

Public Procurement in Scotland

The case for scrutiny, accountability and
transparency

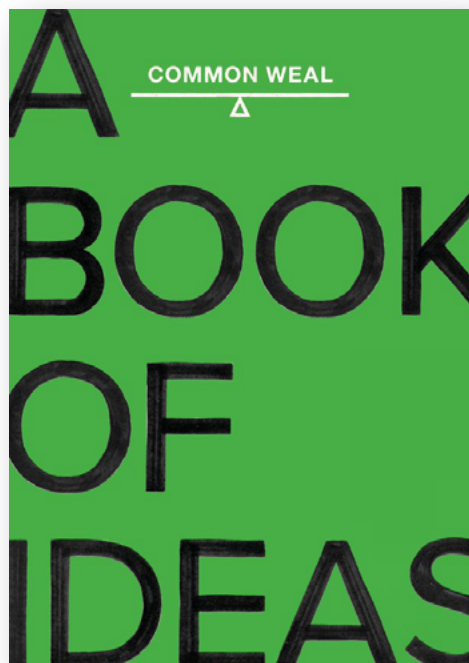
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COMMON WEAL POLICY



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COMMON WEAL POLICY



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“I believe that transparency is not an optional add-on but an integral part of policy making.”

**Nicola Sturgeon, Scottish Parliament,
November 2012**

“Maintaining transparency is a key objective of good governance.”

Audit Scotland, June 2011

Introduction

The collapse of school walls in Edinburgh rightly focused the public’s attention on the way Edinburgh Council had chosen to upgrade its schools through a public private partnership (PPP) arrangement. The following inquiry ‘into the Construction of Edinburgh Schools’, February 2017, concentrated on the construction of the schools, and found the procedures to be lacking.

Construction, however, is not the only public procurement issues that need to be addressed. For many years, Scotland has had systems whereby our representative bodies, the Scottish Government and Local Authorities have been using financial instruments and contracts to procure public buildings and their long-term servicing and maintenance.

The terms of the contracts are such that it is difficult, if not impossible, for the public sector to release the information in the contract to the public - who are, after all, the ones paying for the project and requiring its services.

This paper concentrates on six issues.

1. Why is it that our public representatives are signing up to contracts where the public cannot see the terms of the contract? In the few cases where we have finally been given access to a contract and its financial model, we have found serious problems.

2. Why is it, in the cases concerning public procurement, we continually have to resort to Freedom of Information requests which is time consuming, rarely frees the information requested on major public procurement projects, and of no benefit in regard to getting changes made in any existing contract? Helpful answers to requests for information concerning contracts and financial models have rarely been forthcoming.

3. The third issue concerns the very powerful role that is being played by the Non-Departmental Public Body (NDPB) and the Scottish Futures Trust (SFT) in the public procurement of major projects. The SFT, set up in 2008, is a private company. It now has a major

role in Scotland’s public sector build, maintenance and servicing of projects. Its presence in the procurement chain has resulted in the public finding it difficult, if not impossible, to scrutinise the decision-making process on the facility being built; the process of handing out contracts; the financial aspects of the contract; the effect that the project will have on the local community including on jobs, and on local businesses; and importantly the long term effect this is having on Scotland’s financial well-being and the ownership of what was once regarded as essential public goods.

4. There appears to be no analysis of whether the methods now being used for public procurement of major projects are constructed in such a way that local businesses are missing out on the architectural work, on the maintenance and services work, and, for example, potentially innovative work that could lead to other contracts. Local businesses are involved but are far down the food chain and may not be in as advantageous a position as is desirable for them to grow and develop as they might otherwise have done.

5. The fifth issue considered concerns the methods used by the Scottish Government, Health Boards, Prisons, and Local Authority Councils to raise finance for public procurement. The lack of Whole of Government Accounts for Scotland means that we have no idea what the effect on Scotland’s long term level of debt will be from these projects.

6. The final issue concerns the need for a strengthening of the role which needs to be played by the relevant Parliamentary Committees in dealing with economic and financial issues.

