



Procurement Bill

UK Public Procurement Reform Webinar - Session 2

Planning and Commencing a Procurement

4 October 2022 (slides updated 1 June 2023)

Applicability to Scotland

Introduction

- Clause 125 of the Bill - *“This Act extends to England and Wales, Scotland and Northern Ireland”*.
- Legislation will apply in Scotland albeit Scottish regulations still apply to Scottish authorities.
- The Court of Session has jurisdiction in relation to procurement challenges and other litigation.
- Scottish Ministers are empowered to make subordinate regulations under the Act.
- The Bill permits UK regulations to amend existing Scottish legislation in issues and provisions that are devolved to the Scottish Ministers and Scottish Parliament.

Applicability to Scotland

“Devolved Scottish Authorities”

- The Bill applies to a “contracting authority” as defined in Clause 2(1)(a) the Bill as:
 - *“a public authority, other than an excluded authority…”*.
- The definition of “excluded authorities” includes “devolved Scottish authorities” (Clause 2(5)(a)).
- Clause 2(6) provides, in summary, that devolved Scottish authorities are those with functions exercisable only in or as regards Scotland, and where either:
 - (a) none of its functions relate to reserved matters, or
 - (b) some of its functions relate to reserved matters and some do not.
- In relation to any public undertaking or private utility, this will be treated as a devolved Scottish authority if it operates only in or as regards Scotland and either none of their activities relate to reserved matters or some relate to reserved matters and some do not.

Applicability to Scotland

“Devolved Scottish Authorities” – Some queries...

- **How will the Bill apply to bodies exercising functions or operating solely in Scotland?**
 - Such bodies will continue to be governed by existing Scottish legislation – Procurement Reform (Scotland) Act 2014; Public Contracts (Scotland) Regulations 2015; Utilities Contracts (Scotland) Regulations 2016; and the Concession Contracts (Scotland) Regulations 2016.
- **How will this apply to bodies exercising functions or operating in Scotland, but whose activities may also extend beyond Scotland?**
 - Bodies may potentially be caught by the definition of a ‘contracting authority’ as a result of their activities, as to whether or not they are excluded authorities, e.g. whether or not they exercise their functions only in or as regards Scotland.
- **What happens if a body does not meet the test of being a devolved Scottish authority (or the other very limited excluded authorities in the legislation)?**
 - The provisions contained in the Bill will apply and any procurement activity must be carried out in accordance with the terms of the new legislation.

Helpful public resources

- [Hansard Second Reading of the Bill](#)
- [Running List of Committee Stage Amendment Papers](#)
- [Government Commercial Function – summary guide to the provisions of the Procurement Bill](#)
- [Government Commercial Function Webinar](#)
- Separately, on 13 June 2022 Scottish Ministers [announced](#) concerns about the terms of the Bill and lodged a Legislative Consent Memorandum in the Scottish Parliament, recommending that MSPs refuse consent for the Bill in its current form. The Delegated Powers and Regulatory Reform Committee of the UK Parliament has also issued a report identifying failures in the memorandum prepared to assist with its scrutiny of the Bill. A [Supplementary Legislative Consent Memorandum](#) from the Scottish Government on these concerns was posted on 3 February 2023.
- A Meeting of the Parliament was held to consider the [Legislative Consent Motion S6M-08217](#), which was agreed on [16 March 2023](#).