



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Economy and Fair Work Committee

**Wednesday 17 April 2024**

**Session 6**



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**Wednesday 17 April 2024**

**CONTENTS**

**Col.**

**PROCUREMENT REFORM (SCOTLAND) ACT 2014 (POST-LEGISLATIVE SCRUTINY) ..... 1**

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**ECONOMY AND FAIR WORK COMMITTEE**

**12<sup>th</sup> Meeting 2024, Session 6**

**CONVENER**

\*Claire Baker (Mid Scotland and Fife) (Lab)

**DEPUTY CONVENER**

\*Colin Beattie (Midlothian North and Musselburgh) (SNP)

**COMMITTEE MEMBERS**

\*Maggie Chapman (North East Scotland) (Green)

\*Murdo Fraser (Mid Scotland and Fife) (Con)

Gordon MacDonald (Edinburgh Pentlands) (SNP)

Colin Smyth (South Scotland) (Lab)

\*Kevin Stewart (Aberdeen Central) (SNP)

\*Evelyn Tweed (Stirling) (SNP)

\*Brian Whittle (South Scotland) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Nikki Archer (Scottish Government)

Tom Arthur (Minister for Community Wealth and Public Finance)

Graeme Cook (Scottish Government)

Bob Doris (Glasgow Maryhill and Springburn) (SNP) (Committee Substitute)

**CLERK TO THE COMMITTEE**

Anne Peat

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Economy and Fair Work Committee

Wednesday 17 April 2024

*[The Convener opened the meeting at 09:30]*

### Procurement Reform (Scotland) Act 2014 (Post-legislative Scrutiny)

**The Convener (Claire Baker):** Good morning, and welcome to the 12th meeting in 2024 of the Economy and Fair Work Committee.

I have received apologies from Gordon MacDonald and Colin Smyth. Bob Doris is attending as committee substitute for Gordon MacDonald. Murdo Fraser has been delayed and is expected to join us during the meeting.

Our first item of business is the final evidence session of the committee's post-legislative scrutiny of the Procurement Reform (Scotland) Act 2014. I welcome Tom Arthur, the Minister for Community Wealth and Public Finance, who is joined by Graeme Cook, head of procurement services, and Nikki Archer, head of procurement and commercial policy, from the Scottish Government.

I invite the minister to make a short opening statement.

**The Minister for Community Wealth and Public Finance (Tom Arthur):** Good morning. Thank you very much for the invitation to appear before you this morning.

It seems to be clear that there is agreement on the importance of public procurement in Scotland and the role that public procurement plays in delivering sustainable economic growth, as well as on the big steps that have already been taken to improve the way in which the public sector buys goods, works and services.

The 2014 act was intended to be powerful and proportionate and to place sustainability and wellbeing at the heart of procurement activity. It places on public bodies a small number of general duties and some specific measures that are aimed at promoting good, transparent and consistent practice. It has led to a range of measures to make procurement opportunities more accessible to small and medium-sized enterprises, third sector bodies and supported businesses. Those include advertising opportunities through Public Contracts Scotland, dividing contracts into lots,

subcontracting opportunities through the supply chain and supplier development activities.

We deliberately built on the legislative framework and developed business-friendly and easy-to-access training, guidance and support for businesses of all sizes. The results are demonstrated through the Scottish ministers' "Annual Report on Procurement Activity in Scotland", which we published this week. For example, 56 per cent of the £16 billion of Scottish public sector procurement spend went to Scottish businesses and 55 per cent went to Scottish SMEs, which provided £7.5 billion to Scottish gross domestic product along with 130,000 full-time equivalent jobs.

We actively undertake research and engagement and seek feedback from industry, the public sector, third sector and supported businesses to test and inform our approach. We do that through surveys, commissioning research, our public supply group, industry representation, and hosting supplier round tables. The findings from that research underpin Scotland's public procurement strategy, which was developed across the sectors and with industry, and was published in April last year and is a first in providing a high-level vision for Scottish public procurement.

It was reassuring to hear those who gave evidence to the committee talk in favourable terms about the changes that have been introduced by the legislation. The 2014 act is critical in underpinning an approach to public procurement that helps to create opportunity, boost inclusive and sustainable economic wellbeing, tackle inequalities and create real social impact.

The journey, however, is not complete. We will always look at what more we can do to maximise the impact of public procurement in Scotland. With that in mind, I welcome the committee's post-legislative review of the 2014 act.

**The Convener:** The committee decided to undertake an inquiry into the legislation because procurement came up in a number of different inquiries that we have carried out since we started work on those areas.

During our first evidence session, we heard from the Scottish Chambers of Commerce that it had taken feedback from members and that people would generally give the act a C+ for its performance. It said:

"There has been some good progress, but there is lots more progress to be made."—[*Official Report, Economy and Fair Work Committee*, 7 February 2024; c 10.]

Ten years after the introduction of the legislation, I am interested to hear where the minister feels the remaining challenges or

opportunities to improve the legislation are, and where it has been most successful.

**Tom Arthur:** One of the themes that has emerged from the evidence that the committee has taken is that the 2014 act is a good piece of legislation that was formulated on a largely consensual basis when it went through Parliament 10 years ago. There is also recognition that the act sits within a much larger programme of public procurement reform, preceding its introduction and since then.

One of the challenges that remains is around consistency of application, the variation that can exist between different contracting authorities and the perceptions that that can create among suppliers. We have sought to address that through providing a comprehensive suite of guidance, support, training and engagement. For example, on the Public Contracts Scotland website, you will find links to the procurement journey, the supplier journey, and the supplier development programme, to which we contribute funding.

We also keep a suite of guidance up to date, and we are always working to engage with stakeholders on the development of our policy. We recognise that there will always be challenges around the consistency of application, but the legislation provides a solid foundation, and we remain committed to continuing to engage with partners to ensure that we drive forward consistency.

**The Convener:** During our earlier sessions, we heard evidence about community wealth building and how the five pilots across Scotland can be used as a positive model in supporting local supply chains. Do you have an update on where we are with the pilots? What do you see as the relationship between the community wealth building pilots and the legislation? Do you agree that the pilots are a way to promote and strengthen the effect of the legislation?

**Tom Arthur:** The five pilots have been in place for a number of years. They are operating in different contexts in Clackmannanshire, Fife, South of Scotland, Glasgow and the Western Isles. We have seen real progress, and there has been good engagement with the Centre for Local Economic Strategies, which has produced reports on the activities that are taking place in the pilot areas. The committee is familiar with the positive feedback that has been received on increasing the impact of local procurement in some of those pilot areas.

There is not just the five pilot areas to consider. Other areas of Scotland have taken forward community wealth building ambitions. No conversation about community wealth building would be complete without referring to North

Ayrshire Council, which was the pioneer in taking forward community wealth building in Scotland. We have seen North Ayrshire's approach grow to a regional approach, bringing in East Ayrshire Council, South Ayrshire Council, the local health board, the third sector interface and the college. Further progress has been made on the ambitions that are set out in the 2014 act around sustainable and progressive procurement.

Community wealth building legislation is a programme for government commitment. We consulted on the legislation and published an analysis of it last year. We are considering in detail the next steps with regards to the feedback that we received via the consultation.

