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Implications for Local Authorities: The Procurement Bill

- Objectives of the Bill
- Procurement and Contract Management
- The practical application for councils

Speaker: Mo Baines, Chief Executive, APSE

Why the Bill?

- Post Brexit
- Bringing previous EU procurement rules under UK direct control*
- Lays out new procedures for above and below threshold contracts for public procurement
- Contains further regulatory powers

* *Does not among WTO procurement matters*

What is covered?

- Public contracts: awarded by most central government departments, arms-length bodies of the same
- Wider public sector bodies including local government, health authorities and schools
- Utilities contracts – water, energy and transport
- Concession contracts for the supply of works or services
- Defence and security contracts

Devolved matters

- Applies to England
- Applies to devolved authorities in Wales and Northern Ireland
- Scotland – own arrangements however the Bill DOES cover joint and cross-border procurement with Scottish contracting authorities

Does it deliver?

- 500 amendments at the Lords stage alone!
- 350 Government amendments put forward (279 agreed)
- Criticism from some that it needs to be simple and not create bureaucratic burdens
- Criticism from others that it does not enshrine principles such as integrity, social value and climate change matters

What changed?

- NHS procurement brought fully within scope of the Bill
- Requirements on Ministers to consider certain principles before publishing a National Procurement Strategy
- Allowing contracting authorities to remove certain suppliers (human organ harvesting)
- Ensuring removal of physical surveillance technology involved in modern slavery and crimes against humanity

Pulling the lever of the public sector £1?

- ‘Public Good’ or ‘Public Benefit’ is not defined in the Bill
- The National Procurement Policy Statement – can be changed by future governments or ministers - not included in the face of the Bill itself
- Does it go far enough? Arguably does not allow local or regional priorities to be taken into account alongside national priorities

Social value and climate change

The NPPS does now contain: -

- An obligation on Ministers to consult on the NPPS as appropriate
- Give due regard to strategic national priorities including economic, social, environmental and public safety issues
- Lay that statement before Parliament

And include

- Achieving priorities set out in the Public Services (Social Value Act (2012)
- Achieving targets set out in the Climate Change Act 2008 and Environment Act 2021

Should there be a public interest test?

Should we look to only outsource services where there is a demonstrable public interest?

- Pre-procurement public interest test?
- Service quality and accessibility
- Value for money to expenditure
- Impact on other service budgets / sectors
- Service resilience
- Local economic implications and availability of 'good' work
- Implications for accountability and transparency
- Employment impact assessment
- Climate change contribution
- Equalities and compliance with the public sector equalities duty

Other issues.....

- Teckal exemptions – now in but what about vertical exceptions? Subsidiaries?
- Remedy – concentrates on enforcement solely by contracting authority
- Exclusions – why discretionary only?
- Tax evasion? Strategic Commissioning?
Compliance issues

Actions for local councils?

- The NPPS is imperfect.....but use to your advantage!
- Insist on statements from procuring organisations that they reflect in their contract awards social value, fair employment, access to pensions, public interest matters – local economic outcomes and equalities
- The Public Sector Equalities duty – low paid part-time women workers
- Protection of the public interest – child poverty, and integrated approaches to tackling health and well being?
- Get your own council to review its procurement policy and social value framework

Interface with Wales procurement policy statement

Interaction with relevant legislation

‘Contracting authorities are reminded that they must not take any action in accordance with these principles which would conflict with any obligation relating to existing relevant legislation or public procurement requirements, whether under the Public Contracts Regulations 2015 or otherwise’.

Social Partnerships

- Social Partnership and Public Procurement (Wales) Act 2023
- Aligns to newer calls across the UK for socially and environmental responsible procurement, protection of workers and a 'public interest test'.

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