

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Ninth Delegated Legislation Committee

DRAFT PUBLIC PROCUREMENT (ELECTRONIC  
INVOICES ETC.) REGULATIONS 2019

*Thursday 7 March 2019*

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**Monday 11 March 2019**

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**The Committee consisted of the following Members:**

*Chair: MIKE GAPES*

- |   |  |
|---|--|
| † Churchill, Jo ( <i>Bury St Edmunds</i> ) (Con)                        | † Gethins, Stephen ( <i>North East Fife</i> ) (SNP)        |
| † Creasy, Stella ( <i>Walthamstow</i> ) (Lab/Co-op)                     | † Huddleston, Nigel ( <i>Mid Worcestershire</i> ) (Con)    |
| † Daby, Janet ( <i>Lewisham East</i> ) (Lab)                            | † Latham, Mrs Pauline ( <i>Mid Derbyshire</i> ) (Con)      |
| † Dent Coad, Emma ( <i>Kensington</i> ) (Lab)                           | † Lopresti, Jack ( <i>Filton and Bradley Stoke</i> ) (Con) |
| Doughty, Stephen ( <i>Cardiff South and Penarth</i> ) (Lab/<br>Co-op)   | † Morris, Grahame ( <i>Easington</i> ) (Lab)               |
| † Dowden, Oliver ( <i>Parliamentary Secretary, Cabinet<br/>Office</i> ) | † Platt, Jo ( <i>Leigh</i> ) (Lab/Co-op)                   |
| † Fabricant, Michael ( <i>Lichfield</i> ) (Con)                         | † Swire, Sir Hugo ( <i>East Devon</i> ) (Con)              |
| † Fletcher, Colleen ( <i>Coventry North East</i> ) (Lab)                | † Syms, Sir Robert ( <i>Poole</i> ) (Con)                  |
| † Foster, Kevin ( <i>Torbay</i> ) (Con)                                 | Kevin Candy, <i>Committee Clerk</i>                        |
|   | † <b>attended the Committee</b>                            |

# Ninth Delegated Legislation Committee

Thursday 7 March 2019

[MIKE GAPES *in the Chair*]

## Draft Public Procurement (Electronic Invoices etc.) Regulations 2019

11.30 am

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

That the Committee has considered the draft Public Procurement (Electronic Invoices etc.) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Gapes, in what I hope will be a fairly straightforward statutory instrument for the Committee to consider.

The Government are committed to securing a deal to ensure an orderly withdrawal from the European Union. In that event, we will be required to continue to abide by our commitments under the proposed withdrawal agreement, including the obligation to comply with EU law during the implementation period and to transpose European directives into UK law.

One such directive concerns electronic invoicing in public procurement. The draft regulations are a short and simple measure that aims to promote the uptake of electronic invoicing in public procurement by requiring public bodies to accept electronic invoices from their contracted suppliers. Principally, the draft regulations will transpose the e-invoicing directive, but they also make a number of small and minor technical corrections to public procurement rules.

**Michael Fabricant (Lichfield) (Con):** This SI seems to make good sense—it is very modern, and this is how we should be doing business anyway. However, in the event of no deal, will we have to pass a different statutory instrument or will this one still apply?

**Oliver Dowden:** I was just coming to that. The draft regulations are due to come into effect after the withdrawal date so, in the event of no deal, we would clearly not be obliged to implement it because we would not be subject to EU law, but we might decide to continue to do so anyway. There are pretty good grounds for that, because it is in essence a simplification measure for businesses. That brings me to a segue.

Significant benefits can be realised by promoting the uptake of standardised electronic invoicing in public procurement, given the reduction in costs and administrative burdens for procuring entities and their suppliers, and given the environmental impact of a move away from paper-based invoicing. That is why in 2014 the EU adopted directive 2014/55 on electronic invoicing.

The draft regulations transpose that directive into domestic law. They do so by amending existing procurement legislation applicable to the award of public contracts and of contracts in the utilities sector. The Scottish Government have brought forward their own legislation

to give effect to the directive in similar terms to this instrument. The directive contains one simple obligation for member states: to take necessary measures to require public sector buyers and utilities to receive and process electronic invoices that comply with a common standard.

