

Social Value Toolkit for Councils

Legal Framework for Social Value in Procurement and how to interpret the Procurement Act 2023

Sustainable procurement has been trailed in the UK for decades, especially from the early 2000s when the law around non-commercial considerations in the UK was relaxed in varying degrees by the Scottish, Welsh and UK Governments. Although the Public Contracts Regulations 2015 (“PCR 2015”) (the last iteration of rules in England to implement the EU procurement regime) have ceased to apply to any newly launched procurement activities of a council they provide a lot of good practice that a council can proactively adopt going forward.

Since the *Finnish Buses* case the ability of contracting authorities to build social and environmental characteristics throughout a procurement process has been relatively straightforward under EU law, aided by a succession of other cases in the EU and in the UK (especially Northern Ireland). It is the EU procurement framework and relevant case law that first explicitly permitted policy led procurement- and which underscored significant progress being made in Scotland and Wales, with their respective governments actively promoting intentional policy driven procurement. For this reason, the old law (which is not dissimilar to the regulations that remain extant in Scotland) is described at the back of this section in order that good lessons can still be drawn from it.

Before delving into the Procurement Act 2023 (“PA 2023”), to understand social value in procurement in England requires an appreciation of the Public Services (Social Value) Act 2012 (“Social Value Act”) which was drafted with the reference to the PCR 2015 but are now amended with the correct cross-references to the PA 2023.

The Public Services (Social Value) Act 2012

The Social Value Act requires councils and other contracting authorities to consider, before commencing the procurement of services:

- how what is being proposed to be procured might improve the economic, social and environmental well-being of the area served by it; and
- how to undertake the process of procurement with a view to securing that improvement; and
- whether to undertake any consultation on that improvement.

In relation to this, the contracting authority must consider only matters that are relevant to what is proposed to be procured and, in doing so, must consider the extent to which it is proportionate in all the circumstances to take those matters into account.

On this basis therefore the subject matter of the contract is vitally important and the need to write into the specification for the services all the requirements of councils that widen the scope of what is being procured, whether it be opening the supply chain to enable new SMEs to be integrated, or seeking innovation in the way that services are delivered to enable better outcomes, or including steps to tackle climate change. The sweet spot is to create circumstances in which all such requirements create a virtuous cycle of benefit for local people. The “added value” dimension that has become established common practice has very little to do with the original intentions of the Social Value Act and this toolkit is intended to signal a return to the good practice that had developed in the 2000s and is still in use where “well-being” is in the core of a specification and not just a nice to have.

Its ultimate destination is to have quality assessed against a specification that drives social value outcomes rather than accord a separate weighting that adds credence to the continuing misnomer of social value being viewed as “added value”.

THE PROCUREMENT ACT 2023

The PA 2023 is much more comprehensive in the way that it addresses the procurement cycle, unlike the PCR 2015 which really focuses on the process from pre-procurement consultation to contract award.

The entire procurement life-cycle is covered

In contrast section 1(2) PA 2023 provides: “In this Act, a reference to a procurement or covered procurement includes a reference to—

- (a) any step taken for the purpose of awarding, entering into or managing the contract;
- (b) a part of the procurement;
- (c) termination of the procurement before award.”

As guidance notes published on 26th March 2024 by the Cabinet Office explain about “covered procurement”:

“2. Having a defined term helps contracting authorities understand exactly what provisions apply to above threshold, non-exempted procurement. The Act also includes a wider definition of ‘procurement’, which means the award, entry into and management of a contract (i.e. public contracts and below-threshold and exempted contracts). That allows the Act to make some separate and limited provisions in relation to matters such as:

- a. particular requirements for certain below-threshold procurements;
- b. non-discrimination obligations with respect to treaty state suppliers to satisfy international obligations on public procurement that apply to below-threshold or exempted procurement; and
- c. the duty to have regard to the national procurement policy statement at section 13.”

