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Economy and Fair Work Committee

Post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014



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Economy and Fair Work Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Wellbeing Economy, Net Zero and Energy, with the exception of matters relating to net zero and energy.



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Membership changes

1. The following changes to Committee membership occurred during the course of this parliamentary year—
 - On 29 June 2023, Murdo Fraser replaced Jamie Halcro Johnston, Ash Regan replaced Michelle Thomson, Kevin Stewart replaced Fiona Hyslop, and Brian Whittle replaced Graham Simpson.
 - On 30 October 2023, Ash Regan resigned from the Committee.
 - On 8 November 2023, Evelyn Tweed joined the Committee.
 - On 18 June 2024, Michelle Thomson replaced Colin Beattie, Willie Coffey replaced Evelyn Tweed, and Lorna Slater replaced Maggie Chapman

The Procurement Reform (Scotland) Act 2014

2. [The Procurement Reform \(Scotland\) Act 2014](#) (the 2014 Act) put in place regulation for public procurement for contracts above certain financial thresholds and created a sustainable public procurement duty.
3. The law governing public procurement in Scotland is complex and derives from domestic and international sources. The 2014 Act sits alongside regulations to provide a national legislative framework for sustainable public procurement. The 2014 Act focuses on a small number of general duties on contracting authorities regarding their procurement activities and some specific measures aimed at promoting good, transparent and consistent practice in procurement processes.
4. Regulated procurements under the 2014 Act are defined by the relevant thresholds: £50,000 for a public contract, and £2,000,000 for a public works contract, excluding VAT. The thresholds for the [Public Contracts \(Scotland\) Regulations 2015](#), the [Utilities Contracts \(Scotland\) Regulations 2016](#) and the [Concession Contracts \(Scotland\) Regulations 2016](#) are aligned to the thresholds specified in the [World Trade Organisation's Government Procurement Agreement](#), which the UK is a signatory to.
5. The aim of the 2014 Act was establishment of "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 intention was to "help encourage local action within organisations with the aim of building procurement capability and capacity and maximising public procurement's contributions to wider socio-economic and environmental policy objectives."
6. The sustainable procurement duty in the Act requires a contracting authority, before buying goods or services, to consider how it can improve the social, environmental and economic wellbeing of the area in which it operates, with a particular focus on reducing inequality. This duty includes considering how the involvement of SMEs, the third sector and supported businesses can be facilitated in the procurement process and how processes can be designed in such a way to encourage and promote involvement.
7. All Scottish public bodies are required to consider the use of community benefit requirements for regulated procurements, where the estimated value of the contract is £4 million or more. A community benefit is a contractual requirement which can relate to training and recruitment or the availability of sub-contracting opportunities. A community benefit could also relate to improving the economic, social or environmental wellbeing of the authority's area. Contracting authorities must state the community benefit requirements in their contract notices or, where a requirement is not imposed, state the reasons for not doing so. Contracting authorities must report on their community benefit activities in procurement annual reports.

8. Before undertaking a procurement exercise, statutory guidance on addressing fair work practices including the Living Wage, requires public bodies to consider whether the inclusion of a question on fair work practices is relevant and proportionate, for evaluation alongside other relevant criteria. A public body must also include in its organisational procurement strategy, a statement on its general policy on "the payment of a living wage to persons involved in producing, providing or constructing the subject matter of regulated procurements". Annual procurement reports must include a review of whether procurement complied with the body's procurement strategy, including compliance with this general policy statement.
9. Last Session, the Economy, Energy and Tourism Committee started post-legislative scrutiny of the 2014 Act. That Committee heard the 2014 Act had improved visibility of procurement opportunities but the process of bidding could be bureaucratic, and SMEs were struggling to access public sector procurement. Evidence described challenges in collecting data and monitoring outcomes and suggested local authorities did not have the resources to undertake monitoring. The previous committee's work was curtailed in 2021, due to the Covid-19 pandemic.
10. The Committee's interest in undertaking post-legislative scrutiny of the Procurement Act came, in part, from our [2022 report on Scotland's supply chains](#). During that work, the Committee heard that procurement processes were not flexible enough, were a barrier to SMEs and were weighted towards cost, sometimes to the detriment of other elements. Framework agreements were, in some cases, requiring bidders to confirm prices for several years, a particular challenge for smaller firms and organisations. They were also leading to subcontracting around the UK, at the expense of local supply chains.

Scottish Government research and strategy

11. In early 2023 the Scottish Government published research, undertaken by Harkins Research and Consultancy,¹ looking at procurement policy in Scotland over the previous 20 years. The remit of the research was to “compare community benefits and other sustainable procurement outcomes and practice achieved in the public sector in Scotland, against comparable models in other parts of the UK.” Forty three organisations participated (33 in Scotland) comprising 15 local and national governments, 17 other public bodies, 8 stakeholders and 3 businesses. The research findings included:
- The Scottish model of procurement was a success and suggested Scotland was regarded as a leader in the field of sustainable procurement
 - There is a challenge in balancing consistency while maintaining local flexibility
 - There are particular challenges in relation to managing, monitoring and evaluating community benefits
 - Resource challenges affect all parties and in general, public bodies felt they lacked procurement resource
 - SMEs were considered to lack the capacity to consider and deliver social benefits, which can put them at a disadvantage in bidding for work
 - There are challenges in managing competing priorities, procurement aiming to deliver on numerous fronts which puts a burden on tendering organisations but also on contractors.
12. In April 2023, the Scottish Government published its five-year public procurement strategy² setting out a ‘high-level vision and roadmap’ for public procurement for public sector bodies to align with. The Scottish Government’s vision is for public procurement to be “at the heart of a sustainable economy to maximise value for the people of Scotland.” Objectives in its strategy are grouped in four themes:
- **Good for business and their employees:** promoting early supplier engagement, encouraging a sustainable supply base, consider how procurement contracts are developed to reduce barriers to SMEs.
 - **Good for places and communities:** maximise community wealth building through procurement, maximise opportunities to develop, enhance and maintain a sustainable built environment, promoting the routine consideration of whole life costing.
 - **Good for society:** deliver best value while promoting economic wellbeing for people and organisations in Scotland, promoting food security and ensuring that processes are resilient in the face of any future emergency situations.
 - **Open and connected:** learning from international best practice, improving data through the promotion of consistent use of tools, platforms, and systems.

