

SOCIAL ENTERPRISE AND THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012

A policy briefing for social enterprises & third sector organisations

May 2013 • v1.2



Action for Blind People WM | Anthony Collins Solicitors | ART | BVSC | brap | Business in the Community | Cloudberry | Colebridge Enterprises | Digbeth Trust | Diocese of Birmingham | ENTA | ISE | Jericho Community Business Ltd | Kajans Productions | RnR Organisation | Roots HR (CIC) | The Social Enterprise Loan Fund | Spot On Marketing & Communications CIC | Unity Trust Bank | UnLtd

Birmingham & Solihull Social Economy Consortium C.I.C (trading as BSSEC) is a company limited by guarantee registered in England & Wales No. 07992674. Registered Office address: Anthony Collins Solicitors LLP, 134 Edmund St, Birmingham B3 2ES.

1.0 INTRODUCTION

The deepest public spending cuts in a generation are having a huge impact on public services. It is estimated that by 2017 Birmingham City Council alone will have lost £600m from its budget. Clearly, public bodies must achieve more with less – and this means wringing every scrap of value out of what they spend.

Consequently, for some time now the public sector has been concerned not just with value for money but also with how it can use its purchasing to create additional social, economic and environmental benefits for the communities it serves – an idea that has become known as ‘social value’.

In all likelihood, social value would have remained just a new buzzword but for the fact that last year new legislation called the Public Services (Social Value) Act 2012¹ came into force. Under this Act it is a statutory requirement for public authorities to consider how *economic, social and environmental* well-being are enhanced through their purchasing of services.

As part of a project funded by the Barrow Cadbury Trust, we are working to help Birmingham City Council implement the new legislation and later this year will be providing workshops and other tools to help social enterprises and voluntary organisations understand social value and realise the competitive advantage this new approach to public procurement could offer them. This paper draws on that work.

Seeing at first-hand the practical challenges involved in implementing the legislation in England’s largest local authority and working jointly to overcome these is an invaluable learning experience. We would like to take this opportunity to thank Birmingham City Council for its enthusiastic participation in this project, the Barrow Cadbury Trust for supporting the work, and the BIG Lottery *Awards for All* programme for enabling the production of this and several other briefing papers on policy issues of importance to social enterprises and civil society organisations.²

Who should read this paper?

This project begins to move the debate forward from abstract theorising about social value to practical procedures and this paper explores the new legislation *from a practical, implementation perspective*. It will be of interest to any social enterprise or third sector organisation that hopes to do business with public sector purchasers as well as to those who are already involved in the public service marketplace. It will also be of interest to other public sector bodies keen to learn about the progress being made on social value implementation elsewhere.

However, if social value is new to you then before reading this paper you may find it helpful to read the two excellent guides produced by Social Enterprise UK in conjunction with Anthony Collins Solicitors. These are: *The Public Services (Social Value) Act 2012: A brief guide* (Feb 2012), and *The Social Value Guide: Implementing the Public Services (Social Value) Act 2012* (Nov 2012).³

¹ See: <http://www.legislation.gov.uk/ukpga/2012/3/enacted>

² See: <http://bssec.org.uk/policy-issues/>

³ See Useful Links at end for sources.

2.0 THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012

2.1 What the Act is About

The Public Services Social Value Act 2012 was introduced by Chris White MP as a Private Member's Bill on 30th June 2010. It became law in March 2012 and came fully into force in January 2013. The Act requires public authorities to consider how *economic, social and environmental* well-being are enhanced through the procurement of services. The Act applies to:

- Public service contracts (including service contracts with a works or goods element) and frameworks for such contracts.
- The pre-procurement stage of the commissioning process – i.e. what public authorities must do **prior to commencing a procurement exercise** in order to ensure that their purchasing will realise social value.
- Contracts above the EU procurement thresholds (currently £113,057 for central government and £173,934 for other public bodies).⁴

The Act makes clear that social value outcomes that are included in contract specifications must be:

- Relevant to the procurement in question and proportionate.
- Specific, measurable and verifiable, and
- Form a clear part of the award criteria.

Public authorities must also consider whether consultation is required in order to clarify what social value outcomes are considered most valuable/appropriate, and whether its actions to achieve these ends are appropriate.

Birmingham City Council & Social Value

On the 22nd April 2013, a meeting of Birmingham City Council's Cabinet Committee approved a suite of policies – including a Living Wage policy, its Birmingham Charter for Business Social Responsibility, and a Social Value Policy⁵ – which will enable the authority to maximise social value in its procurement.

