



Public services (Social Enterprise and Social Value) Bill

Bill No 6 of 2010/11

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The Bill attempts to strengthen the social enterprise business sector and make the concept of 'social value' more relevant and important in the placement and provision of public services. New duties will be placed upon central and local government authorities to publish explicit strategies for supporting these values and the public procurement process will need to reflect and measure them. This Paper was completed before a final version of the Bill was published.

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Summary

This Bill attempts to provide a greater focus and role for the 'third sector' by placing further high level responsibilities on government (central and local) to assess the impact of their actions on the sector; to encourage its participation in such things as procurement exercises and to encourage the drawing up of strategic plans by government for its promotion. The Bill also draws on the concept of 'social value' to give focus to its aims.

This sector has been given a further fillip at a political level by the development of the 'Big Society' idea, wherein, greater involvement of 'civil society' and community groups in tackling a range of issues is encouraged by central government.

There have been many attempts in recent years to promote what is sometimes described as the 'third sector'. This third sector is hard to define but generally recognisable in practice. It includes a range of organisations and businesses covering a wide spread of personal and commercial services. They include charities, not for profit organisations and businesses with a social element in their commercial activities. Organisationally they can be charities, the relatively new Community Interest Companies (CICs), social enterprises, co-operatives, industrial and provident societies, trusts, unincorporated associations, mutual organisations, credit unions or limited companies or partnerships.

The Bill would require every local authority (in England) to include in their sustainable community strategy proposals for promoting engagement with social enterprise in their area. They must also include a statement of measures for social enterprise to participate in the implementation of these proposals.

Public procurement is currently governed by EU law. Its purpose is to open up the public procurement market and ensure free movement of goods and services in the EU. All public procurement must comply with the EU Treaty's principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality. The encouragement of third sector groups to be successful in procurement exercises has in the past been a challenge.

There exists already some scope, especially at the local government level, for relevant social issues to be taken into account provided they are consistent with the government's value for money policy. The Bill would require the contracting authority to give greater consideration to economic, social or environmental wellbeing during the pre-procurement stage.

It is a Private Member's Bill (ballot) introduced by the Conservative MP Chris White on 30 June 2010. It applies to England & Wales only, though in practice most measures only affect England.

1 Introduction

There have been many attempts in recent years to promote what is sometimes described as the 'third sector'. The third sector is hard to define but generally recognisable in practice. It includes a range of organisations and business covering a wide spread of personal and commercial services. They include charities, not for profit organisations and businesses with a social element in their commercial activities. Organisationally they can be charities, the relatively new Community Interest Companies (CICs), social enterprises, co-operatives, industrial and provident societies, trusts, unincorporated associations, mutual organisations, credit unions or limited companies or partnerships.

This sector has been given a further fillip at a political level by the development of the Conservative Party's 'Big Society' idea, wherein, greater involvement of 'community' and community groups in tackling a range of issues is encouraged by central government.^{1,2}

Specific legislation in recent years has included measures to improve the flexibility of mutual organisations to merge and strengthen; modernisation of the framework of things such as credit unions and the introduction of alternative forms of organisation such as the CICs. The Bill attempts to provide a greater focus for the sector by placing further high level responsibilities on government (central and local) to assess the impact of their actions on the sector; to encourage their participation in such things as procurement exercises and to encourage the drawing up of strategic plans by government for their promotion. The Bill also draws on the concept of 'social value' to give focus to its aims.

This Paper was completed and printed before a final version of the Bill was published. Comments on it therefore reflect its content as at an advanced draft stage.

2 The social enterprise sector

Social enterprise is defined by the purpose of the organisation, not by its legal status or format. Thus, a limited company, or a co-operative could be part of the sector or not. One representative group in the UK is the Social Enterprise Coalition (SEC). It defines social enterprises as:

businesses that trade in the market with a social purpose. They use business tools and techniques to achieve social aims and include an incredibly wide range of organisations, for example co-operatives, development trusts, community enterprises, housing associations, social firms, and leisure trusts.³

The then DTI's Small Business Service (SBS) had its own variant as did the more academic Global Entrepreneurship Monitor which offers the following definition:

Social entrepreneurship is any attempt at new social enterprise activity or new enterprise creation...by an individual, teams of individuals or established social enterprise, with social or community goals as its base and where the profit is invested in the activity or venture itself rather than returned to investors.⁴

A simple and rough definition is 'businesses trading for a social purpose'.

