

Spending it Better: Taking back control of public contracts to level up Britain

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About the Centre for Social Justice

Established in 2004, the Centre for Social Justice is an independent think-tank that studies the root causes of Britain's social problems and addresses them by recommending practical, workable policy interventions. The CSJ's vision is to give people in the UK who are experiencing the worst multiple disadvantages and injustice every possible opportunity to reach their full potential.

The majority of the CSJ's work is organised around five "pathways to poverty", first identified in our ground-breaking 2007 report Breakthrough Britain. These are: educational failure; family breakdown; economic dependency and worklessness; addiction to drugs and alcohol; and severe personal debt.

Since its inception, the CSJ has changed the landscape of our political discourse by putting social justice at the heart of British politics. This has led to a transformation in government thinking and policy. For instance, in March 2013, the CSJ report It Happens Here shone a light on the horrific reality of human trafficking and modern slavery in the UK. As a direct result of this report, the Government passed the Modern Slavery Act 2015, one of the first pieces of legislation in the world to address slavery and trafficking in the 21st century.

Our research is informed by experts including prominent academics, practitioners and policy-makers. We also draw upon our CSJ Alliance, a unique group of charities, social enterprises and other grass-roots organisations that have a proven track-record of reversing social breakdown across the UK.

The social challenges facing Britain remain serious. In 2021 and beyond, we will continue to advance the cause of social justice so that more people can continue to fulfil their potential.

Executive Summary

The UK government spends around one-third of all its annual expenditure on contracts to private companies. This normally falls in the region of £290 billion per year. For context, that is more than twice the total annual NHS budget, more than five times the size of the defence budget, and greater than Britain's total expenditure on social security, including the state pension.

This is an extraordinary sum, the scale of which is generally underappreciated in Westminster and by the media - so large, in fact, that it places debates over the £6bn cost of the £20 uplift to Universal Credit in the shade. The money spent goes to private suppliers of vital goods and services to the state: building schools and hospitals, running prisons, cleaning and maintaining public buildings, constructing and maintaining roads and rail rolling stock, running social care facilities, providing catering and other services for public institutions, and supplying our emergency services with vital equipment.

Incredibly, the rules according to which these contracts were awarded to date have been determined not by UK government policy but, primarily, by EU law, in the form of the Principles of the Treaty on the Functioning of the European Union (TFEU) and the EU Procurement Directive. The EU rules were designed, in the words of the European Court of Justice itself, to facilitate: **"the free movement of services ... and the opening-up to undistorted competition in all the Member States."**

The effect of these rules often came down to awarding companies contracts based on the lowest bid, with public bodies liable to be sued by tenderers who felt they had lost out under the EU rules. The regime was legally enforced ultimately by the ECJ and the European Commission.

After the UK's exit from the EU and the transition period, the UK is now free to redesign its own procurement rules, within the more flexible WTO regime, the Government Procurement Agreement (GPA). The Government published a Green Paper outlining ideas for reform in December 2020. The recent controversies surrounding the awarding of PPE contracts, and the problems with UK supply chain resiliency exposed by Covid-19, have thrown into sharp relief the urgent need to get UK public contracting right, as did the 2018 collapse of Carillion, at a cost to the Cabinet Office of £148m.

A major example of the old rules having a perverse effect was the awarding of a £1.5bn public contract for City Thameslink to Siemens rather than the Bombardier site in Derby. Professor Karel Williams told the Transport Committee in 2011 that the fallout from this (£100m loss to the economy, £20m lost tax revenue for HMRC and around 500 job losses) was entirely foreseeable. He said:

"A £68 billion trade deficit on manufactures last year and where high quality manufacturing jobs are hard to get, we need to be thinking about how we rebuild the supply chains and not simply let them go."¹

Attempts at reforming procurement to deliver social value rather than focusing purely on the bottom line, through the Social Value Act 2012 and the government Civil Society Strategy, had some positive effects. However, Lord Young's 2015 Review of the Social Value Act found that it had suffered from a lack of take-up, resulting from a lack of enforceability and overly vague requirements.

The Government's interim policy statements on Procurement say positive things about emphasising a range of factors when deciding on the award of contracts, including social value, quality of delivery and environmental concerns.

The CSJ argues that the Government should go further by linking its procurement strategy explicitly to its "levelling up" agenda by prioritising the award of contracts to areas with high levels of economic deprivation.

¹ Professor Karel Williams, Transport Committee Oral Evidence on the award of a £1.5 billion public contract to Siemens rather than Bombardier, resulting in the loss of 500 jobs, £100 million to the economy and £20 million to HM Treasury, 2011, publications.parliament.uk/pa/cm201012/cmselect/cmtran/1453/11090701.htm

The UK has been described by economists as “one of the most regionally unbalanced countries in the industrialised world”.² By every measure the gap between London and the South East on the one hand and the rest of the country on the other is increasing. The divergence in growth rates between UK regions means this trend will not only increase, but accelerate. Identifying this problem is not new. In his first year in office David Cameron said:

*“[Our] economy has become more and more unbalanced, with our fortunes hitched to a few industries in one corner of the country, while we let other sectors like manufacturing slide.....It has become far too dependent on the public sector, with over half of all jobs created in the last ten years associated in some way with public spending”.*³

This deepening structural divide has been earmarked by the Government for correction. But key problems with this agenda are a lack of clear definition and a lack of “levers” available to redress the problem. We suggest that the procurement budget is one such (significant) lever.

The CSJ calls upon the Government to adopt an explicit Levelling Up Test, binding on all public authorities. Wherever possible, public bodies should be obligated to award contracts to tenderers that are active in an area that is economically underperforming, measured by factors such as the Index of Multiple Deprivation (IMD) and local unemployment levels. The burden of proof should lie on the authority to justify any decision not to follow this principle in any specific case. Furthermore, for local authorities there should be a presumption of spending locally unless there is a reason not to, to ensure that local taxpayer funds do not leave the area needlessly. The Government should establish a Public Contracts Taskforce to devise an enforceable mechanism to prioritise levelling up through the regime, and to monitor and enforce it.

The CSJ also calls on the Government to review its understanding of “value for money”. It is fruitless to save £2m through a lower contract bid, while losing more than £2m due to welfare pressures created elsewhere. The potential costs of taking a contract away from a local supplier, or of not giving a contract to a given tenderer, should therefore be taken into consideration in the round, including the social security costs to the DWP implied by any given decision.

Finally, the CSJ calls upon the Government to diffuse its spending power by creating a mechanism for local authorities with an above average score according to the IMD to apply to the Cabinet Office for the right to award a central government contract locally. In this way Whitehall’s enormous spending power can be devolved, but in a way in which there is still oversight by and accountability to the Cabinet Office. This should result in an effective fiscal stimulus in the areas that need it most.

Spending in a way that furthers domestic priorities is entirely normal by global standards, as pointed out in the Green Paper. Hesitations about “protectionism” should be set aside, since procurement involves government acting not as a protector or regulator, but as a purchaser. The same is true of concerns over uncontrolled spending: using public contracts for levelling up should produce a return on investment by lowering unemployment and reducing the social problems poverty can cause.

This is not new money. Rather, the large sums of tax revenue the government already spends on procurement should be repurposed to serve the twin goals of a good financial deal and injecting jobs and investment into the regions and communities that need it most. By linking public contracts to levelling up, the UK can commit to using public money for public good.

² <https://www.tandfonline.com/doi/full/10.1080/00343404.2019.1619928>

³ David Cameron, new PM’s first speech on the economy, 28 May 2010

Summary of Recommendations

The CSJ's recommendations for procurement policy focus on three themes: expanding the concept of "value for money" to consider the costs of unemployment and regionalised poverty; prioritising the public good criteria within the new procurement regime, including creating a Levelling up Test and Public Contracts Taskforce; diffusing government spending to local authorities and setting a local government procurement rulebook that prioritises redressing worklessness.

Expanding the meaning of "value for money"

Recommendation: *The Government should take into account wider social costs and costs to the Exchequer that are foreseeable, including the cost of unemployment and under-employment to the DWP, when seeking "value for money" in public contracts. This wider understanding of value for money should be embedded in the new procurement rules.*

The Public Good element & the Levelling up Test

Recommendation: *The "public good" element of the public procurement criteria should be elevated to a position of priority over the other elements in the Government's procurement framework, with contracting authorities obliged to be able to demonstrate that it has been prioritised.*

Recommendation: *Wherever there is a geographical choice about where to award a public contract, procurement decisions should have to pass a "Levelling up Test". Public bodies should be required to offer contracts in a way which will most effectively redress regional economic disparities and boost investment in left-behind communities, with the Index of Multiple Deprivation used as a measure.*

Recommendation: *The Cabinet Office should establish a Public Contracts Taskforce with an explicit levelling up remit, jointly with the Department for Levelling Up, Housing & Communities, It would be responsible for oversight of central government departments' procurements and for establishing a framework for local authorities in order to apply and enforce the Levelling up Test.*

Localism & Diffusing Public Spending

Recommendation: *The Cabinet Office should establish a mechanism for local authorities to apply for the right to award a central government contract within their own authority, alongside a system of assessment based on factors such as the IMD and other local economic metrics.*

Recommendation: *Where appropriate, central government contracts that do not need to be awarded in a particular geographical area for reasons of delivery should be devolved to local authorities that have successfully applied via the mechanism above, with decisions made on a case-by-case basis.*

Recommendation: *A system should be established by the Cabinet Office in which local tenderers are "scouted" by local authorities and then submitted with local authority support as applicants to the relevant central government department.*

Recommendation: *The Cabinet Office should set a rules framework for local authorities' procurement activities which formally gives priority to job creation and reducing worklessness in the local area, so that creating jobs becomes a uniform procurement objective across the country.*

Introduction - the scale and challenges of UK Government procurement

The UK spends in the region of £290 billion on procurement - government contracts awarded to suppliers in the private sector - every year. This amounts to approximately one-third of all government spending, or 13.3 per cent of annual GDP.⁴

As a point of comparison, the UK spent £229.2 billion in total on welfare in 2018-19.⁵ While the scale by value of the UK procurement budget is not much discussed within the UK policy landscape, it exceeds our total spending on social security by a margin of some £60 billion, a figure significantly larger than the whole annual defence budget.⁶

It should be noted that procurement spending falls within the budget of each department or local authority that engages in public contracting, so the figure of £290bn is not in addition to existing budgets, but is a part of them. Nevertheless, it is an enormous sum spent not internally by the government, but externally in public-to-private transfers.

