

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourteenth Delegated Legislation Committee

DRAFT PUBLIC PROCUREMENT (AMENDMENT
ETC.) (EU EXIT) (NO. 2) REGULATIONS 2019

Thursday 14 March 2019

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The Committee consisted of the following Members:

Chair: MR NIGEL EVANS

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| † Brereton, Jack (<i>Stoke-on-Trent South</i>) (Con) | † Jones, Darren (<i>Bristol North West</i>) (Lab) |
| Campbell, Mr Ronnie (<i>Blyth Valley</i>) (Lab) | † Latham, Mrs Pauline (<i>Mid Derbyshire</i>) (Con) |
| † Chapman, Douglas (<i>Dunfermline and West Fife</i>)
(SNP) | † O'Brien, Neil (<i>Harborough</i>) (Con) |
| † Churchill, Jo (<i>Bury St Edmunds</i>) (Con) | † Platt, Jo (<i>Leigh</i>) (Lab/Co-op) |
| † Cryer, John (<i>Leyton and Wanstead</i>) (Lab) | † Seely, Mr Bob (<i>Isle of Wight</i>) (Con) |
| † Dent Coad, Emma (<i>Kensington</i>) (Lab) | † Tredinnick, David (<i>Bosworth</i>) (Con) |
| † Dowden, Oliver (<i>Parliamentary Secretary, Cabinet
Office</i>) | † Warburton, David (<i>Somerton and Frome</i>) (Con) |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | † Yasin, Mohammad (<i>Bedford</i>) (Lab) |
| † Freeman, George (<i>Mid Norfolk</i>) (Con) | |
| | Kevin Candy, <i>Committee Clerk</i> |
| | † attended the Committee |

Fourteenth Delegated Legislation Committee

Thursday 14 March 2019

[MR NIGEL EVANS *in the Chair*]

Draft Public Procurement (Amendment etc.) (EU Exit) (No. 2) Regulations 2019

11.30 am

The Parliamentary Secretary, Cabinet Office (Oliver Dowden): I beg to move,

That this Committee has considered the draft Public Procurement (Amendment etc.) (EU Exit) (No. 2) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Evans. As hon. Members know, the Government remain committed to securing an agreement on the United Kingdom's exit from the European Union, but we must be prepared for all outcomes. Notwithstanding the motions passed in the House over the past couple of days, it remains the default position that if nothing is agreed we will be in a no-deal situation. The draft regulations deal with procurement in that context.

The amendments made by this instrument do not amount to a material change in procurement policy. To all intents and purposes, they maintain the status quo for UK contracting authorities with regard to their obligations towards certain non-UK suppliers. They will ensure that the UK's procurement system continues to function as intended post EU exit in the event of no deal, and grant certainty to UK contracting entities that they can continue after exit day to procure goods and services in the way they do now. In that way, the Government are ensuring that those entities can continue to be able to obtain value for money for UK taxpayers.

As hon. Members may be aware, the UK Government are working to agree continuity agreements with a number of our international trading partners, which will replicate as closely as possible trade arrangements to which the UK is currently a party via its EU membership. We have already laid before Parliament agreements with Switzerland, Israel and Chile, which contain substantial provisions on procurement. Where the UK has entered into an agreement that contains provisions relating to public procurement, we must ensure that our domestic procurement legislation takes account of the obligations in those agreements.

In their current form, the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019, which were approved by this House a couple of weeks ago, on 20 February, would amend the existing procurement regulations to disapply from exit day the duties that UK contracting authorities currently owe towards economic operators from countries with which the EU has a trade agreement containing procurement provisions. The regulation-making powers in clause 2 of the Trade Bill, which is currently before Parliament, would enable the UK to reinstate those duties in such a way as to reflect the UK's transition continuity agreements, rather than the EU agreements that they replicate to which the UK will no longer be party after exit day. As Committee

members are aware, the Trade Bill is yet to complete its parliamentary passage. In consequence of the absence of bespoke implementing powers, we have had to look at other measures that would enable the UK to demonstrate compliance with agreements that we have worked hard to negotiate.