Birmingham City Council's Social Value Policy commits the local authority to achieving social value:

⁴ See: <http://www.ojec.com/Thresholds.aspx>

⁵ Birmingham City Council Social Value Policy: <http://bssec.org.uk/wp-content/uploads/2013/04/Social-Value-policy-Appendix-1-1.pdf>.

Webcast of the Cabinet meeting that approved these policies:

http://www.birmingham.public-i.tv/core/portal/webcast_interactive/102936 (from 49 mins 50 secs.) All

relevant Cabinet Committee documents:

<http://www.birmingham.gov.uk/democracy/Pages/SearchDocuments.aspx> (search term 'social value policy').

- In its procurement of both services *and* goods – not just services as the Act requires.
- From *all* contracts, not just those above the EU threshold, as the Act specifies.

Thus it can be seen that Birmingham City Council's social value policy goes significantly beyond the minimum requirements of the Act and the principles it sets out offer directions for the council's long-term development of social value-based procurement.

2.2 What the Act Isn't About

It is also important to emphasise what the Act is **not** about, because in our experience it is still subject to some widespread misconceptions. It is important to be clear on the following:

1. The Act is about public authorities securing social value in the services they procure from *all* types of providers. It does **not** refer specifically or solely to social enterprises and third sector organisations, nor make it possible for public service tenders to be restricted to social enterprises and third sector organisations.
2. The Act refers specifically to contracts for public *services* (including services where there are works or goods elements), not goods *per se*, although there are no legal reasons preventing public authorities applying the legislation to their procurement of goods.
3. The Act does **not** mean that public authorities can simply seek undefined 'added value' from their procurement. They are free to specify the social value they seek to realise but it must be **relevant** to the procurement in question and **specific, measurable** and **verifiable** in terms of performance.
4. The Act only applies to contracts above the EU procurement thresholds (currently £113,057 for central government and £173,934 for other public bodies), but there is ministerial support for public bodies applying the legislation as widely as possible. **Nothing prevents public authorities applying the legislation to all of their procurement – goods as well as services, and for all contract values – if they choose.**

3.0 HOW WILL PUBLIC AUTHORITIES IMPLEMENT THE LEGISLATION?

Implementation of the Public Services (Social Value) Act 2012 is still evolving and amongst many public bodies it will remain a work in progress for some while. While the insights that follow below are gained from working closely with one particular local authority, they begin to offer a route to practical implementation of the Act which we believe many other local authorities will ultimately follow.

1. Local authorities will not simply 'invent' social value outcomes they can include in contract specifications. First, they will 'interrogate' their key corporate priorities – those things for which there are already clear policy drivers or political commitment – to see whether these furnish an overall 'framework' within which social value outcomes can be identified. For Birmingham City Council, the core considerations will be the priorities identified in Sir Albert Bore's Leader's Policy Statement (June 2012):⁶
 - To tackle inequality and deprivation, promote social cohesion across all communities in Birmingham, and ensure dignity, in particular for our elderly and safeguarding for children.
 - To lay the foundation for a prosperous city, built on an inclusive economy.
 - To involve local people and communities in the future of their local area and public services – a city with local services for local people.
2. In Birmingham City Council's case, these high-level commitments are in some cases already underpinned by specific policy initiatives **that offer the authority some of the tools it needs to achieve social value**. For example, 'Tackling inequality and deprivation' is underpinned by specific policies to boost the local economy and create jobs including:
 - The Living Wage campaign.
 - A Buy Birmingham First scheme to ensure that as many smaller purchases as possible (those below the EU threshold of £173,000) are sourced from Birmingham businesses, and
 - The Birmingham Charter for Business Social Responsibility.⁷

Promoting cohesion is supported by a number of far-reaching goals set out in *Giving Hope, Changing Lives*,⁸ Birmingham's social inclusion white paper.

⁶ Available at: http://www.bvsc.org/sites/default/files/files/LeaderPolicyStatement_FINAL.pdf

⁷ The Birmingham Charter for Business Social Responsibility: <http://bit.ly/XFIFYj>. For information on the other policies mentioned search using the term 'social value policy' on the Birmingham City Council 'democracy in Birmingham' website: <http://www.birmingham.gov.uk/democracy/Pages/SearchDocuments.aspx>

⁸ Giving Hope, Changing Lives White Paper: http://www.bvsc.org/sites/default/files/files/White%20Paper%20March%202013_Final.pdf

Taken together, these and similar policies will form the context within which commissioners will identify the social value outcomes they wish to include in service specifications.

