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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 125**

**PUBLIC PROCUREMENT**

**The Concession Contracts (Scotland)  
Amendment Regulations 2016**

*Made* - - - - 23rd February 2016  
*Laid before the Scottish  
Parliament* - - - - 24th February 2016  
*Coming into force* - - 18th April 2016

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972<sup>(1)</sup> (“the 1972 Act”) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in that section and it appears to the Scottish Ministers that it is expedient for references in these Regulations to the following EU instruments to be construed as references to those EU instruments as amended from time to time—

- (a) [Directive 1999/93/EC](#) of the European Parliament and of the Council on a Community framework for electronic signatures<sup>(2)</sup>;
- (b) Regulation [\(EC\) 2195/2002](#) of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV)<sup>(3)</sup>;
- (c) [Directive 2002/21/EC](#) of the European Parliament and of the Council on the common regulatory framework for electronic communication networks and services<sup>(4)</sup>;
- (d) [Directive 2004/39/EC](#) of the European Parliament and of the Council concerning markets for financial instruments amending Council Directives [85/611/EEC](#) and [93/6/EEC](#) and [Directive 2000/12/EC](#) of the European Parliament and of the Council and repealing Council [Directive 93/22/EEC](#)<sup>(5)</sup>;
- (e) Commission [Decision 2009/767/EC](#) setting out measures facilitating the use of procedures by electronic means through the points of single contact under [Directive 2006/123/EC](#) of the

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(1) [1972 c.68](#). Section 2(2) was amended by the Scotland Act [1998 \(c.46\)](#), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act [2008 \(c.7\)](#), section 3(3) and Part 1 of the Schedule (“the 2008 Act”). The functions conferred upon a 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. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act Schedule, Part 1.

(2) OJ L 13, 19.1.2000, p.12, amended by Regulation [\(EC\) No 1137/2008](#) (OJ L 311, 21.11.2008, p.1).

(3) OJ L 340, 16.12.2002, p.1.

(4) OJ L 108, 24.4.2002, p.33; last amended by [Directive 2009/140/EC](#) (OJ L 337, 18.12.2009, p.37).

(5) OJ L 145, 30.4.2004, p.1.

- European Parliament and of the Council on services in the internal market (notified under document C(2009)7806)(6);
- (f) [Directive 2010/13/EU](#) of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in member States concerning the provision of audio-visual media services(7);
- (g) [Directive 2013/34/EU](#) of the European Parliament and of the Council on the annual financial statements, consolidated financial statement and related reports of certain types of undertaking(8), amending [Directive 2006/43/EC](#) of the European Parliament and of the Council and repealing Council Directives [78/660/EEC](#) and [83/349/EEC](#);
- (h) Commission [Decision 2011/130/EU](#) establishing minimum requirements for the cross-border processing of documents signed electronically by competent authorities under [Directive 2006/123/EC](#) of the European Parliament and of the Council on services in the internal market (notified under document C(2011) 1081(9));
- (i) [Directive 2014/23/EU](#) of the European Parliament and of the Council on the award of concession contracts(10);
- (j) [Directive 2014/24/EU](#) of the European Parliament and of the Council on public procurement and repealing [Directive 2004/18/EC](#)(11); and
- (k) [Directive 2014/25/EU](#) of the European Parliament and of the Council on procurement entities operating in the water, energy, transport and postal services sectors and repealing [Directive 2004/17/EC](#)(12),
- and they are to be construed accordingly.

### Citation and commencement

1. These Regulations may be cited as the Concession Contracts (Scotland) Amendment Regulations 2016 and come into force on 18th April 2016.

### Amendment of the Concession Contracts (Scotland) Regulations

- 2.—(1) The Concession Contracts (Scotland) Regulations 2016(13) are amended as follows.
- (2) In regulation 2 (interpretation)—
- (a) in the definition of “contracting body”, for “contracting body” substitute “contracting entity”;
- (b) after paragraph (3) insert—
- “(4) In these Regulations, references to the following Directives, Regulation and Commission Decisions are references to the Directives, Regulation and Commission Decisions as amended from time to time—
- (a) [Directive 1999/93/EC](#) of the European Parliament and of the Council on a Community framework for electronic signatures(14);

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(6) OJ L 274, 20.10.2009, p.36, last amended by Commission [Decision 2013/662/EU](#) (OJ L 306, 16.11.2013, p.21).

(7) OJ L 95, 15.4.2010, p.1.

(8) OJ L 182, 29.6.2013, p.19.

(9) OJ L 53, 26.2.2011, p.66.

(10) OJ L 94, 28.3.2014, p.1.

(11) OJ L 94, 28.3.2014, p.65.

(12) OJ L 94, 28.3.2014, p.243.

(13) [S.S.I. 2016/65](#).

(14) OJ L 13, 19.1.2000, p.12, amended by Regulation (EC) No 1137/2008 (OJ L 311, 21.11.2008, p.1).

- (b) Regulation (EC) 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV)(15);
- (c) Directive 2002/21/EC of the European Parliament and of the Council on the common regulatory framework for electronic communication networks and services(16);
- (d) Directive 2004/39/EC of the European Parliament and of the Council concerning markets for financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC(17);
- (e) Commission Decision 2009/767/EC setting out measures facilitating the use of procedures by electronic means through the points of single contact under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (notified under document C(2009)7806)(18);
- (f) Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in member States concerning the provision of audio-visual media services(19);
- (g) Directive 2013/34/EU of the European Parliament and of the Council on the annual financial statements, consolidated financial statement and related reports of certain types of undertaking(20), amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;
- (h) Commission Decision 2011/130/EU establishing minimum requirements for the cross-border processing of documents signed electronically by competent authorities under Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market (notified under document C(2011) 1081(21);
- (i) Directive 2014/23/EU of the European Parliament and of the Council on the award of concession contracts(22);
- (j) Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18/EC(23); and
- (k) Directive 2014/25/EU of the European Parliament and of the Council on procurement entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC(24).”.

(3) In regulation 32 (rules applicable to communication), in paragraph (18) delete “as amended from time to time.”.

(4) In regulation 51 (duty owed to economic operators) in paragraph (5) for “GPS” substitute “GPA”.

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(15) OJ L 340, 16.12.2002, p.1.

(16) OJ L 108, 24.4.2002, p.33; last amended by Directive 2009/140/EC (OJ L 337, 18.12.2009, p.37).

(17) OJ L 145, 30.4.2004, p.1.

(18) OJ L 274, 20.10.2009, p.36, last amended by Commission Decision 2013/662/EU (OJ L 306, 16.11.2013, p.21).

(19) OJ L 95, 15.4.2010, p.1.

(20) OJ L 182, 29.6.2013, p.19.

(21) OJ L 53, 26.2.2011, p.66.

(22) OJ L 94, 28.3.2014, p.1.

(23) OJ L 94, 28.3.2014, p.65.

(24) OJ L 94, 28.3.2014, p.243.

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(5) In regulation 63 (transitional provision and saving where procurement was commenced before 18th April 2016)—

- (a) in paragraph (1), for “47(1)(a) to (3)” substitute “47(1)(a), (2) and (3)”;
- (b) in paragraph (2), for “service” substitute “services”.

(6) In regulation 64 (transitory provision prior to full commencement of regulation 32(1) to (7)), in paragraph (2) for “2106” substitute “2016”.

St Andrew’s House, Edinburgh  
23rd February 2016

*KEITH BROWN*  
A member of the Scottish Government

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations correct drafting errors in the Concession Contracts (Scotland) Regulations 2016.