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The Public Services (Social Value) Act 2012

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This research paper outlines the anticipated impact of the UK *Public Services (Social Value) Act 2012*¹, which was enacted on 8 March 2012. It further outlines the potential effects on public service commissioning of enacting similar legislation in Northern Ireland.

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¹ [Public Services \(Social Value\) Act 2012](#)

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Executive Summary

The *Public Services (Social Value) Act 2012* was brought as a Private Members' Bill in the United Kingdom Parliament by Chris White MP (Conservative, Warwick and Leamington). After receiving Royal Assent on 8 March 2012 it will come into effect upon a commencement order made by the Secretary of State. The Act does not extend to Northern Ireland or Scotland.

The Act requires that public authorities:

- i. have due regard to the economic, social and environmental well-being impacts of procuring public services, and;
- ii. must consider whether to consult on this issue at the pre-procurement stage.

The Act applies to public services contracts and framework agreements across almost the entire public sector.

The aims of the Act are to facilitate the growth of social enterprises, charities, cooperatives and some SMEs (those which have a social agenda), and to have a positive impact in the areas where public services are commissioned. Some doubts remain as to how effectively these aims can be met. For example, there are concerns that social enterprises do not have the capacity to win contracts over larger businesses.

In Public Bill Committee significant amendments were put forward by the Government. These changes removed original clauses which were to create a national social enterprise strategy and to promote engagement with social enterprises in local authorities' sustainable community strategies. A definition of "social enterprise" (for the purposes of the Bill) was also removed. Labour and some social enterprise organisations opposed these amendments.

In general terms, the Act is based on UK Government policy relating to the "big society" idea of promoting social action and the growth of social enterprises. It also relates to the "localism" agenda, where more power is put into the hands of local communities rather than public authorities. Opposition criticism argues that the Act, as enacted, does not do enough to supplant the withdrawal of direct funding to the third sector.

Throughout the UK much work has been done to include social considerations in the procurement of public services, including updating the definition of "Value for Money" to include social, environmental and economic sustainability. However, the logic behind the Act was that there was no statutory requirement upon commissioners to consider these benefits during the pre-procurement stage.

The Northern Ireland Executive's Programme for Government 2011-15 contains commitments to including social clauses in public services contracts and promoting the work and growth of social enterprises.

Recently, in Northern Ireland the Central Procurement Directorate (CPD) and Procurement Board in Department of Finance and Personnel (DFP) has undertaken work to give greater consideration to social benefits and social enterprise when tendering for public service contracts. CPD's Procurement Policy Guidance Notes advise government bodies in NI how services should be procured. This guidance applies to nearly all Northern Ireland central government departments, agencies and arms-length bodies, though district councils are not obliged to comply with this guidance.

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1 Introduction

A Private Members' Bill was introduced to the House of Commons on 30 June 2010 by Chris White MP (Conservative, Warwick and Leamington) in the form of the *Public Services (Social Enterprise and Social Value) Bill*.²

The Government tabled significant amendments to the Bill. Two clauses in the original Bill – relating to the proposed national social enterprise strategy and local authority strategies – were removed at Public Bill Committee.³ The short title was changed to the *Public Services (Social Value) Bill* to reflect the amendments.

With no further amendments tabled the Bill progressed through the House of Lords without event. Royal Assent was granted on 8 March 2012.⁴ A commencement order is to be used by the Secretary of State for Communities and Local Government to bring the Act into effect.

This paper looks at what the Act aims to achieve, the provisions of the Act and how it was altered through the course of Parliament, and the recent interest in social enterprises and social value in tendering for public goods and services. Finally, it looks at the possibilities of introducing similar legislation in Northern Ireland by examining the current role of social value in public sector procurement here. A copy of the Act is included in the Annex to this paper.

2 From Bill to Act

This section examines the progress of the Bill through Westminster: from when it was introduced to its enactment as an Act of Parliament, including a discussion of the amendments which it received in the Commons.

2.1 Support for the Bill and Act

The Bill received wide support, from the coalition Government (Nick Hurd MP gave his support as Parliamentary Under-Secretary for Civil Society to the Cabinet) and from the Opposition. Labour representatives on the Public Bill Committee voted against dropping the clauses relating to social enterprise strategies, which the Government supported as a condition of the Bill passing (discussed in more detail below).

The Government support for the remaining elements of the Act can be seen as part of its commitment to the “big society” agenda, and to replacing provision of certain public services by civil society organisations. This is discussed in more detail below. Labour Members, however, raised concerns as to whether the social finance market was sufficient to replace the estimated £3.2bn-£5.1bn loss in direct funding from central and

² [The Public Services \(Social Enterprise and Social Value\) Bill as introduced \[HC 2010-11 006\]](#)

³ [House of Commons, Public Bill Committee on the Public Services \(Social Enterprise and Social Value\) Bill 2010-11](#)

⁴ [House of Commons, Official Report, 8 March 2012, Royal Assent, Column 1893](#)

local government to the third sector, despite the creation of Social Impact Bonds and the introduction of Big Society Capital.⁵ Some also assert that the aims of the Act are in line with the Government's "localism" agenda of devolving more power to local communities rather than concentrating it in the hands of central government.⁶

Social Enterprise UK (an umbrella group) was a key player in giving assistance to Mr White in developing the Bill.⁷ The Bill/Act has also received wide support from a number of civil society, voluntary and community organisations and their representatives, such as the Association of Chief Executives of Voluntary Organisations (ACEVO) and the National Association for Voluntary and Community Action (NACVA).⁸

2.2 Amendments: clauses removed from the Bill as introduced

As mentioned above, significant clauses contained in the original Bill were removed at Committee Stage through amendments tabled by the Government. These were the original clauses 1 and 2 of the Bill as introduced, and related to the putting in place of strategies relating to matters in the Bill. Other, less significant, amendments were also made.

2.2.1 Clause 1 (national social enterprise strategy)

The original clause 1 (*national social enterprise strategy*) placed a requirement on the Secretary of State to prepare and publish a strategy for government departments to engage in social enterprise in England, with a view to promoting participation by social enterprise representatives in its implementation. The clause also made provisions for consultation to take place and the review and renewal of the proposed strategy.

2.2.2 Clause 2 (local authority strategies)

The original clause 2 (*local authority strategies*) placed a similar requirement on local authorities. This inserts a new subsection into the *Local Government Act 2000* section 4 (*strategies for promoting well-being*), which already contains requirements for local authorities to "*prepare a strategy (referred to in this section as a community strategy) for promoting or improving the economic, social and environmental well-being of their area and contributing to the achievement of sustainable development in the United Kingdom.*"⁹ Under the Bill's original requirements local authorities would have to promote and engage with social enterprise in their area, and include their proposals for doing so in their sustainable community strategy.

