

Mobility and Access Committee for
Scotland (MACS)
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Mobility and Access Committee for Scotland (MACS) Response to the Consultation on the Scottish Government, Procurement Reform Bill

The Mobility and Access Committee for Scotland (MACS) is pleased to respond to the above consultation where it applies to policy aspects affecting the travel needs of disabled people. We would see the proposed Bill providing an opportunity to take account of the views and experiences of disabled people thereby enhancing the general aims and objectives for future Procurement Reform in Scotland.

The Mobility and Access Committee for Scotland (MACS) was established in 2002. MACS believes in a Scotland where anyone with a mobility problem due to some physical, mental or sensory impairment can go when and where everyone else can and have the information and opportunities to do so.

Our aims are:

1. To give Scottish Ministers advice on aspects of policy affecting the travel needs of disabled people.
2. To take account of the broad views and experiences of disabled people when giving advice on travel needs.
3. To encourage awareness amongst disabled people in Scotland of developments which affect their mobility, choices and opportunities of travel.
4. To work closely with the Scottish Government and ensure the Committee's work programme complements the work being undertaken by the Disabled Persons Transport Advisory Committee (DPTAC), the Scotland Office of the Equality and Human Rights Commission and other organisations and voluntary and statutory agencies.
5. To promote the travel needs of disabled people with transport planners, transport operators and infrastructure providers so that these are taken fully into account in the delivery of services.
6. To monitor and evaluate the effectiveness of the Committee's work against the above aims in improving travel opportunities for disabled people in Scotland.

50% of the Committee (including the Convener) must deem themselves to have a disability under the provisions of the Disability Discrimination Act 1995. The majority of the Members have such disabilities, and with the support of the MACS Secretariat we operate a fully functioning Committee.

In August 2010, the Transport Directorate of the Scottish Government merged functions with Transport Scotland and as a consequence, a new Transport Policy Directorate (TPD) was formed. MACS remains under the sponsorship of TPD, therefore our functions were also transferred. This has not meant any change to our working relationship with Scottish Government Ministers.

Key Comments

These are primarily addressing Question 1

1. We are pleased that the consultation document clearly identifies the equalities legislative context that the proposed Bill fits into. Namely, that the Scottish Parliament has also included procurement within the Equalities Act 2010 (Specific Duties)(Scotland) Regulations 2012.

‘These include a duty on contracting authorities to have due regard to whether award criteria and contract conditions should include considerations to enable the better performance of the public service equality duty.’(para 37)

This suggests that all public bodies and those funded out of public funds to supply goods, services and works for disabled travellers whether it be at point of travel by rail, bus, ferry etc, or at transport infrastructure terminal, street/pavement design, or other travel connection with major events would have to comply with these legislative commitments in mind. This would presumably apply to all franchise arrangements for rail, bus, ferry provision as well.

Although these intentions are admirable there is a significant issue in applying procurement to the relatively new specific equality duties as most public sector organisations have as yet very little experience or understanding of the new regulations which came into force in March 2012. It would be even more necessary in these circumstances therefore that an Equality Impact Assessment be conducted on the implications of the Bill for current and new providers of goods, services and works, and those public bodies who are procuring. It would be necessary to do this to ensure that all those involved are not potentially leaving themselves vulnerable to legal challenge and enforcement action.

2. MACS believes that disabled travellers contribute significantly to the social and economic life of Scotland and a focus on using procurement as a lever for economic growth, that will streamline the public sector’s dealings with business, and adopting more efficient procurement practices that encourage competition and secures best value, has some merit. Further through establishing a national legislative framework for sustainable public procurement that supports Scotland’s economic growth, through delivering social and environmental benefits including community benefits in a fair and friendly way must benefit disabled people who participate by going about their ordinary civic, societal and working lives.
3. The potential for the new approach to make it easier for business, SME’s and Third Sector organisations, to access public contract opportunities and sub-contracting

requirements is commendable. It's worth noting here that many Third Sector organisations, social enterprise bodies and those that are socially conscious have a much more inclusive approach to the needs of disabled people and their travel and support needs. There is great potential here for a smarter approach to public procurement and to encourage innovation. Disabled travellers in particular often have a pragmatic approach through co-production to problem solving and new ways of doing things but are frequently excluded from being involved where outcomes really matter.

