



BRIEFING | The Public Services (Social Value) Act 2012 and its potential impact on the VCS

The **Public Services (Social Value) Act** – known as the Social Value Act – requires public authorities (including local authorities and Clinical Commissioning Groups) to 'have regard to' the ways each procurement decision might benefit society in terms of the economic, social and environmental wellbeing of the area, and how they can act with a view to securing that benefit. They should do this to the extent to which it is proportionate to take these matters into account.

The Act applies to:

- all public services contracts and framework agreements to which the Public Contracts Regulations 2006 apply (including those with an element of goods or works, but not to those which are solely for goods or works)
- NHS contracts worth **more than £113,057** and local authority contracts worth **more than £173,934**.

Authorities are however encouraged to apply the Act to goods and works contracts, and contracts below the financial thresholds.

1. What is 'social value'?

The new legislation has been interpreted as:

- reinforcing public authorities' duty to pursue '**best value**' by being more explicit about what they must consider
- increasing focus on **value over low cost** when calculating 'value for money'.

Chris White MP described social value as 'a concept which seeks to maximise the additional benefit that can be created by procuring or commissioning goods and services, **above and beyond the benefit of merely the goods and services themselves**'. Thus the Act has been seen as promoting the consideration of impacts which might otherwise be ignored as **externalities**, by:

- encouraging consideration of *how* a service is delivered as well as *what* is delivered
- encouraging a more holistic view of value across different departments' responsibilities.

However, social value **might not mean only benefits external to the core purpose** of a contract. The Act and its guidance emphasise the importance of pre-procurement consultation and the potential for creative, outcomes-focused commissioning which might **redefine the service being commissioned from the start**. Social value might thus mean addressing more than one need of the user group, or combining services to address the needs of different people.

Example from the [Procurement Policy Note](#): A council considers the provision of a meals-on-wheels service for the elderly. During pre-procurement consultations, it emerges that many users suffer isolation, and that a new community centre is also needed. In the end the council decides to procure a meals service which is based on bringing people to a community centre.

2. The local market

Social requirements must be defined in ways that do not discriminate against any bidders from across the EU – the Act cannot be used to require a local provider.

However, it seems social criteria can include **employing local people** or buying from **local supply chains**. Criteria can also include ensuring quick responses or reducing carbon emissions, which will indirectly tend to favour local suppliers and thus may help some VCOs.

Councils can also promote local benefits by **ensuring that the ‘supply side’, including the VCS, is ready to participate** e.g. it is easy for the contractor to identify and contact local unemployed people; local supplier markets are well-informed about opportunities.

3. Social value policies

European law states that social requirements in tenders and contracts **should reflect policies and priorities of the public authority**. An authority may decide to use priorities already expressed in a sustainable community strategy or local area plan, express social value priorities in a procurement strategy, or adopt a specific social value policy.

Public authorities are to consider **consulting** with the local community (including potential suppliers such as the VCS) when defining the social value they want to achieve.

A social value policy should **clearly define the desired benefits**. [Social Enterprise UK’s guidance](#) suggests that it should also cover how commitments will be reflected in the procurement process, the use of targets and reporting, and how authorities will ‘enable SMEs and social enterprises to participate in its public service commissioning requirements’.

4. Pre-procurement engagement with the public/market

Authorities should consider social value at the **pre-procurement stage** of each exercise. They must consider conducting a refreshed needs analysis.

Ideally, authorities should also **engage with supplier markets** at this stage, perhaps publishing a Prior Information Notice. The [Procurement Policy Note](#) specifically mentions **engagement with the VCS** from the earliest stage.

[Croydon's Social Value Toolkit](#) emphasises the creative possibilities in social commissioning, saying an expert commissioner focuses on outcomes by first asking 'What are we really trying to achieve?' when designing and commissioning services.

5. Building priorities into commissioning

According to the Act, authorities must consider only matters that are **relevant** to what is proposed to be procured, but examples given in the guidance indicate that 'relevance' can be interpreted very broadly.

Under European legislation, for contracts worth **£173,934 or more** (and thus subject to full regime of procurement law) social issues may be included as **award criteria** only if they are linked to the subject matter of the contract. There is limited guidance as to how to determine whether this is the case. Ultimately it is up to the council to determine what the procurement relates to, e.g. the wider regeneration of the area.

Performance obligations can usually be used even when the social issue is not deemed linked to the contract's subject matter and cannot legally be an award criterion.