In 2018 the Institute for Government said:

“Government spends £284 billion a year on buying goods and services from external suppliers. This amounts to around a third of all public expenditure. The money is spent on everything from goods such as stationery and medicine, through to the construction of schools and roads, the daily delivery of back-office functions such as information technology and human resources, and front-line services such as probation and social care.”⁷

Procurement represents approximately 47 per cent of local government spending and 28 per cent of central government spending (procurement is smaller as a percentage of central government spending because the biggest central government expenditures are on welfare, health and national debt interest payments, none of which fall under procurement).⁸

Procurement expenditure can be categorised into resource expenditure (ongoing running costs), including running public services, and capital expenditure, such as making and maintaining military equipment or large infrastructure projects such as HS2. In 2017-18, resource expenditure was £219 billion while capital expenditure was £65 billion.⁹

This enormous spending lever was, until the UK's EU exit transition period ended on 31 December 2020, governed to a large extent by EU law. The purpose of these rules was primarily to secure access member states' companies to one another's public contract markets.¹⁰ Widely perceived as bureaucratic and cumbersome, the rules also gave rise to deeply publicly controversial decisions, such as the decision to award a £1.6bn public contract for Thameslink to Siemens, a German company, over Bombardier, a train maker based in Derby.¹¹

4 Based on pre-pandemic 2019 GDP figures, ONS Gross Domestic Product Time Series, <https://www.ons.gov.uk/timeseriestool?topic=economy/grossdomesticproductgdp>

5 Office for Budget Responsibility, Welfare Trends Report, December 2019, p.3 https://obr.uk/docs/dlm_uploads/Welfare_trends_report_December_2019.pdf

6 House of Commons Library, UK Defence Expenditure, June 2021, p.1 <https://researchbriefings.files.parliament.uk/documents/CBP-8175/CBP-8175.pdf>

7 Institute for Government, Government Procurement: the Scale and Nature of Contracting in the UK, December 2018, https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_procurement_WEB_4.pdf

8 2018 figures. See Institute for Government, Government Procurement: The scale and nature of contracting in the UK, December 2018, p. 6, https://www.instituteforgovernment.org.uk/sites/default/files/publications/IfG_procurement_WEB_4.pdf

9 Ibid., p. 8.

10 Institute for Government, Procurement after Brexit, March 2020, <https://www.instituteforgovernment.org.uk/explainers/procurement-after-brexit>

11 Ibid.; <https://www.telegraph.co.uk/finance/newsbysector/transport/10119477/Bombardier-blow-as-Siemens-wins-1.6bn-Thameslink-deal.html>

What is the money spent on?

Central government procurement spending is dominated by four departments: the Department for Health and Social Care (DHSC), the Ministry of Defence (MoD), Department for Transport (DfT) and the Department for Education (DfE). Together they spent £119bn in 2017-18 - 82 per cent of the total for central government departments.¹²

Procurement represents a large proportion of some departments' total expenditure, too. Four government departments spend more than half their annual budgets in procurement: the Ministry of Justice (MoJ), the Department for Transport (DfT), the Department for Environment, Food and Rural Affairs (DEFRA), and the Department for International Trade (DIT).¹³

There is also variation in whether money is spent on. 94 per cent of DHSC expenditure is resource expenditure, going on things such as medicines and GPs' pay, the three other highest spending departments all have a sizeable capital spend. Resource and capital spending are relatively balanced at the MoD, indicating the cost of weapons systems and maintaining the MoD estate. The DfT spent £10 billion on capital expenditure in 2017-18 out of a total procurement budget of £15 billion. This can be explained by its responsibility for maintaining infrastructure such as rail and roads. Around 30 per cent of the DfE's £7 billion spend on contracts was spent on capital projects such as building schools.¹⁴

The top five categories of procurement expenditure in 2016-17 were: works, facilities management, education, passenger transport and social community care supplies and services. Works are the largest category, and spending on works is dominated by central government rather than local authorities (accounting for 70 per cent of works spending). A large proportion of this is accounted for by the DfT. Local authorities also have a high works spend, especially maintaining local road networks.¹⁵

The risks associated with relying on large individual companies to provide a large number of contracted services was well illustrated by the collapse of Carillion in January 2018. According to the House of Commons Public Administration and Constitutional Affairs Committee, the liquidation of Carillion cost the Cabinet Office £148 million.¹⁶

Procurement inside the EU Rulebook

As part of the EU procurement regime, many Principles of the Treaty on the Functioning of the European Union (TFEU) applied to the domain of public contracts. These include the broad principles of the free movement of goods, non-discrimination, transparency, freedom of establishment for businesses, mutual recognition, proportionality, and the right to provide services.¹⁷ These Principles applied to nearly all public procurement, including contracts awarded by any public body, with no uniform minimum value threshold.¹⁸

Specific obligations arose from certain EU Directives and the implementing UK Regulations. The last set of these prior to Brexit were agreed in 2014, codified in the EU's Public Procurement Directive 2014/24/EU.¹⁹ These were implemented into domestic UK law by the Public Contracts Regulations 2015,²⁰ the Utilities Contracts Regulations 2016,²¹ the Concessions Contracts Regulations 2016,²² and the Scottish equivalents of each.

12 Ibid., p. 10

13 Ibid., p. 8

14 Ibid., p. 10

15 Ibid., p. 12

16 House of Commons Public Administration and Constitutional Affairs Committee, HC 748, July 2018, p. 35, <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/748/748.pdf>

17 Treaty on the Functioning of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

18 House of Commons Library, Public Procurement and Contracts, p. 5, September 2018, researchbriefings.files.parliament.uk/documents/SN06029/SN06029.pdf

19 2004/18/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024&from=EN>

20 <https://www.legislation.gov.uk/uksi/2015/102/contents/made>

21 <https://www.legislation.gov.uk/uksi/2016/274/contents/made>

22 <https://www.legislation.gov.uk/uksi/2016/273/contents/made>

The rules in the EU directives are intended to ensure the EU Treaty principles are embedded in tender processes, so the EU procurement market is open and competitive, and to ensure equal and fair treatment of suppliers. The rules cover aspects such as how and where contracts must be advertised, how companies are assessed, the grounds on which contracts may be awarded and penalties (remedies) when the rules are breached.²³

The Public Contracts Regulations 2015 required contracts to be awarded to the most economically advantageous tender, though they allowed social and environmental factors to be considered as and when they were relevant to the nature of the tender.

It should be noted that the EU was itself a signatory to the WTO's Agreement on Government Procurement (GPA), and that legal obligations to which the UK was subject as an EU member state now continue to apply by virtue of the UK's independent signatory status. It should also be noted that any obligations which applied to the UK as part of a bilateral EU trade deal with a non-EU country will continue to apply to the UK only insofar as the UK has managed successfully to roll over those agreements into bilateral agreements between the UK and the non-EU state, depending on the exact terms agreed in the roll-over deal.²⁴

The UK will remain bound by the terms of access agreed in the UK-EU Trade and Co-operation Agreement and in any other Free Trade Agreements (FTAs) into which the UK voluntarily enters. On 31 December 2020 the UK also became an independent signatory of the World Trade Organisation (WTO)'s Agreement on Government Procurement (GPA),²⁵ which obliges the UK to open up its procurement market to other countries for contracts above a certain value.²⁶

It is widely accepted that the UK experienced a lack of choice over its domestic contract-awarding process by virtue of its EU membership, though UK based firms also benefited from the legal access they gained to EU member states' public contracts. Whether the access afforded to UK companies to foreign markets represents a benefit outweighing the disadvantage of a lack of control over UK contract awards is a matter of debate, but is in a sense now academic. The UK has left the EU, leaving its companies able to access EU public contracts under the terms of the UK-EU Trade and Co-operation Agreement.

The main purpose of the EU rules on procurement are to ensure the free movement of supplies, services and works throughout the EU Single Market. The European Court of Justice itself has declared that the main objective of the EU procurement rules is "**the free movement of services ... and the opening-up to undistorted competition in all the Member States.**"²⁷ In most cases the rules require competition, and reinforce the so-called "value for money" (vfm) principle. This is defined as:

"the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought".²⁸

Sometimes a tender process is not subject to the Public Contracts Directive (for example, because the estimated value of the contract is lower than the relevant threshold), yet the TFEU principles of transparency, equal treatment and non-discrimination still apply; where the contracting authority believes a contract is likely to attract cross-border interest, it is obliged to advertise the contract to potential suppliers in other EU member states in an accessible way.²⁹ Again, the ultimate priority here is securing intra-EU cross-border market access for commercial tenderers, and

23 <https://www.gov.uk/guidance/public-sector-procurement-policy>

24 For information on the roll-over process, see Gov.uk UK Trade Agreements with non-EU Countries, www.gov.uk/guidance/uk-trade-agreements-with-non-eu-countries

25 WTO, Integrated Government Procurement Market Access Information Portal, <https://e-gpa.wto.org/en/GPAInBrief>; the current signatories are Armenia, Canada, the EU, Hong Kong, Iceland, Israel, Japan, South Korea, Liechtenstein, Moldova, Montenegro, Netherlands with respect to Aruba, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, Ukraine and the United States.

26 House of Commons Library, Brexit: Public Procurement, November 2019, p.3 <https://researchbriefings.files.parliament.uk/documents/CBP-8390/CBP-8390.pdf>

27 Stadt Halle (C-26/03), [uk.practicallaw.thomsonreuters.com/1-200-0979?_lrTS=20210831142952600&transitionType=Default&contextData=\(sc.Default\)](http://uk.practicallaw.thomsonreuters.com/1-200-0979?_lrTS=20210831142952600&transitionType=Default&contextData=(sc.Default))

28 Crown Commercial Service, A Brief Guide to the 2014 EU Procurement Regulations, p.3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/560261/Brief_Guide_to_the_2014_Directives_Oct_16.pdf

29 Ibid.

promoting the deepening of the EU internal market, not the domestic policy priorities of individual member states.³⁰

In addition, the UK's own implementing Regulations include rules to improve access for EU suppliers to contracts below the EU Directive's value threshold ("sub-threshold contracts"). Again, the governing logic is one of providing market access and delivering taxpayers value for money by opening up competition.³¹

The EU's procurement regime is ultimately enforced by the European Commission upon the incidence of a complaint from an unsuccessful bidder, or of its own initiative. In the event that it considers there to have been a serious breach of EU law it will usually intervene if and when the internal judicial review processes of a member state, responsible for enforcing and adjudicating appeals based on the member state's implementing regulations, have been exhausted.³² The Commission has the ability to initiate infringement proceedings, and if the alleged abuse is not corrected can bring the matter before the Court of Justice of the European Union (more commonly, the "European Court of Justice (ECJ)"). Aggrieved tenderers may complain directly to the Commission or initiate proceedings before their national courts.

