

Social Enterprise Coalition Submission to the Joint Cabinet Office- BIS Task Force on Cutting Red Tape

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Introduction

1. The Social Enterprise Coalition (SEC) welcomes the opportunity to respond to the Joint Cabinet Office-BIS Task Force on Cutting Red Tape.
2. SEC was established in 2002 as the national voice of social enterprise. We represent a wide range of social enterprises, umbrella bodies and networks, with a combined membership reaching over 10,500 social enterprises. These include co-operatives and mutuals, development trusts, housing associations, leisure and football supporters' trusts and Social Firms. This response was informed by consultation with members of SEC.
3. Social enterprises are businesses with primarily social or environmental objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners.
4. Well-known examples of social enterprises include *The Big Issue* and the fairtrade company Divine Chocolate. According to 2005-2007 data from the Annual Survey of Small Businesses UK, social enterprises contribute £24 billion to the UK economy.
5. Social enterprises are businesses based on the principles of mutualism and participation, which focus on the well-being and needs of their service users, local communities and staff. They tend to be deeply embedded in their communities. Many have particular expertise about their communities, often due to non-traditional ownership structures, involving users and members of the local community in the governance of the enterprise and design and delivery of the services provided.
6. Social enterprises operate in a range of economic sectors, engaging in a wide range of activities. These include housing, education, retail, health and social care but overwhelmingly regardless of which industry they work in, the most common business activity for social enterprises is training, education, and advice – building human capital.
7. The majority of social enterprises work very locally, as two-fifths work in their local authority area or in only one or two local authority areas (42%) while 15% work at a county level and 23% work at a regional level.¹
8. Should you have any questions on the content of this paper, please contact Ceri Jones on ceri.jones@socialenterprise.org.uk

General points

9. The Social Enterprise Coalition welcomes the opportunity to respond to the Joint Cabinet Office-BIS Task Force on Cutting Red Tape.
10. Social Enterprises share a number of the same regulatory and red tape burdens as businesses in general. SEC firmly believes that a regulatory framework must be one that enables businesses and organisations to grow while safeguarding their employees and basic operating standards.

¹ State of Social Enterprise Survey, Social Enterprise Coalition, p.28

11. Social enterprises recognise the importance that regulation can play in supporting basic employee rights and we feel that it is important to protect regulation in these areas. There are however, a number of areas where rules and regulations present an unnecessary burden or barrier on social enterprises and also to the achievement of both the Big Society Vision and creating a robust and sustainable economy. It is here that we have chosen to focus our attentions.

12. These include:

- Inconsistent application of business rate relief for social enterprises
- Clawback restrictions when public funds have been used to fund social enterprise assets
- CRB checks for organisations employing vulnerable adults
- TUPE and pensions
- PQQs and other procurement barriers

Business rates

13. While charities are entitled to business rate reductions on any non-domestic property they use wholly or mainly for charitable purposes, the situation for social enterprises without charitable status varies enormously.

14. A number of local authorities have clear social enterprise policies. However, many local authorities have no official policy for business rates for social enterprises and there is a lack of transparency on how decisions are made and how a social enterprise may go about appealing the payment of full business rates.

15. We believe that a greater transparency of eligibility for business rates reductions would be of great benefit to social enterprises.

Clawback

16. Clawback restrictions when public funds have been used to fund social enterprise assets present a huge barrier to social enterprises ability to leverage finance against these assets.

17. Clawback refers to the repatriation of funding from failing projects or perhaps grant used for ineligible expenditure. However, it is also used to refer to the "hold" funders have over an asset financed by a grant.

18. The current Treasury guidance does allow some flexibility with regard to Clawback. The HM Treasury paper "Clawback: Disposal of Publically Funded Assets" gives a clear message that flexible and strategic implementation of Clawback is more likely to support sustainable community anchor organisations (and permit additional inward investment to deprived communities) than existing procedures. However the majority of funders continue to take an over-cautious approach.

19. This effectively prevents the owner of the asset from using it to secure private finance thus preventing the growth of the business. As many of these community enterprises

operate in areas of multiple deprivation where previous public sector interventions have failed, this protection of public funds is counter to the achievement of the broader policy objectives.

