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**Service Director – Legal, Governance and
Commissioning**

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Thursday 27 February 2025

Notice of Meeting

Dear Member

Corporate Governance and Audit Committee

The **Corporate Governance and Audit Committee** will meet in the **Council Chamber - Town Hall, Huddersfield** at **10.30 am** on **Friday 7 March 2025**.

The items which will be discussed are described in the agenda and there are reports attached which give more details.

A handwritten signature in black ink, appearing to read "S Lawton".

Samantha Lawton

Service Director – Legal, Governance and Commissioning

Kirklees Council advocates openness and transparency as part of its democratic processes. Anyone wishing to record (film or audio) the public parts of the meeting should inform the Chair/Clerk of their intentions prior to the meeting.

The Corporate Governance and Audit Committee members are:-

Member

Councillor John Taylor (Chair)
Councillor James Homewood
Councillor Angela Sewell
Councillor Caroline Holt
Councillor Kath Pinnock
Councillor Imran Safdar
Vacancy
Chris Jones (Co-Optee)

When a Member of the Corporate Governance and Audit Committee cannot attend the meeting, a member of the Substitutes Panel (below) may attend in their place in accordance with the provision of Council Procedure Rule 35(7).

Substitutes Panel

Conservative

D Bellamy
D Hall
M Thompson

Green

K Allison
A Cooper
S Lee-
Richards

Labour

M Sokhal
M Ahmed
S Ullah
B Addy
M Crook
J Rylah E Firth
H McCarthy

Liberal

Democrat
PA Davies
J Lawson
A Munro
A Marchington
A Smith
A Pinnock
A Robinson
D Longstaff

Community

Alliance
A Zaman
C Scott

Kirklees

**Community
Independents**
A Arshad
JD Lawson

Ex Officio Members

Councillor Cahal Burke
Councillor Bill Armer
Councillor Tyler Hawkins

Agenda

Reports or Explanatory Notes Attached

Pages

1: Membership of the Committee

To receive apologies for absence from those Members who are unable to attend the meeting and details of substitutions and for whom they are attending to the Committee membership.

2: Minutes of Previous Meeting

1 - 6

To approve the Minutes of the meeting of the Committee held on 21st February 2025.

3: Declaration of Interests

7 - 8

Members will be asked to say if there are any items on the Agenda in which they have any disclosable pecuniary interests or any other interests, which may prevent them from participating in any discussion of the items or participating in any vote upon the items.

4: Admission of the Public

Most agenda items take place in public. This only changes where there is a need to consider exempt information, as contained at Schedule 12A of the Local Government Act 1972. You will be informed at this point which items are to be recommended for exclusion and to be resolved by the Committee.

5: Deputations/Petitions

The Committee will receive any petitions and/or deputations from members of the public. A deputation is where up to five people can attend the meeting and make a presentation on some particular issue of concern. A member of the public can also submit a petition at the meeting relating to a matter on which the body has powers and responsibilities.

In accordance with Council Procedure Rule 10, Members of the Public must submit a deputation in writing, at least three clear working days in advance of the meeting and shall subsequently be notified if the deputation shall be heard. A maximum of four deputations shall be heard at any one meeting.

6: Public Question Time

To receive any public questions.

In accordance with Council Procedure Rule 11, the period for the asking and answering of public questions shall not exceed 15 minutes.

Any questions must be submitted in writing at least three clear working days in advance of the meeting.

7: District Heating Update

To receive the District Heating Update.

Contact: Scott Wise, Head of Assets and Development.

8: Proposed Revisions to Financial Procedure Rules

9 - 64

To receive the Proposed Revision to Financial Procedure Rules report.

Contact: Martin Dearnley, Head of Risk,
Kevin Mulvaney, Service Director, Finance.

9: Proposed Revisions to Contract Procedure Rules March 2025

65 - 280

To receive the Proposed Revisions to Contract Procedure Rules March 2025 report.

Contact: Ruth Calladine, Head of Procurement.

10: Constitution Updates	281 - 330
To receive the Constitution Updates Report.	
Contact: David Stickley, Principal Lawyer.	
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11: Councillor and Officer Protocol Update	331 - 362
To receive the Councillor and Officer Protocol Update report.	
Contact: David Stickley, Principal Lawyer.	
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12: Proposal for the Review of Procurement Practices in accordance with the Council Motion resolved on 13 November 2024	363 - 368
To receive the Proposal for the Review of Procurement Practices in accordance with the Council Motion resolved on 13 November 2024 report.	
Contact: Ruth Calladine, Head of Procurement.	
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13: Agenda Plan	369 - 370
To review the 2024/25 Agenda Plan.	
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Contact Officer: Nicola Sylvester

KIRKLEES COUNCIL

CORPORATE GOVERNANCE AND AUDIT COMMITTEE

Friday 21st February 2025

Present: Councillor John Taylor (Chair)
Councillor James Homewood
Councillor Angela Sewell
Councillor Caroline Holt
Councillor Kath Pinnock

Co-optees Chris Jones

In attendance: Steve Mawson, Chief Executive
Samantha Lawton, Service Director, Legal, Governance
and Commissioning,
Andy Simcox, Service Director for Strategy and
Innovation,
Leigh Webb, Head of Governance,
Martin Dearnley, Head of Risk,
Terence Hudson, Head of Technology,
Chris Read, Corporate Customer Standards Officer,
Alice Caruthers, Senior Risk Officer,
Greg Charnley, Grant Thornton.

Apologies: Councillor Tyler Hawkins (ex-Officio)

1 Membership of the Committee

Apologies were received from Councillor Tyler Hawkins (ex Officio)

2 Minutes of Previous Meeting

RESOLVED- That the minutes of the meeting held 31st January 2025 be approved as a correct record.

3 Declaration of Interests

No interests were declared.

4 Admission of the Public

It was noted that Agenda item 15 would be considered in private session.

5 Deputations/Petitions

No Deputations/Petitions were received.

6 Public Question Time

No questions were asked.

7 Corporate Customer Standards Annual Report 2023-24

The Committee received a report on Corporate Customer Standards 2023/24. The report provided a commentary on ongoing performance and covered other areas of interest.

The report included statistical information from across West Yorkshire relating to the number of Ombudsman complaints received. It was highlighted that Kirklees had not received any formal reports in 2023/24. The report set out details of Ombudsman complaints considered across West Yorkshire along with the headline figures for the first 6 months of the 2024/25 year. Appendix 2 to the report showed a summary of the Council's complaints process, in total 920 cases passed through the Corporate Customer Standards Section in 2023/24, which was a similar number to the previous year. The report set out detail of complaints by service area and provided a breakdown of third stage complaints. There had been a significant increase in the number of complaints received, with complaints for Special Educational Needs and Disabilities and Waste Collection being the variation in numbers. Council Tax also saw an increase in complaints.

During discussion, the Committee felt that a committee of the Council should have oversight of all complaints and procedures, and that Members were frequently left out of the loop with regards to complaints/service changes. It was noted that the Chair would liaise with the Portfolio Holder to gain an understanding of the information that Cabinet Members receive and would engage with scrutiny regarding local issues that ward members felt they should be informed about.

RESOLVED- That the Corporate Customer Standards Annual Report 2023-24 be approved.

8 Risk Management Annual Report 2024/25

The Committee received a report which provided information on the Council's strategy and approach to Risk Management and its governance arrangements to deliver in line with the approved strategy, and to outline priority actions for development during 2025-26.

The report explained that Service Directors and Heads of Service were responsible for assessing and monitoring risks and implementing effective and proportionate mitigation to control identified risks, where required. Risk registers were used to record and track information, and the Service and/or directorate level risk registers were submitted on a quarterly basis for review and challenge by risk officers and then used to update and inform the Corporate Risk Register, along with significant Emerging Risks and Issues under Management. The corporate risk report had been reformatted, to coincide with the beginning of the 2024/25 report cycle. A new Service Risk Register template had been introduced and was in the process of being rolled out across the Council.

Corporate Governance and Audit Committee - 21 February 2025

The report advised that at the end of Q3 2024/25, the Corporate Risk Register listed 24 risks, nine were reported as red rated risks, thirteen amber and two were green.

During consideration of this item, the Committee asked for confirmation of their role regarding risk. The Chief Executive advised that the Corporate Governance and Audit committees' responsibility was to consider the system of internal control and risk, considering if the system and approach was correct, but not the risks themselves as this should be considered at Cabinet/Scrutiny. The Committee requested that background risk reports provided to other committees be provided or linked in future reports to the Corporate Governance and Audit Committee. The Committee indicated that they would consider inviting service directors to attend future meetings of this committee to discuss the process of risks identification. The Committee noted the Chair of OSMC was an ex officio of this committee and noted his attendance would be helpful to consider matters such as this.

RESOLVED- That the Risk Management Annual Report 2024/25 be noted.

9 Dates of Council Meetings - Proposal for Additional Council Meeting (Reference to Council)

The Committee received a report proposing an additional meeting of Council during the current Municipal Year. Following discussion at the last Committee meeting held on 31st January 2025, it was proposed to hold an additional meeting in April 2025. As there would be no elections scheduled for May 2025, the proposed date did not conflict with rules and guidance in respect of the pre-election period which was normally considered for meetings proposed in April.

Council Procedure Rule 2 (1) advised that the dates of ordinary Council Meeting in each Municipal Year would be determined by the Council following recommendations made by Corporate Governance and Audit Committee. The dates of Council meeting for 2024/25 were approved by full Council following consideration by this Committee on 19th January 2024. Council Procedure Rule 2 (1) further advised that any changes to the agreed schedule of Council meetings required agreement of Full Council following a proposal from the Corporate Governance and Audit Committee.

RESOLVED- That an additional meeting of Council be agreed to be scheduled to take place on 23rd April 2025 and be recommended to Council.

10 Update to Corporate Code of Governance

The Committee received a report of Corporate Code of Governance with updates intended to provide clarification around how Kirklees measured its performance and demonstrated compliance with the code.

The Code of Corporate Governance set out arrangements by which the Council ensures effective governance. The code was drafted with reference to guidelines published by Chartered Institute of Public Finance and Accountancy (CIPFA) and SOLACE.

During discussion the committee thanked officers for a comprehensive report and asked a question on how performance was judged. The Service Director, Legal,

Corporate Governance and Audit Committee - 21 February 2025

Governance and Commissioning advised that performance data, audit reports, and complaints judged the outcome. The Committee suggested that the Code of Corporate Governance report be included in Councillors induction.

RESOLVED- That the suggested updates to the Code of Corporate Governance be recommended to Council.

11 Update on representations on Outside Bodies

The Committee received an update on the Representation on Outside Bodies.

The Service Director, Legal, Governance & Monitoring had delegated authority, in consultation with Group Business Managers, to receive and process nominations to the Outside Bodies. Any Changes in the Council's representation on Outside Bodies were reported to Corporate Governance and Audit Committee for Information.

Since the last update to Committee, changes to the Council's Outside Body representation had occurred and had been incorporated into the Council's database of outside body representation. An update report on the changes would normally be presented to this Committee in September each year, however, due to a number of Member changes which affected the nominations during the 2024/25 Municipal year, there report could not be finalised until recently.

During consideration of this item the committee suggested that a link to representatives of outside bodies be published on the Councils transparency page.

RESOLVED-

- 1) That the update on representation on Outside Bodies as Appendix 1 be noted.
- 2) That Outside Body representation be continued to be monitored and any changes following the Annual General Meeting be reported to this Committee in September each year.

12 Cyber Security Assurance

The Committee received a report on Cyber Security which provided information about the Council's existing cyber control and processes in line with UK Government standards.

The report advised that the Council carried out rigorous annual testing and external assessment to achieve Public Sector Network accreditation. The Council had started a process to adopt the National Cyber Security Centre's Cyber Assessment Framework which would be independently assessed during 2025. The Councils Data Security Protection Toolkit submission strictly followed NHS England's guidance for Standards Met, but the controls had not been directly audited.

During discussion of this item the Committee suggested that a second report which addressed practical information be considered at an informal meeting of this committee.

Corporate Governance and Audit Committee - 21 February 2025

RESOLVED- That the cyber security technical controls and process already in place which meet UK Government expectations be noted.

- 13 Internal Audit Quarterly Report 3 2024/25, October 2024 to December 2024**
The Committee received a report relating to the internal audit work in quarter 3 of 2024/25.

The report set out the work of Internal Audit completed October to December 2024. All work had reached a finalised state. Except where shown otherwise, management had accepted the findings and agreed to implement the recommendations. A number of audits were awaiting finalisation and were to be reported in the next quarter.

RESOLVED- That the Internal Audit Quarterly Report 3 2024/5, October 2024 to December 2024 be noted.

- 14 Exclusion of the Public**
RESOLVED – That acting under Section 100(A) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Part 1 of Schedule 12A of the Act, as specifically stated in the undermentioned minutes.

- 15 Internal Audit Quarterly Report 3 2024/25, October 2024 to December 2024**

RESOLVED- That the Committee noted the exempt information, which was an appendix to agenda item 13.

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KIRKLEES COUNCIL				
COUNCIL/CABINET/COMMITTEE MEETINGS ETC				
DECLARATION OF INTERESTS				
Corporate Governance and Audit Committee				
Name of Councillor				
Item in which you have an interest	Type of interest (eg a disclosable pecuniary interest or an "Other Interest")	Does the nature of the interest require you to withdraw from the meeting while the item in which you have an interest is under consideration? [Y/N]	Brief description of your interest	

Signed: Dated:

NOTES

Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your disclosable pecuniary interests under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.

Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.

Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority -

- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged.

Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.

Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.

Any tenancy where (to your knowledge) - the landlord is your council or authority; and the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -

- (a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and
- (b) either -

the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.



REPORT TITLE: District Heating Update

Meeting	Corporate Governance, Audit Committee
Date	7th March 2025
Cabinet Member (if applicable)	Cllr Moses Crook Deputy Leader and Transport and Housing
Key Decision Eligible for Call In	No Yes/No – If no give reason
Purpose of Report To provide an update on the District Heating Programme and Lessons Learnt: Actions from the Internal audit report, Switch2 metering and billing contract.	
Recommendations <ul style="list-style-type: none"> Note the report and to agree the contents are shared with key stakeholders. Reasons for Recommendations <ul style="list-style-type: none"> To ensure key stakeholders are aware of current position and progress regarding the District Heating Programme and delivery. 	
Resource Implications The requirement for a dedicated Officer to manage the Heat Networks for Homes and Neighbourhoods is essential.	
Date signed off by <u>Executive Director</u> & name	Give name and date for Cabinet / Scrutiny reports David Shepherd 27 th Feb 2025
Is it also signed off by the Service Director for Finance?	Give name and date for Cabinet reports Kevin Mulvaney 27 th Feb 2025
Is it also signed off by the Service Director for Legal Governance and Commissioning (Monitoring Officer)?	Give name and date for Cabinet reports Samantha Lawton 27 th Feb 2025

Electoral wards affected: All

Ward councillors consulted: N/A

Public or private: Public

Has GDPR been considered? Yes

1. Executive Summary

The findings of the internal audit into the district heating schemes published in June 2024, has accelerated the work we are doing to resolve the historic issues relating to our district heating schemes and has highlighted some important priority areas that we are addressing with urgency.

We have responded proactively to the audit findings by forming an internal project group, creating an action plan to address each area of concern, and maintaining oversight at a senior level of the progress being made

Background

District heating, also known as a heat network, is a system that uses a singular central heat source to distribute hot water through a network of insulated pipes to multiple individual dwellings. The structure is usually used to fulfil heating and hot water requirements in apartment complexes.

The contract with the current provider is for the end-to-end heat management service. This contract expired in January 2023. An exemption to continue to use the current provider until 31st December 2024 was granted by the Strategic Director of Homes and Neighbourhoods and the Head of Procurement. A new contract for a period of 12 months was signed by the Director of Homes and Neighbourhood with the current provider Switch2. (expires 31 December 25)

Kirklees has 25 individual district heat networks that supply heat to 1,042 homes. Approximately of which 10% are leasehold. The properties span a wide geography across the Kirklees footprint, within the following wards:

Electoral Ward	Property count
Almondbury	28
Ashbrow	44
Batley West	10
Birstall/Birkenshaw	40
Crosland Moor/Netherton	48
Dewsbury East	246
Dewsbury South	30
Dewsbury West	210
Greenhead	99
Lindley	45
Liversedge and Gomersal	65
Newsome	177

Property breakdown:

District Heating Properties – 1042

Sold/Leasehold – 193

Bungalows & Houses – 75

Flats (Deemed as high risk) – 772

Converted (no longer in use) – 2

The drop from 773 to 772 is because 57 Trinity St is now Sold.

2. Information required to take a decision

N/A No decision required

3. Implications for the Council

Loss of revenue and reputational risk

3.1 Council Plan

Working group in place to address all issues raised in the internal audit report

3.2 Financial Implications

Charges increased from 4.6p per kwh plus a daily admin charge of 14.5p to a maximum of 13.7p per kwh plus a daily admin charge of 24.3p. Meters were amended from 2nd January 2025 to reflect these increases.

The aim is to achieve a full cost recovery of heating charges in 2025/26. The forecast shortfall at Q2 2024/25 was £573k and the forecast shortfall at Q3 2024/25 was £553k

3.3 Legal Implications

3.4 Climate Change and Air Quality

Decarbonisation strategy to be implemented and will include specific plans for Kirklees heat networks.

3.5 Other (eg Risk, Integrated Impact Assessment or Human Resources)

Risk	Mitigation	RAG
Regulatory compliance: Failure to comply with the new heat regulations could result in legal or financial penalties	Requires a dedicated officer in place to have regular reviews and update policies and procedures accordingly. Currently looking at resourcing this role as part of the establishment review.	Medium
Contract Management: Evolving contract management with Kirklees and Switch 2 could affect collaboration and programme outcomes, leading to failure to track contract renewal dates, poor decision-making missed deadlines and miss payments.	Implement a robust contract management system to track renewal dates, deadlines, and payments. Schedule regular meetings with Kirklees and Switch2 to maintain open communication, documenting all interactions and decisions to ensure transparency and accountability.	Medium
Inaccurate Data: The absence of a central storing place of the data makes it difficult to keep track of the latest versions and ensure data accuracy in one central place.	Implement a centralised data management system accessible to all relevant stakeholders. Conduct regularly audit data to ensure accuracy and consistency. IT backup systems in place to aid with the loss of data.	Medium

When Ofgem take over as the regulator in April 2025, it is expected that a limit will be put on as to how far you can go back to recover debt.	Prepare for Ofgem’s new regulations by reviewing current debt recovery practices and making necessary adjustments. Consultant in place to provide advice.	Medium
The increases in unit rates applied in January 2025, may be under recovery	Ongoing monitoring of position and reported each ¼ to Cabinet in normal Finance reports	Medium
Investigation of accounts which may yield potential debts and other issues around contractor performance, due to Inaccurate reporting by Switch2 and not having a dedicated Officer to manage the contract.	Resolution of debt needs further investigation. Establish clear processes for tracking and recovering debts. Engage with residents to negotiate manageable repayment plans for the collection of the debt.	Medium
Resource and capacity to meet the demands of the action plan	Assign a dedicated officer to manage the contract with Switch2. A project group has been formed to address the actions and take ownership.	Medium
Staff changes impacting the delivery of the action plan	Once the procedures and new contract and ways of working are in place, future handovers should be more thorough and achieve continuity of service.	Medium

4. Consultation

Tenant Led Panel approved the letter for residents, informing them of the forthcoming increase to their energy charge.

5. Engagement

Residents have received communication regarding increase tariff charges, that included key contact details.

6. Options

6.1 Options considered N/A

6.2 Reasons for recommended option N/A

7. Next steps and timelines

7.1 District Heating Audit

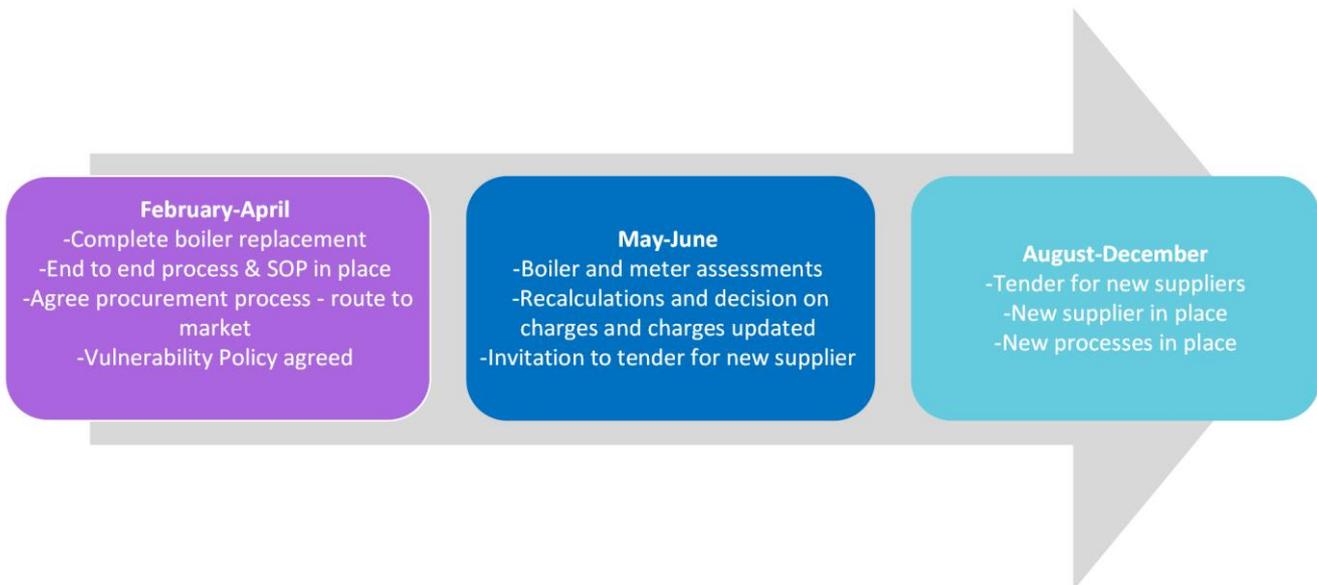
- Continue to have monthly District Heating Group meeting.
- Complete boiler replacement programme: Replacing the remaining two boilers by end of March 2025.
- Work with HR on recruitment campaign for dedicated resource to manage the decarbonisation strategy including District Heating Programme.
- Collaborate closely with the consultant to complete a full survey of heat networks, efficiency review of boilers houses and procurement of a metering

and billing provider. Incorporating their advice on new heat regulations and compiling our decarbonisation strategy.

- Agree a programme including a route to tender specification following the necessary reviews and assessments.
- Continue to monthly review meeting with Switch2 – Ensure the new tariff charges are effectively monitored for any resident's feedback or issues.

7.2 Lesson Learnt

- Work with HR on recruitment campaign for dedicated resource to manage the decarbonisation strategy including District Heating Programme: draft a JD and Job focus sheet for sign off by the Head of Assets and Building Safety
- Collaborate closely with the consultant to complete a full survey of heat networks, efficiency review of boilers houses and procurement of a metering and billing provider. Incorporating their advice on new heat regulations and compiling our decarbonisation strategy. Agree a programme including a route to tender specification following the necessary reviews and assessments.
- Work with Switch2 on the debt highlighted for the prepayment meters.



8. Contact officer

Scott Wise: Head of Assets and Development scott.wise@kirklees.gov.uk

Paulette Johnson: Interim Service Manager – Strategy & Performance
Paulette.johnson@kirklees.gov.uk

Julie Woodfine: Sustainability Strategy Team Leader julie.woodfine@kirklees.gov.uk

9. Background Papers and History of Decisions

Corporate Governance & Audit Committee - September 2024

10. Appendices

Executive summary

11. Interim Service Director responsible

Janet Sharpe for Homes & Neighbourhoods

Tel: 01484 221000 ext 78709

Email: janet.sharpe@kirklees.gov.uk

District Heating Audit STATUS UPDATE 07.03.2025

Project Sponsor	Service Manager	District Heating Representative	Status Date	Overall Status	Project Status	
					Scope	Schedule
Scott Wise	Paulette Johnson	Julie Woodfine	10/02/2025	Amber	Amber	Amber

OVERALL PROJECT STATUS

Overall status is Amber. The programme is Amber due to not having a dedicated resource to manage the district heating programme and the implementation of the Decarbonisation Strategy Kirklees has 25 individual district heat networks that supply heat to 1,042 homes. Approximately of which 10% are leasehold.

Top Accomplishments

Progress:

- Boiler replacement programme across the district heating sites ongoing, 10 have been replaced to date, with a further two to be completed by end of March 2025, and a further 13 that do not require immediate replacement will be replaced accordingly.
- Process agreed to obtain monthly metering readings for finance to reconcile against invoices from gas supplier, ongoing.
- All district heating expenditure and income is now accounted for directly within the HRA.
- A consultant has been commissioned to do a full survey of our heat networks, including an efficiency review of all our boiler houses, assist with the procurement of a meter and billing provider, advising on the new heat regulations and the impact for Kirklees as well as working with us to complete our decarbonisation strategy.
- The recalculation the new tariff charge for residents now completed, 31 days notice was provided to all residents prior to the new charges being applied on 2nd January 2025.
- The Director of Homes and Neighbourhood signed off, Switch2 Extension for a period of 12 months

Next Steps

- Complete boiler replacement programme: Replacing the remaining two boilers by end of March 2025.
- Continue to have monthly District Heating Group meeting
- Work with HR on recruitment campaign for dedicated resource to manage the decarbonisation strategy including District Heating Programme.
- Work closely with the consultant to complete a full survey of heat networks, efficiency review of boilers houses and procurement of a metering and billing provider. Incorporating their advice on new heat regulations and compiling our decarbonisation strategy. Agree a programme including a route to tender specification following the necessary reviews and assessments. See [Kirklees Heat Networks Project Plan.pdf](#)
- Continue to monthly review meeting with Switch2 – Ensure the new tariff charges are effectively monitored for any resident's feedback or issues

Risks/Issues

ACTIVE RISKS & ISSUES:

- Regulatory compliance: Failure to comply with the new heat regulations could result in legal or financial penalties.
- Resource Availability: Limited availability of skilled personnel to lead the programme could hinder programme progress.
- Contract Management: Evolving contract management with Kirklees and Switch 2 could affect collaboration and programme outcomes, leading to failure to track contract renewal dates, poor decision-making missed deadlines and miss payments.
- Inaccurate Data: The absence of a central storing place of the data makes it difficult to keep track of the latest versions and ensure data accuracy in one central place.
- Investigation of accounts which may yield potential debts and other issues around contractor performance, due to Inaccurate reporting by Switch2 and not having a dedicated Officer to manage the contract.

Key Milestones	Status	Target Date	% Complete	Status
New Tariff charge implemented	Green	02/01/2025	100%	Completed
Award Consultancy contract	Green	20/01/2025	100%	Completed
Complete boiler replacement programme	Green	31/03/2025	90%	In Progress
Recalculation of the full costs and income associated with the District Heating	Green	31/03/2025	5%	In Progress
Review vulnerability criteria to ensure it is still appropriate.	Green	31/03/2025	90%	In Progress

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Report title: Proposed Revisions to Financial Procedure Rules

Meeting	Corporate Governance & Audit Committee
Date	7th March 2025
Cabinet Member (if applicable)	N/A
Key Decision Eligible for Call In	No No – If no give reason
Purpose of Report To provide information on proposed changes to Financial Procedure Rules for the municipal year 2025/26	
Recommendations <ul style="list-style-type: none"> Approve the changes contained within the appendix and track changed document, and recommend these changes to Council 	
Reasons for Recommendation <ul style="list-style-type: none"> To clarify arrangements to ensure sound governance and control of financial matters 	
Resource Implication: There are no direct resource implications.	
Date signed off by <u>Strategic Director</u> & name	Not applicable
Is it also signed off by the Service Director for Finance?	Kevin Mulvaney: Service Director- Finance (26/2/2025)
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Samantha Lawton; Service Director - Legal Governance and Commissioning (26/2/2025)

Electoral wards affected: all

Ward councillors consulted: not applicable

Public or private: public

Has GDPR been considered?

yes

1. Executive Summary

- 1.1 This report sets out information on proposed changes to Financial Procedure Rules for the year 2025/26.
- 1.2 There are various changes to titles and definitions, and several changes to detailed arrangements as set out in a detailed appendix, and track changed text.

2. Information required to take a decision

- 2.1 All the proposed changes to texts or periods/ £values are shown in the Appendix1 and track changes marked in the full text.
- 2.2 The changes are incremental. It is intended that over the next year officers from Finance and Risk will draw up proposed (more significantly) revised Financial Procedure Rules.

3. Implications for the Council

Improving governance, through clearer financial procedure rules, should lead to more effective service delivery.

3.1 Working with People

Not directly applicable.

3.2 Working with Partners

Not directly applicable.

3.3 Place Based Working

Not directly applicable.

3.4 Climate Change and Air Quality

Not directly applicable.

3.5 Improving outcomes for children

Not directly applicable.

3.6 Financial Implications

Effective and clear financial procedure rules assist with strong governance and open decision making, and should improve financial control

3.7 Legal Implications

Effective and clear financial procedure rules assist with compliance, governance and open decision making

3.8 Other (e.g. Risk, Integrated Impact Assessment or Human Resources)

Implementation of should improve overall control arrangements and promote good governance.

4 Consultation

These changes have been prepared by officers of Finance and Legal Governance & Commissioning (Risk) service based on issue of control that have arisen during the last year. The proposed changes have been discussed with the councils senior management.

5 Engagement

None beyond consultation as noted above.

6 Options

6.1 Options Considered

The proposals are minor redrafting to clarify the position
Alternatives would be

- To make no change whatsoever.
- To fundamentally redraft the control arrangements- this is proposed for next year.
-

6.2 Reasons for recommended Option

There are no urgent reasons to fundamentally rewrite financial procedure rules (FPRs), which are based around a governance process that allocates responsibilities to Council, Cabinet and officers. In practice the bulk of FPRs are officer processes.

However, over the next year, officers from Finance and Risk will look to assess if further, more significant changes to the FPRs are worth considering to reflect the fundamental financial processes now being controlled through electronic information systems rather than by paper records, and ensuring that overall financial governance properly reflect council structures, and member and officer responsibilities and accountabilities

7 Next steps and timelines

- Requires formal approval of Annual Council

8 Contact officer

Kevin Mulvaney. Service Director Finance (kevin.mulvaney@kirklees.gov)
Martin Dearnley Head of Risk (martin.dearnley@kirklees.gov)

9 Background Papers and History of Decisions

Existing Financial Procedure Rules

10 Appendices

Table of detailed changes in appendix1

11 Service Director responsible

Kevin Mulvaney- Service Director Finance
Sam Lawton- Service Director Legal, Governance & Commissioning

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APPENDIX 1

PROPOSED VARIATIONS TO FINANCIAL PROCEDURE RULES 2025

Variations are generally marked by track changes, except as noted below

General variations

There are some changes to role descriptions, or job titles.

The role previously designated Chief Finance Officer is now formally recorded as Chief Financial Officer (the statutory definition), and referred to in the FPRs, as “CFO”.

The former description Strategic Director is now changed to Executive Director in line with agreed job titles.

The terms Capital Plan is now used consistently. It was previously described sometimes under this title, and other times under the title Capital Investment Plan.

All of the above have been pre-accepted and are not shown as track changes.

There are new definitions for

Asset

Chief Executive

Executive Member (Portfolio Holder)

General Fund

Housing Revenue Account (HRA)

Medium Term Financial Plan (extended periods)

Public Sector Internal Audit Standards

Detailed Changes

Para Number	Description of Change	Reason
1.7	Deletes reference to Monitoring Officer	To make clear that this responsibility lies solely with the CFO
1.14	Deleted wording, as no longer required	Covered in definitions
2	Change in period for which MTFP is applicable	Longer planning horizon facilitated
2.2	Adds words re scheme of delegation	Making clear applicability of authority
2.4	Adds words re HRA	Making clear separation of HRA
2.5/2.6/2.8	Slightly amended words re savings, targets and budget pressures	To set out why savings etc may be needed
2.9	Adds word re constitution as regards Cabinet. Council and the annual budget	The constitution sets out additional arrangements
2.12	Additional words about what must be reported to Cabinet quarterly	clarity
2.21	Earmarked and general reserves	To clarify the CFO role in management of these budgets
2.26	Transfer of budgets from reserves to service budgets	To clarify rights of CFO
2.28	Section reworded to recognise that occasionally the council may want to	Previous rules forbade this

	use revenue budgets for capital purposes, but only with CFO approval	
2.38	Changes to wording about rights of cabinet when they become aware of future budget pressures	Clarity
3.1b	Additional words re what is capital expenditure	Clarity
3.4	Adds in HRA	Clarity
3.9	Additional wording to be clear about the rights and responsibilities of Service directors re capital spending	Clarity
3.16	Amended wording re authorisation of capital expenditure	Potentially provides more flexibility, but retains control
3.18	Amended to make Service Directors responsible for reviews rather than Executive Directors	Aligns responsibility with that of project initiation and management
5.4	Additional wording about compliance with Global Internal Audit Standards by internal audit	Clarity
5.7	Additional wording about responsibilities of Head of Risk & Internal audit re fraud and whistleblowing	Clarity
9.10	“Financial instrument”	To recognise that property leases are covered by rules in the constitution/delegation agreements
11.1	New wording re the setting of general charges by Council, and the circumstances when a Service Director may amend	Clarity, and reminds that any charge resetting may need formal decision under key/delegated decision protocol
11.7	New- shorter wording, re Anti Money Laundering	to reflect government advice more closely, but acknowledge that the requirements have flexibility
11.8-11	Minor paragraph renumbering	
14.4	Amendment to wording to recognise that every employee completes a time sheet	To recognise reality
22.5	Additional wording to recognise that if a grant scheme expects quick expenditure, this may expose risk	To recognise reality
22.7	Additional words to recognise that a 100% externally funded grant, which involves no discretion in fund allocation, can be progressed with retrospective reporting	Will facilitate the use of external funding, often offered at short notice, for specifically directed purposes, without a delay that may result from requiring specific authority

22.14	Addition that Service Director Legal Governance & Commissioning has authority to amend features of a loan in consultation with CFO, Executive Director and Executive Member	To give some flexibility in circumstances where the feature of loan may require amendment

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KIRKLEES COUNCIL

FINANCIAL PROCEDURE RULES

March 2025

Introduction

These Financial Procedure Rules set out the framework which the Council will use in managing its financial affairs. They set out levels of responsibility and give authority to the Cabinet, Members and Officers and are intended to promote good practice in the use of public funds.

A guide to the Financial Procedure Rules will be published on the Intranet to help users understand and implement good financial management. Users should contact the CFO or their staff if assistance or clarification is needed.

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Financial Procedure Rules Definitions

Word	Definition
Activity	A standard sub-division of an Executive Director's budget. normally equivalent to the service portfolio operationally managed at Service Director level;
Asset	An item belonging to the Council that has a value. It can include buildings, equipment, vehicles, stocks, stores, money, debtors , and items of intellectual value
Associated Organisation	An organisation in which the Council has a majority or substantial shareholding or exercises substantial influence through its funding of the organisation.
Business Case	A written document, setting out the reasons for a project, including analysis of options, risks and resources needed.
Cabinet Member	A single member of the Cabinet.
Central Budget	A budget which is held centrally and for which statutory. CFO is accountable (in accordance with any rules established in these procedures, or by Council, or Cabinet)
Chief Executive	The person designated as the councils most senior manager.
Chief Financial Officer (or "CFO")	The person so designated as the section 151 of the Local Government Act 1972 from time to time by the Chief Executive.
Controllable Budget	A budget which is allocated to a director, and for which the Director is accountable, in accordance with any rules established in these procedures, or by the CFO, or by Council, or Cabinet
Council Plan	The strategic plan of the council's activity approved by the Council
Council Provisions	Sums of money set aside to pay for uncertain events

Word	Definition
Earmarked Reserves	As council provisions, but with a more clearly stated purpose
<u>Executive Director</u>	<u>The person responsible for the commissioning of activity at an Executive Directorate level.</u>
<u>Executive Directorate</u>	<u>The consolidated group of activity budgets that fall within the responsibility of any one Executive Director.</u>
Executive Team	The Council's most senior officer leadership team.
<u>Executive Member (Portfolio Holder)</u>	<u>The Councillor responsible at Cabinet and to Council for a range of service areas.</u>
Fixed Asset	Any physical item having a long-term value –such as a vehicle, or property.
<u>General Fund</u>	<u>The expenditure and income that relates to the general operations of the Council (but not the HRA)</u>
<u>Housing Revenue Account (“HRA”)</u>	<u>The expenditure and income that relates to the management of the council housing function</u>
Head of Audit & Risk	The officer currently holding the role of Head of Internal Audit, as required by Public Sector Internal Audit Standards.
His or her Nominees	Refers to the 'Head of Service level' to which Service Directors, including the CFO can. nominate on their behalf, to enact Service Director delegated authorities as set out in these FPR's.
Internal Audit Strategy & Charter	Arrangements agreed by the Corporate Governance & Audit Committee on how the internal audit function will operate in line with Public Sector Internal Audit Standards.
Irregularity	An unexpected or inappropriate event or behaviour.

Word	Definition
Land Asset	Includes any interest in land and buildings and any easement or right in or over land.
Medium Term Financial Plan (MTFP)	Revenue Budget Plan, normally between 2 and <u>4-5</u> years, and Capital Plan, up to <u>5-10</u> years normally up to 5 years.
Monitoring Officer	The person appointed under section 5 of the Local Government & Housing Act 1989, currently the Service Director, Legal, Governance & Commissioning.
Named Project	A project (forming part of a Capital Programme) identified by Cabinet (or any other body or person so authorised by Cabinet) for inclusion in the Capital Plan.
Officer	An employee of the Council or other person contracted to carry out functions where these Financial Procedure Rules apply.
Partnership	Any organisation with which the Council has a formal or informal agreement to act together.
Programme Area	A group of projects having a similar purpose in the Capital Plan, or a major project listed separately within the Capital Plan.
Project	A single scheme included separately in the Capital Plan, or as a part of a programme area.
Public Sector Internal Audit Standards	Rules based on the International Professional Practices Framework (IPPF) , Institute of Internal Auditors Global Audit Standards, as amended by UK government and cipfa (re local authorities) intended to promote improvement in the professionalism, quality, consistency and effectiveness of internal audit across the public sector.
Rollover	A mechanism for transferring budgets between financial years.
Service Director	The person responsible for the proper compliance with these procedures whose name is included on a schedule approved by the Chief Executive.

Word	Definition
Specified Project	A project specified by Council for inclusion in the Capital Plan.
Virement	The transfer of resources from one budget to another.

1. Financial Governance

- 1.1 The Council has a statutory duty to make arrangements for the proper administration of its financial affairs and to secure that one of its officers has responsibility for the administration of those affairs. The Council has resolved that the Chief Financial Officer (CFO) is the responsible officer.
- 1.2 The Council will approve Financial Procedure Rules to be used by all members and officers.
- 1.3 The Corporate Governance & Audit Committee is responsible for approving the Council's Annual Statement of Accounts.
- 1.4 The Cabinet is responsible for ensuring that the Financial Procedure Rules are followed across the Council. The Corporate Governance & Audit Committee is also responsible for reviewing the Financial Procedure Rules annually and for making recommendations for any changes to the Council.
- 1.5 The Corporate Governance & Audit Committee is responsible for approving the Council's risk management policy statement and strategy and for reviewing the effectiveness of risk management arrangements. The Cabinet is responsible for assessing the risk of activity undertaken by the Council.
- 1.6 The CFO is responsible for the proper administration of the Council's financial affairs, and particularly for:
 - a) Providing financial advice and information to members and officers.
 - b) Setting standards for good financial management and monitoring compliance with those standards, including adherence to the CIPFA Financial Management Code of Practice.
 - c) Advising on the key financial controls necessary to secure sound financial management.
 - d) Ensuring that proper systems of internal control are operated.
 - e) Coordinating the preparation of the Revenue Budgets and the Capital Plan.
 - f) Determining the accounting policies and financial procedures and records for the Council.
 - g) Preparing the annual financial statements in accordance with the relevant accounting standards and codes of practice.
 - h) Treasury management activities.
 - i) Preparing a risk management policy statement and promoting it throughout the Council.
 - j) Maintaining an effective internal audit function, jointly with the Chief

Executive.

k) Ensuring proper professional practices are maintained within the finance function; and

l) Managing the Council's taxation affairs.

1.7 The CFO must report ~~to the Council's Monitoring Officer and~~ to the Council if:

a) A decision has been made, or is about to be made, which involves the incurring of expenditure which is unlawful; or

b) There has been, or is about to be, an unlawful action resulting in a financial loss to the Council.

~~and the Council's Monitoring Officer will take all appropriate and necessary steps to deal with the matter.~~

1.8 The CFO may issue any instruction intended to fulfil these responsibilities and is entitled to any information or explanations as he/she may require. The Head of Audit & Risk, and the Service Director Legal, Governance & Commissioning may also issue instructions or guidance in relation to these financial procedure rules.

1.9 Service Directors must ensure that financial systems and procedures used in their service areas are adequate to record and control all transactions and to achieve adequate levels of internal check and control.

1.10 Service Directors must make arrangements to ensure that all officers involved in financial matters are aware of, and competent in the use of, these Financial Procedure Rules. The extent of delegated authority to officers must be recorded.

1.11 Executive Directors must ensure that any report to Cabinet contains the financial implications of any proposals. These financial implications must be agreed with the CFO.

1.12 Where, as a result of legislation or decision of the Council, part of the Council's functions is delivered by an Associated Organisation including any partnerships of which the Council is a member or participant, funded partly or wholly by the Council, the organisation must agree with the Council its own arrangements for corporate governance, by way of an initial proposal. Subsequent authority to approve changes may be delegated to an Executive director. All partnership arrangements will incorporate the spirit of the Council's Financial Procedure Rules and will include the Council's right of access to financial information about the associated organisation.

1.13 Schools with delegated budgets are subject to, and must comply with, the 'Kirklees Scheme for Financing Schools', which has tailored these Financial Procedure Rules for use in those Schools.

1.14 A reference in the Financial Procedure Rules:

a) To the Cabinet includes Cabinet Committees

~~b) To an Executive Director includes where appropriate the Chief Executive~~

~~e)b)~~ To a Service Director includes his or her nominees (except where otherwise specifically forbidden)

~~d)c)~~ To the CFO includes his or her nominees; and

~~e)d)~~ To an officer means any employee of the Council, or other persons contracted to carry out functions where these Financial Procedure Rules apply.

2. Revenue Budget Preparation and Management Revenue Budget

Responsibilities

The Council is responsible for determining the Corporate/Council Plan which sets out the Council's strategic outcomes and actions, and Executive Directorate outcomes to provides the overarching framework for the determination of the Council's Medium Term Financial Plan (MTFP) within available resources.

An annual refresh of the MTFP will be undertaken and presented to Cabinet no later than September of each year. This will provide the framework for the following years budget.

The Council's MTFP includes the following:

a) A revenue balanced budget position for the following financial year; both for the general fund and the ring-fenced Housing Revenue Account (HRA), including the Capital Plan, and making provision for the revenue consequences from the Capital Plan as appropriate.

b) The level of Council Tax for the following financial year.

c) General fund and HRA revenue spend and funding forecasts, including a draft Capital Plan, beyond the next financial year; for a period of up to 4-5 years; including the revenue consequences from the multi-year Capital Plan over the same period; and

d) An overall longer term balanced budget forecast for the HRA MTFP in the context of the ring-fenced 30-year HRA business plan

2.1 The Cabinet is responsible for recommending a Medium-Term Financial Plan (MTFP) as set out above to Budget Council, to enable the Council to set a balanced budget for both the general fund and HRA for the forthcoming

financial year. The 1992 Local Government Finance Act, Section 30 (6) states that ~~that~~ the billing Authority must set an amount of Council Tax before 11th March in the financial year preceding that for which it is set. To comply with this legal requirement, this effectively means that the annual date of Budget Council should be no later than 10th March each year.

- 2.2 The Cabinet is responsible for implementing the Budget Council approved MTFP for the forthcoming financial year. ~~-~~ Specific decisions may decisions may be made under the approved scheme of delegation.
- 2.3 On the advice of the CFO, Cabinet can recommend amendments to the MTFP to any meeting of Council, also recommending any related changes to the Council Plan, strategic objectives or actions.
- 2.4 The Cabinet is responsible for approving the setting of Council Tenant Rents, and other rents and service charges within the Housing Revenue Account (HRA), each year, within the scope of existing HRA rent and charging policies, which is governed by the statutory ringfence that the HRA operates within.

Budget Preparation

- 2.5 The Cabinet will submit no later than the October meeting of the Council each year a provisional budget strategy, for a period of up to 5 years. The starting point will be the existing multi-year plans rolled forward from the previous year, including a high-level review of Council funding and spend assumptions. Any resultant gap between funding and spend forecasts will inform target savings required ~~spending controls~~ over the new MTFP period.
- 2.6 The CFO is responsible for establishing budget procedures, including determination of the following:
 - I. Budget pressures and target ~~spending controls~~ savings for the Council budget over the MTFP, and their allocation to Executive Directors, as appropriate,
 - II. the format for budget documentation,
 - III. a corporate budget timetable, and
 - IV. to report on any amendments put forward as part of the Council's budget process.
- 2.7 The provisional budget strategy will include arrangements for wider public and key stakeholder engagement on budget options being considered.
- 2.8 Executive Directors will produce draft budget proposals to ~~meet~~ address the pressures and ~~target spending controls~~ savings targets for Council budgets over the MTFP, in accordance with budget procedures and the annual budget timetable as set out by the CFO. These draft budget proposals will show how resources are to be allocated across activities, taking into account any service changes, performance targets, and the specific requirements of any relevant legislation, including integrated impact assessments, in formulating budget options for Cabinet consideration.

- 2.9 At least 14 days before the date set for the meeting of the Council which will determine the Council's Budget for the next financial year, the Cabinet will make its recommendations to the Council with regards to the Annual Revenue Budget, the Capital Plan, and the consequent rates for Council Tax, and the updated MTFP. [There are additional rules and arrangements that may apply set out in the Constitution- Budget and Policy Framework document.](#)
- 2.10 The CFO will advise the Cabinet and the Council on the overall budget, the levels of Council Tax, the use of reserves and the need for contingency budgets, and on the risks involved in the forecasts of spending levels and income. The annual budget report must make reference to all matters required by legislation or appropriate professional guidance.

Budget Management

- 2.11 The Cabinet is responsible for implementing the Council Plan within the resources allocated in the Revenue Budget, and MTFP. The Cabinet will provide summary revenue monitoring information to the Council at least twice per year.
- 2.12 The CFO will report to the Cabinet on the overall management of the Revenue Budget on a quarterly basis through the year. [This will also include information about the Housing Revenue Account, Treasury Management and Capital Plan \(3.14\).](#) At least a summary of this information will be published on the council website.
- 2.13 The CFO will determine which budgets are "controllable" by Executive Directors and will allocate the specific budgets that each Executive Director has responsibility to manage.
- 2.14 These budgets will normally align with the Executive Directorate structure of the Council but may also reflect the cross council (transformational) structure of the Council. The CFO will determine which budgets may be considered together for the purposes of delegated virement authority (per FPR 2.24 to 2.28 below).
- 2.15 Service Directors are responsible for managing controllable budgets within their delegated authority and should exercise proper budgetary control in order to achieve Council Plan and service objectives.
- 2.16 Service Directors are authorised to incur any expenditure included in the approved revenue budget, as amended by any virement, including obtaining and accepting quotations and providing grants and loans, subject to other requirements of CPRs and FPRs.
- 2.17 Service Directors must report on budget management. They must take action to avoid overspending budgets and report any difficulties to the appropriate Executive Director and the CFO. These reports must be in a format and to a timetable prescribed by the CFO.

- 2.18 An Executive Director (in consultation with the relevant Portfolio Holder) is authorised to make such changes to service provision as are necessary; providing the proposed change is consistent with the approved Council Plan, service objectives and Council policy, to achieve spending within the approved annual budget or MTFP (as adjusted by any agreed virements).
- 2.19 Where a Service Director is reporting a projected overspend on an activity that cannot be addressed either through budget virement or other in-year changes to service provision, this will be highlighted in a manner prescribed by the CFO as part of the report to the Cabinet on the overall management of the Revenue Budget on at least a quarterly basis through the year. The reasons for the overspending and potential management options for eliminating or reducing the overspending will be included in this report. The Cabinet is responsible for determining such further steps as are necessary to align activity consistent with the resources allocated by the MTFP.
- 2.20 The CFO is accountable for all central budgets, which will be managed in the same way as activity budgets.
- 2.21 The CFO has delegated authority to review the requirement for existing Council Provisions and Earmarked Reserves, in-year, and to approve the proposed drawdown of earmarked reserves in-year in consultation with the relevant Executive Director, ensuring that the proposed drawdowns are appropriate for the stated purpose of the earmarked reserve or where Earmarked Reserves are no longer necessary the CFO -can reallocate these to General Reserves. Earmarked Reserves drawdowns in-year will also form part of the overall report to Cabinet on a quarterly basis as set out at FPR 2.12. The CFO will also report any new Reserves or Provisions requirements to Cabinet for approval.
- 2.22 Service Directors should delegate authority to commit budgets to the appropriate level of management, set out clearly the extent of authority and review the performance of managers in managing these budgets.

Virements

- 2.23 Service Directors are authorised to transfer resources within an activity budget without limit providing the corporate objectives for the activity is not changed in a material way.
- 2.24 Virement which results in a change in the level of service must be addressed as per FPR 2.18
- 2.25 Virement is not permitted between HRA funded and General Fund funding streams.
- 2.26 Executive Directors, in consultation with the appropriate Portfolio Holder (s), are authorised to transfer resources between controllable activity budgets within the Executive Directorate budget up to £1,000,000, cumulatively in any one year.

The CFO is permitted to vire budgets to service ~~directors~~ budgets where

thesesuch budgets that are initially held centrally, (for example, pay award budget).

- 2.27 The Cabinet is authorised to transfer resources (undertake a Virement) without limit for the purposes of achieving budget targets and obligations.
- 2.28 The transfer of revenue resources in any one financial year from the revenue budget to add additional resources to the capital plan, will only be allowed if there is explicit prior year approval as part of the approved budget plans of the Council, for the following financial year. Revenue contributions towards capital investment are not normally allowed , and require approval by the CFO, and insertion in the Capital Plan in accordance with FPR3.
- 2.29 Virement is specifically not allowed where the transfer of resources is from budgets for capital charges, Council support functions or statutory taxes and levies.
- 2.30 All Virements will be recorded in a way prescribed by the CFO -who will arrange for Virements to be incorporated into subsequent financial monitoring reported to the Cabinet.

Rollover

- 2.31 Rollover is a mechanism for transferring budget provisions from one year to the next, or vice versa. Rollover arrangements apply equally to the General Fund and the Housing Revenue Account.
- 2.32 The Council, in determining the Revenue Budget for a particular year, will also determine the arrangements for rollover for that year. The Council will determine changes to the Council's Revenue Budget arising from the rollover process.
- 2.33 The Cabinet is responsible for recommending changes to the Revenue Budget arising from the rollover process.
- 2.34 In the rollover process, the overall level of resources available to support rollover proposals will not exceed any reported net underspend of the Council as a whole for that year. If the Council as a whole does not have a reported under spend, the presumption is that there will be no revenue rollover for that year.
- 2.35 Subject to the parameters set out in FPR 2.34 above, rollover proposals will be considered at Executive Team in the first instance.

Other

- 2.36 Where during any year a material change of funding (and or any change associated activity) arises this must be reported to Cabinet along with a statement of any associated change in the risk profile (for example a change from outsourced to direct employment may have the same overall cost but may significantly increase the Council's risk).

- 2.37 Where, because of a mistake or error by an officer, the Council becomes liable for any charges, penalties or additional expenses, such costs will be met by the activity in which the error is made.
- 2.38 Whenever the Cabinet becomes aware, ~~—~~following a report from the CFO that a reduction in resources or there are overspends that cannot be fully addressed during the current or future years ~~that~~which may impact on the Council's financial position, it may take such steps as it considers necessary to reduce ~~activity, review~~activity, review fees and charges, implement tighter spending controls immediately or at a stage prior to the next budget Council to address this.
- 2.39 After the end of each financial year, the CFO will report to the Cabinet and the Council on the outturn financial performance and any proposed rollover, subject to the parameters set out in FPR 2.33 above.
- 2.40 The CFO is permitted to make variations to revenue funding as necessary in order to ensure that the council funding position is optimised, subject to reporting such actions to Cabinet and Council.

3. Capital Plan Preparation and Management

General

- 3.1 For the purposes of Capital Plan preparation and management, "capital" must meet the following criteria:
- a) The definition for capital as set out in relevant CIPFA accounting guidance and accounting standards, and any other statutory Government guidance as set from time to time.
 - b) Subject to (a) above, a minimum threshold or 'de minimis' to be considered capital at an individual project level, as determined by the CFO. (The usual de minimis level is £10,000, however the definition of Capital expenditure will take precedence over value)
- 3.2 All capital investment must also be made in recognition of the CIPFA 'Prudential Code for Capital Expenditure with regard to prudence, affordability and sustainability, and any associated statutory Government guidance'. Council must approve an Annual Capital Strategy and Annual (Non-Treasury) Investment Strategy in line with the guidance.

Responsibilities

- 3.3 The CFO will advise the Cabinet and the Council on the overall Capital Investment Plan and levels of funding available. The CFO must confirm the robustness of the capital plan and assess and report to Cabinet on the revenue effects of the capital plan (financing, additional running costs, savings and income) and indicating the prudential indicators and limits that support the capital investment.

- 3.4 The Cabinet is responsible for recommending to the Council at the same time as the proposed Revenue Budget, a multi-year Capital Plan ([for both the General Fund and HRA](#)) and the prudential indicators and limits that support the recommended capital investment.
- 3.5 The Council will approve a Capital Plan and determine allocations of capital resources to programme areas, or to specified projects. (and the prudential indicators and limits that support the recommended capital investment)
- 3.6 The Cabinet is responsible for implementing the Capital Plan approved by Council, in line with any stated Council policies, or strategies, and will determine the allocation of resources from the programme area to named projects. A programme or named project may only be progressed once the Cabinet has approved the business case for the programme or project.
- 3.7 Service Directors are responsible for managing programmes and projects and must make appropriate arrangements to control projects and avoid overspending.

Plan Management

- 3.8 The Cabinet is authorised to transfer resources without restrictions. including between any year, within the approved Capital Plan, subject to compliance with 3.11 and 3.13.
- 3.9 [The Chief Executive and Service Directors will designate which Service Director is responsible for each project and programme area within the Capital Plan.](#) The Service Directors are authorised [within capital budgets for which they are designated as responsible](#) to.
 1. Transfer resources within a programme area without restrictions.
 2. Transfer resources between any project or programme area [within their designated projects and programmes](#) up to a maximum of £2,000,000 in any financial year.
 3. Transfer resources within programme areas between any year within the approved Capital Plan, Subject to compliance with 3.10 and 3.11 and notification to the relevant Cabinet Member and appropriate Ward Members.
- 3.10 Transfers under 3.8 and 3.9 require the approval of the CFO who must be satisfied that there is no impact on capital funding stream because of the changes.
- 3.11 Transfer is not permitted between HRA funded and General Fund funding streams, nor in respect of any project (or programme) to the extent that it is funded by a project (or programme) specific third-party grant.
- 3.12 The transfer of revenue resources in any one financial year from the

revenue budget to add additional resources to the Capital Plan, will only be allowed if there is explicit prior year approval as part of the approved budget plans of the Council for the following financial year.

- 3.13 Any decision on resource allocation by Cabinet, Executive and Service Directors must recognise any policy decisions of Council. Any decision on resource allocation by Executive and Service Directors must recognise any policy decisions of Cabinet.
- 3.14 The CFO will report to the Cabinet on the overall management of the Capital Plan on a quarterly basis through the year (including the reporting of virements in respect of transfer of resources within or between programmes). The Cabinet will provide summary monitoring information to the Council at least twice per year. This will include any additional capital grant funding received during the year.

Initiating and Progressing Investment Decisions

3.15 The Chief Executive will establish arrangements, in conjunction with the CFO, to ensure effective deployment of capital resources, ensuring that these align with council priorities and including the preparation of business cases and/or option appraisals designed to ensure project effectiveness and value for money, and to assist Council to determine its Capital Plan, and assist Cabinet with the allocation of programme area budgets to specific projects. For these purposes the Executive Director and CFO may approve the incurring of fees for option appraisal or initial design fees, subject to the identification of an appropriate funding source. This can include payment to a contractor for initial project scoping and design, provided that such costs are covered by an identified funding source.

3.16 ~~Before progressing any Capital Plan project to full contractual stage, the Service Director will seek approval from the CFO. A capital outlay report will be prepared for each specific project. It will be signed off by the relevant Head of Service, Service Director and approved by the Chief Finance Officer, who will grant approval to each specific project when satisfied that:~~

- a) The project appears on a schedule of named projects (approved by Cabinet, or by officers under a scheme approved by Cabinet).
- b) That the total costs of a project are estimated to be less than or equal to the amount approved in the Capital Plan.

OR

Where the total costs of a project exceed the amount approved in the Capital Plan the appropriate additional resources have been approved; (3.8 to 3.12).

- c) Any necessary external approval has been obtained.
- d) The project will not lead to any unexpected or unplanned capital or revenue costs, not envisaged by the business case or option appraisal.

The CFO may issue a partial approval (for example to cover a design stage) provided that there are sufficient resources to cover that stage. The Solicitor to the Council may only issue a contract that aligns with this authorisation.

3.17 Service Directors have authority to progress projects once the approvals at 3.16 have been given. They must ensure compliance also with Contract Procedure Rules.

3.18 ~~Executive Service~~ Directors are responsible for post implementation reviews of capital projects to assess the outcome of investment programmes and projects, and the extent to which these achieved the

planned objectives set out in the business case, this assessment to be used in summary to Cabinet and Council as a part of the overall financial reporting and monitoring process.

- 3.19 The CFO is permitted to make variations to capital funding as necessary in order to ensure that the council funding position is optimised, subject to reporting such actions to Cabinet and Council.

Complex Projects

- 3.20 Any capital project which involves partnership arrangements, or investment in limited companies or other separate entities must be approved by Cabinet.
- 3.21 The reporting of the capital position in such cases must follow a similar arrangement to any direct asset investment.

Leased Assets

- 3.22 Accounting regulations (IFRS 16) makes an ongoing presumption that all leases (including those previously defined as operating leases) will need to be included on the Council's Balance Sheet. All lease arrangement needs to follow the same procedures, and have the same authority and approval, as for other items of capital expenditure.
- 3.23 In respect of any item acquired by lease (other than a Land Asset) the inventory must be marked with the name of the leasing company and the date of expiry of the lease agreement. When requested by the leasing company the item must be suitably marked as the property of that company.

4. Financial Systems and Procedures

- 4.1 The CFO is responsible for the operation of the Council's accounting systems, the form of accounts and the supporting financial records. Any changes to the existing financial systems or the establishment of new systems must be approved by the CFO.
- 4.2 Any exceptions to financial procedures to meet the specific needs of a Service must be agreed between the Service Director and the CFO.
- 4.3 Service Directors must ensure that officers understand and are competent to undertake their financial responsibilities and receive relevant financial training that has been approved by the CFO.
- 4.4 Service Directors are responsible for the proper operation of financial processes in their own activity and must ensure that all financial, costing, and other statistical information is recorded fully and accurately.
- 4.5 Service Directors must ensure that financial documents are retained in accordance with the Council's approved retention schedule.
- 4.6 As far as practicable, Service Directors must make arrangements for

the separation of duties between the carrying out of transactions and the examining and checking of transactions.

5. Internal Audit

Responsibility & Authority

- 5.1 The Chief Executive, (in consultation with the CFO and Monitoring Officer) must arrange a continuous internal audit, which is an independent review of the accounting, financial and other operations of the Council.
- 5.2 The Head of Audit & Risk will report directly to the Chief Executive, the Chair of the Corporate Governance & Audit Committee or the External Auditor in any circumstance where the functions and responsibilities of the CFO are being reviewed. (Other than routine reporting of work carried out)
- 5.3 The Head of Audit and Risk has authority to
 - a) Enter at all times any Council premises or land or location from which Council services are provided.
 - b) Have access to all property, records, documents and correspondence relating to all activities of the Council.
 - c) Require and receive explanations concerning any matter; and
 - d) Require any employee of the Council, without prior notice, to produce cash, stores or any other property for which they are responsible.

- e) Require any Director to ensure that within 5 working days' notice (or such other time as might be agreed by the Head of Audit & Risk).
 - I. to ensure sufficient resource by way of time or otherwise, that an adequate response by employees of the service to any request for information,
 - II. and, or
 - III. any employee attends a meeting at any location (within the Kirklees area,) chosen by the Head of Audit & Risk
 - IV. and or
 - V. the provision of any information, data, records, currently held in any media format be provided that that format, or in any other reasonable format chosen by the Head of Audit & Risk, and as appropriate delivered to a location chosen by the Head of Audit & Risk

and

- VI. to be accountable to the Corporate Governance & Audit Committee should they fail to act.

The CFO has the same authority for any accounting or associated purpose.

For the purposes of FPR 5, the Head of Audit & Risk may delegate the rights of access to premises, information, explanation etc. to any employee or agent of the council (albeit this will normally be staff within the Internal Audit or Fraud team).

Planning and Reporting

- 5.4 The Head of Audit & Risk must plan and report (in accordance with the approved Audit ~~Strategy and~~ Charter and Strategy, obligations in the IIA Global Internal Audit Standards, Public Sector Internal Audit Standards and any instruction from the Councils Corporate Governance & Audit Committee) upon
- a) The risks inherent in and associated with each system.
 - b) The soundness, adequacy and application of the financial and other management controls and systems within each Service
 - c) The extent of compliance with, and the financial effects of, established policies, plans and procedures.

- d) The extent to which the organisation's assets and interests are accounted for and safeguarded from losses of all kinds arising from fraud, other offences, waste, extravagance and inefficient administration, poor value for money and other cause.
- e) The suitability, accuracy and reliability of financial and other management data within the organisation; and
- f) Value for money aspects of service provision.

5.5 In respect of any audit report or communication issued, the [Service](#) Director must reply within 4 weeks indicating the action proposed or taken, by whom and including target dates. Where a draft report is issued for initial comments, a reply must be made within 2 weeks of issue.

5.6 The Head of Audit & Risk will provide a written summary of the activities of the Internal Audit function to the Corporate Governance & Audit Committee at least four times per year and an Annual Report produced for consideration by, Cabinet and Corporate Governance & Audit Committee, including an audit opinion on the adequacy and effectiveness of the Council's risk management systems and internal control environment.

The Head of Audit & Risk will review the system of internal audit on an annual basis (and arrange for an external assessment once every 5 years) and report the outcome to the Corporate Governance & Audit Committee.

Investigations and Suspected Fraud, Corruption or Bribery

5.7 The Chief Executive and Directors must ensure that all Members and employees are:

- a) Aware of the Council's Fraud Prevention Anti-Bribery and, Anti-Corruption Policy
- b) Aware of the Whistleblowing Policy and
- c) Operating in a way that maximises internal check against inappropriate behaviour.

The Head of Audit & Risk is responsible for the development and maintenance of the Council's Fraud Prevention Anti-Bribery and, Anti-Corruption Policy, the Whistleblowing Policy, [and all associated documentation, and](#) for directing the Council's efforts in fraud investigation.

5.8 It is the duty of any officer who suspects or becomes aware of any matter which may involve loss or irregularity concerning cash, stores or other property of the Council or any suspected irregularity in the operations or exercise of the functions of the Council to immediately advise the Director. The Director concerned must immediately notify the Head of Audit & Risk who may take action by way of investigation and report.

5.9 Where, following investigation, the Head of Audit & Risk considers that there

are reasonable grounds for suspecting that a loss has occurred as a result of misappropriation, irregular expenditure or fraud, consultations will be held with the Director on the relevant courses of action, including the possibility of police involvement and the invoking of any internal disciplinary procedure in accordance with the relevant conditions of service.

6. Insurance

- 6.1 The Service Director Legal, Governance & Commissioning, in consultation with Service Directors is responsible for assessing insurable risks and for arranging all insurance cover, including the management and control of the insurance fund. He/she will control all claims and maintain records of them. He/she has authority to receive or make claims on behalf of the council and negotiate and agree all settlements.
- 6.2 Service Directors must promptly notify the Service Director Legal, Governance & Commissioning in writing of all new risks or Assets to be insured and of any alterations affecting existing insurances. All insurances held must be reviewed on an annual basis.
- 6.3 In the event of any insurance claim or occurrence Service Directors must:
 - a) Not admit liability where this may prejudice the outcome of any settlement.
 - b) Promptly notify the Insurance Team, in writing, of any loss, liability, damage or any event likely to lead to a claim; and
 - c) Inform the Police in the case of loss or malicious damage to Council property.
- 6.4 Service Directors must consult the Service Director Legal Governance & Commissioning as to the terms of any indemnity the Council is required to give.
- 6.5 The Service Director in consultation with the Insurance Team will determine the extent of insurance cover which must be provided for in any external contract for the supply of goods, works or services. The Service Director, in consultation with the Service Director Legal Governance & Commissioning, may reduce the cover requirements in respect of specific contracts.

7. Assets

- 7.1 Service Directors are responsible for the care and custody of all current and Fixed Assets of the relevant service (including stocks, stores, inventory items and all other items used for the Council's purposes, including property). These items must only be used for the authorised purposes of the Council.
- 7.2 Service Directors must ensure that contingency plans exist for the security of Assets and the continuity of service in the event of any disaster, significant event, or system failure.

Disposal of Assets

- 7.3 Surplus or obsolete goods, materials and inventory items are to be disposed of by agreed transfer to another Service, or disposal in accordance with Contract Procedure Rules, except when the Cabinet instructs otherwise.
- 7.4 Leased items (excluding Land Assets) should only be disposed of in accordance with instructions of the lessor.

