



Fair Trade Steering Group (FTSG)  
Tuesday 22 September 2015, 3pm  
Cuillin Room, Charles Stewart House

AGENDA

1 **Minute** A  
To approve the minute of the previous meeting on 20 April 2015

2 **Matters Arising**  
To raise any matters arising not covered on the agenda or in post-meeting notes

**SUBSTANTIVE ITEMS**

3 **FTSG Review** B  
To review recommendations and endorse a paper from the Convener and the Head of SRS Programmes

4 **Proposed Conflict Minerals Policy** C  
To discuss and endorse a paper from the Research & Policy Manager

**ROUTINE ITEMS** (verbal unless otherwise noted)

5 **Workers' Rights Consortium**  
To receive an update from the Procurement and Research & Policy Managers

6 **Electronics Watch and Procurement**  
To receive an update from the Convener

7 **EUSA Fair Trade Update**  
To receive an update from the EUSA VPS / Sustainability Coordinator

8 **Fair Trade Communications Update**  
To receive an update on messaging from the Communications Manager

9 **Any Other Business**  
To consider any other matters from Group members including:  
• Update from the Chaplaincy on FTSG collaboration with the Fairtrade Café

**ITEMS FOR FORMAL APPROVAL/NOTING**

10 **Research on the University as a Living Lab** D  
To note a paper from the Research and Policy Manager

11 **Procurement Rules Consultation – UoE Response** E  
To note a paper from the Convener

12 **Feedback from Freshers' Week 2015** Verbal  
To receive a report from the SRS Communications Team

13 **Student Placements – Promotion & Feedback Event** Verbal  
To receive an update from the Research & Policy Manager

14 **APUC SUSTAIN Update** Verbal  
To receive an update from the Convener

## UNIVERSITY OF EDINBURGH

**MINUTE OF A MEETING** of the Fair Trade Steering Group held in the Torridon Room, Charles Stewart House on Monday 20 April 2015.

**Members:** Karen Bowman (in chair), Director of Procurement  
 Kenneth Amaeshi, Lead, Corporate Responsibility & Governance Network  
 Evelyn Bain, Procurement Manager  
 Tasha Boardman, EUSA Vice President Services  
 Conor Bond, Sports Union President  
 Michelle Brown, Head of SRS Programmes  
 Jill Bruce, Development and Alumni  
 Sarah Conway, Careers Service  
 Liz Cooper, SRS Research and Policy Manager  
 Joe Farthing, SRS Communications Manager  
 Hannah Genders Boyd, People and Planet Representative  
 Moira Gibson, External Affairs Manager, Communications and Marketing  
 Dave Gorman, Director of SRS  
 Davy Gray, EUSA Environmental Officer  
 Stephannie Hay, Technology Enhanced Learning Services  
 Tim Hayward, Director of the Just World Institute  
 Matthew Lawson, SRS Programme Manager  
 Ian Macaulay, Asst. Director of Accommodation Services, Catering  
 Lucy Miu, SRS Programme Facilitator  
 Ali Newell, Associate Chaplain  
 Briana Pegado, EUSA President  
 Christina Schmidt, EUSA Global  
 Vikki Stewart, Estates and Buildings Representative

**In attendance:** Jess Acton; Mena Grossman, M.Sc. Environmental Sustainability students

**Apologies:** Kenneth Amaeshi; Tasha Boardman; Conor Bond; Jill Bruce; Sarah Conway; Joe Farthing; Dave Gorman; Stephannie Hay; Tim Hayward; Matthew Lawson; Briana Pegado; Christina Schmidt; Vikki Stewart

## 1 Minute

The minute of the meeting held on 3 February 2015 was approved as a correct record.

## 2 Matters Arising

Covered in post-meeting notes.

## SUBSTANTIVE ITEMS

### 3 Review of Fair Trade University

#### Presentation

MSc Environmental Sustainability students Jess Acton and Mena Grossman presented on fair trade at the University, including how fair trade relates to the equity principle of sustainable development:

“Fair Trade is a trading partnership, based on dialogue, transparency and respect, that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers – especially in the South” (World Fair Trade Organization).

The presentation (circulated with the minute) covered the context of fair trade at UoE, including the 5 Fairtrade Foundation (FTF) goals and broader awareness-raising activities. The aims of the project, carried out through literature review and informal interviews, had been:

- to research what universities do in terms of fair trade
- to generate recommendations on how UoE could go beyond the FTF goals
- to produce recommendations on how UoE could raise awareness of fair trade.

Legal, institutional, academic and logistical constraints in pushing the fair trade agenda further included: communication problems within the University and between institutions; lack of research on Fairtrade universities and differing understandings of fair trade; and the limited number of fair trade products.

The project group's recommendations included:

- embedding fair trade in the curriculum
- enhancing the profile of fair trade within the Sustainability Awards
- providing topic guidance and incentives to promote research in this area
- engaging with other institutions and with FTF to improve goals ( e.g. golden awards, though limited funding prevented these initiatives in the short-term - FTF's focus was on mainstreaming)
- adopting innovative / best practice examples from other institutions to appeal to a broader audience (e.g. fair trade city map; fair trade fashion show; engagement with schools; unfair football match, 'Hunger Banquet'; building links between producers and consumers).

In terms of fair trade awareness, the project noted reduced engagement over time, as well as a loss of trust in fair trade labelling schemes as not reflective of companies' wider values, and recommended:

- providing accessible, bite-sized information
- consistent, year round and year-to-year engagement and events (Freshers' Week was already overloaded)
- dedicated stands to raise the visibility of fair trade products on campus
- collaboration with societies, especially international societies
- targeted engagement with demographics less likely to be familiar with fair trade, including international students
- fair trade areas in shops
- the internet as a valuable forum for discussing and raising awareness of fair trade
- Events (wine tasting, free food, fashion show, sports matches).

## Q&A

The Convener thanked the presenters, recognising that a significant amount of research and thought had gone into this work.

### A. Q&A Discussion on Student Engagement

The presentation had reinvigorated a key issue for FTSG: the necessity, in order to continue, of engaging students, and that the nature of that engagement would change from one generation to the next.

(a) FTSG noted that the project group felt the best way to get students motivated and engage with the issue was to embed fair trade in the curriculum.

### B. Q&A Discussion on Fair Trade Awareness

Members discussed the narrative for the Google Trends graph (slide 10) showing a net decline in mentions of fair trade in online articles over time, noting that the peaks corresponded with Fairtrade Fortnight. The project group confirmed the impression that

many UoE students were not aware that their institution was a Fairtrade University. The decentralisation of the University had made it difficult to get an overview of what was going on in this area.

(b) FTSG noted the absence of reference to the Fairtrade Café, which was pushing the fair trade agenda every week, and discussed ways of highlighting and promoting this work.

### C. Q&A Discussion on Fair Trade Retailing and Labelling

Members discussed sustainability as part of the world food / street food trend and associated accreditation debates (Soil Association / FTF / Rainforest Alliance). It was possible that, as long as spend continued to rise and the fair trade choice continued to be made, falling awareness levels were not necessarily a problem, and were, to a certain extent, inevitable due to increasing normalisation and a lack of new products.

EUSA as a commercial union also reported that fair trade had become normalised for some consumers and some products, current students having grown up with it as part of their retail landscape. However there was felt to be a growing cynicism, particularly with fair trade labelling if the brand was not associated with ethical trading generally. There had also been expansion in the amount of ethical products competing with the fair trade label in a wider context of ethical consumption. The broader idea of 'fairness in trade' was much harder to deliver.

(c) FTSG noted that within the new procurement law there would be an emphasis on food procurement and labelling schemes, and recognised that UoE had a responsibility not just in terms of what it buys but also in educating its students.

### D. Q&A Discussion on Potential Student Mapping Project

Work on a fair trade map for Edinburgh had been started. Similar work was ongoing within the Student Experience Project, and the Fairtrade City Group had a register of fair trade outlets.

(d) FTSG noted that there was potential for a student project to complete the map for areas near campus and halls of residence.

### E. Q&A Discussion on Terminology

The Group acknowledged the need to look again at the terminology and at 'fair trade' as a label versus alternatives such as 'fairness in trade'. 'Sustainable procurement' was not felt to be as user-friendly as 'ethical buying'. Issues of definition alone could provide the basis for a potential dissertation.

Action – MB to reflect on how project findings and recommendations could link in to review of the Sustainability Awards, follow up with the EUSA VPAA, and decide whether to provide course directors with a list of practical projects.

Noted SRS dissertation prizes would be discussed at SRS Committee in June.

Action – LC to work with the project group to establish how best to publicise their findings (e.g. 500 word summary for SRS blog).

### Fair Trade International Symposium paper

Members noted that the Research and Policy Manager would present a conference paper on linking academics and practitioners within universities on fair trade issues at the Fair Trade International Symposium in Milan at the end of May.

## **4 Procurement Rules Consultation – SRS Policy Implications**

**B**

FTSG noted consultation currently ongoing on the rules which would be coming into mainstream procurement law. The Scottish Fair Trade Forum had written to the Scottish

Government to emphasise the importance of including fair trade. Publicly-funded bodies would have to consider their sustainable procurement duty every time they spent over £50K (the threshold may change). Procurement and the SRS Department were working to unpack the issues for each item. Work was ongoing through APUC on labelling schemes and accreditation along supply chains.

### UoE Suppliers' Tax Practices

Tax avoidance and evasion would be covered in the law and details would be published on the HMRC website. When procuring through the framework agreement, this would be covered at the tender stage.

## **5 Electronics Watch and Procurement**

**C**

FTSG noted positive collaboration between People&Planet, UoE and other buying organisations. UoE Procurement had met with the Scottish Government procurement team to urge them to include consideration of Electronics Watch and fair trade. [Public consultation](#) was open until 30 April and members could respond as individuals.

## **6 Student Placements Update**

Two students would be going to Malawi in May for 4 weeks with JTS to look at the supply chain for pulses (livelihoods, value chain analysis, etc.). The students would have dissertations, photos and other material that the Group and the SRS Department could promote and publicise. The Group discussed how to promote this on the University's main page and proposed organising an event for the students to feed back, hosted at the parliament, and inviting the Cross Party Group. The event would need to be in June, before the students graduated and the parliamentary recess.

Action – LC to follow up with Martin Rhodes on dates.

*Post-meeting note: Moira Gibson has highlighted this to CAM as a good news item and they will be in touch with LC. LC is liaising with the students on their travel dates to see what sort of event will fit around them.*

There would be an additional placement within the SRS Department focusing on the garment industry.

## **7 Conflict Minerals Policy Scoping/Progress**

**D**

The Research and Policy Manager was in the early stages of producing a draft policy. Having assessed the risks and opportunities, consultation with stakeholders was ongoing, including a meeting with the University of St Andrews procurement team and a public event in February. A more detailed paper and policy would be shared with the Group in due course. If UoE adopted a conflict minerals policy then all IT buyers would have to follow it, and the University would need the supply chain to match it.

The Director of Corporate Services would soon sign off on relaunch of the Sustainable ICT Group. If the food dimension had normalised and plateaued, conflict minerals and other social issues in electronics supply chains could provide the next main focus, particularly as the University had significant spend and influence in this market. Focus on electronics supply chains also offered linkages to the circular economy and zero waste agenda.

FTSG noted some expertise / leadership in this area from the US, including the Conflict Free Campus Initiative and the Dodd-Frank Act (2010), reflecting concerns about the exploitation and trade of conflict minerals by armed groups. More so than the garment industry, electronics was an area where the University could have a major impact. It was proposed that this could be the focus for Fairtrade Fortnight 2016. A number of events on the topic had already taken place, during Fairtrade Fortnight and Innovative Learning Week.

## **ROUTINE ITEMS**

### **8 Workers' Rights Consortium**

A meeting between EB, LC and procurement staff from Durham had been positive, but they were broadly in the same position as UoE – struggling to implement the recommendations such as finding out who all suppliers of garments are.

