

24th February 2023

SOCIAL VALUE AND PROCUREMENT REFORM

Purpose

1. To update members on the programme for procurement social value now being referred to as 'Wellbeing Outcomes'.
2. To agree the WLGA response to UK Government consultation on the Procurement Bill and support the collaborative programme for implementation.

Background

Local Government Programme

3. WLGA's National Procurement Network drove a programme through 2019-2021 which generated substantial interest in social value. The pilot work within that programme was successful and is continuing.
4. By early 2021 it was evident that scope existed beyond procurement, but the work had already exceeded all reasonable boundaries for our officer network, requiring coordination across sectors, and other practice areas. In 2022 a new Welsh Government programme was established to lead social value nationally.
5. The WLGA National Social Value Taskforce Wales was reformed to focus on procurement as the Welsh TOMs User Group. Discovery by Welsh councils into wider applications of the TOMs paused while the new programme established.

Social Value in Wales

6. Social value is a complementary policy in England. In the ten years since the Social Value Act was introduced, councils have developed procurement tools that have proven equally effective at driving additional value here. The Themes Outcomes and Measures (TOMs) is the leading toolkit. Advocated by the LGA and discovered by Welsh practitioners operating in England, this underpins the work by WLGA and the majority of Welsh councils. 4 councils have led pilots here:
 - Caerphilly County Borough Council was the first council to adopt the TOMs and has committed to including Social Value as a weighted criteria for procurements in excess of £75,000. The council has created two sets of TOMs: A 'Light Set', comprising 38 measures for procurement and a 'Master Set' comprising an additional 40 measures for procurement (total of 78 measures).

- Cardiff Council reported £6,500,000 of additional social value through 46 projects. This included employment for 76 disadvantaged people; £2,736,378 spent in community, charity and VCSE's; 40,332 tonnes of CO2 reduction, 3,932 volunteer hours.
 - Rhondda Cynon Taff County Borough Council employed a dedicated officer and reported 34 social value outcomes in the category of Cultural Wellbeing, 48 Economic, 10 Environmental, 17 Social with 109 outcomes so far.
 - Flintshire County Council reported £6,385,685 of additional social and local economic value through 167 contracts since 2021. This included £4,900,000 of spent in the community, £11,938 of in-kind community funding donated, 491 apprenticeship and trainee training weeks completed, 499 staff volunteering hours donated to support local communities, 1,523 hours donated to support young people into employment.
7. Another 7 Welsh Councils are also using the TOMs, or adaptations. In some councils this is scaling up, with Swansea Council notable for their adaptation to a local model and Gwynedd County Council's local needs analysis an outstanding example of targeted procurement.

Welsh Government Programme – Wellbeing Outcomes

8. The procurement officer network asked Welsh Government to do more to support public services in this area of practice; and at the end of 2021; funding was announced for a new programme. This was to be under the management of the then newly appointed Commercial Director.
9. Leadership of the social value initiative was taken up by Welsh Government with a new five-year commercial programme. We have assurances that this programme will build on the earlier work by WLGA and councils; but it has yet to demonstrate this being a relatively new initiative.
10. The WLGA National Procurement Network will support the Welsh Government initiative as a continuation of the Local Government initiative and make it successful in promulgating wellbeing outcomes within and beyond procurement.

Link to Procurement Reforms

11. There are risks in the procurement reforms, including failure to take up the opportunities afforded by the reforms. We can expect a small industry around change, with all the associated costs. To assure outcomes for councils and manage our costs we need consistent methods with local flexibility.
12. The change from 'Most Economically Advantageous Tender' to 'Most Advantageous Tender' is an opportunity for councils. It allows a wider appreciation of what an

advantageous tender looks like. We can influence change over and above anything we might directly specify and pay for and we have the tools to do it.

13. This is what the TOMs supports. Putting local policy into procurement decisions. The tool is well proven. We can move up right now. Some councils already have. Those councils will be better able to respond when the reformed Procurement & Contracting Rules apply.