It is important that I stress from the outset that private sector suppliers, other than those privatised utilities remaining subject to public procurement rules, will not be obliged to use the EU invoicing standard unless they wish to. We are not imposing additional costs on suppliers.

The measures that we are introducing will oblige contracting authorities and other procuring entities to include within their contracts an express term requiring them to accept and process electronic invoices that comply with the standard, where of course there is no dispute as to payment. In the absence of such express electronic invoicing provisions in the contract, a term to that effect would be implied—if they do not put it in, this statutory instrument will imply that term. Suppliers will be able to enforce their ability to invoice purchasers for goods and services electronically via the terms of the contract.

The European Committee for Standardisation was commissioned to draft the standard, and the British Standards Institution was involved in its development. The standard was published in October 2017, following which the UK had 18 months to implement the directive's requirements. The deadline for that implementation is 18 April 2019. As I discussed with my hon. Friend the Member for Lichfield, it will not escape the attention of the Committee that that falls after the date on which the UK is anticipated to leave the European Union. However, the Government's aspiration or intention remains that the UK will secure a deal with the European Union. Under the withdrawal agreement, we would then enter the implementation period, during which we continue to be bound by the directive, so the draft regulations will come into force on 18 April 2019.

There is a slight wrinkle in respect of central subcontracting authorities such as local authorities and utilities. The directive confers on member states the discretion to postpone the application of implementing provisions until 18 April 2020, in respect of those entities. We have taken advantage of that derogation. I think it is right that we allow procuring authorities other than central Government authorities time to adapt to the change. However, there is nothing to prevent those authorities from accepting electronic invoices prior to that date.

In the event that no agreement is reached, we will, as we have discussed, consider the options available. We would, of course, be free to implement this provision. I see no reason why we would not choose to do so, but we would make the decision at that point.

As set out in further detail in the explanatory memorandum, we have also taken the opportunity in this instrument to make minor amendments to how the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 refer to offences under the Modern Slavery Act 2015. Those are essentially tidying-up measures.

I hope that members of the Committee will agree that with this instrument we have the opportunity to provide real benefits to both the supplier community and the

public sector, and I look forward to seeing its progress through both Houses. I commend the regulations to the Committee.

11.34 am

**Jo Platt** (Leigh) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Gapes. I will start by expressing our support for efforts to modernise and improve the UK's broken procurement system. From the outset, I should state that we support the principle of e-invoicing. However, there are a number of specific issues with these regulations that I must raise.

First, the timing of the implementation of this regulation derives from an EU directive passed on 16 April 2014, but it has not reached this House until close to the deadline of 18 April 2019. As the Minister is well aware, we are in the midst of a Brexit crisis, with dozens of essential SIs hit by a parliamentary logjam. For the Government to wait until now to lay this SI seems grossly negligent.

There were ample opportunities to pass the regulations—for example, during the passage of the Small Business, Enterprise and Employment Act 2015, which had its First Reading on 25 June 2014. I hope the Minister will explain why the Government have waited until the deadline and laid this SI at a time when Parliament is facing enormous and unprecedented pressure. Why has the Minister also chosen to delay the implementation of provisions relating to sub-central contracting authorities and contracting entities until next year?

One of the most important aspects I wish to raise is the support available for small businesses to adopt these changes. Currently, the Connecting Europe Facility provides funding to businesses adapting to new regulations such as these. Between 2014 and 2016, the Connecting Europe Facility provided over €430 million of funding to the UK. When we leave the European Union, funding such as that will no longer be available. As we know, the Government have consistently refused to commit to replacing EU funding for key areas and have failed to invest in sectors of our economy that need it most, especially regions such as the one I represent.

If we leave with or without a deal, will the Government provide the necessary support businesses need to adapt to these new e-invoicing changes? The regulations are a positive move towards supporting and encouraging e-invoicing, but as prevalence increases we must also ensure that our small businesses, which are often less able to adapt to new and emerging technology, are not left behind.

I do not need to remind the Minister of the potential problems of introducing new technology to procurement. It was recently revealed, for example, that technological flaws in the new shared service platform saw a substantial increase in the number of late payments from the Cabinet Office to its suppliers. Indeed, the number of businesses receiving late payments from the Cabinet Office has nearly tripled in the past two years, despite the Department's promise to crack down on contractors who pay suppliers late. That has sent a worrying signal to businesses who are looking to the Government for leadership, which the Government have failed to provide.

