



# **Procurement Reform (Scotland) Bill**

**The UNISON Scotland Submission to the Scottish Parliament's Infrastructure  
and Capital Investment Committee following its call for evidence on the  
Procurement Reform (Scotland) Bill.**

**November 2013**

## Introduction

UNISON is Scotland's largest public sector trade union representing 160,000 members delivering services across Scotland. Our members deliver a wide range of services in the public, community and private sectors. We welcome the opportunity to respond to the Infrastructure and Capital Investment Committee's call for evidence on the Procurement Reform (Scotland) Bill.

**We believe that the annual procurement spend of nearly £11 billion can and should be used to deliver important social, economic and environmental benefits, including improved protection for workers, as well as banning companies involved in tax dodging from public contracts and extending the Living Wage. Frustratingly though, while the Scottish Government has taken welcome action on blacklisting, the Bill lacks commitment and ambition in so many areas.**

The Scottish Government says that the Bill promotes an approach that is business friendly and socially responsible, but we believe it must do far more on social responsibility, including sustainability.

The Policy Memorandum stresses the Scottish Government's broad intention for the Bill to "establish a national legislative framework for public procurement that supports Scotland's economic growth by delivering social and environmental benefits, supporting innovation and promoting public procurement processes and systems which are transparent, streamlined, standardised, proportionate, fair and business friendly."

The emphasis is more on 'housekeeping' processes than on helping to get maximum value from public spending on procurement in driving the kind of society we want. The most likely outcome is that public authorities, particularly as damaging 'austerity' cuts bite ever deeper, will not feel supported in examining the wider costs and benefits to assess true value for money when awarding contracts. Such a cautious approach has led to no mention of the Living Wage being extended to cover the staff of contractors delivering public services and nothing like enough emphasis on ensuring procurement plays its part in responding to the major threat of climate change. On just the Living Wage and climate change, let alone the other important priorities we want to see included, it is clear that action on these would support the economy<sup>1</sup> and, as the Stern Review showed, the costs of not acting are far greater than those of acting<sup>2</sup>. Unfortunately, this Bill, without amendment, will not be a step change to ensuring proper value and cost-effectiveness for public sector spending on services and goods.

## General comments

1. Our submission will focus on health and social care procurement, the Living Wage, preventing companies involved in tax dodging from being awarded public contracts, and on the importance of procurement in meeting Scotland's climate change targets, including in the key area of food procurement. We are also calling for the Bill and associated regulations/guidance to be used to

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[www.unison.org.uk/upload/sharepoint/Briefings%20and%20Circulars/Landman%20Economics%20Living%20Wage%20Report%20-%20Final.pdf](http://www.unison.org.uk/upload/sharepoint/Briefings%20and%20Circulars/Landman%20Economics%20Living%20Wage%20Report%20-%20Final.pdf)

<sup>2</sup> [http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/Executive\\_Summary.pdf](http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/Executive_Summary.pdf)

promote labour rights and workforce protections, such as the PPP Protocol and Section 52 Guidance and compliance with the Equality Act. (These were, of course, also addressed in our November 2012 response<sup>3</sup> to the Scottish Government consultation on the Bill.)

2. First, we want to highlight the very significant coming together of civil society organisations in a coalition of coalitions to identify ten priorities for the Bill. We ask the Committee to act on this call from the wide membership represented by the STUC, Scottish Fair Trade Forum, Scottish Council for Voluntary Organisations, Stop Climate Chaos Scotland and the Enough Food for Everyone IF campaign. The ten priorities<sup>4</sup> include the issues we will raise in more detail below, as well as blacklisting, which we are pleased the Scottish Government is acting on<sup>5</sup>; ethical and fair trade and promoting positive social outcomes.

