

Scottish Procurement Policy Note: SPPN 1/2023

23 March 2023

Public Procurement - changes to Scottish procurement legislation and PCS to give effect to the Free Trade Agreements between the UK and Australia and the UK and New Zealand.

Purpose

The purpose of this Scottish Procurement Policy Note (SPPN) is to give advance notice of changes to Scottish procurement legislation and to Public Contracts Scotland (PCS) that will be made to implement the Free Trade Agreements (FTAs) between the UK and Australia, and the UK and New Zealand.

Key points

The key points are:

- bidders from Australia and New Zealand will be afforded the full rights set out in the procurement regulations in relation to contracts covered by those agreements
- changes will also be made to procurement rules in relation to: the use of Prior Information Notices as a call for competition; estimating the value of a contract; and terminating contracts

Background

The UK-Australia FTA was signed on 16 December 2021 and the UK-New Zealand FTA was signed on the 28 February 2022.

Like other FTAs, these have chapters which deal specifically with public procurement. These chapters set out detailed agreements on both coverage and the rules which must be followed.

For the most part, implementation of these FTAs will have little practical impact on the day-to-day activities of public procurement officials, but some changes to the procurement rules in Scotland will be needed.

We expect these changes to come into effect at the end of May. We will tell you the precise date when this is known.

These rule changes will apply to all contracts, regardless of whether bids from Australia or New Zealand are expected.

Summary of changes to Scottish Regulations and PCS

- suppliers from Australia and New Zealand will be entitled to the same equal treatment as Scottish suppliers when bidding for contracts which are covered by these FTAs. They will also be able to bring legal action on the same basis as Scottish suppliers
- there will be a specific prohibition on the termination of contracts for the purposes of avoiding procurement rule obligations
- when an authority is unable to estimate the value of a contract that contract will be explicitly made subject to the procurement rules
- sub-central contracting authorities will no longer be able to use a Prior Information Notice (PIN) as a call for competition instead of publishing a contract notice. PINs will still be able to be used, but a contract notice will also need to be published

Dissemination

Please bring this SPPN to the attention of all relevant staff, including those agencies, non-departmental public bodies and other sponsored public bodies within your area of responsibility.