13. In its most recent annual report, covering 2022/23 ³, Public Contracts Scotland (PCS) advised 14,895 new public sector business opportunities had been advertised. These were comprised of 1314 FTS (Government Procurement Agreement threshold) notices and 13,581 Low Value, of which 11,579 were Quick Quotes. 18,079 suppliers were awarded public sector contracts through PCS of which 13,004 suppliers were Scottish. 10,894 were Scottish SMEs.
14. In April 2024, the Scottish Government published its Procurement in Scotland Report, the review of procurement annual reports from all contracting authorities and an overview across the Scottish Public sector. ⁴ The report showed:
 - Total Scottish public procurement sector spend was £16 billion, up from £14.5 billion in 2020-21. Of this, £9.3 billion was regulated spend within the threshold set out in the 2014 Act
 - 18,880 suppliers were awarded contracts through PCS, compared to 15,656 in 2021-21 (broadly comparable to the 18,421 awarded in 2019-20)
 - £8.9 billion was spent in Scotland, of which £3.8 billion of spend was within the local area of the purchasing body (compared to £3.6 billion in 2020-21)
 - £1.1 billion of spend was with third sector organisations
 - Consistent percentage of public bodies evidencing they had regard for equal treatment and non-discrimination (80%, 81% last year), or how they were supporting climate change (unchanged at 71%).
15. The Committee noted that the Scottish Government's five-year procurement strategy provided a helpful re-stating of the aims of public procurement. The Harkins research findings and published data were useful context but the Committee observes that only three businesses had been involved.
16. A decade on from passing of the 2014 Act, the Committee thought it important to hear from Scotland's businesses and third sector organisations about their experiences of public procurement. We were grateful to all who took the time to contribute.

The experience of smaller businesses

17. The Committee's first evidence session⁵ was with Scottish Chambers of Commerce (SCC), Federation of Small Businesses (FSB) and the Scottish Wholesale Association (SWA).
18. SCC said transparency had been much improved by the 2024 Act. Publishing opportunities through PCS and Quick Quotes, reporting by contracting authorities and an evaluation of opportunities had all been helpful. FSB said it had seen a desire, across local authorities, to work with smaller businesses. The Supplier Development Programme (a partnership of Local Authorities, Scottish Government and other public bodies) supports Scottish-based SMEs to bid or tender for public sector contracts. It provides free training and other events. FSB called for more resourcing for the Supplier Development Programme.
19. Despite improvements, challenges remained. The SCC said in advance of this evidence session, when seeking feedback from its members, one had given the 2014 Act "a C+ for its performance" summarised as some good progress but more progress still to be made. The SCC also described inconsistencies between contracting authorities and gave the example of the same sustainability information being asked for in different ways, creating unnecessary administrative and cost burdens for its members.
20. Bureaucracy around the procurement process was seen as challenging and a particular barrier for smaller firms. The SWA suggested that a bid could take one person three weeks to prepare. The majority of FSB members had never tendered for a public contract, but of those who had, two thirds had found the process too hard to navigate and "geared towards larger businesses". Small business owners often did not have the time or skill to devote to crafting a successful bid for contracts. Bid writing was seen as a skill in itself, not necessarily one that was aligned with the skillset of a small business.
21. The previous Committee heard concerns that procuring through large contracts could be making it harder for smaller or newer businesses to access opportunities, despite larger contracts being divided into lots. This Committee's evidence suggested this was still a concern. Larger contracts create supply chains where smaller businesses are sub-contracted. Both the FSB and the SCC said this could create issues around late payment for smaller providers or those in the wider supply chain, although prompt payment had been improved for direct contractors.
22. In relation to food and drink, SWA suggested that larger framework contracts were barriers to regional differentiation, competition and smaller regionally focused suppliers. To some extent, SWA said that Scottish Government policy, to continue to align with EU regulation, was a hindrance too because EU regulations did not allow Scottish produce to be the primary choice.
23. SWA said opportunities for local food supply chains were reduced because of a requirement to be able to provide all 32 local authorities' food needs and that nutritional guidelines were not flexible enough. SWA illustrated the rigidity by reference to the requirement in the nutritional framework that bread provided for schools should contain 3g of fibre. SWA said compliant bread was not available in

Scotland and was being brought in from the EU. The SWA said too that the 75% cost weighting, when assessing bids, was encouraging a race to the bottom, putting pressure on margins and discouraging some wholesalers from bidding.

24. On a practical level, the Public Contracts Scotland website was seen as a valuable single point of access but there were calls for it to be improved and updated, to enable businesses to be matched with opportunities, make navigation easier and reduce "clunkiness". Improvements would aid understanding between contracting authorities and suppliers and enable more meaningful pre-bid dialogue, something businesses felt would be helpful, particularly for more technical procurements.
25. SCC said that when reporting on procurement, there was often a focus on the number of contracts but more should be done to highlight the value of awards and how they were broken down. SCC also pointed out that successfully getting on to a framework does not guarantee any work, citing a member who had received no work after 4 years.
26. Feedback for unsuccessful bidders was felt to be inconsistent. In some local authorities that there seemed to be insufficient mechanisms to provide feedback, discouraging future bids. On the other hand, some businesses were reluctant to seek feedback or challenge decisions in case it counted against them in future bidding rounds, or were unaware that they could request further feedback.
27. The Committee received valuable insights from an informal session held with local businesses from the East Ayrshire area. We were grateful to Bryce Cunningham (Mossgeil Milk), Guy Hinks (Photographer), Steven Allan (Concept HR) and Craig Vesey (Connect Modular) for sharing their experiences.
28. The East Ayrshire businesses we spoke with agreed that tendering could be resource intensive and time-consuming and sometimes restrictive for small businesses, even when contracts were lotted. One business said a bid had taken two weeks to prepare, another had required to engage a specialised consultant. The businesses felt that the PCS portal was not necessarily user-friendly and relevant documents were not always easy to find on it. One-to-one support through Business Gateway was seen as having been more helpful than larger group seminars and the businesses wanted more support to navigate terminology and processes.
29. The Committee was pleased that, overall, businesses had found the 2014 Act to have improved transparency but the Committee was concerned that inconsistency, bureaucracy and inflexibility were still creating challenges in navigating the public procurement landscape for some SMEs.