Stores

- 7.5 Service Directors must keep records of all stock held. The CFO will determine which items will be subject to stock accounting, the methods of recording and valuation. An appropriate system of continuous stock taking must be agreed with the CFO.
- 7.6 Service Directors must arrange periodical or continuous checks of stock. This should be by persons independent of the management of the stock. These arrangements must ensure that all items of stock are checked at least once per year. The CFO will be notified of any discrepancies revealed by periodic checks and is authorised to amend records accordingly.
- 7.7 Stock holdings should be kept at minimum levels consistent with normal working practices.

Inventories

- 7.8 Service Directors are responsible for ensuring that detailed inventories of all land, buildings, equipment, specialist furniture, specialist fittings, vehicles, plant and machinery are compiled and kept up to date. New inventory items must be entered promptly, and redundant items (other than Land Assets) deleted and disposed of in accordance with Financial Procedure Rule 7.3. The form of inventory and the type of Assets recorded thereon will be determined by the CFO after consultation with the appropriate Service Director.
- 7.9 The inventory should include.
 - a) The nature, type, model, serial number, location, quantity, value, date of acquisition.
 - b) All items valued at, more than £100.
 - c) Items of a lesser value which are portable and attractive; and
 - d) Evidence to indicate an inspection has been carried out.
- 7.10 Service Directors are responsible for ensuring that inventory items which are the responsibility of another Director but used operationally by their service areas are subject to an appropriate risk-based level of control. When Assets

are loaned to employees, or other organisations, the Service Director must record the reason for the loan, date/periods and name of the receiver, and ensure recovery at the end of the period at which the purpose of the loan has expired.

- 7.11 Inventory items must (where appropriate) be security marked, stamped or engraved with the Council's name.
- 7.12 Each Service Director is responsible for ensuring risk-based checking of the inventory and must notify the CFO, and the Head of Internal Audit & Risk of any discrepancies revealed by these checks.

Fixed Assets Register

- 7.13 The CFO must ensure that a Register of Fixed Assets is maintained.

Each Service Director must notify the CFO of the:

- 1) Acquisition of any land, property or vehicle and any other assets having a value of more than £10,000.
- 2) Disposal (or transfer to another Service) of any Asset (or part of any Asset) which is included on the Register of Fixed Assets.

- 7.14 Leased assets must also be included in this record (see part 3.25, 3.26).

Land Assets

- 7.15 The Service Director responsible must maintain a detailed record of all Land Assets owned by the Council (except dwellings provided for general letting) and is responsible for the security and custody of all title deeds and must maintain a suitable register of Land Assets.
- 7.16 The disposal of Land Assets is dealt with in the Contract Procedure Rules.

Information Assets

- 7.17 Service Directors are responsible for ensuring that inventories of all information Assets are compiled and kept up to date. New inventory items must be entered promptly, and redundant items deleted and disposed of in accordance with the Council's Information Security Policy Records Management Policy and the appropriate Retention and Disposal Schedule. The form of inventory and the type of Assets recorded thereon will be determined by the CFO.

8. Security

Security of Assets

- 8.1 Service Directors are responsible for maintaining proper security at all times for all buildings, stocks, stores, furniture, equipment, cash and any other assets for which they are responsible. The CFO must be consulted to

establish adequate security arrangements except in relation to Land Assets that are the responsibility of the Service Director responsible for them.

- 8.2 All keys to safes and other places containing money, goods or other valuables are to be the responsibility of specified officers who must retain possession of such keys at all times.
- 8.3 A register of keys and their holders must be maintained by each Service Director. The loss of any key must be reported immediately to the Service Director who must record details of the circumstances of the loss, and take such action as is necessary to protect the property of the Council.

Security of Information

- 8.4 Service Directors must maintain proper security, privacy and use of data and information held in any media including, but not inclusively, documents, magnetic, digital, (such as laptop and tablet computers, mobile phones, memory cards).
- a) All employees are aware of and comply with the Council's Information Security and Records Management policies.
 - b) All sensitive information is protected from unauthorised disclosure.
 - c) The accuracy and completeness of information and software is safeguarded.
 - d) Software and other intellectual property are used only in accordance with licensing agreements.
 - e) Data Protection legislation is complied with.
 - f) The Freedom of Information Act is complied with.
 - g) Proper controls to system and physical access are in place; and
 - h) The Councils intellectual property rights are protected.

Security of Property Relating to Clients and Customers

- 8.5 Service Directors must provide detailed written instructions on the collection, custody, investment, recording, safekeeping and disposal of customer/client's property (including instructions on the disposal of property of deceased clients) for all staff whose duty is to administer, in any way, the property of clients. Due care should be exercised in the management of a customer or clients' money in order to maximise the benefits to the customer/client.
- 8.6 The Council is responsible for taking reasonable care of all items of property found by staff or members of the public on Council premises until the items

are reclaimed or disposed of. Each Service Director must nominate officers who are responsible for the custody of lost property and keep a register of such property received, detailing the item, date, time, name and address of finder and how and to whom the property is returned or disposed of.

- 8.7 Service Directors may seek approval from the appropriate Executive Director and Executive Member, on how lost property will be dealt with. Otherwise, if the lost property is not claimed within three months the Service Director will then determine if the item is of value for use by the Council and arrange for its use for this purpose. All other items are to be disposed of in accordance with Contract Procedure Rules and the proceeds allocated to an appropriate council income code.

9. Treasury Management

Policies and Strategies

- 9.1 The Council will adopt both the Code of Practice for Treasury Management in the Public Services, published by the Chartered Institute of Public Finance and Accountancy, and any associated statutory Government guidance, as issued from time to time.
- 9.2 The Council is responsible for adopting a treasury management policy statement, setting out the policies and objectives of its treasury management activities, and treasury management practices, setting out how those policies and objectives will be achieved and how treasury management will be managed and controlled.
- 9.3 The Cabinet is responsible for the implementation and monitoring of the treasury management policies, practices and performance. The Corporate Governance & Audit Committee has responsibility for scrutinizing treasury management policies and practices.
- 9.4 The CFO is responsible for the execution and administration of treasury management decisions in accordance with the policy statement and agreed practices.
- 9.5 The CFO will report to the Council (via the Corporate Governance & Audit Committee and Cabinet)
- a) before each financial year recommending a treasury management strategy and plan.
 - b) at least once in relation to treasury management activity during the year.
 - c) by way of an annual report after the end of the year.

This will include the planned and actual performance in respect of the prudential indicators and limits.

Administration

- 9.6 All money under the management of the Council is to be aggregated for the purposes of treasury management and will be controlled by the CFO.
- 9.7 Investments other than bearer securities are to be in the name of the Council or nominee approved by the Cabinet. All borrowings are to be in the name of the Council.
- 9.8 The CFO will select the Council's Registrar of stocks, bonds and mortgages and must maintain records of all borrowings by the Council.
- 9.9 A suitable register must be maintained in respect of all investments, securities, bearer securities and borrowings.
- 9.10 The CFO will arrange all loans and [\(financial instrument\)](#) leases including operating leases. (See also 3.25, 3.26)

Trust Funds

- 9.11 All trust funds are to be, wherever possible, in the name of the Council, except where charities legislation dictates otherwise. Officers acting as trustees by virtue of their official position must deposit all documents of title relating to the trust with the Service Director, Legal Governance & Commissioning (unless the Trust Deed otherwise directs) who must maintain a register of all such documents deposited.

10. Banking Arrangements, Electronic Payments, Cheques and imprest accounts

Banking Arrangements

- 10.1 All of the Council's banking arrangements are to be approved by the CFO, who is authorised to operate such bank accounts as he or she considers appropriate.
- 10.2 Bank accounts must not be opened without the approval of the CFO. Where a bank account is opened, the account name must describe the purpose of the account. All new accounts should be named in the format 'KC, XYZ Unit Account'.

Electronic Payments & Cheques

- 10.3 Payments to suppliers and employees will be made by electronic means unless there are good reasons to use a different method.
- 10.4 Banking arrangements made for authorisation of payments to be made or received under electronic transfer are to be in a form approved by the CFO. Checks will be carried out as determined by the CFO to verify the validity of counterparty bank accounts prior to the release of any payments.
- 10.5 All cheques are to be ordered only in accordance with arrangements approved by the CFO, who is to ensure their safe custody. Cheques drawn on the Council's main bank accounts must either bear the facsimile signature of the CFO or be signed in manuscript by him/her or other authorised officers. All alterations and amendments are to be signed in manuscript by the CFO, or other authorised officers.
- 10.6 Service Directors must maintain a register of all officers authorised to sign cheques and other bank documents together with specimen signatures.

Imprest Accounts

- 10.7 Service Directors will determine what amount is appropriate for an individual imprest account and keep a record of every imprest issued, including the name of the imprest holder, amount and location.
- 10.8 Any imprest holder (or sub imprest - see rule 10.10) must at any time account for the total imprest if requested to do so by the CFO and keep adequate records in a form approved by the CFO and supported by valid (VAT) receipts. On ceasing to be responsible for an imprest account the officer must account promptly to the Service Director for the amount advanced.
- 10.9 Payments from imprest accounts are to be limited to minor items of expenditure and to any other items approved by the CFO.
- 10.10 Where deemed appropriate by an imprest account holder a sub- imprest may be provided to another officer for which the main imprest account holder must obtain and retain an acknowledgement. In all cases where this occurs the main imprest holder must notify the Service Director.

11. Income

- 11.1 [The Council will determine annual arrangements for amending fees and charges. Fees and charges must be reviewed at least once per annum.](#) Service Directors have authority to implement new charges and amend existing fees and charges to achieve budget targets [\(either in year or future years\)](#), to account for changes in legislation and market conditions, in consultation with the appropriate Executive Director, relevant Portfolio Holder and CFO, [and subject also to the decision making threshold processes. \(e.g. key decision\)](#)

- 11.2 The methods of collecting, recording and banking of all income due to the Council are to be approved by the CFO.
- 11.3 The CFO must be notified, in accordance with practices agreed with the relevant Service Director, of all income due to the Council and of contracts, leases and other agreements and arrangements entered into which involve the receipt of money by the Council.
- 11.4 Service Directors must ensure that to the maximum extent possible income is collected by electronic means. This means that positive action should be taken to promote the use of customer payment by direct debit at the point of order for one off items, and continuous debit arrangements for ongoing services provision. Service Directors must ensure full compliance with all practices necessary to fully protect the banking data of the council's customers.

Collection and Banking of Income

- 11.5 Service Directors must make appropriate arrangements for the control and issue of all receipt forms, books, tickets, ticket machines or other acknowledgements for money.
- 11.6 All income received by the Council must be acknowledged by the issue of an official receipt or by another approved method indicating payment has been received.
- 11.7 ~~In order to ensure~~ compliance with the Anti-Money Laundering Procedures, Service Directors must not normally accept any cash payment in excess of 1015,000 euros (£11,7008,300) in respect of one single transaction on one occasion. The Director of Legal Governance & Commissioning may agree specific circumstances where money in excess of this sum may be collected as cash.~~Any reasonable concerns about the source of monies to be paid to the Council should be raised in accordance with the Procedures. The exception to this rule is that in the case of a disposal of a Land Asset by way of public auction, or under auction conditions, the Council may accept a cash payment in excess of 15,000 Euros where the Land Asset being disposed of exceeds a sale price of 150,000 Euros.~~ If there is any doubt about whether or not to proceed with a transaction, a decision must not be taken until relevant approval has been obtained under the Procedures. Anti-money laundering compliance is the responsibility of the Service Director of Legal Governance & Commissioning who is entitled to issue instruction relating to this matter.
- 11.87 All money received by an officer on behalf of the Council must either be paid to the CFO or to the Council's bank account as the CFO may determine, at intervals taking account of the security of the premises. No deductions are to be made from such monies unless specifically authorised by the CFO. Personal cheques must not be cashed out of monies held on behalf of the Council. Refunds must be made through the payments system.
- 11.98 Arrangements for opening incoming mail must ensure that any money so received is immediately recorded.

11.109 Every transfer of official money from one officer to another must be evidenced in the records of the Services concerned by the signature of the receiving officer.

Cash discrepancies

11.110 Each Director must maintain a detailed record of all cash surpluses and deficiencies in a manner approved by the CFO.

11.124 The Service Director must investigate any apparent patterns of discrepancies. Where such discrepancies are in excess of £100 individually, or in total within any period of 1 month, the Director concerned must immediately investigate and notify the Head of Audit & Risk who may undertake such investigations as he/she deems appropriate.

Debtors

11.13 Wherever possible, payment should be obtained in advance, or at the time of provision of a service, goods, letting or works. Where credit is given, Service Directors must ensure that the credit status of each customer is satisfactory. Service Directors are responsible for issuing debtor accounts in a form approved by the CFO immediately a debt falls due. Each Service Director, in conjunction with the CFO must maintain adequate records to ensure that all credit income due to the Council is promptly recovered.

11.14 The CFO must be satisfied that Service Directors are taking appropriate measures to recover credit income due in a timely and efficient manner. The CFO will take appropriate steps to monitor and review the effectiveness of recovery procedures in services, and in conjunction with the relevant Service Director, implement any further actions as required to maximise income recovery within service to appropriate levels.

11.15 Where a Service Director agrees that a debtor may defer repayment, the Service Director must ensure that full records of the reason for agreeing repayment deferral are retained and must have arrangements in place to formally reconsider the appropriateness of deferral at agreed regular intervals (that must not be longer than 12 months).

11.16 Service Directors must regularly review debts due and ensure adequate year end provisions for bad and doubtful debts. Service Directors are authorised to review and recommend for write off all individual bad debts in a timely manner, as a minimum every 6 months, and subject to the approval of the CFO. A report on the details of all debts written off under delegated authority must be prepared and formally noted by the Service Director in consultation with the Cabinet Member. The CFO must prepare an annual consolidated report of all debts written off for consideration by the Corporate Governance & Audit Committee. Service Directors must ensure that appropriate accounting entries are made following write off actions, in a manner prescribed by the

CFO.

- 11.17 The 'writing off' of a debt does not absolve a Service Director of the responsibility to collect such debts, and the position in relation to such debtors is to be monitored by the Service Director.

12. Payment of invoices

All payments must be made through the councils accounting system (SAP) and should be made by electronic transfer except where there are substantial overriding reasons for alternative means of payment. Service Directors must ensure through a review, at least annually, that SAP authorisations are appropriate to the needs of the service, maintaining an adequate degree of separation of duties and internal control.

- 12.1 Service Directors must ensure that all valid invoices are paid within 30 days of receipt.
- 12.2 The CFO will determine the method and frequency of payment from one of the Council's main bank accounts, except for
- Petty cash and other imprest accounts
 - Delegated bank accounts approved by the CFO

Automated Payments

- 12.3 When an invoice is matched through the automated procurement and payment system, it will be paid in line with the councils determined procedures.
- 12.4 Any invoices rejected by the automated system must be subject to thorough checking by the Director to determine the reason for variance, and the cause recorded.

Certification & Processing (paper records)

- 12.5 Service Directors must approve a schedule of officers authorised to certify invoices, (names and specimen signatures). This must be supplied if requested to the CFO The schedule must be reviewed at least once per year.
- 12.6 All invoices- that are not the subject of automated processing- must be certified in manuscript, unless an alternative method is expressly authorised by the CFO.
- By certifying an account for payment, the authorised officer indicates that satisfactory checks have been carried out to ensure that.
- a) The work, goods or services to which the account relates have been received or carried out, examined and approved.

- b) Prices, extensions, calculations, discounts, other allowances and tax are correct.
- c) There is a proper tax invoice when appropriate.
- d) The relevant expenditure has been properly incurred, is within budget, and is charged to the appropriate budget.
- e) Entries have been made in Asset registers, inventories, stores and other records as appropriate; and
- f) The account has not previously been paid.

12.7 Where errors on an invoice are detected manual adjustments which reduce the total payment are permissible, provided that this does not change the total amount of VAT payable. In all cases where the amount due increases, or changes the amount of VAT, a replacement invoice and/or credit note must be obtained before payment is made.

12.8 The Service Director must where possible achieve an adequate level of internal check. At least two officers should be involved. The officer certifying the account for payment should not be the same officer who received or checked the items, goods, works or services.

No officer may certify any invoice involving payment to himself or herself.

12.9 All forms of account submitted for payment to a supplier or contractor other than on the original invoice must be accompanied by a special certification stating that the original invoice has not been paid and will not be paid subsequently. The certificate must be signed by an officer authorised to certify accounts for payment.

12.10 The CFO may withhold payment of any invoice where there is evidence to suggest that it is not in order. The CFO must establish rules that control the use of pro-forma invoices, to ensure that these are not used to circumvent council procedures,

Advance Payments

12.11 The council should not pay for any goods or service prior to receipt of the items, and not without an invoice. Where a supplier or contractor requires payment prior to the dispatch of goods or the provision of services, an official order signed by a duly authorised officer and clearly marked that payment is to be made before receipt of the goods or services must be completed. Whenever possible a supplier's invoice must be obtained, and payment made on this. In exceptional circumstances only, a pro forma invoice or supplier's order form detailing fully the goods/service to be obtained may be used. This must be approved by an officer authorised to certify invoices and retained as a record of the payment made, Where VAT features in the advance payment,

the issuing officer must then obtain a VAT invoice or authenticated receipt for the transaction, and arrange for its processing to facilitate the recovery of VAT.

Discounts

- 12.12 All discounts available from a supplier are to be taken as a deduction against the cost of goods purchased and must appear on the invoice. Where a supplier provides any free item, or discount is available in the form of goods these are the property of the Council, as are loyalty or bonus points or other rewards earned.

Payment by Direct Debit/Standing Order

- 12.13 The Service Director (or Designated Finance Officer) must approve all requests for creation of a Direct Debit mandate, and supply to the CFO such information as is deemed necessary (e.g., codes, profit centre(s) to be charged, a copy of a recent bill, showing signatory certification, for the account in question). If the payment method is Standing Order, the requestor must also specify the frequency of payment and, where appropriate, a termination date.
- 12.14 The Service Director must inform the CFO when any payment is to be terminated.
- 12.15 Services must retain all statements relating to accounts paid by Direct Debit/Standing Order for current plus three previous financial years in order to substantiate the authority's claim for VAT on these accounts.

13. Purchasing Cards

- 13.1 All arrangements regarding purchasing cards must be approved by the CFO. (As set out in the Purchasing Card Procedure Manual)
- 13.2 Service Directors in conjunction with the CFO will determine the monthly credit limit, any cash limits and permissible purchasing categories for individual payment and procurement cards.
- 13.3 Each cardholder must ensure safe custody of the card at all times.
- 13.4 Cards may be used only in accordance with the approved scheme and for legitimate expenses incurred by the cardholder in the course of official Council business.
They must not be used: -
- a) To avoid any corporate rules on procurement and purchasing (for example to purchase only from approved suppliers)
 - b) To circumvent the procedures for the ordering of and payment for, goods and services under these regulations; or
 - c) To purchase items for the private or personal use of cardholders.

- 13.5 Each cardholder must ensure that all expenditure incurred using a purchasing card is supported by adequate records and a VAT receipt is obtained to support all expenditure.
- 13.6 Employees of the council must not use their own debit or credit card to make purchases on behalf of the council. (Other than in circumstances agreed in advance by the CFO, such as emergencies)

14. Salaries, Wages and Pensions

Service Directors must ensure through a review, at least annually, that SAP authorisations are appropriate to the needs of the service, maintaining an adequate degree of separation of duties and internal control.

- 14.1 All payments of salaries, wages, pensions, compensations, gratuities, allowances and other emoluments to current or former employees are to be made by the CFO in accordance with information supplied by the Director. All payroll transactions must be processed through the Council's SAP payroll system.
- 14.2 Service Directors must ensure that appointments of all employees are in accordance with the appropriate Conditions of Service of the Council or any approved scheme of delegation, and within the approved budgets, grades and rates of pay. Any variations of terms and conditions must be in accordance with arrangements approved by the Cabinet.

Records

- 14.3 Service Directors must maintain adequate records to notify the CFO of all appointments, resignations, dismissals, and retirements together with changes in pay rates, bonuses due, overtime worked and other matters affecting remuneration, and provide all information to ensure that the correct adjustments are made in respect of absences, pensions, income tax, national insurance, sickness and maternity pay and any other additions to or deductions from pay. Service Directors must also advise the CFO of any employee benefit in kind to enable reporting for taxation purposes.
- 14.4 ~~All officers -when instructed-~~ must complete a contemporaneous time record of actual times of attendance at work, ~~except where a time clock is used electronically or by paper records-records. Paper records~~ should be signed by the officer as a correct statement. ~~It is the responsibility of each~~ Every manager ~~to should~~ check time records of officers for which ~~that~~ manager has they have responsibility.
- 14.5 Time records and other pay documents must be maintained in a manner approved by the CFO and be certified by the Service Director or other authorised officers. The Service Director must maintain a list of officers who

are permitted to certify payroll documentation –either electronically or by manuscript (and their specimen signatures) and these authorisations must be reviewed at least annually by the Service Director. Details of officers authorised must be supplied to the CFO.

Overpayments

- 14.6 The Service Director, in consultation with the Head of Peoples Services, is entitled to write off any employee debt on compassionate grounds. All other overpayments of pay must be treated for the purposes of recovery and write off in accordance with Financial Procedure Rule 11.

15. Travel, Subsistence, and Other Allowances

- 15.1 Service Directors must ensure through a review, at least annually, that SAP authorisations are appropriate to the needs of the service, maintaining an adequate degree of separation of duties and internal control.
- 15.2 Payment of all claims must be in accordance with Schemes of Conditions of Service adopted in respect of the employee to which the payment relates and will be paid through the councils SAP payroll system unless otherwise agreed by the CFO.
- 15.3 All claims for payment of car allowances, subsistence allowances, travelling and incidental expenses must be made electronically, or where authorised, on a paper form approved by CFO. The form must provide for certification in manuscript by the Service Director or other officer authorised by the Director.
- 15.4 The Service Director must maintain a list of officers who are permitted to authorise expenses claims electronically and by paper (and their specimen signatures) and these authorisations must be reviewed at least annually by the Service Director. Details of officers authorised to sign such expense claims must be supplied to the CFO on request.
- 15.5 The certification (or electronic approval) of a claim by or on behalf of a Service Director is taken to mean that the certifying officer is satisfied that the journeys were authorised, the expenses properly and necessarily incurred and that the allowances are properly payable by the Council.

16. Taxation

- 16.1 The CFO is responsible for advising the Council on all taxation issues that affect the Council.
- 16.2 Each Director must ensure taxation is treated correctly and consult with the CFO in the event of any uncertainty as to any taxation treatment.
- 16.3 The CFO will lead and co-ordinate discussion or negotiations with HM

Revenue and Customs about any taxation matter.

16.4 The CFO will complete all of the Council's tax returns.

17. Gifts and Hospitality

17.1 Officers must ensure that it is apparent that no cause could reasonably arise for adverse criticism or suggestion of improper influence about the acceptance of any gift or hospitality. They must ensure that in accepting any offer of gifts and or hospitality to do so would not infringe the requirements of the Bribery Act 2010.

17.2 Service Directors must maintain a central record of all gifts, invitations and hospitality offered and or received, including items of token value.

17.3 The receipt of personal gifts should be discouraged, but if an officer, during the course of, or as a result of, official duties, receives any personal gift, other than one of only token value (less than £25), the matter must be reported to the Service Director who will decide if the item is to be returned or forwarded to some charitable cause, and the Director must inform the donor what has happened to the gift and explain the reason why gifts should not be sent in the future.

17.4 Service Directors and other officers with the permission of the Service Director may accept invitations to events and associated hospitality of any value where this relates to a function promoted by an organisation with which the Council has formal links and attendance constitutes a demonstration of faith in that organisation. It will not normally be appropriate for attendance by a companion. A Service Director must agree that they are satisfied that attendance by the companion is appropriate.

17.5 Hospitality must only be given or accepted where it is on a scale appropriate to the circumstances, reasonably incidental to the occasion, not extravagant and justifiable as in the public interest. Particular care must be taken when this involves potential customers or suppliers. The circumstances and the type of hospitality are to be recorded in the central record maintained by the Service Director concerned.

18. Working with Clients and Contractors

18.1 Officers who, in accordance with their conditions of service, are permitted to carry out private or other paid work must not do so during Council time, and must not use any Council premises, resources or facilities for the execution of such work. No stationery or publicity material is to indicate that the person is a Council employee nor should the address or any telephone number of the Council be stated. Officers must declare to their Service Director in writing the nature and duration of such private work.

18.2 Officers must declare to their Service Director any circumstance where they believe that they may have a pecuniary or non-pecuniary interest in any proposed supply contract, grant award or other transaction for which they

have involvement or responsibility.

- 18.3 Officers must not work for any current or prospective supplier or contractor to the Council.
- 18.4 All intellectual property created by employees in the course of their duties is, and remains, the property of the Council. The copyright or equivalent of any material cannot be sold without the permission of Cabinet. Any article, book or similar material for publication that is prepared in the Council's time is the property of the Council. Any disposal of intellectual property must be made in accordance with contract procedure rules. Any article, book or similar material for publication prepared by an employee (relating to their official duties) requires the written approval of the Service Director prior to publication.

19. Unofficial and Voluntary Funds

These regulations relate to funds administered by officers of the Council, the accounts of which are not included in the Authority's accounts.

- 19.1 Any proposed unofficial funds require the prior approval of the Director concerned who must maintain a record of all such funds and ensure that officers are appointed to administer each fund.
- 19.2 A separate bank account must be maintained for each fund (in the name of the fund) and fund monies must be kept separate from Council monies. Alternatively, the fund may be administered through the Council's bank account and general ledger but should be separately identifiable.
- 19.3 Where a separate bank account is maintained, directors must ensure that they receive a copy of the accounts of each fund and a certificate in the prescribed form from the auditors or independent examiners of each fund that has to be audited or independently examined. Such accounts are to be prepared annually, and at the completion of the purpose for which the fund was set up.
- 19.4 The CFO is to have access to any records relating to such funds and be immediately informed of any irregularities which arise in connection with them

20. Financial Control of Partnerships, Joint Ventures Associated Organisations and Similar Arrangements

Working in Partnership with Associated Organisations

- 20.1 The CFO is responsible for promoting and maintaining the same high standards of financial administration in partnerships that apply throughout the Council or advising the Cabinet where he/she is aware that arrangements within a partnership are in conflict or are uncertain compared with the practices adopted by the Council.
- 20.2 The CFO must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory, and must:

- a) Consider the overall corporate governance arrangements and legal issues when arranging contracts with the partner/joint venture or associated organisation.
- b) Ensure that the risks have been fully appraised before agreements are entered into with the partner/joint venture or associated organisation.

20.3 Service Directors must ensure that in all grant agreements, contribution to partnerships and where appropriate in agreed contracts for the supply of works, goods and services the CFO has access to the accounts, records and all other documentation, and is entitled to seek explanations from Officers of the funded organisation regarding the deployment of the Council's funding payment.

Working for Other Organisations

20.4 Service Directors are responsible for ensuring that approval is obtained from the CFO and the Service Director Legal Governance & Commissioning before any negotiations commence in relation to the provision of new or additional works or services to other organisations expected to exceed £20,000 per annum.

20.5 The Cabinet is responsible for approving any arrangements for any new work for other organisations expected to exceed £100,000 per annum. The CFO may agree contractual arrangements below this level.

20.6 Service Directors must ensure that any proposed arrangement to work for other organisations does not impact adversely upon the Services provided to or by the Council. All agreements, contracts or arrangements must be properly documented, and appropriate information must be provided to the CFO to enable a note to be entered into the Council Statement of Accounts concerning material items.

21. Purchasing of Works, Goods and Services

Service Directors must ensure through a review, at least annually, that SAP authorisations are appropriate to the needs of the service, maintaining an adequate degree of separation of duties and internal control.

These procedure rules must be read alongside the Contract Procedure Rules which establish the framework that controls the Council's arrangements for procurement.

Orders

21.1 Before any official order is issued for works, goods or services, the Service Director or other authorised officer must ensure that.

- (a) The works, goods or services, are necessary for the discharge of the responsibilities of the Council.

- (b) Sufficient budget is available to fund the expenditure; and
 - (c) The Contract Procedure Rules (which apply to all purchasing decisions irrespective of value) have been complied with.
- 21.2 Service Directors are responsible for all orders issued. Order will be issued electronically using the SAP system. Paper orders must only be used when authorised by the CFO. Paper orders may only be issued and signed in manuscript by officers authorised by the Service Director. The items, quantities and prices must be accurately recorded.
- 21.3 Service Directors must keep a record of who is authorised to sign order documentation or issue orders electronically and the extent of this authority. This list must be reviewed at least once per year.
- 21.4 Except where there is a formal contract, in which case work instructions and orders must conform with the provisions of the contract, official orders will be issued for all works, goods or services to be supplied to the Council, except for supplies of continuous services (such as gas), and statutory taxes, for petty cash purchases and other exceptions as the CFO may approve. Orders must clearly indicate the nature and quantity of the work/services/items/supplies required, any related contract or agreed prices, discounts receivable and dates or periods of delivery, and where applicable make specific requirements to obligations placed on the contractor, such as those relating to Data Protection
- 21.5 Verbal orders must be kept to a minimum and be confirmed either the same or next working day by written orders which must be marked as a confirmatory order.
- 21.6 Records of all non-computerised order books must be kept by the Director. Copies of orders must be retained. All copies of spoilt, incorrect or un-issued orders must be appropriately marked and retained in any order book.
- 21.7 The Service Director must record the receipt of the goods, works or services electronically (or where applicable on paper) and (where applicable) all payments made in respect of an order. All Goods Received Notes must be retained.

Management of Suppliers

- 21.8 In respect of each order or contract for construction work, and any order or contract for services exceeding £20,000 the Service Director responsible must appoint an authorised officer, directly employed or otherwise to carry out supervision of the contract. All orders must provide for the reasonable inspection of progression of activity at any stage that the council (acting reasonably) chooses.

Specification

- 21.9 In respect of each order or contract exceeding £20,000 the Service Director must prepare or agree a written brief stating the objective of the order or contract and the sources of funding to meet the estimated cost of the project and appoint an authorised officer.
- 21.10 Unless otherwise agreed with the CFO, the authorised officer must prepare a specification which will indicate relevant issues for the supply, (for example type, quantity, quality, time, location, occasions), and the risks and obligations placed on the supplier including data protection and management where applicable. Specifications should set outcomes or outputs and be prepared on a generic basis and not include named products except where this can be justified on technical grounds. They should be prepared in a way which is likely to bring about the most economically advantageous solution whilst ensuring compliance with minimum statutory requirements and Council policy. The specification may only be altered on the basis of written instructions from the Service Director, who must justify the reason for change and sources of funding.

Variations

- 21.11 The authorised officer may, subject to the provisions of the contract, make any variations essential to the achievement of the objectives of the contract but must have regard to the budget provision. The authorised officer must not issue any variation likely to increase the approved cost of the project without the written agreement of the Service Director responsible, who must state the authority and source of financial provision for the additional expenditure.
- 21.12 Every variation must be immediately recorded in writing by the authorised officer.

Overspending

- 21.13 Any variation – including an extension - to a contract which results or will result in additional costs being incurred on a contract of more than 5% of the contract sum will be reported to the budget holding Service Director and CFO as soon as practicable.

Recording of Contractual Payments

- 21.14 Service Directors must ensure that a Contract Register is kept which shows details of all payments made against any contract. Any payments on account to contractors against a formal contract are to be made only on an approved certificate issued and checked by the authorised officer which must be passed to the CFO.
- 21.15 The certificate authorising final financial settlement of any contract will not be issued until the appropriate officer has produced a detailed statement of account and all necessary supporting documents, and these have been

checked in accordance with arrangements approved by the CFO and the final payment agreed by the budget holding Director.

Claims

- 21.16 All claims (or prospective claims) from contractors for loss and expense will be considered by the authorised officer who will immediately advise the client Director, and they will jointly consider methods for cost reduction to achieve the budgetary provision. The budget holding [Service](#) Director and the Chief Finance Officer must be consulted in respect of any claim (or prospective claim) from a contractor for loss and expense in excess of £10,000.
- 21.17 The Service Director will report in detail to the Cabinet if the financial consequences of the claim cannot be accommodated within the approved project budget.
- 21.18 Any claim from a contractor outside the terms of the contract, or under any statutory instrument or any claim for an ex-gratia payment will be jointly considered by the Service Director Legal Governance & Commissioning, CFO and Service Director(s) of the appropriate Service(s) before any recommendation is made to the Cabinet.

Codes of Practice

- 21.19 All procurement must accord with the Contract Procedure Rules, Procurement Policy and all relevant Procedure Guidelines.

22. Grants to and from the Council and Loans from the Council

Grants Receivable

- 22.1 Service Directors in consultation with the appropriate Executive Director and Cabinet Members may apply for grants from any funding body, providing the proposed activity is consistent with the approved Council Plan, service objectives and Council policy where the Council is required to make no contribution, or where the Council contribution can be fully met from an existing budget for that purpose.
- 22.2 Service Directors must ensure a detailed business case is prepared, in consultation with the CFO, in respect of any grant offer sought under clause 22.1. Any application/expression of interest needs to assess:
- a) the alignment of the grant scheme with the current approved policies of the council

- b) the capacity impact on the Council for the deliverability of the project and expenditure,
- c) the parameters of the grant conditions and timescales requirements

The Service Director must agree any material grant conditions with the Service Director Legal Governance & Commissioning.

22.3 Where a proposed revenue or capital budget bid does not align with an existing Council policy, or where there is not sufficient budget allocated appropriately to meet a required council grant contribution, the Service Director must consult with the CFO. After consideration of virement options, it may be necessary to seek authority from Cabinet, or Council (as applicable) to authorise funding to facilitate the grant application.

22.4 Subject to the identification of sufficient resources within existing approved budget, or the approval of cabinet, or Council as necessary Service Directors are authorised to accept any offer of grant and subsequent grant conditions up to a maximum of £500,000.

Executive Directors are authorised to accept a grant of up to:

- a) 5% of the gross revenue budget of the Service to which the grant relates.
OR
- b) For capital projects, £1,000,000.

The CFO in consultation with the Service Director Legal Governance & Commissioning and the appropriate Executive Director is authorised to approve the acceptance of grants in all other circumstances.

22.5 Service Directors are authorised to accept a grant offer of any value from the West Yorkshire Mayoral Combined Authority and any Government department, provided that:

- a) the grant is in fulfilment of a national or regional initiative or requirement, and
- b) the Council is required to make no contribution, or the contribution can be fully met from an existing budget for that purpose.

The Service Director must advise the CFO of the relevant details and obligations of the grant as soon as possible on receiving notice of the grant offer, and on confirmation of the grant award.

Where a grant has a capital element, or revenue grant with discretion on usage, the funding must be identified into the relevant budgets and follow the normal process for approval and control of that funding (for example for capital, a business case as FPR 3.6).

Where a grant offer includes onerous or unusual conditions, including the risk of having to defray/undertake expenditure in a shortened timescale which may leave the Council exposed to the loss of grant when a scheme has commenced, commenced, the Service Director, CFO and Director of Legal, Governance & Commissioning must consider if these requirements represent a significant risk to the Council. If they believe that they do so, they must inform and seek authority for acceptance from the Cabinet.

- 22.6 Service Directors must ensure that any grant conditions or obligations are fulfilled, in respect of the allocations, timings, purposes of expenditure and outputs and outcomes. Service Directors must arrange for expenditure consistent with any specific type or purpose of grant, such as capital or revenue budget expenditure.
- 22.7 The value of all grants must be notified to the CFO, who will make arrangements as necessary to receive the grant and record the relevant expenditure. Any revenue or capital budget impacts will be incorporated into the quarterly financial monitoring update reports to Cabinet.

In respect of capital grants, any additional revenue expenditure requirement consequent from any capital grant award must be recognised by budget virements.

Any new capital programme/scheme that requires a council contribution (capital or revenue) must have an appropriate business case and Cabinet approval as per Section 3 FPR requirement, prior to any grant acceptance. Where a scheme is 100% grant funded with specific conditions that do not allow for discretion, with no financial commitment for the Council then the Service Director in conjunction with the CFO and Service Director of Legal, Governance and Commissioning may progress the scheme. This will be included in the quarterly report to Cabinet as set out in CPR 3.14.

- 22.8 Grant claims, financial returns and submissions must be completed by the relevant Service Director and the CFO for submission to the relevant government department, agency or organisation. The Service Director must provide such additional information as may be required by the CFO and or – when there is a requirement for internal audit authorisation- by the Head of Audit & Risk.

Grants and Loans to Other Organisations

- 22.9 Before issuing any grant the Service Director must be satisfied that the proposed activity or project does not constitute a procurement (to which Contract Procedure Rules would apply).
- 22.10 Except where the CFO agrees otherwise:

- a) Competitive procurement aligning with the council's contract procedure rules must be used in respect of any goods, works or services obtained by another organisation, where the Council is providing a loan or making a grant contribution of £100,000 or more.

b) The Service Director must carry out all appropriate due diligence on the proposed grant recipient entity, ensuring that it operates with appropriate financial and business controls, is not obtaining duplicate funding for the same project from the Council, or any other funding body.

22.11 A Service Director may issue a:

- a) Grant or loan of any value provided that it is offered fully in accordance with a scheme of grants or loans that has been approved by the Cabinet.

Or

- b) Grants of up to £10,000 each and £20,000 cumulative in any one year for any single purpose

Subject to:

- c) There is sufficient budget provision.
- d) Grants awarded under clause (b) above in aggregate may not exceed £10,000 in any one financial year for the same beneficiary.

22.12 Where a Service Director proposes to offer a grant, or loan to any organisation which is not covered by 22.11 above he/she may do so only following:

- a) A full financial appraisal of the project to which the grant or loan relates, by the CFO.
 - b) A full financial appraisal of the organisation to which the grant or loan is to be granted, by the CFO.
 - c) The preparation of a written report that establishes the justification for the financial assistance.
 - d) Consultation with the Executive Member responsible for the budget area which is to offer the grant or loan.
- and
- e) Establishing that there is sufficient budget provision.

The total value of grants awarded to any single organisation under this clause may not exceed £100,000, cumulatively in any one year, or for any objective, purpose or scheme operating for more than one year.

In carrying out the evaluation at (a) and (b) above the CFO will consider if any surety (legal charges on assets, bonds and or guarantees) is required of the applicant (see 22.15)

22.13 A Member lead forum- may issue a grant of any value provided that.

- a) It accords with, or is not in contravention of, any general scheme rules which are established by the Cabinet.
and
- b) There is sufficient budget provision.

22.14 The Service Director Legal Governance & Commissioning will execute any legal agreement in respect of any grant or loan exceeding £180,000.
The Service Director Legal Governance & Commissioning in consultation with the Service Director Finance has the authority to vary terms of the loan, i.e. -e.g. -term or-of interest rate, subject to consultation with the Executive Director and Executive Member-

22.15 The Service Director who is offering the grant or loan may issue any grant or loan agreement below this value (using standard documents where required by the Service Director Legal Governance & Commissioning), except where the CFO considers that a loan or grant should be subject to a surety from the applicant. In such cases grants or loans must then be executed by the Service Director Legal Governance & Commissioning

The Service Director Legal Governance & Commissioning has discretion to delegate the right to enter into such agreements as they think appropriate.

22.16 A Service Director may also administer grants in accordance with a scheme fully supported by

- a) government grants, or
- b) grants from any other third party

provided that the methodology of grant distribution fully follows the obligations of the supported scheme, and where local discretion may apply this is subject to decision making as required by ~~the Council's Constitution or the other requirements of~~ Financial Procedure Rule 22. A scheme that is only partially funded also requires compliance with the ~~Council's Constitution and~~ Financial Procedure Rules sections 2 and or 3.

22.17 When offering grants or other forms of assistance to entities that operate on a commercial basis Service Directors must ensure that no assistance will infringe -applicable national or international Procurement or State Aid or Subsidy Control Act 2022 requirements. In the event of any doubt about the matter advice must be sought from the Service Director Legal Governance & Commissioning.

22.18 Service Directors must ensure that appropriate records are retained to publish details of grants in accordance with the Local Government Transparency Code. Details of any subsidy under State aid rules or the Subsidy Control Act

2022 must be published as required by law.

22.19 In some cases, an agreed asset transfer, or the transfer of a right to a third party may constitute a form of grant, and these types of transactions must accord both with these FPRs and CPR 9 and 10.

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REPORT TITLE: Proposed Revisions to Contract Procedure Rules March 2025

Meeting:	Corporate Governance and Audit Committee
Date:	7 March 2025
Cabinet Member (if applicable)	Not applicable
Key Decision Eligible for Call In	No No
<p>Purpose of Report To provide information on the proposed changes to the Contract Procedure Rules due to new procurement legislation effective from 24 February 2025 and to address some inconsistencies in terminology and definitions.</p>	
<p>Recommendations</p> <ul style="list-style-type: none"> Members are asked to consider the proposed changes to Contract Procedure Rules and recommend them to Annual Council for approval. <p>Reasons for Recommendations</p> <ul style="list-style-type: none"> The proposed changes are needed due to the implementation of the Procurement Act 2023, effective from 24 February 2025 and to address inconsistencies in terminology and definitions. 	
<p>Resource Implications: There are no direct resource implications. Contract Procedure Rules cover all aspect of the Councils operations. The legal obligation to have CPR's is to comply with Section 135 Local Government Act 1972. The council is a public authority and a contracting authority for the purpose of, and is therefore subject to, the procurement regulations (the Procurement Act 2023 and the Public Contracts Regulations 2015).</p>	
<p>Date signed off by <u>Executive Director</u> & name</p> <p>Is it also signed off by the Service Director for Finance?</p> <p>Is it also signed off by the Service Director for Legal and Commissioning (Monitoring Officer)?</p>	<p>Rachel Spencer-Henshall – Deputy Chief Executive and Executive Director for Public Health and Corporate Resources (18/2/25)</p> <p>Kevin Mulvaney – Service Director Finance (18/2/25)</p> <p>Samantha Lawton – Service Director Legal & Commissioning (18/2/25)</p>

Electoral wards affected: All

Ward councillors consulted: Not applicable

Public or private: Public

Has GDPR been considered?

1. Executive Summary

- 1.1 This report sets out information on proposed changes to Contract Procedure Rules from 24 February 2025
- 1.2 Contract Procedure Rules ensure that the Council is acting in line with current legislation and other developments in public law when conducting procurements.
- 1.3 The Procurement Act 2023 (the “Act”) comes into force on 24 February 2025 and the council will be subject to this new legislation for all covered procurements and regulated below threshold procurements.
- 1.4 The previous regulations (the Public Contracts Regulation 2015) will however still apply to contracts which were procured under these regulations and the CPRs therefore still include references to these regulations and procurement processes which were applicable.
- 1.5 A more fundamental review of the Contract Procedure Rules may be undertaken at the appropriate time once all supporting legislation and guidance relating to the Procurement Act 2023 (the ‘Act’) has been published by the Cabinet Office and over time as the previous regulations are eventually superseded entirely.

2. Information required to take a decision

- 2.1 The detail relating to all proposed changes is detailed in the table below;

Section of the Contract Procedure Rules	Proposed changes	
Terminology updates	The following updates to terminology have been made throughout the document to ensure consistency throughout the document and with terms used in the Act:	
	CPR May 2024	CPR February 2025
	Solicitor to the Council	Service Director Legal and Commissioning
	Chief Finance Officer	Service Director Finance
	Head of Internal Audit	Head of Risk
	Head of Corporate Property Management	Head of Corporate Landlord and Capital
	UK Procurement Rules	Procurement Rules
	Framework Agreement	Framework
	Exception	Exemption
	Supplier Selection	Conditions of Participation
INTRODUCTION	Updated to include reference to section 135 of the Local Government Act.	
Procurement Principles	This section has been updated to bring in line with the “Covered procurement: objectives” at Section 12 of the Act.	
RULE 1 – Conduct and Compliance and Waiver	1.8 Rule updated to confirm that a Service Director has authority to award a contract following a procurement.	

	<p>1.13 (Conflicts of Interest and Integrity) This section has been updated in accordance with Section 81 of the Act which requires the Council to identify and mitigate all conflicts and potential conflicts of interest at all stages of the procurement process.</p>
<p>RULE 2 – Preparation and Process</p>	<p>2.1 Information included to make it clear that the value to be used when estimating the contract value is excluding VAT.</p> <p>2.2 UK’s e-notification service will change from Find A Tender Service (FTS) and Contracts Finder to the Central Digital Platform however during the transitional period FTS and Contracts Finder will still be used for publishing notices where appropriate.</p> <p>2.3.1 Amended to reflect Section 18 of the Act which states that a Contracting Authority “must consider” whether supplies could be made under more than one contract.</p> <p>2.3.2 Clarity provided to confirm that the rule applies when the cost of Supply is below the UK Threshold.</p> <p>2.3.3 Rule included at 2.3.3 has been moved to Rule 4 and is now included at 4.10 as this rule relates to assessing the financial standing of a supplier as part of the evaluation process.</p> <p>2.3.3 New addition proposed to ensure that barriers faced by SME’s are considered and reduced for above and below threshold contracts in accordance with Sections 12 and 86 of the Act.</p> <p>2.3.9 (Estimated Value) Rule updated to clarify that the supply will be within budgetary provision.</p> <p>2.3.10 (Bonds and Guarantees) Rule updated in line with current practice to confirm that a parent guarantee will be sought whenever practical unless the Head of Risk is satisfied that a parent company guarantee is not required.</p> <p>2.5.1 (The Specification) New addition proposed to ensure that guidance is sought from the Head of Procurement prior to undertaking any market engagement activities when the estimated value of the contract may exceed the relevant UK Threshold to ensure that all preliminary market engagement is undertaken in accordance with Section 16 of the Act.</p> <p>2.7 (Award Criteria) Rule updated to confirm when Award criteria must be published and refined to specify what must be satisfied when setting the criteria in accordance with Section 23 of the Act.</p> <p>2.7 (Award Criteria) Reference to ‘Suitability Criteria’ to be changed to ‘Conditions of Participation’ in accordance with Section 22 of the Act.</p> <p>2.8 (Award Criteria) Rule revised to make it clear that the Head of Procurement must be consulted if considering conducting interviews or receiving presentations as part of the procurement process.</p>

	<p>2.11 (Data Processing) Rule updated in consultation with the Information Governance Team to bring in line with current practices. A list of all contracts that involve data processing or sharing of personal data is maintained by the Head of Procurement.</p> <p>2.12 (Data Processing) Rule updated to include reference to the requirement for Service Directors to follow all linked policies to the Council’s Information Security Policy.</p> <p>2.12.1 (Data Processing) New addition proposed to confirm when a Data Protection Impact Assessment screening exercise should be completed with advice and guidance sought from the information Governance Team.</p>
<p>RULE 3 – Procurement Process</p>	<p>Table has been updated as follows:</p> <ul style="list-style-type: none"> • Information has been provided to clarify that the value used should exclude VAT. • A requirement to encourage and invite local SMEs and/or VCSEs to quote for contracts valued up to £24,999.99 has been amended to delete “where practicable” as it is expected that this may become a requirement under the new procurement rules in due course. • References to the Goods & Services Threshold, Light Touch Regime Threshold, and Works Threshold have been added to the table. Under the Act, two-stage procurement processes (including Standing Lists) are not permitted (Section 85(1)) for procurements valued below the Goods and Services Threshold and Light Touch Regime Threshold. However, there is an exception for Works contracts exceeding the goods and services threshold (Section 85(3)). • Details on the procurement process for contracts below the Light Touch Threshold have been included to clarify the requirements for these procurements, including the option to access a Pseudo Dynamic Purchasing System for contracts that fall under this threshold. • ‘Any other permitted compliant purchasing mechanism’ included for below threshold procurement to allow for alternative compliant procurement methods to be used as further guidance is issued by the Cabinet Office. • Reference to the use of Dynamic Markets has been included as this will be a new procurement tool available under Section 34 of the Act. • Dynamic Purchasing Systems continue to be referenced throughout the CPRs as these will continue to be available to use throughout the transitional period but will be phased out by February 2029 <p>3.2 Moved to 3.9 as this rule relates to Conditions of Participation.</p> <p>3.2 (Procurement Process) Rule updated to include reference to Quotation</p>

	<p>3.2.1 (Procurement Process) Reference to the use of Dynamic Markets has been included in accordance with Section 34 of the Act.</p> <p>3.5 (Conditions of Participation) Rule updated to comply with Section 85 of the Act to confirm that for below threshold procurements a qualification stage must not be used (except in the case of Works contracts valued at above the supplies and services UK Threshold but below the works UK Threshold) in accordance with Section 85 of the Act.</p> <p>3.6 (Conditions of Participation) Rule updated to ensure that the Council's standard procurement documentation is used to assess the Conditions of Participation when operating a procurement with a value above the UK Threshold.</p> <p>3.7 (Conditions of Participation) Rule updated to ensure that the Conditions of Participation are proportionate to the procurement in accordance with Section 22 of the Act.</p> <p>3.8 (Conditions of Participation) Moved from 3.2 and reworded in accordance with Section 22 of Act</p>
<p>RULE 4 – Tender Receipt and Evaluation</p>	<p>4.4 Rule updated following consultation with the Head of Risk to refer to Tenders not received through the eProcurement Portal to bring in line with current practice as a full audit trail is maintained of all Tenders submitted via the eProcurement Portal.</p> <p>4.9 New addition proposed to comply with Section 26 of the Act; requirement for the Head of Procurement to check the excluded or excludable status of the parties involved in the procurement process, and whether they are on the debarment list.</p> <p>4.11 Rule previously included at 2.3.3 has been moved and is now included here as this rule relates to assessing the financial standing of a supplier as part of the evaluation process.</p> <p>4.13 Rule updated in accordance with Section 19 of the Act to confirm that tenderers will be required to demonstrate that it will be able to perform the contract for the price offered where tenders appear to be abnormally low.</p> <p>4.17.4 (Clarifications, Presentations and Interviews) Rule updated to refer to the compliance check in line with current practice.</p> <p>4.16 (Clarifications, Presentations and Interviews – previous version) Rule moved to 4.19 to make the Rule easier to understand and follow.</p> <p>4.18 (Clarifications, Presentations and Interviews – new version) Rule updated to refer to the procurement process.</p>

	<p>4.19 (Clarifications, Presentations and Interviews) Rule previously included at 4.16 has been moved here and updated to reflect current practice and transparency.</p>
<p>RULE 5 – Standing Lists, Dynamic Purchasing Systems, Dynamic Markets and Frameworks: Creation and Usage</p>	<p>Rule title updated throughout this Rule to include the new Dynamic Markets as per Section 35 of the Procurement Act.</p> <p>5.2 (Standing Lists) Rule updated to include ‘subject to Procurement Rules’ as standing lists are no longer available for most below threshold contracts except for Works contracts valued over the Goods and Services threshold.</p> <p>5.12 (Council Frameworks, Dynamic Purchasing Systems and Dynamic Markets) Rule updated to allow for Open Frameworks to be established in accordance with Section 49 of the Act.</p> <p>5.12.1 (Council Frameworks, Dynamic Purchasing Systems and Dynamic Markets) New addition proposed regarding operation of an Open Framework in accordance with Section 49 of the Act.</p> <p>5.13 (Council Frameworks, Dynamic Purchasing Systems and Dynamic Markets – previous version) Rule removed to reflect current practices in the Procurement Team.</p> <p>5.13 (Council Frameworks, Dynamic Purchasing Systems and Dynamic Markets – new version) Rule updated to include Dynamic Markets and related terminology i.e. the parts of the Dynamic Market, rather than categories as per the Dynamic Purchasing Systems under the Public Contracts Regulations 2015.</p> <p>5.17 (Council Frameworks, Dynamic Purchasing Systems and Dynamic Markets – previous version) Rule removed as a repetition of Rule 5.1.</p> <p>5.16.1 (Use of Third-Party Procurement Facilities) Rule updated to confirm that any third-party Framework used must be setup in accordance with the Procurement Rules.</p>
<p>RULE 6 – Exemptions from Competition</p>	<p>6.1.7 Rule updated to bring in line with the Direct Award Provision set out at Schedule 5 of the Act.</p> <p>6.1.9 and 6.1.10 New additions proposed to bring in line with the Direct Award Provision set out at Schedule 5 of the Act.</p> <p>Trial Purchases title removed to make the document easier to follow.</p> <p>6.3.1 Rule updated to confirm that it should be considered alongside Rule 6.3 and to clarify that it must be applied after any trial conducted in accordance with Rule 6.3.</p> <p>6.10 (Mandatory Suppliers, Frameworks, Dynamic Purchasing Systems or Dynamic Markets) Rule updated to refer to subsidy control</p>

	rather than state aid following the introduction of the Subsidy Control Act 2022
RULE 7 – Record Keeping and Reporting	7.4 Rule removed as completion of a ‘Regulation 84 Report’ is not a requirement of the Act.
RULE 8 – Income Contracts & Concessions	8.3 Updated to correct reference to the FPRs relating to Grants. 8.10 (Concession Contracts) Rule updated to confirm that a procurement process must be undertaken for Concession contracts valued above the UK Threshold to comply with Procurement Regulations and the CPRs. 8.11 (Valuation) Rule updated to clarify that the estimated value of a Concession contract should be estimated in accordance with the Procurement Rules.
RULE 9 - Land	9.2 Rule updated to inclusive language. 9.4 Rule updated to refer to in person and online Land auctions to bring in line with current practice.
RULE 10 – Executing Contracts	10.1 (Supplies) Rule updated to confirm that contracts may only be awarded approved budget to meet the first-year costs and there is sufficient ongoing funding to meet the contractual cost through the anticipated life of the Contract. 10.5 (Supplies) Rule updated to refer to Dynamic Markets in accordance with Section 34 of the Procurement Act. 10.9 (Land) Rule updated to bring in line with current practices to allow for any Contract for the sale or acquisition of, or any other deed or document relating to, Land to be processed in hard copy format or electronic format. Also amended to deal with the sale of land by the council at auction.
RULE 11 – Modification and Termination of Contracts and release of bonds	Title and Rules have been updated to refer to Modification in accordance with the terminology used in the Act and the Public Contracts Regulations 2015. 11.6.1 Sub Rule has been amended to address contract modifications made under Regulation 72 of the Public Contracts Regulations 2015. This amendment pertains to existing contracts awarded under these regulations. 11.6.2 New Rule proposed to explain when contracts can be modified under the Procurement Act in accordance with Section 74 of the Act. 11.7 Rule updated to allow for Procurement oversight where a below threshold contract may become a convertible contract by modification in accordance with Section 74(1) of the Act.

	11.9 Rule reworded to reflect the Act (Schedule 8) which allows additional flexibility.																
DEFINITIONS	In addition to updates to job titles, the following updates have been made to this section:																
	<table border="1"> <thead> <tr> <th>Definition</th> <th>Reason for update</th> </tr> </thead> <tbody> <tr> <td>Central Digital Platform</td> <td>This is the online system that will be used to advertise all procurement activity undertaken in compliance with the Act.</td> </tr> <tr> <td>Conditions of Participation</td> <td>These will replace 'Selection Criteria' in accordance with Section 22 of the Act.</td> </tr> <tr> <td>Council</td> <td>New definition proposed</td> </tr> <tr> <td>Dynamic Market</td> <td>Procurement tool that may be utilised in accordance with Section 34 of the Act.</td> </tr> <tr> <td>Framework</td> <td>Definition updated to include framework agreements established under the Public Contracts Regulations 2015 and Open Frameworks as defined in the Act.</td> </tr> <tr> <td>Procurement Rules</td> <td>Definition updated to include the Act, the Provider Section Regime Regulations 2023 and the Public Concessions Regulations 2016</td> </tr> <tr> <td>Suitability</td> <td>Definition updated in line with the Act</td> </tr> </tbody> </table>	Definition	Reason for update	Central Digital Platform	This is the online system that will be used to advertise all procurement activity undertaken in compliance with the Act.	Conditions of Participation	These will replace 'Selection Criteria' in accordance with Section 22 of the Act.	Council	New definition proposed	Dynamic Market	Procurement tool that may be utilised in accordance with Section 34 of the Act.	Framework	Definition updated to include framework agreements established under the Public Contracts Regulations 2015 and Open Frameworks as defined in the Act.	Procurement Rules	Definition updated to include the Act, the Provider Section Regime Regulations 2023 and the Public Concessions Regulations 2016	Suitability	Definition updated in line with the Act
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Appendix 1	Threshold values updated to include the value excluding VAT.																
Appendix 2	Table updated to ensure correct cross referencing and to remove reference to Regulation 84 reports as this is no longer a requirement of the Act.																

3. Implications for the Council

3.1 Council Plan

These updated CPRs reflect good procurement practice which in turn supports the Council Plan by using procurement activity to help achieve the Council's wider objectives and outcomes.

3.2 Financial Implications

None directly

3.3 Legal Implications

The legal obligation to have CPR's is to comply with Section 135 Local Government Act 1972, the Public Contracts Regulations 2015 Provider Section Regime Regulations 2023 and the Procurement Act 2023.

3.8 Other (e.g. Risk, Integrated Impact Assessment or Human Resources)

None directly

4. Consultation

Consultation has been carried out with the Head of Risk, the Head of Corporate-Legal, the Information Governance Manager and Data Protection Officer and officers in the Procurement Team, Legal Services and Information Governance Team.

5. **Engagement**
Changes will be communicated to stakeholders via the intranet with appropriate training and guidance offered by the Procurement Team.
6. **Options**
 - 6.1 **Options considered**
No other options - the council is required to comply with the legislation accordingly. It was also an opportunity to update other areas which were out of date e.g. job titles and ensure conformity and consistency throughout.
 - 6.2 **Reasons for recommended option**
The Council is required to comply with all UK Procurement legislation.
7. **Next steps and timelines**
Following consideration by this committee the report will proceed to Annual Council for consideration on 21 May 2025.
8. **Contact officer**
Ruth Calladine, Head of Procurement (01484 221000, email – ruth.calladine@kirklees.gov.uk)
9. **Background Papers and History of Decisions**
[Contract Procedure Rules 2024 – Kirklees Council](#)
[Changes to CPRs 2024 Report to Corporate Governance and Audit](#)
[Changes to CPRs 2024 Annual Council](#)
10. **Appendices**
Appendix A - All text changes are marked by track changes.
Appendix B - Clean copy of the revised contract procedure rules with suggested amendments
Appendix C - Copy of the Procurement Act 2023
11. **Service Director responsible**
Samantha Lawton, Service Director Legal & Commissioning
Kevin Mulvaney, Service Director Finance

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KIRKLEES COUNCIL
CONTRACT PROCEDURE RULES

| ~~MAY 2024~~ MARCH 2025

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INTRODUCTION

These Contract Procedure Rules (CPRs) aim to promote the highest standard of probity, integrity, and impartiality in making a clear, understandable and fair selection of Suppliers and Supplies to the Council. Equally important are the delivery of best value through competitive procedures and the avoidance of practices which may restrict, prevent or distort competition.

These Contract Procedure Rules cover the Procurement of all Supplies (goods, works and services) and Income Contracts and are made in accordance with section 135 of the Local Government Act 1972.

These Contract Procedure Rules must be complied with strictly. They are minimum requirements. A more thorough procedure may be appropriate for particular Supplies. However, when designing the Procurement within the parameters of these CPRs, the process and the Specification should be clearly proportionate and relative to the need which the Supply fulfils and should appropriately balance the value of, and risks associated with, any proposed action.

Where the eCouncil wishes to obtain the delivery of goods, works, or services, the use of procurement is the usual method. Grants should only be used to assist or support objectives of another organisation. In some instances, CPRs will apply to grants (see Appendix 4).

Procurement PrinciplesObjectives:

The aim-objective of every procurement exercise should be to deliver value for money. In pursuit of that aimobjective, procurers shall endeavour to treat- suppliers the same, unless a difference between the suppliers justifies different treatment. They must take all reasonable steps to ensure no supplier is given an unfair advantage or disadvantage ~~market operators~~ equally and without discrimination, and to act in a transparent and proportionate manner. Procurers will act, and be seen to act, with integrity at all times.

Without detracting from those principles, pProcurers should take every opportunity to maximise public benefit by considering ing how improvements to the economic, social and environmental wellbeing of the district (social value) can be generated and enhanced in contracts and procurement processes, including This includes encouraging the participation of local businesses, small and medium-sized enterprises (SMEs) and social enterprises in Council tenders.

Commented [RC1]: Updated to reflect s12

RULE 1 – CONDUCT AND COMPLIANCE AND WAIVER

- 1.1 All Council employees, and any person or organisation working on behalf of the Council in Procuring or managing a Supply, must comply with these CPRs.
- 1.2 Cabinet may waive any parts of these CPRs on a case by case basis following consideration of a detailed report setting out in particular: -
 - 1.2.1 the legality of the proposed non-compliant process or action; and
 - 1.2.2 the reputational and financial risks associated with the proposed non-compliant process or action.
- 1.3 Failure to comply with these CPRs without a valid waiver may result in disciplinary action against the officers concerned and may in some cases constitute a criminal offence.
- 1.4 Each Service Director must ensure:-
 - 1.4.1 compliance with these CPRs and the FPRs, using training, instruction and internal control processes;
 - 1.4.2 appropriate supervision and performance management to ensure that decisions taken are subject to authorisation and quality control procedures.
 - 1.4.3 a suitably experienced and trained officer is identified to adequately manage the Contract for every contractual relationship the Council enters into.
- 1.5 When authorising staff to procure Supplies on their behalf, each Service Director must set a financial (or other) limit on the authority vested in individual officers to procure the Supplies. Such limits must be recorded in the relevant Scheme of Officer delegations. An officer wishing to commence a procurement exercise and/or commit the Council to contractual obligations must ensure that:
 - 1.5.1 they have the Cabinet authority or a written approval of the delegated decision by an authorised officer under the Scheme of Officer Delegation to incur the expenditure and provide details to the Head of ~~Corporate~~ Procurement.
 - 1.5.2 officer executive decisions are recorded accurately and promptly including the relevant information required, such as the context in which the decision was taken, the reasons for the decision and alternative options considered.
 - 1.5.3 all significant officer decisions taken relating to the procurement exercise (i.e. decisions which may be of interest to councillors and/or the public) are recorded
 - 1.5.4 where a Supply is a Key Decision, a Key Decision Notice (KDN) has been published in a Notice of Forthcoming Key Decisions.
- 1.6 The Head of Procurement may:-
 - 1.6.1 authorise officers who are not procurement officers under their managerial responsibility to act on their behalf in respect of any role assigned to the Head of Procurement in these CPRs;
 - 1.6.2 issue waivers in relation to the need to consult them under CPR 1.3;
 - 1.6.3 undertake a review of procurement arrangements and practices, and value for money within any service area, in consultation, as appropriate, with the Service Director, ~~Solicitor to the Council~~ ~~Service Director Legal and Commissioning~~, ~~Chief Finance Officer~~ ~~Service Director Finance~~ and Head of ~~Risk~~ ~~Internal Audit~~.

- 1.7 The Head of Procurement must record the precise extent of such authorisations and the officer to which roles have been delegated and share these authorisations with the ~~Solicitor to the Council~~Service Director Legal and Commissioning and the Head of ~~Risk~~Internal Audit.
- 1.8 A Service Director has authority to commence and award any Procurement subject to:
- 1.8.1 compliance with these CPRs and FPRs; and
 - 1.8.2 having appropriate delegated authority; and
 - 1.8.3 compliance with management processes designed to ensure that proposed projects meet the Council's business needs; and
 - 1.8.4 seeking Value for Money.
- 1.9 These CPRs are a minimum standard and a more prescriptive procurement regime must be followed where this is required by UK law and agreements with Grant funding organisations.
- 1.10 The Head of Procurement, the ~~Solicitor to the Council~~Service Director Legal and Commissioning and the Head of ~~Risk~~Internal Audit may each issue Guidance Notes to aid the interpretation of these CPRs, with the following leading responsibilities:
- 1.10.1 the Head of Procurement – Good Procurement Practice;
 - 1.10.2 ~~Solicitor to the Council~~Service Director Legal and Commissioning – UK Procurement Rules and other laws and Corporate Governance;
 - 1.10.3 Head of ~~Risk~~Internal Audit – Procurement project related financial management, Best Value and Risk.
- 1.11 Any dispute concerning interpretation of these CPRs must be referred to the Head of ~~Risk~~Internal Audit who, in consultation with the ~~Solicitor to the Council~~Service Director Legal and Commissioning, may provide clarification and determination.
- 1.12 Subject to Part 3 of the Council's constitution and without prejudice to the role of the Monitoring Officer or the ~~Chief Finance Officer~~Service Director Finance, the Chief Executive may reassign specific duties delegated in these CPRs to the Head of Procurement, the Head of ~~Risk~~Internal Audit, and the ~~Solicitor to the Council~~Service Director Legal and Commissioning provided that:-
- 1.12.1 the post holders to whom these duties are assigned must hold general competencies as follows:-
 - public sector procurement in respect of duties reassigned from the Head of Procurement;
 - finance in respect of duties reassigned from the Head of ~~Risk~~Internal Audit;
 - Law and Court procedure in respect of duties reassigned from ~~Solicitor to the Council~~Service Director Legal and Commissioning.
 - the same degree of separation of officer responsibility for the duties is maintained.

Conflicts of Interest and Integrity¹

- 1.13 ~~—~~Service Directors shall take appropriate measures to effectively prevent, identify and remedy eConflicts of iInterest or potential eConflicts of iInterest arising at all stages

¹ Officers should also familiarise themselves with the FPRs 17 and 18, Chapter 7 of the Employee Handbook and Part 5.6 of the Council's Constitution and Members should also refer to Part 5.1 of the Constitution.

~~of in the conduct of the~~ procurement procedures to avoid any distortion of competition and to ensure equal treatment of all economic operators.

- 1.14 Any Officer, Member or other person acting on the Council's behalf in procuring a Supply must declare any potential Conflict of Interest as soon as they become aware of a potential Conflict of Interest and update the declaration in the event of any changes.
- 1.15 Service Directors must record such declarations and in each case decide whether safeguards need to be put in place or the Officer or Member concerned should be removed from the Procurement or Disposal process.
- 1.16 In exercising the decisions delegated to them, the Head of Procurement, Head of ~~Risk~~Internal Audit and ~~Solicitor to the Council~~Service Director Legal and Commissioning (or any other persons undertaking their responsibilities by application of CPR 1.1~~2~~⁴ or CPR 1.6) must reach their decisions independently.

