

# Public Document Pack



**PLEASE NOTE THAT PRAYERS WILL BE HELD AT 6.50PM BEFORE THE COMMENCEMENT OF THE BUSINESS OF THE COUNCIL.**

**THE MAYOR REQUESTS THAT ANY MEMBER WISHING TO PARTICIPATE IN PRAYERS BE IN ATTENDANCE BY NO LATER THAN 6.45PM.**

Dear Sir/Madam,

You are summoned to attend the meeting of the Borough Council of Newcastle-under-Lyme to be held in the **Dance Studio, Jubilee 2** on **Wednesday, 24th July, 2019** at **7.00 pm**.

## **B U S I N E S S**

- 1 APOLOGIES**
- 2 DECLARATIONS OF INTEREST**  
To receive declarations of interest from Members on items contained within this agenda.
- 3 MINUTES** **(Pages 5 - 14)**  
To consider the minutes of the previous meeting(s)
- 4 MAYOR'S ANNOUNCEMENTS**
- 5 CONSTITUTION - REVIEW OF THE COUNCIL'S CONTRACT** **(Pages 15 - 80)**  
**PROCEDURE RULES & MEMBER/OFFICER PLANNING**  
**ENFORCEMENT PROTOCOL**
- 6 APPOINTMENT OF INTERIM MONITORING OFFICER** **(Pages 81 - 82)**
- 7 HIGH SPEED RAIL (WEST MIDLANDS TO CREWE) BILL (HS2** **(Pages 83 - 86)**  
**PHASE 2A)**
- 8 SSLEP COMPANY MEMBERSHIP AND APPOINTMENT OF** **(Pages 87 - 90)**  
**DIRECTOR**
- 9 STATEMENT OF THE LEADER OF THE COUNCIL**  
Report to follow.
- 10 REPORTS OF THE CHAIRS OF THE SCRUTINY COMMITTEES** **(Pages 91 - 92)**

Written reports are attached for the following:

- (a) Health, Wellbeing and Partnerships Scrutiny Committee

Verbal updates will be given for the Finance, Assets and Performance Scrutiny Committee by the Vice-Chair and for the Economy Environment and Place Scrutiny Committee.

**11 REPORTS OF THE CHAIRS OF THE REGULATORY COMMITTEES (Pages 93 - 94)**

Written reports are attached for the following:

- (a) Licensing and Public Protection Committee

Verbal updates will be given for the Planning Committee and Audit and Standards Committee.

**12 MOTIONS OF MEMBERS (Pages 95 - 96)**

The following Motion has been received:

- Armed Forces Community Covenant.

**13 QUESTIONS TO THE MAYOR, CABINET MEMBERS AND COMMITTEE CHAIRS**

**14 RECEIPT OF PETITIONS**

To receive from Members any petitions which they wish to present to the Council.

**15 STANDING ORDER 18 - URGENT BUSINESS**

To consider any communications which pursuant to Appendix 7 – paragraph 7 of the constitution are, in the opinion of the Mayor, of an urgent nature and to pass thereon such resolutions as may be deemed necessary.

**16 DISCLOSURE OF EXEMPT INFORMATION**

To resolve that the public be excluded from the meeting during consideration of the following report(s) as it is likely that there will be disclosure of exempt information as defined in paragraphs contained within Part 1 of Schedule 12A (as amended) of the Local Government Act 1972.

Yours faithfully



Chief Executive

## **NOTICE FOR COUNCILLORS**

### **1. Fire/Bomb Alerts**

In the event of the fire alarm sounding, leave the building immediately, following the fire exit signs..

Fire exits are to be found at the side of the room leading into Queens Gardens.

On exiting the building Members, Officers and the Public must assemble at the statue of Queen Victoria. DO NOT re-enter the building until advised to by the Controlling Officer.

### **2. Attendance Record**

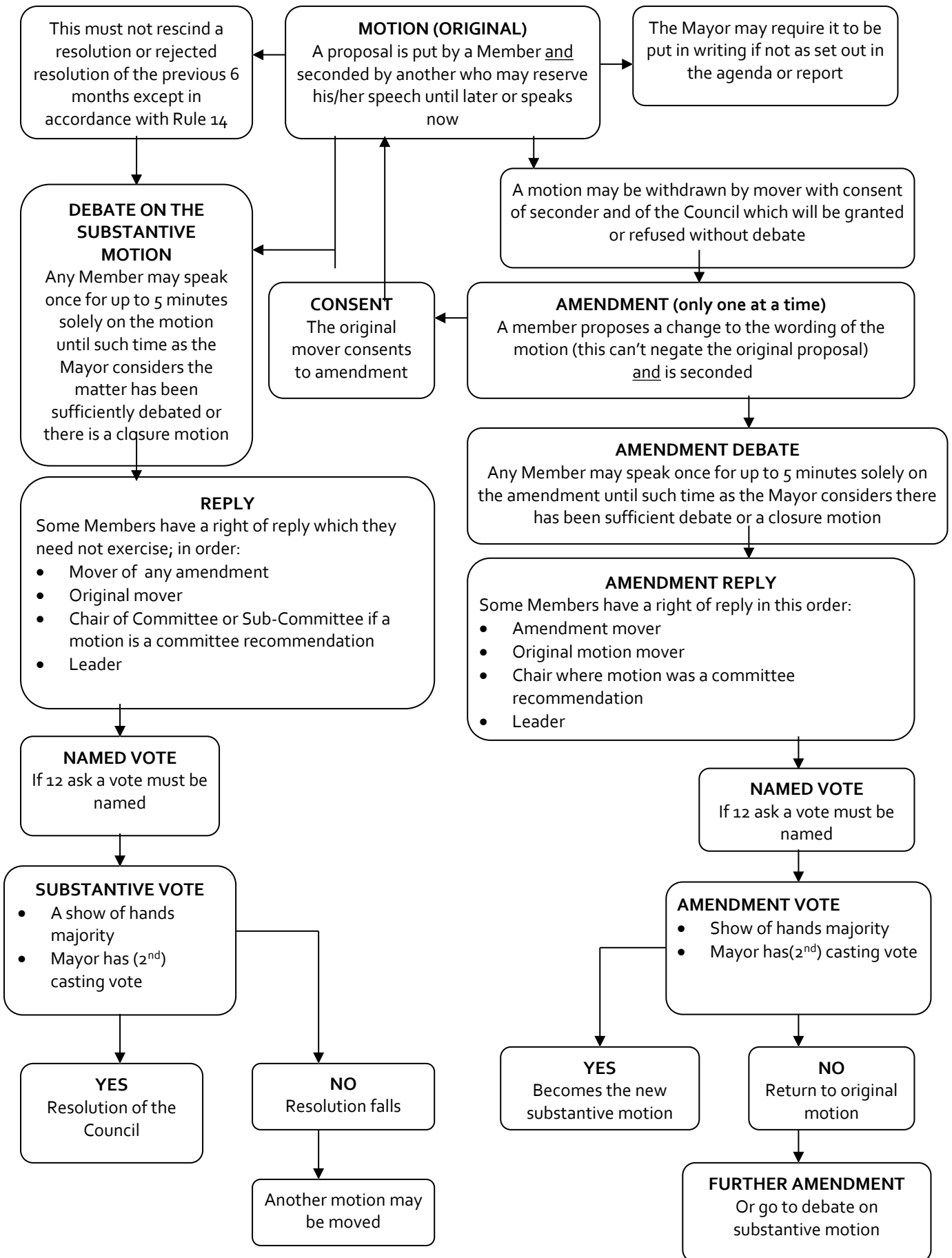
Please sign the Attendance Record sheet on entering the building. This will be located at the reception desk.

### **3. Mobile Phones**

Please switch off all mobile phones before entering the Council Chamber.

### **4. Notice of Motion**

A Notice of Motion other than those listed in Standing Order 19 must reach the Chief Executive ten clear days before the relevant Meeting of the Council. Further information on Notices of Motion can be found in Section 5, Standing Order 20 of the Constitution of the Council.



## **COUNCIL**

Wednesday, 15th May, 2019  
Time of Commencement: 7.00 pm

**Present:-** Councillor Mrs Gill Heesom – in the Chair

**Councillors:**

S. Burgess	B. Panter
G. Burnett	A. Parker
Miss J Cooper	B. Proctor
Mrs J Cooper	M. Reddish
J. Cooper	K. Robinson
S. Dymond	A. Rout
A. Fear	E. Shenton
A. Gardner	M. Stubbs
M. Holland	S. Sweeney
E. Horsfall	J Tagg
Hutton	S Tagg
B. Johnson	J. Walklate
T. Johnson	J Waring
D. Jones	P Waring
T. Kearon	G White
A. Lawley	S White
H. Maxfield	I. Wilkes
S. Moffat	G Williams
P. Northcott	J Williams
M. Olszewski	R. Wright
K.Owen	

**Officers** Executive Director Operational Services- David Adams,  
Geoff Durham - Mayor's Secretary / Member Support Officer,  
Caroline Elwood - Interim Head of Legal / Monitoring Officer,  
Martin Hamilton - Chief Executive and  
Interim Executive Director - Resources and Support Services - Jan Willis

1. **APOLOGIES**

There were no apologies.

2. **DECLARATIONS OF INTEREST**

There were no declarations of interest stated.

3. **MINUTES**

**Resolved:** That the minutes of the meeting held on 3 April, 2019 be agreed as a correct record.

**4. ELECTION OF MAYOR 2019/20**

Prior to the election of Mayor, Councillor Stubbs made reference to Part 2 of the Constitution - Section 2.5 and also the Mayoralty Code of Practice asking the Council's Chief Executive, Martin Hamilton to explain why the 'normal' procedure had not been followed.

Mr Hamilton advised that the summary in the Constitution reflected conventions rather than rules and that the position of Mayor was decided by a formal election process at Annual Council. There was nothing contained within the Council's Constitution which prevented the election of Mayor from being contested.

Two nominations were received

Councillor Shenton. Proposed by Councillor Kearon and seconded by Councillor Robinson.

Councillor Simon White. Proposed by Councillor Proctor and Seconded by Councillor Owen.

A named vote was requested and taken for the election of Mayor

<b>BURGESS</b>	<i>Shenton</i>	<b>JONES</b>	<i>Shenton</i>	<b>SHENTON</b>	<i>Shenton</i>
<b>BURNETT</b>	<i>S.White</i>	<b>KEARON</b>	<i>Shenton</i>	<b>STUBBS</b>	<i>Shenton</i>
<b>COOPER. MRS</b>	<i>S.White</i>	<b>LAWLEY</b>	<i>Shenton</i>	<b>SWEENEY</b>	<i>S.White</i>
<b>COOPER MR</b>	<i>S.White</i>	<b>MAXFIELD</b>	<i>S.White</i>	<b>TAGG J</b>	<i>S.White</i>
<b>COOPER MISS</b>	<i>S.White</i>	<b>MOFFAT</b>	<i>Shenton</i>	<b>TAGG S</b>	<i>S.White</i>
<b>DYMOND</b>	<i>Shenton</i>	<b>NORTHCOTT</b>	<i>S.White</i>	<b>WALKLATE</b>	<i>Shenton</i>
<b>FEAR</b>	<i>S.White</i>	<b>OLSZEWSKI</b>	<i>Shenton</i>	<b>WARING J</b>	<i>S.White</i>
<b>FOX-HEWITT</b>	<i>ABSENT</i>	<b>OWEN</b>	<i>S.White</i>	<b>WARING P</b>	<i>S.White</i>
<b>GARDNER</b>	<i>Shenton</i>	<b>PANTER</b>	<i>S.White</i>	<b>WHITE G</b>	<i>S.White</i>
<b>HEESOM</b>	<i>S.White</i>	<b>PARKER</b>	<i>S.White</i>	<b>WHITE S</b>	<i>S.White</i>
<b>HOLLAND</b>	<i>S.White</i>	<b>PICKUP</b>	<i>ABSENT</i>	<b>WILKES</b>	<i>Shenton</i>
<b>HORSFALL</b>	<i>Shenton</i>	<b>PROCTOR</b>	<i>S.White</i>	<b>WILLIAMS G</b>	<i>Shenton</i>
<b>HUTTON</b>	<i>S.White</i>	<b>REDDISH</b>	<i>Shenton</i>	<b>WILLIAMS J</b>	<i>Shenton</i>
<b>JOHNSON B</b>	<i>Shenton</i>	<b>ROBINSON</b>	<i>Shenton</i>	<b>WRIGHT</b>	<i>Shenton</i>
<b>JOHNSON T</b>	<i>S.White</i>	<b>ROUT</b>	<i>Shenton</i>		

Shenton - 20

S.White - 22

Abstain – 0

**Resolved:** That Councillor Simon White be appointed as Mayor for the 2019/20 municipal year.

The Mayor made the Declaration of Acceptance of Office.

#### 5. APPOINTMENT OF DEPUTY MAYOR 2019/20

Two nominations were received

Councillor John Cooper. Proposed by Councillor Sweeney and seconded by Councillor Simon Tagg.

Councillor Shenton. Proposed by Councillor Kearon and seconded by Councillor Reddish.

A named vote was requested and taken for the election of Deputy Mayor

<b>BURGESS</b>	<i>Shenton</i>	<b>JONES</b>	<i>Shenton</i>	<b>SHENTON</b>	<i>Shenton</i>
<b>BURNETT</b>	<i>John Cooper</i>	<b>KEARON</b>	<i>Shenton</i>	<b>STUBBS</b>	<i>Shenton</i>
<b>COOPER. MRS</b>	<i>John Cooper</i>	<b>LAWLEY</b>	<i>Shenton</i>	<b>SWEENEY</b>	<i>John Cooper</i>
<b>COOPER MR</b>	<i>John Cooper</i>	<b>MAXFIELD</b>	<i>John Cooper</i>	<b>TAGG J</b>	<i>John Cooper</i>
<b>COOPER MISS</b>	<i>John Cooper</i>	<b>MOFFAT</b>	<i>Shenton</i>	<b>TAGG S</b>	<i>John Cooper</i>
<b>DYMOND</b>	<i>Shenton</i>	<b>NORTHCOTT</b>	<i>John Cooper</i>	<b>WALKLATE</b>	<i>Shenton</i>
<b>FEAR</b>	<i>John Cooper</i>	<b>OLSZEWSKI</b>	<i>Shenton</i>	<b>WARING J</b>	<i>John Cooper</i>
<b>FOX-HEWITT</b>	<i>ABSENT</i>	<b>OWEN</b>	<i>John Cooper</i>	<b>WARING P</b>	<i>John Cooper</i>
<b>GARDNER</b>	<i>Shenton</i>	<b>PANTER</b>	<i>John Cooper</i>	<b>WHITE G</b>	<i>John Cooper</i>
<b>HEESOM</b>	<i>John Cooper</i>	<b>PARKER</b>	<i>John Cooper</i>	<b>WHITE S</b>	<i>John Cooper</i>
<b>HOLLAND</b>	<i>John Cooper</i>	<b>PICKUP</b>	<i>ABSENT</i>	<b>WILKES</b>	<i>Shenton</i>
<b>HORSFALL</b>	<i>Shenton</i>	<b>PROCTOR</b>	<i>John Cooper</i>	<b>WILLIAMS G</b>	<i>Shenton</i>
<b>HUTTON</b>	<i>John Cooper</i>	<b>REDDISH</b>	<i>Shenton</i>	<b>WILLIAMS J</b>	<i>Shenton</i>
<b>JOHNSON B</b>	<i>Shenton</i>	<b>ROBINSON</b>	<i>Shenton</i>	<b>WRIGHT</b>	<i>Shenton</i>

JOHNSON T	John Cooper	ROUT	Shenton		
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Shenton - 20

John Cooper - 22

Abstain – 0

**Resolved:** That Councillor John Cooper be appointed as Deputy Mayor for the 2019/20 municipal year.

The Deputy Mayor made the Declaration of Acceptance of Office.

## 6. **MAYORAL APPOINTMENTS**

**Consort –** Councillor Gary White  
**High Constable –** Alderman Chris Malkin  
**Chaplain –** Reverend Peter Nisbeck  
**Mace Bearers –** Mrs Angela Mayer and Mr James Worgan

## 7. **MAYORAL ADDRESS**

The Mayor thanked the Council for affording him the honour of the appointment and paid tribute to the hard work, enthusiasm and commitment of his predecessor.

## 8. **VOTE OF THANKS TO THE RETIRING MAYOR AND CONSORTS**

On behalf of the Council, The Leader, Councillor Simon Tagg expressed gratitude and appreciation to the retiring Mayor and her Consorts for their tireless dedication to the role and their services to the Borough and its communities. Councillor Tagg added that the Borough had been served well by the retiring Mayor as its Ambassador congratulated her for raising approximately £18,500 for her chosen charities.

The Group Leaders thanked the retiring Mayor for her hard work stating that she had been a credit to the Borough.

Official Badges were presented to the retiring Mayor and one of her Consorts. One of the Consorts was not present at the meeting and would be presented with his badge by the retiring Mayor.

## 9. **RESPONSE OF THE RETIRING MAYOR AND SUMMARY OF THE MAYORAL YEAR**

The retiring Mayor thanked Members of the Council stating that she was humbled by what she had heard. Thanks were also given to everyone who had helped and guided her throughout her term of Office.

She stated that it had been a privilege to represent the Borough and had fond memories of many engagements that had been undertaken especially awarding Fred



and Connie Van Buren the Freedom of the Borough. She was proud to have raised just over £18,500 towards her two chosen charities.

The retiring Mayor wished her successor well for the forthcoming year and offered her full support.

A full response would be put onto the Mayor's Facebook page.

**10. MAYOR'S ANNOUNCEMENTS**

The Mayor gave notice that his Annual Civic Service would be held at St. Giles Church at 10.30am on Sunday 23 June 2019. He referred to his Reception which was to be held immediately following this Annual Council meeting.

**11. BY ELECTION RESULT**

The Leader, Councillor Simon Tagg welcomed Councillor Graham Hutton who had recently been elected as Word Councillor for Maer and Whitmore.

**12. APPOINTMENT OF DEPUTY LEADER AND CABINET**

The Leader confirmed Councillor Sweeney as Deputy Leader and the following as members of the Cabinet for 2019/20:

- Councillor Holland
- Councillor T Johnson
- Councillor Northcott
- Councillor J Waring

**13. APPOINTMENT OF COMMITTEES, CHAIRS AND VICE-CHAIRS FOR 2019/20**

It was proposed by Councillor S Tagg and seconded by Councillor S Sweeney that the appointments to committees, chairs, vice-chairs for 2019/20 be as set out in the Supplementary agenda.

***Committee Membership***

**Resolved:** That the appointments to committees, as set out in the Supplementary agenda, be approved:

***Chairs and Vice-Chairs***

A named vote was requested to elect the Chair of Audit and Standards:

There were two nominations: Councillor's Pickup and P Waring

<b>BURGESS</b>	<i>Pickup</i>	<b>JONES</b>	<i>Pickup</i>	<b>SHENTON</b>	<i>Pickup</i>
<b>BURNETT</b>	<i>P.Waring</i>	<b>KEARON</b>	<i>Pickup</i>	<b>STUBBS</b>	<i>Pickup</i>
<b>COOPER. MRS</b>	<i>P.Waring</i>	<b>LAWLEY</b>	<i>Pickup</i>	<b>SWEENEY</b>	<i>P.Waring</i>

COOPER MR	<i>P.Waring</i>	MAXFIELD	<i>P.Waring</i>	TAGG J	<i>P.Waring</i>
COOPER MISS	<i>P.Waring</i>	MOFFAT	<i>Pickup</i>	TAGG S	<i>P.Waring</i>
DYMOND	<i>Pickup</i>	NORTHCOTT	<i>P.Waring</i>	WALKLATE	<i>Pickup</i>
FEAR	<i>P.Waring</i>	OLSZEWSKI	<i>Pickup</i>	WARING J	<i>P.Waring</i>
FOX-HEWITT	<i>Absent</i>	OWEN	<i>P.Waring</i>	WARING P	<i>P.Waring</i>
GARDNER	<i>Pickup</i>	PANTER	<i>P.Waring</i>	WHITE G	<i>P.Waring</i>
HEESOM	<i>P.Waring</i>	PARKER	<i>P.Waring</i>	WHITE S	<i>P.Waring</i>
HOLLAND	<i>P.Waring</i>	PICKUP	<i>Absent</i>	WILKES	<i>Pickup</i>
HORSFALL	<i>Pickup</i>	PROCTOR	<i>P.Waring</i>	WILLIAMS G	<i>Pickup</i>
HUTTON	<i>P.Waring</i>	REDDISH	<i>Pickup</i>	WILLIAMS J	<i>Pickup</i>
JOHNSON B	<i>Pickup</i>	ROBINSON	<i>Pickup</i>	WRIGHT	<i>Pickup</i>
JOHNSON T	<i>P.Waring</i>	ROUT	<i>Pickup</i>		

Pickup - 20

P.Waring - 22

Abstain – 0

**Resolved:** That Councillor Paul Waring be appointed as Chair of the Audit and Standards Committee.

A named vote was requested to elect the Vice-Chair of Audit and Standards:

There were two nominations: Councillor's Owen and Dymond

BURGESS	<i>Dymond</i>	JONES	<i>Dymond</i>	SHENTON	<i>Dymond</i>
BURNETT	<i>Owen</i>	KEARON	<i>Dymond</i>	STUBBS	<i>Dymond</i>
COOPER. MRS	<i>Owen</i>	LAWLEY	<i>Dymond</i>	SWEENEY	<i>Owen</i>
COOPER MR	<i>Owen</i>	MAXFIELD	<i>Owen</i>	TAGG J	<i>Owen</i>
COOPER MISS	<i>Owen</i>	MOFFAT	<i>Dymond</i>	TAGG S	<i>Owen</i>
DYMOND	<i>Dymond</i>	NORTHCOTT	<i>Owen</i>	WALKLATE	<i>Dymond</i>
FEAR	<i>Owen</i>	OLSZEWSKI	<i>Dymond</i>	WARING J	<i>Owen</i>

FOX-HEWITT	<i>Absent</i>	OWEN	<i>Owen</i>	WARING P	<i>Owen</i>
GARDNER	<i>Dymond</i>	PANTER	<i>Owen</i>	WHITE G	<i>Owen</i>
HEESOM	<i>Owen</i>	PARKER	<i>Owen</i>	WHITE S	<i>Owen</i>
HOLLAND	<i>Owen</i>	PICKUP	<i>Absent</i>	WILKES	<i>Dymond</i>
HORSFALL	<i>Dymond</i>	PROCTOR	<i>Owen</i>	WILLIAMS G	<i>Dymond</i>
HUTTON	<i>Owen</i>	REDDISH	<i>Dymond</i>	WILLIAMS J	<i>Dymond</i>
JOHNSON B	<i>Dymond</i>	ROBINSON	<i>Dymond</i>	WRIGHT	<i>Dymond</i>
JOHNSON T	<i>Owen</i>	ROUT	<i>Dymond</i>		

Dymond - 20

Owen - 22

Abstain – 0

**Resolved:** That Councillor Owen be appointed as Vice-Chair of the Audit and Standards Committee.

Councillor Holland moved a Motion to suspend Standing Order 15.2 (Recorded Voting) for the remainder of this meeting. This was seconded by Councillor Simon Tagg.

