Title: Devolution in the UK and Public Procurement: what difference has it made?

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Summary

The purpose of this paper is to explore recent developments in public procurement policy in the devolved regions of Northern Ireland, Scotland and Wales. The paper is part of ongoing research which examines how procurement policy within these regions attempts to incorporate socio-economic criteria into public contracts whilst also exploring the policy networks responsible for developing and delivering public procurement policy throughout the devolved regions.

Key words

Devolution, Public Procurement, Socio-Economic Criteria, Sustainability, PFI

Introduction

Public procurement in the devolved regions has seen significant changes with the publication of the Review of Public Procurement in Northern Ireland (2002), the Review of Procurement in the Welsh Public Sector (2001) and the Review of Public Procurement in Scotland (2006). The proposed research will explore the policy networks responsible for public procurement policy throughout the devolved regions of the UK and examine the interactions between them. The paper will examine changes in policy and practice on incorporating socio-economic conditions in public contracts as a result of the increased influence of elected representatives and Executive ministers responsible for devolved policy areas. In recent years the government has committed itself to sustainable procurement on which a consultation is currently ongoing in Northern Ireland. Finally the paper will look at how PPP/PFI procedures have developed in each region post devolution.
Devolution to Scotland, Wales, Northern Ireland and the English regions

Before devolution, the territorial ministries of Northern Ireland, Wales and Scotland were tied into the Whitehall policy process through a dense network of ministerial and official committees and regular working contacts among ministers and civil servants. Constituent departments therefore often looked to the corresponding functional Whitehall ministers to determine priorities. In the Northern Ireland context, Loughlin (1992) observed that policy making could be seen as a ‘continuum going from a high degree of convergence to a high degree of divergence’ from UK practice. Connolly and Loughlin (1990) preferred to interpret Northern Ireland’s policy experience (both before and after 1972) as located within an ‘adaptation or adoption’ continuum, with policy transfer being predominantly in one direction i.e. from UK central government into Northern Ireland.

The concept of the policy network has been utilised to frame the policy process in NI (see Rhodes, 1988). Carmichael (2002) notes that the network of government within Northern Ireland has constituted a territorial policy community, which boasts the following characteristics: the stability of relationships; the continuity of a highly restricted membership; vertical dependence on the basis of shared delivery responsibilities, insulation from other networks, the public and even from Parliament; and a high level of integration. To that end, a distinct policy network exists in Northern Ireland, locked into the main UK policy networks, but exercising substantial autonomy nonetheless, and relying heavily on local actors and institutions to implement its agenda. There has been a rise in the number of community groups, partly reflecting a general dissatisfaction with sterile and predictable local electoral politics (Carmichael, 2002).

Prior to suspension of the Executive and Assembly in 2002, an example of a policy formulated by the NI Executive that has diverged in some respects from the equivalent policy in England and Wales was public procurement policy. With devolution, in effect Northern Ireland’s devolved administration had no formal procurement policy, as this is a non-reserved area. It was therefore a main priority of the Northern Ireland Executive’s Minister of Finance to finally adopt a policy which reflected the considerable recent changes in procurement policy in England and Wales.

The devolution process has highlighted a large degree of interdependence between devolved and reserved powers (Keating, 2005). In Scotland, for example, transport policy was divided in a complicated way with initially railways and air transport being reserved while road transport was devolved. Later the Scottish Executive gained responsibility for franchises and subsidies for rail services contained within Scotland, enabling it to plan rail and road policy together but this raised problems about the relationship between rail services (devolved) and rail regulation and the network (reserved). Keating et al (2003) also found strong evidence of the entanglement of reserved and devolved matters, in spite of the apparently clean division of competencies. The devolution process in Scotland has been evolutionary rather than a
revolutionary break, with the Scottish Parliament staking out new fields for policy innovation beyond what was available to the old Scottish Office.