RULE 2 – PREPARATION AND PROCESS

- 2.1. Before commencing any process to obtain any Supply having an estimated cost exceeding £25,000 (~~excluding VAT~~), the Service Director must consult with the Head of Procurement. The Head of Procurement must consider if any issues relating to the procurement may create risks that require consultation with the ~~Solicitor to the Council~~Service Director Legal and Commissioning and/or the Head of ~~Risk~~Internal Audit, and undertake these consultations as necessary.
- 2.2. The Service Director must provide to the Head of Procurement information necessary to enable the Council to comply with the UK-Procurement Rules. The Head of Procurement is responsible for ensuring the appropriate placing of notices in the UK's e-notification service either ~~via the Central Digital Platform,~~ Find A Tender Service (FTS) ~~and or~~ Contract Finder ~~as appropriate.~~ Such notices may only be placed by officers authorised to do so by the Head of Procurement.
- 2.3. Each Service Director must ensure:
 - 2.3.1. That Supplies of a similar type are procured together where it is sensible to do so. A Procurement must not be subdivided with the effect of preventing it from falling within the scope of these CPRs or the UK-Procurement Rules, unless justified by objective reasons or permitted by the Procurement Rules.
 - 2.3.2. Where the cost of the Supply is ~~below~~less than the UK Threshold and an approved Frameworks Agreement or Dynamic Purchasing System is not being used, there must be consultation with the Head of Procurement to see whether the value of the Supply needs to be aggregated with any other similar Supplies for the purposes of the UK-Procurement Rules.
 - 2.3.3. That they have regard to the fact that SMEs may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced.
 - 2.3.3. ~~The Head of Internal Audit is satisfied regarding the financial standing of a proposed Supplier for any contract exceeding the UK supplies and services threshold.~~2.3.4. ~~The process~~ can be adequately resourced.
 - 2.3.5. The appointment of an officer to carry out supervision of the resulting contract(s) in accordance with Financial Procedure Rule 21.8.

Commented [RC2]: Updated as per S18

Commented [CM3]: Added to reflect s84

Commented [CM4]: Moved to Rule 4

Compliance

2.3.6. Each Procurement complies with the following:-

- a. it is justified by a business case (that includes a risk assessment) approved by a Senior Manager with relevant authority to purchase; and
- b. a Whole Life Costing Approach underpins the specification of the Supply; and
- c. it aligns with the Procurement Strategy; and
- d. it complies with any requirements or agreements regarding the use of in-house Service suppliers (see CPR 6.13), consortia and other suppliers (Service Directors should, for example, consult the Head of Procurement about decisions and options available under CPRs 6.11 & 6.12).

Estimated Value

2.3.7. Regard is given to Best Value and the Public Sector Equality Duty and consultations with the public have been carried out as required.

2.3.8. An estimate of the full cost of the Supply contract or Framework ~~Agreement~~ which is as accurate as possible is made. Valuations must:

- a. be estimated by reference to the gross value of the Supply contract (including installation, supplier maintenance, options, and any income gained by all Suppliers involved in the agreement);
- b. assess the gross value of a Framework ~~Agreement~~ to be the reasonably estimated value of all Supply contracts which might be made through it;
- c. where the Supply contract includes a fixed duration, cover the entire possible duration of the contract (i.e. including any options, such as for extension or renewal);
- d. where a maximum contract duration is not certain, treat the contract as if it lasts for 4 years;
- e. include any Grant funding;
- f. exclude VAT.

2.3.9. The Supply ~~is likely to will~~ be within budgetary provision (see CPR 10.1).

Bonds and Guarantees

2.3.10. ~~The eCouncil should always will seek a parent company guarantee when ever practical such an option is available unless the Head of Risk is satisfied that a parent company guarantee is not required.~~

2.3.11. Bonds; All supply contracts relating to;

- a. capital construction works in excess of £500,000
- b. any IT contracts that involve pre operational payments in excess of £500,000
- c. any contracts with a total consideration in excess of £5m

will be bonded in the sum of 10% of the Tender value, except where the ~~Solicitor to the Council~~ Service Director Legal and Commissioning and Head of ~~Risk~~ Internal Audit agree either:-

- i. No bond is necessary; or

Commented [CM5]: Amended in consultation with Martin Dearnley to reflect current practice

- ii. A different value (or percentage) is appropriate; and or
- iii. A cash bond; and or
- iv. A parent company guarantee or other form of surety can be accepted instead.

The Specification

- 2.4. In preparing a Specification, the Service Director should consider how the procurement activity might meet the Council's wider policy and strategy but subject always to ensuring full compliance with [the UK procurement Rules legislation](#). Service Directors must also consider how what is proposed to be procured might improve the economic, social and environmental wellbeing of Kirklees.
- 2.5. Consultation with suppliers in the relevant market is permitted but it must not prejudice any potential Supplier and no technical advice may be sought or accepted from any [Supplier](#) in relation to the preparation of any [Specification](#) or contract documentation where this may distort competition, provide any unfair advantage or prejudice the equal treatment of all potential Suppliers.

[2.5.1 Where the estimated value of any contract may exceed the relevant UK Threshold, guidance must be sought from the Head of Procurement prior to undertaking any market engagement activities.](#)

Commented [CM6]: To comply with the new Act

- 2.6. The preparation of appropriate Specifications, costs/pricing document(s), contract terms (other than Land Contracts and subject to CPR 2.10) and other procurement documentation must be created to be understandable by all reasonably well informed people in the relevant industry.

Award Criteria

- 2.7. Where a competitive process is being carried out, a transparent, unambiguous and clearly set out [schedule of Award Criteria](#), which are objectively verifiable and non-discriminatory and are appropriately prioritised, must be prepared and [advertised/published with the procurement documents](#). These criteria must be linked to the subject matter of the contract, [be sufficiently clear, measurable and specific](#), must not include unlawful non-commercial considerations or [Suitability Criteria/Conditions of Participation](#) (which should be identified separately and must follow CPR 3.5– 3.9) and must be proportional to the contract's main objectives, [complexity and cost](#).
- 2.8. The Head of Procurement [is-must be](#) consulted at the preparatory stage if conducting interviews or receiving presentations is considered to be beneficial to the process (also see CPRs 4.16 & 4.17).

Contracting

- 2.9. For contracts up to the UK supplies and services threshold, other than Land Contracts, the Service Director shall wherever possible use appropriate standard contract terms. Otherwise every contract for Supplies or Income Contract must set out:
- a. details of the Supply to be made or to be disposed of;
 - b. the price or prices to be paid or received and/or the amounts and frequency or the method of calculation of contract payments with a statement of discounts or other deductions;

- c. the time(s) within which the contract is to be performed;
- d. termination provisions and break clauses, if appropriate;
- e. appropriate data protection clauses where personal data is involved; and
- f. such other matters as the ~~Solicitor to the Council~~ Service Director Legal and Commissioning considers to be necessary (the ~~Solicitor to the Council~~ Service Director Legal and Commissioning need not be consulted, but guidance must be followed).

2.10. For contracts above the UK supplies and services threshold, other than Land Contracts the Service Director must consult with the ~~Solicitor to the Council~~ Service Director Legal and Commissioning who will prepare contract documentation appropriate for the contract.

Data Processing

2.11. ~~The Head of Procurement will maintain a list of A~~ All contracts that involve the processing or sharing of personal data, ~~must be reported to the Information Governance Team, who will keep a log of these contracts.~~

2.12. Where any Supplier is given possession of, or access to, any personal data, the Service Director must have regard to the Council's obligations as regards the Data Protection Legislation. The Service Director must follow the Council's Information Security Policy and all linked policies, in particular regarding contracting with data processors, sharing data and consulting with the Information Governance Team. The Service Director must ensure that:

- 2.12.1. ~~_____~~ a Data Protection Impact Assessment screening exercise should be carried out, and the appropriate document completed, with advice and guidance sought from the Information Governance Team;
- ~~2.12.2~~ _____ the Supplier is verified as suitable to be trusted with the personal data before allowing the Supplier access to the data;
- 2.12.~~23~~ _____ appropriate guarantees of the security of the personal data are included within a written contract;
- 2.12.~~34~~ _____ the performance of the contract is appropriately monitored;
- 2.12.~~54~~ _____ appropriate steps are taken to enforce the contract where the information security guarantees are not being met;
- 2.12.~~56~~ _____ appropriate steps are taken to minimise as far as possible the impact of a breach of data security;
- 2.12.~~67~~ _____ arrangements that appropriately deal with the transfer, return or deletion of the information at the end of the contract are established.

Collaboration

- 2.13. The potential for genuine collaboration with other public bodies must be considered when planning a procurement exercise.
- 2.14. When taking any benefit from a procurement in which a third party takes any degree of control, Service Directors must ensure that appropriate due diligence steps are taken to be sure that all arrangements are appropriate and compliant. Apart from in the case of Central Purchasing Organisations (like the Yorkshire Purchasing Organisation and the

Commented [CM7]: Amended in consultation with the IG team

Crown Commercial Service); any addition to procurements on a speculative basis (for example, where the Council is added as a user to a third party framework without a likelihood the Council will use it) must be approved by the Head of Procurement.

RULE 3 - PROCUREMENT PROCESS

3.1. Subject to complying with the law, the process for procurement must comply with the following:

Value of Supplies (<u>exc VAT</u>)	Requirement		
	Procurement Process	Advertising	Min no of Suppliers
£0 - £24,999.99	<p>Any Reasonable Means to select are permitted. Reasons to justify the decision taken must be recorded.</p> <p><u>Where practicable, SMEs and/or VCSEs and/or</u> suppliers from Kirklees (and/or West Yorkshire) area are encouraged and should be invited to submit quotes. Officers need to ensure that purchases achieve best value for the Council and an audit trail is maintained to demonstrate this.</p>	<ol style="list-style-type: none"> Any reasonable means A Contract Award notification form needs to be completed for values in excess of £5,000 and up to £24,999. This must be reported to Corporate Procurement 	3
£25,000 – <u>Goods & Services Threshold</u>	<p>One of the following:</p> <ul style="list-style-type: none"> Quotations (CPRs 3-4) Framework Suppliers, <u>Standing Lists, etc.</u> (CPR 5) Exemptions (CPR 6) Internal, Consortia & Compulsory (CPR 6) <p>In addition: Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary</p>	<p>As the Head of Procurement determines</p> <p>1. From a standing list 2.1. An approved Framework 2. An approved Dynamic Purchasing System 3. <u>Any other permitted compliant purchasing mechanism</u> 4. Advertise on eProcurement Portal, Central Digital Platform</p>	<p>Below £100,000 – 3</p> <p>Above £100,000 – 4</p>
<u>Light Touch Services Only Goods and Services Threshold – Light Touch Threshold²</u>	<p>One of the following:</p> <ul style="list-style-type: none"> Quotations (CPRs 3-4) Framework Suppliers, <u>Dynamic Marketplace, Dynamic Markets</u> (CPR 5) Exemptions (CPR 6) Internal, Consortia & Compulsory (CPR 6) <p>In addition: <u>Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary</u></p>	<p>As the Head of Procurement determines</p> <ol style="list-style-type: none"> An approved Framework An approved Dynamic Purchasing System An approved Pseudo Dynamic Purchasing System 	4

² Light touch threshold applies to contracts for certain social, health, education and other public services. Certain health services are subject always to the Health Care Services (Provider Selection Regime) Regulations 2023. For these services there is no minimum threshold for application of this regime.

	The Legal Service will perform the execution of any contract(s).	4. Any other permitted compliant purchasing mechanism 5. Advertise on eProcurement Portal, Central Digital Platform	
Works Only³ Goods and Services Threshold – Works Threshold	<p>One of the following:</p> <ul style="list-style-type: none"> Quotations (CPRs 3-4) Tenders (CPR 3-4) Framework Suppliers, Dynamic Marketplace, Dynamic Markets, Standing Lists, etc. (CPR 5) Exemptions (CPR 6) Internal, Consortia & Compulsory (CPR 6) <p>In addition: Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary</p> <p>The Legal Service will perform the execution of any contract(s).</p>	<p>As the Head of Procurement determines</p> <ol style="list-style-type: none"> From a standing list An approved Framework An approved Dynamic Purchasing System or Dynamic Market Any other permitted compliant purchasing mechanism Advertise on eProcurement Portal, Central Digital Platform 	4
Above Threshold	<p>One of the following:</p> <ul style="list-style-type: none"> Tenders (CPRs 3-4) Framework Suppliers, Dynamic Marketplace, Dynamic Markets, Standing Lists, etc. (CPR 5) Framework Suppliers etc. (CPR 5) Exemptions (CPR 6) Internal, Consortia & Compulsory (CPR 6) <p>In addition: Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary</p> <p>The Legal Service will perform the execution of any contract(s).</p>	<p>Advertise on eProcurement Portal, Central Digital Platform; or</p> <p>Use approved Framework ; or</p> <p>Use approved Dynamic Purchasing System <u>or</u> Dynamic Market</p>	5

Commented [CM8]: Under the new Act two stage processes (which would include Standing Lists) are not permitted (s85(1)) however see s85(3) there is an exception to this rule in relation to works where the value of the contract exceeds the goods and services threshold

~~3.2. — These CPRs also apply to the selection of any nominated or named sub-contractor, product or manufacturer whose use by a supplier is a requirement of a contract specification. 3.32.~~

A Service Director must invite at least the number above of suppliers to submit a written

Commented [CM9]: Moved to Conditions of Participation (3.9)

³ [A separate suitability stage may be included if required in relation to a below threshold Works contract that is valued at over the Goods & Services threshold](#)

Tender / [Quotation](#), unless:-

3.42.1 an **approved**² Framework ~~Agreement~~, [Dynamic Market](#) or Dynamic Purchasing System is being used (and in which case the rules of the Framework ~~Agreement~~, [Dynamic Market](#) or the Dynamic Purchasing System must be followed); or

3.42.2 it is otherwise agreed with the Head of ~~Risk~~[Internal Audit](#) in consultation with the ~~Solicitor to the Council~~[Service Director Legal and Commissioning](#).

3.43. The Suppliers must be reasonably capable of, or have indicated that they are willing to, submit a Tender. If it is not possible to identify the number of suitable and/or willing prospective suppliers indicated above, the Service Director must retain a record of the efforts made and reasons why an appropriate number of suppliers could not be identified.

Supplier Selection Conditions of Participation

3.54. Service Directors must satisfy themselves that Suppliers have relevant and proportional minimum levels of ~~S~~[suitability](#).

3.65. Where the procurement process has an overall value of less than the supplies and services UK ~~€~~Threshold, a qualification stage must not be used ~~(except in the case of Works contracts valued at above the supplies and services UK Threshold but below the works UK Threshold)~~, although key, proportional, suitability questions linked to the subject matter of the contract should, as appropriate, be used to establish the suitability of the supplier. The questions (or absence of any) must be approved by the Head of Procurement.

Commented [CM10]: To comply with s85

3.76. When operating a procurement process with a value above the ~~supplies and services~~ UK ~~€~~Threshold, the Service Director must use the Council's ~~standard selection questionnaire~~[standard procurement documentation](#) to ~~establish suitability~~[assess the eConditions of pParticipation](#) and/or to establish a shortlist [where permitted](#). Any variations to this must be agreed with the Head of Procurement who will notify relevant authorities as necessary.

3.87. The ~~selection~~[Conditions of Participation assessment](#) of any potential Supplier to submit a Tender must be on the basis of a consistent, fair, justifiable and rational method, approved by the Head of Procurement. ~~Selection Criteria~~[Conditions of Participation](#) must be [a transparent and proportionate means of ensuring legal and financial capacity and technical ability to perform the contract, and financial ratios to be used as part of the evaluation must be disclosed](#). When conducting a procurement process which is subject to the ~~UK~~ Procurement Rules, minimum standard and/or pass marks must be published in the relevant ~~FTS contract~~[Tender Notice](#) or invitation to confirm interest.

3.98 The Conditions of Participation also apply to the selection of any ~~nominated or named sub-contractor~~, associated supplier in accordance with the Procurement Rules

3.9. Before any self-employed supplier is awarded a contract, the supplier's details must be obtained and assessed through the HMRC Employment Status Indicator (ESI) Tool. The results of this should be reported to the Head of Procurement. The Service Director and the Head of Procurement must agree on the approach to procurement if the assessment suggests that the Council faces any risk. Any proposal to engage a self-employed person must be agreed with the Head of Procurement.

RULE 4 –TENDER RECEIPT & EVALUATION

- 4.1 For Procurements which are valued above £25,000, suppliers must be required to submit Tenders by electronic means of communication unless the Head of Procurement agrees otherwise. This must be through the eProcurement Portal unless the Head of Procurement agrees otherwise. (If the Head of Procurement approves another means, they will be required to agree and supervise a fair means of tender opening).
- 4.2 All invitations must state clearly the date and time of return. Electronic Tenders must be returned in accordance with the approved tendering system requirements.
- 4.3 All electronic Tenders received by the appointed time will be opened at the same time by the Head of Procurement.
- 4.4 In the case of Tenders not received through the eProcurement Portal, At the Tendering opening the Head of Procurement will maintain a written record of the:
- 4.4.1 Procurement reference and title;
 - 4.4.2 name of each supplier submitting a Tender and the time of submission;
 - 4.4.3 name of suppliers failing to submit prices/proposal for any restricted opportunities;
 - 4.4.4 prices from each supplier;
 - 4.4.5 name of opening officer;
 - 4.4.6 names of the persons present at the opening for any tenders submitted outside of the eProcurement Portal;
 - 4.4.7 date and time of opening of Tenders.
- 4.5 Late Tenders must not be accepted unless the lateness is caused by the Council or other matters reasonably outside of the control of the tenderer AND no unfair advantage is given to the bidder which submits the late Tender. Any decision to accept a late Tender will be made by the Head of Procurement following both (a) such verification as they feel appropriate and (b) approval by the Head of RiskInternal Audit. However, deadlines may be extended at any time prior to their arrival so long as this complies with the principle of equal treatment and non-discrimination between tenderers.
- 4.6 Suppliers must always be required to submit bids which comply with the tender documents. Variant may be permitted providing that the tender documents:
- 4.6.1 say whether a standard or reference bid is also required;
 - 4.6.2 include the minimum requirements to be met by the variants;
 - 4.6.3 set award criteria which can be applied to the variants.
- 4.7 Any variants which are submitted must conform to the requirements of the tender documents.
- 4.8 Tenders which do not comply with the CPR 4.6 may be accepted by the Service Director, only after approval by the Head of RiskInternal Audit.

Commented [CM11]: Amended in consultation with Martin Dearnley. Audit reports are kept from Yortender

4.9 Where appropriate, the Head of Procurement will check the [debarment list in connection with a procurement process to determine the excluded or excludable status of those parties involved.](#)

4.109 The Service Director will carry out an evaluation of the Tenders received against the pre-set Award Criteria (CPR 2.7) and keep a written record of the analysis and outcome.

4.101 ~~The Head of Risk must be satisfied regarding the financial standing of a proposed Supplier for any contract exceeding the UK Threshold.~~

Commented [RC12]: Moved from Rule 2

4.102 The use of or participation in e-auctions to set prices is permitted where:

4.102.1 bids can be ranked automatically; and

4.102.2 the mathematical formula to determine the rankings of the bids (or each variant where variants are permitted) is disclosed; and

4.102.3 the written agreement of the Head of ~~Risk~~[Internal Audit](#) has been given; and

4.102.4 the process is subject to supervision by the Head of Procurement.

4.113 The Service Director will require tenderers to ~~explain the price or costs proposed in their tender demonstrate that it will be able to perform the contract for the price offered~~ where tenders appear to be abnormally low.

4.124 The Service Director must ensure that, where required by ~~UK p~~[Procurement r](#)Rules, appropriate notices of intention to award a contract to a particular supplier, or group of suppliers, are issued, and the necessary standstill period observed, prior to formal acceptance of the ~~t~~[Tender](#). The Head of Procurement will supervise the production and issuance of the mandatory debrief letters and inform the ~~Solicitor to the Council~~[Service Director Legal and Commissioning](#) that the debrief process has completed satisfactorily prior to formal acceptance of any Tender.

4.135 Any complaint or challenge to the procurement process at any stage must immediately be referred to the Head of Procurement, who must take steps to investigate and (subject to CPR 4.145) take action as necessary, taking guidance from the ~~Solicitor to the Council~~[Service Director Legal and Commissioning](#) and the Head of ~~Risk~~[Internal Audit](#).

4.146 If a formal challenge is initiated (e.g. a formal letter before Court action is received or Court or arbitration proceedings are commenced) the ~~Solicitor to the Council~~[Service Director Legal and Commissioning](#) must be informed immediately with full objective disclosure of the facts relating to the issue(s), who will manage the claim. At this stage information exchange should be restricted and Service Directors must not copy dispute related information to anybody who has not seen it before until the ~~Solicitor to the Council~~[Service Director Legal and Commissioning](#) advises about confidentiality and Legal Privilege.

Clarifications, Presentations and Interviews

4.157 Where information or documentation submitted by a bidder is or appears to be incomplete (including where specific documents are missing) or erroneous or unclear, Service Directors may request the bidder concerned to submit, supplement, clarify or complete the relevant information or documentation, provided that requests for clarification:

- 4.157.1 set an appropriate time limit for a reply; and
- 4.157.2 do not request changes or otherwise seek to influence the bidder; and
- 4.157.3 deal with all of the matters in the Tender which are incomplete or erroneous or unclear; and
- 4.157.4 treat all tenderers equally and fairly and so, for example, the request:-
 - a. must not occur before all of the bids have been subject to an initial evaluation or compliance check;
 - b. must not unduly favour or disadvantage the bidder to whom the request is addressed; and
 - c. must be sent in the same way to all bidders unless there is an objectively verifiable ground justifying different treatment.

~~4.16~~ ~~Clarity may also be facilitated through planned presentations designed to assist in understanding or verifying submitted bids. Clarification questions may be asked during such presentations and prior scoring may be appropriately moderated. All key information given in the presentation must be recorded thoroughly and any clarifications must be confirmed in writing.~~ 4.1768 Interviews and/or presentations which form part of the bid procurement process must be authorised by the Head of Procurement in writing. They must also be:

Commented [CM13]: Moved to 4.17 to flow better

- 4.1867.1 Comprehensively recorded; and
- 4.1867.2 Assessed according to transparent and objectively verifiable criteria connected to the subject matter of the contract; and
- 4.1867.3 Supervised by the Head of Procurement.

~~4.179~~ Where provided for in the procurement process, clarity may also be facilitated through planned presentations, meetings or demonstrations designed to assist in verifying submitted bids as part of the Due Diligence process to ensure compliance with procurement documentation.

Commented [RC14]: Updated to reflect current practices and to ensure compliance / transparency

RULE 5 –STANDING LISTS, DYNAMIC PURCHASING SYSTEMS, DYNAMIC MARKETS AND FRAMEWORKS AGREEMENTS: CREATION AND USAGE

- 5.1 The Head of Procurement will maintain a list of approved central purchasing organisations, purchasing consortia and Council "trading services".

Standing Lists

- 5.2 ~~Subject to the Procurement Rules,~~ The Head of Procurement will determine for which types of Supply Council-wide Standing Lists ~~may~~**must** be kept (see CPR 6.11). The Head of Procurement will notify the relevant Service Director of such decisions where the Standing List is Service specific and be responsible for creation and maintenance of Standing Lists which will be used Council-wide by any Service Director requiring Supplies of that type.
- 5.3 Standing Lists may be used for Supplies where the aggregated value (in compliance with the **UK** Procurement Rules) of the Supply in question does not exceed the relevant UK Threshold. A Framework **Agreement** or a Dynamic Purchasing System can be used where the aggregated value exceeds the relevant UK Threshold.

Commented [CM15]: Added due to s85

- 5.4 Standing Lists will be created by the selection of suppliers to be included from those responding to advertisements placed on at least the eProcurement Portal, Contracts Finder and other appropriate media as the Head of Procurement may determine. Standing Lists will remain valid for five years from creation. During that period the Standing List will remain open to the addition of further suppliers meeting the appropriate admission requirements and will remain advertised on the Council's web site for that time. Standing Lists must be renewed every 5 years.
- 5.5 Admission to a Standing List should be on the basis of a transparent, rational, justifiable evaluation of information submitted by prospective Suppliers relating to technical, financial and any other relevant matters determined by the Head of Procurement.
- 5.6 The Head of Procurement (in consultation with the ~~Solicitor to the Council~~ Service Director Legal and Commissioning) may delete a supplier from a Standing List only where there is appropriate evidence and a written report justifying the action.
- 5.7 If there are insufficient suppliers on a Standing List, or too few are willing to submit Tenders, to meet the CPRs Tender requirements potential Suppliers must be sought as if a Standing List is not maintained.
- 5.8 Each Service Director must establish and advertise a set of fair, proportionate and transparent rules that reflect these CPRs which set out how Supplies will be procured through each Standing List which they are responsible for.

Council Frameworks ~~Agreements~~ and Dynamic Purchasing Systems and Dynamic Markets

- 5.9 Frameworks ~~Agreements~~ and Dynamic Purchasing Systems and Dynamic Markets may be used to source contracts for appropriate types of Supplies (subject to compliance with the ~~UK~~ Procurement Rules, as applicable).
- 5.10 Framework Suppliers will be chosen by a competitive process in accordance with these rules as if they were a Supply contract and in accordance with the ~~UK~~ Procurement Rules.
- 5.11 All Frameworks ~~Agreements~~ will be in the form of a written agreement detailing the method by which the Council will call off Supplies during the duration of the Framework ~~Agreement~~ and stating that there will be no obligation to order any Supplies of any type from a Framework Supplier.
- 5.12 Unless the Framework has been established as an Open Framework, Frameworks ~~Agreements~~ above the UK Threshold must be closed to new entrants and must not last longer than 4 years without this being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.

5.12.1 Open Frameworks above the UK-Threshold must be reopened in accordance with the Procurement Rules.

- ~~5.13 Contracts created through Framework Agreements must not be greater than 4 years in duration without being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.~~ 5.14 Dynamic Purchasing Systems and Dynamic Markets must:

5.14.1 be set up by an advertised competitive process which is approved by the Head of Procurement; and

Commented [CM16]: Deleted to reflect current practice in the procurement team

- 5.143.2 remain advertised; and
- 5.143.3 not limit the number of suppliers admitted to the system or market (but the system or market may be split into categories or parts (as applicable)); and
- 5.143.4 be set up with clear operative rules which involve obtaining Tenders from all suppliers on the system or market, or on the relevant category or part on the system or market, as appropriate; and
- 5.143.5 be operated wholly electronically; and
- 5.143.6 be open to new entrants; and
- 5.143.7 be subject to consistent due diligence assessments of ~~DPS~~-participants
- 5.154 When using Frameworks, ~~Agreements~~ or Dynamic Purchasing Systems or Dynamic Markets, the Council must follow the procurement rules set out in the Framework, ~~Agreement or the~~ Dynamic Purchasing System or Dynamic Market.
- 5.165 The Head of Procurement will ensure that the use of Framework Suppliers, ~~and~~ Dynamic Purchasing Systems and Dynamic Markets provide value for money, considering all procurement costs and alternative approaches.
- ~~5.17 The Head of Procurement will maintain a list of all approved Framework Agreements and Dynamic Purchasing Systems which Service Directors are permitted to use.~~ **Use of Third Party Procurement Facilities**
- 5.186 Supplies may be obtained through third party Frameworks ~~Agreements~~ (provided that the Head of Procurement is satisfied that using such a method is demonstrated to represent value for money) that:
- 5.186.1 are created ~~by a public body or a private sector party as agent of a public sector body in accordance with the Procurement Rules and~~ which is approved by the Head of Procurement (see also CPR 5.1);
- 5.186.2 have valid mechanisms that exist to enable the Council to use the Framework ~~Agreement~~ (including appropriate transparent referencing in the procurement documents and inclusion in the framework call off conditions);
- 5.186.3 comply with the Council's Contract Procedure Rules, or in the opinion of the Head of ~~Risk~~Internal Audit, rules which are broadly comparable;
- 5.186.4 where the ~~UK~~pProcurement Rules apply, the procurement will not take the use of the framework more than 10% over the framework's advertised value.

Commented [CM17]: Repetition of 5.1

RULE 6 – ~~EXCEPTIONS~~EXEMPTIONS FROM COMPETITION

- 6.1 Subject to compliance with the ~~UK~~ Procurement Rules the following are exempted from the competitive requirements of these CPRs⁴:
- 6.1.1 ~~where there is genuinely only one potential Supplier, such as for works of art and copyrighted material or unique technology, where no reasonable alternative~~

⁴ When the ~~UK~~ Procurement Rules apply, these exemptions may not be permitted (Directors must check this). [Exemptions are not permitted for those health services which are in scope of the Health Care Services \(Provider Selection Regime\) Regulations 2023](#)

or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

6.1.2 items purchased or sold by public auction (in accordance with arrangements agreed by the Head of ~~Risk~~Internal Audit);

6.1.3 the selection of a supplier whose usage is a condition of a Grant funding approval;

6.1.4 the selection of a supplier on the instruction of a third party, providing the whole of the funding is met by the third party;

6.1.5 where CPR 6.11 applies;

6.1.6 counsel or other external legal advice, provided that the ~~Solicitor to the Council~~Service Director Legal and Commissioning takes steps to ensure that value for money is being obtained;

6.1.7 a ~~necessary~~ Supply that is strictly necessary for reasons of extreme and unavoidable urgency required extremely urgently, not due to any action or inaction of the Council, with the prior agreement of the Head of ~~Risk~~Internal Audit;

6.1.8 direct award from an approved Framework ~~Agreement~~ (see CPR 5.18) which has validly been set up to be called off on a non-competitive basis and which was set up in accordance with the requirements of these CPR and the ~~UK~~ Procurement Rules;

~~6.1.9 in respect of the production of a prototype, or supply of other novel goods or services, at the request of the Council; or~~

~~6.1.10 for the supply of goods, services or works by the existing Supplier which are intended as an extension to, or partial replacement of, existing goods, services or works in circumstances where a change in Supplier would result in disproportionate technical difficulties in operation or maintenance or additional cost to the Council.~~

Commented [CM18]: Additional grounds based on the new Act

6.2 The Service Director must make a written record of the justification for the selection of the Supplier. The Service Director must obtain the approval of the Head of Procurement before exercising the decision to apply an ~~exemption~~ in respect of a supply valued in excess of £100,000. Value for money must be evidenced and recorded.

Trial Purchases

6.3 Service Directors may purchase a trial of a Supply which is new to the Council up to £100,000 without competition in order to ascertain if the Supply is of interest to the Council. Where an ~~exemption~~ to competition in CPR 6.1 does not apply, a full competition compliant with the CPR must be held following the trial if the Service Director wishes to continue with the type of Supply.

6.3.1 Following any such trial, Arrangements must be made to ensure that the Supplier involved in the trial has not acquired any advantage through that involvement when compared to any alternative suppliers of a similar product. The Head of Procurement must approve any proposed trial arrangement exceeding £25,000.

6.54 The procuring Service Director and the Head of Procurement may decide that;

6.54.1 An alternative means of selection of Suppliers to those required by these CPRs is appropriate (e.g. a Supplier shortlist other than described in these CPRs, negotiation with a single supplier not otherwise permitted, etc.) but they must record the reason for their decision and obtain the approval of the Head of ~~RiskInternal Audit~~.

6.54.2 Following receipt of Tenders for the Supply, it is appropriate to seek to reduce the overall cost, or change other terms of the Supply by negotiation with one or more suppliers which have submitted Tenders.

6.54.3 It is appropriate to negotiate a repeat, continuation or serial contract with an existing Supplier, by reference to the original Tender for the Supply.

6.54.4 The use of another local authority as a supplier of services by its own labour or as a procurement agent acting on behalf of the eCouncil without competition is appropriate (although subject to ~~the UK~~ Procurement Rules).

Note in the above, in order to achieve internal check, the Head of Procurement alone cannot reach such decisions. Where the Head of Procurement is making a decision in relation to a Procurement exercise by their own Service Director, there must be consultation with the Head of ~~RiskInternal Audit~~.

Negotiated Contracts

6.65 Verbal negotiation must be undertaken by at least two Council Officers at least one of whom must be independent of the process and approved by (or included on a list of negotiators kept by) the Head of Procurement.

6.76 Written negotiation must be subject to evidenced independent check of process, calculation and overall value for money.

6.87 For any contract valued at above £100,000 the Service Director must obtain the approval of the Head of ~~RiskInternal Audit~~ of the proposed terms of the negotiated Supply including its cost and the reason for choice before the contract is entered into.

Legal Issues

6.98 The ~~Solicitor to the Council~~ Service Director Legal and Commissioning must be consulted in advance of any negotiation in respect of any contract estimated to exceed the UK ~~€~~ threshold (except those in relation to Land where the Head of Corporate Landlord for Corporate Property Management should be consulted irrespective of value).

6.109 The Head of Procurement will decide whether the purchase is likely to be on terms which would be acceptable to a private buyer operating under normal market economy conditions. If the Head of Procurement does not think that this is likely to be achieved, they must consult with the ~~Solicitor to the Council~~ Service Director Legal and Commissioning about the possibility of subsidy control before approving the exemption from competition.

~~Mandatory sSuppliers, fFrameworks agreements, or dDynamic pPurchasing sSystems or dDynamic mMarkets~~

6.110 In respect of defined categories of goods, works and services the Head of Procurement may determine (following a written risk assessment which, as appropriate, deals with the ~~UK~~

Procurement Rules and the possibility of ~~subsidy control~~~~state aid~~) that the use of one (or more) Suppliers is compulsory.

6.121 The Head of Procurement may also determine that Supplies of a particular type are to be obtained from Suppliers via a Framework ~~Agreement or a~~ Dynamic Purchasing System, ~~Dynamic Market~~ or Standing Lists, and set standards to be established in those arrangements.

6.132 Supplies must be obtained from internal Council Services (which are capable of supplying them directly) without competition except:-

6.132.1 where Cabinet has determined that Supplies of a particular kind will be subject to a competitive process;

6.132.2 in respect of the outsourcing of an activity having a value below £100,000;

6.132.3 in respect of services provided within schools;

6.132.4 in respect of ad hoc services for the design and construction of buildings or parts of buildings.

RULE 7 - RECORD KEEPING AND REPORTING

7.1 Service Directors must keep detailed written records of the progress of all procurement or disposal procedures (including negotiation). To that end, Service Directors must ensure that they keep sufficient documentation to justify decisions taken in all stages of the procedure, such as documentation on:-

7.1.1 communications with economic operators and internal deliberations;

7.1.2 preparation of the procurement or sale documents;

7.1.3 the dividing large procurements into contract Lots;

7.1.4 consideration of social value in the commissioning and procurement process;

7.1.5 any interviews, other dialogue or negotiation;

7.1.6 a risk log;

7.1.7 supplier vetting; and

7.1.8 reasons for award of the contract.

The documentation must be kept for a period as defined within the Councils relevant retention schedule.

7.2 A full trail of electronic Tenders received must be recorded on the eProcurement Portal or retained in a database approved by the Head of ~~Risk~~~~Internal Audit~~.

7.3 All contracts over £5,000 must be reported to the Head of Procurement who will arrange to publish these transactions on the statutory contracts register (also see Appendix 2).

~~7.4~~ ~~The relevant Service Director must complete the Council's standard 'Regulation 84 Report' template by the end of each procurement process which is subject the UK Procurement Rules.~~^{7.54}

Commented [CM19]: No equivalent in the new Act

Each Service Director must promptly provide to the Head of Procurement the information specified in Appendix 2.

7.65 The Head of Procurement must ensure that the appropriate publications are made to comply with the Local Government Transparency Requirements (and each Service Director will notify the Head of Procurement of any expenditure above £500; also see CPR 7.3 above).

7.76 The Service Director must keep a written record of the reasons for using a negotiated procedure under Rules 6.5 - 6.7.

RULE 8 - INCOME CONTRACTS & CONCESSIONS

8.1 CPR 8 Includes nil value and disposal contracts but excludes Land.

8.2 CPRs 8.2 to 8.8 apply when the Council intends to derive income from:-

8.2.1 the disposal of property (other than Land);

8.2.2 the sale of a right to exploit a business opportunity;

8.2.3 the operation of business activity.

8.3 Where the Council is proposing to enter into an Income Contract at manifestly less than market value where the market value is estimated at £1,000 or more, the Head of ~~Risk~~~~Internal Audit~~ must be consulted and they will decide whether this amounts to a Grant (and so FPR 224 applies instead of CPR 8).

The disposal of an asset (other than land and buildings)

8.4 The procedure for the disposal of assets e.g. surplus plant, vehicles, furniture, equipment and stock items (owned by the Council and not leased) is:-

8.4.1 assets valued up to £25,000 must be disposed of by a method chosen by the Service Director and a written justification of the choice retained.

8.4.2 assets valued above £25,000 must be disposed of following public notice either by open Tender process, closed Tender process involving at least 3 prospective purchasers or public auction, unless the interests of the Council would be better served by disposal in some other way;.

8.4.3 Authority for alternative disposal methods must be granted by the Head of Procurement in consultation with the Head of ~~Risk~~~~Internal Audit and Risk~~.

8.4.4 All IT equipment should be disposed of in accordance with the contract arrangements put in place by IT services to ensure equipment is securely and safely dealt with in line with requirements.

8.5 Leased assets must be disposed of only in accordance with the instruction of the lessor.

The sale of a right to exploit a business opportunity

8.6 The letting of rights to exploit a business opportunity for the contractor's own benefit (for example, advertisement space on Council Land) (a 'business opportunity contract') must be subject to a written contract and must only take place following a competitive selection process as set out below or written approval of other means from the Head of Procurement based on a detailed business case which, where appropriate, includes consideration of matters such as state aid.

8.6.1 A business opportunity contract that will not generate income in excess of £25,000 over the duration of the contract may be sourced by any reasonable means and should be arranged and undertaken by the Service Director responsible for the activity.

8.6.2 The Head of Procurement must direct and supervise the tendering of any arrangement expected to generate income in excess of £25,000.

The operation of business activity, beyond that normally undertaken by a local authority.

8.7 If an Income Contract is intended to be or become profitable or be commercial in nature, advice must be obtained from the ~~Solicitor to the Council~~Service Director Legal and Commissioning.

8.8 If an Income Contract has any potential to distort the relevant market advice must be obtained from the ~~Solicitor to the Council~~Service Director Legal and Commissioning.

Concession Contracts

8.9 Concession contracts for works or services are a type of Supply contract and the procurement of all Concessions shall follow the competitive and contracting requirements in these CPRs for Supplies.

8.10 Concession contracts for works or services above UK ~~€~~£ thresholds ~~or more~~ are subject to the ~~Public Concessions Regulations 2016~~UK Procurement Rules Regulations and will be subject to such additional procurement process requirement(s) as the Head of Procurement feels are necessary to comply with the Procurement Rules and these CPRs Regulations.

Valuation

8.11 The value of a Concession contract shall be estimated in accordance with the Procurement Rules~~the total turnover of the concessionaire generated over the duration of the contract, net of VAT, in consideration for the Supplies which are the object of the Concession contract and for any ancillary Supplies.~~

8.12 The value of an Income Contracts is the gross income generated by the Council as a result of the rights granted, or goods, works or services supplied by the Council.

8.13 When calculating the estimated value of an ~~Concession contract or~~ Income Contract, Service Directors shall, where applicable, take into account:-

8.13.1 the value of any form of option and any extension of the duration of the contract;

8.13.2 revenue from the payment of fees and fines by the users of the works or services or public other than those collected on behalf of the Council;

8.13.3 payments or any other financial advantages, in any form, from the Council or any other public authority to the contractor;

- 8.13.4 the value of grants or any other financial advantages, in any form, from third parties for the performance of the contract;
- 8.13.5 revenue from sales of any assets which are part of the contract;
- 8.13.6 the value of all the supplies and services that are made available to the contractor by the Council, provided that they are necessary for executing the works or providing the services;
- 8.13.7 any prizes or payments to candidates or tenderers.

RULE 9 - LAND

Commented [CM20]: Amended in consultation with Andrew Hoyle and Grant Brown

- 9.1 Procurement of Land will generally be by the means described in this CPR 9. The Head of Corporate ~~Landlord and Capital~~Property Management must be consulted in respect of all Land transactions of any value except where the ~~Solicitor to the Council~~Service Director ~~Legal and Commissioning~~ authorises other nominated officers to deal with tenancies or licences for specific purposes.
- 9.2 The Head of Corporate ~~Landlord and Capital~~Property Management (and any other ~~authorised~~ Director ~~authorised so to do~~) will arrange the acquisition or disposal of estates or interests in land (including any buildings erected on it) either pursuant to the authority delegated to ~~him~~them by a Service Director in accordance with Part 3 (Section F) of the Constitution or, in the case of a decision made by Cabinet then in accordance with the authority delegated to ~~them~~him from the Cabinet.
- 9.3 Where any proposed land transaction cannot be executed within the terms established in this rule, arrangements must be agreed between the Head of Corporate ~~Landlord and Capital~~Property Management and the ~~Solicitor to the Council~~Service Director ~~Legal and Commissioning~~, and details of the process leading to the transaction must be recorded, and the circumstances reported to Cabinet either for information, if falling within the delegated authority of officers, or in order to secure the relevant authority to give effect to the transaction.
- 9.4 Where Land is sold at an ~~in person~~ public auction, the Head of Corporate ~~Landlord and Capital~~Property Management must submit a sealed reserve price (prepared by a qualified valuer on a professional basis) for consideration alongside the bids submitted or made ~~however, if the Land is to be sold by way of an online auction the reserve shall be agreed between the Council's internal qualified valuer on a professional basis in liaison with the auctioneer who under the procured tender contract is obligated to also provide their professional opinion of market value based on experience and evidence and they will jointly set a reserve prior to the auction going live..~~ If a successful bid is less than the reserve price then the Head of Corporate ~~Landlord and Capital~~Property Management may accept a lower bid provided that such lower bid is not less than 10% below the professional valuation of the reserve price.

RULE 10 – EXECUTING CONTRACTS

Supplies

- 10.1 A Contract may only be awarded where the Service Director has sufficient approved budget to meet the first year costs and is satisfied that there is ~~likely to be~~ sufficient ongoing funding to meet the contractual cost through the anticipated life of the Contract.

- 10.2 Contracts for all Supplies (which includes call-offs from Frameworks ~~Agreements~~ and Dynamic Purchasing Systems), Concessions, Income Contracts and Frameworks ~~Agreements~~ up to the UK supplies and services threshold must be in writing and can be made by the Service Director either:
- where appropriate, by issuing the order through the Council's electronic purchasing system (currently SAP) and incorporating the correct standard terms; or
 - By issuing (electronically or on paper) contract terms which the Service Director has assessed as being appropriate both in terms of suitability and risk.
- 10.3 If the Service Director and ~~Solicitor to the Council~~Service Director Legal and Commissioning decide that it is appropriate for the Contract to be sealed (or if it is required by law), the Contract will be executed by the ~~Solicitor to the Council~~Service Director Legal and Commissioning.
- 10.4 The Head of Procurement must ensure that the Council's electronic procurement systems are set up so that the most appropriate Official Council Order ~~are~~is available to be attached to the supply being purchased.
- 10.5 Contracts for all Supplies (which includes call-offs from Frameworks ~~Agreements~~, and Dynamic Purchasing Systems and Dynamic Markets), Concessions, Income Contracts and every Framework ~~Agreement~~ with an estimated value above the UK supplies and services threshold must be in writing and must (subject to CPR 10.6) be either:
- made under the corporate common seal of the Council, attested by one legal officer; or
 - signed by two legal officers;
 - a document shall be properly signed where it is physically signed in hardcopy format, or it is electronically signed in an electronic format approved by the Solicitor the Council;
- who have been nominated as Contract signatories by the ~~Solicitor to the Council~~Service Director Legal and Commissioning under their Scheme of Officer Delegations. The ~~solicitor to the Council~~Service Director Legal and Commissioning may authorise an external firm of lawyers to sign documents (and or initial and make amendments to documents) as agent on behalf of the Council.
- 10.6 Notwithstanding CPR 10.5, the ~~Solicitor to the Council~~Service Director Legal and Commissioning may authorise officers who are not Legal Officers to sign specific or specialist Contracts for Supplies above the UK supplies and services threshold. Two authorised officers must sign each such Contract.
- 10.7 The ~~Solicitor to the Council~~Service Director Legal and Commissioning may, subject to including appropriate restrictions and/or instructions designed to achieve valid execution of the relevant Contracts and suitable record keeping, provide third parties with a power of attorney to sign Council Contracts of values below the UK Threshold for supplies and services.

Land

- 10.8 The ~~Solicitor to the Council~~Service Director Legal and Commissioning will complete all land transactions, including acquisition or disposal by way of freehold or leasehold purchase or sale or the taking or granting of all short or long term leases or tenancies and other deeds and documents associated with Land. The ~~Solicitor to the Council~~Service Director Legal and Commissioning may nominate other officers to enter into Land

commitments and arrangements using documentation previously approved by the ~~Solicitor to the Council~~Service Director Legal and Commissioning.

- 10.9 Any Contract for the sale or acquisition of, or any other deed or document relating to, Land must either be signed (under hand where executed in hardcopy format or electronically where executed in electronic format) by, or have the corporate common seal affixed in the presence of, the ~~Solicitor to the Council~~Service Director Legal and Commissioning (or by a legal officer nominated by ~~them~~him or her), and where the corporate common seal is affixed it is permissible to do so electronically (where the law permits in accordance with the Electronic Communications Act 2000). Additionally, the ~~Solicitor to the Council~~Service Director Legal and Commissioning may authorise other nominated officers to be authorised signatories to tenancies or licences for specific purposes as referred to in CPR 9.1. Where the Council has listed Land for sale at public auction and a sale is agreed post-auction through the auctioneer under RICS common auction conditions (or such other conditions as appropriate), the Solicitor to the Council may authorise the external property auctioneer to sign the contract for the sale of the Land (on the same basis as outlined above in this CPR 10.9) as agent for the Council and to deal with exchange of contracts between the Council and the buyer.

Commented [CM21]: Amended in consultation with Grant Brown and Andrew Hoyle

General

- 10.10 The ~~Solicitor to the Council~~Service Director Legal and Commissioning is entitled to sign any agreement in any way related to Procurement, Supplies, Concessions or Income Contracts or any security instrument (regardless of whether another officer including the Chief Executive may sign such things), subject to CPR 10.5 and provided that this is not subject to any contrary direction from the Council or Cabinet.
- 10.11 The ~~Solicitor to the Council~~Service Director Legal and Commissioning may authorise an external property auctioneer to sign as agent for the Council, a Sale Memorandum to record the property price and terms of conditions of sale.

RULE 11 – VARIATION, MODIFICATION AND TERMINATION OF CONTRACTS AND RELEASE OF BONDS

- 11.1 It is recognised that during the term of a Contract, modifications may be proposed, which if adopted would result in additional Works, Goods and/or Services, which were not considered when the original procurement took place, being procured or otherwise would alter the overall nature of the Contract. There are significant limitations upon the Council being able to make such modifications, especially where the Procurement Rules/Regulations apply. When considering a variation, modification or the termination of an existing Contract, advice must be sought in advance from the Corporate Procurement Service and ~~with the~~ Solicitor to the CouncilService Director Legal and Commissioning.
- 11.2 A Service Director may terminate any contract strictly in accordance with any contractual provision which allows for termination without fault, but with prior consultation with the Head of Procurement if alternative Supplies would be required.
- 11.3 A Service Director, in consultation with the ~~Solicitor to the Council~~Service Director Legal and Commissioning, has the power to terminate any contract in the event of any breach of contract justifying termination, where in the opinion of these officers no other remedy is appropriate. Where the financial implications of a decision to terminate a contract exceed, or may exceed £100,000, the reason for termination and any consequences must be reported to the next meeting of the Cabinet.

11.4 The ~~Solicitor to the Council~~Service Director Legal and Commissioning may release any bond held by the Council, on request from the Head of Procurement.

11.5 The Head of ~~Risk~~Internal Audit is entitled to negotiate with any bond issuer on sums of settlement proposed, and in consultation with the ~~Solicitor to the Council~~Service Director Legal and Commissioning accept such proposed sums.

11.6 Service Directors may ~~vary~~modify contracts:

~~11.6.1 that were awarded under the Public Contracts Regulations 2015 UK Procurement Regulations~~ by operating 'clear, precise and unequivocal contractual review clauses' which were advertised in the original Procurement, strictly in accordance with the contract; ~~or~~:

~~11.6.2~~ Service Directors may modify contracts that were awarded under the Procurement Act 2023 UK Procurement Regulations if 'the possibility of the modification is unambiguously provided for in the contract awarded and the tender or transparency notice for the award of contract and the modification would not change the overall nature of the contract'.

11.7 ~~Any variation modification, whether above or below the relevant UK Threshold, with a value above £25,000~~ to a contract which cannot be fulfilled by following CPR 11.6 must be subject to the approval of the Head of Procurement.

11.8 Any ~~modification~~variation to a contract which cannot be fulfilled by following CPR 11.6 must be made in writing and signed in accordance with CPR 10 even if it does not need a competitive Procurement process.

11.9 Subject to approval of the ~~Solicitor to the Council~~Service Director Legal and Commissioning and the Head of Procurement, ~~and the Procurement Rules as applicable~~, contracts may be novated or reassigned to another Supplier ~~who is not an excluded supplier where permitted by an express provision to novate in the terms and conditions of contract; or in the event of a successor due to the original Supplier carrying out a only where this is needed following a corporate restructuring or similar circumstances, such as a takeover, merger, acquisition or insolvency.~~ merger, acquisition, takeover or insolvency. The new Supplier must comply with the requirements under the original contract.

Commented [CM22]: Amended to allow for oversight by Head of Procurement where a below threshold contract may become a convertible contract by modification

Commented [CM23]: Reworded to reflect the new Act which will allow some additional flexibility

RULE 12 - MISCELLANEOUS

12.1 A Special Purpose Vehicle (such as a limited liability company or otherwise) to be wholly or partially owned or controlled by the Council, will only be formed or joined on the approval of the Cabinet, following a detailed evaluation by the ~~Solicitor to the Council~~Service Director Legal and Commissioning and the ~~Chief Finance Officer~~Service Director Finance. This does not apply to any purchase of shares or similar for the purpose of investment.

DEFINITIONS

DEFINITION	DESCRIPTION
Award Criteria	Relate directly to the goods, services or works to be provided. Award criteria evaluate supplier's offers made in relation to fulfilling the Council's requirements for the Supply, in particular the Specification.
<u>Central Digital Platform</u>	<u>Means the "online system" established and operated for the publication of notices, procurement documents and other information relating to public contracts</u>
Chief Executive	The Chief Executive is the head of the Council's paid staff and its principal adviser on policy matters and leads the discharge of Council strategy and responsibilities.
Chief Finance Officer	<u>Means the Service Director – Finance</u>
Commissioning	The relationship between commissioning and procurement is described in the diagram in Appendix 3.
Concession	Is where a Supplier is remunerated mostly through being permitted to run and exploit the work or service and is exposed to a potential loss on its investment.
<u>Conditions of Participation</u>	<u>is a condition that a supplier must demonstrate they are capable of satisfying in order to be awarded a contract.</u>
Conflict of Interest	Means any interest outside of the Council which may appear to an objective bystander to affect the fair judgment of an Officer or Member or any other person acting on the Council's behalf in the Procurement of a Supply or the disposal of property (including Land). The concept of conflict of interest shall at least cover any situation where the relevant person has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of a Procurement or sale procedure.
Contract	Means any form of contract, agreement for the supply of any works, goods, or services that the Council enters into (whether by purchase, lease, hire or any other arrangement).
Contract Procedure Rules (CPRs)	Means these Contract Procedure Rules.
<u>Council</u>	<u>Means the Council of the Borough of Kirklees, which is also known by its abbreviated name of Kirklees Council.</u>

Data Protection Legislation	Means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419 and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority.
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DEFINITION	DESCRIPTION
<u>Dynamic Market</u>	<u>Is a procurement tool established in accordance with sections 34 to 40 of the Procurement Act 2023 and is available for the procurement of above UK Threshold contracts. It is a list of qualified suppliers (i.e. suppliers who have met the 'conditions for membership' of the dynamic market who are eligible to participate in future procurements. A dynamic market may be split into parts, with suppliers only eligible to participate in the parts for which they have qualified. New suppliers can be added through the lifetime of the dynamic market and there is no maximum term or minimum or maximum number of suppliers.</u>
Dynamic Purchasing System (DPS)	Is a procurement tool available for contracts for works, services and goods commonly available on the market. It has its own specific set of requirements (as set out in Regulation 34 of the Public Contracts Regulations 2015); for example, it must be run as a completely electronic process, must remain open to new entrants, all suppliers on the relevant category in the Dynamic Purchasing System must be invited to quote for all contracts and it should be set up using the restricted procedure.
eProcurement Portal (YORtender)	The on-line Supplier and Contract Management System used by the Council to operate e-tenders and for the online management of suppliers and contracts and to advertise contracts. Currently available at https://yortender.eu-supply.com
Financial Ratio	Is a pre-set method of determining a supplier's financial standing, such as turnover, net asset value, and profitability.
Find A Tender Service (FTS)	"Find a Tender" means the UK e-notification service where notices for new procurements and contracts awarded under the Public Contracts Regulations 2015 are required to be published;
Financial Procedure Rules (FPRs)	The Financial Procedure Rules.

Frameworks Agreement	Means an agreement between a Contracting Authority and one or more Suppliers which operates as a Procurement tool through which contracts for Supplies can be sourced. Frameworks Agreements which deal with Supplies that are above, or aggregate above, the UK Threshold are subject to the Public Procurement Rules. They set out the terms for the Supply (often including the price) and the method for calling off orders. 'Framework Agreement' and 'Framework Suppliers' shall be construed accordingly. <u>References to Frameworks includes Framework Agreements established under the Public Contracts Regulations 2015 and Open Frameworks as defined in the Procurement Act 2023.</u>
Head of Corporate Landlord and Capital Property Management	Means the officer appointed by the Service Director who is responsible for corporate property management functions.
Head of Risk Internal Audit	Means the officer appointed by the Chief Executive who is responsible for Internal audit.
Head of Procurement	Means the <u>Head of Procurement and Commissioning or such other</u> officer appointed by the Service Director – Legal, Governance & Commissioning who is responsible for Corporate Procurement.
Income Contract	An Income Contract is one where the main object of the contract is that the Council does something in relation to a Council asset ⁴ and includes situations where the Council does so at nil value (subject to this not being a Grant – see Appendix 4).

⁴ For contracts where the Council provides services to another body, please refer to FPRs 20.4-20.6

DEFINITION	DESCRIPTION
Land	“Land” includes any interest in land (including buildings) and any easement or right in or over land
Local Government Transparency Requirements	Means the statutory codes and legislation requiring the Council to publish information, such as ⁵ the Local Government Transparency Code and certain Regulations within the Public Contracts Regulations 2015.
Official Council Order	A standard form of contract for a Supply for a value of less than the current UK supplies and services threshold approved by the Solicitor to the Council <u>Service Director Legal and Commissioning</u> whether attached electronically
Personal Data	Means data which relate to a living individual who can be identified— (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual (e.g. references) and any indication of the intentions of the data controller or any other person in respect of the individual.
Procurement	The purchase, contract hire, lease, rental ⁶ or any other form of acquisition which results in a contract for Supplies where the Council is the buyer (therefore, in the context of the CPR, this does not include the Council providing the Supply to itself or gifts). Procurement also includes the establishment of Standing Lists, Frameworks <u>Agreements</u> , <u>and Dynamic Purchasing Systems</u> <u>and Dynamic Markets</u> . ‘Procurement’ and ‘Procured’ shall be construed accordingly.
Public Procurement Rules	The rules on procurement for Supplies above the UK Threshold are subject to the statutory requirements outlined in the <u>Procurement Act 2023, the Health Care Services (Provider Selection Regime) Regulations 2023, Public Concessions Regulations 2016 and Public Contracts Regulations 2015</u> and those described in the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (EU Exit Regulations) <u>as may be applicable in relation to the Procurement or Contract</u> .
Reasonable Means	Methods of selection or advertising which reflect reasonable trade practice. This might include informal briefs, supplier written Tenders or proposals, verbal or telephone quotes (which are then written down), comparative pricing for suitable supplies over the internet.
Senior Manager	Means an officer who reports directly to a Head of Service.

⁵ The words “including”, “include”, “for example”, “e.g.”, and “such as” in these CPRs indicate examples and are not intended to be limiting

⁶ Note: Contract hire, lease and rental agreements require the specific advance approval of the Director of Resources or their delegate [**See the FPR**].

DEFINITION	DESCRIPTION
Service	A grouping of departments or other sections of the Council which is under the overall responsibility of a Service Director.
Service Director	Means the most senior officer responsible for the day to day functions of each Service.
<u>Service Director Finance</u>	<u>Means the Service Director responsible for finance, also being the s151 Officer</u>
<u>Service Director Legal and Commissioning</u>	<u>Means the Service Director responsible as legal adviser to the Council, also being the Monitoring Officer</u>
Social Value	Means The Public Services (Social Value) Act 2012 ('Social Value Act') that requires the Council to consider how a procurement over the relevant thresholds could improve the economic, social and environmental wellbeing of the district
<u>Solicitor to the Council</u>	<u>Means the Service Director – Legal, Governance & Commissioning in the role as legal advisor to the Council.</u>
Special Purpose Vehicle	Companies (limited by shares, or otherwise) or any other legal entity, established by or in which the Council participates whether alone or with others to provide specific Supplies to the Council.
Specification	A written document detailing the Council's requirements. This can include things such as definitions, acceptance test methods, material requirements or characteristics, drawings, plans, certifications of compliance with standards, workmanship, data security measures, quality control including performance testing and KPIs, completion, delivery, safety, timing, key personnel qualities, communication requirements, returns policies and tolerances.
Standing List	A list of suppliers who are assessed as suitable to provide Supplies to the Council prepared in accordance with CPR 5.
<u>Suitability Criteria</u>	<u>Relate to the assessment or vetting of mMeans a supplier's' general capability, fidelity, skill, competence, etc. to carry out the contract, including, where relevant, whether a Supplier is an excluded or excludable supplier under the Procurement Act 2023. 'Suitability' shall be interpreted accordingly.</u>
Supplier	Any person, partnership, company, or other organisation, which provides or contractually offers to provide any Supply to the Council or on behalf of the Council.
Supply / Supplies	Means the supply of any works, goods, or services; being provided, or to be provided, to or on behalf of the Council (whether by purchase, lease, hire or any other arrangement).
Tender	A written offer in relation to a Supply or Disposal of Assets making reference to a price and (where applicable) other information.

UK Threshold	The financial threshold from time to time at which the UK Procurement Rules are applicable to a Supply. Current UK Thresholds are set out in Appendix 1.
Value for Money	Securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought.

DEFINITION	DESCRIPTION
Whole Life Costing Approach	<p>Is an approach which addresses all the elements of a Supply over its life cycle such as:-</p> <ul style="list-style-type: none"> • costs relating to acquisition, • costs of use, such as consumption of energy and other resources, • maintenance costs, • end of life costs, such as collection and recycling costs which can be used to produce a spend profile of the Supply over its anticipated lifespan.

Relevant Thresholds in Public Contract Regulations inclusive of VAT Microsoft Word - Procurement Policy Note 10:21 - New Thresholds Values and Inclusion of VAT in Contract Estimates.docx (publishing.service.gov.uk)	
Supply Goods and services contracts	£214,904 (£179,086.67 excl. VAT)
Light Touch Regime Contracts	£663,540 (£552,950 excl. VAT)
Works contracts	£5,372,609 (£4,477,174.17 excl. VAT)
Concession contracts	£5,372,609 (£4,477,174.17 excl. VAT)

+ These are current the values for the purposes of these CPRs. The threshold values to be used will be those applicable at the commencement of the procurement process. The thresholds are updated every two years with the next update due on the 1 January 2026

Appendix 2

Information to be Reported to the Head of Procurement (RULE 7 – RECORD KEEPING AND REPORTING)

	Information	When
A.	Details of all contracts awarded for Supplies of £5,000 or above following a competitive process including the name of the Supplier, and amount of the Tender and if the chosen supplier was not the cheapest, then the same information in relation to unsuccessful Suppliers, and the reason why the successful Supplier was chosen.	When requested
B.	Details of all contracts awarded for Supplies of £100,000 or above, which result from negotiation including the reason for negotiation and the name of the successful Supplier and value of the contract.	When requested
C.	Details of all contracts awarded for supplies of £5,000 or above which a Service Director considered to be exempt from the competitive requirements by virtue of Rule 6, including the reason for the exemption.	When requested
D.	Contracts with a value of £5,000 or more (see Rule 3) CPR, with the following information: 1. reference number 2. title of agreement 3. Contract Manager; name of person responsible for managing the contract 4. description of the goods and/or services being provided 5. Supplier name and details 6. sum to be paid over the length of the contract (or if unknown, the estimated annual spending or budget for the contract) 7. start, end and review dates, including permitted extensions 8. whether or not the contract was the result of an invitation to quote or a published invitation to tender, and 9. whether or not the Supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number 10. whether or not the contract involves processing personal data	In All Cases on Contract Award
E.	All other information necessary to enable compliance with the Council's obligations under legislation and regulation to publish data about its contractual arrangements and payments.	In All Cases on Request
F.	Copies of Regulation 84 reports	All cases where the Public Procurement Rules apply on Contract Award

Appendix 3

Relationship between Commissioning and Procurement



Appendix 4

How to decide if a procurement or grant is applicable

- The Council obtains supplies of goods, works, and services from external suppliers and normally uses competitive processes to do so in accordance with the Contract Procedure Rules (CPRs)
- It is always appropriate to use procurement to obtain **goods** and **works**, and this is the usual preference to obtain **services**.
- There may though be some occasions when a grant may be an appropriate way to achieve the priorities of the Council. The information below aims to provide a guide to support commissioners to think about whether a grant or procurement is the most appropriate method in obtaining and/or supporting a particular **service**.

1. If you are seeking to obtain **goods** or **works** you should **procure as per CPRs**
2. If you are seeking to obtain a **service** and can answer **YES** to **ANY** of the following, you should **procure as per CPRs**
 - Is there an intention to specify service standards and outputs required?
 - Will payment be reduced/alterd if service standards are not met, or additional payment be made if there are claims for additional costs incurred?
 - Are there opportunities for change control?
 - Is there a contractual obligation on both parties?
 - Is there an intention to have active management of the provider?
3. If you are seeking to use a supplier that is a commercial i.e., profitmaking organisation this would generally require procurement as per CPRs. If the organisation is a genuine "not for profit" organization or charity you should discuss further with the Procurement team.
4. If you are seeking a **service** and can answer **YES** to **ANY** of the following, you can consider use of a **Grant as per FPRs**
 - Is there an intention to broadly support an activity, with expected outcomes, but no clear obligations on the provider?
 - Is the intention to support parts of an existing activity?
 - Is the intention to provide a subsidy to existing service users
 - Is the Council's only ultimate remedy to withhold payment of a next phase of grant, seek clawback or to refuse to fund future activity by the provider?
 - Is the intention to meet a stated set of costs, and an intention that the provider should not profit from the support?

Important notes/advice

- Always remember to check with the Procurement team if unsure.
- A competition will generally be appropriate to select which parties are entitled to receive grants.
- Grants still require a grant agreement.
- Grants which involve procurement by a third party require use of competition in selection of their suppliers (broadly aligning with Council CPRs)

KIRKLEES COUNCIL
CONTRACT PROCEDURE RULES

MARCH 2025

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INTRODUCTION

These Contract Procedure Rules (CPRs) aim to promote the highest standard of probity, integrity, and impartiality in making a clear, understandable and fair selection of Suppliers and Supplies to the Council. Equally important are the delivery of best value through competitive procedures and the avoidance of practices which may restrict, prevent or distort competition.

These Contract Procedure Rules cover the Procurement of all Supplies (goods, works and services) and Income Contracts and are made in accordance with section 135 of the Local Government Act 1972.

These Contract Procedure Rules must be complied with strictly. They are minimum requirements. A more thorough procedure may be appropriate for particular Supplies. However, when designing the Procurement within the parameters of these CPRs, the process and the Specification should be clearly proportionate and relative to the need which the Supply fulfils and should appropriately balance the value of, and risks associated with, any proposed action.

Where the Council wishes to obtain the delivery of goods, works, or services, the use of procurement is the usual method. Grants should only be used to assist or support objectives of another organisation. In some instances, CPRs will apply to grants (see Appendix 4).

Procurement Objectives:

The objective of every procurement exercise should be to deliver value for money. In pursuit of that objective, procurers shall endeavour to treat suppliers the same, unless a difference between the suppliers justifies different treatment. They must take all reasonable steps to ensure no supplier is given an unfair advantage or disadvantage. Procurers will act, and be seen to act, with integrity at all times.

Procurers should take every opportunity to maximise public benefit by considering how improvements to the economic, social and environmental wellbeing of the district (social value) can be generated and enhanced in contracts and procurement processes. This includes encouraging the participation of local businesses, small and medium-sized enterprises (SMEs) and social enterprises in Council tenders.