¹ See for example Cabinet Office [press release](#) 2 November 2010

² A [House of Lords Library note](#) *The Charitable Sector and Civil Society*, includes more information on the third sector and the 'Big Society'

³ See website at <http://www.socialenterprise.org.uk/>

⁴ London Business School, *Social Entrepreneurship Monitor UK 2006*, p 5

Examples of well known social enterprises include Welsh Water, Café Direct, The Big Issue, the Co-operative Group and Loch Fyne Oysters. That the Co-operative Group is the biggest single component of the sector in the UK, (almost a third of total sector turnover) highlights some of the ambivalence of these definitions. Few people would automatically feel that its food stores were more than just another supermarket. Aside from the Co-op, the sector includes thousands of smaller groups from sporting clubs to health services; from florists to radio stations and from inner city ethnic education and opportunities work to rural support and community sustainable living. A recent SEC Awards ceremony included a firm repairing bicycles; another maintaining and repairing mobility equipment and a centre for autism.⁵

SE is also big business. A report by the London Business School in 2006 found that:⁶

- 1.2 million adults are engaged in some form of SE activity (SEA).
- 5% of all businesses with employees are engaged in SEA with a total turnover of £27 billion (CO-Op group £7.3 billion).
- SEA activity was highest in London and lowest in the East Midlands; rural regions more SE orientated than urban ones.
- Women are far better represented in SEA than in traditional entrepreneurial activity.
- Compared to levels in the white British population, SE start up activity is three times higher in the Black population and twice as high amongst Black Caribbeans.
- SEA has become more economically significant in recent years. The average SEA start up employs more people and has a higher turnover than the average mainstream start up. Furthermore, the clear trend is for work in this sector to be paid rather than voluntary.

One of the previous Labour Government's initiatives to support SE was the creation of a new form of company – the Community Interest Companies or CICs. Information specifically on CICs can be had from the following website: <http://www.cicregulator.gov.uk/> it summarises CICs as being:

Community Interest Companies (CICS) are limited companies with special additional features created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage. This is achieved by a "community interest test" and "asset lock", which ensures that the CIC is established for community purposes and the assets and profits are dedicated to these purposes. Registration of a company as a CIC has to be approved by the Regulator who also has a continuing monitoring and enforcement role.

CICs were established by the *Companies (Audit Investigations and Community Enterprise) Act 2004* and they have proved to be a popular form of establishment; according to the CIC website, CICs are being registered at an impressive rate, over 4,000 applications have been approved in the five years to 2010, as the table below shows:

⁵ <http://www.socialenterpriseawards.org.uk/pages/socialenterpriseawards.html>

⁶ *Social Entrepreneurship Monitor 2006*; LBS, GEM Barclays

Community Interest Companies

Applications	2005-06	2006-07	2007-08	2008-09	2009-10	Total
Received	260	719	873	1,209	1,572	4,633
Approved	208	637	814	1,120	1,296	4,075
Ineligible	1	0	0	0	0	1
Converted to a charity	0	0	3	2	5	10
Dissolved	0	0	35	86	372	493

Source: CIC Regulator Annual Report 2009/10

In the light of the 'Big Society' concept – that civil society can support more functions previously solely provided by public bodies, it is clear that the links between SE activity and government, via its funding vehicles, is very strong already as the table below shows:⁷

Percentage of state versus non-state income funding

	Turnover £'s						
	Total	0 - 10,000	10,001 - 50,000	50,001 - 100,000	100,001 - 250,000	250,001 - £1 million	Over £1 million
Number in survey	821	48	125	126	182	164	144
State funding >50% of income	39%	33%	31%	38%	42%	48%	35%
State less than 50%	51%	63%	54%	52%	48%	45%	54%
Combined	10%	4%	14%	10%	10%	7%	11%

Combined: where no clear distinction between trading and non-trading income was possible

Source: Social Enterprise Survey 2009; Social Enterprise Coalition

Specific examples of the voluntary sector working to provide public services can be found in a briefing note by the [National Council for Voluntary Organisations](#).⁸

Other significant initiatives introduced by the previous Labour government include:

- the introduction of the Community Development Finance Institutions (CDFIs); and
- the Community Investment Tax Relief to investors in them.