Within Wales there has been a history of administrative devolution from 1964 to 1999. The model of executive devolution implemented in the Government of Wales Act of 1998 was heavily imbued with the legacy of the old Welsh Office, from the precise functions transferred to the key civil service personnel involved in the transition. Cole (2004) points out that devolution in Wales is a system of shared competencies or concurrent powers and while the Welsh Assembly has no primary legislative powers it does control the implementation of secondary legislation as it applies to Wales. Every Westminster Bill for Wales is now a devolution bill and the ambit of Assembly discretion is determined statute by statute. This has meant that the general power of policy initiative still clearly resides with central government and poses the question whether there at least exists a Welsh veto on UK primary legislation (Kay, 2003).

Attempts to establish a framework for devolution in England were set out in the May 2002, Government white paper Your Region, Your Choice: Revitalising the English Regions, which set out its proposals for elected regional government in England. At the same time, the government held formal soundings to gauge levels of interest in holding referendums on regional assemblies. As a result, it was announced in June 2003 that referendums would be held in the North East, North West and Yorkshire and the Humber as, it was claimed, a majority in these three regions had expressed a desire for one. In July 2004, referendums for the North West and Yorkshire and the Humber were postponed, while the referendum in the North East went ahead and resulted in an overwhelming vote against the proposed regional assembly (Knock, 2006).

However, there has been a process of administrative devolution to English regions. In 1998 the Regional Development Agencies (RDAs) in England were created with the aims of strengthening regional economic performance, achieving regionally balanced growth and tackling intra-regional economic inequalities (Ayres et al, 2005). Accountable to the Secretary of State for the Department of Trade and Industry, RDAs have a £2.2 billion annual budget comprising contributions from the Department for Communities and Local Government (75% of funding), Department for Education and Skills, Department for Environment, Food and Rural Affairs and Department for Culture, Media and Sport. In 2002, and again in 2004, RDAs were given additional resources and greater discretion over their use, together with new responsibilities for tourism and transport, the delivery of rural policies, skills and business support.

Public Procurement in the Devolved Regions

Since the introduction of devolution in the UK each region has adopted a review on how they deliver public procurement. McCrudden (2006) identified at least four groups of stakeholders whose interests are most involved in the development of procurement reform, namely: the taxpayers and other funding
bodies; those who stand to benefit from the goods or services that are being purchased by government; those who are or who seek to become contractors with government (whether or not firms are successful in bidding for such contracts, and on what conditions, may well significantly affect the economic success of the firm and potentially even its survival); finally there are the interests of the government of the day. With the new procurement regimes in the devolved regions, relationships between the UK Government and the devolved administrations are governed by a series of agreements, none of which are intended to be legally binding. The principal agreement is the Memorandum of Understanding Concordat which provides for the establishment of a Joint Ministerial Committee for the resolution of differences.

The Concordats aim to provide a framework for co-operation and consultation which should minimise the risk of disputes. Where disputes do arise, attempts should be made to resolve them through the framework for consultation for which the Concordats provide, or failing that, in accordance with the relevant provisions of the Treasury and DTI Concordats. The concordats between the devolved regions and central government cover four areas in particular: co-ordination of European Union policy issues; International Relations; the relationship between the Devolved Executive and the Treasury; and the relationship between the Executive and the Department of Trade and Industry (Henderson 2003).

The Scottish Executive has sought to establish a common e-procurement platform. The Scottish Executive Procurement and Commercial Services Division are responsible for ensuring that public funds are utilised to achieve value for money for the taxpayer. A more co-ordinated approach across the public sector has been pursued, and has recently been reinforced by the publication of the McClelland Report (2006). The National Assembly for Wales considers that full cross-sector collaboration will be a fundamental requirement for the success of these projects. Considerable work has been done to bring Welsh public sector procurement together to operate in a unitary way. This has been a notable change directly resulting from devolution.

