

Social Clauses in Northern Ireland

a research paper

**Centre for
Economic Empowerment
Research Report: two**

RSM McClure Watters
Audit · Tax · Consulting

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This paper was commissioned by the Centre for Economic Empowerment and was carried out by RSM McClure Watters in association with Tom Tweddell, independent consultant – social clauses.

NICVA Foreword

This piece of research forms part of the work of NICVA's Centre for Economic Empowerment (CEE). The CEE is a skills development project and observatory with the overall aim to build the capacity of the voluntary and community sector to engage in economic policy debate in Northern Ireland. The CEE approaches its research work with a view to providing information and analysis which has the potential to have a positive impact on people and communities in Northern Ireland. We seek our work to be thought provoking and to add, where appropriate, to public debates.

The commitment in the Programme for Government 2011-15 to include 'social clauses' in all public procurement contracts means that social clauses are set to be a major feature of government policy in Northern Ireland. Social clauses are attached to contracts in an attempt to create benefits that are additional to the goods, services, or works being procured. As such they can help increase the impact of public expenditure.

Social clauses have been used in Northern Ireland for some time but there has been little independent scrutiny of their implementation and effectiveness. Our discussions with key stakeholders indicate that social clauses have considerable potential to deliver social and economic benefits, but their full potential is often unrealised, despite many examples of good practice.

In this context the CEE commissioned RSM McClure Watters to examine the difficulties experienced with social clauses in Northern Ireland and to recommend areas for improvement. The report argues for a clearer strategic vision for the use of social clauses, earlier consideration of the role of social clauses on each project, more innovation, a stronger focus on outcomes, and a robust system of enforcement. The practicalities require further thought and we recognise that this is a highly complex field. However we hope that the report contributes to policy and practice in this important area.

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1 EXECUTIVE SUMMARY

1.1 Introduction

RSM McClure Watters was appointed in November 2012 by NICVA's Centre for Economic Empowerment (CEE) to undertake the Social Clauses Research.

This section sets out the terms of reference, methodology and findings from this research.

1.2 Terms of Reference

The terms of reference outlined the following requirements:

- Robust research on the difficulties experienced in implementing social clauses;
- Commentary on the monitoring systems and procedures regarding the implementation of social clauses; and
- Development of real examples to influence government on the use of social clauses.

(Source: Terms of Reference November 2012).

1.3 Methodology

The methodology involved a review of the policy context for public sector procurement and social clauses in Northern Ireland. Consultations were undertaken with key stakeholders to identify difficulties experienced in implementing social clauses. The consultation list included procurement officials, the community and voluntary sector, the construction sector and trade union officials.¹

Based on the findings and in conjunction with the CEE² a small selection of 'live' service, supply and construction contracts were selected and recommendations for incorporating and monitoring social clauses in public sector procurement were developed.

1.4 Conclusions and Recommendations

1.4.1 Conclusions

Northern Ireland has made considerable progress in implementing social clauses. This is due to the work of Central Procurement Directorate (CPD) working mainly with the construction sector and getting agreement on a model for including apprenticeships and Steps to Work placements as part of all construction contracts. Progress to date is also due to the work of the two Social Clause Forums facilitated by Derry City Council (DCC) and the Department for Employment and Learning (DEL), and the work of Strategic Investment Board Limited (SIB). Progress has also been made on the supplies and services contracts. Notably, DEL has provided the support needed to help companies find StW participants and this has kept the costs low and practical for contractors.

However, in order to maximise the impact to be gained from including social clauses in contracts, there needs to be a focus on the actual outcomes rather than the level of activity being generated. Social clauses needs to move to a new phase of development and there should be a strategy developed which sets out the social needs across Northern Ireland and how social clauses could be utilised to address these, whilst delivering the goods, services and capital works that need to be procured.

The strategy should detail the types of issues and outcomes that could be delivered for Northern Ireland. For example, the Northern Ireland Executive aims to eradicate child poverty by 2020, and all Departments are working to deliver on this target. Commissioners and procurement officials should review the social needs relevant to their projects as part of an early needs assessment process, resulting in the design of outcome indicators that can be built into the procurement process.

The Public Services (Social Value) Act 2012 in England and Wales sets out a framework and approach which should be considered in Northern Ireland. It places a requirement on commissioners to consider the social, economic, and environmental (or sustainability) benefit³ of their procurement before that activity is started. It applies to the pre-procurement stage because that is where articulation of social value can have the greatest impact. The Act, which came into force on 31 January 2013, seeks to simplify the way commissioners think about procurement in two respects:

1. They are asked to consider 'commissioning sustainability', which means looking at the commissioning process and how sustainable impacts can be achieved. The Act does not prescribe how the results of considerations should shape procurement, but it does enable users' and communities' perspectives on certain services to be taken into account in developing outcomes. Commissioning is therefore intended to lead to more innovation and cost-effectiveness.
2. Social value is discussed with regard to the delivery of community outcomes. 'Communities' is meant in a broad sense to include all sectors of an area touched by commissioning, whether that is people in certain groups, social enterprises, or businesses. By using social value to describe community benefits, commissioners can specify measurable outcomes that can be used as evaluation criteria in the procurement process, and as part of contract compliance.

¹ List of consultees included in appendix 1.

² Centre for Economic Empowerment (CEE) an observatory/think-tank and skills development project at NICVA.

³ Although this is the first time public sector organisations have been required to consider these issues, the underpinning duties have been in place for some time. Part 1 of the Local Government Act (2000) "gives local authorities powers to take any steps which they consider are likely to promote the well-being of their area or their inhabitants. It also places authorities under a duty to develop community strategies, together with other local bodies, for this purpose. These provisions are intended to give local authorities increased opportunities to improve the quality of life of their local communities." In addition, under Best Value Statutory Guidance (CLG, 2011), local authorities must already consider social, economic, and environmental value.

1.4.2 Recommendations

Recommendation 1:

A Social Value Strategy should be developed, setting out how commissioners and procurement officials should use social clauses to further the social, environmental and economic goals of the Northern Ireland Executive.

Recommendation 2:

Commissioners and procurement officials should be encouraged to consider social clauses at the pre-procurement stage, i.e. development of the business case, and where possible to include them in the award criteria.

Recommendation 3:

Major contracts should be informed by a social needs assessment, with consideration given to how social clauses can help address those needs. Assessments should be conducted in conjunction with key stakeholders, including members of the public as appropriate.

Recommendation 4:

The Social Value Strategy should promote more innovative use of social clauses to deliver positive social benefits. Trade apprenticeships and StW placements should still be utilised in construction, but other apprenticeships and StW placements should also be considered, linked to the priority skills sectors for Northern Ireland. The Strategic Investment Board's, Social Clause Toolkit should be published to help inform thinking on integrating social clauses into public contracts and to develop a Social Value Strategy.

Recommendation 5:

Commissioners in conjunction with procurement officials should set up monitoring and evaluation frameworks for the delivery of social clauses at the start of the contract and these should be included in the tender documents. Monitoring systems should measure the outcomes achieved through the inclusion of social clauses, in addition to activities and outputs. Any cost implications for companies should be considered as part of the contract value.

2 INTRODUCTION

2.1 Introduction

This section sets out the background and the current situation regarding social clauses as operated through central government in Northern Ireland.

2.2 Rationale for the Research

The Centre for Economic Empowerment commissioned research on the use of social clauses in public procurement contracts. The Northern Ireland Programme for Government (PfG) 2011-15 contains a commitment to include social clauses in all public procurement contracts. The CPD is the Agency tasked with providing policy guidance to government departments across Northern Ireland.

NICVA wishes to ensure that CPD in developing policy have access to research which sets out the difficulties encountered by procurement officials and suppliers in implementing social clauses and that these can be taken account of in any future guidance that is issued.

2.3 Methodology

The methodology involved:

- Reviewing the policy context for public sector procurement and social clauses in Northern Ireland;
- Completing consultations with key stakeholders to identify difficulties experienced in implementing social clauses. The consultation list included procurement officials, the community and voluntary sector, the construction sector and trade union officials;⁴ and
- Selecting three 'live' service, supply and construction contracts and identifying opportunities for incorporating and monitoring social clauses in each.

2.4 Social Clauses in Northern Ireland

What are social clauses?

Social clauses have been defined by the Cabinet Office as:

.....requirements within contracts or the procurement process which allow the contract to provide added social value through fulfilling a particular social aim. For example, a social clause in a public contract could prioritise the need to train or give jobs to the long term unemployed in the community as part of the contracting workforce.⁵

How have social clauses developed?

