

## **PUBLIC SERVICES (SOCIAL VALUE) BILL**

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### **EXPLANATORY NOTES**

#### **INTRODUCTION**

1. These explanatory notes relate to the Public Services (Social Value) Bill as brought from the House of Commons on 25th November 2011. They have been prepared by the Cabinet Office with the consent of Lord Newby, the Peer in charge of the Bill, in order to assist the reader of the Bill and to inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

#### **SUMMARY AND BACKGROUND**

3. This Bill was introduced by Chris White MP as a Private Member's Bill on 30th June 2010. The Bill requires certain public authorities at the pre-procurement phase of procuring services to consider how what is being procured might improve the economic, social and environmental well-being of an area and how the authority might secure that improvement in the procurement process itself. There is also a requirement that authorities consider whether to consult on these matters.

4. Guidance on taking into account social and environmental issues in the context of procurement has been published: *Social issues in purchasing* (February 2006) and *Joint note on environmental issues in purchasing* (October 2003). Guidance on the best value duty, *Best Value Statutory Guidance* (September 2011) has been published which requires certain public authorities to consider overall value – including social value – in the provision of services.

#### **TERRITORIAL EXTENT AND APPLICATION**

5. The Bill extends to England and Wales.

6. Its application to Wales is limited. The provisions do not apply to procurement by authorities which exercise functions that are wholly or mainly devolved in Wales. A Legislative Consent Motion was sought for the provisions in the Bill which may affect

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matters which are the responsibility of the devolved institutions in Wales, and was agreed on 22nd November 2011.

7. The Bill does not extend to Scotland or Northern Ireland.

8. The Bill does not contain provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

## COMMENTARY ON CLAUSES

### **Clause 1 – Contracts of relevant authorities**

9. *Clause 1* requires certain public authorities to consider how, in the context of procuring services, economic, social and environmental well-being may be enhanced.

10. The duties imposed by *Clause 1* operate against the background of the Public Contracts Regulations 2006 (S.I. 2006/5). These Regulations implement for England and Wales and Northern Ireland Directive 2004/18/EC of the European Parliament and the Council of 31st March 2004. The Regulations impose requirements as to the way in which certain goods, works and services are to be procured by certain public authorities.

11. *Clause 1* affects public authorities that are contracting authorities as defined by regulation 3 of the Regulations. *Clause 1* does not apply to procurement by specified Welsh authorities or authorities which exercise wholly or mainly Welsh devolved functions, as described in *subsections (11) and (12)*.

12. *Subsection (1)* causes the pre-procurement obligations in *subsections (3), (6) and (7)* to apply when an authority proposes to enter into a public services contract, as defined by the Regulations, or a framework agreement that will be a basis mainly for such contracts. Public services contracts are contracts for services or contracts where the greater part by value is for services. *Subsection (1)(a)* excepts cases where an authority proposes to enter into a public services contract based on a framework agreement. *Subsection (1)* is also affected by *subsection (13)*. *Subsection (13)* limits *Clause 1* to the proposed public services contracts and framework agreements that would, if pursued, be affected by the Regulations. The Regulations contain certain exceptions. In particular, regulation 8 provides for threshold values below which the Regulations do not apply.

13. *Subsection (2)* identifies what constitutes the start of the procurement process, and the point before which the pre-procurement obligations in *subsections (3), (6) and (7)* are to be carried out.

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14. *Subsection (3)* requires authorities to consider how to improve the economic, social and environmental well-being of an area by what is proposed to be procured and how that improvement might be achieved through the procurement process. *Subsections (4) and (5)* define the area the well-being of which is to be considered.

15. *Subsection (6)* prevents an authority taking into account matters that are not relevant to what is being procured when considering under subsection (3) how the procurement process might be used to improve well-being. It also requires an authority to consider to what extent it is proper to take a relevant matter into account (a proportionality requirement).

16. *Subsection (7)* requires that authorities consider consulting on how what is proposed to be procured might improve the well-being of the area and on how through the procurement process it might achieve that improvement.

17. *Subsection (8)* allows some or all of the pre-procurement obligations to be disregarded if the need to procure certain services is urgent. But subsection (8) cannot be relied on in so far as the urgency is caused by undue delay by the authority (*subsection (9)*). Delay by the authority before Clause 1 comes into force is not to be taken into account.

18. *Subsection (14)* makes the initial operation of the pre-procurement obligations easier for public authorities to manage by validating steps taken in anticipation of commencement.

**Clause 2 – Local authority contracts**

19. *Clause 2* amends Part 2 of the Local Government Act 1988 so as to provide that the public bodies to which that Part applies may, despite the general rule in that Part, exercise a function by reference to a non-commercial matter to the extent that the authorities consider it necessary or expedient to do so in order to comply with the requirements in Clause 1.

**FINANCIAL EFFECTS OF THE BILL**

20. Clause 1 does not specify exactly how authorities should improve economic, social and environmental well-being. This decision is left to the authority. Therefore it is not possible fully to quantify the wider costs that may result from the Bill. For an individual authority, additional costs are likely to be small. It is already best practice to take into account wider value when undertaking procurement and to consult in such circumstances, and guidance and tools are already available.

**EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER**

21. It is not possible to quantify the additional public sector manpower required for Clause 1, as it is at the discretion of the authority affected how it undertakes the requirements. However, it is anticipated that additional public sector manpower will not be significant.

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## **SUMMARY OF THE IMPACT ASSESSMENT**

22. The impact assessment for the Bill analyses the costs and potential benefits of the proposals and assesses their possible impact on race, gender and disability equality. No negative impact on equalities groups has been identified.

## **COMMENCEMENT DATES**

23. *Clause 4* provides for Clauses 1 and 2 to come into force on such a day as a Minister of the Crown may appoint by order and for clauses 3 and 4 to come into force on the day on which the Act is passed.

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