

# Our briefing on the House of Lords debate on increasing the social value of public procurement

House of Lords, 23 May 2019

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## Introduction

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The Equality and Human Rights Commission (the Commission) has been given powers by Parliament to advise Government on the equality and human rights implications of laws and proposed laws and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

The UK Government has published a consultation<sup>1</sup> on how procurement by central government departments can be used to achieve the aims set out in the Public Services (Social Value) Act 2012 (the 'SV Act') as supported by the Public Contracts Regulations 2015. The SV Act requires that public bodies in England and Wales consider how the services they procure can improve social, economic and environmental well-being. It has direct relevance to equality and human rights issues. The consultation was issued by the Cabinet Office on 11 March 2019 and closes on 10 June 2019.

This briefing addresses the forthcoming House of Lords debate on the motion tabled by Baroness McGregor-Smith on increasing the social value of public procurement by aligning it with Her Majesty's Government's Civil Society Strategy.

## Commission's view

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The Equality and Human Rights Commission welcomes the current consultation on increasing the social value of government procurement. The consultation recognises the power of public procurement – worth around £260 billion in England and Wales in 2015 – to drive social change, and that equality is a key consideration. For example, it is encouraging that the high level outcomes suggested in the consultation include improved employability and skills, improving the gender pay gap, increased representation of disabled people, ethnic minorities, and people with mental health conditions, community cohesion and the

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<sup>1</sup> Open consultation: Social value in government procurement, <https://www.gov.uk/government/consultations/social-value-in-government-procurement>

reduction of modern slavery. The evaluation model for these outcomes is also positive, specifically suggesting outcomes and measurement in relation to the contract over time – for example, reporting on the number of apprenticeship opportunities taken up by women or people with disabilities. We agree that articulating the key equality challenges to be addressed will drive concerted action for improvement. This approach aligns with our proposals for stronger specific duties under the Public Sector Equality Duty (PSED),<sup>2</sup> to direct the efforts of public bodies towards the biggest equality challenges facing Britain, as set out in our report *Is Britain Fairer? 2018*.<sup>3</sup>

Scottish public bodies are already required to consider building equality considerations into award criteria and conditions of contracts. This approach has meant that the positive drive towards equality enshrined in the PSED has been extended into private sector contractors, encouraging action on employment and pay gaps experienced by under-represented groups across the economy.

There are, however, some areas in which we think the proposed approach could be finessed or could go further:

- **The lack of an explicit link to the PSED is a missed opportunity.** The requirement to have ‘due regard’ under the PSED is stronger than the ‘consider’ duty in the SV Act. Using the PSED approach, and developing specific requirements on government and other public bodies to build equality considerations into their procurement, would therefore be more robust and more likely to deliver specific equality outcomes for people in under-represented and disadvantaged groups.
- **Experience has shown that pre-market engagement is important.** Experience from Scotland suggests that the more specific the tender is in its desired outcomes, the more likely it is to achieve its aims. So, for example, in pre-market engagement, setting out the social outcomes that the contract

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<sup>2</sup> Section 149 of the Equality Act 2010

<sup>3</sup> *Is Britain Fairer?* (2018), <https://www.equalityhumanrights.com/en/publication-download/britain-fairer-2018>

seeks to support (e.g. increased employment of disabled people) the contractor should define the problem it wishes to resolve in an area (e.g. disabled people's economic inactivity in Shropshire). This focusses the mind of bidders to positively engage with equality issues when bidding. It also increases parity with environmental considerations which tend to be much more specific in terms of outputs and outcomes.

- **The consultation is largely silent on the potential of procurement to reduce deprivation.** This is an opportunity in England to drive progress in tackling socio-economic disadvantage, which is disproportionately experienced by certain ethnic minority groups and disabled people.
- **The section on community cohesion is very limited.** It is primarily concerned with community involvement in the design and delivery of contracts. While this is welcome it fails to address issues of good community relations, which may be affected should the majority of jobs in an area go to one section of the community. Public procurement should not only guard against harming community relations but should, where possible, promote good relations between different groups. This is particularly important in the current climate of heightened community tensions around Brexit.
- **Large construction contracts are outside the scope of this consultation.** However, the breadth of professions in the construction industry is currently highly segregated according to sex and disability, and limited in terms of race. The principles in this consultation could therefore very usefully be applied in this area to some of the biggest public contracts.
- **Small minority-run businesses may need support to compete for public contracts.** Many minority-run businesses are small enterprises, which find it harder to compete against larger and more established contractors. The consultation fails to make proposals to ensure smaller businesses are supported to compete on a level playing-field.

## Further information

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The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about the Commission's work on our [website](#).

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