RULE 1 – CONDUCT AND COMPLIANCE AND WAIVER

- 1.1 All Council employees, and any person or organisation working on behalf of the Council in Procuring or managing a Supply, must comply with these CPRs.
- 1.2 Cabinet may waive any parts of these CPRs on a case by case basis following consideration of a detailed report setting out in particular: -
 - 1.2.1 the legality of the proposed non-compliant process or action; and
 - 1.2.2 the reputational and financial risks associated with the proposed non-compliant process or action.
- 1.3 Failure to comply with these CPRs without a valid waiver may result in disciplinary action against the officers concerned and may in some cases constitute a criminal offence.
- 1.4 Each Service Director must ensure:-
 - 1.4.1 compliance with these CPRs and the FPRs, using training, instruction and internal control processes;
 - 1.4.2 appropriate supervision and performance management to ensure that decisions taken are subject to authorisation and quality control procedures.
 - 1.4.3 a suitably experienced and trained officer is identified to adequately manage the Contract for every contractual relationship the Council enters into.
- 1.5 When authorising staff to procure Supplies on their behalf, each Service Director must set a financial (or other) limit on the authority vested in individual officers to procure the Supplies. Such limits must be recorded in the relevant Scheme of Officer delegations. An officer wishing to commence a procurement exercise and/or commit the Council to contractual obligations must ensure that:
 - 1.5.1 they have the Cabinet authority or a written approval of the delegated decision by an authorised officer under the Scheme of Officer Delegation to incur the expenditure and provide details to the Head of Procurement.
 - 1.5.2 officer executive decisions are recorded accurately and promptly including the relevant information required, such as the context in which the decision was taken, the reasons for the decision and alternative options considered.
 - 1.5.3 all significant officer decisions taken relating to the procurement exercise (i.e. decisions which may be of interest to councillors and/or the public) are recorded
 - 1.5.4 where a Supply is a Key Decision), a Key Decision Notice (KDN) has been published in a Notice of Forthcoming Key Decisions.
- 1.6 The Head of Procurement may:-
 - 1.6.1 authorise officers who are not procurement officers under their managerial responsibility to act on their behalf in respect of any role assigned to the Head of Procurement in these CPRs;
 - 1.6.2 issue waivers in relation to the need to consult them under CPR 1.3;
 - 1.6.3 undertake a review of procurement arrangements and practices, and value for money within any service area, in consultation, as appropriate, with the Service Director, Service Director Legal and Commissioning, Service Director Finance and Head of Risk.

- 1.7 The Head of Procurement must record the precise extent of such authorisations and the officer to which roles have been delegated and share these authorisations with the Service Director Legal and Commissioning and the Head of Risk.
- 1.8 A Service Director has authority to commence and award any Procurement subject to:
- 1.8.1 compliance with these CPRs and FPRs; and
 - 1.8.2 having appropriate delegated authority; and
 - 1.8.3 compliance with management processes designed to ensure that proposed projects meet the Council's business needs; and
 - 1.8.4 seeking Value for Money.
- 1.9 These CPRs are a minimum standard and a more prescriptive procurement regime must be followed where this is required by UK law and agreements with Grant funding organisations.
- 1.10 The Head of Procurement, the Service Director Legal and Commissioning and the Head of Risk may each issue Guidance Notes to aid the interpretation of these CPRs, with the following leading responsibilities:
- 1.10.1 the Head of Procurement – Good Procurement Practice;
 - 1.10.2 Service Director Legal and Commissioning – Procurement Rules and other laws and Corporate Governance;
 - 1.10.3 Head of Risk – Procurement project related financial management, Best Value and Risk.
- 1.11 Any dispute concerning interpretation of these CPRs must be referred to the Head of Risk who, in consultation with the Service Director Legal and Commissioning, may provide clarification and determination.
- 1.12 Subject to Part 3 of the Council's constitution and without prejudice to the role of the Monitoring Officer or the Service Director Finance, the Chief Executive may reassign specific duties delegated in these CPRs to the Head of Procurement, the Head of Risk, and the Service Director Legal and Commissioning provided that:-
- 1.12.1 the post holders to whom these duties are assigned must hold general competencies as follows:-
 - public sector procurement in respect of duties reassigned from the Head of Procurement;
 - finance in respect of duties reassigned from the Head of Risk;
 - Law and Court procedure in respect of duties reassigned from Service Director Legal and Commissioning.
 - the same degree of separation of officer responsibility for the duties is maintained.

Conflicts of Interest and Integrity¹

- 1.13 Service Directors shall take appropriate measures to effectively prevent, identify and remedy Conflicts of Interest or potential Conflicts of Interest arising at all stages of the

¹ Officers should also familiarise themselves with the FPRs 17 and 18, Chapter 7 of the Employee Handbook and Part 5.6 of the Council's Constitution and Members should also refer to Part 5.1 of the Constitution.

procurement process to avoid any distortion of competition and to ensure equal treatment of all economic operators.

- 1.14 Any Officer, Member or other person acting on the Council's behalf in procuring a Supply must declare any potential Conflict of Interest as soon as they become aware of a potential Conflict of Interest and update the declaration in the event of any changes.
- 1.15 Service Directors must record such declarations and in each case decide whether safeguards need to be put in place or the Officer or Member concerned should be removed from the Procurement or Disposal process.
- 1.16 In exercising the decisions delegated to them, the Head of Procurement, Head of Risk and Service Director Legal and Commissioning (or any other persons undertaking their responsibilities by application of CPR 1.12 or CPR 1.6) must reach their decisions independently.

RULE 2 – PREPARATION AND PROCESS

- 2.1. Before commencing any process to obtain any Supply having an estimated cost exceeding £25,000 (excluding VAT), the Service Director must consult with the Head of Procurement. The Head of Procurement must consider if any issues relating to the procurement may create risks that require consultation with the Service Director Legal and Commissioning and/or the Head of Risk, and undertake these consultations as necessary.
- 2.2. The Service Director must provide to the Head of Procurement information necessary to enable the Council to comply with the Procurement Rules. The Head of Procurement is responsible for ensuring the appropriate placing of notices in the UK's e-notification service either via the Central Digital Platform, Find A Tender Service (FTS) or Contract Finder as appropriate. Such notices may only be placed by officers authorised to do so by the Head of Procurement.
- 2.3. Each Service Director must ensure:
 - 2.3.1. That Supplies of a similar type are procured together where it is sensible to do so. A Procurement must not be subdivided with the effect of preventing it from falling within the scope of these CPRs or the Procurement Rules, unless justified by objective reasons or permitted by the Procurement Rules.
 - 2.3.2. Where the cost of the Supply is below the UK Threshold and an approved Framework or Dynamic Purchasing System is not being used, there must be consultation with the Head of Procurement to see whether the value of the Supply needs to be aggregated with any other similar Supplies for the purposes of the Procurement Rules.
 - 2.3.3. That they have regard to the fact that SMEs may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced.
 - 2.3.4. The process can be adequately resourced.
 - 2.3.5. The appointment of an officer to carry out supervision of the resulting contract(s) in accordance with Financial Procedure Rule 21.8.

Compliance

2.3.6. Each Procurement complies with the following:-

- a. it is justified by a business case (that includes a risk assessment) approved by a Senior Manager with relevant authority to purchase; and
- b. a Whole Life Costing Approach underpins the specification of the Supply; and
- c. it aligns with the Procurement Strategy; and
- d. it complies with any requirements or agreements regarding the use of in-house Service suppliers (see CPR 6.13), consortia and other suppliers (Service Directors should, for example, consult the Head of Procurement about decisions and options available under CPRs 6.11 & 6.12).

Estimated Value

2.3.7. Regard is given to Best Value and the Public Sector Equality Duty and consultations with the public have been carried out as required.

2.3.8. An estimate of the full cost of the Supply contract or Framework which is as accurate as possible is made. Valuations must:

- a. be estimated by reference to the gross value of the Supply contract (including installation, supplier maintenance, options, and any income gained by all Suppliers involved in the agreement);
- b. assess the gross value of a Framework to be the reasonably estimated value of all Supply contracts which might be made through it;
- c. where the Supply contract includes a fixed duration, cover the entire possible duration of the contract (i.e. including any options, such as for extension or renewal);
- d. where a maximum contract duration is not certain, treat the contract as if it lasts for 4 years;
- e. include any Grant funding;
- f. exclude VAT.

2.3.9. The Supply will be within budgetary provision (see CPR 10.1).

Bonds and Guarantees

2.3.10. The Council will seek a parent company guarantee whenever practical unless the Head of Risk is satisfied that a parent company guarantee is not required.

2.3.11. Bonds; All supply contracts relating to;

- a. capital construction works in excess of £500,000
- b. any IT contracts that involve pre operational payments in excess of £500,000
- c. any contracts with a total consideration in excess of £5m

will be bonded in the sum of 10% of the Tender value, except where the Service Director Legal and Commissioning and Head of Risk agree either:-

- i. No bond is necessary; or
- ii. A different value (or percentage) is appropriate; and or
- iii. A cash bond; and or
- iv. A parent company guarantee or other form of surety can be accepted instead.

The Specification

- 2.4. In preparing a Specification, the Service Director should consider how the procurement activity might meet the Council's wider policy and strategy but subject always to ensuring full compliance with the Procurement Rules. Service Directors must also consider how what is proposed to be procured might improve the economic, social and environmental wellbeing of Kirklees.
- 2.5. Consultation with suppliers in the relevant market is permitted but it must not prejudice any potential Supplier and no technical advice may be sought or accepted from any Supplier in relation to the preparation of any Specification or contract documentation where this may distort competition, provide any unfair advantage or prejudice the equal treatment of all potential Suppliers.
 - 2.5.1 Where the estimated value of any contract may exceed the relevant UK Threshold, guidance must be sought from the Head of Procurement prior to undertaking any market engagement activities.
- 2.6. The preparation of appropriate Specifications, costs/pricing document(s), contract terms (other than Land Contracts and subject to CPR 2.10) and other procurement documentation must be created to be understandable by all reasonably well informed people in the relevant industry.

Award Criteria

- 2.7. Where a competitive process is being carried out, a transparent, unambiguous and clearly set out Award Criteria, which are objectively verifiable and non-discriminatory and are appropriately prioritised, must be prepared and published with the procurement documents. These criteria must be linked to the subject matter of the contract, be sufficiently clear, measurable and specific, must not include unlawful non-commercial considerations or Conditions of Participation (which should be identified separately and must follow CPR 3.5– 3.9) and must be proportional to the contract's main objectives, complexity and cost.
- 2.8. The Head of Procurement must be consulted at the preparatory stage if conducting interviews or receiving presentations is considered to be beneficial to the process (also see CPRs 4.16 & 4.17).

Contracting

2.9. For contracts up to the UK supplies and services threshold, other than Land Contracts, the Service Director shall wherever possible use appropriate standard contract terms. Otherwise every contract for Supplies or Income Contract must set out:

- a. details of the Supply to be made or to be disposed of;
- b. the price or prices to be paid or received and/or the amounts and frequency or the method of calculation of contract payments with a statement of discounts or other deductions;
- c. the time(s) within which the contract is to be performed;
- d. termination provisions and break clauses, if appropriate;
- e. appropriate data protection clauses where personal data is involved; and
- f. such other matters as the Service Director Legal and Commissioning considers to be necessary (the Service Director Legal and Commissioning need not be consulted, but guidance must be followed).

2.10. For contracts above the UK supplies and services threshold, other than Land Contracts the Service Director must consult with the Service Director Legal and Commissioning who will prepare contract documentation appropriate for the contract.

Data Processing

2.11. The Head of Procurement will maintain a list of all contracts that involve the processing or sharing of personal data.

2.12. Where any Supplier is given possession of, or access to, any personal data, the Service Director must have regard to the Council's obligations as regards the Data Protection Legislation. The Service Director must follow the Council's Information Security Policy and all linked policies, in particular regarding contracting with data processors, sharing data and consulting with the Information Governance Team. The Service Director must ensure that:

- 2.12.1. a Data Protection Impact Assessment screening exercise should be carried out, and the appropriate document completed, with advice and guidance sought from the Information Governance Team;
- 2.12.2 the Supplier is verified as suitable to be trusted with the personal data before allowing the Supplier access to the data;
- 2.12.3. appropriate guarantees of the security of the personal data are included within a written contract;
- 2.12.4 the performance of the contract is appropriately monitored;
- 2.12.5. appropriate steps are taken to enforce the contract where the information security guarantees are not being met;
- 2.12.6 appropriate steps are taken to minimise as far as possible the impact of a breach of data security;

- 2.12.7. arrangements that appropriately deal with the transfer, return or deletion of the information at the end of the contract are established.

Collaboration

- 2.13. The potential for genuine collaboration with other public bodies must be considered when planning a procurement exercise.
- 2.14. When taking any benefit from a procurement in which a third party takes any degree of control, Service Directors must ensure that appropriate due diligence steps are taken to be sure that all arrangements are appropriate and compliant. Apart from in the case of Central Purchasing Organisations (like the Yorkshire Purchasing Organisation and the Crown Commercial Service); any addition to procurements on a speculative basis (for example, where the Council is added as a user to a third party framework without a likelihood the Council will use it) must be approved by the Head of Procurement.

RULE 3 - PROCUREMENT PROCESS

3.1. Subject to complying with the law, the process for procurement must comply with the following:

Value of Supplies (excl. VAT)	Requirement		
	Procurement Process	Advertising	Min no of Suppliers
£0 - £24,999.99	<p>Any Reasonable Means to select are permitted. Reasons to justify the decision taken must be recorded.</p> <p>SMEs and/or VCSEs and/or suppliers from Kirklees (and/or West Yorkshire) area are encouraged and should be invited to submit quotes. Officers need to ensure that purchases achieve best value for the Council and an audit trail is maintained to demonstrate this.</p>	<ol style="list-style-type: none"> 1. Any reasonable means 2. A Contract Award notification form needs to be completed for values in excess of £5,000 and up to £24,999. This must be reported to Corporate Procurement 	3
£25,000 – Goods & Services Threshold	<p>One of the following:</p> <ul style="list-style-type: none"> • Quotations (CPRs 3-4) • Framework Suppliers, (CPR 5) • Exemptions (CPR 6) • Internal, Consortia & Compulsory (CPR 6) <p>In addition: Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary</p>	<p>As the Head of Procurement determines</p> <ol style="list-style-type: none"> 1. An approved Framework 2. An approved Dynamic Purchasing System 3. Any other permitted compliant purchasing mechanism 4. Advertise on eProcurement Portal, Central Digital Platform 	<p>Below £100,000 – 3</p> <p>Above £100,000 – 4</p>
<u>Light Touch Services Only</u> Goods and Services Threshold – Light Touch Threshold²	<p>One of the following:</p> <ul style="list-style-type: none"> • Quotations (CPRs 3-4) • Framework Suppliers, Dynamic Marketplace, Dynamic Markets (CPR 5) • Exemptions (CPR 6) • Internal, Consortia & Compulsory (CPR 6) <p>In addition: Legal, Governance, Risk, Insurance, Information Governance and Health</p>	<p>As the Head of Procurement determines</p> <ol style="list-style-type: none"> 1. An approved Framework 2. An approved Dynamic Purchasing System 3. An approved Pseudo Dynamic Purchasing System 	4

² Light touch threshold applies to contracts for certain social, health, education and other public services. Certain health services are subject always to the Health Care Services (Provider Selection Regime) Regulations 2023. For these services there is no minimum threshold for application of this regime.

	<p>& Safety teams must be consulted where necessary.</p> <p>The Legal Service will perform the execution of any contract(s).</p>	<p>4. Any other permitted compliant purchasing mechanism</p> <p>5. Advertise on eProcurement Portal, Central Digital Platform</p>	
<p>Works Only³ Goods and Services Threshold – Works Threshold</p>	<p>One of the following:</p> <ul style="list-style-type: none"> • Quotations (CPRs 3-4) • Tenders (CPR 3-4) • Framework Suppliers, Dynamic Marketplace, Dynamic Markets, Standing Lists, etc. (CPR 5) • Exemptions (CPR 6) • Internal, Consortia & Compulsory (CPR 6) <p>In addition: Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary.</p> <p>The Legal Service will perform the execution of any contract(s).</p>	<p>As the Head of Procurement determines</p> <ol style="list-style-type: none"> 1. From a standing list 2. An approved Framework 3. An approved Dynamic Purchasing System or Dynamic Market 4. Any other permitted compliant purchasing mechanism 5. Advertise on eProcurement Portal, Central Digital Platform 	4
<p>Above Threshold</p>	<p>One of the following:</p> <ul style="list-style-type: none"> • Tenders (CPRs 3-4) • Framework Suppliers etc. (CPR 5) • Exemptions (CPR 6) • Internal, Consortia & Compulsory (CPR 6) <p>In addition: Legal, Governance, Risk, Insurance, Information Governance and Health & Safety teams must be consulted where necessary.</p> <p>The Legal Service will perform the execution of any contract(s).</p>	<p>Advertise on eProcurement Portal, Central Digital Platform; or</p> <p>Use approved Framework; or</p> <p>Use approved Dynamic Purchasing System or Dynamic Market</p>	5

³ A separate suitability stage may be included if required in relation to a below threshold Works contract that is valued at over the Goods & Services threshold

- 3.2. A Service Director must invite at least the number above of suppliers to submit a written Tender / Quotation, unless: -
- 3.2.1 an **approved** Framework, Dynamic Market or Dynamic Purchasing System is being used (and in which case the rules of the Framework, Dynamic Market or the Dynamic Purchasing System must be followed); or
 - 3.2.2 it is otherwise agreed with the Head of Risk in consultation with the Service Director Legal and Commissioning.
- 3.3. The Suppliers must be reasonably capable of, or have indicated that they are willing to, submit a Tender. If it is not possible to identify the number of suitable and/or willing prospective suppliers indicated above, the Service Director must retain a record of the efforts made and reasons why an appropriate number of suppliers could not be identified.

Conditions of Participation

- 3.4. Service Directors must satisfy themselves that Suppliers have relevant and proportional minimum levels of suitability.
- 3.5. Where the procurement process has an overall value of less than the supplies and services UK Threshold, a qualification stage must not be used (except in the case of Works contracts valued at above the supplies and services UK Threshold but below the works UK Threshold), although key, proportional, suitability questions linked to the subject matter of the contract should, as appropriate, be used to establish the suitability of the supplier. The questions (or absence of any) must be approved by the Head of Procurement.
- 3.6. When operating a procurement process with a value above the UK Threshold, the Service Director must use the Council's standard procurement documentation to assess the Conditions of Participation and/or to establish a shortlist where permitted. Any variations to this must be agreed with the Head of Procurement who will notify relevant authorities as necessary.
- 3.7. The Conditions of Participation assessment of any potential Supplier to submit a Tender must be on the basis of a consistent, fair, justifiable and rational method, approved by the Head of Procurement. Conditions of Participation must be a transparent and proportionate means of ensuring legal and financial capacity and technical ability to perform the contract. When conducting a procurement process which is subject to the Procurement Rules, minimum standard and/or pass marks must be published in the relevant notice or invitation to confirm interest.
- 3.8 The Conditions of Participation also apply to the selection of any associated supplier in accordance with the Procurement Rules
- 3.9. Before any self-employed supplier is awarded a contract, the supplier's details must be obtained and assessed through the HMRC Employment Status Indicator (ESI) Tool. The results of this should be reported to the Head of Procurement. The Service Director and the Head of Procurement must agree on the approach to procurement if the assessment suggests that the Council faces any risk. Any proposal to engage a self-employed person must be agreed with the Head of Procurement.

RULE 4 –TENDER RECEIPT & EVALUATION

- 4.1 For Procurements which are valued above £25,000, suppliers must be required to submit Tenders by electronic means of communication unless the Head of Procurement agrees otherwise. This must be through the eProcurement Portal unless the Head of Procurement agrees otherwise. (If the Head of Procurement approves another means, they will be required to agree and supervise a fair means of tender opening).
- 4.2 All invitations must state clearly the date and time of return. Electronic Tenders must be returned in accordance with the approved tendering system requirements.
- 4.3 All electronic Tenders received by the appointed time will be opened at the same time by the Head of Procurement.
- 4.4 In the case of Tenders not received through the eProcurement Portal, at the Tendering opening the Head of Procurement will maintain a written record of the:
 - 4.4.1 Procurement reference and title;
 - 4.4.2 name of each supplier submitting a Tender and the time of submission;
 - 4.4.3 name of suppliers failing to submit prices/proposal for any restricted opportunities;
 - 4.4.4 prices from each supplier;
 - 4.4.5 name of opening officer;
 - 4.4.6 names of the persons present at the opening for any tenders submitted outside of the eProcurement Portal;
 - 4.4.7 date and time of opening of Tenders.
- 4.5 Late Tenders must not be accepted unless the lateness is caused by the Council or other matters reasonably outside of the control of the tenderer AND no unfair advantage is given to the bidder which submits the late Tender. Any decision to accept a late Tender will be made by the Head of Procurement following both (a) such verification as they feel appropriate and (b) approval by the Head of Risk. However, deadlines may be extended at any time prior to their arrival so long as this complies with the principle of equal treatment and non-discrimination between tenderers.
- 4.6 Suppliers must always be required to submit bids which comply with the tender documents. Variant may be permitted providing that the tender documents:
 - 4.6.1 say whether a standard or reference bid is also required;
 - 4.6.2 include the minimum requirements to be met by the variants;
 - 4.6.3 set award criteria which can be applied to the variants.
- 4.7 Any variants which are submitted must conform to the requirements of the tender documents.

- 4.8 Tenders which do not comply with the CPR 4.6 may be accepted by the Service Director, only after approval by the Head of Risk.
- 4.9 Where appropriate, the Head of Procurement will check the debarment list in connection with a procurement process to determine the excluded or excludable status of those parties involved.
- 4.10 The Service Director will carry out an evaluation of the Tenders received against the pre-set Award Criteria (CPR 2.7) and keep a written record of the analysis and outcome.
- 4.11 The Head of Risk must be satisfied regarding the financial standing of a proposed Supplier for any contract exceeding the UK Threshold.
- 4.12 The use of or participation in e-auctions to set prices is permitted where:
- 4.12.1 bids can be ranked automatically; and
 - 4.12.2 the mathematical formula to determine the rankings of the bids (or each variant where variants are permitted) is disclosed; and
 - 4.12.3 the written agreement of the Head of Risk has been given; and
 - 4.12.4 the process is subject to supervision by the Head of Procurement.
- 4.13 The Service Director will require tenderers to demonstrate that it will be able to perform the contract for the price offered where tenders appear to be abnormally low.
- 4.14 The Service Director must ensure that, where required by Procurement Rules, appropriate notices of intention to award a contract to a particular supplier, or group of suppliers, are issued, and the necessary standstill period observed, prior to formal acceptance of the Tender. The Head of Procurement will supervise the production and issuance of the mandatory debrief letters and inform the Service Director Legal and Commissioning that the debrief process has completed satisfactorily prior to formal acceptance of any Tender.
- 4.15 Any complaint or challenge to the procurement process at any stage must immediately be referred to the Head of Procurement, who must take steps to investigate and (subject to CPR 4.14) take action as necessary, taking guidance from the Service Director Legal and Commissioning and the Head of Risk.
- 4.16 If a formal challenge is initiated (e.g. a formal letter before Court action is received or Court or arbitration proceedings are commenced) the Service Director Legal and Commissioning must be informed immediately with full objective disclosure of the facts relating to the issue(s), who will manage the claim. At this stage information exchange should be restricted and Service Directors must not copy dispute related information to anybody who has not seen it before until the Service Director Legal and Commissioning advises about confidentiality and Legal Privilege.

Clarifications, Presentations and Interviews

- 4.17 Where information or documentation submitted by a bidder is or appears to be incomplete (including where specific documents are missing) or erroneous or unclear, Service Directors

may request the bidder concerned to submit, supplement, clarify or complete the relevant information or documentation, provided that requests for clarification:

- 4.17.1 set an appropriate time limit for a reply; and
 - 4.17.2 do not request changes or otherwise seek to influence the bidder; and
 - 4.17.3 deal with all of the matters in the Tender which are incomplete or erroneous or unclear; and
 - 4.17.4 treat all tenderers equally and fairly and so, for example, the request: -
 - a. must not occur before all of the bids have been subject to an initial evaluation or compliance check;
 - b. must not unduly favour or disadvantage the bidder to whom the request is addressed; and
 - c. must be sent in the same way to all bidders unless there is an objectively verifiable ground justifying different treatment.
- 4.18 Interviews and/or presentations which form part of the procurement process must be authorised by the Head of Procurement in writing. They must also be:
- 4.18.1 Comprehensively recorded; and
 - 4.18.2 Assessed according to transparent and objectively verifiable criteria connected to the subject matter of the contract; and
 - 4.18.3 Supervised by the Head of Procurement.
- 4.19 Where provided for in the procurement process, clarity may also be facilitated through planned presentations, meetings or demonstrations designed to assist in verifying submitted bids as part of the Due Diligence process to ensure compliance with procurement documentation.

RULE 5 –STANDING LISTS, DYNAMIC PURCHASING SYSTEMS, DYNAMIC MARKETS AND FRAMEWORKS: CREATION AND USAGE

- 5.1 The Head of Procurement will maintain a list of approved central purchasing organisations, purchasing consortia and Council "trading services".

Standing Lists

- 5.2 Subject to the Procurement Rules, the Head of Procurement will determine for which types of Supply Council-wide Standing Lists may be kept (see CPR 6.11). The Head of Procurement will notify the relevant Service Director of such decisions where the Standing List is Service specific and be responsible for creation and maintenance of Standing Lists which will be used Council-wide by any Service Director requiring Supplies of that type.
- 5.3 Standing Lists may be used for Supplies where the aggregated value (in compliance with the Procurement Rules) of the Supply in question does not exceed the relevant UK Threshold. A Framework or a Dynamic Purchasing System can be used where the aggregated value exceeds the relevant UK Threshold.

- 5.4 Standing Lists will be created by the selection of suppliers to be included from those responding to advertisements placed on at least the eProcurement Portal, Contracts Finder and other appropriate media as the Head of Procurement may determine. Standing Lists will remain valid for five years from creation. During that period the Standing List will remain open to the addition of further suppliers meeting the appropriate admission requirements and will remain advertised on the Council's web site for that time. Standing Lists must be renewed every 5 years.
- 5.5 Admission to a Standing List should be on the basis of a transparent, rational, justifiable evaluation of information submitted by prospective Suppliers relating to technical, financial and any other relevant matters determined by the Head of Procurement.
- 5.6 The Head of Procurement (in consultation with the Service Director Legal and Commissioning) may delete a supplier from a Standing List only where there is appropriate evidence and a written report justifying the action.
- 5.7 If there are insufficient suppliers on a Standing List, or too few are willing to submit Tenders, to meet the CPRs Tender requirements potential Suppliers must be sought as if a Standing List is not maintained.
- 5.8 Each Service Director must establish and advertise a set of fair, proportionate and transparent rules that reflect these CPRs which set out how Supplies will be procured through each Standing List which they are responsible for.

Council Frameworks , Dynamic Purchasing Systems and Dynamic Markets

- 5.9 Frameworks, Dynamic Purchasing Systems and Dynamic Markets may be used to source contracts for appropriate types of Supplies (subject to compliance with the Procurement Rules, as applicable).
- 5.10 Framework Suppliers will be chosen by a competitive process in accordance with these rules as if they were a Supply contract and in accordance with the Procurement Rules.
- 5.11 All Frameworks will be in the form of a written agreement detailing the method by which the Council will call off Supplies during the duration of the Framework and stating that there will be no obligation to order any Supplies of any type from a Framework Supplier.
- 5.12 Unless the Framework has been established as an Open Framework, Frameworks above the UK Threshold must be closed to new entrants and must not last longer than 4 years without this being justified in a written assessment of the exceptional factors present and the approval of the Head of Procurement.
 - 5.12.1 Open Frameworks above the UK Threshold must be reopened in accordance with the Procurement Rules.
- 5.13 Dynamic Purchasing Systems and Dynamic Markets must:
 - 5.13.1 be set up by an advertised competitive process which is approved by the Head of Procurement; and
 - 5.13.2 remain advertised; and

- 5.13.3 not limit the number of suppliers admitted to the system or market (but the system or market may be split into categories or parts (as applicable)); and
 - 5.13.4 be set up with clear operative rules which involve obtaining Tenders from all suppliers on the system or market, or on the relevant category or part on the system or market, as appropriate; and
 - 5.13.5 be operated wholly electronically; and
 - 5.13.6 be open to new entrants; and
 - 5.13.7 be subject to consistent due diligence assessments of participants
- 5.14 When using Frameworks, Dynamic Purchasing Systems or Dynamic Markets, the Council must follow the procurement rules set out in the Framework, Dynamic Purchasing System or Dynamic Market.
- 5.15 The Head of Procurement will ensure that the use of Framework Suppliers, Dynamic Purchasing Systems and Dynamic Markets provide value for money, considering all procurement costs and alternative approaches.

Use of Third Party Procurement Facilities

- 5.16 Supplies may be obtained through third party Frameworks (provided that the Head of Procurement is satisfied that using such a method is demonstrated to represent value for money) that:
- 5.16.1 are created in accordance with the Procurement Rules and which is approved by the Head of Procurement (see also CPR 5.1);
 - 5.16.2 have valid mechanisms that exist to enable the Council to use the Framework (including appropriate transparent referencing in the procurement documents and inclusion in the framework call off conditions);
 - 5.16.3 comply with the Council's Contract Procedure Rules, or in the opinion of the Head of Risk, rules which are broadly comparable;
 - 5.16.4 where the Procurement Rules apply, the procurement will not take the use of the framework more than 10% over the framework's advertised value.

RULE 6 – EXEMPTIONS FROM COMPETITION

- 6.1 Subject to compliance with the Procurement Rules the following are exempted from the competitive requirements of these CPRs⁴:
- 6.1.1 where there is genuinely only one potential Supplier, such as for works of art and copyrighted material or unique technology, where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

⁴ When the Procurement Rules apply, these exemptions may not be permitted (Directors must check this). Exemptions are not permitted for those health services which are in scope of the Health Care Services (Provider Selection Regime) Regulations 2023

- 6.1.2 items purchased or sold by public auction (in accordance with arrangements agreed by the Head of Risk);
 - 6.1.3 the selection of a supplier whose usage is a condition of a Grant funding approval;
 - 6.1.4 the selection of a supplier on the instruction of a third party, providing the whole of the funding is met by the third party;
 - 6.1.5 where CPR 6.11 applies;
 - 6.1.6 counsel or other external legal advice, provided that the Service Director Legal and Commissioning takes steps to ensure that value for money is being obtained;
 - 6.1.7 a Supply that is strictly necessary for reasons of extreme and unavoidable urgency, not due to any action or inaction of the Council, with the prior agreement of the Head of Risk;
 - 6.1.8 direct award from an approved Framework (see CPR 5.18) which has validly been set up to be called off on a non-competitive basis and which was set up in accordance with the requirements of these CPR and the Procurement Rules;
 - 6.1.9 in respect of the production of a prototype, or supply of other novel goods or services, at the request of the Council; or
 - 6.1.10 for the supply of goods, services or works by the existing Supplier which are intended as an extension to, or partial replacement of, existing goods, services or works in circumstances where a change in Supplier would result in disproportionate technical difficulties in operation or maintenance or additional cost to the Council.
- 6.2 The Service Director must make a written record of the justification for the selection of the Supplier. The Service Director must obtain the approval of the Head of Procurement before exercising the decision to apply an exemption in respect of a supply valued in excess of £100,000. Value for money must be evidenced and recorded.
- 6.3 Service Directors may purchase a trial of a Supply which is new to the Council up to £100,000 without competition in order to ascertain if the Supply is of interest to the Council. Where an exemption to competition in CPR 6.1 does not apply, a full competition compliant with the CPR must be held following the trial if the Service Director wishes to continue with the type of Supply.
- 6.3.1 Following any such trial, arrangements must be made to ensure that the Supplier involved in the trial has not acquired any advantage through that involvement when compared to any alternative suppliers of a similar product. The Head of Procurement must approve any proposed trial arrangement exceeding £25,000.
- 6.4 The procuring Service Director and the Head of Procurement may decide that;
- 6.4.1 An alternative means of selection of Suppliers to those required by these CPRs is appropriate (e.g. a Supplier shortlist other than described in these CPRs, negotiation with a single supplier not otherwise permitted, etc.) but they must record the reason for their decision and obtain the approval of the Head of Risk.

- 6.4.2 Following receipt of Tenders for the Supply, it is appropriate to seek to reduce the overall cost, or change other terms of the Supply by negotiation with one or more suppliers which have submitted Tenders.
- 6.4.3 It is appropriate to negotiate a repeat, continuation or serial contract with an existing Supplier, by reference to the original Tender for the Supply.
- 6.4.4 The use of another local authority as a supplier of services by its own labour or as a procurement agent acting on behalf of the Council without competition is appropriate (although subject to the Procurement Rules).

Note in the above, in order to achieve internal check, the Head of Procurement alone cannot reach such decisions. Where the Head of Procurement is making a decision in relation to a Procurement exercise by their own Service Director, there must be consultation with the Head of Risk.

Negotiated Contracts

- 6.5 Verbal negotiation must be undertaken by at least two Council Officers at least one of whom must be independent of the process and approved by (or included on a list of negotiators kept by) the Head of Procurement.
- 6.6 Written negotiation must be subject to evidenced independent check of process, calculation and overall value for money.
- 6.7 For any contract valued at above £100,000 the Service Director must obtain the approval of the Head of Risk of the proposed terms of the negotiated Supply including its cost and the reason for choice before the contract is entered into.

Legal Issues

- 6.8 The Service Director Legal and Commissioning must be consulted in advance of any negotiation in respect of any contract estimated to exceed the UK Threshold (except those in relation to Land where the Head of Corporate Landlord should be consulted irrespective of value).
- 6.9 The Head of Procurement will decide whether the purchase is likely to be on terms which would be acceptable to a private buyer operating under normal market economy conditions. If the Head of Procurement does not think that this is likely to be achieved, they must consult with the Service Director Legal and Commissioning about the possibility of subsidy control before approving the exemption from competition.

Mandatory Suppliers, Frameworks , Dynamic Purchasing Systems or Dynamic Markets

- 6.10 In respect of defined categories of goods, works and services the Head of Procurement may determine (following a written risk assessment which, as appropriate, deals with the Procurement Rules and the possibility of subsidy control) that the use of one (or more) Suppliers is compulsory.
- 6.11 The Head of Procurement may also determine that Supplies of a particular type are to be obtained from Suppliers via a Framework, Dynamic Purchasing System, Dynamic Market or Standing List, and set standards to be established in those arrangements.

6.12 Supplies must be obtained from internal Council Services (which are capable of supplying them directly) without competition except:-

6.12.1 where Cabinet has determined that Supplies of a particular kind will be subject to a competitive process;

6.12.2 in respect of the outsourcing of an activity having a value below £100,000;

6.12.3 in respect of services provided within schools;

6.12.4 in respect of ad hoc services for the design and construction of buildings or parts of buildings.

RULE 7 - RECORD KEEPING AND REPORTING

7.1 Service Directors must keep detailed written records of the progress of all procurement or disposal procedures (including negotiation). To that end, Service Directors must ensure that they keep sufficient documentation to justify decisions taken in all stages of the procedure, such as documentation on:-

7.1.1 communications with economic operators and internal deliberations;

7.1.2 preparation of the procurement or sale documents;

7.1.3 the dividing large procurements into contract Lots;

7.1.4 consideration of social value in the commissioning and procurement process;

7.1.5 any interviews, other dialogue or negotiation;

7.1.6 a risk log;

7.1.7 supplier vetting; and

7.1.8 reasons for award of the contract.

The documentation must be kept for a period as defined within the Councils relevant retention schedule.

7.2 A full trail of electronic Tenders received must be recorded on the eProcurement Portal or retained in a database approved by the Head of Risk.

7.3 All contracts over £5,000 must be reported to the Head of Procurement who will arrange to publish these transactions on the statutory contracts register (also see Appendix 2).

7.4 Each Service Director must promptly provide to the Head of Procurement the information specified in Appendix 2.

7.5 The Head of Procurement must ensure that the appropriate publications are made to comply with the Local Government Transparency Requirements (and each Service Director

will notify the Head of Procurement of any expenditure above £500; also see CPR 7.3 above).

- 7.6 The Service Director must keep a written record of the reasons for using a negotiated procedure under Rules 6.5 - 6.7.

RULE 8 - INCOME CONTRACTS & CONCESSIONS

- 8.1 CPR 8 Includes nil value and disposal contracts but excludes Land.
- 8.2 CPRs 8.2 to 8.8 apply when the Council intends to derive income from:-
- 8.2.1 the disposal of property (other than Land);
 - 8.2.2 the sale of a right to exploit a business opportunity;
 - 8.2.3 the operation of business activity.
- 8.3 Where the Council is proposing to enter into an Income Contract at manifestly less than market value where the market value is estimated at £1,000 or more, the Head of Risk must be consulted and they will decide whether this amounts to a Grant (and so FPR 22 applies instead of CPR 8).

The disposal of an asset (other than land and buildings)

- 8.4 The procedure for the disposal of assets e.g. surplus plant, vehicles, furniture, equipment and stock items (owned by the Council and not leased) is:-
- 8.4.1 assets valued up to £25,000 must be disposed of by a method chosen by the Service Director and a written justification of the choice retained.
 - 8.4.2 assets valued above £25,000 must be disposed of following public notice either by open Tender process, closed Tender process involving at least 3 prospective purchasers or public auction, unless the interests of the Council would be better served by disposal in some other way;
 - 8.4.3 Authority for alternative disposal methods must be granted by the Head of Procurement in consultation with the Head of Risk.
 - 8.4.4 All IT equipment should be disposed of in accordance with the contract arrangements put in place by IT services to ensure equipment is securely and safely dealt with in line with requirements.
- 8.5 Leased assets must be disposed of only in accordance with the instruction of the lessor.

The sale of a right to exploit a business opportunity

- 8.6 The letting of rights to exploit a business opportunity for the contractor's own benefit (for example, advertisement space on Council Land) (a 'business opportunity contract') must be subject to a written contract and must only take place following a competitive selection process as set out below or written approval of other means from the Head of Procurement

based on a detailed business case which, where appropriate, includes consideration of matters such as state aid.

8.6.1 A business opportunity contract that will not generate income in excess of £25,000 over the duration of the contract may be sourced by any reasonable means and should be arranged and undertaken by the Service Director responsible for the activity.

8.6.2 The Head of Procurement must direct and supervise the tendering of any arrangement expected to generate income in excess of £25,000.

The operation of business activity, beyond that normally undertaken by a local authority.

8.7 If an Income Contract is intended to be or become profitable or be commercial in nature, advice must be obtained from the Service Director Legal and Commissioning.

8.8 If an Income Contract has any potential to distort the relevant market advice must be obtained from the Service Director Legal and Commissioning.

Concession Contracts

8.9 Concession contracts for works or services are a type of Supply contract and the procurement of all Concessions shall follow the competitive and contracting requirements in these CPRs for Supplies.

8.10 Concession contracts for works or services above UK Thresholds are subject to the Procurement Rules and will be subject to such additional procurement process requirement(s) as the Head of Procurement feels are necessary to comply with the Procurement Rules and these CPRs.

Valuation

8.11 The value of a Concession contract shall be estimated in accordance with the Procurement Rules.

8.12 The value of an Income Contract is the gross income generated by the Council as a result of the rights granted, or goods, works or services supplied by the Council.

8.13 When calculating the estimated value of an Income Contract, Service Directors shall, where applicable, take into account:-

8.13.1 the value of any form of option and any extension of the duration of the contract;

8.13.2 revenue from the payment of fees and fines by the users of the works or services or public other than those collected on behalf of the Council;

8.13.3 payments or any other financial advantages, in any form, from the Council or any other public authority to the contractor;

8.13.4 the value of grants or any other financial advantages, in any form, from third parties for the performance of the contract;

8.13.5 revenue from sales of any assets which are part of the contract;

8.13.6 the value of all the supplies and services that are made available to the contractor by the Council, provided that they are necessary for executing the works or providing the services;

8.13.7 any prizes or payments to candidates or tenderers.

RULE 9 - LAND

- 9.1 Procurement of Land will generally be by the means described in this CPR 9. The Head of Corporate Landlord and Capital must be consulted in respect of all Land transactions of any value except where the Service Director Legal and Commissioning authorises other nominated officers to deal with tenancies or licences for specific purposes.
- 9.2 The Head of Corporate Landlord and Capital (and any other authorised Director) will arrange the acquisition or disposal of estates or interests in land (including any buildings erected on it) either pursuant to the authority delegated to them by a Service Director in accordance with Part 3 (Section F) of the Constitution or, in the case of a decision made by Cabinet then in accordance with the authority delegated to them from the Cabinet.
- 9.3 Where any proposed land transaction cannot be executed within the terms established in this rule, arrangements must be agreed between the Head of Corporate Landlord and Capital and the Service Director Legal and Commissioning, and details of the process leading to the transaction must be recorded, and the circumstances reported to Cabinet either for information, if falling within the delegated authority of officers, or in order to secure the relevant authority to give effect to the transaction.
- 9.4 Where Land is sold at an in person public auction, the Head of Corporate Landlord and Capital must submit a sealed reserve price (prepared by a qualified valuer on a professional basis) for consideration alongside the bids submitted or made however, if the Land is to be sold by way of an online auction the reserve shall be agreed between the Council's internal qualified valuer on a professional basis in liaison with the auctioneer who under the procured tender contract is obligated to also provide their professional opinion of market value based on experience and evidence and they will jointly set a reserve prior to the auction going live.. If a successful bid is less than the reserve price then the Head of Corporate Landlord and Capital may accept a lower bid provided that such lower bid is not less than 10% below the professional valuation of the reserve price.

RULE 10 – EXECUTING CONTRACTS

Supplies

- 10.1 A Contract may only be awarded where the Service Director has sufficient approved budget to meet the first year costs and is satisfied that there is sufficient ongoing funding to meet the contractual cost through the anticipated life of the Contract.
- 10.2 Contracts for all Supplies (which includes call-offs from Frameworks and Dynamic Purchasing Systems), Concessions, Income Contracts and Frameworks up to the UK

supplies and services threshold must be in writing and can be made by the Service Director either:

- where appropriate, by issuing the order through the Council's electronic purchasing system (currently SAP) and incorporating the correct standard terms; or
- By issuing (electronically or on paper) contract terms which the Service Director has assessed as being appropriate both in terms of suitability and risk.

10.3 If the Service Director and Service Director Legal and Commissioning decide that it is appropriate for the Contract to be sealed (or if it is required by law), the Contract will be executed by the Service Director Legal and Commissioning.

10.4 The Head of Procurement must ensure that the Council's electronic procurement systems are set up so that the most appropriate Official Council Order is available to be attached to the supply being purchased.

10.5 Contracts for all Supplies (which includes call-offs from Frameworks , Dynamic Purchasing Systems and Dynamic Markets), Concessions, Income Contracts and every Framework with an estimated value above the UK supplies and services threshold must be in writing and must (subject to CPR 10.6) be either:

- made under the corporate common seal of the Council, attested by one legal officer; or
- signed by two legal officers;
- a document shall be properly signed where it is physically signed in hardcopy format, or it is electronically signed in an electronic format approved by the Solicitor the Council;

who have been nominated as Contract signatories by the Service Director Legal and Commissioning under their Scheme of Officer Delegations. The Service Director Legal and Commissioning may authorise an external firm of lawyers to sign documents (and or initial and make amendments to documents) as agent on behalf of the Council.

10.6 Notwithstanding CPR 10.5, the Service Director Legal and Commissioning may authorise officers who are not Legal Officers to sign specific or specialist Contracts for Supplies above the UK supplies and services threshold. Two authorised officers must sign each such Contract.

10.7 The Service Director Legal and Commissioning may, subject to including appropriate restrictions and/or instructions designed to achieve valid execution of the relevant Contracts and suitable record keeping, provide third parties with a power of attorney to sign Council Contracts of values below the UK Threshold for supplies and services.

Land

10.8 The Service Director Legal and Commissioning will complete all land transactions, including acquisition or disposal by way of freehold or leasehold purchase or sale or the taking or granting of all short or long term leases or tenancies and other deeds and documents associated with Land. The Service Director Legal and Commissioning may nominate other officers to enter into Land commitments and arrangements using documentation previously approved by the Service Director Legal and Commissioning.

10.9 Any Contract for the sale or acquisition of, or any other deed or document relating to, Land must either be signed (under hand where executed in hardcopy format or electronically where executed in electronic format) by, or have the corporate common seal affixed in the presence of, the Service Director Legal and Commissioning (or by a legal officer nominated by them), and where the corporate common seal is affixed it is permissible to do so electronically (where the law permits in accordance with the Electronic Communications Act 2000). Additionally, the Service Director Legal and Commissioning may authorise other nominated officers to be authorised signatories to tenancies or licences for specific purposes as referred to in CPR 9.1. Where the Council has listed Land for sale at public auction and a sale is agreed post-auction through the auctioneer under RICS common auction conditions (or such other conditions as appropriate), the Solicitor to the Council may authorise the external property auctioneer to sign the contract for the sale of the Land (on the same basis as outlined above in this CPR 10.9) as agent for the Council and to deal with exchange of contracts between the Council and the buyer.

General

10.10 The Service Director Legal and Commissioning is entitled to sign any agreement in any way related to Procurement, Supplies, Concessions or Income Contracts or any security instrument (regardless of whether another officer including the Chief Executive may sign such things), subject to CPR 10.5 and provided that this is not subject to any contrary direction from the Council or Cabinet.

10.11 The Service Director Legal and Commissioning may authorise an external property auctioneer to sign as agent for the Council, a Sale Memorandum to record the property price and terms of conditions of sale.

RULE 11 – MODIFICATION AND TERMINATION OF CONTRACTS AND RELEASE OF BONDS

11.1 It is recognised that during the term of a Contract, modifications may be proposed, which if adopted would result in additional Works, Goods and/or Services, which were not considered when the original procurement took place, being procured or otherwise would alter the overall nature of the Contract. There are significant limitations upon the Council being able to make such modifications, especially where the Procurement Rules apply. When considering a variation, modification or the termination of an existing Contract, advice must be sought in advance from the Corporate Procurement Service and the Service Director Legal and Commissioning.

11.2 A Service Director may terminate any contract strictly in accordance with any contractual provision which allows for termination without fault, but with prior consultation with the Head of Procurement if alternative Supplies would be required.

11.3 A Service Director, in consultation with the Service Director Legal and Commissioning, has the power to terminate any contract in the event of any breach of contract justifying termination, where in the opinion of these officers no other remedy is appropriate. Where the financial implications of a decision to terminate a contract exceed, or may exceed £100,000, the reason for termination and any consequences must be reported to the next meeting of the Cabinet.

- 11.4 The Service Director Legal and Commissioning may release any bond held by the Council, on request from the Head of Procurement.
- 11.5 The Head of Risk is entitled to negotiate with any bond issuer on sums of settlement proposed, and in consultation with the Service Director Legal and Commissioning accept such proposed sums.
- 11.6 Service Directors may modify contracts:
- 11.6.1 awarded under the Public Contracts Regulations 2015 by operating 'clear, precise and unequivocal contractual review clauses' which were advertised in the original Procurement, strictly in accordance with the contract; or
 - 11.6.2 awarded under the Procurement Act 2023 if 'the possibility of the modification is unambiguously provided for in the contract awarded and the tender or transparency notice for the award of contract and the modification would not change the overall nature of the contract'.
- 11.7 Any modification, whether above or below the relevant UK Threshold, to a contract which cannot be fulfilled by following CPR 11.6 must be subject to the approval of the Head of Procurement.
- 11.8 Any modification to a contract which cannot be fulfilled by following CPR 11.6 must be made in writing and signed in accordance with CPR 10 even if it does not need a competitive Procurement process.
- 11.9 Subject to approval of the Service Director Legal and Commissioning and the Head of Procurement, and the Procurement Rules as applicable, contracts may be novated or reassigned to a Supplier who is not an excluded supplier only where this is needed following a corporate restructuring or similar circumstances, such as a takeover, merger, acquisition or insolvency.

RULE 12 - MISCELLANEOUS

- 12.1 A Special Purpose Vehicle (such as a limited liability company or otherwise) to be wholly or partially owned or controlled by the Council, will only be formed or joined on the approval of the Cabinet, following a detailed evaluation by the Service Director Legal and Commissioning and the Service Director Finance. This does not apply to any purchase of shares or similar for the purpose of investment.

DEFINITIONS

DEFINITION	DESCRIPTION
Award Criteria	Relate directly to the goods, services or works to be provided. Award criteria evaluate supplier's offers made in relation to fulfilling the Council's requirements for the Supply, in particular the Specification.
Central Digital Platform	Means the "online system" established and operated for the publication of notices, procurement documents and other information relating to public contracts
Chief Executive	The Chief Executive is the head of the Council's paid staff and its principal adviser on policy matters and leads the discharge of Council strategy and responsibilities.
Commissioning	The relationship between commissioning and procurement is described in the diagram in Appendix 3.
Concession	Is where a Supplier is remunerated mostly through being permitted to run and exploit the work or service and is exposed to a potential loss on its investment.
Conditions of Participation	is a condition that a supplier must demonstrate they are capable of satisfying in order to be awarded a contract.
Conflict of Interest	Means any interest outside of the Council which may appear to an objective bystander to affect the fair judgment of an Officer or Member or any other person acting on the Council's behalf in the Procurement of a Supply or the disposal of property (including Land). The concept of conflict of interest shall at least cover any situation where the relevant person has, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of a Procurement or sale procedure.
Contract	Means any form of contract, agreement for the supply of any works, goods, or services that the Council enters into (whether by purchase, lease, hire or any other arrangement).
Contract Procedure Rules (CPRs)	Means these Contract Procedure Rules.
Council	Means the Council of the Borough of Kirklees, which is also known by its abbreviated name of Kirklees Council.

Data Protection Legislation	Means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder), the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019/419 and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority.
Dynamic Market	Is a procurement tool established in accordance with sections 34 to 40 of the Procurement Act 2023 and is available for the procurement of above UK Threshold contracts. It is a list of qualified suppliers (i.e. suppliers who have met the ‘conditions for membership’ of the dynamic market who are eligible to participate in future procurements. A dynamic market may be split into parts, with suppliers only eligible to participate in the parts for which they have qualified. New suppliers can be added through the lifetime of the dynamic market and there is no maximum term or minimum or maximum number of suppliers.
Dynamic Purchasing System (DPS)	Is a procurement tool available for contracts for works, services and goods commonly available on the market. It has its own specific set of requirements (as set out in Regulation 34 of the Public Contracts Regulations 2015); for example, it must be run as a completely electronic process, must remain open to new entrants, all suppliers on the relevant category in the Dynamic Purchasing System must be invited to quote for all contracts and it should be set up using the restricted procedure.
eProcurement Portal (YORtender)	The on-line Supplier and Contract Management System used by the Council to operate e-tenders and for the online management of suppliers and contracts and to advertise contracts. Currently available at https://yortender.eu-supply.com
Financial Ratio	Is a pre-set method of determining a supplier’s financial standing, such as turnover, net asset value, and profitability.
Find A Tender Service (FTS)	“Find a Tender” means the UK e-notification service where notices for new procurements and contracts awarded under the Public Contracts Regulations 2015 are required to be published;
Financial Procedure Rules (FPRs)	The Financial Procedure Rules.

Frameworks	Means an agreement between a Contracting Authority and one or more Suppliers which operates as a Procurement tool through which contracts for Supplies can be sourced. Frameworks which deal with Supplies that are above, or aggregate above, the UK Threshold are subject to the Procurement Rules. They set out the terms for the Supply (often including the price) and the method for calling off orders. ‘Framework Agreement’ and ‘Framework Suppliers’ shall be construed accordingly. References to Frameworks includes Framework Agreements established under the Public Contracts Regulations 2015 and Open Frameworks as defined in the Procurement Act 2023.
Head of Corporate Landlord and Capital	Means the officer appointed by the Service Director who is responsible for corporate property management functions.
Head of Risk	Means the officer appointed by the Chief Executive who is responsible for Internal audit.
Head of Procurement	Means the Head of Procurement and Commissioning or such other officer appointed by the Service Director – Legal, Governance & Commissioning who is responsible for Corporate Procurement.
Income Contract⁵	An Income Contract is one where the main object of the contract is that the Council does something in relation to a Council asset and includes⁶ situations where the Council does so at nil value (subject to this not being a Grant – see Appendix 4).
Land	“Land” includes any interest in land (including buildings) and any easement or right in or over land
Local Government Transparency Requirements	Means the statutory codes and legislation requiring the Council to publish information, such as⁵ the Local Government Transparency Code and certain Regulations within the Public Contracts Regulations 2015.
Official Council Order	A standard form of contract for a Supply for a value of less than the current UK supplies and services threshold approved by the Service Director Legal and Commissioning whether attached electronically or by

⁵ For contracts where the Council provides services to another body, please refer to FPRs 20.4-20.6

⁶ The words “including”, “include”, “for example”, “e.g.”, and “such as” in these CPRs indicate examples and are not intended to be limiting

Personal Data	<p>Means data which relate to a living individual who can be identified—</p> <p>(a) from those data, or</p> <p>(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,</p> <p>and includes any expression of opinion about the individual (e.g. references) and any indication of the intentions of the data controller or any other person in respect of the individual.</p>
Procurement	<p>The purchase, contract hire, lease, rental⁷ or any other form of acquisition which results in a contract for Supplies where the Council is the buyer (therefore, in the context of the CPR, this does not include the Council providing the Supply to itself or gifts). Procurement also includes the establishment of Standing Lists, Frameworks , Dynamic Purchasing Systems and Dynamic Markets. ‘Procurement’ and ‘Procured’ shall be construed accordingly.</p>
Procurement Rules	<p>The rules on procurement for Supplies above the UK Threshold are subject to the statutory requirements outlined in the Procurement Act 2023, the Health Care Services (Provider Selection Regime) Regulations 2023, Public Concessions Regulations 2016 and Public Contracts Regulations 2015 and those described in the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (EU Exit Regulations) as may be applicable in relation to the Procurement or Contract.</p>
Reasonable Means	<p>Methods of selection or advertising which reflect reasonable trade practice. This might include informal briefs, supplier written Tenders or proposals, verbal or telephone quotes (which are then written down), comparative pricing for suitable supplies over the internet.</p>
Senior Manager	<p>Means an officer who reports directly to a Head of Service.</p>

Service	<p>A grouping of departments or other sections of the Council which is under the overall responsibility of a Service Director.</p>
Service Director	<p>Means the most senior officer responsible for the day to day functions of each Service.</p>

⁷ Note: Contract hire, lease and rental agreements require the specific advance approval of the Director of Resources or their delegate [See the FPR].

Service Director Finance	Means the Service Director responsible for finance, also being the s151 Officer
Service Director Legal and Commissioning	Means the Service Director responsible as legal adviser to the Council, also being the Monitoring Officer
Social Value	Means The Public Services (Social Value) Act 2012 ('Social Value Act') that requires the Council to consider how a procurement over the relevant thresholds could improve the economic, social and environmental wellbeing of the district
Special Purpose Vehicle	Companies (limited by shares, or otherwise) or any other legal entity, established by or in which the Council participates whether alone or with others to provide specific Supplies to the Council.
Specification	A written document detailing the Council's requirements. This can include things such as definitions, acceptance test methods, material requirements or characteristics, drawings, plans, certifications of compliance with standards, workmanship, data security measures, quality control including performance testing and KPIs, completion, delivery, safety, timing, key personnel qualities, communication requirements, returns policies and tolerances.
Standing List	A list of suppliers who are assessed as suitable to provide Supplies to the Council prepared in accordance with CPR 5.
Suitability	Means a supplier's general capability, fidelity, skill, competence, etc. to carry out the contract, including, where relevant, whether a Supplier is an excluded or excludable supplier under the Procurement Act 2023.
Supplier	Any person, partnership, company, or other organisation, which provides or contractually offers to provide any Supply to the Council or on behalf of the Council.
Supply / Supplies	Means the supply of any works, goods, or services; being provided, or to be provided, to or on behalf of the Council (whether by purchase, lease, hire or any other arrangement).
Tender	A written offer in relation to a Supply or Disposal of Assets making reference to a price and (where applicable) other information.
UK Threshold	The financial threshold from time to time at which the Procurement Rules are applicable to a Supply. Current UK Thresholds are set out in Appendix 1.
Value for Money	Securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought.

Whole Life Costing Approach	Is an approach which addresses all the elements of a Supply over its life cycle such as:- <ul style="list-style-type: none">• costs relating to acquisition,• costs of use, such as consumption of energy and other resources,• maintenance costs,• end of life costs, such as collection and recycling costs which can be used to produce a spend profile of the Supply over its anticipated lifespan.
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Appendix 1

Relevant Thresholds in Public Contract Regulations inclusive of VAT*	
<u>Microsoft Word - Procurement Policy Note 10:21 - New Thresholds Values and Inclusion of VAT in Contract Estimates.docx (publishing.service.gov.uk)</u>	
Goods and services contracts	£214,904 (£179,086.67 excl. VAT)
Light Touch Regime Contracts (Annex XIV)	£663,540 (£552,950 excl. VAT)
Works contracts	£5,372,609 (£4,477,174.17 excl. VAT)
Concession contracts	£5,372,609 (£4,477,174.17 excl. VAT)

* These are current the values for the purposes of these CPRs. The threshold values to be used will be those applicable at the commencement of the procurement process. The thresholds are updated every two years with the next update due on the 1 January 2026

Appendix 2

Information to be Reported to the Head of Procurement (RULE 7 – RECORD KEEPING AND REPORTING)

	Information	When
A.	Details of all contracts awarded for Supplies of £5,000 or above following a competitive process including the name of the Supplier, and amount of the Tender and if the chosen supplier was not the cheapest, then the same information in relation to unsuccessful Suppliers, and the reason why the successful Supplier was chosen.	When requested
B.	Details of all contracts awarded for Supplies of £100,000 or above, which result from negotiation including the reason for negotiation and the name of the successful Supplier and value of the contract.	When requested
C.	Details of all contracts awarded for supplies of £5,000 or above which a Service Director considered to be exempt from the competitive requirements by virtue of Rule 6, including the reason for the exemption.	When requested
D.	Contracts with a value of £5,000 or more (see Rule 3), with the following information: <ol style="list-style-type: none"> 1. reference number 2. title of agreement 3. Contract Manager; name of person responsible for managing the contract 4. description of the goods and/or services being provided 5. Supplier name and details 6. sum to be paid over the length of the contract (or if unknown, the estimated annual spending or budget for the contract) 7. start, end and review dates, including permitted extensions 8. whether or not the contract was the result of an invitation to quote or a published invitation to tender, and 9. whether or not the Supplier is a small or medium sized enterprise and/or a voluntary or community sector organisation and where it is, provide the relevant registration number 10. whether or not the contract involves processing personal data 	In All Cases on Contract Award
E.	All other information necessary to enable compliance with the Council's obligations under legislation and regulation to publish data about its contractual arrangements and payments.	In All Cases on Request

Appendix 3

Relationship between Commissioning and Procurement



Appendix 4

How to decide if a procurement or grant is applicable

- The Council obtains supplies of goods, works, and services from external suppliers and normally uses competitive processes to do so in accordance with the Contract Procedure Rules (CPRs)
- It is always appropriate to use procurement to obtain **goods** and **works**, and this is the usual preference to obtain **services**.
- There may though be some occasions when a grant may be an appropriate way to achieve the priorities of the Council. The information below aims to provide a guide to support commissioners to think about whether a grant or procurement is the most appropriate method in obtaining and/or supporting a particular **service**.

1. If you are seeking to obtain **goods** or **works** you should **procure as per CPRs**
2. If you are seeking to obtain a **service** and can answer **YES** to **ANY** of the following, you should **procure as per CPRs**
 - Is there an intention to specify service standards and outputs required?
 - Will payment be reduced/alterd if service standards are not met, or additional payment be made if there are claims for additional costs incurred?
 - Are there opportunities for change control?
 - Is there a contractual obligation on both parties?
 - Is there an intention to have active management of the provider?
3. If you are seeking to use a supplier that is a commercial i.e., profitmaking organisation this would generally require procurement as per CPRs. If the organisation is a genuine “not for profit” organization or charity you should discuss further with the Procurement team.
4. If you are seeking a **service** and can answer **YES** to **ANY** of the following, you can consider use of a **Grant as per FPRs**
 - Is there an intention to broadly support an activity, with expected outcomes, but no clear obligations on the provider?
 - Is the intention to support parts of an existing activity?
 - Is the intention to provide a subsidy to existing service users
 - Is the Council’s only ultimate remedy to withhold payment of a next phase of grant, seek clawback or to refuse to fund future activity by the provider?
 - Is the intention to meet a stated set of costs, and an intention that the provider should not profit from the support?

Important notes/advice

- Always remember to check with the Procurement team if unsure.
- A competition will generally be appropriate to select which parties are entitled to receive grants.
- Grants still require a grant agreement.
- Grants which involve procurement by a third party require use of competition in selection of their suppliers (broadly aligning with Council CPRs)³³

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Procurement Act 2023

2023 CHAPTER 54

An Act to make provision about procurement.

[26th October 2023]

BE IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

KEY DEFINITIONS

1 Procurement and covered procurement

- (1) In this Act—
 - (a) “procurement” means the award, entry into and management of a contract;
 - (b) “covered procurement” means the award, entry into and management of a public contract.
- (2) In this Act, a reference to a procurement or covered procurement includes a reference to—
 - (a) any step taken for the purpose of awarding, entering into or managing the contract;
 - (b) a part of the procurement;
 - (c) termination of the procurement before award.
- (3) In this Act, a reference to a contracting authority carrying out a procurement or covered procurement is a reference to a contracting authority carrying out a procurement or covered procurement—
 - (a) on its own behalf, including where it acts jointly with or through another person other than a centralised procurement authority, and
 - (b) if the contracting authority is a centralised procurement authority—
 - (i) for or on behalf of another contracting authority, or

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(ii) for the purpose of the supply of goods, services or works to another contracting authority.

(4) In this Act, “centralised procurement authority” means a contracting authority that is in the business of carrying out procurement for or on behalf of, or for the purpose of the supply of goods, services or works to, other contracting authorities.

2 Contracting authorities

(1) In this Act “contracting authority” means—

- (a) a public authority, or
 - (b) in the case of a utilities contract, a public authority, public undertaking or private utility,
- other than an excluded authority.

(2) In this Act—

“public authority” means a person that is—

- (a) wholly or mainly funded out of public funds, or
- (b) subject to public authority oversight,

and does not operate on a commercial basis (but see subsections (9) and (10));

“public undertaking” means a person that—

- (a) is subject to public authority oversight, and
- (b) operates on a commercial basis;

“private utility” means a person that—

- (a) is not a public authority or public undertaking, and
- (b) carries out a utility activity.

(3) A person is subject to public authority oversight if the person is subject to the management or control of—

- (a) one or more public authorities, or
- (b) a board more than half of the members of which are appointed by one or more public authorities.

(4) The following are examples of factors to be taken into account in determining whether a person operates on a commercial basis—

- (a) whether the person operates on the basis that its losses would be borne, or its continued operation secured, by a public authority (whether directly or indirectly);
- (b) whether the person contracts on terms more favourable than those that might reasonably have been available to it had it not been associated with a public authority;
- (c) whether the person operates on a market that is subject to fair and effective competition.

(5) The following authorities are excluded authorities—

- (a) a devolved Scottish authority;
- (b) the Security Service, the Secret Intelligence Service and the Government Communications Headquarters;
- (c) the Advanced Research and Invention Agency;
- (d) any person that is subject to public authority oversight—

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- (i) only by reference to a devolved Scottish authority, or
 - (ii) by reference to an authority mentioned in paragraph (b) or (c).
- (6) An authority is a “devolved Scottish authority” if its functions are exercisable only in or as regards Scotland, and—
 - (a) none of its functions relate to reserved matters, or
 - (b) some of its functions relate to reserved matters and some do not.
- (7) A contracting authority that is a public undertaking or private utility is to be treated as a devolved Scottish authority for the purposes of this Act if it operates only in or as regards Scotland, and—
 - (a) none of its activities relate to reserved matters, or
 - (b) some of its activities relate to reserved matters and some do not.
- (8) In this Act, a reference to a devolved Scottish authority includes a reference to an authority that is to be treated as a devolved Scottish authority for the purposes of this Act.
- (9) In this Act, a reference to a public authority includes a reference to the Common Council of the City of London.
- (10) For the purposes of this Act, a person that operates on a commercial basis but is, as a controlled person, awarded an exempted contract by a public authority in reliance on paragraph 2 of Schedule 2 (vertical arrangements) is to be treated as a public authority in relation to any relevant sub-contract.
- (11) This Act does not apply to His Majesty acting in his private capacity.
- (12) In this section—
 - “relevant sub-contract” means a contract substantially for the purpose of performing (or contributing to the performance of) all or any part of the exempted contract;
 - “reserved matters” has the same meaning as in the Scotland Act 1998.

3 Public contracts

- (1) A “public contract” is a contract of a kind specified in subsection (2), (3) or (4).
- (2) Any contract for the supply, for pecuniary interest, of goods, services or works to a contracting authority which—
 - (a) has an estimated value of not less than the threshold amount for the type of contract, and
 - (b) is not an exempted contract.
- (3) Any framework which—
 - (a) has an estimated value of not less than the threshold amount for the type of contract, and
 - (b) is not an exempted contract.
- (4) Any concession contract which—
 - (a) has an estimated value of not less than the threshold amount for the type of contract, and
 - (b) is not an exempted contract.

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- (5) Schedule 1 sets out the threshold amounts.
- (6) Schedule 2 sets out contracts that are exempted contracts for the purposes of this Act.

4 Valuation of contracts

- (1) For the purposes of this Act, the “estimated value” of a contract is its value for the time being estimated by a contracting authority.
- (2) A contracting authority that estimates the value of a contract must do so in accordance with Schedule 3.
- (3) A contracting authority must not exercise a discretion in connection with estimating the value of a contract with a view to securing that any requirement of this Act does not apply in relation to the contract.

5 Mixed procurement: above and below threshold

- (1) Subsection (3) applies if, on award of a below-threshold contract other than a framework, a contracting authority considers that—
 - (a) certain of the goods, services or works to be supplied under the contract could reasonably be supplied under a separate contract, and
 - (b) that contract would have an estimated value of not less than the threshold amount for a contract of its type.
- (2) Subsection (3) applies if, on award of a below-threshold contract that is a framework, a contracting authority considers that—
 - (a) certain of the goods, services or works to be supplied under contracts awarded in accordance with the framework could reasonably be supplied under a contract not awarded in accordance with the framework, and
 - (b) that contract would have an estimated value of not less than the threshold amount for a contract of its type.
- (3) The contract is to be treated as having an estimated value of not less than the threshold amount for the type of contract.
- (4) In considering whether goods, services or works could reasonably be supplied under a separate contract, a contracting authority may, for example, have regard to the practical and financial consequences of awarding more than one contract.
- (5) In this Act “below-threshold contract” means—
 - (a) a contract for the supply, for pecuniary interest, of goods, services or works to a contracting authority,
 - (b) a framework, or
 - (c) a concession contract,that has an estimated value of less than the threshold amount for the type of contract.
- (6) This section does not apply to a contract awarded in accordance with a framework.

