

# Procurement in Scotland

## factsheet

### Introduction

Procurement in Scotland is a devolved issue, meaning responsibility for the statutory framework of procurement rests with the Scottish government. As a result there are important differences between the political and legal framework in Scotland and the rest of the UK. This factsheet explains these distinctive features and tells you where to get more information on areas of specific interest.

### Political context for procurement in Scotland

Scotland has a different public service structure to that which operates in England. The Scottish public service model is based on co-operation rather than competition and therefore many of the procedures and competitive initiatives in England do not apply to Scotland. However, that does not mean that procurement is not an issue for Scottish branches. Procurement is driven by Scottish arrangements including the Efficient Government Initiative, Scottish Futures Trust, Best Value regime, Improvement Service and more recently as a political response to financial cuts.

### The legal context for procurement in Scotland

Scotland's procurement regulations came into force on 31 January 2006 under the Public Contracts (Scotland) Regulations and the Utilities Contracts (Scotland) Regulations. These regulations were introduced to ensure compliance with European Union directives and providing a general framework for procurement regulations similar to the rest of the UK.

### Statutory guidance and protocols

The Scottish Trades Union Congress (STUC) agreed a protocol in 2002 with

the Scottish government covering employment issues in public private partnerships (PPP). PPP is the umbrella term for initiatives which involve the private sector in the operation of public services. In addition the Scottish government has issued statutory guidance to Scottish local authorities (s52 Guidance), which is similar to the PPP Protocol. This covers any exercise which involves a change of service provider or where local authority staff are transferred. These protocols are currently under review (May 2009) and revised guidance will be issued to branches by UNISON Scotland when the review is completed.

Both the protocol and the guidance state that trade unions should be involved at the earliest stages of a review process. Branches should use this opportunity to ensure in-house options are adopted in accordance with UNISON guidance. See UNISON's UK wide guidance on Commissioning and Procurement ([www.unison.org.uk/acrobat/17808.pdf](http://www.unison.org.uk/acrobat/17808.pdf)) for more information on how to achieve this.

If outsourcing is adopted trade union involvement should extend to any selection process and requires "full disclosure of information on all matters affecting the workforce". Both the s.52 statutory guidance and the PPP protocol make it clear that openness is the default approach and spurious use of 'commercial confidentiality' is not an excuse for not disclosing. Potential contractors should be advised of this at the outset and a list of relevant information is set out in the guidance.

Branches should have representative members on any panel or board established to consider procurement options and award the contract. However, UNISON should not put itself in a position of providing a justification for outsourcing based on participation in a process and should remain independent and critical at all times.

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## Two tier workforce

Both the statutory guidance and the PPP Protocol contain provisions to ensure “that the terms and conditions of service of new employees appointed by contractors to their workforces post-transfer, should be such as to eliminate the scope for the creation of so-called ‘two-tier’ workforces”.

This means new starters or existing contractor staff allocated to a contract, should be employed on terms and conditions which are no less favourable overall to those of transferred employees. The intention is that contractors and unions should agree the package of terms and conditions. This includes pensions and the service provider has to offer new recruits a ‘broadly comparable’ pension to the originally transferred staff. In local government this will normally be achieved by Admitted Body Status to the Local Government Pension Scheme.

## TUPE

When staff transfer they will normally be covered by TUPE. Even if TUPE does not apply in strict legal terms the principles of TUPE will apply for contracts covered by both the guidance and the PPP Protocol. It should be made clear to potential contractors that employees should be able to maintain broadly comparable pensions at the outset of the contract.

## Monitoring and enforcement

Both the guidance to local authorities and the PPP Protocol amount to statutory guidance, meaning public authorities are under a duty to give regard to them. Their provisions should be included in any contract within their scope. Failure of local authorities to comply with the guidance could be regarded as a breach of the statutory Best Value duty under s2 of the Local Government in Scotland Act 2003 and therefore covered by the enforcement regime under that Act.

## Further information

*A resource page for UNISON's campaign against PFI*

<http://www.unison-scotland.org.uk/comms/pfi.html>

*UNISON Scotland's Guidance on Statutory Procurement Guidance to Local Authorities*

<http://www.unison-scotland.org.uk/briefings/s52guidancebrief.html>

*A UNISON Scotland Guide to the STUC/Scottish Executive Public Private Partnerships in Scotland – Protocol and Guidance Concerning Employment Issues*

<http://www.unison-scotland.org.uk/briefings/pppprotocol.html>

*At What Cost? a UNISON report on the aggregate costs of PFI/PPP projects in Scotland – and some suggestions on a way forward*

<http://www.unison.org.uk/acrobat/atwhatcostoct07.pdf>

*The Scottish Government's statutory guidance to local authorities on contracting issued under s52 of the Local Government in Scotland Act 2003*

<http://www.scotland.gov.uk/Resource/Doc/115506/0028632.pdf>

*From Commissioning to Procurement: UNISON's guide to campaigning and negotiating around procurement*

<http://www.unison.org.uk/acrobat/17808.pdf>