The experience of the third sector

30. The Committee's second evidence session⁶ was with the TSI Scotland Network, SCVO, Social Enterprise Scotland, Close the Gap and the Scottish Fair Trade Forum.
31. Witnesses were generally positive about the 2014 Act and the wider procurement reform process. Similar to the smaller business perspective, there was agreement that the reforms had improved transparency and accessibility of procurement in Scotland. However, there was felt to be an implementation gap.
32. TSI Scotland Network said the collective power of public procurement could now be used more effectively, recognising lessons from the pandemic on the importance of local responses and solutions. It called for procurement to be more outcome-focused at the commissioning stage, earlier engagement with stakeholders and potential suppliers and recognition that procurement might not be the best way to achieve intended outcomes.
33. SCVO said there was considerable room for improvement to the design of framework contracts to make the tendering process easier, particularly for new bidders. It said the current design, timescales and experience needed to bid can marginalise those closest to the communities they serve. SCVO made six suggestions including reducing the length and complexity of forms, not using generic templates that require extraneous detail, only seeking accreditations that are necessary, more use of Quick Quotes, more consistency across local authorities and a partnership approach to commissioning.
34. Social Enterprise Scotland said many of its organisations had yet to participate in any public procurement and it had not seen as much change as it would like. A frustration voiced by Social Enterprise Scotland's members was questions or requirements which were seen as either disproportionate to the good/service being tendered for, i.e. large indemnity insurance requirements, or appeared irrelevant. More generally, complexity of the process including language and bureaucracy, lack of capacity, a need for training and a lack of smaller contracts were limiting participation by social enterprises. Social Enterprise Scotland said some procurement professionals were more risk averse and had less understanding of social enterprises. It suggested improved reporting, and more disaggregated information reported on the number of contracts awarded to the third sector, would be helpful.
35. The TSI Scotland Network called for the sustainable procurement duty to be strengthened to support a rebalancing away from price, acknowledging that the sustainable procurement duty requires factors, other than price, to be considered.
36. Close the Gap pointed to a lack of cohesion across various policies and procurement legislation. For example, the public sector equality duty not being specifically referenced in the sustainable procurement duty, contributing to a perception that procurement and equality were separate. It said a more explicit link between procurement and the public sector equality duty could help. Close the Gap had only found evidence of one public body mentioning equality in its procurement strategy and pointed to research within the social care sector suggesting that price

remained the determining factor and had contributed to a 'race to the bottom' in terms of staff terms and conditions.

37. Public sector fiscal constraints were acknowledged but witnesses noted that multi-year funding was a common request. The TSI Network said a lack of funding certainty, whether the source was grants or contracts, had contributed to challenges in providing fair work for suppliers. It said that reform of the reserved contracts regulations, opening them up to supported businesses where at least 30% of the employees were disabled or disadvantaged, had been positive but lots were currently too narrow, limiting the number of suppliers. Overall, the TSI Network felt the reserved contract mechanism was underused and that public bodies were not necessarily thinking about the disability employment gap.
38. The Committee has recently concluded evidence taking on its disability employment gap inquiry and will report in due course. The Committee notes that without the powers to legislate on employment or equalities law, or to directly regulate employers, public procurement is one of the key policy levers available to the Scottish Government to meet its target of halving the disability employment gap by 2038. During this inquiry, the Committee received evidence that in order to meet its target, a more co-ordinated approach across Government will be needed. This could include, for example, using reserved contracts to incentivise the employment of disabled people.
39. The Scottish Fair Trade Forum said a strength of the 2014 Act was the requirement for public bodies to set out their general policies on fairly and ethically traded goods and services. The biggest challenge was in monitoring, recording and reporting. There was no obligation to track and publish expenditure on "Fair Trade" products and no definition in the 2014 Act of "Fair and Ethical Trade" to allow accurate monitoring on annual expenditure on Fair Trade goods. Some bodies who do seek to monitor expenditure on fairly and ethically traded goods only included products with a fair trade accreditation, others included products that made any mention of ethical considerations.
40. The Scottish Fair Trade Forum said, for the purposes of monitoring and recording, there should be a clear definition of Fair Trade within legislation and, in the interim, through guidance. It said the definition should be items that are certified as fairly traded through the two major international fair trade systems; Fair Trade International and the World Fair Trade Organisation.
41. Much of our evidence referred to the role that forthcoming Community Wealth Building legislation could play and the hopes and expectations that third sector witnesses, in particular, had for this anticipated legislation to drive change. The Scottish Government has committed to introduce a Bill before the end of this Parliamentary session and has been working with local authorities to help build capacity and support community wealth building at local and regional levels through five community wealth building pilot areas: Clackmannanshire, Fife, Glasgow City Region, South of Scotland and Western Isles.

Local authorities, centres of excellence and Scottish Water

42. At the third evidence session,⁷ the Committee heard from:

- local authorities,
- NHS National Service, Advanced Procurement for Universities and Colleges (two of the four Procurement Centres of Expertise in Scotland which between them provide support and guidance to all public sector bodies) and
- Scottish Water.

Scottish Water is not designated as a contracting authority in terms of the 2014 Act but incorporates the duties and requirements of the Act in its processes. Again, our witnesses at this evidence session said that the 2014 act had improved transparency and accessibility and encouraged greater focus on community benefits.

