PUBLIC SERVICES (SOCIAL VALUE) ACT 2012

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EXPLANATORY NOTES

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, 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.