Durham are carrying out their own tender for garments/workwear, whereas Edinburgh are trying to influence national agreements but bound by specific procurement rules. A Skype conversation between UoE and WRC had been enlightening at the time, but not much further had come from it. Although the information on their website was accessible without signing up, both institutions had agreed that it was better to be a member and to work with the WRC to make membership more meaningful for UK institutions. FTSG recognised the success of the consortium as a lobbying group on sweatshops around the world, though their resource to influence suppliers was limited. Edinburgh and Durham discussed the possibility of linking up together and with other UK members of WRC to engage further with WRC on taking the work further within the UK context.

As poor practice was widespread throughout garment trade supply chains, it was important for the Group and the University to support those looking into it, even if UoE spend in this area was minimal. Estates as the largest garment purchaser, while under significant budget constraints, was procuring some fair trade cotton uniform items for its servitorial and cleaning staff. Procurement could encourage departments to buy in accordance with the University's Fair Trade Policy, but the decision ultimately lay with the budget holder. Greater leverage and the ability to draw more information from suppliers may come with the rules changes next year, when tenders would include fair trade caveats.

A Master's student will be carrying out a placement with SRS on university garment/textiles supply chains this summer to look into WRC, Fairtrade cotton and other considerations further.

### **9 EUSA Fair Trade Update**

The EUSA Environmental Officer assured the Group that the incoming VPS would be fully briefed with regard to fair trade. FTSG noted an appetite within EUSA to move on from the coffee and chocolate dimensions to the wider fair trade agenda. Engagement with students would continue through the VPS and the SRS Student Forum.

Members discussed ways to re-establish links with the Fairtrade Café, including asking representatives to join if only for part of a meeting, offering monetary incentives, and moving some meetings to take place in the café.

Action – AN to approach the Fairtrade Café to explore ideas and investigate how they would like FTSG to work with them.

### **10 Fair Trade Communications Update**

Work was ongoing looking at how to take forward the newsletter.

### **11 Any Other Business**

Action – All to feed in to the secretary on the items to cover at May's meeting.

## **ITEMS FOR FORMAL APPROVAL/NOTING**

### **12 APUC Sustain Update**

Carried forward to May's meeting.



**FAIR TRADE STEERING GROUP**

**22 September 2015**

***Fair Trade Steering Group Review***

**Description of paper**

The purpose of this paper is to inform the Fair Trade Steering Group (FTSG) members of the FTSG Review and the outcomes from discussions and propose recommendations.

**Action requested**

FTSG is requested to review the recommendations and endorse them

**Background and context**

In 2003, students voted for the University to become a Fairtrade University, making commitments to procurement and sale of Fairtrade products on campus, and to engaging staff and students in fair trade. Status was awarded in 2004, and in late 2004, a Sustainability Issues and Fairtrade Task Group met for the first time – meeting one of the Fairtrade University scheme criteria to host a staff-student group that discussed fair trade. The Fairtrade Policy, as recommended by the Fairtrade Foundation, was adopted in 2004. In November 2009, in order to focus more clearly on fair trade issues, the group changed its name to the Fairtrade Steering Group. In 2013, recognising the need to discuss and promote approaches to fairness in trade beyond the Fairtrade labelling scheme, the group's name was changed to Fair Trade Steering Group.

Also in 2013, the original Fairtrade Policy was slightly modified to become a broader Fair Trade Policy. This policy states that:

*“Our student-staff Fair Trade Steering Group will regularly review and make recommendations to revise the University’s approach to fair trade procurement and awareness-raising, taking into account the latest developments in fair trade movements and in academia.”*

The University’s Procurement Strategy has demonstrated a practical commitment to social responsibility and sustainability including fair trade and ethical standards since 2004 and adopted a shared universities and colleges supply chain code of conduct and guidance offered to covering workplace matters such as living wages, workers’ rights in 2012.

Legal duties (e.g. equalities duties, bribery act) are incorporated and this will be supplemented within the next 12 months with new sustainable procurement, community benefits and workplace matters, fair trade and ethical procurement statutory obligations. The University will have transparency and reporting requirements which appear in the public domain when new laws are implemented.

Hence, the University’s relationship to sustainable procurement, workers’ rights, the living wage and other aspects of fair trade and ethical procurement will change as they become part of its legal duties, next year

In June 2015, a proposal was agreed by the SRS Committee to review the Fair Trade Steering Group (including name, remit and membership) in Summer 2015 (led by the FTSG chair with support from SRS department), with resulting recommendations to be presented

to FTSG members on 22 September and outcomes reported back to SRS Committee on 21 October.2015.

Objectives of the (light touch) review:

1. Clarify the purpose and aim of a Fair Trade Steering Group vis-à-vis changing legal duties in relation to sustainable procurement, stakeholder interest and accountability and transparency of SRS in supply chains.
2. Confirm need and relevance for a sub group of SRS Committee and the remit and membership of group.

In doing so, the review should consider: the flow of information to SRS Committee (current reporting frequency is three times per year); If the Group has met its terms of reference; identifying any improvements required, and any amendments to its terms of reference.

## **Discussion**

Director of Procurement and Head of SRS Programmes solicited input from a variety of stakeholders and focussed interviews around the following questions:

- *How are issues around fair trade and sustainable procurement currently tackled within SRS Governance?*
- *Role of FTSG vis a vis SOAG and SRS Committee?*
- *What value is the FTSG adding to the University?*
- *Does being a Fairtrade University matter to staff and student stakeholders?*
- *Do the costs (time, etc...) justify the benefits of having a group?*
- *What improvements are required for a Fair Trade Group (if it were to continue)? What recommendations are being made and where do topics sit?*
- *What would be lost if FTSG ceased to exist and what would need to be transferred to other groups, or some version of this?*

## **Brief summary of concerns regarding FTSG:**

### **Commitment to Fair Trade Remains**

- Strong agreement that the University maintains a public commitment to fair trade and ethical standards in procurement (and maintain FT accreditation)

### **Sustainable (including environmental, social, economic) procurement**

- Many aspects of our fair trade commitment now 'business as usual'
- Some noted it may not be as inspiring of a concept for today's students as it was 10 years ago (due to business as usual; wider concerns over who we do business with; interest in local suppliers and local food; etc...) but that this should not change our own commitment to sourcing fair trade
- There is an additional legal duty for procurement activities to take into account a range of social responsibility and sustainability duties and to be able to evidence and report on this to meet statutory guidance (awaiting publication). This will also have more requirements for transparency than currently.
- Procurement teams working to embed sustainability and social responsibility in category strategies and contract plans.

### **Questioning the purpose of the existing group and need for efficiencies**

- The University's approach to fair trade has been going beyond the Fairtrade Universities approach for a number of years, and discussions at this group have reflected this shift. However, a significant amount of time at meetings is still spent



discussing Fairtrade Fortnight events and communications campaigns – activities which are now covered by SRS teams and EUSA collaboratively.

- Many stakeholders noted need to reduce the number of committees and meetings they go to...
- Attendance at meetings is varied – some members only attend occasionally, and academic members do not attend meetings. Some stakeholders commented on the broad remit of the group and needing to ensure the right academics were participating for the right topics
- Some stakeholders noted that in the earlier years the student voice was stronger on fair trade.
- SOAG's remit in relation to operational sustainability includes procurement and any other group could cause overlap with SOAG and procurement / user specialists.

### **Targeted input / advice / steering aligned to risks and impacts**

- Procurement teams need user intelligence group support for policy and procurement risk management champions, to agree key priorities. APUC's supply chain code of conduct and database [SUSTAIN] has been developed with wide engagement.

### **Recommendations**

**1. Current version of FTSG to change / disband.** Most stakeholders consulted noted too many meetings, not enough time, lack of clear focus, broader concerns than 'fair trade', etc...

**2. A SRS Staff / Student Forum<sup>1</sup>** would be held (twice per year) endorsed by the SRS Committee and organised by the SRS Department and together with EUSA for interested staff and students and to give them an opportunity to feed into annual SRS Implementation Plans and related strategies and would include a section on Fair Trade. It is proposed that the first one take place in Spring 2016.

**3. Short life Working Groups and Living Lab Projects** to engage academics and students in reviews contributing to research led decision making. These could report into SOAG (or specific sub groups such as the Sustainable Labs Group or Sustainable IT Group) and would include representation from SRS Department, EUSA (staff and student representatives), procurement, estates, academics working on social responsibility and related research e.g. Workers' rights, local economic impact, specific supply chain research, and others. Link in with Procurement User Intelligence Groups.

**2. Supply chain SRS aspects beyond environmental performance integrated into SOAG.** Current SOAG remit while recognising wider 'social responsibility' as well as 'sustainability' in operations, has a purpose focussed on improving "the environmental performance of all operational areas of the University". SOAG reports into the SRS Committee whose purpose is to "advise Central Management Group on how the University might differentiate itself as a leader in Social Responsibility and Sustainability (SRS) and take action to maximize its reputation and impact in this area." Sustainable IT Group and Sustainable Labs report into SOAG.

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<sup>1</sup> Not to be confused with the SRS Student Forum (student led with some support from SRS)

## Resource implications

The options presented above would save resources by reducing overlap and duplication of groups given new requirements for sustainable procurement and links to SOAG and reduce risk of duplicated work by both SRS and procurement teams in existing user intelligence groups e.g. food, ICT, lab, waste etc.

## Risk Management

**Reputational Risk:** If seen to be leaving FT arena. Recommendations proposed which mitigate this risk if a Staff / Student Forum ensures wide engagement and operational aspects managed by departments and linked into SOAG. Commitment to FT accreditation assumes we are not decreasing activities around FT, products, engagement, etc... Clear messaging needed that far from being less of a commitment to FT it demonstrate more strategic management of the issues in our SRS student engagement and our broader social responsibility and sustainable procurement risk management through a supply chain code of conduct and a shared reporting and social audit (APUC.)

SRS Staff / Student Forum and relevant working groups would bring together academics as a living lab with operations/professional services and student representation on specific issues. Potential risk of formal advisory role vis a vis legal duties which lie with the delegated authorities of Court but could review research evidence, progress on collecting evidence for SRS priority areas , emerging issues, bring in staff (academic and operational) and student voice and EUSA.

**Legal Compliance Risk** if we do not prioritise the sustainable procurement issues (across all the elements in new laws) e.g. using good evidence in assessments of risk impact and influence priorities and in taking this into account in selection of firms and contracts we award.

**Lack of buy in from colleagues:** Active consultation as part of the review taking place. Need to minimise commitment from colleagues on duplicating professional services (SRS or Procurement). Role of the new senior CMG representatives (Procurement Risk Management Executives to directly guide on the implementation of the new laws in each College/Support Group/ subsidiary may be undermined by yet another advisory group.

**Loss of wider community and civic engagement:** Continue to participate in Fair Trade City group / Holyrood on Fair Trade issues - report after FTSG consideration of this Review – nominees reporting via SRS and procurement eNews or if relevant papers to SOAG or SRSC.

## Equality & Diversity

Fair trade policy and supply chain code of conduct, as well a legal duties on sustainable procurement enhance the equalities duties, representation and procurement strategies will consider EIA on a case by case basis.

