

2019 No. 7

PUBLIC PROCUREMENT

**The Electronic Invoicing (Public Contracts etc.) Amendment
(Scotland) Regulations 2019**

Made - - - - - *16th January 2019*

Laid before the Scottish Parliament *18th January 2019*

Coming into force in accordance with Regulation 1(2)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electronic Invoicing (Public Contracts etc.) Amendment (Scotland) Regulations 2019.

(2) These Regulations come into force on—

- (a) 18 April 2019 in relation to central government authorities and all bodies established by or under the National Health Service (Scotland) Act 1978(b), and
- (b) 18 April 2020 in relation to all other contracting authorities and contracting entities.

(3) These Regulations extend to Scotland only.

(4) In this regulation, “central government authority” has the same meaning as in the Public Contracts (Scotland) Regulations 2015(c).

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“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) (“the 2008 Act”), section 3(3) and Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by the 2006 Act, section 28, and was amended by the 2008 Act, Schedule, Part 1.

(b) 1978 c.29.

(c) S.S.I. 2015/446.

Amendment of the Public Contracts (Scotland) Regulations 2015

2.—(1) The Public Contracts (Scotland) Regulations 2015 are amended in accordance with paragraph (2).

(2) After regulation 70 (conditions for performance of contracts) insert—

“Electronic invoicing

70A.—(1) It shall be an implied term of all public contracts that contracting authorities must accept and process electronic invoices for the provision of works, supplies or services in the performance of a contract where such invoices—

- (a) comply with the European standard on electronic invoicing reference to which has been published pursuant to Article 3(2) of Directive 2014/55/EU of the European Parliament and of the Council on electronic invoicing in public procurement^(a), and
- (b) contain any of the syntaxes on the list published pursuant to Article 3(2) of that Directive.

(2) In this regulation—

“electronic invoice” means an invoice containing the information components referred to in regulation 70A(3) that has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing,

“GDPR” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, and

“syntax” means the machine readable language or dialect used to represent the data elements contained in an electronic invoice.

(3) An electronic invoice referred to in this regulation must contain the following information components—

- (a) process and invoice identifiers,
- (b) the invoice period,
- (c) seller information,
- (d) buyer information,
- (e) payee information,
- (f) seller’s tax representative information,
- (g) contract reference,
- (h) delivery details,
- (i) payment instructions,
- (j) allowance or charge information,
- (k) invoice line item information,
- (l) invoice totals, and
- (m) VAT breakdown.

(4) This regulation is without prejudice to applicable law on data protection.

(5) Subject to any provisions to the contrary in any enactments and without prejudice to the exemptions and restrictions set out in GDPR and the Data Protection Act 2018^(b),

(a) OJ L 133, 6.5.2014, p.1.

(b) 2018 c.12.

personal data obtained for the purpose of electronic invoicing may be used only for that purpose or for purposes compatible with it.

(6) This regulation is without prejudice to any provision made by or under Schedule 11 of the Value Added Tax Act 1994(a).”.

Amendment of the Concession Contracts (Scotland) Regulations 2016

3.—(1) The Concession Contracts (Scotland) Regulations 2016(b) are amended in accordance with paragraph (2).

(2) In Part 4 (Rules on the performance of concession contracts) immediately before regulation 45 (subcontracting), insert—

“Electronic invoicing

44A.—(1) It shall be an implied term of all public contracts that contracting entities must accept and process electronic invoices for the provision of works, supplies or services in the performance of a contract where such invoices—

- (a) comply with the European standard on electronic invoicing reference to which has been published pursuant to Article 3(2) of Directive 2014/55/EU of the European Parliament and of the Council on electronic invoicing in public procurement(c), and
- (b) contain any of the syntaxes on the list published pursuant to Article 3(2) of that Directive.

(2) In this regulation—

“electronic invoice” means an invoice containing the information components referred to in regulation 44A(3) that has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing,

“European standard” means a standard adopted by a European standardisation organisation and made available to the general public,

“GDPR” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, and

“syntax” means the machine readable language or dialect used to represent the data elements contained in an electronic invoice.