There exist industry specific rules for the defence and security sector and for the passenger public transport sector, each of which is governed by independent directives.

It should be noted that in 2014 the Commission issued revised guidance, urging member states to move away from price alone as a determining factor in public procurement, and encouraging them to look instead at the price-quality ratio. While slightly more holistic and flexible than a price-alone approach, this is a long way from granting member states the freedom to engage in a robust and comprehensive social policy, including prioritising regional development, through their procurement activities.³³

It should be noted that the rules are complex, offering different regulated tendering procedures to contracting authorities, and applying to all public bodies as defined by the Public Contracts Directive (including local authorities). The rules allow some scope for the adoption of internal policy choices relating to procurement within each member state, but with the scope and exercise of procurement decisions ultimately supervised by the ECJ. The value thresholds specified by the EU Procurement Directive for public contracts are listed below:

EU Thresholds

	Supply, Services and Design Contracts	Works Contracts	Social and other specific services ³
Central Government	£122,976 €139,000	£4,733,252 €5,350,000	£663,540 €750,000
Other contracting authorities	£189,330 €214,000	£4,733,252 €5,350,000	£663,540 €750,000
Small Lots	£70,778 €80,000	£884,720 €1,000,000	n/a

30 <https://www.cambridge.org/core/journals/cambridge-yearbook-of-european-legal-studies/article/abs/purpose-of-the-eu-procurement-directives-ends-means-and-the-implications-for-national-regulatory-space-for-commercial-and-horizontal-procurement-policies/121F2BAA1AD9168B22F8EA62992DC0F5>

31 See Public Contracts Regulations 2015, <https://www.legislation.gov.uk/uksi/2015/102/contents/made>

32 [https://uk.practicallaw.thomsonreuters.com/9-522-6594?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/9-522-6594?transitionType=Default&contextData=(sc.Default))

33 https://ssir.org/articles/entry/how_public_procurement_can_spur_the_social_economy

Attempts at reform

The Public Contracts (Social Value) Act 2012 and Small Business, Enterprise and Employment Act 2015

The Coalition government of 2010-15 aimed to increase the role played by charities and social enterprises in the delivery of public services as part of its “Big Society” policy programme.³⁴ It gave its support to a private member’s bill tabled in the 2010-12 parliamentary session by Chris White MP, the Public Services (Social Enterprise and Social Value) Bill, which aimed to broaden the criteria according to which public contracts were awarded. In particular, it aimed to increase the ability of voluntary organisations, social enterprises and “socially responsible” businesses to bid for contracts.

The Bill also received the support of the Opposition Labour Party, and passed into law as the Public Services (Social Value) Act 2012. It defined “social value” as:

[...] (a) how the economic, environmental and social well-being of the relevant area may be improved by what is being procured and (b) how, in conducting the procurement, [the contracting authorities] might act with a view to securing that improvement.”³⁵

The Explanatory Notes to the Act specified that contracting authorities should consult the market before the awarding of any contract, and that the consultation should consider how procurement might promote the well-being of the area and on how to achieve this.³⁶

Impact and limitations

It should be noted that the Social Value Act only applies to services, and that this restriction was a condition of the Coalition government’s agreeing to lend the original Bill its support. Importantly it only applies to contracts above the OJEU procurement threshold (i.e. the threshold to activate the EU Procurement Directive - £122,976 for central government and £189,330 for other authorities).³⁷

The Coalition Government described the Act as “permissive” in nature, and the then minister for the Cabinet Office, Francis Maude, specified that it remained important for contracting authorities to choose how to apply social value to decision-making. He also argued that it was important that the consideration of social value should not interfere with the primary objective of government procurement, which should be delivering value for money.³⁸

A 2015 review of the Act by Lord Young found that, where its stipulations have been taken up, it had had a positive effect, “encouraging a more holistic approach to commissioning which seeks to achieve an optimal combination of quality and best value.”³⁹

However, the review found that the number of instances in which social value had actually been taken into account in a procurement was relatively low.⁴⁰ The review also identified a lack of clarity over the Government’s stated definition of what constitutes “social value”.

34 HM Government, Building the Big Society, 18 May 2010, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/78979/building-big-society_0.pdf

35 Cabinet Office, ‘Social Value in Government Procurement’, 11 March 2019, https://www.gov.uk/government/consultations/social-value-in-government-procurement?dm_i=2OYA,UVPF,1F73R,3796A,1

36 Explanatory Notes to the Public Services (Social Value) Act 2012

37 Thresholds as of 1 January 2020, <https://www.ojeu.eu/thresholds.aspx>

38 House of Commons Public Administration Committee, Government Procurement, 19 July 2013, HC 123 of session 2013-14, pp 3-4, <https://publications.parliament.uk/pa/cm201314/cmselect/cmpublicadm/123/123.pdf>

39 Cabinet Office, Social Value Act Review, February 2015, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/403748/Social_Value_Act_review_report_150212.pdf, p. 4

40 Ibid., p. 4

A key finding of the Review was that the wording of the Act only called upon public authorities to “consider” social value when engaging in a procurement. To comply with the law it was therefore only necessary to show that such factors had been taken into account, not to demonstrate that social value was in fact present in any given award. To satisfy this it was only necessary to supply internal documentation or other records demonstrating that social value had been “considered”.⁴¹

Alternative approaches towards extending the Act were considered by the Young Review: a “vertical” extension, deepening the requirements of including social value to extend to every stage of the procurement process and making the social value element mandatory; a “horizontal” extension, which would make the Act apply more broadly for example to goods and works as well as services, or extending its provisions below the OJEU thresholds. The Review took the view that a “vertical” extension of the Act would not be desirable, arguing that it would not be consistent with the flexible and innovation-based model, adding too many layers of bureaucracy.⁴²

In 2013 Social Enterprise UK called for the Act to be amended to include works and goods as well as services, and this was supported by the Labour Party.⁴³ However, Lord Young’s Review prioritised developing a clarification of the meaning of social value, a system of measurement to render it quantifiable, and the promotion of awareness and uptake, prior to any significant extension of the Act’s requirements.⁴⁴

Social Value and the Civil Society Strategy

In 2018 Theresa May’s minority Conservative government announced the introduction of a new Civil Society Strategy. Prior to the launch of the strategy then Cabinet Office minister David Lidington announced that the degree to which social value would be used as a test for approving central government procurement contracts would be increased, stating:

*“we will extend the requirement of the [Public Services (Social Value) Act 2012] in central government to ensure that all major procurements explicitly evaluate social value, where appropriate, rather than just consider it. We will also require all departments in central government to regularly report on the social impact of new procurements...”*⁴⁵

He went on to say that this would extend the role of mutuals, charities, small enterprises co-operatives and social enterprises.

Summarising the Government’s wider Civil Society Strategy Danny Kruger, then adviser to the Department for Culture, Media and Sport (DCMS) on civil society, described the strategy as “a more muscular version of David Cameron’s Big Society”.⁴⁶

The “foundations of social value” identified by the strategy were:

- People
- Places
- The social sector
- The private sector
- The public sector.⁴⁷

41 Ibid., p. 13

42 Ibid., p. 15

43 House of Commons Public Administration Committee, Government Procurement, 19 July 2013, HC 123 of Session 2013-14, pp 3-4, <https://publications.parliament.uk/pa/cm201314/cmselect/cmpublicadm/123/123.pdf>

44 Cabinet Office, Social Value Act Review, February 2015, p. 27 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/403748/Social_Value_Act_review_report_150212.pdf

45 Cabinet Office, ‘Chancellor of the Duchy of Lancaster Speech to Reform’, 25 June 2018

46 <https://www.civilsociety.co.uk/news/civil-society-strategy-more-practical-and-muscular-version-of-big-society.html>

47 HM Government, Civil Society Strategy: Building A Future That Works for Everyone, August 2018, p 12, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732765/Civil_Society_Strategy_-_building_a_future_that_works_for_everyone.pdf

Limitations of the social value expansion

The government went on to clarify that social value should only be considered if and when it is relevant to the subject matter of the procurement in question and if it is proportionate to the value of what is being procured.⁴⁸

The aspiration to extend and improve the Social Value Act 2012 was included in the Civil Society Strategy in August 2018,⁴⁹ but as part of the consultation process for the Strategy the government received criticism to the effect that the social value criteria were only being applied in a perfunctory or superficial manner - a "tick-box exercise" - rather than genuinely driving change in the way public money is used. It was also found that charities and other not-for-profit organisations often lacked a full understanding of the principle of social value and therefore of how their activities might qualify under the criteria of the Act.

The then Shadow Cabinet Office minister, Jon Trickett, criticised Lidington's proposals. He argued the Government needed to do more to ensure scrutiny of the companies providing government services, and said of Lidington's social value proposals "*talk of social value [was] meaningless without proper supervision and enforcement*".⁵⁰

In his June 2018 speech, David Lidington announced the Government would provide training to its commercial buyers in how to take account of social value and how to procure from social enterprises. The Government also published further guidance including examples of social as well as economic and environmental value. These included "collaborating with the voluntary and community sector" and "monitoring labour standards through the supply chain".⁵¹ The CSJ argues that the principles of this guidance were severely limited in scope and depth.