## Consultation

Meetings / discussions with: \* member of FTSG

- Jonny Ross-Tatam, President EUSA\*
- Maria Sergeera, President EUSU \*
- Davy Gray, Sustainability Coordinator, EUSA\*
- Urte Macikene VP Services, EUSA \*
- Moira Gibson, CAM \*
- Ali Newall, Chaplaincy \*

- Ian MacAulay Asst Director Catering \*
- Kenneth Amaeshi, Sustainable Business Initiative \*
- + other colleagues in Procurement and SRS teams

#### **Further information**

- Fair Trade Steering Committee  
Remit <http://www.ed.ac.uk/about/sustainability/governance-publications-reports/committees/fair-trade>
- Fair Trade Policy <http://www.ed.ac.uk/about/sustainability/themes/fair-trade/governance/policy>
- SOAG Remit
- SRS Committee Remit

#### **Authors and Presenters:**

Karen Bowman, Director of Procurement

Michelle Brown, Head of Social Responsibility & Sustainability Programmes

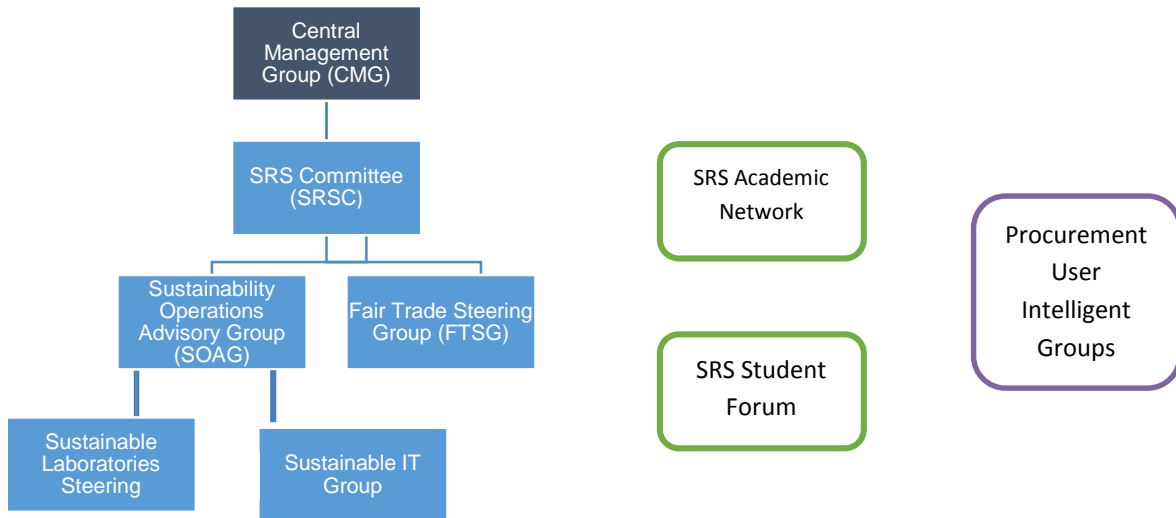
#### **Freedom of Information**

This is an open paper.

## Annex 1 -Mapping of FTSG in relation to University Committee and Governance

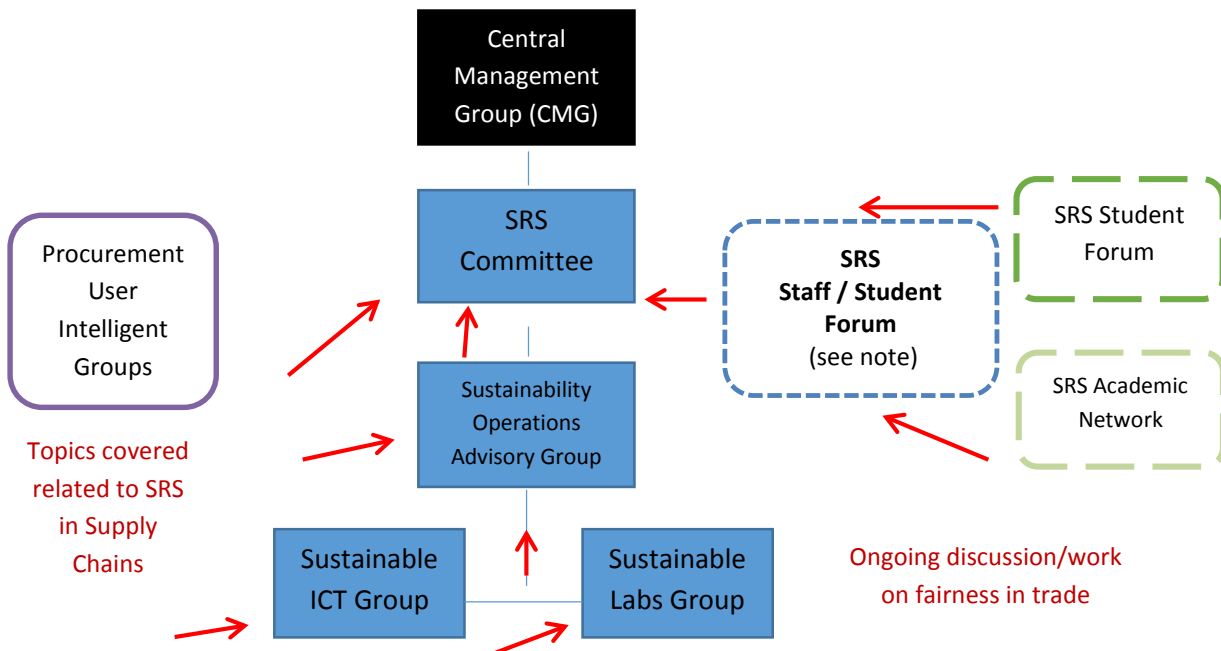
### Current

The formal committee structure is marked by boxes in BLUE on the left. Relevant staff and student networks are marked in GREEN on the right.



Short-life working groups on specific issues also exist, which bring together academics, operations/professional services, and student representation (i.e. fossil fuels review).

### Possible new structure if FTSG dissolved (fairness in trade integration in red):



Short-life working groups on specific issues, which bring together academics, operations/professional services, and student representation. Proposed Living Lab project on ICT in 2016.



**Fair Trade Steering Group (FTSG)**

**Tuesday 22 September 2015**

**Proposed conflict minerals policy for the University**

**Description of paper**

1. This paper provides a proposed conflict minerals policy for the University for consideration and endorsement by the group. The policy is a result of extensive consultation with stakeholders, with input from SRS, Procurement, academic staff and EUSA.

**Action requested**

2. The Group is asked to consider and potentially endorse this policy, for it to then be taken to SRS Committee for approval.

**Recommendation**

3. It is recommended that the group decide during the meeting whether to endorse this policy.

**Background and context**

4. This policy paper follows a paper presented at the Fair Trade Steering Group on 20<sup>th</sup> April 2015 which explained the policy development process – including background to the issue, rationale for a policy, and the research and consultation processes being undertaken. The following timeline was proposed in April:

- **Nov 2014 – March 2015** = scoping, public engagement and research
- **April 2014** = draft of policy consultation document and engagement with key stakeholders (academics with relevant expertise and Procurement Dept.)
- **Summer 2015** = revise policy draft (iterative with key stakeholders)
- **Autumn 2015** = proposed policy sign-off
- **Autumn 2015** = expected publishing of policy on University website and in standard SRS comms channels, and incorporation into/awareness of in procurement practices
- **Each summer** = review of policy and implementation (timing tbc, in line with Procurement reporting commitments)

EUSA is concurrently developing a conflict minerals policy for the student association, led by VPS Urte Macikene.

**Discussion**

5. The draft policy is provided on the following three pages, which would be made publicly available if approved.



## Conflict minerals policy

1. **Purpose** – this policy publicly commits the University of Edinburgh to continuing to work collaboratively to eradicate conflict minerals from its supply chains, reflecting its Strategic Plan (2012-2016) that includes ‘making a significant, sustainable and socially responsible contribution to Scotland, the UK and the world, promoting health and economic and cultural wellbeing’.

**Background** – Profits from mining around the world may be being used to fund armed conflict, as many mines are under the control of armed groups. The most widely-cited instance of conflict minerals is in the Democratic Republic of Congo and neighbouring countries, where tin, tungsten, tantalum and gold are mined. These minerals are all used in the manufacture of electronics products procured and used by the University, and to varying extents in our labs. Other examples of minerals with potential links to conflict include copper, cobalt, platinum and diamonds. A number of initiatives have been developed to break the link between mineral extraction and conflict, such as certified conflict-free smelters and refiners. Regulation requiring transparency from companies on mineral sourcing has been developed in the US (the Dodd-Frank Wall Street Reform and Consumer Protection Act, section 1502 on Conflict Minerals Dodd-Franck Act, 2012), and is in development at EU level (as of May 2015).

The vast majority of electronics goods and raw minerals used by the University are bought through collaborative framework agreements for the Higher and Further Education sector or for the wider public sector, which are managed by procurement consortia. While some steps are already being taken in the procurement processes used by the University to avoid conflict minerals in our supply chains, namely asking questions to suppliers during tender stage, there is a need for increased visibility of these efforts, and for further action. Efforts to reduce any links our procurement practices may have to funding conflict reflect the University’s wider commitment to Social Responsibility and Sustainability.

2. **Scope** – The University understands the term conflict minerals to mean any minerals that have been found to be being used to fund conflict in any part of the world. This is broader than a common understanding of conflict minerals to include only tin, tungsten, tantalum and gold mined in the Democratic Republic of Congo and surrounding Great Lakes Region of Sub-Saharan Africa. While the focus of this policy is on conflict minerals, it is recognised that a conflict-free claim does not guarantee that human rights of workers are respected. This policy forms part of a broader approach to socially responsible supply chains.

This policy primarily covers procurement of electronics goods bought in large quantities through collaborative framework agreements, but also commits to ongoing efforts to bring conflict minerals considerations into smaller scale purchasing of electronics equipment containing minerals, and of minerals themselves (for use in laboratories). The policy also makes reference to collaboration between academic researchers, Social Responsibility and Sustainability and

Procurement within the University to further our knowledge and action in the area of conflict minerals.

### 3. **The Policy**

1. When purchasing electronics goods in large quantities, either directly or through public procurement consortia, the University is committed to striving to ensure these goods do not contain conflict minerals. Understanding the need to conform to EU and Scottish Procurement Law, this commitment will be demonstrated through:
  - a. Ensuring a question about what efforts suppliers are making to combat conflict minerals is included in tenders we have influence over, requesting concrete evidence of these pursuits
  - b. Requesting detailed progress updates on conflict minerals at quarterly supplier meetings during contract management stage
  - c. Encouraging procurement consortia which manage the framework agreements to continue to improve their practices regarding eradicating conflict minerals, including recommending questions to be asked of suppliers in tenders
2. Efforts will be made to raise awareness among and advise students and staff regarding small-scale and personal purchases of goods that may contain conflict minerals and of raw minerals for use in laboratories
3. Academic research from different disciplines within the University on conflict minerals and related themes, plus external research on best practice, will be highlighted and recommendations shared with Procurement staff
4. Student engagement in conflict minerals through teaching, projects and events will be encouraged
5. Learning and best practice on conflict minerals will be shared with other institutions

4. **Procedure and responsibility** – this policy has been developed in collaboration between the SRS Department and Procurement Office. The Procurement Office is responsible for ensuring implementation of all procurement-related commitments outlined in point 1 above, with support from SRS where appropriate. The SRS Department is primarily responsible for points 2 to 4, that is, engaging with staff and students on small-scale purchasing, keeping track of relevant research, and offering/encouraging student engagement opportunities, including in partnership with EUSA. Point 5, sharing our learning with other institutions, is a shared responsibility.

5. **Equality and diversity** – this policy fits within a wider procurement strategy and advocates conforming to all applicable public procurement regulation, which includes consideration of Equalities Duties. A separate Equalities Impact Assessment has therefore not been carried out for this specific policy.

6. **Support systems** – The SRS Department can provide contacts and advice regarding implementation of this policy.

## 7. Approval and review

<i>Date policy approved</i>	
<i>Final approval by</i>	
<i>Consultations held</i>	SRS Department carried out face to face and email consultation with stakeholders (procurement staff, academic staff, students, EUSA, selected suppliers, other universities, other experts and campaign groups) in 2015.
<i>Date of commencement of policy</i>	Immediate.
<i>Dates for review of policy</i>	July 2017 or sooner if regulatory changes.
<i>How policy will be reviewed</i>	Joint SRS and Procurement review of implementation successes and challenges, and of developments in the sector.
<i>Policies superseded by this policy</i>	This is the first conflict minerals policy for the University.

8. **Contact** – for further information, or if this policy is required in an alternative format, please contact xxxx.

\_\_\_\_\_ *End of policy* \_\_\_\_\_

### Resource implications

6. Resource implications relate to staff time for the implementation of this policy – responsibilities for SRS and Procurement are outlined in the policy and have been agreed in advance.