4. Given the equalities impact considerations for procurement it would seem logical to conduct an Equalities Impact Assessment as this would almost certainly underline the potential benefits for disabled people who may wish to get into employment or be better involved as part of a new inclusive process. The potential spin offs for disabled peoples' travel needs would be enormous.
5. We would agree that process directly affects outcomes and that therefore procurement should drive towards more outcome based approaches. Such desirable outcomes should include those set out in Single Outcome Agreements, Equality Outcomes set nationally and locally through the Equality Act provisions, and also meet the objectives within the National Performance Framework. The role of disabled people in setting some of these outcomes would further strengthen the effectiveness of the procurement process

Part 1: Public Procurement Processes are Transparent, Streamlined, Proportionate Standardised and Business-Friendly

Question 2

There is a strong case for placing upon public sector bodies a general duty to conduct procurement in an effective, transparent and proportionate manner. In the absence of a general duty transport service providers, for example, are not obliged or encouraged to go beyond current Best Value considerations or to be pro-active with procurement if they are not higher value contracts. Where the general duty is applied there would be much better scope for disabled travellers and their supporters to call service providers to account. An annual strategic procurement plan would provide the necessary scrutinizing document for this to happen

Part 2: Making it easier for business, particularly newer businesses, SMEs and Third Sector organisations, to access public contract opportunities and sub-contracting requirements

Question 9

The public sector has indeed a vital role in leading by example and ensuring that size is not a barrier to accessing and competing effectively for public sector contracts. Within the Third Sector for example there are many disability organisations that are already providing a range of procured services from training in disability awareness and diversity, consultancies on how to apply equal opportunity considerations to service planning and delivery, making physical environments more accessible, to employment support bodies. Disabled people's views are invariably significant in the development of such service provision. Some small not for profit enterprises have played a significant role particularly within rural areas in maintaining key skills and local services. There are far more collaborative approaches to bidding by small organisations and this could create major new opportunities should the Bill's key provisions become enacted

It would be important that public bodies consider and act to facilitate smaller organisations from business and Third Sector on the impact of new requirements on their abilities to compete, and on how they could be better facilitated. This would be better conveyed through a general duty on public bodies to ensure a consistency of approach throughout Scotland.

Question 10

The logical approach to conducting the procurement process would be through engagement with the relevant trade and enterprise bodies, and Third Sector representative groups at local level perhaps Councils for the Voluntary Sector.

Question 11

The potential costs/benefits are promising but currently unquantifiable and will depend to a large extent on how well the public sector engages with the process. If it works we would expect to see a wider range of organisations and partnerships being able to participate and indeed within the current climate of financial constraints sustain and grow a range of new suppliers that could be vital for the economy of communities.

Question 12

Given the enormity of the potential sums of public money involved around £9 Billion it would require some form of statutory body to bed down and implement these goods, services and works provisions. It may be that Bill's short life and other working groups could be reformed to carry out such a function. An Audit Scotland function would be required in any case.

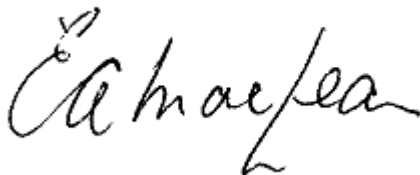
Question 13

A single specified online portal to advertise and award all contracts would be desirable. There should be a threshold set for goods and services at least. It would be desirable in addition that disability and Third Sector organisations can have access to a portal that would enable them to upload and update their services which would further support 'productive contract development' It is worth noting also that current European regulations support those awarding contracts to reserve provision specifically for disabled people's organisations. This proposed legislation could be utilized domestically to strengthen this provision in Scotland.

MACS reserves comment on the other questions within this consultation as we deem the areas already covered to be the priority issues for disabled travelers.

November 2012

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anne MacLean', with a stylized flourish at the end.

Anne MacLean
Convener
MACS