



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

32nd Report, 2014 (Session 4)

Procurement Reform (Scotland) Bill as amended stage 2

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Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
 - (a) any—
 - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
 - (ii) [deleted]
 - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
 - (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
 - (c) general questions relating to powers to make subordinate legislation;
 - (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
 - (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
 - (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
 - (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
 - (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson

Committee Clerking Team:

Clerk to the Committee

Euan Donald

Assistant Clerk

Elizabeth White

Support Manager

Daren Pratt



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The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meeting on 6 May 2014, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Procurement Reform (Scotland) Bill as amended at Stage 2 (“the Bill”)¹. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.
2. In broad outline the Bill introduces a degree of regulation for procurements concerning the tranche of public contracts which are above certain financial thresholds, but below the thresholds contained in the Public Contracts (Scotland) Regulations 2012 (SSI 2012/88).
3. The Bill also makes provision in relation to a wider range of procurements, most notably creating obligations concerning advertising, community benefits and procurement strategies.
4. The Bill will establish a national legislative framework for sustainable public procurement. It places a small number of general duties on Scottish contracting authorities regarding their procurement activities, and some specific measures aimed at promoting good, transparent and consistent practice in procurement. The Bill also places some administrative requirements on larger spending contracting authorities to publish procurement strategies and annual reports. That is designed to aid visibility of the purchasing activities of these bodies, and how they will meet their procurement obligations.
5. The Scottish Government has provided the Parliament with a supplementary memorandum on the delegated powers provisions in the Bill, in advance of Stage 3 of the Bill (“the SDPM”²).

¹ Procurement Reform (Scotland) Bill [as amended at Stage 2] available at: <http://www.scottish.parliament.uk/S4/Bills/Procurement%20Reform/b38as4-stage2-amend.pdf>

² Procurement Reform (Scotland) Bill Supplementary Delegated Powers Memorandum available at: [http://www.scottish.parliament.uk/S4/Bills/Procurement%20Reform/Procurement Reform Supplementary DPM.pdf](http://www.scottish.parliament.uk/S4/Bills/Procurement%20Reform/Procurement%20Reform%20Supplementary%20DPM.pdf)

6. The Committee reported on certain matters in relation to the delegated powers provisions in the Bill at Stage 1 in its [64th report of 2013](#).

DELEGATED POWERS PROVISIONS

7. The Committee considered each of the new or substantially amended delegated powers provisions in the Bill after Stage 2.

8. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new or substantially amended delegated powers provisions listed below and that it is content with the Parliamentary procedure to which they are subject:

- Section 7 – Dynamic purchasing system
- Section 10A(3) – Contracts for health or social care services
- Section 10C(1) – Other circumstances in which contract can be awarded without competition
- Section 34A – Transfer of forum for proceedings to First-tier Tribunal
- Section 9A – Guidance on sustainable procurement duty
- Section 10B – Guidance on procurements for health or social care services
- Section 16 – Guidance on procurement strategies and annual procurement reports
- Section 21 – Guidance on community benefit requirements
- Section 24 – Guidance on selection of tenderers

9. The Committee reports that it is content with the provisions in the Bill which have been amended at Stage 2 to insert or substantially alter provisions conferring powers to make subordinate legislation and other delegated powers.

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