This paper is based on what information has been made available through published documents and through Freedom of Information and other requests on each of the above six areas. It draws on research carried out by Jim Cuthbert and I over the past 15 years. But, first, some background.

Background

There was a great need for new public infrastructure in the 1990s after years of neglect. But there were two problems: first, where was the money to be found, and second, even if the money could be found, how could government keep levels of public debt low enough that they were within the financial restrictions of the Maastricht Treaty? Failure to keep within the rules could lead to severe charges levied by the EU.

There were three ways for government to meet this challenge: (i) build a highly effective economy, and so earn the income to pay for the schools etc. out of revenue; (ii) limit spending within revenue constraints, possibly by refurbishing rather than new build; (iii) pay consultants to come up with highly complex schemes that allow what is in essence capital expenditure on the building of schools, hospitals, etc. to be reclassified as revenue and so avoid the EU rules.

The need for new infrastructure was immediate and the third option appeared to offer a solution: the private sector would provide and become responsible for the design, build, management and provision of a stream of services in areas traditionally provided by the state: for example, schools, prisons, hospitals, rail, roads, and water, for which the private consortium involved would receive an annual unitary charge for possibly 25 years. The risk of things going wrong was expected to be transferred mostly to the private sector. As a result, PFI projects would be regarded as being off the government's books so that they were not adding to the government capital account, and the UK would therefore be able to hold itself within the limits set by Maastricht.

PFI became the only real option for local authorities. And importantly, as PFI was regarded as having too large up-front costs, such as working on preparing bids, it was promoted by the UK Treasury as a method suitable only for large projects.

"The PFI system did not remove the debt owed: in fact, it made it much bigger. The research showing the expense of PFI was eventually accepted, with the Hairmyres hospital being regarded as one hospital for the price of two."

The PFI system did not remove the debt owed: in fact, it made it much bigger. The research showing the expense of PFI was eventually accepted, (with the Hairmyres hospital being regarded as one hospital for the price of two). A revised model was introduced in Scotland which aimed at reducing the returns to the private sector, and did indeed appear. Considerable research had by this time been carried out by Allyson Pollock, Jim Cuthbert and I on the problems associated with PFI. In particular, by gaining

sight of some of the PFI contracts and financial models Jim Cuthbert and I were able to show the excessive profits being earned by the private sector consortia. The SNP administration accepted the findings and introduced a new model – the Not for Profit Distribution (NPD) model. This is not a “not for profit” model. Contractors and lenders are expected to earn a normal market rate of return. Surplus profits are not distributed to the private sector. Apart from this, NPD is not very different to PFI. The reforms which were subsequently introduced did appear to reduce the rate of return for new projects - but achieved little else.

This third route of devising financial instruments and methods to avoid breaking EU rules on debt is still the favoured path. As the EU tries to catch up with the novel methods used by governments to avoid its intentions regarding EU members' debt, Scotland has introduced increasingly complex ways of avoiding expenditure on schools, hospitals, roads, prisons etc. being counted under capital expenditure. PFI was first followed by the NPD initiative and this has progressed into the many capital programmes of SFT – in all cases in an effort to alter the classification under EU rules of what would previously have been regarded as capital expenditure by the public sector.

Issue 1: Why are our public representatives signing up to deals where we, the public, cannot question the terms of the deal?

In following the third route of financing public sector procurement of large projects, the public sector is limited in the extent to which it can check on detailed progress during the construction phase of a PFI project. As guidance issued by the Treasury on PFI contracts states, “it will not be appropriate for the authority to adopt the type of overseeing role it might traditionally expect to have when procuring stand-alone construction or development services.”¹

The rationale for the Treasury stance was that, if the public sector gets too involved in checking the work of the private sector consortium, it makes it difficult to determine the allocation of responsibility between the public and private sector should things go wrong.