6 Utilities contracts

- (1) In this Act, “utilities contract” means a contract for the supply of goods, services or works wholly or mainly for the purpose of a utility activity.

- (2) In this Act, “utility activity” means an activity that—
- (a) is specified in Part 1 of Schedule 4,
 - (b) is not specified in Part 2 of Schedule 4,
 - (c) is not carried out wholly outside the United Kingdom, and
 - (d) in the case of an activity carried out by a person that is not a public authority or public undertaking, is carried out pursuant to a special or exclusive right.
- (3) A person carries out a utility activity pursuant to a “special or exclusive right” if—
- (a) the person (whether alone or with others) has been granted a right to carry out the activity pursuant to any statutory, regulatory or administrative provision, and
 - (b) that provision also substantially limits the ability of persons not granted the right to carry on the activity.
- (4) But a right to carry out a utility activity is not a “special or exclusive right” if it is granted—
- (a) following award under section 19 (competitive award), or
 - (b) otherwise pursuant to a procedure in which—
 - (i) the opportunity to be granted the right was publicised widely enough to avoid an artificial narrowing of competition, and
 - (ii) the grant of the right was based on criteria that did not favour or disadvantage certain persons.
- (5) An appropriate authority may by regulations amend Part 2 of Schedule 4 for the purpose of—
- (a) specifying an activity, or
 - (b) removing an activity.
- (6) Regulations under subsection (5) may not specify an activity unless the authority is satisfied that—
- (a) the activity is carried out on a market that is subject to fair and effective competition, and
 - (b) entry to that market is unrestricted.
- (7) In this Act, a reference to a utilities contract includes a reference to a framework for the future award of contracts for the supply of goods, services or works wholly or mainly for the purpose of a utility activity.

7 Defence and security contracts

- (1) In this Act, “defence and security contract” means a contract for the supply of—
- (a) military equipment;
 - (b) sensitive equipment;
 - (c) goods, services or works necessary for the development, production, maintenance or decommissioning of military equipment or sensitive equipment;
 - (d) logistics services relating to military equipment or sensitive equipment;
 - (e) goods, services or works for wholly military purposes;
 - (f) sensitive services or sensitive works;

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- (g) goods, services or works that are otherwise relevant to the operational capability, effectiveness, readiness for action, safety or security of the armed forces.
- (2) In this Act, a reference to a defence and security contract includes a reference to a framework for the future award of contracts for the supply of goods, services or works of a kind described in subsection (1)(a) to (g).
- (3) A contract that is a defence and security contract only by virtue of subsection (1)(g) is not to be treated as a defence and security contract for the purposes of Schedule 1 (thresholds for application of this Act).
- (4) In this Act, “defence authority contract” means a defence and security contract awarded by a defence authority.
- (5) A “defence authority” is a contracting authority specified in regulations made by a Minister of the Crown.
- (6) A Minister of the Crown may only specify a contracting authority for the purposes of subsection (5) if the Minister considers that the authority exercises its functions wholly or mainly for the purposes of defence or national security.
- (7) In this section—
- “classified information” means information or other material which—
 - (a) in the interests of national security, requires protection from unauthorised access, distribution, or destruction, or from other compromise, and
 - (b) on the basis of those interests, has that protection under the law of any part of the United Kingdom;
 - “decommissioning”, in relation to equipment, includes—
 - (a) withdrawal of equipment from use;
 - (b) disposal or destruction of equipment;
 - “development”, in relation to equipment, includes—
 - (a) research allowing for the development of equipment, and
 - (b) development of industrial processes allowing for the production of equipment;
 - “equipment” includes any part, component or subassembly of equipment;
 - “maintenance”, in relation to equipment, includes—
 - (a) repair of equipment;
 - (b) modernisation of equipment;
 - (c) modifications to equipment;
 - (d) installing equipment, including after its transport to a new location;
 - (e) testing equipment;
 - “military equipment” means equipment specifically designed or adapted for military purposes, including—
 - (a) arms, munitions or war material, and
 - (b) any of the military goods, software and technology the export or transfer of which is controlled by virtue of Schedule 2 to the Export Control Order 2008 (S.I. 2008/3231), as amended from time to time;
 - “sensitive equipment” means equipment for use for security purposes where—

- (a) the use or supply of the equipment may involve dealing with classified information,
- (b) the supply of the equipment requires access to a physical site or to other equipment as a result of which classified information is likely to be accessible to the supplier, or
- (c) the equipment contains classified information;
“sensitive services” means services performed for security purposes where performing the services—
 - (a) involves dealing with classified information, or
 - (b) requires access to a physical site or to equipment as a result of which sensitive equipment or classified information is likely to be accessible to the supplier,and includes the training of personnel to use sensitive equipment;
“sensitive works” means works undertaken for security purposes, where undertaking the works—
 - (a) involves dealing with classified information, or
 - (b) requires access to a physical site or to equipment as a result of which sensitive equipment or classified information is likely to be accessible to the supplier;“supply”, in relation to equipment, other goods, services or works, includes the development of the equipment, other goods, services or works for the purposes of their supply to the contracting authority;
“wholly military purposes” include—
 - (a) the transportation of military personnel or military equipment;
 - (b) the training of military personnel;
 - (c) the training of other personnel to use military equipment;
 - (d) the construction of military facilities, including military airfields, military storage facilities or facilities for the maintenance of military equipment.

8 Concession contracts

- (1) In this Act, “concession contract” means a contract for the supply, for pecuniary interest, of works or services to a contracting authority where—
 - (a) at least part of the consideration for that supply is a right for the supplier to exploit the works or services, and
 - (b) under the contract the supplier is exposed to a real operating risk.
- (2) An “operating risk” is a risk that the supplier will not be able to recover its costs in connection with the supply and operation of the works or services, where the factors giving rise to that risk—
 - (a) are reasonably foreseeable at the time of award, and
 - (b) arise from matters outside the control of the contracting authority and the supplier.

9 Light touch contracts

- (1) In this Act, “light touch contract” means a contract wholly or mainly for the supply of services of a kind specified in regulations under subsection (2).

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- (2) An appropriate authority may by regulations specify services for the purposes of the definition in subsection (1).
- (3) But an appropriate authority may specify services only if, having had regard to the nature of those services, the authority considers that it is appropriate for the award of public contracts for their supply to be exempted from the provisions of this Act that do not apply to light touch contracts.
- (4) In having regard to the nature of services for that purpose, the appropriate authority must, in particular, consider the extent to which—
 - (a) suppliers from outside the United Kingdom are likely to want to compete for contracts for the supply of the services;
 - (b) the services are supplied for the benefit of individuals (for example, health or social care services) or the community generally;
 - (c) proximity between the supplier and the recipient of the services is necessary or expedient for the effective and efficient supply of the services.
- (5) In this Act, a reference to a light touch contract includes a reference to a framework for the future award of contracts wholly or mainly for the supply of services of a kind specified in regulations under subsection (2).

10 Mixed procurement: special regime contracts

- (1) Subsection (3) applies if, on award of a special regime contract other than a framework, a contracting authority considers that—
 - (a) certain of the goods, services or works to be supplied under the contract could reasonably be supplied under a separate contract, and
 - (b) that contract—
 - (i) would not be a special regime contract of the same kind (or at all), and
 - (ii) would have an estimated value of not less than the threshold amount for the type of contract.
- (2) Subsection (3) applies if, on award of a special regime contract that is a framework, a contracting authority considers that—
 - (a) certain of the goods, services or works to be supplied under contracts awarded in accordance with the framework could reasonably be supplied under a contract not awarded in accordance with the framework, and
 - (b) that contract—
 - (i) would not be a special regime contract of the same kind (or at all), and
 - (ii) would have an estimated value of not less than the threshold amount for the type of contract.
- (3) The contract is not to be treated as a special regime contract for the purposes of this Act.
- (4) Subsection (3) does not apply to prevent the contract from being treated as a defence and security contract if the contracting authority has good reasons for not awarding separate contracts.
- (5) In considering whether goods, services or works could reasonably be supplied under a separate contract, a contracting authority may, for example, have regard to the practical and financial consequences of awarding more than one contract.

- (6) A “special regime contract” means—
- (a) a concession contract,
 - (b) a defence and security contract,
 - (c) a light touch contract, or
 - (d) a utilities contract,
- and a reference to a special regime contract of a particular kind is a reference to a special regime contract of a kind described in paragraph (a), (b), (c) or (d).
- (7) This section does not apply for the purpose of determining whether a contract is a public contract.
- (8) This section does not apply to a contract awarded in accordance with a framework.

PART 2

PRINCIPLES AND OBJECTIVES

11 Covered procurement only in accordance with this Act

- (1) A contracting authority may not carry out a covered procurement except in accordance with this Act.
- (2) Accordingly, a contracting authority may not enter into a public contract unless it is awarded in accordance with—
- (a) section 19 (competitive award);
 - (b) section 41 (direct award in special cases);
 - (c) section 43 (direct award after switching procedures);
 - (d) section 45 (award under frameworks).

12 Covered procurement: objectives

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

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13 The national procurement policy statement

- (1) A Minister of the Crown may publish a statement setting out the Government’s strategic priorities in relation to procurement.
- (2) In this section, “the national procurement policy statement” means the statement for the time being published under this section.
- (3) Before publishing the national procurement policy statement, a Minister of the Crown must—
 - (a) carry out such consultation as the Minister considers appropriate,
 - (b) make any changes to the statement that appear to the Minister to be necessary in view of responses to the consultation, and
 - (c) lay the statement before Parliament.
- (4) A Minister of the Crown must withdraw the national procurement policy statement if, before the end of the 40-day period, either House of Parliament resolves not to approve it.
- (5) “The 40-day period” is the period of 40 days beginning with the day on which the statement is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the days on which it is laid).
- (6) When calculating the 40-day period, ignore any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (7) A Minister of the Crown must keep the national procurement policy statement under review.
- (8) The national procurement policy statement may be amended or replaced by a subsequent statement, and this section applies in relation to any amended or replacement statement as it applies in relation to the original statement.
- (9) A contracting authority must have regard to the national procurement policy statement.
- (10) Subsection (9) does not apply—
 - (a) to private utilities;
 - (b) in relation to the award of a contract—
 - (i) in accordance with a framework, or
 - (ii) by reference to suppliers’ membership of a dynamic market;
 - (c) in relation to procurement under a devolved Welsh procurement arrangement or transferred Northern Ireland procurement arrangement;
 - (d) to a devolved Welsh authority or transferred Northern Ireland authority, except in relation to procurement under a reserved procurement arrangement (but not an arrangement of a kind mentioned in paragraph (b)).

14 The Wales procurement policy statement

- (1) The Welsh Ministers may publish a statement setting out the Welsh Government’s strategic priorities in relation to procurement.
- (2) In this section, “the Wales procurement policy statement” means the statement for the time being published under this section.

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- (3) Before publishing the Wales procurement policy statement, the Welsh Ministers must—
 - (a) carry out such consultation as the Welsh Ministers consider appropriate,
 - (b) make any changes to the statement that appear to the Welsh Ministers to be necessary in view of responses to the consultation, and
 - (c) lay the statement before the Senedd.
- (4) The Welsh Ministers must withdraw the Wales procurement policy statement if, before the end of the period of 40 days beginning with the day on which the statement is laid before the Senedd, the Senedd resolves that the statement be annulled.
- (5) When calculating the period of 40 days for the purposes of subsection (4), ignore any period during which the Senedd is dissolved or in recess for more than four days.
- (6) The Welsh Ministers must keep the Wales procurement policy statement under review.
- (7) The Wales procurement policy statement may be amended or replaced by a subsequent statement, and this section applies in relation to any amended or replacement statement as it applies in relation to the original statement.
- (8) The following contracting authorities must have regard to the Wales procurement policy statement—
 - (a) a devolved Welsh authority, except in relation to procurement under a reserved procurement arrangement or transferred Northern Ireland procurement arrangement;
 - (b) a contracting authority other than a devolved Welsh authority in relation to procurement under a devolved Welsh procurement arrangement.
- (9) But subsection (8) does not apply—
 - (a) to private utilities;
 - (b) in relation to the award of a contract—
 - (i) in accordance with a framework, or
 - (ii) by reference to suppliers’ membership of a dynamic market.
- (10) In this section “the Senedd” means Senedd Cymru.

PART 3

AWARD OF PUBLIC CONTRACTS AND PROCEDURES

CHAPTER 1

PRELIMINARY STEPS

15 Planned procurement notices

- (1) Before publishing a tender notice, a contracting authority may publish a planned procurement notice.
- (2) A “planned procurement notice” means a notice setting out—
 - (a) that the contracting authority intends to publish a tender notice, and

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- (b) any other information specified in regulations under section 95.
- (3) A “qualifying planned procurement notice” means a planned procurement notice published at least 40 days but not more than 12 months before the day on which the tender notice is published.
- (4) See section 54(4) for provision for reduced tendering periods in cases where a qualifying planned procurement notice has been published.

16 Preliminary market engagement

- (1) Before publishing a tender notice in respect of a public contract, a contracting authority may engage with suppliers and other persons for the purpose of—
 - (a) developing the authority’s requirements and approach to the procurement;
 - (b) designing a procedure, conditions of participation or award criteria;
 - (c) preparing the tender notice and associated tender documents;
 - (d) identifying suppliers that may be able to supply the goods, services or works required;
 - (e) identifying likely contractual terms;
 - (f) building capacity among suppliers in relation to the contract being awarded.
- (2) Engagement under subsection (1) is called “preliminary market engagement”.
- (3) In carrying out preliminary market engagement, a contracting authority must take steps to ensure that—
 - (a) suppliers participating in the preliminary market engagement are not put at an unfair advantage, and
 - (b) competition in relation to the award of the public contract is not otherwise distorted.
- (4) Subsection (5) applies if a contracting authority considers that—
 - (a) a supplier’s participation in preliminary market engagement has put the supplier at an unfair advantage in relation to the award of a public contract, and
 - (b) the advantage cannot be avoided.
- (5) The contracting authority must in relation to the award—
 - (a) treat the supplier as an excluded supplier for the purpose of—
 - (i) assessing tenders under section 19 (competitive award), or
 - (ii) awarding a contract under section 41 or 43 (direct award), and
 - (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.

17 Preliminary market engagement notices

- (1) If a contracting authority carries out preliminary market engagement, the authority must—
 - (a) publish a preliminary market engagement notice before publishing a tender notice, or
 - (b) provide reasons for not doing so in the tender notice.
- (2) A “preliminary market engagement notice” means a notice setting out—

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- (a) that the contracting authority intends to conduct, or has conducted, preliminary market engagement, and
- (b) any other information specified in regulations under section 95.

18 Duty to consider lots

- (1) Before publishing a tender notice in respect of a public contract, a contracting authority must consider—
 - (a) whether the goods, services or works to be supplied under the contract could reasonably be supplied under more than one contract, and
 - (b) whether such contracts could appropriately be awarded by reference to lots.
- (2) If the contracting authority considers that the goods, services or works could reasonably be supplied under more than one contract and such contracts could appropriately be awarded by reference to lots, the authority must—
 - (a) arrange for the award of the contract or contracts by reference to lots, or
 - (b) provide reasons for not doing so.

CHAPTER 2

COMPETITIVE AWARD

Terms of a procurement

19 Award of public contracts following a competitive tendering procedure

- (1) A contracting authority may award a public contract to the supplier that submits the most advantageous tender in a competitive tendering procedure.
- (2) The “most advantageous tender” is the tender that the contracting authority considers—
 - (a) satisfies the contracting authority’s requirements, and
 - (b) best satisfies the award criteria when assessed by reference to—
 - (i) the assessment methodology under section 23(3)(a), and
 - (ii) if there is more than one criterion, the relative importance of the criteria under section 23(3)(b).
- (3) In assessing tenders for the purposes of this section a contracting authority—
 - (a) must disregard any tender from a supplier that does not satisfy the conditions of participation;
 - (b) may disregard any tender from a supplier that—
 - (i) is not a United Kingdom supplier or treaty state supplier, or
 - (ii) intends to sub-contract the performance of all or part of the contract to a supplier that is not a United Kingdom supplier or treaty state supplier;
 - (c) may disregard any tender that offers a price that the contracting authority considers to be abnormally low for performance of the contract;
 - (d) may disregard any tender which breaches a procedural requirement set out in the tender notice or associated tender documents.

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- (4) Before disregarding a tender under subsection (3)(c) (abnormally low price), a contracting authority must—
 - (a) notify the supplier that the authority considers the price to be abnormally low, and
 - (b) give the supplier reasonable opportunity to demonstrate that it will be able to perform the contract for the price offered.
- (5) If the supplier demonstrates to the contracting authority’s satisfaction that it will be able to perform the contract for the price offered, the authority may not disregard the tender under subsection (3)(c) (abnormally low price).
- (6) The reference to a tender breaching a procedural requirement includes a reference to a supplier breaching a procedural requirement in relation to the tender.
- (7) In this Act, a reference to a contracting authority’s requirements is a reference to requirements described in the tender notice or associated tender documents (see section 21(5) and (6)).
- (8) See sections 26 and 28 for provision about disregarding tenders from suppliers that are excluded or excludable suppliers or that are sub-contracting to excluded or excludable suppliers.
- (9) See sections 32 and 33 for provision about reserving public contracts to supported employment providers and qualifying public service mutuals.
- (10) See section 34 for provision about disregarding tenders from suppliers that are not members of a dynamic market.
- (11) In this section “procedural requirement” includes a requirement that a supplier provide information.

20 Competitive tendering procedures

- (1) Before awarding a public contract under section 19, a contracting authority must carry out a competitive tendering procedure in accordance with a tender notice and any associated tender documents.
- (2) A “competitive tendering procedure” is—
 - (a) a single-stage tendering procedure without a restriction on who can submit tenders (an “open procedure”), or
 - (b) such other competitive tendering procedure as the contracting authority considers appropriate for the purpose of awarding the public contract (a “competitive flexible procedure”).
- (3) A contracting authority must ensure that the procedure is a proportionate means of awarding the public contract, having regard to the nature, complexity and cost of the contract.
- (4) A competitive flexible procedure—
 - (a) may limit the number of participating suppliers, generally or in respect of particular tendering rounds or other selection processes;
 - (b) may provide for the refinement of award criteria in accordance with section 24;

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- (c) may not permit the participation of suppliers that did not submit a tender in the first round of tendering or that were excluded following an earlier round.
- (5) A competitive flexible procedure may provide for the exclusion of suppliers—
 - (a) by reference to conditions of participation (see section 22);
 - (b) by reference to an intermediate assessment of tenders;
 - (c) that are not United Kingdom suppliers or treaty state suppliers;
 - (d) that intend to sub-contract the performance of all or part of the contract to a supplier that is not a United Kingdom supplier or treaty state supplier.
- (6) The reference in subsection (5)(b) to an intermediate assessment of tenders is a reference to an assessment of which tenders—
 - (a) satisfy the contracting authority’s requirements, and
 - (b) best satisfy the award criteria at the point of exclusion, when assessed by reference to—
 - (i) the assessment methodology under section 23(3)(a), and
 - (ii) if there is more than one criterion, the relative importance of the criteria under section 23(3)(b),in each case, at the point of assessment.
- (7) A competitive tendering procedure may, if a contract is being awarded by reference to lots, limit the number of lots in respect of which any one supplier can submit a tender.
- (8) See sections 27, 28 and 30 for provision about excluding suppliers that are excluded or excludable suppliers, that are sub-contracting to excluded or excludable suppliers or for improper behaviour.
- (9) See sections 32 and 33 for provision about reserving public contracts to sheltered employment providers and qualifying mutual societies.
- (10) See section 34 for provision about excluding suppliers that are not members of a dynamic market.

21 Tender notices and associated tender documents

- (1) A contracting authority must publish a tender notice for the purpose of—
 - (a) inviting suppliers to submit a tender as part of an open procedure, or
 - (b) in the case of a competitive flexible procedure—
 - (i) inviting suppliers to submit a request to participate in the procedure, or
 - (ii) where no such invitation is made, inviting suppliers to submit their first, or only, tender as part of the procedure.
- (2) A “tender notice” means a notice setting out—
 - (a) that a contracting authority intends to award a public contract under section 19, and
 - (b) any other information specified in regulations under section 95.
- (3) A contracting authority must provide any associated tender documents in accordance with the tender notice.

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- (4) “Associated tender document” means, in relation to a tender notice, a document setting out information specified in regulations under section 95 that supplements that set out in the tender notice.
- (5) A contracting authority may not invite suppliers to submit a tender as part of a competitive tendering procedure unless it is satisfied that the tender notice or associated tender documents contain—
 - (a) information sufficient to allow suppliers to prepare such a tender, and
 - (b) in particular, details of the goods, services or works required by the contracting authority.
- (6) In detailing its requirements, a contracting authority must be satisfied that they—
 - (a) are sufficiently clear and specific, and
 - (b) do not break the rules on technical specifications in section 56.
- (7) See section 40 for an exception to the duty in subsection (1) for contracts awarded by reference to suppliers’ membership of certain utilities dynamic markets.

22 Conditions of participation

- (1) A contracting authority may set conditions of participation in relation to the award of a public contract under section 19 only if it is satisfied that the conditions are a proportionate means of ensuring that suppliers have—
 - (a) the legal and financial capacity to perform the contract, or
 - (b) the technical ability to perform the contract.
- (2) A “condition of participation” is a condition that a supplier must satisfy if the supplier is to be awarded the public contract.
- (3) A condition set under subsection (1)(a) may not—
 - (a) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;
 - (b) require insurance relating to the performance of the contract to be in place before the award of the contract.
- (4) A condition set under subsection (1)(b) may relate to suppliers’ qualifications, experience or technical ability, but may not—
 - (a) require suppliers to have been awarded a contract by a particular contracting authority,
 - (b) break the rules on technical specifications in section 56, or
 - (c) require particular qualifications without allowing for their equivalents.
- (5) When considering whether a condition is proportionate for the purposes of subsection (1), a contracting authority must have regard to the nature, complexity and cost of the public contract.
- (6) A condition of participation may require the provision of evidence that is verifiable by a person other than the supplier.
- (7) If a supplier does not satisfy a condition of participation, the contracting authority may exclude the supplier from participating in, or progressing as part of, the competitive tendering procedure.

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- (8) A supplier is to be treated as satisfying a condition of participation to the extent that a supplier associated with the supplier satisfies the condition.
- (9) For the purposes of this section, a supplier is associated with another supplier if—
- (a) the suppliers are submitting a tender together, or
 - (b) the contracting authority is satisfied that the suppliers will enter into legally binding arrangements to the effect that—
 - (i) the supplier will sub-contract the performance of all or part of the contract to the other, or
 - (ii) the other supplier will guarantee the performance of all or part of the contract by the supplier.

23 Award criteria

- (1) In this Act, “award criteria” means criteria set in accordance with this section against which tenders may be assessed for the purpose of awarding a public contract under section 19 (award following competitive tendering procedure).
- (2) In setting award criteria, a contracting authority must be satisfied that they—
- (a) relate to the subject-matter of the contract,
 - (b) are sufficiently clear, measurable and specific,
 - (c) do not break the rules on technical specifications in section 56, and
 - (d) are a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.
- (3) In setting award criteria, a contracting authority must—
- (a) describe how tenders are to be assessed by reference to them and, in particular, specify whether failure to meet one or more criteria would disqualify a tender (the “assessment methodology”), and
 - (b) if there is more than one criterion, indicate their relative importance by—
 - (i) weighting each as representing a percentage of total importance,
 - (ii) ranking them in order of importance, or
 - (iii) describing it in another way.
- (4) In setting award criteria for the assessment of tenders by reference to lots, a contracting authority—
- (a) may limit the number of lots that may be awarded to any one supplier, and
 - (b) in doing so, must provide an objective mechanism for supplier selection in circumstances where a supplier would otherwise exceed the limit.
- (5) In subsection (2), the reference to the subject-matter of a contract includes a reference to—
- (a) the goods, services or works to be supplied under the contract, including in respect of any aspect of their production, trading or other stage in their life-cycle;
 - (b) how or when those goods, services or works are to be supplied;
 - (c) the qualifications, experience, ability, management or organisation of staff where those factors are likely to make a material difference to the quality of goods, services or works being supplied;
 - (d) price, other costs or value for money in all the circumstances.

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- (6) In the case of a light touch contract, the reference to the subject-matter of the contract also includes a reference to—
- (a) the views of an individual for whose benefit the services are to be supplied (a “service recipient”), or of a person providing care to a service recipient, in relation to—
 - (i) who should supply the services, and
 - (ii) how and when they should be supplied;
 - (b) the different needs of different service recipients;
 - (c) the importance of proximity between the supplier and service recipients for the effective and efficient supply of the services.

24 Refining award criteria

- (1) A contracting authority may refine an award criterion as part of a competitive flexible procedure if—
 - (a) the tender notice or associated tender documents provide for the refinement of the criterion, and
 - (b) the authority is yet to invite suppliers to submit tenders to be assessed under section 19 (award following competitive tendering procedure).
- (2) A contracting authority may, in consequence of refining an award criterion under subsection (1), refine the indication of the relative importance of the award criteria under section 23(3)(b).
- (3) A contracting authority may not make a refinement under this section if it would result in award criteria that would, had the refinement been made earlier, have allowed one or more suppliers that did not progress beyond an earlier round or selection process to have done so.
- (4) A contracting authority must modify and republish or provide again the tender notice and any associated tender documents affected by refinements under this section.

25 Sub-contracting specifications

- (1) Subsection (2) applies if a contracting authority considers that the authority could award a contract for the supply of certain goods, services or works to a particular supplier under section 41 (direct award in special cases).
- (2) In awarding a contract that is wholly or partly for the supply of those goods, services or works under section 19 (award following competitive tendering procedure), the contracting authority may require that a supplier sub-contracts the supply of those goods, services or works to the particular supplier.

Exclusions and modifications

26 Excluding suppliers from a competitive award

- (1) In assessing tenders under section 19, a contracting authority must disregard any tender from a supplier that is an excluded supplier.
- (2) Before assessing which tender best satisfies the award criteria for the purposes of section 19, a contracting authority—

- (a) must consider whether a supplier is an excludable supplier, and
 - (b) may disregard any tender from an excludable supplier.
- (3) If the supplier is an excluded or excludable supplier only by virtue of an associated person being an excluded or excludable supplier, the contracting authority must, before disregarding a tender—
 - (a) notify the supplier of its intention to disregard, and
 - (b) give the supplier reasonable opportunity to replace the associated person.
- (4) In this Act, “associated person” means a person that the supplier is relying on in order to satisfy the conditions of participation (see section 22(8)), but not a person who is to act as guarantor as described in section 22(9).

27 Excluding suppliers from a competitive flexible procedure

- (1) Before permitting a supplier to participate in a competitive flexible procedure, a contracting authority must determine whether the supplier is—
 - (a) an excluded supplier, or
 - (b) an excludable supplier.
- (2) The contracting authority must exclude an excluded supplier from participating in, or progressing as part of, the competitive flexible procedure.
- (3) The contracting authority may exclude an excludable supplier from participating in, or progressing as part of, the competitive flexible procedure.
- (4) Before excluding a supplier that is an excluded supplier or excludable supplier only by virtue of an associated person, a contracting authority must—
 - (a) notify the supplier of its intention, and
 - (b) provide the supplier with reasonable opportunity to replace the associated person.
- (5) In this section, a reference to a supplier participating in a competitive flexible procedure is a reference to a supplier participating beyond the initial submission of tenders or requests to participate.

28 Excluding suppliers by reference to sub-contractors

- (1) A contracting authority must as part of a competitive tendering procedure—
 - (a) request information about whether a supplier intends to sub-contract the performance of all or part of the public contract, and
 - (b) seek to determine whether any intended sub-contractor is on the debarment list.
- (2) A contracting authority may, as part of a competitive tendering procedure, request information for the purpose of determining whether any intended sub-contractor is an excluded or excludable supplier.
- (3) If, after requesting information under subsection (1) or (2), a contracting authority considers that a supplier intends to sub-contract to a supplier that is an excluded supplier, the contracting authority must—
 - (a) treat the supplier as an excluded supplier for the purpose of assessing tenders under section 19, and

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- (b) exclude the supplier from participating in, or progressing as part of, the competitive tendering procedure.
- (4) If, after requesting information under subsection (1) or (2), a contracting authority considers that a supplier intends to sub-contract to a supplier that is an excludable supplier, the contracting authority—
 - (a) must treat the supplier as an excludable supplier for the purpose of assessing tenders under section 19, and
 - (b) may exclude the supplier from participating in, or progressing as part of, the competitive tendering procedure.
- (5) Before disregarding a tender or excluding a supplier under subsection (3) or (4), a contracting authority must—
 - (a) notify the supplier of its intention, and
 - (b) give the supplier reasonable opportunity to find an alternative supplier with which to sub-contract.
- (6) In this section, a reference to a supplier participating in a competitive tendering procedure is a reference to a supplier participating beyond the initial submission of tenders or requests to participate.
- (7) Subsections (3) and (4) do not apply if the intended sub-contractor is an associated person.

29 Excluding a supplier that is a threat to national security

- (1) This section applies if a relevant contracting authority intends to disregard a tender under section 26 or 28 or exclude a supplier under section 27 or 28 on the basis of the discretionary exclusion ground in paragraph 14 of Schedule 7 (threat to national security).
- (2) The contracting authority may not disregard the tender, exclude the supplier or notify the supplier of its intention unless—
 - (a) the authority has notified a Minister of the Crown of its intention, and
 - (b) the Minister of the Crown considers that—
 - (i) the supplier or an intended sub-contractor is an excludable supplier by reference to paragraph 14 of Schedule 7, and
 - (ii) the tender should be disregarded or supplier excluded.
- (3) The reference in subsection (2) to a contracting authority notifying a supplier of its intention is a reference to notification in accordance with section 26(3), 27(4) or 28(5).
- (4) In this section, a “relevant contracting authority” means a contracting authority other than—
 - (a) a Minister of the Crown or a government department,
 - (b) the Corporate Officer of the House of Commons, or
 - (c) the Corporate Officer of the House of Lords.

30 Excluding suppliers for improper behaviour

- (1) Subsection (2) applies if a contracting authority determines that—
 - (a) a supplier has acted improperly in relation to the award of a public contract,

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- (b) in consequence, the supplier is put at an unfair advantage in relation to the award, and
 - (c) the unfair advantage cannot be avoided other than by excluding the supplier.
- (2) The contracting authority must in relation to the award—
 - (a) treat the supplier as an excluded supplier for the purpose of assessing tenders under section 19, and
 - (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.
- (3) Before making a determination of the kind described in subsection (1), a contracting authority must give the supplier reasonable opportunity to—
 - (a) make representations, and
 - (b) provide relevant evidence.
- (4) In subsection (1), the reference to a supplier acting improperly is reference to a supplier—
 - (a) failing to provide information requested by the contracting authority,
 - (b) providing information that is incomplete, inaccurate or misleading,
 - (c) accessing confidential information, or
 - (d) unduly influencing the contracting authority’s decision-making.
- (5) Subsection (6) applies if—
 - (a) a contracting authority has, in relation to the award of a public contract, requested—
 - (i) information about a supplier’s connected persons or associated persons for the purpose of determining whether the supplier is an excluded or excludable supplier, or
 - (ii) other information under section 28(2) (excluding suppliers by reference to sub-contractors), and
 - (b) the supplier has—
 - (i) failed to provide the information requested, or
 - (ii) provided information that is incomplete, inaccurate or misleading.
- (6) The contracting authority must in relation to the award—
 - (a) treat the supplier as an excluded supplier for the purpose of assessing tenders under section 19, and
 - (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.

31 Modifying a section 19 procurement

- (1) A contracting authority may modify the terms of a covered procurement before the following deadlines have passed—
 - (a) in the case of an open procedure, the deadline for submitting tenders;
 - (b) in the case of a competitive flexible procedure—
 - (i) the deadline for submitting a request to participate in the procedure, or
 - (ii) where there has been no invitation to submit such requests, the deadline for submitting a first or only tender.

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- (2) In the case of a competitive flexible procedure, a contracting authority may also modify the terms of a covered procurement before the deadline for submitting a tender for assessment under section 19 (award following competitive tendering procedure) has passed if—
- (a) the modification is not substantial, or
 - (b) the procurement relates to the award of a light touch contract.
- (3) A modification is “substantial” if—
- (a) it would permit suppliers that are not participating suppliers to submit a tender, or
 - (b) the contracting authority considers that, had the modification been reflected in the tender notice or associated tender documents before a deadline referred to in subsection (1)(b) passed—
 - (i) one or more participating suppliers would not be a participating supplier, or
 - (ii) one or more suppliers that are not participating suppliers would be a participating supplier.
- (4) Whenever a contracting authority modifies the terms of a covered procurement, the authority must consider revising applicable tender deadlines and other time limits in accordance with section 54 (time limits).
- (5) If a contracting authority modifies the terms of a covered procurement under subsection (1), the authority must revise and republish or provide again the tender notice and any associated tender documents affected by the modifications or time limit revisions.
- (6) If a contracting authority modifies the terms of a covered procurement under subsection (2), the authority must notify each participating supplier.
- (7) In this section—
- “terms of a covered procurement” means anything set out in a tender notice or associated tender documents, including any requirements of a competitive tendering procedure, conditions of participation or award criteria;
- “participating supplier” means a supplier that—
- (a) has submitted a request to participate in, or a tender as part of, the competitive tendering procedure, and
 - (b) has not been excluded in accordance with the procedure or under this Act.
- (8) See section 43 for provision about switching to direct award.

Reserving contracts to certain suppliers

32 Reserving contracts to supported employment providers

- (1) A competitive flexible procedure may provide for suppliers that are not supported employment providers to be excluded from participating in, or progressing as part of, the procedure.

- (2) Subsection (3) applies in relation to the award of a public contract under section 19 if the competitive flexible procedure provides for suppliers to be excluded as set out in subsection (1).
- (3) In assessing tenders under section 19, a contracting authority must disregard any tender from a supplier that is not a supported employment provider.
- (4) A “supported employment provider” means an organisation that operates wholly or partly for the purpose of providing employment, or employment-related support, to disabled or disadvantaged individuals where—
 - (a) disabled or disadvantaged individuals represent at least 30 per cent of the workforce of the organisation,
 - (b) if a particular part of the organisation is to perform the contract, disabled or disadvantaged individuals represent at least 30 per cent of the workforce of that part of the organisation, or
 - (c) if more than one organisation is to perform the contract, disabled or disadvantaged individuals represent at least 30 per cent of the combined workforce of—
 - (i) those organisations,
 - (ii) where a particular part of each organisation is to perform the contract, those parts, or
 - (iii) where a combination of organisations and parts is to perform the contract, those organisations and parts.

33 Reserving contracts to public service mutuals

- (1) This section applies in relation to the award of a public contract under section 19 if the contract—
 - (a) is for reservable light touch services, and
 - (b) has a maximum term of five years or less.
- (2) A competitive flexible procedure may provide for suppliers that are not qualifying public service mutuals to be excluded from participating in, or progressing as part of, the procedure.
- (3) Subsection (4) applies in relation to the award of a public contract under section 19 if the competitive flexible procedure provides for suppliers to be excluded as set out in subsection (2).
- (4) In assessing tenders under section 19, a contracting authority must disregard any tender from a supplier that is not a qualifying public service mutual.
- (5) A “qualifying public service mutual” means a public service mutual that has not entered into a comparable contract during the period of three years ending with the day on which the contract referred to in subsection (1) is awarded.
- (6) A “public service mutual” means a body that—
 - (a) operates for the purpose of delivering public services and mainly for the purpose of delivering one or more reservable light touch services,
 - (b) is run on a not-for-profit basis or provides for the distribution of profits only to members, and
 - (c) is under the management and control of its employees.

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(7) In this section—

“comparable contract” means a contract that was—

- (a) a contract for the same kind of services,
- (b) awarded by the same contracting authority, and
- (c) awarded in reliance on this section;

“reservable light touch services” means services of a kind specified in regulations under subsection (8).

(8) An appropriate authority may by regulations specify services of a kind specified in regulations of the authority under section 9 (light touch contracts).

Awarding contracts by reference to dynamic markets

34 Competitive award by reference to dynamic markets

(1) A competitive flexible procedure may provide for the following suppliers to be excluded from participating in, or progressing as part of, the procedure—

- (a) suppliers that are not members of an appropriate dynamic market, or
- (b) suppliers that are not members of an appropriate part of an appropriate dynamic market.

(2) Subsection (3) applies in relation to the award of a public contract under section 19 if the competitive flexible procedure provides for suppliers to be excluded as set out in subsection (1).

(3) In assessing tenders under section 19, a contracting authority must disregard any tender from a supplier that is not a member of—

- (a) the appropriate dynamic market, or
- (b) the appropriate part of the appropriate dynamic market.

(4) A contracting authority must, before excluding suppliers or disregarding tenders under this section, consider any applications for membership of the market or part of the market from suppliers that have submitted a request to participate in the competitive flexible procedure, or submitted a tender as part of the competitive flexible procedure.

(5) Subsection (4) does not apply in relation to an application for membership if, due to exceptional circumstances arising from the complexity of the particular procurement, a contracting authority is unable to consider the application before—

- (a) the deadline for submitting a request to participate in the procedure, or
- (b) where there has been no invitation to submit such requests, the deadline for submitting a first or only tender.

(6) A dynamic market or part of a dynamic market is “appropriate” for the purposes of this section if its terms permit the award of the contract by the contracting authority.

(7) This section does not apply in relation to the award of a concession contract, unless the concession contract is also a utilities contract.

(8) In this Act—

“dynamic market” means arrangements established under section 35(1);

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references to a contract being awarded by reference to suppliers' membership of a dynamic market are references to a contract being awarded in reliance on this section;

references to suppliers' membership of a dynamic market are references to suppliers' participation in arrangements established under section 35(1).

35 Dynamic markets: establishment

- (1) A contracting authority may establish arrangements for the purpose of a contracting authority awarding public contracts by reference to suppliers' participation in the arrangements.
- (2) In this Act a “utilities dynamic market” means a dynamic market established only for the purpose of the award of utilities contracts by utilities.
- (3) If arrangements established by any person comply with the requirements of this Act that apply in relation to a utilities dynamic market established by a private utility—
 - (a) the arrangements are to be treated for the purposes of this Act as a utilities dynamic market established by a private utility, and
 - (b) a utility may award public contracts that are utilities contracts by reference to suppliers' membership of the market.
- (4) In this Act, “utility” means—
 - (a) a public authority, or public undertaking, that carries out a utility activity;
 - (b) a private utility.
- (5) Documents establishing or modifying a dynamic market are not a contract for the purposes of this Act.

36 Dynamic markets: membership

- (1) A contracting authority may set conditions for membership of a dynamic market or part of a dynamic market only if it is satisfied that the conditions are a proportionate means of ensuring that members—
 - (a) have the legal and financial capacity to perform contracts awarded by reference to membership of the market or the part of the market;
 - (b) have the technical ability to perform such contracts.
- (2) A condition set under subsection (1)(a) may not—
 - (a) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;
 - (b) require insurance relating to the performance of the contract to be in place before the award of the contract.
- (3) A condition set under subsection (1)(b) may relate to suppliers' qualifications, experience or technical ability, but may not—
 - (a) require suppliers to have been awarded a contract by a particular contracting authority,
 - (b) break the rules on technical specifications in section 56, or
 - (c) require particular qualifications without allowing for their equivalents.

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- (4) When considering whether a condition is proportionate for the purposes of subsection (1) a contracting authority must have regard to the nature, complexity and cost of contracts to be awarded by reference to suppliers' membership of the market.
- (5) A condition for membership may require the provision of evidence that is verifiable by a person other than the supplier.
- (6) A contracting authority must—
 - (a) accept applications for membership of a dynamic market or part of a dynamic market at any time during the term of the market;
 - (b) consider such applications within a reasonable period;
 - (c) admit to the market or the part of the market, as soon as reasonably practicable, any supplier that—
 - (i) is not an excluded or excludable supplier, and
 - (ii) satisfies the conditions for membership;
 - (d) consider whether to admit to the market or the part of the market any supplier that—
 - (i) is an excludable supplier, and
 - (ii) satisfies the conditions for membership;
 - (e) inform a supplier of the outcome of their application, together with reasons for the decision, as soon as reasonably practicable.
- (7) A contracting authority may not—
 - (a) limit the number of suppliers that can be admitted to a dynamic market or part of a market, or
 - (b) modify the conditions for membership of a dynamic market or part of a market during the term of the market.

37 Dynamic markets: removing members from the market

- (1) A contracting authority must remove a supplier from a dynamic market if the authority considers that the supplier is an excluded supplier under section 57(1)(b) (debarment by reference to mandatory exclusion ground).
- (2) A contracting authority may remove a supplier from a dynamic market if—
 - (a) the authority considers that the supplier—
 - (i) is an excluded supplier under section 57(1)(a),
 - (ii) does not satisfy the conditions for membership, or
 - (iii) has, since becoming a member, become an excludable supplier, or
 - (b) the authority discovers that, on becoming a member, the supplier was an excludable supplier.
- (3) The reference to a supplier becoming an excludable supplier includes a reference to a supplier becoming an excludable supplier by virtue of a discretionary exclusion ground that—
 - (a) did not apply before the supplier became a member, or
 - (b) applied before the supplier became a member by reference to different circumstances.
- (4) Before removing a supplier from a dynamic market, a contracting authority must inform the supplier of its decision to do so, together with reasons for the decision.

38 Dynamic markets: fees

- (1) Documents establishing a dynamic market other than a utilities dynamic market may provide for the charging of fees to suppliers that are awarded a contract by reference to their membership of the market.
- (2) Fees charged by virtue of subsection (1) must be set as a fixed percentage to be applied to the estimated value of the awarded contract.
- (3) Documents establishing a utilities dynamic market may provide for the charging of fees to suppliers in connection with obtaining and maintaining membership of the market.

39 Dynamic market notices

- (1) A notice under this section is called a “dynamic market notice”.
- (2) Before establishing a dynamic market, a contracting authority must publish a notice setting out—
 - (a) that the authority intends to establish a dynamic market, and
 - (b) any other information specified in regulations under section 95.
- (3) As soon as reasonably practicable after establishing a dynamic market, the contracting authority must publish a notice setting out—
 - (a) that the dynamic market has been established, and
 - (b) any other information specified in regulations under section 95.
- (4) As soon as reasonably practicable after modifying a dynamic market, the contracting authority must publish a notice setting out—
 - (a) the modifications made to the market, and
 - (b) any other information specified in regulations under section 95.
- (5) As soon as reasonably practicable after a dynamic market ceases to operate, the contracting authority that established the market must publish a notice setting out—
 - (a) that the dynamic market has ceased to operate, and
 - (b) any other information specified in regulations under section 95.
- (6) Subsection (5) does not apply to private utilities.

40 Qualifying utilities dynamic market notices: no duty to publish a tender notice

- (1) The duty to publish a tender notice in section 21(1) does not apply in relation to the award of a contract by reference to suppliers’ membership of—
 - (a) a utilities dynamic market established by reference to a qualifying utilities dynamic market notice, or
 - (b) a part of such a market.
- (2) A contracting authority must instead provide a tender notice to members of the market, or part of the market, for the purposes set out in section 21(1).
- (3) A contracting authority may also provide a tender notice to suppliers that have applied for membership of the market, or part of the market, but have yet to be accepted or rejected.

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- (4) The reference in section 21(5) to a tender notice or associated tender documents includes a reference to a qualifying utilities dynamic market notice.
- (5) Section 34(4) (duty to consider applications for membership) does not apply in relation to the award of a contract by reference to suppliers' membership of—
 - (a) a utilities dynamic market established by reference to a qualifying utilities dynamic market notice, or
 - (b) a part of such a market.
- (6) In this section, “a qualifying utilities dynamic market notice” means a dynamic market notice under section 39(2) (dynamic market notices) that—
 - (a) relates to the establishment of a utilities dynamic market, and
 - (b) sets out—
 - (i) that only members of the market will be notified of a future intention to award a contract by reference to suppliers' membership of the market, and
 - (ii) any other information specified in regulations under section 95.
- (7) In this Act, a reference to publication of a tender notice includes a reference to provision of a tender notice under subsection (2) or (3).

CHAPTER 3

DIRECT AWARD

41 Direct award in special cases

- (1) If a direct award justification applies, a contracting authority may award a public contract directly—
 - (a) to a supplier that is not an excluded supplier, or
 - (b) in accordance with subsection (2).
- (2) A contracting authority may award a contract to a supplier that is an excluded supplier if the contracting authority considers that there is an overriding public interest in awarding the contract to that supplier.
- (3) A contracting authority may carry out a selection process or take such other preliminary steps as it considers appropriate for the purpose of awarding a contract under this section.
- (4) Before awarding a contract to a supplier under this section, a contracting authority must consider whether the supplier is an excludable supplier.
- (5) There is an overriding public interest in awarding a public contract to an excluded supplier if—
 - (a) it is necessary in order to construct, maintain or operate critical national infrastructure,
 - (b) it is necessary in order to ensure the proper functioning of a sector on which the defence, security or economic stability of the United Kingdom relies,
 - (c) failure to do so would prejudice the conduct of military or security operations, or the effective operation of the armed forces or intelligence services, or

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- (d) the contract is being awarded by reference to paragraph 13 of Schedule 5 (extreme and unavoidable urgency) and cannot be awarded to, or performed by, a supplier that is not an excluded supplier within the necessary time frame.
- (6) The direct award justifications are set out in Schedule 5.
- (7) In this section, “intelligence services” means the Security Service, the Secret Intelligence Service and the Government Communications Headquarters.

42 Direct award to protect life, etc

- (1) If a Minister of the Crown considers it necessary, the Minister may by regulations provide that specified public contracts may be awarded under section 41 as if a direct award justification applies.
- (2) In subsection (1), “necessary” means necessary to—
 - (a) protect human, animal or plant life or health, or
 - (b) protect public order or safety.
- (3) Provision under subsection (1) may—
 - (a) specify contracts or classes of contract, or otherwise describe contracts by reference to purpose, subject-matter or contracting authority;
 - (b) include other conditions or limitations;
 - (c) confer a discretion.
- (4) A Minister of the Crown must—
 - (a) keep regulations made under subsection (1) under review, and
 - (b) if the Minister considers that direct award under section 41 is no longer necessary, revoke the regulations.

43 Switching to direct award

- (1) A contracting authority may award a public contract directly to a supplier that is not an excluded supplier if—
 - (a) the authority has invited suppliers to submit tenders as part of, or requests to participate in, a competitive tendering procedure in respect of the contract,
 - (b) it has not received any suitable tenders or requests in response, and
 - (c) it considers that award under section 19 is not possible in the circumstances.
- (2) A tender or request is not suitable if the contracting authority considers that—
 - (a) it would be disregarded in an assessment of tenders under section 19(3)(a), (b) or (c);
 - (b) it does not satisfy the contracting authority’s requirements or the award criteria when assessed by reference to the assessment methodology and the relative importance of the criteria indicated under section 23(3);
 - (c) there is evidence of corruption or collusion between suppliers or between suppliers and contracting authorities;
 - (d) it materially breaches a procedural requirement in the tender notice or associated tender documents.
- (3) A reference to a tender breaching a procedural requirement includes a reference to a supplier breaching a procedural requirement in relation to the tender.

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- (4) A breach is material if the contracting authority considers that ignoring it would put the tender at an unfair advantage.
- (5) A contracting authority may carry out a selection process or take such other preliminary steps as it considers appropriate for the purpose of awarding a contract under subsection (1).
- (6) Before awarding a contract to a supplier under this section, a contracting authority must consider whether the supplier—
 - (a) is an excludable supplier, or
 - (b) submitted an unsuitable tender or request in response to the invitation referred to in subsection (1)(a).

44 Transparency notices

- (1) Before awarding a contract under section 41 or 43 a contracting authority must publish a transparency notice.
- (2) A “transparency notice” means a notice setting out—
 - (a) that a contracting authority intends to award a contract directly, and
 - (b) any other information specified in regulations under section 95.
- (3) This section does not apply in relation to the award of a contract under section 41 by virtue of paragraph 15 of Schedule 5 (direct award: user choice contracts).

CHAPTER 4

AWARD UNDER FRAMEWORKS

45 Frameworks

- (1) A contracting authority may award a public contract in accordance with a framework.
- (2) A “framework” is a contract between a contracting authority and one or more suppliers that provides for the future award of contracts by a contracting authority to the supplier or suppliers.
- (3) Unless subsection (4) applies, a framework may only provide for the future award of a public contract following a competitive selection process.
- (4) A framework may provide for the future award of a public contract without competition between suppliers—
 - (a) in circumstances where only one supplier is party to the framework, or
 - (b) if the framework sets out—
 - (i) the core terms of the public contract, and
 - (ii) an objective mechanism for supplier selection.
- (5) A framework must include the following information—
 - (a) a description of goods, services or works to be provided under contracts awarded in accordance with the framework;
 - (b) the price payable, or mechanism for determining the price payable, under such contracts;

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- (c) the estimated value of the framework;
 - (d) any selection process to be applied on the award of contracts;
 - (e) the term of the framework (see section 47);
 - (f) the contracting authorities entitled to award public contracts in accordance with the framework;
 - (g) whether the framework is awarded under an open framework (see section 49).
- (6) A framework may not—
- (a) permit the award of a public contract to an excluded supplier, or
 - (b) prevent a contracting authority from requesting additional information from suppliers before awarding a contract.
- (7) A framework may provide for the charging of fees at a fixed percentage of the estimated value of any contract awarded to the supplier in accordance with the framework.
- (8) This section does not apply in relation to the award of—
- (a) a concession contract, or
 - (b) a framework.
- (9) Subsections (3) to (5) do not apply to a framework that is a light touch contract (see section 9(5)).

46 Frameworks: competitive selection process

- (1) A competitive selection process may provide for conditions of participation only if the contracting authority is satisfied that the conditions are a proportionate means of ensuring that suppliers party to the framework have—
- (a) the legal and financial capacity to perform the contract, or
 - (b) the technical ability to perform the contract.
- (2) In this section, a “condition of participation” means a condition that a supplier must satisfy in order to be awarded a public contract in accordance with the framework.
- (3) A condition set under subsection (1)(a) may not—
- (a) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;
 - (b) require insurance relating to the performance of the contract to be in place before the award of the contract.
- (4) A condition set under subsection (1)(b) may relate to suppliers’ qualifications, experience or technical ability, but may not—
- (a) require suppliers to have been awarded a contract under the framework or by a particular contracting authority,
 - (b) break the rules on technical specifications in section 56, or
 - (c) require particular qualifications without allowing for their equivalents.
- (5) When considering whether a condition is proportionate for the purposes of subsection (1), a contracting authority must have regard to the nature, complexity and cost of the public contract.

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- (6) A condition of participation may require the provision of evidence that is verifiable by a person other than the supplier.
- (7) If a supplier does not satisfy a condition of participation, the contracting authority may exclude the supplier from participating in, or progressing as part of, the competitive selection process.
- (8) A competitive selection process may provide for the assessment of proposals, but only by reference to one or more of the award criteria against which tenders were assessed in awarding the framework.
- (9) The award criteria may be refined for the purposes of subsection (8).
- (10) In this section, a “competitive selection process” means a competitive selection process for the award of a public contract in accordance with a framework.
- (11) This section does not apply to a framework that is a light touch contract.

47 Frameworks: maximum term

- (1) The term of a framework may not exceed—
 - (a) in the case of a defence and security framework or a utilities framework, eight years, and
 - (b) otherwise, four years.
- (2) Subsection (1) does not apply if the contracting authority considers the nature of the goods, services or works to be supplied under contracts awarded in accordance with the framework means that a longer term is required.
- (3) If a contracting authority relies on subsection (2) in awarding a framework with a term exceeding four or eight years, the contracting authority must set out its reasons in the tender or transparency notice for the framework.
- (4) In this section—
 - (a) “a defence and security framework” is a framework which does not provide for the future award of public contracts other than defence and security contracts;
 - (b) “a utilities framework” is a framework which does not provide for the future award of public contracts other than utilities contracts.
- (5) This section does not apply in relation to—
 - (a) a framework awarded under an open framework (see section 49),
 - (b) a framework awarded by a private utility, or
 - (c) a framework that is a light touch contract (see section 9(5)).

48 Frameworks: implied terms

- (1) It is an implied term of every framework that a contracting authority may exclude a supplier that is an excluded supplier or has, since the award of the framework, become an excludable supplier from participating in any selection process run in relation to the award of a contract under the framework.
- (2) For the purposes of the term in subsection (1), the reference to a supplier becoming an excludable supplier includes a reference to—

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- (a) a supplier becoming an excludable supplier on the basis of a discretionary exclusion ground that—
 - (i) did not apply before award of the contract, or
 - (ii) applied before award of the contract by reference to different circumstances, and
 - (b) a contracting authority discovering that, before award of the contract, the supplier was an excludable supplier.
- (3) Before excluding a supplier that is an excluded or excludable supplier only by virtue of an associated person, the contracting authority must give the supplier reasonable opportunity to replace the associated person.
- (4) Any term purporting to restrict or override the term implied by subsection (1) is without effect.

49 Open frameworks

- (1) An “open framework” is a scheme of frameworks that provides for the award of successive frameworks on substantially the same terms.
- (2) An open framework must provide—
- (a) for the award of a framework at least once during—
 - (i) the period of three years beginning with the day of the award of the first framework in the scheme, and
 - (ii) each period of five years beginning with the day of the award of the second framework in the scheme;
 - (b) for the expiry of one framework on the award of the next (but see subsection (3));
 - (c) for the final framework to expire at the end of the period of eight years beginning with the day on which the first framework under the scheme is awarded.
- (3) An open framework may provide that, if a framework expires in accordance with subsection (2)(b) while a process for the award of a contract in accordance with the framework is ongoing, the contracting authority may continue the process and award the contract as though the framework had not expired.
- (4) If there is no limit on the number of suppliers that can be party to a framework under an open framework, a contracting authority may award the framework to an existing supplier by reference to—
- (a) the fact that the supplier has already been awarded a framework under the scheme,
 - (b) a tender relating to an earlier award under the scheme, or
 - (c) a tender relating to the current award.
- (5) Otherwise, a contracting authority may award a framework under an open framework to an existing supplier by reference to—
- (a) a tender relating to an earlier award of a framework under the scheme, or
 - (b) a tender relating to the current award.
- (6) If a framework under an open framework is awarded to only one supplier, the framework, and the open framework, must expire before the end of the period of four years beginning with the day on which the framework is awarded.

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- (7) Subsection (6) applies despite subsection (2)(c) and any term of the framework or open framework.
- (8) In this section, an “existing supplier” means a supplier that is party to a framework under the open framework.
- (9) A reference to an award on substantially the same terms is a reference to an award that could be made by reference to the same tender or transparency notice without substantial modification (see section 31).
- (10) A framework under an open framework may not be awarded under section 41 (direct award in special cases) or 43 (switching to direct award).

CHAPTER 5

AFTER AWARD, STANDSTILL PERIODS AND NOTICES

50 Contract award notices and assessment summaries

- (1) Before entering into a public contract, a contracting authority must publish a contract award notice.
- (2) A “contract award notice” means a notice setting out—
 - (a) that the contracting authority intends to enter into a contract, and
 - (b) any other information specified in regulations under section 95.
- (3) Before publishing a contract award notice in respect of a contract awarded under section 19 (award following competitive tendering procedure), a contracting authority must provide an assessment summary to each supplier that submitted an assessed tender.
- (4) An “assessment summary” means, in relation to an assessed tender, information about the contracting authority’s assessment of—
 - (a) the tender, and
 - (b) if different, the most advantageous tender submitted in respect of the contract.
- (5) In this section, an “assessed tender” is a tender which—
 - (a) was submitted in respect of the contract and assessed for the purposes of determining the most advantageous tender under section 19(1), and
 - (b) was not disregarded in the assessment of tenders.
- (6) Subsection (1) does not apply in relation to—
 - (a) a defence and security contract awarded under a defence and security framework;
 - (b) a contract awarded under section 41 by reference to paragraph 15 of Schedule 5 (direct award: user choice contracts).

51 Standstill periods on the award of contracts

- (1) A contracting authority may not enter into a public contract before—
 - (a) the end of the mandatory standstill period, or

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- (b) if later, the end of another standstill period provided for in the contract award notice.
- (2) The “mandatory standstill period” is the period of eight working days beginning with the day on which a contract award notice is published in respect of the contract.
- (3) Subsection (1) does not apply in relation to a contract that is—
 - (a) awarded under section 41 by reference to paragraph 13 of Schedule 5 (direct award: extreme and unavoidable urgency);
 - (b) awarded under section 41 by reference to regulations under section 42 (direct award to protect life, etc);
 - (c) awarded under section 41 or 43 (direct award and switching to direct award) by a private utility;
 - (d) awarded in accordance with a framework;
 - (e) awarded by reference to a dynamic market;
 - (f) a light touch contract.
- (4) If a contract is of a kind described in subsection (3), a contracting authority may not enter into the contract before the end of any standstill period (a “voluntary standstill period”) provided for in the contract award notice.
- (5) A voluntary standstill period may not be less than a period of eight working days beginning with the day on which the contract award notice is published.

52 Key performance indicators

- (1) Before entering into a public contract with an estimated value of more than £5 million, a contracting authority must set at least three key performance indicators in respect of the contract.
- (2) Subsection (1) does not apply if the contracting authority considers that the supplier’s performance under the contract could not appropriately be assessed by reference to key performance indicators.
- (3) A contracting authority must publish any key performance indicators set under subsection (1).
- (4) A “key performance indicator” is a factor or measure against which a supplier’s performance of a contract can be assessed during the life-cycle of the contract.
- (5) An appropriate authority may by regulations amend this section for the purpose of changing the financial threshold.
- (6) This section does not apply in relation to a public contract that is—
 - (a) a framework,
 - (b) a utilities contract awarded by a private utility,
 - (c) a concession contract, or
 - (d) a light touch contract.
- (7) See section 71 for provision about assessing performance against, and publishing information about, key performance indicators.

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53 Contract details notices and publication of contracts

- (1) A contracting authority that enters into a public contract must publish a contract details notice—
 - (a) if the contract is a light touch contract, before the end of the period of 120 days beginning with the day on which the contract is entered into;
 - (b) otherwise, before the end of the period of 30 days beginning with the day on which the contract is entered into.
- (2) A “contract details notice” means a notice setting out—
 - (a) that the contracting authority has entered into a contract, and
 - (b) any other information specified in regulations under section 95.
- (3) A contracting authority that enters into a public contract with an estimated value of more than £5 million must publish a copy of the contract—
 - (a) if the contract is a light touch contract, before the end of the period of 180 days beginning with the day on which the contract is entered into;
 - (b) otherwise, before the end of the period of 90 days beginning with the day on which the contract is entered into.
- (4) Subsection (3) does not apply in relation to a contract—
 - (a) awarded by a devolved Welsh authority or a transferred Northern Ireland authority, unless it is awarded under a reserved procurement arrangement, or
 - (b) awarded under a devolved Welsh procurement arrangement or a transferred Northern Ireland procurement arrangement.
- (5) A Minister of the Crown may by regulations amend this section for the purpose of changing the financial threshold.
- (6) This section does not apply—
 - (a) to private utilities, or
 - (b) in relation to a contract awarded under section 41 by reference to paragraph 15 of Schedule 5 (direct award: user choice contracts).

CHAPTER 6

GENERAL PROVISION ABOUT AWARD AND PROCEDURES

Time limits and termination

54 Time limits

- (1) In setting time limits for the purposes of this Part, a contracting authority must, where relevant, have regard to—
 - (a) the nature and complexity of the contract being awarded;
 - (b) the need for site visits, physical inspections and other practical steps;
 - (c) the need for sub-contracting;
 - (d) the nature and complexity of any modification of the tender notice or any associated tender documents;
 - (e) the importance of avoiding unnecessary delay.

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- (2) Time limits set for the purposes of this Part must be the same for each supplier.
- (3) A participation period set under this Part must equal or exceed the shortest minimum period specified in an entry in the second column of the following table that corresponds with an entry in the first column which applies to the circumstances of the case—

<i>Circumstance</i>	<i>Minimum period</i>
The contract being awarded is a light touch contract	No minimum period
The contracting authority considers there to be a state of urgency that means that a 25 day participation period is impractical	10 days
Neither of the above circumstances apply	25 days

- (4) A tendering period set under this Part must equal or exceed the shortest minimum period specified in an entry in the second column of the following table that corresponds with an entry in the first column that applies to the circumstances of the case—

<i>Circumstance</i>	<i>Minimum period</i>
The contract being awarded is a light touch contract	No minimum period
The contract— (a) being awarded is a utilities contract, or (b) is being awarded by a contracting authority that is not a central government authority, and is subject to a negotiated tendering period	No minimum period
The contract— (a) being awarded is a utilities contract, or (b) is being awarded by a contracting authority that is not a central government authority, and tenders may be submitted only by preselected suppliers	10 days
A qualifying planned procurement notice has been issued	10 days
The contracting authority considers there to be a state of urgency that means any other applicable minimum tender period is impractical	10 days
The contract being awarded is being awarded by reference to suppliers' membership of a dynamic market	10 days
Tenders may be submitted electronically, and the tender notice and associated tender documents are all provided at the same time	25 days
Tenders may be submitted electronically, but the tender notice and associated tender documents are not all provided at the same time	30 days
Tenders may not be submitted electronically, but the tender notice and associated tender documents are all provided at the same time	30 days

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<i>Circumstance</i>	<i>Minimum period</i>
Tenders may not be submitted electronically, and the tender notice and associated tender documents are not all provided at the same time	35 days

(5) In this section—

“central government authority” has the meaning given in paragraph 5 of Schedule 1;

“negotiated tendering period” means a tendering period agreed between a contracting authority and pre-selected suppliers in circumstances where tenders may be submitted only by those pre-selected suppliers;

“qualifying planned procurement notice” has the meaning given in section 15;

“participation period” means the period beginning with the day following the day on which a contracting authority invites the submission of requests to participate in a competitive flexible procedure and ending with the day by which those requests must be submitted;

“pre-selected supplier” means a supplier that—

- (a) has been assessed as satisfying conditions of participation before being invited to submit a tender as part of a competitive tendering procedure, or
- (b) in the case of a contract that is being awarded by reference to suppliers’ membership of a dynamic market, is a member of that market;

“tendering period” means the period beginning with the day following the day on which a contracting authority invites the submission of tenders as part of a competitive tendering procedure and ending with the day by which tenders must be submitted.

55 Procurement termination notices

- (1) This section applies if, after publishing a tender or transparency notice in respect of a public contract, a contracting authority decides not to award the contract.
- (2) As soon as reasonably practicable after making the decision, the contracting authority must give notice to that effect.
- (3) This section does not apply to private utilities.

Technical specifications

56 Technical specifications

- (1) This section applies in relation to—
 - (a) a competitive tendering procedure;
 - (b) an award of a public contract in accordance with a framework;
 - (c) a process to become a member of a dynamic market.
- (2) The procurement documents may not refer to design, a particular licensing model or a description of characteristics in circumstances where they could appropriately refer to performance or functional requirements.
- (3) The procurement documents may not refer to a United Kingdom standard unless—

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- (a) the standard adopts an internationally-recognised equivalent, or
 - (b) there is no internationally-recognised equivalent.
- (4) If the procurement documents refer to a United Kingdom standard, they must provide that tenders, proposals or applications that the contracting authority considers satisfy an equivalent standard from another state, territory or organisation of states or territories will be treated as having satisfied the United Kingdom standard.
- (5) In considering whether a standard is equivalent to a United Kingdom standard for the purposes of subsection (4), a contracting authority may have regard to the authority's purpose in referring to the standard.
- (6) A contracting authority may require certification, or other evidence, for the purpose of satisfying itself that a standard is satisfied or equivalent.
- (7) Unless the contracting authority considers it necessary in order to make its requirements understood, the procurement documents may not refer to a particular—
 - (a) trademark, trade name, patent, design or type,
 - (b) place of origin, or
 - (c) producer or supplier.
- (8) If the matters mentioned in subsection (7) are referred to, the procurement documents must also provide that tenders, proposals or applications demonstrating equivalent quality or performance will not be disadvantaged.
- (9) In this section—
 - “procurement documents” means—
 - (a) the tender notice or associated tender documents, including any requirements of a competitive tendering procedure, conditions of participation or award criteria;
 - (b) documents inviting suppliers to participate in a competitive selection process under a framework, including details of the process, any conditions of participation or criteria for the award of the contract;
 - (c) documents inviting suppliers to apply for membership of a dynamic market, including any conditions for membership;
 - “United Kingdom standard” means a standard that is—
 - (a) set by the British Standards Institution, or
 - (b) primarily developed for use in the United Kingdom, or part of the United Kingdom.

Excluding suppliers

57 Meaning of excluded and excludable supplier

- (1) A supplier is an “excluded supplier” if—
 - (a) the contracting authority considers that—
 - (i) a mandatory exclusion ground applies to the supplier or an associated person, and
 - (ii) the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or

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- (b) the supplier or an associated person is on the debarment list by virtue of a mandatory exclusion ground.
- (2) A supplier is an “excludable supplier” if—
- (a) the contracting authority considers that—
 - (i) a discretionary exclusion ground applies to the supplier or an associated person, and
 - (ii) the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again, or
 - (b) the supplier or an associated person is on the debarment list by virtue of a discretionary exclusion ground.
- (3) If a supplier is an excluded supplier on the basis of the supplier or an associated person being on the debarment list only by virtue of paragraph 35 of Schedule 6 (threat to national security), the supplier is to be treated as an excluded supplier only in relation to public contracts of a kind described in the relevant entry.
- (4) For the purposes of a covered procurement carried out by a private utility—
- (a) an excluded supplier is to be regarded as an excludable supplier, and
 - (b) a reference in this Act to an excludable supplier includes a reference to such an excluded supplier.
- (5) In this Act “debarment list” means the list kept under section 62.
- (6) The mandatory exclusion grounds are set out in Schedule 6.
- (7) The discretionary exclusion grounds are set out in Schedule 7.