43. City of Edinburgh Council said its engagement with suppliers had improved but this had come at an administrative cost. It said alongside lotting contracts to make opportunities accessible, more work was needed to upskill smaller suppliers. The Supplier Development Programme had helped, but it was an additional cost to local authorities. South Lanarkshire Council highlighted the increasing use of Quick Quotes and creating more opportunities for smaller businesses but suggested the £50,000 threshold for Quick Quotes was now low. Aberdeen City and Shire councils pointed to increased use of sub-contracting but reduced visibility of the wider supply chain. Less supply chain visibility could mean that the volume of work going to smaller, local firms was being under-reported. Less visibility also created a challenge in monitoring fair work or other sustainable procurement duty requirements.

44. In response to the Committee's questions about weightings when assessing bids, witnesses said different weightings were used depending on the procurement activity and desired outcomes but no activity was judged solely on price. Value for money was recognised as being important. Witnesses discussed some limitations around whole life costing. For example, projecting future energy costs could be challenging and it could be difficult to provide feedback to unsuccessful bidders where modelled future costs had been a factor in the decision. Although no activity was judged solely on price, witnesses noted that tight budgets, with little flexibility to move spend from year to year, were barriers. This was contrasted with Scottish Water. Scottish Water is able to operate over a 6-year regulatory period which, to an extent, alleviates some of the budgetary challenges.

45. The Committee was told the PCS system was approaching the end of its commercial life and that a replacement was to be tendered for soon. Centres of excellence were working with the Scottish Government to influence this procurement. Scottish Water had initially used PCS but found it unsuitable for its needs. It now had its own platform with more of a focus on negotiated procurements rather than competitive tendering.

46. For contracting authorities, the PCS system was still seen as efficient but it was acknowledged that within contracting authorities buyers had dedicated experienced teams familiar with the platform and systems, unlike smaller suppliers. City of Edinburgh Council noted that suppliers had to renew their registration every 12 months or suppliers would stop being visible to buyers, something that was not always understood amongst suppliers. Witnesses agreed that there was scope to better integrate the system with guidance and for improved visuals to assist user experience and supplier search functionality.
47. The Committee asked the witnesses about scope for reducing bureaucracy. South Lanarkshire Council said the need to safeguard public funds did require an appraisal of the financial standing of suppliers. Similarly, health and safety requirements could be viewed as a bureaucratic barrier but were often important aspects in any procurement exercise. In the universities and colleges context, Advanced Procurement for Universities and Colleges (APUC) acknowledged that procurement staff sometimes faced internal barriers, such as risk aversion and financial constraints which could contribute to bureaucracy.
48. In its written submission, Unison said surveys suggested fair work was weighted at around 5 per cent by local authorities. More generally, City of Edinburgh Council said engagement with contractors to outline priorities and set out fair work requirements could influence the content of bids, but data and collection were still challenges and there was a balance between setting out requirements and making the process burdensome, particularly for smaller businesses. In response to the Committee's questions about how consistently the sustainable procurement duty was assessed, witnesses felt their general approaches were consistent but said that specific weightings, for any given tender, could vary depending on the sector and regional priorities. For example, in sectors with particularly gendered workforces, a certain weighting might be used to reflect this.
49. Scottish Water said complying with the sustainable procurement duty was recognised as best practice and it did not view it as challenging. Its approach to procurement was to first identify the outcomes sought. It had achieved better outcomes by having discussions with suppliers before contracting and then working together. Scottish Water highlighted that due to the nature of its work, it had strong regional supply chains and was also able to have good oversight of the wider chain.
50. Aberdeen City and Shire suggested that the £4 million threshold for community benefit clauses might be too high. South Lanarkshire said it was considering a dedicated community benefit reporting system but would have to balance the costs to the council of establishing and maintaining this. The Committee asked whether this was something that should be delivered at a national level. South Lanarkshire suggested there could be a role for national organisations such as Scotland Excel but that it would also require local support. NHS National Service has a community benefit portal allowing communities to express preferences.
51. The Committee asked about inconsistencies in recording and reporting on fair and ethically traded products. Witnesses noted that there was no requirement to report which meant fair trade reporting was a lower priority. If contracting authorities were required to report on fair trade, changes to product catalogues would be required.
52. Specifically on food procurement and local produce, national nutritional requirements were highlighted again as a barrier to innovation or diversity.

Witnesses also suggested there could be practical barriers to managing multiple suppliers. For example, schools preferred a single large delivery instead of multiple deliveries spread over days. Aberdeen City and Shire noted that scale is a barrier as there are more than 250 schools across their areas. Splitting into smaller contracts had resource implications for the councils. City of Edinburgh Council said that measuring sustainability through food miles could be a lever to promote local produce but that explicitly requiring local content was not possible.

Supplier Development Programme, Scotland Excel and Central Government Procurement

53. At the penultimate evidence session, ⁸ the Committee heard from Scotland Excel, Central Government Procurement (the other two of the four Procurement Centres of Expertise in Scotland) and the Supplier Development Programme. Unison also attended this session.
54. Scotland Excel said the 2014 Act had helped drive social and community benefits such as payment of the real living wage and local supply chains. It said national frameworks could drive value by negating the costs associated with local tenders and enable sharing of procurement expertise across the wider public sector. Central Government Procurement said by lotting national contracts, local content need not necessarily be reduced and that there had been growth of around 20% in Scotland-based businesses winning contracts.
55. Central Government Procurement said a tender to upgrade the PCS website was expected soon with the aim of simplifying processes and reducing administrative burdens. Scotland Excel said PCS and PCS Tender should be merged. The Committee observed that the two systems and processes could create duplication and cause confusion with businesses thinking they were fully registered but not being visible to buyers.
56. The Committee sought to understand whether risk aversion in public bodies was limiting innovation. Unison had highlighted the Granite City Consortium framework which had delivered a more flexible care provision and given frontline staff considerable autonomy. Central Government Procurement pointed out that this contract had been enabled through standard procurement routes; the difference had been that commissioners decided they wanted to buy a different service and had worked with the market and procurement professionals to shape it.
57. The Committee asked witnesses to what extent frameworks supported the consideration of whole-life costing. Central Government Procurement advised that whole-life costing was not undertaken for every procurement exercise due to being resource intensive and not always proportionate to the value of the contract. However a whole-life costing would be undertaken for a complex product or service. Central Government Procurement said there could be issues around having to defend the outcome of any whole-life costing, if challenged. Contracting authorities would have to be confident that their approach had been sufficiently robust to explain to unsuccessful bidders how modelled costs might have contributed to the outcome.
58. On the issue of feedback for unsuccessful bidders, Central Government Procurement said there was a clear requirement to provide feedback, but buyers did not always seek detailed feedback following receipt of a standardised response. The Supplier Development Programme suggested that the requirement to give feedback is for contracts above the regulated thresholds and some evidence on the lack of feedback might relate to lower-level contracts.