Social clauses have been in use for some time in Northern Ireland, mainly in construction contracts. In 2002, the Northern Ireland Executive agreed a Public Procurement Policy which included the incorporation of social clauses. To date they have primarily taken the form of employment and training requirements, such as apprenticeships and providing placement opportunities for the long term unemployed.⁶

The Northern Ireland PfG 2011-15 contains a commitment to include social clauses in all services, works and supplies contracts. By way of delivery, a Procurement Guidance Note⁷ and Departmental targets for implementation were to be agreed by 2012/13. Responsibility for this commitment rests with the Procurement Board, which develops public procurement policy in Northern Ireland.⁸ The Procurement Board is supported by the CPD, a branch of the Department of Finance and Personnel (DFP), which disseminates procurement advice and guidance, and monitors their implementation. In addition, eight Centres of Procurement Expertise (CoPE) are responsible for procurement policy in specific areas.⁹

Social clauses were developed in conjunction with CPD and local industry through the Construction Industry Forum for Northern Ireland (CIFNI) and these require that:

- For each £250k of contract labour value the contractor either directly, or through the supply chain, provides 13 weeks of work experience or employment opportunities for the unemployed (through StW or equivalent);
- Five per cent (5%) of the contractor's workforce and the workforce of its first tier subcontractors (with 20 or more employees) are employed on formally recognised paid apprenticeships;
- The contractor provides work opportunities for student(s) on a construction related course at university or college (one 40 week student placement for contract labour value of between £2-£5m and two placements for contract labour value greater than £5m); and
- The contractor provides eight person weeks of work placement for Training for Success (TfS) Trainees, through the DEL training suppliers, or equivalent, per £500k of contract labour value.

⁴ List of consultees included in appendix 1.

⁵ http://www.cabinetoffice.gov.uk/third_sector/public_services/social_clauses.aspx and as set out in a Northern Ireland Assembly Research Paper 2009 on Social Clauses in public contracts 2009.

⁶ Other social requirements were agreed in June 2008 by the CoPEs in conjunction with the Construction Industry Forum for Northern Ireland (CIFNI). For example, these include promoting equality of opportunity in the workplace, promoting respect for people and promoting best practice in Health and Safety.

⁷ Guidance Notes are "the administrative means by which the public sector is advised of procurement policy and best practice." DFP 2011 Northern Ireland Public Procurement Policy Handbook page 18.

⁸ Chaired by the Finance Minister, the members of the Procurement Board also include; the Permanent Secretaries of the 12 Departments, their Agencies, Non-Departmental Public Bodies (NDPBs) and public corporations. The Board includes the Treasury Officer of Accounts, two external experts without a specific sectorial interest and the Director of CPD. A representative of Strategic Investment Board Ltd attends as an observer, source: Northern Ireland Public Procurement Policy Version 8: October 2012. The Central Procurement Directorate. Department of Finance and Personnel.

⁹ Roads Service, NI Water, Procurement and Logistics Service, Northern Ireland Housing Executive, Health Estates, Education and Library Boards and Translink.

Currently government departments in Northern Ireland are obliged to produce annual procurement plans that will deliver economically advantageous outcomes but which will also include measures to 'assist in the delivery of PfG commitments and the full consideration of social procurement guidelines'.¹⁰

Local councils in Northern Ireland are also encouraged to consider the inclusion of social clauses in their contracts if it represents best value. Such clauses should comply with the Treaty on the Functioning of the European Union (TFEU) and with European Public Procurement legislation.

Why are social clauses used?

Social clauses are used to ensure that additional benefits can be derived from public procurement alongside the goods, services and capital works being procured.

How are they delivered?

DEL is central to the delivery of social clauses in departmental contracts. DEL has established a team to assist contractors implement StW and apprenticeships. A process has been set up so that the DEL team are provided with detail on all the new contracts incorporating social clauses (through a Social Clause Validation Mail Box); DEL then notifies the contractors and StW providers and then it is up to the contractor to come through with the details of their requirements and communicate with the StW¹¹ providers to get the placements on board.

The contractors are then required to report on the number of placements and apprenticeships in place on a monthly basis to the client. If a placement or apprentice leaves, it is up to the contractor to get the person replaced as soon as possible. The monitoring is based on number of placement weeks or apprenticeship weeks.

2.5 Terms of Reference for the Research

The research has two main components.

- **Diagnosing the difficulties**

The first phase of work involved interviewing procurement officials, suppliers and other stakeholders¹² to understand their experience of devising or implementing social clauses and to highlight any specific difficulties encountered. In addition, it included a review of the adequacy of the systems established by the Procurement Board to monitor the implementation of social clauses.

- **Influencing practice**

The second phase of work involved working with the Centre for Economic Empowerment to identify a small selection of service, supply and construction contracts, develop proposals as to how they can incorporate social clauses, and establish a framework for monitoring implementation.

2.6 Format of Report

The remaining sections of the report are structured as follows:

- Section 3: Progress to date
- Section 4: Difficulties involved and Proposed Solutions
- Section 5: Social Clauses Case Studies and Implementation
- Section 6: Conclusions and Recommendations
- Appendix 1: List of Consultees
- Appendix 2: Policies relating to Social Clauses
- Appendix 3: Procurement Control Limits

¹⁰ Procurement Board Strategic Plan 2008-11. By 31 March each year Departments to produce annual procurement plans.

¹¹ Note: DEL StW programme finishes in 2013 and this process will be replaced by Steps to Success.

¹² List of consultees included in appendix 1.

3 PROGRESS TO DATE

3.1 Introduction

The focus of this research is on identifying the difficulties with the existing approach to social clauses. However, there has been significant progress over the last four years and this section briefly highlights some aspects of the system which work well. The rest of the report details a number of areas for development of social clauses in the future.

3.2 Central Procurement Directorate

Central government departments and their agencies include social clauses in procurement contracts, as required by the PfG. The main focus over the last few years has been on construction contracts, although the number of supplies and services contracts including social clauses has also increased.¹³

Progress to date is due to the CPD working with the construction sector and commissioners to create awareness of social clauses and to develop processes for implementation. For example, the CPD worked with local industry through the CIFNI to develop an agreement on how social clauses would be implemented. Getting the buy-in from the construction sector to implement social clauses, at a time of economic downturn, is a significant achievement for all those involved.

3.3 Department for Employment and Learning

The cost involved in implementing social clauses has been kept low through contractors being able to work with the DEL and StW providers to get access to unemployed people that are needed to fulfil the social clause conditions. Consultees interviewed as part of this research felt this process worked well and were appreciative of the help and guidance provided by DEL in this area.

3.4 Social Clauses Forums

There are two Social Clauses Forums operating in Northern Ireland, one facilitated by Derry City Council in the North West and one by DEL in Belfast, and these have been influential in ensuring there is a clear route for public bodies wishing to include such clauses in contracts. Derry City Council in particular was successful in establishing the first ever Social Clause Delivery Forum.

3.5 Strategic Investment Board Limited

SIB has worked with commissioners to consider the social needs of an area at the pre procurement stage of several construction contracts. The Desertcreat project (detailed in section 5) has involved this approach. In addition, SIB is developing a toolkit which considers how social clauses can be used in supplies and services contracts, building on its previous toolkit focused on construction contracts.

3.6 Community/ Voluntary Sector

Construction companies interviewed for this research highlighted that the support available from the voluntary and community sector, and public sector has also been key to the success of some projects. For example, Derry City Council hosts the Kickstart to Work¹⁴ programme which provides support to contractors from the business case stage right through the social clause implementation process. The programme also supports the individuals placed with companies, to ensure that those on placement are briefed and mentored on what to expect from the work experience and how to get the maximum benefit from the experience. Similarly, they brief the construction employer on what to expect from people with no previous experience of the sector and who have been unemployed for some time and need support in settling into a construction environment.

¹³ Presentation from DEL to the Derry Social Clause Forum - May 2013.

¹⁴ Kickstart to Work is funded by European Social Fund (ESF) Priority 1 Helping people into employment (65%), and matched by Derry City Council (35%).

4 DIFFICULTIES INVOLVED AND PROPOSED SOLUTIONS

4.1 Introduction

This section contains a summary of the findings from our research and consultations on the difficulties involved in developing and implementing social clauses. It also contains proposed solutions to each of the difficulties.