This view was clearly taken from a financial viewpoint. The result was that the public sector had to rely on the agreed mechanisms for checking the quality of aspects built into the contract. This may well increase the risk of defects going undetected relative to what would happen under traditional public sector procurement, and hide a range of aspects that could be detrimental to the public.

What is not so understandable is why public authorities signed contracts binding them from not releasing information about the contract. This secrecy continues to this day.

In research into the PFI contracts eventually made available, it became apparent that while the private sector had worked out how to maximise their benefits, they also understood where there were holes in the understanding and in the calculations done by the public sector: holes which might benefit the private companies involved. An analysis of service costs for the new Royal Infirmary of Edinburgh (NRIE) and five comparator hospitals was carried out by the consultants Mott MacDonald for the lenders to the project. This showed that for catering, the NRIE cost per bed was well above the range for the other hospitals. The Mott MacDonald report was exclusively for the lenders.²

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Treasury guidance had not only the immediate effect of hiding the detail in contracts from view of the purchasers (the public) but also limited the future role of civil servants, and with that, limited the types of work on offer in the public sector. This essentially led to a hollowing out of the professional groups in the public service.

As a result, it has become ever more important for the public to be able to question the deals that are being made and be provided with the answers before the contracts are signed. Some of the main questions are:

a) Are the systems introduced adding more to our national debt than if public bodies had followed traditional methods? Are we really getting the value that is promised from these new systems, when we take into account the wider picture of their effects on the growth of the Scottish economy and on the development of local businesses throughout the country?

There is no apparent analysis in any government documents that indicate that this wider picture has been adequately taken into account.

b) Are the benefits to the Scottish economy in terms of major contracts benefiting businesses in Scotland as much as they could, with resulting benefits for research and development in Scotland, and apprenticeships and training for young Scottish workers, outstripping the benefits accruing to the non-Scottish companies that lead many of the schemes?

Again, there has been no analysis made of this (at least that's available to the public). What can be said is that the costs of implementing a PFI system encouraged the bundling of projects, with some schools projects such as in Edinburgh, Glasgow, and South Lanarkshire covering over 30 schools, and also that most Scottish businesses had

neither the size capacity nor the finance to be able to afford to put large contracts together never mind construct the buildings.

Inevitably this meant that the companies benefiting from the arrangement were likely to be coming from larger countries than Scotland. (This can easily be checked, although time consuming, by going through the government excel spreadsheets on all PFI projects in Scotland). Further, as regards the long-term provision of janitorial services, cleaning, maintenance, and canteen services, etc. direct employment by the local authorities and use of small local businesses were both seriously reduced with the provision of services going to giant corporations such as Serco.

c) Why were the initial plans developed by the local Councils, such as, for example, the refurbishment of some schools and the building of a few new ones changed in discussions between the public body and the potential PFI contractors?

As explained by Malcolm Fraser³, award-winning Edinburgh architect, the result of this change has been that "perfectly well designed existing schools in good locations, but in need of modernisation and refurbishment, have been closed and the new PFI building is often in a less accessible spot. Often the old land and property have been sold to the PFI consortium at a low price and developed into business and domestic properties."

The House of Commons Committee of Public Accounts carried out a study in England and Wales, "Contracting out public services to the private sector Forty-Seventh Report of Session 2013–14"⁴, which found that: "Government is clearly failing to manage performance across the board, and to achieve the best for citizens out of the contracts into which they have entered. Government needs a far more professional and skilled approach to managing contracts and contractors, and contractors need to demonstrate the high standards of ethics expected in the conduct of public business, and be more transparent about their performance and costs."

These findings are equally relevant to Scotland.

Issue 2: Given Freedom of Information, why do we rarely receive helpful answers to requests for information?

The Freedom of Information (Scotland) Act (FOiSA) came into force in 2005. Among the Scottish Government's Six Principles with regard to the Act is that it "provides for responsible openness"⁵ and that "we support the Act's underpinning principles by encouraging behaviour which is open, transparent and increases public participation."⁶

Nevertheless, a typical response to a Freedom of

Information request is as follows:

No, we will not release the contract as “its disclosure by the authority so obtaining it to the public would constitute a breach of confidence actionable by that person or any other person. We trust this is to your satisfaction.”

