

Procurement Reform (Scotland) Bill

Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 40
Long Title

Schedule

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 8

James Kelly

- 11 In section 8, page 4, line 8, at end insert <, and
() the Scottish living wage duty.>

Patrick Harvie

- 30 In section 8, page 4, line 9, leave out subsection (3) and insert—
<() Nothing in subsection (1) is to be taken to prohibit a contracting authority from considering any matter or acting in any way required to fulfil the sustainable procurement duty.>

Section 9

Jackie Baillie

- 15 In section 9, page 4, line 24, after <process,> insert—
<() promote compliance by economic operators with the matters that comprise the public sector equality duty under section 149 of the Equality Act 2010 (c.15),>

Sarah Boyack

- 31 In section 9, page 4, line 25, after <innovation,> insert—
<() before carrying out a regulated procurement involving the provision of food, to consider how in conducting the procurement process it can—
(i) improve the health, wellbeing and education of communities in the authority's area, and
(ii) promote the highest standards of animal welfare,>

Jackie Baillie

- 16 In section 9, page 4, line 36, at end insert—
<() In this section, references to the wellbeing of the authority's area include, in particular, reducing inequality in the area.>

Section 9A

Patrick Harvie

32 In section 9A, page 4, line 38, at end insert—

- <() In preparing guidance published under subsection (1), the Scottish Ministers must have regard to the likely effects of regulated procurements, taken as a whole, on—
- (a) global sustainability,
 - (b) the compliance by contracting authorities with—
 - (i) their duties under the Climate Change (Scotland) Act 2009 (asp 12), and
 - (ii) the United Nations Guiding Principles for Business and Human Rights as endorsed by the Human Rights Council of the United Nations in resolution 17/4 of 16 June 2011.>

After section 9A

James Kelly

14 After section 9A, insert—

<Scottish living wage duty

- (1) For the purposes of this Act, the Scottish living wage duty is the duty of a contracting authority to specify in the contract notice relating to a regulated procurement that it intends to impose a condition relating to the performance of the contract that the economic operator who is the successful tenderer must pay the Scottish living wage.
- (2) An economic operator pays the Scottish living wage if the remuneration of each of its employees who undertakes any activities related to the performance of the contract is at least the Scottish living wage.
- (3) The Scottish Ministers must by regulations define the Scottish living wage for the purposes of this Act, and may from time to time as they see fit revise such definition.>

After section 10

Mary Fee

33 After section 10, insert—

<Third sector bodies

- (1) Despite section 8, a contracting authority may restrict participation in a regulated procurement to third sector bodies only.
- (2) Where a contracting authority restricts participation under subsection (1), it must state that fact in the contract notice.
- (3) For the purposes of this Act, “third sector bodies” means organisations (other than bodies established under an enactment) that exist wholly or mainly to provide benefits for society or the environment.
- (4) The Scottish Ministers may by order amend this section so as to modify the meaning of “third sector bodies” for the purposes of this Act.>

Section 10A

Mary Fee

- 35 In section 10A, page 5, line 17, leave out <may> and insert <must>

Section 10C

Mary Fee

- 36 In section 10C, page 5, line 26, leave out <may> and insert <must>

Section 11

Mark Griffin

- 2 In section 11, page 6, line 22, at end insert—
- <() include a statement setting out—
 - (i) whether the authority intends to restrict participation in regulated procurements under section 10(1), and
 - (ii) how the authority intends to ensure that it awards at least one contract to a supported business,>

Nicola Sturgeon

- 6 In section 11, page 6, line 25, after <procurements,> insert—
- <(iia) the payment of a living wage to persons involved in producing, providing or constructing the subject matter of regulated procurements,>

Jim Eadie

- 17 In section 11, page 6, line 25, after <procurements,> insert—
- <() promoting compliance by contractors and sub-contractors with the Health and Safety at Work etc. Act 1974 (c.37) and any provision made under that Act,>

Claudia Beamish

- 18 In section 11, page 6, line 26, at end insert—
- <(iv) the use of its regulated procurements to reduce greenhouse gas emissions,>

Jackie Baillie

- 19 In section 11, page 6, line 26, at end insert—
- <() set out how, in carrying out its regulated procurements, the authority intends to promote compliance by economic operators with the matters that comprise the public sector equality duty under section 149 of the Equality Act 2010 (c.15),>

Sarah Boyack

- 37 In section 11, page 6, line 26, at end insert—
- <() include a statement of the authority's general policy on how it intends its approach to regulated procurements involving the provision of food to—

- (i) improve the health, wellbeing and education of communities in the authority’s area, and
- (ii) promote the highest standards of animal welfare,>

Nicola Sturgeon

7 In section 11, page 6, line 35, at end insert—

<() In subsection (5)(b)(iia), a “living wage” means remuneration which is sufficient to ensure an acceptable standard of living.>