4.2 Need for an overall Social Value¹⁵ Strategy/ Social Value Plans

4.2.1 Northern Ireland

Private sector and community/ voluntary sector consultees felt there was a need to be clearer on the overall outcomes needed and being achieved through the use of social clauses in public contracts. There is a concern from the private sector, that the opportunities being provided may not provide lasting benefits for the target groups - who are those from vulnerable groups and the long term unemployed.

In particular, the construction sector has experienced a significant downturn. The real value of construction output in quarter four of 2012 was estimated to be 41% lower than its peak in quarter two of 2007.¹⁶ In December 2012 there were 29,930 employee jobs in construction, down by 36% from its height of 46,820 jobs in December 2007.¹⁷

In these circumstances it is uncertain how beneficial it is to require that contractors universally retain 5% of their workforce as paid apprentices, particularly as many of the small and medium enterprises (SMEs) find it difficult to deliver on this requirement. With limited job opportunities there is a danger that people on apprenticeships or StW placements will not find employment in the sector in the long term.

As part of its on-going review of apprenticeships and youth training, DEL may wish to consider whether apprenticeships and placements that are included as social clauses should be more strongly geared towards industries with greater employment opportunity such as, information and communication technology (ICT), agri-food,¹⁸ and more closely aligned with Northern Ireland's skills gaps, whilst in line with EU procurement law.

For example, the Programme for Government highlights the need to eradicate child poverty in Northern Ireland by 2020.¹⁹ Other parts of the UK have required construction companies building libraries to work with social services to target 10-20 families who are in poverty in the local area and

involve them in the build process, in ways which will improve their chances of getting out of poverty or minimising the impacts of poverty.²⁰ In this case, it has included providing training, employment opportunities but also providing opportunities to make parents and children aware of the project at the outset and to get them involved ultimately in using the library.

As we present below, other parts of the UK are moving towards a wider and more strategic view of how public procurement can be used to deliver benefits to society, namely taking a social value perspective.

4.2.2 England and Wales

The Public Services (Social Value) Act 2012 in England and Wales, places a requirement on commissioners, to consider the social, economic, and environmental (or sustainability) benefits of their approach to procurement, before that activity is started. It applies to this pre-procurement stage because that's where social value can start to have the greatest effect. The Act, which came into force on 31 January 2013, simplifies the way that commissioners are asked to think, as stated below:

1. They are asked to consider 'commissioning sustainability', which means looking at the commissioning process and how sustainable impact can be achieved. The Act does not prescribe how the results of considerations should shape procurement, but it does enable users' and communities' perspectives on certain services to be taken into account in developing outcomes. Commissioning is therefore intended to lead to more innovative and cost-effective service delivery; and
2. Social value is linked to community outcomes. 'Communities' is meant in a broad sense to include all sectors of an area touched by commissioning, whether that is people in certain groups, social enterprises, or businesses. By using social value to describe community benefits, commissioners can specify measurable outcomes that can be used as evaluation criteria in the procurement process, and as part of contract compliance. Public sector organisations are expected to do some work to decide their social value priorities.

Although this is the first time public sector organisations have been required to consider these issues, the underpinning duties have been in place for some time in England and Wales. Part 1 of the Local Government Act (2000) "gives local authorities powers to take any steps which they consider are likely to promote the well-being of their area or their inhabitants. It also places authorities under

¹⁵ Social value 'refers to wider non-financial impacts of programmes, organisations and interventions, including the wellbeing of individuals and communities, social capital and the environment. These are typically described as 'soft' outcomes, mainly because they are difficult to quantify and measure'.

¹⁶ NISRA (2013) NI Construction Bulletin – Q4 2012 page 4.

¹⁷ NISRA (2013) NI Construction Bulletin – Q4 2012 pages 49-50.

¹⁸ See DARD (2012) Innovation and Skills: Implications for the Agri-food Sector.

¹⁹ The Child Poverty Act 2010 requires the NI Executive to develop a Strategy to achieve the eradication of child poverty in the UK by 2020. Uniquely, in terms of the responsibilities in other devolved administrations, the legislation places this duty on each department within the NI Executive. The Office of First Minister and deputy First Minister (OFMDFM) led the work to bring forward an Executive Strategy. This Strategy - Improving Children's Life Chances - was laid before the NI Assembly in March 2011.

²⁰ Research currently being completed for OFMDFM on child poverty discusses the importance of local solutions for families in poverty and early intervention. The construction example is one where a company in England is seeking to involve a number of families in the design of a local library; provide job/ training opportunities; get the children involved and enthused about the library and its associated facilities so that they are more likely to use them and help them develop. Education is seen as a key way for children to move out of poverty.

a duty to develop community strategies, together with other local bodies, for this purpose. These provisions are intended to give local authorities increased opportunities to improve the quality of life of their local communities."

4.2.3 Scotland

The proposed Procurement Reform Bill in Scotland is part of the Public Procurement Reform Programme established in 2006 following John McClelland's review of public sector procurement in Scotland. The reform agenda is about both obtaining savings for the public purse but also to ensure that public sector spend is used to the best effect by generating benefits to the economy and to society as a whole. The proposed aim of the Bill is to establish a national legislative framework for sustainable public procurement that supports Scotland's economic growth. It will do this by delivering community benefits, supporting innovation, considering environmental requirements and promoting public procurement processes and systems which are transparent, streamlined, standardised, proportionate and business-friendly. The Scottish policy if approved will be similar to England and Wales and is focusing on social value rather than solely on social clauses.

4.2.4 European Commission

A report called 'Strategic Use of Public Procurement in Europe'²¹ prepared for the European Commission noted that all procurement exercises should aim to include some of the following "Socially Responsible Public Procurement" (SRPP) practices as categorised by the EU:

- Promoting "Employment Opportunities"; in particular for youths, disadvantaged groups, long term unemployed, older workers and the disabled.
- Decent work: promoting various labour rights relating to hours, pay, equal opportunities, health and safety, benefits and ending workplace discrimination.
- Supporting social inclusion and promoting social economy organisations: encouraging participation of firms with significant numbers of employees from minority groups, the disabled and non-profit organisations.
- Promoting SMEs: this can reduce the cost of participating in SRPP opportunities.
- Promoting accessibility and design for all: ensure that goods and services are accessible to all and appropriate provisions have been made in technical specifications.
- Taking into account fair or ethical trade issues: these stipulations should be included in tender specifications and conditions of contracts.
- Seeking to achieve wider voluntary adherence to Corporate Social Responsibility.

4.2.5 Areas for Development

Currently it is not entirely clear what social clauses are supposed to deliver with regard to outcomes for Northern Ireland's society and economy. In order to address this, a Social Value Strategy should be developed, setting out the main ways in which social clauses should further the Northern Ireland Executive's social, economic and environmental goals, including those set out in the PfG and the Economic Strategy.

On the basis of this overarching Strategy, CoPEs /Departments could set out their own plans for utilising social clauses in line with EU Procurement Law. This could then inform the use of social clauses, which would be decided on a case-by-case basis.

4.3 Joined Up Thinking

A number of procurement officials working on the large strategic programmes for government departments highlighted the importance of getting departmental buy in to maximise the benefits generated out of any large capital procurement. The point was made that new build programmes have the potential to create opportunities for other departments, if there is time set aside to consider the potential fully at the pre- procurement stage. An example of this is the Shared Education facility being developed at Lisanelly (see section 5 case study three). The full community benefit of this procurement can only be obtained with the relevant public, private and community/ voluntary sector working together in an integrated way.

There is an opportunity for Departments to work strategically on the major construction contracts to consider how the builds can be used to deliver wider benefits. It is recognised that getting Departments bought into a project sufficiently to commit budget, can be time intensive. There is no structure or process which makes this happen easily.

The largest build projects should get visibility at the Procurement Board or other Departmental grouping that allows consideration of project by all relevant departments, including the social issues relating to the area that could be dealt with through the procurement.

4.4 Legal Issues

EU Public Procurement law is set out in the European Commission's Consolidated Directive on public procurement (2004/18/ EC), which was adopted in March 2004. The EU is currently debating the revision of the Procurement Directives, but it will take until at least 2014 before the changes are implemented into UK law.