As the committee will be aware, procurement is just one of the pillars of community wealth building, albeit that it is an incredibly important one. Community wealth building can add value by bringing about strategic coherence across the five pillars, which is one of the reasons why we committed to legislation in the PFG. I could say a huge amount about community wealth building, but I appreciate that that might be straying beyond the specifics of what we are considering this morning.

**The Convener:** That is helpful. Thank you. As you have mentioned Ayrshire, I will bring in Brian Whittle.

**Brian Whittle (South Scotland) (Con):** Good morning, minister and team. You will be unsurprised to hear that I am going to ask about food procurement, given its importance to health and education.

We have heard that the proportion of locally produced food products that is available through the national framework has increased. I would say that that bar is set pretty low. When I looked at it in the previous session of Parliament, the proportion was sitting at about 16 per cent while outliers such as East Ayrshire, which we know is exemplary, sit at about 75 per cent. They have shown us the way. Food procurement is a special case because of its impact not just on health and education but on things like the circular economy, the rural economy and emissions reductions by not importing food.

With that in mind, do you think that we are moving fast enough? Can we move more quickly? East Ayrshire has shown us the way, and others are starting to follow. Should we not be pushing that harder?

**Tom Arthur:** You raise a number of important points, Mr Whittle. I am glad that you took the opportunity to highlight East Ayrshire, which has been an inspiring example. A couple of years ago, I had the privilege of visiting Mossgiel farm, which has benefited directly from the opportunity to work

in partnership with East Ayrshire Council. East Ayrshire sits within the broader regional approach to community wealth building that I referred to earlier.

What we have already provided for, in legislation and in practice, is support for the objectives that you have set out. That includes opportunities for lotting. For example, we have seen flexibilities around supply for organisations that do not necessarily possess the logistical capacity to deliver. The committee will have heard about that previously. Contracting authorities that are obliged to publish a strategy and to report on it are required to have a specific statement on their regulated procurement of food. Therefore, there is a strong foundation in that regard.

As we look towards the community wealth building legislation and the further foregrounding of those principles, there will be an opportunity to reiterate and reinforce the importance of dealing with the concern that you have expressed and operating within the structures and the framework of procurement law to identify opportunities to use local suppliers.

I recognise the desire to go faster. We have made solid progress and we have a strong legislative foundation. The example of East Ayrshire demonstrates what is possible, and there will be an opportunity to give that further consideration as we move forward with our community wealth building ambitions.

**Brian Whittle:** Do you think that there is an opportunity, potentially through Scotland Excel contracts, to deliver a more universal approach across Scotland and give better choice to push that faster?

**Tom Arthur:** From the evidence that the committee has taken from Scotland Excel, I know how committed it is to engaging with suppliers and taking a proactive approach. It does a huge amount of work in that space. The need to consider matters on a case-by-case basis is fundamental to procurement, which must be relevant to the particular circumstances and proportionate. The legislative framework that we provide affords that.

I am keen that we continue to take a more co-ordinated approach through the work and actions that we are undertaking on community wealth building in order to support more suppliers to grow and develop, to be able to compete for and win contracts, and to increase the number of suppliers that are available. Graham Cook might want to say something about implementation.

**Graeme Cook (Scottish Government):** I would like to add a bit about sharing best practice. There is lots of best practice in the Scotland Excel frameworks, but the Scottish Government shares

best practice through a number of mechanisms, including case studies.

The procurement journey is updated constantly because these things are not static. We have annual meetings of heads of procurement, at which good examples such as those that have been discussed this morning are shared with the entire public sector procurement community. There are also more local clusters and sectoral meetings. Therefore, throughout the year, best practice examples and case studies are shared through a number of mechanisms. Those exemplars are shared right across the procurement community in Scotland.

**Brian Whittle:** Food procurement is an area where there can be false economy if we let those who are in charge of the purse strings have too much influence, although I do not want to give accountants a bad name. Is there a specific drag on how we ensure that councils can afford good nutritious local food through the procurement process?

**Tom Arthur:** I respect the autonomy of local authorities in taking the decisions that they feel are best for their areas. They have to operate within the requirements of domestic procurement law.

I will pick up on the point that Graeme Cook made and the point about East Ayrshire that you made, Mr Whittle, and which we discussed. There is always power in an example. We can talk theory, but the examples that other local authorities can provide and sharing examples of best practice can serve to demonstrate what the opportunities are to those local authorities where practice might be inconsistent.

However, I have to respect that it is for individual local authorities to take those decisions. They must operate in a way that is consistent with the requirements of the legislation but, ultimately, decisions must be taken by elected members who are democratically accountable to their electorates.

09:45

**Brian Whittle:** I have a final question. We heard from the Scottish Wholesalers Association, which suggested that rigid nutrition standards present a significant barrier to increasing public procurement of locally produced food. You will know that I am a stickler for having high nutrition value, but the standards include things such as shapes of pizza. Do you think that we are creating too rigid a structure, which potentially prevents local procurement from moving quicker?

**Tom Arthur:** I would be speaking beyond my portfolio responsibilities if I strayed into the territory of food regulation and its specifics. There

will be sound reasons for those particular standards.

What is important from a procurement perspective is that we continue to develop a system that is not only open and transparent but that allows opportunities for continued engagement with suppliers. We look at the other broader levers that we have to support suppliers in meeting the requirements and demands of public sector procurers.

**Brian Whittle:** I will leave it there.

**The Convener:** Further to that question, the evidence that we heard from Colin Smith of the Scottish Wholesalers Association about the rigidity of the structure was quite convincing, whether it was about the shape of pizzas or the difficulty of providing bakery products from Scottish suppliers because they did not meet the nutrition standards. I would just ask the minister whether we can get a commitment that he will have a conversation about that issue with the department and the minister who are responsible. We all support good nutritional standards in schools, but if the minister were to have that conversation about the impact that the standards might be having on local procurement, and how they might present barriers to getting local or Scottish suppliers for certain products, the committee would welcome that.

**Tom Arthur:** I am more than happy to do that. I recognise that that is one of a number of areas in which there will always be tensions, because tensions always exist in procurement. With your permission, convener, I will bring in Nikki Archer to say a few words.

**Nikki Archer (Scottish Government):** The current policy set-up allows local organisations to specify requirements that are based on plans for food that is fresh, nutritional and in season. They are able to design protected geographical indicators within their requirements, to specify recognised assurance schemes, such as the Quality Meat Scotland scheme, and to supply and design menus around food that is free range, organic, vegan and so on. There is a lot of flexibility within the rules to allow local organisations to implement really good practice in terms of what we are looking at today.

**The Convener:** That was not the evidence that we heard, particularly from the Scottish Wholesalers Association. I understand what Nikki Archer has outlined to us, but if that conversation were to be held, the committee would appreciate it.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** Minister, we are all aware of the tremendous challenges that every organisation faces because of the financial situation and tight budgets. Is there a danger that

pressures on the public finances will dilute the importance of the quality aspects of procurement activity?