3. Individual Birmingham City Council Directorates have already gone through a process of examining their service portfolios to identify which of the council's corporate objectives they are most able to make a contribution to.⁹ In addition to this, individual commissioners will also interrogate the contracts they are responsible for to see whether other social value outcomes can be identified for the client group, community or area in question. It is here that new service-user or marketplace consultation may play a role in identifying additional service outcomes. (While the Act does not make service-user or marketplace consultation mandatory in every instance, it does require public bodies to consider whether fresh consultation may be necessary.)
4. For many providers, the changes brought about by the new legislation will probably be largely invisible, as they will take place behind the scenes – as modifications to public authorities' procurement processes and practices. The emphasis of the new legislation is very much on changing the *practice* of procurement so as to ensure that social value *can* be realised. And this may mean relatively subtle but potentially far-reaching changes. For example, Birmingham City Council's social value policy commits the local authority to:
 - Ensuring that tenders are advertised in places and by methods which maximise the chances of them being seen by 'small suppliers' (the term Birmingham City Council uses to cover all kinds of small businesses, including social enterprises and third sector providers).
 - 'Disaggregating' contracts (i.e. splitting contracts up) so that they are not too large for smaller providers to be able to service.
 - Ensuring that financial, insurances, reserves or other thresholds are not set so high that they inadvertently preclude smaller suppliers.

While none of these changes are specifically *about* social value, they represent modifications to the council's procurement process which will reduce the likelihood of small providers (including social enterprises and voluntary organisations) being inadvertently excluded from tendering, and thus increase the likelihood of contracts being awarded to providers best able to deliver on social value.

3.1 Examples of Procuring for Social Value

It is probably important to emphasise that social value 'solutions' won't necessarily always look the same. They will vary depending on the context and type of purchasing involved, as well as the scale and magnitude of the contracts concerned. There are different routes to achieving social value.

⁹ See Appendix 1 (p.130) *Birmingham – Council Business Plan and Budget 2013+*, Birmingham City Council. <http://bit.ly/1OZZhh0>

Construction

At the mega-contract end of the spectrum, public works commissions with a strong social value dimension have been a feature of Birmingham City Council's procurement strategy for some years. For example:

- The contract held by Wilmott Dixon to provide repairs and maintenance for around 60,000 council properties has long included 'social value outcomes' in the form of local employment and apprenticeship opportunities. The company partners with local voluntary organisations to ensure that these opportunities are open to the most disadvantaged individuals.¹⁰
- The massive construction contract held by Carillion for Birmingham's new central library from the outset included an extensive social value clause with specific targets for local employment opportunities and apprenticeships.¹¹

Energy and the environment

Birmingham Energy Savers (BES) is a programme established by Birmingham City Council to deliver the Green Deal initiative and ensure that Birmingham's homes and buildings are as energy efficient as possible. BES will help residents by carrying out a home audit to identify energy efficiency measures and recommending a "Green Deal Plan" of improvements. The scheme allows residents to pay for some or all of the improvements by installments through their electricity bills. BES is therefore central to Birmingham's objectives of reducing carbon emissions and addressing fuel poverty.

What distinguishes BES from other Green Deal schemes is that in appointing Carillion Energy Services its delivery partner for the scheme, the council included a wide range of 'social outcomes' in the contract. In addition to the environmental targets one would expect – such as a reducing carbon emissions by 48,000 tonnes – 'deliverables' also include:

- The creation of training and employment opportunities for local people, including access to work placements, new jobs, apprenticeships and support to get into low carbon careers in the city. BES will create and/or safeguard 360 sustainable jobs and deliver 16,000 training weeks.
- The creation of a local and small and medium enterprise-led tier 1 supply chain.
- The measurement of the health outcomes of the programme.
- The engagement of schools and young people in energy efficiency and energy saving.

¹⁰ See *Transforming Communities*, Wilmott Dixon (n.d):
<http://www.wilmottdixongroup.co.uk/assets/t/r/transforming-communities-single.pdf>

¹¹ See *Carillion: building Birmingham's flagship library*, Jack Wills, Guardian professional network:
<http://www.guardian.co.uk/sustainable-business/best-practice-exchange/carillion-building-birmingham-flagship-library>

- Support for residents who are financially excluded from the Green Deal initiative.
- The provision of business support for small and micro businesses, the third sector and social enterprises.
- The support of community projects and the formation of Community Energy Trusts.