In Northern Ireland, public procurement is the responsibility of the Minister of Finance and Personnel. A Procurement Board has been established, chaired by the Finance Minister and accountable to the Northern Ireland Assembly. This is responsible for the development, dissemination and co-ordination of public procurement policy and practice for the Northern Ireland public sector. A new Central Procurement Directorate has also been established within the department as a core professional procurement body which will support the Procurement Board's role in all aspects of public procurement policy (cpdni.gov.uk).

**Methodology**

The proposed research will use a policy network framework to explore the actors, values, resources and influence of those within the central and local government public procurement networks (Wright, 1998). The research will involve both primary and secondary data collection and analysis. In order to
identify actors in the networks a full literature and documentary review will be undertaken initially and exploratory interviews with prominent participants in the networks will also be conducted. Structured interviews will then be carried out with selected participants in the network such as senior officials within the various contracting authorities, Principal Finance Officers of relevant departments, Directors and senior staff of procurement units, business representatives and members of statutory bodies.

The analysis will look at a range of PPP/PFI projects to examine what criteria are set for the incorporation of socio-economic criteria in contracts, how the tenders are evaluated and whether these contracts adhere to EU Directives and Best Value for Money principles.

Socio-Economic Criteria

There are several ways to achieve the incorporation of socio-economic goals for example, environmental protection, guaranteeing the rights of minorities and generating employment. Within Northern Ireland the public procurement policy approved in May 2002 is guided by the concept of “best value for money” which is defined as “the optimum combination of whole life cost and quality to meet the customer’s requirements”. While achieving best value for money is the primary objective of procurement policy, this definition allows for the integration, as appropriate within the procurement process, of sustainable development goals under the individual or collective pillars of social, economic and environmental objectives (for more on the environment and protection of minorities see Kunzlik 2003, Marron 1997, Orton & Ratcliffe 2004). The main criticisms of the use of public procurement to pursue socio-economic policies such as environmental protection and social inclusion are based upon increased costs, both financial and transactional; lack of clarity in terms of value for money from procurement contracts; and the potential for discrimination against non-national suppliers or target groups, especially within the European Union.

The following section will take a closer at how public procurement can be used to combat unemployment by highlighting a scheme which the authors evaluated between June 2003 and June 2005. The use of active labour market policies to combat unemployment is common in countries such as Sweden where the activities of public employment services have featured strongly (Robinson, 2000). These policies have the objectives of reducing unemployment, welfare dependency and income poverty, though these policies can prove to be more expensive than standard welfare approaches. Scott (2006) argued that those who are targeted by active labour policies can often face an unacceptable risk of becoming unemployed again. This is due to difficulties in progressing to a situation where work pays and the limited availability of long-term employment.

However, an empirical study compiled by Kraft (1998) found that active polices such as job subsidies and qualifications led to higher job creation and are more cost effective than passive labour policies such as unemployment benefits. Fraser (1999) points out that active labour market policies can achieve
efficiency for the long term unemployed by enabling them to become more effective competitors for jobs which will moderate wage increases and boost employment levels. It was the combination of ideas of equity, social cohesion and efficiency which lay behind the Unemployment Pilot Project in Northern Ireland.

A recommendation from the 2001 Review of Public Procurement in Northern Ireland advocated the introduction of a Pilot Project which involved incorporating a clause into 15 piloted contracts for tenderers to provide an unemployment utilisation plan. This plan would outline how the firm would attempt to recruit people who had been unemployed for at least three months to work on the contract. The results of the pilot found that there was the possibility to get people who were unemployed into meaningful employment without significant increases in workload or costs for either the contracting authority or contractors. An end of Pilot questionnaire showed broad levels of satisfaction among the participants and continued employment from a majority of those who had been recruited by the scheme (Erridge and Hennigan, 2006).