Section 14

Nicola Sturgeon

20 In section 14, page 7, line 18, at end insert—

<() a summary of any steps taken to facilitate the involvement of supported businesses in regulated procurements during the year covered by the report,>

Claudia Beamish

21 In section 14, page 7, line 18, at end insert—

<(cc) a statement setting out how the authority has used its regulated procurements to reduce greenhouse gas emissions, including—

- (i) the estimated amount of greenhouse gas emissions attributable to its regulated procurements during the year covered by the report,
- (ii) the methodologies it has used to calculate the amount of such emissions,
- (iii) the sector or sectors associated with its regulated procurements it has identified as contributing the highest levels of greenhouse gas emissions,
- (iv) how it has promoted among economic operators a reduction in greenhouse gas emissions in the sector or sectors so identified,>

Mark Griffin

3 In section 14, page 7, line 20, at end insert—

<() a statement of the action the contracting authority has taken during the year covered by the report to ensure that it awards at least one contract to a supported business, and the details of any such contract awarded,>

Section 16

Claudia Beamish

22 In section 16, page 8, line 1, at end insert—

<() the matters mentioned in section 11(5)(b)(iv) and 14(2)(cc), including the methodologies that may be used to calculate the information required under section 14(2)(cc)(i).>

After section 16

Jackie Baillie

38 After section 16, insert—

<Annual report on procurement activity in Scotland

- (1) As soon as reasonably practicable after the end of each financial year, the Scottish Ministers must prepare a report, based on information contained in annual procurement reports published under section 15(1) during that year, on procurement activity in Scotland.
- (2) The report must include information about—
 - (a) regulated procurements that have been completed,
 - (b) community benefit requirements that contracting authorities consider were fulfilled,
 - (c) steps taken to facilitate the involvement of supported businesses in regulated procurements.
- (3) The report may also contain such other information as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers must—
 - (a) publish the report in such manner as they consider appropriate,
 - (b) lay a copy of the report before the Scottish Parliament.>

Section 18

Sarah Boyack

39 In section 18, page 8, line 20, at end insert—

- <() In publicising the award of a contract, a contracting authority must include a statement setting out how it considers the contract will contribute to the achievement of the matters mentioned in section 9(1).>

Section 20

Mary Fee

41 In section 20, page 9, line 14, leave out <£4,000,000> and insert <£2,000,000>

Jackie Baillie

23* In section 20, page 9, line 25, at end insert <, and

- (b) a requirement that the economic operator must collect data required to demonstrate the benefits that are being achieved as a result of the contract including community benefit requirements.
- (4A) The Scottish Ministers may by regulations make further provision about—
- (a) the data that must be collected under subsection (4)(b),
 - (b) the manner in which data collected is to be published.>

After section 21

Jackie Baillie

24 After section 21, insert—

<Equal pay audits

Power to require equal pay audit

A contracting authority may, in the contract notice relating to a regulated procurement, include a statement that it intends to award the contract to an economic operator that can demonstrate that it has conducted an equal pay audit in relation to its employees.>

Ken Macintosh

42 After section 21, insert—

<Wage ratio conditions

Wage ratio conditions

- (1) The Scottish Ministers may by regulations make provision requiring a contracting authority to specify in the contract notice relating to a regulated procurement that it intends to impose a wage ratio condition relating to the performance of the contract.
- (2) For the purposes of this section, a wage ratio condition is a condition about the ratio between the remuneration of the highest and lowest paid of those employees of the successful tenderer who undertake any activities related to the performance of the contract.
- (3) Regulations under this section may—
 - (a) specify an appropriate wage ratio for the purposes of this section,
 - (b) specify contracts, or classes or types of contract, in relation to which a wage ratio condition can be specified,
 - (c) make such other provision relating to specifying wage ratio conditions as the Scottish Ministers think fit.>

Before section 22

Jayne Baxter

1 Before section 22, insert—

<Exclusion of economic operators: zero hours contracts

- (1) A contracting authority must exclude an economic operator from the process relating to a regulated procurement if subsection (2) applies.
- (2) This subsection applies if the contracting authority is satisfied that the economic operator has in place arrangements for any of its employees to be employed on the basis of a zero hours contract.
- (3) In this section, a “zero hours contract” means a contract or arrangement for the provision of labour which—
 - (a) except where subsection (6) applies, fails to specify guaranteed working hours, and
 - (b) has either of the features mentioned in subsection (4).