⁵ [House of Commons, Official Report, 25 November 2011 \(Third Reading\), Column 575](#)

⁶ [House of Commons, Official Report, 19 November 2010 \(Second Reading\), Column 1216-17](#)

⁷ Social Enterprise UK, [Public Services \(Social Value\) Act](#)

⁸ Sources: [ACEVO](#), [NACVA](#)

⁹ [Local Government Act 2000: section 4\(1\)](#)

2.2.3 Arguments against dropping the clauses

In Public Bill Committee Chris White commented that the dropping of the above clauses was a condition of the Government's support for the Bill.¹⁰ Labour opposed the dropping of the clauses. Gareth Thomas MP (Labour) attempted to have the clauses reinserted at Third Reading, along with a new clause placing a requirement on the Secretary of State to produce an annual report on the renewed social enterprise strategy and report to Parliament.¹¹ He commented that removing the clauses removed the Government's accountability to progress a social enterprise strategy and was detrimental to the Big Society pledge.¹²

2.2.4 Arguments for dropping the clauses

Some of the arguments against the inclusion of clauses 1 and 2 were made in respect of the cost of producing a national strategy (valued at £41,000 by Mr White¹³); and the effect that the statutory prerequisite and involvement of local government in producing strategies would have in slowing down the process of involving social enterprises in public service by adding "bureaucratic box-ticking". In supplanting this requirement, the Government, as articulated by Mr Hurd, wished to see strategies arise from need and conviction on the ground. He said that he hoped this would inspire a culture change that could not be legislated for, rather than by imposing statutory duty from the centre.¹⁴

2.2.5 Definition of social enterprise

The above two dropped clauses also defined social enterprise for the purposes of the Bill, though the limitations and problems surrounding the definition were highlighted during Second Reading and at Committee (discussed in more detail in chapter 0 3.1

Social Enterprise). Hazel Blears MP commented that an opportunity to define social enterprise had been lost by dropping the clauses. Furthermore, she expressed concerns that the removal of the definition, despite its limitations, would cause private businesses to label themselves as social enterprises to take advantage of the new commissioning framework and take control of public assets, particularly when they do not use their profits for social purposes.¹⁵

2.2.6 Other amendments

The Bill was also amended to limit the scope of the public services contracts being awarded as the Government did not feel that there was a need to legislate for these at this time.¹⁶ Contracts consisting mainly of works and the supply of goods (as defined in the *Public Contract Regulations 2006*) were excluded from the requirements of the Bill, as are any contracts below the EU procurement threshold of €137,000 (£108,278).

¹⁰ [House of Commons, Official Report, 19 October 2011 \(Public Bill Committee\), Column 4](#)

¹¹ [House of Commons, Consideration of Public Services \(Social Value\) Bill as at 25 November 2011](#)

¹² The Guardian (Patrick Butler), [Big society: ministers take an axe to the social enterprise bill](#), 18 October 2011

¹³ As contained in the [Explanatory Notes](#)

¹⁴ [Public Bill Committee, Columns 13-14](#)

¹⁵ [Public Bill Committee, Columns 5-6](#)

¹⁶ [Public Bill Committee Amendments as at 19 October 2011, amendment 15](#)

Again, Labour Members opposed this amendment in Public Bill Committee, commenting that it vastly limited the scope and impact of the Bill and was a recipe for confusion amongst potential suppliers.

The title of the Bill was amended, dropping the “*Social Enterprise*” term in favour of leaving “*Social Value*” as the remaining title, which Chris White remarked upon as being the most important aspect of the Bill.¹⁷

2.3 What the Act, as enacted, aims to do

The long title of the Act is:

*An Act to require public authorities to have regard to economic, social and environmental well-being in connection with public services contracts; and for connected purposes.*¹⁸

At the Second Reading in the House of Commons, Mr White said, in relation to the now remaining major clause of the Act:

*The Bill asks all organisations that are currently publicly contracting authorities under the Public Contract Regulations 2006 to consider how they might promote wider economic, social and environmental well-being in a contract and how they commission such contracts accordingly. Although considering that wider social value during the contracting process is only a small technical change, it would bring significant benefits for our public services in terms of the quality of contracting. It would also benefit communities, social enterprises, voluntary groups and small businesses, which generate considerable social value.*¹⁹

The Act aims to strengthen the social business sector and to make the concept of “social value” more relevant and important in the placement and provision of public services. By refocusing the terms by which public services contracts are awarded the Bill should help enable social enterprises to win contracts and therefore level the playing field in competition for commissioning. This could have the added beneficial side effect of creating jobs, stimulating the local economy and providing best value for money by making social value a weightier consideration in the procurement process and including social clauses in all public contracts.

A detailed explanation of each section of the Act is given below. The full text of the Act is included in the Annex.

¹⁷ [Public Bill Committee, Column 4](#)

¹⁸ [Public Services \(Social Value\) Act 2012: Introductory Text](#)

¹⁹ [House of Commons, Official Report, 19 November 2010 \(Second Reading\), Column 1177-8](#)

2.3.1 Section 1 (contracts of relevant authorities)

Section 1 of the Act (*contracts of relevant authorities*) requires public authorities to consider how procuring services will “*improve the economic, social and environmental well-being*” of the area in which they operate. The authority must also consider whether to undertake consultation in relation to these new duties. These actions must occur before the process of procurement has started (such a time is defined in subsection (2)).

The requirements of section 1 apply if the public services contract to be entered into is not based on a framework agreement, and also applies to the conclusion of a framework agreement that may constitute public services contracts.²⁰

If there is an urgent need to arrange procurement meaning that the requirements of section 1 are impractical it is possible for the authority to disregard them; however, this will not apply if the urgency is due to undue delay on the authority’s part.

“Publicly contracting authorities” as defined by the *Public Contract Regulations 2006* include all government departments and their agencies, NHS trusts, public entities such as the Houses of Parliament and Royal Mint, and local authorities.²¹ In effect, this is almost the whole of the public sector.

2.3.2 Section 2 (local authority contracts)

Section 2 (*local authority contracts*) amends section 17 of the *Local Government Act 1988*²² (which limits the consideration of matters relating to contracts to solely economic rationale) so that it does not give prejudice to the *1988 Act* with respect to the *2012 Act*.

2.3.3 Section 3 (financial provisions)

Section 3 (*financial provisions*) accords that expenditure incurred as a consequence of the requirements will be supplied by Parliament.

2.3.4 Section 4 (short title, commencement and extent)

Section 4 provides the *short title, commencement and extent* (see below) of the Act.