Section 12: the lightning rod for embedding social value in procurement

Unlike the enabling content of the PCR 2015, which makes it clear that social and environmental matters can be dealt with throughout a procurement process, the PA 2023 contains no such steer. Instead, section 12 PA 2023 provides the architecture for each contracting authority to adopt its own approach to covered procurement so long as key principles are observed:

“(1) In carrying out a covered procurement, a contracting authority must have regard to the importance of—

- (a) delivering value for money;

Social Value Toolkit for Councils – Produced by the Cooperative Councils’ Innovation Network |
Author – Mark Cook, Anthony Collins | Launched July 2025

- (b) maximising public benefit;
 - (c) sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions;
 - (d) acting, and being seen to act, with integrity.
- (2) In carrying out a covered procurement, a contracting authority must treat suppliers the same unless a difference between the suppliers justifies different treatment.
- (3) If a contracting authority considers that different treatment is justified in a particular case, the authority must take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage.
- (4) In carrying out a covered procurement, a contracting authority must—
- (a) have regard to the fact that small and medium-sized enterprises may face particular barriers to participation, and
 - (b) consider whether such barriers can be removed or reduced.”.

Furthermore, under section 13(9) “A contracting authority must have regard to the national procurement policy statement.”.

What does this mean in practice? It is these provisions that are critical to the council taking an approach which optimises the embedment of social value in procurement, going beyond February 2025.

From MEAT to MAT: no change in substance

More importantly is the apparent but not necessarily substantive change to the basis for awarding contracts under the PA 2023, so that under section 19 “a contracting authority may award a public contract to the supplier that submits the most advantageous tender in a competitive tendering procedure”. As we will have seen in the discussion about most economically advantageous tender under the PCR 2015, the shift is not a real one given that award criteria are given if anything wider explicit scope than under the PA 2023.

Under section 23, the test in the PCR 2015 and following the Finnish Buses case are adhered to. Section 23(2) provides: “In setting award criteria, a contracting authority must be satisfied that they—

- (a) relate to the subject-matter of the contract,
- (b) are sufficiently clear, measurable and specific,
- (c) do not break the rules on technical specifications in section 56, and
- (d) are a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.”

Section 23(5) provides: “In subsection (2), the reference to the subject-matter of a contract **includes** a reference to—

- (a) the goods, services or works to be supplied under the contract, including in respect of any aspect of their production, trading or other stage in their **life-cycle**;
- (b) how or when those goods, services or works are to be supplied;

(c) the qualifications, experience, ability, management or organisation of staff where those factors are likely to make a material difference to the quality of goods, services or works being supplied;

(d) price, other costs or value for money in all the circumstances.”.

Section 23(6) provides: In the case of a light touch contract, the reference to the subject-matter of the contract also includes a reference to—

(a) the views of an individual for whose benefit the services are to be supplied (a “service recipient”), or of a person providing care to a service recipient, in relation to—

(i) who should supply the services, and

(ii) how and when they should be supplied;

(b) the different needs of different service recipients;

(c) the importance of proximity between the supplier and service recipients for the effective and efficient supply of the services.”.

This narrative on “subject matter of the contract” will need to be reflected and built upon in the Council’s contract standing orders, as well as its procurement policies, as there is the opportunity to really transform the way that suppliers are engaged to deliver social value as part of best value.

The provisions on technical specifications in section 56 are not as extensive as under the PCR 2015 and basically ensure that UK standards are not used in preference to international ones. This means that the Council’s procurement policy documents and contract standing order should explain what the Council expects in line with the language of the soon-to-be-old PCR 2015, but also the NPPS which offers some authority too.

Below threshold procurements – application of the duty to help SMEs

Part 6 deals with regulated below-threshold contracts, and contains some nominal baseline duties on contracting authorities, and so it is interesting that one of these is section 86 which provides for a duty to consider small and medium sized enterprises which is the same as that which applies to covered procurement under section 12(4):

“(1) Before inviting the submission of tenders in relation to the award of a regulated below-threshold contract, a contracting authority must—

(a) have regard to the fact that small and medium-sized enterprises may face particular barriers in competing for a contract, and

(b) consider whether such barriers can be removed or reduced.

(2) Subsection (1) does not apply in relation to the award of a contract in accordance with a framework.”.