**Tom Arthur:** That is an important point. In any time of challenging financial circumstances, that tension will always be present across a range of policy areas. It is important to reiterate the way in which procurement operates in Scotland. As the committee is aware and has heard from other witnesses, the decisions that we took for the 2015 regulations state that contracts will not be awarded solely on the basis of lowest cost. The ratio of price to quality comes down to decisions that are taken on a case-by-case basis.

I recognise the challenging financial circumstances that we are in and the concern that that raises. The way in which procurement operates in Scotland and the obligations around regulated procurement are such that there needs to be a balanced approach to decision making.

**Colin Beattie:** In the evidence that we have taken, it was made clear that decisions on procurement were not always based on the cheapest price but on the cheapest price over a period—the theory being that you spend money now to save money in the future. However, the current financial pressures will put that approach on the back burner, realistically. Everyone is looking to the short term and at closing the budget gap now. How do we monitor that? How do we understand that issue and manage it?

**Tom Arthur:** On monitoring, the requirements on public bodies that are operating above the threshold to publish strategies and report are important. That gives a direct answer to how we can monitor things.

The process of continued engagement that I have previously spoken about, as well as our work on constantly updating our guidance, gives us a means of responding to any issues that develop. However, we will continue to monitor the particular dynamics within the system as reports are published and through our on-going engagement with, for example, heads of procurement. Given the financial context that we are operating in, things are challenging, and we have been under huge pressure, so we will continue to monitor that.

On the point about our ability to understand what is happening, I refer back to the reporting requirements under the existing legislation.

**Colin Beattie:** I will continue with the topic of resources. We have heard from contracting authorities about pressures being caused by the lack of resources such as time and skills. Those resources are needed to maximise effective procurement and commissioning practice. How do the Scottish Government and other bodies effectively pool and share procurement resources?

How could that be improved to better support contracting authorities?

**Tom Arthur:** A huge amount of collaboration and activity goes on. To pick up on the first point about human resources and ensuring that we have the people in place, we have a strong and powerful story to tell about the work that the Scottish Government has undertaken. I will ask Nikki Archer to provide information on that.

**Nikki Archer:** It is important to realise that procurement is part of a much wider system. In addition to all the best practice and collaboration that the minister and Graeme Cook have referred to, we find that the earlier that we are involved, the better. If local leaders and service delivery managers ensure that procurement is engaged much earlier in the planning and scoping stages of projects and programmes, that allows us to explore the art of what is possible through procurement to deliver on the wider ambitions. It also allows us to get to market earlier, to give more advanced notification to markets, which strengthens our ability to deliver a good balance of cost and quality.

There are a number of themes in relation to what we are doing to get earlier engagement, targeted development and best practice sharing.

**Colin Beattie:** I hear what you say about the ideal approach, but the evidence that we have been getting is that some of the key contracting authorities in Scotland are struggling in relation to having the resources and the skills to do the work. We asked one panel whether the cheapest deal should be taken or the deal that would give savings over a period, consistently and sustainably. The problem for some of the authorities was that they do not have the resources to do the more complex calculations that are important for long-term investment. How can you support them in that?

**Tom Arthur:** We provide a lot of support. I recognise the fundamental point that you are driving at. We want a system in which we pay a fair price for a good product, not one in which we do not pay a good price for a fair product. That must be at the heart of what we are doing around procurement.

I ask Graeme Cook to talk about some of our work on engagement and providing support.

**Graeme Cook:** We are looking to expand the Scottish Government's full national suite of frameworks, contracts and support. Moving into additional category areas will help to ease some of the pressure and release some of the resources locally if more things are done centrally.

As you will have heard in some of the evidence sessions, centralisation does not necessarily

mean the loss the consideration of local need. We are looking to increase the categories that will be bought on a collaborative basis, and the various means of sharing best practice also save significant resource locally. After all, if you know someone who has recently bought something, you can get hold of their documents.

In fact, one of the biggest impacts of the procurement reform programme, which started back in 2006, has been building a community of procurement professionals on whom we can rely for that sort of example, which saves huge amounts of time and means that we do not have to reinvent the wheel. It has already been successful, but, as with all of these things, there is space to do more.

**The Convener:** I call Murdo Fraser, to be followed by Maggie Chapman.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Thank you, convener, and good morning, minister. I apologise for being a few moments late at the start of the meeting—it was due to traffic.

We have taken quite a lot of evidence from the business community about some of the challenges that they face in accessing public sector contracts, and I want to ask a few questions in and around that particular space. First, we have heard about resource constraints being a key factor, particularly for the smallest businesses trying to engage with public procurement. The committee has heard that funding for support services such as the Supplier Development Programme has fallen in real terms. What more can be done to assist businesses, particularly the smallest ones, that want to access public contracts but are struggling to do so, because of a lack of resource?

**Tom Arthur:** I appreciate the question and want to record my thanks to the SDP for its outstanding work, which I think we all recognise.

A number of activities are taking place. First, we are one of a number of partners that fund SDP, which runs a range of activities including training, the provision of guidance and local and regional "meet the buyer" events. The Government also works with some of the national events that create opportunities for suppliers to engage directly with buyers. Moreover, there is the range of guidance that has already been touched on in earlier questions and which we provide via the Public Contracts Scotland website, where you will find links to the various forms of support. Therefore, there is the online activity, and there is also our work to support SDP.

On the broader issue of our practice with regard to engagement, Graeme Cook might have something to add.

**Graeme Cook:** Pre-commercial engagement, as we call it, is a really important part of any successful procurement, be it public or private. Nikki Archer talked about early engagement, and that is essential to procurement, because not only will advice come in when it will be more effective but it provides an opportunity to discuss requirements with the market. We find that to be particularly important to SMEs, so we are looking at what we can do to increase the use of pre-commercial engagement and roll it out in all the best-practice forums that I have mentioned.

**Murdo Fraser:** Thanks for that. The minister mentioned the Public Contracts Scotland website. We have had some feedback that, although the portal is welcome, it is starting to feel dated and could be brought up to date. I know that there are plans potentially to retender and reinvent it, but what improvements would you like to see in a new portal to make it more user friendly?

**Tom Arthur:** That work is at a very early stage and we are still scoping things out. As the committee will have heard from previous witnesses, we have started the process of engagement, but the work at the moment is very much about building the evidence base. Instead of the Government presupposing what PCS should look like, it is looking to understand more fully the feedback and the particular issues that have been raised, which Mr Fraser has referred to.

That process of engagement will help to inform our work in this space. As we move forward, I will, of course, be more than happy to keep the committee up to date.

Nikki, do you want to add anything?

10:00

**Nikki Archer:** Almost 90 per cent of the suppliers that are currently registered on the portal are SMEs. We regularly survey our users of the portal to understand how we can improve it. Over time, we have taken action to improve it. That gives us really good access to feedback on what the system of the future should look like. One of the challenges of being an early adopter of best practice is that everybody else soon catches up and you become the one who is out of date, so the early scoping work is important to our moving forward in the future.

Over the past year, following a session of the Business in the Parliament conference that the minister and I attended, we have done quite a lot of work with the Federation of Small Businesses, Women's Enterprise Scotland and other members of the procurement supply group to pull together one-stop-shop guidance on sources of support for SMEs in the third sector on how to engage with,

and to win, business. That seems to have been quite well received.