### Risk Management

7. Ethical, reputational and legal risks associated with this issue, and with not having a clear policy, have been explored in the policy development consultation paper as presented at the April meeting.

### Equality & Diversity

8. No Equalities Impact Assessment has been carried out in relation to this policy, as it fits within a wider approach to social responsibility and no direct equalities risks have been identified.

### Next steps/implications

9. Once endorsed, this policy will be taken to SRS Committee for approval.

### Consultation

10. The draft policy has been reviewed by staff in Procurement, SRS, EUSA and some academics.

### Further information

11. Author and presenter

Liz Cooper

SRS Research and Policy Manager

8<sup>th</sup> September 2015

### Freedom of Information

12. This is an open paper.





**Fair Trade Steering Group (FTSG)**

**Tuesday 22 September 2015**

**Social Responsibility and Sustainability Department research on the University as a Living Lab**

**Description of paper**

The purpose of this paper is to make the Group aware of recent research carried out by the Department of Social Responsibility and Sustainability on the University as a Living Lab, and its implications for the development of the emerging Learning and Teaching Vision. The Living Lab approach is utilised by several high profile universities across the world as way to combine impactful research, real-world learning, and organisational improvement.

**Action requested**

FTSG is asked to *note* the Living Lab work at the University.

**Resource implications**

There are no resource implications of this paper – various internal and external funding streams are already being drawn on to implement Living Lab projects at the University.

**Risk Management**

This paper highlights a broad approach to research, learning and teaching, rather than advocating a specific course of action, and so no specific risks are highlighted.

**Equality & Diversity**

No equality and diversity impact assessment is considered necessary in relation to raising awareness of this research report's findings and recommendations.

**Freedom of information**

This paper can be included in open business, as the full research report is already in the public domain at <http://www.ed.ac.uk/about/sustainability/themes/research-teaching/the-university-as-a-living-lab>

**Originator of the paper**

Liz Cooper, Research and Policy Manager, Department for Social Responsibility and Sustainability

# Social Responsibility and Sustainability Department research on the University as a Living Lab

## Description of Paper

- 1 The purpose of this paper is to make the Learning and Teaching Committee aware of recent research carried out on behalf of the Department of Social Responsibility and Sustainability on the University as a Living Lab, and its implications for the development of the emerging Learning and Teaching Vision. The Living Lab approach is utilised by several high profile universities across the world as way to combine impactful research, real-world learning, and organisational improvement. It is important for the Learning and Teaching Committee to be aware of increasingly popular approach, and of the strong student, academic, and operations staff support for it – so that goals and strategies across the University are joined up, and messages given to colleagues and students complement each other.

## Background

- 3 The Department for Social Responsibility and Sustainability (SRS) was formally established in 2013 to providing high quality advice, support and action across the University, in support of the Strategic Plan goal of making a significant, sustainable and socially responsible contribution to Scotland, the UK and the world. One of the Department's themes of work for 2015-18 is 'Research, Learning and Teaching - ensuring students and staff are supported in opportunities to integrate social responsibility and sustainability into research, learning and teaching activities and **using the campus as a Living Lab**'. In this area, since its inception, the Department has:
  - collaborated with Schools to facilitate student research projects and placements examining different areas of University practice with regards to SRS
  - established an SRS Academic Network with over 125 members
  - coordinated numerous workshops and projects linking academics, operations staff and external partners on different SRS themes, for example the circular economy
  - launched SRS dissertation prizes for undergraduate and Master's students, with a panel of academic judges
  - offered support to colleagues developing further SRS courses for students
  - coordinated participation in the NUS Responsible Futures award scheme, which works to encourage embedding of SRS issues in curricula (the University was awarded the accreditation this year)
- 4 The Living Lab approach is defined by the SRS Department as follows: *'For us, treating the University as a Living Lab means using our own academic and student research capabilities to solve social responsibility and sustainability issues relating to our infrastructure and practices. Collaborative Living Lab projects can provide answers and guidance for operations and professional services staff; real-life learning opportunities for students; and opportunities for research impact for academics, amidst a culture of collaboration.'*
- 5 In order to better understand the theoretical literature on the Living Lab concept, approaches taken by other universities, and the implications for Edinburgh, the SRS

Department recruited a postgraduate researcher (Patrycja Graczyk) to undertake a closely supervised research project between April and June 2015.

## Research approach

- 6 The objectives of the research project were: to investigate and summarise the theoretical background and literature on the Living Lab concept; to provide an overview of how other universities are implementing the concept with regards to social responsibility and sustainability; to explore what activities are already taking place at Edinburgh that relate to the concept; and to identify gaps, opportunities and enthusiasm for doing more work in this area.
- 7 In addition to literature and document review, fifteen staff members were interviewed (three operations, six professional/support staff, six academics), four students took part in a focus group, and one elected student representative was interviewed. Three staff members in other universities who are responsible for coordinating Living Lab initiatives were also interviewed.

## Findings and recommendations

- 8 The concept of the Living Lab is relatively new, having only been introduced in the early 2000's (van Geenhuizen 2013). It has been credited to William J. Mitchell of the Massachusetts Institute of Technology, who proposed moving various types of research from laboratories to in vivo settings, such as specific buildings, institutions or areas of the city, to enable the monitoring of users' interaction with and responses to the innovation (van Geenhuizen 2013; Svensson et al. 2009). The concept has since been adopted by the European Commission, and a European Network of Living Labs has been established. The Living Lab concept is key part of the International Sustainable Campus Network charter (of which the University is a signatory), and is also promoted by the EAUC (Environmental Association for Universities and Colleges). The Living Lab approach is recognised as a tool for sustainability leadership in universities by the International Alliance of Research Universities (IARU).
- 9 Prominent Living Lab programmes exist in leading universities such as the University of British Columbia, the University of Cambridge, and the University of Manchester. University campuses have been identified as spaces that provide numerous, dynamic sustainability learning opportunities for students from different programmes. These programmes tend to focus on quantitative data, use of ICT to collect and analyse data, and environmental challenges, such as optimum use of solar panels, rainwater harvesting, or alternative fuels for campus vehicles. At Edinburgh the intention is to fully incorporate qualitative data and social responsibility issues in addition to quantitative data and environmental questions, reflecting the broader understanding of SRS. Edinburgh can learn from these other institutions in terms of how they secured external funding for Living Lab projects, and how they coordinated projects that link up different functions.
- 10 Academic colleagues from Informatics, Edinburgh College of Art and Social and Political Science have recently established Edinburgh Living Lab (<http://edinburghlivinglab.org/>) which has run courses that involve Living Lab projects in collaboration with Edinburgh Council and particular communities in the city. Discussions are underway between Edinburgh Living Lab and the SRS

Department regarding how best to collaborate, including identifying undergraduate projects to explore and propose improvements for aspects of University practices.

- 11 In terms of findings from the primary research carried out at Edinburgh, not many interviewees had heard of the Living Lab concept – but there was much enthusiasm from most once it was explained. Students expressed particular interest in having opportunities for real world learning and to witness positive impacts of their efforts. A current lack of collaboration between academics and operations staff was highlighted, but also an appetite more such collaborations to be facilitated. Some respondents suggested that a database of projects and contacts would be useful to facilitate links. Interest was expressed in terms of embedding Living Lab projects in particular courses, and in project-based activities such as Innovative Learning Week. It was recognised that buy-in is required from senior management in order to be able to develop significant Living Lab projects. Respondents identified challenges to working across functions on projects, such as time limitations, limited resources, different working styles and objectives, and different expectations. Examples of existing projects that reflect the Living Lab concept were gathered – these are listed in the report, along with potential funding sources.
- 12 A preliminary summary of this project's findings was presented at the SRS Committee in June 2015 where the approach was endorsed. Following the conclusion of the research project, a new Living Lab web page has been added to the SRS section of the university website, stronger links and plans for collaboration have been forged between SRS and Edinburgh Living Lab, and plans have been made for further SRS Living Lab projects, including a focus on ICT.
- 13 To summarise: reflecting the emerging Learning and Teaching Vision of 'course design for 21<sup>st</sup> Century learners', 'moving away from passive learning styles', the Living Lab approach provides opportunities for hands-on learning for students, enables innovative approaches to teaching, and has the potential to improve the University's social responsibility and sustainability performance in a variety of areas.

Liz Cooper  
Research and Policy Manager, Department for Social Responsibility and Sustainability  
27 August 2015



**Fair Trade Steering Group (FTSG)**

**Tuesday 22 September 2015**

**Procurement Rules Consultation – UoE Response**

**Description of paper**

This paper comprises the UoE response to the recent Scottish Government consultation on changes to the Public Procurement Rules in Scotland.

**Action requested**

FTSG is invited to note the paper and discuss next steps.

**Background and context**

Following publication of the Public Procurement Reform Act, consultation began focused on those clauses of the Act where Scots law differed. This process was ongoing within a wider context of increasing expectations of the Procurement function in general.

**Resource implications**

Full assessment of the impact and implications will form part of the follow up process.

**Risk Management**

Due consideration will be taken in reviewing financial and reputational risks.

**Equality & Diversity**

Due consideration has been given to equality and diversity as a key element of the SRS agenda.

**Consultation**

A paper on the consultation was submitted to FTSG on 20 April 2015 for discussion as part of a wider consultation process.

**Further information**

Author and Presenter Karen Bowman, Director of Procurement 15<sup>th</sup> September 2015.

**Freedom of Information**

This is an open paper.

## Annex B – Respondent Information Form

### Public Procurement: A Consultation on Changes to the Public Procurement Rules in Scotland

#### RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately



#### 1. Name/Organisation

##### Organisation Name

The University of Edinburgh

Title Mr  Ms x Mrs  Miss  Dr  Please tick as appropriate

##### Surname

Bowman

##### Forename

Karen

#### 2. Postal Address

Charles Stewart House 9-16 Chambers Street

Edinburgh

Postcode EH1 1HT

Phone 0131 650 2508

Email

Karen.bowman@ed.ac.uk

#### 3. Type of Respondent

Please tick as appropriate

Executive Agencies and NDPBs

Local authority

NHS

Other statutory organisation

Representative body for private sector organisations

Representative body for third sector/equality organisations

Representative body for community organisations

Representative body for professionals

Private sector organisation Third

sector/equality organisation

Community group

Academic

Individual

#### 4. Permissions - I am responding as...

Individual / Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes  No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes  No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

## University of Edinburgh Response

### University of Edinburgh Response

The University of Edinburgh is not a public body. It is a higher education institution, with charitable purposes which is autonomous, independent of government, operating in the third sector and both locally and internationally *influencing the world since 1583*.

The University of Edinburgh is in a strong and positive position and is making a significant contribution to the economic, social and cultural well-being of Scotland.

*“Edinburgh is a truly international university firmly rooted in Scotland and an overarching theme for this plan is increasing our global impact and our contribution to society. Our Global Academies are key for developing innovative solutions to the world’s most challenging problems. Our priorities for delivery ... are set out against this background and are shaped by our commitments to social and environmental responsibility, equality and inclusion, widening participation and good governance.”*

Professor Sir Timothy O’Shea  
BSc, PhD, DUniv, LL.D hc, FRSE  
Principal and Vice-Chancellor, The University of Edinburgh

Our mission is the creation, dissemination and curation of knowledge. As a world-leading centre of academic excellence we aim to:

- enhance our position as one of the world’s leading research and teaching universities and to measure our performance against the highest international standards
- provide the highest quality learning and teaching environment for the greater wellbeing of our students and deliver an outstanding educational portfolio
- produce graduates fully equipped to achieve the highest personal and professional standards
- make a significant, sustainable and socially responsible contribution to Scotland, the UK and the world, promoting health, economic growth and cultural wellbeing

We welcomed the clause 4 (1) (c) which was introduced after an earlier Consultation into the Procurement Reform (Scotland) Act 2014 to minimise unintended consequences of new regulatory procedures on Scotland’s higher education success.

