

Procurement Reform (Scotland) Bill

2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Ethical and fair trade practices

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Compliance with public sector equality duty

68, 74

Procurement involving the provision of food

7, 15

Contracts for health and social care services

38, 10, 10A, 11, 11A

Supported businesses

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Other circumstances in which contract can be awarded without competition

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Power to restrict participation to third sector bodies

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Procurement strategy and annual report: procurement contributing to other plans

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Meaning of “regulated procurement”

With 4 – 24, 25, 27

Consideration to be given to various employment practices

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Amendments in debating order

Ethical and fair trade practices

Jim Eadie

- 6 In section 9, page 4, line 11, after <process,> insert—
<() promote ethical and fair trade practices,>

Nicola Sturgeon

- 14 In section 11, page 5, line 25, at end insert <, and
() the procurement of fairly and ethically traded goods and services,>

Jim Eadie

- 28 In section 24, page 10, line 29, at end insert—
<() Without prejudice to the generality of subsection (2), any guidance issued under subsection (1) must cover the manner in which contracting authorities are to take ethical and fair trade practices into account in assessing the suitability of an economic operator.>

Compliance with public sector equality duty

Jackie Baillie

- 68 In section 9, page 4, line 11, 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),>

Jackie Baillie

- 74 In section 11, page 5, line 25, 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),>

Procurement involving the provision of food

Sarah Boyack

- 7 In section 9, page 4, line 12, 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,

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- (ii) promote the highest standards of animal welfare, and
- (iii) promote fair trade practices,>

Sarah Boyack

15 In section 11, page 5, line 25, 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,
 - (ii) promote the highest standards of animal welfare, and
 - (iii) promote fair trade practices,>

Contracts for health and social care services

Jim Eadie

38 In section 9, page 4, line 12, after <innovation,> insert—

- <() before carrying out a regulated procurement relating to a health or social care service, to consider how in conducting the procurement process it can improve—
 - (i) the quality of the service to, and
 - (ii) the wellbeing of,persons who use or will use the service and the families and carers of such persons,>

Nicola Sturgeon

10 After section 10, insert—

<Contracts for health or social care services

- (1) Despite section 8, a contracting authority may award a contract for a health or social care service without seeking offers in relation to the proposed contract.
- (2) In relation to a regulated procurement where, by virtue of subsection (1), a contracting authority does not seek offers, section 18(1) does not apply.
- (3) The Scottish Ministers may by regulations make provision specifying what is a health or social care service for the purposes of subsection (1) and section (*Guidance on procurements for health or social care services*)(1).>

Mary Fee

10A As an amendment to amendment 10, line 7, leave out <may> and insert <must>

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Nicola Sturgeon

11 After section 10, insert—

<Guidance on procurements for health or social care services

- (1) The Scottish Ministers may publish guidance on the carrying out of regulated procurements relating to contracts for health or social care services.
- (2) Contracting authorities must have regard to any guidance published under this section.
- (3) The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.>

Mary Fee

11A As an amendment to amendment 11, line 3, leave out <may> and insert <must>

Supported businesses

Nicola Sturgeon

9 In section 10, page 4, line 32, leave out subsection (4)

Mark Griffin

13 In section 11, page 5, 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,>

Mark Griffin

17 In section 14, page 6, line 18, 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,>

Other circumstances in which contract can be awarded without competition

Nicola Sturgeon

12 After section 10, insert—

<Other circumstances in which contract can be awarded without competition

- (1) The Scottish Ministers may by regulations specify circumstances in which a contracting authority may, despite section 8, award a regulated contract without seeking offers in relation to the proposed contract.
- (2) In relation to a regulated procurement where, by virtue of regulations made under subsection (1), a contracting authority does not seek offers, section 18(1) does not apply.>

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Mary Fee

- 12A** As an amendment to amendment 12, line 3, leave out <may> and insert <must>

Nicola Sturgeon

- 33** In section 38, page 17, line 22, at end insert—

<() section (*Other circumstances in which contract can be awarded without competition*)(1),>

Power to restrict participation to third sector bodies

Mary Fee

- 41** 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.>

Procurement strategy and annual report: procurement contributing to other plans

Adam Ingram

- 43** In section 11, page 5, line 31, at end insert—

<(ca) set out how the authority intends to ensure that its regulated procurements support the achievement of any objectives or outcomes it has set out in any plan that the authority has a legal requirement to prepare,>

Adam Ingram

- 44** In section 11, page 5, line 31, at end insert—

<() where the authority is a provider of children’s services, set out how the authority intends to use its regulated procurement activities to contribute to the aims of children’s services plans as set out in section 9(2) of the Children and Young People (Scotland) Act 2014,>

Adam Ingram

- 45** In section 11, page 5, line 34, at end insert—

<() In this section, “children’s services” has the meaning given in section 7(1) of the Children and Young People (Scotland) Act 2014.>