2.1 Further information

Further, information on the social enterprise sector can be found on the websites of:

Social Enterprise Coalition: <http://www.socialenterprise.org.uk/>

Co-operatives UK: <http://www.uk.coop/>

Community Interest Companies: <http://www.cicregulator.gov.uk/>

3 Social value

3.1 What is social value?

While there is no single, generally accepted definition of 'social value', it is usually understood to refer to the "non-financial impacts of programmes, organisations and

⁷ Social Enterprise Coalition [2009 Review](#)

⁸ *BACKGROUND BRIEFING, PUBLIC SERVICES AND THE VOLUNTARY SECTOR*, NCVO

interventions”.⁹ These usually refer to social and environmental impacts as well as to individual well-being.

In a May 2008 speech to the Campaign to Protect Rural England, David Cameron discussed the “belief that the only thing that matters when it comes to policy and administration is economic value - that social value doesn’t matter”.¹⁰ He offered a number of examples where he felt social value had been diminished and these provide a flavour of some of the relevant issues:

It might be cheaper to educate children in larger schools, but if that means peer groups are bigger and pupils spend smaller amounts of time with a larger number of teachers this can have a significant and detrimental effect on their social and emotional development. It means you’re less likely to be able to spot - and then stop - a teenager from going off the rails, and that means higher costs down the line.

It may be cheaper to close down the small rural Post Offices but in doing so you close down the informal networks that can give elderly and often isolated people vital interaction and connections that can help avoid the need for more hospital calls or adult social services. The supposed benefits of these top-down reorganisations often seem to accrue to the bureaucracy rather than the user. They do not deliver taxpayer value, because they destroy social value.¹¹

3.2 Why measure social value?

Because the outcomes that contribute to social value are difficult to quantify there is a danger that they are ignored when the effectiveness of a programme or activity is being assessed. A large number of models have therefore been developed to ascribe a quantifiable value to social outcomes. This is particularly important in the context of public service provision where, under successive Labour Governments, the third sector played an increasingly important role.¹² Moreover, it is now envisaged that the third sector will be a key element in the Coalition Government’s plans for ‘[building a Big Society](#)’.

A recent [Demos report](#) has observed that:

policy makers from both sides of the political spectrum are more keenly focused on ensuring ‘genuine’ value for money in the delivery of services. This has led to growing interest in social value, value added and outcomes measures as alternatives to narrow interpretations of monetary value for money.¹³

Therefore, it concludes:

By measuring and communicating social ‘added’ value, third sector organisations may well be able to defend their role in public service delivery and justify their funding more effectively.¹⁴

⁹ Claudia Wood and Daniel Leighton, [Measuring social value: the gap between policy and practice](#), Demos, June 2010, p20

¹⁰ [David Cameron: Speech to CPRE on Local Communities](#), 12 May 2008, Conservative Party website

¹¹ Ibid

¹² For details see: Public Administration Committee, [Public services and the third sector: rhetoric and reality](#), HC 112-I, July 2008; NCVO website, [Public service delivery](#)

¹³ [Measuring Social Value; the gap between theory and practice](#); Demos, p13

¹⁴ Ibid p17

3.3 How social value is measured

A large number of frameworks have been developed for measuring social value.¹⁵ Some focus on a particular aspect (environmental impact, for example) while others are designed with a specific user in mind (such as a social enterprise). An approach currently popular with policy makers is the Social Return on Investment (SROI) model.¹⁶ This evaluates and ascribes monetary values to social outcomes, enabling a SROI ratio to be calculated. This model has been used by the Cabinet Office, illustrated by the following example from its website:

Fab Pad is a project run by Impact Arts. Fab Pad supports young homeless people to sustain new tenancies. Impact Arts believes that by engaging young people in making their new environment a home there will be less chance of them becoming homeless. The SROI evaluation carried out on Fab Pad revealed that for every £1 invested by the government in support, £8.38 of social return was derived in reduced health care costs, reduced welfare benefits expenditure and reduced costs of repeat homelessness.