²⁰ Under the [Public Contract Regulations 2006](#), which have effect in Northern Ireland, a framework agreement is an agreement between contracting authorities and economic operators (contactors, suppliers and service providers) which establishes the terms under which the economic operator will enter into contracts over the period which the framework agreement applies.

²¹ [Public Contract Regulations 2006: regulation 3 \(Contracting Authorities\)](#) and [schedule 1 \(Government Procurement Agreement Contracting Authorities\)](#).

²² [Local Government Act 1988: section 17 \(Local and other public authority contracts: exclusion of non-commercial considerations\)](#).

2.4 Costs on public authorities

As mentioned in the *Explanatory Notes* to the Bill it was not possible to calculate the financial effects of the requirements upon a public authority to consider social impacts in procurement; exactly how this was to be done was left to the authority itself to decide. However, it was noted that the costs to the authorities are likely to be small and that relevant guidance and tools to account for wider value are already available. Also, the additional public sector manpower needed would not be significant.²³

2.5 Impact assessment

Impact assessments were carried out on the implications of the Bill before it was introduced, assessing the possible impact on race, gender and disability equality. No negative impact on any of the equalities group has been identified by the impact assessment or by any other study or commenter.²⁴

2.6 Extent of the Act and related regulations beyond England and Wales

The Act covers England and Wales, though it is more limited in the authorities to which it applies in Wales. It does not extend to Northern Ireland or Scotland. It should also be noted that the Act, in section 1(11) excludes “*relevant authorities whose functions are wholly or mainly Welsh devolved functions*”, leaving most of the impact of the Act on public contracting authorities in England only.

The *Public Contract Regulations 2006*, to which the Act applies, do apply in Northern Ireland. Northern Ireland and Scottish devolved public bodies are included under the Regulations; however, in the case of the Act these are excluded by way of omission under section 4(4).

The *Local Government Act 1988* (which is amended by section 2) and the *Local Government Act 2000* (which was to be amended by the original clause 2 before its removal) do not extend to Northern Ireland. Local authorities in NI are therefore not currently required by these Acts to prepare strategies promoting economic, social and environmental well-being and sustainability in their areas. However, NI local authorities may have similar strategies in place, as will be explored in 4 The Northern Ireland Context) of this paper.

2.7 Other relevant legislation

During the Parliamentary debates passing references were made to other existing legislation, relevant to the *Public Services (Social Value) Act*, as they had similar aims and provisions:

²³ As contained in the [*Explanatory Notes*](#), para 20

²⁴ *Ibid*, para 22

- The recently passed *Localism Act 2011* created the right for local communities to challenge existing service provision by submitting an expression of interest, while being given more information and greater transparency about what is being carried out by local authorities.²⁵ This part of the Act does not apply to Northern Ireland.
- The *Sustainable Communities Act 2007* seeks the promotion of sustainable communities and placed a duty on local authorities to produce a strategy relating to the economic, social and environmental well-being (sustainability) of their community, and on the Secretary of State to allow local authorities to make proposals on improving sustainability.²⁶ Again, this Act does not apply to Northern Ireland.

There is therefore a shortfall of legislative provision for sustainable community strategies in Northern Ireland as compared to England and Wales.

3 Social Enterprise and Social Value

There are no precise and agreed definitions of what either social value or social enterprise (SE) is. They may each be known under a variety of different terms (e.g. well-being, value for money; third sector, civil organisations etc.). There are some established definitions in use, though their extent and impacts may vary considerably. There are many precedents for accounting for social value and the role that social enterprises may play in commissioning public services which have existed since before the introduction of the Act. This section attempts to provide some clarity around these issues and more.

3.1 Social Enterprise

Despite the clauses largely relating to social enterprise having been removed from the Bill by Government amendment, social enterprises (SEs) may become the main beneficiaries of a focus on providing social value through public services contracts. The issues surrounding social enterprise are discussed in this subsection.

3.1.1 The definition originally contained in the Bill

Originally (before the relevant clauses were removed) the Bill contained the following definition of social enterprise in clause 1(5) and clause 2(3):

For the purposes of this section a person or body is engaged in social enterprise if—

(a) the person or body is carrying on a business;

²⁵ [Localism Act 2011, Part 5, Chapter 2 \(Community Right to Challenge\)](#)

²⁶ [Sustainable Communities Act 2007](#)

(b) the business's activities are being carried on primarily for a purpose that promotes or improves the social or environmental well-being of the United Kingdom, whether the purpose is pursued in relation to all or any part of the United Kingdom or all or any of the persons resident or present in it;

(c) the greater part of any profits for distribution is applied for such a purpose.

In the Second Reading of the Bill, Hazel Blears MP, while a supporter of the Bill, commented that “*the Bill's definition of social enterprise is insufficient.*”²⁷ This was reiterated by Ben Gummer MP, who added: “*that definition could equally apply to private enterprises that pay dividends to shareholders.*”²⁸

There was therefore some confusion as to the Bill’s definition of social enterprise, and to how limited the scope for the definition should be; one Member suggested replacing the word “business” with “charity”, though this may exclude a large number of businesses which provide a social or environmental purpose.

3.1.2 What is a social enterprise?

The Social Enterprise Coalition provides the following definition of social enterprise:

*A business that trades to tackle social problems, improve communities, people's life chances, or the environment. This might sound like charity work, but social enterprises are businesses. They make and do things that earn money and make profits like any business. It is how they work and what they do with their profits that is different: working to make a bigger difference, reinvesting the profits they make to do more good.*²⁹

This further complicates the issue, as it is clear that not all SEs are charities. Well known social enterprises include organisations such as The Big Issue, the Cooperative Group, Traidcraft and the Eden Project.³⁰

Organisations collectively known as the “third sector” may be SEs, but also included under this definition would be voluntary and community organisations, charities, mutuals and cooperatives that are independent of government. The term “third sector” has come about as the organisations could be described as being neither public nor private sector.