58 Considering whether a supplier is excluded or excludable

- (1) In considering, for the purposes of section 57(1)(a) or (2)(a), whether the circumstances giving rise to the application of an exclusion ground are continuing or likely to occur again, a contracting authority may have regard to the following matters—
- (a) evidence that the supplier, associated person or connected person has taken the circumstances seriously, for example by paying compensation;
 - (b) steps that the supplier, associated person or connected person has taken to prevent the circumstances continuing or occurring again, for example by changing staff or management, or putting procedures and training in place;
 - (c) commitments that such steps will be taken, or to provide information or access to allow verification or monitoring of such steps;
 - (d) the time that has elapsed since the circumstances last occurred;
 - (e) any other evidence, explanation or factor that the authority considers appropriate.
- (2) Before determining whether a supplier is an excluded supplier under section 57(1)(a) or an excludable supplier under section 57(2)(a), a contracting authority must give the supplier reasonable opportunity to—
- (a) make representations, and
 - (b) provide evidence as to whether exclusion grounds apply and whether the circumstances giving rise to any application are likely to occur again (including information of a kind referred to in subsection (1)).

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- (3) But a contracting authority may not require particular evidence or information unless the authority is satisfied that the requirements are proportionate in the circumstances, having regard to—
- (a) the nature and complexity of the matters being assessed, and
 - (b) where relevant, the preliminary nature of a consideration under section 27(3).

Debarment

59 Notification of exclusion of supplier

- (1) This section applies where—
- (a) a contracting authority—
 - (i) has disregarded a tender from an excluded or excludable supplier under section 26 or 28,
 - (ii) has excluded an excluded or excludable supplier from participating in, or progressing as part of, a competitive tendering procedure under section 27 or 28,
 - (iii) is aware of an associated person or sub-contractor having been replaced under section 26(3), 27(4) or 28(5) (replacing an excluded or excludable associated person or sub-contractor),
 - (iv) has rejected an application from a supplier for membership of a dynamic market on the basis that the supplier is an excluded or excludable supplier (see section 36), or
 - (v) has removed an excluded or excludable supplier from a dynamic market under section 37, and
 - (b) the supplier was an excluded or excludable supplier—
 - (i) under section 57(1)(a) or (2)(a) by virtue of a relevant exclusion ground, or
 - (ii) on the basis of being on the debarment list by virtue of paragraph 35 of Schedule 6 (threat to national security).
- (2) The contracting authority must, before the end of the period of 30 days beginning with the day on which the tender was disregarded or the supplier excluded, replaced or removed, give notice of that fact to the relevant appropriate authority.
- (3) A notice under subsection (2) must set out—
- (a) any relevant exclusion ground that the authority considers applies to the supplier, and
 - (b) any other information specified in regulations under section 95.
- (4) If any proceedings under Part 9 are brought in respect of the disregard, exclusion, replacement or removal, the contracting authority must give notice to the relevant appropriate authority of—
- (a) the commencement of those proceedings or any appeal proceedings;
 - (b) the outcome of any proceedings within paragraph (a).
- (5) Notice under subsection (4)(a) or (b) must be given before the end of the period of 30 days beginning with the day the proceedings concerned are commenced or determined.
- (6) In this section—

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“exclusion ground” means a mandatory exclusion ground or a discretionary exclusion ground;

“relevant exclusion ground” means any exclusion ground except the one listed in paragraph 43 of Schedule 6 (failure to cooperate with investigation);

“relevant appropriate authority” means—

- (a) if the contracting authority is a devolved Welsh authority, the Welsh Ministers;
- (b) if the contracting authority is a transferred Northern Ireland authority, the Northern Ireland department that the contracting authority considers it most appropriate to notify;
- (c) in any other case, a Minister of the Crown.

60 Investigations of supplier: exclusion grounds

- (1) An appropriate authority may, for the purpose of considering whether an entry could be added to the debarment list in respect of a supplier, investigate whether a supplier is, by virtue of the application to the supplier of a relevant exclusion ground—
 - (a) an excluded supplier under section 57(1)(a), or
 - (b) an excludable supplier under section 57(2)(a).
- (2) A Minister of the Crown must—
 - (a) have regard to the fact that contracting authorities may be unknowingly awarding public contracts to suppliers that—
 - (i) could be excludable suppliers by virtue of paragraph 14 of Schedule 7 (threat to national security), or
 - (ii) are sub-contracting to suppliers that could be excludable suppliers by virtue of that paragraph, and
 - (b) in light of that fact, keep under review whether particular suppliers or sub-contractors should be investigated under this section.
- (3) If an appropriate authority decides to investigate under this section, the authority must give the supplier concerned a notice setting out—
 - (a) the relevant exclusion grounds in respect of which the investigation is being conducted,
 - (b) how and when the supplier may make representations to the appropriate authority, and
 - (c) any other information specified in regulations under section 95.
- (4) The appropriate authority may by notice require a contracting authority—
 - (a) to provide such relevant documents as the appropriate authority may reasonably require for the purposes of the investigation, in the form or manner specified in the notice;
 - (b) to give such other assistance in connection with the investigation as is reasonable in the circumstances and is specified in the notice.
- (5) A contracting authority must comply with a notice under subsection (4) before the end of the period specified in the notice.
- (6) The appropriate authority may by notice request that the supplier concerned, or a connected person in relation to the supplier—

Status: This is the original version (as it was originally enacted).

- (a) provide such relevant documents as the appropriate authority may reasonably require for the purposes of the investigation, in the form or manner, and before the end of the period, specified in the notice;
 - (b) give such other assistance in connection with the investigation as is reasonable in the circumstances and is specified in the notice, before the end of the period so specified.
- (7) A notice under subsection (6) must set out the potential consequences for the supplier of non-compliance with the request (see paragraph 43 of Schedule 6).
- (8) In this section—
- “relevant documents” means documents or other information that—
 - (a) are specified or described in a notice under subsection (4) or (6), and
 - (b) are in the possession or control of the recipient of the notice;
 - “relevant exclusion ground” has the meaning given in section 59.

61 Investigations under section 60: reports

- (1) This section applies where an appropriate authority has conducted an investigation under section 60.
- (2) The Welsh Ministers or a Northern Ireland department—
- (a) may refer the case to a Minister of the Crown for the Minister’s consideration for the purposes of section 62(1), and
 - (b) if they do so, must provide the Minister with all information relevant to their findings.
- (3) A Minister of the Crown who has conducted, or considered the findings of, an investigation must—
- (a) prepare a report in relation to the findings of the investigation,
 - (b) give a copy to the supplier concerned as soon as reasonably practicable after the report is prepared, and
 - (c) publish it.
- Paragraphs (b) and (c) are subject to subsection (5).
- (4) The report must, in particular, set out whether the Minister is satisfied that the supplier is, by virtue of a relevant exclusion ground, an excluded or excludable supplier, and if the Minister is so satisfied—
- (a) in respect of each applicable relevant exclusion ground—
 - (i) whether it is a mandatory or discretionary ground,
 - (ii) the date on which the Minister expects the ground to cease to apply (see paragraph 44 of Schedule 6 and paragraph 15 of Schedule 7), and
 - (iii) whether the Minister intends to make an entry to the debarment list,
 - (b) in respect of the exclusion ground in paragraph 35 of Schedule 6 (if applicable), the description of contracts in relation to which the Minister—
 - (i) is satisfied the ground applies, and
 - (ii) intends to refer to in a relevant entry in the debarment list, and
 - (c) in each case, the Minister’s reasons.
- (5) If the Minister considers it necessary to do so for a purpose mentioned in subsection (6), the Minister may—

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- (a) remove information from a report before publishing it or giving it to the supplier concerned;
 - (b) decide not to publish the report;
 - (c) decide not to give the report to the supplier;
 - (d) disclose the report only to such persons as the Minister considers appropriate.
- (6) The purposes are—
- (a) safeguarding national security;
 - (b) preventing the publication of information that is sensitive commercial information where there is an overriding public interest in it being withheld from publication or other disclosure.
- (7) In this section—
- “relevant exclusion ground” has the meaning given by section 59;
 - “sensitive commercial information” has the meaning given by section 94.

62 Debarment list

- (1) Subsection (3) applies where a Minister of the Crown—
- (a) has conducted an investigation under section 60 or considered the findings of such an investigation conducted by the Welsh Ministers or a Northern Ireland department, and
 - (b) is satisfied that the supplier is, by virtue of the application of a relevant exclusion ground, an excluded or excludable supplier.
- (2) Subsection (3) also applies where a Minister of the Crown has made a determination as mentioned in paragraph 43 of Schedule 6 in relation to a supplier (mandatory exclusion ground for failing to cooperate with investigation).
- (3) The Minister may enter the supplier’s name on a list kept by a Minister of the Crown for the purposes of this section and, as part of that entry, must include the relevant debarment information.
- (4) In this section, the “relevant debarment information” means—
- (a) the exclusion ground to which the entry relates;
 - (b) whether the exclusion ground is mandatory or discretionary;
 - (c) in the case of an entry made on the basis of paragraph 35 of Schedule 6 (threat to national security), a description of the contracts in relation to which the supplier is to be an excluded supplier;
 - (d) the date on which the Minister expects the exclusion ground to cease to apply (see paragraph 44 of Schedule 6 and paragraph 15 of Schedule 7).
- (5) Before entering a supplier’s name on the debarment list, the Minister must give notice to the supplier setting out—
- (a) the decision to do so,
 - (b) an explanation of the supplier’s rights under sections 63 to 65, and
 - (c) any other information specified in regulations under section 95.
- (6) The Minister may not enter a supplier’s name on the debarment list before the end of the period of eight working days beginning with the day on which the Minister gives notice to the supplier in accordance with subsection (5) (the “debarment standstill period”).

- (7) The Minister may not enter a supplier’s name on the debarment list if—
- (a) during the debarment standstill period—
 - (i) proceedings under section 63(1) (interim relief) are commenced, and
 - (ii) the Minister is notified of that fact, and
 - (b) the proceedings have not been determined, discontinued or otherwise disposed of.
- (8) A Minister of the Crown—
- (a) must keep the debarment list under review,
 - (b) may remove an entry from the debarment list,
 - (c) in the case of an entry added on the basis of paragraph 35 of Schedule 6 (threat to national security), may revise an entry to remove a description of contracts, and
 - (d) may revise a date indicated under subsection (4)(d).
- (9) If a Minister of the Crown voluntarily removes or revises an entry in connection with proceedings under section 65 (debarment decisions: appeals), a Minister of the Crown may reinstate the entry only after the proceedings have been determined, discontinued or otherwise disposed of.
- (10) A Minister of the Crown must—
- (a) remove an entry if the Minister is satisfied that the supplier is not an excluded or excludable supplier by virtue of the ground stated in the entry;
 - (b) in the case of an entry added on the basis of paragraph 35 of Schedule 6 (threat to national security), revise the entry to remove a description of contracts if the Minister is satisfied the exclusion ground in that paragraph does not apply in relation to contracts of that description.
- (11) A Minister of the Crown must publish the debarment list (including any amended list).
- (12) A Minister of the Crown must consult the Welsh Ministers and the Northern Ireland department that the Minister considers most appropriate before—
- (a) entering a supplier’s name on the debarment list, or
 - (b) removing or revising an entry pursuant to an application under section 64.
- (13) In this section, “relevant exclusion ground” has the meaning given by section 59.

63 Debarment decisions: interim relief

- (1) A supplier may apply to the court for suspension of the Minister’s decision to enter the supplier’s name on the debarment list.
- (2) Proceedings under subsection (1) must be brought during the debarment standstill period.
- (3) The court may make an order to—
- (a) suspend the Minister’s decision to enter the supplier’s name on the debarment list until—
 - (i) the period referred to in subsection (2)(c) of section 65 (appeals) ends without proceedings having been brought, or
 - (ii) proceedings under that section are determined, discontinued or otherwise disposed of, and

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- (b) if relevant, require that an entry in respect of the supplier be temporarily removed from the debarment list.
- (4) In considering whether to make an order under subsection (3), the court must have regard to—
- (a) the public interest in, among other things, ensuring that public contracts are not awarded to suppliers that pose a risk,
 - (b) the interest of the supplier, including in relation to the likely financial impact of not suspending the decision, and
 - (c) any other matters that the court considers appropriate.
- (5) In this section—
- “the court” means—
 - (a) in England and Wales, the High Court,
 - (b) in Northern Ireland, the High Court, and
 - (c) in Scotland, the Court of Session;
 - “debarment standstill period” has the meaning given in subsection (6) of section 62 (debarment list).

64 Debarment list: application for removal

- (1) A supplier may at any time apply to a Minister of the Crown for the removal or revision of an entry made on the debarment list in respect of the supplier.
- (2) The Minister is only required to consider such an application if—
- (a) in the opinion of the Minister, there has been a material change of circumstances—
 - (i) since the entry was made or, where relevant, revised, or
 - (ii) in a case where the supplier has made a previous application under subsection (1) in relation to the entry or, where relevant, revision, since the most recent application that was considered by the Minister was made, or
 - (b) the application is otherwise accompanied by significant information that has not previously been considered by a Minister of the Crown.
- (3) After considering an application under subsection (1), the Minister must—
- (a) notify the supplier of the Minister’s decision, and
 - (b) give reasons for the decision.

65 Debarment decisions: appeals

- (1) A supplier may appeal to the court against a decision of a Minister of the Crown—
- (a) to enter the supplier’s name on the debarment list,
 - (b) to indicate contracts of a particular description as part of an entry made in respect of the supplier on the basis of paragraph 35 of Schedule 6 (threat to national security),
 - (c) to indicate a particular date as part of an entry in respect of the supplier under section 62(4)(d), or
 - (d) not to remove or revise an entry made in respect of the supplier following an application under section 64 (application for removal).

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- (2) Proceedings under subsection (1)—
- (a) may only be brought by a United Kingdom supplier or a treaty state supplier,
 - (b) may only be brought on the grounds that, in making the decision, the Minister made a material mistake of law, and
 - (c) must be commenced before the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the Minister’s decision.
- (3) Subsection (4) applies if, in proceedings under subsection (1)(a) or (b), the court is satisfied that—
- (a) the Minister made a material mistake of law, and
 - (b) in consequence of the mistake, a contracting authority excluded the supplier from participating in a competitive tendering procedure, or other selection process, in reliance on section 57(1)(b) or (2)(b).
- (4) The court may make one or more of the following orders—
- (a) an order setting aside the Minister’s decision;
 - (b) an order to compensate the supplier for any costs incurred by the supplier in relation to participating in the procedure or process referred to in subsection (3)(b).
- (5) Otherwise, if the court is satisfied that the Minister made a material mistake of law, the court may make an order setting aside the Minister’s decision.
- (6) In this section—
- “the court” has the meaning given in section 63 (interim relief);
 - the reference to a supplier being excluded includes a reference to—
 - (a) the supplier’s tender being disregarded under section 26;
 - (b) the supplier becoming an excluded supplier for the purposes of section 41(1)(a), 43(1) or 45(6)(a).

66 Debarment proceedings and closed material procedure

Part 2 of the Justice and Security Act 2013 (disclosure of sensitive material) applies in relation to proceedings under sections 63(1) (interim relief) and 65 (appeals) as if, in each of the following provisions, each reference to the Secretary of State included a reference to the Minister for the Cabinet Office—

- (a) section 6(2)(a), (7) and (9)(a) and (c);
- (b) section 7(4)(a);
- (c) section 8(1)(a);
- (d) section 11(3);
- (e) section 12(2)(a) and (b).

Status: This is the original version (as it was originally enacted).

PART 4

MANAGEMENT OF PUBLIC CONTRACTS

Terms implied into public contracts

67 Electronic invoicing: implied term

- (1) The term set out in subsection (2) is implied into every public contract entered into by a contracting authority.
- (2) The contracting authority must accept and process for payment any electronic invoice issued to the authority for payment under the contract which is—
 - (a) in the required electronic form, and
 - (b) not disputed by the authority.
- (3) For the purposes of the term in subsection (2)—

“electronic invoice” means an invoice which is issued, transmitted and received in a structured electronic format that allows for its automatic and electronic processing;

“required electronic form” means a form that—

 - (a) complies with the standard for electronic invoicing approved and issued by the British Standards Institution in the document numbered BS EN 16931-1:2017 (Electronic invoicing - Part 1: Semantic data model of the core elements of an electronic invoice), and
 - (b) uses a syntax which is listed as a syntax that complies with that standard in the document numbered PD CEN/TS 16931-2:2017 (Electronic invoicing - Part 2: List of syntaxes that comply with EN 16931-1) approved and issued by the British Standards Institution.
- (4) A reference to a standard or document is a reference to the standard or document as it stands—
 - (a) on the day that the contract is entered into, or
 - (b) if the parties agree, on the day on which the invoice is issued.
- (5) Any term purporting to restrict or override the implied term is of no effect.
- (6) The implied term does not prevent a contracting authority—
 - (a) requiring the use of a particular system in relation to electronic invoices;
 - (b) in the case of a defence authority (as defined in section 7(5)), requiring the use of a system that requires the payment of fees by the supplier.
- (7) An appropriate authority may by regulations amend this section for the purpose of changing what it means for an invoice to be in the required electronic form.
- (8) Before making regulations under subsection (7), an appropriate authority must consult such persons as the authority considers appropriate.

68 Implied payment terms in public contracts

- (1) The terms in subsections (2) to (5) are implied into every public contract entered into by a contracting authority, except a public contract that is—

Status: This is the original version (as it was originally enacted).

- (a) a concession contract,
 - (b) a utilities contract awarded by a private utility, or
 - (c) a contract awarded by a school.
- (2) Any sum due to be paid under the public contract by the contracting authority must be paid before the end of the period of 30 days beginning with—
 - (a) the day on which an invoice is received by the contracting authority in respect of the sum, or
 - (b) if later, the day on which the payment falls due in accordance with the invoice.
- (3) The term in subsection (2) does not apply if the contracting authority—
 - (a) considers the invoice invalid, or
 - (b) disputes the invoice.
- (4) On receiving an invoice from a payee, the contracting authority must notify the payee without undue delay if—
 - (a) it considers the invoice invalid, or
 - (b) it disputes the invoice.
- (5) A contracting authority may rely on a payment made by a third party to satisfy the term in subsection (2) only with the agreement of the payee.
- (6) Any term purporting to restrict or override the terms implied by this section is without effect.
- (7) But nothing in this section prohibits the parties to a contract from agreeing that a sum due under the contract must be paid earlier than would be required by the term in subsection (2).
- (8) For the purposes of the terms in subsections (2) to (5), an invoice is valid if—
 - (a) it is an electronic invoice issued in the required electronic form, or
 - (b) it sets out the minimum required information and meets any other requirement set out in the contract.
- (9) The minimum required information is—
 - (a) the name of the invoicing party,
 - (b) a description of the goods, services or works supplied,
 - (c) the sum requested, and
 - (d) a unique identification number.
- (10) An appropriate authority may by regulations amend this section for the purpose of changing the period within which a sum due under a contract must be paid, but the period may not exceed 30 days.
- (11) In this section—
 - “electronic invoice” and “required electronic form” have the meanings given in section 67(3);
 - “payee” means the person due to be paid under the invoice concerned;
 - a reference to a contracting authority receiving an invoice includes a reference to an invoice being delivered to an address, or through an electronic invoicing system, specified in the contract for the purpose.

Status: This is the original version (as it was originally enacted).

Notices about payments and performance

69 Payments compliance notices

- (1) Before the end of the period of 30 days beginning with the last day of a reporting period, a contracting authority must publish a payments compliance notice if during that period—
 - (a) the authority made a payment under a public contract;
 - (b) a sum owed by the authority under a public contract became payable.
- (2) A “payments compliance notice” means a notice setting out—
 - (a) specified information about the contracting authority’s compliance with the term set out in section 68(2) (payment within 30 days), and
 - (b) any other specified information.
- (3) For the purposes of this section, a reporting period is—
 - (a) the period beginning with the day on which this section comes into force and ending with the 31 March or 30 September following that day, whichever is earlier, and
 - (b) each successive period of six months.
- (4) A Minister of the Crown or the Welsh Ministers may by regulations make provision about the preparation of a payments compliance notice, including provision requiring that the notice must be approved by a person of a description specified in the regulations.
- (5) In subsection (2), “specified information” means information specified in regulations under section 95.
- (6) This section does not apply—
 - (a) to a transferred Northern Ireland authority,
 - (b) to private utilities,
 - (c) in relation to a public contract awarded by a school, or
 - (d) in relation to a concession contract.

70 Information about payments under public contracts

- (1) A contracting authority must publish specified information about any payment of more than £30,000 made by the authority under a public contract.
- (2) The information must be published before the end of the period of 30 days beginning with the last day of the quarter in which the payment was made.
- (3) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing—
 - (a) the financial threshold;
 - (b) the time limit for publication.
- (4) This section does not apply in relation to a public contract that is—
 - (a) a utilities contract awarded by a private utility,
 - (b) a concession contract,
 - (c) awarded by a school,

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- (d) awarded by a transferred Northern Ireland authority, unless it is awarded as part of a procurement under a reserved procurement arrangement or devolved Welsh procurement arrangement, or
- (e) awarded as part of a procurement under a transferred Northern Ireland procurement arrangement.

(5) In this section—

“quarter” means a period of three months ending with 31 March, 30 June, 30 September or 31 December in any year;

“specified information” means information specified in regulations under section 95.

71 Assessment of contract performance

- (1) Subsection (2) applies where a contracting authority has set key performance indicators in accordance with section 52(1).
- (2) At least once in every period of twelve months during the life-cycle of the contract and on termination of the contract the contracting authority must —
 - (a) assess performance against the key performance indicators, and
 - (b) publish information specified in regulations under section 95 in relation to that assessment.
- (3) Subsection (5) applies if—
 - (a) a supplier has breached a public contract, and
 - (b) the breach results in—
 - (i) termination (or partial termination) of the contract,
 - (ii) the award of damages, or
 - (iii) a settlement agreement between the supplier and the contracting authority.
- (4) Subsection (5) also applies if a contracting authority considers that a supplier—
 - (a) is not performing a public contract to the authority’s satisfaction,
 - (b) has been given proper opportunity to improve performance, and
 - (c) has failed to do so.
- (5) Before the end of the period of 30 days beginning with the day on which this subsection first applies in relation to a particular breach or failure to perform, the contracting authority concerned must publish the following information—
 - (a) that this subsection applies,
 - (b) the circumstances giving rise to its application, and
 - (c) any other information specified in regulations under section 95.
- (6) Subsection (5) does not apply in relation to a light touch contract.
- (7) This section does not apply to private utilities.

Sub-contracting

72 Sub-contracting: directions

- (1) This section applies in relation to a supplier if—
 - (a) a contracting authority, as a condition of awarding a public contract, required that the supplier sub-contract the supply of certain goods, services or works to another supplier, or
 - (b) the supplier—
 - (i) indicated to a contracting authority that it intended to sub-contract all or part of a public contract to another supplier, and
 - (ii) relied on that other supplier to satisfy any conditions of participation (see section 22(8)).
- (2) The contracting authority may direct that the supplier enter into a legally binding arrangement with the other supplier for the purpose of that supplier performing all or part of the contract (as required or indicated).
- (3) If a supplier fails to enter into a legally binding arrangement as directed by the contracting authority, the contracting authority may—
 - (a) choose not to enter into the contract with the supplier,
 - (b) where subsection (1)(b) applies, direct the supplier to enter into a legally binding arrangement with another appropriate supplier, or
 - (c) if the contract has already been entered into, terminate the contract.
- (4) In subsection (3), an “appropriate supplier” means a supplier that—
 - (a) is not an excluded supplier, and
 - (b) could have been relied on in place of the supplier referred to in subsection (1)(b)(ii).
- (5) In subsection (1)(a), the reference to a condition of award includes, in the case of a direct award, any condition attaching to the award of a contract.
- (6) For the purposes of subsection (1), a supplier is not to be treated as having relied on another supplier to satisfy conditions of participation if the conditions were satisfied by the first supplier alone.

73 Implied payment terms in sub-contracts

- (1) The terms in subsections (2) to (5) of section 68 (implied payment terms in public contracts) are implied into every public sub-contract.
- (2) But for the purposes of subsection (1)—
 - (a) references in those terms to the contracting authority are to be read as references to the person to whom goods, services or works are supplied under the public sub-contract, and
 - (b) section 68(8)(a) (electronic invoices) does not apply.
- (3) Any term purporting to restrict or override the terms implied by this section is without effect.

Status: This is the original version (as it was originally enacted).

- (4) But nothing in this section prohibits the parties to a public sub-contract from agreeing that a sum due under the contract must be paid earlier than would be required by the term in section 68(2).
- (5) In this section, “public sub-contract” means a contract substantially for the purpose of performing (or contributing to the performance of) all or any part of a public contract.
- (6) This section does not apply in relation to a public sub-contract that is for the purpose of performing (or contributing to the performance of) all or any part of—
 - (a) a concession contract,
 - (b) a utilities contract awarded by a private utility, or
 - (c) a contract awarded by a school.

Modifying public contracts

74 Modifying a public contract

- (1) A contracting authority may modify a public contract or a contract that, as a result of the modification, will become a public contract (a “convertible contract”) if the modification—
 - (a) is a permitted modification under Schedule 8 (permitted modifications),
 - (b) is not a substantial modification, or
 - (c) is a below-threshold modification.
- (2) A contracting authority may also modify a public contract or a convertible contract if the contract is a light touch contract.
- (3) A “substantial modification” is a modification which would—
 - (a) increase or decrease the term of the contract by more than 10 per cent of the maximum term provided for on award,
 - (b) materially change the scope of the contract, or
 - (c) materially change the economic balance of the contract in favour of the supplier.
- (4) A modification is a “below-threshold modification” if—
 - (a) the modification would not itself increase or decrease the estimated value of the contract by more than—
 - (i) in the case of a contract for goods or services, 10 per cent;
 - (ii) in the case of a contract for works, 15 per cent,
 - (b) the aggregated value of below-threshold modifications would be less than the threshold amount for the type of contract,
 - (c) the modification would not materially change the scope of the contract, and
 - (d) the modification is not within subsection (1)(a) or (b).
- (5) In this section, a reference to a modification changing the scope of a contract is a reference to a modification providing for the supply of goods, services or works of a kind not already provided for in the contract.
- (6) For the purposes of subsection (4), the “aggregated value of below-threshold modifications” is the amount of the estimated value of the contract after modification that is attributable to below-threshold modifications.

Status: This is the original version (as it was originally enacted).

- (7) Subsection (8) applies if, on modifying a public contract under this section, a contracting authority considers that—
- (a) the modification could reasonably have been made together with another modification made to the contract under this section, and
 - (b) that single modification would not have been permitted under subsection (1).
- (8) The modification is to be treated as not within subsection (1).
- (9) Except as provided for in paragraph 9 of Schedule 8 (modification permitted on corporate restructuring), a contracting authority may not modify a public contract so as to change the supplier.
- (10) Part 3 does not apply in relation to a contract to modify a contract where the modification is made in accordance with this section.

75 Contract change notices

- (1) Before modifying a public contract or a convertible contract (see section 74(1)), a contracting authority must publish a contract change notice.
- (2) Subsection (1) does not apply if—
- (a) the modification increases or decreases the estimated value of the contract by—
 - (i) in the case of a contract for goods or services, 10 per cent or less,
 - (ii) in the case of a contract for works, 15 per cent or less, or
 - (b) the modification increases or decreases the term of the contract by 10 per cent or less of the maximum term provided for on award,
- unless the modification is a permitted modification under paragraph 9 of Schedule 8 (novation or assignment on corporate restructuring).
- (3) A “contract change notice” is a notice setting out—
- (a) that the contracting authority intends to modify the contract;
 - (b) any other information specified in regulations under section 95.
- (4) Subsection (5) applies if, on making a modification within subsection (2)(a) or (2)(b), a contracting authority considers that—
- (a) the modification could reasonably have been made together with an earlier modification of the contract, and
 - (b) subsection (1) would have applied to that single modification.
- (5) Subsection (1) is to be treated as applying to the modification.
- (6) This section does not apply in relation to a modification of a contract that—
- (a) is a defence and security contract,
 - (b) is a light touch contract,
 - (c) was awarded by a private utility,
 - (d) was awarded by a transferred Northern Ireland authority, unless it was awarded as part of a procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement, or
 - (e) was awarded as part of a procurement under a transferred Northern Ireland procurement arrangement.

Status: This is the original version (as it was originally enacted).

- (7) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing the percentage thresholds.

76 Voluntary standstill period on the modification of contracts

- (1) A contracting authority may not modify a public contract or a convertible contract before the end of any standstill period (“a voluntary standstill period”) provided for in a contract change notice in respect of the contract.
- (2) A voluntary standstill period may not be less than a period of eight working days beginning with the day on which the contract change notice is published.

77 Publication of modifications

- (1) Before the end of the period of 90 days beginning with the day on which a contracting authority makes a qualifying modification under section 74(1), the authority must publish a copy of—
- (a) the contract as modified, or
 - (b) the modification.
- (2) A “qualifying modification” is a modification—
- (a) in respect of which the contracting authority is required to publish a contract change notice under section 75, and
 - (b) which modifies, or results in, a public contract with an estimated value of more than £5 million.
- (3) Subsection (1) does not apply in relation to a modification of a contract that—
- (a) was awarded by a devolved Welsh authority, unless it was awarded as part of a procurement under a reserved procurement arrangement, or
 - (b) was awarded as part of a procurement under a devolved Welsh procurement arrangement.
- (4) A Minister of the Crown may by regulations amend this section for the purpose of changing the financial threshold.

Terminating public contracts

78 Implied right to terminate public contracts

- (1) It is an implied term of every public contract that the contract can, if a termination ground applies, be terminated by the contracting authority in accordance with this section.
- (2) Each of the following circumstances is a termination ground—
- (a) the contracting authority considers that the contract was awarded or modified in material breach of this Act or regulations made under it;
 - (b) a supplier has, since the award of the contract, become an excluded supplier or excludable supplier (including by reference to an associated person);
 - (c) a supplier (other than an associated person) to which the supplier is sub-contracting the performance of all or part of the public contract is an excluded or excludable supplier.

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- (3) The termination ground in subsection (2)(c) is not available unless—
- (a) the contracting authority requested information under section 28(1)(a) (information about sub-contractors) in relation to the award of the public contract, and
 - (b) subsection (4), (5) or (6) applies.
- (4) This subsection applies if, before awarding the public contract, the contracting authority did not know the supplier intended to sub-contract the performance of all or part of the contract.
- (5) This subsection applies if—
- (a) the sub-contractor is an excluded or excludable supplier under section 57(1)(b) or (2)(b) (the debarment list), and
 - (b) before awarding the contract the contracting authority—
 - (i) sought to determine whether that was the case in accordance with section 28(1)(b), but
 - (ii) did not know that it was.
- (6) This subsection applies if—
- (a) the sub-contractor is an excluded or excludable supplier under section 57(1)(a) or (2)(a),
 - (b) the contracting authority requested information about the sub-contractor under section 28(2), and
 - (c) before awarding the contract, the contracting authority did not know that the sub-contractor was an excluded or excludable supplier.
- (7) Before terminating a contract by reference to the term implied by subsection (1), a contracting authority must—
- (a) notify the supplier of its intention to terminate,
 - (b) specify which termination ground applies and why the authority has decided to terminate the contract,
 - (c) give the supplier reasonable opportunity to make representations about—
 - (i) whether a termination ground applies, and
 - (ii) the authority’s decision to terminate.
- (8) Before terminating a contract by reference to the fact that a supplier to which the supplier is sub-contracting is an excluded or excludable supplier (whether under subsection (2)(b) or (c)), a contracting authority must give the supplier reasonable opportunity to—
- (a) cease sub-contracting to the excluded or excludable supplier, and
 - (b) if necessary, find an alternative supplier to which to sub-contract.
- (9) A public contract may contain provision about restitution and other matters ancillary to the termination of the contract by reference to the term implied by subsection (1).
- (10) But any term purporting to restrict or override the implied term is without effect.
- (11) In subsection (2)(b), the reference to a supplier becoming an excludable supplier includes a reference to—
- (a) a supplier becoming an excludable supplier on the basis of a discretionary exclusion ground that—
 - (i) did not apply before award of the contract, or

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- (ii) applied before award of the contract by reference to different circumstances, and
 - (b) a contracting authority discovering that, before award of the contract, the supplier was an excludable supplier.
- (12) In this section, “material breach” means a breach that the contracting authority considers could reasonably result in a successful legal challenge under Part 9 or otherwise.

79 Terminating public contracts: national security

- (1) A relevant contracting authority may not terminate a contract by reference to the implied term in section 78 on the basis of the discretionary exclusion ground in paragraph 14 of Schedule 7 (threat to national security) unless—
 - (a) the authority has notified a Minister of the Crown of its intention, and
 - (b) the Minister considers that—
 - (i) the supplier or sub-contractor is an excludable supplier by reference to paragraph 14 of Schedule 7, and
 - (ii) the contract should be terminated.
- (2) A relevant contracting authority may not terminate a contract by reference to the implied term in section 78 on the basis of the mandatory exclusion ground in paragraph 35 of Schedule 6 (threat to national security) unless the authority has notified a Minister of the Crown of its intention.
- (3) In this section, a “relevant contracting authority” means a contracting authority other than—
 - (a) a Minister of the Crown or a government department,
 - (b) the Corporate Officer of the House of Commons, or
 - (c) the Corporate Officer of the House of Lords.

80 Contract termination notices

- (1) Before the end of the period of 30 days beginning with the day on which a public contract is terminated, a contracting authority must publish a contract termination notice.
- (2) A “contract termination notice” is a notice setting out—
 - (a) that the contract has been terminated, and
 - (b) any other information specified in regulations under section 95.
- (3) In this section, a reference to termination includes a reference to—
 - (a) discharge,
 - (b) expiry,
 - (c) termination by a party,
 - (d) rescission, or
 - (e) set aside by court order (whether or not under Part 9).
- (4) This section does not apply—
 - (a) to private utilities, or

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- (b) in relation to a contract awarded under section 41 by reference to paragraph 15 of Schedule 5 (direct award: user choice contracts).

PART 5

CONFLICTS OF INTEREST

81 Conflicts of interest: duty to identify

- (1) A contracting authority must take all reasonable steps to identify, and keep under review, in relation to a covered procurement any—
- (a) conflicts of interest, or
 - (b) potential conflicts of interest.
- (2) There is a conflict of interest in relation to a covered procurement if—
- (a) a person acting for or on behalf of the contracting authority in relation to the procurement has a conflict of interest, or
 - (b) a Minister acting in relation to the procurement has a conflict of interest.
- (3) A person who influences a decision made by or on behalf of a contracting authority in relation to a covered procurement is to be treated as acting in relation to the procurement.
- (4) In this section—
- “interest” includes a personal, professional or financial interest and may be direct or indirect;
- “Minister” means—
- (a) a Minister of the Crown;
 - (b) a member of the Welsh Government;
 - (c) the First Minister, deputy First Minister or a Northern Ireland Minister;
- “member of the Welsh Government” means a person referred to in section 45 of the Government of Wales Act 2006.

82 Conflicts of interest: duty to mitigate

- (1) A contracting authority must take all reasonable steps to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage in relation to a covered procurement.
- (2) Reasonable steps may include requiring a supplier to take reasonable steps.
- (3) Subsection (4) applies if a contracting authority considers that—
- (a) a conflict of interest puts a supplier at an unfair advantage in relation to the award of a public contract, and
 - (b) either—
 - (i) the advantage cannot be avoided, or
 - (ii) the supplier will not take steps that the contracting authority considers are necessary in order to ensure it is not put at an unfair advantage.
- (4) The contracting authority must in relation to the award—
- (a) treat the supplier as an excluded supplier for the purpose of—

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- (i) assessing tenders under section 19 (competitive award), or
 - (ii) awarding a contract under section 41 or 43 (direct award), and
- (b) exclude the supplier from participating in, or progressing as part of, any competitive tendering procedure.

(5) In this section, “conflict of interest” has the meaning given in section 81.

83 Conflicts assessments

- (1) Before publishing a tender or transparency notice in relation to a covered procurement, a contracting authority must prepare a conflicts assessment in relation to the procurement.
- (2) Before publishing a dynamic market notice in relation to the establishment of a dynamic market, a contracting authority must prepare a conflicts assessment in relation to the establishment.
- (3) A conflicts assessment must include details of—
- (a) conflicts or potential conflicts of interest identified in accordance with section 81 (duty to identify), and
 - (b) any steps the contracting authority has taken or will take for the purposes of section 82 (duty to mitigate).
- (4) If a contracting authority is aware of circumstances that it considers are likely to cause a reasonable person to wrongly believe there to be a conflict or potential conflict of interest, a conflicts assessment must also include details of any steps the contracting authority has taken or will take to demonstrate that no such conflict or potential conflict exists.
- (5) A contracting authority must—
- (a) keep any conflicts assessment under review,
 - (b) revise the assessment as necessary, and
 - (c) when publishing any relevant notice, confirm that a conflicts assessment has been prepared and revised in accordance with this section.
- (6) Subsection (5) does not apply after—
- (a) a contracting authority has given notice of its decision not to award the contract (under section 55),
 - (b) a contract termination notice is published in relation to the procurement, or
 - (c) a dynamic market notice is published in relation to the market ceasing to operate.
- (7) In the case of a contracting authority that is a private utility—
- (a) the reference in this section to notice of a decision not to award a contract is a reference to the decision;
 - (b) the reference in this section to a contract termination notice being published in relation to a procurement is a reference to the contract being terminated;
 - (c) the reference in this section to a dynamic market notice being published in relation to a market ceasing to operate is a reference to the market ceasing to operate.
- (8) In this section—
- “conflict of interest” has the meaning given in section 81;

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- “relevant notice” means—
- (a) a tender notice,
 - (b) a transparency notice,
 - (c) a dynamic market notice in relation to the establishment of a dynamic market,
 - (d) a contract details notice relating to a public contract, or
 - (e) a contract change notice;
- “terminated” is to be understood by reference to section 80(3).

PART 6

BELOW-THRESHOLD CONTRACTS

84 Regulated below-threshold contracts

- (1) In this Part, a “regulated below-threshold contract” means a below-threshold contract which is not—
- (a) an exempted contract,
 - (b) a concession contract, or
 - (c) a utilities contract.
- (2) This Part does not apply in relation to procurement—
- (a) by a school,
 - (b) by a transferred Northern Ireland authority, other than procurement under a reserved procurement arrangement or a devolved Welsh procurement arrangement, or
 - (c) under a transferred Northern Ireland procurement arrangement.

85 Regulated below-threshold contracts: procedure

- (1) If a contracting authority invites the submission of tenders in relation to the award of a regulated below-threshold contract, the authority may not restrict the submission of tenders by reference to an assessment of a supplier’s suitability to perform the contract.
- (2) The reference to a supplier’s suitability to perform the contract includes a reference to a supplier’s—
- (a) legal and financial capacity;
 - (b) technical ability.
- (3) Subsection (1) does not apply in relation to a works contract if the contract has an estimated value of—
- (a) in the case of a contract to be awarded by a central government authority, not less than £138,760, or
 - (b) otherwise, not less than £213,477.
- (4) A Minister of the Crown may by regulations amend this section for the purpose of amending the financial thresholds.
- (5) This section does not apply in relation to—

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- (a) the award of a contract by a devolved Welsh authority, unless it is awarded under a reserved procurement arrangement,
- (b) the award of a contract under a devolved Welsh procurement arrangement, or
- (c) the award of a contract in accordance with a framework.

86 Regulated below-threshold contracts: duty to consider small and medium-sized enterprises

- (1) Before inviting the submission of tenders in relation to the award of a regulated below-threshold contract, a contracting authority must—
 - (a) have regard to the fact that small and medium-sized enterprises may face particular barriers in competing for a contract, and
 - (b) consider whether such barriers can be removed or reduced.
- (2) Subsection (1) does not apply in relation to the award of a contract in accordance with a framework.

87 Regulated below-threshold contracts: notices

- (1) A contracting authority may not advertise for the purpose of inviting tenders in relation to the award of a notifiable below-threshold contract without first publishing a below-threshold tender notice.
- (2) Subsection (1) does not apply if a contracting authority advertises only for the purpose of inviting tenders from particular or pre-selected suppliers.
- (3) As soon as reasonably practicable after entering into a notifiable below-threshold contract, a contracting authority must publish a contract details notice.
- (4) A “notifiable below-threshold contract” is a regulated below-threshold contract with an estimated value of—
 - (a) in the case of a contract to be awarded by a central government authority, not less than £12,000, or
 - (b) otherwise, not less than £30,000.
- (5) A “below-threshold tender notice” is a notice setting out—
 - (a) that the contracting authority intends to award a contract, and
 - (b) any other information specified in regulations under section 95.
- (6) Any time limits provided for in a below-threshold tender notice must be—
 - (a) reasonable, and
 - (b) the same for each supplier.
- (7) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of amending the financial thresholds.

88 Regulated below-threshold contracts: implied payment terms

- (1) The terms in subsections (2) to (5) are implied into every regulated below-threshold contract entered into by a contracting authority.
- (2) Any sum due to be paid under the contract by the contracting authority must be paid before the end of the period of 30 days beginning with—

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- (a) the day on which an invoice is received by the contracting authority in respect of the sum, or
 - (b) if later, the day on which the sum first became due in accordance with the invoice.
- (3) The term in subsection (2) does not apply if the contracting authority—
- (a) considers the invoice invalid, or
 - (b) disputes the invoice.
- (4) On receiving an invoice from a payee, the contracting authority must notify the payee without undue delay if—
- (a) it considers the invoice invalid, or
 - (b) it disputes the invoice.
- (5) A contracting authority may rely on a payment made by a third party to satisfy the term in subsection (2) only with the agreement of the payee.
- (6) For the purposes of the terms in subsections (2) to (5), an invoice is valid if it sets out the minimum required information and meets any other requirement set out in the contract.
- (7) The minimum required information is—
- (a) the name of the invoicing party,
 - (b) a description of the goods, services or works supplied,
 - (c) the sum requested, and
 - (d) a unique identification number.
- (8) The terms in subsections (2) to (5) are also implied into any contract that is wholly or substantially for the purpose of performing (or contributing to the performance of) all or any part of the contract referred to in subsection (1).
- (9) But for the purpose of subsection (8), references in those terms to the contracting authority are to be read as references to the person to whom goods, services or works are supplied for the purpose of performing (or contributing to the performance of) all or any part of the contract referred to in subsection (1).
- (10) Any term purporting to restrict or override the terms implied by this section is without effect.
- (11) But nothing in this section prohibits the parties to a contract from agreeing that a sum due under the contract must be paid earlier than would be required by the term in subsection (2).
- (12) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing the number of days referred to in subsection (2), but the number of days may not be more than 30 days.
- (13) In this section—
- (a) “payee” means the person due to be paid under the invoice concerned;
 - (b) a reference to a contracting authority receiving an invoice includes a reference to an invoice being delivered to an address specified in the contract for the purpose.

PART 7

IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS

89 Treaty state suppliers

- (1) In this Act, a “treaty state supplier” means a supplier that is entitled to the benefits of an international agreement specified in Schedule 9.
- (2) But a supplier is a treaty state supplier only to the extent that it is entitled to the benefits of an international agreement specified in Schedule 9 in relation to the procurement being—
 - (a) carried out, or
 - (b) challenged.
- (3) An appropriate authority may by regulations amend Schedule 9 for the purpose of—
 - (a) specifying an international agreement to which the United Kingdom is a signatory, or
 - (b) removing, or amending a reference to, an international agreement.
- (4) In subsection (3)(a), the reference to being a signatory to an international agreement includes a reference to having—
 - (a) exchanged instruments, where the exchange constitutes the agreement;
 - (b) acceded to the agreement.
- (5) In this Part a reference to a supplier being entitled to the benefits of a treaty includes a reference to a supplier being entitled by virtue of the place of origin of goods, services or works supplied.
- (6) In this Act—
 - (a) a reference to a treaty state supplier does not include a reference to a supplier that is entitled to the benefits of an international agreement only by reference to the United Kingdom being party to that agreement;
 - (b) a reference to a state or territory being party to an agreement includes a reference to a state or territory being part of an organisation of states or territories that is party to an agreement.

90 Treaty state suppliers: non-discrimination

- (1) A contracting authority may not, in carrying out a procurement, discriminate against a treaty state supplier.
- (2) A contracting authority discriminates against a treaty state supplier if it treats the supplier less favourably than it treats, or would treat, a United Kingdom supplier or other treaty state supplier because of—
 - (a) the supplier’s association with the supplier’s treaty state, or
 - (b) the supplier’s lack of association with—
 - (i) the United Kingdom, or
 - (ii) another treaty state.
- (3) On a comparison of cases for the purposes of subsection (2), there must be no material difference between the circumstances relating to each case.

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- (4) In this section, a reference to a supplier’s association with a state includes a reference to the fact that the state is the place of origin of goods, services or works supplied by the supplier.
- (5) In this section, a “treaty state” means a state, territory or organisation of states or territories that is party to an international agreement specified in Schedule 9, other than the United Kingdom.
- (6) And, in subsection (2)(a), a treaty state is a supplier’s treaty state if the supplier is entitled to the benefits of such an international agreement by reference to that treaty state being party to the agreement.
- (7) In this Act, “United Kingdom supplier” means a supplier that is—
 - (a) established in, or controlled or mainly funded from, the United Kingdom, a British Overseas Territory or a Crown Dependency, and
 - (b) is not a treaty state supplier.

91 Treaty state suppliers: non-discrimination in Scotland

- (1) A Minister of the Crown or the Scottish Ministers may by regulations make provision for the purpose of ensuring that treaty state suppliers are not discriminated against in the carrying out of devolved procurements.
- (2) Regulations under subsection (1) may only include provision that is equivalent to provision in—
 - (a) subsection (1), (2), (5) or (6) of section 89 (treaty state suppliers),
 - (b) section 90 (treaty state suppliers: non-discrimination), or
 - (c) Schedule 9 (specified international agreements).
- (3) Regulations under subsection (1) may not be made unless a Minister of the Crown considers, or the Scottish Ministers consider, that the regulations are necessary in order to ratify or comply with an international agreement to which the United Kingdom is a signatory.
- (4) In subsection (3), the reference to being a signatory to an international agreement includes a reference to having—
 - (a) exchanged instruments, where the exchange constitutes the agreement;
 - (b) acceded to the agreement.
- (5) In this section—
 - (a) “devolved procurement” means procurement carried out by a devolved Scottish authority;
 - (b) a reference to discrimination is a reference to discrimination as defined in section 90.
- (6) Regulations under subsection (1) may modify primary legislation (whenever passed).

92 Trade disputes

- (1) This section applies where there is, or has been, a dispute relating to procurement between the United Kingdom and another state, territory or organisation of states or territories in relation to an international agreement specified in Schedule 9.

- (2) An appropriate authority or the Scottish Ministers may by regulations make such provision relating to procurement as the authority considers, or the Scottish Ministers consider, appropriate in consequence of the dispute.
- (3) Any provision made by the Scottish Ministers under subsection (2) must relate to procurement—
 - (a) carried out by devolved Scottish authorities, or
 - (b) under devolved Scottish procurement arrangements.
- (4) Regulations under this section may include provision modifying primary legislation, whenever passed (including this Act).
- (5) In subsection (1), the reference to an international agreement specified in Schedule 9 does not include a reference to the Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part, signed at Brussels and London on 30 December 2020.

PART 8

INFORMATION AND NOTICES: GENERAL PROVISION

93 Pipeline notices

- (1) This section applies in relation to any contracting authority that considers that, in the coming financial year, it will pay more than £100 million under relevant contracts.
- (2) A contracting authority must publish a pipeline notice before the end of the period of 56 days beginning with the first day of the financial year referred to in subsection (1).
- (3) A “pipeline notice” means a notice setting out specified information about any public contract with an estimated value of more than £2 million in respect of which the contracting authority intends to publish a tender notice or transparency notice during the reporting period.
- (4) In this section—
 - “financial year” means—
 - (a) the period of twelve months beginning with the 1 April following the day on which this section comes into force, and
 - (b) each successive period of 12 months;
 - “relevant contracts” means any contracts for the supply of goods, services or works to the contracting authority other than exempted contracts;
 - “reporting period” means the period of 18 months beginning with the first day of the financial year referred to in subsection (1);
 - “specified information” means information specified in regulations under section 95.
- (5) A Minister of the Crown or the Welsh Ministers may by regulations amend this section for the purpose of changing the financial thresholds.
- (6) This section does not apply to—
 - (a) private utilities, or

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- (b) a transferred Northern Ireland authority.

94 General exemptions from duties to publish or disclose information

- (1) A contracting authority is not required to publish or otherwise disclose information under this Act if the authority is satisfied that—
 - (a) withholding the information from publication or other disclosure is necessary for the purpose of safeguarding national security, or
 - (b) the information is sensitive commercial information and there is an overriding public interest in its being withheld from publication or other disclosure.
- (2) “Sensitive commercial information” is information which—
 - (a) constitutes a trade secret, or
 - (b) would be likely to prejudice the commercial interests of any person if it were published or otherwise disclosed.
- (3) If a contracting authority withholds information under this section, the authority must publish or notify anyone to whom the information would otherwise be provided of—
 - (a) the fact that information is being withheld, and
 - (b) whether it is being withheld under subsection (1)(a) or (1)(b).
- (4) A contracting authority is not required to publish or notify someone under subsection (3) if the authority is satisfied that it would be contrary to the interests of national security to do so.

95 Notices, documents and information: regulations and online system

- (1) An appropriate authority may by regulations make provision about—
 - (a) the form and content of notices, documents or other information to be published or provided under this Act;
 - (b) how such notices or documents are, or information is, to be published, provided or revised.
- (2) Regulations under subsection (1) may for example—
 - (a) require a notice or document to contain specified information;
 - (b) require publication on a specified online system.
- (3) Regulations under subsection (1) may—
 - (a) make different provision for different kinds of notice, document or information;
 - (b) make different provision for the same kind of notice, document or information for different purposes.

See also section 122(3).

- (4) A Minister of the Crown must make arrangements to establish and operate an online system for the purpose of publishing notices, documents and other information under this Act.
- (5) An online system established or operated under subsection (4) must—
 - (a) make notices, documents and other information published under this Act available free of charge, and
 - (b) be accessible to people with disabilities.

96 Electronic communications

- (1) In carrying out a covered procurement, a contracting authority must so far as practicable—
 - (a) communicate with suppliers electronically, and
 - (b) take steps to ensure that suppliers participating in the procurement communicate electronically.
- (2) In carrying out a covered procurement, a contracting authority may only use, or require the use of, electronic communication systems that are—
 - (a) free of charge and readily accessible to suppliers,
 - (b) generally available, or interoperable with other generally available systems, and
 - (c) accessible to people with disabilities.
- (3) Subsection (2)(a) does not apply in relation to an electronic communications system used, or required to be used—
 - (a) after the award of the public contract, or
 - (b) in relation to a utilities dynamic market.
- (4) This section does not apply if the contracting authority is satisfied that electronic communication, or the use of an electronic communication system meeting the requirements of subsection (2), poses a particular security risk in the circumstances.
- (5) In this section, “electronic communication system” includes any electronic system used for the purpose of communication with suppliers.

97 Information relating to a procurement

- (1) An appropriate authority may by regulations make provision requiring certain information to be shared in a particular way, including through a specified online system.
- (2) Regulations under subsection (1) may require a contracting authority to—
 - (a) share information in a particular way, or
 - (b) take steps to ensure that suppliers participating in a procurement share information in a particular way.
- (3) In this section, “information” means information shared under, or for a purpose relating to, this Act.

98 Record-keeping

- (1) A contracting authority must keep such records as the authority considers sufficient to explain a material decision made for the purpose of awarding or entering into a public contract.
- (2) For the purposes of subsection (1), a decision is “material” if, under this Act, a contracting authority is required—
 - (a) to publish or provide a notice, document or other information in relation to the decision, or
 - (b) to make the decision.

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- (3) A contracting authority must keep records of any communication between the authority and a supplier that is made—
 - (a) in relation to the award or entry into of a public contract, and
 - (b) before the contract is entered into.
- (4) A record under this section must be kept until—
 - (a) the day on which the contracting authority gives notice of a decision not to award the contract (see section 55), or
 - (b) the end of the period of three years beginning with the day on which the contract is entered into or, if the contract is awarded but not entered into, awarded.
- (5) This section does not apply in relation to defence and security contracts.
- (6) This section does not affect any other obligation under any enactment or rule of law by virtue of which a contracting authority must retain documents or keep records, including for a longer period.

99 Data protection

- (1) This Act does not authorise or require a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the powers conferred and the duties imposed by and under this Act).
- (2) In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

PART 9

REMEDIES FOR BREACH OF STATUTORY DUTY

100 Duties under this Act enforceable in civil proceedings

- (1) A contracting authority’s duty to comply with Parts 1 to 5, 7 and 8 is enforceable in civil proceedings under this Part.
- (2) For the purposes of this Part, the duty is owed to any supplier that is—
 - (a) a United Kingdom supplier, or
 - (b) a treaty state supplier.
- (3) Proceedings under this Part may be brought in the court by a supplier that—
 - (a) is a United Kingdom or treaty state supplier, and
 - (b) has suffered, or is at risk of suffering, loss or damage in consequence of a breach of the duty.
- (4) See section 106 for time limits applicable in respect of claims under this Part.
- (5) A contracting authority’s duty to comply with section 12(4) (requirement to have regard to barriers facing SMEs), or section 13(9) or 14(8) (requirement to have regard to procurement policy statements), is not enforceable in civil proceedings under this Part.

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- (6) A contracting authority's duty to comply with section 90 (treaty state suppliers: non-discrimination) in relation to a procurement is not enforceable in civil proceedings under this Part, except in relation to a covered procurement.
- (7) A supplier may not bring proceedings under this Part on the grounds that one or more of the following decisions of a Minister of the Crown was unlawful—
 - (a) a decision to enter a supplier's name on the debarment list;
 - (b) a decision relating to the information included in an entry on the debarment list;
 - (c) a decision not to remove an entry from the debarment list, or revise information included in such an entry,(see section 65 (debarment decisions: appeals)).
- (8) This Part applies irrespective of section 2(2) and 21 of the Crown Proceedings Act 1947.
- (9) In this Part—
 - “claimant”—
 - (a) in relation to a claim in Northern Ireland, means plaintiff;
 - (b) in relation to a claim in Scotland, means pursuer;
 - “the court” means—
 - (a) in England and Wales, the High Court,
 - (b) in Northern Ireland, the High Court, and
 - (c) in Scotland, the Court of Session.

101 Automatic suspension of the entry into or modification of contracts

- (1) A contracting authority may not enter into a public contract, or modify a public contract or a convertible contract, if during any applicable standstill period—
 - (a) proceedings under this Part are commenced in relation to the contract, and
 - (b) the contracting authority is notified of that fact.
- (2) The court may lift or modify the restriction in subsection (1) by order under section 102.
- (3) The restriction in subsection (1) does not apply if—
 - (a) the proceedings at first instance have been determined, discontinued or otherwise disposed of, and
 - (b) the court has not made an order to extend the restriction.
- (4) In this section “convertible contract” has the meaning given in section 74.
- (5) See sections 51 and 76 for provision about standstill periods.

102 Interim remedies

- (1) In proceedings under this Part, the court may make one or more of the following orders—
 - (a) an order lifting or modifying the restriction in section 101(1);
 - (b) an order extending the restriction or imposing a similar restriction;

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- (c) an order suspending the effect of any decision made or action taken by the contracting authority in carrying out the procurement;
 - (d) an order suspending the procurement or any part of it;
 - (e) an order suspending the entry into or performance of a contract;
 - (f) an order suspending the making of a modification of a contract or performance of a contract as modified.
- (2) In considering whether to make an order under subsection (1), the court must have regard to—
- (a) the public interest in, among other things—
 - (i) upholding the principle that public contracts should be awarded, and contracts should be modified, in accordance with the law;
 - (ii) avoiding delay in the supply of the goods, services or works provided for in the contract or modification (for example, in respect of defence or security interests or the continuing provision of public services);
 - (b) the interests of suppliers, including whether damages are an adequate remedy for the claimant;
 - (c) any other matters that the court considers appropriate.
- (3) An order under subsection (1) may not permit a contract to be entered into or modified before the end of any applicable standstill period (see sections 51 and 76).
- (4) An order under subsection (1) may provide for undertakings or conditions.

103 Pre-contractual remedies

- (1) This section applies if the court is satisfied that a decision made, or action taken, by a contracting authority breached the duty referred to in section 100(1) and—
- (a) the contract in relation to which the breach occurred has not been entered into, or
 - (b) where the breach occurred in relation to a modification of a contract, the modification has not yet been made.
- (2) The court may make one or more of the following orders—
- (a) an order setting aside the decision or action;
 - (b) an order requiring the contracting authority to take any action;
 - (c) an order for the award of damages;
 - (d) any other order that the court considers appropriate.

104 Post-contractual remedies

- (1) This section applies if the court is satisfied that a decision made, or action taken, by a contracting authority breached the duty referred to in section 100(1) and—
- (a) the contract in relation to which the breach occurred has already been entered into, or
 - (b) where the breach occurred in relation to a modification of a contract, the modification has already been made.
- (2) The court—
- (a) must, if a set aside condition in section 105 is met, make an order setting aside the contract or modification, and

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- (b) may, in any case, make an order for the award of damages.
- (3) The duty in subsection (2)(a) does not apply if the court is satisfied that there is an overriding public interest in not setting aside the contract or modification (for example, in respect of defence or security interests or the continuing provision of public services).
- (4) In which case, the court may make an order reducing—
 - (a) the term of the contract;
 - (b) the goods, services or works to be supplied under the contract.
- (5) In considering whether there is an overriding public interest in not setting aside a contract or modification, the court—
 - (a) may have regard to the financial consequences of setting aside the contract or modification only in exceptional circumstances, and
 - (b) must in any event disregard costs that are directly associated with—
 - (i) the contracting authority having to award another contract or enter into a contract to a different supplier,
 - (ii) a delay in the performance of the contract or the contract as modified, or
 - (iii) any legal obligations arising from setting aside the contract or modification.
- (6) If a contract or modification is set aside, it is to be treated as without effect from the date of the order.
- (7) An order setting aside a framework or modification of a framework may not operate to set aside contracts already awarded under the framework.
- (8) An order setting aside or reducing the term of, or supplies under, a contract may make provision for restitution and other consequential or supplementary matters.

105 Post-contractual remedies: set aside conditions

- (1) A set aside condition is met if the court is satisfied that the claimant was denied a proper opportunity to seek a remedy under section 103 (pre-contractual remedies) because—
 - (a) a required contract award notice was not published;
 - (b) the contract was entered into or modified before the end of any applicable standstill period (see sections 51 and 76);
 - (c) the contract was entered into or modified during a period of automatic suspension under section 101 or in breach of a court order;
 - (d) in the case of a contract of a kind described in section 51(3) (exceptions to mandatory standstill), the breach became apparent only on publication of a contract award notice;
 - (e) in the case of a modification under section 74, the breach became apparent only on publication of a contract change notice;
 - (f) the breach became apparent only after the contract was entered into or modified.
- (2) Subsection (1)(d) does not apply if—
 - (a) the contract award notice provided for a standstill period, and

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- (b) the contract was not entered into before the end of that standstill period.
- (3) Subsection (1)(e) does not apply if—
 - (a) the contract change notice provided for a standstill period, and
 - (b) the modification was not made before the end of that standstill period.
- (4) References in this section to a notice not being published include references to a notice that, though published, did not provide accurate information in respect of the contract as entered into.

106 Time limits on claims

- (1) A supplier must commence any specified set-aside proceedings before the earlier of—
 - (a) the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim;
 - (b) the end of the period of six months beginning with the day the contract was entered into or modified.
- (2) A supplier must commence any other proceedings under this Part before the end of the period of 30 days beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim.
- (3) The court may make an order extending a time limit referred to in subsection (1)(a) or (2) if it considers there to be a good reason for doing so.
- (4) An order under subsection (3) may not permit proceedings to be commenced after—
 - (a) in the case of specified set-aside proceedings, the end of the period referred to in subsection (1)(b), and
 - (b) in any case, the end of the period of 3 months beginning with the day on which the supplier first knew, or ought to have known, about the circumstances giving rise to the claim.
- (5) In this section, “specified set-aside proceedings” means proceedings under section 104(2) to—
 - (a) set aside a public contract in circumstances where the contracting authority did not publish a contract details notice in respect of the contract in accordance with section 53, or
 - (b) set aside a modification of a contract.

107 Part 9 proceedings and closed material procedure

Part 2 of the Justice and Security Act 2013 (disclosure of sensitive material) applies in relation to proceedings under this Part as if, in each of the following provisions, each reference to the Secretary of State included a reference to the Minister for the Cabinet Office—

- (a) section 6(2)(a), (7) and (9)(a) and (c);
- (b) section 7(4)(a);
- (c) section 8(1)(a);
- (d) section 11(3);
- (e) section 12(2)(a) and (b).

PART 10

PROCUREMENT OVERSIGHT

108 Procurement investigations

- (1) An appropriate authority may investigate a relevant contracting authority's compliance with requirements of this Act.
- (2) An appropriate authority conducting a procurement investigation may by notice require a relevant contracting authority—
 - (a) to provide such relevant documents as the appropriate authority may reasonably require for the purposes of the procurement investigation, in the form or manner specified in the notice;
 - (b) to give such other assistance in connection with the procurement investigation as is reasonable in the circumstances and is specified in the notice.
- (3) The relevant contracting authority must comply with a notice under subsection (2) before the end of—
 - (a) the period specified in the notice (which must be at least 30 days beginning with the day on which the notice is given), or
 - (b) such longer period as the appropriate authority may agree to.
- (4) The appropriate authority may publish the results of a procurement investigation, including any section 109 recommendation issued.
- (5) In this section—
 - “procurement investigation” means an investigation under subsection (1);
 - “relevant contracting authority” means a contracting authority other than—
 - (a) a Minister of the Crown or a government department;
 - (b) the Welsh Ministers;
 - (c) a Northern Ireland department;
 - (d) the Corporate Officer of the House of Commons;
 - (e) the Corporate Officer of the House of Lords;
 - (f) the Senedd Commission;
 - (g) the Northern Ireland Assembly Commission;
 - (h) a private utility;
 - “relevant documents” means documents or other information that—
 - (a) are specified or described in a notice under subsection (2), and
 - (b) are in the possession or control of the relevant contracting authority to which the notice is given;
 - “section 109 recommendation” has the meaning given in section 109.

109 Recommendations following procurement investigations

- (1) This section applies where an appropriate authority—
 - (a) has conducted a procurement investigation under section 108, and
 - (b) considers, in light of the results of that procurement investigation (whether alone or in conjunction with the results of other such investigations), that a

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relevant contracting authority is engaging in action giving rise, or that is likely to give rise, to a breach of any requirement of this Act.

- (2) The appropriate authority may issue a recommendation (a “section 109 recommendation”) to the relevant contracting authority as to—
 - (a) the action the relevant contracting authority should take with a view to ensuring that it complies with the requirements of this Act specified in the recommendation;
 - (b) the timing of such action.
- (3) A section 109 recommendation must not relate to how the relevant contracting authority should—
 - (a) comply with section 12 (procurement objectives);
 - (b) have regard to the national procurement policy statement (see section 13) or the Wales procurement policy statement (see section 14);
 - (c) comply with section 86 (regulated below-threshold contracts: duty to consider SMEs);
 - (d) exercise a discretion in relation to a particular procurement.
- (4) In considering how to comply with the requirements of this Act, a relevant contracting authority must have regard to a section 109 recommendation issued to it.
- (5) A relevant contracting authority to which a section 109 recommendation has been issued must, where the recommendation so specifies, submit a progress report to the appropriate authority at such intervals as may be specified.
- (6) A “progress report” is a report setting out—
 - (a) what action (if any) the relevant contracting authority has taken as a result of the recommendation, or
 - (b) if the authority has taken no such action, a statement to that effect.
- (7) Where the relevant contracting authority has taken no action as a result of the section 109 recommendation, or has taken different action to that recommended, the progress report must also include the authority’s reasons for doing so.
- (8) The appropriate authority may publish a progress report or, where the relevant contracting authority fails to submit one, notice of that fact.
- (9) In this section—

“action” includes acts and omissions;

“procurement investigation” and “relevant contracting authority” have the meanings given in section 108.

110 Guidance following procurement investigations

- (1) Where an appropriate authority has conducted a procurement investigation under section 108, the authority may publish guidance setting out what the authority considers to be the lessons of the matters considered in the procurement investigation for compliance with the requirements of this Act by contracting authorities generally.
- (2) In considering how to comply with the requirements of this Act, a contracting authority must have regard to relevant guidance published under subsection (1).

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- (3) In subsection (2), the reference to relevant guidance is a reference to guidance that could, in light of Part 11, be addressed to the contracting authority.