A named vote was requested to suspend Standing Order 15.2 (Recorded Voting) for the remainder of the meeting:

BURGESS	<i>Against</i>	JONES	<i>Against</i>	SHENTON	<i>Against</i>
BURNETT	<i>For</i>	KEARON	<i>Against</i>	STUBBS	<i>Against</i>
COOPER. MRS	<i>For</i>	LAWLEY	<i>Against</i>	SWEENEY	<i>For</i>
COOPER MR	<i>For</i>	MAXFIELD	<i>For</i>	TAGG J	<i>For</i>
COOPER MISS	<i>For</i>	MOFFAT	<i>Against</i>	TAGG S	<i>For</i>
DYMOND	<i>Against</i>	NORTHCOTT	<i>For</i>	WALKLATE	<i>For</i>
FEAR	<i>For</i>	OLSZEWSKI	<i>Against</i>	WARING J	<i>For</i>
FOX-HEWITT	<i>ABSENT</i>	OWEN	<i>For</i>	WARING P	<i>For</i>

<b>GARDNER</b>	<i>Against</i>	<b>PANTER</b>	<i>For</i>	<b>WHITE G</b>	<i>For</i>
<b>HEESOM</b>	<i>For</i>	<b>PARKER</b>	<i>For</i>	<b>WHITE S</b>	<i>For</i>
<b>HOLLAND</b>	<i>For</i>	<b>PICKUP</b>	<i>ABSENT</i>	<b>WILKES</b>	<i>For</i>
<b>HORSFALL</b>	<i>Against</i>	<b>PROCTOR</b>	<i>For</i>	<b>WILLIAMS G</b>	<i>Against</i>
<b>HUTTON</b>	<i>For</i>	<b>REDDISH</b>	<i>For</i>	<b>WILLIAMS J</b>	<i>Against</i>
<b>JOHNSON B</b>	<i>Against</i>	<b>ROBINSON</b>	<i>Against</i>	<b>WRIGHT</b>	<i>For</i>
<b>JOHNSON T</b>	<i>For</i>	<b>ROUT</b>	<i>Against</i>		

For - 26

Against - 16

Abstain – 0

**Resolved:** That Standing Order 15.2 be suspended for the remainder of this meeting.

**Resolved:** That the following Chair and Vice-Chair appointments be approved:

<b>COMMITTEE</b>	<b>CHAIR</b>	<b>VICE - CHAIR</b>
Audit and Standards	P. Waring**	K.Owen**
Conservation Advisory	Julie Cooper	T. Johnson
Employment Committee	Portfolio Holder	No nomination required
Licensing & Public Protection	M. Olszewski*	G. Hutton
Planning	A. Fear	M. Reddish*
Health, Wellbeing & Partnerships Scrutiny	I. Wilkes*	Julie Cooper
Economy, Environment & Place Scrutiny	G. White	G. Heesom
Finance, Assets & Performance Scrutiny	H. Maxfield	B. Proctor

\*Denotes where a vote was not taken as only one nomination was received.

\*\*Denotes where a named vote was requested.

Councillors' Stubbs and Robinson requested that their votes for Councillor Garner as Chair of Conservation Advisory Working Party be recorded,

**14. APPOINTMENT OF REPRESENTATIVES ON OUTSIDE BODIES**

The List of Representatives onto Outside Bodies was considered.  
Where more than one nomination was received a vote was taken.

**Aspire Board** - Councillor Northcott

*The following Members requested that their vote for Councillor Shenton be recorded: Councillors' Burgess, Dymond, Gardner, Horsfall, B. Johnson, Jones, Kearon, Lawley, Moffatt, Robinson, Rout, Shenton, G Williams and Wright.*

*Councillor S Tagg requested his vote for Councillor Northcott be recorded.*

**Waste and Mineral Site Liaison Committee - Holditch** - Councillor Owen

**West Midland Reserve Forces and Cadets Association** - Councillor Sweeney

*The following Members requested that their vote for Councillor Stubbs be recorded: Councillors' Burgess, Dymond, Gardner, B. Johnson, Jones, Kearon, Moffatt, Robinson, Rout, and G Williams.*

*Councillor Northcott requested his vote for Councillor Sweeney be recorded.*

- Resolved:**
- (i) That the list of Representatives onto Outside Bodies, as set out in the Supplementary agenda and those Members listed above following a vote having been taken, be agreed and the Members appointed accordingly.
  - (ii) That all terms of office on outside bodies be extended to 5 May, 2022 to coincide with the four year term of office held by all elected members.

15. **STANDING ORDER 18 - URGENT BUSINESS**

There was no urgent business.

**COUNCILLOR MRS GILL HEESOM**  
Chair

**COUNCILLOR SIMON WHITE**  
Chair

Classification: NULBC **UNCLASSIFIED**  
**Council - 15/05/19**

Meeting concluded at 8.32 pm

## NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

### EXECUTIVE MANAGEMENT TEAM'S REPORT TO COUNCIL

Date 24 July 2019

1. **REPORT TITLE** Constitution - Review of the Council's Contract Procedure Rules & Member/Officer Planning Enforcement Protocol
- Submitted by:** Interim Head of Legal / Monitoring Officer
- Portfolios:** Leader, Finance and Efficiency, Leisure, Culture & Heritage, Planning & Growth
- Ward(s) affected:** All

#### **Purpose of the Report**

The report summarises the proposed changes to the Council's Contract Procedure Rules and the Member/Officer Planning Enforcement Protocol following consideration by the Constitution & Member Support Working Group. The report also recommends the deletion of two appendices currently part of the Council's Constitution.

#### **Recommendations**

**That:**

- a) **The proposed changes to the Contract Procedure Rules as set out in Appendix A to the report are agreed and adopted.**
- b) **The Member/Officer Planning Enforcement Protocol at Appendix B is agreed and adopted.**
- c) **The Appendices 15 (ICT Strategy) and 26 (Communications Strategy) are removed from the Council's Constitution.**

#### **Reasons**

The Contract Procedure Rules form part of the council's constitution (at Appendix 12) and a review of the current rules is required to include updates in legislation, options to improve efficiency and best practice guidance. It should also be noted that further changes are likely to be required following BREXIT as the current Contract Procedure Rules include a number of references to EU procurement/directives.

The Member/Officer Planning Enforcement Protocol is a new protocol and has been considered and approved by the Planning Committee at its meeting on 26 March 2019.

The deletion of Appendices 15 and 26 of the Constitution is also recommended on the basis that it is not standard practice to include such strategies within the Constitution and both documents are out of date in any event.

#### 1. **Background - Contract Procedure Rules**

- 1.1 The Contract Procedure Rules form part of the Council's Constitution (at Appendix 12) and provide a corporate framework for the procurement of all goods, services and works for the Council. The Rules are designed to ensure that all procurement activity is conducted with

openness, probity and accountability and that the Council obtains value for money as well as the required level of quality and performance in all contracts that are let.

- 1.2 The Contract Procedure Rules are subject to review and a number of amendments, updates and additions have been identified which the Constitution and Members Support Working Group reviewed at their meeting on 3<sup>rd</sup> July 2019 and are now recommending that Council approve.

## 2. **Issues**

- 2.1 The provisions contained in the Rules are subject to the statutory requirements of both the European Union and the United Kingdom Government. The rules contain various references to European legislation which are likely to be needed to be amended following BREXIT.
- 2.2 A need to include further details on alternate procurement routes to market have been identified and included as part of this review and update.
- 2.3 With the introduction of a council supplier contract management website (My Tenders) this has resulted in a change in the receipt and custody section for tenders and quotations which negates the need for manual recording of their receipt since the My Tenders portal delivers an e-recording solution as part of the process. The Rules have been amended accordingly.
- 2.4 The Rules contain a number of links to external pages that are either no longer relevant or are no longer in use/available and as such will need to be removed from the Rules.
- 2.5 The current Rules say little about the considerations and implications of GDPR, Safeguarding, Modern Slavery on the Council's Procurement Processes.

## 3. **Options Considered**

- 3.1 There is an option to do nothing and to update Contract Procedure Rules post BREXIT when there will be further changes required; however unfortunately the continued delay in delivering BREXIT would delay the provision of up to date information on a number of changes that impact on the delivery of compliant procurement across the authority.

## 4. **Proposal**

- 4.1 A summary of the changes proposed includes;
  - A document control page which aids tracking of changes has been introduced;
  - There are a number of tracked comments linked to references to EU Procurement, within the document that will need to be updated post BREXIT;
  - The receipt and custody section for tenders and quotations has been updated to reflect the e-recording process delivered by the council supplier contract management website (My Tenders);
  - A reference to the council's 'Retention & Disposal' and the requirements placed on the lead officer regarding the retention of information has been added;
  - A reference to the General Data Protection Regulations (GDPR) has been included;



- A reference to setting up a council run 'Framework Agreement' has been added;
- A reference to setting up a council run 'Dynamic Purchasing System' has been added;
- Guidance to establishing a 'Framework Agreement' / 'Dynamic Purchasing System' have been included to support officers in this work;
- A reference to Modern Slavery and procurement considerations has been included;
- A reference to Safeguarding and procurement considerations has been included;

(a copy of the Contract Procedure Rules with all tracked changes is attached to this report at Appendix A).

## **5. Member / Officer Planning Enforcement Protocol**

- 5.1 The proposed new Member/Officer Planning Enforcement Protocol has been prepared by Planning Officers in consultation with the Planning and Growth Portfolio holder and was approved the Constitution & Member Support Working Group on 20 March 2019 and by members of the Planning Committee at their meeting on the 26 March 2019.
- 5.2 The Protocol is designed to be read in conjunction with the existing Members Protocol on Planning Matters which is set out at Appendix 21 to the Constitution and, if approved by Council, will be added as an additional Appendix to the Constitution.
- 5.3 The Protocol sets out the processes to be followed in relation to enforcement issues and the text highlighted in bold highlights the changes from current practice. Under the Protocol members will be provided with a weekly list of cases received in their ward. Given the number of cases received it is not considered practical to provide members with updates on all cases received but this can be provided on request.
- 5.4 The Protocol also provides for members to be able to request in writing that the Chair of Planning asks the Head of Planning to report to Committee on a particular enforcement Matter and provides that a Ward Member who is not on the Planning Committee may speak on the matter in the same was as a Member of the Public (provided the item is not confidential).

## **6. Appendices 15 (ICT Strategy) and 26 (Communications Strategy)**

- 6.1 The Constitution and Members Support Working Group also reviewed the inclusion of the ICT Strategy and Communications Strategy within the Constitution. Members were advised that it was not standard practice to include these items within the Constitution and in fact both Strategies were out of date and due for review. The documents were fairly lengthy and it was felt that a more streamlined and user friendly Constitution would be beneficial. The Group agreed to recommend the deletion of the Strategies in the circumstances.

## **7 Reasons for Preferred Solution**

- 7.1 Approval of the recommendations and adoption of the proposed changes to the Contract Procedure Rules will aid officers as part of a devolved procurement structure that exists

within the council. It should be noted that there will be a need for further changes post BREXIT.

7.2 The new Member/Officer Planning Enforcement Protocol updates and improves current practice in relation to enforcement matters.

7.3 The two appendices are no longer relevant and would not normally be included with the formal Constitution.

8. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

8.1 The Contract Procedure Rules form part of the Council's Constitution and are designed to ensure that all procurement activity is conducted with openness, probity and accountability.

8.2 The Contract Procedure Rules have both a direct and indirect impact on the council's four corporate priorities:

- Local Services that Work for Local People
- Growing our People and Places
- Healthy, Active and Safe Borough
- A Town Centre for All

9. **Legal and Statutory Implications**

9.1 All local authorities are required by law to have a written Constitution which must be kept under regular review. Any amendments to the Constitution require the approval of full Council.

10. **Equality Impact Assessment**

10.1 Where any equality impact has been identified it has been addressed.

11. **Financial and Resource Implications**

11.1 No significant additional resources will be required in relation to the recommendations.

12. **Major Risks**

12.1 That the Contract Procedure Rules do not reflect up to date legal requirements and/or best practice resulting in challenge to the Council's decisions and/or reputational damage.

12.2 The update to council's 'Contract Procedure Rules' supports in the mitigation of the above major risk.

13. **Sustainability and Climate Change Implications**

13.1 No direct implications

14. **Key Decision Information**

14.1 This is not a key decision which requires inclusion in the forward plan.

15. **Earlier Cabinet/Committee Resolutions**

Report to Planning Committee 26 March 2019 – **Member/Officer Planning Enforcement Protocol**

16 **List of Appendices**

16.1 A copy of the Contract Procedure Rules with all tracked changes is attached at (Appendix A) to this report and the draft **Member/Officer Planning Enforcement Protocol is attached at Appendix B**

17. **Background Papers**

17.1 There are no additional background papers

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Appendix 'A'

## APPENDIX 12

### CONTRACT PROCEDURE RULES

#### Document Control

<b>Organisation</b>	Newcastle-under-Lyme Borough Council
<b>Title</b>	Contract Procedural Rules
<b>Filename</b>	
<b>Owner</b>	Business Improvement Manager
<b>Review date</b>	May 2019

#### Revision History

Revision Date	Reviser	Previous Version	Description of Revision
01.07.2014	Simon Sowerby	0.1	Initial draft – to Head of Service – Mark Bailey
02.07.2014	Simon Sowerby	0.2	Amended draft – to Head of Service – Mark Bailey
04.08.2014	Simon Sowerby	0.3	Amended draft – to Head of Service – Mark Bailey
11.08.2014	Simon Sowerby	0.4	Amended draft – to Head of Service – Mark Bailey
12.08.2014	Simon Sowerby	0.5	Amended draft – to Head of Service – Mark Bailey
16.09.2014	Simon Sowerby	0.6	Amended draft – to Head of Service – Mark Bailey
01.10.2014	Simon Sowerby	0.7	Amended draft – to Head of Service – Mark Bailey
02.01.2015	Simon Sowerby	1.0	Mark Bailey - Approved
31.05.2019	Simon Sowerby	1.1	Review and update plus tracked changes to – Legal services

#### Document Approvals

This document requires the following approvals:

Sponsor Approval	Name	Date
Monitoring Officer / Legal services		
Executive Management Team		

#### Document Distribution

This document will be distributed to:

Executive Management Team
Cabinet
Heads of Service
Business Managers
Constitution and Member Support Working Group

## **CONTRACT PROCEDURE RULES**

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**1. INTRODUCTION**

1.1 Procurement is the process by which the Council manages the acquisition of all its goods, services and works. It includes the identification of need, consideration of options, the actual procurement process and the subsequent management and review of the contracts.

1.2 These Contract Procedure Rules provide a corporate framework for the procurement of all goods, services and works for the Council. The Rules are designed to ensure that all procurement activity is conducted with openness, probity and accountability. Above all, the Rules are designed to ensure that the Council obtains value for money and the required level of quality and performance in all contracts that are let.

1.3 In these Rules, the following definitions apply:

**Contract** Means any form of contract, agreement or other arrangement for the supply of goods, services or work.

**Council** Means the Borough Council of Newcastle-under-Lyme.

**Code of Practice** Means the Council's Code of Practice for Procurement – this includes accompanying guidance.

**Services** Includes all services which the Council purchases or obtains including advice, specialist consultancy work, agency staff, etc.

**Works** Includes all construction and repairs in respect of physical assets (buildings, etc.).

**Strategic Procurement Team** Means officers responsible for strategic procurement support (Business Improvement Manager and/or Business Improvement Officer Performance and Procurement)

**Lead Officer** The officer within the Council/Service Area taking the lead on the procurement exercise.

**Chief Officer(s)** Means (one of) the following:  
Chief Executive  
Executive Director (Operational Services)  
Executive Director (Regeneration and Development)  
Executive Director (Resources and Support Services)  
  
who together as a group form the Council's Executive Management Team (EMT) and have responsibility for the day to day management of the Council and its officers.

**Section 151 Officer** Is a statutory position under Section 151 of the Local Government Act 1972. The Executive Director (Resources and Support Services) currently holds this position.

**Maverick Spend** Refers to purchasing made outside of agreed contracts and



the councils contract procedural rules.

<b>Monitoring Officer</b>	Is a statutory position under Section 5 of the Local Government and Housing Act 1989, as amended by Schedule 5, paragraph 24 of the Local Government Act 2000.
<b>Service</b>	The relevant Service area within the Council.
<b>Head of Service</b>	Means a senior manager with responsibility for the Service.
<b>Business Manager</b>	Means a manager with responsibility for a business area within the Service.
<b>Authorised Officer</b>	Means any officer who by the nature of his or her job, or as directed by a Head of Service or Business Manager, is authorised to place orders.
<b>Financial Regulations</b>	Means the financial regulations issued by the Section 151 Officer and approved by the Council.
<b>International Financial Reporting Standards (IFRS)</b>	Means a common global language for business affairs so that company accounts are understandable and comparable across international boundaries.
<b>Rules</b>	Means these Contract Procedure Rules.
<b>Cabinet</b>	Means the part of the Council which is responsible for most day-to-day decisions.
<b>Constitution</b>	This document sets out how the Council operates, how decisions are made and the procedures which are followed.
<b>Cabinet Portfolio Holder</b>	Means a member of the Cabinet with a specific area of responsibility (known as a portfolio) to ensure greater accountability for the decisions taken by Cabinet.
<b>TUPE</b>	TUPE is an acronym for 'Transfer of Employment (Protection of Employment) Regulations 2006 (amended in 2014). These Regulations preserve employees' terms and conditions when a business or undertaking (or part of one) is transferred to a new employer.
<b>Supplier Contract Management System/website</b>	The portal used by the council to publish contract notices, upload procurement documents, receive and respond to clarifications, receive bids and publish award notices.

- 1.4 These Rules apply to all contracts whereby the Council pays for goods, services or works. The Public Procurement Regulations or their equivalents do not apply to income based contracts (arrangements whereby the Council gets an income from a

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third party). However, it is good practice to always follow the principles of these Contract Procedure Rules when awarding such arrangements. Advice must always be sought from the Section 151 Officer when dealing with income based arrangements.

- 1.5 All values referred to in these Rules are exclusive of VAT.
- 1.6 Any dispute regarding interpretation of these Rules shall be referred to the Section 151 Officer for resolution.
- 1.7 The Section 151 Officer (or their nominee/s) shall undertake a formal review of the Rules on an annual basis.
- 1.8 These Rules do not apply to:
  - (a) Contracts of employment
  - (b) Contracts relating to interest in land
  - (c) The engagement of Counsel or other legal advisers; or
  - (d) Contracts relating to Treasury Management entered into by the Section 151 Officer in pursuance of the powers delegated to him under the Council's Constitution
- 1.9 Whereas the titles of Chief Officers are shown in these Rules, their nominees may undertake the responsibilities listed during their principal's absence provided they have written authority from the relevant Chief Officer to do so. This shall not be the case where statute law, or resolution of the Council, or a decision of the Council's Cabinet, requires otherwise.