**Sustainable Procurement**

The public sector in the UK spends over £125 billion a year on goods and services bought from third parties (HM Treasury, 2007. The government has recognised that the public sector needs to make more responsible choices if a vision of sustainable development is to be achieved. The UK Government and Devolved Administrations launched their Strategic Framework, *One future - different paths*, on 7 March 2005. This was launched in conjunction with the UK Government's new strategy for sustainable development ‘Securing the future’ (sustainable-development@gov.uk). The commitment to sustainable development was reinforced in the Simms report (2006) ‘Procuring the Future, Sustainable Procurement National Action Plan: Recommendations from the Sustainable Procurement Task Force’. This sets the goal for sustainable development and highlighted environmental concerns which could be addressed through a review of existing public policy. In Wales the constitution of the National Assembly is one of only three world-wide that expressly refers to sustainable development, stating that the Assembly will "...in the exercise of its functions...promote sustainable development." The Welsh Sustainable Procurement Programme contains guidance for purchasers which has led in one example of all Welsh NHS hospitals now purchasing ‘green’ electricity (Thorpe, 2007).

**PPP/PFI**

A key test of the success of sustainability is whether the policy can be compatible with the increased use of PFI for large scale projects particularly in Northern Ireland and Scotland. In the devolved regions there have been challenges to how PFI projects are implemented compared to UK central government. The success of PFI projects depends on the degree to which risk is genuinely transferred from the public to the private sector and how it is optimally shared (Hodge et al, 2005). According to the Treasury, PFI and other arrangements, where the public sector contracts to purchase services on a long
term basis, can take advantage of private sector management skills given the incentive of having private finance at risk.

This includes concessions and franchises, where the private sector partner takes on the responsibility for providing a public service (Akintoye, 2003). This is reflected in public actors wanting to reduce expectations and implementation costs while securing a political influence on the projects, with private actors looking for certainties in order to minimise financial risks. Together they produce a situation in which they focus on a separation of responsibilities and emphasise contractual relations (Klijn et al, 2003).

Within Northern Ireland the Executive accepted the Treasury’s edict that many large capital projects would have to be funded by the PPP/PFI mechanism. However, opposition from trade unions and other sections of the public led to a search for a different model of PPP/PFI, in particular one that would keep affected workers in the public sector (Horgan, 2006). An inter-departmental working group was established and a report issued for consultation. The report advocated limited use of PPP/PFI, with a social partnership approach which would involve trade unions and the voluntary sector in decisions about which projects should involve the private sector (OFMDFM, 2002).

The ‘Northern Ireland Sustainable Development Strategy’ set a number of objectives, one of which requires the Northern Ireland public sector to become a UK regional leader in sustainable procurement. In larger and more complex projects, including PPPs, a project board which is representative of all relevant interests for all stages of the project can protect the project from diverging visions and other difficulties. The aim of this lead body would be to enhance accountability and support all authorities involved in meeting the responsibilities in their equality schemes in the course of the project.

In Scotland, while the Executive adopted the same line as Westminster on the use of private finance, following the recommendations of the Scottish Parliament’s Finance Committee, all PPP contracts were to require guarantees from commercial operators that pay and conditions of transferred public employees would not be adversely affected. (Bradbury et al, 2003). Evidence from this research and from findings by the National Audit Office (NAO, 2003) demonstrated that PPP procurement has resulted in significant improvements over conventional procurement in delivering projects on time and within budget. In Wales the Welsh Assembly rejected all proposed PFI in relation to education (Cole, 2006) and in April 2004 the Welsh Assembly closed its Private Finance Unit (PFU).

Conclusion

This paper is an early synopsis of a Research Project that the authors hope to undertake over the next 18 months. The research will examine the three devolved regions to explore areas of policy convergence and divergence especially in the areas of socio-economic conditions, sustainability and PPP/PFI. Previous research has demonstrated that there will be difficulties in each devolved administration in trying to formulate government policy that
appeals to public purchasers with their emphasis on value for money, those in
the business network with their emphasis on competitiveness and enterprise,
and those in the equality networks with their emphasis on human rights issues.
Whilst it is an impossible task to formulate a policy that is universally accepted,
an effective process of consultation will ensure that interested parties are given
the opportunity to voice concerns and for policy makers to amend policy where
appropriate to take those concerns in account.

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