It is the duty of a responsible Government to ensure that, once we have left the EU, we continue to reap the economic benefits that these agreements bring. It is also our duty to uphold our reputation as a valued and respected trading partner by ensuring that the obligations we have committed to maintain after our withdrawal from the EU are adhered to. I am therefore bringing forward this second EU exit instrument, which will amend the first instrument before it comes into force. Instead of removing the procurement regulations—the obligations owed by UK contracting authorities and other entities towards non-UK suppliers—immediately on exit day, the first SI would preserve them for 18 months after exit day. The need for a second amending instrument was, as hon. Members may recall, referred to during the debate on the first EU instrument in a Delegated Legislation Committee on 13 February, which I also led on behalf of the Government.

In practical terms, the preservation of obligations will have the effect of ensuring that for a time-limited period, suppliers from certain non-EU trading partners will be afforded the same guaranteed rights of access to UK procurement markets that they now enjoy. This mirrors a similar provision already contained in the first SI in respect of suppliers from states that are party to the World Trade Organisation government procurement agreement. That provision has already been approved by the House; it is simply being extended to 18 months, to align it with the provisions that we are introducing in respect of bilateral treaties between the EU and third countries.

By keeping alive duties owed by contracting authorities as they exist already, the Government are ensuring that the UK continues to meet its international procurement obligations. In turn, that will help to ensure that UK businesses continue to enjoy access to overseas procurement opportunities, and that UK contracting authorities can continue to obtain the best possible value for money when procuring through robust supplier competition.

Some hon. Members may at this point question whether, when the UK leaves the EU, it is appropriate to maintain existing obligations arising from EU agreements to which we will be no longer a party, and whether doing so will produce an adverse effect on British businesses and authorities. It should be emphasised that the procurement obligations that arise from the UK's continuity agreements are in essence the same as those that until now have arisen from the EU's trade agreements, meaning that the amendments in this instrument represent a temporary, technical solution to complying with the UK's international procurement obligations until such time as the Trade Bill is enacted.

I assure the Committee again that, in practical terms, the provisions in this instrument amount to a time-limited continuation of the status quo that will create no additional burdens or costs for UK businesses or contracting authorities. Contracting authorities across the UK will continue to be able to procure competitive goods and services from overseas, as they do now, and UK businesses will see no change as a result of this instrument in the

way they go about bidding for and winning lucrative public contract opportunities, both in the UK and in countries with which the UK has a trade agreement. For that reason, it has not been necessary to publish an official impact assessment.

The instrument will ensure that in the event of no deal, the UK's procurement system continues to function as intended post Brexit; that the UK can successfully ratify and comply with its international continuity agreements; and that UK suppliers and contracting authorities can continue to operate, as they do now, for the foreseeable future. I therefore commend the regulations to the Committee.

11.37 am

Jo Platt (Leigh) (Lab/Co-op): Here we are again, for another of our weekly meetings with the Minister. This is the third procurement SI in a row; two are the result of the possibility of a no-deal Brexit, and one could have been sorted months ago but was recently added to the parliamentary logjam.

It is clear that the Government are in turmoil, but the growing crisis is now beginning to hit previously unaffected areas of government, including procurement, as these regulations prove. However, the context in which we are reviewing today's regulations has significantly changed. Last night, we clearly and categorically voted twice to rule out no deal. The Government have a duty to respect the clear and unambiguous position of the House and prevent no-deal regulations such as these ever having to come into effect. We understand why the Government feel it necessary to introduce these measures, but we remember that it is the mishandling of Brexit that has left us scrambling to scrutinise and approve hundreds of SIs, the effects of which will reverberate for a considerable period of time.