- (4) The features referred to in subsection (3)(b) are that the contract or arrangement—
 - (a) requires the employee to be available for work when there is no guarantee that the employee will be required to work,
 - (b) subject to subsection (5), requires the employee to work exclusively for that economic operator.
- (5) Subsection (4)(b) does not apply if the contracting authority is satisfied that the economic operator has demonstrated a compelling business reason to justify a contract or arrangement requiring the employee to work exclusively for that economic operator.
- (6) A contract is not, for the purposes of this section, a zero hours contract if, after being given the opportunity to seek—
 - (a) legal advice, or
 - (b) the advice of a trade union or other elected representative of employees,
 an employee agrees to accept a contract that fails to specify guaranteed working hours.
- (7) Without prejudice to the generality of subsection (5), a compelling business reason may, in particular, include requirements of commercial confidentiality.>

Neil Findlay

4 Before section 22, insert—

<Exclusion of economic operators: tax avoidance

- (1) A contracting authority must exclude an economic operator from the process relating to a regulated procurement if the economic operator has entered into an artificial tax avoidance arrangement or series of arrangements.
- (2) For the purposes of this section, an “artificial tax avoidance arrangement” is to be interpreted in accordance with sections 58 to 60 of the Revenue Scotland and Tax Powers Act 2014.
- (3) The Scottish Ministers must by regulations make provision specifying—
 - (a) the process to be followed, and
 - (b) the evidence that is to be conclusive,
 in determining whether or not an economic operator has at any time entered into an artificial tax avoidance arrangement or series of arrangements.>

Neil Findlay

5 Before section 22, insert—

<Exclusion of economic operators: blacklisting

- (1) A contracting authority must exclude an economic operator from the process relating to a regulated procurement if subsection (2) applies.
- (2) This subsection applies if the contracting authority is satisfied that the economic operator—
 - (a) has at any time compiled, used, sold or supplied a list (a “prohibited list”) which—

- (i) contains details of persons who are or have been members of trade unions, or who are taking part or have taken part in the activities of trade unions, and
 - (ii) is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to the recruitment or treatment of workers, and
- (b) has not taken action which, in the opinion of the contracting authority, is sufficient to remedy the effects of such compilation, use, sale or supply.
- (3) Subsection (2) does not apply where it appears to the contracting authority that the economic operator has compiled, used, sold or supplied a prohibited list in circumstances which fall within a case set out in regulation 4 (exceptions to general prohibition) of the Employment Relations Act 1999 (Blacklists) Regulations 2010 (SI 2010/493) (“the 2010 Regulations”).
- (4) Without prejudice to the generality of subsection (2)(b), matters that the contracting authority must take into account in determining whether remedial action is sufficient include whether the economic operator has—
- (a) publicly acknowledged that it has undertaken activities falling within subsection (2)(a),
 - (b) apologised to those affected by such activities,
 - (c) subsequently employed persons affected by such activities, and
 - (d) paid to persons affected by such activities adequate compensation, negotiated with representatives of such persons.
- (5) In this section—
- “employment agency” has the same meaning as in regulation 2(1) of the 2010 Regulations,
- “discrimination” has the same meaning as in regulation 3(3) of the 2010 Regulations,
- “use”, in relation to a list, includes use of information contained in the list.
- (6) References in this section to membership of a trade union include references to—
- (a) membership of a particular branch or section of a trade union, and
 - (b) membership of one of a number of particular branches or sections of a trade union,
- and references to taking part in the activities of a trade union have a corresponding meaning.>

Section 23

Nicola Sturgeon

- 25 In section 23, page 11, line 1, leave out <to pay> and insert <in relation to the payment of>

Section 24

Nicola Sturgeon

- 8 In section 24, page 11, line 22, after <operators> insert <and the award of contracts>

Nicola Sturgeon

- 9 In section 24, page 11, line 27, leave out <and> and insert <, remuneration (including payment of a living wage) and other>

Ken Macintosh

- 43 In section 24, page 11, line 29, after <procurement> insert <, and
<() employee representation including trade union recognition,>

Nicola Sturgeon

- 10 In section 24, page 11, line 33, at end insert—
<() In subsection (2)(b), “living wage” has the same meaning as in section 11(5)(b)(ia).>

Section 36

Claudia Beamish

- 26 In section 36, page 17, line 37, at end insert—
<“emissions” has the same meaning as in section 17(1) of the Climate Change (Scotland) Act 2009 (asp 12),>

Claudia Beamish

- 27 In section 36, page 18, line 2, at end insert—
<“greenhouse gas” has the same meaning as in section 10(1) of the Climate Change (Scotland) Act 2009 (asp 12),>

Patrick Harvie

- 44 In section 36, page 18, line 8, leave out <, disregarding any areas outside Scotland>

Schedule

Tavish Scott

Supported by: James Kelly

- 28 In the schedule, page 21, line 13, at end insert—
<hub East Central Scotland Limited
hub North Scotland Limited
hub South East Scotland Limited
hub South West Scotland Limited
hub West Scotland Limited>

James Kelly

- 29 In the schedule, page 22, line 7, at end insert—
<Scottish Water>

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