The Government consulted in 2019 on how better to implement social value in government procurement.⁵² The consultation found that a majority of respondents supported the metrics and model within the Social Value Act and were supportive of a 10 per cent minimum weighting for social value concerns being embedded in the Government's guidance.⁵³

The 'value for money' principle

Separately from the Social Value Act, achieving "value for money" remains a principle of HM Treasury's ongoing guidance on managing public money for any contract-awarding public body.⁵⁴

In describing the roll of the Comptroller and Auditor General (C&AG), the Treasury explains the role of value for money reports, the purposes of which are:

*"assessing the economy, efficiency and effectiveness with which public money has been deployed in selected areas of public business. A programme of these reviews covers a variety of subjects over a period, taking account of the risks to value for money and parliament's interests."*⁵⁵

48 7 House of Commons, 'Written Question: Public Services (Social Value) Act 2012', 2 July 2018, 157758, <https://questions-statements.parliament.uk/written-questions/detail/2018-06-26/157758>

49 HM Government, Civil Society Strategy, Building a Future that Works for Everyone, August 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/732765/Civil_Society_Strategy_-_building_a_future_that_works_for_everyone.pdf

50 Labour Party, 'Jon Trickett Responds to the Government's Announcement on Planned Changes To Outsourcing', 19 November 2018, <https://labour.org.uk/press/jon-trickett-responds-governments-announcement-planned-changes-outsourcing/>

51 Department for Communities and Local Government, The Public Services (Social Value) Act 2012: An Introductory Guide For Commissioners and Policymakers, 2018, <https://www.gov.uk/guidance/vcses-a-guide-to-working-with-government>

52 https://www.gov.uk/government/consultations/social-value-in-government-procurement?dm_i=2OYA,UVFP,1F73R,3796A,1

53 Ibid.

54 HMT, Managing Public Money, p. 9 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994901/MPM_Spring_21_without_annexes_180621.pdf

55 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994901/MPM_Spring_21_without_annexes_180621.pdf, p. 6

In explaining the role of public accounting officers, the Treasury's guidance goes on to state that responsibility falls to them for:

"ensuring that the organisation's procurement, projects and processes are systematically evaluated to provide confidence about suitability, effectiveness, prudence, quality, good value judged for the Exchequer as a whole, not just for the accounting officer's organisation (eg using the Green Book⁵⁶ to evaluate alternatives)".⁵⁷

It should be noted that the Green Book is the Treasury's central, standard document giving guidance on how to appraise policies, programmes and projects, as well as providing guidance on monitoring and evaluation. The government reported on its review of the Green Book in November 2020. It found that within the guidance on investment and spending "a lack of strategic consideration" had caused "particular problems in developing proposals to support a specific place or places". It also noted that "central government departments also frequently fail to work together across organisational boundaries and ring-fenced funding streams to develop, appraise and delivery truly 'place-based' strategy."⁵⁸

A review of the Green Book's guidance to make more room in government spending decisions for a place-based regional and economic strategy is extremely welcome. However, unless the "value for money" principle as embodied simplistically in HM Treasury's guidance on managing public money is similarly reconceived to allow a regional strategic approach, with a decisive move away from "vfm" as embodied in EU law for procurement regulation, then significant barriers to the government's ability to use its spending power for levelling up will remain.

The effect of the old rules

Although most public sector contracts are awarded to UK contractors, it is estimated that in the years running up to EU exit 2.5 per cent of the value of larger UK procurements was awarded directly to suppliers based outside the UK, with around half going to EU countries, and 22 per cent of the value of larger UK procurements was awarded indirectly to suppliers based outside the UK (i.e. overseas owned suppliers with a UK base). Again, of these approximately half were based in the EU.

Conversely, it is estimated that 1.7 per cent of the value of larger EU (non-UK) procurements went directly to suppliers based in the UK. 11 per cent of the value of larger EU (non-UK) procurements was awarded indirectly to UK suppliers (i.e. the successful bidder was not based in the UK but was a subsidiary of a UK company).⁵⁹

There have been various calls for procurement to be used more effectively to promote local growth by prioritising local, regional and UK-based suppliers. These have come from various voices including the Labour Party. Former Opposition leader Jeremy Corbyn said in 2018 that Labour would support the more effective harnessing of government procurement spending to "nurture and grow our industries", "so that government supports jobs and industry." In spite of Labour's then policy of seeking regulatory harmonisation with the EU Single Market, Corbyn said:

"We have made clear we would seek exemptions or clarifications from EU state aid and procurement rules where necessary as part of the Brexit negotiations to take further steps to support cutting edge industries and local businesses."⁶⁰

56 <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

57 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994901/MPM_Spring_21_without_annexes_180621.pdf, p. 15

58 HM Treasury, Green Book Review 2020, Findings and response, p. 4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/937700/Green_Book_Review_final_report_241120v2.pdf

59 Figures cover above threshold procurement from 2009 to 2015 and come from JIIP Joint Institute for Innovation Policy; VVA Consulting; London Economics for European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Measurement of impact of cross-border penetration in public procurement, February 2017, <https://op.europa.eu/en/publication-detail/-/publication/5c148423-39e2-11e7-a08e-01aa75ed71a1>

60 Jeremy Corbyn, Build it in Britain Again, 24 July 2018, <https://labourlist.org/2018/07/build-it-in-britain-again-corbyns-full-speech/>

However, the UK government's legal ability to pursue a domestically focused procurement strategy has until now inherently been limited by the Principles of the TFEU, by the Procurement Directive and by the implementing Regulations. Labour's policy on utilising procurement for regional regeneration of industry - what is now often referred to as "levelling up" - would simply have been legally impossible inside the EU or inside its commercial legal framework.

It should be reiterated that a carte blanche "buy British" policy would not be considered lawful under the terms of the GPA given the UK's WTO member status, but once again the GPA is considerably more liberal than the EU's state aid and procurement rules, applying to a smaller range of procurements and allowing more flexibility for pursuing domestic policy priorities.

It is also noteworthy that in 2016 the government issued new guidance to public bodies to take account of a wider range of factors when making procurement decisions, where appropriate, including considering of the capacity for procurement to promote economic growth using a "balanced scorecard" approach. However, this still took the form of guidance rather than rules, only encouraged considering economic growth "where appropriate", and took the approach of treating procurement decisions very much on a case by case basis, with value for money still prioritised.⁶¹ Moreover, the guidance could only ever operate within the confines of the EU legal regime.

Case study: Bombardier vs Siemens

In 2011 the German train manufacturer Siemens was awarded a UK government contract worth £1.5 billion to construct 1,200 new train carriages over Bombardier, a major British manufacturer.

In evidence to the Transport Committee Professor Karel Williams, director of the Centre for Research on Socio-Cultural Change at the University of Manchester, told MPs were told that as a consequence of the deal approximately 1,400 jobs would stand to be lost throughout the UK, with a total cost to the economy of £100 million. HM Treasury would lose out in tax receipts to the tune of £20 million per year.⁶²

A survey by Survation on behalf of the Unite union found that 32 per cent of companies surveyed expected the deal to have a negative impact on their business, with nearly 20 per cent believing their business growth would be "substantially harmed".⁶³

In evidence to the Committee, Professor Williams said:

"the other issue which all your witnesses are emphasising is that value for money was defined very narrowly as price for quality, as though it were you or I choosing a toaster at John Lewis or my central administrator choosing stationery supplies. That calculus is entirely appropriate for a small-scale decision by you or me at John Lewis. It is not appropriate for a £1.5 billion contract which is relevant to the future of train building in the UK.

Therefore, as soon as one says that, the scale makes this a kind of procurement industrial policy, if you like. It is necessarily industrial policy, whatever you do. As soon as you say it is industrial policy, then you come back to Professor Bovis's point about how the Europeans would often take into consideration a broader set of considerations. On that, if you look at our report, you will see that some of these considerations have some considerable weight. Each Bombardier worker pays £17k of taxes a year and makes £10k a year of tax contributions. Average pay in the rail supply industry is £44k total compensation. These are material considerations, material sums, which should have been taken into account and should now be taken into account if the question of penalties for breaking or changing things is to be introduced, because clearly there are items in the ledger which the DfT did not consider."⁶⁴

61 Crown Commercial Service, Procurement Policy Note - Procuring Growth Balanced Scorecard, 14 October 2016, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/560246/Balanced_Scorecard_PPN_09_16.pdf

62 <https://www.publicfinance.co.uk/news/2011/09/thameslink-contract-award-cost-uk-%C2%A3100m-mps-told>

63 <https://supplychaindigital.com/logistics-1/thameslink-siemens-deal-hurts-uk-train-supply-chain>

64 <https://publications.parliament.uk/pa/cm201012/cmselect/cmtran/1453/11090701.htm>

“One needs to say that, because one is unhappy with the outcome, one should not talk up every figure in sight to get a result that is politically congenial. One of the things we have to face is that this is part of a much larger problem about the decline of British manufacturing and broken supply chains so that, for example, the multiplier effects, the backward linkages into the supply chain in the UK are much weaker than they are in Germany. 25% of intermediate output in rail engineering is domestically sourced in the UK and 55% in Germany. We have a situation where the employment benefits of the Derby contract backwards are partly in Germany, but, when that is said and done, that is not an excuse for letting it go, because in a country with a £68 billion trade deficit on manufactures last year and where high quality manufacturing jobs are hard to get, we need to be thinking about how we rebuild the supply chains and not simply let them go.”⁶⁵

The Department for Transport responded that it was left with no choice but to award the contract to Siemens due to the EU’s procurement rules, which prohibit the adoption of a national preference when making a decision. In the event Siemens’s superior credit rating, although in Professor Williams’s analysis not very material to the substance of the decision, meant that the choice was a foregone conclusion.

Case Study - Requiring tenderers to offer the National Living Wage

In 2015 the Scottish Government obtained clarification from the European Commission on the question of whether it could insist upon employers tendering for Scottish public contracts to offer the National Living Wage, rather than just the minimum wage.

The clarification from the European Commission found that it was not legally permissible within the framework of European procurement law for public authorities to make payment of the Living Wage a mandatory requirement as part of a competitive tender process, if the Living Wage being required is higher than the minimum wage in UK law (i.e. the National Minimum Wage).

This position was reinforced in the ECJ decision *Bundesdruckerei v Stadt Dortmund* (C549/13),⁶⁶ which made it clear that no part of the overall tender score could be reserved specifically for payment of the Living Wage.

In this way, EU law prevented public authorities from making policy determinations regarding remuneration standards for potential contractors. Although this particular guidance was sought by the Scottish Government, the law applied equally to public authorities in England.⁶⁷

Case Study - Airbus vs Leonardo

In September 2021 the Ministry of Defence announced that the RAF would be retiring its fleet of 23 Puma helicopters. Ministry of Justice officials were in September finalising plans to open up an estimated £400m contract to replace the helicopters to tender.

The European giant Airbus offered to militarise its H175 civilian helicopters and move construction to its site in Broughton, Wales. Its new facility in Broughton already manufactures wings for Airbus jets.

The announcement of Airbus’s intention to bid for the contract placed them in direct competition with British firm Leonardo, which was offering to build its AW149 for the MoD at its site in Yeovil, Somerset. Leonardo stated that winning the contract would create hundreds of local jobs, while delays to winning the contract

⁶⁵ Ibid.

