

UK MINISTERS ACTING IN DEVOLVED AREAS

66 - The Public Procurement (Amendment Etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 18 December 2018

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 21
SICM under SO 30A (because amends primary legislation)	Paper 22

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8(1) of and paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018.

The Regulations amend domestic legislation which implements EU legislation in the field of public procurement. The Regulations will to ensure this area of law continues to be operable after the withdrawal of the UK from the EU.

Legal Advisers agree with the statement laid by the Welsh Government dated 10 December 2018 regarding the effect of these Regulations. However, Members may wish to note the following additional information.

The Equality Act 2010 (“the Act”) imposes a “public sector equality duty” on certain public authorities. That duty is to have due regard, in the exercise

of functions, to the need to do various things, including eliminating discrimination and advancing equality of opportunity.

The Act allows the Welsh Ministers to impose additional duties on certain “relevant Welsh authorities” for the purpose of enabling the better performance by them of the public sector equality duty in carrying out public procurement. Those authorities include the Welsh Government, local government and various providers of health care and education. The Regulations will change existing references so that they will refer to UK Public Procurement law rather than EU public procurement law.

Other changes made by the Regulations do not affect the functions of either the National Assembly for Wales or the Welsh Ministers. Members may wish to note, however, that the Explanatory Memorandum to the Regulations indicates (among other things) the following-

- (i) Some deficiencies are not being fixed by the Regulations and are subject to ongoing discussion between the UK Government and the Welsh Government (no further detail is given);
- (ii) The Welsh Government’s public procurement portal ‘Sell2Wales’ is unaffected by the Regulations;
- (iii) The UK Government will be given power to amend public procurement law in England and Wales so that certain international obligations may no longer apply in the fields of environmental, social and employment law. These powers may only be exercised with the consent of the Welsh Ministers, as far as they affect devolved authorities;
- (iv) The UK Government intends to join the World Trade Organisation’s agreement on public procurement (the “GPA”) on or shortly after the UK departs from the EU;
- (v) Separate regulations will be made to correct deficiencies in relation to defence procurement. Legal Advisers note that defence is a reserved matter. Those regulations are not, therefore, likely to give rise to a statement by the Welsh Government.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect and the extent to which these Regulations would enact new policy in devolved areas. Legal Advisers do not consider that any significant issues arise under paragraph 8 of the Memorandum on the European Union (Withdrawal) Bill and the Establishment of Common Frameworks in relation to these Regulations.

The Welsh Government has indicated that a consent motion under Standing Order 30A.10 has been laid in relation to these Regulations.