

## Delivering community benefits in public procurement

### Purpose

1. This note is to provide guidance on interim arrangements relating to Community Benefit requirements in public contracts in advance of the full implementation of the provisions of the Procurement Reform (Scotland) Act 2014 and Statutory Guidance to be published under the Act.

### Key Points

2. The key points are:
- These changes under the Act will mandate the use of community benefit clauses in certain procurements, with the ambition to utilise the purchasing power of the public sector;
  - This note is not a comprehensive guide to the use of community benefits but to raise awareness of the opportunities within contracts prior to the commencement of the legislation;
  - Consideration of such clauses in contracts must ensure that they are relevant and proportionate to the subject matter of their contracts.

### Background

3. The Scottish Model of Procurement aims to secure the maximum economic benefit from the £10 billion spent by the public sector on goods and services each year, through an approach that balances the business friendly and the socially responsible.

4. The Public Procurement Reform Programme delivers value that goes beyond savings and benefits – improving supplier access to public contracts, particularly for SMEs; maximising efficiency and collaboration; and placing the local, social and economic aspects of sustainability at the heart of the purchasing process.
5. The Procurement Reform (Scotland) Act 2014 has established a national legislative framework for sustainable public procurement that supports Scotland's economic growth through improved procurement practice – and requires public bodies to consider how their procurement activity can improve the economic, social and environmental wellbeing of the authority's area.
6. It also specifically requires public bodies to consider imposing community benefit requirements as part of a major contract; these might relate to, for example, employment opportunities or to sub-contracting opportunities. An extract from the relevant section of the Act is at Annex A.
7. Prior to secondary legislation being introduced to implement the provisions of the Act and the transposition of the three new EU procurement Directives, maximising the impact of Scotland's procurement spending will remain front and centre in our considerations.

## **Community Benefit Clauses – Public Contracts Scotland portal**

8. Functionality has been developed within the Public Contracts Scotland website ("PCS") to support the use and monitoring of community benefit clauses. It encourages contractors of major capital infrastructure projects to advertise appropriate sub-contracts within PCS.
9. Public bodies, if not already doing so, should utilise the new functionality available within the PCS portal to include, where appropriate, community benefit clauses within major works public works contract notices i.e. above OJEU threshold. Public bodies may provide full details of the requirements within the tender documentation. Public bodies may also consider using community benefit clauses in other types of contract notices where appropriate.

## **Guidance**

10. Guidance describing the functionality available on PCS is at Annex B.

11. Guidance is also available to enable organisations to collect consistent and comparable data which tracks the impact of community benefits. The benefits of collecting this monitoring data include:

- Helping organisations evaluate and inform the impact of continued use.
- Enabling organisations to demonstrate and communicate that impact.
- This [guidance](#) is available on the Scottish Government website.

## **Further information**

12. A growing range of [evidence and case studies](#) is available, demonstrating the success and breadth of opportunity this policy is establishing.

13. Additionally, the [Scottish Government's Infrastructure Investment Board](#) reports the progress of major capital projects with a value in excess of £50m. The approach is also embedded in [Scottish Futures Trust's](#) 'hubco' programme.

14. Further guidance will be available as the Regulations become mandatory in line with the new Directives, and other Statutory Guidance.

## **Dissemination**

15. This SPPN replaces SPPN 3/2013 which has been withdrawn. Please bring this SPPN to the attention of all relevant staff within your field of responsibility to whom this note may be of interest.

## **Enquiries**

16. Any enquiries in relation to this guidance should be addressed to [Scottish Procurement](#):

**Scottish Procurement**  
**The Scottish Government**  
**2nd Floor, Europa Building**  
**450 Argyle Street**  
**Glasgow**  
**G2 8LG**

## **Extract from Procurement Reform (Scotland) Act 2014**

### **Part 3 - Community Benefit Requirements.**

#### **“Community benefit requirements**

#### **24 Community benefit requirements**

For the purposes of this Act, a community benefit requirement is a contractual requirement imposed by a contracting authority—

- (a) relating to—
  - (i) training and recruitment, or
  - (ii) the availability of sub-contracting opportunities, or
- (b) which is otherwise intended to improve the economic, social or environmental wellbeing of the authority’s area in a way additional to the main purpose of the contract in which the requirement is included.