As a result of their SROI, they have gained follow-on funding support for the programme, developed a higher profile with their main partners and funders, and have begun applying SROI to other aspects of their business as a strategic management tool.¹⁷

In 2009, the Cabinet Office published a [guide](#) on SROI. This was part of a measuring social value project that was delivered by the SROI Network and supported by New Philanthropy Capital, the New Economics Foundation, Charities Evaluation Services and the National Council for Voluntary Organisations.¹⁸

4 Public procurement

The Government intends to publish a Green Paper later this year which will discuss creating a level playing field for civil society organisations wanting to bid for public service contracts. There will be a Public Service Reform White Paper next year.¹⁹

4.1 Background

Value for money is the main aim of public procurement. This does not necessarily mean, however, that contracts should be awarded to the lowest initial bid. Costs over the whole life of the procurement, and quality, also need to be taken into account.

Public procurement is currently governed by EU law.²⁰ Its purpose is to open up the public procurement market and ensure free movement of goods and services in the EU. All public procurement must comply with the EU Treaty's principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality. Particular regulations apply where the procurement exceeds certain monetary thresholds. These contracts must be advertised in the Official Journal of the European Union and other rules must be followed.

There is scope within existing procurement rules to incorporate social issues if they are relevant to the subject matter of the contract, and are consistent with value for money policy.

¹⁵ A Demos report refers to 22 differing models: [Measuring social value: the gap between policy and practice](#), June 2010, p20

¹⁶ See the [SROI Network website](#) for further detail

¹⁷ Cabinet Office website, [Background on social return on investment](#)

¹⁸ [The Project](#), NCVO

¹⁹ Cabinet Office Press Release, [Downing Street Summit – Green Paper to put Big Society at the heart of public service reform](#), 2 November 2010

²⁰ This is implemented in the UK by [The Public Contracts Regulations 2006, SI 2006/5](#)

To help ensure compliance with the EU Public Procurement Rules, social issues in public procurement should be considered on a case-by-case basis depending on the requirements of the individual procurement.

Social issues can be considered in the procurement process at the following stages:

- Pre-procurement – when identifying the need and considering the market. For example, engaging with the community as potential customers.
- At the Specification Stage – when defining the requirement - social considerations can be included if they are directly relevant to the subject matter of the contract.
- At the Selection Stage – when selecting potential suppliers to invite to tender where social issues are relevant in terms of demonstrating technical ability.
- At the Award Stage. Criteria involving social considerations may be used to determine the most economically advantageous tender where they provide an economic advantage for the contracting authority which is linked to the product or service which is the subject matter of the contract.
- Through Contract Conditions – where they relate to the performance of a contract, are proportionate and compatible with EU Law.

There are also opportunities outside the formal procurement process to promote the importance of social issues and encourage action amongst suppliers.

Contracting authorities should be clear about the social benefits and weigh these up against any additional costs to ensure that action taken through the procurement process is proportionate and that value for money is attainable.

4.2 Local authority procurement

Local authorities, like the rest of the public sector, must also comply with EU procurement legislation. Because of the size and importance of this sector, central government has sought to influence the way in which procurement is undertaken. By virtue of the *Local Government Act 1999*, local authorities are subject to “best value” requirements, defined as a duty “...to secure continuous improvement in the exercise of all functions undertaken by the authority, having regard to a combination of economy, efficiency and effectiveness.”²¹

The Labour Government launched a *National procurement strategy for local government* in 2003 to promote good practice in local authority procurement.²² Its “key messages” were said to be:

...councils should build up their capacity; take up further opportunities for collaborative working; implement further steps on e-procurement; and stimulate markets.²³

The national procurement strategy document advised councils that neither the EU procurement rules nor the best value requirements stopped them from working with suppliers to realise “community benefits”. It added:

