

SUSTAINABLE SCOTLAND NETWORK

WRITTEN SUBMISSION

The Sustainable Scotland Network (SSN) supports public sector action on sustainable development. This includes programmes on climate change and sustainable procurement. The Scottish Government provides funding to Keep Scotland Beautiful to develop SSN and the SSN Steering Group guides the SSN agenda. Building on over a decade's work with local government, SSN has opened up its support to the wider public sector.

The SSN has a membership which consists of around 250 public sector officers from a range of backgrounds. Members include, but are not restricted to, sustainability and climate change officers, waste officers, procurement officers and facilities management staff.

The SSN Sustainable Procurement Working Group

SSN set up the Sustainable Procurement Working Group (SPWG) along with officers from key national organisations, including a number of local authorities, Scotland Excel, COSLA, the NHS and the Scottish Government, to improve coordination and to develop a Scotland-wide sustainable procurement support programme for the public sector. The aim of the SPWG is to bring sustainable development and procurement officers together to tackle sustainable procurement issues, using the expertise and contacts available from both fields.

Along with the SSN Steering Group, the SPWG helps to guide and support the SSN Sustainable Procurement Work Plan. In addition to supporting general sustainable procurement, the work plan for 2012-2015 currently has three main thematic areas:

- Timber and other forest products
- Food and catering services
- Fair and ethical trade

SSN's Consultation Response Process

SSN issued an invitation to members to comment on the Bill and its associated documents. This consultation submission draws on a number of SSN information and research sources, including a number of network member organisational responses, specific responses from SPWG and SSN members and also from regular communication with SSN members working in Scottish local authorities and the wider public sector.

The SSN staff team at Keep Scotland Beautiful has analysed the responses received and added comments based on our professional experience and knowledge. Where these comments are distinct from direct SSN member feedback they appear in italics.

General Issues

Overall we welcome the introduction of the Bill and its focus on promoting sustainable procurement policy and practice. We encourage the Parliament to act to ensure that the Bill delivers effectively on its sustainable procurement ambitions.

More specifically, we would draw attention to the following:

Public sector buyers need to know that they must embed sustainability as quality outputs of their contracts; and suppliers must instil and demonstrate confidence that any sustainable products or processes they develop will bring social and environmental as well as economic benefits. Currently policy and legislation is too vague and full of positive language constrained by optionality. Creating rigour will help unlock opportunities for creative businesses and creative outputs, in order to provide more sustainable economic development through public procurement. Much will depend on how much of the Bill can be taken as “guidance” and what aspects of sustainable procurement will be “mandatory” as a result.

That the Bill is now called the ‘Procurement Reform Bill’, having changed from the original notion of a ‘Sustainable Procurement Bill’ gives the impression that there is less emphasis on sustainability. While the Scottish Government has a stated objective of “embedding sustainable procurement at the heart of the reform agenda”¹ the Bill appears fairly light on sustainability and seems to be predominantly focussed on economic development issues. While it is important that this be addressed, it should not be at the expense of social and environmental goals, particularly when we are already starting to appreciate the economic cost of the effects of climate change as well as the economic value of Scotland’s natural capital.

It is disappointing that there is no explicit mention of the Public Bodies Climate Change Duties stemming from the Climate Change (Scotland) Act 2009 within the Bill, despite procurement having the potential to be a key driver for sustainability and carbon reduction.

SSN would also draw attention to the fact that whole-life costing is a fundamental part of sustainability; reducing environmental and social impacts goes hand-in-hand with saving money. While environmentally-damaging practices can sometimes save money in the short-term, they tend not to be cheaper overall. As noted above, this is being borne out by climate change - it is already costing society, and the projected rises in these costs are well-documented. The procurement process offers an important opportunity for whole-life costing to become common practice. SSN would welcome moves to ensure that this is better reflected in the Bill.

Section 9- Sustainable Procurement Duty

Section 9 of the Bill requires that before carrying out a regulated procurement, a contracted authority must consider how it can use this process to (amongst other things)“improve the economic, social and environmental wellbeing of the authority’s area” and “facilitate the involvement of SMEs, third sector bodies and supported businesses in the process”.