3. A major disappointment for UNISON and others, including the coalitions mentioned above, is that the Bill, originally proposed as the Sustainable Procurement Bill, is so weak on sustainability. For a Government, and a Parliament, that claims to be proud of its world-leading climate change legislation, it ought to be obvious that far stronger action is needed urgently to protect the planet for current and future generations - as emphasised by the facts in the recent IPCC report<sup>6</sup>. Procurement has a vital role to play in the public sector leading by example on this, yet the fear is that the Bill as proposed is not doing enough to ensure that environmental costs and benefits are properly assessed and included in evaluating tenders. It is telling that there is no reference whatsoever in the Bill and its supporting documents to the public bodies duties established in the Climate Change (Scotland) Act 2009, which place a legal requirement on the public sector to contribute to the emissions reduction targets in the Act. Most councils don't currently report emissions associated with procurement. This Bill should be changing that.

4. Important solutions to this failure are in priorities 1) and 2) from the ten priorities' document: 1) 'Statement of Intent', to embed sustainable and ethical considerations at the heart of the procurement process; and 2) 'Enshrining sustainability', which states that the Bill should refer to the established definition of sustainable development. This has five guiding principles, already agreed by the Scottish and UK governments: living within environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly. This commitment would provide much stronger support for public authorities taking into account a wide range of relevant factors and not cost alone. While the Scottish Model of Procurement defines value for money as about the best balance of cost, quality and sustainability, the reality is that procurement professionals need strong support in legislation and guidance to ensure cost is not the overriding factor.

### **Health and social care procurement**

5. We hope that Committee members would strongly condemn the way in which social care services across the UK are under attack from the combined effects of austerity cuts and privatisation, driving a race to the bottom which is a national disgrace. Nobody can think it is right or healthy in a civilised society for

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<sup>3</sup> [http://www.unison-scotland.org.uk/response/ProcurementReformBill\\_Response\\_Nov2012.pdf](http://www.unison-scotland.org.uk/response/ProcurementReformBill_Response_Nov2012.pdf)

<sup>4</sup> [www.stopclimatechaos.org/sites/default/files/Procurement-10asks-final.pdf](http://www.stopclimatechaos.org/sites/default/files/Procurement-10asks-final.pdf)

<sup>5</sup> <http://news.scotland.gov.uk/News/New-moves-to-tackle-blacklisting-660.aspx>

<sup>6</sup> <http://www.stopclimatechaos.org/governments-must-act-urgently-avoid-catastrophic-climate-change>

care services for vulnerable, elderly people to have home visits restricted to unreasonable times, workers losing employment rights, and the undermining of minimum wage and Living Wage levels by not paying for travel time - leading to a high turnover of staff and poor quality service. The relentless rise of zero hours and nominal hours contracts adds to the pressures on staff and care standards.

6. More than £400m is spent by councils alone on home care in Scotland, mostly in the private and voluntary sector. These services are being squeezed as demand increases, yet local authority budgets are cut. The third sector is being affected particularly badly, with a range of vital services, including for disabled people, now hanging by a thread<sup>7</sup>.

7. We welcome the fact that the forthcoming new EU public procurement directive will set much simpler rules for health and social care services, recognising that buying these is so very different from buying goods. Quality of care must be paramount and we want to see the Scottish Government look at further measures to ensure a differentiated approach in buying services, making sure we have proper person-centred procurement. We should also specify, through procurement, decent employment standards, including the Scottish Living Wage for all working on public service contracts, no zero-hours or nominal hours contracts, proper training and funding for services.

8. Freedom of Information rights should follow the public pound. See FOI comments at Par 19.

### **Tax dodging**

9. UNISON has campaigned strongly for a ban on companies involved in tax dodging being awarded public contracts. (See our consultation response, mentioned above, for more detail, including reference to action on this in Helsinki, Paris, Sweden and Norway<sup>8</sup>.) We believe there is strong public support, but weak words and little action from the UK Government, while the Scottish Government has an opportunity with this Bill and associated Regulations and Guidance to really make a difference on this.

10. Procurement should be used as part of stronger efforts to tackle tax dodging and tax avoidance, both at home and in developing countries. This could bring in much-needed billions of pounds for the public purse. It is entirely wrong that companies seeking to avoid paying their fair share of tax should be awarded public contracts. There should be pre-qualification disclosure of company taxation policies, not just illegal tax evasion. Public bodies should be able to demonstrate that a company would benefit the community through funding for education, road etc. through the payment of tax. This would allow them to evaluate a tender on the basis of which company pays tax or not. There should be penalty clauses for tax evasion and aggressive tax avoidance, post contract.

