

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT PUBLIC PROCUREMENT (AMENDMENT
ETC.) (EU EXIT) REGULATIONS 2020

Wednesday 11 November 2020

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Sunday 15 November 2020

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The Committee consisted of the following Members:

Chair: MR PHILIP HOLLOBONE

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| † Allan, Lucy (<i>Telford</i>) (Con) | † Lopez, Julia (<i>Parliamentary Secretary, Cabinet Office</i>) |
| † Blomfield, Paul (<i>Sheffield Central</i>) (Lab) | † Pawsey, Mark (<i>Rugby</i>) (Con) |
| † Clarkson, Chris (<i>Heywood and Middleton</i>) (Con) | † Rutley, David (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | Twigg, Derek (<i>Halton</i>) (Lab) |
| † Garnier, Mark (<i>Wyre Forest</i>) (Con) | Winter, Beth (<i>Cynon Valley</i>) (Lab) |
| † Gibson, Peter (<i>Darlington</i>) (Con) | Yasin, Mohammad (<i>Bedford</i>) (Lab) |
| Grady, Patrick (<i>Glasgow North</i>) (SNP) | Seb Newman, <i>Committee Clerk</i> |
| † Holden, Mr Richard (<i>North West Durham</i>) (Con) | † attended the Committee |
| † Hunt, Jane (<i>Loughborough</i>) (Con) | |
| Jarvis, Dan (<i>Barnsley Central</i>) (Lab) | |
| † Largan, Robert (<i>High Peak</i>) (Con) | |

Eighth Delegated Legislation Committee

Wednesday 11 November 2020

[MR PHILIP HOLLOBONE *in the Chair*]

Draft Public Procurement (Amendment etc.) (EU Exit) Regulations 2020

2.30 pm

The Chair: I call the Minister to move the motion in what I believe is her debut Delegated Legislation Committee performance.

The Parliamentary Secretary, Cabinet Office (Julia Lopez): I beg to move,

That the Committee has considered the draft Public Procurement (Amendment etc.) (EU Exit) Regulations 2020.

It is an honour to make my first statutory instrument under your chairmanship, Mr Hollobone. It ensures that the UK meets the requirements of the withdrawal agreement and the Northern Ireland protocol, and replaces earlier statutory instruments that did not reflect those circumstances.

The instrument is essential to ensure that there is legal clarity for public procurement at the end of the transition period, and certainty while wider procurement reforms are considered and introduced in domestic legislation. The majority of it is unchanged from the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019, which were debated in both Houses and made on 13 March 2019, and which addressed deficiencies in a no-deal scenario.

To provide legal clarity in public procurement, the instrument consolidates the 2019 regulations and incorporates changes in new provisions where relevant. As in the 2019 regulations, the amendments made by the instrument do not amount to a material change in procurement policy. They will ensure that the UK's procurement system continues to function as intended at the end of the transition period and will grant certainty to UK contracting entities that they can continue to procure goods and services without substantial changes in the process. In that way, the Government are ensuring that those entities can continue to obtain value for money for UK taxpayers.

Principally, the instrument makes amendments to the three sets of regulations that implement EU directives on awarding contracts and concessions in the public and utilities sectors outside the field of defence and security. It seeks to provide a level of continuity for procurement procedures that began before the end of the transition period. Procurements that fall within that category, including orders from ongoing contracts such as framework agreements, will continue in substance to follow the unamended procurement regulations.

The instrument makes various amendments to the procurement regulations, to reflect recent amendments made to other domestic and retained direct EU legislation, for example in relation to the acceptable formats for advanced electronic signatures and the applicable rules for determining the origin of products. To enable the procurement regulations to reflect technological

developments, and full and ongoing interoperability in electronic invoicing, a power has been conferred on the Minister for the Cabinet Office to make regulations to substitute a different e-invoicing standard or a different reference to the same standard, or to make changes to specific syntaxes for e-invoices.

The instruments disappplies, for the whole of the UK, the rights derived from article 18 of the treaty on the functioning of the European Union and parallel provisions in other agreements. Retaining those rights would leave a lack of clarity as to whether EU parties were in the scope of article 18 of the TFEU and therefore had additional rights in the UK compared with non-EU countries—for example, suppliers from the EU may be provided with additional rights compared with third-country suppliers.

The UK has been invited to accede to the Agreement on Government Procurement in its own right. The instrument contains contingency arrangements in case we are unable to legislate for GPA accession due to a delay in the Trade Bill. It mitigates the risk of a short gap in GPA membership by facilitating continued market access.

I have picked out some of the key features of the draft statutory instrument, but it does a lot of technical work. The particularly full explanatory memorandum to the instrument contains a lot of detail on the technical matters that I very much do not wish to detain the Committee with.

Left unamended, the existing regulations would not work as intended and the EU exit regulations made last year in the context of a no-deal scenario would come into force. That would amount to a breach of our international obligations and would cause confusion and uncertainty among procurers and suppliers, which would hamper the public sector's ability to obtain value for money from procurement. I commend the regulations to the Committee.

The Chair: Hon. Members will be pleased to know that the debate can last until 4 o'clock.

2.34 pm

Paul Blomfield (Sheffield Central) (Lab): I will see what I can do, Mr Hollobone, to reflect the importance of the Minister's debut—at least until about 3.55 pm.

As the Minister outlined, the regulations largely carry over the processes that we have had in place as EU members and put them in a new, UK-only framework. They are obviously necessary. They also lay the legal foundation for our individual membership of the Agreement on Government Procurement with the World Trade Organisation.