²¹ *Local Government Act 1999*, section 3

²² ODPM/Local Government Association, *National procurement strategy for local government in England*, 2003

²³ See Bill Roots, *Review of arrangements for efficiencies from smarter procurement in local government (the “Roots Review”)*, DCLG, 2009, section 2

Councils should invite bidders for partnerships to include in their offers optional, priced proposals relating to the delivery of specified community benefits (economic, social and environmental) that are relevant to the contract and that add value to the council's community plan [now known as the "sustainable community strategy"]. This might include employment, training and enterprise opportunities in the locality and local multiplier effects. Impacts upon voluntary sector partners and the sustainability and equality issues of the area may also be factored into priced proposals where relevant to the contract.²⁴

A 2006 report on public sector procurement and social enterprise in Gloucestershire, summarised the conditions that must be met if community benefits are to be included in specifications for local authority contracts. In particular, such benefits must:

- be a core part of the procurement;
- be relevant to the rest of the contract specification;
- be capable of being evaluated in the selection process;
- comply with equal opportunities;
- add to the achievement of value for money; and
- not disadvantage non-local firms.²⁵

A sustainable procurement strategy for local government was developed and published in 2007 in response to the recommendations of the Sustainable Procurement Task Force and the government's subsequent action plan. The strategy envisaged contracts being awarded on the basis of "whole life costs and benefits wherever possible". Councils and their partners were to "...pursue the achievement of social economic and environmental benefits through the Sustainable Community Strategy, Local Strategic Partnership and Local Area Agreement."²⁶

4.3 Local authority commissioning

The commissioning role is wider than procurement in that it involves determining how a given service should be designed and delivered, regardless of who delivers it. The Labour Government's local government White Paper, *Strong and prosperous communities* (2006), emphasised the need for authorities, as strategic 'place-shapers', to continue the move away from simple service delivery towards a commissioning role. This meant "...being open to using the best possible ways of securing service outcomes."²⁷ Subsequent statutory guidance entitled *Creating strong, safe and prosperous communities* (2008) said:

Local authorities will generally be better able to meet their best value duty by adopting a commissioning role. A commissioning role is one in which the authority seeks to secure the best outcomes for their local communities by making use of all available

²⁴ ODPM/Local Government Association, *National procurement strategy for local government in England*, 2003, p50

²⁵ Mutual Advant *Public sector procurement and social enterprise: improving practice in Gloucestershire*, January 2006, p10

²⁵ LGA/IDeA/C age Partnership LLP, *Public sector procurement and social enterprise: improving practice in Gloucestershire*, January 2006, p10

²⁶ LGA/IDeA/Centre of Excellence North East, *Local government sustainable procurement strategy*, November 2007

²⁷ Cm 6939-I, p109

resources – without regard for whether services are provided in-house, externally or through various forms of partnership.²⁸

The guidance urged authorities to put “people and places” at the heart of commissioning, exploring with communities how services can be varied or targeted and locating commissioning decisions closer to communities (e.g. through parish and town councils). It advocated a “mixed economy” of service provision with the emphasis on outcomes and not on whether a particular service is provided publicly, privately or by the third sector.

5 Sustainable Community Strategies

Clause 2 of the Bill relates to local authority sustainable community strategies. The *Local Government Act 2000* gave local authorities a new power to do anything they considered likely to promote or improve the economic, social or environmental well-being of their area. Under Section 4 of the Act, councils in England were required to prepare a community strategy for promoting or improving well-being. The White Paper that preceded the Act explained that this was to be:

a clear and understandable strategy for every area, based on an analysis of the area's needs and priorities for future action. It should be developed with local people, local business and with public and voluntary sector bodies who operate in the local area.²⁹

Later renamed the “sustainable community strategy” (SCS) its purpose, as defined in government guidance, is to:

“set the overall strategic direction and long-term vision for the economic, social and environmental well-being of a local area...in a way that contributes to sustainable development in the UK.”³⁰

The SCS is described as the “overarching plan” for an area taking into account other local and regional plans just as they are expected to take account of it. The Local Area Agreement, drawn up by the authority and its partners, was viewed as the prime delivery vehicle for the SCS.

