



THE SCOTTISH OFFICE

National Health Service in Scotland  
Management Executive

NHS  
MEL (1992)11

St. Andrew's House  
Edinburgh EH1 3DG

Dear Colleague

THE PUBLIC WORKS CONTRACTS  
REGULATIONS 1991

Telephone 031-244  
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26 May 1992

Summary

1. This letter draws attention to:
  - (a) the need to ensure that satisfactory proof of despatch of contract notices can be furnished and
  - (b) the European Commission's recommendation to use standard nomenclature and notices for works contracts when preparing notices for publication in the Official Journal (OJ) of the European Communities.
2. The Annex to this letter provides some background to why it has become necessary to draw the matters at 1(a) and 1(b) above to your attention.
3. A copy of the Commission's recommendation referred to at 1(b) together with the relevant forms and guidance notes are enclosed and should be read in association with the Annex to this letter.

Action

4. General Managers are asked to ensure that Unit General Managers and other members of staff concerned with the placing of contracts are made aware of the contents of this letter.

Yours sincerely

H R McCALLUM  
Director of Estates

Addressees

For Action:

General Managers,  
Health Boards

General Manager,  
Common Services Agency

General Manager, State  
Hospital

Chief Executives, and  
Chief Executive  
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For information:

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To be copied to Unit  
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## BACKGROUND NOTE

## (A) Proof of Despatch of Notices for Publication in the Official Journal

1. Regulation 30(1) of the Public Works Contract Regulations 1991 requires indicative notices, contract notices and contract award notices to be sent by the most appropriate means to the Office of Official Publications (the OJ Office) and, in the case of contract notices for the accelerated procedure, by telex, telegram or fax. Regulation 30(3) requires that contracting authorities shall retain evidence of the date of despatch to the OJ of each notice.

2. Following a case last year concerning the despatch of 2 notices for contracts involving Community funds, in which the contracting authority asserted that they were enclosed with a third notice and the OJ Office had no record of their receipt, consideration has been given to what arrangements might be made to supplement certificates of posting (and fax despatch slips) so as to relate these more clearly to the contents of communications. The EC Works Directive (No 71/305) requires that contracting authorities must be able to supply proof of the date of despatch, but as the word 'proof' may have been misleading, the Public Works Contracts Regulations 1991 which enacts Council Directive 71/305/EEC and which came into force on 21 December 1991, makes it clear that contracting authorities shall retain evidence of date of despatch of individual notices (Regulation 30(3)).

3. One way of implementing this Regulation would be to include with other records of the procurement a signed and dated certificate from a responsible official indicating the date and means of despatch of each notice. When the notice is sent by post or fax the responsible official should, if possible, post or fax it personally and then sign and date a copy for the file, stating whether it was posted or whether it was faxed and attaching any certificate of posting or fax despatch slip. If a covering letter is used it should refer to each notice. If any dispute arises the official, on referring to the copy, should be able to certify that he or she posted or faxed the notice. In the case of telexes, the sender's print-out should be put on the relevant file. As the OJ Office will acknowledge receipt of any notice for publication, contracting authorities are also advised to ensure that they receive and retain such acknowledgements, unless it is known that the notices have been published in the OJ.

## (B) Standardisation of Notices for Publication in the Official Journal and the Use of Standardised Works Nomenclature

1. The European Commission has recommended that, when preparing notices for publication in the Official Journal of the European Communities, contracting authorities should use standard notices and standardised works nomenclature. The Commission's Recommendation and its Appendix (published in the Supplement to the Official Journal of the European Communities) which includes the relevant forms and guidance notes is attached.

2. The forms in the Appendix referred to in the preceding paragraph will help in compiling the various notices required by The Public Works

Contracts Regulations 1991. Member States will be consulted for comments on these provisions by the Commission towards the end of 1992; contracting authorities will be better placed at that stage to comment and therefore to seek to influence the ultimate shape and content of the notices and nomenclature if they implement the Commission's Recommendation at present.

3. The following notes will assist in completing the standard forms:

3.1 Where the standard forms call for more information than specified in the Regulations, completion of the relevant entries is optional (see, for example, the boxes for "Overall estimated value excluding VAT" in Section 03b of the works open, restricted and negotiated procedure contract notices and Section 01b of the works concessionaire contract notice). This is explained further in General Instruction No 6 of the Supplement.

3.2 The title of the standard notice "Works - Contracts awarded by the Concessionaire" is misleading. It is a contract notice issued before the tendering stage and is not a notification of the award of a contract.

3.3 Contracting authorities who tick box 13 in section 11a of the standard contract notice for a works open procedure - or the equivalent box in other standard contract notices for works - will need to indicate in box 99 of the same section which of the confirmations listed in Article 23(a), (b) and (c) of the Works Directive are required.

3.4 There are no standard forms for either public works prior information notices or public works concession contract notices.

4. HMSO is being asked to consider whether, and how, blank forms for the standard notices can be made available in the UK, but in the meantime contracting authorities may wish to copy the examples enclosed as and when necessary.