In addition, further work is under way to develop and publish an SME and third sector action plan, which we hope to have out by the end of this month, or as near to the end of this month as we can.

**Tom Arthur:** We look forward to the proposed community wealth building legislation, on which we have engaged closely with the FSB, increasing opportunities for local suppliers and SMEs. That will be crucial to the success of our approach.

**Murdo Fraser:** You said that the work on the portal is at an early stage. Do you have a likely timescale for its progression?

**Tom Arthur:** I cannot confirm a timescale at the moment, because we are still at an early stage. However, I would be more than happy to update the committee on that work in due course, at which point I could respond to any further questions that the committee might have. I appreciate that that is a strong point of interest, and that the issue has been raised by witnesses.

**Murdo Fraser:** I have a slightly different question, which is about the provision of feedback to unsuccessful bidders. We were told that small businesses can find it discouraging when they put a lot of work into submitting a bid, the bid is unsuccessful and they get very little feedback on how that bid might be improved for future bids. Do you have any thoughts on how that process could be improved?

**Tom Arthur:** That comes back to the issue of what is in the legislation and how that has been implemented. The committee will be familiar with the requirements under the legislation around regulated procurement, the provision of feedback and opportunities for further engagement. The committee will be aware from its evidence taking that there are many buyers who are more than keen to engage with suppliers who are unsuccessful, because such feedback is important in allowing suppliers not only to stay engaged with the public procurement system but to enhance their capacity and ability, and their opportunities, to win contracts in the future.

On the issue of implementation and how we seek to ensure that the requirements of the act are effectively carried forward, I will ask Graeme Cook to come in.

**Graeme Cook:** All bidders are entitled to request feedback. It takes a lot of work to provide good feedback. Everyone is always happy to provide such feedback, but it is not provided automatically. There are suppliers that are not all that interested in receiving detailed feedback—I

would suggest that such suppliers are few and far between, but they exist.

I wonder whether the issue is to do with the distinction between being entitled to ask for feedback and its being provided automatically. Some suppliers might not know that they are entitled to ask for further feedback after they have been told the result of a competition. Things such as the supplier journey, the Supplier Development Programme and so on are critically important in enabling bidders to understand their full rights to feedback in the procurement system.

**Murdo Fraser:** I have a question on a slightly different subject. The procurement legislation has several thresholds: the £50,000 and £2 million thresholds; the threshold associated with the quick-quote system; and the £4 million threshold for community benefit requirements. Those thresholds have not changed since the act was introduced in 2014. Obviously, we have had inflation since that time. Is the Government giving any thought to whether those thresholds are still appropriate or whether they need to be reviewed?

**Tom Arthur:** As part of the community wealth building legislation process, in the consultation on that, as well as asking a specific question about the proposed duties, we asked for any feedback across the five pillars of community wealth building. We received specific feedback that suggested that changes should be made to the thresholds in the procurement legislation. At the moment, I am not in a position to say what the Government's response to that is. We are still giving the matter detailed consideration, but it was raised as part of that process.

**Murdo Fraser:** I have one more question. It is on the quick-quote system, which we have heard some positive things about from people who have used it. Do you know how many local authorities use quick quotes? Although I have not had a chance to verify the information, I was told that only three out of 32 local authorities use it. Do you have any knowledge of that?

**Graeme Cook:** There are two sides to it. There is a system within PCS which is the inbox, if you like, which you can use to receive quick quotes. There is also the concept of a small level of competition, which every public body in Scotland uses. I cannot say whether every public body is still using the PCS electronic inbox, because, as mentioned, the system is getting a bit long in the tooth. It may well be that some local authorities choose not to use that inbox and use a different one, but, nonetheless, they are still using the quick-quote concept of a smaller, quicker and more efficient level of competition for lower-value, lower-risk procurement.

**Murdo Fraser:** That is helpful.

**The Convener:** Bob Doris, do you want to ask a supplementary?

**Bob Doris (Glasgow Maryhill and Springburn) (SNP) (Committee Substitute):** I will do so very briefly, if that is okay, convener.

Previously, I was a substitute on the committee when a similar line of questioning was being posed to other witnesses. Could we get confirmation that all bidders are definitely entitled to receive feedback, not just for bids that are of more than a certain value? That is my first question, but I will roll them together for brevity, if that is helpful.

Secondly, I remember asking at a previous committee meeting whether any monitoring of unsuccessful bidders is done and whether a lack of feedback on their lack of success deters them from making future applications. My understanding is that no monitoring has been done on that. Is Government aware of that, or will it consider analysing the information in order to see whether more needs to be done? An unsuccessful bidder can still build the expertise to allow them to bid successfully in the future.

**Tom Arthur:** I will ask Nikki Archer to come in on the specifics. You raise an important point. As has been suggested previously, I highlight the importance of the requirements being proportionate. We have already had an exchange on the pressures and the resource challenges that we are currently facing.

**Nikki Archer:** Certainly, bidders are entitled to ask for feedback—including successful bidders, who might want feedback on what made them successful. Many suppliers are bidding, so to track and follow trends is nigh on impossible. The theory is that we are providing them with useful feedback that will help them to improve their bids the next time, which will help us; we help them to help us in future bids. Therefore, we should certainly be providing good feedback to bidders when it is requested.

**Bob Doris:** Can I just check the facts, for completeness? I understand that resources are an issue, convener, as is providing detailed feedback for everyone. However, a sample exercise could quite easily be done on, say, 50 or 100 unsuccessful bidders—I apologise; I do not know what an appropriate number would be—over a period of time in order to find out whether they reapply. Some kind of data analysis could be done. What I was asking is whether that has been considered. If not, would it be considered?

**Nikki Archer:** We run supplier surveys and we look at the range of questions that we ask, so it is certainly something that could be considered. We are due to look at further surveys this year—the last one was published in 2021, I think. We are

trying to look at matters that are of importance. Events such as this help to inform what we decide to put in there, so I thank you for that.

**Maggie Chapman (North East Scotland) (Green):** Good morning, minister, and thank you for your contribution so far.

In the 10 years since the 2014 act was passed, we have seen more focus on issues such as the climate impact of our work, the shift to net zero, renewed interest in community wealth building, as you have already spoken about, and the development of regional economic partnerships to focus on local resilience, sustainability and the like. The vision in the five-year procurement strategy that was published last year focuses on maximising value for the people of Scotland and putting public procurement at the heart of a sustainable economy.

Are we using procurement to the best possible effect to meet the challenges in the 2014 act around the sustainable procurement duty and deliver the positive social and environmental outcomes that we know it can deliver?

**Tom Arthur:** That touches again on the distinction between what we have in legislation and the questions around consistency or variation in implementation. What we have in legislation is very strong and, as I have touched on before, it is supported by a comprehensive package of guidance, toolkits and engagement. A lot of positive work is being undertaken in procurement per se.

Touching on the community wealth building point, which I know you have a strong interest in, a more coherent and joined-up approach across different pillars of economic development will afford us opportunities to go further than we have. With regard to what we have at the moment, and as reflected in the independent report that was published recently on the sustainable procurement journey that we have been on over the past two decades, we have a very strong story to tell and we have made significant progress.