The Procurement Bill

14. The Procurement Bill applies to England, Wales and Northern Ireland. It affects a third of public spending.
15. The Bill was debated in the House of Commons on Monday 9 January 2023. As a second reading, it was a general debate without amendments. The need to ensure improved transparency in the award of public contracts dominated the exchanges. There was widespread support from MPs for the proposed stronger SME focus and the single platform which will underpin the new regime. The importance of being able to buy local was also discussed, as was the scope of the proposed regime as regards the NHS and clinical services.
16. The Public Bill Committee in the Commons will now scrutinise the Bill line by line and has put out a Procurement Bill call for evidence with a deadline of 23 February 2023.
17. At the first sitting of the Public Bill Committee in the House of Lords on 31st January there was strong support for the in-house and public-public cooperation exemptions under the existing Regulations (PCR 2015) to be unambiguously maintained in the new regime. The proposals relating to maintaining these exemptions with a clearer and simplified definition in law were put and agreed to.
18. There is also work by Welsh Government officials and Ministers in the Senedd to agree exactly how to implement the Bill. The broad intention is that Wales go along with the UK legislation. Procurement is however a within the competency of Welsh Ministers who have reserved their rights to variations for Wales. This might be to support important policies here, or to be legally robust in the presence of Welsh legislation. A Legislative Consent Memorandum was issued on 6th February.
19. It was very positive to hear that the Lords have taken the local government advice and agreed to maintain in-house and public-public cooperation exemptions in the Bill. This decision is subject to further Parliamentary scrutiny, as is the rest of the Bill. There is also the matter of implementation in Wales, the details of which will be important to Welsh councils.

20. Further details and progress of the Bill can be found at the following links:

Legislative Consent Memo (LCM) laid before the Senedd: [Link](#)
Progress of the Bill, UK Parliament: [Link](#)
LGA briefing on the Procurement Bill, Second Reading: [Link](#)

Recommendations

21. Members are asked to:

21.1 Note and support the work on Wellbeing Outcomes; and

21.2 Approve the response to UK Government on the Procurement Bill at Appendix 1.

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Appendix 1: Proposals to UK Government

- The WLGA broadly welcomes the Government's proposed reforms to public procurement including enshrining in law the objectives of public procurement.
- Following the publication of the Green Paper, [Transforming Public Procurement](#), we have been engaging with Government to help them to understand the way that councils procure goods, works and services, to help design the new regime in a way that is effective and reduces unnecessary costs and administrative burdens for local government.
- We are pleased that many of our concerns arising from the Green Paper have been resolved in the proposed legislation and we are grateful for Cabinet Office officials' ongoing engagement with us to improve the Bill. However, there are several important issues for local government that we are still seeking to resolve.
- Our primary concern is that the Bill will significantly limit public bodies from using the current vertical and horizontal procurement exemptions, which enable councils and public sector bodies to enter into collaborative arrangements to run efficient public services. Shared service arrangements enabled by these exemptions help to drive significant efficiencies in local government through achieving economies of scale and by pooling resources. [LGA research](#) revealed that in 2018/19 these arrangements contributed in part to saving the taxpayer nearly £200 million.
- However, the Bill introduces a new 'reasonableness' test which stipulates that these exemptions can only be used if the contract 'could not reasonably be supplied under a separate contract'. It will often be the case that public services, whether front-line or back-office, could 'reasonably be supplied' by a provider that is not a public entity. As a result, the legislation can be interpreted as requiring the public sector to have to engage the market, even for arrangements wholly within the public-sector, such as one council wishing to work with an in-house company or collaborate with a neighbouring council(s). We remain concerned that the wording of this provision could close down the exemptions and certain models of collaborative public service delivery which save public money.
- [Section 17 \(1\) of the Local Government Act 1988](#) currently prohibits local authorities from reserving contracts, whatever their value, to local suppliers, SMEs and voluntary, community and social enterprises (VCSEs). In the public sector this restriction is unique to local government, placing councils at a disadvantage. This ability is vital to support councils' place shaping role, drive economic growth and achieve wider objectives such as reducing carbon emissions and boosting supply chain resilience. We are pleased that the Government has committed to address this issue in secondary legislation, which would come into force at the same time as the Procurement Act. We would welcome early engagement from Cabinet Office on the secondary legislation.
- We strongly support the aims of the single digital platform to simplify the public procurement system for both buyers and suppliers and enhance transparency. It is important that the Government now acts to bring differing procurement requirements in existing legislation (the Transport Act 1988 and Service Subsidy Agreements (Tendering) (England) Regulations 2002) into line with the single digital platform to avoid duplication and inefficiency. Any future legislative requirements in relation to procurement, whether under the Act or in sectoral legislation, should also make use of the platform.
- We want to see Government go as far as possible to reduce red tape for both the public sector and businesses, and will continue to work with Government, as the Bill passes through the Commons to ensure the reforms deliver their intended improvements to the procurement regime.