Background:
1. The University of Edinburgh is amongst the leading higher education institutes (HEIs) in the world for its excellence in research, teaching, knowledge exchange/commercialisation. As was reported to the Scottish Parliament on 25th September 2013, we have generated some £300m in competitively won research income (up 20% in 2012/13) and our commercialisation activities have generated over £140m in gross value add for Scotland and support over 2,400 jobs. The University sources 56% of our annual influenceable expenditure with small and medium firms (SMEs) and 80% of all the firms supplying us are SMEs e.g. £25m with around 600 SMEs in the local area and we buy from supported businesses. Our University spin-outs or start-ups have in fact created 171 new companies (in total over 5 years).

Support for Procurement Best Practice:
2. The University has a long standing sustainability and social responsibility strategy, is a signatory of the Suppliers’ Charter, and achieves levels 3 to 5 of the Flexible Framework on Scottish Sustainable Procurement Action Plan, which has been recognised by the Universities UK¹ as a case study in embedding ‘sustainable procurement as a strategic asset’. We are active supporters of the Scottish Model of Procurement and the Procurement Reform initiatives, serving on the advisory groups at all levels. We also have a track record of superior capability in public procurement performance². Our Director of Procurement is a Fellow of the Chartered Institute of Purchasing and Supply has 30 years in public sector procurement in Scotland in the national health and now higher education sectors.

Written Evidence regarding the Bill:
3. As recognised in the APUC (Advanced Procurement for Universities and Colleges) evidence Universities Scotland report that Scotland’s university sector has £6.7 billion gross value added to the Scottish economy in 2012/13 supporting 142,000 jobs. Scotland is now the most successful part of the UK with 28 per cent of all spin-outs and attracting foreign direct investment by ...innovative new models that will become “critical to the way companies re-invent and evolve products and services.”³

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² Procurement Capability Assessments (superior) since 2008: Times Higher Education & Government Opportunities Awards
³ GROW, EXPORT, ATTRACT, SUPPORT Universities’ contribution to Scotland's economic growth Universities Scotland, 2013
4. We must not risk the excellent international standing of our University’s research, or the value-add of HEIs in Scotland’s economy, by adding extra compliance risks, to be managed by our researchers, that **do not apply to competitors** across the rest of the UK (rUK) or in Europe (EU).

5. We appreciated the Consultation process and the amendments made as a result, but would suggest, as indicated in oral evidence, that some further issues remain to be considered seriously, although many of its provisions are procurement best practice and already covered in our activities.

**Critical to the University are consideration for any unintended consequences for research impact:**

6. The Bill or implementing Regulations should **clearly exclude contracts for goods, services or small works for the purposes of academic research**, to avoid unintended consequences, for the University’s staff or its research income, and for all Scottish universities, as stated by APUC, to avoid having to meet new **compliance risks at much lower values** than at competitor HEIs in rest of the UK (rUK) and in the EU. Publishing our strategic buying plans (Bill s11) or limiting the pre-qualification criteria (s23) we can use may add other risks to confidential or high value and high risk research, which may hamper the most innovative and globally competitive academic research growth which in turn attracts Scottish and international students, and these should be subject to the ‘withholding information’ rights as in s29, but of course, for similar justifications, and in exceptional cases.

7. To avoid the unrealistic complexity of **separating procurement for research from that for teaching**, as goods/services or works are shared, in the Regulations yet-to-be-drafted, it may thus be safer to **remove higher education institutions from the new processes additional to those in rUK**, where HEIs, we understand will be seen in future be seen as outside the public regime, or in the EU, where new EU Directives are likely to offer flexible options at higher values for non-central authorities (such as European higher education institutions). All research staff are very mobile:

Illustrative Scenario: A high profile international academic principal investigator (PI) at the University is challenged by failed bidders on a procurement process of £51k, delaying vital research outputs, missing deadline for research funders. She blames the University and takes a grievance procedure and seeks press interest. The University is asked to repay full or part of a £300k UK research grant. Then PI moves to another rUK institution, attracts her former research team to join her and all their grants & equipment assets (£2m) transfer from Edinburgh. PI attracts global press interest and academic journal interest on the theme of ‘**Scots value a process above scientific progress**’.

This harms Scotland’s global reputation for research funding and makes it hard to attract other PIs.

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8. **Implementation guidance, regulations, tools and buyer & supplier training** must be available before any of the Bill's new rules apply; a phased change programme (s39) may confuse the various supply markets and risk unforced errors by buying staff in contracting authorities; the changes need legal certainty with training and resources in place. Costs for contracting authorities are underestimated and as APUC indicated may need up to 20% increase in procurement resources.

9. **Full debriefing obligations** as proposed for lower value tenders (s28) can add delays & costs and a more simple [secure online tick-box using the PCS portal] summary to inform failed bidders of the rationale for rejection then tailored FOISA requests would be faster and probably more useful to assist the SMEs to prepare for new opportunities coming up imminently, after a failed bid event.

*Illustrative Scenario: The University has 400 purchases over £50k, requires 30 – 60 mins for a full s28 debrief letter preparation. If (say) there are 5 unsuccessful bids each time: this is 1-2000 hours p.a. of limited procurement resources focused on bid losers. If the Bill attracts more SMEs to bid, it also lowers each bidder's chances of success, and increases resources just on debriefs, reducing value-add.*

10. We welcome the **Sustainability and Social Responsibility** opportunities in the Bill, but suggest there needs to be scrutiny to avoid conflict with (current) EU Directives and the Treaty Obligations on contract materiality and on non-discrimination; to avoid this the Bill could link the new s9 and s19 duty to an authority's purpose and strategic objectives rather than to its 'area' or perhaps have new requirements apply below EU level, to avoid issues until after new EU Directives.