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Adam Ingram

46 In section 11, page 5, line 34, at end insert—

<() The Scottish Ministers may by order specify the types of plans in respect of which the duty under subsection (5)(ca) is to apply.>

Adam Ingram

47 In section 14, page 6, line 18, at end insert—

<() the number of times that the authority has used a Public Social Partnership during the year covered by the report,>

Adam Ingram

48 In section 14, page 6, line 18, at end insert—

<(da) a summary of how the authority has used its regulated procurement activities during the year covered by the report to deliver any objectives or outcomes as set in any plan that the authority has a legal requirement to prepare,>

Adam Ingram

49 In section 14, page 6, line 18, at end insert—

<() where the authority is a provider of children’s services, a review of how each regulated procurement has contributed to the aims of children’s services plans as set out in section 9(2) of the Children and Young People (Scotland) Act 2014,>

Adam Ingram

50 In section 14, page 6, line 21, at end insert—

<() In this section, “children’s services” has the meaning given in section 7(1) of the Children and Young People (Scotland) Act 2014.>

Adam Ingram

51 In section 14, page 6, line 21, at end insert—

<() The Scottish Ministers may by order specify the types of plans in respect of which the duty under subsection (2)(da) is to apply.>

Community benefit requirements

Nicola Sturgeon

16 In section 14, page 6, line 16, at end insert—

<() a summary of any community benefit requirements imposed as part of a regulated procurement that were fulfilled during the year covered by the report,>

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Mary Fee

53 In section 19, page 8, line 10, at end insert—

<() A requirement under subsection (1)(a) relating to training may, in particular, include a requirement that 5 per cent of the employees of an economic operator who will undertake any activities related to the performance of the contract must be apprentices.>

Mary Fee

54 In section 20, page 8, line 14, leave out <£4,000,000> and insert <£2,000,000>

Jackie Baillie

78 In section 20, page 8, 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 (3)(b),

(b) the manner in which data collected is to be published.>

Publication of guidance and laying before the Parliament

Nicola Sturgeon

18 In section 16, page 6, line 32, leave out <issue guidance to contracting authorities> and insert <publish guidance>

Nicola Sturgeon

19 In section 16, page 7, line 1, leave out <issued> and insert <published>

Nicola Sturgeon

20 In section 16, page 7, line 1, at end insert—

<() The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.>

Nicola Sturgeon

21 In section 21, page 8, line 29, leave out <issue> and insert <publish>

Nicola Sturgeon

22 In section 21, page 8, line 39, leave out <issued> and insert <published>

Nicola Sturgeon

23 In section 21, page 8, line 39, at end insert—

<() The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.>

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Nicola Sturgeon

- 26 In section 24, page 10, line 21, leave out <issue> and insert <publish>

Nicola Sturgeon

- 29 In section 24, page 10, line 30, leave out <issued under subsection (1)> and insert <published under this section>

Nicola Sturgeon

- 30 In section 24, page 10, line 30, at end insert—
<() The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.>

Annual procurement report by the Scottish Ministers

Jackie Baillie

- 75 After section 16, insert—
<**Annual report by Scottish Ministers**
(1) As soon as reasonably practicable after the end of each financial year, the Scottish Ministers must prepare and publish an annual procurement report.
(2) A report prepared under this section must include—
(a) an overview of procurement activity undertaken by contracting authorities during the year covered by the report,
(b) a summary of the extent to which the Scottish Ministers consider procurement activity is being carried out in compliance with the duties of contracting authorities under this Act,
(c) a summary of the community benefits that are considered to have been achieved as a result of requirements imposed by contracting authorities under section 20,
(d) a summary of the extent to which procurement activity relating to health or social care services and other services has differed from other procurement activity,
(e) such other information as the Scottish Ministers consider appropriate.
(3) The Scottish Ministers must lay a copy of each report prepared under this section before the Scottish Parliament.>

Exclusion of economic operators on various grounds

Neil Findlay

- 56 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.

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- (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

57 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,

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“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.>

Jayne Baxter

58 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.>

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Remedies: power to transfer forum from courts to First-tier Tribunal

Nicola Sturgeon

31 After section 34, insert—

<Transfer of forum for proceedings to First-tier Tribunal

The Scottish Ministers may by regulations modify sections 33 and 34 so that proceedings under section 32 may be brought before the First-tier Tribunal for Scotland instead of the sheriff court or Court of Session.>

Nicola Sturgeon

34 In section 38, page 17, line 24, at end insert—

<() section (*Transfer of forum for proceedings to First-tier Tribunal*),>

Regulations about dynamic purchasing systems: parliamentary procedure

Nicola Sturgeon

32 In section 38, page 17, line 22, at end insert—

<() section 7(1),>