11. We note in regard to suggestions that EU laws could be an impediment, that the UK Parliament's Public Accounts Committee said in September in its 6<sup>th</sup> Report<sup>9</sup>, covering procurement: “..government is still not fully using its negotiating position as a large customer to challenge those who pay little UK tax on their profits or those who have failed to deliver effectively in previous contracts. The Cabinet Office should consider how suppliers' performance and

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<sup>7</sup> <http://www.unison-scotland.org.uk/news/2013/novdec/1106.htm>

<sup>8</sup> [http://www.unison-scotland.org.uk/response/ProcurementReformBill\\_Response\\_Nov2012.pdf](http://www.unison-scotland.org.uk/response/ProcurementReformBill_Response_Nov2012.pdf)

<sup>9</sup> <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublic/137/137.pdf>

record of paying their fair share of tax impact on procurement decisions. *EU public procurement laws should not be interpreted as a barrier to making common sense decisions on procurement.*” (our emphasis)

### **Living Wage**

12. The Scottish Living Wage of £7.65 is good news for workers as they get higher wages and that improves health and job motivation. It’s good for employers because it reduces turnover, improves productivity and attracts better staff through reputational gain. The wider community also benefits through lower benefit cost, less stress on the NHS and cash into the local economy.

13. The Institute of Fiscal studies has calculated sub-living wage employers cost the taxpayer £6bn a year in in-work benefits alone. The indirect cost on poverty is around £25bn. A new report for UNISON by Landman Economics looks at the economic benefits and calculates that 58,000 additional jobs across the UK could be created by the stimulus impact of the living wage<sup>10</sup>. This shows that the living wage is an economic win-win, strengthening the case for making it a statutory provision.

14. Almost all the public sector in Scotland is now committed to paying the Scottish Living Wage with less than 3% of the workforce not covered. The challenge is to extend the scope to more parts of the voluntary and private sector. The Scottish Government has agreed to financially support a project to extend accreditation and this is very welcome. A field worker should be able to explain the benefits to a wider range of employers and help them achieve accreditation. However, we believe that a Living Wage Unit is essential to drive this forward.

15. The key next step is to promote the Scottish Living Wage outwith the public sector through procurement. The Bill should include a requirement that all contracting authorities stipulate payment of the Scottish Living Wage as a condition for performance of the contract. In addition, there should be a Code of Practice for the promotion of the Living Wage in procurement, giving guidance on the legal position, good practice, uprating, accreditation, s52 statutory guidance and the PPP protocol on the two tier workforce.

16. Some may argue to the Committee that companies can’t afford the living wage. Figures from the Office for National Statistics show that the UK’s biggest companies increased their cash reserves by £83bn between 2007 and 2012. But some employers are refusing to use this cash to offer decent wage rises that would increase demand in the economy. Instead, workers are suffering the longest wage squeeze in over a century and in-work poverty continues to grow. The Scottish Government ought to want to tackle this cost of living crisis. Low paid women are being hit particularly hard and would be helped enormously by extending the living wage. As Dave Moxham, Deputy General Secretary of the STUC, said in Living Wage Week in November: “We need a more radical approach to how the care economy in Scotland is valued in Scotland and paying the Living Wage in the care sector can play a part in challenging the historical undervaluing of ‘women’s work’.”<sup>11</sup>

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<sup>10</sup><https://www.unison.org.uk/upload/sharepoint/Briefings%20and%20Circulars/Landman%20Economic%20Living%20Wage%20Report%20-%20Final.pdf>

<sup>11</sup><http://www.stuc.org.uk/news/1026/scottish-living-wage-campaign-calls-for-co-operation-between-scottish-government-and-local-authorities-to-ensure-living-wage-is-central-to-procurement-contracts>

## **Climate change targets**

17. As noted, we are astonished that there is no mention of the public bodies climate change duties and believe this reflects the lack of priority given to climate change. Policies on climate change and the economy, pay, skills, etc. should all come together under plans for a 'Just Transition' to a low carbon economy. We urge members to address this in the various ways highlighted in the ten priorities document, including 3) Reducing Greenhouse Gas Emissions.