## **2. COMPLIANCE WITH CONTRACT PROCEDURE RULES**

- 2.1 The provisions contained in these Rules are subject to the statutory requirements of both the European Union and the United Kingdom Government. The letting and content of contracts shall conform to all statutory requirements and be subject to any over-riding directives of the European Union relating to contracts and procurement. This Rule cannot be waived since a failure to comply with European legislation may result in a legal challenge with consequent reputational and financial risk.

**Commented [SS1]:** Any reference to the European Union will need to be reviewed post BREXIT...

In addition, where specific statutory procedures are prescribed for certain types of procurement or contract, then these procedures must be followed at all times. In any case where the Council approves, through a resolution of its Cabinet, to have separate Procedure Rules for particular types of contract, then such Rules (which must be prepared in consultation with the Chief Executive, the Section 151 Officer and the Monitoring Officer will take precedence over these Rules.

- 2.2 Subject to Rules 2.1 and 2.3, every contract for the supply of goods and services and for the execution of works made by or on behalf of the Council shall comply with these Rules, the Council's Financial Regulations and the Council's Procurement Strategy. All Council employees and organisations or companies engaged to act in any capacity to procure, manage or supervise a contract on behalf of the Council must be provided with a copy of (or access to) these Rules and comply with them.

Any exception to this Rule may only be made with the written authority of a Chief Officer or the Monitoring Officer.

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- 2.3 A written record of any exception from the provisions of these Rules shall be made by a Chief Officer or his or her nominee and the Monitoring Officer. An 'exceptions form' must be completed for every instance where a Chief Officer approves an exception from these Rules. The form must adequately document the reasons for the exception and an electronic copy must be retained by the Service concerned. A copy of each completed form shall be forwarded to the Chief Officer concerned, the Monitoring Officer, Internal Audit and the Strategic Procurement Team where a record of all exceptions is maintained. The Chief Officer concerned is responsible for keeping the appropriate Cabinet Portfolio Holder informed.
- 2.4 All procurement activity must be undertaken with regard to high standards of probity and in accordance with the relevant sections of the Council's Constitution. All officers should manage procurement activity in a manner which avoids any conflicts of interest, and if any conflicts of interest do arise, these should be referred immediately to the Monitoring Officer, and recorded in the Register of Disclosures and Pecuniary Interests by Officers, which is kept in the office of the Legal Practice Administrator.
- 2.5 All procurement and spend activity shall comply with these Contract Procedural Rules, none compliance / Maverick spend, will be reported to the council's internal governance/monitoring committee (Statutory Officers Group) for action.
- 2.6 The procurement of goods, services and works must comply with UK and European Union public procurement legislation where applicable. Where such legislation is applicable and any conflict with these Rules arises, EU Directives and/or UK legislation take precedence over these Rules. Current regulations require tenders to be advertised in the EU Journal where the value exceed those set (and reviewed) by the European Union on a two yearly basis.

Commented [SS2]: See comment SS1...

Commented [SS3]: See comment SS1...

In estimating relevant values, officers shall have regard to the rules addressing aggregation. The estimated value payable over the life of the contract or, in instances where the total contract value is difficult to estimate, the approximate monthly value of the contract, multiplied by 48. Requirements must be calculated based on all Council spend (i.e. the corporate requirement rather than individual service needs) and must not be divided into two or more smaller purchases as this is in breach of the aggregation rules.

Further detail in relation to aggregation can be found in the Public Contract Regulations 2006.

Commented [SS4]: See comment SS1...

- 2.7 Chief Officers are responsible for ensuring processes are in place to comply with these regulations within their own Service.
- 2.8 **Partnerships**

These Rules apply to any proposal for the Council to become involved in a joint venture or partnership, including the monitoring of any such arrangement.

- (a) In relation to the Rules, a joint venture or partnership includes any arrangement involving one or more organisations in addition to the Council through which either a specific project or services within any of the functions of the Council are to be provided, and

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- (b) Provides a role for the Council or any of its Members or officers in whatever structure is used to deliver the project or services involved (such structures may include, but are not limited to, companies, trusts and management committees).
- 2.9 Before any consideration is given to the Council entering into a joint venture with the private sector or a strategic service delivery partnership with any external organisation and in particular before any detailed negotiations are entered into or before any contract is made or undertaking given by or on behalf of the Council in relation to a joint venture or partnership, the Chief Officer concerned must submit detailed information concerning the proposed joint venture or partnership to the Chief Executive. The Chief Executive will give consideration to the proposed joint venture in accordance with these Rules. On receipt of the detailed information above, the Chief Executive will liaise with the relevant Chief Officer(s) or his/her representative(s) to ensure that an appropriate project board is convened.
- 2.10 Procurement processes for strategic partnerships and PFI projects must include, where relevant:
- a) The issue of an information memorandum to prospective bidders setting out the background to the project, the Council's objectives and an outline of the procurement process and timetable, with roles and responsibilities made clear (the drafting of which can be supported by the Strategic Procurement Team);
  - b) An invitation to bidders to demonstrate their track record in achieving value for money through effective use of their supply chain, including the use of small firms. This should continue to be examined as part of contract management;
  - c) A requirement on bidders which must be included in their invitations to tender (or negotiate for partnerships) to submit optional, priced proposals for the delivery of specified social benefits/value which are relevant to the contract and add value to the community strategy.

### **3. NORMAL PROCEDURE**

- 3.1 These Rules relate to three categories of procurement based on the estimated value of the contract:
- a) Up to £5,000;
  - b) £5,001 to £30,000 (inclusive);
  - c) £30,001 to £50,000 (inclusive);
  - d) In excess of £50,000;
- 3.2 In all instances, goods, services or works must be obtained via appropriate existing approved arrangements where these exist. These include:
- a) In-house services (for example facilities management);
  - b) Established corporate contracts and approved arrangements;
  - c) For works (construction) related compliant frameworks where these are available for the Council to use;

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The following arrangements shall be used where it is considered that they provide value for money for the Council:

- d) Use of contracts which have been established by consortia of which are available to the Council (for example Yorkshire Purchasing Organisation (YPO); Eastern Shires Purchasing Organisation (ESPO) – both being part of the Pro5 consortia);
- e) Direct purchasing from YPO, ESPO (i.e. products available from published catalogue);
- f) Approved nationally negotiated contracts (for example those arranged by Crown Commercial Services (CCS));
- g) Approved e-Procurement solutions;
- h) For low value purchases, purchasing cards can be used provided they are not used with the intention of undermining the use of approved or corporate contracts or as a method of circumventing aggregation rules;

Information relating to the above arrangements will be published regularly on the Council's intranet.

Where the Council has an in-house service, external companies should not be used for these services unless the Head of Service (responsible for the in-house service) confirms specifically that they are unable to meet requirements on that occasion.

Use of Council contracts shall be mandatory for the supply of the goods/services included in the contract specification.

- 3.3 Orders and payments for goods, services and works shall be undertaken in accordance with Financial Regulations. Orders must be placed, using approved Council systems, in advance of the receipt of the goods/services and orders must be coded to appropriate account codes.
- 3.4 Where the supply is of a significantly higher than normal value for the existing arrangement in Rule 3.2 – for example for bulk purchases – the Authorised Officer should consult with the Strategic Procurement Team to determine whether special rates should be sought or whether an alternative procurement procedure may be required.
- 3.5 Prior to inviting tenders or quotations, the Authorised Officer must:
  - a) Ensure that there is not another arrangement which must be used instead, as per paragraph 3.2 above, and;
  - b) For contracts where there is evident risk, and for all contracts over £50,000, produce and maintain a documented risk log for the procurement process and for the eventual contractual relationship. As a minimum this should analyse all risks, identify how the risks will be managed, the responsible officer(s) and the review periods as per the Council's procurement risk log template;
  - c) Consider at the outset, through the use of the procurement risk log, any equality and diversity, social, environmental, economic, ethical, health and wellbeing and workforce implications in respect of the provision of supplies, services or works;

**Commented [SS5]:** Client officers need to be reminded of this need as part any future procurement / risk training undertaken corporately.

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- d) In support of the Public Services (Social Value) Act 2012, it should be considered at the outset, in the development of the procurement risk log, how the contract can improve the social, economic and environmental wellbeing of the Borough of Newcastle-under-Lyme, its citizens and businesses and this should be built into the contract where appropriate. The Service must be able to demonstrate that social value has been considered and, where applicable to the subject matter of the contract sought and achieved. The Service must also record that it considered whether it was appropriate to consult with stakeholders in respect of social value and the reasons for its decision;
- e) Be satisfied that a specification (where appropriate), that will form the basis of the contract, has been prepared (the specification should be retained on the appropriate contract file held within the Service);
- f) Be satisfied that all key stakeholders have been identified and consulted, and their views represented in the procurement risk log, specification and contract documents;
- g) Have prepared and documented an estimate of the whole life cost of the contract including (where appropriate) any maintenance and ongoing costs (the estimate should be retained on the appropriate contract file held within the Service);
- h) Ensure that all evaluation criteria (including sub-criteria) have been determined in advance, put into order of relative importance with weightings for each criteria and sub-criteria and published in the tender documentation;
- i) Ensure that an appropriate procurement process is undertaken based on the whole life cost of the contract;
- j) For all contracts, regardless of value, no person with a personal or financial interest in any of the bidders submitting proposals should be involved in evaluating quotations or tenders or involved in any way in influencing the decision as to which company is to be awarded the contract. A declaration of interest form must be completed by each officer involved in evaluating bids and held on file by the Lead Officer, where the Lead Officer is or forms part of the evaluation team the Monitoring Officer will be requested to hold declarations of interest on file;
- k) Be satisfied that he or she has taken advice from the Strategic Procurement Team, Legal Services and Financial Services;
- l) Be satisfied that he or she has the necessary authority to enter into the contract.

3.6 Before entering into a contract the Authorised Officer must:

- (a) Have undertaken a due diligence process to ensure the proposed contract is robust;
- (b) Be satisfied about the technical capability of such proposed contractor;
- (c) Ensure that these Rules and Financial Regulations have been complied with, and that the proposed contract represents value for money;
- (d) For all contracts that exceed £30,001 and/or where deemed appropriate, the Authorised Officer shall undertake appropriate checks to ensure that the proposed contractor has the financial and resource capacity (taking account of

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contract value and risk) to perform the contract (unless the contractor has already been subjected to a recent satisfactory financial check). Financial vetting shall be undertaken by Internal Audit, who will advise on what, if any, security should be provided by the contractor. Under no circumstances must a company be eliminated from a procurement process on the basis of a credit reference check only;

(e) The Chief Officer responsible for the contract must ensure that a suitably experienced and trained officer is identified to adequately manage the contract the Council enters into.

3.7 In all instances, procurement shall be undertaken in accordance with the principles of Best Value, and in a manner that is non-discriminatory, transparent and fair.

3.8 In instances where the Council's policy of payment settlement in 30 days will cause problems to a company or voluntary sector organisation, or early settlement will attract a discounted rate from the company, alternative settlement dates can be considered. Any company can request quicker payment terms by contacting the Council's relevant Authorised Officer.

Payment in advance may be required by small businesses, social enterprise or voluntary sector organisations but it must be used with care to:

- a) Ensure that the agreement with the organisation protects the Council as far as possible;
- b) Be satisfied that the risk is low and managed;
- c) Be satisfied that the small company, social enterprise or voluntary sector organisation has to incur costs in advance and that this will place it in a financially difficult position;
- d) Ensure that payments are charged to the appropriate financial year (*this is particularly important with an advance payment*);

3.9 The Council publishes on its website all items of expenditure on goods, services and works which exceed £500 in value. Prior to placing any order, officers must consider whether the expenditure can be justified. Orders must not be artificially split with the intention of bringing the value of each order below £500, or order less than is actually required.

3.10 Contracts for goods, services and works shall be structured, where appropriate and within the legislative framework, to support and promote the policies and corporate priorities of the Council. In particular, where appropriate and subject to procurement law, officers should encourage and/or invite local suppliers to bid for Council contracts. Also, ensure that tenders are not framed in such way as to unnecessarily debar small and medium sized companies, the voluntary sector and social enterprises from bidding.

3.11 Where available, tenders should be advertised on the regional procurement portal.

**NOTE:** case law has established that, even when contract values fall below EU Procurement Directive thresholds (above which the full requirements of the Directives apply), contracting authorities must ensure a degree of contract advertising sufficient to ensure competition, to avoid discrimination on the grounds of nationality and allow

Commented [SS6]: See comment SS1...

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the impartiality of procurement procedures to be reviewed. Advertising opportunities on the regional procurement portal supports compliance with this requirement.

- 3.12 All tenders must be advertised and, where appropriate, be available for download (where available) on a regional procurement portal. Contract award notices shall also be published on the website in a timely manner following contract award. For procurements less than £5,000, the use of Micro; Small to Medium Enterprises and/or a voluntary sector and/or social enterprise directory should be used, where appropriate, to source potential voluntary sector suppliers to invite to quote. In cases where a quotation process is deemed appropriate for a contract over £10,000, these should be placed on a regional procurement portal (if available). If this is not available, the council's supplier contract management website should be used for advertising / publishing contract opportunities.
- 3.13 Where there are no arrangements in place as per 3.2 above, orders with a value of less than £5,000 should be placed with suppliers from the local area where possible, utilising an informal quotation process.
- 3.14 All tenders advertised in the European Journal must be placed via an electronic system. Officers must ensure that entries into the Official Journal of the European Union (OJEU) fully comply with requirements/guidance on producing notices for the European Journal. This is available from the Strategic Procurement Team.
- 3.15 All EU notices for non-routine procurement MUST be referred, in advance of sending to the OJEU, to the Strategic Procurement Team for advice on wording.
- 3.16 All quotes and tenders must be undertaken using the Council's standard template documentation, unless prior approval has been obtained from the Section 151 Officer or the procurement is construction related, where JCT/JCI templates are able to be used.
- 3.17 Any project to develop a strategic service delivery partnership (which may or may not involve a transfer of staff to an external organisation) shall be undertaken in accordance with appropriate legislation.

Commented [SS7]: See comment SS1...

Commented [SS8]: See comment SS1...

**The Chief Executive must be notified prior to commencing any such initiative**

- 3.18 Any project to develop a strategic service delivery partnership (which may or may not involve a transfer of staff to an external organisation) must be referred to the Council's Cabinet for:
- a) Initial approval to commence the project, and;
  - b) Approval to award the contract which must be supported by a robust business case.
- 3.19 Any project which involves significant risk including: staff transfer, significant implications across a number of service areas or significant potential for reputational or financial risk, must be managed in an appropriate manner using Council approved project management methodology and progress reports must be provided to the Executive Management Team at key milestones, these to be agreed with the relevant Chief Officer.

Commented [SS9]: There has been no council approved project management methodology for some time albeit the re-introduction of such is a future consideration.

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- 3.20 Evaluation of tenders and quotations must be based on whole life costs, or total cost of ownership, including environmental, social and economic benefits where relevant to the contract.
- 3.21 The Council will achieve employment and skills outcomes through procurement where relevant to the purpose of a contract. Where relevant to the subject matter of the contract, the bidders' approach to tackling unemployment and creating training and apprenticeship opportunities should be built into the procurement process.
- 3.22 Where the Council will own an asset as a result of a contract, the asset has to be recorded in accordance with International Financial Reporting Standards (IFRS).
- 3.23 Where these situations arise, the Section 151 Officer must be contacted in the early stages of the procurement process in order to identify any IFRS implications and record them appropriately.

#### **4. EXCEPTIONS TO CONTRACT PROCEDURE RULES**

- 4.1 Subject to statutory requirements, tenders need not be invited in accordance with these Rules in the following cases:
- (a) In the case of the supply of goods:
    - (i) the goods or materials are proprietary articles and in the opinion of the appropriate Chief Officer no reasonably satisfactory alternative is available, or;
    - (ii) the prices of goods or materials are wholly controlled by statutory bodies, trade organisations or Government Order and in the opinion of the appropriate Chief Officer no reasonable satisfactory alternative is available;
  - (b) The work to be executed or the goods or services to be supplied are controlled by a statutory body;
  - (c) The contract is for the execution of work or the supply of goods or services certified by the appropriate Chief Officer to be required so urgently as to preclude the invitation of tenders. The appropriate Cabinet Portfolio Holder shall be kept informed of such decisions;
  - (d) The purchase of a named or proprietary product required to be compatible with an existing installation as approved by the Authorised Officer;
  - (e) Where the contract, subject to the approval of the Section 151 Officer relates to security work where the publication of documents or details in the tendering process could prejudice the security of the works to be done;
  - (f) In any case of work to be executed or goods or services to be supplied the Authorised Officer, in consultation with the Section 151 Officer, decides that there can be no genuine competition;

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- 4.2 An 'exceptions form' (see Annex 1) must be completed for every instance where a Chief Officer approves an exception from these Rules for contracts with a total value of £5,000 or more, in accordance with 2.3 above.
- 4.3 Nothing contained in the above exceptions exempts officers either from using the Council's internal services or from following established arrangements in accordance with Rule 3.2. Officers must ensure that the best possible balance of value for money and quality is obtained for the Council.
- 4.4 Tenders need not be invited in accordance with these Rules where they have been undertaken by or on behalf of any consortium, collaboration or similar body, of which the Council is either a member or is able to access contracts for goods, services or works. Officers should ensure that any contracts let by such a consortium, collaboration or similar body are in accordance with UK and EU procurement **directives** and regulations and that the Council is legally able to access the arrangements. Advice should be sought from the Strategic Procurement Team.
- 4.5 Where the Council acts as lead body on a consortium or collaborative arrangement, the procedures for tendering contained within these Rules shall be followed (including the delivery, opening and acceptance of tenders) unless those provisions are inconsistent with the method by which tenders are dealt with by the consortium, collaboration or other body concerned and are not detrimental to the Council.
- 4.6 Where another body is acting on behalf of the Council, the Council is providing funding to another body to undertake a scheme or project or the Council is provided funding from another organisation, satisfactory processes must be put in place and followed. Advice must be sought from the Section 151 Officer.
- 4.7 The budget required (both capital and revenue) over the lifetime of the goods/service/works being procured must be confirmed by the relevant budget holder prior to the commencement of any tender or quotation process.

Commented [SS10]: See comment SS1...

## **5. CONTRACTS UNDER £5,000**

- 5.1 These rules, in general, do not apply to contracts of less than £5,000. However, Rules 3.2, 3.7, 3.8 and 3.9 and the following principles apply to all procurement activity, irrespective of value.
- 5.2 Where Goods or Services are regularly required and arrangements illustrated in Rule 3.2 do not exist, these should be reported to the Section 151 Officer who will assess the need for appropriate arrangements to be put in place.
- 5.3 Officers should order Goods and Services that are required through an arrangement illustrated in Rule 3.2. Unless otherwise approved by the relevant Chief Officer (for the in-house service), external businesses will not be used where the Council has its own in-house services.

If a corporate contract cannot meet the reasonable needs of the Service, the Authorised Officer must inform the Section 151 Officer before using an alternative supplier.

- 5.4 Contract / procurement expenditure is monitored through the financial systems and a Service will be challenged on the use of non-contracted or inappropriate arrangements.

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- 5.5 It is good practice (for all but small value and routine purchases) to obtain a written quotation. All quotations to the value of £5,000 can be provided by way of an informal quotation i.e. the Authorised Officer obtaining electronic quotations and maintaining (electronic) file copies linked to the relevant procurement. Whilst the council's supplier contract management website is available for use as part of routine purchases there is no formal requirement to utilise this process for quotations to the value of £5,000.
- 5.6 The Authorised Officer (ICT) must be informed of any system or hardware related procurements, regardless of value.

## **6. CONTRACTS VALUED £5,000 TO £50,000 INCLUSIVE**

- 6.1 Contracts that are estimated to be for amounts between £5,000 and £50,000 (inclusive) shall be let on a competitive basis, normally via a request for quotes, unless an arrangement under Rule 3.2 has already been established for the Goods, Services or Works required.
- 6.2 A clear specification of requirements (identifying outputs or outcomes rather than inputs, unless there is a demonstrable need to specify inputs) should be produced and the Authorised Officer shall place the quotation on to (where available) a regional procurement portal. Where this is not available, the council's supplier contract management website should be used for advertising to support transparency and promotion of a competitive bidding process (in accordance with Rule 3.12).
- 6.3 A minimum of two (for contract values of £5,000 to £30,000) and three (for contract values of £30,001 to £50,000) companies shall be invited to submit a quotation through (where available) a regional procurement portal. Where this is not available the council's supplier contract management website should be used for advertising to support transparency and promotion of a competitive bidding process.
- 6.4 In every instance there shall be a record of the process which will include:
- (a) the officer(s) undertaking the procurement process and taking the decisions;
  - (b) a copy of the specification and risk register (for contracts less than £50,000, a risk register is only required where there is evident risk);
  - (c) copies of all tenders or quotations;
  - (d) copy of the evaluation process and reasons for the decisions as to acceptance or rejection for every tender;
  - (e) the award letter;
  - (f) copy of the final contract;
  - (g) copy of the contract review and management process including the officer responsible for on-going contract management;
  - (h) a quotation profile which should be completed with details of the bid values and subsequent award information.