In the delivery of our purposes, we work closely in partnerships with the City and Nation but cannot be said to have a specific ‘area’ in which we operate or influence, unlike (say) a local authority or NHS or even a regional college body. We require a discretion to assess our impacts as appropriate to our activities and strategic goals.

We are in receipt of public funding and already perform to a ‘superior’ public procurement capability, winning recognition from independent award schemes. We have been strong supporters and contributors to the Scottish Model of Procurement. We do not support a single entity (enquiry/ombudsman) but could support use of a tribunal in settling disputes, so long as the right of appeal to court was also maintained.



We welcome many of the provisions in the current Consultation where these will allow efficient and effective operating and minimise costs; we are a strong supporter of collaborative procurement; have been recognised for our sustainability and social responsibility in procurement activity, both locally in Scotland and also internationally.

Any new Statutory Guidance for similar (publicly funded) bodies, and in particular any new procedures and duties, reporting and monitoring obligations, applied to universities must allow sufficient flexibility in the content, data and level of detail required. New guidance and advice must work closely with professional best practice, to allow a procurement strategy to be tailored to the organisation's overall strategic goals and be suitable for communication to our stakeholders, funders and suppliers.

The University of Edinburgh has a strong tradition of having in place and adhering to a Procurement Strategy which reflects and contributes to the University's Strategic Goals, Enablers and Themes. We offer details on how the University intends to carry out regulated procurements, the considerations which it takes into account, such as sustainability and social responsibility and value for money (balancing quality and cost). As an early supporter of the Scottish sustainable procurement action plan, and as Scotland's first Fairtrade University, working with others on a range of sustainability risk mitigations, and environmental initiatives we seek to use procurement policy as an enabler, delivering benefits beyond our own [physical] building premises locality.

Our Responses below on these Consultation Questions relate both to sharing our significant knowledge in this field, as well as considering the impact of the proposals under review, on the totality of our research, teaching, and innovation.

Our Director of Procurement, other specialists, researchers and colleagues are happy to work with policy makers on the next stages: drafting guidance, tools and techniques. A separate closed letter has some specific suggestions.

Questions and Responses:

Q1 What are your views about what should be included in this Statutory Guidance? Please explain your answer.

**Procurement Strategy – Statutory Guidance**

It is essential, given the inclusion of independent autonomous organisations within those impacted by the legislation, that the Statutory Guidance contain **only** those compulsory matters which would need to be addressed in the Public Procurement Strategy and other new obligations covered in the Consultation, directly flowing from the law.

To avoid potential confusion, and future misinterpretation of the law as it applies to Universities and any other non-public bodies, the Statutory Guidance should not include preferred practice for public sector organisations. We commend the use of existing strategic procurement forums as the mechanism for further procurement reform through identification of good practice, sector and market specific approaches.

- Our preference is that enforcement of the legislation should be through the Courts.
- Guidance should reflect the fact that while public bodies have an “area” of operation at either the regional or Scotland level this is not the case for Universities which compete in a global environment, teaching students from around the world and collaborating in international research. For example, the University of Edinburgh has a physical presence (through buildings/offices) in Edinburgh, Midlothian, Perthshire, Beijing, Sao Paulo, New York and Mumbai, teaches students from 140 countries on campus, has supported over 1 million students around the world on our Massive Open Online Courses (MOOCs) and has deep partnerships in India, China, Europe and the Americas.
- Guidance on publication of planned expenditure should allow sufficient flexibility in the content, data and level of detail to enable contracting authorities to create appropriate strategies tailored to their organisation’s overall strategic goals (as in the Act section 15 (5)(a)) and be suitable for communication to their stakeholders and suppliers.

### **Annual Report - Statutory Guidance**

The University notes the new requirement to publish an annual report on:

1. how its procurement activity has complied with its procurement strategy; and
2. expected future regulated procurements, over the next two years.

We would emphasise the following concerns:

- Clarity is required in reference to the Act section 18(2) over which financial ‘**year**’ is applicable, the organisation’s financial year, the fiscal year, or the calendar year (the latter is required for procurement spend reports by EU).
- The University do not operate a funding model in which we can reasonably be expected to know our specific purchase plans two years in advance nor will all of our procurement proposals be suitable for external publication. This reflects potential involvement in joint ventures or mergers/acquisitions, pre-commercial engagement, spin-outs and knowledge exchange activities. The University would therefore request that this requirement i.e. public listing of all planned acquisitions over the Act thresholds or for EU levels should be removed to avoid the risk of disadvantaging Scottish universities. We would also note that Prior Information Notices for EU regulated procurement require to be made *no more than 12 months* in advance of procuring. Consequently, the identification of

future regulated procurements over a longer period has the potential to mislead the markets.

We welcome and reinforce the amendment, during the bill stages of the Procurement Reform Act, which recognised that **research** related procurement (for research and other collaborative or innovative externally funded and commercially sensitive projects) cannot be considered as 'publicly regulated'; reflecting funding body restrictions on publication.

Q2 What are your views about what should be included in this Statutory Guidance? Please explain your answer.

The sustainable procurement duty contained in the Act section 9(1) requires the contracting authority to think about how it can:

- (i) improve the economic, social, and environmental wellbeing of the authority's area,
- (ii) facilitate the involvement of small and medium enterprises, third sector bodies; supported businesses in the process; and
- (iii) promote innovation.

The University would welcome clear and unambiguous guidance on how to

- comply with the sustainable procurement duty, as currently contained in the Procurement Reform Act, and which requires considerations of improving the economic, social and environmental wellbeing of the authority's **area**. As noted in response to Q1 Universities, in contrast to public bodies, do not have an area of operation.
- whilst still conforming with the general principles of **equal treatment and non-discrimination** required under TfEU, EU Procurement Directives and the Procurement Reform Act, itself. This is of particular concern in relation to procurement which may conflict with cross-border interests and that which includes collaboration with UK contracting authorities.

The University welcomes the focus by Scotland and Europe on sustainability and highlights the existence of our long-standing social responsibility and sustainability strategy.

- We note that the 'sustainable procurement duty' applies to regulated procurements above the £50,000 (goods and services, the latter aggregated over 48 months if recurring, bringing the impact down to £12,500 p.a.) and a new £2 million (works) threshold.
- We also note that this sustainability duty appears to apply to EU regulated procurements<sup>1</sup> with objectives contained in the EU Directives<sup>2</sup> which are now revised and modernised in order to 'increase the efficiency of public spending, facilitating in particular the participation of small and medium-sized enterprises (SMEs) in public procurement, and to enable procurers to make better

<sup>1</sup> Section 8(5) Procurement Reform (Scotland) Act 2014 states that Subsection (1) [of section 8] does not apply in relation to an EU-regulated procurement so we deduct from this that Subsection (2) Sustainable Procurement Duty does apply to EU-regulated procurements.

<sup>2</sup> Recital 2 Directive 2014/24/EU on public procurement.

use of public procurement in support of common societal goals'. Confirmation of this interpretation would be appreciated.

Q3 What are your views about what should be included in this Statutory Guidance? Please explain your answer.

The University of Edinburgh would welcome the **optional** inclusion of community benefits requirements in contracts above a certain threshold e.g. £4 million where such clauses are **appropriate and proportionate**.

- It is essential that any obligation remains consistent with the EU principle of **not being allowed to favour** businesses based on nationality or geography as one the underlying principles of public procurement activity.
- Reporting requirements must not place a disproportionate burden on both contracting authorities or their contractors, especially SMEs.
- it must be recognised in the financial impact assessment of the Procurement Rules that the costs of evidencing Community Benefit, where it does not normally exist in a business, is in all likelihood an added administration cost which will be passed on from contractors to the procuring organisation, going forwards.
- There must be clear discretion on how this obligation is tailored and if we can include 'Community' Benefit Clauses, for example which are pertinent to our core activities, for example in regard to student experience work placements, student academic or professional projects, appropriately funded graduate trainee schemes as well as the modern apprenticeships and other similar benefits.

Q4 We believe that a statutory obligation on public bodies to include relevant clauses in their contracts is the best way to ensure that contractors comply with all relevant laws and collective agreements. This should also ensure that public bodies are able to end contracts where a contractor does not meet these requirements. Do you agree or disagree with this position? Please explain your answer.

Agree X Disagree

The University of Edinburgh agrees that the best way for contracting authorities to ensure compliance with laws, where suppliers are not already obliged to do so, is through the contractual terms and conditions which govern and **are appropriate to** the services, goods or works to be performed by the supplier for the contracting authority. However, we would suggest that a statutory obligation is unnecessary; creating complexity with regard to UK sector and other collaborative and framework procurement agreements and implying additional undue bureaucracy/obligations regarding evidence of compliance.

- To help contracting authorities cover all applicable obligations, a suitable source of up-to-date legal material will be helpful. This could be incorporated into the public contract portal, or procurement journey or the sustainable duty tool kits, proposed in the Consultation.

Q5 Is there still a case for reserving contracts for supported businesses in Scotland?

Yes  No

Yes, the University of Edinburgh agrees and is keen to reserve contracts for supported businesses, and already does so, where appropriate. However there is no clear source of 'approved' supported businesses apart from the few providers who are currently on the national framework agreement.

- We would recommend that businesses registering on the Public Contracts Scotland portal should have their status as 'supported businesses' recorded and confirmed.

Q6 Do you think that the definition of a "disadvantaged person" in this context should be "the unemployed, members of disadvantaged minorities or otherwise socially marginalised groups"?

Yes No

If not, what do you think the definition should be and why?

The University agrees that a clear definition is needed, however, we would suggest that the nature of disadvantage is not necessarily static and we would suggest that the approach in Section (3) (6) of the Post-16 Education (Scotland) Act 2013 on widening access to higher and further education, may be a relevant reference point

"The Scottish Ministers, the Council and higher education institutions may take into account any social or economic characteristics which they consider appropriate when determining which groups are to constitute "socio-economic groups" ....

As a fair trade nation, Scotland may need to consider a wide view on deprivation and on trade/procurement's ability to improve lives.

Q7 Our view is that we are not aware of any arguments that currently support reserving contracts for mutual and other non-public sector bodies in Scotland, and we believe this is less of an issue in Scotland. Do you think there are any advantages or disadvantages to applying this provision to the procurement activities of public bodies in Scotland? Please explain your answer.

Advantages  Disadvantages

Procurement activity should allow for competition to ascertain best value, be fair, transparent, and innovate. The University of Edinburgh believes that allowing contracts to be reserved in this particular way for mutuals could potentially be a disadvantage in that it restricts competition. However, given the absence of substantive research into when or if these kind of

organisations are already in existence supplying/servicing Scottish public services, then it may be appropriate to include the provision with clear guidance on how to apply it.

Q8 Should the rules about labels which apply to contracts that are EU regulated procurements also apply to lower value regulated procurement contracts covered by the Act? Please explain your answer.

Yes  No

The University agrees that this should be consistently applied across all regulated procurements, whether lower value or EU. This reflects the complexity created by having separate rulings on labelling (or alternative labelling) based purely on a threshold spend, especially as this is based on estimating in advance of planning a procurement.

We acknowledge that the principle applies and aims to apply the **relevant** and **proportionate** environmental and social (or other appropriate and proportionate) labelling and accreditation schemes, or accepting equivalents. The work we are leading with our sector centre and our students on APUC SUSTAIN to establish an effective supply chain code of conduct / database could be a useful exemplar for this aspect.

Q9 Do you think we should align the rules on technical specifications for all regulated procurements, including those lower value procurements regulated by the Act? Please explain your answer.

Yes  No

The University agrees it is logical that all 'regulated' procurements both above and below the EU threshold follow the same process/procedures in so far as technical requirements are concerned, in order to simplify the process for bidders and to enhance transparency and fairness.

However any process and documentation has to be **proportionate** for lower value procurements, with possibly simpler requirements and clearer for specific markets, particularly for enabling SMEs to bid more effectively.

Q10 We believe that contracts should not be awarded on the basis of price or cost alone? Do you agree or disagree? Please explain why.

Agree  Disagree

The University of Edinburgh agrees with the proposal.