#### **25 Community benefit requirements in major contracts**

- (1) This section applies where a contracting authority proposes to carry out a regulated procurement in relation to which the estimated value of the contract is equal to or greater than £4,000,000.
- (2) The contracting authority must, before carrying out the procurement, consider whether to impose community benefit requirements as part of the procurement.
- (3) The contracting authority must, in the contract notice relating to the procurement, include—
  - (a) a summary of the community benefit requirements it intends to include in the contract, or
  - (b) where it does not intend to include any such requirements, a statement of its reasons for not including any requirements.

- (4) Where community benefit requirements are included in a contract, the contracting authority must include in the award notice a statement of the benefits it considers will be derived from those requirements.
- (5) The Scottish Ministers may by order modify subsection (1) so as to substitute for the figure specified there for the time being such other figure as they consider appropriate.

## **26 Guidance on community benefit requirements**

- (1) The Scottish Ministers may publish guidance on the use of community benefit requirements.
- (2) The guidance may, in particular, cover—
  - (a) consultation that should take place before a contracting authority determines whether or not to include community benefit requirements in a contract to which section 25 applies,
  - (b) the information that should be contained in a contract notice and award notice in relation to community benefit requirements,
  - (c) the circumstances in which inclusion of community benefit requirements would or would not be appropriate.
- (3) Contracting authorities must have regard to any guidance published under this section.
- (4) The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.”

## Inclusion of community benefit clauses using PCS

### Guidance note on using the functionality of Public Contracts Scotland to increase the inclusion of community benefits clauses in major works contracts.

A question will be asked within the templates for Works Contract Notices at OJEU level – see Fig 1. The buyer must answer whether a Community Benefits Clause (CBC) applies to the contract. The question will have a default answer of “no”. This is to avoid the buyer inadvertently inserting a Community Benefit Clause into their contract notice where it may not be appropriate to the nature of the contract in question.

Whichever answer a buyer selects, they are required to provide more information.

### Inserting a Community Benefits Clause

If the buyer answers “Yes”, they are required to enter a description of the CBC(s) which apply.

Fig 1.

This image displays the description box on the PCS system should you answer yes, when asked, if community benefits apply to your contract.

The screenshot shows a web-based form titled "Required information." with a "Go to question:" dropdown menu set to "Community Benefits Clauses (OJEU Works)". The main question is "Will Community Benefits Clauses apply to this contract?" with radio buttons for "Yes" (selected) and "No".

If "Yes" is selected, the form states: "If community benefits clauses apply to this contract, a standard clause will be inserted into the notice as follows: Under the terms of this contract the successful supplier(s) will be required to deliver Community Benefits in support of the authority's economic and social objectives. Accordingly, contract performance conditions may relate in particular to social and environmental considerations. The Community Benefits included in this contract are: Please provide a brief description of the community benefits clause(s) that may apply to this contract. The text you provide will be appended to the clause above and inserted into the notice." Below this is a large text input area.

If "No" is selected, the form states: "If no community benefits clauses apply to this contract, please provide a reason why a community benefits clause is not being included in this contract. This is for reporting purposes only and will not be published within the notice." Below this is another large text input area.

Navigation buttons "Next", "Save", and "Cancel" are located on the right side of the form.

This information is appended to a standard clause which is then inserted into the “Additional Information” section of the published notice.

**VI.3) Additional Information**

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Under the terms of this contract the successful supplier(s) will be required to deliver Community Benefits in support of the authority's economic and social objectives. Accordingly, contract performance conditions may relate in particular to social and environmental considerations. The Community Benefits included in this contract are:

### **Not inserting a Community Benefits Clause**

If the buyer chooses to answer “no”, they are required to provide a reason for not including a Community Benefits Clause. These details will not be published but will be made available to the Scottish Government to help them assess the impact and value of this approach.