With respect to SMEs there is a requirement to consider to what extent SMEs and the Third Sector wish to access public contracts. SSN is aware that, of SMEs surveyed in Scotland only around 20% of them wish to access public contracts. ²

With respect to supported businesses, from information supplied to SSN, we understand that there are only about 25-30 supported businesses in Scotland. Consequently, a target for every public sector organisation in Scotland to hold a contract with a supported business may not be realistic and could very quickly overwhelm those 25-30 businesses.

¹ Procurement Reform (Scotland) Bill, Policy Memorandum p8

² Scottish Government (2013) Small Business Survey Scotland 2012, <http://www.scotland.gov.uk/Topics/Economy/>

We would encourage the Parliament to investigate this situation further, including through further dialogue with the relevant businesses.

SSN thinks that it would be much more effective if all businesses seeking to gain contracts with public sector bodies knew that they had to meet robust, verifiable (and possibly specified mandatory) sustainability standards that deliver the goals of the Climate Change (Scotland) Act, Zero Waste Regulations and other legislative drivers such as those as being delivered via the Scottish Sustainable Procurement Action Plan, the Flexible Framework within the Procurement Capability Assessments, the Marrakesh Approach to sustainable procurement and so on. At the moment, these sustainability standards – such as the very useful Government Buying Standards - feel like ‘aspirations’ rather than ‘obligations’, because it is up to each contracting body to actively choose to demand high sustainability standards in their specifications, Pre-Qualifying Questionnaires and Invitation to Tenders. This helps neither the public sector nor businesses seeking work, as there is a lack of certainty about the quality standards and the rigour with which they will be enforced. There is little comeback on either end of the contract if such standards are not achieved.

With respect to embedding sustainable procurement into the procurement reform process, our preference would be to make use of existing processes and systems such as the Public Contracts (Scotland) Regulations 2012, Scottish Sustainable Procurement Action Plan, Procurement Journey, Flexible Framework and the Marrakesh approach to sustainable procurement advice and templates; updating them to make them relevant to this aspect.

Section 9 (1) states that an organisation should try to improve “the economic, social and environmental wellbeing of [its] area” through procurement. The use of the phrase ‘it’s area’ is problematic, especially as sustainable procurement must consider impacts and opportunities throughout supply chains and take account of international factors. Scotland is a Fair Trade Nation, and it is a trading nation with a global reach, therefore the Bill also needs to support reciprocal international trade and the procurement of fairly traded goods in particular, where the goods in question generally come from abroad (e.g. tea, coffee, cocoa, bananas). In addition, we are concerned that this wording essentially encourages organisations to displace their impacts to other areas, rather than deal with them where they arise. Therefore this section needs to be very carefully re-worded so as not to have unintended negative consequences.

Where relevant, the same sustainability criteria needs to be applied/ requested whether purchases are made locally or globally, therefore the use of verified standards along the supply chain, such as those certified by e.g. Fairtrade or FSC is important.

Section 11- Procurement Strategy

Section 11 appears to require that a contracting authority with significant procurement expenditure must publish (at least on the internet) a procurement strategy for the next financial year. The strategy must include how it will meet the requirements in section 8 (which includes the sustainable procurement duties of section 9).

The Bill appears to have caused confusion over whether a new corporate procurement strategy is required to be published each financial year. As per the comments from SSN members listed below, there appears to be a need to clarify the requirements.

“The bill will bring a new requirement for publicly reporting an annual strategy and annual procurement report. [Organisation X] already has a strategy which spans a 3 year period.

It is unclear what would change strategically to require an annual strategy and this additional frequency will cost the [organisation] in additional strategic and operational resource.”

“There is concern that if all public bodies are required to publish their annual procurement plans this could have a more significant impact on staff resources in smaller organisations where a very high proportion of procurement is of a low value i.e. below the European threshold.”

“Strategies are important, but increased frequency of strategy writing means there may be less ability / time to react to unexpected occurrences.”

SSN would welcome clarification of this aspect of the Bill. We feel that public sector organisations would probably be best served by having a medium-term procurement strategy (3-year timescales for example) with the obligation to produce an annual report outline progress and priorities.