We would however clarify that call-off purchases from Framework Agreements or purchasing within Dynamic Purchasing Systems should continue to be available on a cost only basis; the assessment of minimum

quality having been evaluated through the process of establishing the Framework Agreement/DPS.

Q11 We believe that public bodies should retain discretion to split requirements into smaller lots and to award more than one lot to the same bidder. Do you agree or disagree with this? Please explain your answer.

Agree  Disagree

The University agrees that on a case-by-case basis, the reasoning and decision making over whether to split a specific Requirement into lots will need to be done at a local level, based upon the organisational needs, procurement strategy and delivery plans for that project or recurring requirement. This will normally be done in conjunction with the stakeholder consultation and early market engagement.

It would be difficult to see how a 'one size fits all approach' i.e. mandating the splitting into lots would benefit either the public body or the supply market in every case, indeed it could constrain the growth of business opportunities for SMEs.

As for awarding multiple lots, this again needs to be decided on a case-by-case basis, and there should not be artificial anti-competitive or poor value for money restrictions placed on public bodies or suppliers (who may be able to offer significant efficiencies by combining lots in their bid, both for themselves, their supply chain and their public sector client).

The individual contract procurement strategy would (in effect) justify why lots are or are not desirable in each case and allow both buyers and bidders to calculate opportunity cost, administration cost, risk in bidding for or awarding individual or multiple lots, to take this into account in whole life VfM analysis.

Q12 To avoid creating unnecessary confusion, we believe that public bodies should have the discretion to decide whether to request additional information about sub-contractors. What are your views about this?

The University agrees that this discretion would be welcomed as a number of large supplier or service provider organisations now no longer have the staff and or equipment always available in-house which means more and more of the overall scope of works, in particular, are being sub contracted and we need to be able to seek information as and when required.

Q13 The Directives also make clear that public bodies are responsible for obtaining any information about sub-contractors from the main contractor. There is an option to transfer this obligation (to deliver the information) to the main contractor. We do not plan to transfer that obligation to the main contractor. What are your views about this?

The University agrees with regards to the plan not to transfer that obligation to the Main Contractor.

Our views are that if this role and responsibility was transferred then we may have difficulty in obtaining drawings, O&M manuals, equipment warranty certificates etc. especially after a Main Contractor has successfully completed the project commissioning/ handover stage.

Our views are that without the right to request additional information remaining as an item for action between the Client and Main Contractor in the specific circumstances of a major project, (and the existence of individual commercial relationships which cannot be legislated for within public procurement law), we may have difficulty in managing construction and other major, for example high-technology or major service change, projects.

Q14 We believe that we should not apply similar provisions on sub-contracting to contracts covered by the Act, as we do not think this would be proportionate. Do you agree or disagree with this?

Agree X Disagree

The University of Edinburgh agrees that we should not add additional obligations to the sub EU threshold contracts, unless absolutely necessary. However, the discretion to ask businesses which parts of the contract they plan to subcontract and to whom may be in the public interest.

Q15 We believe that similar payment terms for sub-contractors, as for main contractors, is a good thing and there are some measures underway, or in place, to address this. We also believe that direct payments to sub-contractors could be complicated and could mean public bodies assuming some responsibilities that should arguably remain with the main contractor. In light of this, we believe that public bodies should be able to make direct payments to sub-contractors only where the contract allows this to happen and parties agree. Do you agree or disagree?

Agree X Disagree

The University of Edinburgh agrees.

Direct payments to sub-contractors would place an additional time resource and contract management burden on the contracting authority. In effect it would be providing a service to the main contractors and their subcontractors, and possibly taking on undue risk liability, with regards to approving when the work is due for payment, and costs in processing all sub-contractors applicable payment transfers.

It would also have an impact on the contractual performance and service level agreements with the Main Contractor, by passing risk back to the client



which would be unacceptable. We would like to see the Client's payment terms and conditions being applied to the Main Contractor and their associated sub-contractors, as normal ethical business practice.

Q16 Do you think that the same rules on selection criteria should apply to lower value regulated contracts as to higher value EU regulated public contracts? In particular, should the same rules apply on:

- The use of turnover as a selection criterion?
- The right of a public body to assume that a business does not have the professional ability needed for the performance of a specific contract, if that business has a conflict of interest which might mean that it is less able to deliver the contract?

Please explain your answer.

Yes  No

Use of turnover as a selection criterion:

The University agrees that a business's turnover is not the best or the only way of judging whether a business can deliver a contract. Turnover is not an indicator of future performance, economic viability or quality of the services, goods or works on offer but it has been recognised and used as contributing to information available to contracting authorities to assess a company's economic and financial standing.

A contracting authority should have sufficiently wide discretion in the assessment of a bidder's economic and financial standing in accordance with the general principle of **proportionality and equal treatment**. The University would encourage the Scottish Government to retain flexibility for contracting authorities and **not** impose the same restriction on the level of minimum turnover for lower value regulated contracts; given the potential to disadvantage SMEs.

The University regrets the European legislator's decision to restrict the contracting authorities' discretion with regards to the level of turnover required, even though it notes the exception provided for duly justified cases such as relating to the special risks attached to the nature of the works, services or supplies.

Conflict of interest.

The suggested approach of dealing with conflicts of interest seems sensible to the University of Edinburgh. Industry bodies should make it very clear to their members how to behave in these potential conflicts if bidding to supply the public funded sector, and governance bodies should also be given the opportunity to access simple guidance and consistent advice about the

benefits of separating advisers from 'suppliers' of subsequent services or goods or works.

In practice this needs to be dealt with on a case-by-case basis, in particular in our sector which is both competitive and collaborative in its very nature.

Q17 Do you agree or disagree that public bodies should retain the flexibility to decide for themselves the basis upon which groups of businesses will be able to meet tests of economic and financial standing and technical and professional ability that will be necessary to perform a particular contract or should there be national standards? Please explain your answer.

Agree  Disagree

The University of Edinburgh agrees with the proposition to give contracting authorities the flexibility to decide which groups of businesses will be accepted to meet tests of economic and financial standing and technical and professional ability that will be necessary to perform a contract.

Q18 Should the list of criminal convictions which may result in exclusion from bidding be the same for all regulated contracts, regardless of value? Please explain your answer.

Yes  No

Consistency between the rules for higher and lower value contracts would facilitate compliance with this exclusion requirement.

The University of Edinburgh would welcome further enhancement of the information available on such convictions. Police Scotland may currently operate a confidential information sharing protocol with different contracting authorities but there is no real consistency or transparency as to how this is organised for all contracting authorities in Scotland.

Further (separate) guidance from the Scottish Government would be welcomed regarding the practicalities of such information sharing and other legal obligations which contracting authorities have to comply with such as FOI, Data Protection and Confidentiality.

The University would welcome the retention of the current exception which allows contracting authorities to disregard these specific exclusion grounds if they are satisfied that there are overriding requirements in the general interest which would justify doing so.

Q19 Should public bodies be required to exclude a business from bidding for lower value regulated contracts if it, or someone who holds a senior position in it, has been convicted of any of the offences on the list?

Yes  No

The University agrees that with regard to criminality, the financial value of the contract is unimportant. This is a matter of principle, public money should not go to organisations who have criminal links.

Exclusions should only apply until the conviction is spent (rehabilitation of offenders' legislation, self-cleansing, etc.) and this discretion described above is being applied, in which case the rationale must be retained in case challenged.

The key challenge is ensuring that the information is available to a contracting authority in considering this matter at the relevant stage of a procurement process, is up-to-date and easily accessible and may be a suitable enhancement to the Public Contracts Scotland portal.

Q20 Should public bodies retain the discretion to decide whether or not to exclude a business from bidding for a contract where the body can demonstrate by appropriate means, short of a court, tribunal or administrative decision, that the business has breached its obligations to do with paying tax or social security contributions?

Yes  No

The University agrees that for consistency, Scottish Government should provide a definition and some practical guidance of what '*can demonstrate*' may include and what the '*appropriate means*' are.

We would note that we are not in a position to assess when and where companies may have evaded tax or Social Security unless HMRC or Police can provide evidence of such breaches. We would also note that it would be an inappropriate use of limited resources to attempt verification of self-certifications of the absence of breaches.

Q21 Should public bodies be given the discretion not to exclude a business which has breached its obligations to do with paying tax or social security contributions, and where this has been established by a court, tribunal or administrative decision, if it would be disproportionate to do so?

Yes  No

The University agrees with the current procurement regulations' approach which gives the option to public bodies to exclude suppliers for non-payment of taxes or social security contributions - see Regs 23(4) (f & g).

The University believes that making this a mandatory exclusion would not sit well with the principle of **proportionality** which has to be adhered to in every single procurement.

Q22 Should public bodies also have the discretion to exclude a business from

bidding for lower value regulated contracts if it has breached its obligations in relation to the payment of tax?

Yes  No

The University believes that having a discretion to handle this on a case-by-case basis is even more appropriate at lower values. Making this a mandatory exclusion would not sit well with the principle of **proportionality** which has to be adhered to in every single procurement.

And it may not be in the general interest or appropriate to the specific situation for a low value contract e.g. non-payment of a very small amount of tax by an SME's director in a firm which is bidding for small (and narrow profit margin) supply or service contract, well below EU threshold, as low as £12,500 per annum for recurring services.

Q23 Should public bodies retain the discretion to decide whether or not to exclude a business which is bankrupt, or is in insolvency proceedings from bidding? Please explain your answer – in particular, if you think that public bodies should have discretion in these situations, do you think that discretion should apply in every circumstance?

Yes  No

The University agrees that on many occasions excluding a supplier which is bankrupt or in insolvency proceedings or similar from bidding for a contract is a measure aimed at protecting the contracting authority from poor or non-delivery of the contractual obligations by the supplier. It is therefore rare that a contracting authority would not exclude a supplier in that position.

However in narrow markets where there are specialist suppliers or when community benefit considerations apply, with the appropriate guarantees, or during restructuring, permitting public body to continue to work with a company may be very relevant.

The Public Contract (Scotland) Regulations 2012 give the contracting authorities a choice as to whether to exclude or not on these grounds.

A contracting authority is required to comply with the general principle of **proportionality** and would be wise to retain evidence as to why there are specific circumstances which the contracting authority would like to take into account in a specific case. Similarly, an obligation could not be imposed on contracting authorities not to exclude companies in that position, if certain other conditions are met.

Contracting authorities have obligations towards its funders, the public and in the case of the University, its students and staff.

It is therefore essential that the University retains the right to exclude bankrupt or insolvent suppliers if required for the operations of the University, whether

in its research, teaching, innovation or other activities OR conversely to choose to continue to work with such a company where it is relevant and necessary and appropriate.

Q24 Should the same rules apply to EU regulated contracts and to lower value regulated contracts? Please explain your answer.

Yes  No

The University agrees that the same rules should be applied. This provides consistency, reducing confusion for contractors and bidders, and recognises the difficulty in estimating contract values close to the threshold levels.

Q25 Should a public body be allowed not to exclude a business with disqualifying criminal convictions, or which has breached its obligations to pay tax or social security, in exceptional circumstances? Please explain your answer.

Yes  No

The University would welcome the proposal to retain the discretion for lower value regulated contracts, in a similar manner to that currently contained in the Public Contracts (Scotland) Regulation 2012, which allows contracting authorities to disregard these specific exclusion grounds if they are satisfied that there are overriding requirements in the general interest which would justify doing so.

However we are aware that it would only be appropriate to deal with such a company if there were a strong case for doing so, rather than use a competitor who was not disqualified, and that on a case-by-case basis this decision would need to be considered in the light of any reputational risk and equalities duty impacts.

This may be an area which would benefit from (separate) practical and policy guidance to ensure an element of consistency in interpretation of this discretion, particularly with regard to impact on SMEs.

Q26 Should the same rules apply to EU regulated contracts and to lower value regulated contracts? Please explain your answer.

Yes  No

The University would welcome the proposal to retain the discretion for lower value regulated contracts, in a similar manner to that currently contained in the Public Contracts (Scotland) Regulation 2012, which allows contracting authorities to disregard these specific exclusion grounds if they are satisfied that there are overriding requirements in the general interest which would justify doing so.

