

Briefing

Public services (Social Value) Act 2012

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Summary

This Federation briefing outlines the Public Services (Social Value) Act 2012 and examines what the new legislative requirement mean for housing associations' procurement and tendering processes. It also explains the options that housing associations have if they wish to analyse the social value of their own activities and how this may help in securing contracts with local authorities or other public bodies.

1.0 Background

The concise Public Services (Social Value) Act, or simply the Social Value Act received royal ascent on 8th March 2012. It has its origin in a Private Member's Bill, introduced by Chris White MP (Conservative, Warwick and Leamington) in June 2010. Section 3 of the Act, which relates to the contract arrangements of public bodies and the application of the Act came into force on that day. Other provisions of the Act are expected to come into force through statutory instrument early in 2013. We expect light guidance to the Act to be published in August 2012.

Chris White's stated aim of the Bill as it was introduced 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*".

Section 1 of the Act has extensive significance which requires public authorities to have regard to the enhancement of economic, social and environmental well-being at the pre-procurement phase of procuring or commissioning services. The authority must consider how the procurement process might secure an improvement in these themes rather than focus solely on the price or quality of their contracts. In addition those bodies affected by the Act will be required to consider whether it is necessary to consult the communities affected in the locality of the contract.

The Act has received cross party support in the House of Commons and has also been welcomed by social enterprise bodies and the charitable sector as they feel it confirms that social value and wider community benefit, however this is quantified, has a place in the contracting process.

2.0 What does the Act relate to?

For the purposes of the Act, its requirements relate to the following bodies: Local authorities, Government departments, NHS Trusts, PCTs, fire and rescue services and housing associations in England. The application is limited in Wales to those bodies which operate in England but extend their activities to Wales.

The Act applies to all public service contracts and framework agreements to which the Public Contracts regulations (2006) apply. The Act does not apply to contracts solely relating to goods and works contracts. It applies to contracts for all products and services, but not goods only contracts above and below the EU commissioning threshold. Therefore this Act is intended to complement existing procurement legislation rather than replace or supersede it.

When the Act applies to a service contract then a contracting body must consider the following when proposing to procure or make arrangements for procuring a service.

- How the proposed service to be procured might improve the economic social and environmental well-being of the relevant area, and
- How, in conducting the process of procurement, it might act with a view to securing that improvement.

The relevant area is defined in the Act as consisting of the local authority area or the locality of the framework agreement. The Act also defines the start of the procurement period as soon as an advert is placed in Official Journal of the European Union (OJEU), when an advertisement is published seeking offers or expressions of interest, or when a person is contacted in order to seek an offer.

For housing associations in particular the Act applies in two important and distinct respects. Firstly as a relevant authority which is bound by the requirements of the legislation when procuring a service and secondly, housing associations must also be prepared to define the social and economic value and impact of the services they offer when tendering for a service from a local authority or another relevant body.

Many housing associations already support and offer services which have wide ranging social and economic impact in their operating areas. The Act's requirements offer an opportunity to housing associations to explicitly demonstrate and publicise this work area when looking to procure or tender for services. It may also make it easier for housing associations to justify supporting such projects in terms of the local value that they offer.

3.0 What is meant by social and economic value?

In terms of the Act, social value is defined by referencing at pre-procurement stage, how what is being procured could improve economic, social and environmental well being and how that improvement could be secured.

One of the significant problems with the implementation of the Act is that there is no universal definition of social value. Social enterprise UK defines it as 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?'¹

¹ Public Services (Social Value) Act 2012 A Brief Guide-Social Enterprise UK

A procuring body will therefore need to look wider than the straightforward cost benefit analysis of a service when coming to a decision on awarding their contracts and this will undoubtedly cause areas of uncertainty. There are many examples and methodologies from organisations who are currently quantifying social value and impact but there is very little consistency in this arena.

4.0 What the Act means in practice?

The Act sets a requirement for contracting organisations to have due regard for the social and economic value of their procurement processes and raise the profile of the social value agenda when contracting for services. However the Act is vague as it stands and it will need careful implementation to realise any real effects.

There are a number of uncertainties and insecurities in the legislation as it stands which are likely to be clarified in subsequent case law.

One uncertainty is that the contracting authority must consider to what extent it is proper to take a relevant matter into account, and its proportionality. (Subsection 6). The terms relevant and proportionality will clearly need to be further defined although there is some case law in this area already. Needless to say an authority may think that such matters of relevance and proportionality are determined by the locality of specific project and so there is opportunity for these terms to be widely disputed.

Partly they will be determined by subsection 7 which requires the contracting authority to consider whether a consultation process is needed to determine and reflect the specific social value to the local area and community and how the improvement of the well being of an area can be improved by the procurement process. Local priorities may determine clarity over specific values.

Importantly, subsection (8) allows some or all of the pre-procurement obligations to be disregarded if the need to procure certain services is urgent. Timescales are not defined for what could be considered urgent.

The Act requires bodies to have regard to or think about the social value in a contract. The challenge is that this process needs to be demonstrated, through consultation for example. If demonstrated, the contractor can decide against its relevance. The European Commission has guidance in this area.

In terms of practical implementation, it is important that procurement processes are transparent and that social value is considered to avoid challenge.

5.0 How can you prepare?

There are a number of internal decision making processes that housing associations may wish to consider or re-evaluate when preparing for procurement or seeking to tender for services.

- Consider what services you are preparing to procure or contract in the future.
- Consider what services you are preparing to tender for.

- Be clear about the priorities and commissioning practices of the local authority that you are partnering with.
- Consider whether you effectively measure or define the social value that your services offer and produce and whether you demonstrate this effectively in your tendering?
- Consider the related costs of utilising internal or external social impact methodologies?
- Review your standing orders/contract procurement policies.
- Review and update your impact assessments if necessary.

6.0 Conclusion

On balance, the Social Value Act has been welcomed by those promoting social enterprise and wishing to see the social and economic value of businesses being considered to a greater degree in procurement. However the Act is vague and will need several areas of clarification through its implementation and therefore it remains to be seen whether its requirements will have much of an effect on the activities of those organisations that are covered by its remit.

There is also added uncertainty around the lack of a consistent definition of social and economic value as a starting point.

The Federation hopes to see guidance from the Government on the Act's implementation to ensure the cost of legal advice does not outweigh the Act's important principles in order to deliver the most effective benefit to communities.

7.0 Further resources

If you wish to download a full copy of the relevant legislation you can through this link www.legislation.gov.uk/ukpga/2012/3/enacted

Social Enterprise UK have been very supportive of the legislation and have a produced a straightforward and useful guide to the Act.

http://www.socialenterprise.org.uk/uploads/files/2012/03/public_services_act_2012_a_brief_guide_web_version_final.pdf

There is wide variety of tools, standard and bespoke, currently available to quantify the social and economic value of neighbourhood services, social enterprises, SMEs and local community projects. If you are interested in quantifying the social and economic value of the projects and services that you are involved with, the following are worthwhile starting points:

The Social Return on Investment model, explained by the SROI network <http://www.thesroinetwork.org/>

and a specific model developed for housing associations through Housemark <http://www.housemark.co.uk/hm.nsf/all/Community+Impact+Tracking+Service?opendocument>

For more information on the Federations work in this area, please contact Sara Cunningham sara.cunningham@housing.org.uk 020 7067 1078