Section 14- Annual Procurement Report

Section 14 requires that an annual report must be published (at least on the internet) on how the authority performed in relation to its strategy.

Rather than creating a new and additional annual report requirement, the integration and alignment of reporting requirements is extremely important to avoid wasted effort.

SSN members noted that instead of burdening the public sector with additional reporting, more emphasis should be placed on the mechanisms that already exist, such as the flexible framework, and making that a more prominent part of the Procurement Capability Assessments. Also, new Sustainability Reporting guidance published by the Scottish Government asks for narrative information about procurement and the socio-economic aspects of the public sector climate change duties. In addition, SSN is considering adding a section to the report template and guidance for local authorities who have signed up to Scotland’s Climate Change Declaration³, so that progress within the Flexible Framework can be monitored as part of the Public Bodies Duties. This will help to streamline reporting on sustainable procurement within existing reporting mechanisms. SSN would urge the Committee to look further into the issue of developing effective and efficient annual reporting on sustainable procurement and public sector procurement more generally, linked to these other reporting agendas.

SSN also feels that mechanisms already in place in Scottish Procurement could be used to draw off annual reports rather than require all public sector bodies to create numerous annual reports across the public sector.

External scrutiny of reporting, including the Flexible Framework, would also increase the robustness of the results.

Section 31- Amendment of Climate Change (Scotland) Act 2009

Through the amendment in Section 31, contracting authorities can request that a specified proportion of the goods/materials used in supplying a service are made of reused/recycled material or can be reused/recycled.

³ . All 32 local authorities have signed Scotland’s Climate Change Declaration (SCCD) and have for the third year in a row voluntarily reported on their Declaration commitments

Care must be taken to ensure that any guidance allows for flexibility to develop the scope of the contract being tendered and ensure that specifications can be most economically advantageous to avoid additional cost factor both for the buyer and the supplier.

Recycling of and using recycled products is an area where a lot of work has already been done, therefore, the Bill doesn't appear to be moving anything on here. In fact there is a danger that the Bill inadvertently moves us backwards due to its focus on recycling/recycled products, when we should be encouraging the public sector to move up the waste hierarchy, particularly in the current economic climate, i.e. Reduce demand, Reuse what is purchased, Recycle what cannot be reused, Recover energy from what cannot be recycled. Scotland is a Circular Economy 100 member and the Bill should be supporting a transition to a low carbon, circular economy, rather than continuing to focus on recycling

In addition, the Scottish Government has a strong commitment to addressing climate change as seen in the Second Report on Proposals and Policies for a Low Carbon Scotland and the recently published Draft Scottish Adaptation Programme. Linking this commitment to the new national procurement legislation would be key to realising the significant potential emissions reductions and climate resilience that can be achieved through sustainable public procurement. SSN, through the SPWG and its work on climate change, is seeking to develop more robust approaches to factoring climate change factors into public procurement and we would encourage the Committee to focus on ensuring that the Procurement Reform (Scotland) Bill provides a robust legislative context to support public sector action on climate change.

Conclusion

In conclusion, the SSN membership and staff team at Keep Scotland Beautiful feel that the following points need to be considered at this stage in the Bill process:

Sustainability needs to be more strongly embedded into public procurement; therefore, it should be a central consideration that cuts across the Bill, particularly the sections on strategy and reporting, rather than just being mentioned in section 9 under the sustainable procurement duty.

A strategy is best formed locally to meet the needs of the organisation and the community it serves. The Bill appears to imply that an annual strategy timetable will be required. Clarity is needed on this matter. Reporting needs to be streamlined and aligned to existing reporting structures.

The sustainable procurement duty should be supported by standard mandatory requirements in contracts.

Where reference is made to improvements in an authority's area, in Sections 9 and 19, careful re-wording is required to ensure no unintended negative consequences. Scotland's international reach through procurement and its commitment to Fair Trade needs to be considered here, as well as cross-boundary considerations within Scotland.

Stronger links need to be made between the Climate Change (Scotland) Act and the Procurement Reform (Scotland) Bill.

The Marrakesh Approach and associated frameworks should be promoted to support sustainable procurement and innovation from supplier.

Sustainable Scotland Network
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