NHS Forth Valley.

“This contract which is not publicly available contains commercial and financial information and there is an expressed legally-binding duty of confidence in relation to the information contained within it. If this information were to be disclosed in response to this request this would be likely to prejudice substantially the commercial interests of the Council and its partners.”

in the case of the Edinburgh Council’s ill-fated schools programme.

“The redactions from the material supplied to you were effected on the basis that the disclosure of the material would, or would be likely to, prejudice substantially the commercial interests of a company, and if disclosed, would constitute an actionable breach of confidence”.

North Lanarkshire.

What is important to note is that, in the responses rejecting the Freedom of Information request, the public body gave absolutely no analysis of why the public interest points were considered to be less important than those of the private sector. The private sector and public bodies’ interests are often disclosed in the refusal letters. In none of the refusals to divulge the contracts and projections that we have received has any discussion and analysis ever been given from the NDPBs, the Local Authority Councils, or the Health Trusts as to how they have evaluated “public interest”. There is no analysis showing any account taken by the public body on possible negative effects on employment, on access to services, on local businesses, and on local professions; nor is there any analysis backing their conclusion that the private sector’s interest outweighed these problems. This has never been provided in the Freedom of Information rejections we have received.

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The response of Edinburgh Council would appear particularly odd. In April 2014, the period of time at which a record became ‘historical’ had been reduced from 30 years to 15 years. This has the effect of meaning that most key exemptions, for example, policy formulation and commercial interests cannot be applied to information older than 15 years. The schools project contract was 2001.

The rejection was received in 2016, less than a handful of months before the 15 years were up.

In the area of public sector procurement of capital goods and services such as hospitals, schools, prisons, etc., it has to be asked whether the current system of Freedom of Information is as helpful as what was initially intended in the legislation. While it may well be of great sense in other public functions, there is nothing that can be done by the public if it is found 15 years after the event that a local authority, the prison service, the NHS or central government, entered a contract which was overly costly and caused harm to various aspects of the local community.

Issue 3: Why is there an ever-growing role for Non-Departmental Public Bodies (NDPBs) in capital and revenue spending in Scotland?

The UK government’s definition in 1997 of a NDPB was: “A body which has a role in the processes of national government, but is not a government department or part of one, and which accordingly operates to a greater or lesser extent at arm’s length from Ministers.”⁷

Public anger at the importance of NDPBs in the decision-making process is not new. We have had a number of political figures such as Gordon Brown, Alex Salmond and Nicol Stephen all mirroring the view of Labour shadow Scottish secretary George Robertson, when he said in 1997: “Scots are sick and tired of having their major public services run by faceless, hand-picked appointees.”

Nevertheless, the number of NDPBs directly related to public procurement has increased. In Scotland, interest lies particularly on this issue with Scottish Futures Trust.

The Scottish Government website identifies the Scottish Futures Trust as an NDPB, giving it total funding in 2015-16 of £4.7 million. Nevertheless, the Scottish Futures Trust (SFT) is a private company as is shown in the Registrar of Companies: “The Registrar of Companies for Scotland hereby certifies that Scottish Futures Trust Limited is this day incorporated under the Companies Act 1985 as a private company and that the company is limited.”⁸ The company was established by the Scottish Government with a responsibility for delivering value for money across public sector infrastructure investment and firmly based in the private sector. Its work is what one would commonly have regarded as public sector.⁹

In the Scottish Government consultation paper on the Scottish Futures Trust in 2007, Finance Minister John Swinney wrote that “by making non-profit distributing organisations the core of public-private partnerships, we can remove the element of PFI that delivered the most extreme and unwarranted profits.”¹⁰ The Scottish Government considered that to secure the

additionality of private sector investment, the vehicle would need to be positioned in the private sector, and, demonstrate it was independent of the public sector and was able to control the assets it creates. And thus the Government created a privately classified company so that the debt would be classified to the private sector whereas a project classified to the public sector counts towards the national debt. One way or the other, the asset is ultimately paid for by a public authority over the time it is used.