3.1.3 How many social enterprises are there and how are they measured?

Social enterprises are highly differentiated: there is no legal status or single operating model, and they engage in a number of different activities. One piece of research found

²⁷ [Second Reading, Column 1182](#)

²⁸ [Second Reading, Column 1194](#)

²⁹ Social Enterprise Coalition UK, [Social Enterprise Explained](#), page 4

³⁰ More examples of SEs can be found here: <http://www.socialenterprise.org.uk/about/about-social-enterprise/faqs>

that changing the definition of what comprised a social enterprise could change the number of SEs in the UK from between 15,000 to 234,000.³¹

The annual Department for Business Innovation and Skills (BIS) *UK Small Business Survey 2010* found that 26% of Small to Medium-sized Enterprises (SMEs) categorise themselves as social enterprises. Under their stricter definition of a business that is for primarily social or environmental purposes and invests more than 50% in the business or community, this falls to only 7% of SMEs (comprising 68,000 organisations), which has grown from 4% of SMEs in 2006-7.³²

The BIS *Social Enterprise Barometer February 2010* found that many SEs had formerly defined themselves as traditional for-profit organisations or charities, suggesting movement in the form that SEs take, perhaps to take advantage of new opportunities.³³

A Durham University longitudinal study *Business Support for Social Enterprises* for BIS explores a number of different models for social enterprise and the business support needs of SEs from a demand side. It also provides an evidence base for targeted support to encourage SEs.³⁴

Community Interest Companies (CICs) are a new legal form of company, regarded as social enterprises, introduced by the Labour Government under the *Companies (Audit, Investigations and Community Enterprises) Act 2004* and the *Community Interest Company Regulations 2005*.³⁵ CICs are a type of limited company set up for the benefit of the community rather than its owners and can be limited by shares or guarantees, such as “asset locks”, which prevent profits from being distributed to non-community interests. They are regulated by the CIC Regulator who is appointed by the Secretary of State for Business, Innovation and Skills.³⁶

3.1.4 Social enterprise in Northern Ireland

During the 2008-2010 Inquiry into Public Procurement the Committee for Finance and Personnel heard that the social enterprise network was not as well developed in Northern Ireland, but that there were around 600 social enterprises employing around 10,000 people. Social Economy Network highlighted that there was a shift away from funding based on government grant-aid to the provision of services through a competitive tendering process.³⁷

³¹ Third Sector Research Centre (2010), [*Approaches to measuring the scale of the social enterprise sector in the UK*](#)

³² Department for Business, Innovation and Skills (2011), [*Small Business Survey 2010*](#), pages 15-16

³³ BIS (2010), [*Social Enterprise Barometer*](#), page 10

³⁴ BIS (2011), [*Business Support for Social Enterprises*](#)

³⁵ [*Companies \(Audit, Investigations and Community Enterprise\) Act 2004*](#) and [*Community Interest Company Regulations 2005*](#)

³⁶ CIC Regulator: <http://www.bis.gov.uk/cicregulator/>, accessed Feb 2012

³⁷ Committee for Finance and Personnel (2010), [*Report on the Inquiry into Public Procurement in Northern Ireland*](#) (NIA 19/08/09r), Paragraphs 82-87

In 2007 secondary legislation similar to the *Community Interest Company Regulations 2005* was enacted in Northern Ireland.³⁸ There are around 5000 CICs in the UK, 60 of which are in Northern Ireland.³⁹

The *Report on the Inquiry into Public Procurement* shows that only a very small number of social enterprises (from outside but especially inside NI) were awarded contracts, both in terms of the number of successful SEs and the value of the contracts won; most were awarded to SMEs.⁴⁰ The Report also made various recommendations relating to the needs, capacity and pressures on SEs, such as the reduction of barriers for access, encouraging collaboration, prompt payment and reducing burdensome applications.⁴¹

3.2 Social Value

Similarly, confusion reigns around what exactly is meant by “social value”, and its connection to other ideas such as “value-for-money” (VfM) and social return on investment (SROI). This section explores these differences and their implications.

3.2.1 What is social value and value-for-money?

The Inquiry into Public Procurement in Northern Ireland, took evidence that highlighted concerns around a lack of definition of social value. Many witnesses identified it as an issue of most concern, and indicated that developing an understanding of social value would be most beneficial.⁴²

The think-tank Demos defines social value as the:

“wider non-financial impacts of programmes, organisations and interventions, including the wellbeing of individuals and communities, social capital and the environment. These are typically described as ‘soft’ outcomes, mainly because they are difficult to quantify and measure.”⁴³

HM Treasury defines “value-for-money” as:

“the optimum combination of whole-of-life costs and quality (or fitness for purpose) of the good or service to meet the user’s requirement. VfM is not the choice of goods and services based on the lowest cost bid...”⁴⁴

However, the New Economics Foundation note that central and local government often do not take account of these factors; and instead measure VfM of commissioned services in strictly monetary terms, i.e. the relationship between financial cost and unit

³⁸ [Companies \(Audit, Investigations and Community Enterprise\) \(Northern Ireland\) Order 2005](#) (commencement made in 2007)

³⁹ CIC Regulator, [Annual Report 2010-11](#), page 33

⁴⁰ Committee for Finance and Personnel (2010), Fig 3, p 25. From a total of 22,277 contracts, only one was let to a NI-based SE

⁴¹ *Ibid*, Key Conclusions and Recommendations 9-10, 15, 17-18, 20-21, 25, 31-33

⁴² *Ibid*, page 47

⁴³ Demos (2010), [Measuring Social Value](#), page 22

⁴⁴ HM Treasury, [Value for Money Assessment Guidance](#), page 7

output. This represents a missed opportunity in valuing the full public benefit and therefore delivering cost savings while providing greater VfM, where the cheapest provider of services may not necessarily be the best option.⁴⁵ A report by the PricewaterhouseCoopers's Public Sector Research Centre (*Valuing Social Impacts: should government pay for results?*) found similar barriers to the third sector being commissioned to deliver public services caused by a failure to fully envisage VfM.⁴⁶

3.2.2 Social value's use in economic measurement

Social return on investment is a measurement framework used to monetize the total social value of investment expenditure. A London Business School definition says that SROI:

*"shows the value of the social impact in relation to the investment required to achieve it [...] the SROI ratio is calculated by dividing the value of your social impact by the investment required to achieve that impact. [...] it gives you an indication of the value for society that's created for every £1 invested."*⁴⁷

The New Economics Foundation defines SROI as:

*"an analytic tool for measuring and accounting for a much broader concept of value. It incorporates social, environmental and economic costs and benefits into decision making, providing a fuller picture of how value is created or destroyed."*⁴⁸

Trends in recent years have been moving towards new economic values. Economist Joseph Stiglitz's *Commission on the Measurement of Economic Performance and Social Progress (CMEPSP) Report* (which was endorsed by Nicholas Sarkozy) seeks to bring new measures of GDP in its report, incorporating sustainability and community well-being in wealth and growth measurements. The report also recommends a shift from input-based to outcome-based measurements of performance, and highlights the difficulties of capturing quality change.⁴⁹

3.2.3 Social value and value-for-money in Northern Ireland

DFP's Procurement Board produced a revised definition of VfM (in response to the Committee for Finance and Personnel's *Report on the Inquiry into Public Procurement*, discussed in detail below), which was endorsed by the Executive in March 2011:

⁴⁵ nef (for the Cabinet Office of the Third Sector), [A Better Return](#), page 7-8

⁴⁶ PricewaterhouseCoopers, [Valuing Social Impacts: should government pay for results.](#), page 1

⁴⁷ London Business School, [Measuring Social Impact](#), pages 6.1-6.3

⁴⁸ New Economics Foundation (nef): <http://www.neweconomics.org/projects/social-return-investment> (accessed Apr 2012)

⁴⁹ Stiglitz, J., Sen, A., Fitoussi, J.P. (2009),[Report by the Commission on the Measurement of Economic Performance and Social Progress](#)

[Best Value for Money is] the most advantageous combination of cost, quality and sustainability to meet customer requirements.

