

# **PUBLIC SERVICES (SOCIAL VALUE) ACT 2012**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Public Services (Social Value) Act 2012, which received Royal Assent on 8 March 2012. They have been prepared by the Cabinet Office in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **SUMMARY AND BACKGROUND**

3. This Act was introduced by Chris White MP as a Private Member's Bill on 30 June 2010. The Act 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 Act 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 for the provisions in the Act which may affect matters which are the responsibility of the devolved institutions in Wales was agreed on 22 November 2011.
7. The Act does not extend to Scotland or Northern Ireland.
8. The Act does not contain provisions falling within the terms of the Sewel Convention. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament.

## **COMMENTARY ON SECTIONS**

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

9. *Section 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 *section 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 31 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. *Section 1* affects public authorities that are contracting authorities as defined by regulation 3 of the Regulations. Section 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 section 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.
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 section 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.

### ***Section 2 – Local authority contracts***

19. *Section 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,

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2012 (c.3) which received Royal Assent on 8 March 2012*

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 section 1.

**COMMENCEMENT DATES**

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

**HANSARD REPORTS**

21. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

| <i>Stage</i>             | <i>Date</i>      | <i>Hansard reference</i>  |
|--------------------------|------------------|---|
| <b>House of Commons</b>  |                  |   |
| Introduction             | 30 June 2010     | Vol. 512 Col. 866   |
| Second Reading           | 19 November 2010 | Vol. 518 Cols. 1170-1228  |
| Committee                | 19 October 2011  | Hansard – Public Services (Social Enterprise and Social Value) Bill Committee |
| Report and Third Reading | 25 November 2011 | Vol. 536 Cols. 571-609  |
| <b>House of Lords</b>    |                  |   |
| Introduction             | 25 November 2011 | Vol. 732 Col. 1258  |
| Second Reading           | 27 January 2012  | Vol. 734 Cols. 1293-1316  |
| Committee                | 14 February 2012 | Vol. 735 Cols. 680-681  |
| Third Reading            | 28 February 2012 | Vol. 735 Col. 1181  |
| Royal Assent             | 8 March 2012     | House of Lords Hansard Vol. 735 Col. 893                                      |
|                          |                  | House of Commons Hansard Vol. 541 Col. 893                                    |