The Government recognise in the expansive explanatory memorandum to which the Minister referred that the regulations are a work in progress. As the memorandum highlights, it is "likely" that sections of the instrument that we are being asked to approve today will need to be "revoked and replaced" within the next few months—and not for the first time. Irrespective of the outcome of the negotiations on our future relationship, we have known for four years that we will be leaving the EU, and the withdrawal agreement was agreed more than 12 months ago. However, with less than two months before the end of the transition period, we are being presented with regulations that are not fully fit for purpose. Nevertheless,

they are necessary regulations that sensibly provide for us to broadly continue the existing procedures, with which we agree. We clearly need a new framework and a smooth transition in the interests of fairness, effectiveness and transparency. Although we do not oppose this statutory instrument, we have some questions on points of detail.

In line with the approach of keeping things much as they are, these regulations contain certain steady state amendments, such as removing references to the *Official Journal of the European Union*, which is to be replaced by a new UK e-notification service. Public bodies will be required to submit notices to that service in place of the EU publications office, so will the Minister confirm that the new e-notification service will be up and running by the end of the transition period, as the Government have previously promised? Will she also outline what guidance and support has been prepared to assist those who will be required to use it?

The instrument transfers to the Minister for the Cabinet Office the European Commission's function to revalue the main financial thresholds. It also replaces cross-references to thresholds in the relevant EU directive with sterling values contained within the regulations themselves, and it provides for the Commission's biannual review of the thresholds to be undertaken by the Minister for the Cabinet Office. That is all quite straightforward, but we would like assurance from the Minister that none of those provisions will impact on existing rights. For example, regulation 7(4) revokes regulation 90 of the Public Contracts Regulations 2015, albeit allowing for a year before it does so.

In part 5 of the instrument, regulation 25 removes any prohibition on awarding contracts on the grounds of nationality, and regulation 26 removes the international obligations the UK entered into when it was part of the EU. Will the Minister explain the rationale for regulation 25 and, in the context of regulation 26, outline how the Government will ensure that standards are strengthened and not diminished?

Government procurement is clearly under the spotlight at the moment—the issue was raised at Prime Minister's questions today—and so this is a good time to reflect on our procedures. In recent months, the Government have delayed publication of awarded contracts long after the required timescales. They have heavily redacted the details of those contracts, needlessly avoided competitive tendering, and used commercial sensitivity as an excuse not to provide basic information to reasonable questions, such as: what are the names of Serco's 29 contact-tracing subcontractors? Even allowing for the challenges of the pandemic, that is simply not good enough. The Government must meet the minimum levels of transparency and the highest standards that we expect to underpin procurement rules.

We understand that the Government are planning to publish a Green Paper on procurement, which might mean that some of these regulations will work differently in future. Can the Minister provide any further information on how the regulations might be affected, and will she assure us that there will be meaningful consultation with the local representatives responsible for so much of the nation's procurement? When we sought views on the regulations, the Local Government Association told us:

“Councils need a simple and efficient public procurement regime which ensures the best value for public money and respects local decision-making. Shorter timescales, lighter-touch advertising

requirements and award procedures, a speedier way of dealing with legal challenges, greater negotiation with suppliers, and a new focus on SMEs and voluntary community and social enterprises (VCSEs) would also be of benefit.”

For too long, Ministers have hidden behind EU procurement laws as a reason not to do more, while other countries have used the same procurement framework to improve economic and social outcomes. We could, for example, apply the principles of the Welsh Government's code of practice for ethical employment, which promotes decent jobs and the living wage, and protects against exploitative practices at work.

The Opposition's ambition for procurement is not limited to price. We want more public bodies to be able to use procurement to strengthen employment standards, improve supply chains, tackle carbon emissions and support other policy objectives—using public money to give the broadest gain for the taxpayer, as part of joined-up government. In addition to answering my specific questions, I would be grateful if the Minister could tell us more about the Government's plans to build on the regulations to achieve those broader objectives.

2.41 pm

Julia Lopez: I appreciate the hon. Member's scrutiny. It is very important that we build public confidence in everything that we are trying to do on procurement. Ultimately, this is a narrow piece of legislation. We need to ensure that the public procurement regulatory regime will function after the end of the transition period, and that we have continuity and legal certainty for procurers and suppliers. There are many moving parts to the negotiations, and this is a belt and braces approach to ensure that all the legal details are tied up in time for the end of the transition period.

We are doing such things as transferring powers from the EU to the Cabinet Office, which will obviously happen once we are no longer in the transition period. The hon. Member asked about our e-tender service. I have spoken to officials about it, and I am assured that the new system, moving away from the EU's notification system, will be up and running by 11 o'clock on 31 December. He rightly touched on our wider ambitions for public procurement and the Green Paper, which is currently in draft form. Ministers are starting to look through it, ensuring that it fits with our own ambitions for the work that we want to do on this area, particularly on social value.

The hon. Member talked about the need to simplify procedures to ensure that local authorities and officials understand the rules. That means not only simplifying everything that we are doing and helping businesses to access exciting public procurement opportunities, but ensuring that we have training in place for officials, both in central Government agencies and in local authorities, to understand the new rules and articulate them to businesses so that the system functions as a whole.

The hon. Member talked about procurement during the pandemic. I want to ensure that we retain public confidence in everything that we do on contracts that have been let. We are working with the National Audit Office on those issues. I am sure that we will have further opportunities to debate them in the House, including during Cabinet Office oral questions tomorrow.

[Julia Lopez]

Question put and agreed to.

Ultimately, this is a very narrow amendment that tries to ensure that we have covered all bases when it comes to leaving the transition period, and I commend it to the Committee.

2.43 pm

Committee rose.