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The innovative financing that has been taken over or developed by SFT covers a whole range of capital investments and includes:

- The National Housing Trust, which leverages private sector funding and council borrowing to support the delivery of homes for intermediate rent. Together with other innovative financing approaches, around 2,000 new affordable homes are now being delivered in communities across Scotland.
- The Tax Incremental Financing pilot programme, under which Councils fund infrastructure by borrowing against future business rate income. It has already resulted in two projects worth almost £150 million entering construction in Glasgow and Falkirk. This programme and the Growth Accelerator programme unlocked £1 billion of economic investment.
- The Growth Accelerator Model is a new financial model that combines public and private sector investment in local infrastructure and public space. The model unlocked an £850 million investment in the St James Quarter in Edinburgh by bringing together the Scottish Government, Edinburgh Council and private sector developers.
- The Hub initiative covering five large areas in Scotland (described below).
- The Non Profit Distributing financing model currently delivering a £3.5 billion programme of investment.
- A part in the £1.3 billion Rural Development Programme (SRDP), 2014-20.

In December 2015, SFT noted that its innovative approach had attracted £6bn of private sector infrastructure investment across Scotland's cities. The value of Hub projects alone across Scotland was £2.29 billion in March 2017.

Each one of the above projects takes control away from the

public sector. The Government itself admitted at the time of setting up the SFT that: "To secure the best borrowing rates, any SFT investment vehicle should be placed in the public sector and have clear government backing. This placement would offer the prospect of access to government funds such as those available at low rates from the Public Works Loans Board (PWLB) and strengthen its credit rating."¹¹

Nevertheless, rather than cutting the cloth to suit the coat, and using refurbishment and smaller new projects that could be covered by public monies, the Scottish Government chose to go the route of setting up a private body and untested financial instruments in order to get their spending past the EU rules.

As the Scottish Futures Trust is a private company can its shareholders, who are currently the government, sell their shares to bodies outside Scotland? If so, is this in the interest of the Scottish public given that the SFT has become a major force in health, education, prisons, etc., and given that it is building up a large asset portfolio?

Just as importantly, there are areas that need clarified. The SFT is itself building a considerable portfolio of assets, for example, through the Hub programme. Scotland has already seen, through the 1980s and 1990s, the sell-off of major public assets. The structure of the SFT would seem to make it even more likely that such a thing will happen again and be even more of a problem to the public than the earlier sell-offs.

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The Hub programme covers Scotland and is administered through five hubs. Its purpose is to provide new build and services in the area each 'HubCo' covers: South East, North, East Central, West, and South West Scotland. The initiative is led by SFT and each HubCo is made up of a number of partners of which most are public bodies such as health boards, local authorities, police, etc. There is also a private sector development partner. In all but one Hub the private sector development partner is made up of companies with head offices outside Scotland. Hubs have appointed Tier 1 contractors. These contractors appear to be very powerful. It is they who have been handed the power to contract with companies lower down the food chain.

One of the Hub's private sector chains, for the South East, works as follows. The private sector development partner is Space (Scottish Partnership and Community Enterprise): a trading company, registered in Scotland and created in 2009 by Galliford Try, Fulcrum and Davis Langdon (now AECOM). All are headquartered outside Scotland. Its Tier 1

Contractor is Morrison Construction (part of Galliford Try). Its supply chain is Galliford Try, Morrison Construction, Graham Construction, and BAM Construction: all headquartered outside Scotland. The importance of this Hub arrangement for firms cannot be underestimated. Galliford Try own half the equity of the subordinate debt in the James Gillespie High School in Edinburgh project (which has a capital value of £33.9million) and Galliford Try is again part of the private sector development partner. Galliford Try gained £50.8m in Contracts for New School Campuses in July 2014.