⁶⁶ [https://uk.practicallaw.thomsonreuters.com/Cosi/SignOn?redirectTo=%2f5-581-6725%3f__lRTS%3d20210913170241231%26transitionType%3dDefault%26contextData%3d\(sc.Default\)%26firstPage%3dtrue](https://uk.practicallaw.thomsonreuters.com/Cosi/SignOn?redirectTo=%2f5-581-6725%3f__lRTS%3d20210913170241231%26transitionType%3dDefault%26contextData%3d(sc.Default)%26firstPage%3dtrue)

⁶⁷ <http://publicsectorblog.practicallaw.com/living-wage-provisions-in-public-procurement-contracts/>

would result in having to commence the reduction of its Yeovil workforce. At the time, Nick Whitney, managing director at Leonardo, said the company was the only such company in the UK with total capability, “from concept to design manufacture to support”, and that 60 - 70 per cent of the AW149’s parts would come from UK sources.⁶⁸

Yeovil is not highly deprived, but is not wealthy. It contains one Lower layer Super Output Area (LSOA) that falls within the most deprived 10 per cent nationally.⁶⁹ In 2017 it was reported that 16.8 per cent of employees in Yeovil worked in manufacturing - the highest proportion other than the health sector (18.5 per cent), accountable for by virtue of the presence of Yeovil District Hospital.⁷⁰ The town is therefore highly exposed to job losses in manufacturing.

The Leonardo Yeovil site bid is therefore an excellent example of a procurement in which the broader economic fallout from not awarding the contract to the site should be considered, including job losses and other socio-economic damage. While it is possible that Airbus could win the contract on a simplistic “bottom-line” basis, it seems clear that Leonardo would have an advantage if a Levelling up Test were applied to the procurement.

Brexit and the GPA

The UK is now no longer subject to EU rules with regard to procurement, except insofar as it is bound by bilateral treaties such as the UK-EU Trade & Co-operation Agreement, or by any future multilateral treaties into which it may enter, such as the Comprehensive & Progressive Trans-Pacific Partnership (CPTPP).

However, it is now an independent signatory of the WTO’s Government Procurement Agreement (GPA). This is a plurilateral agreement between 21 parties within the WTO, including Canada, the USA, Japan and the EU itself. The UK used to participate in the GPA via its status as an EU member state, but now participates independently. Any domestically implemented procurement policy that seeks to promote certain social policy objectives would need to be compliant with the UK’s legal commitments under the GPA, but also with the WTO’s Agreement on Subsidies and Countervailing Measures, the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS).⁷¹

Where a procurement is covered by the GPA, the agreement insists that basic requirements are met. These include a requirement to advertise contracts, to observe minimum timescales and to follow rules on technical specifications and award criteria. The GPA also requires non-discrimination with no less favourable treatment than that given to domestic goods, services and suppliers.⁷² Awarding authorities must treat domestic and GPA suppliers equally and not discriminate on a national basis, and there are remedies available through the courts for breach of GPA rules, including contract termination. These obligations apply only above GPA value thresholds. The thresholds are broken down on the WTO’s Integrated Government Procurement Market Access Information (e-GPA) Portal.⁷³

There are not, however, the same degree of intrusive requirements into the process of domestic procurement within the GPA, and UK compliance is not enforceable by the European Commission or before the ECJ. GPA obligations do not apply in cases where the procurement in question falls beneath the GPA threshold, in contrast to the EU Procurement regime in which TFEU principles continued to apply even in sub-threshold procurements.

68 <https://www.telegraph.co.uk/business/2021/09/14/airbus-plots-uk-helicopter-plant-win-mod-contract/>

69 <http://www.somersetintelligence.org.uk/indices-of-deprivation-2019-somerset-summary.pdf>

70 https://www.southsomerset.gov.uk/media/1347/yeovil_settlement_profile_october_2017_final.pdf, p. 5

71 <https://blogs.sussex.ac.uk/uktpo/files/2016/11/Briefing-Paper-8.pdf>, p. 5

72 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/963079/PPN-0221-Requirements-for-contracts-covered-by-the-WTO-Government-Procurement-Agreement-and-the-UK-EU-Trade-and-Co-operation-Agreement.pdf, p. 3

73 <https://e-gpa.wto.org/en/ThresholdNotification/FrontPage>

Rather than a single, uniform legal regime, the GPA depends on a complex set of bilateral negotiations between the parties because any given party is not required to give the same access commitments to all trading partners.⁷⁴

The WTO GPA Annex negotiations are based upon four basic variables: i) the value of procurement - covering only contracts estimated to exceed a certain value threshold; ii) the identity of the procuring entity - covering only those listed by each party in its annexes; iii) the type of goods or services procured - consisting of all goods, apart from some expressly excluded by each party, and only services listed by each party in its annexes; and iv) the origin of the goods or services - including only countries that are GPA parties.⁷⁵

The UK therefore enjoys considerably more freedom as an independent entity when making bilateral commitments to co-signatory parties under the GPA than it did as an EU member state bound by the TFEU Principles and the Procurement Directive.

74 See <https://blogs.sussex.ac.uk/uktpo/files/2016/11/Briefing-Paper-8.pdf>, Appendix I

75 Ibid., p. 3

Transforming Public Procurement after Brexit

National Procurement Policy Statement

In June 2021 the Government published a new National Procurement Policy Statement prior to the publication of a new Procurement Bill, announced in the 2021 Queen's Speech. It applies to all contracting public authorities as defined by the Small Business Enterprise and Employment Act 2015 and includes central government departments, executive agencies, non-departmental public bodies, local authorities, NHS bodies and the wider public sector. All such authorities are instructed to have regard for the Statement.⁷⁶

The Statement lays down criteria which contracting authorities, including government departments and local authorities, should consider when making their assessments. The priorities identified are:

- Social value
- Commercial and procurement delivery
- Skills and capability for procurement

The social value element is transformative in potential and reflects a qualitative shift away from previous procurement policy.

Social Value in the National Procurement Policy Statement

The Social Value element of the new procurement policy is subdivided into:

- Creating new businesses, new jobs and new skills
- Tackling climate change and reducing waste
- Improving supplier diversity, innovation and resilience

Encouragingly, the Statement says that *"public procurement should be leveraged to support priority national and local outcomes for the public benefit."*⁷⁷

On the first of the above social value metrics, the Statement goes on to specify:

- Increasing opportunities for entrepreneurship and helping new and/or small businesses to grow
- Supporting higher economic growth and greater business creation
- Increasing employment opportunities particularly for those who face high barriers to employment or who are located in disadvantaged areas
- Extending training opportunities, particularly for people in industries with known skills shortages or in high growth sectors⁷⁸

The Statement seeks to implement some of the procurement criteria envisaged in the Government's earlier December 2020 Green Paper, *Transforming Public Procurement*.⁷⁹ The Green Paper, which anticipates a Bill later in this Parliament, constitutes the beginning of the overhaul of the UK's procurement system after Brexit. The Paper lays out the Principles of public procurement, one of which is "the public good":

76 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990289/National_Procurement_Policy_Statement.pdf, p. 1

77 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/990289/National_Procurement_Policy_Statement.pdf, p. 3

78 Ibid.

79 Cabinet Office, *Transforming Public Procurement*, December 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943946/Transforming_public_procurement.pdf

“Procurement should support the delivery of strategic national priorities including economic, social, ethical, environmental and public safety.”⁸⁰

It calls for procurement spending to be leveraged to support “strategic national priorities”, claiming that

“This is consistent with international practice where public procurement is regularly leveraged to achieve social and environmental value beyond the primary benefit of the specific goods, services and capital works through operational delivery that contributes additional social value.”⁸¹

The Green Paper also lays out a more holistic understanding of value for money, stating:

“Value for money does not therefore mean simply selecting the lowest price, it means securing the best mix of whole-life quality and effectiveness for the least outlay over the period of use of the goods, works or services bought. Value for money also involves an appropriate allocation of risk and an assessment of the procurement to provide confidence about its probity, suitability, and economic, social and environmental value over its life cycle.”⁸²

In general, this more qualitative approach towards the process of awarding public contracts is therefore to be welcomed, as is a revision of the concept of “value for money”, which should be understood longitudinally and within the context of medium and long-term future costs to government which given procurements have the potential to alleviate.

A further key proposed reform of procurement criteria in the Green Paper is the removal of the requirement to award contracts to “the most economically advantageous tender”, replacing this criterion with “the most advantageous tender”.⁸³ Removing the word “economically” potentially sets the stage for a radical overhaul of government contracting, placing social value, public goods, relief of unemployment and levelling-up communities at its core.

The CSJ argues that the Government should go further and be even more robust with its understanding of social value and the public good. In the next section, the case will be made that procurement and the fiscal stimulus it has the capacity to deliver is one of the most powerful direct levers available to government for the process of “levelling up”.

It is also argued that goals intrinsic to levelling up, including the relief of unemployment, the stimulation of job creation within regional economies, fostering replacement industries in or near communities that have suffered from industrial decline or the offshoring of jobs, and addressing complex localised deprivation, should all be given the utmost priority in the crafting of the procurement rules, which will shape how hundreds of billions of pounds of public money are spent for years or even decades to come.

80 Ibid., p. 14

81 Ibid., p. 14

82 Ibid., p. 15

83 Ibid., p. 10

Britain's Challenges and the Potential to Level Up

The costs of unemployment and under-employment: Covid-19 and beyond

In 2018-19, before the coronavirus pandemic, the UK Government spent £126 billion on working age welfare spending (the state pension bill represented a further £97 billion.⁸⁴ In 2018-19 the UK Government spent £886 billion in total, meaning the welfare bill was 14 per cent of overall spending.

In 2017, the Resolution Foundation found that working-age welfare spending had fallen as a percentage of GDP since the election of the Coalition government in 2010, but its forecast up to 2067 remained stubbornly high, not falling below 4 per cent of national income at any stage. This presents a significant fiscal timebomb, however, since the cost of the state pension as a percentage of GDP is only projected to rise from just over 12 per cent of GDP in 2017 to over 12 per cent by 2067.

These projections do not factor in the extra social security costs implied by the impact of the Covid-19 pandemic and subsequent public lockdowns. The Chancellor's Job Support Scheme (furlough) is projected to cost over £70 billion,⁸⁵ and the number of people in receipt of Universal Credit has more than doubled from less than 3 million before the pandemic to over 6 million now.⁸⁶ While the Labour Force Survey's unemployment rate is still only approximately 4 per cent, the UK Claimant Count (which records the number of people claiming benefits principally for the reason of being unemployed) is more in the region of 8 per cent, or 2.29 million.⁸⁷ It is likely that the unemployment rate will rise as the furlough scheme unwinds in the Autumn of 2021.