The Scottish Government position

59. The Committee's final evidence session⁹ was with the Minister for Community Wealth and Public Finance. The Minister told the Committee that the 2014 Act had made opportunities more accessible by advertising them through Public Contracts Scotland, dividing contracts into lots and subcontracting opportunities through the supply chain. The Minister pointed to the Scottish Government having developed business-friendly and easy-to access training and guidance and support for businesses of all sizes. The Minister said the results were demonstrated in the recently published "[Annual Report on Procurement Activity](#)".
60. Nevertheless, the Minister agreed inconsistency between different contracting authorities could be a challenge. The Minister said efforts were being made to address inconsistencies through guidance, support, training and engagement but that there would inevitably still be some variations in implementation. Ultimately decisions were taken locally, but engagement and support provided by the Scottish Government and others to procurement heads and facilitating and sharing best practice were key to supporting and encouraging appropriate consistency. Following his evidence session, and in response to a request from the Committee, the Minister wrote to the Committee¹⁰ with details of the last year of Scottish Government activity to facilitate and share best practice.
61. Contracting authorities said resourcing was a key constraint when considering how to maximise effective procurement and commissioning practice. The Committee asked the Minister how the Scottish Government and other bodies effectively pool and share procurement resources and what more could be done to support contracting authorities. The Scottish Government said it was looking to expand the national suite of frameworks, contracts and support and increase the categories that could be bought collaboratively. It was also looking at how best practice is shared, all of which would save significant local resource.
62. The Committee also heard that resource constraints were limiting smaller businesses' ability to engage with public procurement. Funding for support services such as the Supplier Development Programme has fallen in real terms. Responding to these concerns, the Minister noted that the Scottish Government was one of a number of partners that funded the Supplier Development Programme. The Minister pointed to the guidance and support on the PCS website and the importance of "pre-commercial engagement", particularly for SMEs. The Minister added that he expected to publish an SME and third sector action plan by the end of that month.
63. With regard to the Public Contracts Scotland website, the Minister said work to update it was at an early scoping stage and there was no timescale but he gave a commitment to keep the Committee updated.
64. The Committee asked the Minister about confusion around Quick Quotes and how many local authorities used the facility. The Scottish Government explained that within the PCS website there is an in-box that can be used to receive Quick Quotes. Local authorities did not necessarily use the specific PCS website Quick Quotes facility, but Quick Quotes were nevertheless used by all local authorities. In subsequent correspondence, the Scottish Government advised that in the last financial year, 5024 Quick Quote notices, from all 32 local authorities, had been

published on the PCS website.

65. As noted earlier in this report, the Scottish Government's anticipated community wealth building legislation is being seen by stakeholders as key to ensuring that the sustainable duty and community benefit requirements of the 2014 Act can be fully embedded, particularly to support local supply chains. The Committee asked the Minister for an update on the five community wealth building pilot areas and next steps.
66. The Minister noted that the pilots had been in place for a number of years. Each operated in different contexts and real progress had been made. The Minister said there had been good engagement with the Centre for Local Economic Strategies, which had produced reports on the activities. The Minister noted that other areas of Scotland were also taking forward initiatives, including North Ayrshire Council which was seen as a pioneer. The Minister confirmed that community wealth building legislation remained a programme for government commitment. The Scottish Government had consulted in 2023 and published an analysis of responses. It was now considering next steps.
67. The Committee recognises that the proportion of locally produced food products, available through the national frameworks, has increased. However, the Scottish Wholesale Association suggested that rigid nutritional standards presented a significant barrier to increasing volumes of local produce through public procurement. The Committee asked the Scottish Government about this and was advised there was a lot of flexibility within the rules, including the ability for buyers to design protected geographical indicators within their requirements and to specify recognised assurance schemes, such as the Quality Meat Scotland scheme.
68. In a subsequent letter to the Committee,¹⁰ the Minister provided further information on food regulations advising that in his view they were flexible enough to allow menus to be designed to meet local needs and preferences. The Minister said that having clear, evidence-based nutritional standards and guidance helped potential providers by providing certainty of demand.
69. The Committee raised with the Minister the evidence about inconsistency in the provision of feedback for unsuccessful bidders. In response, the Minister suggested this was an implementation issue. The Minister emphasised that all bidders were entitled to feedback and that the issue of feedback would be considered for future supplier surveys.
70. The requirement to produce annual procurement reports and publish strategies has been welcomed but there are inconsistencies across public bodies. The Scottish Government's recently published annual synthesis report provides a picture of procurement activity across the Scottish public sector. The Committee asked the Minister whether he recognised the need for more consistency and better links between actions and outcomes. In response, the Scottish Government pointed to the minimum requirements for inclusion in strategies and reports, that feedback is offered on areas for improvement and that the Scottish Government Procurement Strategy, published this year, had been developed with local authorities and set out shared agreed outcomes.
71. A specific area of inconsistency highlighted to the Committee was reporting on fair trade products. The Committee heard in evidence that this stemmed from there

being no obligation to track and publish expenditure on "Fair Trade" products and services and the lack of an agreed definition in the 2014 Act of "Fair and Ethical Trade". In response, the Scottish Government pointed to the sustainable procurement duty and supporting guidance. In subsequent correspondence, the Minister provided further explanation, referred to the range of different fair trade and eco certification schemes and confirmed that, subject to meeting the required criteria, a number of fair trade certification schemes may be accepted as procurement compliant.

