

Commissioning for social value: what the Public Services (Social Value) Act 2012 means in practice

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This briefing applies to England, and to activities in Wales by English-based organisations.

Key points

- Public service contracts must now be designed with social value in mind as well as financial value
- Housing organisations are affected by the new legislation, both as commissioners and as providers of services
- The legislation does not tell commissioners what aspects of social value to measure or how to do so. This must be decided locally
- The legislation must be considered alongside existing UK and European rules on procurement – it does not supersede them.

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Introduction

Social value is an idea that has been much debated over the past decade and more. At the heart of that debate is a belief that the worth of an activity or service should be measured not just on financial grounds, but on the wider benefits it brings to society.

While few would disagree with that proposition, putting it into practice is another matter. What factors should be considered when we decide what social value is? How should they be measured? And how do we balance one set of social benefits, such as jobs for local people, against another, such as savings to the public purse?

It is no wonder that legislators have tended to shy away from such conundrums. But the result has been that by default, value tends to be defined as value for money, even where the results have been perceived as socially damaging. In 2011, when Derby-based train manufacturer Bombardier lost a £1.4bn Department of Transport contract to build new carriages to the German firm Siemens, there was a political outcry: trade unionists and commentators questioned whether the loss of 1,400 jobs was a price worth paying for ‘value for money’.

The passing of the Public Services (Social Value) Act 2012 was the first attempt to redress the balance between financial and social value through legislation. The new Act, promoted as a

private member's bill by Warwick and Leamington MP Chris White, requires public bodies to consider how they can improve the economic, social, and environmental wellbeing of their areas through the services they procure.

What does the Public Services (Social Value) Act do?

When he introduced his private member's bill, Mr White said his aim was to 'support community groups, voluntary organisations and social enterprises to win more public sector contracts and to change commissioning structures so that a wider definition of value rather than just financial cost was considered'.

To achieve that, public bodies are required to take certain steps before commissioning services or tendering a contract. They must consider how the proposed service might improve the economic, social and environmental wellbeing of the area concerned, and how the procurement process itself can help achieve that improvement. They must also consider whether to consult more widely in order to fulfil these new duties.

Unlike the 'power of wellbeing' introduced in the Local Government Act 2000, which was superseded by the 'general power of competence' enshrined in the Localism Act 2011, the new Act sets out duties that public bodies must observe.

However, those duties do not necessarily mean contracts will be awarded differently. The intention is that organisations should take a more holistic approach to the way they follow existing rules on procurement and commissioning, not to overturn those rules.

There are also some important caveats and exceptions that we consider more closely below.

Who is affected?

The Public Services (Social Value) Act applies only in England, and in very limited circumstances in Wales. It does not affect the actions of devolved administrations.

The definition of a public body is broad, and includes housing associations and the NHS. So housing organisations are affected both as commissioners of services and as suppliers of services to other public bodies. These include any organisations covered by UK and European rules on public procurement.

A full list of these organisations is set out in Regulation 3 of the Public Contracts Regulations 2006, which implement relevant European directives on procurement within England, Wales and Northern Ireland. The list is extensive, including local authorities, fire and rescue services, government departments, national parks and arm's-length corporations set up by public agencies.

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The new legislation only applies to Wales in that it affects English-based organisations that also operate within Wales. This may be particularly relevant to housing providers that have stock in both countries.

How should social value be defined?

The new Act says nothing about how organisations should consider social value – just that they should do so. This may prove to be frustrating and liberating in equal measure. There is scope to be imaginative in defining social value according to local needs, but any definition that undermines existing regulations on contracting and commissioning is likely to be open to challenge.

The legislation's broad-brush approach to 'economic, social and environmental wellbeing' enables commissioners to consider a very wide range of factors when purchasing a service, from the employment of vulnerable people to the environmental impact of a contractor's supply chains.

Social Enterprise UK says measuring social value is a case of asking the question: “If £1 is spent on the delivery of services, can that same £1 be used, to also produce a wider benefit to the community?”

However, different benefits may be obtained from different approaches and commissioners will need to find ways of weighing these up and deciding which benefits are most important. This is where consultation may be helpful before going ahead with commissioning a service.

Chris White has said he hopes commissioners will think of the requirement to consider consultation, which is set out in section 1, subsection 7 of the Act, as a 'duty to consult'. This may be the spirit of the legislation, but there is no legal duty.