Would Nikki Archer like to add something on the policy aspect and some of the successes that have come from that?

**Nikki Archer:** There is a challenge in balancing the various outcomes that we are looking for. There is always a tension between competing pressures. One thing that we use quite heavily across the public sector is our sustainable procurement tools system, which has been recognised internationally. It helps buyers to ascertain, with their customers, what the biggest bang for their buck is in relation to the balance of social, environmental and economic outcomes, as well as sustainability and innovation.

Those tools are very important, and we have an awful lot of examples of good practice, which is one reason why it is so important that people who spend above a certain amount must publish their strategies, setting out how they will use procurement to deliver against a sustainable procurement duty. It is important that they not only do that but report annually with evidence on how they are doing that in practice.

We gather and analyse all those reports—around 115, but do not quote me—and set out in the minister's annual report evidence of good practice with examples. That is a big focus for us, and we use and share those examples of good practice. We develop case studies and put them in the tools to help others to learn, adapt and apply.

**Graeme Cook:** I could give a few examples that have been drawn through those annual reports, if that would be helpful. In Perth and Kinross Council's Tay link road procurement, the tenders were required to state what carbon reduction initiatives would be implemented if those bidders won. The Scottish Government's print, design and associated services procurement specifically reduced waste and minimised the use of non-environmentally friendly raw materials.

The Scottish Government's general office supplies framework, which is used across the public sector in Scotland, reduced the frequency of deliveries through consolidation and minimum order value. Something as simple as a minimum order value can reduce the number of journeys and deliveries. It also combines two separate frameworks, which cuts delivery miles in half, and uses electric or low-emission vehicles.

Those are the sorts of examples that get pulled out through the requirements and the summing up of the annual reports, which are required as part of the 2014 act.

**Maggie Chapman:** That is helpful, and it is interesting to hear those examples. We heard from witnesses that there is a lot of good will and intention, but that quite often price drowns out the other factors and negates the positive social or environmental outcomes. We also heard that the reducing inequalities element has got lost as far as measuring the social and environmental outcomes is concerned. There is a specific example, which may link to the threshold point, relating to subcontracting and secondary supply chains down the way, because the contractors are not obliged to provide information around the environmental and social outcomes.

How can we ensure that we see the maximising of value in the round rather than just a focus on price?

10:15

**Tom Arthur:** I will ask Graeme Cook to come in on the point around implementation in subcontracting and then I will come back in.

**Graeme Cook:** With subcontracting, scrutinising a supply chain in detail, as with all things procurement, has to be proportionate. There are an awful lot of supply chains for very small amounts of money, and if we required a supplier to do a lot of additional work for a relatively small contract, it represents quite a barrier. That is what they quote as the unnecessary bureaucracy. We need to work hard to balance all of that.

In larger contracts and in contracts that have a higher environmental risk or a greater opportunity to, for example, deliver social outcomes, public bodies will scrutinise the supply chains and have regular contract supplier meetings. It has to be done on a proportionate basis. That pulls through to the annual reports—where there is successful implementation of policy in the supply chain, we see that in the annual reports.

**Tom Arthur:** Again, it gets to the tensions that exist in procurement, which we spoke about earlier, and what we want procurement to do. In recent decades, we have come a long way with how procurement operates. In the past 10 years, we have seen real progress, partly in relation to what has been delivered by the act and partly through the broader work around procurement reform that the Scottish Government has been undertaking. I understand and share the appetite for seeing what more procurement can do—we touched on that with regard to community wealth building—but it always come back to the point about proportionality.

We are talking about the delivery of goods, services and works, which are essential for the functioning and operation of the public sector, but we want to do that in such a way that we can maximise the wider impacts. If we look at the report on 20 years of the sustainable procurement journey, we can see that those considerations went from being an add-on to being a golden thread that goes right through the process.

That speaks more broadly to the aspirations that we talk about for community wealth building, sustainable economic growth, sustainable development and a wellbeing economy—however one wishes to phrase it. That broader consideration of the social, environmental and specific economic outcomes has been a much more upstream concern. We are seeing that change happen in procurement.

It also speaks to the broader point about implementation. You will have heard from a number of witnesses who have appeared before the committee that we have policy and we have

legislation, but culture and practice are important as well. That will take time but, 10 years on from the act being passed, we can see that we have made significant progress. That is reflected in the annual reports, as well as in the independent review of the progress that we have made over the past couple of decades.

**Maggie Chapman:** Thanks for that. You talked about the delivery of goods, services and works, but around those also come the jobs and pay and conditions of the people who are delivering those goods, services and works. It is not only those individuals; it is the communities that they live in and support, and those local economies. We can see the tracking of fair work requirements through some of the contracting processes, and I hear what you say about the bureaucracy of following that all the way through. We have seen really positive progress, as you outlined, around the real living wage, but that is easily defined, easy to measure and easy to monitor.

There has perhaps been less progress around gender representation and carbon accounting, for instance. What thought has the Scottish Government given to defining more clearly what we mean by progress in those areas? They are fundamental to the sustainable communities that rely on the economies that we are talking about, but if we do not have a clear understanding of what we mean when we talk about gender equality or carbon accounting, those who are delivering the goods, services and works are working, perhaps not blind, but with good intentions although without a clearly defined focus or outcome.

**Tom Arthur:** I think that the committee will recognise the legal requirements around equal treatment and non-discrimination under which we have to operate in respect of regulated procurement, and our obligations under the Government procurement agreement and so on.

On your point about gender, part of that involves looking at the supply side and the work that we do in engaging with suppliers, which includes the bits of work that I spoke about previously. Nikki Archer may want to pick up on that, because she referred earlier to the Business in the Parliament conference event, about which we have had an extended conversation.

**Nikki Archer:** A couple of thoughts were going through my head, minister. On the concept of carbon accounting, there is a risk of unreliability in conflating spend with emissions. There is a whole industry out there on different ways to do that. We are working on that by ensuring that we focus not just on how we buy, but on whether we buy at all. That decision can stop the carbon accounting at source. We consider what we buy and how much, and build it into the specification. That gives us the

twin results of lower budgets and stopping the carbon cycle and scope 3 emissions.

With regard to the social aspects, we have the community benefits in procurement procedure, which has a long-standing and very positive history of embedding those benefits, not just above the threshold for community benefits but through people volunteering to use them below the thresholds. We are also looking at getting protected characteristics back into work and apprenticeships. There is a lot of focus and commitment on doing things in that space.

Another example is the provision of independent advocacy services. There was much engagement up front with people with a disabled background in order to understand how they could access the services, so that we could build and incorporate that into the way that we deliver them.

There are a lot of ways to balance those things. If we are getting local suppliers and local interpreters, that also affects the carbon footprint, so there is a lot of mutuality involved.

**Maggie Chapman:** It is complex and interconnected.

**Nikki Archer:** Very much so, and it needs to be considered case by case. That is why we need professional buyers to assess the marketplace in order to understand what the right balance is in each situation, based on the market dynamics.