See comments on response to Question 25.

Q27 Should the law allow public bodies the discretion to decide whether or not to exclude bidders in situations where there is evidence of a breach of environmental, social and labour law obligations, grave professional misconduct, distortion of competition, a conflict of interest, a significant failure to perform in an earlier contract, or a security risk (in the case of defence and security concessions)? Please explain your answer.

Yes  No

The University agrees that it is absolutely crucial that a contracting authority retains the right to assess these exclusion grounds in the light of the specific circumstances on each contract, rather than introduce blanket obligations.

Such assessment is circumstantial and only the contracting authority would be best placed to make such an assessment with regard to its impact on its own reputational and financial risk. Discretion should be allowed for ensuring that contracting authorities can consider misbehaviour such as grave professional misconduct, conflict of interest and poor performance in an earlier contract whether in its own authority or elsewhere as appropriate.

Q28 Should the same rules apply to EU regulated contracts and to lower value regulated contracts? Please explain your answer.

Yes  No

The University agrees that for consistency, an obligation could not be imposed on contracting authorities to exclude or not to exclude companies in these positions, for either EU regulated contracts or lower value regulated contracts where relevant, for example if certain other conditions are met. See comments in response to Question 27.

As lower value contracts may be of particular interest to SMEs, consistency is important here, so that poor performance is not rewarded but that discretion remains available to influence markets and improve standards through our procurement and engagement.

Q29 Do you agree or disagree with our proposed maximum periods of exclusion? Please explain your answer.

Agree  Disagree

The University of Edinburgh agrees with the Scottish Government's proposal of proposing the maximum periods of exclusion allowable under EU law. In fact, the University regrets the fact that the EU has imposed such maximum periods, especially in terms of exclusion for criminal convictions.

The University welcomes the fact that a supplier can perform what is referred to as “self-cleansing”. It is therefore disappointing that a supplier who would opt not to take such steps to ‘self-cleansing’, could again bid for public contracts and no longer be excluded, just by letting a period of 5 years lapse, as this may be disproportionately low depending on the impact of their previous behaviour.

Nothing would be available to demonstrate to the contracting authority or the public that the said supplier has changed its ways or tried to improve itself. It also needs recognised that securing a new conviction may take more than 5 years since the first court judgement, if the economic operator has not improved its ways. This position is regrettable and therefore the University welcomes the proposal to introduce the maximum periods as allowed under EU law.

Q30 Should the same rules apply to EU regulated contracts and to lower value regulated contracts? Please explain your answer.

Yes  No

The University agrees that for consistency, an obligation could not be imposed on contracting authorities to exclude or not to exclude companies for different periods, when bidding for either EU regulated contracts or lower value regulated contracts or both, where relevant.

As stressed in our responses to other questions on this topic, lower value contracts may be of particular interest to SMEs. However, criminal convictions and bad performance must not be rewarded and there is a need to maintain the maximum exclusion period allowed by EU law.

Q31 Should public bodies be required to check that sub-contractors do not fail any of the exclusion criteria?

Yes  No

The University does not agree that it should be the public bodies’ responsibility as a duty to check sub-contractors relative to the exclusion criteria. Legal responsibility for nominating sub-contractors and establishing their bona fide position and suitability for the contract in question must remain with the appointed Main Contractor.

Transferal of the responsibility to check sub-contractors would impact massively on the resources required to manage construction/major works projects. We would also be concerned about the potential for Extension of Programme/Time requests (and associated additional Costs) because of delays in starting/completing sections of the project or changing sub-contractor while awaiting clearance of sub-contractors from the Contracting Authority.

Q32 What are your views about what should be included in this Statutory Guidance? Please explain your answer.

The University believes it is essential that where Statutory Guidance is introduced it should relate purely to legal duties. Comments and Questions earlier in this Consultation imply considerable discretion and thus Statutory Guidance should specify 'minimum standards'.

The University regrets that that the Act introduces Statutory 'Guidance' and would welcome the separate and ongoing development of best practice.

Each contract needs assessed on its own merits within the framework of decisions to be taken by a contracting authority, as permitted or imposed by the law; adding mandatory guidance (obligations) restricts contracting authorities' discretion in deciding on selection criteria appropriate, relevant and **proportionate** to the contract.

**Proportionality** The University notes that this Statutory Guidance will apply to all regulated procurements.

The matters which the Consultation and the Act propose to be included in the Statutory Guidance are extensive. These matters are contained in three main themes:

- Employment
- Environmental
- General conduct, including self-cleansing

Whilst the University appreciates and supports the sentiment behind the need for clearer guidance, it feels that the impact on resources within the University or smaller public bodies elsewhere to investigate, deliver, manage and ensure compliance at lower threshold procurements is disproportionate to the value to be gained by achievement of compliance of this guidance at lower value contracts.

A better approach and procurement best practice is early market engagement and stakeholder discussions which ensure the encouragement of high standards of people management, through industry bodies and contract terms.

The University is very concerned for the unintended impact this may have on the ability of SMEs to apply effectively for low value public contracts, and respond to all the questions which may potentially be put to them for low value, low margin business.

For example, an SME may not be in a position in which it can offer the full range of workplace options such as flexible working, career breaks or flexi-time to its employees the same way a large company could, especially if it is a micro-business with very few employees.



This could impact on our start-up and spin out companies if they were to be in a position to be bidders for public supply or service contracts in future.

The University would therefore encourage the Scottish Ministers to tread very carefully when imposing a whole range of additional exclusion grounds for lower value contracts as this may have a negative impact on both contracting authorities and suppliers, especially SMEs, as it may discourage competition rather than increase opportunities which was one of the main aims of the Act.

#### Compliance with EU Law

Living Wage – whilst the University is not formally a Living Wage Employer, it pays equivalent to the living wage and supports the promotion of positive remuneration measures for all workers, the compatibility of ‘living wage’ with existing legal frameworks for public procurement remains subject to significant challenge.

Q33 We expect to apply only limited rules to contracts for social and other specific services to the person. These will require compliance with the basic Treaty Principles and publication of contract opportunity and award notices as described in this section. Do you agree or disagree that these rules will be sufficient for an effective light-touch regime? Please explain your answer.

Agree  Disagree

Yes, University agrees that this would be appropriate and **proportionate**.

There should be clarity about the kind of services now covered by both the transposition of the EU Directives Annex XIV and the, for example a new EU threshold relevant to this is €750,000, and statutory guidance needs to explain how this relates to the proposed £50,000 regulated procurement rules, unique to Scotland, for these kinds of services.

This is of particular interest to the University in relation to its student experience, its educational and professional education provision as a ‘supplier’ and procurer, and its link to both health and social research or related specialist services procurement and our regular and ongoing collaborations with other public bodies, which may come under this kind of ‘**light-touch**’ regime.

Q34 We believe that contracts should not be awarded on the basis of price or cost alone? Do you agree or disagree with this position? Please explain why.

Agree  Disagree

The University agrees that this position reflects current working practice and best professional advice. The University of Edinburgh agrees with the proposal and has explained in response to Question 10 above.

For this reason, we do not believe this option (choosing on the cost alone) is appropriate for either contracts or call offs from frameworks and DPS.

Q35 What are your views about what should be included in this Statutory Guidance? Please explain your answer

The proposed approach, if already agreed by key sectors, such as the 2010 Procurement of Care and Support Services Guidance<sup>3</sup>, allows appropriate flexibility.

As in our response to Question 33, this may relate to the University student experience our regular and ongoing collaborations in a provider and /or procurer role with other public bodies, which may come in future under this kind of 'light-touch' regime.

Note our earlier comments on the nature and scope of Statutory Guidance should be considered carefully for these 'personal' services.

Q36 Should provision be made for the use of a Prior Information Notice by non-central authorities (where they choose) as the call for competition in restricted procedures and competitive procedure with negotiation? Please explain your answer.

Agree  Disagree

Whilst the University of Edinburgh very much welcomes this proposal, it needs noted that the portal system and model documents in use for public authorities and for suppliers registering for calls or making expressions of interest will need updated consistently in advance to allow for this option.

Public Contracts Scotland – Tender solution and Procurement Journey is not yet able to handle expressions of interest based upon PIN Notices, a change which will require addressed in advance of the law, in order not to add to the bureaucracy for contracting authorities to manage this.

Clear advice and guidance should be available for all parties, including interested suppliers. It is worth noting that the time reduction which was a benefit from starting with PIN notices is being negated with the useful proposed reductions in timescales by other means in the new EU Directives.

Q37 Do you agree or disagree that this provision should also apply to lower value regulated contracts, that is, those that are below European regulated thresholds and are regulated by the? Please explain your answer.

Agree  Disagree

The University has no strong view, provided that the Statutory Guidance for advertising [content of published Notices] for lower value regulated contracts is not overly complex, and is more akin to mini-tenders or quick-quotes than

<sup>3</sup> <http://www.gov.scot/Publications/2010/09/21100130/5>

the requirements of completing full EU Notices. However, in a more complex Notice environment, then PINs may be an attractive mechanism to engage SMEs.

Q38 Do you agree or disagree that public bodies should be permitted to award a contract without competition in the circumstances permitted by the Directives? Please explain why.

Agree X Disagree

The University agrees that the current reasons as stated in the Directives are adequate and reasonable in setting out the justifications which are acceptable to carry out a direct award.

If this was removed, organisations would be forced to carry out tenders which have no realistic chance of generating competition, increasing costs for both the buying organisation and the supply base, and add time and costs to public bodies and suppliers as a result.

Procurement services are already at risk of being seen as overly bureaucratic and process driven rather than pragmatic and adding value to the Outcomes or the Strategic Plan of the public body it is here to serve.

Adding more complexity or tendering where there are no opportunities, runs risks of damaging markets or discouraging innovative suppliers, including SMEs, which wish to supply public bodies by not procuring in the most efficient and effective and proportionate manner.

Q39 Do you agree or disagree that public bodies should also be permitted to award lower value regulated contracts in similar situations? Please explain why.

Agree X Disagree

The University agrees with the comments as described above that the current reasons as stated in the Directives are adequate and reasonable in setting out the justifications which are acceptable to carry out a direct award.

The process for lower value regulated procurements should be kept to an absolute minimum to maintain probity, encourage competition and enable innovation. Tendering should not be an end in itself.

Q40 Do you agree or disagree that all non-central authorities using the restricted procedure should be able to set the time limit for the receipt of tenders by agreement with candidates? Please explain why.

Agree X Disagree

The University agrees with the Consultation document that the minimum time to tender without agreement of all bidders is 10 days. For straightforward tenders, where the specifications and other criteria are very clear, this reduced timescale would be of benefit to bidders and contracting authorities alike.

We note and support the obligation to ensure adequate time for the complexity of the project. This is important to ensure bidders, particularly SMEs, are not disadvantaged in responding to complex tenders. Practical guidance or supporting material on this matter should be separately provided in the Procurement Journey.

Q41 When using the open procedure, should public bodies retain the flexibility to determine whether to evaluate bids before evaluating qualification and exclusion criteria? Please explain your answer.

Yes  No

The University agrees with this proposal and again suggests (separate) guidance and supporting material within the Procurement Journey to ensure that a contracting authority does this in a fair and transparent method. This new flexibility is a benefit, for example where there are a number of bids which do not meet the minimum technical or quality standard, or are so significantly out on price comparison, that the company status is somewhat irrelevant.

One option which should be available in considering timescales and stages for completing a contract award process, is to apply the model where a "qualification envelope" or "technical envelope" and 'commercial envelope' are provided and processes and tools provided must be tailored in advance of the legal changes, where they do not currently allow this optional approach.

Q42 Should public bodies be allowed to ask for supplementary or missing information and to ask a company to provide clarification of their bid?

Yes  No

The University agrees that, as is currently the case, supplementary and clarification of provided information should be allowed. However the ability to ask for entirely 'missing' information should be **excluded**. The proposal potentially compromises the statutory obligation of openness and risks contracting authorities not treating all bidders equally.

