment with operator		45500000
		45.50	Renting of construction or demolition equipment with operator		45500000

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SCHEDULE 2

Regulations 2(4) and 3(4)

“SCHEDULE 3

Regulation 2(2)

CATEGORIES OF SERVICES

<i>Category</i>	<i>Services</i>	Part A	
		<i>CPC Reference No</i>	<i>CPV Code</i>
1	Maintenance and repair of vehicles and equipment	6112, 6122, 633, 886	from 50100000-6 to 50884000-5 (except for 50310000-1 to 50324200-4 and 50116510-9, 50190000-3, 50229000-6, 50243000-0), and from 51000000-9 to 51900000-1
2	Transport by land, including armoured car services and courier services but not including transport of mail and transport by rail	712 (except 71235), 7512, 87304	from 60100000-9 to 60183000-4 (except 60160000-7, 60161000-4, 60220000-6), and from 64120000-3 to 64121200-2
3	Transport by air but not transport of mail	73 (except 7321)	from 60410000-5 to 60424120-3 (except 60411000-2, 60421000-5), and 60500000-3, and from 60440000-4 to 60445000-9
4	Transport of mail by land, other than by rail, and by air	71235, 7321	60160000-7, 60161000-4 60411000-2, 60421000-5
5	Telecommunications services	752	from 64200000-8 to 64228200-2, 72318000-7, and from 72700000-7 to 72720000-3
6	Financial services: (a) Insurance services (b) Banking and investment services other than financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments and central bank services	ex 81, 812, 814	from 66100000-1 to 66720000-3
7	Computer and related services	84	from 50310000-1 to 50324200-4, from 72000000-5 to 72920000-5 (except 72318000-7 and from 72700000-7 to 72720000-3), 79342410-4

Part A			
<i>Category</i>	<i>Services</i>	<i>CPC Reference No</i>	<i>CPV Code</i>
8	Research and development services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs and the services are to be wholly paid for by the contracting authority	85	from 73000000-2 to 73436000-7 (except 73200000-4, 73210000-7, 73220000-0)
9	Accounting, auditing and book-keeping services	862	from 79210000-9 to 79223000-3
10	Market research and public opinion polling services	864	from 79300000-7 to 79330000-6 and 79342310-9, 79342311-6
11	Management consultancy services and related services but not arbitration and conciliation services	865, 866	from 73200000-4 to 73220000-0, from 79400000-8 to 79421200-3 and 79342000-3, 79342100-4, 79342300-6, 79342320-2, 79342321-9, 79910000-6, 79991000-7, 98362000-8
12	Architectural services; engineering services and integrated engineering services; urban planning and landscape engineering services; related scientific and technical consulting services; technical testing and analysis services	867	from 71000000-8 to 71900000-7 (except 71550000-8) and 79994000-8
13	Advertising services	871	from 79341000-6 to 79342200-5 (except 79342000-3 and 79342100-4)
14	Building-cleaning services and property management services	874, 82201 to 82206	from 70300000-4 to 70340000-6, and from 90900000-6 to 90924000-0
15	Publishing and printing services on a fee or contract basis	88442	from 79800000-2 to 79824000-6, and from 79970000-6 to 79980000-7
16	Sewage and refuse disposal services; sanitation and similar services	94	from 90400000-1 to 90743200-9 (except 90712200-3), from 90910000-9 to 90920000-2 and 50190000-3, 50229000-6, 50243000-0

Part B			
<i>Category</i>	<i>Services</i>	<i>CPC Reference No</i>	<i>CPV Code</i>
17	Hotel and restaurant services	64	55100000-1 to 55524000-9 and from 98340000-8 to 98341100-6
18	Transport by rail	711	from 60200000-0 to 60220000-6
19	Transport by water	72	from 60600000-4 to 60653000-0, and from 63727000-1 to 63727200-3
20	Supporting and auxiliary transport services	74	from 63000000-9 to 63734000-3 (except 63711200-8, 63712700-0, 63712710-3, and from 63727000-1 to 63727200-3), and 98361000-1
21	Legal services	861	from 79100000-5 to 79140000-7
22	Personal placement and supply services	872	from 79600000-0 to 79635000-4 (except 79611000-0, 79632000-3, 79633000-0), and from 98500000-8 to 98514000-9
23	Investigation and security services, other than armoured car services	873 (except 87304)	from 79700000-1 to 79723000-8
24	Education and vocational education services	92	from 80100000-5 to 80660000-8 (except 80533000-9, 80533100-0, 80533200-1)
25	Health and social services	93	79611000-0 and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services	96	from 79995000-5 to 79995200-7, and from 92000000-1 to 92700000-8 (except 92230000-2, 92231000-9, 92232000-6)
27	Other services		”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Public Contracts (Scotland) Regulations 2006 (“the Public Contracts Regulations”) and the Utilities Contracts (Scotland) Regulations 2006 (“the Utilities Contracts Regulations”).

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

Commission Regulation (EC) 213/2008 (“the CPV Regulation”) concerning public procurement procedures, as regards the revision of the Common Procurement Vocabulary amends Annexes I, IIA and IIB of the Public Sector Directive and Annexes XII, XVIIA and XVIIIB of the Utilities Directive which list the activities, along with their Common Procurement Vocabulary (“CPV”) codes, which constitute public works and public services for the purposes of the two Directives.

The CPV Regulation does not change the material scope of the Public Sector Directive or of the Utilities Directive.

Regulations 2 and 3 amend the Public Contracts Regulations and the Utilities Contracts Regulations to reflect the amendments to the Public Sector Directive and Utilities Directive made by the CPV Regulation.

A full regulatory impact assessment has not been produced as no impact on the private and voluntary sectors is foreseen.

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