

Economy and Fair Work Committee
Wednesday 9 October 2024
26th Meeting, 2024 (Session 6)

Note by the Clerk on the Public Procurement (International Trade Agreements) (Miscellaneous Amendments) (Scotland) Regulations 2024 [draft]

Overview

1. At this meeting, the Committee will take evidence from the Minister for Public Finance, and officials, on the Public Procurement (International Trade Agreements) (Miscellaneous Amendments) (Scotland) Regulations 2024, before debating a motion in the name of the Minister inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below—

Title of instrument: [Public Procurement \(International Trade Agreements\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2024 \[draft\]](#)

Laid under: [The Procurement Act 2023](#)

Laid on: 12 September 2024

Procedure: Affirmative

Lead committee to report by: 6 November 2024

Commencement: If approved, the instrument comes into force on 21 November 2024.

Procedure

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
4. Once laid, the instrument is referred to—
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee—
 - an evidence session with the Minister and officials; followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.

Delegated Powers and Law Reform Committee consideration

8. The DPLR Committee considered the instrument on 24 September 2024 and reported on it in [56th Report, 2024](#).
9. It welcomed the UK Government's commitment to amend the Procurement Act 2023 to correct the reference to the enabling power in section 122(14), as highlighted in the policy note accompanying the SSI.
10. It made no recommendations in relation to the instrument.

Purpose of the instrument

11. The instrument amends the following Scottish procurement regulations—
 - the Concession Contracts (Scotland) Regulations 2016;
 - the Public Contracts (Scotland) Regulations 2015; and
 - the Utilities Contracts (Scotland) Regulations 2016.
12. The Scottish Government is required to make these amendments following updates to UK International Trade Agreements (ITAs) which remove access to bidders from the following countries to the procurement of certain health care services—
 - Georgia;
 - the Republic of Albania;
 - the Republic of Kosovo;
 - the Republic of Moldova;
 - the Republic of North Macedonia; and
 - Ukraine.
13. The instrument also updates the list of ITAs to reflect the date and location of the

amended agreements and inserts a reference into each of the above regulations to a new ITA with Kazakhstan. The UK Government is expected to make similar changes to procurement legislation in the rest of the UK.

14. The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.
15. It highlights an error in the UK Procurement Act 2023. This instrument relies on an enabling power in section 91 of the Act. Section 122 (14a) of the Act incorrectly refers to this enabling power as being in section 90.
16. The Policy Note states that the UK Government is considering options to correct this and has provided assurances that it will do so in due course.

Report

17. **Following today's proceedings, a draft report will be prepared by the clerks. The Committee is invited to delegate responsibility for agreeing the draft report to the Convener.**

**Clerks to the Committee
October 2024**

Annexe: Scottish Government Policy Note

POLICY NOTE

THE PUBLIC PROCUREMENT (INTERNATIONAL TRADE AGREEMENTS) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2024

SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by section 91 of the Procurement Act 2023. The instrument is subject to affirmative procedure.

Summary Box

This instrument makes amendments to Scottish public procurement regulations for the purpose of fulfilling international obligations and reflecting updates to various International Trade Agreements (ITA).

Policy Objectives

This instrument gives effect in Scotland to international obligations.

This instrument amends the schedules of the Scottish public procurement regulations (the Public Contracts (Scotland) Regulations 2015, the Concession Contracts (Scotland) Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016) as a consequence of amendments made to the United Kingdom's ITAs with Georgia, the Republic of Kosovo, Ukraine, the Republic of North Macedonia, the Republic of Moldova and the Republic of Albania. The ITAs with these countries have been amended to remove access to bidders from those countries to the procurement of certain health care services.

In practice, these Regulations update the list of ITAs to reflect the date and location of the amended agreements.

The Republic of Kazakhstan and the UK signed a Strategic Partnership and Cooperation Agreement in April 2024. This instrument inserts the procurement chapter of this agreement into the International Trade Agreement Schedules of the Public Contracts (Scotland) Regulations 2015, the Concession Contracts (Scotland) Regulations 2016 and the Utilities Contracts (Scotland) Regulations 2016.

Suppliers from the Republic of Kazakhstan will be afforded the same rights as economic operators from the United Kingdom for relevant contracts. The equal treatment duty in respect of economic operators from the Republic of Kazakhstan applies to procurements that start on or after the date on which the agreement enters into force.

The UK Government is expected to make similar changes to procurement legislation in the rest of the UK.

This instrument relies on an enabling power in section 91 of the UK Government's Procurement Act 2023. At the time of laying this instrument, section 122 of the Act, which sets out the parliamentary procedures to which regulations made using powers in the Act are subject, erroneously refers at paragraph (14)(a) to an enabling power in section 90, rather than in section 91. There is no enabling power in section 90; this is an error which occurred during renumbering of the Bill's clauses during its passage.

The UK government is currently assessing available options for correcting this error and has provided reassurance that it will be amended in due course.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:

"In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, The Public Procurement (International Trade Agreements) (Miscellaneous Amendments) (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of the Act."

EU Alignment Consideration

This SSI is not directly relevant to the Scottish Government's policy to maintain alignment with the EU, since the SSI is purely consequential and means Scotland can fulfil international obligations.

Consultation

There has been no consultation on this instrument as these are international obligations which must be implemented. The Scottish Government does not have any substantive discretion in the matter.

Impact Assessments

The procurement rule changes described in this policy note are expected to have minimal impact on public purchasers and businesses.

Financial Effects

The Minister for 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
September 2024