[...] In this context, cost means consideration of the whole life cost; quality means meeting a specification which is fit for purpose and sufficient to meet the customer's requirements; and sustainability means economic, social and environmental benefits, considered in the business case, in support of the Programme for Government.⁵⁰

This has much in similarity with the HM Treasury description, and while it is defined in fairly broad terms, it is nevertheless inclusive of social value and a long-term view of all of the benefits that will be brought by the best VfM choice.

3.2.4 Current role of social value in public procurement and commissioning

Lord Newby, the Bill's adopter in the House of Lords, commented that:

There is nothing in theory to prevent a public body assessing the social value of competing tenders as part of the procurement process. Some local authorities already do this – for example, Camden, Durham and Wakefield – but they are a small minority.⁵¹

Indeed, the *Local Government Act 2000* has a clause binding all local authorities to prepare strategies to improve economic, social and environmental well-being. However, that does not include a requirement to include such factors while procuring services.

The National Audit Office has published a guide to successful commissioning, which includes a section on the third sector. Again, this is for guidance purposes only, and does not place any requirements on public bodies to consult or refer to the third sector.⁵²

Social Impact Bonds were announced in March 2010 and are issued to non-government investors in respect of agreed social outcomes which will result in public sector savings. This provides a new way of funding third sector organisations and for government to have services delivered to agreed outcomes, thereby ensuring that money is not wasted. The scheme is currently being piloted in the areas of criminal justice (a six-year pilot scheme in Peterborough, whereby if reoffending is not reduced by 7.5% investors will not receive payment), family support services, healthcare (reducing health and social care costs amongst older people) and drug rehabilitation.⁵³

HM Treasury's guide to appraisal and evaluation in central government, known as the *Green Book*, was updated in July 2011 to reflect a discussion piece on the subject of

⁵⁰ Department of Finance and Personnel: <http://www.dfpni.gov.uk/index/procurement-2/cpd/cpd-about.htm> (accessed Apr 2012)

⁵¹ House of Lords, *Official Report*, 27 January 2012 (Third Reading), Column 1294

⁵² National Audit Office: [Successful Commissioning Guide](#) (accessed Mar 2012):

⁵³ Social Finance: <http://www.socialfinance.org.uk/work/sibs>, (accessed Mar 2012)

the valuation of non-market impacts (such as health, environmental and social matters). The relevant section outlines techniques to measure non-market impacts, e.g. cost-benefit analysis, “willingness to pay vs. willingness to accept” approaches. The guide also states that:

*The full value of goods such as health, educational success, family and community stability, and environmental assets cannot simply be inferred from market prices, but we should not neglect such important social impacts in policy making.*⁵⁴

3.2.5 Difficulties in commissioning for social value and its relation to the Act

The preceding chapter discusses the importance and challenges of measuring social value; however, it is also a task to present such benefits in a meaningful and useful way.

When demonstrating that they provide good social value, organisations will have to prove the merit of their work to the commissioners and procurement departments who will ultimately decide on the tenders of contracts incorporating social value. This can be particularly difficult for small social enterprises and charities that are unable to dedicate time and resources to such an undertaking. While a charity may be able to talk in broad terms about the services that they provide and the good work that their volunteers do, they may find it much harder to quantify these values than a larger and better resourced organisation may be able to.

A survey by Demos into the measuring of outputs and outcomes of 30 third sector organisations found that they had a number of methods of measuring social value, either through the Social Return on Investment described above, by social audits and accounting and those who show outputs only through case studies and quotes from stakeholders. Some did not provide any information on their own impact or even produce annual reports and reviews.⁵⁵ The survey found that:

*Overall, no single group of third sector organisations proved particularly adept in measuring and communicating social value. Some very large organisations make no attempt at this, while some very small charities made a valiant attempt in spite of their resource constraints.*⁵⁶

A recent article on the passing of the *Public Services (Social Value) Act* noted:

This could be the Bill’s undoing. Because if commissioners want to give evidence about social value as much weight and validity as other factors they take into account when awarding contracts – i.e. price and quality – then only larger charities who invest in Social Return on Investment type

⁵⁴ HM Treasury (2011), [The Green Book](#), pages 57-58

⁵⁵ Demos (2010), [Measuring Social Value](#), Appendix A

⁵⁶ *Ibid*, page 37

analysis will be able to provide it. And, somewhat ironically, it will also be private companies who can meet the challenge. Many private companies have developed sophisticated analytics to measure their ethical and corporate social responsibility activities [...] So we may see a situation where contracts are not awarded to organisations which have the greatest social value, but the ones who are best at quantifying and articulating this to commissioners.⁵⁷

Third sector organisations generally do recognise these limitations; however, in attempting to rectify this and provide good quantitative evidence of their work, they will face constraints of time, experience and resources; and the benefits of competing may be outweighed by the potentially unrewarded costs. A hurdle therefore exists, in the context of the Bill, for the organisations best at achieving social value to demonstrate their worth and receive public services contracts.

Lastly, it is often difficult for government departments to actively commission for social value, whatever the impetus to do so is. Problems with “joined-up government” persist at the level of procurement, particularly as the departments responsible for securing service contracts are not those responsible for increasing employment or ensuring that sustainable choices are made. Also, with recognition of recent economic circumstances, it is difficult for those who procure to always choose the option with the largest social value, particularly when it is not the cheapest option available. One service provider may well offer locally-sourced services and employ young apprentices to do so, but this may come at a greater price than another offer from a basic service provider with no social agenda. Pressure is put on commissioners to choose the cheapest option and keep within budgets, and social value may be overlooked for the sake of short-run practicalities.⁵⁸

3.3 “The big society”

The “big society” was the flagship policy idea of the Conservative election campaign 2010 and part of the Coalition Agreement in delivering social action in England (as the related policy areas are devolved the Agreement does not apply to Northern Ireland).⁵⁹ A large part of big society aims to empower communities, open up public services and encourage social action, all of which link in to the Act and its proposal to involve social organisations in the commissioning of public services.