Q43 Do you agree or disagree that the rules in the Directives about modifying contracts should not apply to contracts under the Act? Please explain why.

Agree  Disagree

The University agrees that although the rules in Article 72 promote **transparency** and **fairness** they could, for low value contracts, become

unnecessarily bureaucratic burdens for contracting authorities. This reflects the disproportionately small changes permitted without re-tendering; with potentially undesired consequences on SMEs.

Q44 We believe we should continue to progress the work plan from the Construction Review report, rather than requiring the use of BIM or similar in works contracts and design contests. Do you agree or disagree? Please explain your answer.

Agree X Disagree

The University agrees and we believe that this is desirable so that it will allow time for BIM or equivalent to mature. In order to allow this requirement to be implemented efficiently and effectively, we would encourage Scottish Government to continue to engage with procurement and estates specialists in the HE sector, as well as wider public sector and industry specialists, who have considerable expertise to offer, with regards to the Construction Review.

Q45 Do you agree or disagree that we should establish an overall confidentiality and security framework which individual public bodies would use to inform their own approach to the security handling of electronic communication? Please explain your answer.

Agree Disagree X

The University does not entirely agree that a framework should be established, because of what the technical specialists recommend. It may appear to introduce consistency for both contracting authorities and suppliers, but could become an issue for the non-central government bodies if an onerous model suitable for government security is required to be adopted. However, if a common approach is applied, it must be a standard that is achievable by all that are required to comply and take account of the sector infrastructure and security policies and international reach, and the technical ability of SMEs and international collaborators such as apply in UK higher education, and our global collaborations in research/education.

Q46 Do you agree or disagree that we should maximise the time available to implement fully electronic procurement processes and defer the requirement for full electronic communication for the maximum permissible time?

Agree X Disagree

We agree that there is a need to defer the requirement as it maximises the opportunity for contracting authorities and for especially smaller suppliers to implement the changes effectively.

The Scottish Government should also be asked to consider in its funding to public authorities a means to ensure we are able to budget for any costs directly or indirectly involved from this legislative requirement.

However, delaying electronic communications is an approach that risks reducing the efficiency benefits which could be achieved, for example for SMEs who are dealing with many clients. Some bodies will choose not to implement until the deadline when legal obligations are forced to apply.

It would be helpful in practical policy guidance to know what the Scottish Government is doing in terms of helping SMEs and others prepare for EU wide or open standards so that international collaborations are not compromised if different standards emerge from systems or technology chosen in this timescale across the European Union.

Q47 Do you agree or disagree that all communications about concession contracts in a procurement exercise should be by electronic means?

Agree  Disagree

The University agrees that communications regarding **all** contracts should be made in a standard way, although for concessions contracts the document files size (and equally for major works) can impact on the systems available for communications electronically, which can again disadvantage SMEs in bid processes.

Contrary to comments within the Consultation document it is these large drawings and other material of a similar type that is often hand-delivered along with a sealed electronic bid for a major concession project.

Q48 Do you think that public bodies should retain the flexibility to decide when the use of electronic catalogues is appropriate? Please explain your answer.

Yes  No

The University agrees and already has several million pounds per annum of procurement call offs via contracts using eCatalogues, including punch out sites. We note that there are many types of markets where procurements in this manner can be very beneficial, but equally many specialist areas where it is not, such as personalised services or complex requirements.

Retaining flexibility will allow contracting authorities the opportunity to decide where catalogues are appropriate.

Q49 Do you agree or disagree that we should defer the requirement to provide the European Single Procurement Document in electronic form only until 18 April 2018? Please explain your answer.

Agree  Disagree

The University agrees that organisations and suppliers need time to prepare for these changes and the Scottish Government should consult and provide

(separate) practical advice, and guidance both to contracting authorities and most importantly to suppliers including SMEs which will allow all parties to effectively implement and manage these new documents and processes.

This may be part of a future development of the public contracts portal.

Q50 Do you agree or disagree that we should defer until 18 October 2018 the provision that says businesses should not have to submit supporting documents where the public body awarding the contract holds these? Please explain your answer.

Agree X Disagree

The University agrees that contracting authorities and businesses need time to prepare for these changes and consideration needs to be given as to how to effectively implement and manage them in a devolved procurement environment such as the University.

Q51 Do you agree or disagree that we should defer the obligation on public bodies to use e-Certis until October 2018?

Agree X Disagree

The University agrees that contracting authorities and businesses need time to prepare for these changes and consideration needs to be given as to how to effectively implement and manage them within the procurement journey and other tool, such the portal.

Contracting authorities and procurement teams will also need time to understand what e-Certis actually covers and how to use it most effectively and if there are any exceptions to its applicability.

Companies including SMEs will also need awareness training and support.

Q52 Do you agree or disagree that we adopt this option for utilities contracts? Please explain your answer.

Agree X Disagree

The University agrees that utilities contracts should follow a similar path. Utilities procurement expenditure in Scotland is primarily placed via national framework contracts, so little additional administration is required to comply with this from public buyers, it seems that this question relates to utilities as procurers. If our in-house utilities company were to be selling power and become 'Utilities directive regulated' we could comply but would have the same reservation as to publication of forwards plans, as seen in our Response to Q1.

Q53 Do you think that dynamic purchasing systems should be available as a tool for purchasers in respect of regulated procurements?

Yes  No

The University agrees that the changes to dynamic purchasing systems and better clarity on their establishment and management is beneficial. It is recommended that appropriate training and supplier development is needed to gain the benefits of DPS, as currently there is little or no take up of this. But in order to determine when this is appropriate, organisations need to think about the time and resource impact on the contracting authority, compared to other procurement routes available to it and ensure their approach is appropriate to the market concerned.

Q54 Do you think that the same rules which apply in Article 34 of the Public Procurement Directive should be extended to lower value regulated procurements under the Act?

Yes  No

The University agrees that this could apply to lower thresholds and be an effective tool for example for dividing into lots, eCatalogues or for regular reviews of opportunities to supply - which would benefit SMEs and public bodies.

It is recommended that better training and supplier development is needed for organisations to gain the benefits of E-auctions or DPS as currently there is little or no take up of this.

Q55 Do you agree or disagree that we should continue to allow public bodies in Scotland to use central purchasing bodies as described in this section?

Agree  Disagree

The University agrees that central purchasing bodies are beneficial for certain kinds of framework agreements and shared services, as described elsewhere in our response.

Q56 Do you agree or disagree that we should not require the use of central purchasing bodies for particular types of procurement, thereby allowing public bodies to exercise discretion as to when, and which, central purchasing body to use?

Agree  Disagree

The University agrees that organisations should have discretion on when and what central purchasing body contracts to use or not. It is easily demonstrable that the use of central purchasing bodies' (CPB) contracts are increasing year on year, with the latest usage statistics, when this is non-mandated, and our sector in particular has established efficiency targets from shared services.



CPB's contracts by their very nature tend to be framework agreements for goods or services which are more generic and may not therefore always be the best fit for individual public bodies in a particular consortium. The organisation is accountable for delivering value for money to meet its Strategic plan, engaging its stakeholders and suppliers.

Therefore this should be discretionary.

Q57 Do you agree or disagree that we should not restrict access by Scottish public bodies to European centralised purchasing activities? Please explain your answer.

Agree X Disagree

University agrees that organisations should also have the ability to use whatever collaborative contract best suits their specific requirements rather than being arbitrarily directed to one local consortia. It is likely to be a relatively small number of contracts that are of interest in this area – however, this flexibility may be particularly important in relation to international collaborations.

Q58 Do you agree or disagree that the monitoring and enforcement body for Scotland should be the Scottish Ministers, acting through the existing Single Point of Enquiry? Please explain your answer.

Agree Disagree X

Although we find that a Single Point of Enquiry approach could be beneficial in clarifying the advice and guidance to SMEs and others who are questioning specific procurement procedures, or asking for clarifications on decisions made, the role as described in the Consultation document is somewhat unclear and appears to be a mixture of advice and statutory powers which are as yet undefined. This would bring legal uncertainty, fails to meet the absolute need for separation of policy making, compliance and those agents with a statutory role in enforcement. It is thus entirely inappropriate and a particular concern given the independent and autonomous status of Universities.

- The requirement for access to contract documents above certain values (1 million Euro for supply and service contracts and 10 million Euro for works) does not fit neatly with the other legal thresholds or may not match the current document retention and data protection advice for a specific body.

Q59 Do you agree or disagree that we should simply copy the provisions on applications to the court from the existing 2012 Regulations? Please explain your answer.

Agree X Disagree

The University agrees that under the Public Contracts (Scotland) Regulations 2012, a contracting authority owes to economic operators a duty to comply with public procurement law.

Non-compliance with public procurement law is a breach of this duty and actionable by bringing proceeding in the Sheriff Court or the Court of Session within 30 days of the date on which such economic operator first knew or ought to have known that the grounds for bringing the proceedings had arisen.

Before proceedings are brought, the relevant person must notify the contracting authority of the failure to comply with a duty under public procurement law and of their intention to bring proceedings.

This system has been in place since 2009 and is a well-established process which allows robust scrutiny, the opportunity of public procurement activities being challenged by highly qualified legal professionals, and ensures a suitable level of evidence before any remedies or sanctions are applied.

Public procurement law in Scotland has benefitted from the expertise and precedence established by the Scottish Courts in dealing with such matters.

The Courts have adopted a pragmatic approach in such proceedings which have allowed for a well-balanced judicial review of public procurement activities.

The University strongly recommends this as the best approach.

Q60 Do you think there is a need for a review body which sits beneath the national courts?

Yes  No X

See response under Q59. The University strongly prefers the court-based approach as it would be of concern that adding another judicial body at lower level which would deal with public procurement legal remedies, could lead to confusion or multiple layers of appeal and long delays in decision making.

Currently, proceedings can be brought in the Scottish Courts and referred to the Court of Justice of the European Union.

This allows for a consistent approach in the interpretation of EU and Scots Public Procurement Rules.

Bodies beneath the national courts would lack this national and European reach and understanding which could lead to a local approach in their rulings, and could result in escalation to higher authorities.

This would be detrimental to both the private and public sector in Scotland, the United Kingdom and Europe.

Q61 If so, do you think the review body should be established as a tribunal within the Scottish tribunals system?

Yes  No X

See responses under Q 59 and 60 and 62. Additional layers of judiciary are not recommended for the reasons given above. However the tribunal option is preferable to either SPoE or Ombudsman, so long as it is quicker and less costly than Court action, for either a claimant or public body defender.

Q62 Or do you think it should take some other form, for example, a Scottish Procurement Ombudsman?

Yes  No X

The University does not agree with this suggestion at all as the flexibility of the concept and wide-ranging remit of ombudsmen in the UK have allowed different ombudsmen to interpret the rules they are monitoring and the laws themselves very differently.

This lack of clarity and coherence in interpretation of the public procurement rules (law) which ultimately is based on European law would be a concern for both the public and private sector if it were put in place, particularly as it then differs within the UK and applies at different thresholds for regulated and EU regulated contracts in Scotland, alone.

Q63 What is your view of the Scottish Government's position to broadly endorse the principles of open contracting and commitment to work with civil society and wider stakeholder groups to improve transparency in its procurement practices as part of its continuing programme of procurement reform?

The University agrees that freedom of information, working with civil society and wider stakeholder groups, including in our case, staff and students on procurement best practice is an important and continuing requirement of procurement reform.

However the full disclosure proposals within the 'open contracting' website may be contrary to, or go significantly beyond, the duties and obligations which are relevant to commercial confidentiality, innovation and research knowledge exchange, and could disadvantage small and medium enterprises, spin out companies and start-ups should all steps and stages of contract decisions be made entirely open to the public.

We do not therefore recommend that this Consultation incorporates any specific requirements of this principle beyond those already defined by law and suggest that this matter is taken forward as a policy and practice development consultation with the existing strategic forum groups and sector specialists, but is not incorporated into the transposition of the EU Directives or the Statutory Guidance [and Procurement Journey] for the Act at this time.