

UK CENTRAL GOVERNMENT BODIES REQUIRED TO TAKE ACCOUNT OF 'SOCIAL VALUE' WHEN AWARDING CONTRACTS

On 24 September 2020, the UK government announced a new procurement policy, which will require central government bodies to evaluate 'social value' in procurement.

The new policy (set out in Procurement Policy Note ([PPN 06/20](#)) (PPN)) requires that central government departments adopt a 'social value model' in public procurement, requiring them to "explicitly evaluate" social value when procuring new public contracts.

The goal of the new policy is "to deliver social value through government's commercial activities". It is based on the principle, as articulated in the PPN, that:

Whilst the overarching objective for the government's commercial activities will remain achieving the best commercial outcome, it is right that the government applies its commissioning to supporting key social outcomes. The public sector must maximise social value effectively and comprehensively through its procurement.

From 1 January 2021, all central government departments, their executive agencies and non-departmental public bodies (collectively defined as 'In-Scope Organisations') must apply a *minimum* weight of 10% to social value in determining the total overall score of a bid when procuring contracts covered by the Public Contracts Regulations (PCR) 2015. This weighting aims to ensure that the social value element will be a "differentiating factor" in determining the outcome of the evaluation of bids. The policy permits for a higher weighting to be applied if justified, but there is not scope for a lower weighting. Buyers will retain "flexibility" in determining which of the social value outcomes should be applied to their particular procurement.

Clifford Chance's Director of Public Law, Andrew Dean, commented:

Central government have lagged behind their wider public sector counterparts in using the procurement process to achieve broader societal objectives. Though not legally binding, we expect to see the social value model applied with vigour and government suppliers must act now to ensure they are well placed to respond.

The PPN lists priority areas of social value (articulated as 'themes and outcomes'). These include:

- COVID-19 recovery;
- tackling economic inequality;
- fighting climate change;

Key issues

- New public procurement policy in the UK will require that central government departments adopt a 'social value model' in public procurement.
- Buyers must apply a minimum weight of 10% to social value in determining the total overall score.
- The new policy applies to procurements covered by the Public Contracts Regulations 2015, and applies to all central government departments, their executive agencies and non-departmental public bodies.
- The social value model should be applied to all new procurements from 1 January 2021.

- equal opportunity; and
- wellbeing

The full list of themes, outcomes and delivery objectives is set out in Annex to this note.

Further guidance will be published by the UK government, the purpose of which is to enable central government bodies to evaluate and assess performance against the social value themes and outcomes in a standardised way.

BACKGROUND

Social value is not a new concept in public procurement and has increasingly been used as a tool by which the public sector can achieve 'horizontal' policy objectives (objectives not directly linked to the goods or services acquired) in areas such as climate change, social equality, and local growth.

EU-derived public procurement law – which remains on the UK statute book (for now at least) – leaves it to the individual Member State and buyer to decide whether to use public procurement as a tool for achieving broader objectives.

UK legislative measures and policies in this area have been relatively unambitious and uptake by central government departments has been less enthusiastic with the traditional 'price v value' assessment still largely prevailing.

Public Services (Social Value) Act 2012

Introduced against the backdrop of the 2010-2016 'Big Society' agenda, the well-intentioned Public Services (Social Value) Act 2012 (Social Value Act) introduced a requirement for contracting authorities to 'consider' how their procurement processes might secure social value, relying upon a "weak legal nudge"¹ approach to changing behaviour toward consideration of social value, rather than mandating its use in practice. The Social Value Act has had a positive impact in increasing the prominence of social value in UK public procurement, though its full potential has not been realised.²

Carillion Collapse and the Civil Society Strategy

The social value model was originally conceived during the Theresa May government in response to the Carillion collapse and as part of the Civil Society Strategy to use the government's buying power to drive social change. A draft policy – known as 'Social Value in Government Procurement' – was published as part of a [public consultation](#) in March 2019, which proposed a more robust approach than the Social Value Act, requiring the use of social value criteria by central government departments.

Covid-19 and Levelling-up

Despite the outbreak of Covid-19 and the change of Prime Minister, the Boris Johnson government has pursued the social value model under its "levelling-up" agenda.

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¹ Richard Craven, "The Legal and Social Construction of Value in Government Procurement Markets" in the *Journal of Law and Society*, 2020. Available online at <https://onlinelibrary.wiley.com/doi/10.1111/jols.12211>.

² Lord Young's "[Social Value Act Review](#)", February 2015.

Alongside the PPN, the UK government has also released the [findings](#) of the consultation. Other than the inclusion of a new "Covid-19 recovery" theme, the social value model contained in the consultation remains largely the same.

Of the 245 responses to the consultation, 62% of respondents endorsed the 10% minimum weighting. The government highlights the fact that a small majority of respondents supported the proposal, in deciding against making it permissible to fall below 10%.

Many of the consultation submissions argued that effective training and guidance would be critical to the successful implementation of the new model. Government is therefore developing a capability programme comprising e-learning, training for departments, supplier guidance, sharing case studies and continuing to engage on social value. Nonetheless, the relatively short timeframe for implementation, requiring In-Scope Organisations to apply the social value model to all new procurements from 1 January 2021, does not leave a lot of time for learning, especially as the accompanying guidelines are yet to be published. Whilst the government has provided some training to date, there is still the potential for the social value model to be applied inconsistently for the short term at least.