The Government’s vision for growing the social investment market sets out strategies for opening up and decentralizing public services by providing finance to social entrepreneurs and organisations that will provide services to the public.⁶⁰

⁵⁷ Public Finance (Claudia Wood), [The value of everything](#), 5 March 2012

⁵⁸ New Economics Foundation (Susan Steed), [The Public Services \(Social Value\) Bill explained – with lettuces](#), 16 March 2012

⁵⁹ The Coalition, [Our Programme for Government](#), (accessed Mar 2012)

⁶⁰ Cabinet Office (2011), [Growing the Social Investment Market: a vision and strategy](#),

Big Society Capital (also known as the “Big Society Bank”) recently came into operation in early April. It will provide funding from dormant bank accounts made available in England to organisations that invest in the social sector.⁶¹

This links in to the current economic situation where the Government’s policy is to reduce government spending and the public deficit. The Government maintains that imparting the responsibility for public service delivery to non-governmental organisations can produce savings, which in turn can reduce the deficit and release more money to be reinvested in these services. This idea receives much support from across the political spectrum and is a major motivation in the proliferation of Social Impact Bonds.

4 The Northern Ireland Context

The 1998 *Concordat between the Voluntary and Community Sector and the Northern Ireland Government* states:

*In this partnership Government recognises the nature, diversity, and value of the contribution which the Voluntary and Community Sector makes to the social, economic, environmental, political and cultural life of Northern Ireland.*⁶²

The agreement also sets out a framework for working in partnership and underlines the Executive’s commitment to the voluntary and community sector. Other precedents recognise the contribution of the social sector in Northern Ireland, which has developed in the years since the Concordat was established.

This section examines the current role of social value in public sector commissioning in Northern Ireland, and highlights any areas that may need attention in view of the *Public Services (Social Value) Act*.

4.1 The public procurement structure

The Department of Finance and Personnel’s Central Procurement Directorate (CPD) has a role to develop and establish the policy framework and best practice public procurement for the wider public sector in NI, helping to maximise the benefits of effective procurement.

The Procurement Board, chaired by the Finance Minister and comprised of the permanent secretaries of NI departments, has responsibility for the development,

⁶¹ Big Society Capital: <http://www.bigsocietycapital.com/>, (accessed Mar 2012)

⁶² NI Executive (1998), [*Concordat between the Voluntary and Community Sector and the Northern Ireland Government*](#)

dissemination and co-ordination of public procurement policy and practice for the NI public sector.⁶³

The Directorate provides guidance notes on public procurement (which are endorsed by the Board), setting out the policy and direction that procurement of goods and services are to take in central government in NI. Some such guidance notes give recommendations on helping SMEs and Social Enterprises win public services contracts,⁶⁴ a range of possibilities for integration of social and environmental considerations into public procurement.⁶⁵

4.2 Committee for Finance and Personnel Inquiry into Public Procurement

The Committee's *Report on the Inquiry into Public Procurement in Northern Ireland* sought to:

- “a) examine the experience of [Small to Medium Enterprises] SMEs and [Social Economy Enterprises] SEEs in tendering for and delivering public contracts;*
- b) consider the nature, extent and application of social clauses within public contracts;*
- c) identify issues to be addressed and which are within the remit of DFP;*
- d) assess progress by DFP in achieving associated objectives and targets, including those contained in the Programme for Government (PfG) and related Public Service Agreements (PSAs); and,*
- e) make recommendations to DFP for improvements to public procurement policies and processes, aimed at increasing access to opportunities for SMEs and SEEs and maximising the economic and social benefits for the local community, whilst taking account of the principles governing public procurement.”*

There was therefore an emphasis on the end-user experience of SMEs and the social enterprise sector, with an expectation that the recommendations would help to realise additional economic and social benefits to local community from public procurement.⁶⁶

A chapter on “maximising social benefit” explored the nature, extent and application of social clauses with public sector procurement contracts, and aimed to identify

⁶³ For a full list of public bodies to which procurement policy applies see http://www.dfpni.gov.uk/list-of-bodies-proc-pol-applies-june_2011.pdf

⁶⁴ CPD, [Procurement Guidance Note 02/11](#) and [Procurement Guidance Note 01/11](#)

⁶⁵ CPD, [Procurement Guidance Note 03/04](#) and [Procurement Guidance Note 04/04](#)

⁶⁶ CFP (2010), [Report on the Inquiry into Public Procurement in Northern Ireland](#), Paragraphs 10-12

improvements to procurement policies and practices to maximise economic and social benefits for the local community.⁶⁷

The Committee took evidence from, amongst others, DFP's Central Procurement Directorate, Social Economy Network, Bryson Charitable Group, Ulster Community Investment Trust, NICVA, Citizens Advice, NILGA, and the Social Research Centre. Social economy representatives and experts were clearly a feature in submissions and evidence seen by the Committee.⁶⁸

The recommendations arising from the section of the report sought:

- i. a need for greater clarity on the measurement and definition of social value;
- ii. a clear Executive policy directive on procuring social benefit as per their PfG/PSA commitments, to be reflected in departmental business objectives and by the Procurement Board;
- iii. the use of clauses setting quotas for employing apprentices and the long-term unemployed in all suitable public contracts (especially construction contracts);
- iv. that Value-for-Money assessments strike a balance between short-term monetary considerations and longer-term economic, social and environment costs and benefits;
- v. that DFP put in place a suitable model for systematically measuring, evaluating and incorporating wider social value considerations within economic appraisals and business cases, which will inform public procurement processes.
- vi. that socially responsible procurement be included as a scored criterion in Centre of Procurement Expertise accreditations.⁶⁹

The Procurement Board published an *Action Plan* in response to the recommendations made in the *Report*.⁷⁰ Subsequent updates on this plan were published in March and June 2011 showing substantial progress on the action points, particularly in relation to ensuring that there was a clear policy direction regarding social benefit. Updated *Procurement Guidance Notes* (as mentioned above) were published aiming to help social enterprises and SMEs gain access to public sector contracts.⁷¹

The Procurement Board also updated their definition of "Value-for-Money", discussed in "3.2 Social Value", above.

⁶⁷ *Ibid*, Paragraph 213

⁶⁸ *Ibid*, Appendices 2, 3, 5 and 7 for a full list of written submissions, minutes of evidence and the stakeholder conference.