Although economists are projecting a strong economic recovery, and some sectors are experiencing labour shortages, there is still a strong risk that the UK experiences more scarring than other economies in the G7.⁸⁸ There are therefore both long-term and pandemic-induced pressures to tackle areas of structural unemployment.

Structural unemployment

Structural unemployment often occurs in areas where industries on which particular communities previously depended disappear. The UK has a well-documented structural unemployment problem in certain regions, with historical data showing that average unemployment rates in the North East and North West during the 20th Century were in the region of double the average rate in the South East, and significantly above the UK national average.⁸⁹ In 2019 economic inactivity rates in England were highest in the North East, North West and Yorkshire and the Humber, with inactivity in the North East exceeded only by Northern Ireland.⁹⁰ The North East had the highest unemployment rate at 6.1 per cent, over one-third above the UK average of 3.8 per cent.⁹¹

After the 2008 financial crisis UK unemployment rose sharply, peaking at 8.5% in 2011, but then fell consistently despite the contraction in UK GDP, surprising many economists. This trend continued up to the beginning of the Covid-19 pandemic, with unemployment falling to its lowest rate since 1974 in 2019.⁹²

However, a number of factors may have contributed to this high employment rate. One is falling real wages, with nominal wages failing to keep pace with inflation after the financial crisis. Practices such as the increasing prevalence of zero hours contracts may have helped employers to retain staff but in less advantageous conditions. A fall in productivity (which in turn tends to lead to lower real wages) may have resulted in firms being willing to keep

84 Office for Budget Responsibility, Welfare Trends December 2019, https://obr.uk/docs/dlm_uploads/Welfare_trends_report_December_2019.pdf

85 <https://www.statista.com/statistics/1122100/uk-cost-of-furlough-scheme/>

86 <https://stat-xplore.dwp.gov.uk/webapi/jsf/dataCatalogueExplorer.xhtml>

87 <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/outofworkbenefits/timeseries/bcjd/unem>

88 <https://www.theguardian.com/business/2021/may/31/uk-growth-upgraded-but-oecd-warns-of-deepest-economic-scar-in-g7-brexite-covid-19>

89 Clarke, Regional Unemployment Disparities, Centre for Local and Regional Economic Analysis, University of Portsmouth, 2009 <https://www.economicnetwork.ac.uk/sites/default/files/Faye%20Sizeland/1005b.pdf>

90 ONS, Labour Market in the Regions of the UK: February 2020 <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/regionallabourmarket/february2020#local-labour-market-indicators-first-published-21-january-2020>

91 Ibid.

92 <https://www.ft.com/content/4cce6f54-7624-11e9-bbad-7c18c0ea0201>

workers on but with lower output. There may have been a rise in “disguised” unemployment or under-employment through shorter hours, and welfare reforms through the introduction of Universal Credit and conditionality in the benefits system may have forced more people into work, even if it has been low-paid, low-skilled work.

Therefore, although overall headline unemployment remained relatively low before the pandemic, there exist deeper long-term, structural problems beneath the surface.⁹³

Unemployment relief and Procurement choices

The CSJ argues that the scale of Britain’s welfare costs should be taken into account when applying principles such as the public good or value for money when evaluating procurement decisions. Given tenders may offer a lower headline price, but costs to the taxpayer incurred elsewhere through unemployment and under-employment should be considered.

The relevant authority should ask the question: “Will allocating a contract to company X rather than company Y save the taxpayer money long-term by reducing demand for Universal Credit?”

Considerations such as the prospect for future tax receipts should be taken into consideration, too. A procurement decision based on the lowest price but which generates job losses, such as the Bombardier case, is not necessarily “value for money”, let alone serving the public good.

Recommendation: *The Government should take into account wider social costs and costs to the Exchequer that are foreseeable, including the cost of unemployment and under-employment to the DWP, when seeking “value for money” in public contracts. This wider understanding of value for money should be embedded in the new procurement rules.*

The UK regional economic divide and the “levelling up” agenda

The UK has been described by economic analysts as the most “spatially unequal”⁹⁴ country in Europe, and as “one of the most regionally unbalanced countries in the industrialised world”.⁹⁵ The dominance of London and the decline of Britain’s historic regionally based industries are primary causes of this divide - a divide that has been getting worse, not better, since the financial crisis.

Every region in the country outside London and the South East has performed consistently below the national average, with this gap widening continuously since 1998.⁹⁶ Before the pandemic annual growth in GDP per head in the North East was less than half that of London.⁹⁷ Of the jobs created between the financial crisis and the Covid-19 pandemic, 31% were in London.⁹⁸

Former prime minister David Cameron acknowledged this deep and growing problem back in 2010 in his first speech on the UK economy. He said:

*“[O]ur economy has become more and more unbalanced, with our fortunes hitched to a few industries in one corner of the country, while we let other sectors like manufacturing slide.....It has become far too dependent on the public sector, with over half of all jobs created in the last ten years associated in some way with public spending”.*⁹⁹

93 Pettinger, 2020 <https://www.economicshelp.org/blog/5695/alevel/unemployment-stats-and-graphs/>

94 <https://newsocialcovenant.co.uk/read/blog-6>

95 <https://www.tandfonline.com/doi/full/10.1080/00343404.2019.1619928>

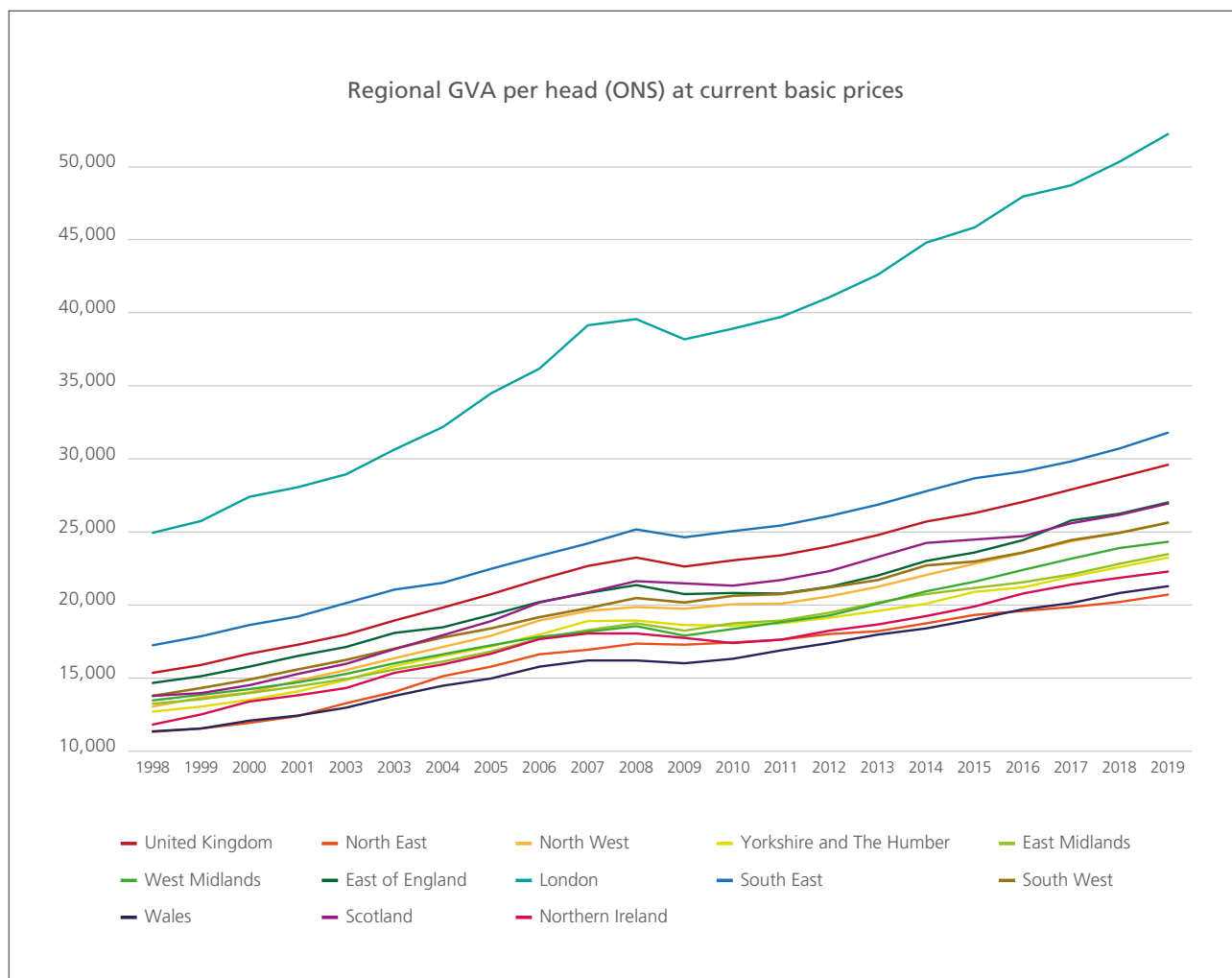
96 NUTS Data (2018), Table 2, ONS Regional Gross Value Added <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/unemployment/datasets/claimantcountbyparliamentaryconstituencyexperimental> (GVA), London, ONS

97 <https://www.ons.gov.uk/economy/grossdomesticproductgdp/bulletins/regionaleconomicactivitybygrossdomesticproductuk/1998to2018>

98 <https://www.centreforsocialjustice.org.uk/about/the-five-pathways/worklessness>

99 David Cameron, new PM’s first speech on the economy, 28 May 2010

In 2011 the UK Commission for Employment and Skills (UKCES) found that spatial variation in prosperity (measured by GDP per capita across NUTS3 sub-regions within member states) across the UK was high compared to other EU countries.¹⁰⁰ The gap has also been increasing in real terms over time. The graph below demonstrates the increasing disparity in GDP per capita between the UK's different regions:



As can be seen, the gap in GDP per capita, as a proxy for living standards, has more than doubled between London and the North East over the last 21 years.