Local authorities must have regard to the government guidance cited above. This was last updated in 2008 and covers such matters as how SCSs work in two-tier areas:

Most district partnerships have prepared their own community strategy; others have prepared joint strategies with other district areas; some have contributed to overarching county-wide strategies and not prepared their own. Some county partnerships have not prepared their own strategy but have contributed to district strategies...With the advent of Local Area Agreements, we would expect at a minimum there to be an agreed county-wide set of priorities. This would sensibly be set out in a countywide Sustainable Community Strategy...³¹

The Coalition Government announced that authorities would not have to prepare a Local Area Agreement from April 2011 once the current agreements expire.³² Moreover, the

²⁸ HM Government, *Creating strong, safe and prosperous communities: statutory guidance*, July 2008, p49

²⁹ *Modern local government: in touch with the people*, Cm 4104, 1998, para 13, para 8.13

³⁰ DCLG, *Creating strong, safe and prosperous communities: statutory guidance*, 1998, section 3

³¹ *Ibid*, p32

³² HC Deb 13 October 2010 cc20-21WS

guidance is to be reviewed “as part of a wider survey of reducing unnecessary burdens and duties.”³³

Section 4 of the 2000 Act also requires authorities to “have regard” to certain child poverty matters when preparing or modifying their SCS. This provision was inserted by the *Child Poverty Act 2010*. According to the 2010 Act’s explanatory notes:

The effect of the amendment is that local authorities are required to take account of the local child poverty needs assessment, the joint child poverty strategy and other arrangements they have made to tackle child poverty in their area when preparing their sustainable community strategy.

This is to ensure that measures to reduce, and mitigate the effects of, child poverty are reflected in the wider planning of local authorities.³⁴

6 The Bill

The Bill contains three substantive clauses concerning social enterprise, local authority community strategies and new rules on central and local government procurement. The Bill generally extends to England and Wales only although many aspects apply in practice to England only. The Bill’s Explanatory Notes clarify its territorial extent:

Its application to Wales is limited. The national strategy to be prepared under Clause 1 relates to the promotion of social enterprise in England. Clause 2 concerns strategies issued by local authorities in England. The provisions as regards procurement by public authorities in Clause 3 do not apply in relation to functions that are devolved functions as regards Wales.

The Bill does not extend to Scotland or Northern Ireland

The Bill and accompanying explanatory notes can be found on the Library website and on the [Bill Gateways](#) page.

6.1 Social enterprise

Clause 1(1) requires the Secretary of State to publish a “national social enterprise strategy” that will involve, Clause 1(2), representatives of the sector and public in either its implementation or the monitoring of its effectiveness. Clause 1(5) defines a social enterprise as being a business, the activities of which “are being carried on primarily for a purpose that promotes or improves the social or environmental well-being of the United Kingdom”.

The Social Enterprise Coalition supports the Bill and has assisted with its drafting.

6.2 Local community strategies

Clause 2 of the Bill seeks to amend Section 4 of the *Local Government Act 2000* which concerns strategies for promoting well-being. The amendment requires that every local authority (in England) must include in their sustainable community strategy proposals for promoting engagement with social enterprise in their area. They must also include a statement of measures for social enterprises to participate in the implementation of these proposals.

³³ HL Deb 27 October 2010 cWA293

³⁴ [Child Poverty Act 2010: Explanatory Notes](#), Section 24

6.3 Procurement & commissioning

Clause 3 places certain requirements on public sector bodies (“contracting authorities”).³⁵ These requirements only apply to procurements which are subject to the EU rules (see above). The contracting authority must consider how a contract might improve the economic, social or environmental wellbeing of the UK. In doing so, however, the authority may only consider matters which are relevant to the contract and proportionate. The authority must also consider whether to consult those intended to benefit from the goods or services supplied under the contract. The authority must take into consideration the matters it identified at the pre-procurement stage as promoting well-being when drawing up the contract.

This clause does not apply to certain bodies in Wales.

³⁵ A contracting authority is defined by the *Public Contracts Regulations 2006, SI 2006/5* and includes central and local government and other public sector bodies.