



# Procurement Reform (Scotland) Act 2014

## 2014 asp 12

### PART 2

#### GENERAL DUTIES AND PROCUREMENT STRATEGIES

##### *General duties*

#### **8 General duties**

- (1) A contracting authority must, in carrying out a regulated procurement—
  - (a) treat relevant economic operators equally and without discrimination,
  - (b) act in a transparent and proportionate manner.
- (2) A contracting authority must also comply with the sustainable procurement duty.
- (3) However, a contracting authority must not do anything in pursuance of subsection (2) that would conflict with its duty under subsection (1).
- (4) A relevant economic operator is an economic operator who is a national of, or is established in—
  - (a) a member State, or
  - (b) Iceland, Liechtenstein or Norway.
- (5) Subsection (1) does not apply in relation to an EU-regulated procurement.

#### **Annotations:**

#### **Commencement Information**

- I1** S. 8(1)(4)(5) in force at 18.4.2016 by S.S.I. 2016/30, **art. 3** (with **art. 5**)
- I2** S. 8(2)(3) in force at 1.6.2016 by S.S.I. 2016/30, **art. 4** (with **art. 5**)

#### **9 Sustainable procurement duty**

- (1) For the purposes of this Act, the sustainable procurement duty is the duty of a contracting authority—

*Changes to legislation: There are currently no known outstanding effects for the Procurement Reform (Scotland) Act 2014, Part 2 . (See end of Document for details)*

- (a) before carrying out a regulated procurement, to consider how in conducting the procurement process it can—
    - (i) improve the economic, social, and environmental wellbeing of the authority's area,
    - (ii) facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses in the process, and
    - (iii) promote innovation, and
  - (b) in carrying out the procurement, to act with a view to securing such improvements identified as a result of paragraph (a)(i).
- (2) The contracting authority must consider under subsection (1) only matters that are relevant to what is proposed to be procured and, in doing so, consider the extent to which it is proportionate in all the circumstances to take those matters into account.
- (3) In this section—  
 “small and medium enterprises” means businesses with not more than 250 employees,  
 “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) In this section, references to the wellbeing of the authority's area include, in particular, reducing inequality in the area.

**Annotations:**

**Commencement Information**

**I3** S. 9 in force at 1.6.2016 by S.S.I. 2016/30, art. 4 (with art. 5)

**10 Guidance on sustainable procurement duty**

- (1) The Scottish Ministers may publish guidance on the sustainable procurement duty.
- (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.

**Annotations:**

**Commencement Information**

**I4** S. 10 in force at 11.1.2016 by S.S.I. 2015/411, art. 3

**11 Supported businesses**

- (1) Despite section 8, a contracting authority may restrict participation in a regulated procurement (other than an EU-regulated procurement) to supported businesses only.
- (2) Where a contracting authority restricts participation under subsection (1), it must state that fact in the contract notice.

*Changes to legislation: There are currently no known outstanding effects for the Procurement Reform (Scotland) Act 2014, Part 2 . (See end of Document for details)*

- (3) For the purposes of this Act, a “supported business” is an economic operator who operates a supported business, <sup>F1</sup>or supported employment programme within the meaning of regulation 21] of the Public Contracts Regulations.

**Annotations:**

**Amendments (Textual)**

- F1** Words in s. 11(3) substituted (18.4.2016) by [The Public Contracts \(Scotland\) Regulations 2015 \(S.S.I. 2015/446\)](#), reg. 1(2), **Sch. 6 para. 2(3)** (with regs. 3-18, 99-101)

**Commencement Information**

- I5** S. 11 in force at 18.4.2016 by [S.S.I. 2016/30](#), **art. 3** (with [art. 5](#))

## 12 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 23(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 13(1).

**Annotations:**

**Commencement Information**

- I6** [S. 12](#) in force at 18.4.2016 by [S.S.I. 2016/30](#), **art. 3** (with [art. 5](#))

## 13 Guidance on procurements for health or social care services

- (1) The Scottish Ministers must 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.