A key measure of economic productivity is Gross Value Added (GVA) per capita. This represents the amount of output per unit of input per person. Increases to productivity on a per capita basis are what ultimately causes per capita economic growth. Therefore a large interregional gap in productivity will lead to a significant divergence in incomes and living standards. UKCES found that high levels of variation in productivity within the UK reflect industrial specialisation, such as the concentration of high value-added financial and business services and the concomitant agglomeration effects, resulting in spatial concentrations of economic activity.¹⁰¹

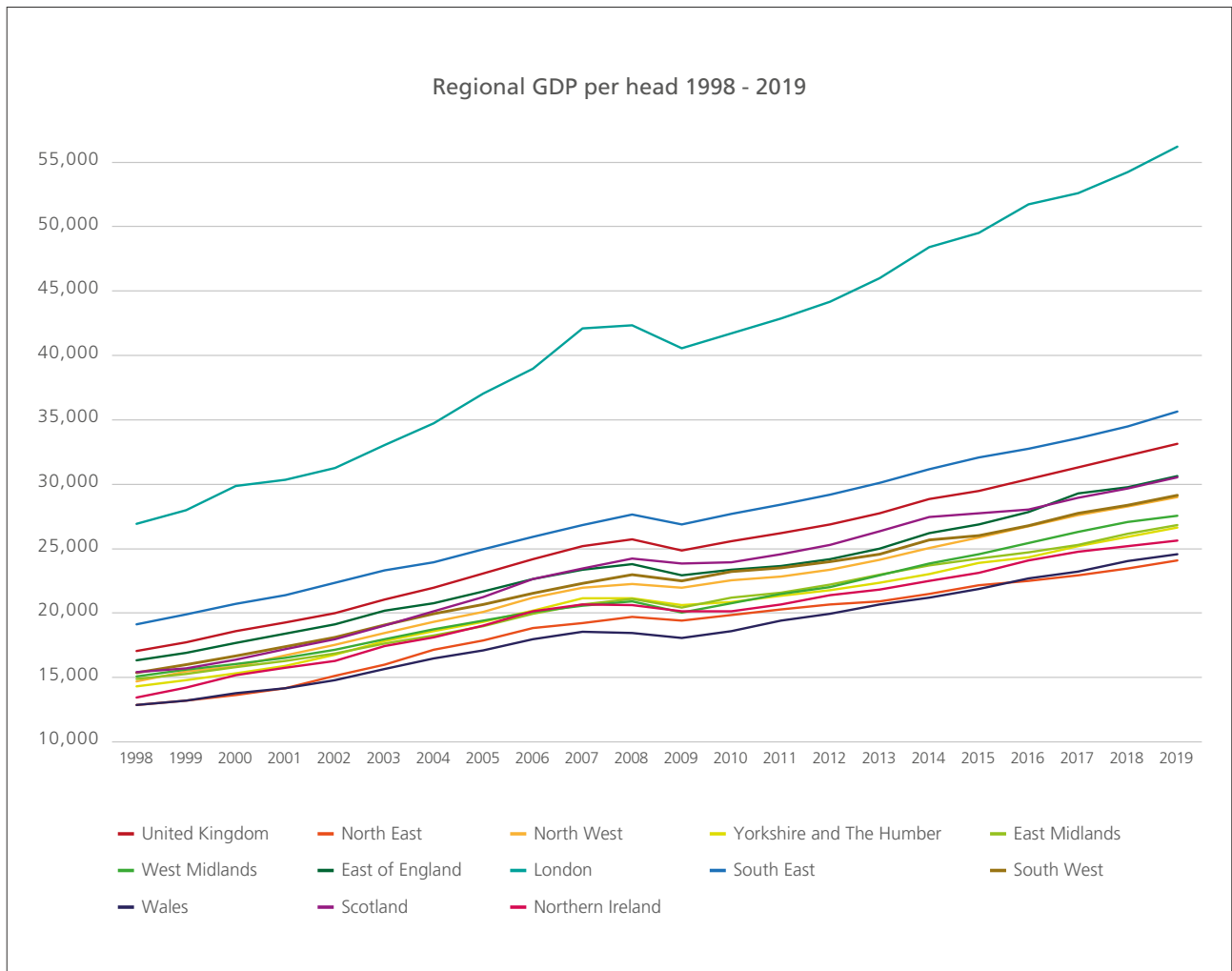
Notably, UKCES also found high levels of variation in prosperity at the sub-regional level, with *“areas of very significant wealth often being side by side with locales experiencing deprivation and need.”*¹⁰²

100 UK Commission for Employment and Skills, Rebalancing the Economy Sectorally and Spatially, 2011, <https://orca.cardiff.ac.uk/72065/1/9.pdf>, p. 15

101 Ibid., p. 15

102 Ibid., pp. 15-16

The UK has an extremely large productivity gap, with every UK region other than London and the South East falling below the UK average for GVA per capita. The UK's different regions are diverging but are also diverging at an accelerating rate. The UK's increasingly rapid productivity divergence is depicted via the graph below.¹⁰³



As can be seen from this graph depicting GVA per head by International Territorial Level (ITL) 1 regions, since 1998 every UK ITL1 region other than London and the South East have fallen below the UK average. Although every UK region is more productive than it was in 1998, when this time series begins, the divergence between regions has increased significantly over the 21-year period. While the South East has remained above the UK average by roughly the same amount as in 1998, the gap between the South East and the next most productive region increased over time.

103 ONS, Regional gross value added (balanced) per head and income components, 26 May 2021, <https://www.ons.gov.uk/economy/grossvalueaddedgva/datasets/nominalregionalgrossvalueaddedbalancedperheadandincomecomponents>

Region	1989	1997	2008
North East	-18.2	-21.3	-24.9
North West	-10.5	-13	-17
Yorks & Humber	-12.3	-12.9	-19.2
East Midlands	-7	-9.1	-14.7
West Midlands	-10	-9.8	-17.4
East	-6.6	-7.2	-7.9
London	53.8	53.4	64.5
South East	-1.8	1.7	2.6
South West	9.9	-9.6	-11.2
Wales	-17.2	-21.3	-27.9
Scotland	-5.9	-4.7	-5

The chart below also depicts the increase in deviation from the national average over time of all UK regions between 1989 and 2008. It is noteworthy that this trend predates the 2008 financial crisis, though the crash exacerbated interregional economic differences according to standards measures (GVA, GDP per capita, labour productivity, etc.).¹⁰⁴

As can be seen, London has increased its relative position from 53.8 per cent above the UK average to 64.5 per cent above the average, while the North East has fallen from 18.2 per cent below average to an alarming 24.9 per cent below average. The position of every UK region except London and the South East relative to the rest of the country has therefore worsened, meaning that the UK's internal economic divides have been deepening over time.

UKCES found that, in 2011, London and the South East accounted for nearly one-third of UK GVA, and that this share had grown steadily since the early 1990s.¹⁰⁵ Private sector job growth was found to have been concentrated in London and the South East. The Centre for Cities reported that “for every private sector job generated in the North and Midlands between 1998 and 2008 ten were created in London and the South.”¹⁰⁶

Regional economic performance data from the ONS shows that from 2010 to 2019, 40 per cent of UK nominal GDP growth was accounted for by London and the South East combined, despite these regions only containing 25 per cent of the population. In contrast, the North East supplied just 2 per cent of the UK's growth, despite having 5 per cent of the population. The problem, then, is not just that levels of output are vastly different in the UK's different regions; the UK's different regions are growing at vastly different speeds, meaning the UK's internal geographical divide is becoming rapidly more severe.¹⁰⁷

The Government's pursuit of a “levelling up” strategy can therefore be understood as a response to this long-term problem. The slogan “Build Back Better”, relating to the Covid-19 pandemic, also speaks to this: rather than returning to the status quo prior to Covid the Government's vision is to redress the structural inequalities that predated it, including Britain's deep and divisive regional inequality.

104 Source: ONS

105 UK Commission for Employment and Skills, *Rebalancing the Economy Sectorally and Spatially*, 2011, p. 17, <https://orca.cardiff.ac.uk/72065/1/9.pdf>

106 Ibid., p. 18

107 CSJ analysis. Data source: ONS, *Gross Domestic Product: all ITL regions*, 2021, <https://www.ons.gov.uk/economy/grossdomesticproductgdp/datasets/regionalgrossdomesticproductallnutslevelregions>

The need for a new strategy

The Government's commitments on levelling up so far, through pots such as the Levelling Up Fund and the Towns Fund, are welcome and useful commitments. However, more government spending on built environment renovation and social infrastructure, while important, will not solve the deep structural divides within the UK economy, nor will they reverse the current direction of travel towards an ever more economically divided society.

Rather, a strategy is needed to stimulate greater private sector economic activity, investment and job creation in the regions that have been falling behind. There is also a socio-political dimension to this: keeping every UK region except the South East and the capital afloat purely through subsidy and fiscal transfer is an unsustainable model for a modern economy, inevitably generating malaise and alienation in left-behind communities and resentment among the regions that subsidise them. Steps must therefore be taken to help economically underperforming regions to become more self-sustaining.

Research by the CSJ has demonstrated a clear statistical link between regional poverty and metrics of social breakdown, including family breakdown, substance addiction, educational underperformance and personal indebtedness.¹⁰⁸ There is significant research into the link between local industrial decline and negative social outcomes, including the link between the disappearance of hard industries and the opioid crisis in the American Rust Belt,¹⁰⁹ though a comprehensive review of the literature is beyond the scope of the present report.

An injection of investment into underperforming regions is therefore likely not only to improve local economic conditions, but will have a "virtuous cycle" effect by improving social outcomes, too.

Expanding Social Value and the Public Good

The CSJ calls upon the Government to place social value and the public good criteria within its new procurement framework in a position of priority. The other criteria, including value for money and delivery, should be interpreted within the public good context. The principal reasons for this recommendation are that the enhancement of the public good criteria represents one of the key opportunities outside of the EU rulebook, and because of the Government's stated commitment to levelling up parts of the UK experiencing deprivation using the levers at its disposal.

Secondly, all procurement decisions at a central government level should be subject to a "levelling up test": decision-makers should be required to ask: "will this contract award help to serve the goal of providing investment to economically disadvantaged places?"

The burden of proof should lie on the contracting authority to demonstrate why it has not, in any given circumstance, allocated a contract in accordance with the Levelling up Test. It should fall to the Cabinet Office to develop enforcement mechanisms to ensure all local authorities comply with this requirement, with suitable derogations as necessary.