Without concrete reassurances that our procurement market is ready for another technological evolution, we risk further inflicting financial difficulties, which our

small and medium-sized enterprises find harder to bear. That is the reason why we request impact assessments, which are made. The worrying trend emerging of the Government inadequately assessing risk further undermines the long-term stability of our already broken procurement system. This SI is another example of that.

I will also raise with the Minister the cyber-security threats presented by the growth of e-invoicing. What safeguards are in place to prevent fraud and protect the integrity of the system? As the procurement market is digitising, we are faced with unique challenges that require specific and rigorous safeguards. We know that UK organisations are particularly vulnerable, with a recent survey finding that 77% of organisations still operate with limited cyber-security and resilience. We also know that Government communication is poor, with only 4% of businesses recalling using any Government sources of information for their cyber-security. The further promotion of e-invoicing will not be without risk, so I hope the Government are able to detail how they are planning on mitigating that risk.

I turn to the final aspect of the regulations: the imposition of public procurement exclusions based on modern slavery tests. We fully welcome these steps. The Government should lead the way on this issue. However, although this is a positive move forward, because there are tens of thousands of people in the UK living in slavery, there is clearly far more that we need to do.

It is right that our procurement market is evolving and modernising to meet the realities of the modern economy, and we support the efforts to speed up the invoicing process, and to reduce waste and costs. If it is managed well, this would be an extremely positive and beneficial move for some of our small and medium-sized enterprises, but if they are again left behind to fend for themselves, we risk creating barriers to their involvement and competitiveness in the modern economy.

We can only hope that this evolution will not be met with the disruption that is becoming characteristic of this Government's record on implementation.

11.41 am

**Oliver Dowden:** I welcome the support of the Opposition Front-Bench spokesperson, the hon. Member for Leigh, for these measures. I will try to address the points that she has raised; if I fail to address any of them, I will be happy to come back to her in writing.

First of all, in relation to timing it is true that the directive came into effect in 2014. However, it relied on the publication of the European standard, which was only published in 2017. Member states were given 18 months from then to bring forward their measures.

In respect of the delay for smaller entities, those are quite welcome to adopt the standards at an earlier stage; the regulations are simply permissive to allow them a longer period of time. I felt it was appropriate to invoke this derogation to allow those smaller entities a long period, because it may take them more time to adjust to the necessary changes to their procurement systems.

In respect of the other points that the hon. Lady raised, it is important to clarify that no private sector business, whether a large business or an SME, will be required to take advantage of these regulations. The regulations permit businesses, if they wish, to invoice

[*Oliver Dowden*]

electronically, but they can continue to invoice in a paper-based form if they wish. What the regulations do is require the Government supplier to accept an e-invoice if they so choose; if there is not a term within the contract that allows for e-invoicing, the regulations will imply that. They are very much about enabling rather than requiring.

The hon. Lady raised the point about Cabinet Office prompt payment. She is absolutely right that there was a decline in Cabinet Office prompt payment, which was due to the adoption of a new invoicing system. That is common with other Departments. I think I updated her, or another Opposition Member, in the House a couple of weeks ago on the progress that we are making in that regard. In fact, we are back up to standard now in the most recent months when it comes to the speed of prompt payment, but I would be very happy to write to her to set out those figures in detail.

Regarding impact assessment, Cabinet Office economists have calculated that the direct costs and benefits to business flowing from this directive do not exceed £5 million.

On that basis, we did not feel it necessary to undertake a full regulatory impact assessment to be cleared by the Regulatory Policy Committee.

Cyber-security is very important, which is why the Government have established for the first time a national cyber-security strategy, accompanied by £1.9 billion worth of funding. As part of that strategy, they have set up a national cyber-security centre that sets standards for cyber-security. In addition, the revised Government playbook—the rules for procurement that I published the week before last—contains explicit provisions in relation to cyber-security requirements for all those contracting with Government.

I hope that my response has addressed the points that the hon. Member for Leigh raised. As I said, this is a fairly straightforward measure: it is simply about enabling businesses to invoice electronically, and requiring suppliers to accept that. I am grateful for the Opposition's support, and I commend the regulations to the Committee.

*Question put and agreed to.*

11.45 am

*Committee rose.*



