

# Economy and Fair Work Committee

## 29<sup>th</sup> Meeting 2023, (Session 6), Wednesday 22 November 2023

### SSI cover note

<b>Title of Instrument:</b>	<b>Public Procurement (Agreement on Government Procurement) (Thresholds) (Miscellaneous Amendments) (Scotland) Regulations 2023</b>
<b>Relevant Dates:</b>	<b>laid 26 October 2023 coming into force 1 January 2024</b>
<b>Reporting deadline:</b>	<b>27 November 2023</b>
<b>Type of instrument:</b>	<b>Negative</b>

### Parliamentary procedure

1. An instrument subject to negative procedure comes into force on the date specified in the instrument, unless a motion to annul is agreed to by the Parliament.
2. Under [Rule 10.4](#) of Standing Orders, any motion to annul must be lodged within 40 days of the date the instrument was laid. Any member (whether a member of the lead committee or not) may lodge a motion. Further information on the negative procedure can be found on the [Parliament's website](#).
3. No motion to annul has been lodged.
4. The Interpretation and Legislative Reform (Scotland) Act 2010 requires a negative SSI is laid before the Scottish Parliament at least 28 days before the instrument comes into force.

### Background to the regulations

5. Scottish Ministers are required to review and adjust the thresholds which apply to procurement activity in the scope of the Agreement on Government Procurement (GPA) every two years to ensure that they correspond with the thresholds set out in the GPA, reflecting any differences in exchange rates over the period.

6. These thresholds will be updated by all signatories to the GPA and should be consistent over time.
7. These are uncontroversial policy decisions, and the Scottish Government has no scope to take an alternative route. As the UK is a member of the GPA, it must extend the same rights to all countries who subsequently join the agreement. The process for updating the thresholds is set out as part of the UK's membership and defined in Scottish legislation.
8. The Regulations are attached at **Annexe A**, the Policy Note is attached at **Annexe B**.

## Purpose of the regulations

9. The purpose of the regulations is to make amendments to Scottish procurement regulations to update the financial thresholds that apply to public procurement, in line with the United Kingdom's obligations under the Agreement on Government Procurement's (GPA) thresholds.
10. Calculations are carried out in accordance with the methodology set out in Section 5A of the [Public Contracts \(Scotland\) Regulations 2015](#), Section 15 of the [Utilities Contracts \(Scotland\) Regulations 2016](#) and Section 8A of the [Concession Contracts \(Scotland\) Regulations 2016](#).
11. The calculation is based on the average value of Sterling for the two years up to 31 August 2023.
12. The updated financial thresholds show a less than 1% increase from the current thresholds and will take effect from 1 January 2024.

## Correspondence

13. The Scottish Government advised there has been no consultation on this instrument as it contains minor and technical provisions needed to comply with an international obligation.

## Delegated Powers and Law Reform Committee consideration

14. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 7 November 2023. [Its report](#) raised no points.

## For decision

15. **The Committee is invited to note the instrument.**

## SCOTTISH STATUTORY INSTRUMENTS

## 2023 No. 300

## PUBLIC PROCUREMENT

## The Public Procurement (Agreement on Government Procurement) (Thresholds) (Miscellaneous Amendments) (Scotland) Regulations 2023

<i>Made</i>	- - - -	<i>24th October 2023</i>
<i>Laid before the Scottish Parliament</i>		<i>26th October 2023</i>
<i>Coming into force</i>	- -	<i>1st January 2024</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by regulations 5A(4) and 83A(2) of the Public Contracts (Scotland) Regulations 2015(a), regulations 15A(4) and 108A(2) of the Utilities Contracts (Scotland) Regulations 2016(b), regulations 8A(4) and 60ZA(2) of the Concession Contracts (Scotland) Regulations 2016(c), sections 1(1)(a) and 4(1)(d) of the Trade Act 2021(d) and all other powers enabling them to do so.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Public Procurement (Agreement on Government Procurement) (Thresholds) (Miscellaneous Amendments) (Scotland) Regulations 2023.

(2) These Regulations come into force on 1 January 2024.

**Amendment of the Public Contracts (Scotland) Regulations 2015**

2.—(1) The Public Contracts (Scotland) Regulations 2015 are amended as follows.

(2) In regulation 5(1) (thresholds)—

- (a) in sub-paragraph (a), for “£5,336,937” substitute “£5,372,609”,
- (b) in sub-paragraph (b), for “£138,760” substitute “£139,688”,
- (c) in sub-paragraph (c), for “£213,477” substitute “£214,904”.

**Amendment of the Utilities Contracts (Scotland) Regulations 2016**

3.—(1) The Utilities Contracts (Scotland) Regulations 2016 are amended as follows.

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- (a) S.S.I. 2015/446 as relevantly amended by S.S.I. 2021/378. Regulations 5A and 83A were inserted by regulation 4(6) and (57) of the Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468) (“the 2020 Regulations”).
  - (b) S.S.I. 2016/49 as relevantly amended by S.S.I. 2021/378 and S.S.I. 2021/424. Regulations 15A and 108A were inserted by regulation 6(7) and (59) of the 2020 Regulations.
  - (c) S.S.I. 2016/65 as relevantly amended by S.S.I. 2021/378. Regulations 8A and 60ZA were inserted by regulation 8(6) and (31) of the 2020 Regulations.
  - (d) 2021 c. 10.

