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Report 1
Infrastructure and Capital Investment Committee

To consider and report on infrastructure, capital investment, transport, Scottish Water and other matters falling within the responsibility of the Cabinet Secretary for Infrastructure, Investment and Cities, and matters relating to housing and digital infrastructure.

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Committee Membership

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**Clare Adamson**
Scottish National Party

**Alex Johnstone**
Scottish Conservative and Unionist Party

**Mike MacKenzie**
Scottish National Party

**Siobhan McMahon**
Scottish Labour

**David Stewart**
Scottish Labour
Subordinate Legislation

The Committee reports to the Parliament as follows—

1. On 18 January 2016, the Procurement (Scotland) Regulations 2016 [draft] was laid before Parliament and was subject to affirmative resolution procedure.

Purpose of the instrument

2. This instrument is part of a number of instruments laid by the Scottish Government to enact changes to public procurement in Scotland. Specifically, the instrument makes further provisions about regulated contracts, dynamic purchasing systems, general duties and specific duties under the Procurement Reform (Scotland) Act 2014 (“the Act”).

3. The instrument comes into force on 18 April 2016 to align with the coming into force of Regulations which give effect in Scots law to European Parliament Directives 2014/24/EU; 2014/25/EU and 2014/23/EU. These directives regulate the award of public contracts, utilities contracts and concession contracts respectively. The Committee formally considered a negative instrument implementing 2014/24/EU at its meeting on 3 February 2016 and is due to formally consider negative instruments implementing Directives 2014/25/EU and 2014/23/EU at a future meeting.

Delegated Powers and Law Reform Committee consideration

4. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 2 February 2016 and agreed that it required to draw to the attention of Parliament a failure to follow proper drafting practice, largely due to the reader having to read either the explanatory note, or the statutory guidance to follow, or the Act (or all of these), to find an explanation of which types of contract or procurement the regulations apply to.

5. The Scottish Government confirmed that the Regulations need to be read in conjunction with the Act, as the application of the provisions to different types of contracts is governed by the Act itself. The Regulations will be accompanied by statutory guidance, which is intended to make clear how the regime will operate in practice. The explanatory notes also distinguish between the application of provisions to ‘regulated contracts’, ‘regulated procurements’ and ‘EU-regulated procurements’.

6. The full report from the Delegated Powers and Law Reform Committee can be read here: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/96352.aspx
Infrastructure and Capital Investment Committee consideration

7. At its meeting on 24 February 2016, the Infrastructure and Capital Investment Committee took evidence on the instrument from Keith Brown, Cabinet Secretary for Infrastructure, Investment and Cities.

8. During its consideration of the instrument, the Committee also took the opportunity to question the Cabinet Secretary on the full package of legislation relating to public procurement reform in Scotland as it had previously led on the scrutiny of the Act and had committed to scrutinising the resultant measures.

9. Following the evidence session, the Cabinet Secretary subsequently moved the following motion—

S4M-15451—That the Infrastructure and Capital Investment Committee recommends that the Procurement (Scotland) Regulations 2016 [draft] be approved.

10. The Committee agreed the motion without division.

11. The Official Report of the meeting is available here:


Recommendation

12. The Infrastructure and Capital Investment Committee recommends to the Parliament that it approves the draft instrument.