**Maggie Chapman:** Okay, thank you—I will leave it there.

**The Convener:** Before I bring in Kevin Stewart, I will follow up on Maggie Chapman's question. The minister will know that the committee is about to undertake work on disability employment. As part of that, we have discussed supported workplaces and where they fit into procurement services.

We have heard from people who are positive about reform of the reserved contracts provisions under the Public Contracts (Scotland) Regulations 2015, which we are opening up to supported businesses, but the minister might want to say more about how public procurement can support such businesses.

We have heard reports that there are some barriers—for example, the areas in which those businesses can participate are quite narrow, and it can be difficult to match them up with opportunities. Is more work needed to recognise the role that supported businesses can play? How do we make it easier for them to access public procurement?

**Tom Arthur:** I agree entirely. I visited a supported business yesterday, and I am visiting another one next week. Last autumn, Scotland

Excel ran an excellent event on supported businesses, which I was privileged to attend and speak at.

The committee will be aware of what is set out in the legislation. I ask Graeme Cook to say a few words on some of the work that we are undertaking on dynamic purchasing.

**Graeme Cook:** The Scottish Government has a dynamic purchasing system, which is a bit like a framework. It allows new businesses to join as they merge and move into markets, which is the main difference between a DPS and a normal framework. There is a DPS specifically for supported businesses that is accessible right across the Scottish public sector. In 2021-22, across the 110 public bodies that published an annual report for that year, £27.9 million in regulated contracts went to supported businesses. Some of that was through the DPS, but not all of it.

The DPS is one route that can simplify access, but it is not the only route. A significant sum already goes to supported businesses. As always, there is great success, but there is always room for more, which is why we moved from using the standard framework to using the DPS. As more businesses emerge, or as more supported businesses move into new markets and develop new products and services, they are able to join that system rather than being cut out until the next time it gets renewed.

**Kevin Stewart (Aberdeen Central) (SNP):** I intend to ask some questions about commissioning, but the exchange just now has been interesting. This is the first that the committee has heard of a dynamic purchasing system, for example, which you say is different from a normal framework. If it is the first time that we have heard of it, how do folk out there who are trying to sell things keep up with all the tweaks and differences as they appear?

**Tom Arthur:** We do all that we can to publicise and make available that information. I will not repeat the various partners that we work with and the suite of guidance that we produce. We will continue to learn from the situation. One of the things that I will be keen to learn from the committee's deliberations and report is about what more we can do to increase awareness of the support that is available and to create an environment where we can encourage more SMEs and supported businesses to look for opportunities to engage with public sector procurement.

With regard to Mr Stewart's specific point about how we raise awareness, I refer back to the points that officials and I have made about the existing suite of support, guidance and engagement.

**Kevin Stewart:** Let us move on to commissioning. We have heard from many people

that good commissioning work can lead to very good outcomes, which is what we all want. However, we have been told that competitive public tenders are not necessarily the most appropriate vehicles for that commissioning work. We have also heard that there is a perception, when it comes to commissioning, that accountants and lawyers have more influence over the tender than the people on the front line who know what is required. Do you have any comment on that, minister?

**Tom Arthur:** There is a fundamental point about knowing what need the procurement is seeking to address. With regard to commissioning, we must ensure through pre-market engagement with suppliers that they have a clear understanding of the need and demand that is to be met. On the point about the officers who are involved in the administrative process of drafting and decision making, that will be for the individual contracting bodies, but they must comply with the legislative requirements. They have to be in a position to demonstrate how they are doing that. I know that those points have been raised in previous sessions, but there is a fundamental point about having a clear understanding of the need and demand and about working with suppliers to find the most effective way of addressing that.

**Kevin Stewart:** You said earlier—I agree with you, and I think that most of the committee would agree with you—that we have the legislation, but the difficulty is often implementation. Implementing what we want, which is good outcomes for all, is often hampered by risk aversion and a misreading of the legislation and guidance. How do we get over that?

**Tom Arthur:** There is the engagement that takes place between officials and heads of procurement, for example, and there is the support that I have spoken about through the procurement journey. On the point about implementation, as has been identified by the committee, when we have a diverse and sophisticated public sector landscape, it is inevitable that there will be variations in implementation, for a multitude of reasons.

On the point about being risk averse, I highlight the need to ensure that all procurement activity is compliant with the relevant domestic and international obligations to which we are subject.

I will ask Graeme Cook to comment on both of the points that Mr Stewart raised in his previous two questions.

10:30

**Graeme Cook:** On engagement with people on the front line, no procurement can go forward

without end users defining the specification. That is the minimum technical threshold that must go into a tender.

Price is always part of the consideration but, once you start thinking about other layers—whether there is modern slavery in a supply chain, whether the product has a high-carbon impact and whether a supplier pays the living wage—that will often change the brand that is ultimately delivered to the end user. Through 20 years of working in public procurement, I know that that can come as a shock to the end user, who will often say that the accountant, budget holder or lawyer has skewed the result away from what they really wanted. Sometimes, decisions will be down to there simply not being the budget for something, for example, and those will be local decisions.

In reality, however, what changes the brand and final outcome more often is delivery of the fundamental policies that procurement is being asked to deliver. A multitude of things are going on underneath the surface when someone says, “Well, it’s the accountants who have changed the answer.” Some of that will be down to exactly what committee members expect the 2014 act to deliver.

**Kevin Stewart:** But some of it might not be down to that, which is what we are here to delve into.

Let us look at some of the things that are going on out there. Mr Cook said earlier that there are events and seminars to ensure that best practice is exported across the piece, where it can be. However, although we see things going on out there that are providing great outcomes for people, that is not happening in a lot of places, because it might be seen as being too risky.

Let me give an example that has been given in evidence on a number of occasions. It relates to social care in my home city of Aberdeen and the Granite Care Consortium. The commissioned work provides a lot of flexibility, with front-line workers having the ability, independence and autonomy to step up and step down care. The contract allows for that. If that were happening elsewhere in the country, folk would probably not be going into hospital unnecessarily on as many occasions. That practice has been picked up in certain other parts of the country, but not in many others. Why is that kind of procurement best practice not being exported across the board?

**Tom Arthur:** The first point is implicit in what Mr Stewart stated and echoes the points that were made earlier about East Ayrshire. That example demonstrates what is possible under the existing legislative framework, which permits the kind of activity that he has described.

On the question of why other public bodies and other contracting authorities do not take a similar approach, that will, ultimately, reflect the decisions that they have taken. As I touched on earlier, local authorities are, of course, democratically accountable to their electorate.

I will not re-rehearse the points that have been made about the various examples of facilitating and sharing best practice—whether in person or online—but, with regard to how we can further support public bodies to share best practice beyond what we have already set out, I will, of course, carefully consider the committee's views and reflections on the matter. This is a statement of the obvious, but the key point is that the examples of good practice that have been identified are occurring under the existing framework, so they demonstrate what is possible.

I do not know whether Graeme Cook has any reflections on the broader point about sharing best practice and whether he can unpack why some authorities will take one approach while others might not choose to take the same approach.