(2) In regulation 15(1) (thresholds)—

- (a) in sub-paragraph (a), for “£426,955” substitute “£429,809”,
- (b) in sub-paragraph (b), for “£5,336,937” substitute “£5,372,609”.

#### **Amendment of the Concession Contracts (Scotland) Regulations 2016**

**4.** In regulation 8(1) (thresholds and methods for calculating the estimated value of the concession contract) of the Concession Contracts (Scotland) Regulations 2016, for “£5,336,937” substitute “£5,372,609”.

#### **Saving where public contract procurement procedures commenced before 1 January 2024**

**5.—**(1) In this Regulation—

- (a) “the Procurement Regulations” means the following and, in relation to any procedure, means whichever of the following applies to that procedure—
  - (i) the Public Contracts (Scotland) Regulations 2015,
  - (ii) the Utilities Contracts (Scotland) Regulations 2016,
  - (iii) the Concession Contracts (Scotland) Regulations 2016,
- (b) the following have the same meaning as in the Procurement Regulations—
  - (i) concession contract,
  - (ii) contract,
  - (iii) contracting authority,
  - (iv) design contest
  - (v) dynamic purchasing system
  - (vi) economic operator,
  - (vii) framework agreement
  - (viii) public contract,
  - (ix) UK e-notification service,
  - (x) utility,
- (c) “procedure” means all processes undertaken by the contracting authority in accordance with the Procurement Regulations, with the intention of awarding a contract, concession contract or public contract but does not include procedures taken for the purposes of modifying a contract, concession contract or public contract.

(2) Nothing in these Regulations affects any procedure or design contest that commenced under the Procurement Regulations before 1 January 2024.

(3) For that purpose, a procedure or design contest has been commenced before 1 January 2024 if, before that date—

- (a) a notice has been submitted for publication on the UK e-notification service in accordance with the Procurement Regulations, in order to—
  - (i) invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract, concession contract, public contract, framework agreement or dynamic purchasing system, or
  - (ii) advertise an intention to carry out a design contest,
- (b) the contracting authority or utility has had published any form of advertisement seeking offers or expressions of interest in a proposed contract, concession contract, public contract, framework agreement or dynamic purchasing system, or

- (c) the contracting authority or utility has contacted any economic operator in order to—
  - (i) seek expressions of interest or offers in respect of a proposed contract, concession contract, public contract, framework agreement or dynamic purchasing system, or
  - (ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed contract, concession contract, public contract, framework agreement or dynamic purchasing system.

*TOM ARTHUR*

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
24th October 2023

**EXPLANATORY NOTE**

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

These Regulations amend the thresholds that apply in the field of public procurement that are specified in the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 and the Concession Contracts (Scotland) Regulations 2016 respectively in accordance with the obligations of the United Kingdom under the Agreement on Government Procurement agreed among certain World Trade Organisation members including the United Kingdom and as required by each set of Regulations being amended.

**POLICY NOTE**

**THE PUBLIC PROCUREMENT (AGREEMENT ON GOVERNMENT  
PROCUREMENT) (THRESHOLDS) (MISCELLANEOUS AMENDMENTS)  
(SCOTLAND) REGULATIONS 2023**

**SSI 2023/300**

The above instrument was made in exercise of the powers conferred by regulations 5A(4) and 83A(2) of the Public Contracts (Scotland) Regulations 2015, regulations 15A(4) and 108A(2) of the Utilities Contracts (Scotland) Regulations 2016, regulations 8A(4) and 60ZA(2) of the Concession Contracts (Scotland) Regulations 2016 and sections 1(1)(a) and 4(1)(d) of the Trade Act 2021 and all other powers enabling them to do so. The instrument is subject to negative procedure.

**Summary Box**

<p>This instrument makes amendments to Scottish procurement regulations for the purpose of updating the financial thresholds that apply to public procurement, in line with the United Kingdom's obligations under the Agreement on Government Procurement's thresholds (GPA).</p>
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**Policy Objectives**

The thresholds set out in the United Kingdom's coverage schedule of the World Trade Organisation's GPA are denominated in Special Drawing Rights. Scottish Ministers are required to update the sterling value of these thresholds, set out in domestic legislation, to reflect currency fluctuations every two years.

Calculations are carried out in accordance with the methodology set out in Section 5A of the Public Contracts (Scotland) Regulations 2015, Section 15A of the Utilities Contracts (Scotland) Regulations 2016 and Section 8A of the Concession Contracts (Scotland) Regulations 2016. The calculation is based on the average value of sterling for the two years to 31 August 2023.

The updated financial thresholds, which will take effect from 1 January 2024 show a less than 1% increase from the current thresholds.

The UK Government will amend the relevant legislation in force elsewhere in the UK; thresholds will remain aligned across the UK.

This SSI is needed in order to fulfil international obligations.

**EU Alignment Consideration**

While this instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU, the EU, like the UK, is party to the GPA and the European

Commission is expected to update the thresholds applicable in the EU according to the same methodology.

### **Consultation**

There has been no consultation on this instrument as it contains only minor and technical provisions needed to comply with an international obligation. The Scottish Government does not have any discretion in the matter.

### **Impact Assessments**

Impact assessments have not been carried out in relation to this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

### **Financial Effects**

The Minister for Community Wealth and Public Finance confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Scottish Procurement and Property Directorate

*October 2023*