Defining social value remains a subjective business, and one that is likely to change just as places and social needs change. A commissioner may decide, for example, that long-term

environmental impact should be given more weight than creating jobs in the short term (or vice versa).

Rather than wait until each contract comes up for tender, commissioners may find it helpful to draw up their own principles for assessing social value that can be applied to all their procurement activities. This could help to provide a transparent approach that can be understood by procurement officers and contractors alike. It could satisfy the requirement to consider public consultation while avoiding the expense and delays that could arise from repeated consultation exercises on individual contracts.

Some organisations will have already developed their own approaches to social value. Many housing associations have taken steps in this direction and may be able to use this work as evidence that they have satisfied the requirements of the legislation. The Public Services (Social Value) Act specifically permits this, saying that actions taken before the legislation comes into force that would meet its requirements should be taken into account.

Where organisations have not yet considered how to achieve social value, there are various tools and methods that can be readily adapted.

Bennington and Moore (2011),¹ for example, set out three categories of value that may be achieved: the value created by services, such as clean streets or well maintained homes; the value achieved through outcomes, such as a more skilled workforce or a reduction in anti-social behaviour; and the value created through increased trust where people see organisations' behaviour as just and fair.

A more straightforward, finance-based, approach has been adopted by the Centre for Local Economic Strategies (CLES) in its work on procurement (2010).² CLES worked with Manchester City Council to map its spending, analysing how much was spent on organisations based within the city, and how much on organisations in the city's most deprived areas.

Methods such as Social Return On Investment seek to provide a cash equivalent of social value, either by calculating costs to the public purse saved as a result of social benefits, or by assigning a proxy value to social benefits based on how much users would be prepared to pay. The SROI Network (www.thesroinetwork.org) has developed detailed methodologies and tools that can be used or adapted.

While the debates about social value can be complex, putting it into practice can often be relatively straightforward. Southwark Council, for example, asked companies tendering for a catering contract in 2010 to demonstrate social value. The contract was awarded to Unity Kitchen, a social enterprise, which promised to create job opportunities and apprenticeships for people with learning disabilities. A total of 14 staff were taken on who would otherwise have been dependent on daycare services provided by the Council.

“While value for money remains central to UK public policy, there have been important moves towards a broader understanding of the concept”

The small print

Many contracts will not be affected by the new legislation at all. The Act only covers services, not works or goods – so a building contract or the supply of new vehicles would be outside its scope. A contract for ongoing repairs or management, or looking after green spaces, however, would be covered.

The legislation also affects ‘framework’ contracts, where a general agreement is made with a number of providers to offer services over a period of time. In this case not every service covered needs to be a ‘public service’, but public services need to make up the majority of services measured by financial value.

The Public Services (Social Value) Act is intended to complement existing regulations, so the same exemptions apply. Contracts below the threshold for public procurement, for example, are not affected. Details of the thresholds are set out in Regulation 8 of the Public Contracts Regulations 2006.³

There is also an exemption where services have to be procured urgently. The legislation makes it clear, though, that this does not apply where the hurry is needed to make up for delays by the commissioner in tendering a service.

The Act amends the Local Government Act 1988, which prevented local authorities from taking ‘non-commercial considerations’ into account within public procurement decisions. This removes an obstacle sometimes cited by officers or councillors when resisting efforts to factor social value into public contracts.

However, commissioners must only consider issues that are relevant to the services being procured. They cannot ask service providers to offer benefits that are not directly connected with the contract, such as contributions towards the cost of public works.

The legislation is expected to come into force in early 2013, giving commissioners time to prepare for the new regime, and the government is due to issue guidance shortly.

The wider context: changing approaches to measuring value

Chris White's legislation needs to be considered within a broader context of changing attitudes towards procurement and measuring value. While value for money remains central to UK public policy, there have been important moves towards a broader understanding of the concept:

- There is growing interest in the idea of wellbeing as a measure of the nation's economic and social health. Following the actions of the French Government in commissioning economists Joseph Stiglitz and Amartya Sen to consider measurements of wellbeing,⁴ the UK Government asked the Office for National Statistics to undertake a consultation on how to assess wellbeing. The first outputs from this exercise have now been published.⁵ Underlying this work is a growing understanding that a well functioning society is one where people feel good about themselves and their localities, not just one where costs are reduced and productivity is maximised
- The Best Value Statutory Guidance published in September 2011⁶ says local authorities must consider economic, environmental and social value when reviewing service provision. It adds: "As a concept, social value is about seeking to maximise the additional benefit that can be created by procuring or commissioning goods and services, above and beyond the benefit of merely the goods and services themselves." This guidance has already been used to challenge local authority decisions on grant funding for charities
- Annex 2 of HM Treasury's Green Book, updated in 2011, makes it clear that policymakers should value 'non-market impacts' of policies or projects. "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," it comments.⁷ Recent guidance on accounting for environmental impacts outlines how 'total economic value' can be used as a methodology for decision-making⁸

- The European Commission, often seen as a barrier to progress on social value, has moderated its stance in recent publications. A 2011 Green Paper on procurement argued that ‘public authorities can make an important contribution to the Europe 2020 strategic goals by using their purchasing power to procure goods and services with higher societal value in terms of fostering innovation.’⁹

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Issues for housing practitioners

Housing associations and other registered providers are likely to be affected by the Act both as commissioners and as providers of services. Those working in a strategic housing capacity within local authorities will be affected as commissioners, while arm’s-length management organisations (ALMOs) will be in a similar position to housing associations.

Those working in the private sector will be affected as suppliers, and may need to be more explicit in showing the social value they can offer through their services, and how it is likely to meet the aspirations and objectives of service commissioners.

While all organisations providing affordable or subsidised housing can argue that they offer social value, this is unlikely to be enough to meet the requirements of the legislation. They need to demonstrate that they can contribute to economic, social or environmental wellbeing within the parameters of each contract being tendered. So within a contract to manage public areas of an estate, for example, a supplier would need to offer added value in the form of benefits such as local employment, training for staff, or environmental management to protect biodiversity.

For commissioners, the legislation presents an opportunity to think creatively about how to maximise the organisation’s purchasing power and to consider the wider costs and benefits of each procurement exercise. It will be important to develop methods of assessing social value that are transparent and easy to understand, so potential suppliers are as aware of the social benefits they are expected to deliver as they are of financial considerations.

More generally, there is a need for practitioners, procurement officers and local policymakers to understand the implications of the legislation and the concept of social value. This will require as a minimum a process of information and training so that service design and commissioning reflect the intent of the legislation.

Commentary

The Public Services (Social Value) Act 2012 is designed to encourage, not prescribe. There are no sanctions for failure to comply and no specifications as to how commissioning bodies are to fulfil their new duties.

What is important is that they can show they have taken the new duties seriously. Given the complexities of social value accounting and the very wide range of benefits that could be achieved, organisations may find it helpful to create an overarching framework to factor social value into their procurement activities, rather than simply responding to the requirements contract by contract.

This could also help to create a culture within commissioning organisations in which social value is given greater weight within financial decision-making. It provides an opportunity to restate the organisation's values and purpose and align spending more closely with those values.

Suppliers who are seeking to influence procurement decisions should seek a conversation with commissioners at the earliest opportunity in order to influence thinking at a strategic level. This may be done directly or through local partnership organisations. Such conversations are more likely to lead to a set of shared values and a common understanding of the benefits commissioners are seeking to achieve than discussions on individual contracts, which could be time-consuming and at worst lead to a succession of legal challenges.

The recent trend within public services, unsurprisingly, has been for financial considerations to outweigh all others as budgets are squeezed. A recent survey by accountants BDO, for example, found that 83% of English local authorities did not measure social value within their procurement processes, and nearly half preferred to use their purchasing power to bring down direct costs.

The Public Services (Social Value) Act is unlikely to change this overnight, but it takes an important step towards taking social value out of the erudite world of specialist consultants and into everyday practice.

Resources

The legislation can be found online at:

<http://www.legislation.gov.uk/ukpga/2012/3/contents>

Explanatory notes are available at:

<http://www.legislation.gov.uk/ukpga/2012/3/notes/contents>

About the author

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 - 4 Stiglitz, J., Sen, A. and Fitoussi, J-P. (2009), *Report by the Commission on the Measurement of Economic Performance and Social Progress*, available from: www.stiglitz-sen-fitoussi.fr
 - 5 Office for National Statistics (2012). *Measuring National Well-being: Summary of proposed domains and measures*: http://www.ons.gov.uk/ons/dcp171766_272242.pdf
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