These social value requirements are an integral part of the contract management process and Carillion Energy Services has appointed a Social Value manager to meet these commitments.

Community-based services

But it isn't only about huge contracts. Innovative approaches to securing additional social value outcomes in public purchasing are also being tested at the small, community-led end of the spectrum too. For example, a recent Adults & Communities contract for the provision of community-based luncheon club services for elderly residents was let to the voluntary sector development body The Digbeth Trust.

Under the terms of this contract The Digbeth Trust is supporting a consortium of predominantly small church-based luncheon clubs which would otherwise probably be too small to bid for local authority contracts. As well as providing centralised contract management to the consortium, The Digbeth Trust is also providing members with capacity-building to help improve their long-term sustainability and working with the group to identify other health and wellbeing outcomes their services can help achieve.

This example helps illustrate that social value is sometimes as much about *how* services are purchased as what is written in the contract. Birmingham City Council has already indicated that it is keen to replicate this model of contracting-plus-management-plus-support as a means of ensuring that grassroots organisations have a presence in its supply chain for services to vulnerable groups.

4.0 WHAT ARE THE IMPLICATIONS FOR SOCIAL ENTERPRISES?

What implications does this new legislation have for the social enterprise sector? We think the following are key points to consider:

1. The legislation is **not** about social enterprise. It is not about enabling public authorities to buy more from social enterprises and third sector providers; nor does it make it possible for public service contracts to be restricted to social enterprises and third sector organisations. **The Act is about public authorities securing social value in the services they procure from *all* types of providers.**

2. While some public bodies will consider social enterprises and third sector providers more likely to be able to deliver social value, the Act does **not** enable public bodies to automatically favour social enterprises and third sector providers. They won't, and under the terms of the legislation, they can't. **Indeed, the most likely outcome of this legislation is that social enterprises will increasingly find themselves competing on social value with private sector suppliers.** This is a crucial point.
3. However, the legislation *should* offer social enterprises a degree of competitive advantage, because they will be more familiar with the concept of social value, better able to employ its language and – at least in theory – better able to demonstrate and evidence social value. But the private sector – or at least, parts of it – will catch up. There will not be a social enterprise monopoly on social value. Evidencing social value, then, will be a key issue and the social enterprise sector will have to make significant progress here. Specifically, it will need to get better at:
 - **Articulating** social value in tenders.
 - **Monitoring** social value.
 - Developing **evidence** that is clear and easily conveyed, and which will demonstrate that social value outcomes have been achieved.
4. Social value legislation does not replace or remove the existing procurement law that public authorities must adhere to, it sits alongside it. Similarly, social value approaches to procurement are not going to result in entirely new procurement models. Everything we have so far seen in our work with Birmingham City Council suggests that for local authorities **social value will be about working with the grain of what is already there.**
5. Consequently, the social value outcomes that public authorities might ask of you will not come out of the blue. They will not be a basket of social value 'possibles' that you have never heard of. Rather, they will be an adaptation or a further iteration of social outcomes a local authority or other public body is already trying to achieve (for its citizens, service-users, communities, localities) and will reflect established key policy drivers.

4.1 The Question of 'Evidence'

Given that social value outcomes in contracts must be specific, measurable and verifiable, what evidence will public bodies want to see from providers? For two reasons, it will almost certainly be a light touch regime. First, because they will wish (quite rightly) to err on the side of what is proportionate (a word the Act uses). And second, because they will not want to be inundated with data that they have neither the time or resources (or perhaps the skills) to process, compare and judge. Over and above all other considerations, it is abundantly clear that public bodies will not implement social value in ways that will add to their own contract management costs. They simply cannot afford to.

Local authorities – certainly Birmingham City Council, at any rate – are likely to operate on a contract-by-contract basis and will do something along these lines:

- a) First, the market briefing and/or invitation to tender will include a clear statement regarding the authority's intention to secure social value in its procurement.
- b) Invitations to Tender and contract specifications will probably include examples of the kinds of social value sought from the contract in question.
- c) Those tendering will probably be asked to include some kind of 'social value statement' indicating:
 - The social value outcomes their method of delivery or operating model enables them to deliver, and
 - The evidence they are able to furnish which will demonstrate that these social value outcomes have been achieved.
- d) The Award Criteria will allocate a proportion of the overall marks to this social value element of the tender.