I will start by looking at the 18-month so-called transition of 18 international agreements covering procurement. The truth is that the transition is anything but that. It unilaterally opens up our procurement market to a number of countries across the world after the exit date. It allows them to enjoy all the benefits, without any assured obligations in return. This could lead to the Government effectively throwing British industry under the bus, allowing the international industry free access to our markets, without reciprocal arrangements, while forcing British business to compete for UK contracts at home.

The Minister will recall that I raised that dilemma in the Committee scrutinising the original SI. His response to my concerns then was that he would expect co-operation. That simply does not cut it for UK businesses that rely on securing international procurement contracts. They need guarantees, not Ministers' expectations, which these days have a remarkable habit of changing. I ask again: what assurances has the Minister received from other Governments that the arrangements are mutual? Our businesses, especially small and medium-sized enterprises, deserve to know. How many of the 18 countries to which the original agreements applied have agreed to mirror the UK's 18-month transition period?

During the passage of the original SI, the Minister also said:

"There is a small chance of a gap between the "in principle" accession to the GPA that is already agreed and the "in law" joining of the GPA".—[*Official Report, Thirteenth Delegated Legislation Committee*, 13 February 2019; c. 10.]

We now know from the Department for International Trade that the Government now anticipate a short gap. A letter from the Minister confirmed this week that the Government expect a delay, possibly until the end of April. Will the Minister confirm the reason for the change in the situation, how it is being communicated, and that the Government's no-deal planning is now dangerously off-track?

We cannot escape the chaos in which the regulation has been presented. We are confronted with an amendment to an instrument that passed through Committee four weeks ago—an amendment to which the Minister referred in his speech on that occasion. At that point we were asked to pass the instrument knowing that the Government intended to alter it a few weeks later. It is a total mess, and it is all down to the Government shambles, although after the complete mess of the past few days I guess none of us can act surprised.

What message does this send to UK suppliers, to our businesses and to the rest of the world? There are businesses that need certainty. We are asking them to make investment decisions and fulfil public sector contracts, but the Government are rewriting the rules just 15 days before we could leave the European Union without a deal. They are eroding the UK's reputation for stability—something we used to be renowned for. Frankly we are a laughing stock.

The Government are destroying not only the nation's reputation but their own. The Conservative party used to be known as the party of business, but their actions speak louder than words. The past few months have shown them to be abandoning business, and the fiasco I have described is just the latest example. If the Minister were serious in his commitment and his responsibility to protect our procurement market and support UK SMEs, he would support every vote in the House that rules out the chaos of no deal or a hard Brexit, but instead of supporting our procurement market and businesses he voted last night to keep the door open to a no-deal Brexit, which would be chaotic and highly disruptive to businesses, jobs and our economy.

I might contrast the Government's actions last night with our proposals, which would protect our procurement market. They would also unblock the passage of the Trade Bill—the issue that has led to our having to deal with today's emergency measure. Their refusal to back the proposals not only endangers the long-term stability of our procurement market, but is blocking the path towards the Commons majority needed to back a Brexit deal in the national interest.

The proposals before the Committee are symptomatic of the total chaos across Government that is eroding the little trust that the procurement sector still has in them. There are serious questions for the Minister to answer now about the assurances he has received that UK suppliers will be adequately protected and supported. They are serious questions about our membership of the GPA, but there are also serious questions now about the competence of the Government.

The Opposition expect nothing less than concrete assurances and prompt communication with the procurement sector. The fact that the Minister is unable to provide those things today speaks volumes. Yet again, we are presented with regulations that could weaken our already broken procurement market. It is unforgivable that that is because of the Government's negligence. The sector simply deserves much better.

11.44 am

Douglas Chapman (Dunfermline and West Fife) (SNP): It is a pleasure to serve under your chairmanship, Mr Evans.