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6.5 All procurements for £5,000 and over **will be recorded on the Council's Contracts Register**.

## 7. **CONTRACTS OVER £50,000 – INVITATION TO TENDER**

7.1 For contracts whose estimated value is expected to be greater than £50,000 (but under current EU Procurement **Thresholds**) for Work, Materials, Goods or Services, the contract **will be recorded on the Council's Contracts Register** and the following tender procedures shall be adopted.

**Commented [SS11]:** See comment SS1...

7.2 The tendering procedure should follow the relevant EU prescribed time **limits**. Where there is no prescribed procedure, a closing date of between fourteen (14) and twenty-eight (28) days from the placing of the notice shall be given for reply.

**Commented [SS12]:** See comment SS1...

7.3 The invitation to tender shall state that no tender will be considered unless it is received by the date and time stipulated on the Invitation to Tender.

**Commented [SS13]:** This relates to a restricted (two stage procedure) which is no longer permissible under PCR2015.

7.4 Contractors must be chosen by one of the following methods:

- (a) selective tendering via open or
- (b) by way of a compliant framework agreement that the Council is authorised to use or a framework established itself (strategic procurement can support in reviewing compliance and/or the introduction of a council run framework);
- (c) requesting tenders on behalf of a consortium, association or similar organisation of which the Council is a member following the rules of that organisation; or
- (d) requesting tenders under the instructions of another authority for which the Council is acting as agent; or
- (e) selecting a contractor from a list of contractors with a schedule of rates approved and selected by another authority for which the Council is acting as an agent.

**Commented [SS14]:** See comment SS13...

7.5 The invitation to tender must include details of the Council's requirements for the particular contract including:

- (a) a form of tender, instructions to tenderers including a procurement timetable, evaluation criteria, financial reference requests, insurance, business continuity questionnaire, health and safety checklists, return details and draft contract terms approved by the Council's Legal Team (all tenders should have the facility to be submitted electronically);
- (b) A specification that describes clearly the Council's requirements in sufficient detail to enable the submission of competitive offers. The **EU** rules with regard to specification shall be followed and these are set out in the **EU** Codes of Practice;
- (c) Pricing mechanism and instructions for completion and;
- (d) Whether the Council is of the view that TUPE will apply;

**Commented [SS15]:** See comment SS1...

**Commented [SS16]:** See comment SS1...

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- (e) A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose);
- (f) A requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion. Where tender documentation is sent electronically, if selected, the tenderer may be required to submit the relevant signed documentation through conventional means;
- (g) Notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense;
- (h) The invitation to tender or quotation must state that the Council is not bound to accept any quotation or tender;
- (i) The method by which any arithmetical errors discovered in the submitted tenders is to be dealt with, in particular whether the overall price prevails over the rates in the tender or vice versa;

7.6 Except under the open procedure, all tenderers invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

7.7 Where any public advertisement has not defined the award criteria, invitations to tender must state the award criteria in objective terms and where possible in descending order of importance.

#### 7.8 Single Tenders

In exceptional circumstances, the relevant Chief Officer may decide that it is in the best interests of the Council:

- (a) that a single tender be invited for the execution of work from a contractor selected by it; or
- (b) that a contract be negotiated with a contractor currently engaged by the Council on the basis of rates and prices contained in an initial contract awarded by the Council following open competition.

In any such case he/she may do so subject to setting out in writing the reasons for the decision which shall be kept centrally in the Service concerned. The appropriate Cabinet Portfolio Holder shall be kept informed, and a copy of the decision sent to the Cabinet.

This provision cannot be used for contracts exceeding (in aggregate) the current EU thresholds.

Commented [SS17]: See comment SS1...

#### 8. **CONTRACTS OVER EU THRESHOLDS**

Commented [SS18]: See comment SS1...

8.1 Where the value of the contract is likely to exceed the European threshold (taking account of the rules of aggregation), it must be tendered in accordance with the relevant European procurement directive and procurement regulations. The

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Authorised Officer should record, retaining a file note on the reasons for adopting the selected procurement route (i.e. open tender, restricted tender, competitive dialogue or negotiated procedure, accelerated procedure). The exception to this Rule is in cases where Goods, Services or Works can be obtained through a framework contract which has been established via the relevant EU procurement process (for example, Crown Commercial Service frameworks).

Commented [SS19]: See comment SS1...

In estimating relevant values, officers shall have regard to the rules regarding aggregation (see Rule 2.5 above). Further detail in relation to aggregation can be found in the Public Contract Regulations 2006.

- 8.2 Any decision to adopt the negotiated, competitive dialogue or accelerated procedure should first be referred to the Strategic Procurement Team and Section 151 Officer.
- 8.3 The arrangements identified in Rule 3.2 shall be used provided the arrangement is clearly identified as relevant for high value contracts.
- 8.4 When a restricted process is undertaken, a minimum of 5 companies will be shortlisted to submit tenders (where 5 suitable suppliers express an interest).
- 8.5 Standard template documentation must be used to structure tender processes and the documentation must be placed where available on the e-tender portal to allow any company to express an interest in bidding (in the case of the restricted or competitive dialogue procedures) or to complete an Invitation to Tender (in the case of an open procedure).
- 8.6 In every instance there shall be a record of the process which will include the following, plus any information that may be required for submitting annual reports to the Government or other agencies:
  - (a) the officer(s) undertaking the procurement process and taking the decisions;
  - (b) the rationale for the procurement route taken (including open or restricted procedure if above EU thresholds);
  - (c) a copy of the specification and risk register;
  - (d) copies of all tenders and all associated correspondence/clarification obtained during the tender period;
  - (e) a copy of the evaluation process and reasons for the decisions as to acceptance or rejection for every tender;
  - (f) the award and unsuccessful letters;
  - (g) a copy of the final contract;
  - (h) a copy of the contract review and management process including the officer responsible for on-going contract management.

Commented [SS20]: See comment SS1...

Tender award and unsuccessful letters must be in the approved template format and following the issue of these letters, any requests for further information or clarification must be dealt with promptly and a full audit trail must be kept of all such dialogue.

All dialogue with bidders during the tender process must be dealt with using the e-tender regional portal to ensure that all bidders are provided with the same information at the same time in the process. Officers must not conduct separate dialogue using any other means with any company during the process without obtaining advice from the Strategic Procurement Team.

- 8.7 In accordance with EC Procurement Directive 2004/18/EC, and subsequent amendments in the Public Procurement (Miscellaneous Amendments) Regulations

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2011, any company responding to an EU tender shall be excluded from the tender process if it or its directors have been convicted of: conspiracy, corruption, bribery, fraud, money laundering, an offence in connection with the proceeds of criminal conduct or an offence in connection with the proceeds of drug trafficking. Any instances where a service has information relating to the above must contact the Audit **Manager** and Monitoring Officer for advice.

**Commented [SS21]:** The Council's audit management is outsourced to SoTCC do we remove the reference to Audit Manager? Worthy of further discussion at Statutory Officers Group.

8.8 Upon completion of the procurement process a formal contract award notice will be published in the Official Journal of the European Union (OJEU).

### 8.9 **Single Tenders**

In exceptional circumstances, the relevant Chief Officer may decide that it is in the best interests of the Council:

- (a) that a single tender be invited for the execution of work from a contractor selected by it; or
- (b) that a contract be negotiated with a contractor currently engaged by the Council on the basis of rates and prices contained in an initial contract awarded by the Council following open competition.

In any such case he/she may do so subject to setting out in writing the reasons for the decision which shall be kept centrally in the Service concerned. The appropriate Cabinet Portfolio Holder shall be kept informed, and a copy of the decision sent to the Cabinet.

This provision cannot be used for contracts exceeding (in aggregate) the current EU **thresholds**.

**Commented [SS22]:** See comment SS1...

## 9. **RECEIPT AND CUSTODY**

9.1 No tender will be considered unless it is received via the council's supplier contract management website specifically set up for the purpose of receipt of the said tender. Receipt of bids through the system is preferred and bidders will be encouraged to submit electronically.

Self Service facilities are available at the Customer Service Centres and support will be provided, if required.

9.2 All tenders sought on behalf of external agencies where these are to be named as client under a subsequent contract may be addressed and opened in accordance with the procedure rules, regulations and written requirements of such external agency.

9.3 Responses to Standard Selection Questionnaires (SSQs) and quotations are not deemed to be tenders and should be returned to the originating officer, electronically through the council's supplier contract management website. Submissions and responses in respect of negotiated procedure tenders and PFI projects must also be returned via the council's supplier contract management website.

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## **10. OPENING TENDERS**

- 10.1 Tenders received via the council's supplier contract management website shall be opened and recorded at one time and by one officer. Should the council require for any purposes tenders received in hard copy format shall be opened and recorded by not less than two officers designated for that purpose by the Monitoring Officer (or their nominated officer).
- 10.2 Should the council require for any purposes tenders to be submitted in hard copy format these must be opened by the same officer/s and at the same time as documents received via the council's supplier contract management website.
- 10.3 In respect of tenders with a value in excess of £50,000, any Member of the Council who so wishes may be present at the opening. Internal Audit also has the right to attend any tender opening.
- 10.4 Where external agencies contribute to the overall funding of a project, representatives of such agencies are permitted to attend the opening of tenders. They are allowed to make a note of the tenders and to also receive a copy of the subsequent written report on tenders received, provided that such representatives agree to observe commercial confidentiality and be bound by the confidentiality requirements of the Local Government Act 1972, as amended.

## **11. LATE TENDERS**

- 11.1 Where a tender is submitted in competition and is received after the specified time then it shall be disqualified. Any such tender should be returned promptly to the tenderer who should be notified accordingly. The tender envelope may be opened to ascertain the name and address of the tenderer concerned.
- 11.2 The only exception to Rule 11.1 where a late tender may be considered is if none of the other tenders received have been opened and no tenders have been received via the council's supplier contract management website. The officer responsible for the opening of tenders must keep a record of the date and time of receipt of late tenders and the circumstances resulting in their acceptance, late tenders having to be received in hard copy format as the council's supplier contract management website does not permit tender submissions after the date and time established in the portal.

## **12. ALTERATIONS**

- 12.1 An external tender can be amended after it has been received and before it has been accepted only in order to correct an arithmetical error or other discrepancy made in good faith, subject to the following:
- (a) The tenderer shall be given details of the error or discrepancy found during the examination of the tender and shall be given the opportunity of confirming the tender without amendment or withdrawing the tender;
- OR
- (b) Amending the tender to correct genuine arithmetical errors provided that in



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this case, apart from these arithmetical errors, no other adjustment, revision or qualification is made. In this case written confirmation should be requested from the tenderer as to the error or discrepancy and confirming what the corrected entry should be.

12.2 The appropriate Chief Officer must keep a record of all amendments made under this Rule and a copy of the record shall be sent to the Monitoring Officer.

### 13. ACCEPTANCE

13.1 Acceptance of tenders over £50,000 in value (whether payable by or to the Council) must be recorded in the minutes of the Cabinet or appropriate Committee<sup>1</sup>.

13.2 Contracts shall be evaluated and awarded in accordance with the evaluation criteria issued with the tender documentation. Only those tenders that comply with the evaluation criteria shall be considered for acceptance.

13.3 Tenders must be accepted on the basis of the “most economically advantageous” tender. The winning bidder will be determined by using the criteria and process communicated to bidders in the tender documentation:

(a) For clarity, (where applicable) whole-life costs should be assessed when determining the most economically advantageous tender. In the case of capital works this includes taking into account the revenue impact of capital projects over a reasonable life for the asset (for example a slight increase in capital cost, such as energy management features, will reduce running costs).

(b) In the case of PFI projects, financial evaluation and acceptance will be on the basis of the agreed financial model and all other relevant documents used during the process to determine the most economically advantageous tender.

(c) In the case of tenders or quotes below the EU threshold and where two or more tenders or quotations provide the same level of quality at the same quoted cost, environmental considerations (transport, packaging, etc.) may be used to determine the successful bid if they are relevant to the contract. Prior to the award of the contract, a due diligence process must be carried out for all high risk/high value contracts to ensure the preferred bid is bona fide and that it is fully understood what the Council will receive and what payment is to be made.

**Commented [SS23]:** The delivery of PFI projects are significantly reducing – do officers retain this paragraph? Worthy of further discussion at Statutory Officers Group.

**Commented [SS24]:** See comment SS1...

13.4 A tenderer who submits a qualified or conditional tender shall be given the opportunity to withdraw the qualification or condition without amendment to the tender. If the tenderer fails to do so, the tender must be rejected unless it is dealt with as an alteration in accordance with Rule 12.1.

13.5 Prior to final contract award, the contractor must provide evidence of adequate insurance cover for public and employers’ liability and professional indemnity insurance (where applicable) and produce such evidence during the life of the contract at the reasonable request of the Authorised Officer.

<sup>1</sup> This paragraph should be read in conjunction with: Part 2: Appendix 12; Section 13: para 13.2 (a to e) – relative to key decisions)

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- 13.6 All tenderers must be notified in writing of their success/failure in the tender/quotation process. Notifications must be made using template letters which must be issued electronically via email for quotations of greater than £5,000.
- 13.7 It is important to notify companies as soon as possible after their elimination from a process. Therefore any company eliminated at the SSQ stage must be informed promptly using the Council's agreed templates which can be found on the Council's intranet or made available from strategic procurement.

For all procurements covered by EU Directives, a minimum of 10 calendar days (where notification is made electronically) mandatory standstill period is required between the communication of the notification of the award decision and contract conclusion, with day one being the day after the award decision is issued, via the e-tender portal or alternatively by email. The standstill period must end on a weekday (excluding bank holidays). This notification must be in the Council's agreed template which can be found on Connexus (the council's intranet) and should be sent to all companies that remain in the process. This is to allow companies an opportunity to challenge the decision. The notification of the award decision, based on the most economically advantageous tender, must contain:

Commented [SS25]: See comment SS1...

- (a) the award criteria;
- (b) the score the tender obtained against those award criteria;
- (c) the score the winning tenderer obtained;
- (d) the name of the winning tenderer;
- (e) the characteristics and relative advantages of the winning tender;
- (f) precise details of standstill period (i.e. key dates).

NOTE: Where notification is not issued electronically or is followed up by posted notification, the standstill period must be no less than 15 calendar days.

- 13.8 All contract awards must be recorded on the council's supplier contract management website and councils contract register, and must include the name of the winning tenderer, bid value and performance monitoring information.
- 13.9 Upon completion, a formal contract award notice must be published in the Official Journal of the EU

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#### 14. **NEGOTIATIONS FOLLOWING RECEIPT OF TENDERS**

- 14.1 This Rule applies to all tenders.
- 14.2 In all tenders, it is essential that the principles of probity, fairness and equal treatment are applied. Therefore negotiation following receipt of tenders or quotations is only permissible in limited circumstances in order to address minor issues since inappropriate negotiation may expose the Council to risk of challenge. The Section 151 Officer must be consulted before any negotiation is undertaken.
- 14.3 Any negotiations shall be conducted on behalf of the Council by at least two appropriate officers and at least one must be from the service concerned (Head of Service & Business Manager and/or an officer from Strategic Procurement). The Section 151 Officer shall be invited to send a representative to the negotiation meetings. A full written record shall be kept of the results of the negotiations, approved by the Chief Officer or his or her nominee personally, retained on a central

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file in the Service concerned and a copy sent to the Section 151 Officer. The appropriate Cabinet Portfolio Holder must also be kept informed.

- 14.4 Should the tender be of a nature where there is likely to be a requirement for discussion regarding the proposals, specification and/or pricing model, the Competitive Dialogue process may provide the most appropriate procurement process.
- 14.5 Negotiation must not be undertaken following receipt of tenders where the tender was subject to the EU Procurement Directives (unless the contract notice published in OJEU specifically allows for such negotiation).
- 14.6 Should there be a need for any reason to amend the Council's requirements / specification (value engineer) all providers submitting a tender shall be informed and given the opportunity to re-submit their proposal. **Should any of the following arise this will require a new procurement:**
- (a) amendments that could have resulted in a different outcome in the procurement;
  - (b) amendments that shift the economic balance of the contract in favour of the contractor. For example, a price increase could fall into this category;
  - (c) amendments which extend the scope of the contract considerably, such as a substantial increase in the duration or extension of the subject matter of the contract;
  - (d) where a new contractor replaces the original contractor, other than where this is allowed i.e. "if an event or set of circumstances occurs which a contracting authority acting "diligently" could not have foreseen";
  - (e) where it is determined that 'material change' occurs in line with regulation 72 of the Public Procurement Regulations (PCR) 2015.

Commented [SS27]: See comment SS1...

Commented [SS28]: See comment SS1...

**15. NOMINATED/NAMED SUB-CONTRACTORS AND SUPPLIERS**

- 15.1 It is recommended that contracts are awarded to a single entity or lead contractor, who in turn will take contractual responsibility for the performance (and risks) the contractor will ensure that the insurances for any sub-contractors are equal to the minimum required by the Council. This responsibility lies with the contractor for all sub-contractors in their supply-chain. This reduces the risk of the Council becoming party to disputes between contractors.

**16. ENGAGEMENT OF CONSULTANTS**

- 16.1 Approval must be obtained from the appropriate Cabinet Portfolio Holder and the Chief Officer before engaging any consultant, consultancy firm or adviser.
- 16.2 An Authorised Officer may only appoint external consultants or advisors providing professional or consulting services if such Services are not available within the Council or if Council officers providing them do not have the resources to meet the needs of the Service. Where such Services are available in-house, the authorised officer must consult with the Chief Officer or Head of Service before taking any decision to make an external appointment.

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- 16.3 Consideration should always be given to using approved frameworks, examples include: YPO (Yorkshire Purchasing Organisation), ESPO (Eastern Shires Purchasing Organisation, CCS (Crown Commercial Service); Homes England.
- 16.4 External consultants and technical officers engaged to supervise contracts must follow these Rules as applicable and their contracts for Services must state this requirement.
- 16.5 Procurement plans and/or tenders prepared by external consultants on behalf of the Council must be referred to the Strategic Procurement Team for approval and advice.
- 16.6 All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services provided at the request of the Authorised Officer, and lodge all such documents and records with the appropriate officer at the end of the contract.
- 16.7 The Authorised Officer shall ensure that any consultant working for the Council has appropriate indemnity insurance.
- 16.8 Any consultant used by the Council shall be appointed in accordance with these Procedural Rules. Where the Council uses consultants to act on its behalf in relation to any procurement, then the Chief Officer shall ensure that the consultant/s carry out any procurement in accordance with these Procedural Rules and using the Council's standard terms and conditions of contract in any procurement that the consultant carries out. No consultant shall make any decision on whether to award a contract or who a contract should be awarded to. The Chief Officer shall ensure that the consultant's performance is monitored.
- 16.9 Where the engagement of a consultant is required to support a procurement process or related project, the consultant should sign an appropriately drafted confidentiality agreement and be bound by the confidentiality requirements of the Local Government Act 1972, as amended.

## **17. CONTRACT CONDITIONS**

- 17.1 Every contract which exceeds £30,000 in value, and in any other case where the Monitoring Officer so decides, shall be in writing in a form approved by the Legal Services team. Most contracts under £50,000 are not required to be executed under seal. Contracts where the total value is expected to exceed £50,000 must be sealed. In relation to IT contracts, those involving leasing arrangements where it is proposed to use a supplier's own terms and high risk and/or long-term contracts, advice should be sought from the Legal Services team via its email address at [instructionsforlegal@newcastle-staffs.gov.uk](mailto:instructionsforlegal@newcastle-staffs.gov.uk). All written contracts shall specify:
  - (a) The Work, Goods, or Services to be provided or undertaken (including any appropriate output or technical specifications); and (unless in the case of an annual contract where the following information is not available);
  - (b) Full detail of all prices to be paid, detailing the frequency and method of calculation (if relevant) with a statement of discounts or other deductions; and
  - (c) The period or times within which the contract is to be performed.

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- 17.2 For contracts with an estimated value in excess of £50,000 for the execution of Works or for the supply of Goods or Services by a particular date or series of dates, the Authorised Officer shall assess the need to include provision for liquidated damages based on advice from the Legal Services team. Liquidated damages should only be included if they can be genuinely pre-estimated and are agreed with the contractor.
- 17.3 Every written contract must contain a clause to secure that if the contractor fails to comply with its contractual obligations in whole or in part, or commits a fundamental breach of the contract, the Council may, without prejudice to any other remedy available to it:
- (a) Terminate the contract, either wholly or to the extent of such default;
  - (b) Complete the contract either itself or through another contractor or agent to make good the default;
  - (c) Recover from the contractor any additional costs incurred in completing the contract to the original specification.
- 17.4 The contract should require that if one or more sums of money are to be received by the Council, the contractor responsible for the payment of such sum or sums must pay interest in respect of late payment at the rate stated in the contract from the date when payment is due until the date when payment is received.
- 17.5 It shall be a requirement that in the performance of the contract, the contractor must comply with the Equality Act 2010 including where relevant the Council's Public Sector Equality Duty, and shall provide the Council with information on request in relation to its compliance.
- 17.6 In the performance of the contract, the contractor must comply with the requirements of the Health and Safety at Work etc. Act 1974 and of any other relevant Acts, Regulations or Orders pertaining to health and safety.
- 17.7 Contractors discharging Council functions must comply with the duty of Best Value under the Local Government Act 1999 (as amended).
- 17.8 All Goods, Services and Works must comply with any relevant European Union standards or specifications, code of practice, British Standard Specifications or Codes of Practice or European Union equivalents current at the date of the tender.
- 17.9 Every contract over £50,000 for the execution of work or the supply of goods or services must include a clause in respect of the prevention of bribery.
- 17.10 In every written contract for the execution of work or the supply of goods or services the following or equivalent clauses shall be inserted:
- "The Supplier shall not assign, novate, sub-contract or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the Council such consent not to be unreasonably withheld."
- This clause may be amended to meet the requirements of a specific contract but only following consultation with the Council's Legal Services team.