**Annotations:**

**Commencement Information**

- I7** [S. 13](#) in force at 11.1.2016 by [S.S.I. 2015/411](#), **art. 3**

## 14 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.

*Changes to legislation: There are currently no known outstanding effects for the Procurement Reform (Scotland) Act 2014, Part 2. (See end of Document for details)*

- (2) In relation to a regulated procurement where, by virtue of regulations made under subsection (1), a contracting authority does not seek offers, section 23(1) does not apply.

**Annotations:**

**Commencement Information**

**I8** S. 14 in force at 18.4.2016 by S.S.I. 2016/30, art. 3 (with art. 5)

*Procurement strategy and annual report*

**15 Procurement strategy**

- (1) A contracting authority which expects to have significant procurement expenditure in the next financial year must, before the start of that year—
- (a) prepare a procurement strategy setting out how the authority intends to carry out regulated procurements, or
  - (b) review its procurement strategy for the current financial year and make such revisions to it as the authority considers appropriate.
- (2) Subsection (3) applies where a contracting authority—
- (a) has not, in relation to a financial year, prepared or reviewed a strategy under subsection (1), and
  - (b) becomes aware of the likelihood of having significant procurement expenditure during that year.
- (3) The contracting authority must, as soon as practicable after it becomes aware of the likelihood of having significant procurement expenditure—
- (a) prepare a procurement strategy setting out how the authority intends to carry out regulated procurements, or
  - (b) review its most recent procurement strategy and make such revisions to it as the authority considers appropriate.
- (4) An authority has significant procurement expenditure in a year if the sum of the estimated values of the contracts to which its regulated procurements in that year relate is equal to or greater than £5,000,000.
- (5) The procurement strategy must, in particular—
- (a) set out how the authority intends to ensure that its regulated procurements will—
    - (i) contribute to the carrying out of its functions and the achievement of its purposes,
    - (ii) deliver value for money, and
    - (iii) be carried out in compliance with its duties under section 8,
  - (b) include a statement of the authority's general policy on—
    - (i) the use of community benefit requirements,
    - (ii) consulting and engaging with those affected by its procurements,
    - (iii) the payment of a living wage to persons involved in producing, providing or constructing the subject matter of regulated procurements,

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- (iv) promoting compliance by contractors and sub-contractors with the Health and Safety at Work etc. Act 1974 (c.37) and any provision made under that Act, and
  - (v) the procurement of fairly and ethically traded goods and services,
  - (c) 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, and
    - (ii) promote the highest standards of animal welfare,
  - (d) set out how the authority intends to ensure that, so far as reasonably practicable, the following payments are made no later than 30 days after the invoice (or similar claim) relating to the payment is presented—
    - (i) payments due by the authority to a contractor,
    - (ii) payments due by a contractor to a sub-contractor,
    - (iii) payments due by a sub-contractor to a sub-contractor,
  - (e) address such other matters as the Scottish Ministers may by order specify.
- (6) The Scottish Ministers may by order modify subsection (4) so as to substitute for the figure specified there for the time being such other figure as they consider appropriate.
- (7) In subsection (5)(b)(iii), a “living wage” means remuneration which is sufficient to ensure an acceptable standard of living.

**Annotations:**

**Commencement Information**

- I9** S. 15(1)-(4)(5)(a)(b)(i)(ii)(iv)(v)(c)-(e)(6) in force at 18.4.2016 by [S.S.I. 2016/30](#), [art. 3](#) (with [art. 5](#))
- I10** S. 15(5)(b)(iii) in force at 28.9.2015 for specified purposes by [S.S.I. 2015/331](#), [art. 3](#)
- I11** S. 15(5)(b)(iii) in force at 18.4.2016 in so far as not already in force by [S.S.I. 2016/30](#), [art. 3](#) (with [art. 5](#))
- I12** S. 15(7) in force at 28.9.2015 by [S.S.I. 2015/331](#), [art. 3](#)

**16 Joint strategies**

A group of two or more contracting authorities may have a joint procurement strategy for both or, as the case may be, all of the authorities in the group.

**Annotations:**

**Commencement Information**

- I13** [S. 16](#) in force at 18.4.2016 by [S.S.I. 2016/30](#), [art. 3](#) (with [art. 5](#))

**17 Compliance with strategy**

A contracting authority which is required to prepare or review a procurement strategy in relation to a financial year must ensure that its regulated procurements in that year are, so far as reasonably practicable, carried out in accordance with its strategy.