⁶⁹ [Report on the Inquiry into Public Procurement in Northern Ireland](#) Paragraphs 244-253

⁷⁰ DFP, [Procurement Board Action Plan](#), particularly points 32-39

⁷¹ DFP, [Action Plan Updates: March 2011](#) and [June 2011](#)

4.3 Programme for Government

Priority 1 (*Growing a Dynamic and Innovative Economy*) of the PfG 2008-11 stated:

Part of developing our economy also includes developing the social economy. We recognise the important contribution that such local economic activity promotes in both social objectives and in sustainable community development. Indeed the important contribution made by the Community and Voluntary sector should not be underestimated. We will need to be creative and imaginative about resourcing and retaining the skills and expertise that have been acquired within this sector, and which have helped to promote and sustain citizenship and a peaceful and stable society.⁷²

Some of the key commitments of the PfG 2011-15 (which was released since the Committee made its report) are to:

- *include Social Clauses in all public procurement contracts for supplies, services and construction⁷³*
- *invest in social enterprise growth to increase sustainability in the broad community sector⁷⁴*

In fact, priorities concerning increasing the benefits of high quality and efficient public services, creating opportunities and improving well-being can be seen in the light of maximising social benefit through procurement, demonstrating the wide-ranging potential that the consideration of social clauses in public service contracts can have. Whether this is done by legislation or through strategy is an important matter to consider.

4.4 Legislation governing procurement in Northern Ireland

Procurement law in Northern Ireland is driven by European directives,⁷⁵ which are implemented through regulations (UK Statutory Instruments), including the *Public Contracts Regulations 2006*, discussed above in relation to the proposed Bill.⁷⁶

This could be seen as imposing some limitations on attempts to form strategies or legislation which take full account of social enterprise and social value. However, the EU Commission has published guides on socially responsible public procurement and the integration of social considerations into public procurement.⁷⁷ One of these guides states:

⁷² Northern Ireland Executive, [Programme for Government 2008-11](#), Pages 8-9

⁷³ Northern Ireland Executive, [Programme for Government 2011-15](#), Page 54

⁷⁴ Northern Ireland Executive, [Programme for Government 2011-15](#), Page 33

⁷⁵ European Commission http://ec.europa.eu/internal_market/publicprocurement/index_en.htm

⁷⁶ [Public Contract Regulations 2006](#)

⁷⁷ European Commission [guide to socially responsible public procurement](#)

In general, any contracting authority is free, when defining the goods or services it intends to buy, to choose to buy goods, services or works which correspond to its concerns as regards social policy including through the use of variants, provided that such choice does not result in restricted access to the contract in question to the detriment of tenderers from other Member States.⁷⁸

There should therefore be little obstacles in the way of applying social value considerations to public procurement in NI, while keeping in line with EU directives.

4.5 Local authorities in Northern Ireland

District Councils have a separate and different framework of accountability regarding public procurement. As a consequence of this, it is recognised that compliance with NI Public Procurement Policy can be on a voluntary basis only under existing legislation.⁷⁹ However, they are required to comply with the relevant UK Statutory Instruments, mentioned above, and the relevant EU legislation governing procurement law.

In hearing evidence during the Committee Stage of the *Local Government (Finance) Bill*, the Committee for the Environment heard that the *Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1992*⁸⁰ prevents local authorities in Northern Ireland from including social clauses in their contracts.⁸¹ However, the Department of the Environment replied that it was seeking secondary legislation to repeal the prohibitory provisions under the proposed *Local Government Best Value (Exclusion of Non-commercial Considerations) Order (Northern Ireland) 2011*.⁸²

5 The Scottish Context

As has been mentioned, the Act does not apply to Scotland. However, similar to NI, there have been moves towards commissioning social value outcomes, as evidenced by the work of the Scottish Government, Parliament and local authorities.

In February 2008 the Scottish Government published a report called *Community Benefits in Public Procurement: A Report Demonstrating the Methodology for Including Targeted Recruitment and Training Clauses in Public Sector Contracts*, which sets out the legal and policy context of including “community benefit clauses” in public procurement contracts. Also included is a good practice guide and toolkit for contracting.⁸³

⁷⁸ European Commission communication, [Integrating social considerations into public procurement](#), Page 7

⁷⁹ DFP Procurement Board, [NI Public Procurement Policy](#), Page 12

⁸⁰ [Local Government \(Miscellaneous Provisions\) \(Northern Ireland\) Order 1992](#)

⁸¹ Committee for the Environment (2010), [Report on the Local Government \(Finance\) Bill](#), (NIA 03/10/11R), Paragraphs 129-131

⁸² Department of the Environment (2011), [The Draft Local Government Best Values \(Exclusion of Non-commercial Considerations\) Order \(Northern Ireland\) 2011 Consultation Document](#)

⁸³ Scottish Government (2008), [Community Benefits in Public Procurement](#), page 6

Also in February 2008, the Scottish Government and COSLA (Convention of Scottish Local Authorities) jointly published guidance on the use of community benefit clauses in procurement contracts. These clauses are contractual requirements which deliver a wider social impact alongside the core purpose of the public services contract.⁸⁴ When procuring such projects, however, the key requirement is on commissioners to always deliver “Value for Money”.⁸⁵ Therefore, while a contract may contain a community benefit clause the key role of the commissioner is to deliver best value rather than consider social value.

In addition, the *Public Contracts (Scotland) Regulations 2006* contain specific legal provision allowing local authorities to include social and environmental considerations in the conditions relating to the performance of a contract.⁸⁶

A web portal, *Social Impact Scotland*, exists to offer resources and support for third sector organisations, funders, and public sector commissioners interested in finding out more about social impact measurement. It is a legacy outcome of the Scottish Government’s Social Return on Investment (SROI) project.⁸⁷

6 Conclusion

This briefing has already mentioned some of the major issues surrounding the *Public Services (Social Value) Act 2012*, social enterprise and the existing framework for social considerations during procurement in Northern Ireland. The points below present a summary of these issues:

- The Bill and Act received widespread support from the Government and the Opposition, as well as social enterprise strategies, charities and cooperatives.
- A lack of clarity surrounds the definition of both “social enterprise” and “social value”, and in particular how social value is measured and accounted for in procurement.
- The Government amended the original Bill, removing the clauses relating to statutory duties as to the creation of a national social enterprise strategy (reportable to Parliament by the Secretary of State for Communities and Local Government) and including engagement with social enterprises as a responsibility of local authorities’ sustainable community strategies.
 - The Parliamentary Under-Secretary for Civil Society to the Cabinet (Nick Hurd MP) defended this by remarking that he wanted local commissioners to base their strategies and actions on need and conviction rather than as a bureaucratic duty.