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- 17.11 Contracts shall contain details of relevant performance criteria, targets, standards and information on how the contract will be monitored, reviewed and managed by the Council. Benchmarking and/or price reduction clauses must be included, where appropriate, in contracts.
- 17.12 All tenders and contracts must contain a notice relating to the Freedom of Information Act and a schedule that clearly identifies those sections or clauses that are commercially confidential within the terms of the Freedom of Information Act.
- 17.13 If a contract is for the provision of business critical Services or supplies, officers may need to include clauses to the effect that the contractor maintains adequate business continuity processes in order to minimise the Council's exposure to risk.
- 17.14 Other contractual conditions shall be included as required within these Rules, the Code of Practice or as directed by the Legal Services team.

**18. EXTENDING EXISTING CONTRACTS**

- 18.1 Prior to extending a contract, the Authorised Officer must ensure that an options appraisal is undertaken to determine if it is in the interest of the Council to extend the current arrangement.
- 18.2 The Authorised Officer, after consultation with the appropriate Chief Officer, may extend a contract subject to the extension being within the scope of the original scheme.
- 18.3 Extensions to capital project contracts that will fall outside the scope of the original tender or scheme must go to the Cabinet for approval. This does not apply to operational contracts for goods and services that are not key decisions (i.e. where annual or periodic contracts are to be extended). The definition of a key decision is set out in Part 2; Section 13 subsection 13.2 of the Council's Constitution. In such cases the Authorised Officer or the Cabinet must, before taking the decision, consider tendering or negotiating the additional work, and ensure that any additional required funding is secured. In addition to obtaining approval to extend the contract, approval to increase the budget available for the project must be obtained in all cases where the increased contract amount would cause an overspending against the existing budget. Also, if the contract extension fundamentally or significantly changes the nature of the project, this should be reported to Members before an extension is agreed. A written record of the decision with reasons should be approved and retained by the Chief Officer concerned or his or her nominee and the record must be retained on a central file in the relevant Service. A copy should also be sent to the Monitoring Officer.
- 18.4 If the original contract was subject to the EU procurement regulations, the contract can only be extended within the parameters identified in the original EU contract notice, or if the notice explicitly contained provision for extension.
- 18.5 If the contract was not subject to the EU procurement regulations, any extension must not take the total value of the contract above the EU thresholds.
- 18.6 If the contract was awarded as a framework agreement, the total framework period, including any extensions, cannot exceed four years except in exceptional circumstances relating to the subject of the framework agreement. For example, a

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longer duration could be justified in order to ensure effective competition if four years would not be sufficient to provide return on investment.

- 18.7 The length of call-offs under a framework agreement should not last for more than four years. The length of call-offs, as with other contracts, should be appropriate to the purchases in question and should reflect value for money considerations. However, individual call-offs from the framework can extend beyond the end date of the framework itself.
- 18.8 When negotiating a contract extension the Authorised Officer must make every effort to negotiate improved contract terms with regard to the cost and quality of the goods, services and works being delivered through the contract. The terms agreed must be confirmed in writing and the Contracts Register must be updated accordingly to show the extended contract period.

## **19. CANCELLATION OR DETERMINATION**

- 19.1 In every written contract a clause shall be inserted to ensure that the Council shall be entitled to cancel the contract, and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor or its employees or agents (with or without its knowledge):
- (a) does anything improper to influence the Council to award the contractor any contract; and/or;
  - (b) commits an offence under the Bribery Act 2010 in connection with the contract or under Section 117 of the Local Government Act 1972.

**NOTE:** The provisions of the Bribery Act that came into force into 2010 now means that the Council may commit the following offences:

Section 1 – bribing another person;  
Section 2 – offences relating to being bribed; and  
Section 6 – bribing a foreign public official.

If the Council commits any of these offences, then senior officers (defined under S.14 of the Act as a director, manager secretary or other similar officer in the case of a body corporate can be held personally liable and may be subject to 10 years' imprisonment. In addition, Section 7 of the Act creates a new offence of failing to prevent bribery, which again relates to the Council and in this instance the Council could find itself liable to an unlimited fine.

## **20. SIGNATURE OF CONTRACTS**

- 20.1 Every contract that exceeds £50,000 must be sealed on behalf of the Council. Contracts below £50,000 can be signed by the appropriate Chief Officer or their authorised officer.
- 20.2 All contracts must be concluded before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Monitoring Officer. An award letter is insufficient.

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- 20.3 **The Authorised Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.**

## **21. REGISTERS OF CONTRACTS**

21.1 The Strategic Procurement Team shall keep:

- (a) a Contracts Register setting down details of contracts awarded in the preceding twelve months, together with details of those contracts above £50,000;
- (b) A copy of the Contracts Register will be published on the Council's website;

21.2 A payments register of all contracts in a form approved by the Section 151 Officer shall be maintained by the relevant Head of Service or their nominated officer. The payments register may be maintained electronically. The Register shall for each contract, specify the name of the contractor, the works to be executed or the Goods to be supplied and the contract value. The Register shall contain a record of all payments made individually and cumulatively to contractors and sub-contractors.

21.3 Approval can be sought from the Section 151 Officer by a Chief Officer or Head of Service where it is more appropriate to monitor contracts against approved expenditure budgets where applicable. Officers monitoring these budgets must ensure that the relevant statutory requirements are adhered to and that contract values do not exceed EU thresholds for competitive tendering.

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## **22. SEALING**

22.1 Where contracts are sealed as a deed the Common Seal of the Council shall be affixed to the contract and witnessed by a Council Member of the Cabinet and by an authorised signatory.

22.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed without the authority of Cabinet or of a Chief Officer acting under delegated powers. A contract must be sealed where:

- (a) The Council wishes to enforce the contract for more than six years after its end; or
- (b) The price paid or received under the contract is a nominal price and does not reflect the value of the Goods or Services; or
- (c) Where there is any doubt about the authority of the person signing for the other contracting party; or
- (d) Where the total value is expected to exceed £50,000.

## **23. BONDS AND PARENT COMPANY GUARANTEES**

23.1 For contracts over £50,000, a performance bond may be required if considered

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appropriate by the relevant Authorised Officer, the Section 151 Officer or other appropriate Chief Officer. The decision will be based on the risks associated with the contract, for example:

- (a) The value of the contract,
- (b) The type of goods / services / works being procured,
- (c) The payment profile for the contract,
- (d) The financial strength of the company,
- (e) Affordability and proportionality

The security required may be a performance bond or some other form of financial or performance guarantee. Affordability and proportionality must always be taken into consideration when deciding whether some form of financial security is appropriate and required.

- 23.2 For contracts over £100,000 the contractor must provide a bond from a source approved by the relevant Authorised Officer for completing the contract except where the relevant Authorised Officer in consultation with the Monitoring Officer decides that this is not necessary, after receipt of a completed risk analysis inclusive of a business continuity questionnaire.
- 23.3 At the discretion of the relevant Authorised Officer, a cash sum can be held in the place of a bond, either as a direct payment or set off against initial invoices received by the Council from the provider. Approval for this shall be requested in writing by the relevant Authorised Officer and details of which, when agreed with the Monitoring Officer, forwarded to the Section 151 Officer.
- 23.4 Where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the contractor, a bond shall be required regardless of the contract value.
- 23.5 A parent company guarantee is necessary when the contractor is a subsidiary of a parent company and:
- (a) The total value exceeds £100,000; or
  - (b) Award is based on evaluation of the parent company; or
  - (c) There is some concern about the stability of the contractor.
- 23.6 Where a bond is required the tender documents must contain provision for this cost to be identified separately.
- 23.7 If the contract period covers a number of years the Authorised Officer shall determine after consultation with the Monitoring Officer and the Section 151 Officer whether or not the bond is to be calculated by reference to the total contract sum over the duration of the contract or by reference to the annual value of the contract.
- 23.8 As stages of the contract are completed the value of the bond can be reduced at the discretion of the Authorised Officer with the approval of the Monitoring Officer.

**Commented [SS34]:** Is this area of the Rules always adhered to. Worthy of further discussion at Statutory Officers Group.

**Commented [SS35]:** See comment above.

## **24. RETENTION AND DISPOSAL REQUIREMENTS**

- 24.1 The retention of contracting information inclusive of:
- (a) approved suppliers;
  - (b) contracts award and monitoring;

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- (c) contracts award and monitoring – under seal;
- (d) quotations;
- (e) product evaluation;
- (f) product information;
- (g) tendering policies;
- (h) tenders;
- (i) tendering for contracts to be signed under seal
- (j) unsuccessful bidders

will be held on file by the lead officer/s either electronically or in hard copy format in line with the retention periods, disposal processes and relevant authority as contained in the council's Records Retention & Disposal Schedule, published on the council's intranet.

## **25. FRAMEWORK AGREEMENTS**

- 25.1 The Public Contract Regulations 2015 (Regulations) define a framework agreement as:  
"an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged."
- 25.2 The framework agreement with relevant providers will set out the terms and conditions under which agreements for specific purchases (known as call-off contracts) can be made throughout the term of the agreement.
- 25.3 The term of the agreement will be no more than four years.
- 25.3 A framework agreement will not itself commit either party to purchase or supply, but the procurement to establish a framework agreement is subject to the EU procurement rules.
- 25.4 Where the value of the framework contract is likely to exceed the European threshold (taking account of the rules of aggregation), it must be tendered in accordance with the relevant **European** procurement directive and procurement regulations. The Authorised Officer should record, retaining a file note on the reasons for adopting the selected procurement route.
- 25.5 In establishing a framework officers should adopt/follow in principle the procurement procedures highlighted in section 8 above.
- 25.5 Further guidance in relation to framework agreements and a questions and answers section (produced by Crown Commercial Services) can be found at Annex 2.

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## **26. DYNAMIC PURCHASING SYSTEMS**

- 26.1 The Dynamic Purchasing System (DPS) is a procedure available for contracts for works, services and goods commonly available on the market. As a procurement tool, it has some aspects that are similar to an electronic framework agreement, but where new suppliers can join at any time. However, it has its own specific set of requirements. It is to be run as a completely electronic process, and should be set up using the restricted procedure and some other conditions (as set out in Regulation 34 of the Public Contracts Regulations 2015).

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- 26.2 Contracting authorities may set up a DPS. The DPS should be set up for identified types of requirement, which may be divided into categories of products, works or services.
- 26.3 The DPS is a two-stage process. First, in the initial setup stage, all suppliers<sup>2</sup> who meet the selection criteria and are not excluded must be admitted to the DPS. Contracting authorities must not impose any limit on the number of suppliers that may join a DPS. Unlike framework agreements, suppliers can also apply to join the DPS at any point during its lifetime. Individual contracts are awarded during the second stage. In this stage, the authority invites all suppliers on the DPS (or the relevant category within the DPS) to bid for the specific contract.
- 26.4 Guidance in relation to establishing a DPS and a questions and answers section (produced by Crown Commercial Services) can be found at Annex 3.

## **27 GENERAL DATA PROTECTION REGULATIONS (GDPR)**

- 27.1 GDPR requires officers of the council to protect the privacy of all EU citizens and prevent data breaches.
- 27.2 The lead officer/s will highlight in any pre-procurement dialogue with potential suppliers that the contract will be subject to GDPR and ensure bidders are both familiar with the legislation and of their obligations as the Processor.
- 27.3 In certain circumstances, the Controller is required to conduct a Data Protection Impact Assessment (“DPIA”) prior to any processing (see Article 35 of the GDPR). This may occur before the contract is entered into, and ideally the DPIA should be conducted as early on in the procurement as possible. In all cases advice should be sought from your Data Protection Officer as to whether a DPIA is required.
- 27.4 In procurements for contracts involving processing personal data to be awarded, due diligence should be undertaken to ensure suppliers can implement the appropriate technical and organisational measures to comply with GDPR and to ensure the protection of the rights of data subjects. Selection criteria should be used to assess suppliers’ human and technical resources to perform the contract to the appropriate standard and suppliers should be asked to provide proof by reference to the technical facilities and measures they have in place.
- 27.5 When evaluating responses, officers should consider undertaking due diligence and ensure they are satisfied the bidder can provide protective measures appropriate to the nature and risk of the processing. This should be relevant to the subject matter of the contract, and proportionate.
- 27.6 The lead officer will ensure the roles and responsibilities of the Controller and the Processor are set out clearly throughout contract delivery. The Controller must set out clear written instructions for the Processor on how

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<sup>2</sup> For convenience “supplier” is used in this note to include any economic operator

the personal data should be processed, and these must be adhered to. If the Processor does not follow these written instructions, and determines the processing purpose or means of processing themselves, they will be in breach of contract, and the Processor may be considered to be a Controller in respect of that processing.

27.7 In drafting the specification of requirements linked to the procurement the lead officer will ensure that the following details are clearly established:

- the subject matter of the processing;
- details of the duration of the processing;
- the nature and purpose of the processing;
- the type of personal data being processed;
- the categories of the data subjects;
- the obligations and the rights of the Controller;
- that the Processor acts on the documented instructions of the Controller;
- the requirement for the Processor to delete or return the personal data at the end of the provision of services;
- a requirement for the Processor to implement appropriate technical and organisational measures; and
- a right for the Controller to audit the Processor.

27.8 The lead officer will ensure that written instructions at least set out that the Processor must:

- process the personal data only on the documented instructions of the Controller;
- comply with security obligations equivalent to those imposed on the Controller (implementing a level of security for the personal data appropriate to the risk);
- ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- only appoint Sub-processors with the Controller's prior specific or general written authorisation, and impose the same minimum terms imposed on it on the Sub-processor; and the original Processor will remain liable to the Controller for the Sub-processor's compliance. The Sub-processor must provide sufficient guarantees to implement appropriate technical and organisational measures to demonstrate compliance. In the case of general written authorisation, Processors must inform Controllers of intended changes in their Sub-processor arrangements;
- make available to the Controller all information necessary to demonstrate compliance with the obligations laid down in Article 28 GDPR and allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller - and the Processor shall immediately inform the controller if, in its opinion, an instruction infringes GDPR or other EU or member state data protection provisions;
- assist the Controller in carrying out its obligations with regard to requests by data subjects to exercise their rights under chapter III of the GDPR, noting different rights may apply depending on the specific legal basis for the processing activity (and should be clarified by the Controller up-front);

- assist the Controller in ensuring compliance with the obligations to implementing a level of security for the personal data appropriate to the risk, taking into account the nature of processing and the information available to the Processor;
- assist the Controller in ensuring compliance with the obligations to carry out Data Protection Impact Assessments, taking into account the nature of processing and the information available to the Processor; and
- notify the Controller without undue delay after becoming aware of a personal data breach.

27.9 At the award stage for procurements involving personal data processing, and particularly those for high risk processing, lead officers should ensure bidders are asked, at award stage, how the technical and organisational measures put in place (and set out at selection stage) meet the needs of the contract. For example, a model award question to ask bidders might be:-

*Please provide details of the key data protection risks you foresee with this Contract and set out your proposals for dealing with those risks.*

27.10 The lead officer will build into contract management activities sufficient checks to ensure suppliers are meeting their obligations under GDPR as the Processor. These supplier assurance activities may include audits undertaken by the Controller or a third party auditor. If obligations are not being met, the lead officer will take urgent remedial action with the supplier to address issues and risks.

## **28. MODERN SLAVERY**

28.1 As part of the Council's procurement, contracting and contract review processes with its suppliers and their supply chains, officers will endeavour to ensure that all suppliers address the requirements of the Modern Slavery Act 2015.

28.2 The lead officer will not select bidder(s) that have been prosecuted or served notice under the Modern Slavery Act, unless satisfied that appropriate remedial Action has been taken to prevent future occurrences/breaches.

28.3 The lead officer must ensure that bidders clearly complete Modern Slavery questions raised in the Invitation to Tender part II.

## **29. SAFEGUARDING**

29.1 The UK Government has established a principle of delivering "Policy through Procurement", meaning that the Government expects certain aspects of legislation to be delivered and enforced through Public Sector procurement and commissioning where applicable.

29.2 The Council is morally and legally responsible for:

- implementing its safeguarding policy and procedures;
- discharging its duty of care for children, young people and vulnerable adults,
- safeguarding the wellbeing of children, young people and vulnerable adults, and

- protecting children, young people and vulnerable adults from abuse and/or neglect when they are engaged in services organised and provided by the Council.
- 29.3 The lead officer must ensure any specific safeguarding requirements are outlined in the specification, which may also include any monitoring requirements. This should include any minimum safeguarding requirements (e.g. the need to have a Safeguarding Policy);
- 29.4 The lead officer if requesting a method statement will ask the bidder to outline how they (and their sub-contractors if relevant) will deliver the specification. If safeguarding is relevant to the service the method statements should ask the bidder to detail how it will meet its safeguarding responsibilities;
- 29.5 Conditions of Contract – for higher value requirements it may be appropriate to use the Council’s standard Terms and Conditions of Contract. These make provision for safeguarding and are available from the strategic procurement team.

**308. OTHER REQUIREMENTS**

- 30.1 The Authorised Officer must consult with the Section 151 Officer prior to entering into any lease or credit arrangement which has a capital cost or implications. The cost must first be approved for inclusion in the Capital Programme
- 30.2 The Authorised Officer must inform the Section 151 Officer immediately of any claims (or anticipated claims) by or against contractors that are the subject of dispute between the Council and the contractor.

**ANNEX 1**

**EXCEPTIONS TO CONTRACT PROCEDURE RULES**

*This 'exceptions form' must be completed for every instance where a Chief Officer approves an exception from these Rules for contracts with a total value of £5,000 or more, in accordance with 2.3 above (The form must adequately document the reasons for the exception and an electronic copy must be retained by the Service concerned. A copy of each completed form is automatically forwarded to the Chief Officer concerned, the Monitoring Officer, Internal Audit and the Strategic Procurement Team where a record of all exceptions is maintained). The Chief Officer concerned is responsible for keeping the appropriate Cabinet Portfolio Holder informed*

Title of Contract:	Contract Value:
Date:	
Description of Good or Service:	
Reason why the exception is being sought:	

Responsible Officer:	
Approved (Chief Officer):	Date:

**ANNEX 2**

**THE PUBLIC CONTRACTS REGULATIONS 2015**

**&**

**THE UTILITIES CONTRACTS REGULATIONS 2016**

**GUIDANCE ON FRAMEWORK AGREEMENTS**

**(A Crown Commercial Services Publication)**



## **Contents**

### **Guidance on Framework Agreements**

#### **Overview:**

- What are frameworks?
- What has changed (following the introduction of the Public Contracts Regulations 2015)?
- Why is this helpful / necessary?

#### **Key Points:**

- Identifying contract authorities in contract notices
- Call-offs and mini-competitions
- Award notices

#### **FAQs**

## **Overview**

### **What are framework agreements?**

The Public Contract Regulations 2015 (Regulations) define a framework agreement as:

“an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.”<sup>3</sup>

In other words, a framework agreement is a general phrase for agreements with providers that set out terms and conditions under which agreements for specific purchases (known as call-off contracts) can be made throughout the term of the agreement. In most cases a framework agreement will not itself commit either party to purchase or supply, but the procurement to establish a framework agreement is subject to the EU procurement rules.

### **What has changed - (following the introduction of the Public Contracts Regulations 2015)?**

The key changes include the clarification of the rules on identifying the users of the framework agreement, increased flexibility in the rules on setting up and calling off multi-supplier framework agreements, and the requirement to publish award notices for call-offs on Contracts Finder.

### **Why is this helpful / necessary?**

The new rules support the Government’s approach to making the process simpler and more transparent for business and contracting authorities.

### **Which rules do I need to refer to?**

Regulation 33 on Framework Agreements

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<sup>3</sup> Regulation 33(2)

Regulation 108 (1)(b) publishing award notices for call-offs from framework agreements on Contracts Finder<sup>4</sup>

The provisions in Regulation 51 of the Utilities Contracts Regulations 2016 are less detailed than in the 2015 Public Contracts Regulations. They do, however, set out that the term of the framework agreement should not exceed 8 years and that contracts based on the framework agreement shall be awarded on the basis of objective rules and criteria.