In South West Scotland, the South West Territory Programme Board in conjunction with the Scottish Futures Trust (SFT) appointed Alliance Community Partnerships comprising of John Graham Holdings Ltd, Equitix Holdings Ltd, Kier Project Investments Ltd and Galliford Try Investments Ltd as the private company on the board of the Hub to deliver over £500m of public sector infrastructure projects. All of South West Scotland's 18 Hub participant companies are headquartered outside Scotland.

The literature by SFT points to the local economy benefiting from the Hubco arrangements:

“Historically projects of this size and above have had to go through full EU procurement processes. The £3.5m threshold has been selected as the level at which local suppliers, main contractors and design practices will be given additional opportunities to build links with Hub companies and potentially gain a place in the supply chain. This has also been reflected in how limits on exclusivity for health boards have been developed. In the first two territories, the South East and North, an exclusivity threshold of £750,000 for new-build health projects was trialled. In practice, this means that an NHS health board should, where the value of a project is over £750,000, provide their local hubco with the first opportunity to demonstrate a value for money proposal.”¹²

This claim is difficult to justify. Some detailed data is needed to justify that the local business community will benefit from this Hub arrangement, and it is difficult to see how local innovative businesses are going to be able to make a name for themselves when they may be well down the chain of sub-contractors and not positioned to be in regular discussion with the clients. It is also challenging to justify giving one private company, Galliford Try, such power over public sector procurement arrangements.

An example of the power of the Hubs in affecting the chances of being chosen to meet procurement needs is shown from the South West Hub website. To the question “What are the exclusivity arrangements under Hub?” the answer given is:

“For the first 10 years of the partnership in the South West Territory, we will have an exclusive right to develop proposals for (and, subject to meeting certain criteria, deliver through its supply chain) certain projects: projects specifically named in the

South West Territory Partnering Agreement; NHS projects: all primary/community health facilities with a capital value exceeding £3.5 million; and any other projects specifically allocated to hub South West ; Local Authority, Police and Fire Authority projects: other projects specifically allocated to hub South West ; Joint NHS/Authority projects: all projects with a capital value exceeding £3.5 million involving primary/community health facilities where the NHS is lead procurer; any other projects specifically allocated to hub South West Scotland.”¹³

With regard to the stream of future projects: “It will be permissible for the Participants to procure the new project without going through a further procurement process.”

In fact, in the Hub Territory Partnering Agreement Standard Form, in the section ‘Contract Term and Expiry’, the Hub could have been granted 20 years with a possible five year extension.

To meet the objectives of the programme, Scottish Futures Trust has told Hubs that they will need to bundle “together small value projects into higher value transactions, to attract private finance on a systematic programme basis”.¹⁴

Might the taxpayer not regard such advice as verging on the unacceptable given that local authorities and indeed all public sector bodies are facing considerable cuts to their budgets?

Eurostat rules, introduced in 2014, required changes to the structure of SFT and to its programme on the financing of the Hub programme.¹⁵ ONS accepted SFT's proposals for revised arrangements: these were that projects would be taken forward by special purpose companies that were owned 60% by the existing Hub private partners, 20% by a Hub Community Foundation charity, 10% by SFT and 10% by the procuring Authority.

“What is outstandingly obvious from the above is that, despite the Hub literature putting forward that they are there to assist the local community, the private companies they have as their special purpose companies, who own 60% of the Hubs, are almost all companies with headquarters outside Scotland.”

What is outstandingly obvious from the above is that, despite the Hub literature putting forward that they are there to assist the local community, the private companies they have as their special purpose companies, who own 60% of the Hubs, are almost all companies with headquarters outside Scotland. In addition, the tier 1 suppliers, who are in a supreme position in that they are the ones who choose which companies they will bring in, are also almost all with headquarters outside Scotland. A request to the Scottish Government concerning whether

the Hubs are covered by Freedom of Information produced the reply: “While Scottish Futures Trust (SFT) is subject to the Freedom of Information (Scotland) Act 2005 (FOISA) the 5 'HubCos' are not.”