The existing European Public Procurement Directive (2004/18/EC) acknowledges the possibility of incorporating social considerations into public procurement within defined circumstances. For example, Article 26 of the Directive specifically refers to the incorporation of social and environmental considerations as contract performance conditions and it states the legitimate aims for such contract conditions as including:

²¹ Kahlenborn, Walter; Christine Moser; Joep Frijdal and Michael Essig 2011: *Strategic Use of Public Procurement in Europe – Final Report to the European Commission* MARKT/2010/02/C. Berlin: adelphi.

- The provision of onsite vocational training; and
- The fight against unemployment for example through the recruitment of long term job-seekers.

The Directive also makes provision for addressing social aims at other stages of public procurement processes, for example, in the technical specifications and encouraging the involvement of small and medium sized undertakings through provisions on sub-contracting.

European case law has played a key role in the development of an understanding of this complex area. Indeed, one of the landmark cases on this subject was the *Concordia Buses case*²² which established the circumstances within which social considerations may be used as award criteria:

- "The criteria adopted to determine the economically most advantageous tender must be applied in conformity with all the procedural rules laid down in Directive 92/50, in particular the rules on advertising."
- Criteria must also comply with the fundamental principles of EU law, in particular the principle of non-discrimination.
- The judgment concludes that a contracting authority may take into account ecological criteria provided that:
 - they are linked to the subject-matter of the contract;
 - do not confer an unrestricted freedom of choice on the authority;
 - are expressly mentioned in the contract documents or tender notice; and
 - comply with all the fundamental principles of Community law, in particular the principle of non-discrimination.

In 2010 the European Commission published *Buying Social: a guide to taking account of social considerations in public procurement*. This document defines 'buying social' as promoting employment opportunities, social and labour rights, social inclusion, ethical trade issues, corporate social responsibility (CSR) and promoting SMEs. The European Commission²³ highlights the various opportunities to address social concerns at different stages of public procurement processes.

This is a constantly evolving area of law, but what is certain is that social considerations may be legitimately addressed through public procurement. How this may be done will depend upon a case-by-case assessment of each project and may require the involvement of legal practitioners in order to avoid costly legal and contractual mistakes.

It is perceived by procurement officials that Northern Ireland is more litigious than other parts of the UK and this has resulted in a more risk-averse approach being taken to including social clauses in contracts.

There are two ways in which social clauses can be included in government contracts:

- 1. Option 1:** Assessed as part of the award criteria: The bidders for a contract can be asked to either put forward suggestions on what they can deliver regarding community benefits or they can be required to confirm that they will deliver specific social clause requirements which are included in the terms of reference. In this case the bidders are assessed on their response and this is scored as part of the assessment and award process
- 2. Option 2:** Included as part of the performance monitoring of the contract, not as part of the award process. Social clauses are not included as part of the assessment criteria or scored as part of the award, but instead they are included as part of the performance monitoring conditions for those who win the work.

Northern Ireland Procurement policy set by CPD states Northern Ireland Departments should use option 2.²⁴

There is recognition that the new EU Directive includes the suggestion that social benefits can be included as part of the award criteria, but that this hasn't been approved or tested through case law. However, whilst the majority of contracts are following option 1, we have included a case study in section 5 of the *Desertcreat Training College* where community benefits have been assessed as part of the contract award process. We understand from the SIB Project Manager that this has allowed the bidders to look wider than apprenticeships and StW placements. No further details can be produced at this stage as the winning bid has not been announced.

Guidance issued by the Scottish Government²⁵ and by the Local Government Association in England²⁶ states that social contract award criteria are allowed. They state that 'this issue has been considered by the European Court and it is clear in 'Buying Social' that relevant social award criteria can be applied if the requirements have been written into contract specifications. This enables the bidders' jobs, skills and supply chain proposals to be considered when deciding which tender is the 'most economically advantageous' from a buyer perspective'.²⁷

²² A6.1.3 C-513/99 *Concordia Bus Finland (Concordia Bus Finland Oy Ab (formerly Stagecoach Finland Oy Ab) v (1) Helsingin Kaupunki (2) HKL-Bussiliikenne (2002))*

²³ *Buying Social - A Guide to Taking Account of Social Considerations in Public Procurement*. European Commission October 2010.

²⁴ Confirmed with CPD policy through a meeting and follow up emails.

²⁵ *Scottish Government (2008) Community Benefits in Procurement. A Report Demonstrating the Methodology for Including Targeted Recruitment and Training Clauses in Public Sector Contracts* by Richard MacFarlane and Mark Cook, Anthony Collins Solicitors.

²⁶ *Buying into communities: Jobs, skills training and business opportunities from council contracts*. Local Government Association

²⁷ *Buying into communities: Jobs, skills training and business opportunities from council contracts*. Local Government Association

As stated above, the Public Services (Social Value) Act 2012 in England and Wales, places a requirement on commissioners, to consider the social, economic, and environmental (or sustainability) benefits of their approach to procurement, before that activity is started.

It is clear from our research that many procurement officials across the UK are interpreting EU law and guidance on the use of social clauses in contracts, very differently. It appears to come down to the attitude towards risk. Given that Northern Ireland is a litigious environment, then it is understandable why CPD has taken the position they have.

However, it is worth considering if Northern Ireland could require commissioners and procurement officials to consider the development of social clauses at the outset of the planning a project and in particular at the pre-procurement stage and where possible to include them in the award criteria.

4.5 Assessing Social Clauses as part of Tender Responses

Procurement officials assess bids either on lowest cost or on the Most Economically Advantageous Tender²⁸ (MEAT). There is concern from procurement officials that including social aspects as part of these criteria could leave them exposed to more legal challenges and hence cost. They also feel that given the pressure on public sector budgets, it is difficult for them to reconcile any move away from the existing criteria with the cost cutting that is happening in many Departments and Agencies.

Suppliers are equally concerned that they could be in a bidding situation for a contract and not be clear about what is being 'purchased' and therefore not put forward their best case. Any move to include social aspects, alongside the lowest cost or (MEAT), needs to ensure that there is no confusion as to what is being specified.

Therefore any move to include social aspects in the MEAT criteria needs to be capable of being objectively assessed and measured.

4.6 Monitoring and Evaluation of Social Clauses

The example of construction underlines the importance of viewing social clauses not as an end in themselves, but as a means of realising social value. There is a danger that people complete apprenticeships and work placements in construction, without that experience leading to long term employment in the industry. In measuring success it is therefore vital that the outcomes of social clauses are monitored, as well as outputs.

In construction this does not yet take place. Contractors are required to report monthly to the client on the number of apprenticeship/placement weeks completed. DEL does not record whether an apprenticeship or work placement leads to sustained employment. This creates a situation in which social clauses could be complied with, creating the appearance of success, without them actually adding much in the way of social value. A Social Value Strategy would need to consider how social clause outcomes could be measured, and this may be more difficult in some areas than others. We have developed the framework below in order to demonstrate what the inclusion of outcome measures might involve in relation to apprenticeships and StW placements in construction.

More generally, there are a number of models used to measure social value, with the Social Return on Investment (SROI) methodology generally best known.²⁹ SROI analysis is a process of understanding, measuring and reporting on the social, environmental and economic value that is being created. New Economics Foundation's (NEF's) SROI framework is an approach to measurement – developed from cost-benefit analysis, social accounting and social auditing – which attempts to capture social value by translating social objectives into financial and non-financial measures. SROI measures the value of the benefits relative to the costs of achieving those benefits. It is expressed as a ratio of the net present value of benefits to the net present value of the investment. For example, a ratio of 3:1 indicates that an investment of £1 delivers £3 in social value.

We have developed a framework in table 4.2, which demonstrates the move from output to outcome measures for apprenticeships, StW placements and use of subcontractors. In the table below, we set out the definitions key to understanding the framework.

²⁸ MEAT means that the tender response will be assessed on both quality and cost. The relative importance of each will be set out in the tender documents.

²⁹ Definition by New Economics Foundation (NEF).