## **Key Points**

### **Identifying contract authorities in contract notices**

The call for competition or invitation to confirm interest has to clearly identify the contracting authorities that can use the framework. The key is that economic operators from any Member State can easily identify who the users of the framework may be. The identification has to be either by name or by other means that makes them clearly identifiable. Where possible a link to a list of relevant authorities should be provided. However potential framework users may be identified by reference to a specific class of contracting authorities in a defined region that can be identified on the internet.

### **Call-offs and mini-competitions**

Call-off contracts based on framework agreements may be longer than four years, and may extend beyond the expiry date of the framework (Recital 62 Public Procurement Directive).

For single provider framework agreements, call-offs are placed according to the terms and conditions laid out in the framework agreement.

Multi-supplier framework agreements can now comprise just two suppliers (previously minimum of three)

For multi-provider frameworks, there are now **three** potential ways to select the provider and place specific contracts: direct award; mini-competition; or a combination of both.

- i. **Direct award without re-opening competition.** If the framework agreement sets out all the terms governing the provision of the works, services and/or supplies concerned and all the objective conditions that are required to make a decision for award of the specific contract, then awarding the contract without re-opening competition amongst the parties to the framework agreement is possible. In this instance, the choice of provider must be based on the objective criteria laid out in the procurement documentation
- ii. **Mixture of direct award and mini-competition (New).** This route is available where the procurement documents for the framework agreement state that it may be used, and the framework agreement sets out all the terms governing the provision of the works, supplies and services concerned. The procurement documents for the framework agreement must set out objective criteria which will be used to determine whether a specific contract will be placed following a reopening of competition or directly on the terms set out in the framework

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<sup>4</sup> See Regulation 108 (1)(b) and Contract Finder Guidance

agreement so it is clear and transparent for all users and suppliers. The procurement documents should also specify which terms may be subject to the re-opening of competition. For example a direct award could be for those suppliers allocated to provide goods to a specific region and the accompanying objective criteria for selecting to re-open competition could be:

- a. the contract exceeds a set financial threshold;
- b. the quantity of products required is over a certain level;
- c. the contract has particularly complex requirements

- iii. **Mini-competitions.** When the framework agreement does not include all the terms governing the provision of the works, services and supplies concerned, the contracting authority must organise a 'mini-competition' between the providers which are party to the framework agreement.

## **Award Notices**

Contracting authorities must publish award notices for call-offs from framework agreements on Contracts Finder<sup>5</sup>.

## **FAQs**

### **When do I have to advertise a framework in OJEU?**

All framework agreements subject to Regulation 33 must be advertised in OJEU. Advertising would not be required if the call-off contracts to be awarded under the framework are exempt from the requirement to publish in OJEU – for example because the estimated maximum value of all call-offs under the framework agreement over its lifetime is below the relevant EU threshold<sup>6</sup>, or the procurements in question are covered by one of the exclusions set out in the Regulations. Where this is the case, Regulation 33 will not apply.

When assessing the total value of the framework, a required field in the OJEU Contract Notice, it is important that the estimate should include all the potential call-offs over the lifetime of the agreement that may be made by all contracting authorities that are permitted to use the framework, not just the intended call-offs by the contracting authority which is procuring the framework agreement.

### **How can my organisation set up a framework that can be used by other contracting authorities in our region?**

Contracting authorities may set up and advertise framework agreements on behalf of other contracting authorities. This is particularly common in the case of contracting authorities that act as Central Purchasing Bodies (CPD). Where the EU rules have been followed by such CPDs, other contracting authorities may use the framework agreements as required so long as they have been covered in the call for competition or invitation to confirm interest. The identities of all the contracting authorities entitled to call-off under the terms of the framework agreement must be included in the procurement documentation. See Key Points above for more detail

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<sup>5</sup> See Regulation 108 (1)(b) and Contract Finder Guidance

<sup>6</sup> Regulation 5(8)

The contracting authority using the framework agreement is responsible for awarding call-off agreements in a way which complies with the terms of the framework agreement.

### **What do I need to include in my OJEU Notice?**

The Regulations stipulate what is required in the Contract Notice or PIN as a call for competition, and your portal provider may also include guidance on what is required on the OJEU standard forms and notices. However the following will give you some idea of the information you need to consider and have at hand for completing the forms:

- consider how the identities of all the contracting authorities entitled to call-off under the terms of the framework agreement will be easily available for potential bidders.
- consider the length of term of the framework agreement. It will be a maximum of four years “save in exceptional cases duly justified, in particular by the subject-matter of the framework agreement”<sup>7</sup>. You should therefore seek legal advice if you intend to conclude a framework agreement with a longer duration. It is worth considering, in any event, whether a framework agreement is necessarily the best vehicle for a longer term project.
- estimate the total value of the goods, works or services for which call-offs are to be placed and, so far as is possible, the value and frequency of the call-offs to be awarded under the agreement. This is necessary for providers to be able to gauge the likely values involved and to provide a figure for the framework overall which, as with other contracts, should not normally be exceeded without a new competition taking place.
- include the other information required by Annex V to the Directive and the relevant form.

### **My Authority has a requirement that could be met by a sheltered workshop type organisation. Can we do that for a framework?**

Yes. Regulation 20 enables contracting authorities to reserve the right to participate in a public contract to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons. The ability to reserve contracts in this way applies to framework agreements as well as to contracts generally. The OJEU call for competition, at the start of the procurement for the framework agreement, will need to make it clear that the framework is reserved for sheltered workshops (the term used for supported employment programs, factories and businesses in the EU Directive itself) under Article 20 of the Public Procurement Directive.

### **A framework I want to call-off from will expire in 6 months and I need to award the call-off for 2 years. Can I do that?**

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<sup>7</sup> Regulation 33(3)

The length of call-offs under framework agreements are not specifically limited by the Regulations. The length of call-offs, as with other contracts, should be appropriate to the purchases in question and should reflect value for money considerations. It may be the case that individual call-offs extend beyond the four-year term of the framework itself. However, this should not be done in order to circumvent the EU rules. For example, it might be difficult to justify a 12-month call-off, very near the end of the framework itself, where the normal pattern for the goods or services in question had been for such call-offs to last for just one month at a time.

**Do I have to use a particular procedure to award a framework?**

A framework agreement that is over the relevant threshold must be awarded in accordance with one of the procedures set out in the Regulations and the procurement documents. The OJEU call for competition must specify the procedure that will be used. The authority setting up the framework agreement should follow the rules for all phases of the procurement process covered by the Regulations.

**Does having a framework mean we don't have to consider sustainability and other issues such as TUPE?**

The use of framework agreements does not remove the obligation on contracting authorities to address issues such as TUPE, where they are relevant to the contract at the call-off stage.

**How many providers do I have to have on a framework?**

Framework agreements can be concluded with a single provider or with several providers, for the same goods, works or services, it all depends on the market and your procurement strategy. Unlike the previous rules, which required multiple-supplier frameworks to include at least three providers, it is now permissible to have just two providers. The framework agreement will establish the objective criteria that will apply under the framework, for call-off by direct award, mini-competition or a combination thereof.

**Can a multi-provider framework include a term that allows a direct award call-off to one provider i.e. no mini-competition?**

Yes. Where the terms laid down in the framework agreement set out all the terms governing the provision of the specific requirement, and the terms or procurement documents set out the objective conditions for determining which of the economic operators should perform the contract, the authority can award the call-off without reopening competition. The Regulations do not specify how this should be done, but the mechanism used should comply with general Treaty principles including transparency and non-discrimination.

**Do the award criteria used for awarding the framework agreement have to be the same for mini-competitions?**

No. The award criteria used for mini-competitions need not be the same as those applied in the award of the framework agreement itself. The contracting authority should award

the call-off to the provider which has submitted the best tender on the basis of the award criteria set out in the framework agreement focusing on the particular requirement. Contracting authorities must make it clear in the procurement documentation the criteria to be used for awarding call-off contracts.

**Do we have to observe a standstill period before we enter into the framework agreement or after a mini-competition?**

The standstill period applies when you set up a framework agreement. However, there is no mandatory standstill period for a call-off contract under a framework.

### **ANNEX 3**

## **THE PUBLIC CONTRACTS REGULATIONS 2015**

**&**

## **THE UTILITIES CONTRACTS REGULATIONS 2016**

## **DYNAMIC PURCHASING SYSTEMS**

**(A Crown Commercial Services Publication)**

## OVERVIEW

### **What is the Dynamic Purchasing System?**

The Dynamic Purchasing System (DPS) is a procedure available for contracts for works, services and goods commonly available on the market. As a procurement tool, it has some aspects that are similar to an electronic framework agreement, but where new suppliers can join at any time. However, it has its own specific set of requirements. It is to be run as a completely electronic process, and should be set up using the restricted procedure and some other conditions (as set out in Regulation 34 of the Public Contracts Regulations 2015).

Contracting authorities, including central purchasing bodies, may set up a DPS. The DPS should be set up for identified types of requirement, which may be divided into categories of products, works or services.

The DPS is a two-stage process. First, in the initial setup stage, all suppliers<sup>8</sup> who meet the selection criteria and are not excluded must be admitted to the DPS. Contracting authorities must not impose any limit on the number of suppliers that may join a DPS. Unlike framework agreements, suppliers can also apply to join the DPS at any point during its lifetime. Individual contracts are awarded during the second stage. In this stage, the authority invites all suppliers on the DPS (or the relevant category within the DPS) to bid for the specific contract. The new directive and Regulations update the existing DPS rules, as discussed below.

### **Why is this helpful / necessary?**

The DPS can streamline procurement for both suppliers and authorities; suppliers don't have to demonstrate suitability and capability every time they wish to compete for a public sector contract and the award of individual tenders can be quicker than under some other procedures. The DPS is more flexible in some respects than frameworks, particularly as suppliers may join it at any time during its period of validity, meaning that suppliers are not locked out for the duration as they are with traditional frameworks.

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<sup>8</sup> For convenience "supplier" is used in this note to include any economic operator



However the DPS under the old rules was rather cumbersome, so it was little-used either in the UK or in other member States. The new rules provide additional flexibility.

### **What has changed?**

The basic principles remain from the old DPS, but there are several significant changes. Suppliers no longer have to submit an “indicative tender” with their request to join the DPS. The old obligation for authorities to publish a further simplified advertisement in the OJEU each time they wish to award a contract under a DPS no longer applies. The default four-year limit on the duration of a DPS has been removed. These improvements make the DPS significantly more useable and useful.

### **Which rules do I need to refer to?**

Regulation 34 of the PCR 2015 sets out the rules on Dynamic Purchasing Systems. Regulation 34(5) states that in order to procure under a DPS, contracting authorities should follow the rules of the restricted procedure, and subject to the provisions of clause 34. Therefore, Regulations that apply to the Restricted Procedure, and to procedures generally, apply to the DPS, except where regulation 34 specifically alters or dis-applies them.

The corresponding provision in the Utilities Contracts Regulations is Regulation 52. It should be noted that in Regulation 52 (25) – (27) covering means of proof, cross references are made to relevant provisions of the PCR 2015.

### **KEY POINTS**

#### *Stage 1: Establishing the DPS and adding additional suppliers*

To set up a DPS, a contracting authority must place a call for competition in OJEU to make known the intention to establish a DPS, and suppliers must be allowed at least 30 days to respond. (As with other procedures, sub-central bodies may use a Prior Information Notice to make known their intention). This initial DPS set-up phase only covers the exclusion and selection criteria, as used in other procedures, and as set out in Regulations 57-64 of the PCR 2015. The OJEU contract notice should specify the nature of the requirements and the approximate quantities or values envisaged.

As with other procedures, the procurement documents should be made freely available electronically from the date of the advert. These procurement documents must remain available electronically throughout the duration of the DPS.

A DPS can be divided into categories of works services or goods, which are objectively defined on the basis of characteristics of the procurement to be undertaken under the category. The characteristics used to define a group may include size of contract or geographical area of contract delivery.

If the DPS is divided into categories, the selection requirements for each category should be appropriate to that category, and may vary between categories. In accordance with Regulation 59, suppliers should “self-certify” their compliance with the selection requirements, and confirm that none of the grounds for exclusion apply, in order to gain admittance to the DPS. Normally (subject to Regulation 59(8)), only suppliers who win contracts under the DPS should be expected to provide documentary evidence of their status (consistent with other procedures).

This is also subject to the requirement of Regulation 59(11), so authorities should not request supporting documents where they already hold them or can obtain relevant information from a national database. Where a supplier has already submitted documents under a previous contract (DPS or indeed otherwise) it should be asked to confirm these are still applicable, and only provide new documents as preceding ones expire, or circumstances change. Where CPBs set up DPSs It would be sensible for the CPB to hold information about the evidence submitted, and make this available to its own customers.

All suppliers who meet and pass the exclusion and selection criteria must be admitted to the DPS and/or the relevant categories within it.

Suppliers may join the DPS at any point during its validity if they satisfy the selection requirements, and none of the grounds for exclusion apply. The authority is required to evaluate these suppliers' requests within 10 working days of receipt; this may be extended to 15 days if justified, for example, by the need to examine documents or to verify whether the selection criteria have been met (examination documents or other verification should not be the default, and only used if necessary for the proper conduct of the process; as noted as only the winning bidder should normally have to submit documents).

Contracting authorities may provide for award of contracts under a DPS on the basis of updated electronic catalogues, provided that the authority establishes the technical specification and format for the catalogue; supplier's requests to participate should be accompanied by a catalogue.

#### *Stage 2: Awarding specific contracts using the DPS*

Once the DPS is set up, an authority may award specific contracts using a DPS that they are entitled to use by inviting all suppliers admitted to the relevant category to bid, in accordance with regulation 54. As with a framework, the award criteria to be used for the award of individual contracts are to be set out in the original contract notice<sup>9</sup>. These criteria may be "formulated more precisely" for specific contracts, as set out in the invitation to tender for the specific contract.

The award process and permissible award criteria are consistent with those for other procedures; the minimum timescale for return of tenders is 10 days. Where the contracting authority is a sub-central body, this time limit can be reduced by mutual agreement between the contracting authority and all suppliers in the relevant DPS / category.

The authority may choose to require that tenders for a specific contract comprise or include electronic catalogues, adapted to the specific requirement, in which case the authority should have asked the suppliers request to participate to be accompanied by a catalogue as mentioned above.

There is no obligation to undertake a "standstill" period, although there may be some benefits in doing so (see under FAQ section below).

The DPS is to be undertaken as a wholly electronic procedure, in accordance with Regulation 22 (1) to (7) and (11) to (20). Unlike other procedures there is no derogation

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<sup>9</sup> Or in the invitation to confirm interest where a Prior Information Notice was used for the original advertisement.

to postpone the electronic requirements, so this requirement is in force from the date of the new Regulations. However where authorities already use an e-procurement solution it may well be that this can be used or adapted for a DPS; authorities may wish to discuss with their e-procurement solution or service provider. The requirement for an electronic procedure does not prevent “human” evaluation of tenders received under a DPS.

There is no requirement to submit any form of award notice to OJEU following the setting up of the DPS, or when new suppliers are added to the DPS. There *is* a requirement to publish contract award notices (which must be sent to the Publications Office within 30 days of award) for specific contracts awarded under the DPS. However, authorities can choose to group DPS contract award notices on a quarterly basis, which must be sent within 30 days (after) the end of each quarter. Authorities should also abide by the requirements for publication on Contracts Finder about contracts awarded, as explained under Procurement Policy Note 03/15;

See <https://www.gov.uk/government/publications/procurement-policy-note-0315-reforms-to-make-public-procurement-more-accessible-to-smes>

A DPS may be set up by central purchasing bodies, to undertake centralised purchases by the CPB itself, and / or for the CPB’s “customers” to compete contracts.

## **Frequently Asked Questions**

General nature and use of DPS

**Q. The DPS is to be used for “commonly used purchases...generally available on the market”. What does this mean?**

The rules do not specify how this should be interpreted. It is likely to depend on the specific type of goods, works or services covered by the DPS. The DPS will normally be suitable for largely “off-the-shelf” requirements which can be closely specified in advance. One-off, or heavily bespoke and / or highly complex requirements are unlikely to be suitable

**Q. Are there any restrictions on the number or type of category into which a DPS may be divided?**

No restrictions are specified in the rules; the regulations require that categories are objectively defined on the basis of the characteristics of the procurement to be undertaken. The rules state that these characteristics may include the maximum size of contract or geographical area of contract performance. However other characteristics are not excluded, for example the nature or scope of the deliverables might be appropriate. The authority will have to make its decision based on the specifics of its requirements. Early market engagement may be helpful in identifying suitable categories. Of course categories will need to ensure compliance with Treaty principles; so it would not be permissible to have different categories for different sizes or geographical locations of *suppliers*.

**Q. Is there a time limit on how long a DPS can operate? And is there any flexibility?**

The “period of validity” must be stated on the original OJEU notice; but the Regulations indicate that the period can be later amended (extended, shortened, terminated) subject to notification on the relevant OJEU standard form. This provides useful flexibility if the authority’s circumstances change, or developments in technology, markets, etc. mean the DPS as originally set-up outlives its usefulness. There is now no specific maximum duration of a DPS. Any changes to the period of validity of a DPS should comply with relevant Treaty principles.

**Q. What is a suitable duration for a DPS?**

The authority must make its own decision based on its needs and understanding of the market. Early market engagement should help provide insights. A longer-running DPS will reduce the need to re-compete, but if it is too long the DPS may become obsolete if the authority’s circumstances or markets change. As noted above the authority may be able to lengthen or shorten the duration if necessary.

**Q. Does the DPS encourage SME access to public contracts?**

As with all procedures, the suitability for SMEs depends more on the authority’s procurement decisions than the particular rules which apply to the process. However the DPS has some features which can potentially encourage SMEs. The selection stage is potentially less onerous, as the supplier only has to complete this stage on entry to the DPS (and thereafter periodically reconfirm its status) instead of having to do so separately for all procurements. As the DPS is open to suppliers throughout its duration, new start-ups, or businesses that wish to expand into new public sector markets, will not be frozen out of the market.

The division of DPS into categories by type of requirement, size of contract, or geographical place of delivery, could be arranged to ensure that niche suppliers and SMEs have maximum opportunity to compete.

**Q. Is it permissible to have different terms and conditions for contracts under different categories of a DPS?**

The rules do not govern the terms of the contracts awarded under a DPS. It would not be contrary to the rules to have different terms and conditions for contracts awarded under different categories of a DPS provided these complied with the Treaty principles of transparency, equal treatment and proportionality. There should be objective reasons why different terms and conditions are appropriate for different categories. The terms and conditions should be appropriate to contract for “commonly use purchases... available on the market” (so contracts designed for large bespoke requirements, for example, would not be appropriate).

In all cases the intended terms and conditions should be included within the procurement documents made available when the DPS is first advertised.

**Q. Can suppliers be required to sign-up to the standard contractual terms and conditions of the authority setting up the DPS as part of the initial application process?**

The authority can make clear that suppliers will be required to accept the terms and conditions of the authority setting up the DPS when bidding for contracts under the DPS.

**Q. Does the “standstill” period apply to setting up the DPS?**

There is no obligation to hold a standstill before admitting suppliers and commencing the DPS. And as suppliers may apply (or reapply if previously not accepted) at any time during the currency of the DPS, a standstill at initial set up-would be of little value.  
Suppliers joining a DPS

**Q. Do suppliers need to submit an “indicative tender” with their initial application?**

No; this requirement in the old rules has been removed from the new DPS.

**Q. If a DPS is divided into categories, may a supplier apply for more than one category?**

Yes, a supplier may apply for as many categories as it wishes.

**Q, Can we limit the number of suppliers on the DPS or in any categories under the DPS?**

No; any and all suppliers who pass the exclusion criteria and meet the selection criteria must be admitted to the DPS [category].

**Q. Can we set the selection criteria at a high level, intended to limit the number of successful applicants?**

No. The selection criteria and pass marks should be proportionate and objectively justifiable according to the requirements to be delivered in the DPS / category. Unnecessary or overly- onerous requirements meant to limit the number of suppliers would breach proportionality and equal treatment, would be likely to discourage SMEs, and would tend to reduce competition.

**Q. Is it permissible to have different selection criteria for different categories under the DPS?**

Yes; where a dynamic purchasing system is divided into categories; the contracting authority should apply selection criteria that are proportionate and relevant to the characteristics of the category concerned.

It is possible that a supplier could pass the selection stage for, and be admitted to, one or several categories but not to others.

**Q. If a supplier fails the exclusion or selection stage, can it reapply later?**

Yes.

If the supplier had failed the exclusion stage, it could reapply if the mandatory or discretionary exclusionary periods had ended, or if the supplier had self-cleaned.

If the supplier did not meet selection criteria, it could reapply if its circumstances changed, for example if it had newly available skills, experience, or if something else which would change its answers to the selection criteria had occurred.

**Q. If a supplier is admitted, is it obliged to bid for any contracts procured under the DPS?**

No.