Using the PA 2023 alongside the contract to enforce the measures committed by suppliers

There is a panoply of tools in the PA 2023 that can be applied to the subject of this report alongside their application to the entire procurement and contract management process. These include:

- use of published key performance indicators under section 52 and section 71 (1) and (2);
- publication of a supplier’s unremedied poor performance under section 71 (4) and (5);
- debarment under sections 59 to 66; and
- pipeline notices under section 93;

to name a few.

Procurement Regulations 2024

The Procurement Regulations 2024 will require that tender notices, contract award notices and contract details notices contain additional information about:

“whether the contracting authority considers that the contract or any lot forming part of the contract may be particularly suitable to be awarded—

(i) to a small and medium-sized enterprise, or

(ii) to a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives,”.

As a number of SMEs and ethnic minority businesses will provide services that are covered by the less stringent “light touch regime” under the Procurement Act 2023, a strategy for dealing with procurements that fall in the categories should be developed.

Light Touch Regime for Socio-Cultural Services

The principal local authority functions that will adopt the “light touch” services processes available will be:

Social care – Health, social and related services;

Children – Health, social and related services;

Libraries and museums – Administrative social, educational, healthcare and cultural services (Library, archives, museums and other cultural services);

Entertainment – Administrative social, educational, healthcare and cultural services (Cultural event organisation services);

Education – Administrative social, educational, healthcare and cultural services (Education and training services);

Leisure – Administrative social, educational, healthcare and cultural services (Recreational, cultural and sporting services).

In relation to above threshold contracts there is the opportunity to ask prime contractors to re-open their supply chains and to consider additional SMEs, which can then be made available by a portal listing them, for example.

In relation to below threshold contracts there is the opportunity to mandate that at least three local SMEs that are suitable to be selected should be shortlisted in any tender exercise. This will be permissible under the PA 2023, but, judging from the experience of many councils, does not in itself guarantee success on the part of those SMEs.

Further work therefore needs to be done to build on the impact not only of the PA 2023 but also the requirements of the Procurement Regulations 2024.

National Procurement Policy Statement and PPN 002

The release of the newly published National Procurement Policy Statement (“NPPS”) coincided session called “Beyond Social Value” at the CCIN Annual Conference on 13th February 2025.

The NPPS took effect on 24th February 2025 - the same day as the Procurement Act 2023 (“PA 2023”) came into force. Heralded as promoting a “mission-led” approach to public procurement, the NPPS describes several ways in

Social Value Toolkit for Councils – Produced by the Cooperative Councils’ Innovation Network |
Author – Mark Cook, Anthony Collins | Launched July 2025

which public procurement can support delivery of this Government's missions: to kickstart economic growth; make Britain a clean energy superpower; "take back our streets"; break down barriers to opportunity; and build a National Health Service fit for the future.

It is given legal weight by section 13 PA 2023 which requires mainly English contracting authorities to have regard to the NPPS. This is alongside the prime obligation under section 12 PA 2023 on all contracting authorities to have regard to the importance of delivering value for money; maximising public benefit; sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions; acting, and being seen to act, with integrity.

Contracting authorities must also have regard to the fact that small and medium-sized enterprises may face particular barriers to participation and consider whether such barriers can be removed or reduced (see discussion of section 12 PA 2023 above).

The new NPPS provides clear messages that are very much to be welcomed, and much of which is captured in this extract:

"Contracting authorities can deliver value for money by:

- driving economic growth and strengthening supply chains by giving small and medium-sized enterprises (SMEs) and voluntary, community and social enterprises (VCSEs) a fair chance, creating high quality jobs and championing innovation;*
- delivering social and economic value that supports the Government's missions including by working in partnership across organisational boundaries where appropriate; and*
- ensuring the right commercial capability and standards are in place to procure and manage contracts effectively and to collaborate with other contracting authorities to deliver best value."*

What the new NPPS does not do is to explicitly re-state the line in the previous NPPS that contracting authorities should consider nationally applicable social value outcomes "alongside any additional local priorities". Councils and other non-central public bodies must fill in this "blank" themselves.