Table 4.1: Definitions and Examples

Social Clause Measure	Description	Activities	Outputs	Outcomes	
		<p>Activities: these are the things actioned to achieve change. Examples might be training, events or information leaflets, mentoring, sessions with school children on careers etc.</p>	<p>Outputs: these refer to the direct results of these activities, for example, 10 people have achieved a particular qualification; or 10 information brochures were delivered in a local area; or 20 people completing a Steps to Work placement etc.</p>	<p>Outcomes: these are the changes in people, the environment, or the community, that result from the activities. For example, this might be: becoming more employable, or reducing crime in an area.</p>	<p>Impacts: these are the longer term changes that have been achieved. These can be assessed by reviewing the impact on the group being supported - i.e. what has happened to those who availed of StW placements on construction contracts over the last 12 months- and how has the experience impacted on their lives and their families lives. This type of analysis often includes an assessment of additionality- what impacts where a direct result of the support; and deadweight - to what extent would these impacts been generated anyway - or some of them.</p>
Work Experience Placement	The work experience placements are to support unemployed people, get work experience and get back into work. The minimum duration of a work experience placement should be specified. The placement could also contain the need to complete certain training or skills development – e.g. NVQ level 2 etc.	<p>Work placements vary, but they need to include:</p> <ul style="list-style-type: none"> • One to one sessions with a more experienced worker to help the individual understand the company, the role and to discuss their training needs. • On-going mentoring support to help the placement student, get the most out of the experience. • Potentially referral to others inside the company or outside (to FE college etc.) to get further advice or support. 	<ul style="list-style-type: none"> • Number of individuals who complete the work placement. • Length of work placement completed. • Number of days training/ mentoring received during the work placement. • Number of jobs applied for during the work placement. • Number of training courses completed. 	<ul style="list-style-type: none"> • Number of work placement students that obtain a job within four weeks of leaving. • Number of work placement students that sustain these jobs for six months or more. • Number of work placement students that achieve qualifications during the work placement. 	
Apprenticeship	This target describes recruitment of apprentices to the project workforce. An apprenticeship is defined as an individual pursuing a formal apprenticeship framework incorporating either N/SVQ level 2 or 3.	<ul style="list-style-type: none"> • Registration of Apprentices • Allocation of work programme. • Establishment of training/ study programme. • Completion of on-going assessment process. 	<ul style="list-style-type: none"> • Number of trainees who successfully complete and are awarded the qualifications they aimed for at the start of the process. 	<ul style="list-style-type: none"> • Number of trainees who successfully completed apprenticeship, who then are offered employment within one month. • Number of trainees who successfully completed apprenticeship and sustain employment for six months or more. 	
Development of Subcontractors	This target describes performance or business improvement provided to individuals working in the project supply chain, not directly employed by the main contractor.	<ul style="list-style-type: none"> • The activities depend on the nature of the programme agreed with subcontractors. • Analysis of Needs within supply chain company. • Development of action plan for individual contractors. • Number of training days provided. 	<ul style="list-style-type: none"> • Number of subcontractors supported through a development process with the main contractor. • Extent to which subcontractor has increased their knowledge and skills regarding performance or business improvement. 	<ul style="list-style-type: none"> • Increased productivity/ increased efficiency in supply chain company, through the subcontractors developed. • Evidence of business development/ performance improvement in each of companies supported through the process. 	

4.7 Enforcement

Some interviewees were concerned that social clauses are not always enforced. At the time of the research interviews, the approach to enforcement was still under development, with monetary fines³⁰ and the issuing of 'Poor Performance Certificates' being discussed as options. While enforcement is essential it is important that the system is designed to be practical and take into account the limitations organisations may face in implementing the social clauses. For example, SMEs will not have spare resources available to invest in this area and support may be needed to help them with implementation.

³⁰ It is not clear if these can be legally implemented or not and this was being investigated at the time of the research interviews being completed.

5 SOCIAL CLAUSES CASE STUDIES AND IMPLEMENTATION

5.1 Introduction

The Terms of Reference for this research requires the following:

The consultant will work with the CEE to identify a small selection of service, supply and construction contracts and develop proposals as to how they can incorporate social clauses.

Source Terms of Reference CEE-September 2012.

5.2 Case Studies

In this section we provide details on the three case studies agreed with CEE, namely the Desertcreat College, the Social Investment Fund and the Shared Education Project. We describe each in turn, detailing their approach to social clauses and consider recommendations for the way ahead. The case studies detail opportunities for further development.

5.2.1 Case Study:

Project One - Desertcreat College

The Desertcreat College provides an example of a major construction project that not only includes the standard social clauses of providing Steps to Work placements and apprenticeships, but has gone beyond this to require providers to provide ideas and proposals as to how they will deliver social, economic and environmental benefits. We consider the project in more detail below.

Project Title	Desertcreat College
Sponsor Department(s)	Department of Health, Social Services and Public Safety (DHSSPS); and Department of Justice (DOJ).
Key Stakeholders	Health Estates CoPE; Police Service for Northern Ireland (PSNI); Northern Ireland Fire and Rescue Service (NI Fire & Rescue); Northern Ireland Prison Service (NIPS) Strategic Investment Board Limited (SIB).
Background	The project is the procurement and build of a Public Services Training College at Desertcreat in Cookstown, which involves combining the training needs of the PSNI, NI Fire and Rescue Service and the NI Prison Service.
Stage of Procurement	The original business case for the Police College construction was approved for £140m. The tender went out for the contract in 2012 and bids were received. Further monies are required and the business case is being updated. If the funding is approved, then a preferred bidder will be appointed soon after and the project will move to implementation within 3-6 months. Note further procurement will be needed for example, facilities management, security, catering etc. It is expected that the procurement in these areas will take place through the existing Health Procurement Frameworks that are in place.
Skills and Expertise	The team comprises SIB, PSNI and Health Estates Procurement Officials. They have worked on major build programmes and one of the team was previously Project Director of the Belfast Education and Library Board "strategic partnership" – a ten year regeneration project for Belfast schools and libraries. Another member of the team had worked on the regeneration of social housing project in England which had significantly involved the local community, in the development of space surrounding the housing. ³¹ The CoPE involved in the project is Health Estates and they work to the social clauses agreed with the Construction Engineering Federation. There is significant experience and expertise in relation to social clauses and this has meant that the team have developed a procurement approach which has incorporated both social clauses and social/community benefits into the contract.
Procurement Approach	Social Clauses: The social clause requires that the contractor appointed will ensure that apprentices and Steps to Work ³² placements will be provided in line with the CPD/CEF agreement based on the labour value of the contract. Social Benefits: The tender also required bidders to submit proposals which would be evaluated as part of the overall tender with regard to social, environmental and economic impacts that they could provide as part of the contract. The procurement team are unable to give further details at present as the preferred bidder has not been announced. The team noted that bidders providers provided well thought out and researched ideas. They noted that this project tested the willingness of bidders to respond to such criteria and the responses have noted that the process works. The team would therefore wish to be more ambitious in any future projects of a similar nature.
Monitoring and Evaluation	The contract specification set out that monthly monitoring reports will be required and any contractor not delivering on these will be issued with a certificate of non-performance, which is a breach of contract. Once the preferred bidder is appointed, there will be a period of contract negotiations on the monitoring and evaluation process or the sanctions that will be put in place for any non-performance will be reviewed.
Learnings	Social Clauses focused on StW placements do not allow for monitoring the quality of work provided to placements or what skills are being developed as a result. This approach offers limited scope to ensuring that real benefits are being derived for the individuals concerned or society. Apprenticeships provide the opportunity for employees to develop new skills and expertise. However, there is concern that these could be used to train or partially train new workers when other more experienced and skilled workers who have been made redundant from other construction companies cannot then access the jobs. It is the team's view that requiring bidders to submit proposals on how they plan to deliver social/community benefits will be much more effective than the use of StW or apprenticeships on their own. This approach allows the needs of the local community to be taken into account and proposals developed that meet these needs. Note: Commissioners can include social, economic and environmental requirements to be taken account of in their contracts, but to do so they must be considered at the pre-procurement phase, allowing them to embed them into the design of the service from the outset. Therefore procurement officials need to decide on the strategy for creating social impacts at the design phase of the project.

³¹ Reference the Guidance issued by this CoPE regarding construction and social clauses.

³² Note: DEL StW programme finishes in 2013 and this process will be replaced by Steps to Success.

5.2.2 Case Study: Project Two - Social Investment Fund

The Social Investment Fund (SIF) was set up by the Northern Ireland Executive on 22 March 2011. It has a budget of £80m to be spent over a four year period. The high level aim of the Social Investment Fund is to reduce poverty, unemployment and physical deterioration in areas through area based interventions of significant scale which will be delivered in partnership with communities.

The SIF's strategic objectives are to support communities to:

- Build pathways to employment;
- Tackle the systemic issues linked to deprivation;
- Increase community services; and
- Address dereliction.