**Q. Can a supplier be deselected from a DPS?**

A supplier's initial admission to the DPS should normally be based on self-certification that it passes the exclusion criteria and meets the selection requirements. In similar manner to other procedures, the winning bidder for a contract under a DPS should be asked to provide confirmatory evidence before award of contract (unless previously submitted as discussed above). Please see separate guidance on "selection and award" for further information on those rules.

If a supplier ceases to meet the original exclusion or selection criteria during the course of the DPS it is likely that it could be excluded (indeed if it fails one of the mandatory exclusion grounds the authority will be *required* to remove the supplier).

The frequency of updates is for the authority to decide, but at least an annual update might be appropriate. Authorities could also require suppliers to confirm that their exclusion and selection status is not changed before the award of each contract.

It would *not* be permissible to remove or exclude a supplier from a DPS because the supplier had not chosen to bid for any contracts under the DPS, or because the supplier had bid but was unsuccessful in all its bids.

**Q. Can a supplier be excluded for poor performance on contracts under the DPS?**

Poor performance on prior public or utilities contracts which have led to contract termination, damages or other comparable sanctions are now grounds for discretionary exclusion. (Regulation 57(8)(g)). Therefore poor performance on previous contracts under the DPS which had led to sanctions could be used to exclude the supplier from the same, and other, DPSs in future.

As with any other exclusion for poor performance, this must be based on objective failings which led to sanctions; subjective assessment of a supplier's attitude, aptitude, etc. must not be used.

If a DPS is set up by a CPB for use by other contracting authorities, the decision on whether to exclude a supplier should rest with the CPB.

**Q. Can a supplier be deselected from one or more categories but not others?**

In principle, yes, if the supplier ceases to meet the selection criteria for some categories but remains compliant with all the criteria for other categories.

If a supplier breaches a mandatory exclusion ground during the course of the DPS, he must of course be excluded from the whole DPS. And most of the discretionary exclusion grounds are unlikely to be category-specific.

However, if a supplier had evinced poor performance in contracts under some categories but not others, although it would be permissible to exclude it from the whole DPS, depending on the case, it might be more proportionate and appropriate to only remove it from the problematic categories.

Authorities will need to make their own case-specific judgements, and treat all suppliers equally.

**Q. How long do we have to complete the assessment of new applicants?**

Regulation 34(16) states that contracting authorities must finalise their evaluation of new applicants (i.e. applications which are received during the period of validity of the DPS) within 10 days of receipt. This may be prolonged to 15 working days in individual cases where this can be justified, in particular because of the need to examine additional documentation or to otherwise verify whether the selection criteria are met. Contracting authorities are under a clear duty to meet these timescales, and should ensure that systems and resources are in place to meet them.

These rules also apply to the initial evaluation of applicants when the DPS is set up. However, as long as the invitation to tender for the first specific contract under the Dynamic Purchasing System has not been sent, the period may be extended provided that no invitation to tender is issued during the extended evaluation period. If initial evaluation of tenders takes additional time, it is therefore possible to delay the start of the DPS to provide further time for evaluation of applicants.

Individual contract award under a DPS

**Q. Do I have to run a competition for every requirement under a DPS? Or can the DPS be used for “direct awards”, perhaps for low-value contracts?**

The rules state that each requirement under a DPS must be competed; all suppliers under the DPS or the relevant category must be invited to bid. “Single tender” is not permitted (unless only one eligible supplier has applied for the category), and there is no derogation for low-value contracts.

This reflects the nature of the DPS; admission to the system only requires suppliers to demonstrate their suitability, ability, and capability to deliver the type of requirement in the DPS or category. (There is no requirement to submit any type of tender as part of the application for admission). Therefore the decision on the best value-for-money offering can only be decided at the tender stage for each individual requirement, and equal treatment requires that all suppliers on the DPS [category] have the opportunity to bid.

The European Commission regards impermissible direct awards as the worst type of breach of the procurement rules and Treaty principles, and would probably take legal action, particularly if there was systemic use of direct awards under a DPS. Aggrieved suppliers would also be able to take action under the Remedies rules.

The 10-day minimum for return of tenders (including if applicable completion of a catalogue) in a competition under a DPS is substantially shorter than the total procurement process-time for the other procedures under the directive. As the DPS is

intended for commonly used purchases generally available on the market, and must be an electronic process, it should normally be possible to readily undertake a competition.

**Q. If we cannot limit the number of suppliers on the DPS or in any category, how will we effectively resource and undertake competitions for individual contracts?**

The DPS is no more onerous than the open procedure for individual contracts; in fact it will be easier, as authorities will only have to examine tenders and not assess supplier's exclusion and selection status for every contract (although they may need to receive the supporting documents as confirmation, as discussed above). Authorities will also know how many suppliers are on the DPS [category] at any given point, so they will know the maximum number of potential responses in advance. As the DPS is for works, goods and services commonly available on the market, it may be possible in many cases to run relatively straightforward award evaluation criteria, which will help to keep resource requirements in check.

As with any procurement, contracting authorities should adopt the "Lean" approach. This will include early market engagement to understand the supplier base and the potential for the market to meet the authority's needs. This will help the authority to decide the best division into categories. Focused categories may help limit the number of suppliers who apply for each category.

Authorities, including CPBs and authorities with access to DPSs and frameworks put in place by CPBs, will wish to consider the relative merits of DPSs, frameworks, and individual separate procurements, depending on the specific requirements and circumstances.

**Q. Does the standstill period apply to contracts under the DPS?**

The standstill period is not obligatory for individual contracts awarded under a DPS.

**Q. Is there a clear requirement to provide a debrief report for unsuccessful bidders for individual contracts under a DPS?**

The requirement for a "notice of decision" as required in the rules for most procedures is specifically **not** obligatory for award of contracts under a DPS. However authorities are not prohibited from either proactively providing feedback or offering to provide feedback on request, and CCS regards provision of feedback as being good practice. Where an authority provides or offers feedback it should treat all suppliers equally, make known its intention to do so in advance, and abide by good practice on providing feedback, as when providing feedback under procedures where it *is* obligatory.

**Q. May individual contracts "overhang" the duration of the DPS itself?**

This is not specifically covered in the rules, and given the flexibility of DPS duration, need not be a concern. However, the new rules specifically allow "overhang" in frameworks, and there is no reason to consider that proportionate overhang would be impermissible in DPS. As with all procedures, the DPS should not be used in a way which will distort or prevent competition.



Electronic processes and DPS

**Q. The DPS must be a wholly electronic process; what does this mean?**

The provision of Regulation 22, covering electronic communications, apply to the use of the DPS from the entry into force of the Regulations, and Regulation 34(2) states that a DPS must be a ‘completely electronic process.’ The derogation to postpone electronic communications does **not** apply to the DPS. Authorities which wish to use the DPS will therefore need to ensure that they have access to suitable IT systems which enable compliance with Regulation 22, (including the technical and security requirements in Regulation 22 (16)). As noted above, however, existing e-procurement solutions and services may be useable or adaptable for the DPS, as the requirements and processes are similar in principle to those in other procedures under the rules.

The specific derogations in Regulation 22 (8) to (10) for oral communication do not apply. As the DPS is for works, goods and services commonly available on the market, it is unlikely that the derogations for physical models, special formats or office equipment, or specific security requirements in Regulation 22(2) to (7), will normally be pertinent, although they apply where relevant. As mentioned activities not involving communication between the parties, such as tender evaluation, do not have to be electronic, although there is no prohibition on use of electronic evaluation tools.

**Q. Can electronic auctions be used for the award of contracts under a DPS?**

Yes, the rules explicitly allow the use of e-auctions in the award of contracts under a DPS, provided that the subject matter is suitable (including a requirement that the technical specification can be established with precision). All the other rules applicable to e-auctions also apply; see Regulation 35.

Electronic catalogues and DPS

**Q. Can catalogues be used in the DPS?**

Yes, the authority may choose to allow or require the submission of electronic catalogues. These should meet the requirements for electronic communication in Regulation 22 and the provisions on e-catalogues in Regulation 36.

As with all use of catalogues under the public procurement rules, suppliers should not simply submit their general catalogues but should adapt the format and content to the specific requirements of the DPS.

Contracting authorities may require economic operators to submit an electronic catalogue as part of tender for a specific contract under a DPS. Authorities may also ask for submission of a catalogue with the initial request to participate. Please see separate guidance on e-communications for further details of the use of e-catalogues.

**Q. If the request to participate in the DPS is accompanied by a catalogue, what should that catalogue contain?**

The rules do not specify what the catalogue should contain. It should comply with the technical specifications and format specified by the authority, (having regard to

Government policy on open standards), and the format and content are likely to depend on the nature of the works, goods or services to be procured. As it is not an indicative tender it is unlikely that it would need to contain detailed pricing information. Specific details of works, services or products and prices for each specific requirement will be completed at tender stage.

**Q. If suppliers have recently completed catalogues can these be used for additional contracts, without further updating, and without going to tender again?**

There is no provision to do so under the rules. The rules envisage that each supplier will be advised every time an authority wishes to award a tender, and invited to complete / update its catalogue and confirm whether it wishes to participate. In practice, in some cases, it may be that the supplier will be able to simply confirm that a previous catalogue still stands unchanged.

## **MEMBER / OFFICER PLANNING ENFORCEMENT PROTOCOL**

### **1.0 INTRODUCTION**

1.1 Planning enforcement is a process to investigate cases where development without planning permission is alleged to be taking place, and where appropriate to take enforcement action, and to ensure that development with planning permission accords with the approved plans and planning conditions.

1.2 Local planning authorities have the discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations.

1.3 It is recognised that it is important that unauthorised/unlawful development is investigated and action is taken where it is expedient to do so to avoid undermining public confidence in the planning system.

1.4 The purpose of this document is to set out guidance and procedure in respect of the task of planning enforcement. It aims to set out current procedure, identify how Members can become involved in planning enforcement and what obligations are placed upon officers to keep Members informed on the progress of certain enforcement cases. The reference to Members is to Borough Councillors.

### **2.0 CURRENT PROCESS**

2.1 As set out in the Council's Planning Enforcement Policy (PEP) (February 2009), all complaints regarding breaches of planning control should be confirmed in writing. Anonymous complaints are not acted upon unless it is in the wider public interest to do so. Where members of the public have particular concern over disclosing their identity they are encouraged to ask their Borough Councillor, or if applicable, their Parish or Town Council to report the issue on their behalf.

2.2 When complaints are received a case is set up and allocated to an officer (generally the Enforcement Officer who carries out the initial investigations). An acknowledgement is sent to the complainant providing the name of that officer and reference number of the case, which should be used in all subsequent correspondence.

2.3 All complaints received are treated as confidential and a complainant's identity is not generally revealed without their consent unless the Council is required to reveal that information by law. Access to enforcement case information is therefore restricted to maintain such confidentiality.

2.4 It is current policy to advise the complainant, on all but the cases that are more significant as having the greatest impact within 30 working days, of one of the following:

- No breach of planning control has been identified
- It has been concluded that it is not expedient to take action
- Discussions have been entered into to remedy the breach
- A retrospective application has been invited to be submitted.

2.5 These cases are category 2 and 3 cases as defined in the PEP.

2.6 For those the cases that are more significant have the greatest impact (category 1 cases as defined in the PEP), the complainant should be advised, verbally, if immediate action is

considered necessary and given an explanation of why such action is required which is then confirmed in writing within 10 working days.

2.7 In addressing the expediency of taking formal enforcement action, consideration is given as to whether such action would be in the public interest. The investigating officer must judge the overall impact of the unauthorised development, doing so with reference to national and local planning policies as set out in the Development Plan and to any other material considerations. A report is prepared setting out such considerations.

2.8 If a breach does not result in 'demonstrable harm', (because planning permission would be likely to have been granted for the development in any event) then it is not expedient to take action. In such circumstances a retrospective planning application is often requested to regularise the breach of planning control and, where necessary, to impose restrictions or secure amendments to the unauthorised development to make it acceptable in planning terms. A report is prepared on the retrospective planning application setting out the key planning considerations, as with any other planning application. Where a retrospective application is not received but it is nonetheless not expedient to take enforcement action, a file note, and in some cases a report, is prepared setting out the reasons why such a conclusion was reached.

2.9 Both the Planning Committee and the Executive Director of Regeneration and Development have, in the existing Scheme of Delegation, authority to exercise the Council's powers of enforcement of planning control. This authority must mean both to take and also not to take enforcement action with respect to such breaches of control.

2.10 The presumption is that the decision on whether or not there is a breach and whether it is expedient to take enforcement action will be made under delegated powers by:

- Senior Planning Officers on breaches of planning control relating to householder developments (except where they are themselves the case officer),
- The Development Management Team Manager on all other matters except for breaches of planning control relating to Major Development (other than where they are the case officer).
- The Head of Planning on breaches of planning control relating to Major Development

2.11 Where such matters are reported to Planning Committee, following a decision by the Head of Planning that it is appropriate to do so or by the request of Members, the relevant reports are cleared by the Development Management Team Manager except where the case officer or the breach relates to Major Development in which case the Head of Planning would clear the report.

2.12 The decision arising from the decision by Planning Committee or under delegated authority is whether it is expedient to take action and if so what steps are necessary to rectify the breach and the timescales within which such steps should be taken. Legal advice is generally sought as to the type of action that is appropriate to the breach of planning control identified as there are a number of different notices and/or actions that are able to be taken by the Local Planning Authority. These can be summarised as follows:

- Enforcement Notice
- Breach of Condition Notice
- Stop Notice
- Temporary Stop Notice
- Section 215 Notice
- Injunctive Action

- Formal Cautions
- Planning Enforcement Order

Further information about each of the above can be found within the online [Planning Practice Guidance](#) (PPG) and in particular the section on [Ensuring Effective Enforcement](#)

2.13 It should be noted that enforcement action is taken in respect of a specific breach of planning control and the breach of planning control alleged will be identified in any Notice that is served. If the Notice is not complied with within the specified time period the Local Planning Authority can seek to prosecute with respect to that non-compliance. Notices are specific as to the breach of planning control identified within them. Any other breaches of planning control that take place subsequently are not covered by the action already taken and as such it will not be possible to seek to prosecute such matters pursuant to the Notice already served. Such breaches will need to be the subject of separate enforcement action if it is expedient to take action.

### 3.0 MEMBER INVOLVEMENT

3.1 Members become aware of planning enforcement issues through various means. It may be brought to their attention by those affected by the breach or they may identify a potential breach themselves. In certain cases Members are approached for advice by individuals who are the subject of the complaint.

3.2 Members of Planning Committee also receive monthly lists of the new enforcement cases received in the previous month and **it is intended to provide all Members with a weekly list of new cases received in their Ward as part of this new protocol** The information contained within the lists should be treated as confidential as should any more detailed information obtained from the Planning Service with regard to the breach of planning control.

3.3 Given the number of cases that are received it would not be possible to provide Members with updates on all cases received, however **information will be provided upon request**. In addition **if Members wish to receive regular updates on particular cases these can be provided upon request**. In such cases **updates will be given as soon as practicable after an event has occurred (such as a site meeting, correspondence with the individuals who are the subject of the complaint, or a key milestone has been reached) or every month following the request whichever is sooner**. Any requests for information or for regular updates must be made in writing through email to [planningenforcement@newcastle-staffs.gov.uk](mailto:planningenforcement@newcastle-staffs.gov.uk).

3.4 If a Member considers that a enforcement case should be reported to the Planning Committee for their information or for a decision to be reached as to whether enforcement action should be taken and in what form, they **should send a request in writing to the Chair of Planning Committee asking that the matter is to be brought to Committee setting out why that is considered appropriate**. The Chair of Planning will upon receipt of such a request consult with the Head of Planning and the decision of the Chair on that request shall be final. Where the Chair asks for a report to come to Committee officers will aim to bring such a report either to the next meeting of the Committee or the following one. Where a case is reported to the Committee, a Ward Member who is not on Planning Committee will be entitled to speak on the item on the same terms as the public speaking protocol provided that the item is not being dealt with as a confidential item where Committee resolve that the public (including Members not on Planning Committee) are to be excluded. Any Members of Planning Committee are under an obligation to disclose any interest in an enforcement case that is being considered at the meeting as with any other item on the agenda.

3.4 A Member may wish to set up a meeting to discuss an enforcement case that includes other interested parties, such as the MP or a Parish Council. **If that is the case a request should be made in writing to the Development Management Team Manager .**

3.5 Quarterly reports are taken to Planning Committee as follows:

- Open Enforcement cases – providing background information regarding the scale of the enforcement case load, to enable the Committee to undertake its oversight role. The report identifies the number of new cases opened within the last Quarter and the overall number of open cases at that point in time. A Table is provided showing the number of open cases for previous years.
- Progress on Enforcement Cases where Enforcement Action has been authorised – providing details of progress made on those cases where enforcement action has been authorised either by the Planning Committee or under delegated powers. It includes details of all the cases, the progress made within the last Quarter, and the targets for the next Quarter.

**3.6 In all cases where enforcement action has been authorised the case officer will provide monthly updates to the Chair and Vice-Chair of Planning Committee and Ward Members in addition to the reporting of such cases in the quarterly report referred to above.**

#### **4.0 REVIEW OF THIS PROTOCOL**

4.1 The operation of this Protocol shall be reviewed 12 months after it has been brought into effect

#### **5.0 RELEVANT ENFORCING AUTHORITY**

5.1 Newcastle-under-Lyme Borough Council, as Local Planning Authority, is the appropriate enforcing authority for the majority of breaches of planning control. Where enforcement involves activities relating to mineral extraction, waste disposal and recycling Staffordshire County Council is the relevant enforcing authority dependent, in the case of waste disposal upon the scale of such activities and the purpose for which the waste is being deposited on site.

5.2 Where the unauthorised activity results in, or has the potential to result in, pollution, the Environment Agency may be the relevant lead enforcing Authority.

5.3 Where the activities involve a statutory nuisance the Council's Environmental Health Division may be better placed to take action.

5.4 The County Council, as Highway Authority, are the relevant enforcing authority where the breach of planning control is taking place entirely on a public highway and if it does not relate to a breach of condition of planning permission.

5.6 Where a complaint relates to unstable/dangerous buildings such complaints should be directed to the North Staffordshire Building Control Partnership.

5.7 There are a number of complaints that are received that don't relate to breaches of planning control and as such are not matters that the Borough Council has any powers to take action against. Where such complaints are received the Planning Service endeavours to direct the complainant to the relevant enforcing authority. Some of the typical complaints and the relevant enforcing authority are as follows:

- Obstruction of the highway and other road traffic issues – the Police

- Operation of care homes – Ofsted
- Safety of building sites – Health and Safety Executive

## 6.0 KEY SOURCE MATERIAL AND LEGISLATION

- [Town and Country Planning Act 1990](#) – This forms the current primary legislation
- [Planning and Compensation Act 1991](#) and the [Planning and Compulsory Purchase Act 2004](#) – these two Acts are secondary legislations which amend and add to the provisions of the Town and Country Planning Act 1990.
- [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#)
- [Localism Act 2011](#)
- [National Planning Policy Framework](#) (NPPF) (July 2018)
- [Planning Practice Guidance](#) (PPG) including a section on [Ensuring Effective Enforcement](#)
- [Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy \(CSS\) 2006-2026](#)
- [Newcastle-under-Lyme Local Plan \(NLP\) 2011](#)
- [Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#) (as amended)
- [Town and Country Planning \(General Permitted Development\) Order 2015](#) (as amended)
- [Town and Country Planning \(Use Classes\) Order 1987](#) (as amended)
- [Town and Country Planning \(Control of Advertisements\) \(England\) Regulations 2007](#)
- [Regulation of Investigatory Powers Act 2000](#)
- [Police and Criminal Evidence Act 1984](#)
- [A Councillor's Workbook on Planning](#) by the Local Government Association – this includes a short section on planning enforcement.
- [Probity in Planning for Councillors and Officers](#) by the Local Government Association and the Planning Advisory Services
- [Newcastle Borough Council Members Protocol on Planning Matters](#) September 2018

Final draft v1 3<sup>rd</sup> April 2019

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## NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

### EXECUTIVE MANAGEMENT TEAM'S REPORT TO FULL COUNCIL

Date 24 July 2019

1. **REPORT TITLE**                      **APPOINTMENT OF INTERIM MONITORING OFFICER**
- Submitted by:**                      **CHIEF EXECUTIVE**
- Portfolios:**                          **Corporate and Service Improvement, People & Partnerships**
- Ward(s) affected:**                  **All**

#### **Purpose of the Report**

To seek formal confirmation to the appointment of an Interim Monitoring Officer, until such time as a permanent appointment to the post can be made.

#### **Recommendation**

**That, in accordance with s5 of the Local Government & Housing Act 1989, Council be asked to confirm the appointment of Mrs Caroline Elwood as the Council's Interim Monitoring Officer.**

#### **Reasons**

To comply with the requirement of the Local Government & Housing Act 1989 that all local authorities appoint a Monitoring Officer.

#### 1. **Background**

- 1.1 Under section 5 of the Local Government & Housing Act 1989 the Council has a statutory duty to appoint a Monitoring Officer.
- 1.2 The Monitoring Officer has a number of statutory duties and responsibilities relating to the Council's Constitution and the Council's arrangements for effective governance. These include:
- to report on matters he/she believes are, or are likely to be, illegal or amount to maladministration;
  - to be responsible for matters relating to the conduct of Councillors and officers; and
  - to ensure the Council's Constitution is up to date and fit for purpose.