72. Looking ahead, the Committee is aware that SMEs can have difficulty engaging with the climate change agenda. The Committee was interested in how public procurement could support businesses in meeting climate change responsibilities and, where required, to shift business models. The Minister said the Scottish Government wanted to "support, encourage and enable businesses to go on that journey". It was acknowledged that it could be difficult to articulate what is being done. For example, where there is a make or buy decision and the decision is made not to buy, that would not be recorded in procurement report.

Conclusions and Recommendations

73. The Committee welcomes the improved transparency and accessibility of public procurement opportunities created by the 2014 Act. Ten years in, the Committee is keen that the Scottish Government, and contracting authorities, continue to build on progress to support Scottish supply chains with action to address the public procurement implementation challenges and barriers that still exist.
74. Public Contracts Scotland, the national website for accessing public sector procurement in Scotland, was seen as ground-breaking when launched in 2008. It is still a valuable resource, but developments in digital and customer interface capabilities, understandably, mean the website now seems dated and in need of a refresh.
75. The Scottish Government is asked to set out how it is learning from best practice in other areas to ensure the refreshed or replaced Public Contracts Scotland website is once again "best in class". As a valuable single point of access, the Committee calls for delivery of an improved and updated website to be prioritised. The Scottish Government is asked to set out a timetable for this.
76. The Committee asks the Scottish Government to engage directly with businesses, not just centres for excellence, to inform the work to refresh or replace the Public Contracts Scotland website, to explore options with a view to seeking agreement on a single portal and minimising associated bureaucracy.
77. The Committee acknowledges there will be a degree of variation in practice between contracting authorities. But there are undoubtedly opportunities for greater consistency and standardisation, particularly around the requirements for certain information, for example, the sustainable credentials of smaller businesses.
78. The Scottish Government is asked to work with contracting authorities to look at what more can be done to drive consistency and streamline, as far as possible, the standard information sought from bidders and to reduce the administrative and cost burdens on bidders.
79. The Committee recognises that often small business owners do not have the time or skills to devote to bid writing. The Committee notes that funding for the Supplier Development Programme has not increased in real terms. The Committee emphasises the importance of small businesses and the third sector being supported in ways that work for them and being able to meaningfully participate in pre-tender dialogue.
80. The Committee recommends that more one-to-one training opportunities are provided for small businesses and the third sector and, when scoping improvements to the Public Contracts Scotland website, that consideration is given to including links to resources that could more immediately help an

unsuccessful bidder with future bids.

81. The Committee recognises that there have been issues with larger framework contracts and that, in some cases, they create barriers to regional differentiation and local supply chains. While the Committee is aware of some contracts being lotted in ways that support increased local content, barriers remain where lots require scale or geographic spread. This can exclude smaller suppliers. Increasing use of frameworks can mean a greater role for secondary suppliers but also challenges in monitoring fair work requirements beyond the primary supplier, due to a lack of visibility and capacity in contracting authorities.

82. The Committee acknowledges the tendering efficiencies that larger contracts can create. The Committee asks the Scottish Government to undertake an exercise to share best practice, using specific examples of lotting carried out effectively that have increased local content.

83. The Scottish Government is asked to explore ways it can improve accessibility of framework contracts to ensure smaller bidders, that are closest to the communities they serve, are not marginalised.

84. The Committee recognises that there has been an increase in the the proportion of locally produced food products available through national frameworks but asks the Scottish Government to ensure contracting authorities' understanding that "best value" means more than just price. Public procurement must align with the principles of the Good Food Nation (Scotland) Act 2022, the Agriculture and Rural Communities (Scotland) Act 2024, the Circular Economy (Scotland) Act 2024 and the proposed community wealth building legislation. The Committee would observe that food miles should also be considered when contracting, given the drive to reduce carbon output.

85. The Scottish Government is asked to review nutritional standards for public food procurement to ensure that the health and wellbeing of those using the services of public bodies, such as schools and hospitals, are the primary concern and, as far as possible, to support locally procured food.

86. The Scottish Government is asked to explore how best to better balance the increasing use of framework contracts with the desire to ensure fair work compliance throughout the supply chain.

87. The Committee is aware that the 2014 Act allows flexibility and opportunities for different ways in which procurement exercises can be approached. Proof of this

can be seen in the commissioning model for Granite Care Consortium. The Committee acknowledges this is currently being assessed to identify what was done differently and how different approaches can be shared. The Committee urges the Scottish Government to consider and report back on how it will accelerate the sharing of best practice.

88. The 2014 Act has a number of thresholds, none of which have been updated: the £50,000 and £2 million thresholds; the £50,000 threshold associated with the quick-quote system; and the £4 million threshold for community benefit requirements. Feedback from the recent community wealth building consultation suggested that thresholds be reviewed. The Committee supports that.

89. The Committee asks the Scottish Government to undertake a review of thresholds, prioritising the threshold for Quick Quotes, and report back its findings to the Committee.

90. The Committee would like to see improved links between commissioning bodies and the third sector and, in particular, greater awareness of the reserved contract mechanism.

91. The Scottish Government is asked to explore how the range and number of businesses on the frameworks could be increased and awareness of the reserved contracts mechanism improved.

92. The Committee notes that the "reducing inequalities" element of a bid can be lost when assessing social and environmental outcomes associated with bids. The Committee also recognises that there is not always cohesion across various policies and procurement legislation to prevent this happening.

93. The Scottish Government is asked to consider what more should be done to ensure reducing inequalities is taken account of in procurement processes. This should include the strengthening of the sustainable procurement duty and the inclusion of specific references to the public sector equality duty and fair work obligations.

94. The Committee asks the Scottish Government to consider the calls from the Scottish Fair Trade Forum for a clear definition of Fair Trade within legislation and, in the interim, for dissemination in future guidance and resources for Contracting Authorities.