(3) An electronic invoice referred to in this regulation must contain the following information components—

- (a) process and invoice identifiers,
- (b) the invoice period,
- (c) seller information,
- (d) buyer information,
- (e) payee information,

(a) 1994 c.23; section 96(1) defines “the Commissioners” as meaning the Commissioners of Customs and Excise and “regulations” as meaning regulations made by the Commissioners under the Act; paragraphs 2A and 2B of Schedule 11 were inserted by section 24(2) of Finance Act 2002 (c.23); paragraph 3 of Schedule 11 was substituted by section 24(3) of Finance Act 2002; paragraph 6 of Schedule 11 was amended by paragraphs 4 and 5 of Schedule 37 to the Finance Act 2008 (c.9). The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5 of the Commissioners For Revenue and Customs Act 2005 (c. 11); section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs. [DN; needs to be updated from 2012]

(b) S.S.I. 2016/65.

(c) OJ L 133, 6.5.2014, p.1.

- (f) seller’s tax representative information,
- (g) contract reference,
- (h) delivery details,
- (i) payment instructions,
- (j) allowance or charge information,
- (k) invoice line item information,
- (l) invoice totals, and
- (m) VAT breakdown.

(4) This Regulation is without prejudice to applicable law on data protection.

(5) Subject to any provisions to the contrary in any enactments and without prejudice to the exemptions and restrictions set out in GDPR and the Data Protection Act 2018, personal data obtained for the purpose of electronic invoicing may be used only for that purpose or for purposes compatible with it.

(6) This regulation is without prejudice to any provision made by or under Schedule 11 of the Value Added Tax Act 1994.”.

Amendment of the Utilities Contracts (Scotland) Regulations 2016

4.—(1) The Utilities Contracts (Scotland) Regulations 2016(a) are amended in accordance with paragraph (2).

(2) After regulation 84 (conditions for performance of contracts) insert—

“Electronic invoicing

84A.—(1) It shall be an implied term of all public contracts that utilities must accept and process electronic invoices for the provision of works, supplies or services in the performance of a contract where such invoices—

- (a) comply with the European standard on electronic invoicing reference to which has been published pursuant to Article 3(2) of Directive 2014/55/EU of the European Parliament and of the Council on electronic invoicing in public procurement, and
- (b) contain any of the syntaxes on the list published pursuant to Article 3(2) of that Directive.

(2) In this regulation—

“electronic invoice” means an invoice containing the information components referred to in regulation 84A(3) that has been issued, transmitted and received in a structured electronic format which allows for its automatic and electronic processing,

“GDPR” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, and

“syntax” means the machine readable language or dialect used to represent the data elements contained in an electronic invoice.

(3) An electronic invoice referred to in this regulation must contain the following information components—

- (a) process and invoice identifiers,
- (b) the invoice period,
- (c) seller information,

(a) S.S.I. 2016/49.

- (d) buyer information,
- (e) payee information,
- (f) seller's tax representative information,
- (g) contract reference,
- (h) delivery details,
- (i) payment instructions,
- (j) allowance or charge information,
- (k) invoice line item information,
- (l) invoice totals, and
- (m) VAT breakdown.

(4) This regulation is without prejudice to applicable law on data protection.

(5) Subject to any provisions to the contrary in any enactments and without prejudice to the exemptions and restrictions set out in GDPR and the Data Protection Act 2018, personal data obtained for the purpose of electronic invoicing may be used only for that purpose or for purposes compatible with it.

(6) This regulation is without prejudice to any provision made by or under Schedule 11 of the Value Added Tax Act 1994.”.

St Andrew's House,
Edinburgh
16th January 2019

DEREK MACKAY
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2014/55/EU of the European Parliament and of the Council on electronic invoicing in public procurement. These Regulations extend to Scotland only.

Regulation 2 amends the Public Contracts (Scotland) Regulations 2015. It makes provision about receipt and processing of electronic invoices and specifies the core elements of an electronic invoice. It provides that these Regulations are without prejudice to certain rights under GDPR and the Data Protection Act 2018 and the provisions of Council Directive 2006/112/EC on the common system of value added tax.

Regulation 3 makes similar amendments to the Concession Contracts (Scotland) Regulations 2016.

Regulation 4 makes similar amendments to the Utilities Contracts (Scotland) Regulations 2016.

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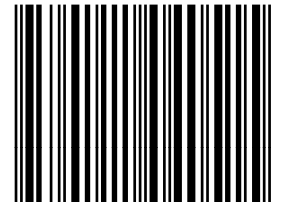
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