PART 11

APPROPRIATE AUTHORITIES AND CROSS-BORDER PROCUREMENT

111 Welsh Ministers: restrictions on the exercise of powers

- (1) The Welsh Ministers may only exercise a power under this Act for the purpose of regulating—
- (a) contracting authorities that are devolved Welsh authorities (within the meaning given in section 157A of the Government of Wales Act 2006),
 - (b) contracting authorities that—
 - (i) are not devolved Welsh authorities, but
 - (ii) for the purposes of this Act, are to be treated as devolved Welsh authorities, or
 - (c) procurement under a devolved Welsh procurement arrangement.
- (2) A contracting authority that is a public undertaking or private utility is to be treated as a devolved Welsh authority for the purposes of this Act if—
- (a) it operates wholly or mainly in relation to Wales, and
 - (b) its activities are wholly or mainly activities that do not relate to reserved matters.
- (3) Otherwise, a contracting authority is to be treated as a devolved Welsh authority for the purposes of this Act if the authority’s functions—
- (a) are exercisable wholly or mainly in relation to Wales, and
 - (b) are wholly or mainly functions that do not relate to reserved matters.
- (4) Other than in this section and section 127 (commencement), a reference in this Act to a devolved Welsh authority includes a reference to an authority that is to be treated as a devolved Welsh authority for the purposes of this Act.
- (5) Subsection (1) does not apply in relation to a power under sections 59 to 66 (debarment).
- (6) In this section—
- “reserved matters” has the meaning given in the Government of Wales Act 2006;
 - “Wales” has the meaning given in section 158 of the Government of Wales Act 2006 (when read by reference to section 157A(9) of that Act).

112 Northern Ireland department: restrictions on the exercise of powers

- (1) A Northern Ireland department may only exercise a power under this Act for the purpose of regulating—
- (a) contracting authorities that are transferred Northern Ireland authorities,
 - (b) contracting authorities that are public undertakings or private utilities that—
 - (i) are not transferred Northern Ireland authorities, but

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- (ii) for the purposes of this Act, are to be treated as transferred Northern Ireland authorities, or
 - (c) procurement under a transferred Northern Ireland procurement arrangement.
- (2) For the purposes of this section, an authority is a “transferred Northern Ireland authority” if its functions—
- (a) are exercisable only in or as regards Northern Ireland, and
 - (b) are wholly or mainly functions that do not relate to reserved or excepted matters (within the meaning given by the Northern Ireland Act 1998).
- (3) A contracting authority that is a public undertaking or private utility is to be treated as a transferred Northern Ireland authority for the purposes of this Act if—
- (a) it operates only in or as regards Northern Ireland, and
 - (b) its activities are wholly or mainly activities that do not relate to reserved or excepted matters.
- (4) Other than in this section, a reference in this Act to a transferred Northern Ireland authority includes a reference to an authority that is to be treated as a transferred Northern Ireland authority for the purposes of this Act.
- (5) Subsection (1) does not apply in relation to a power under sections 59 to 66 (debarment).

113 Minister of the Crown: restrictions on the exercise of powers

- (1) A Minister of the Crown may exercise a power under this Act for the purpose of regulating a contracting authority that is a devolved Welsh authority only in relation to procurement under—
- (a) a reserved procurement arrangement, or
 - (b) a transferred Northern Ireland procurement arrangement.
- (2) Subsection (1) does not apply in relation to a power under section 67 (electronic invoicing) or 110 (guidance following procurement investigation).
- (3) A Minister of the Crown may not make regulations under section 67 or section 125, or publish guidance under section 110, for the purpose of regulating a devolved Welsh authority without the consent of the Welsh Ministers, unless the regulations relate to, or the guidance relates to, procurement under—
- (a) a reserved procurement arrangement, or
 - (b) a transferred Northern Ireland procurement arrangement.
- (4) A Minister of the Crown may not make regulations under this Act for the purpose of regulating a transferred Northern Ireland authority without the consent of a Northern Ireland department, unless the regulations relate to procurement under—
- (a) a reserved procurement arrangement, or
 - (b) a devolved Welsh procurement arrangement.
- (5) A Minister of the Crown may not publish guidance under section 110 for the purpose of regulating a Northern Ireland department without the consent of a Northern Ireland department, unless the guidance relates to procurement under—
- (a) a reserved procurement arrangement, or
 - (b) a devolved Welsh procurement arrangement.

- (6) Subsections (1) and (4) do not apply in relation to a power under—
- (a) sections 59 to 66 (debarment);
 - (b) section 89 (treaty state suppliers);
 - (c) section 91 (non-discrimination in Scotland);
 - (d) section 92 (trade disputes);
 - (e) section 125 (power to make consequential, etc, provision);
 - (f) section 127 (commencement).

114 Definitions relating to procurement arrangements

- (1) In this Act, a reference to a procurement under a procurement arrangement is a reference to a procurement as part of which the contract is awarded—
- (a) in accordance with a framework or similar arrangement,
 - (b) by reference to a dynamic market or similar arrangement, or
 - (c) following a procedure or other selection process carried out—
 - (i) jointly by two or more authorities, or
 - (ii) by a centralised procurement authority or equivalent body.
- (2) A procurement arrangement is a devolved Welsh procurement arrangement if—
- (a) the framework was awarded by a devolved Welsh authority,
 - (b) the dynamic market was established by a devolved Welsh authority,
 - (c) the centralised procurement authority is a devolved Welsh authority, or
 - (d) a devolved Welsh authority is designated the lead authority in the tender or transparency notice.
- (3) A procurement arrangement is a transferred Northern Ireland procurement arrangement if—
- (a) the framework was awarded by a transferred Northern Ireland authority,
 - (b) the dynamic market was established by a transferred Northern Ireland authority,
 - (c) the centralised procurement authority is a transferred Northern Ireland authority, or
 - (d) a transferred Northern Ireland authority is designated the lead authority in the tender or transparency notice.
- (4) A procurement arrangement is a devolved Scottish procurement arrangement if—
- (a) the framework or similar arrangement was awarded by a devolved Scottish authority,
 - (b) the dynamic market or similar arrangement was established by a devolved Scottish authority,
 - (c) the centralised procurement authority or equivalent body is a devolved Scottish authority, or
 - (d) a devolved Scottish authority was designated the lead authority in respect of the procedure or selection process.
- (5) A procurement arrangement is a reserved procurement arrangement if it is not—
- (a) a devolved Welsh procurement arrangement,
 - (b) a transferred Northern Ireland procurement arrangement, or
 - (c) a devolved Scottish procurement arrangement.

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(6) In this section—

“equivalent body” means, in relation to a centralised procurement authority, a body carrying out functions of a kind described in section 1(4) (centralised procurement authorities);

“framework” includes a framework agreement within the meaning given in Scottish procurement legislation;

“similar arrangement” includes, in relation to a dynamic market, a dynamic purchasing or qualification system.

115 Powers relating to procurement arrangements

(1) A Minister of the Crown may by regulations make provision, including provision amending this Act, for the purpose of regulating devolved Scottish authorities carrying out procurement under—

- (a) reserved procurement arrangements,
- (b) devolved Welsh procurement arrangements, or
- (c) transferred Northern Ireland procurement arrangements.

(2) A Minister of the Crown may by regulations amend this Act for the purpose of disapplying provision so far as it relates to procurement under devolved Scottish procurement arrangements.

(3) The Scottish Ministers may by regulations amend Scottish procurement legislation for the purpose of—

- (a) applying it in relation to procurement carried out by contracting authorities under devolved Scottish procurement arrangements;
- (b) disapplying it in relation to procurement carried out by devolved Scottish authorities under—
 - (i) reserved procurement arrangements,
 - (ii) devolved Welsh procurement arrangements, or
 - (iii) transferred Northern Ireland procurement arrangements.

(4) In this Act, “Scottish procurement legislation” means—

- (a) the Procurement Reform (Scotland) Act 2014 ([asp 12](#)),
- (b) the Public Contracts (Scotland) Regulations 2015 ([S.S.I. 2015/446](#)),
- (c) the Utilities Contracts (Scotland) Regulations 2016 ([S.S.I. 2016/49](#)),
- (d) the Concession Contracts (Scotland) Regulations 2016 ([S.S.I. 2016/65](#)), and
- (e) any legislation which modifies or replaces that legislation (including an Act of the Scottish Parliament).

PART 12

AMENDMENTS AND REPEALS

116 Disapplication of duty in section 17 of the Local Government Act 1988

(1) In section 17 of the Local Government Act 1988 (exclusion of non-commercial considerations), in subsection (11), after “imposed on it by” insert “the Procurement Act 2023 or”.

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- (2) A Minister of the Crown or the Welsh Ministers may by regulations make provision disapplying the duty under section 17(1) of the Local Government Act 1988 (“the 1988 Act”) as it relates to a relevant authority.
- (3) The regulations may disapply the duty as it relates to—
- (a) all relevant authorities or those that are specified;
 - (b) all functions that are regulated by section 17 of the 1988 Act (see subsection (4) of that section) or those that are specified;
 - (c) contracts of all types mentioned in section 17(1) of the 1988 Act, or of those types that are specified;
 - (d) all non-commercial matters (see section 17(5) of the 1988 Act) or those that are specified.
- (4) In this section—
- “relevant authority” means an authority to which section 17 of the 1988 Act applies other than a devolved Scottish authority;
 - “specified” means specified, or of a description specified, in regulations under this section.

117 Single source defence contracts

Schedule 10 makes amendments to Part 2 of the Defence Reform Act 2014 (single source contracts).

118 Concurrent powers and the Government of Wales Act 2006

In Schedule 7B to the Government of Wales Act 2006 (general restrictions on devolved competence)—

- (a) at the end of paragraph 9(8)(b)(vi), omit “or”;
- (b) in paragraph 9(8)(b)(vii), at the end insert “or
(viii) the Procurement Act 2023.”;
- (c) at the end of paragraph 11(6)(b)(ix), omit “or”, and
- (d) in paragraph 11(6)(b)(ix), at the end insert “or
(x) the Procurement Act 2023.”

119 Repeals etc

- (1) The enactments set out in Schedule 11 are repealed or revoked.
- (2) The following regulations apply only in relation to devolved Scottish authorities—
- (a) the Public Contracts (Scotland) Regulations 2015 ([S.S.I. 2015/446](#));
 - (b) the Utilities Contracts (Scotland) Regulations 2016 ([S.S.I. 2016/49](#));
 - (c) the Concession Contracts (Scotland) Regulations 2016 ([S.S.I. 2016/65](#)).

PART 13

GENERAL

120 Power to disapply this Act in relation to procurement by NHS in England

(1) A Minister of the Crown may by regulations make provision for the purpose of disapplying any provision of this Act in relation to regulated health procurement.

(2) In this section—

“regulated health procurement” means the procurement of goods or services by a relevant authority that is subject to provision made under section 12ZB of the National Health Service Act 2006 (procurement of healthcare services etc for the health service in England), whether or not that provision is in force;

“relevant authority” has the meaning given in that section.

121 Power to amend this Act in relation to private utilities

(1) An appropriate authority may by regulations amend this Act for the purpose of reducing the regulation of private utilities under this Act.

(2) The regulations may, for example, make provision—

- (a) disapplying requirements under this Act in relation to private utilities;
- (b) modifying requirements under this Act as they apply in relation to private utilities so as to reduce any burden, or the overall burdens, for private utilities resulting directly or indirectly from this Act.

(3) Before making regulations under this section an appropriate authority must consult—

- (a) persons appearing to the authority to represent the views of private utilities, and
- (b) such other persons as the authority considers appropriate.

(4) In this section “burden” includes—

- (a) a financial cost;
- (b) an administrative inconvenience;
- (c) an obstacle to efficiency, productivity or profitability.

122 Regulations

(1) Any power to make regulations under this Act—

- (a) so far as exercisable by a Minister of the Crown or the Welsh Ministers is exercisable by statutory instrument;
- (b) so far as exercisable by a Northern Ireland department, is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

(2) For regulations made under this Act by the Scottish Ministers, see also section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)) (Scottish statutory instruments).

(3) Regulations under this Act may—

- (a) make different provision for different purposes or areas;
 - (b) make provision generally or only in relation to specified cases;
 - (c) make incidental, supplementary or consequential provision;
 - (d) make transitional, transitory or saving provision.
- (4) A statutory instrument containing (whether alone or with other provision) regulations made by a Minister of the Crown under any of the following provisions may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament—
- (a) section 6 (utilities contracts);
 - (b) section 7 (defence and security contracts);
 - (c) section 9 (light touch contracts);
 - (d) section 33 (reserving contracts to public service mutuals);
 - (e) section 52 (key performance indicators);
 - (f) section 53 (publication of contracts);
 - (g) section 69 (payment compliance notices);
 - (h) section 70(3)(a) (information about payments: financial thresholds);
 - (i) section 75 (contract change notices and publication of modifications);
 - (j) section 87 (regulated below-threshold contracts: notices);
 - (k) section 89 (treaty state suppliers: international agreements);
 - (l) section 91 (treaty state suppliers: non-discrimination in Scotland);
 - (m) section 92 (trade disputes);
 - (n) section 93 (pipeline notices);
 - (o) section 95 (notices, documents and information);
 - (p) section 97 (information relating to a procurement);
 - (q) section 115 (powers relating to procurement arrangements);
 - (r) section 116 (disapplication of section 17 of Local Government Act 1988);
 - (s) section 120 (disapplication of Act: NHS procurement in England);
 - (t) section 121 (amendment of Act in relation to private utilities);
 - (u) section 123 (interpretation);
 - (v) section 125 (power to make consequential, etc, provision), if the regulations made under it modify primary legislation;
 - (w) section 127(6) (exclusion of devolved Welsh authorities);
 - (x) paragraph 3 or 5 of Schedule 1 (threshold amounts);
 - (y) Schedule 2 (exempted contracts);
 - (z) Schedule 4 (utility activities).
- (5) A statutory instrument containing regulations made by a Minister of the Crown under section 42 (direct award to protect life, etc) must be laid before Parliament after being made.
- (6) Any other statutory instrument containing regulations made by a Minister of the Crown under any provision of this Act, except section 127 (commencement), is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Regulations contained in a statutory instrument laid before Parliament under subsection (5) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.

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- (8) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—
- (a) Parliament is dissolved or prorogued, or
 - (b) either House of Parliament is adjourned for more than four days.
- (9) If regulations cease to have effect as a result of subsection (7), that does not—
- (a) affect the validity of anything previously done under the regulations, or
 - (b) prevent the making of new regulations.
- (10) A statutory instrument containing (whether alone or with other provision) regulations made by the Welsh Ministers under any of the following provisions may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru—
- (a) section 6 (utilities contracts);
 - (b) section 9 (light touch contracts);
 - (c) section 33 (reserving contracts to public service mutuals);
 - (d) section 52 (key performance indicators);
 - (e) section 69 (payment compliance notices);
 - (f) section 70(3)(a) (information about payments: financial thresholds);
 - (g) section 75 (contract change notices and publication of modifications);
 - (h) section 87 (regulated below-threshold contracts: notices);
 - (i) section 89 (treaty state suppliers: international agreements);
 - (j) section 92 (trade disputes);
 - (k) section 93 (pipeline notices);
 - (l) section 95 (notices, documents and information);
 - (m) section 97 (information relating to a procurement);
 - (n) section 116 (disapplication of section 17 of Local Government Act 1988);
 - (o) section 121 (amendment of Act in relation to private utilities);
 - (p) section 123 (interpretation);
 - (q) section 125 (power to make consequential, etc, provision), if the regulations made under it modify primary legislation;
 - (r) paragraph 3 or 5 of Schedule 1 (threshold amounts);
 - (s) Schedule 2 (exempted contracts);
 - (t) Schedule 4 (utility activities).
- (11) Any other statutory instrument containing regulations made by the Welsh Ministers under this Act is subject to annulment in pursuance of a resolution of Senedd Cymru.
- (12) Regulations of a Northern Ireland department under any of the following provisions (whether alone or with other provision) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly—
- (a) section 6 (utilities contracts);
 - (b) section 9 (light touch contracts);
 - (c) section 33 (reserving contracts to public service mutuals);
 - (d) section 52 (key performance indicators);
 - (e) section 89 (treaty state suppliers: international agreements);
 - (f) section 92 (trade disputes);

- (g) section 95 (notices, documents and information);
 - (h) section 97 (information relating to a procurement);
 - (i) section 121 (amendment of Act in relation to private utilities);
 - (j) section 123 (interpretation);
 - (k) section 125 (power to make consequential, etc, provision), if the regulations made under it modify primary legislation;
 - (l) paragraph 3 or 5 of Schedule 1 (threshold amounts);
 - (m) Schedule 2 (exempted contracts);
 - (n) Schedule 4 (utility activities).
- (13) Any other regulations of a Northern Ireland department under this Act are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 as if they were a statutory instrument within the meaning of that Act.
- (14) Regulations of the Scottish Ministers under any of the following provisions are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010)—
- (a) section 90 (treaty state suppliers: non-discrimination);
 - (b) section 92 (trade disputes);
 - (c) section 115 (powers relating to procurement arrangements).

123 Interpretation

(1) In this Act—

“appropriate authority” means—

- (a) a Minister of the Crown,
- (b) the Welsh Ministers, or
- (c) a Northern Ireland department;

“enactment” includes primary legislation and legislation made under primary legislation;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“modify”, in relation to enactments, includes amend, repeal or revoke;

“Northern Ireland legislation” has the meaning given in section 24(5) of the Interpretation Act 1978;

“primary legislation” means—

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) an Act or Measure of Senedd Cymru, or
- (d) Northern Ireland legislation;

“pupil referral unit” means—

- (a) in England, a pupil referral unit within the meaning given by section 19 of the Education Act 1996;
- (b) in Wales, a pupil referral unit within the meaning given by section 19A of the Education Act 1996;

“school” means—

Status: This is the original version (as it was originally enacted).

- (a) the governing body of a maintained school (see section 19(1) of the Education Act 2002);
 - (b) the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of an Academy within the meaning given by that section;
 - (c) the proprietor, within the meaning given by section 579(1) of the Education Act 1996, of a school that has been approved under section 342 of that Act;
 - (d) the governing body, within the meaning given by section 90 of the Further and Higher Education Act 1992, of an institution within the further education sector within the meaning given by section 91 of that Act;
 - (e) the Board of Governors of a grant-aided school within the meaning given by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3));
- “small and medium-sized enterprises” means suppliers that—
- (a) have fewer than 250 staff, and
 - (b) have a turnover of an amount less than or equal to £44 million, or a balance sheet total of an amount less than or equal to £38 million;
- “VAT” means value added tax;
- “working day” means a day other than—
- (a) a Saturday or Sunday, or
 - (b) a day which is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971.
- (2) In this Act, a reference to an amount payable or paid, receivable or received, or to be paid or received, under a contract includes a reference to any amount referable to VAT.
- (3) In this Act, a reference to a contract awarded by a school includes a reference to a contract awarded wholly for the purposes of supplying goods, services or works to a pupil referral unit.
- (4) An appropriate authority may by regulations change the definition of “small and medium-sized enterprises”.
- (5) Regulations under subsection (4) may amend this section.

124 Index of defined expressions

In this Act the expressions listed in the left-hand column of the table have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision</i>
appropriate authority	section 123
associated person	section 26
associated tender document	section 21
award criteria	section 23
below-threshold contract	section 5

Status: This is the original version (as it was originally enacted).

<i>Expression</i>	<i>Provision</i>
central government authority	Schedule 1
centralised procurement authority	section 1
competitive flexible procedure	section 20
competitive tendering procedure	section 20
concession contract	section 8
condition of participation	section 22
connected person	Schedule 6
contract award notice	section 50
contract change notice	section 75
contract details notice	section 53
contracting authority	section 2
convertible contract	section 74
covered procurement	section 1
debarment list	section 57
defence and security contract	section 7
defence authority contract	section 7
devolved Scottish authority	section 2
devolved Scottish procurement arrangement	section 114
devolved Welsh authority	section 111
devolved Welsh procurement arrangement	section 114
discretionary exclusion ground	Schedule 7
dynamic market	section 34
enactment	section 123
estimated value	section 4
excludable supplier	section 57
excluded supplier	section 57
exempted contract	Schedule 2
framework	section 45
light touch contract	section 9
mandatory exclusion ground	Schedule 6
Minister of the Crown	section 123
modify	section 123
open framework	section 49

Status: This is the original version (as it was originally enacted).

<i>Expression</i>	<i>Provision</i>
primary legislation	section 123
private utility	section 2
procurement	section 1
public contract	section 3
public undertaking	section 2
publication of a tender notice	section 40
requirements	section 19
reserved procurement arrangement	section 114
school	section 123
Scottish procurement legislation	section 115
small and medium-sized enterprises	section 123
tender notice	section 21
threshold amount	Schedule 1
transferred Northern Ireland authority	section 112
transferred Northern Ireland procurement arrangement	section 114
transparency notice	section 44
treaty state supplier	section 89
United Kingdom supplier	section 90
utilities contract	section 6
utilities dynamic market	section 35
utility	section 35
utility activity	section 6
VAT	section 123
working day	section 123
works	Schedule 1
works contract	Schedule 1

125 Power to make consequential, etc, provision

- (1) An appropriate authority may by regulations make supplementary, incidental or consequential provision in connection with any provision of this Act.
- (2) Regulations under subsection (1) may modify primary legislation.

126 Extent

This Act extends to England and Wales, Scotland and Northern Ireland.

127 Commencement

- (1) This Part comes into force on the day on which this Act is passed.
- (2) The remaining provisions of this Act come into force on such day as a Minister of the Crown may by regulations appoint; and different days may be appointed for different purposes.
- (3) A Minister of the Crown may not make specified regulations under subsection (2) without the consent of the Welsh Ministers.
- (4) In this section, “specified regulations” means regulations to bring into force provisions regulating procurement by a devolved Welsh authority other than procurement under—
 - (a) a reserved procurement arrangement, or
 - (b) a transferred Northern Ireland procurement arrangement,but “specified regulations” does not include regulations to bring into force provisions in Part 7 (implementation of international obligations).
- (5) In this section, “devolved Welsh authority” has the meaning given in section 157A of the Government of Wales Act 2006.
- (6) A Minister of the Crown may by regulations make such provision as the Minister considers appropriate for the purpose of ensuring that—
 - (a) Parts 1 to 6 and 8 to 13, or particular provisions in those Parts, so far as not already brought into force under subsection (2) do not regulate procurement by a devolved Welsh authority other than procurement under—
 - (i) a reserved procurement arrangement, or
 - (ii) a transferred Northern Ireland procurement arrangement;
 - (b) existing legislation continues to regulate procurement by devolved Welsh authorities and procurement under devolved Welsh procurement arrangements.
- (7) Regulations under subsection (6) may modify this Act.
- (8) In this section—

“existing legislation” means any enactment, other than this Act or regulations made under this Act, that is passed or made before section 11 (covered procurement only in accordance with this Act) comes into force;

a reference to a provision regulating procurement includes a reference to a provision conferring a function exercisable in relation to procurement.

128 Short title

This Act may be cited as the Procurement Act 2023.

Status: This is the original version (as it was originally enacted).

SCHEDULES

SCHEDULE 1

Section 3

THRESHOLD AMOUNTS

- 1 (1) The threshold amount for a contract of a type referred to in the second column of the table below is as set out in the corresponding row of the third column.

	<i>Type of contract</i>	<i>Threshold amount</i>
1	Defence and security contract that is a works contract	£5,336,937
2	Defence and security contract that is a concession contract	£5,336,937
3	Defence and security contract not within row 1, 2 or 8	£426,955
4	Utilities contract that is a works contract	£5,336,937
5	Utilities contract that is a light touch contract	£884,720
6	Utilities contract not within row 3, 4 or 5	£426,955
7	Light touch contract that is a concession contract	£5,336,937
8	Light touch contract not within row 5 or 7	£663,540
9	Concession contract not within row 2, 6 or 7	£5,336,937
10	Works contract not within row 1, 4 or 9	£5,336,937
11	Contract for the supply of goods, services or works to a central government authority not within any other row	£138,760
12	Contract for the supply of goods, services or works to a sub-central government authority not within any other row	£213,477

- (2) See section 7(3) in relation to the application of the thresholds in the table to certain contracts concerning defence and security.
- 2 An appropriate authority may by regulations amend this Schedule for the purpose of amending the threshold amount for—

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- (a) a type of contract in any of rows 4, 6 or 9 to 12 of the table in order to reflect an amendment to the corresponding threshold for contracts of that type in the United Kingdom’s Coverage Schedule to the GPA;
 - (b) the type of contract in row 1 in order to reflect an amendment to the threshold amount for the type of contract in row 10;
 - (c) the type of contract in row 2, in order to reflect an amendment to the threshold amount for the type of contract in row 9;
 - (d) the type of contract in row 3, in order to reflect an amendment to the threshold amount for the type of contract in row 6.
- 3 An appropriate authority may by regulations amend this Schedule for the purpose of amending the threshold amount for —
 - (a) any type of light touch contract in row 5, 7 or 8 of the table;
 - (b) any type of defence and security contract in rows 1 to 3 where the amendment is not within paragraph 2.
- 4 A contract is a “works contract” if its main purpose is—
 - (a) the carrying out of works under the contract (whether or not resulting in a complete work), or
 - (b) to facilitate the carrying out of works otherwise than under the contract, where those works are intended to result in a complete work that complies with specifications set out in, or determined under, the contract.
- 5 (1) In this Schedule—
 - “central government authority” means a contracting authority specified, or of a description specified, in regulations made by an appropriate authority;
 - “complete work” means a functioning structure that results from the carrying out of works;
 - the “GPA” means the Agreement on Government Procurement signed at Marrakesh on 15 April 1994, as amended from time to time;
 - “sub-central government authority” means a contracting authority that is not—
 - (a) a central government authority, or
 - (b) a private utility or a public undertaking;
 - “works” has the meaning given by regulations made by an appropriate authority.
- (2) In this Schedule—
 - (a) a reference to a contract for the supply of goods, services or works to a particular kind of authority includes a reference to a framework for the future award of such contracts;
 - (b) a reference to a works contract includes a reference to a framework for the future award of works contracts.

Status: This is the original version (as it was originally enacted).

SCHEDULE 2

Section 3

EXEMPTED CONTRACTS

PART 1

COUNTERPARTY EXEMPTED CONTRACTS

General

- 1 A contract is an exempted contract if it is a contract of a kind listed in this Part of this Schedule.

Vertical arrangements

- 2 (1) A contract between a contracting authority and a person that is controlled by—
- (a) the contracting authority,
 - (b) the contracting authority acting jointly with one or more other contracting authorities,
 - (c) another contracting authority, where that authority also controls the contracting authority referred to in paragraph (a), or
 - (d) another contracting authority acting jointly with one or more other contracting authorities, where the authorities acting jointly also control the contracting authority referred to in paragraph (a).
- (2) A contracting authority, or a contracting authority acting jointly with one or more other contracting authorities, controls a person if—
- (a) the contracting authority is a parent undertaking, or the contracting authorities are parent undertakings, in relation to the person,
 - (b) no person other than the authority, or authorities, exerts a decisive influence on the activities of the person (either directly or indirectly),
 - (c) more than 80 per cent of the activities carried out by the person are carried out for or on behalf of—
 - (i) the contracting authority or authorities, or
 - (ii) another person that is, or other persons that are, controlled by the authority or the authorities acting jointly, and
 - (d) in the case of joint control—
 - (i) each of the contracting authorities is represented on the person's board, or equivalent decision-making body, and
 - (ii) the person does not carry out any activities that are contrary to the interests of one or more of the contracting authorities.
- (3) A person is not to be regarded as controlled by a contracting authority, or a contracting authority acting jointly with other contracting authorities, if any person that is not a public authority holds shares in the person.
- (4) In sub-paragraph (2)(a)—
- “parent undertaking” has the meaning given in section 1162 of the Companies Act 2006, save that an “undertaking” includes any person;

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“parent undertakings” means two or more contracting authorities acting jointly that would, if they were a single undertaking, be a parent undertaking.

- (5) For the purposes of sub-paragraph (2)(b), a person does not exercise a decisive influence on the activities of a person only by reason of being a director, officer or manager of the person acting in that capacity.
- (6) An appropriate authority may by regulations make provision about how a calculation as to the percentage of activities carried out by a person is to be made for the purposes of sub-paragraph (2)(c).
- (7) For the purposes of sub-paragraph (2)(d)(i), one representative may represent more than one contracting authority.
- (8) In this paragraph, references to a contracting authority do not include references to a public undertaking or a private utility.

Horizontal arrangements

- 3 (1) A contract between contracting authorities only that relates to a horizontal arrangement between those authorities.
- (2) A “horizontal arrangement” means an arrangement—
 - (a) entered into—
 - (i) with the aim of achieving objectives the authorities have in common in connection with the exercise of their public functions;
 - (ii) solely in the public interest;
 - (b) in which no more than 20 per cent of the activities contemplated by the arrangement are intended to be carried out other than for the purposes of the authorities’ public functions.
- (3) An appropriate authority may by regulations make provision about how a calculation as to the percentage of activities carried out by a person is to be made for the purposes of sub-paragraph (2)(b).
- (4) In this paragraph, references to a contracting authority do not include references to a public undertaking or a private utility.

Defence and security contracts

- 4 (1) A defence and security contract where the supplier is the government of another state or territory.
- (2) In this Schedule “government” includes—
 - (a) any governing authority;
 - (b) the government of a region or locality within a state or territory.

Utilities contracts

- 5 (1) A utilities contract between a utility and a relevant joint venture to which that utility is party, where—
 - (a) the joint venture was formed for the purpose of carrying out a utility activity for at least three years, and

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- (b) the parties to the joint venture are committed, by way of a written agreement, to continue to be parties to the joint venture for a period of three years following the date of that agreement.
- (2) In this Schedule, “relevant joint venture” means a joint venture—
 - (a) formed for the purpose of carrying out a utility activity;
 - (b) where each party to the joint venture is a utility.
- 6 (1) A utilities contract awarded for the supply of goods, services or works—
 - (a) by a utility to a person affiliated with the utility, or
 - (b) where the utility in question is a relevant joint venture, by the utility to a person affiliated with any member of the joint venture,
 but only if the turnover test is met by the affiliated person in relation to goods, services or (as the case may be) works.
- (2) A person is “affiliated” with another if the person is in the position of a group undertaking of the other person, within the meaning given in section 1161(5) of the Companies Act 2006, whether or not either of them is an undertaking within the meaning given in section 1161(1) of that Act.
- (3) The “turnover test” is met in relation to goods, services or works if the affiliated person’s turnover deriving from the supply of goods, services or (as the case may be) works to the utility and other persons affiliated with the utility (their “affiliated turnover amount”) exceeds 80 per cent of their total turnover amount deriving from the supply of goods, services or works.
- (4) An appropriate authority may by regulations make provision about how to calculate a person’s affiliated turnover amount and total turnover amount for the purposes of sub-paragraph (3).
- (5) The regulations may, in particular, make provision—
 - (a) for those amounts to be calculated by reference to—
 - (i) an average amount for a period specified in the regulations;
 - (ii) another reasonable method so specified;
 - (b) to secure that, in calculating those amounts in relation to a person (“A”), turnover of a person who is an affiliated person in relation to A is to be treated as part of A’s turnover.

PART 2

SUBJECT-MATTER EXEMPTED CONTRACTS

General

- 7 (1) A contract is an exempted contract if it is—
 - (a) a contract of a kind listed in this Part of this Schedule;
 - (b) a framework for the future award of contracts only of a kind listed in this Part of this Schedule.
- (2) But a Part 2-only contract is not an exempted contract if, on award of the contract, a contracting authority considers that—

- (a) the goods, services or works representing the main purpose of the contract could reasonably be supplied under a separate contract, and
 - (b) that contract would not be a contract of a kind listed in this Part of this Schedule.
- (3) In considering whether goods, services or works could reasonably be supplied under a separate contract, a contracting authority may, for example, have regard to the practical and financial consequences of awarding more than one contract.
- (4) In this paragraph “Part 2-only contract” means a contract of a kind listed in this Part of this Schedule that is not of a kind listed in Part 1 of this Schedule.

Land and buildings etc

- 8 (1) A contract—
- (a) for the acquisition, by whatever means, of land, buildings or any other complete work, or of an interest in or right over any of them, or
 - (b) which concerns an interest in or right over any of them.
- (2) In this paragraph “complete work” has the meaning given in Schedule 1.

Broadcasting

- 9 A contract for the acquisition, development, production or co-production of material intended for broadcast (by any means) by a contracting authority to the general public.
- 10 A contract for the broadcast (by any means) by a contracting authority to the general public of material (including, for example, a programme or an advertisement) supplied by the supplier.

Electronic communications services

- 11 A contract the main purpose of which is facilitating the provision by a contracting authority to the general public of an electronic communications service (within the meaning given in section 32 of the Communications Act 2003).
- 12 A contract the main purpose of which is permitting a contracting authority to provide, maintain or use a public electronic communications network (within the meaning given in section 151 of the Communications Act 2003).

Alternative dispute resolution

- 13 A contract for the provision to a contracting authority of arbitration, mediation or conciliation services, or of any other similar services.

Legal services

- 14 (1) A contract for the provision of exempt legal services to a contracting authority.
- (2) The following services are “exempt legal services”—
- (a) legal representation by a lawyer in judicial proceedings or other dispute resolution proceedings, whether in or outside the United Kingdom;

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- (b) the giving of legal advice by a lawyer in connection with, or in contemplation of, any such proceedings;
- (c) document certification or authentication services provided by a notary in circumstances where the certification or authentication is required under an enactment or other rule of law to be performed by a notary;
- (d) legal services provided by a person required to provide them under an enactment or an order of a court or tribunal.

(3) In this paragraph—

“judicial proceedings” includes proceedings before a court, tribunal or public authority;

“lawyer” means—

- (a) a person who is an authorised person or an exempt person in relation to a reserved legal activity for the purposes of the Legal Services Act 2007 (see sections 18 and 19 of that Act);
- (b) a solicitor or advocate in Scotland;
- (c) a solicitor or barrister in Northern Ireland;
- (d) a person who is a member, and entitled to practise as such, of a legal profession regulated in a jurisdiction outside the United Kingdom;

“other dispute resolution proceedings” includes arbitration, mediation and conciliation.

Financial services

15 A contract for the lending of money in any currency to a contracting authority.

16 (1) A contract for the provision or carrying out of an investment service or activity, or of an ancillary service, in relation to a financial instrument by an investment firm or a qualifying credit institution.

(2) In this paragraph—

“ancillary service” means a service listed as such in Part 3A of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ([S.I. 2001/544](#));

“financial instrument”, “investment firm” and “qualifying credit institution” have the meanings given in Article 3 of that Order;

“investment service or activity” means a service or activity listed as such in Part 3 of Schedule 2 to that Order.

17 A contract for the provision of services by the Bank of England.

Employment

18 (1) A contract of employment or a worker’s contract.

(2) In this paragraph, the expressions “contract of employment” and “worker’s contract”—

- (a) in the case of a contract awarded by a transferred Northern Ireland contracting authority or awarded as part of a procurement under a transferred Northern Ireland procurement arrangement, have the meanings given in Article 3 of the Employment Rights (Northern Ireland) Order 1996 ([S.I. 1996/1919 \(N.I. 16\)](#));

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- (b) in any other case, have the meanings given in section 230 of the Employment Rights Act 1996.

- 19 Any other contract between a contracting authority and an individual for the remuneration or compensation of that individual where they are appointed to a public office by the contracting authority, including as a—
- (a) non-executive director of a public authority, or
 - (b) member of a public inquiry.

Emergency services

- 20 A contract for the provision by an organisation or association not run for profit of one or more of the following services—
- (a) services relating to the promotion of fire safety;
 - (b) fire extinguishing services;
 - (c) services for the protection of life and property in the event of fires;
 - (d) search and rescue services;
 - (e) civil defence services;
 - (f) nuclear safety services;
 - (g) ambulance services provided in respect of medical emergencies.

Public passenger transport services

- 21 (1) A contract that is required to be awarded in accordance with the public service obligations regulations.
- (2) In this paragraph, “the public service obligations regulations” has the meaning given by section 136(11) of the Railways Act 1993.

Research and development services

- 22 (1) A contract for the provision of research and development services to a contracting authority, where—
- (a) the services are intended by the authority to be for, or to result in, benefit to the public, and
 - (b) the contract does not also provide for the provision of goods or works.
- (2) In this paragraph, “research and development services” means services that consist of one or more of the following activities—
- (a) research to acquire new scientific or technical knowledge without any particular application or use in view;
 - (b) research directed mainly at generating scientific or technical knowledge for the purposes of a particular objective;
 - (c) development which uses existing knowledge to initiate the manufacture of new materials or products, establish new processes, systems or services, or to achieve a substantial improvement in existing materials, products, processes, systems or services;
 - (d) the manufacture and testing of prototypes.
- (3) But services are not “research and development services” if they include—
- (a) the production of tools for manufacture, or

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- (b) the development of industrial processes to manufacture goods or works arising from research or development.

International agreements and organisations

- 23 A contract awarded under a procedure specified in an international agreement of which the United Kingdom is a signatory relating to—
 - (a) the stationing of military personnel, or
 - (b) the implementation of a joint project between the signatories to that agreement.
- 24 A contract awarded under a procedure—
 - (a) adopted by an international organisation of which the United Kingdom is a member, and
 - (b) that is inconsistent in any material respect with the procedure for the award of the contract in accordance with this Act.

But this paragraph does not apply to a defence and security contract (as to which, see paragraph 29).

National security

- 25 A contract that the contracting authority determines should not, in the interests of national security, be subject to this Act or a part of this Act.

Intelligence activities

- 26 A contract for the purposes of carrying out, facilitating or supporting intelligence activities.

Defence and security contracts

- 27 A defence and security contract where—
 - (a) the supplier is located in an area outside the United Kingdom in which the armed forces are deployed, and
 - (b) the operational needs of the armed forces require the contract to be awarded to that supplier.
- 28 A defence and security contract where—
 - (a) the supplier is located in a state or territory outside the United Kingdom in which the armed forces maintain a military presence,
 - (b) that state or territory requires, in connection with that presence, that the supplier supplies the goods, services or works to which the contract relates.
- 29 A defence and security contract awarded under a procedure adopted by an international organisation of which the United Kingdom is a member.
- 30 A defence and security contract awarded under an arrangement between the United Kingdom and one or more other states or territories, where the purpose of that arrangement is, or is in connection with—
 - (a) the joint development of a new product by or on behalf of the parties to the arrangement, or
 - (b) the exploitation of that product once developed.

Utilities contracts

- 31 A utilities contract for the supply of goods, services or works to a utility other than one acting as a centralised procurement authority, where—
- (a) the purpose of the contract is to allow the further sale or lease of those goods, services or works to a third party,
 - (b) the utility does not have a special or exclusive right, within the meaning given by section 6(3), to sell or lease those goods, services or works, and
 - (c) other persons may sell or lease those goods, services or works under the same conditions as the utility.
- 32 A utilities contract for the supply of water to a utility carrying out a utility activity referred to in paragraph 3(1)(a) or (b) of Schedule 4.
- 33 A utilities contract for the supply of energy, or fuel for the production of energy, to a utility carrying out a utility activity referred to in paragraph 1, 2 or 6 of Schedule 4.
- 34 A contract for the supply of goods, services or works wholly or mainly for the purpose of an activity that would be a utility activity if it were not specified in Part 2 of Schedule 4.

Concession contracts

- 35 A concession contract for the carrying out of a utility activity within paragraph 3(1) or (2) of Schedule 4 (water services), ignoring for this purpose the effect of paragraph 3(4) of that Schedule.
- 36 (1) A concession contract that—
- (a) confers an exclusive right to operate a relevant scheduled air service for a period of four years or a series of periods falling within a period of four years, and
 - (b) imposes minimum service requirements in respect of that service during those periods.
- (2) In this paragraph—
- “air service” means a flight, or a series of flights, carrying passengers or cargo (including mail);
 - “airport” means any area especially adapted for air services;
 - “relevant scheduled air service” means an air service that—
- (a) operates between two airports within the United Kingdom or within the United Kingdom and Gibraltar, and
 - (b) the Secretary of State considers to be necessary in order to maintain sufficient transport links between the areas served by the airports.
- 37 A concession contract for the provision of public passenger transport services.

Commercial contracts of the City of London

- 38 A contract for the supply of goods, services or works to the Common Council of the City of London other than for the purposes of its functions as a local authority, police authority or port health authority.

SCHEDULE 3

Section 4

ESTIMATING THE VALUE OF A CONTRACT

General rule

- 1 (1) A contracting authority must estimate the value of a contract as the maximum amount it could expect to pay under the contract including, where applicable, amounts already paid.
- (2) The amount a contracting authority could expect to pay includes the following—
 - (a) the value of any goods, services or works provided by the contracting authority under the contract other than for payment;
 - (b) amounts that would be payable if an option in the contract to supply additional goods, services or works were exercised;
 - (c) amounts that would be payable if an option in the contract to extend or renew the term of the contract were exercised;
 - (d) amounts representing premiums, fees, commissions or interest that could be payable under the contract;
 - (e) amounts representing prizes or payments that could be payable to participants in the procurement.
- (3) In estimating the value of a contract, a contracting authority must take into account all of the facts which are material to the estimate and available to the authority at the time it makes the estimate.
- (4) This paragraph is subject to the rest of this Schedule.

Frameworks

- 2 (1) A contracting authority must estimate the value of a framework as the sum of the estimated values of all the contracts that have or may be awarded in accordance with that framework.
- (2) In the case of a framework awarded under an open framework, the value of the framework is to be treated as including the value of all frameworks awarded, or to be awarded, under the open framework.
- (3) In this Schedule, “framework” has the meaning given in section 45(2).

Concession contracts

- 3 (1) Paragraph 1 does not apply to the estimation of the value of a concession contract.
- (2) A contracting authority must estimate the value of a concession contract as the maximum amount the supplier could expect to receive under or in connection with the contract including, where applicable, amounts already received.
- (3) The amount a supplier could expect to receive includes the following—
 - (a) amounts representing revenue (whether monetary or non-monetary) receivable pursuant to the exploitation of the works or services to which the contract relates (whether from the contracting authority or otherwise);
 - (b) the value of any goods, services or works provided by the contracting authority under the contract other than for payment;

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- (c) amounts that would be receivable if an option in the contract to supply additional services or works were exercised;
- (d) amounts that would be receivable if an option in the contract to extend or renew the term of the contract were exercised;
- (e) amounts representing premiums, fees, commissions or interest that could be receivable under the contract;
- (f) amounts received on the sale of assets held by the supplier under the contract.

Anti-avoidance

- 4 (1) Sub-paragraph (2) applies where—
- (a) a contracting authority estimates the value of two or more contracts, and
 - (b) the goods, services or works to be supplied under the contracts could reasonably be supplied under a single contract.
- (2) The contracting authority must estimate the value of each of the contracts as including the value of all of the contracts, unless the authority has good reasons not to do so.

Cases where estimate not possible

- 5 If a contracting authority is unable to estimate the value of a contract in accordance with this Schedule (for example because the duration of the contract is unknown), the authority is to be treated as having estimated the value of the contract as an amount of more than the threshold amount for the type of contract.

SCHEDULE 4

Section 6

UTILITY ACTIVITIES

PART 1

ACTIVITIES THAT ARE UTILITY ACTIVITIES

Gas and heat

- 1 (1) The following are utility activities—
- (a) the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of gas or heat;
 - (b) the supply of gas or heat to such a network.
- (2) But the supply of gas or heat to a network is not a utility activity if—
- (a) the person supplying it (the “operator”) is a private utility or a public undertaking,
 - (b) the production of gas or heat by the operator is a necessary consequence of carrying out an activity other than a specified activity, and
 - (c) the amount of gas or heat supplied to the network represents not more than 20 per cent of the operator’s turnover amount.

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- (3) An appropriate authority may by regulations make provision about how to calculate an amount referred to in sub-paragraph (2)(c).
- (4) The regulations may, in particular, make provision for such an amount to be calculated by reference to—
 - (a) an average amount for a period specified in the regulations;
 - (b) another reasonable method so specified.

Electricity

- 2 (1) The following are utility activities—
 - (a) the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of electricity;
 - (b) the supply of electricity to such a network.
- (2) But the supply of electricity to a network is not a utility activity if—
 - (a) the person supplying it (the “operator”) is a private utility or a public undertaking,
 - (b) the operator produces electricity because it needs electricity to carry out an activity other than a specified activity,
 - (c) the supply consists only of electricity that was produced by the operator as mentioned in paragraph (b) but which it has not consumed, and
 - (d) the amount of electricity supplied represents not more than 30 per cent of the amount of energy produced by the operator.
- (3) An appropriate authority may by regulations make provision about how to calculate an amount referred to in sub-paragraph (2).
- (4) The regulations may, in particular, make provision for such an amount to be calculated by reference to—
 - (a) an average amount for a period specified in the regulations;
 - (b) another reasonable method so specified.

Water

- 3 (1) The following are utility activities—
 - (a) the provision or operation of a fixed network for the provision of a service to the public in connection with the production, transport or distribution of drinking water;
 - (b) the supply of drinking water to such a network.
- (2) The following are utility activities to the extent that they are carried out by a person who also carries out activities within sub-paragraph (1)—
 - (a) any activity connected with a hydraulic engineering project, irrigation or land drainage in circumstances where the condition in sub-paragraph (3) is met;
 - (b) any activity connected with the disposal or treatment of sewage.
- (3) The condition is that a person carrying out the activity would reasonably expect that more than 20 per cent of the water made available by the project, irrigation or land drainage is to be supplied as drinking water to a network within sub-paragraph (1)(a).

- (4) The supply of drinking water as mentioned in sub-paragraph (1)(b) is not a utility activity if—
- (a) the person supplying it (the “operator”) is a private utility or a public undertaking,
 - (b) the operator produces drinking water because it needs drinking water to carry out an activity that is not a specified activity,
 - (c) the supply consists only of drinking water that was produced by the operator as mentioned in paragraph (b) but which it has not consumed, and
 - (d) the amount of drinking water supplied represents not more than 30 per cent of the amount of drinking water produced by the operator.
- (5) An appropriate authority may by regulations make provision about how to calculate an amount referred to in sub-paragraph (4).
- (6) The regulations may, in particular, make provision for such an amount to be calculated by reference to—
- (a) an average amount for a period specified in the regulations;
 - (b) another reasonable method so specified.

Transport

- 4 An activity is a utility activity if it relates to the provision or operation of a network for the provision of a service to the general public for transport, whether by rail, tram, bus or other means.

Ports and airports

- 5 (1) An activity relating to the exploitation of a geographical area for the following purposes is a utility activity—
- (a) the provision of an airport to carriers of passengers or goods by air;
 - (b) the provision of a port or other terminal facilities to carriers of passengers or goods by sea or inland waterway.
- (2) In this paragraph “airport” has the same meaning as in Part 1 of the Civil Aviation Act 2012 (see section 66 of that Act).

Extraction of oil and gas and exploration for, or extraction of, coal or other solid fuels

- 6 An activity relating to the exploitation of a geographical area for the following purposes is a utility activity—
- (a) extracting oil or gas;
 - (b) searching for or extracting coal or other solid fuels.

Interpretation of Schedule

- 7 In this Part of this Schedule—
- “specified activity” means an activity specified in paragraph 1(1), 2(1), 3(1) or 4;
 - “supply” includes—
 - (a) production, but not the production of gas in the form of extraction (as to which, see paragraph 6), and

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(b) generation and wholesale or retail sale.

PART 2

ACTIVITIES THAT ARE NOT UTILITY ACTIVITIES

- 8 Generation of electricity in England, Scotland or Wales.
- 9 Production of electricity in England, Scotland or Wales.
- 10 Wholesale or retail sale of electricity in England, Scotland or Wales.
- 11 Wholesale or retail sale of gas in England, Scotland or Wales.
- 12 Exploration for oil in England, Scotland or Wales.
- 13 Exploration for natural gas in England, Scotland or Wales.
- 14 Production of oil in England, Scotland or Wales.
- 15 Production of natural gas in England, Scotland or Wales.
- 16 Development of infrastructure for production of oil in England, Scotland or Wales.
- 17 Development of infrastructure for production of natural gas in England, Scotland or Wales.

SCHEDULE 5

Section 41

DIRECT AWARD JUSTIFICATIONS

- 1 This Schedule contains the direct award justifications.

Prototypes and development

- 2 The public contract concerns the production of a prototype, or supply of other novel goods or services, for the purpose of—
 - (a) testing the suitability of the goods or services,
 - (b) researching the viability of producing or supplying the goods or services at scale and developing them for that purpose, or
 - (c) other research, experiment, study or development.
- 3 In paragraph 2, “novel goods or services” means goods or services designed or developed at the request of the contracting authority.

Single suppliers

- 4 The public contract concerns the creation or acquisition of a unique work of art or artistic performance.
- 5 The following conditions are met in relation to the public contract—
 - (a) due to a particular supplier having intellectual property rights or other exclusive rights, only that supplier can supply the goods, services or works required, and
 - (b) there are no reasonable alternatives to those goods, services or works.

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- 6 The following conditions are met in relation to the public contract—
- (a) due to an absence of competition for technical reasons, only a particular supplier can supply the goods, services or works required, and
 - (b) there are no reasonable alternatives to those goods, services or works.

Additional or repeat goods, services or works

- 7 The public contract concerns the supply of goods, services or works by the existing supplier which are intended as an extension to, or partial replacement of, existing goods, services or works in circumstances where—
- (a) a change in supplier would result in the contracting authority receiving goods, services or works that are different from, or incompatible with, the existing goods, services or works, and
 - (b) the difference or incompatibility would result in disproportionate technical difficulties in operation or maintenance.
- 8 The public contract concerns the supply of goods, services or works by the existing supplier that are similar to existing goods, services or works where—
- (a) the existing goods, services or works were supplied under a public contract that was awarded in accordance with a competitive tendering procedure within the period of five years ending with the day on which the transparency notice is published, and
 - (b) the tender notice or any tender document in respect of that earlier contract set out—
 - (i) the contracting authority’s intention to carry out a subsequent procurement of similar goods, services or works in reliance on this direct award justification, and
 - (ii) any other information specified in regulations under section 95.
- 9 In paragraphs 7 and 8—
- “existing goods, services or works” means goods, services or works already supplied, or contracted to be supplied, to the contracting authority;
 - “existing supplier” means the supplier that has already supplied, or contracted to supply, the existing goods, services or works.

Commodities

- 10 The public contract concerns goods purchased on a commodity market.

Advantageous terms on insolvency

- 11 The award of the public contract to a particular supplier will ensure terms particularly advantageous to the contracting authority due to the fact that a supplier, whether or not the one to whom the contract is to be awarded, is undergoing insolvency proceedings.
- 12 A supplier is “undergoing insolvency proceedings” if it has—
- (a) become bankrupt or, in Scotland, the estate of the supplier has been sequestrated,
 - (b) become subject to insolvency or winding-up proceedings,
 - (c) had its assets subject to administration or receivership, including by a liquidator or court,

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- (d) entered into an arrangement with its creditors,
- (e) become subject to a petition or application for any such procedures or arrangements, or
- (f) in any jurisdiction, been subject to a procedure or an application that corresponds to any procedure or application mentioned in paragraphs (a) to (e).

Urgency

- 13 Where—
- (a) the goods, services or works to be supplied under the public contract are strictly necessary for reasons of extreme and unavoidable urgency, and
 - (b) as a result the public contract cannot be awarded on the basis of a competitive tendering procedure.
- 14 For the purpose of paragraph 13, urgency is unavoidable if it—
- (a) is not attributable to any act or omission of the contracting authority, and
 - (b) could not have been foreseen by the contracting authority.

User choice contracts

- 15 The public contract is a contract for the supply of user choice services and the conditions in paragraph 17 are met.
- 16 In paragraph 15, “user choice services” means services—
- (a) that are of a kind specified in regulations under section 9 (light touch contracts),
 - (b) that are supplied for the benefit of a particular individual, and
 - (c) in respect of which a contracting authority would, in awarding a contract for their supply, be required under an enactment to have regard to the views of the individual, or a person providing care to the individual (their “carer”), in relation to who should supply the services.
- 17 The conditions are that—
- (a) the individual to whom the services are to be supplied or their carer has expressed a preference as to who should supply the services, or the nature of the services to be supplied is such that only one supplier is capable of providing them, and
 - (b) the contracting authority considers that it is not in the best interests of the individual to award the contract under section 19.

Defence and security

- 18 The following conditions are met in relation to the public contract—
- (a) the contract is a defence and security contract,
 - (b) the contract relates to the supply of air or maritime transport services to the armed forces or the security services—
 - (i) while they are deployed outside the United Kingdom, or
 - (ii) in order for them to be so deployed, and
 - (c) the nature of the services is such that no reasonable supplier would be able to guarantee that all of the terms that would be contained in a tender

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- submitted for the supply of those services by such a supplier would remain in effect for the period of 10 days beginning with the day of submission.
- 19 (1) The following conditions are met in relation to the public contract (the “new contract”)—
- (a) there is another contract between the contracting authority and the supplier (the “existing contract”),
 - (b) either of the conditions in sub-paragraphs (2) and (3) is met in relation to the new contract, and
 - (c) the new contract would, if awarded directly, be a “qualifying defence contract” under section 14(2) of the Defence Reform Act 2014 (regulations relating to qualifying defence contracts).
- (2) The condition in this sub-paragraph is met if, treating the new contract as a modification of the existing contract, the new contract would not be a substantial modification of the existing contract within the meaning given in section 74(3).
- (3) The condition in this sub-paragraph is met if, treating the new contract as a modification of the existing contract, the new contract would be a modification of the existing contract of a kind described in—
- (a) paragraph 4 of Schedule 8 (unforeseeable circumstances), or
 - (b) paragraph 8 of that Schedule (additional goods, services or works).
- 20 The following conditions are met in relation to the public contract—
- (a) the contract is a defence authority contract,
 - (b) the contract is not a defence and security contract only by virtue of section 7(1)(g) (or, in the case of a framework, section 7(1)(g) and (2)), and
 - (c) it is necessary for the contract to be awarded directly in order to enhance or maintain the operational capability, effectiveness, readiness for action, safety or security of the armed forces.

SCHEDULE 6

Section 57

MANDATORY EXCLUSION GROUNDS

PART 1

OFFENCES

- 1 A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been convicted of an offence referred to in this Part of this Schedule.

Corporate manslaughter or corporate homicide

- 2 An offence under section 1 of the Corporate Manslaughter and Corporate Homicide Act 2007 (corporate manslaughter or corporate homicide).

Terrorism

- 3 An offence listed in section 41 or 42 of the Counter-Terrorism Act 2008 (terrorism offences, and offences having a terrorist connection, in respect of which the

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notification requirements under Part 4 of that Act apply), other than an offence under section 54 of that Act.

Theft, fraud, bribery etc

- 4 An offence at common law in Scotland of theft, fraud, extortion, robbery, theft by housebreaking, housebreaking with intent to steal, uttering, embezzlement, or reset.
- 5 An offence at common law of conspiracy to defraud.
- 6 An offence under any of the following sections of the Theft Act 1968—
 - (a) sections 1 to 13 (theft, robbery, burglary, etc);
 - (b) sections 17 to 21 (fraud and blackmail);
 - (c) sections 22 and 23 (offences relating to stolen goods);
 - (d) section 24A (dishonestly retaining a wrongful credit);
 - (e) section 25 (going equipped for stealing etc).
- 7 An offence under any of the following sections of the [Theft Act \(Northern Ireland\) 1969 \(c. 16 \(N.I.\)\)](#)—
 - (a) sections 1 to 13 (theft, robbery, burglary, etc);
 - (b) sections 17 to 20 (fraud and blackmail);
 - (c) sections 21 and 22 (offences relating to stolen goods);
 - (d) section 23A (dishonestly retaining a wrongful credit);
 - (e) section 24 (going equipped for stealing etc).
- 8 An offence under section 3 of the Theft Act 1978 (making off without payment).
- 9 An offence under section 5 of the Theft (Northern Ireland) Order 1978 ([S.I. 1978/1407 \(N.I. 23\)](#)) (making off without payment).
- 10 An offence under Article 172 or 172A of the Road Traffic (Northern Ireland) Order 1981 ([S.I. 1981/154 \(N.I. 1\)](#)) (taking vehicle without authority etc).
- 11 An offence under section 58 of the Civic Government (Scotland) Act 1982 (convicted thief in possession).
- 12 An offence under section 113 of the Representation of the People Act 1983 (bribery of electors).
- 13 An offence under section 178 of the Road Traffic Act 1988 (taking motor vehicle without authority etc).
- 14 An offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002 (money laundering offences).
- 15 An offence under section 2, 3, 4, 6 or 7 of the Fraud Act 2006 (fraud offences).
- 16 An offence under section 993 of the Companies Act 2006 (fraudulent trading).
- 17 An offence under section 1, 2 or 6 of the Bribery Act 2010 (bribery offences).
- 18 An offence under section 49 of the Criminal Justice and Licensing (Scotland) Act 2010 ([asp 13](#)) (offences relating to articles for use in fraud).

Labour market, slavery and human trafficking offences

- 19 An offence under the Employment Agencies Act 1973 (offences relating to employment agencies) other than an offence under section 9(4)(b) of that Act.

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- 20 An offence under the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (S.I. 1981/839 (N.I. 20)) (offences relating to employment agencies) other than an offence under Article 7B(11) of that Order.
- 21 An offence under section 31(1) of the National Minimum Wage Act 1998 (refusal or wilful neglect to pay the national minimum wage).
- 22 An offence under the Gangmasters (Licensing) Act 2004 (offences relating to gangmasters).
- 23 An offence under section 1, 2, 4 or 30 of the Modern Slavery Act 2015 (slavery and human trafficking offences).
- 24 An offence under section 1, 4 or 32 of the Human Trafficking and Exploitation (Scotland) Act 2015 (asp 12) (slavery and human trafficking offences).
- 25 An offence under section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2) (N.I.), or paragraph 16 of Schedule 3 to that Act (slavery and human trafficking offences).
- 26 An offence under section 27 of the Immigration Act 2016 (failure to comply with labour market enforcement order).

Organised crime

- 27 An offence under section 28 of the Criminal Justice and Licensing (Scotland) Act 2010 (agreeing to become involved in serious organised crime).
- 28 An offence under section 45 of the Serious Crime Act 2015 (participating in activities of organised crime group).

Tax offences

- 29 An offence at common law of cheating the public revenue.
- 30 (1) An offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.
- (2) In this paragraph, “tax” means a tax imposed under the law of any part of the United Kingdom, including national insurance contributions under—
- (a) Part 1 of the Social Security Contributions and Benefits Act 1992, or
 - (b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- 31 An offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent facilitation of tax evasion).

Cartel offence

- 32 An offence under section 188 of the Enterprise Act 2002 (cartel offence).

Ancillary offences

- 33 In relation to an offence otherwise referred to in this Part, any of the following offences—
- (a) aiding, abetting, counselling or procuring the commission of the offence;

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- (b) in Scotland, being art and part in the commission of the offence;
- (c) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence;
- (d) inciting a person to commit the offence;
- (e) attempting or conspiring to commit the offence.

Offences committed outside the United Kingdom

- 34 (1) An offence under the law of a country or territory outside the United Kingdom which would be an offence otherwise referred to in this Part of this Schedule if the conduct constituting that offence was carried out in any part of the United Kingdom.
- (2) For the purposes of this paragraph, an act punishable under the law of a country or territory outside the United Kingdom constitutes an offence under that law, however it is described in that law.

PART 2

OTHER MANDATORY EXCLUSION GROUNDS

National security

- 35 (1) A mandatory exclusion ground applies to a supplier in relation to contracts of a particular description if an appropriate authority determines that the supplier or a connected person—
- (a) poses a threat to the national security of the United Kingdom, and
 - (b) would pose such a threat in relation to public contracts of that description.
- (2) In sub-paragraph (1)—
- (a) the reference to an appropriate authority is a reference to the appropriate authority that is considering whether the exclusion ground applies;
 - (b) the reference to a particular description includes, for example, a description by reference to—
 - (i) the goods, services or works being supplied;
 - (ii) the location of the supply;
 - (iii) the contracting authority concerned.
- (3) Sub-paragraph (1) applies only for the purpose of an appropriate authority’s functions under sections 59 to 66 (debarment), and cannot otherwise be relied on by a contracting authority when considering whether a supplier is an excluded supplier under section 57(1)(a).

Misconduct in relation to tax

- 36 (1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been liable to a penalty under—
- (a) section 69C of the Value Added Tax Act 1994 (transactions connected with VAT fraud) except where the penalty is reduced under section 70 of that Act, or
 - (b) section 25 of the Finance Act 2003 (evasion of tax or duty).

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- (2) The supplier or connected person is not to be treated as having been liable to such a penalty unless HMRC has assessed the amount of the penalty and the time for any appeal or further appeal relating to the penalty has expired or, if later, any appeal or final appeal relating to it has been finally determined.
- 37 (1) A mandatory exclusion ground applies to a supplier if a penalty has been payable by the supplier or a connected person under—
- (a) Schedule 24 to the Finance Act 2007 (errors in tax documentation), or
 - (b) Schedule 41 to the Finance Act 2008 (failure to notify and certain VAT and excise wrongdoing),
- but only where the conduct giving rise to that penalty was deliberate.
- (2) Such a penalty is not to be treated as having been payable unless—
- (a) if the penalty has been assessed, the time for any appeal or further appeal relating to the penalty has expired or, if later, any appeal or final appeal relating to it has been finally determined, or
 - (b) a contract has been made between HMRC and the supplier or connected person, under which HMRC undertook not to assess the penalty or (if it was assessed) not to take proceedings to recover it.
- 38 (1) A mandatory exclusion ground applies to a supplier if—
- (a) the supplier or a connected person has entered into or carried out tax arrangements that are abusive (within the meaning given in section 207 of the Finance Act 2013), and
 - (b) adjustments have accordingly been made under section 209 of that Act (countering tax advantages), including as it applies under section 10 of the National Insurance Contributions Act 2014.
- (2) Adjustments are not to be treated as having been made until they can no longer be challenged, whether on appeal or otherwise.
- 39 (1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has been found by HMRC, in exercise of its powers in respect of VAT, to have engaged in an abusive practice.
- (2) The supplier or connected person is not to be treated as having been found by HMRC to have engaged in those arrangements or practices until the finding can no longer be challenged, whether on appeal or otherwise.
- 40 (1) A mandatory exclusion ground applies to a supplier if the supplier or a connected person has incurred a defeat in respect of notifiable tax arrangements they have entered into.
- (2) In this paragraph—
- “defeat” means that—
- (a) Condition A in paragraph 5 of Schedule 16 to the Finance (No. 2) Act 2017, or
 - (b) Condition B in paragraph 6 of that Schedule,
- is met in respect of the arrangements (where “T” in those paragraphs is taken to mean the supplier or connected person entering into the arrangements);
- “notifiable tax arrangements” means tax arrangements in respect of which a reference number—

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- (a) has been notified to the supplier or connected person under section 311A, 312 or 312ZA of the Finance Act 2004 (disclosure of tax avoidance schemes) or paragraph 22A, 23 or 23A of Schedule 17 to the Finance (No. 2) Act 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes), and
 - (b) has not been withdrawn;
- “tax arrangements” has the meaning given in paragraph 3(1) of Schedule 16 to the Finance (No. 2) Act 2017.

Competition law infringements

- 41 (1) A mandatory exclusion ground applies to a supplier if the CMA has made a decision under the Competition Act 1998 that the Chapter I prohibition (within the meaning given by section 2 of that Act) has been infringed by an agreement or concerted practice—
- (a) to which the supplier or a connected person was party, and
 - (b) which was a cartel (within the meaning given by paragraph 4(1) of Schedule 8A to that Act).
- (2) Sub-paragraph (1) does not apply if the CMA did not impose a penalty on the supplier or connected person in respect of the infringement because the supplier or connected person was an immunity recipient (within the meaning given by paragraph 14 of Schedule 8A to the Competition Act 1998).
- (3) In this paragraph, references to the CMA include references to a regulator referred to in section 54(1) of the Competition Act 1998 in circumstances where it exercises functions concurrently with the CMA in accordance with that Act.

Equivalents outside the United Kingdom

- 42 A mandatory exclusion ground applies to a supplier if the supplier or a connected person—
- (a) has been subject to a penalty or a decision by a regulator, court or other authority outside the United Kingdom, where the conduct giving rise to that penalty or decision is conduct that would give rise to a penalty or decision referred to in any of paragraphs 36 to 41 if committed in the United Kingdom, in circumstances where the penalty or decision would be a mandatory exclusion ground, or
 - (b) has had a tax advantage counteracted outside the United Kingdom, in circumstances where the supplier or connected person would have incurred a defeat of the kind referred to in paragraph 40 had the tax advantage arisen in respect of tax payable in the United Kingdom.

Failure to cooperate with investigation

- 43 A mandatory exclusion ground applies to a supplier if—
- (a) an appropriate authority has given the supplier or a connected person notice under section 60(6) (requests for documents or other assistance in connection with investigation),
 - (b) the supplier or connected person has failed to comply with the notice to the satisfaction of the authority before the end of the period specified in the notice, and

- (c) a Minister of the Crown has made a determination that the failure to do so was sufficiently serious so as to warrant constituting a mandatory exclusion ground.

PART 3

GENERAL

Excluded matters

- 44 (1) In determining whether a mandatory exclusion ground applies to a supplier, the decision-maker must ignore any event that occurred before the five-year period ending with the date on which the determination is made.

This is subject to sub-paragraphs (2) to (4).

- (2) In determining whether a mandatory exclusion ground listed in any of the following paragraphs applies to a supplier, sub-paragraph (1) applies whether the event occurred before or after the coming into force of this Schedule—
- (a) paragraph 3 (terrorism offences);
 - (b) paragraph 12 or 17 (bribery);
 - (c) paragraph 14 (money laundering offences);
 - (d) paragraph 23, where the ground in that paragraph applies by virtue of an offence under section 1, 2 or 4 of the Modern Slavery Act 2015 (slavery and trafficking offences);
 - (e) paragraph 24, where the ground in that paragraph applies by virtue of an offence under section 1 or 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 (slavery and trafficking offences);
 - (f) paragraph 25, where the ground in that paragraph applies by virtue of an offence under section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (slavery and trafficking offences);
 - (g) paragraph 27 or 28 (organised crime);
 - (h) paragraph 33 or 34, so far as relating to any offence that constitutes a mandatory exclusion ground listed in any of the paragraphs within paragraph (a) to (g) above (inchoate offences and corresponding offences outside the United Kingdom).
- (3) In determining whether a mandatory exclusion ground listed in any of the following paragraphs applies to a supplier, the decision-maker must also ignore any event that occurred before the coming into force of this Schedule—
- (a) paragraph 2 (corporate manslaughter or homicide);
 - (b) paragraph 4, 5, 6(a) or (c) to (e), 7(a) or (c) to (e), 8 to 11 or 13 (theft, robbery, burglary etc);
 - (c) paragraph 33 or 34, so far as relating to any offence that constitutes a mandatory exclusion ground listed in any of the paragraphs within paragraph (a) and (b) above (inchoate offences and corresponding offences outside the United Kingdom);
 - (d) paragraph 35 (threat to national security).