**Graeme Cook:** I will touch on the national care service, although I appreciate that that is outside the minister's remit. The national care service programme has considered the commissioning model for Granite Care Consortium and how it relates to procurement. That is being looked into in some detail. So far, it looks like the decision that was made was fundamentally one to buy something else. It was the social care commissioners—the budget holders or end users—who drove that change, and procurement then delivered what the commissioners requested.

Under that system approach, multiple players will all have an impact on what is bought and how a contract works. Something different was asked for, and the procurement legislation allowed it, in that there was sufficient flexibility. The question that colleagues in the national care service programme are unpacking now, in consultation with various parties, is about what drove that and who needs to share what best practice. Is it the commissioners of social care who need to share that best practice, or does that responsibility lie with procurement? It probably lies across them all.

That analysis is being done to consider why best practice is not being spread right across the country right now, what barriers are being removed and so on.

**Kevin Stewart:** You kind of make my point for me. I will not go into the national care service in depth, as the convener will, I am sure, not allow me the time to do that, but the national care service is about uniformity, having the best standards possible for the best outcomes for

people and creating a high-quality standard across the board. We are not there yet.

As I said, Mr Cook makes my point for me. People on the front line in Aberdeen came up with something different, and they have been allowed to go with it, whereas there has been risk aversion in other parts of the country, where folks on the front line have wanted a similar approach to that taken in Aberdeen, with flexibility, independence and autonomy, but they have been told no. The folks putting together the tenders and documents have said, "That's not possible."

**Tom Arthur:** I will ask Nikki Archer to contribute in a moment but, regarding the requirements for the strategies, I highlight the need to set out how bodies are engaging with their areas and the considerations that go into those strategies.

Your point is something that I will take away from this exchange. In the community wealth building consultation, one of the central questions concerned duties to be placed on public bodies to advance community wealth building. We are giving detailed consideration to that, and we are reflecting on the responses to the consultation, but I will certainly take away the point that you have raised about decision making being more informed by the considerations of those on the front line and in the community, leading to better outcomes, when thinking about how we take forward the propositions that we consulted on regarding community wealth building.

**Nikki Archer:** I made a point earlier about the importance of the early engagement of procurement, with procurement and commissioning coming together much earlier in the process, making it a mutual process of development. We have discovered, by doing an awful lot of work to assess what has been happening historically, that there has not always been that closer collaboration, which has led to suboptimal outcomes. That is why the current programme is learning from Aberdeen and elsewhere about how to bring communities much closer together earlier in the process in order to define what needs to be done. That is based on the outcomes that we are trying to drive.

**Kevin Stewart:** I have a final brief question. All of this is about people and getting the best possible outcomes for them. We have heard about some of the work that has been undertaken to share best practice and the attempts to get rid of some of the risk aversion that still exists. Minister, would it be possible for you and your officials to provide some detail on what has gone on in that area over, say, the past year and give us a flavour of how you are going about that business?

**Tom Arthur:** I would be happy to write with a summary of the engagement activity that my

officials and I have been undertaking with contracting authorities, in time for the committee to consider that in its report, if that would be helpful.

**Kevin Stewart:** That would certainly be useful for me, and I think that it would be useful for other members, too. Thank you.

**Bob Doris:** We have heard a lot today about transparency in supply chains and understanding the ethical decisions that must be taken in relation to payment of the living wage, fair trade and a variety of other things.

The legislation that we are scrutinising was passed in 2014, but I want to highlight the Circular Economy (Scotland) Bill, which is going through the Parliament at the moment. As someone who sits on the committee that is considering the bill, I think that we need to ensure that all public sector procurement decisions play their part in relation to a circular economy. A circular economy strategy for Scotland will be developed following the passage of the bill, which, I hope, will have a beneficial impact on procurement for all public bodies, including local authorities, NHS Scotland and Police Scotland.

Minister, how cognisant are you of that bill? Is work being done across portfolios? For example, is Lorna Slater, who is leading on the bill, talking to your department to ensure that the public sector and—this is the key point—people in the supply chains know what they need to do to play their part in ensuring that Scotland has a truly circular economy?

**Tom Arthur:** I would just highlight that, in many respects, we have been ahead of the curve with procurement, given what is set out in the 2014 act on sustainable procurement, the suite of tools that we provide to support buyers and the sustainable procurement obligations.

I will ask Nikki Archer to provide some detail and talk about the engagement that has taken place between officials.

**Nikki Archer:** We work very closely with other portfolios, including our climate, fair work and economy colleagues, to drive the sustainable outcomes that we are trying to achieve through procurement. When they develop legislation on climate, we are part of that discussion. For example, we have discussions about how we ensure that we do the right things for the people of Scotland without creating unnecessary burdens, particularly for small businesses, which can slow them down in relation to giving them a chance to play a part in the public procurement supply chain.

On reporting duties, we reached an agreement that what our public bodies present on climate in their annual reports can be used for the climate reporting duties for procurement, to ensure that

they report only once and can use that report in both cases. We are trying to streamline what we do.

We have written this into our policy guidance and tools, but when we go out to the market, we take a proportionate approach to ensure that we do not inadvertently block small businesses and that we bring them on the journey of trying to deliver climate and circular economy ambitions. We have climate and circular economy policy guidance and tools, and we have mandated e-learning to make our buyers climate literate. That is available free of charge to all buyers across Scotland, and we track and monitor who is availing themselves of that free training. We are trying to increase the knowledge and understanding of our buyers in applying those important considerations to relevant procurements.

10:45

**Bob Doris:** I find that encouraging. I am not part of these deliberations, but I would just say that, as the committee concludes this particular post-legislative scrutiny, I am sensing a frustration that, in the committees that I sit on, we are always thinking about what is next, rather than the good work that has taken place up to this date. However, that is just what politicians do.

You have mentioned burdens on businesses. I get that, but we also have to think about what the right thing to do is and to support businesses in doing it, instead of using terms such as “burdens on businesses”. If we are to have a proper partnership across portfolios, we have to enable businesses to see the value in doing the right thing, instead of our talking about it in terms of burdens. Maybe the language has to be changed a little bit.

**Nikki Archer:** I could not agree more. I probably used the word “burdens”, because we are talking about trying to get access for small businesses, but when we discuss things with our suppliers, what we are trying to lay out—and what we do lay out within the supplier journey—is what we expect of them. It is about the outcomes that we are trying to develop and deliver together, including those for climate and fair work as well as opportunities for community wealth and community benefits. That is the language that we use to bring people with us.

**Bob Doris:** Ms Archer, I do not want to be a hypocrite. The first time that a local business contacts me to say that there are too many burdens on it, I will be making representations to Government.

**Nikki Archer:** It is all about balance.

**Bob Doris:** I have another question. We know that public bodies report annually on all this, and

we know that there are strategies, but the committee has heard that, quite often, there is an inconsistency in the way in which the aims contained in those reports and strategies are linked to outcomes in reality. I did not know—though I do now—that there was an annual synthesis report that pulls together some of that stuff. Does the minister recognise those inconsistencies? What efforts have been made to address them?

**Tom Arthur:** I think that balance and proportionality are becoming the go-to words of this session. They are specific requirements that have to be met, both in the strategies and in the reporting.