Project Title	Social Investment Fund
Sponsor Department	Office of First Minister and deputy First Minister (OFMDFM)
Key Stakeholders	Steering Groups have been established in each of the nine Social Investment Zones and they have voluntary/ community and political representatives on each group.
Background	<p>Each zone has a steering group with up to 14 members from the business, political, statutory and voluntary and community sectors. They have developed plans for each of the social investment zones. The areas within each zone that are eligible for funding are:</p> <ul style="list-style-type: none"> • Areas within the top 10 per cent of most deprived Super Output Areas on the Multiple Deprivation Measure 2010; • Areas within the top 20 per cent of most deprived Super Output Areas on the key indicators of income, employment, education and health; and • Areas which can provide independently verified and robust evidence of objective need linked to the four strategic objectives of the Social Investment Fund (as detailed above).
Contract Values	£80m will be spent over four years.
Stage of Procurement	The Steering Groups are at different stages. All have met, reviewed the needs of their local areas and identified the priority projects that meet the criteria set out for SIF funding. Economic appraisals have been developed on projects and these have either been submitted or are in the process of being submitted to OFMDFM. Funding decisions are expected later this year.
Skills and Expertise	<p>The Steering Groups comprise local political and voluntary/ community sector representatives for each area. The understanding of social clauses and community/ social benefits will therefore vary throughout the Groups.</p> <p>It is important that the Chair and other members of the Steering Groups have an understanding of how Social Clauses can be used to achieve maximum social benefits for their areas. It should be noted that both Derry~Londonderry and Belfast City Council have Social Value Forums in operation, which could be utilised to help for their respective SIF areas.</p>
Procurement Approach	<p>Each Steering Group has identified approximately 10 projects each, therefore 90 projects in total. These are currently being appraised and funding decisions will be taken in the next few months. Given that the projects are all already geared to improving local communities it could be forgotten that social clauses have a role to play in these contracts as well.</p> <p>As Social Clauses are designed to creating an “additional benefit” to the community from a commissioning /procurement process over and above the direct purchasing of goods, services and outcomes”, it would be very timely to be approaching OFMDFM and the Steering Groups to ensure these are being considered for inclusion in any contracts.</p>

Project Title	Social Investment Fund
Barriers to get maximum community benefits	<p>There are a number of barriers to getting maximum impact for communities from the SIF:</p> <ol style="list-style-type: none"> 1. There are a number of projects devised for each of the nine Social Investment Zones. Some of these will be small projects valued at less than £500k and some are extensions of existing projects, which need funding to survive. Research has shown that it can be difficult to monitor the impacts generated and the value of small projects means that it may not be cost effective to do so. If the projects are not evaluated at impact level, there can be no assurance that the monies are delivering what is needed. 2. OFMDFM set out a number of themes to the project work, namely; increasing employment opportunities; tackling health and wellbeing issues; increasing services in the community and addressing dereliction. A number of areas will have come back with similar projects for example design and delivery of training and work placement programmes. Consideration should be given as to how the learning from the existing programmes that exist across NI/ UK / Ireland can be shared with the Steering Groups and whether there are opportunities for efficiency, effectiveness and sustainability to be increased through taking a more strategic approach to delivering these programmes. For example, how can the placements generated be turned into real job opportunities? Does there need to be some resource across the SIF areas focused on developing new work opportunities? Will this result in the sector being able to turn these placements into jobs?
Monitoring and Evaluation	<p>As these projects will be appraised in whether they are feasible and the extent to which they deliver social/ community benefits against their costs, the setting of targets will be relatively straight forward. As with other similar projects, the focus needs to be on measuring outcomes/ impacts not outputs. For example, to generate lasting benefit the local communities need sustainable jobs, not the delivery of a certain number of work placements.</p>
Barriers – what will hold SIF back from getting maximum community benefits	<p>There are a number of barriers for the voluntary and community sector (VCS):</p> <ul style="list-style-type: none"> • VCS need to set internal targets focused in getting a return on the investment which exceeds the monies invested. For example an employment programme will costs £500k, needs to create 27 sustainable jobs at the average wage to cover its costs and ideally should be aiming for a two to four fold return of 54- 108 sustainable jobs to be created. • VCS do not tend to have the resource in-house to support on-going evaluation work. It is also a specialist area of work and it would be beneficial if the projects could set up a centralised shared resource across the SIF investment zones to help the project managers provide the evidence needed to demonstrate positive impacts. • All projects needs to ensure the outcomes are sustainable. To help make this happen on employment contracts, there needs to be an equal focus in ensuring the VCS involved in providing the work placements are developing their businesses sufficiently to create job opportunities. <p>The Final Draft of a new EU Public Procurement Directive has been published, with the Directive expected later this year. This Directive will make it easier for social enterprises to be added to a tender list than exists at present. It is important that public sector commissioners are aware of this change now, as it is critical that the design phase of any procurement takes this into account, so that the specification is up to date with this change, when the Directive is issued later this year.</p>

5.2.3 Case Study:

Project Three - Shared Education

The Shared Education Project is at an early stage of development. The Department of Education (DENI) is exploring options to address the provision of the future post-primary estate in a strategic way, one of which is the creation of a new shared education campus on the site of the former Lisanelly military barracks in Omagh.

Project Title	Shared Education
Sponsor Department	Department of Education (DENI)
Key Stakeholders	<p>Omagh District Council;</p> <p>Strategic Investment Board Limited;</p> <p>Western Education and Library Board;</p> <p>Lisanelly Schools Working Group;</p> <p>Omagh Businesses and Church Leaders; and</p> <p>Northern Ireland Commission for Catholic Education.</p>
Background to the Project	<p>The post primary school estate in the Omagh area is in need of modernisation. DENI is progressing the concept of a shared campus that could facilitate up to six schools relocating to new facilities.</p> <p>Pupils in Omagh will have access to brand new facilities and modern post-primary education. The shared campus initiative has the potential to achieve better value for money as all schools will have access to up-to-date facilities, such as playing fields, arts and performance space and technology labs, within one site.</p> <p>Schools that relocate to the shared campus will retain their individual identity and ethos and collaborate with other schools, building stronger educational and cross-community relations.</p> <p>The shared campus will be a long term investment in education provision in the Omagh area, as the new infrastructure will be designed to respond to changes in the curriculum and in pupil intake numbers.</p> <p>The development of a shared campus offers the potential to encourage greater integration between the pupils but, also, among the wider community. Centralising the education facilities in the area will result in improved traffic management and road safety, especially at peak times, as school transport will be directed to one site. The site will also be of use for the wider community who would benefit from extra services, including catering facilities, a crèche and various community facilities. It is intended that appropriate facilities will be available to the wider community once the needs of the schools have been met.</p> <p>Also, the sites currently occupied by the individual schools could become available to be used for further economic development, therefore creating employment opportunities for local people and businesses.</p> <p><i>Source: SIB</i></p>
Contract Values	The build value is estimated to be in excess of £100m.
Stage of Procurement	<p>The Outline Business Case is currently being considered by departmental economists prior to its submission to DFP. DFP are expected to consider the case for funding and present their assessment within three months of receipt.</p> <p>Under PFG targets construction is expected to be underway by March 2015.</p>
Skills and Expertise	<p>The CoPE involved in the project is Central Procurement Directorate and they work to the social clauses agreed with the Construction Engineering Federation.³³</p> <p>The Programme Manager from SIB is a Chartered Engineer and Town Planner and has extensive experience at senior management level both in the public and private sectors in engineering, town planning, transportation, programme management and public private procurement. This experience and expertise has meant that the team have developed a procurement approach which is incorporating social clauses and social/community benefits into the contract</p>
Procurement Approach	<p>The project is not yet at the stage of going out to tender on the build work. It is understood that there will be two phases to the build procurement.</p> <p>Phase 1 is to procure the build of a small school on site (as it was burned down last year and a replacement build is needed urgently). This school is only a small part of the overall programme. It is expected this work will go ahead this year.</p> <p>Phase 2 is to procure the build of the rest of the Lisanelly programme and this will go to tender in 18 months subject to the project being approved and funding confirmed.</p>

³³ Reference the Guidance Issued by this CoPE regarding construction and social clauses.