4.2 What Can Social Enterprises do to Prepare for 'Social Value'?

We believe that there are plenty of things social enterprises can do to prepare for social value. Here are some ideas:

1. Read the two Social Enterprise UK briefings (see Useful Links) because these offer a fuller analysis of the legal implications.
2. Read Birmingham City Council's Social Value Policy.¹² This sets out the key principles that the council will adhere to and establishes the framework for its continuing development of social value-based procurement.
3. Most social enterprises and third sector organisations will already have some idea of the social value they create – whether this derives from particular methods of service delivery, innovative operating models, specific interventions, use of volunteers, employment of local people and use of local supply chains, community-based partnerships, or specialised experience of disadvantaged groups and 'hard to reach' communities. Being able to articulate this clearly and convincingly will be vital. Begin to assemble this information:
 - Review the messages you use to articulate and define the social value you do create. Are they clear, punchy, precise and easy for a busy commissioner to grasp?
 - Think about the kind of evidence you have that will help you describe and substantiate this additional social value – data, evaluations, user feedback,

¹² Available here: <http://bssec.org.uk/wp-content/uploads/2013/04/Social-Value-policy-Appendix-1-1.pdf>

case studies etc. Keep it clear and simple and start to put together an evidence folder.

- Look particularly for evidence that helps you illustrate and explain the additional social value of:
 - Specific services.
 - Ways of working/delivering that are unique to you (your USPs).
 - Particular interventions.
 - Impact and outcomes for specific groups of service-users.
- 4. Where evidence does not exist think about how you might be able to get evidence and plan to do so.
- 5. If you already use Social return on Investment (SROI) or Social Accounting techniques it is likely that you will have the evidence you need. However, to date there is little to suggest that public authorities will stipulate SROI or similar as their preferred evidencing methods.¹³ Certainly, there is no indication that this is the route Birmingham City Council will go down. We think it is more likely that local authorities will want evidence that illustrates the *social outcomes* for clients, communities and service-users, and in particular will need to know whether your method of delivery creates social value that other providers cannot. But it must be emphasised that embedding social value in public purchasing will be an evolving practice; and at present, social value evidence requirements remain the least clear part of the process.
- 6. Again, it must be reiterated that when public authorities begin using the legislation it is likely to be on a contract-by-contract basis and they will want evidence that best illustrates the particularities of the specific contract in question. So be ready with a body of evidence that you can 'cherry pick' from to ensure **relevance** and **appropriateness**. And where you don't have evidence, it may be helpful to set down your ideas about how and where meaningful evidence could be gathered. It is all about being prepared.

Implementing this new legislation will not always run smoothly; it may not even always be successful. But social enterprises and third sector organisations have a role to play in helping to make the Act a living reality:

- We need to work together to make it as easy as possible for public bodies to 'do' social value.
- We must put ourselves at the forefront of social value practice and play to our strengths.
- We must be ready and prepared to demonstrate, prove and convince – because competing on social value is now open to everyone.

¹³ Although in some specialised scenarios, such as Social Impact Bonds, this may be the case.

USEFUL LINKS

Birmingham City Council: Leader's Policy Statement, Sir Albert Bore (June 2012)

http://www.bvsc.org/sites/default/files/files/LeaderPolicyStatement_FINAL.pdf

Birmingham City Council: Social Value Policy (April 2013)

<http://bssec.org.uk/wp-content/uploads/2013/04/Social-Value-policy-Appendix-1-1.pdf>

Preparing for the Social Value Act (n.d.)

Social Enterprise UK (in conjunction with NCVYS, The Young Foundation and the National Youth Agency)

http://www.socialenterprise.org.uk/uploads/files/2013/02/preparing_for_the_social_value_act_dec_122.pdf

Public Services (Social Value) Act 2012: A brief guide (Feb 2012)

Social Enterprise UK

http://bssec.org.uk/wp-content/uploads/2013/05/public_services_act_2012_a_brief_guide_web_version_final.pdf

The Social Value Guide: Implementing the Public Services (Social Value) Act 2012

Social Enterprise UK (Nov 2012)

http://bssec.org.uk/wp-content/uploads/2013/05/social_value_guide-implementing.pdf

Public Services (Social Value) Act 2012 <http://www.legislation.gov.uk/ukpga/2012/3/enacted>

BSSEC archive on social value

Updates on our Barrow Cadbury-funded work, including presentations given by key Birmingham City Council Cabinet members and officers at the project launch event in January 2013, our own social value literature review and other materials are all available here and are constantly being added to:

<http://bssec.org.uk/policy-issues/public-services-and-social-value/>

Produced for BSSEC by Alun Severn
May 2013 • v1.2