⁸⁴ Scottish Government (2008), [Community Benefits in Public Procurement Guidance Note](#), page 1

⁸⁵ *Ibid*, page 6

⁸⁶ *Public Contracts (Scotland) Regulations 2006*, [Regulation 39](#)

⁸⁷ Social Impact Scotland: <http://www.socialimpactscotland.org.uk/>

- Labour Members commented that the removal of the clauses were damaging to the growth of social enterprises and showed that the Government did not back its own “big society” rhetoric.
- Social Enterprise UK added that the removal of the definition of “social enterprise” was worrying as it removed a major signpost for commissioners and was not in the spirit of the Bill.⁸⁸
- The Act ties in with the Coalition Government’s policy on “the big society” and “localism”, encouraging social action and the opening up of public services to local communities.
- The Act could also be said to tie in with the attempt to reduce the public expenditure deficit by imparting the responsibility for the delivery of public services to non-governmental organisations and bring possible efficiency savings.
- There are concerns that provisions contained in the Act and any related legislation or policies could result in private enterprises remodeling themselves as social enterprises in order to benefit from increased tendering opportunities.
- There are concerns that smaller organisations capable of delivering services are unable to communicate effectively the social value which they represent. This brings problems associated with the Act, as the organisations most capable of demonstrating social value to commissioners may win out over more deserving providers who can deliver social value.

Key points specific to Northern Ireland

- In Northern Ireland, the Procurement Guidance Notes issued by the Central Procurement Directorate (and endorsed by the Procurement Board) include guidance on including social clauses in contracts and the consideration of social impacts of procurement. The definition of “Value for Money” in commissioning has been updated recently to include the issues of “well-being” and social, environmental and health impacts.
- Much of the new guidance from the Central Procurement Directorate was made in response to the Committee for Finance and Personnel’s *Report on the Inquiry into Public Procurement in Northern Ireland*, which emphasised the benefits of SMEs and the social economy sector in helping to deliver positive social outcomes.

⁸⁸ The Guardian (Patrick Butler), [Big society: ministers take an axe to the social enterprise bill](#), 18 October 2011

- The Programme for Government 2011-15 includes commitments to have social clauses include in all public services contracts and to invest in the social enterprise sector in Northern Ireland.

Annex – text of the Public Services (Social Value) Act 2012



2012 CHAPTER 3

An Act to require public authorities to have regard to economic, social and environmental well-being in connection with public services contracts; and for connected purposes. [8th March 2012]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Contracts of relevant authorities

- (1) If a relevant authority proposes to procure or make arrangements for procuring the provision of services, or the provision of services together with the purchase or hire of goods or the carrying out of works, by—
 - (a) entering into a public services contract that is not a contract based on a framework agreement, or
 - (b) concluding a framework agreement as regards which public services contracts are likely to constitute the greater part by value of the contracts based on the agreement, it must comply with the requirements in subsections (3), (6) and (7) before starting the process of procurement.
- (2) The authority is to be treated for the purposes of subsection (1) as having started the process of procurement as regards what is proposed to be procured as soon as it takes whichever of the following steps is the first to occur—
 - (a) sending a notice to the Official Journal of the European Union for the purpose of inviting tenders, requests to be selected to tender or to negotiate or requests to participate in relation to a public services contract or framework agreement relating to what is proposed to be procured;
 - (b) publishing an advertisement seeking offers or expressions of interest in relation to such a contract or framework agreement;
 - (c) contacting a person in order to seek an offer or expression of interest in relation to such a contract or framework agreement;
 - (d) contacting a person in order to respond to an unsolicited offer or expression of interest in relation to such a contract or framework agreement;
 - (e) entering into such a contract or concluding such a framework agreement.
- (3) The authority must consider—

- (a) how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
 - (b) how, in conducting the process of procurement, it might act with a view to securing that improvement.
- (4) In subsection (3) “the relevant area” means the area consisting of the area or areas of the one or more relevant authorities on whose behalf a public services contract is, or contracts based on a framework agreement are, intended to be made.
- (5) For the purposes of subsection (4) the area of a relevant authority is an area consisting of the area or areas by reference to which the authority primarily exercises its functions, disregarding any areas outside the United Kingdom.
- (6) The authority must consider under subsection (3)(b) only matters that are relevant to what is proposed to be procured and, in doing so, must consider the extent to which it is proportionate in all the circumstances to take those matters into account.
- (7) The authority must consider whether to undertake any consultation as to the matters that fall to be considered under subsection (3).
- (8) If an urgent need to arrange the procurement in question makes it impractical to comply with the requirements in subsections (3), (6) and (7) before the time indicated by subsection (1), a relevant authority may disregard the requirements to the extent that it is not practical to comply with them.
- (9) Subsection (8) does not apply to the extent that the time available is reduced by undue delay on the part of the authority after this section has come into force.
- (10) Failure to comply with subsection (1), (3), (6) or (7) does not affect the validity of anything done in order to comply with the Regulations.
- (11) The following are not required to comply with subsections (1), (3), (6) and (7)—
- (a) the Welsh Ministers;
 - (b) the First Minister for Wales;
 - (c) the Counsel General to the Welsh Assembly Government;
 - (d) the National Assembly for Wales Commission;
 - (e) a relevant authority whose functions are wholly or mainly Welsh devolved functions.
- (12) For the purposes of subsection (11) a function of a relevant authority is a Welsh devolved function if—
- (a) provision conferring or imposing that function upon the authority is within the legislative competence of the National Assembly for Wales, or
 - (b) provision conferring or imposing that function upon the authority is made by the Welsh Ministers.

(13) This section has effect in relation to a relevant authority's proposed procurement or arrangements for procurement only if the public services contract or framework agreement in contemplation is such that the Regulations would have effect in relation to it.

(14) If anything done before the commencement of this section would to any extent have satisfied the requirements in subsections (1), (3), (6) and (7) if done after that commencement, the requirements are to that extent to be treated as satisfied.

(15) In this section—

“framework agreement” has the same meaning as in the Regulations, and a reference to a contract based on a framework agreement is a reference to a contract entered into on terms established by such an arrangement;

“public services contract” has the same meaning as in the Regulations (and includes a contract that is treated as being a public services contract by the Regulations);

“the Regulations” means the Public Contracts Regulations 2006 (S.I. 2006/5), or any regulations replacing those regulations, as from time to time amended;

“relevant authority” means a person or body that is a contracting authority for the purposes of the Regulations.

2 Local authority contracts

In section 17 of the Local Government Act 1988 (exclusion of non-commercial considerations in the case of local and other public authority contracts), after subsection (10) insert—

“(11) This section does not prevent a public authority to which it applies from exercising any function regulated by this section with reference to a non-commercial matter to the extent that the authority considers it necessary or expedient to do so to enable or facilitate compliance with a duty imposed on it by section 1 of the Public Services (Social Value) Act 2012.”

3 Financial provisions

There is to be paid out of money provided by Parliament any expenditure incurred in consequence of this Act by a Minister of the Crown, government department or other public authority.

4 Short title, commencement and extent

(1) This Act may be cited as the Public Services (Social Value) Act 2012.

(2) Section 3 and this section come into force on the day on which this Act is passed.

(3) Sections 1 and 2 come into force on such day as a Minister of the Crown may by order made by statutory instrument appoint.

(4) This Act extends to England and Wales.