Project Title	Shared Education
Monitoring and Evaluation	<p>This project is not yet at the stage to consider the monitoring and evaluation systems required. However, it is important that objectives and targets are set for the attainment of community benefits and that these are built into the award criteria for the phase 2 contract.</p> <p>To develop the objectives and targets regarding community and social benefits, we would suggest the following process:</p> <p>A detailed needs assessment is conducted on the area which will include for example not only the education needs, but wider issues such as health and wellbeing needs of local communities and specific needs of young people outside of education. This work would build on the high level needs assessment already included in the business case.</p> <p>Consideration should therefore be given as to how the schools estate at Lisanelly could be used to develop community and social benefits through its utilisation outside core academic hours. We suggest that this process should involve the wider community and potential funders; working together to develop projects linked to the schools estate and needs. The Belfast Schools Project accessed funding through DHSSPS, OFMDFM, Department for Social Development (DSD), DFP, Big Lottery as well as DENI.</p> <p>These needs and projects should be built into the tender to go out for the build project and suppliers should be requested to cost these accordingly.</p> <p>Consideration should also be given to encouraging a social enterprise approach as used in Belfast - the Artemis Model, which is detailed later in this section. To do so, the procurement would need to specify this and include any additional costs that contractors need to consider for example, the employment of a Social Enterprise Manager, an administrator and commercial and marketing support. The cost of this support should be specified and included in the overall contract pricing structure.</p> <p>The contract specification should set out that monthly monitoring reports will be required and any contractor not delivering on these will be issued with a certificate of non-performance, which is a breach of contract.</p> <p>Once the preferred bidder is appointed, there will be a period of contract negotiations and issues such as any further development of the detail on the monitoring and evaluation process or for example the sanctions that will be put in place for any non-performance will be reviewed.</p>
Barriers to maximising Community and Social Benefits on this Project	<p>This project has yet to go out to procurement and there are significant opportunities for social and community benefits that can still be obtained. The barriers that need to be addressed to achieve maximum value are as follows:</p> <p>Lack of ideas: requires recognition by other departments of how the project could potentially contribute to their Departmental objectives and targets.</p> <p>If departments do not realise the potential that the school build project has to offer in help them meet their objectives, then they are unlikely to come forward with ideas as to how to get the best out of the facility or maximise the value to the community.</p> <p>Funding to develop the opportunity beyond school buildings: The Programme Team's primary objective is to procure and manage the Lisanelly School Build Programme. Their primary concern is not therefore generating maximum benefit to the community, although it is clear from the research and consultation that they are very aware and mindful of these issues as the project develops. They do not, however, have the funding or the resources to make this a priority for the project. To get maximum value through the build programme, other Departments and Agencies with funding need to get involved to share the vision and translate the vision into activities and schemes that can benefit to the local area.</p> <p>Ability to align new projects to Build Project Deadlines: The DENI/SIB team are required to meet specific deadlines for their project. They therefore need other funders and partners to have their projects ready in line with the overall timetable for the build.</p>
Further Opportunities: Accessing other Government Departments Budgets and Shared Vision to deliver	<p>We set out a list of suggested actions needed to overcome the barriers listed above.</p> <ul style="list-style-type: none"> • All Departments need to consider the Lisanelly project and to what extent the facilities could be used to deliver community benefits directly linked to their Departments core functions, and to advise how the project could be piggybacked on to deliver VFM for the Department and tax payer. • The work of Departments should be supported by the Procurement Board setting out a vision as to what community and social benefits could be generated from the project. This vision and areas for priority action would be developed from further consultation with local stakeholders and funders. • The Procurement Board could track the progress being made on strategic projects such as Lisanelly to ensure that all Departments have responded to the request for action on identifying projects and funding that could be linked to Lisanelly. • The Departmental commitments for funding need to be developed into project specifications which in turn need to be included in the overall build tender and procurement process. • The Lisanelly Project Manager should develop the objectives and targets to be included in the procurement tender that are focused on sustainable outcomes.

Project Title	Shared Education
<p>Social Enterprise developed through the Belfast Schools project - and it provides a good example of what can be achieved at minimum through Lisanelly</p>	<p>Amey and the BELB supported by the SIB signed a major strategic partnering agreement in 2008. The agreement set up the social enterprise company called Artemis. It is a company limited by guarantee and a registered charity. It is an independent body not controlled by the public or private sector and is made up of a broad variety of individuals and agencies that represent the interests of specific groups within the community. Amey had an obligation under the Belfast Schools contract (five new schools in Belfast) to develop community benefit by maximising the utilisation of the schools estate outside of core academic hours through engaging with the local community and implementing a social enterprise economy. Alongside day to day educational provision, the new schools have been designed to provide facilities for the wider community to use for learning and community activities both during and beyond the school day. SIB developed the Full Business Case that enabled additional community facilities to be funded by £7m of cross departmental capital support from DHSSPS, OFMDFM, DCAL, DENI, DSD, DFP and Big Lottery funding, representing some 6% of the project's capital value and £500k of annual revenue support for the additional extended school facilities.</p> <p>Enhanced facilities include:</p> <ul style="list-style-type: none"> • Enhanced (100% larger) sports halls; • Dance studios; • Larger and better equipped performing arts facilities; • Early year's unit including a Day-care Nursery for forty four 6-week to 5-year olds; • Full-service community rooms and offices; • Health improvement and intervention facilities; • Electronic Village Hall with 60 PC workstations; • Youth Centre; • Hair and beauty salon training facilities; and • Construction trades training laboratory facilities. <p>A Social Enterprise Manager, an administrator and commercial and marketing support were appointed and paid for through the contract.</p> <p>2. OFMDFM set out a number of themes to the project work, namely; increasing employment opportunities; tackling health and wellbeing issues; increasing services in the community and addressing dereliction. A number of areas will have come back with similar projects for example design and delivery of training and work placement programmes. Consideration should be given as to how the learning from the existing programmes that exist across NI/ UK / Ireland can be shared with the Steering Groups and whether there are opportunities for efficiency, effectiveness and sustainability to be increased through taking a more strategic approach to delivering these programmes. For example, how can the placements generated be turned into real job opportunities? Does there need to be some resource across the SIF areas focused on developing new work opportunities? Will this result in the sector being able to sustain these placements into jobs?</p>
<p>Monitoring and Evaluation</p>	<p>As these projects will be appraised in whether they are feasible and the extent to which they deliver social/ community benefits against their costs, the setting of targets will be relatively straight forward. As with other similar projects, the focus needs to be on measuring outcomes/ impacts not outputs. For example, to generate lasting benefit the local communities need sustainable jobs, not the delivery of a certain number of work placements.</p>

6 CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusions

Northern Ireland has made considerable progress in implementing social clauses. This is due to the work of CPD working mainly with the construction sector and getting agreement on a model for including apprenticeships and StW placements as part of all construction contracts. Progress to date is also due to the work of the two Social Clause Forums facilitated by DCC and DEL, and the work of SIB. Progress has also been made on the supplies and services contracts. Notably, DEL has provided the support needed to help companies find StW participants and this has kept the costs low and practical for contractors.

However, in order to maximise the impact to be gained from including social clauses in contracts, there needs to be a focus on the actual outcomes rather than the level of activity being generated. Social clauses needs to move to a new phase of development and there should be a strategy developed which sets out the social needs across Northern Ireland and how social clauses could be utilised to address these, whilst delivering the goods, services and capital works that need to be procured.

The Strategy should detail the types of issues and outcomes that could be delivered for Northern Ireland. For example, the Northern Ireland Executive aims to eradicate child poverty by 2020, and all Departments are working to deliver on this target. Commissioners and procurement officials should review the social needs relevant to their projects as part of an early needs assessment process, resulting in the design of outcome indicators that can be built into the procurement process.

The Public Services (Social Value) Act 2012 in England and Wales sets out a framework and approach which should be considered in Northern Ireland. It places a requirement on commissioners to consider the social, economic, and environmental (or sustainability) benefits³⁴ of their procurement before that activity is started. It applies to the pre-procurement stage because that is where articulation of social value can have the greatest impact. The Act, which came into force on 31 January 2013, seeks to simplify the way commissioners think about procurement in two respects:

1. They are asked to consider 'commissioning sustainability', which means looking at the commissioning process and how sustainable impacts can be achieved. The Act does not prescribe how the results of considerations should shape procurement, but it does enable users' and communities' perspectives on certain services to be taken into account in developing outcomes. Commissioning is therefore intended to lead to more innovation and cost-effectiveness.

2. Social value is discussed with regard to the delivery of community outcomes. 'Communities' is meant in a broad sense to include all sectors of an area touched by commissioning, whether that is people in certain groups, social enterprises, or businesses. By using social value to describe community benefits, commissioners can specify measurable outcomes that can be used as evaluation criteria in the procurement process, and as part of contract compliance.