#### 2. **Issues**

- 2.1 The Council has been without a permanent Monitoring Officer for some little time and arrangements are in hand to recruit to the post on a permanent basis. The role was most recently undertaken on a temporary basis by an officer from the County Council but following my appointment a decision was taken with the support of all Group Leaders to appoint to the role on a full time interim basis in order to add capacity to the organisation.

2.2 Members will be aware that Mrs Elwood joined the organisation in May but members are asked to formally confirm the appointment now, which is the first ordinary Council since her appointment.

3. **Options Considered**

3.1 It would have been an option to continue with temporary support from the County Council but the appointment of a full time officer based in the council offices was considered to be beneficial.

4. **Proposal**

4.1 That in order to comply with the requirements of the Local Government & Housing Act 1989 the Council appoints an Interim Monitoring Officer.

5. **Reasons for Preferred Solution**

5.1 To increase capacity and have a presence on site.

6. **Legal and Statutory Implications**

6.1 There are no additional legal implications other than those set out in the report.

7. **Equality Impact Assessment**

7.1 No implications.

8. **Financial and Resource Implications**

8.1 Budgetary provision has been made for the appointment.

9. **Major Risks**

9.1 The Council needs to ensure that it has its three statutory officers in place to comply with legal requirements and to demonstrate good governance.

10. **Sustainability and Climate Change Implications**

10.1 No implications

11. **Key Decision Information**

11.1 This is not a key decision which requires inclusion in the Forward Plan

12. **Earlier Cabinet/ Committee Resolutions**

12.1 None directly relevant to this matter.

13. **List of Appendices**

13.1 Not applicable

14. **Background Papers**

14.1 There are no background papers for consideration/inclusion.

## NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

### EXECUTIVE MANAGEMENT TEAM'S REPORT TO COUNCIL

Date 24 July 2019

1. **REPORT TITLE** High Speed Rail (West Midlands to Crewe) Bill (HS2 Phase 2a)
- Submitted by:** Head of Planning
- Portfolios:** Planning & Growth
- Ward(s) affected:** Maer & Whitmore, Madeley & Betley, Keele, Silverdale, Knutton, Holditch and Chesterton (when account is taken of the electricity supply to the railway)

#### **Purpose of the Report**

The report informs Council of the opportunity for the Borough Council to become a Qualifying Authority.

#### **Recommendations**

**That Council resolves that the Borough Council should become a Qualifying Body**

#### **Reasons**

The Council should take up this opportunity to have some influence over the details of the scheme

#### 1. **Background -**

1.1 HS2 Phase 2a is being authorised by the High Speed Rail (West Midlands to Crewe) Bill (HS2 Phase 2a). This is a process used to deliver key infrastructure projects of national importance. The Bill will effectively grant planning permission for the works needed to bring the railway into operation

1.2 Amongst other things, the Bill will authorise

- The construction of significant works in the Borough
- The compulsory acquisition of significant amounts of land and ;
- Significant alterations to and interference with highways

1.3 The permission granted by the Bill for the construction of the railway will be subject to a number of conditions requiring the nominated undertaker (the party or parties who will construct the railway) to obtain the consent or the approval of the Local Planning Authorities along the route for certain matters.

1.4 The Bill gives each Local Planning Authority a choice between having a wide or narrow range of controls over the approval of construction details. Local Planning Authorities opting for a wider range of controls are referred to as "Qualifying Authorities", for the purposes of Schedule 17 (Conditions of deemed planning permission) to the Bill.

## 2. **Issues**

2.1 Qualifying Authorities will be responsible for issuing consents and approvals in relation to matters such as

- Cuttings
- Embankment and other earthworks
- Fences and walls
- Telecommunication masts
- Pedestrian access to the railway line
- Artificial lighting, waste and spoil disposal

2.2 Local Planning Authorities choosing not to sign the Planning Memorandum are referred to in the Bill as “non-qualifying authorities”. They will have a more restricted role and will only be required to approve plans and specification for buildings.

2.3 If it chooses to become a Qualifying Authority the Borough Council will have responsibility for issuing consents and approval in relation to those matters for which it generally has control through the planning system. This will include bridges which are deemed buildings for the purposes of the Bill.

2.4 It would not be responsible for matters which would generally fall to the County Council as follows

- Plans and specifications and construction arrangements about waste and soil disposal and excavation of bulk materials from borrow pits
- Construction arrangements comprising lorry routing

2.5 Councils wishing to become Qualifying Authorities are required to sign the Planning Memorandum. The Planning Memorandum is a document which sets out rules of conduct and administrative arrangements for both the LPAs and the nominated undertaker. It requires the Council to commit to dealing with applications for consent in an expedient manner and being sufficiently resourced to do so. It is likely that the timescale for determination of applications will be 8 weeks, which is in line with the statutory period for non-major planning applications. The Planning Memorandum can be viewed via the following [link](#). Once signed, the Planning Memorandum will be binding upon the planning authority, unless it is released from its requirements by way of an order made by the Secretary of State

2.6 In summary, becoming a Qualifying Authority involves a commitment by the Council to deal with applications appropriately, and within specified timescales, in return for greater control over a wide range of matters than it would otherwise have.

2.7 There is a recognition that the cost of processing approvals and consents will constitute a new burden on the Council. Fees for such approvals and consents, at a level yet to be determined, would be payable. It is known what the fees have been with respect to HS2 Phase 1 approval requests, and that they were set at a level intended to provide planning authorities with a fee regime that enables them to meet the costs of processing such requests. Up until the date on which Royal Assent is obtained work undertaken in respect of HS2 is also the subject of a separate Service Level Agreement with HS2.

2.8 In relation to HS2 Phase 1 (London to Birmingham) all but one of the Councils decided to become Qualifying Bodies – the only Council that did not being the Council where the entire section of HS2 running through its area was in tunnel.

2.9 To become a Qualifying Authority the Council must sign the Planning Memorandum on or before the day when the Bill is reported from the House of Lords Select Committee. It is understood that there is a possibility that this event may happen before the Full Council meeting that is to be held on the 18th September so this matter needs to come before Full Council now. The Department for Transport have asked that each planning authority along the route of HS2 Phase2a indicate by the 31st July 2019 whether they intend to become a Qualifying Authority, although the actual process of signing the Planning Memorandum would follow later.

### 3. **Options Considered**

3.1 The Council could decide not to become a Qualifying Authority in which case it would have a more restricted role and would only be required to approve plans and specification for buildings.

### 4. **Proposal**

4.1 That the Council agree to become a Qualifying Authority

### 5. **Reasons for Preferred Solution**

5.1 It is considered that the Council should take up the opportunity to become a Qualifying Authority which would give it the opportunity to have some influence over details of the scheme, should the Bill become an Act

### 6. **Outcomes Linked to Sustainable Community Strategy and Corporate Priorities**

6.1 HS2 Phase 2a will have a significant impact upon the western part of the Borough. By being a Qualifying Authority the Council will have the opportunity to have some influence over details of the scheme and this is considered to be compatible and consistent with the Council's corporate priority of providing Local Services that Work for Local People

### 7. **Legal and Statutory Implications**

7.1 None have been identified

### 8. **Equality Impact Assessment**

8.1 No equality impact has been identified

### 9. **Financial and Resource Implications**

9.1 No significant additional resources will be required in relation to the recommendation. The HS2 Bill makes provisions for the putting in place of regulations for fees for applications for approval under Schedule 17, so the impact of becoming a Qualifying Body should be neutral. Depending upon the volume of pre-application enquiries and applications that the Council receives it may be necessary to take on additional staff to deal with this work, but because such work is capable of being the subject of pre-application advice charges and application fees this could be cost neutral, depending upon how pre-application advice charges are set, by the Council, and the level of the fees (which is set by parliament). With respect to the latter the intended objective of the Fee Regulations for Phase 1 has been to provide planning authorities with a fee regime that enables them to meet the costs of processing requests for planning approval under Schedule 17 of the Act associated with that Phase.

10. **Major Risks**

10.1 No Major risk has been identified

11. **Sustainability and Climate Change Implications**

11.1 No direct implications

12. **Key Decision Information**

12.1 This is not a key decision which requires inclusion in the Forward Plan.

13. **Earlier Cabinet/Committee Resolutions**

13.1 None directly relevant to this matter

14. **List of Appendices**

14.1 There are no appendices

15. **Background Papers**

15.1 There are no additional background papers

## NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

### EXECUTIVE MANAGEMENT TEAM'S REPORT TO FULL COUNCIL

Date 24 July 2019

1. **REPORT TITLE**                      **SSLEP – COMPANY MEMBERSHIP & APPOINTMENT OF DIRECTOR**
- Submitted by:**                      **CHIEF EXECUTIVE**
- Portfolios:**                          **Corporate and Service Improvement, People & Partnerships**
- Ward(s) affected:**                  **All**

#### **Purpose of the Report**

The government's National Local Growth Assurance Framework required all Local Enterprise Partnerships (LEPs) to move from informal partnerships to an incorporated body structure by 31 March 2019 and also set out future expectations for the LEP Board structure, including their size and representation from the private-public sector and gender and diversity mix.

As a result Stoke and Staffordshire LEP ('SSLEP') formally moved to a company limited by guarantee structure earlier this year and changes have been made to the Board representation. There are now 4 District Council representatives nominated by the Staffordshire Leaders Group.

The Leader of Newcastle-under-Lyme was nominated at Annual Council to be our representative on the LEP and has now been formally nominated by the Leaders Group as a District Council representative. This report seeks authority for the Council as a corporate body to become a member of the LEP company.

#### **Recommendation**

- a. **That Newcastle-under-Lyme Borough Council joins Stoke on Trent and Staffordshire Local Enterprise Partnership Limited (SSLEP) as a member.**
- b. **To note that the Leader of the Council has been selected to be appointed as a Director of the SSLEP company as one of the four District Council Representatives.**

#### **Reasons**

The Government is continuing to develop the role of Local Enterprise Partnerships (LEPs) and the move to a formal structure is a new phase in this development. The change from an informal partnership means that the Council itself as a corporate body must become a member of the Company, although its liability in the event of the Company being wound up is limited to a £1:00.

#### 1. **Background**

- 1.1 In January 2019, the government updated their guidance on the requirements of the LEP Review in the final National Local Growth Assurance Framework. A key requirement is for LEPs to move to an incorporated body model to reflect their more prominent role in local

growth and to allow them to enter into legal commitments to take on further responsibilities in the future.

- 1.2 The government expects public-private collaboration to continue within LEPs as at present. Each has a role, with the private sector providing essential market intelligence to inform local decision making and Local Authorities providing democratic accountability and community knowledge as well as supporting business growth. The most successful LEPs also work closely with universities, further education colleges, the voluntary sector, and other key economic, business and community stakeholders.
- 1.3 LEPs will continue to set their own policies and priorities, but Government expects to see a focus on the following:
  - **Strategy:** Developing an evidence-based Local Industrial Strategy that identifies local strengths and challenges, future opportunities and the action needed to boost productivity, earning power and competitiveness across their area.
  - **Allocation of funds:** Identifying and developing investment opportunities; prioritising the award of local growth funding; and monitoring and evaluating the impacts of its activities to improve productivity across the local economy.
  - **Co-ordination:** Using their convening power, for example to coordinate responses to economic shocks; and bringing together partners from the private, public and third sectors.
  - **Advocacy:** Collaborating with a wide-range of local partners to act as an informed and independent voice for their area.
- 1.4 Under the new requirements Private sector representatives must form at least two thirds of the company board (by February 2020), with a maximum permanent board of 20 people. Up to five additional people with specialist knowledge may be co-opted on a one-year basis. LEPs are expected to improve the diversity of their board members by drawing from a more diverse representation of sectors and all parts of their geographical area and with representation from more entrepreneurial and growing start-ups and from the voluntary and community sector. The government wants to see equal representation of men and women on LEP Boards by 2023, with at least a third of members being women by 2020.

## 2. Issues

- 2.1 At their meeting on the 14 February 2019 the LEP Executive Board endorsed the external legal advice from Sharpe Pritchard Solicitors that the SSLEP partnership should be set up as a company limited guarantee by the deadline of 31 March 2019 with the County Council continuing to act as the accountable body. It was agreed that all 18 LEP Executive Board Members would become Directors of the new company, however in order to be compliant with the new requirements the new board had to be two thirds private sector to one third public sector, with six women on the Board of Directors by 2020 (although the gender balance rule does not apply to local authority representation).
- 2.2 The new Board of Directors has been constituted with 12 Directors from the private sector (which includes the University) and 6 Directors from the public sector which includes:
  - 1 Representative each from the County Council and City Council who currently provide match funding resources



- 4 District Council representatives nominated by the Staffordshire Leaders Group

2.3 This is a variation from the previous arrangement for public sector representation as both the County Council and Stoke on Trent City Council originally had two voting places on the Executive Board which has now been reduced to one each. However, whereas District Partners previously only had two seats/votes on the Board under the new company structure this has been increased to four Directors/votes. These are to be filled by District Council nominations, with those nominations agreed by the Staffordshire Leaders Group. Alternate Directors from another District have been nominated in the event the agreed representative is unable to attend.

### 3. **Proposal**

3.1 The Staffordshire Leaders Group has recently met and Cllr Simon Tagg, as the Leader of NULBC, has been selected as one of the four district representatives on the new company board. There is no allowance attached to this role.

3.2 Annual Council at its meeting in May 2019 approved the Leader's nomination to the LEP, but the change of legal structures means that Cllr Tagg is not only required to consent to act as a Director of the new company, but is also asked to sign consent on behalf of the Council to NULBC itself becoming a member of the Stoke on Trent & Staffordshire Local Enterprise Partnership Limited. This requires the Council to abide by the Articles of Association and to contribute £1 if the company is wound up whilst the Council is a member, or within one year of the Council ceasing to be a member.

### 3 **Reasons for Proposed Solution**

3.1 The composition of the new board is in accordance with new government requirements and if District Councils are to retain their role in shaping and influencing the future strategies and policies of the LEP it is important to be able to take up a seat on the new Board.

### 4. **Options Considered**

4.1 There is an option of not approving the proposal, but NULBC would lose the opportunity to be represented on the LEP Board.

### 5. **Legal and Statutory Implications**

5.1 As a legal entity, the SSLEP will be required to follow relevant legislation, codes and corporate governance arrangements which align to the Company Limited by Guarantee (CLG) model. A CLG requires guarantors who are also known as 'members' of the company. It is proposed that the private sector members will be directors themselves and the public sector members will appoint directors.

5.2 The Council has the power to join the SSLEP Company and to appoint a director to its board of directors under the Localism Act 2011 general power of competence.

5.3 As a member of the SSLEP Company the Council will have liability of up to a £1.00. Accordingly if the company is wound up whilst the Council is a member, and for one year after the Council ceases to be a member, the Council will contribute a £1.00 to the assets of the company in accordance with the Companies Act 2006.

5.4 All directors of the SSLEP Company will need to make sure that they are familiar with the Articles of Association in line with the requirements of the SSLEP Assurance

Framework/Constitution. The directors need to understand their rights and obligations in the role of director of the company.

5.5 The newly-incorporated SSLEP has been advised to take out Directors' and Officers' Insurance.

6. **Equality Impact Assessment**

6.1 No implications.

7. **Financial and Resource Implications**

7.1 There are no significant resource or financial implications.

8. **Major Risks**

8.1 The SSLEP itself has developed and maintains a comprehensive Risk Register which is monitored and managed through the Executive Board.

9. **Sustainability and Climate Change Implications**

9.1 No implications.

10. **Key Decision Information**

10.1 This is not a key decision which requires inclusion in the Forward Plan

11. **Earlier Cabinet/ Committee Resolutions**

11.1 None directly relevant to this matter.

12. **List of Appendices**

12.1 Not applicable

13. **Background Papers**

13.1 National Local Growth Assurance Framework (January 2019)

Classification: NULBC **UNCLASSIFIED**

The Health, Wellbeing and Partnerships Scrutiny Committee received an update from Cabinet, presented by Councillor Holland. To date the Minister at the Home Office has not responded to the letter regarding reclassification of Monkey Dust.

The CCG presented proposals to become a single strategic commissioning organisation and explained how this change would offer improved health and care services for the Staffordshire and Stoke on Trent area. It was an informative session with many questions from members. Committee members will feed back on an individual basis to the consultation.

A Safeguarding report was presented by Sarah Moore with recommendations from Internal Audit. Members asked if the training could be rolled out to include members of community hall management and Parish Councils.

Our future work programme will include Space, J2, Emergency Planning, Domestic Violence, and Emergency Planning. We will look at ways to encourage greater use of the parks and green spaces to benefit health and mental wellbeing, revisit the dementia friendly strategy, and look at our air quality.

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## **Report to Full Council (July 2019) from the Chair of Licensing & Public Protection**

The Licensing & Public Protection Committee has met once since the last Full Council. The meeting took place on 11<sup>th</sup> June. Following a long consultation and numerous meetings between the Chair of Licensing and Public Protection, the Deputy Leader of the Council and the Taxi trade the Licensing and Public Protection Committee needed to resolve all the various elements of the proposed new Taxi policy.

### **TAXI POLICY REPORT**

Consideration was given to a report introduced by the Council's Head of Environmental Health Services, Mrs Nesta Barker on the Taxi and Private Hire Licensing Policy 2019-2022, asking Members to review the consultations received in respect of the draft taxi policy, and to discuss and agree any amendments to the proposed new Taxi and Private Hire Licensing Policy following the consultation period.

The report contained twenty-seven decisions for Members to agree upon. The principle decisions are set out below:

- English speaking and writing requirement for drivers

That, all new applicants and current licence holders must be able to converse orally and in writing in English to a standard that would reasonably be expected of a person undertaking the role of a taxi driver.

- Knowledge Test for Drivers

That, all new applicants are required to pass the Council's written test before the Council will grant them a driver's licence.

- Driver Requirements for Medical certificates

All applications must - Undergo Group 2 medical examination and provide the medical certificate issued by their registered GP or a Medical Practitioner who confirms they have had access to the full medical records.

- Hackney Carriage Vehicle Licensing Criteria – Age of Vehicles

To adopt the same age/vehicle licensing policy as Stoke City Council currently use. That is that vehicles must be less than 7 years old when first licensed. When the vehicles become 10 years old they require safety/MOT tests at 6 monthly intervals and there is no maximum age. All new Hackney Carriages must be wheelchair accessible but owners of currently licensed saloon/hatchback/estate vehicles may replace the vehicle with one of a similar body type.

- Private Hire Vehicle Licensing Criteria – Age of Vehicles

That the Council adopt the same age/vehicle licensing policy at Stoke City Council currently uses. That is that vehicles must be less than 7 years old when first licensed. When the vehicles become 10 years old they require safety/MOT tests at 6 monthly intervals and there is no maximum age.

A new disciplinary system will also be introduced for all drivers, which will be simpler and more effective to administer.

The new policy containing all the matters that were resolved, will be brought back to the Public Protection Committee soon to agree an implementation date. In agreeing the new policy, the priority for members is public safety.

Cllr Mark Olszewski

## **MOTION ON THE ARMED FORCES COMMUNITY COVENANT**

### **Council notes:**

The Armed Forces Covenant, adopted by this Council in 2012, is a “promise by the nation ensuring that those who serve or have served in the Armed Forces, and their families, are treated fairly”. The Covenant commits our public agencies to ensuring that the armed forces community do not face disadvantage in accessing public services by reason of their service to our country.

Like all local authorities, the Borough Council supports the Armed Forces Community Covenant, and implements it in our practices and policies.

With the support of the Ministry of Defence, the Forces in Mind Trust (FiMT) and the Local Government Association published 'Our Community – Our Covenant', a report on research commissioned into ways of improving the delivery of Covenant obligations across different localities.

In June 2019 the Minister For Defence, People and Veterans wrote to every local Authority asking them to appoint an Armed Forces Covenant Member Champion.

### **Council believes:**

- (1) That we should have regard to the work that has been done since 2012 to deliver on the Armed Forces Covenant, including the latest updates to the 'Our Community – Our Covenant' report, and it is right that we direct the work of Members and officers to meet its recommendations.
- (2) That we should collaborate closely with other local authorities and national Government to ensure that our commitment to our ex-servicemen and women is discharged to a consistent, high standard.
- (3) In order to do so, that we should appoint formally a Member to be the Council's Armed Forces Covenant Champion, and an officer to act as a single point-of-contact within the organisation for Covenant implementation.

### **Council resolves:**

- (1) To reaffirm our support for the Armed Forces Community Covenant.
- (2) To appoint an Armed Forces Covenant Member Champion.
- (3) Request that the Chief Executive appoint an Armed Forces Covenant Officer Champion, who shall be the officer point-of-contact within the Council for issues relating to the Covenant.

### **Proposed by:**

Councillor Simon Tagg

### **Seconded by**

Councillor Stephen Sweeney .

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