Thirdly, local authorities (as opposed to central government departments) should prioritise awarding contracts locally (that is, to tenderers with a physical presence within their local authority area), unless there is a good reason not to. The Cabinet Office should therefore develop a rulebook with a two-stage process for local authorities in which local tenderers are considered exhaustively before alternatives. In this way local public money can be kept within the area, creating a fiscal stimulus and supporting employment for local workers.

¹⁰⁸ <https://www.centreforsocialjustice.org.uk/library/productivity-place-and-poverty>

¹⁰⁹ <https://www.americanmanufacturing.org/blog/study-links-deindustrialization-with-opioid-deaths/>

Recommendation: *The “public good” element of the public procurement criteria should be elevated to a position of priority over the other elements in the Government’s procurement framework, with contracting authorities obliged to be able to demonstrate that it has been prioritised.*

Recommendation: *Wherever there is a geographical choice about where to award a public contract, procurement decisions should have to pass a “Levelling up Test”. Public bodies should be required to offer contracts in a way which will most effectively redress regional economic disparities and boost investment in left-behind communities, with the Index of Multiple Deprivation used as a measure.*

Recommendation: *The Cabinet Office should establish a Public Contracts Taskforce with an explicit levelling up remit, jointly with the Department for Levelling Up, Housing & Communities, It would be responsible for oversight of central government departments’ procurements and for establishing a framework for local authorities in order to apply and enforce the Levelling up Test.*

Who awards the contract? Devolving Britain’s procurement spending & the role of local government

In 2017-18 central government spent £178 billion on procurement, while local government spent £98 billion, according to the Institute for Government.¹¹⁰

Clearly certain contracts are geographically constrained in some way: a contract for cleaning services for a site in the East Midlands cannot readily be given to a company based in Bristol. However, there are instances in which contracts could be awarded to suppliers regardless of the physical location of their premises, especially if the government is purchasing manufactured goods that are easily transported.

A degree of controlled devolution of procurement activity would be an effective and desirable way of diffusing the spending at the government’s fingertips to areas that could most benefit from a fiscal stimulus. Therefore, there is a strong case to be made that local authorities should be able to apply to the Cabinet Office to have the ability to award a central government contract themselves, subject to guidelines, budget limitations and oversight by the Cabinet Office, within the geographical area of their own authority. The Cabinet Office should devise a mechanism for assessing the merits of applications using measures such as the Index of Multiple Deprivation (IMD).

In this way the decision-making over how significant segments of public money are spent on public-to-private transfers could be decentralised, but with the potential for abuse offset by central government supervision.

One option for this mechanism would entail applicant local authorities applying to the Cabinet Office with a specific local tenderer in mind, submitting the details of their local tender to the Cabinet Office or relevant contracting government department for review.

Recommendation: *The Cabinet Office should establish a mechanism for local authorities to apply for the right to award a central government contract within their own authority, alongside a system of assessment based on factors such as the IMD and other local economic metrics.*

Recommendation: *Where appropriate, central government contracts that do not need to be awarded in a particular geographical area for reasons of delivery should be devolved to local authorities that have successfully applied via the mechanism above, with decisions made on a case-by-case basis.*

Recommendation: *A system should be established by the Cabinet Office in which local tenderers are “scouted” by local authorities and then submitted with local authority support as applicants to the relevant central government department.*

110 IfG, Government Procurement: the scale and nature of contracting in the UK, https://www.instituteforgovernment.org.uk/sites/default/files/publications/ifg_procurement_WEB_4.pdf, p. 8

Recommendation: *The Cabinet Office should set a rules framework for local authorities' procurement activities which formally gives priority to job creation and reducing worklessness in the local area, so that creating jobs becomes a uniform procurement objective across the country.*

Local government contracting

A significant proportion of procurement spending is entered into by local authorities (approximately 35 per cent, according to the Institute for Government). An irrational situation can arise in which public money, which is raised in part locally through local forms of taxation, leaves the area when contracts are awarded to companies operating from other counties.

This breaks the link between local taxation, local governance and the ultimate destination of local taxpayers' money. Local authorities have the capacity to act as a significant purchaser and to provide fiscal stimulus to their local economies.

Therefore, it would be appropriate for local government to prioritise the awarding of contracts to companies with a local connection or physical tie to the region whose funds are being spent. Local money can therefore be reinvested. The funding that comes from central government to local authorities would also then be distributed by local authorities to local businesses, providing a strong levelling up lever.

If a local supplier cannot be found that will be able to offer a service at a reasonable price and to a professional standard, then local authorities would be permitted to look elsewhere. However, as with the provisions of the Social Value Act, local authorities would be obliged to be able to demonstrate that they had fully considered the local market first. This local spending dynamic would be supervised by the Cabinet Office taskforce recommended above.

Recommendation: *The Cabinet Office should establish a rulebook for local authorities in which they are required to give priority to tenderers that would bring benefit to the local area and which operate locally. Tenderers would have to satisfy one of the following example criteria:*

- *The bidder has physical premises within the relevant contracting local authority area.*
- *A majority of the bidder's employees live within the relevant local authority.*
- *The bidder brings in a majority of its supplies from the relevant contracting local authority area.*

Opportunities offered by expanding social value

There are clear examples of social value being implemented successfully as a criterion upon which to award a public contract, reflecting the guidance under the Social Value Act.

Case Study: Emmaus Communities

Emmaus is a federation of social enterprises that offer homeless people a home for as long as they need it alongside meaningful work within the enterprise. This helps to restore self-esteem which can be lost as a result of homelessness and worklessness.

Emmaus has calculated significant public savings from its work, including fewer rough sleepers, reduced pressure on statutory homelessness services, a reduction in housing waiting lists, fewer people claiming benefits, reduced substance abuse, reduced crime and better health outcomes.

The savings calculated include £1,478,506 to the Department for Health, £778,435 to the Ministry of Justice, and £1,252,030 for the DWP through reduced welfare costs. 59 per cent of its £5,956,583 saving to the state was accrued to central government (and the remainder to local authorities).¹¹¹

¹¹¹ Cabinet Office, Social Value Act Review, February 2015, p. 16 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/403748/Social_Value_Act_review_report_150212.pdf

Case Study: Durham Council

A further key case study from the 2015 Review of the Social Value Act was Durham Council, which successfully secured the provision of financial education and finance for credit unions through their banking tender.

These social outcomes were written into their service specification, meaning that a procurement officer could assess bids in the normal way against this “fixed point” of the service specification, rather than having to adjudicate between incommensurate or incomparable social value criteria. In this way the social value dimension was made “concrete” within the terms of the tender.

In this case the Council spoke to the provider market in advance of writing these specifications into the terms of the tender in order to ensure that the requirements were reasonable and proportionate.¹¹²

In the same way, under our recommendations local authorities would be free to bypass the Levelling up Test if it was found that to apply it rigorously would not be reasonable or proportionate given the state of the market.

Case Study: Circle Housing

Circle Housing, an affordable housing provider, successfully achieved a return on investment by writing social value provisions into the terms of their maintenance and repairs procurement activity.

They rationalised their contracts while mandating social value objectives within their procurement model, including securing one apprenticeship for every £0.5 million spent. In so doing, social value was built into the supply chain, with suppliers providing social value which would otherwise have to have been funded by Circle Housing.

This approach resulted in projected savings of £80 million over a ten-year period.¹¹³

Case Study: Social Procurement in Australia

There are many international precedents for using domestic procurement budgets for social and policy purposes, as noted in the Cabinet Office’s 2020 Green Paper.

The state government of Victoria, Australia (VIC), has assembled a set of tools and resources to facilitate public procurements, including a “Buyer’s Guide to Procurement”, a digital resource informing procurement officials of best practice. Examples of practices outlined include identifying risks, analysing the market, weighing options and developing strategies. The resource “Supplying to Government” provides information to potential contractors on how to become a known entity to government, how to find opportunities and how to submit a bid.

One of the state’s procurement policies is a Social Procurement Framework, along with implementing guidelines. Victoria’s Social Procurement Framework seeks to support the expansion and standardisation of social procurement practice across all government procurement activities through both direct and indirect methods. Prioritisation of “social benefit suppliers” is built into the framework.¹¹⁴

112 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/403748/Social_Value_Act_review_report_150212.pdf, p. 30

113 Ibid., p. 31

114 <https://www.oecd-ilibrary.org/sites/0d83e1f9-en/index.html?itemId=/content/component/0d83e1f9-en>

Case study: Birmingham City Council

In 2009-10 Birmingham City Council (BCC) implemented jobs and skills requirements as contract conditions in the £193m library construction project, and negotiated a target of 250 jobs created for local unemployed people, and a sub-target of 25 apprenticeships, with the appointed contractor. At project completion, 306 jobs had been created, including 82 apprenticeships, 54 per cent of which were taken up by residents of the council's priority areas.

BCC adopted a formal Procurement Policy Framework for Jobs and Skills (PPFJS) with the explicit aim of "reducing worklessness and raising skill levels". The Framework was made mandatory for all for all BCC procurement activity, justified legally under the "best value" concept. The PPFJS was managed by the BBC's Employment Access Team (EAT); it should be noted that a levelling playing field was maintained for non-local contractors by opening up the opportunity to bid for contracts via the EAT.¹¹⁵

115 <file:///C:/Users/GavinRice/Downloads/poverty-procurement-social-mobility-full.pdf>, pp. 55-6

Conclusions

The limitations of the old EU Procurement rules went further than simply causing UK companies to lose out to EU competitors. They also provided for a highly prescriptive model and set of processes which had as their aim the provision of a level playing field for procurement across the Single Market.

The principle that social value is a desirable objective for government procurement is well-established, from the Social Value Act 2012 through to the 2020 Green Paper, as well as the manifold international examples.

Just as private customers choose how to wield their purchasing power based on a range of factors, including price but usually ranging much further, encompassing quality, ethical considerations, sustainability and the desire to spend locally, so public bodies should when acting as purchasers consider the public good in the round before committing taxpayers' money.

This government has rightly identified levelling up the UK's economically underperforming regions as the most important policy objective after delivering Brexit. The latter has made transforming the way in which the country's enormous procurement budget is spent possible. This transformation should, we argue, be focused on the former.

It is frequently commented that a key obstacle to levelling up is the lack of direct levers. While there are many indirect ones, there is a £290bn direct lever at government's disposal. The CSJ calls upon government to use its procurement spending to put much needed investment through job-creating contracts into the places that need it most and that have felt left behind. In this way the Government can use its power as a purchaser, not just as a giver of handouts, to level up Britain.

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