6.2 Recommendations

Recommendation 1:

A Social Value Strategy should be developed, setting out how commissioners and procurement officials should use social clauses to further the social, environmental and economic goals of the Northern Ireland Executive.

Recommendation 2:

Commissioners and procurement officials should be encouraged to consider social clauses at the pre-procurement stage, i.e. development of the business case, and where possible to include them in the award criteria.

Recommendation 3:

Major contracts should be informed by a social needs assessment, with consideration given to how social clauses can help address those needs. Assessments should be conducted in conjunction with key stakeholders, including members of the public as appropriate.

Recommendation 4:

The Social Value Strategy should promote more innovative use of social clauses to deliver positive social benefits. Trade apprenticeships and StW placements should still be utilised in construction, but other apprenticeships and StW placements should also be considered, linked to the priority skills sectors for Northern Ireland. The Strategic Investment Board's, Social Clause Toolkit should be published to help inform thinking on integrating social clauses into public contracts and to develop a Social Value Strategy.

Recommendation 5:

Commissioners in conjunction with procurement officials should set up monitoring and evaluation frameworks for the delivery of social clauses at the start of the contract and these should be included in the tender documents. Monitoring systems should measure the outcomes achieved through the inclusion of social clauses, in addition to activities and outputs. Any cost implications for companies should be considered as part of the contract value.

³⁴Although this is the first time public sector organisations have been required to consider these issues, the underpinning duties have been in place for some time. Part 1 of the Local Government Act (2000) "gives local authorities powers to take any steps which they consider are likely to promote the well-being of their area or their inhabitants. It also places authorities under a duty to develop community strategies, together with other local bodies, for this purpose. These provisions are intended to give local authorities increased opportunities to improve the quality of life of their local communities." In addition, under Best Value Statutory Guidance (CLG, 2011), local authorities must already consider social, economic, and environmental value.

**APPENDIX 1:
LIST OF CONSULTEES**

Consultees
Organisations
H+J Martin
Grahams
Federation of Small Businesses Northern Ireland (FSB)
Centre Procurement Directorate (CPD)
Department for Employment and Learning (DEL)
Office of First Minister and deputy First Minister (OFMDFM)
South Eastern Education and Library Board (SEELB)
Western Education and Library Board (WELB)
Northern Ireland Housing Executive (NIHE)
Strategic Investment Board Limited (SIB)
Derry City Council (DCC)
Pinsent Masons
Unison
Business in the Community (BITC)
Participation and Practice of Rights Project
Bryson Group
Ashton Centre

Presentation to Social Clause Delivery Forum	
Social Clause Delivery Forum hosted by Derry City Council	Western Education and Library Board Department for Regional Development Department for Social Development Health and Social Services Board (HSSB) Equality Commission Northern Ireland Northern Ireland Housing Executive North + West Housing Politicians CPD - Construction: Billy Black DEL - Employment Contact Manager: Roisin Sloan

APPENDIX 2: POLICIES RELATING TO SOCIAL CLAUSES

List of documents from the Terms of Reference - Structures and policies relating to Social Clauses

- Programme for Government (PFG) (2011 - 2015): states “we will include social clauses in all public procurement contracts for supplies, services and construction.
- Sustainable Development Strategy (OFMDFM, 2006).
- Sustainable Procurement Action Plan Northern Ireland (DFP, 2007): sets out that each CoPE is required to produce their own sustainable procurement action plan. Specifically, the plan notes that it will work with communities to give them more say in decisions which affect them.
- NI Public Procurement Policy (version 8, October 2012): all public procurement is delivered in under this policy.
- Investment Strategy Northern Ireland (2011 - 2021): the Strategy sets out how £6bn of infrastructure will be delivered in the next three years and approaching £20bn in the next 10 years. It notes that it has included social clauses into all major public works contracts to include training and employment opportunities for the long term unemployed. The strategy notes that this will be developed further to include supplies and services contracts.
- Social Change Framework (developed by OFMDFM 2012): sets out six priority areas of work (signature projects) that OFMDFM and relevant Departments will take forward with additional investment of £26m. The six signature projects are additional teaching support in schools to boost literacy and numeracy, family support hubs, parent programmes, social enterprise hubs, pilots to support young people not in employment, education or training (NEETS) and nurture units to provide additional support to primary school children in need. Other key priorities under the Social Change Framework are an increase in joined-up commissioning and planning (of programmes and services), integrated delivery, early intervention and transitions.
- Delivering social benefits through public procurement (ISNI, 2010): the toolkit provides advice on establishing monitoring frameworks and measuring implementation of the social clause throughout the procurement process. Also supplies and services toolkits under development.
- CIFNI – Construction Industry Federation NI developed a sustainability task force in conjunction with DFP and developed a set of guidelines and model clauses for construction contractors to following in relation to the implementation of social clauses.
- Structures as set out in section 3: namely the Procurement Board (supported by the Central Procurement Directorate (CPD), CoPEs include: Roads Service, NI Water, Translink, Health Estates, HSC Procurement and Logistics Service, (Business Support Organisation); Education and Library Boards; and the Northern Ireland Housing Executive. Procurement Practitioners Group (PPG) where representatives from the CPD and the other CoPEs would meet regularly to inform, test and develop policy and where appropriate, operational issues. This group now has two sub-groups: for supplies and services, and construction works and services.

APPENDIX 3: PROCUREMENT CONTROL LIMITS

Procurement Control Limits: Goods and Non-Construction Services

Value	Procedure
Up to £5,000	Departments must demonstrate that value for money has been secured.
£5,000 to £30,000 Service	A minimum of two tenders invited by the person authorised to procure for their organisations in accordance with a Level Agreement (SLA) with a CoPE; or a tender process undertaken by a CoPE.
£30,000 to EU Thresholds	Advertise on eSourcingNI. Tender process must be conducted in line with Procurement Guidance Note 05/12: Procurement of Goods, Works and Services Over £30,000 and Below EU Thresholds.
Above EU Thresholds	Advertise on eSourcingNI. EU Directives apply - advertise in the Official Journal of the European Union (OJEU)

Source: *Procurement Control Limits and Basis for Contract Awards. Procurement Guidance Note PGN 04/12 Central Procurement Directorate (Department of Finance and Personnel, January 2013)*

Procurement Control Limits: Construction Works

Construction is a distinct area of procurement, with specialist requirements and forms of contract. All construction related contracts, irrespective of value, should be procured through or under the delegated authority of a construction CoPE or via a Service Level Agreement with a CoPE in accordance with the following PCLs. CoPEs may choose to make slight variations to these limits to suit the particular circumstances of their business.

Value	Procedure
Up to £5,000	Departments must demonstrate that value for money has been secured.
£5,000 to £30,000	Consultants must be registered on Constructionline. First six consultants from a randomly selected list generated by Constructionline are invited to tender.
£30,000 to EU Thresholds	Advertise on eSourcingNI. Tender process must be conducted in line with Procurement Guidance Note 05/12: Procurement of Goods, Works and Services Over £30,000 and Below EU Thresholds.
Above EU Thresholds	Advertise on eSourcingNI. EU Directives apply - advertise in OJEU. Normally use the Restricted Procedure.

Source: *Procurement Control Limits and Basis for Contract Awards. Procurement Guidance Note PGN 04/12 Central Procurement Directorate (Department of Finance and Personnel, January 2013)*

Procurement Control Limits: Construction Services

Value	Procedure
Up to £5,000	Departments must demonstrate that value for money has been secured.
£5,000 to £30,000	Consultants must be registered on Constructionline. First six consultants from a randomly selected list generated by Constructionline are invited to tender.
£30,000 to EU Thresholds	Advertise on eSourcingNI. Tender process must be conducted in line with Procurement Guidance Note 05/12: Procurement of Goods, Works and Services Over £30,000 and Below EU Thresholds.
Above EU Thresholds	Advertise on eSourcingNI. EU Directives apply - advertise in OJEU. Normally use the Restricted Procedure.

Source: *Procurement Control Limits and Basis for Contract Awards. Procurement Guidance Note PGN 04/12 Central Procurement Directorate (Department of Finance and Personnel, January 2013)*

To ensure consistency and visibility in the award of contracts, CoPEs must use eSourcingNI as the electronic tendering portal for all bodies covered by the public procurement policy.