11. **Limits to minimum standards**; the Bill's Policy Memorandum has a suggestion based on turnover that is inappropriate for assessing financial risk (*para 97*). And the Bill's s11 payment strategy obligations could be applied for works (as a sub-contractor's own sub-contractors can be known) but if applied to all goods or services contracts will put a burden on bidders, especially SMEs, to manage this down their supply chains. In works contracts this could have an inflationary impact on costs and this aspect should be considered in response to the Scottish Construction Review 6.

12. **Missed opportunities**, as noted in our Consultation Response, the Bill could embed key reforms in procurement best practice in Scotland, for example, it could:

- **require adequate procurement capability resources** and accountability in public body governance; supported from audits and Scottish Government;
- ensure the availability of SME, third sector, supported **business training and bid qualification** support by enterprise and business development bodies;
- encourage public bodies and suppliers to public bodies to **invest in people and skills for sustainability and social responsibility**, knowledge sharing;

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5 *Freedom of Information (Scotland) Act 2002* requires response within 20 working days, faster than 30 days as in Bill s28
• secure resources to **improve procurement skills and capabilities** (invest in procurement people today and *procurement people of tomorrow*);
• encourage **price transparency and open book access or auditing** of public suppliers bids/contracts, to avoid lowball bids, money laundering, tax issues;
• clarify reforms to benefit **Scotland as a Fair Trade Nation**; require as minimum **International Labour Organisation** standards, reducing modern day slavery, worker exploitation and child labour, locally and globally; with implementing guidance, training and supplier awareness, for example on s25 technical specification to ‘define characteristics … relating to any process….stage in..life cycle’.

**Consultation**

Did you take part in the Scottish Government consultation exercise which preceded the Bill and, if so, did you comment on the financial assumptions made?
13. YES

Do you believe your comments on the financial assumptions have been accurately reflected in the FM?
14. NO – see comments below

Did you have sufficient time to contribute to the consultation exercise?
15. YES

**Costs**

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the FM? If not, please provide details.
16. NO see below

Do you consider that the estimated costs and savings set out in the FM and over the timescales for which they are projected are reasonable and accurate?
17. Unable to quantify - much to be drafted

If relevant, are you content that your organisation can meet any financial costs it is expected to incur as a result of the Bill? If not, how do you think these costs should be met?
18. NO if the research risks occur and the process costs continue to outweigh any new efficiency benefits due low values.

**Does the FM accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?**
19. NO as the impact on research and higher education of a new regime compared to rUK and EU has not been taken into FM account.

Wider Issues

Do you believe that the FM reasonably captures the costs associated with the Bill? If not, which other costs might be incurred and by whom?

20. NO see below

Do you believe that there might be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

21. UNABLE TO QUANTIFY due to regulations yet to be drafted, which could add process costs, competition effects or other costs, see comments:

22. If research related procurement or universities are not excluded through yet-to-be-drafted Regulations and the Bill thresholds at which new compliance obligations must be met is ~ 50% lower than for researchers at competitor higher education institutions in the rest of the UK (rUK), the University of Edinburgh will have to resource up to support academic excellence and maintain its procurement capability, and may have difficulty attracting/retaining researchers, and have more costly research grant bids in future.

23. The complexity of the yet-to-be-drafted Regulations may add further costs that we cannot estimate.

24. Operational risks with financial implications, already identified for the University of Edinburgh:

25. Need to manage new training & awareness for all researchers (100 nationalities, 3000+ researchers), Analysis/consultations prior to start on ~400 purchases to ensure comply with new statutory duties, Delays to research starting, risk of challenges from suppliers who lose business, affecting outcomes.

26. This could add around 15-20% to our procurement cost* (to ensure compliance so funding is not clawed back later) and this can affect the efficiency of grant bids for research (full economic costs).

27. More serious risk is in losing research income, research staff and our reputation for excellence in research and commercialisation due to a lower value compliance in Scotland than UK (rUK) and EU.

28. rUK institutions are likely to be coming out of the public procurement regime altogether and be free to negotiate supplies (saving time and significant money) and EU regime is becoming more flexible.

29. Our research income (won competitively) from rUK sources (e.g. UK research councils) was over £170m from £300m of total research income in 2012. Our Scottish Funding Council income (research and teaching) was around 27% of our income. The former is at risk
30. New process costs could easily outweigh the benefits for this University and its suppliers as we already have 56% of our procurement spend with SMEs, who are 80% of the suppliers we use. The Bill will not increase these opportunities, rather it will open competition across EU for lower value procurements currently won by ~700 local firms and also have a potential negative impact on the early incubation period of 171 new spin-out/start-up firms (as in last 5 years). More bidders means more debriefing work and risks lower success rates for Scottish SMEs already supplying our needs.

31. Resource to handle detail debriefing letter/enquiries – say 5 per procurement ~ 30-60mins average* Recent experience is more will be required (as above EU threshold or local invitations to tender) bids are from 10 to 80, for one contract award. We have procurement skills but need to focus on successful firms and not only on those who lost. APUC estimated the impact as around 20% more procurement resources required across the universities and colleges sector, and that seems sensible.