This is counter to the Standard Form of the Hub Territory Partnering Agreement which states that:

“Hubco acknowledges that a Participant is subject to the requirements of the FOI(S)A and the Environmental Information (Scotland) Regulations and shall assist and cooperate with a Participant (at hubco's expense) to enable the Participant to comply with any Information disclosure requirements.”

This suggests that initially the intention was that HubCos should effectively be subject to Freedom of Information.

Finally, the available detail on the Hub Community Foundation charity, set up in December 2015, is scant. Its annual return to end 2016 shows no income and no expenditure. However it has the right to invest in up to 20% of the subordinate debt arising in Hub projects, as part of a package. In addition, the SFT itself, and the public sector participant(s) can invest in a further 20%. This type of arrangement poses potential dangers, as set out in a paper by Jim Cuthbert on the subject.¹⁶

Issue 4: Why are we not measuring the effect on local business and employment in public procurement?

A fourth issue is that there appears to be no analysis of whether the methods now being used for public procurement of major projects are constructed in such a way that local businesses are missing out on the architectural work, on the maintenance and services work, and, for example, potentially innovative work that could lead to other contracts.

This is an important issue for the future development of the economy. Expenditure by the public sector on public procurement is one of the main ways in which the public at large can assist in the development of new products and new methods, providing employment opportunities in Scotland for the output of our universities and education colleges.

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Scotland for the output of our universities and education colleges.

Issue 5: Why is there no Whole of Government Accounts for Scotland?

The Scottish Government does not produce Whole of Government Accounts. These accounts are there to provide data for fiscal planning and they take into account the whole of the public sector: central government, local government, health, and public corporations. Such accounts have been produced for the UK since 2010. They are independently audited and go before the Public Accounts Committee. They have been repeatedly asked for in Scotland. If any country needs such information to help in fiscal planning at this moment, it is Scotland. Scotland inputs to the UK database and, it is understood, could produce Whole of Government Accounts for Scotland itself, but to date Audit Scotland have not had the go ahead from the Scottish Government to do so, despite there being a crying need for such accounts.

In October 2016, the Audit and Standards Committee wrote:

“The Scottish Government already publishes a range of financial and economic information. However, a key element to support the decision-making process is to produce an overall account of revenues, spending, assets and liabilities of the Scottish public sector, equivalent to the Whole of Government accounts for the UK. The timescales for this proposal have still to be set out.”

No action by the Scottish Government has yet been taken.

Issue 6: Why have we not made the Scottish Government and its NDPBs more accountable to Parliamentary Committees?

The Parliamentary Committees with responsibility for questioning economic decisions need to be more robust in asserting themselves and make sure that the NDPBs coming before them to contribute evidence realise the importance of the Committees in our democratic society. The unpreparedness of Scottish Enterprise when asked to appear before the Economic, Energy and Tourism Committee to give evidence in March 2015 on the performance of exports and foreign direct investment is illustrated here in the following interchange.¹⁷

Convenor: On the budget split, do you have any sense of how much of your budget goes on inward investment as opposed to export potential?

Scottish Enterprise: I do not have that exact information with me. We can provide it to the committee later.

Scottish Enterprise: The estimate of what we are spending on our trade effort, excluding the cost of our staff resources, is about £11 million. We will confirm the precise numbers to you in due course.

The Convener: That £11 million is out of a total budget of how much?

Scottish Enterprise: I am sorry—I do not have that figure in my head.

The Convener: You do not have the figure—that is fine. We can follow that up.

According to the Committee support staff there is no evidence of any follow up by Scottish Enterprise. This shows not only insufficient respect by Scottish Enterprise for one of our important institutions but a lack of follow-up by the Parliamentary Committee.

