

Statement on the Procurement Reform (Scotland) Act 2014 to the Economy and Fair Work Committee 6th March 2024

Stephen Connor

Procurement Reform (Scotland) Act 2014

The statutory guidance for the Procurement Reform (Scotland) Act 2014 states that the Act was introduced with the intention of providing “a national legislative framework for sustainable public procurement that supports Scotland’s economic growth through improved procurement practice”.

The Act has had a large impact on public procurement in Scotland since it was introduced in 2014. I feel the impacts can broadly be put into 3 groups.

Impact on Procurement Activity

The Act introduced a new £50k threshold for regulated procurement, much lower than the threshold in the Public Contracts (Scotland) Regulations 2015. This has meant that a lot more spend is now covered by procurement regulations. This has in turn meant a greater need for public bodies to understand and control their spend and to ensure that staff are appropriately trained in order to comply with the Act.

Reporting and Transparency

The Reform Act has introduced measures for increased reporting and transparency – contracting authorities are required to publish a contracts register, a procurement strategy and an annual procurement report. In many cases this increase in transparency and scrutiny has led public bodies to think more about procurement, how it is addressed in their organisation and how to meet the requirements of the Act.

Sustainability

The Reform Act has sought to promote and embed sustainability in procurement, through the introduction of the Sustainable Procurement Duty as well as various other provisions around Community Benefits and Fair Work.

All of the changes introduced by the Reform Act have been in line with the wider Public Procurement Reform Programme.

Impact on the Higher and Further Education Sector.

Initially the introduction of the Act was a major change for the sector. This required serious readjustment and change management from Universities and Colleges due to the impacts outlined above. This required extensive training and in many cases additional resource both for institutions and APUC.

Overall it is my view that the introduction of the Act has been a net benefit to public procurement in Scotland and the University and College Sector.

The requirement to publish a procurement Strategy has forced organisations to, at the very least, publicly outline their approach to procurement. The ongoing reporting requirements means that organisations have a greater level of accountability.

The introduction of the Procurement Reform Act has raised the profile and professional standards of procurement in the sector. Although it should be noted that this is not only due to the Reform Act on its own. This has also been part of the wider Public Procurement Reform Programme and the work done by organisations, Centres of Expertise and Scottish Government to support this.

Another positive impact of the Act has been the focus on sustainability. There are various provisions within the Act, including the Sustainable Procurement Duty, that empower Contracting Authorities to take more account of sustainability in public procurement. It has also served to raise the profile of sustainability issues. The increased focus on sustainability is not solely due to the Act but is part of wider policy and social trends, but the Act has empowered organisations that wish to use it.

Overall, the Act has led to an increase in the profile of procurement and greater recognition of its value.

Challenges presented by the Act

However, the introduction of the Act has not been without issues.

There has been an increased administrative burden due to greater regulation. For lower value requirements it is not necessarily clear whether the increased competition, which is driven by having a lower threshold, is offset against the administrative burden of carrying out a procurement exercise.

Another challenge is that, whilst obviously a key component, public procurement has become viewed as a way of delivering policy goals (e.g. around environmental or social issues) sometimes ahead of the main goal of delivering best value.

Potentially the requirement to consider wider policy issues is also leading to the stifling of best value and innovation. Contracting Authorities can be so focused on including all aspects of policy (fair work, environment etc) that it becomes a box ticking exercise and dissuades smaller companies from bidding.

Contracting authorities can be put in an awkward position if the requirements to deliver policy outcomes start to stray too far from the subject matter of a contract. There is a risk of failing to secure best value. There is also a risk of failing to treat suppliers fairly and equally and therefore breaching the regulations.

More generally with the current issues around inflation and continuity of supply there needs to be greater recognition of the competing priorities faced by procurement staff. There is a difficult balance between seeking to achieve best value whilst also ensuring that goods and services are ethically and sustainably sourced.

Economic/Supplier Impact

It is difficult to judge from the buying side how the Act is impacting suppliers. Anecdotally there seems to be an appreciation that more opportunities are being advertised. However, suppliers often seem to be unhappy about the burden of completing tender documentation.

I'm not aware of any challenges having been brought by suppliers under the Reform Act – this could be a good sign that contracting authorities are following the regulations at all times. But it could also be a sign that remedies contained within the Act are too difficult to follow through.

Shared Best Practice

APUC and the Higher and Further Education sector do a lot to try and share best practice but more could be done. Across the sector there are difficulties in effectively sharing best practice, building capability and finding adequate resource.

This is particularly true with regards to Contract and Supplier Management. With inflation and supply chain pressures, delivery of the full value of contracts is increasingly important. Sharing and utilising best practice requires resource and management. It is not just about making documents available but about teaching and sharing.

The Future

Some views on the future of the Reform Act.

Brexit – The Reform Act was drafted to ensure that it did not contradict the EU Directive on Public Procurement. Since Brexit that requirement has arguably fallen away. This could allow for greater flexibility within the Reform Act (and the Public Contracts (Scotland) Regulations) to allow for a more flexible approach to public procurement, albeit within the bounds of the WTO Government Procurement Agreement.

Procurement Act 2023 - It remains to be seen what impact the new procurement regulations used in the rest of the UK will have on public procurement in Scotland. But there may be some issues if it appears that public procurement is heavily regulated in Scotland compared to the rest of the UK – both in terms of the supply market and the procurement profession.

Reporting – the requirement to produce an annual procurement report has had a positive impact. I think there needs to be greater use of the reported data in order to shape and drive future direction. Otherwise over time organisations may start to feel it is not worthwhile completing their reports.

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Wider views

As part of this statement views have also been sought from within the sector. This has been reproduced below.

- The 50k threshold is now counter-productive. The level of resource required to undertake compliant procurement at Route 2 does not justify the outcomes. Greater flexibility needs to be offered.
- It's become very clear to most in the public sector that better service levels can be achieved through robust Contract & Supplier Management. But resource is rarely dedicated to this because the compliance aspect of the tendering takes precedence. If some of the lower-value tendering activity can be taken away, then it could redirect the resource onto contract managing the high value, high risk areas.
- On the best practice front, the Government should be taking much more of a lead when it comes to developing an all-encompassing sustainability/social impact tool as well as a contract management module. Every institution is doing something different and it's a wildly ridiculous waste of resource.
- If we are taking sustainability seriously and they are happy to refer to the 'climate emergency', then our procurement routes should allow for quick avenues to markets that offer greener alternatives. A 'climate emergency NCA' allowance for example. Providing you can objectively demonstrate that the supplier/solution offers a greener solution than competitors.
- Policy priorities are often thrown onto Procurement activity with very little thought as to how it affects on the ground operational procurement. But then policies rarely do this anyway, so doubt anything will change on that front.