



Briefing

Procurement

Cabinet Office Consultations: Transposition of Concessions Directive and Utilities Directive

The Cabinet Office has published consultations on 21 August 2015 concerning the UK transposition of the new **Concessions Directive**¹ and the revised **Utilities Directive**².

The consultations will run for 4 weeks until 18 September 2015, with the accompanying draft Regulations expected to come into effect by April 2016 at the latest.

Background

The Concessions Directive and the Utilities Directive, along with the Public Sector Directive, came into force in April 2014. The Government must transpose them into national law by 18 April 2016.

The Public Sector Directive has already been implemented by the Public Contracts Regulations 2015 ("PCR 2015"). The Government now intends to implement the remaining two Directives by the Concessions Contracts Regulations 2016 (the "draft CCR 2016") and the Utilities Contracts Regulations 2016 (the "draft UCR 2016") (together, the "Draft Regulations").

We covered the adoption of the new directives in our February 2014 update: **Adoption by the EU Council of the new procurement package**.

The current consultations stress the mandatory nature of many provisions of the Utilities and Concessions Directives. Combined with the fact that the Government has adopted a policy of "copying out" EU Directives and avoiding "gold-plating", stakeholders are limited in their ability to influence the substantive content of the Draft Regulations.

Key Points to Note

Concessions Directive: Concessions Contracts Regulations 2016

The draft CCR 2016 replace regulations 36 and 37 of the Public Contracts Regulations 2006 which cover the award of works

concessions only under the previous Public Sector Directive. Those two regulations remain in force under the PCR 2015 until the new Concessions Directive is transposed.

The Cabinet Office has also specifically asked for comments on the proposed remedies rules in Part 5 of the draft CCR 2016.

Utilities Directive: Utilities Contracts Regulations 2016

The revised Utilities Directive has removed the indicative list of utilities (by sector) covered by the Directive. Accordingly the draft UCR 2016 do not contain a list of UK utilities.

This places the onus on utilities to determine whether they are caught by the draft UCR 2016.

Consultation Response

Responses to both consultations must be received by 12pm on 18 September 2015.

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¹ Directive 2014/23 on the award of concession contracts

² Directive 2014/25 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17