

Procurement Reform (Scotland) Bill

Introduction

The Procurement Reform (Scotland) Bill was introduced on 3 October. Deputy First Minister Nicola Sturgeon said it would ensure Scotland remains a world leader in public procurement reform, “promoting an approach that is both business friendly and socially responsible.”

Background

The SNP 2011 manifesto pledge was for a Sustainable Procurement Bill, but frustratingly, particularly given the latest Intergovernmental Report on Climate Change, the Procurement Reform Bill is weak on sustainability, focusing on ‘business-friendly’ processes. The only reference to sustainable procurement in the Scottish Government news release is immediately followed by “ensuring that we maximise the economic benefit brought to Scotland from effective and efficient public procurement spend”, raising a major question about how much Ministers want financial factors to be prioritised over environmental and social issues. Incredibly, the Bill and its supporting documents do not mention the Scottish Climate Change Act’s public bodies duties, yet procurement is a key way the public sector can contribute to climate change targets. (A 2013 survey of councils about progress on the duties found most don’t report emissions associated with procurement. This Bill should be changing that.)

UNISON has campaigned strongly on using the Bill to support innovative action to ban companies involved in tax dodging from public contracts. We have also joined with the STUC, Stop Climate Chaos Scotland and other coalitions to highlight ten priorities. We welcome proposals that companies using blacklisting or inappropriate zero hours contracts can be excluded. But much more must be done on tax dodging, the Scottish Living Wage, ethical/fair trade, employment standards etc. as well as enshrining sustainability. While the Scottish Government is correctly a Living Wage employer, it is appalling that they say nothing here about extending this to contractors.

Main Provisions of the Bill

As well as a range of business-friendly changes, the Bill proposes some general duties on contracting authorities, some specific duties and other measures. In practice, much will depend on subsequent regulations and guidance. The **general duties** include:

- To treat relevant economic operators equally and without discrimination (s8)
- To act in a transparent and proportionate manner (s8)
- To comply with the sustainable procurement duty (s8).
- The sustainable procurement duty (s9) says that, before carrying out a regulated procurement, an authority must consider how in conducting the procurement process it can (i) improve the economic, social and environmental wellbeing of the authority’s area, (ii)

KEY POINTS:

- **The Bill was initially due to be a Sustainable Procurement Bill but is weak on sustainability, focusing on ‘business-friendly’ processes**
- **Ten civil society priorities for the Bill include: Living Wage, action on tax dodging & blacklisting, a sustainable development focus and measures on ethical/fair trade, employment standards & positive social outcomes**
- **Sustainable food procurement should be an explicit objective across public services with policy taking account of the ‘whole life’ costs including health & climate change**



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facilitate the involvement of small and medium enterprises (SMEs), third sector bodies and supported business (businesses where 50% or more of employees have a disability), and (iii) promote innovation.

Authorities which expect to have annual procurement spend of more than £5m must prepare and publish a procurement strategy, comply with it, so far as reasonably practicable, and publish an annual procurement report.

Specific duties (Part 3), include: publication of contract notices and award notices on a single Public Contracts website, prohibiting charges for documents, publishing a contracts register, setting standards for debrief information, amendment of the Climate Change Act to include procurement of recyclable and reusable materials, and:

For all contracts over £4m, requiring contracting authorities to consider whether to impose community benefit requirements (s20) (contracts such as the Glasgow 2014 Commonwealth Games and Southern General Hospital in Glasgow include these) or state why not included. Community benefit requirements can refer to training/recruitment requirements, the availability of sub-contracting opportunities or other ways to improve the economic, social or environmental wellbeing of the authority's area. UNISON will be investigating use of this as it may be possible to argue that companies which pay their taxes properly, as opposed to those involved in tax dodging, are providing a clear community benefit.

Another specific duty is section 23, Selection of Tenderers. This sets out a number of criteria which can be used in assessing the suitability of economic operators to participate in the procurement process. Ministers can make further provision in regulations and can issue guidance which authorities would have to have regard to. This section does not apply to EU-regulated procurement. However, we understand Ministers propose to amend the Public Contracts (Scotland) Regulations 2012 to match the provisions here, which they intend to be used to include offences connected with blacklisting of workers as constituting "grave professional misconduct", leading to exclusion from public contracts until and unless appropriate remedial action is taken. Other areas the Scottish Government is expected to address in guidance include workforce related issues such as the inappropriate use of zero hours contracts. But not the Living Wage.

EU

A new EU Public Procurement Directive is imminent. The Scottish Government will then lay new public procurement Regulations. Progress with the EU Directive has been taken account of in the Bill's proposals.

Food Procurement

Food is different from other procurement. See our Bargaining Briefing on why food's 'whole life' cost must be recognised, with the balance between price and quality and sustainable development, including costs attributable to health and climate change, factored into the business proposition.

Action for Branches

Support any campaigning work to improve the Bill. Lobby employers to include payment of the Living Wage as a stipulation in contracts. Keep the Bargaining & Campaigns team updated with any innovative positive (or worrying) procurement policies/developments at local level, particularly on tax dodging, sustainability and food.

Further info

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www.scottish.parliament.uk/parliamentarybusiness/Bills/68170.aspx

Scottish Government news release on Procurement Reform Bill

<http://news.scotland.gov.uk/News/Public-contracts-4d6.aspx>

UNISON response to the 2012 consultation on the Proc Ref Bill

www.unison-scotland.org.uk/response/ProcurementReformBill_Response_Nov2012.pdf

SCCS, STUC & other coalitions' 10 civil society priorities for the Bill

www.stopclimatechaos.org/sites/default/files/Procurement-10asks-final.pdf

Scotland's councils, NHS etc. have public bodies climate change duties

www.unison-scotland.org.uk/briefings/b015_PolicyBrief_PublicBodiesClimateChangeDuties_October2011.pdf

UNISON's Food for Good Charter and Bargaining Briefing

www.unison-scotland.org.uk/foodforgood/2013FoodforGoodCharter.pdf

www.unison-scotland.org.uk/briefings/b041_BargainingBrief_Food4GoodCharter_Oct2013.pdf



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