LEGAL STATUS

The PPN is guidance-only and does not supersede existing EU and UK public procurement laws. Therefore, In-scope Organisations will still need to navigate the conditions imposed by EU-derived procurement law (e.g. the PCR 2015 rules on award criteria) when applying the guidance and still, where relevant, comply with obligations under the Social Value Act and Public Sector Equality Duty introduced by the Equality Act 2010 when procuring new public contracts.

THE OUTSOURCING PLAYBOOK

The PPN follows the publication of [version 2.0 of the Outsourcing Playbook](#) in June 2020 which itself promotes the use of social value considerations.

APPLICATION TO FRAMEWORK AGREEMENTS?

The PPN applies to procurements covered by the PCR 2015. This could include orders placed under framework agreements.

Before applying the social value model to mini-competitions, contracting authorities should consider Regulation 33 of the PCR 2015:

(11) [Mini-]competitions shall be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms and, where appropriate, other terms referred to in the procurement documents for the framework agreement, in accordance with the following procedure:—

[...]

*(d) contracting authorities shall award each contract to the tenderer that has submitted the best tender **on the basis of the award criteria set out in the procurement documents for the framework agreement.***
(Emphasis added)

It appears that the criteria and methodology set out in the social value model can only be used during mini-competitions to the extent that they are disclosed when setting up the original framework agreement.

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The government's consultation response promises further guidance to make clear: 'how social value weightings may be applied under framework agreements, i.e. at procurement of the framework agreement and then at call-off stage.' But, in the meanwhile, contracting authorities should exercise caution when applying the social value model to mini-competitions under framework agreements.

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ANNEX – THEMES AND OUTCOMES

Theme	Policy Outcome	Theme Policy Outcome Delivery objectives what good looks like
COVID-19 recovery	Help local communities to manage and recover from the impact of COVID-19	<p>Activities that, in the delivery of the contract:</p> <ul style="list-style-type: none"> • Create employment, re-training and other return to work opportunities for those left unemployed by COVID-19, particularly new opportunities in high growth sectors. • Support people and communities to manage and recover from the impacts of COVID-19, including those worst affected or who are shielding. • Support organisations and businesses to manage and recover from the impacts of COVID-19, including where new ways of working are needed to deliver services. • Support the physical and mental health of people affected by COVID-19, including reducing the demand on health and care services. • Improve workplace conditions that support the COVID-19 recovery effort including effective social distancing, remote working, and sustainable travel solutions.
Tackling economic inequality	Create new businesses, new jobs and new skills	<p>Activities that, in the delivery of the contract:</p> <ul style="list-style-type: none"> • Create opportunities for entrepreneurship and help new, small organisations to grow, supporting economic growth and business creation. • Create employment opportunities particularly for those who face barriers to employment and/or who are located in deprived areas. • Create employment and training opportunities, particularly for people in industries with known skills shortages or in high growth sectors. • Support educational attainment relevant to the contract, including training schemes that address skills gaps and result in recognised qualifications. • Influence staff, suppliers, customers and communities through the delivery of the contract to support employment and skills opportunities in high growth sectors.

Theme	Policy Outcome	Theme Policy Outcome Delivery objectives what good looks like
	Increase supply chain resilience and capacity	Activities that: <ul style="list-style-type: none"> • Create a diverse supply chain to deliver the contract including new businesses and entrepreneurs, start-ups, SMEs, VCSEs and mutuals. • Support innovation and disruptive technologies throughout the supply chain to deliver lower cost and/or higher quality goods and services. • Support the development of scalable and future-proofed new methods to modernise delivery and increase productivity. • Demonstrate collaboration throughout the supply chain, and a fair and responsible approach to working with supply chain partners in delivery of the contract. • Demonstrate action to identify and manage cyber security risks in the delivery of the contract including in the supply chain. • Influence staff, suppliers, customers and communities through the delivery of the contract to support resilience and capacity in the supply chain.
Fighting climate change	Effective stewardship of the environment	Activities that: <ul style="list-style-type: none"> • Deliver additional environmental benefits in the performance of the contract including working towards net zero greenhouse gas emissions. • Influence staff, suppliers, customers and communities through the delivery of the contract to support environmental protection and improvement.
Equal opportunity	Reduce the disability employment gap	Activities that: <ul style="list-style-type: none"> • Demonstrate action to increase the representation of disabled people in the contract workforce. • Support disabled people in developing new skills relevant to the contract, including through training schemes that result in recognised qualifications. • Influence staff, suppliers, customers and communities through the delivery of the contract to support disabled people.
	Tackle workforce inequality	Activities that: <ul style="list-style-type: none"> • Demonstrate action to identify and tackle inequality in employment, skills and pay in the contract workforce. • Support in-work progression to help people, including those from disadvantaged or minority groups, to move into higher paid work by developing new skills relevant to the contract. • Demonstrate action to identify and manage the risks of modern slavery in the delivery of the contract, including in the supply chain.

Theme	Policy Outcome	Theme Policy Outcome Delivery objectives what good looks like
Wellbeing	Improve health and wellbeing	<p>Activities that:</p> <ul style="list-style-type: none"> • Demonstrate action to support the health and wellbeing, including physical and mental health, in the contract workforce. • Influence staff, suppliers, customers and communities through the delivery of the contract to support health and wellbeing, including physical and mental health.
	Improve community integration	<p>Activities that:</p> <ul style="list-style-type: none"> • Demonstrate collaboration with users and communities in the codesign and delivery of the contract to support strong integrated communities. • Influence staff, suppliers, customers and communities through the delivery of the contract to support strong, integrated communities.