It is quite clear from the explanatory memorandum that the regulations apply primarily to England and Wales and Northern Ireland. However, the Trade Bill gives Ministers discretionary powers over procurement, which is a devolved area. It is one of the 24 powers that we are concerned about that may be grabbed back by the UK Government in the withdrawal Bill, which may have far-reaching consequences for businesses across a variety of sectors in Scotland, from food and drink to medical equipment.

In the UK, the Federation of Small Businesses reported that only 20% of public procurement contracts went to SMEs in 2017. We have set a target of 33% for 2020, which is encouraging, but in Scotland in 2018 78% of public procurement contracts went to SMEs and 60% of them went to companies in Scotland. That is a 46% increase in the SME contribution since 2014 and amounts to contracts worth nearly £5 billion. For us, public procurement is a big deal.

Since the SME involvement in public procurement in Scotland is such a success story and such a boon for Scottish businesses and economic diversity north of the border, it is completely unfair that the Government may be planning to maintain control of oversight of public procurement in London. Can the Minister assure me that he is not throwing the baby out with the Brexit bathwater?

11.46 am

Oliver Dowden: I have great respect for the hon. Member for Leigh, but she somewhat overstates her case in respect of the regulations. They are just about continuity; there is no change for businesses affected and we are not seeking to rewrite the regulations. All we are doing is accepting the reality of the situation, which is that the Trade Bill has not completed its passage through Parliament, so we have to find a way to give effect to our international obligations.

The principal international obligation that we have to give effect to is the GPA, which the hon. Lady characterised as a failure. Most people did not expect us to conclude the GPA before exit day, but we managed to deliver that. It covers almost all the access rights for United Kingdom businesses, so they will be able to access third-country markets through our membership of it. The way in which the Constitutional Reform and Governance Act 2010 works means that the measure has to be laid 30 days before it takes effect, which is why it will take effect shortly after exit day. There will be a very small window in which, in theory, UK companies will not be able to access those third-country markets.

As I said last time we discussed this, access remains the default for most third-country markets, so the Governments and legislatures in those countries would

have to actively decide and go to the effort of saying that we could not have guaranteed access in that small window—notwithstanding the fact that they know we will have it by the end of the month. In respect of the small number of countries where the default is that we drop out, the situation would have to be that procurements were commenced and completed in that period, so a vanishingly small number of companies will be affected.

On the hon. Lady's point about the wider access to markets, of course there are further mutual obligations in respect of the bilateral agreements between the EU and third countries to which we are a party through our membership of the EU. On procurement, however, most do not go much further than the GPA that we have already agreed. We are making good progress in concluding bilateral trade agreements; I have outlined the ones that we have already reached.

The other point to remember is that the default policy in the United Kingdom is completely open access, so we already allow access regardless of whether countries are signatories to the GPA or other bilateral agreements. We will simply be maintaining that. The only thing that will be different is the right to remedies for third countries as they enter the UK market. A company in a third country that accesses the UK market would not have remedies unless they were granted by the UK Government. The draft instrument gives continuity, in that they will continue to be able to get remedies. In all other respects, the situation will remain exactly the same.

The hon. Member for Dunfermline and West Fife raised several points on Scottish procurement. We very much want to increase the proportion of SMEs able to access Government procurements, and we are making good progress. There is a slight difference between Scotland and the UK, in that UK contracts tend to be much larger. For example, in reprocurring Trident, it is highly unlikely—in fact, impossible—that an SME would win the contract.

On whether the draft instrument will take powers away from Scotland, I say to the hon. Gentleman that everything will continue as it was before. As he knows, we have proceeded with consent. Scotland is replicating these provisions. It is a long-standing practice that the Scottish Government regulate procurements in respect of Scotland, and the draft instrument does not change that. I hope that reassures him.

In summary, this is a prudent step to ensure continuity, reflecting the fact that it remains the case that no deal remains the default position unless and until Parliament legislates to change that. A responsible Government have to take steps that take that into account. Again, I commend the draft regulations to the Committee.

Question put and agreed to.

11.51 am

Committee rose.

