

# The Public Contracts (Scotland) Regulations 2015

## Relevance and applicability to SBCC Contracts

Many publicly procured construction projects in Scotland are carried out utilising SBCC forms of contracts. Thus, it is important that public sector clients feel confident in using SBCC contracts and that they are fully compliant with the Public Contracts (Scotland) Regulations 2015 (“PC(S)R 2015”).

The Scottish procurement regime differs from The Public Contracts Regulations 2015 (applicable in England and Wales only) and is governed by the Public Contracts (Scotland) Regulations 2015 (SSI 2015/446), the Procurement Reform (Scotland) Act 2014 and associated statutory guidance, and the Procurement (Scotland) Regulations 2016 which apply to below-threshold regulated procurements.

The PC(S)R 2015 apply where the Employer is a contracting authority (as defined in Regulation 2) and awards a public contract that meets or exceeds the relevant Scottish procurement thresholds. For contract drafting, provisions relevant to the PC(S)R 2015 apply only where the Employer is a Scottish public authority and the Contract is subject to these Regulations.

## What are the specific provisions included?

### Regulation 70 (Prompt payment)

Scottish procurement law imposes payment obligations through a combination of Regulation 70 of the PC(S)R 2015 and duties in the Procurement Reform (Scotland) Act 2014. Contracting authorities must ensure prompt payment of invoices and verification of invoices “in a timely fashion” under the PRS Act 2014 statutory guidance, and a 30-day payment period is expected through all tiers of the supply chain as part of Scottish Government statutory guidance under the 2014 Act. Authorities must ensure that subcontractors’ terms mirror the main payment obligations and that these are passed down the supply chain.

Standard SBCC payment provisions generally align with the required timeframes, but contracting authorities must ensure the 30-day requirement and project specific payment obligations are complied with.

### Regulation 71 (Sub-contracting)

Regulation 71 of the PC(S)R 2015 introduces several duties in relation to subcontracting. Contractors may be required to provide the Employer with basic information about immediate subcontractors, with the right to extend such information to lower tiers, and the Employer may require the Contractor to replace or remove a subcontractor where exclusion grounds apply under the Regulations. SBCC contracts for Scotland incorporate clauses that can give effect to these statutory rights at both main-contract and subcontract level.

### Regulation 73 (Termination)

Regulation 73 of the PC(S)R 2015 requires public contracts to include rights allowing termination where a substantial modification has occurred that would have required a new procurement procedure under Regulation 72, the Contractor was subject to a mandatory exclusion ground at the time of award and should not have been selected, or the award constitutes a serious infringement of procurement legislation. SBCC contracts must therefore include clear and appropriate termination rights and provisions addressing the consequences of termination in these statutory circumstances.

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## **Additional duties under the Procurement Reform (Scotland) Act 2014**

In Scotland, contracting authorities must also comply with duties under the 2014 Act. The sustainable procurement duty under section 10 requires consideration to be made with regards to economic, social and environmental wellbeing. There are community benefit requirements imposed under section 26 for contracts at or above the statutory threshold, selection and award requirements under section 29 ensuring transparent and fair criteria, and Fair Work First expectations incorporated into updated statutory guidance. These duties must be reflected in procurement procedures and may require project specific contractual provisions, which will be incorporated into the relevant SBCC contract(s).