The Government has re-issued several of its Procurement Policy Notes (PPNs) to take account of the PA 23. PPN 003 still provides its coherent explanation of the Public Services (Social Value) Act 2012 ("the Social Value Act"). PPN 005 is helpful in exploring the reservation of below threshold contracts by supplier location or for small and medium sized enterprises (SMEs) and voluntary, community and social enterprises (VCSEs).

PPN 02 updates the Social Value Model and the guidance that accompanies it to take account of the Government's missions as expanded upon in the NPPS. The updated Guide to using the Social Value Model is based upon one premise that could be seen to constrain the possibilities for transformational commissioning and procurement. This is the principle of social value being distinct from core deliverables, when it says:

"In-scope organisations must ensure that any benefit identified as social value in tenders or contracts under this policy is over and above the core deliverable/s of the tender or the contract."

It is important to note, given the steer provided by the toolkit to embed social value in the core of contracts, that PPN 02 applies only to central government procurement. Local government can therefore still choose take the

more transformative approach of embedding social value objectives in core of the contract under the Public Services Social Value act.

A brief look back at the EU procurement rules

Contrary to common perception there were several levers and permissions set out in the PCR 2015 which enable good practice in supporting SMEs and pursuing social value aims (including environmental aspects) in a procurement. These include (and only a sample of the key provisions are set out):

Pre-market engagement (Regulation 40):

It's worth rehearsing the entirety of Regulation 40 as its scope was very wide in encouraging conversation with potential providers but also independent experts:

“(1) Before commencing a procurement procedure, contracting authorities may conduct market consultations with a view to preparing the procurement and informing economic operators of their procurement plans and requirements.

(2) For this purpose, contracting authorities may, for example, seek or accept advice from independent experts or authorities or from market participants.

(3) Such advice may be used in the planning and conduct of the procurement procedure, provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.”.

The opportunity could be taken to explain to the market:

- what the council's policy priorities are;
- what the council's requirements are in terms of responding to its policy priorities;
- how they can comment on those aspects of the specification for the services or project in question that relate to economic, social or environmental aspects of sustainability, including whole life-costing.

Dividing contract into lots (Regulation 46)

What is interesting about this regulation is not the fact that Regulation 46(1) gave permission to contracting authorities to award a contract in the form of separate lots and determine the size and subject-matter of such lots, but that Regulation 46(2) requires them to provide an indication of the main reasons for their decision *not* to subdivide into lots, which shall be included in the procurement documents or the regulation 84 report. We suspect that this lever was not used by contracting authorities as much as it should, although it will now be adopted under the equivalent provisions of the PA 23 given that tender notices are required to describe the reasons why any public contract is not going to be awarded by reference to lots, and the reasons why.

Technical specifications (Regulation 42)

Regulation 42 was particularly enabling in making clear that when laying down the characteristics required of works, services or supplies (Regulation 42(2)), environmental and social characteristics can be set out in technical specifications.

Special conditions (Regulation 70)

Regulation 70 was self-explanatory in its scope and could be reflected more as a matter of good practice by councils even in their current practices under the PA 23:

Social Value Toolkit for Councils – Produced by the Cooperative Councils' Innovation Network |
Author – Mark Cook, Anthony Collins | Launched July 2025

“(1) Contracting authorities may lay down special conditions relating to the performance of a contract, provided that they are—

(a) linked to the subject-matter of the contract within the meaning of regulation 67(5), and

(b) indicated in the call for competition or in the procurement documents.

(2) Those conditions may include *economic, innovation-related, environmental, social or employment-related* considerations.”.

Contract award criteria (Regulation 67)

Under Regulation 67 there was a breadth to the factors that contracting authorities can take into account when they base “the award of public contracts on the most economically advantageous tender assessed from the point of view of the contracting authority” (Regulation 67(1)). See our italics and bold in the pertinent provisions.

“That tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with regulation 68, and *may include the best price-quality ratio, which shall be assessed on the basis of criteria, such as qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question*” (Regulation 67(2)).

“Such criteria may comprise, for example—

(a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, *social, environmental and innovative characteristics* and trading and its conditions;

(b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or

(c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion” (Regulation 67(3)).

Author: Mark Cook – Partner, Anthony Collins

For more information, contact Hello@councils.coop