Of course, there is nothing to preclude a public body from going beyond those requirements, and there is nothing to preclude a public body whose annual expenditure is below £5 million from also producing strategies and reports. It is important to have that flexibility to reflect the fact that different public bodies will have different focuses with regard to procurement. Of course, there are requirements that most public bodies will need to address through procurement, but there will also be things that are more sector specific.

**Nikki Archer:** I will mention something else in relation to that. We have some minimum requirements on what public bodies must put into their strategies and their annual reports. When we analyse every public procurement report, my team also offers feedback on how the reports can be improved. We gather them together in the minister's annual report, but we also offer feedback on their strengths and how they can be improved.

Again, there is a balance to consider in relation to putting on to our hard-pressed buying communities another burden of having to document everything on an annual basis. It is about getting the balance with regard to what must be recorded so that we can give a good account of our impact, and then going further than that.

**Bob Doris:** Is my point about aims in strategies and reports not necessarily being linked to actual outcomes something that the Government is aware of? The committee will want to know whether that is a systemic or an anecdotal thing. How real is it?

**Nikki Archer:** The minister mentioned our approach to the public procurement strategy for Scotland, which was developed in consultation and collaboration with the public sector across Scotland to ensure that, together, we set out our priorities with regard to the outcomes that are good for businesses and employees, good for places and communities and good for society, and which remain open and connected. That is our

mantra; it is how we set out our annual reports and how our priorities are structured. That national strategy is about pulling together in the right direction, with the outcomes as the aim.

**Graeme Cook:** A distinction can be drawn between an aim that you set out and what you buy in a particular year. For example, many contracts will be four years long—that is a fairly standard length. For several years, you might have a strategy for delivering particular things, but you will tender for them only once every four years. There will be peaks and troughs of opportunity in delivering more things under that contract. I am sure that that will also have an influence on what pops up in each annual report, but I am sure that, if you were able to look over a longer period, you would see a greater correlation between the aims in the strategy and what had been reported as being delivered.

**Bob Doris:** That is a fair point.

I should ask my final question, as it is in my notes. One inconsistency that has been identified is reporting on fair trade products. Because there is no agreed definition in that respect, consistent reporting or looking at trends becomes very difficult. Is there a need for a clear definition? Is the minister aware of that? Is work being done on it?

**Tom Arthur:** There are requirements for that in the strategy, but there are important flexibilities, too.

**Graeme Cook:** I will avoid the brand name Fairtrade, as it is a particular company involved in fairly traded goods.

There is a definition in the sustainable procurement duty and in the supporting policy guidance training on the procurement journey platform. I do not think that the definition is an issue in delivering the sustainable procurement duty and fairly traded policies. Delivery can sometimes be underreported, and there are organisations that will concentrate on their own particular branded type of fairly traded goods. Some of the figures out there in public are underreported, because organisations will look to only their own brand rather than the broader definition in the procurement legislation, the policy guidance and so on.

**Bob Doris:** I am sure that the committee would welcome further details of that in writing. I do not want to take up more of the committee's time with this line of questioning, but there is a tension between there being a definition and there being flexibility and the definition being interpreted differently by public bodies. I do not want to make something of something that is not there, so some clarity through correspondence might be quite helpful.

**Tom Arthur:** I will provide the detail behind that.

**The Convener:** I was going to request the same, given that the Scottish Fair Trade Forum has noted that legislation does not have any definition for fair trade, which has led to significant variance in what is categorised as fair or ethical among public bodies. The minister says that there is a clear definition, so it could be just about how that is being interpreted instead of there being a lack in that respect. However, we have heard evidence of differences in the way in which authorities categorise or report their fair trade products.

**Nikki Archer:** We can certainly do what has been suggested. In addition to what we have in the legislation, there is national policy that also sets out clear guidance on some of those items. The suite of legislation and policy sets out the standards and the approach that are then embedded in our tools for buyers to use, but we will follow up on that.

**Evelyn Tweed (Stirling) (SNP):** Good morning, minister, and good morning, panel. Thanks for all your answers so far.

How has the procurement common framework influenced engagement with the UK Government as the Procurement Act 2023 for England and Wales has been developed? Do you have any concerns about how such reforms might influence procurement in Scotland?

**Tom Arthur:** There is a good level of engagement between procurement officials in Scotland and those in the other nations of the UK. We have seen recent reform of procurement legislation, both by the UK Government on behalf of England and in reserved bodies, and also in Wales.

Of course, beyond that engagement, we are looking on with interest at what is happening, and, in many respects, we are seeing other parts of the UK seeking to catch up with where we are in Scotland. As we touched on earlier, we are very much ahead of the curve, because of what we achieved in 2014. Different provisions have come in via UK legislation, and we will, of course, want to monitor that very carefully. We are always keen to understand different approaches and any learning that we can take from them.

Broadly, what we have in Scotland—and what has been reflected in the evidence that the committee has taken—is a strong piece of legislation that supports regulations, buttressed by the comprehensive suite of guidance and support that we have touched on.

**The Convener:** Thank you for that.

On Monday, the 2021-22 annual report was published, and you shared it with the committee,

which was appreciated. I have just one question about it. I know that Maggie Chapman has raised questions about sustainability, and we have had a chat about the other legislation that is coming up, but the fact is that the percentage of public bodies that provided evidence of the regard that they are paying to climate change sits unchanged at 71 per cent.

In other inquiries, the committee has heard about the difficulty that SMEs in particular have with engaging with the climate change agenda, about the lack of support or knowledge, about how the increase in the cost of doing business has put pressure on them and about how they prioritise these things. The percentages for providing other sorts of evidence have improved, but that one is sitting at 71 per cent. Do you want to say anything more about those challenges, how public procurement can support businesses in meeting their climate change responsibilities and how it can help them shift the model that they use to do their business?

**Tom Arthur:** This builds on Mr Doris's line of questioning, and I am conscious that Nikki Archer's answers highlighted the need for a proportionate approach. We want to support, encourage and enable businesses to go on that journey. If we have a set of requirements that small operators in particular do not have the capacity to comply with, we will be missing an opportunity to take them on that journey.

Nikki Archer might want to provide additional feedback on what emerged from the cumulative annual reports, as reflected in the ministerial report.

**Nikki Archer:** People are still finding it quite difficult to articulate what they are doing on climate. I mentioned earlier that procurement is part of a whole system. If there is a make-or-buy decision and we decide not to buy, that will not make it into an annual report. People often miss the opportunity to articulate demand management-type strategies to reduce the cycle of scope 3 emissions right at the start, either because we are buying less or because our choice is restricted. We are trying to encourage more buyers to come forward with more of those examples.

We know that that is happening. In our national climate and procurement forum, which has representation from across the public sector, we discuss and debate how we move the agenda forward and take action. We prioritise where we are going to focus and where we can have the biggest impact. We are doing a lot of work on construction, on heat and fleet and on vehicles, as you would expect, but we are also starting to more routinely consider climate and the circular economy in any procurement.

A lot is happening, but I do not think that we are quite as far ahead as we would like in being able to capture and report that. It is definitely an area that we are focused on.

**The Convener:** That brings us to the end of the evidence session. I thank the minister for giving evidence this morning.

10:57

*Meeting continued in private until 11:14.*

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