Conclusion and Recommendations

Under the present system of public sector decision making and procurement in Scotland the public have been deprived of a democratic say in the deals placed by public bodies, including NDPBs, with the private sector. Further, the Scottish Government and its NDPBs do not give sufficient information on the results of the monitoring and evaluation of the economic and financial programmes which are paid for from the public purse. Nor do the public have sufficient detail on the money levered from the private sector. Nor do the public know what rights a private sector company, created using public money, may have to cut its ties with the public sector and profit by selling the assets it controls. What we do know is that they can behave like a private company and recompense their senior staff accordingly.

The ability to scrutinise deals has been seriously affected by:

- The hollowing out of the professional body and input of statisticians and economists in decision making and evaluation in the civil service and in local authorities.
- The increasing use of arms-length NDPBs, some of which are private companies; which bodies are not facing the scrutiny that was previously given to public sector projects by the civil service and public bodies.
- The development of untested financial instruments which have a core intention of changing the accounts books so that what was once regarded as capital spend on projects such as schools, hospitals, prisons, libraries, etc. now belong in large part to the private sector and are out with public ownership.

The emphasis on strict “value for money” has changed the whole ethos of public procurement. Value for Money (“VfM”) at a project level is defined as the optimum available combination of whole-life costs and quality (or ‘fitness for purpose’) of the good or service to meet the

users’ requirements.”¹⁸ However, there is no evidence in any of the work available regarding the effect of the system of choosing suppliers etc. on local business and the convenience of the location of the project for the local community, to name but two important issues. Evidence provided in this paper suggests that, in its public procurement agenda, the Scottish Government, Scottish Futures Trust and other public bodies have managed to create a system which has got round some of the EU capital expenditure rules but, while repackaging debt, have also made it far more difficult for the public to find out what is really going on.

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Even before SFT grew so large, the former Scottish Information Commissioner observed:

“As the public sector landscape constantly evolves, we must ensure that Freedom of Information rights follow the public pound. Action to reform and improve our public sector should increase the preservation of the public right to ask for and receive information about how decisions are being made, and how well public services and functions are being delivered at operational level.”¹⁹

We need a strong Freedom of Information Act that provides transparency. We also need a surveillance of public sector projects that does not have to wait 15 years before errors are uncovered. By this point, the private sector financiers have made their money and the public has no way of getting it back.

There appear to be five ways in which large scale public procurement can be improved:

- 1) More highly qualified staff with grounding in economics, statistics, and finance in the public sector at senior positions, with their input being treated as a solid base for policy decisions.
- 2) A stoppage to the bundling of projects into very large projects where the public sector is unlikely to be able to follow the path of the financing and of the methods being used.
- 3) Much more openness in Freedom of Information to allow for scrutiny of contracts, leading to the ability for changes to be made where the contract is found to be against the interests of the public or too

much of a money maker for the consortium.

4) Far more clout being given to Parliamentary Committees to hold Government to account and to hold NDPBs to account. A stronger Parliament that holds a government to account when a Committee has shown that change is needed.

5) The publication of Whole of Government Accounts. These would bring to light the level of debt, currently out of sight, that is being incurred.

These are all issues which require to be addressed urgently by the public and by its representatives in the Parliament and in the relevant Parliamentary Committees.

Scotland has been badly in need of new and improved infrastructure. It is to the credit of the Scottish Government that they have pushed forward so vigorously with their infrastructure programme. None of the criticism in this paper should be interpreted as detracting from the improvements in infrastructure which are being made. What is at stake, however, is the loss of public rights implicit in the particular approach which the Scottish Government has adopted.

A fitting end is given in the words of Rosemary Agnew, the Scottish Information Commissioner, who said in 2012:

"An ever-growing concern is the loss of rights occurring through the delivery of public services by "arms-length" organisations and third parties. FOI was introduced for a reason - to ensure that the delivery of public services and the spending of public money is transparent, open and accountable. It is simply not acceptable that citizens' rights continue to be eroded through complex changes in the delivery of services. This must be looked at as an immediate priority."²⁰

So far, there is no evidence of this advice being followed – it's about time it was.

ENDS

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