95. The Committee heard criticisms about the availability of feedback for unsuccessful bidders. There appears to be an element of confusion about the entitlement to receive feedback. This should be an opportunity for a relatively easy "quick fix" to make clearer the entitlement to feedback.

96. The Committee recommends that a uniform process for the provision of feedback should be developed. This would aide and improve transparency and should be focused on encouraging engagement by unsuccessful bidders with future procurement opportunities.
97. The responsibility placed on contracting bodies to report annually on their procurement activities is welcome. The Committee is of the view that it would be helpful for reports to provide more detail on the value of contracts awarded and how that value is broken down in terms of awards to smaller businesses and the third sector.
98. The Committee asks the Scottish Government to undertake an evaluation of the procurement annual reports with a view to making changes that are impactful for users and that minimise the burden on contracting authorities.
99. Spending to maximise community and business benefits through procurement and commissioning is one of the key pillars of community wealth building. The Scottish Government has committed to bringing forward community wealth building legislation. Stakeholders have high expectations that this will build on and strengthen the 2014 Act's sustainable duty and community benefit requirements. The Committee recognises that any legislation passed may require organisational culture changes within commissioning bodies and careful balances to be struck, to ensure community wealth building principles are fully embedded in procurement processes.

Annexe A - Extract of minutes

This annexe sets out relevant extracts from the minutes of the Economy and Fair Work Committee throughout the inquiry. Each main heading links to a web-page that gives access to—

- the agenda and public papers for the meeting;
- the Official Report of the meeting (public business only); and
- minutes of the meeting.

[10th meeting, 2023 \(Session 6\), Wednesday 29 March 2023](#)

Work programme (In Private): The Committee considered and noted a work programme update and further agreed to undertake post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014 and consider a paper at a future meeting.

[16th meeting, 2023 \(Session 6\), Wednesday 24 May 2023](#)

Post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014 (In Private):

The Committee considered its approach to post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014 and agreed to consider a further paper at a future meeting.

[19th meeting, 2023 \(Session 6\), Wednesday 14 June 2023](#)

Post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014 (In Private):

The Committee considered its approach to post-legislative scrutiny and agreed to consider a further paper at a future meeting.

[20th meeting, 2023 \(Session 6\), Wednesday 21 June 2023](#)

Post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014 (In Private):

The Committee further considered its approach to post-legislative scrutiny and agreed to launch a call for views.

[32nd meeting, 2023 \(Session 6\), Wednesday 13 December 2023](#)

Post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014 (In Private):

The Committee agreed who to invite to give oral evidence.

[5th meeting, 2024 \(Session 6\), Wednesday 7 February 2024](#)

Post-Legislative Scrutiny of the Procurement Reform (Scotland) Act 2014: The

Committee took evidence from—

- Joanne Davidson, Scottish Chambers of Commerce Network, Scottish Chambers of Commerce;
- Stacey Dingwall, Head of Policy and External Affairs (Scotland), Federation of Small Businesses; and

- Colin Smith, Chief Executive, Scottish Wholesale Association.

Post-Legislative Scrutiny of the Procurement Reform (Scotland) Act 2014 (In Private): The Committee considered the evidence heard under agenda item 2.

7th meeting, 2024 (Session 6), Wednesday 28 February 2024

Post-Legislative Scrutiny of the Procurement Reform (Scotland) Act 2014:The Committee took evidence from—

- Pauline Gordon, Partnership Manager, TSI Scotland Network;
- David Livey, Policy and Public Affairs Manager, Scottish Council for Voluntary Organisations;
- Duncan Thorp, Policy and Public Affairs Manager, Social Enterprise Scotland.

and then from—

- Lindsey Millen, Head of Policy and Development, Close the Gap;
- Martin Rhodes, Chief Executive, Scottish Fair Trade Forum.

Post-Legislative Scrutiny of the Procurement Reform (Scotland) Act 2014 (In Private): The Committee considered the evidence heard under agenda item 2. Colin Smyth indicated that he is the Convener of the Cross-Party Group on Fair Trade and Chair of Dumfries and Galloway Regional Fairtrade Steering Group.

8th meeting, 2024 (Session 6), Wednesday 6 March 2024

Post-Legislative Scrutiny of the Procurement Reform (Scotland) Act 2014: The Committee took evidence from—

- Craig Fergusson, Head of Finance (Transactions), South Lanarkshire Council;
- Melanie Mackenzie, Strategic Commercial Manager, Aberdeenshire Council and Aberdeen City Council;
- Lynette Robertson, Head of Commercial and Procurement Services, City of Edinburgh Council;

And then from—

- Gordon Beattie, Director of National Procurement, NHS National Services Scotland;
- Stephen Connor, Senior Procurement Manager, Advanced Procurement for Universities and Colleges;
- Rob Mustard, Director of Capital Investment; and
- Joe Rowan, General Manager of Procurement, Scottish Water

Post-Legislative Scrutiny of the Procurement Reform (Scotland) Act 2014 (In Private): The Committee considered the evidence heard under agenda item 1 and agreed to seek written input from Scottish Trades Union Congress.

9th meeting, 2024 (Session 6), Wednesday 13 March 2024

Post-Legislative Scrutiny of the Procurement Reform (Scotland) Act 2014: The Committee took evidence from—

- Gillian Cameron, Programme Manager, Supplier Development Programme
- Graeme Cook, Head of Scottish Government Procurement Services, Scottish Government
- Peter Hunter, Regional Manager, UNISON Scotland
- Julie Welsh, Chief Executive and Mary Mitchell, Chief Procurement Officer, Scotland Excel

Kevin Stewart indicated that he is a member of UNISON.

Post-Legislative Scrutiny of the Procurement Reform (Scotland) Act 2014 (In Private): The Committee considered the evidence heard under agenda item 2.