18. Food is different from other procurement, with quality food widely acknowledged as essential for good health and with food a key issue in tackling climate change. We agree strongly with the recommendation in the 2009 Walking the Talk report by Robin Gourlay that the 'whole life' cost of food should be recognised, with "the balance between price and quality, and sustainable development, including costs attributable to health and climate change" acknowledged by purchaser and provider and factored into the business proposition<sup>12</sup>. We say in our Food for Good Charter that sustainable food procurement should be an explicit objective across public services<sup>13</sup>.

## **Other comments**

19. Freedom of Information rights should follow the public pound. We want to see amendments to the Bill to the effect that all companies bidding for public contracts should, as a condition of the contract, have to comply with FOI legislation as regards that contract. However, if Committee members are not willing to go that far, we would ask them to agree that this should apply as a minimum to health and social care contracts. Deputy First Minister Nicola Sturgeon said in a speech on procurement this autumn that a key element of the Bill is a push for greater transparency in procurement. She means to help business, yet makes no mention of transparency for the public<sup>14</sup>. The public has a right to know and the push for transparency should include companies bidding for contracts. The Scottish Information Commissioner's recently commissioned Ipsos MORI poll reaffirmed the strong public support for this<sup>15</sup>. UNISON's long-standing objections to PPP/PFI contracts include the lack of accountability and need for FOI to apply, as well as the excessive costs involved. We support the point made in the evidence to the Committee from the Campaign for Freedom of Information in Scotland that, while they would like to see a provision in the Bill for public contractors to accept responsibilities and provide information to the public under the conditions of the Freedom of Information (Scotland) Act, that Act should still be amended to ensure all bodies providing public services are covered directly. As they say, and we hope the Committee will agree, "this is especially important when the item being bought is a contract to deliver services direct to the public, particularly for health or social care, or for services that carry a significant safety risk, such as transport or utility supply."

20. On equalities, we want the Bill to promote compliance with the Equality Act and propose that the Public Sector Equality Duty and Scottish Specific Duties are extended to cover all procurement contracts. Also, see above comments on how the Living Wage helps low paid women.

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<sup>12</sup> <http://www.scotland.gov.uk/Resource/Doc/291749/0089895.pdf>

<sup>13</sup> [http://www.unison-scotland.org.uk/briefings/b041\\_BargainingBrief\\_Food4GoodCharter\\_Oct2013.pdf](http://www.unison-scotland.org.uk/briefings/b041_BargainingBrief_Food4GoodCharter_Oct2013.pdf)

<sup>14</sup> <http://www.scotland.gov.uk/Topics/Government/Procurement/Procurement-News/NatConf08/dfmkeynoteaddress2013>

<sup>15</sup> <http://www.itspublicknowledge.info/home/SICReports/OtherReports/PublicAwarenessResearch2013.aspx>

21. We welcome the fact that public authorities which expect to have an annual procurement spend of more than £5m must prepare and publish a procurement strategy, comply with it, so far as is reasonably practicable, and publish an annual procurement report.

22. We note that S23 (Selection of tenderers, which enables Ministers to make regulations about the selection of economic operators, including minimum standards criteria and how a contracting authority determines whether a potential bidder meets the specified minimum standard) will only apply to contracts regulated by the Bill, so those above the financial thresholds are EU regulated and proposals from the Scottish Government must ensure consistency by also amending the 2012 regulations. While this will presumably happen for blacklisting and other proposals that Ministers are committed to, the Committee should address this need for consistency in the other proposals that we are asking them to take up. Any such amendments to regulations should also be covered in the new regulations following the new EU Procurement Directive, due soon.

23. We ask the Committee to reject outright calls from the CBI to introduce a so-called 'right to bid'. This is simply part of a right-wing agenda to seek a major increase in privatisation of public services, damaging to quality, to workers' pay and conditions and therefore to the economy. It is short-sighted and costlier in the long run and is not what the public wants to see happen.

### **Conclusion**

UNISON urges the Committee to include our proposals, including the ten civil society priorities, in its report and urges Committee members to address them when proposing and considering amendments to the Bill.

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