20. The implications this has for Development Trusts and other asset owning social enterprises are vast. Goodwin Development Trust in Hull, for example, currently owns assets in excess of £9m. However, due to previous restrictions provided in clawback clauses they are only able to secure private finance against 5% of their asset portfolio. This greatly restricts their ability to access adequate financing to cover working capital, thus stifling growth and restricting the creation of local jobs and opportunities.

CRB checks

21. There has been a huge amount of discussion in recent years on the implications of CRB checks for organisations with volunteers. This is also true for many social enterprises.
22. However, CRB is an additional burden for 'work integration' social enterprises where providing employment for individuals marginalised in the labour market is core to their social mission.
23. If a social enterprise is to provide employment opportunities for vulnerable adults they are currently required to ensure that all existing members of staff are CRB checked posing both a large financial and administrative burden to the organisation.
24. Given the objectives of the Coalition Government's Work Programme to increase participation rates through supporting those on incapacity benefits (IB) into employment addressing the barriers this presents for businesses who want to play a role in supporting vulnerable adults into employment is essential.

Procurement

25. Social enterprises experience significant barriers in tendering for government contracts similar to those of small businesses in general. These include factors such as:
26. Lack of transparency regarding procurement pipelines and basic difficulties in finding information about tenders. Information is particularly hard for smaller social enterprises to obtain, as they do not normally have the capacity to conduct extensive research for new tenders.
27. The deadlines for responding to calls to tender are often too short. Social enterprises generally need more time to prepare competitive offers due to staff constraints. This is particularly the case in areas where social enterprises need to form partnerships or consortia in order to achieve the scale required to compete.
28. The costs of responding are often too high. Since many tendering costs are fixed, social enterprises and SMEs in general face disproportionately high costs in comparison with larger enterprises.
29. Tender forms and guidance are often worded in specialist, unclear and overly complex jargon.

30. The increased complexity of procurement, including form filling, and excessive and complex documentation for small contracts, places an additional administrative burden on social enterprises and SMEs which often lack the staff capacity to engage properly with the process.
31. An over emphasis by awarding authorities on price over quality and impact results in social enterprises being penalised. This also presents a false economy on the public sectors part.
32. A lack of expertise regarding the inclusion of social value in procurement decisions means that the added value social enterprises offer is not considered in procurement decisions.
33. Pre-qualification questionnaire (PQQ) requirements can often act as a barrier to social enterprises tendering for contracts. Barriers include: the need to have a certain number of financial reserves, inflexible formats that do not allow social enterprises to show off their selling points, or their innovation and expertise in any given area. Similarly the lack of standardisation between public sector agencies or even departments within agencies places a disproportionately high burden on social enterprises and other SMEs.
34. SEC recommends the standardization and simplification of procurement systems, as well as the PQQ to reduce the disproportionate burden on social enterprises and the inclusion of social value as standard in procurement processes.

TUPE and Pensions

35. Current TUPE and Pensions rules also present a significant burden to social enterprises.
36. Inconsistent application of TUPE rules designed to protect employees which guarantee them 'broadly comparable' terms and conditions when they are transferred from one employer to another is a particular problem for all independent providers. Social Enterprises are fully respectful of TUPE in principle but have encountered difficulties in interpreting how government departments are using the 'TUPE' rules. SEC believes that the TUPE regulations must be fairly and consistently implemented.
37. Similarly rules regarding eligibility to remain within the NHS or local authority pension schemes are also a barrier for social enterprises, particularly those involved in the right to request and in the future the right to bid (part of the localism white paper).
38. The discretionary allocation of Direction Employer status with a lack of guarantee of whether a social enterprise will be eligible to receive this status has proved to be a significant barrier to social enterprises. As has the inconsistency between Direction Employer status and qualifying as an Employing Authority for NHS services. This requires further investigation and standardisation. Similarly there is a lack of clarity on the eligibility to remain part of the local authority pension scheme for social enterprises emerging from local authorities.
39. Far greater clarity and transparency on both TUPE and eligibility of NHS and local authority pension schemes are required.