12th meeting, 2024 (Session 6), Wednesday 17 April 2024

Post-Legislative Scrutiny of the Procurement Reform (Scotland) Act 2014: The Committee took evidence from—

- Tom Arthur, Minister for Community Wealth and Public Finance;
- Nikki Archer, Head of Procurement and Commercial Policy;
- Graeme Cook, Head of Scottish Government Procurement Services, Scottish Government.

Post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014 (In Private): The Committee considered the evidence heard earlier in the meeting and noted the points on which the Minister undertook to provide further information.

15th meeting, 2024 (Session 6), Wednesday 15 May 2024

Post-Legislative Scrutiny of the Procurement Reform (Scotland) Act 2014 (In Private): The Committee considered a draft report. Various changes were agreed to, and the Committee agreed to consider a revised draft, in private, at a future meeting

19th meeting, 2024 (Session 6), Wednesday 12 June 2024

Post-Legislative Scrutiny of the Procurement Reform (Scotland) Act 2014 (In Private): The Committee considered a revised report. Various changes were agreed to, and the Committee delegated responsibility for finalising the draft report for publication to the Convener.

Annexe B: Evidence and information gathered

This annexe provides links to—

- oral evidence taken (links to the Official Report of relevant meetings), together with associated written submissions and follow-up correspondence;
- other written submissions; and
- other correspondence.

Oral evidence (and associated submissions and correspondence)

Aberdeen City Council

- [Written submission](#)
- [Oral evidence, 6 March 2024](#)

Aberdeenshire Council

- [Written submission](#)
- [Oral evidence, 6 March 2024](#)

Advanced Procurement for Universities and Colleges

- [Written submission](#)
- [Oral evidence, 6 March 2024](#)
- [Follow up letter, 6 March 2024](#)

City of Edinburgh Council

- [Oral evidence, 6 March 2024](#)

Close the Gap

- [Oral evidence 28 February 2024](#)

Federation of Small Businesses Scotland

- [Oral evidence, 7 February 2024](#)

NHS National Services Scotland

- [Oral evidence, 6 March 2024](#)

Scottish Chambers of Commerce

- [Oral evidence, 7 February 2024](#)

Scottish Council for Voluntary Organisations

- [Written submission](#)
- [Oral evidence, 28 February 2024](#)

Scotland Excel

- [Written evidence](#)
- [Oral evidence, 13 March 2024](#)

Scottish Fair Trade Forum

- [Written submission](#)
- [Oral evidence 28 February 2024](#)
- [Follow up letter, 20 February 2024](#)

Scottish Government Procurement Services

- [Oral evidence, 13 March 2024](#)

Scottish Water

- [Written submission](#)
- [Additional written submission](#)
- [Oral evidence, 6 March 2024](#)

Scottish Wholesale Association

- [Oral evidence, 7 February 2024](#)

Social Enterprise Scotland

- [Written submission](#)
- [Oral evidence, 28 February 2024](#)

South Lanarkshire Council

- [Written submission](#)
- [Oral evidence, 6 March 2024](#)

Supplier Development Programme

- [Written submission](#)
- [Oral evidence, 13 March 2024](#)

TSI Scotland Network

- [Oral evidence, 28 February 2024](#)

Unison Scotland

- [Oral evidence, 13 March 2024](#)

Other written submissions (individuals)

- [Beattie, Diane](#)
- [Turner, Chris](#)
- [Wildgoose, Ruth](#)

Other written submissions (organisations)

- [Aberdeen Foyer](#)
- [British Association for Supported Employment \(BASE Scotland\)](#)
- [Crawford Architectural](#)
- [Glasgow Council for the Voluntary Sector \(GCVS\)](#)
- [MCN Scotland Limited](#)
- [Nuline Ltd](#)
- [Shetland Islands Council](#)
- [Springboard Events](#)
- [Stirling Catering Equipment Ltd](#)

Other correspondence

Follow up information from the Scottish Government, following the evidence session on 17 April 2024—

- [Letter from Minister for Community Wealth and Public Finance, 3 May 2024](#)

- [1] Scottish Government. (2023). Scotland's journey of achieving sustainable procurement outcomes 2002-2022: independent review. Retrieved from <https://www.gov.scot/publications/independent-review-scotlands-journey-achieving-sustainable-procurement-outcomes-2002-2022/>
- [2] Scottish Government. (2023). The Scottish Government Procurement Strategy April 2024 – March 2028. Retrieved from [The Scottish Government Procurement Strategy April 2024 – March 2028](#)
- [3] Scottish Government. (2024). Procurement: annual report 2022 to 2023. Retrieved from <https://www.gov.scot/publications/scottish-government-annual-procurement-report-2022-23/>
- [4] Scottish Government. (2024). Annual Report on Procurement Activity in Scotland An overview of procurement activity 2021-22. Retrieved from <https://www.gov.scot/publications/annual-report-procurement-activity-scotland-2021-2022/pages/4/>
- [5] Scottish Parliament. (2024). ECONOMY AND FAIR WORK COMMITTEE 5 th Meeting 2024, Session 6. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=15706>
- [6] The Scottish Parliament. (2024). ECONOMY AND FAIR WORK COMMITTEE 7 th Meeting 2024, Session 6. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=15737>
- [7] Scottish Parliament. (2024). ECONOMY AND FAIR WORK COMMITTEE 8 th Meeting 2024, Session . Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=15749>
- [8] Scottish Parliament. (2024). ECONOMY AND FAIR WORK COMMITTEE 9 th Meeting 2024, Session 6. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=15764>
- [9] Scottish Parliament. (2024). ECONOMY AND FAIR WORK COMMITTEE 12th Meeting 2024, Session 6. Retrieved from <https://www.parliament.scot/api/sitecore/CustomMedia/OfficialReport?meetingId=15806>
- [10] Scottish Parliament. (2024). Letter dated 3 May 2024 from Tom Arthur MSP, Minister for Community Wealth and Public Finance. Retrieved from https://www.parliament.scot/-/media/files/committees/economy-and-fair-work-committee/correspondence/2024/20240503_minister-to-convener_procurement.pdf