*Changes to legislation: There are currently no known outstanding effects for the Procurement Reform (Scotland) Act 2014, Part 2 . (See end of Document for details)*

**Annotations:**

**Commencement Information**

**I14** S. 17 in force at 18.4.2016 by S.S.I. 2016/30, art. 3 (with art. 5)

**18 Annual procurement reports**

- (1) A contracting authority which is required to prepare or revise a procurement strategy in relation to a financial year must prepare an annual procurement report on its regulated procurement activities as soon as reasonably practicable after the end of that financial year.
- (2) The report must include—
  - (a) a summary of the regulated procurements that have been completed during the year covered by the report,
  - (b) a review of whether those procurements complied with the authority's procurement strategy,
  - (c) to the extent that any regulated procurements did not comply, a statement of how the authority intends to ensure that future regulated procurements do comply,
  - (d) a summary of any community benefit requirements imposed as part of a regulated procurement that were fulfilled during the year covered by the report,
  - (e) a summary of any steps taken to facilitate the involvement of supported businesses in regulated procurements during the year covered by the report,
  - (f) a summary of the regulated procurements the authority expects to commence in the next two financial years,
  - (g) such other information as the Scottish Ministers may by order specify.
- (3) For the purposes of subsection (2)(a), a regulated procurement is completed when the award notice is published or when it otherwise comes to an end.

**Annotations:**

**Commencement Information**

**I15** S. 18 in force at 18.4.2016 by S.S.I. 2016/30, art. 3 (with art. 5)

**19 Publication etc.**

- (1) A contracting authority must publish—
  - (a) the procurement strategy prepared under section 15,
  - (b) any revised strategy prepared under that section,
  - (c) the annual procurement report prepared under section 18.
- (2) Publication is to be in such manner as the authority considers appropriate but must include publication on the internet.
- (3) On publishing a document under subsection (1), the authority must notify the Scottish Ministers.

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*Changes to legislation: There are currently no known outstanding effects for the Procurement Reform (Scotland) Act 2014, Part 2 . (See end of Document for details)*

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**Annotations:**

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**Commencement Information**

**I16** S. 19 in force at 18.4.2016 by S.S.I. 2016/30, art. 3 (with art. 5)

## 20 Guidance

- (1) The Scottish Ministers must publish guidance on the preparation and publication of procurement strategies and annual procurement reports.
- (2) The guidance may, in particular, cover—
  - (a) consultation to be undertaken in relation to the preparation of a strategy,
  - (b) the form and content of strategies and reports,
  - (c) the process by which an authority approves its strategy.
- (3) The guidance may include a model procurement strategy and model annual report.
- (4) Contracting authorities must have regard to any guidance published under this section.
- (5) The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.

**Annotations:**

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**Commencement Information**

**I17** S. 20 in force at 11.1.2016 by S.S.I. 2015/411, art. 3

## 21 Annual report on procurement activity in Scotland

- (1) As soon as reasonably practicable after the end of each financial year, the Scottish Ministers must prepare a report, based on information contained in annual procurement reports published under section 19(1) during that year, on procurement activity in Scotland.
- (2) The report must include information about—
  - (a) regulated procurements that have been completed,
  - (b) community benefit requirements that contracting authorities consider were fulfilled,
  - (c) steps taken to facilitate the involvement of supported businesses in regulated procurements.
- (3) The report may also contain such other information as the Scottish Ministers consider appropriate.
- (4) The Scottish Ministers must—
  - (a) publish the report in such manner as they consider appropriate,
  - (b) lay a copy of the report before the Scottish Parliament.

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*Changes to legislation: There are currently no known outstanding effects for the  
Procurement Reform (Scotland) Act 2014, Part 2 . (See end of Document for details)*

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**Annotations:**

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**Commencement Information**

**I18** [S. 21](#) in force at 18.4.2016 by [S.S.I. 2016/30](#), [art. 3](#) (with [art. 5](#))

**Changes to legislation:**

There are currently no known outstanding effects for the Procurement Reform (Scotland) Act 2014, Part 2 .