For contracts worth **less than £173,934** commissioners have significantly more flexibility to use award criteria – though this is also the threshold below which they do not have to implement the Act.

6. Measurement and monitoring

Social requirements should be capable of being **measured** in terms of performance. Authorities must put **monitoring** in place to ensure value for money is being met.

[Social Enterprise UK and London Councils](#) found that the most commonly used measurement tools are Social Return on Investment, HACT's Wellbeing Valuation, bespoke toolkits, and Local Multiplier 3. Some organisations used a **simpler approach** focusing on, for example, the number of local jobs created.

7. Potential impact on the VCS

One of the aims of the Act is to enable voluntary sector organisations (VCOs) and social enterprises to win more contracts, but this depends on how it is implemented:

- Many VCOS are good at providing their core services and bring **added value**, but this does not automatically translate into **social value** when this is seen to mean externalities.
- Incorporating social value clauses into contracts may not benefit VCOs if the **price or turnover requirements** are not simultaneously reduced.¹
- Many **private sector organisations** have put extensive resources into polishing their 'social value offer' and may be better equipped than the VCS to

¹ It is already recommended that price not be the highest-scoring element in tender assessments. A new European Directive says that turnover requirements should not be more than twice the contract value.

deliver some types of social value, such as big apprenticeship or training programmes.

- Nevertheless, if a social value policy places **volunteering** (and training of volunteers) in high esteem this will give an advantage to many VCOs.
- There may also be benefits to encouraging large contractors to **include VCOs in their supply chains**, or to develop and support VCOs, as part of their social value obligations.
- It might be productive to investigate whether the Act could be used to place more value on VCOs' **preventative work**.
- Because it is outcomes-focused, rather than profit-focused, the VCS may be particularly well-equipped to contribute to **creative commissioning** and **needs assessment**.
- The VCS may also be able to enable the fulfillment of social value criteria by other contractors, e.g. by **signposting** them to local unemployed people in need of training.
- Implementation of a social value policy could result in **heavier monitoring burdens** for small organisations. These should be proportionate (and the costs proportionate to the value of the contract).

8. Examples of social value commissioning

Social Enterprise UK (SEUK) found in a survey that for most local authorities trying to implement the act, **current priorities are employment and job-creation**.

However, there was also a growing understanding that social value is **not just about employment**, with some commissioners looking at health, crime and environment criteria.

Some examples of **social value criteria used by Southwark**:

- Catering contract (2010) awarded to social enterprise which committed to creating job opportunities/apprenticeships to people with learning disabilities (14 were taken on who would otherwise have been dependent on Council daycare).
- SEND school transport (2014): pay all staff LLW, use and source green, environmentally friendly vehicles whenever possible.

Examples of possible **commitments**:

- Compliance with social and labour law/good practice (e.g. Considerate Contractors)
- Promoting training, apprenticeship and employment opportunities, often for underrepresented groups (can be measured as % of total man hours)
- Local jobs/training places (Croydon have specified that certain proportions of workers should be from the local area, and that positions should be advertised locally first)
- Work placements to school children, students and young adults
- Providing career advice and information
- Offering curriculum support to schools
- Providing additional opportunities for individuals or groups facing greater social or economic barriers (e.g. guaranteed interviews)
- Promoting SMEs and civil society organisations (equal treatment, proportionality and transparency; making subcontracting opportunities visible)

- Developing third sector organisations
- Fair and ethical buying – e.g. buying local food to reduce airmiles
- Contributing to climate change mitigation targets and to energy efficiency
- Contributing to health improvement priorities
- Stimulating social integration and community engagement
- Ensuring more effective and efficient public expenditure
- Demonstrating socially responsive governance
- Making facilities (such as school libraries, leisure facilities or computers) available to targeted groups.

Some interesting features of particular **social value policies**:

- Very high emphasis on the importance of social value to the Council (Croydon)
- Social value approaches to move towards being the default position for all procurements (Knowsley); applying social value considerations in every appropriate contract as a matter of routine (Cumbria)
- Applying the Act to all contracts above £50k - a more generous interpretation than the Act requires (Sunderland)
- Emphasis on growth of a social enterprise sector (Knowsley)
- Social value model was created in conjunction with local social enterprises, third sector, and business representatives. Two of the six aims are reduction in demand for public services, and increase in the number and impact of volunteers (Knowsley)
- Explicit acknowledgement of the value-driven nature of third sector organisations e.g. social capital, volunteering, local roots, access to networks and funding leverage, opportunities for community coproduction, contribution to local economy (Croydon).