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- (4) In determining whether a mandatory exclusion ground listed in any of the following paragraphs applies to a supplier, the decision-maker must also ignore any event that occurred before the three-year period ending with the coming into force of this Schedule—
- (a) paragraph 6(b) or 7(b) (blackmail);
 - (b) paragraph 15, 16 or 18 (fraud and fraudulent trading);
 - (c) paragraphs 19 to 22 (labour market offences);
 - (d) paragraph 23, where the ground in that paragraph applies by virtue of an offence under section 30 of the Modern Slavery Act 2015 (breach of orders under that Act);
 - (e) paragraph 24, where the ground in that paragraph applies by virtue of an offence under section 32 of the Human Trafficking and Exploitation (Scotland) Act 2015 (breach of orders under that Act);
 - (f) paragraph 25, where the ground in that paragraph applies by virtue of an offence under paragraph 16 of Schedule 3 to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (breach of orders under that Act);
 - (g) paragraph 26 (breach of labour market enforcement order);
 - (h) paragraphs 29 to 31 (tax offences);
 - (i) paragraph 32 (cartel offence);
 - (j) paragraph 33 or 34, so far as relating to any offence that constitutes a mandatory exclusion ground listed in any of the paragraphs within paragraphs (a) to (i) above;
 - (k) paragraphs 36 to 40 (tax misconduct);
 - (l) paragraph 41 (competition law infringements);
 - (m) paragraph 42 (equivalents to tax misconduct and competition law infringements outside the United Kingdom).

Definitions

45 In this Schedule—

- the “CMA” means the Competition and Markets Authority;
- “conduct” includes acts and omissions;
- “connected person”, in relation to a supplier, means any of the following—
 - (a) a person with “significant control” over the supplier (within the meaning given by section 790C(2) of the Companies Act 2006 (“CA 2006”));
 - (b) a director or shadow director of the supplier;
 - (c) a parent undertaking or a subsidiary undertaking of the supplier;
 - (d) a predecessor company;
 - (e) any other person who it can reasonably be considered stands in an equivalent position in relation to the supplier as a person within paragraph (a) to (d);
 - (f) any person with the right to exercise, or who actually exercises, significant influence or control over the supplier;
 - (g) any person over which the supplier has the right to exercise, or actually exercises, significant influence or control;

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- “court” includes a tribunal;
- “decision-maker”, in relation to a supplier, means a contracting authority or an appropriate authority that is considering whether a mandatory exclusion ground applies to the supplier;
- “director” has the meaning given in section 250 of CA 2006;
- “event” means a conviction, decision, ruling, failure or other event by virtue of which a mandatory exclusion ground would apply to a supplier;
- “HMRC” means His Majesty’s Revenue and Customs;
- “parent undertaking” and “subsidiary undertaking” have the meanings given in section 1162 of CA 2006;
- “predecessor company” means a company which—
- (a) became insolvent and ceased to trade,
 - (b) before it ceased to trade, carried on the same or substantially the same business as the supplier,
 - (c) has transferred all or substantially all of its assets to the supplier, and
 - (d) had at least one director or shadow director who is or has been a director or shadow director of the supplier;
- “shadow director” has the meaning given in section 251 of CA 2006.

SCHEDULE 7

Section 57

DISCRETIONARY EXCLUSION GROUNDS

Labour market misconduct

- 1 A discretionary exclusion ground applies to a supplier if any of the following orders has been made against the supplier or a connected person—
 - (a) a slavery and trafficking prevention order, an interim slavery and trafficking prevention order, a slavery and trafficking risk order or an interim slavery and trafficking risk order under Part 2 of the Modern Slavery Act 2015;
 - (b) a trafficking and exploitation prevention order, an interim trafficking and exploitation prevention order, a trafficking and exploitation risk order or an interim trafficking and exploitation risk order under Part 4 of the Human Trafficking and Exploitation (Scotland) Act 2015 ([asp 12](#));
 - (c) a slavery and trafficking prevention order or an interim slavery and trafficking prevention order under Schedule 3 to the [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c.2 \(N.I.\)\)](#);
 - (d) a labour market enforcement order under section 18 of the Immigration Act 2016.
- 2 A discretionary exclusion ground applies to a supplier if the supplier or a connected person has engaged in conduct outside the United Kingdom that the decision-maker considers could result in any such order being made if the conduct occurred in the United Kingdom.
- 3 A discretionary exclusion ground applies to a supplier if the decision-maker considers that there is sufficient evidence that the supplier or a connected person has

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engaged in conduct (whether in or outside the United Kingdom) constituting (or that would, if it occurred in the United Kingdom, constitute) an offence referred to in—

- (a) section 1, 2, 4 or 30 of the Modern Slavery Act 2015,
- (b) section 1, 4 or 32 of the Human Trafficking and Exploitation (Scotland) Act 2015, or
- (c) section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, or paragraph 16 of Schedule 3 to that Act.

Environmental misconduct

- 4 A discretionary exclusion ground applies to a supplier if—
- (a) the supplier or a connected person has been convicted of an offence (whether in or outside the United Kingdom), and
 - (b) the conduct constituting the offence caused, or had the potential to cause, significant harm to the environment, including the life and health of plants and animals.

Insolvency, bankruptcy, etc

- 5 A discretionary exclusion ground applies to a supplier if the supplier or a connected person has—
- (a) become bankrupt (or, in Scotland, its estate has been sequestrated),
 - (b) become subject to insolvency or winding-up proceedings,
 - (c) had its assets subject to administration or receivership, including by a liquidator or court,
 - (d) entered into an arrangement with its creditors,
 - (e) become subject to a petition or application for any such procedures or arrangements, or
 - (f) in any jurisdiction, been subject to a procedure or an application the decision-maker considers to correspond to any procedure or application mentioned in paragraphs (a) to (e).
- 6 A discretionary exclusion ground applies to a supplier if the supplier or a connected person has suspended or ceased carrying on all or a substantial part of its business.

Potential competition infringements

- 7 (1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that an agreement or concerted practice to which the supplier or a connected person is party has infringed—
- (a) the Chapter I prohibition (within the meaning given by section 2 of the Competition Act 1998), or
 - (b) any substantially similar prohibition applicable in a jurisdiction outside the United Kingdom.
- (2) Sub-paragraph (1) does not apply where—
- (a) the supplier or connected person is an immunity recipient (within the meaning given by paragraph 14 of Schedule 8A to that Act), or

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- (b) a regulator or other authority outside the United Kingdom has granted the supplier or connected person immunity from penalties in respect of the infringement.
- 8 A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has infringed—
 - (a) the Chapter II prohibition (within the meaning given by section 18 of the Competition Act 1998), or
 - (b) any substantially similar prohibition applicable in a jurisdiction outside the United Kingdom.
- 9 (1) A discretionary exclusion ground applies to a supplier if—
 - (a) the CMA has made a decision under the Competition Act 1998 that the supplier or a connected person has infringed the Chapter II prohibition, or
 - (b) a regulator or other authority outside the United Kingdom has made a decision that the supplier or a connected person has infringed any substantially similar prohibition.

(2) In this paragraph the reference to the CMA includes a reference to a regulator referred to in section 54(1) of the Competition Act 1998 in circumstances where it exercises functions concurrently with the CMA in accordance with that Act.
- 10 (1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has engaged in conduct constituting—
 - (a) an offence under section 188 of the Enterprise Act 2002 (cartel offence), or
 - (b) a substantially similar offence under the law of a country or territory outside the United Kingdom.

(2) Sub-paragraph (1) does not apply if—
 - (a) the CMA has given written notice to the supplier or connected person under section 190(4) of the Enterprise Act 2002 (immunity from prosecution for cartel offences) in connection with the conduct, or
 - (b) a regulator or other authority outside the United Kingdom has determined that the supplier or connected person is immune from prosecution in respect of the conduct.

Professional misconduct

- 11 (1) A discretionary exclusion ground applies to a supplier if the decision-maker considers that the supplier or a connected person has engaged in professional misconduct which brings into question the supplier's integrity.
- (2) A discretionary exclusion ground applies to a supplier if a court, regulator or other authority has ruled that the supplier or connected person has engaged in such professional misconduct.
- (3) "Professional misconduct" includes conduct involving—
 - (a) dishonesty;
 - (b) impropriety;
 - (c) a serious breach of ethical or professional standards applicable to the supplier (whether those standards are mandatory or not).

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Breach of contract and poor performance

- 12 (1) A discretionary exclusion ground applies to a supplier if—
- (a) the supplier has breached a relevant contract, and
 - (b) the breach was sufficiently serious.
- (2) A discretionary exclusion ground applies to a supplier if—
- (a) a court has ruled that the supplier breached a relevant contract, and
 - (b) the breach was sufficiently serious.
- (3) A discretionary exclusion ground applies to a supplier if the supplier—
- (a) has not performed a relevant contract to the regulated authority’s satisfaction,
 - (b) was given proper opportunity to improve performance, and
 - (c) failed to do so.
- (4) A discretionary exclusion ground applies to a supplier if a contracting authority has published information under section 71(5) in respect of the supplier (information concerning either breach or poor performance).
- (5) For the purposes of this paragraph, a breach of a contract is “sufficiently serious” if it results in—
- (a) termination (or partial termination) of the contract,
 - (b) the award of damages,
 - (c) a settlement agreement between the supplier and the regulated authority.
- (6) In this paragraph—
- “regulated authority” means—
 - (a) a contracting authority,
 - (b) another public authority, or
 - (c) an authority outside the United Kingdom that the decision-maker considers to be equivalent;
 - “relevant contract” means a contract to which a regulated authority is party.

Acting improperly in procurement

- 13 (1) A discretionary exclusion ground applies to a supplier if a decision-maker considers that—
- (a) the supplier has acted improperly in relation to any procurement, and
 - (b) in so doing, the supplier put itself at an unfair advantage in relation to the award of a public contract.
- (2) A supplier might act improperly in relation to a procurement by—
- (a) failing to provide information requested by the contracting authority;
 - (b) providing information that is incomplete, inaccurate or misleading;
 - (c) accessing confidential information;
 - (d) unduly influencing the contracting authority’s decision-making.

National security

- 14 A discretionary exclusion ground applies to a supplier if a decision-maker determines that the supplier or a connected person poses a threat to the national security of the United Kingdom.

Excluded matters

- 15 (1) For the purpose of determining whether a discretionary exclusion ground applies to a supplier, the decision-maker must ignore any event that—
- (a) the decision-maker was aware of before the five-year period ending with the date on which the determination is made, or
 - (b) a reasonably well-informed decision-maker in their position would have been aware of before that period.

This is subject to sub-paragraphs (2) and (4).

- (2) In determining whether a discretionary exclusion ground within sub-paragraph (3) applies to a supplier, the decision-maker must also ignore any event that—
- (a) the decision-maker was aware of before the three-year period ending with the date on which the determination is made, or
 - (b) a reasonably well-informed decision-maker in their position would have been aware of before that period.
- (3) The grounds are those listed in—
- (a) paragraphs 5 and 6 (insolvency, bankruptcy etc);
 - (b) paragraphs 7 to 10 (potential competition infringements);
 - (c) paragraph 11 (professional misconduct);
 - (d) paragraph 12(1) or (2) (breach of contract);
 - (e) paragraph 12(4) (adverse information about supplier published by contracting authority), where the information is published in relation to a breach of contract;
 - (f) paragraph 13 (acting improperly in a procurement).
- (4) In determining whether a discretionary exclusion ground listed in any of the following paragraphs applies to a supplier, the decision-maker must also ignore any event that occurred before the coming into force of this Schedule—
- (a) paragraphs 1 to 3 (labour market misconduct);
 - (b) paragraph 4 (environmental misconduct);
 - (c) paragraph 12(3) (poor performance);
 - (d) paragraph 12(4) (adverse information about supplier published by contracting authority), where the information is not published in relation to a breach of contract;
 - (e) paragraph 14 (national security).

Definitions

- 16 In this Schedule—
- “decision-maker”, in relation to a supplier, means a contracting authority or an appropriate authority that is considering whether a discretionary exclusion ground applies to the supplier;

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“event” means a conviction, decision, ruling, failure or other event by virtue of which a discretionary exclusion ground would apply to a supplier;

“information” includes evidence verifying that information.

- 17 Other terms used in this Schedule and defined in Schedule 6 have the meanings given in that Schedule.

SCHEDULE 8

Section 74

PERMITTED CONTRACT MODIFICATIONS

Provided for in the contract

- 1 A modification is a permitted modification if—
- (a) the possibility of the modification is unambiguously provided for in—
 - (i) the contract as awarded, and
 - (ii) the tender or transparency notice for the award of that contract, and
 - (b) the modification would not change the overall nature of the contract.

Urgency and the protection of life, etc

- 2 A modification is a permitted modification if—
- (a) its purpose could otherwise be achieved by the direct award of a contract under section 41, and
 - (b) such an award could be made by reference to—
 - (i) paragraph 13 of Schedule 5 (extreme and unavoidable urgency), or
 - (ii) regulations under section 42 (direct award to protect life, etc).
- 3 Assume, for the purposes of paragraph 2, that the contract would be a public contract as defined in section 3.

Unforeseeable circumstances

- 4 (1) A modification is a permitted modification if—
- (a) the circumstances giving rise to the modification could not reasonably have been foreseen by the contracting authority before the award of the contract,
 - (b) the modification would not change the overall nature of the contract, and
 - (c) the modification would not increase the estimated value of the contract by more than 50 per cent.
- (2) Sub-paragraph (1)(c) does not apply if the contract being modified is a utilities contract.

Materialisation of a known risk

- 5 (1) A modification is a permitted modification if—
- (a) the contracting authority considers that—
 - (i) a known risk has materialised otherwise than as a result of any act or omission of the contracting authority or the supplier,

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- (ii) because of that fact, the contract cannot be performed to the satisfaction of the contracting authority,
 - (iii) the modification goes no further than necessary to remedy that fact, and
 - (iv) awarding a further contract under Part 3 (instead of modifying the contract) would not be in the public interest in the circumstances, and
 - (b) the modification would not increase the estimated value of the contract by more than 50 per cent ignoring, for the purpose of estimating the value of the contract, the fact that the risk has materialised.
 - (2) Sub-paragraph (1)(b) does not apply if the contract being modified is a utilities contract.
- 6 In paragraph 5, a “known risk” means a risk that—
- (a) the contracting authority considered—
 - (i) could jeopardise the satisfactory performance of the contract, but
 - (ii) because of its nature, could not be addressed in the contract as awarded, and
 - (b) was identified in the tender or transparency notice for award of the contract, including by reference to—
 - (i) it meeting the description in paragraph (a), and
 - (ii) the possibility of modification under paragraph 5.
- 7 In considering whether awarding a new contract would be in the public interest for the purposes of paragraph 5, a contracting authority—
- (a) must consider whether a new contract could provide more value for money, and
 - (b) may consider technical and operational matters.

Additional goods, services or works

- 8 (1) A modification is a permitted modification if—
- (a) the modification provides for the supply of goods, services or works in addition to the goods, services or works already provided for in the contract,
 - (b) using a different supplier would result in the supply of goods, services or works that are different from, or incompatible with, those already provided for in the contract,
 - (c) the contracting authority considers that the difference or incompatibility would result in—
 - (i) disproportionate technical difficulties in operation or maintenance or other significant inconvenience, and
 - (ii) the substantial duplication of costs for the authority, and
 - (d) the modification would not increase the estimated value of the contract by more than 50 per cent.
- (2) Sub-paragraph (1)(d) does not apply if the contract being modified is a utilities contract.

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Transfer on corporate restructuring

- 9 A novation or assignment (or in Scotland, assignation) of a public contract to a supplier that is not an excluded supplier is a permitted modification if it is required following a corporate restructuring or similar circumstance.

Defence authority contracts

- 10 A modification of a defence authority contract is a permitted modification where it is necessary to enable the contracting authority to—
- (a) take advantage of developments in technology, or
 - (b) prevent or mitigate any adverse effect of those developments.
- 11 A modification of a defence authority contract is a permitted modification where—
- (a) the continuous supply of the goods, services or works supplied under the contract is necessary to ensure the ability of the Armed Forces to maintain their operational capabilities, effectiveness, readiness for action, safety, security, or logistical capabilities, and
 - (b) the modification is necessary to ensure there is continuous supply of those goods, services or works.

SCHEDULE 9

Section 89

TREATY STATE SUPPLIERS (SPECIFIED INTERNATIONAL AGREEMENTS)

- 1 The Agreement on Government Procurement signed at Marrakesh on 15 April 1994, as amended on or before the day on which this Schedule comes into force.
- 2 Agreement establishing an Association between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile, signed at Santiago on 30 January 2019.
- 3 Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation, signed at Bern on 11 February 2019.
- 4 Trade and Partnership Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the State of Israel, signed at Tel Aviv on 18 February 2019.
- 5 Economic Partnership Agreement between the CARIFORUM States, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, signed at Castries, Saint Lucia on 22 March 2019.
- 6 Trade Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Colombia, the Republic of Ecuador and the Republic of Peru, of the other part, signed at Quito on 15 May 2019.
- 7 Agreement Establishing an Association between the United Kingdom of Great Britain and Northern Ireland and Central America, signed at Managua on 18 July 2019.
- 8 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Republic of Korea, of the other part, signed at London on 22 August 2019.

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- 9 Strategic Partnership and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and Georgia, signed at London on 21 October 2019.
- 10 Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Kosovo, signed at Pristina on 3 December 2019.
- 11 Political, Free Trade and Strategic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland and Ukraine, signed at London on 8 October 2020.
- 12 Agreement between the United Kingdom of Great Britain and Northern Ireland and Japan for a Comprehensive Economic Partnership, signed at Tokyo on 23 October 2020.
- 13 Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of North Macedonia, signed at Skopje on 3 December 2020.
- 14 Agreement on Trade Continuity between the United Kingdom of Great Britain and Northern Ireland and Canada, signed at Ottawa on 9 December 2020.
- 15 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Singapore, signed at Singapore on 10 December 2020.
- 16 Trade Continuity Agreement between the United Kingdom of Great Britain and Northern Ireland and the United Mexican States, signed at Mexico City on 15 December 2020.
- 17 Strategic Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Moldova, signed at Chisinau on 24 December 2020.
- 18 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Socialist Republic of Viet Nam, signed at London on 29 December 2020.
- 19 Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part, signed at Brussels and London on 30 December 2020.
- 20 Partnership, Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of Albania, signed at Tirana on 5 February 2021.
- 21 Partnership, Trade and Cooperation Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Serbia, signed at Belgrade on 16 April 2021.
- 22 Free Trade Agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, signed at London on 8 July 2021.
- 23 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, signed at London on 16 December 2021 and at Adelaide on 17 December 2021.

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- 24 Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand signed at London on 28 February 2022.

SCHEDULE 10

Section 117

SINGLE SOURCE DEFENCE CONTRACTS

- 1 The Defence Reform Act 2014 is amended as follows.

Definition of qualifying defence contract

- 2 (1) Section 14 (regulations relating to qualifying defence contracts) is amended as follows.
- (2) In subsection (2)(a), after “goods, works or services” insert “wholly or substantially”.
- (3) After subsection (5) insert—
- “(5A) Single source contract regulations may specify circumstances in which a contract entered into by the Secretary of State with a primary contractor is or is not to be treated as amending an existing contract between those parties for the purposes of this section.”
- (4) After subsection (8) insert—
- “(8A) The regulations may also specify when a contract is to be treated as substantially for defence purposes.”

Pricing of qualifying defence contracts

- 3 (1) Section 15 (pricing of qualifying defence contracts) is amended as follows.
- (2) In subsection (1), after “qualifying defence contract” insert “, and, where the contract is divided into components, each component of that contract,”.
- (3) For subsection (2) substitute—
- “(2) The regulations must provide for the price payable under the contract, or any component, to be determined—
- (a) in accordance with the formula in subsection (4), or
- (b) in such circumstances as may be specified in the regulations, in accordance with another method.
- (2A) The regulations must only specify circumstances for the purposes of subsection (2)(b) if the Secretary of State is satisfied that the factors referred to in section 13(2) may be ensured in those circumstances if another method is used.
- (2B) The regulations may also make provision requiring a particular method specified in the regulations to be used in certain of the circumstances specified for the purposes of subsection (2)(b).”
- (4) In subsection (3)(a)—
- (a) after “contract” insert “or each amended component of that contract,”;

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- (b) for “the formula in subsection (4)” substitute “the method applicable by virtue of subsection (2)”.
 - (5) In subsection (3)(b) for “formula” substitute “method”.
 - (6) In subsection (4)—
 - (a) after “for the contract” insert “or component”;
 - (b) after “under the contract” insert “or component”.
 - (7) In subsection (5), after “contract” insert “or component”.
 - (8) After subsection (5) insert—
 - “(6) In this Part, “component”, in relation to a contract, means a part of the contract that is to be treated distinctly from other such parts in determining the price payable under the contract.
 - (7) For the purposes of subsection (6), a part of a contract is to be treated distinctly if—
 - (a) single source contract regulations contain provision to that effect, or
 - (b) the parties to the contract agree that it should.
 - (8) Single source contract regulations may make provision about when parts of a qualifying defence contract are or are not to be treated distinctly from other parts of the same contract.”
- 4 (1) Section 16 (pricing of contracts: supplementary) is amended as follows.
- (2) In subsection (1)(b)(i), after “contract” insert “or, where relevant, a component of that contract”.
 - (3) After subsection (3) insert—
 - “(4) Single source contract regulations may provide that the SSRO—
 - (a) must, on an application by a person within subsection (5), determine whether the method used to determine the price payable under a qualifying defence contract or a component of that contract was appropriate;
 - (b) may, in consequence of a determination under paragraph (a), determine that the price payable under the contract is to be adjusted by an amount specified by the SSRO.
 - (5) The following persons are within this subsection—
 - (a) the Secretary of State,
 - (b) an authorised person, and
 - (c) the primary contractor.”
- 5 After section 21(2) (final price adjustment) insert—
 - “(2A) Provision made under subsection (2) may include provision dealing with how, in the case of a qualifying defence contract divided into components, the components are to be taken into account in determining the amount of any adjustments to the total price payable under such a contract.”
- 6 In section 22(1)(a) (recovery of unpaid amounts), after “section” insert “16(4),”.
- 7 (1) Section 42 (single source contract regulations: general) is amended as follows.

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- (2) In subsection (4)(b), omit the second “or”.
- (3) After subsection (4)(b) insert—
 - “(ba) provision made by virtue of section 15(2)(b) (pricing of contracts), whether alone or with other provision, or”.
- 8 In section 43 (interpretation etc), at the appropriate place insert—
 - ““component” has the meaning given by section 15(6).”

Contract profit rate

- 9 (1) Section 17 (contract profit rate) is amended as follows.
 - (2) In subsection (1) at the end insert “, or, where the contract is divided into components, any component of that contract”.
 - (3) In subsection (2)—
 - (a) in step 2, for the words from “the risk” to “estimated allowable costs” substitute “the financial risks to the primary contractor of entering into the contract or component, taking into account the particular type of activities to be carried out by the primary contractor under that contract or component.”;
 - (b) omit steps 3 and 4 (and, accordingly, renumber steps 5 and 6 as steps 3 and 4);
 - (c) in new step 3, for “4” substitute “2”;
 - (d) in new step 3, after “contract” insert “or component”;
 - (e) in new step 3, before “Any increase” insert “In specifying provisions of the contract or component, the Secretary of State must comply with any requirements imposed by the regulations, and”;
 - (f) in new step 4, for “5” substitute “3”;
 - (g) in new step 4, after “contract”, in both places it occurs, insert “or component”.
 - (4) In subsection (3) for “6”, in both places it occurs, substitute “4”.
 - (5) In subsection (4)(b), for “6” substitute “4”.
- 10 (1) Section 18 (contract profit rate: supplementary) is amended as follows.
 - (2) In subsection (2)(a)—
 - (a) for “6” substitute “4”;
 - (b) after “paragraph” insert “, or a component of such a contract”.
 - (3) In subsection (2)(b), after “contract” insert “or component”.
 - (4) In subsection (2)(c), after “those contracts” insert “or components of those contracts”.
 - (5) For subsection (3)(a) substitute—
 - “(a) may, on an application by a person within subsection (4), determine whether—
 - (i) the baseline profit rate identified under step 1 in section 17(2) is correct in relation to a qualifying defence contract or a component of such a contract;
 - (ii) an adjustment agreed under any of steps 2 to 4 in section 17(2) is appropriate;

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(iii) an adjustment agreed under step 3 in section 17(2) is in accordance with the regulations.”

- 11 (1) Section 19 (rates etc relevant to determining contract profit rate) is amended as follows.
- (2) In subsection (1) omit “the SSRO funding adjustment”.
- (3) In subsection (2)—
- (a) omit “and the SSRO funding adjustment”;
- (b) omit “or funding adjustment”.
- (4) In subsection (4) omit “, and the SSRO funding adjustment for that year,”.
- (5) In subsection (5)—
- (a) omit “or the SSRO funding adjustment”;
- (b) omit “or funding adjustment” in both places it occurs.
- (6) In subsection (6) omit “or the funding adjustment”.

Allowable costs

- 12 (1) Section 20 (allowable costs) is amended as follows.
- (2) In subsection (2)—
- (a) after “qualifying defence contract” insert “, or, where the contract is divided into components, a component of that contract”;
- (b) in paragraph (b), after “contract” insert “or component”.
- (3) After subsection (2) insert—
- “(2A) Single source contract regulations may provide that the requirements set out in subsection (2)(a) to (c) are not met in relation to a cost where the cost arises from profits made by a person connected with the primary contractor.
- (2B) The regulations may specify the circumstances in which a person is connected with the primary contractor.”
- (4) In subsection (4) after “contract” insert “, or where the contract is divided into components, a component of that contract.”.
- (5) For subsection (5) substitute—
- “(5) Where a person within subsection (5A) applies to the SSRO for such a determination, the SSRO must determine—
- (a) the extent to which a cost is or would be an allowable cost under a qualifying defence contract or a component of such a contract, or
- (b) the extent to which a method which is used or may be used to determine a cost under a qualifying defence contract or a component of such a contract would result in that cost being an allowable cost under such a contract or component.
- (5A) The following persons are within this subsection—
- (a) the Secretary of State;
- (b) an authorised person;
- (c) a primary contractor under a qualifying defence contract;

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(d) a potential primary contractor.”

(6) In subsection (6), for “the contract”, in the first place it occurs, substitute “a qualifying defence contract”.

Reports

- 13 (1) Section 25 (reports on overheads and forward planning etc) is amended as follows.
- (2) For subsection (3)(a) substitute—
- “(a) where P is associated with one or more other persons—
- (i) the ultimate parent undertaking in relation to P and those other persons, or
- (ii) where permitted under the regulations in relation to a report mentioned in subsection (2), another person associated with P which that undertaking and the Secretary of State have agreed is to be a designated person in relation to that report, and”.
- (3) After subsection (8) insert—
- “(8A) In this section, “financial year” means a year beginning with 1 April or a year beginning with such other date as may be agreed between the Secretary of State and a designated person.”
- 14 In section 43 (interpretation etc), in the definition of “financial year”, at the end insert “(but see section 25(8A) for the different meaning of “financial year” in that section)”.

Qualifying sub-contracts

- 15 (1) Section 29 (determining whether a contract is a qualifying sub-contract) is amended as follows.
- (2) After subsection (2)(b) insert—
- “(c) where the assessment is that the proposed contract would not be a qualifying sub-contract if it were entered into, to give notice in writing of that fact, and of reasons for the assessment, to the Secretary of State, an authorised person and the prospective sub-contractor.”
- (3) After subsection (4)(b) insert—
- “(c) where the assessment is that the proposed sub-contract would not be a qualifying sub-contract if it were entered into, to give notice in writing of that fact, and of reasons for the assessment, to the Secretary of State, an authorised person and the prospective sub-contractor.”
- (4) In subsection (5), in each of paragraphs (a) and (b), after “would”, insert “or would not”.
- 16 In section 30(4)(a) (application of single source contracts regime to qualifying sub-contracts)—
- (a) after “for the” insert “primary contractor or”;
- (b) for “the sub-contractor’s opinion” substitute “their opinion”.

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- 17 In section 31(3) (compliance notices)—
- (a) in paragraph (e), omit “, or”;
 - (b) in paragraph (f), at the end insert “, or
 - (g) in circumstances where P is required to give the notice mentioned in section 29(2)(c) or (4)(c) in respect of a proposed contract, P fails to give such a notice.”

Powers of the Single Source Regulations Office (“SSRO”)

- 18 (1) Section 35 (opinions and determinations by the SSRO) is amended as follows.
- (2) In subsection (1)(a), omit “qualifying defence” in both places it occurs.
 - (3) For subsection (2)(c) substitute—
 - “(c) a person who has entered into a contract with the Secretary of State (a “contractor”).”
 - (4) In subsection (2)(d)—
 - (a) for “the”, in the first place it occurs, substitute “a”;
 - (b) omit “(in the case of a proposed contract)”.
 - (5) For subsection (3) substitute—
 - “(3) The SSRO may, on a reference made to it by a person mentioned in subsection (2), give an opinion on any other matter relating to the application or interpretation of this Part or single source contract regulations.”
 - (6) In subsection (4)(a), omit “qualifying defence”.
 - (7) In subsection (5), omit “primary” in both places it occurs.

- 19 After section 35 insert—

“35A Guidance

The SSRO may issue such guidance as it considers appropriate in relation to the application or interpretation of this Part or single source contract regulations.”

- 20 In paragraph 10(3) of Schedule 4 (procedure of the SSRO), after “16(2)(b)” insert “or (4)”.

SCHEDULE 11

Section 119

REPEALS AND REVOCATIONS

Primary legislation

- 1 Paragraphs 9(9)(d) and 11(6)(b)(ix) of Schedule 7B to the Government of Wales Act 2006 (as inserted by the Trade (Australia and New Zealand) Act 2023).
- 2 Sections 39 and 40 of the Small Business, Enterprise and Employment Act 2015.
- 3 The Trade (Australia and New Zealand) Act 2023.

Status: This is the original version (as it was originally enacted).

Subordinate legislation

- 4 The Defence and Security Public Contracts Regulations 2011 ([S.I. 2011/1848](#)).
- 5 The Public Contracts Regulations 2015 ([S.I. 2015/102](#)).
- 6 The Concession Contracts Regulations 2016 ([S.I. 2016/273](#)).
- 7 The Utilities Contracts Regulations 2016 ([S.I. 2016/274](#)).



REPORT TITLE: Constitution updates

Meeting:	Corporate Governance and Audit Committee
Date:	7th March 2025
Cabinet Member (if applicable)	Cllr Tyler Hawkins
Key Decision Eligible for Call In	No No
<p>Purpose of Report</p> <p>To seek approval for a number of amendments to the Constitution to be recommended to Annual Council.</p>	
<p>Recommendations</p> <ul style="list-style-type: none"> • That the suggested amendments to the Constitution be recommended to Annual Council <p>Reasons for Recommendations</p> <ul style="list-style-type: none"> • The suggested amendments are intended to update and modernise the Constitution 	
<p>Resource Implications:</p> <p>None</p>	
<p>Date signed off by Executive Director & name</p> <p>Is it also signed off by the Service Director for Finance?</p> <p>Is it also signed off by the Service Director for Legal Governance and Commissioning?</p>	<p>Rachel Spencer-Henshall 25/02/25</p> <p>Kevin Mulvaney 25/2/2025</p> <p>Samantha Lawton 25/02/2025</p>

Electoral wards affected: All

Ward councillors consulted: Members of the Monitoring Officer's Constitution Working Group

Public or private: Public

Has GDPR been considered? Yes

1. Executive Summary

1.1 It is essential that the Constitution is subject to regular review and, where necessary, is amended to ensure that it both follows any legal requirements placed on the Council and is fit for purpose.

1.2 Whilst certain changes to the Constitution can be made by the Monitoring Officer using delegated powers, most changes need to be made by Council, on the recommendation of this Committee.

1.3 The Monitoring Officer has set up the Constitution Working Group, comprised of officers and members, to review the Constitution and to consider proposed amendments. This is the first report to Committee that addresses some of the initial proposed amendments.

2. Information required to take a decision

2.1 Responsibility for Council (Non-Executive) Functions Part 3.3

2.1.1 Licensing and Safety Committee Terms of Reference

There are minor amendments to the Terms of Reference, visible on the 'track change' version at appendix A.

2.1.2 Corporate Governance and Audit Committee Terms of Reference

There are minor amendments to the Terms of Reference, visible on the 'track change' version at appendix B.

2.2 Council Procedure Rules Part 4.1

2.2.1 A number of changes have been proposed to the CPRs. The wording in black is the current wording within the rules and the wording in red is the proposed new wording.

2.2.2 Details of these are in table form in appendix C, which also provides details of the reasons for the proposed changes.

2.3 **Monitoring Officer Protocol**

2.3.1 The protocol is part 5.2 of the Constitution and has been updated to clarify the Deputy Monitoring Officer role and to bring references to legislation up to date.

2.3.2 The Standards Process has also been added to the protocol. This is to ensure that it does appear within the Constitution and is publicly accessible.

2.3.2 A tracked change copy of the revised protocol is at appendix D.

2.4 **Officer Code of Conduct**

2.4.1 The Officer Code of Conduct has been rewritten and the proposed version differs quite considerably from the one that is currently part 5.6 of the Constitution.

2.4.2 The purpose of the rewrite was to modernise the code and to make it easier to read and understand.

2.4.3 A copy of the proposed amended code is attached at appendix E.

2.5 **Licensing and Safety Committee Protocols**

2.5.1 The protocol is part 5.8 of the Constitution and has been updated with a number of minor amendments. These are visible in the 'track change' version of the protocol at appendix F.

3. **Implications for the Council**

3.1 **Working with People**

N/A

3.2 **Working with Partners**

N/A

3.3 **Place Based Working**

N/A

3.4 **Climate Change and Air Quality**

N/A

3.5 **Improving outcomes for children**

N/A

3.6 **Financial Implications for the People Living or Working in Kirklees**

N/A

3.7 Other (eg Legal/Financial or Human Resources)

Regular review of the Constitution will ensure that Kirklees Council is operating lawfully.

4. Consultees and their opinions

- 4.1 The Constitution Working Group has considered the proposed amendments and provided feedback which has informed a number of the changes, particularly with regard to the Council Procedure Rules.

5. Next steps and timelines

- 5.1 Any amendments recommended by this Committee will need to be considered by Council and a report to Annual Council will be prepared.
- 5.2 Any changes to the Constitution agreed by Annual Council will then be put into place.

6. Officer recommendations and reasons

- 6.1 That members approve the proposed amendments to the Constitution.

7. Cabinet portfolio holder's recommendations

N/A

8. Contact officers

David Stickley
Principal Lawyer
david.stickley@kirklees.gov.uk
01484 221000

9. Background Papers and History of Decisions

N/A

10. Appendices

Appendix A – Licensing and Safety Committee Terms of Reference
Appendix B – Corporate Governance and Audit Committee Terms of Reference
Appendix C – Council Procedure Rules
Appendix D – Monitoring Officer Protocol
Appendix E – Officer Code of Conduct
Appendix F – Licensing and Safety Committee Protocol

11. Service Director responsible

Samantha Lawton
Service Director – Legal, Governance and Commissioning
01484 221000
Samantha.lawton@kirklees.gov.uk

Appendix A

Licensing and Safety Committee Terms of Reference

Licensing and Safety Committee

Membership

14~~5~~ Members of the Council

Terms of Reference

This Committee constitutes the Licensing Committee for the purposes of the Licensing Act 2003 and the Gambling Act 2005 and has delegated authority in respect of all the Council's functions under those Acts or regulations made under them which may be delegated, including (2003 Act) licensing of premises and persons and (2005 Act) licensing of premises and other licences, permits etc. in respect of gambling and connected activities set out in the Act. This includes but is not limited to:-

1. To recommend to the Executive/Council a Statement of Licensing Policy, or any revisions to such Policy, in accordance with the Licensing Act 2003.
2. To recommend to the Executive/Council a three year Licensing Policy or any revisions to such policy in accordance with the Gambling Act 2005.
3. To exercise all licensing functions under the Licensing Act 2003 including determining and dealing with applications for licences, certificates, temporary events and other notices and all variations, transfers, withdrawals and reviews of such matters.
4. To exercise all licensing and related functions allocated to the local licensing authority under the Gambling Act 2005, including determining and dealing with applications for licenses, certificates, permits, registration, temporary use of premises and other notices and all variations, transfers, surrenders, revocations, reviews of such matters (but not including the power to pass a resolution not to issue casino licences under section 166 of the 2005 Act).
5. To establish the Licensing Panels, consisting of three Members, and arrange for the discharge of all or some of the functions under the 2003 and 2005 Acts to be exercised by the Panels.
6. To make arrangements for authorised persons of the Council to discharge those functions which may be delegated to an Officer under the terms of the 2003 or 2005 Act.
7. To consider and determine any other functions which may properly be referred to this Committee by the Council under the terms of the 2003 or the 2005 Act, including the setting of fees and the initiation of prosecution for offences.
8. To receive reports from the Licensing Panels as required.

9. To determine all applications referred to the Committee by either the Licensing Panels or Officers.

10. To consider all policy matters under the terms of the 2003 and 2005 Acts with the referral of appropriate recommendations to Council for adoption.

Delegated authority in respect of all other licensing and registration functions which are not, by virtue of any legislation, present or future, the responsibility of the Executive and which are not specifically delegated to any other Committee or required by legislation to be carried out by the full Council. This includes:-

1. To establish Regulatory Panels to carry out such licensing and registration functions other than the 2003 and 2005 Acts functions as the Committee may delegate.
2. All the Council's functions relating to the power of designating alcohol control zones under sections 12 – 15 of the Criminal Justice and Police Act 2001.
3. All the Council's functions relating to smoke free legislation under the Health Act 2006 and associated regulations.

Delegated authority in respect of functions under any of the "relevant statutory provisions" within the meaning of Part 1 (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc. Act 1974, to the extent that those functions are discharged otherwise than in the authority's capacity as an employer.

Regulatory Panels

(Sub-committees of the Licensing & Safety Committee)

Membership

Any five members of the Licensing and Safety Committee selected by the Service Director – Legal, Governance and Commissioning.

Terms of Reference

1. Power to issue cinema and cinema club licences.
2. Power to issue theatre licences.
3. Power to issue licences to sexual entertainment venues.
4. Power to license sex shops and sex cinemas.
5. Power to license performances of hypnotism.
6. Power to register premises for acupuncture, tattooing, ear-piercing, and electrolysis.
7. Power to license pleasure boats and pleasure vessels.
8. Power to license market and street trading.
9. Power to license dealers in game and the killing and selling of game.
10. Power to license scrap yards.
11. Power to issue, amend, or replace, safety certificates (whether general or special) for sports grounds.
12. Power to issue, cancel, amend, or replace, safety certificates for regulated stands at sports grounds.
13. Power to issue fire certificates.
14. Power to register common land or town or village greens, except where the power is exercisable solely for the purpose of giving effect to:-
 - (a) an exchange of lands affected by an order under Section 19(3) of, or paragraph 6(4) of Schedule 3 to the Acquisition of Land Act 1981 (c.67) or
 - (b) an order under section 147 of the Inclosure Act 1845 (c.8 and 9 Vict. C118).
15. Power to register variation of rights of common.

16. Power to sanction persons to collect for charitable and other causes.
17. Power to license agencies for the supply of nurses.
18. Power to sanction use of parts of buildings for storage of celluloid.
19. Power to make, vary or revoke closing orders with respect to take-away food shops.
20. Power to register premises or stalls for sale of goods by way of competitive bidding.
21. Power to license premises for the breeding of dogs.
22. Power to license pet shops and other establishments where animals are bred or kept for the purposes of carrying on a business.
23. Power to register animal trainers and exhibitors.
24. Power to license zoos
25. Power to license dangerous wild animals.
26. Power to license knackers' yards.
27. Power to grant consent for the operation of a loudspeaker.
28. Power to issue licences for the movement of pigs.
29. Power to license the sale of pigs.
30. Power to license collecting centres for the movement of pigs.
31. Power to issue a licence to move cattle from a market.
32. Power to approve meat products premises.
33. Power to approve premises for the production of minced meat or meat preparations.
34. Power to approve dairy products establishments.
35. Power to approve egg products establishments.
36. Power to issue licences to retail butchers' shops carrying out commercial operations in relation to unwrapped raw meat and selling or supplying both raw meat and ready-to-eat foods.
37. Power to approve fishery products premises.

38. Power to approve dispatch or purification centres.
39. Power to register food business premises.
40. Power to license the employment of children.
41. Power to approve premises for the solemnisation of marriages.
42. Power to revoke/refuse to grant permits under the Pollution, Prevention and Control (England and Wales) Regulations 2000 and authorisations under the Environmental Protection Act 1990.
43. Power to approve the commencement of proceedings in the High Court in respect of offences under the Environmental Protection Act 1990 and the Pollution, Prevention and Control (England and Wales) Regulations 2000.

Delegated authority in respect of functions under any of the "relevant statutory provisions" within the meaning of Part 1 (health, safety and welfare in connection with work, and control of dangerous substances) of the Health and Safety at Work etc. Act 1974, to the extent that those functions are discharged otherwise than in the authority's capacity as an employer.

Licensing Panels

(Sub-committees of the Licensing & Safety Committee)

Membership

Any three Members of the Licensing and Safety Committee selected by the Service Director – Legal, Governance and Commissioning.

Terms of Reference

1. To exercise all licensing functions under the Licensing Act 2003 including determination and dealing with applications for licences, certificates, temporary events and other notices and all variations, transfers, withdrawals and reviews of such matters.
2. To exercise all licensing and related functions allocated to the local licensing authority under the Gambling Act 2005, including determining and dealing with applications for licenses, certificates, permits, registration, temporary use of premises and other notices and all variations, transfers, surrenders, revocations, reviews of such matters.
3. To consider and determine any other functions referred to the Panel by the Council or the Licensing and Safety Committee under the terms of the Licensing Act 2003 or the Gambling Act 2005.
4. Power to register pool promoters.
5. Power to grant track betting licences.
6. Power to license inter-track betting schemes.
7. Power to grant permits in respect of premises with amusement machines.
8. Power to register societies wishing to promote lotteries.
9. Power to grant permits in respect of premises where amusements with prizes are provided.
10. To provide feedback reports to the Licensing and Safety Committee, as necessary, on any matters determined under these Terms of Reference.
11. To refer any matter, if necessary, for determination to the Licensing and Safety Committee.

Appendix B

Corporate Governance and Audit Committee Terms of Reference

Membership

Seven **Elected** Members, **up to 2 Independent Members** and the following ~~four~~ **three** ex-officio members: ~~with rights to speak but not vote:~~

- Member of the Cabinet with responsibility for Corporate Governance
- The Chair of the Overview & Scrutiny Management Committee,
- The Chair of the Standards Committee
- ~~Person having specialist knowledge of treasury management (to be appointed and attend as required).~~

Independent and Ex-officio Members have the rights to speak but not vote.

No leaders of any group shall be a member of the Committee

Terms of Reference

Delegated authority in respect of all powers and duties set out below and all other Council functions not required to be determined by the full Council and not delegated to any other committee:

1. To be responsible for:

1.1. Monitoring the operation of the Council's Constitution and keeping its terms under review, including all procedure rules

1.2. Making recommendations to the Council for any change or additions to the procedure rules or Articles of the Constitution or executive arrangements

2. ~~To determine~~ **Determining** all matters relating to the adoption and operation of the Members' Allowances Scheme including recommendation to the Council of the adoption of or amendment to any such Scheme

3. ~~To~~ **Keeping** under review the portfolios of the Cabinet and the terms of reference and delegations of Council functions to committees and formally appointed bodies and officers

4. ~~To consider the Council's arrangement relating to accounts including~~

~~(a) the approval of the statement of accounts and any material amendments of the accounts recommended by the auditors~~

~~(b) to keep under review the Council's financial and management accounts and financial information as it sees fit~~

4. Consideration of the Council's arrangements relating to accounts, including:

(a) Consideration of any material changes to accounting policies

(b) Approval of the statement of accounts

(c) Approval of any material amendments to the accounts recommended by the auditors

(d) Keep the Council's financial and management accounts and financial information under review as it sees fit

~~5. To consider the Council's arrangements relating to the external audit requirements including:~~

~~(a) the receipt of the external audit reports so as to;~~

~~(i) inform the operation of the Council's current or future audit arrangements~~

~~(ii) provide a basis for gaining the necessary assurance regarding governance prior to the approval of the Council's accounts~~

5. Consideration of the Council's arrangements relating to the external audit requirements including:

(a) the selection and appointment of the external auditor.

(b) the consideration of the external auditors' annual reports so as to gain the necessary assurance regarding accuracy, value for money and governance prior to the approval of the Council's accounts, and approval of any other reports

(c) meeting with the external auditor from time to time, and considering any matters that they wish to raise

The Committee shall be entitled to meet the external auditor without the presence of any council officers (other than for the purposes of minuting the conversation)

~~6. To consider the Council's arrangements relating to internal audit requirements including:~~

~~(a) considering the Annual Internal Audit report, reviewing and making recommendations on issues contained therein~~

~~(b) monitoring the performance of internal audit~~

~~(c) agreeing and reviewing the nature and scope of the Annual Audit Plan~~

6. Consideration of the Council's arrangements relating to internal audit requirements including:

(a) reviewing the nature and scope of internal audit activity

(b) approval of Annual Audit Plan

(c) monitoring the performance of internal audit, including compliance with regulatory internal audit standards

(d) agreeing the adequacy of internal audit resourcing

(e) considering the Annual Internal Audit report, reviewing and making recommendations on issues contained therein

(f) monitoring progress in implementation of internal audit recommendations

(g) seeking responses from officers or portfolio holders about matters identified by internal audit

The Committee shall be entitled to meet the Head of Internal Audit without the presence of any council officers (other than for the purposes of minuting the conversation)

7. ~~To review~~ **Reviewing** the adequacy of the Council's Corporate Governance arrangements. This will include (but not be limited to) the following:

- 7.1. Internal control and risk management;
- 7.2. Oversight of whistleblowing and the Council's whistleblowing policy;
- 7.3. Oversight of the complaints process and the role of the Local Government Ombudsman;
- 7.4. Oversight of Information Governance and the role of the **Information Commissioners Office (ICO)**;
- 7.5. ~~To review~~ **Reviewing** and ~~approving~~ the annual statement of Corporate Governance.
- 8. ~~To agree and update~~ **Agreeing and regularly updating** the Council's Code of Corporate Governance, monitoring its operation and compliance with it, and using it as a benchmark against performance for the annual Statement of Corporate Governance.
- 9. ~~To designate the Head of Paid Service, the Monitoring Officer and all statutory "proper officers"~~.
- 9. ~~To approve~~ **Approving** payments or ~~providing~~ other benefits in cases of maladministration as required and make recommendations arising from any review of a report of the Local Government and Social Care Ombudsman
- 10. Undertaking a community governance review following a decision of Council to agree the terms of reference for and conduct such a review, making recommendations to Council who will determine the outcome of such reviews.
- 11. All functions relating to elections and parishes set out in Part D of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (or any replacement or amendment of it)
- 12. Charities and charitable trusts (so far as not the responsibility of Cabinet).
- 13. ~~Responsibility for~~ **R**eviewing and challenging all treasury management activities.
- 15. ~~To determine appointments of individuals~~ **Noting the finalised list of appointments to** outside bodies (except school governing bodies) and revocation of such appointments.
- 14. ~~To~~ **Determining** nominations for charitable trustees in cases where there has been failure reach agreement.
- 15. ~~To~~ **Receiving** updates and monitoring compliance with the Council's Regulation of Investigatory Powers Act (RIPA) policy

Appendix C

Council Procedure Rules

CPR	Suggested Amendments in red	Comments/Rationale
5 (6)	<p>In addition to the Annual Meeting of the Council (CPR1) and the ordinary meetings (CPR5 (1)) there shall be [at least] one meeting of Council convened each Municipal Year at which the mayor from time to time of the West Yorkshire Combined Authority (WYCA) shall attend to meet with Kirklees Councillors as an opportunity to discuss and report back on their work programme and outcomes.</p> <p>The Elected Mayor (West Yorkshire Combined Authority) shall attend a Key Discussion Meeting once in each municipal year, where practicable, to provide an overview of their work programme and priorities (for up to 15 minutes), followed by a question and answer session, of at least 45 minutes. Questions will be allocated on a proportional basis across groups, as determined by the Mayor.</p>	<p>Wording for CPR 5(6) re-written/simplified to reflect current practice.</p>
9 (2)	<p>2) When a petition is received at a Council meeting the petitioner (member of the public or elected member) shall have a maximum of one minute to present their petition and no discussion shall take place on the item. There shall be no response at the meeting. The Mayor/Chair will acknowledge receipt.</p>	<p>Minor amend to clarify that procedure rule applies to both members of the public and elected members.</p>
10 (3)	<p>3) The Council will not receive more than four deputations at any ordinary meeting Committee, Panel, Board or Meeting of the Council</p>	<p>Amendment to clarify that CPR applies to deputations at Committees, Panels, Boards or Meetings of Council.</p>

10 (7)	<p>Deputations which will not be received</p> <p>A deputation will not be received if the Chief Executive considers that it includes references to the following:</p> <p>(a) Matters which in the opinion of the Chief Executive are likely to involve the disclosure of confidential or exempt information.</p> <p>(b) Information relating to complaints made under statutory provisions which have not been finally dealt with.</p> <p>(c) Matters relating to items already listed on a public agenda or listed for consideration by a committee including, but not limited to the Council, Cabinet or a committee, sub-committee, panel or officers.</p> <p>(d) Information concerning the merit of applications or other matters for determination relating to planning, licensing and other administrative or regulatory matters.</p> <p>(e) Information of a personal nature or which is defamatory, offensive, frivolous, repetitive or vexatious.</p>	<p>Applies consistency in line with 11(3) in respect of both public and elected member questions.</p>
11	<p>The subheading of 'Additional Questions' to change to 'Supplementary Questions at Meetings of Council'</p>	<p>Change of heading reflects wording within the body of the procedure rule.</p>
11 (3)	<p>Questions Which Will Not Be Answered (Members of the Public)</p> <p>(3) Questions will not be answered if the Chief Executive considers that they include references to the following:</p> <p>(a) Matters which in the opinion of the Chief Executive are likely to involve the disclosure of confidential or exempt information.</p> <p>(b) Questions relating to complaints made under statutory provisions which have not been finally dealt with.</p> <p>(c) Questions concerning the merit of applications or other matters currently before the Council, Cabinet or a Committee, Sub-Committee, Panel or Officers for determination in respect of which the Council is under duty to act quasi-judicially</p>	<p>Suggested amendments to 11(3) seeks to apply consistency in respect of both public and elected member questions</p> <p>Changes in (c) simplifies the language used without affecting the practical application of the</p>

relating to planning, licensing and other administrative or regulatory matters.

(d) Questions of a personal nature or which are defamatory, offensive, frivolous, repetitive or vexatious.

Written Questions requirements

A written question, as well as any supplementary question, must be relevant to the Terms of Reference or powers or duties of Cabinet or of the relevant Committee / Sub-Committee / Panel / Joint Committee or External Body or affect the area of Kirklees and should not be of a personal nature or one which is defamatory, offensive, frivolous, repetitive or vexatious.

Written Questions by Members which Will Not Be Answered

Questions will not be answered if the Chief Executive considers that they include references to the following:

- (a) Matters which in the opinion of the Chief Executive are likely to involve the disclosure of confidential or exempt information.
- (b) Questions relating to complaints made under statutory provisions which have not been finally dealt with.
- (c) Questions about the merit of applications or other matters currently before the Council, Cabinet or a Committee, Sub-Committee, Panel or Officers for determination in respect of which the Council is under a duty to act quasi-judicially relating to planning, licensing and other administrative or regulatory matters
- (d) Questions of a personal nature or which are defamatory, offensive, frivolous, repetitive or vexatious.

procedure rule. Is consistent with changes to CPR 10(7)

Removal of wording avoids duplication as is referenced in (d) below

Wording amended for consistency with public questions and deputations.

	To add the definition of 'confidential' as defined in Rule 11 of the Access to Procedure Rules.	Added to ensure there is a clear definition of what is confidential.
11 (6)	<p>Answers to Questions at Meetings of the Council (Delete CPR)</p> <p>A written answer will be provided to a written question and will be given to the questioner and Councillors the day before the meeting. The question and answer will then be taken as read at the meeting itself and need not be read out.</p> <p>A copy of all written questions and written answers circulated at the meeting will be attached to the published agenda for the meeting.</p>	Changes to the question process at Full Council was introduced from May 2024. When originally introduced it was acknowledged that the implementation of the changes would be monitored. Following engagement with Group Leaders and Members it was felt that the new process had not been an improvement on previous practice. Deletion of this CPR 11 (6) will mean the Council revert to the process in place prior to May 2024 for public questions at Full Council meetings
12	<p>Written Questions by Members</p> <p>12(3) A written answer will be provided to a written question and will be published with the agenda, and provided to the questioner and all Councillors, the day before the meeting. The question and answer will then be taken as read at the meeting itself and not be read out. The schedule of written questions shall be published the day prior to the Council meeting.</p>	As above. Deletion of CPR 12(3) will mean the Council revert to the process in place prior to May 2024 for written questions by Members at Full Council meetings
12 (5)	<p>5) When an answer to a written question has been given, the Member who asked it may, if they are in attendance, ask one supplementary question relating to the response on the same topic. Subject to the Mayor/Chair's discretion a 3-minute time limit applies for individual supplementary questions to be put.</p> <p>A Cabinet Member will be permitted a maximum of five minutes to respond to any written question or any supplementary question.</p>	Suggested amendment to place time limit for responses

Procedure at Council Meetings in Relation to Reports and/or Minutes of Cabinet and Committees Holding the Executive to Account

(1) Minutes for Information/Reports that require approval

- (i) ~~Any matter expressly referred to Council by Cabinet or a Committee for determination shall be dealt with first.~~
- (ii) Minutes of Meetings of Cabinet and Committees and WYCA Meetings shall be presented to Council meetings for information and as a basis for questioning and comment. There shall be no need for any motion or vote to receive them **as they are presented for information only**. If the Minutes are not considered due to lack of time they shall be deemed to have been presented to Council and will not require resubmission.

~~(2)(i) The Minutes of Cabinet shall be submitted to Ordinary meetings of Council followed by those of Cabinet Committee Local Issues.~~

The Minutes of Cabinet and Cabinet Committee Local Issues shall be submitted to Ordinary Meetings of Council (Holding Executive to Account).

(2) Questions/Comments on Cabinet Minutes **(Holding Executive to Account)**

~~(ii) Prior to the start of questions to Cabinet Members, Portfolio Holders may make a report, not exceeding 10 minutes in length per Cabinet Member, setting out his /her Portfolio Plan for municipal year, or on progress against that Plan.~~

Amendment to CPR 13 seeks to re-write the wording to provide clarity. The updated CPR does not change current arrangements

	<p>Comments and statements by Cabinet Members shall not exceed 30 minutes in duration including any questions arising from the information provided.-A total of 60 minutes shall be allocated to this item.</p> <p>All Cabinet Members will be required to make Council aware of their Portfolio Plan at the start of the municipal year either verbally or in writing circulated to all Members and to report on progress against that Plan at least once in the municipal year</p> <p>13 (3)(i) The Minutes of other Committees submitted to Ordinary (Holding Executive to Account) meetings of the Council shall be set out in alphabetical order.</p> <p>13(5) Time permitted Oral Questions to Committee/Sub Committee/Panel Chairs and Nominated Spokespersons of Joint Committees/External Bodies</p> <p>(i) Subject to the time limit for speaking set out in CPR13(2) the maximum time permitted for consideration of matters in CPR (1) –(3) including comments and questions on Minutes to Cabinet Members shall be a maximum of 60 minutes and The time permitted for comments and questions to Chairs of Committees/Sub Committee/Panel Chairs and Nominated Spokespersons of Joint Committees/External Bodies shall be a maximum of 30 minutes.</p>	
14 (6)	6) Every motion shall be relevant to some matter in relation to which the Council has powers or duties and/or which affects the area of Kirklees.	Widens scope in respect of relevance of Motions

14 (11)	<p>- Any proposed amendment to a Motion which has been included in the summons for a meeting, shall be delivered to the Service Director – Legal, Governance and Commissioning no later than 10.00am on the day prior to the Council Meeting. Any amendments will be published at no later than 5pm the day before the meeting.</p>	Minor amend to reflect working practice
14(12)	<p>Motions on Identical Subjects Where motions have been submitted to Council by different groups which relate to the same subject matter, then the movers shall be given the opportunity to agree a composite motion by 2.00 p.m. on the second working day before the date of the Council meeting. Notice of the composite shall be given to the Service Director - Legal, Governance and Commissioning who will notify the groups or individual Members to allow them to consider the proposals. If no composite motions are received, then the first motion submitted on the agenda on a similar topic will be debated. Once the motion or amendment is dealt with, the subsequent motions will fall.</p>	The additional wording is added to reflect the working practice where similar motions are submitted and no composite motion has been put forward.
21 Delete 18(5) and insert	<p>Member Conduct Addressing the Mayor Member Speaking When a Member wishes to speak, they will indicate that to the Chair/Mayor whilst remaining seated. No Member will speak unless called on to do so by the Chair. Unless the Chair/Mayor indicates otherwise, a Member must stand and address the Mayor while speaking. If two or more Members indicate that they wish to speak, the Chair/Mayor will ask one to speak and the other(s) will remain silent. While a Member is speaking the other Members shall remain seated and be</p>	Deletion of CPR 18(5) and amendment of CPR21 is suggested to avoid duplication and bring together clear wording in respect of Member Conduct

	<p>silent, unless rising on a point of order or in personal explanation.</p> <p>Respect for the Chair/Mayor</p> <p>Whenever the Chair/Mayor indicates that they wish to speak during a debate the rest of the Council shall be silent. If a Member disregards the ruling of the Chair/Mayor or behaves improperly, offensively or obstructs the business of meeting, the Chair/Mayor shall warn them regarding their conduct.</p> <p>Member not be heard</p> <p>If a member at a Council meeting any Member of the Council (in the opinion of the Mayor) persistently disregards (in the opinion of the Chair/Mayor) the ruling of the Chair/Mayor or behaves irregularly, improperly, offensively or obstructs the business of the Council, the Chair/Mayor or any other Member may move "That the Member named be not heard further on the item of business before the Council". If the motion is seconded it shall be determined voted on without discussion.</p> <p>General Disturbance</p> <p>(3) In the event of general disturbance which in the opinion of the Mayor renders the despatch of business impossible, the Mayor may decide to adjourn the meeting of the Council for as long as he/she considers necessary.</p> <p>If there is a general disturbance which the Chair decides makes orderly business impossible, the Chair may adjourn the meeting for as long as they think necessary.</p>	
36(1)	Observer Attendance by Councillors at Committees, Sub-Committees or Panels	Amendment suggested to allow non committee/panel elected members to contribute to debate on individual agenda items. Time limit

<p>(1) Subject to paragraphs (2) and (3) below a Councillor who is not a Member of a Committee, Sub-Committee, or Panel may attend any meeting as an observer. That Councillor shall be able to speak once for 5 minutes on any items on the agenda have the same speaking rights as any Member of that Committee Sub-Committee or Panel.</p>	<p>suggested to allow for the Chair to manage the debate and allow range of potential speakers.</p>
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Appendix D
Monitoring Officer Protocol

MONITORING OFFICER PROTOCOL

1. Introduction to Statutory Responsibilities

- 1.1 The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged.
- 1.2 The role of the Monitoring Officer rests with the Service Director – Legal, Governance and Commissioning. The Monitoring Officer may nominate a member of staff to act as Deputy Monitoring Officer while absent or ill and has appointed the Head of Legal Service and Head of Safeguarding as Deputy Monitoring Officers. The Deputies will act only in the absence of the Monitoring Officer.
- 1.3 The Monitoring Officer has a broad role in ensuring the lawfulness and fairness of corporate decision making, ensuring compliance with Codes and Protocols, promoting good governance and high ethical standards.
- 1.4 A summary list of the Monitoring Officer’s responsibilities appears in the Annex attached. The Monitoring Officer’s ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:-
 - (a) complying with the law (including any relevant Codes of Conduct);
 - (b) complying with any general guidance, codes or protocols issued from time to time, by the Standards Committee and the Monitoring Officer;
 - (c) making lawful and proportionate decisions: and
 - (d) generally, not taking action that would bring the Council, their offices or professions into disrepute.

2. Working Arrangements

- 2.1 Having excellent working relations with Members and officers will assist in the discharge of the statutory responsibilities by the Monitoring Officer. Equally, a speedy flow of relevant information and access to debate (particularly at the **early stages** of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and officers must, therefore, work with the Monitoring Officer (and his/her staff) to discharge the Council’s statutory and discretionary responsibilities.
- 2.2 The following arrangements and understandings between the Monitoring Officer, Members and Directors are designed to ensure the effective discharge of the Council’s business and functions. The Monitoring Officer will:-
 - 2.2.1 **Resources**
 - (a) report to the Council, as necessary on the staff, accommodation and resources s/he requires to discharge his/her statutory functions,
 - (b) have sufficient resources to enable him/her to address any matters concerning his/her Monitoring Officer functions;
 - (c) have control of a budget sufficient to enable him/her to seek Counsel’s opinion on any matter concerning his/her functions.

- (d) appoint a deputy and keep him/her briefed on any relevant issues that s/he may be required to deal with in the absence of the Monitoring Officer.

2.2.2 Access to information/meetings

- (a) be alerted by Members and officers to any issue(s) that may become of concern to the authority, including, in particular issues around legal powers to do something or not, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise:
- (b) have advance notice, (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the authority (including meetings at which officer delegated decisions are taken) at which a binding decision may be made (including a failure to take a decision where one should have been taken);
- (c) have the right to attend (including the right to be heard) any meeting of the authority (including meetings at which officer delegated decisions are taken) before any binding decision is taken (including a failure to take a decision where one should have been taken);
- (d) be a member of the Corporate Management Team and will have advance notice of those meetings, agenda and reports and the right to attend and speak;
- (e) in carrying out any investigation(s), have unqualified access to any information held by the Council and to any officer who can assist in the discharge of his/her functions.

2.2.3 Relationships

- (a) ensure the other statutory officers (Head of Paid Service and the Section 151 Officer) are kept up to date with relevant information regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (b) meet regularly with the Head of Paid Service and the Section 151 Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (c) have a close working relationship of respect and trust with the Mayor and the chairs of the Cabinet, Standards Committee and Scrutiny Committee with a view to ensuring the effective and efficient discharge of Council business;
- (d) develop effective working liaison and relationship, with the Local Audit Framework and the Local Government and Social Care Ombudsman (including having the authority, on behalf of the Council, to complain to the same, refer any breaches or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary);
- (e) in consultation, as necessary, with the Leader, Cabinet and Standards Committee, defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved;
- (f) make arrangements to ensure effective communication between his/her office and clerks to parish councils on Monitoring Officer and Standards Committee issues.

2.2.4 Standards Matters

- (a) give informal advice and undertake relevant enquiries into allegations of misconduct and, if appropriate, make a written report to the Standards Committee (unless the Chair of Standards Committee agrees a report is not necessary) if, in the opinion of the Monitoring Officer, there is a serious breach of the Members Code of Conduct,
- (b) subject to the approval of the Standards Committee, be responsible for preparing any training programme for Members on ethical standards and Code of Conduct issues.
- (c) provide information in response to a contact from a member of the public about an elected member(s) provided that it would not compromise the Monitoring Officer should a formal complaint be made subsequently by the member of the public.

2.2.5 Constitution

Review and monitor the Constitution in accordance with Article 15.1 of the Constitution and consult with the Chief Finance Officer and Head of Paid Service before taking any report to the relevant committee to approve amendments to the Constitution

3. Member and Officer Responsibilities

To ensure the effective and efficient discharge of the arrangements set out in paragraph 2 above, Members and officers will report any breaches of statutory duty procedures and other vices or constitutional concerns to the Monitoring Officer, as soon as practicable.

4. Advice

The Monitoring Officer is also available for Members and officers to consult on any issues relating to the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (eg Council Procedure Rules, Policy Framework, Terms of Reference, Scheme of Delegations, etc).

4.1 Working Arrangements

The following arrangements and understandings between the Monitoring Officer and colleagues and members are designed to help ensure the effective discharge of their functions:-

Meetings

- 4.1.1 The Monitoring Officer will have advance notice of all meetings whether informal or formal between Chief Officers and members of the Cabinet or Chairs of Committees, where any procedural, vices or other constitutional matters are likely to arise;
- 4.1.2 The Monitoring Officer will have advance notice (including receiving Agendas, Minutes, Reports and related papers) of all relevant meetings of the Council at which a binding decision of the Council may be made (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Cabinet Member, Committee meetings or Executive Management Team;
- 4.1.3 The Monitoring Officer will have the right to attend any meeting of the Council (including the right to be heard) before any binding decision is taken by the Council

(including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Cabinet Member, Committee meetings or Executive Management Team.

Miscellaneous

The Monitoring Officer will:-

- (a) establish and maintain the Register of Members' Interests, and the Register of Gifts and Hospitality.
- (b) receive copies of certificates under the Local Authorities (Contracts) regulations 1997.
- (c) be the Proper Officer for Access for Information.
- (d) advise on whether executive decisions are within the Budget & Policy Framework.
- (e) be the primary Qualified Person for considering whether certain information is exempt from disclosure under the Freedom of Information Act.

5. Monitoring the Protocol

Annually, the Monitoring Officer will report to the Standards Committee regarding whether the arrangements set out in the Protocol have been complied with and will include any proposals for amendments in the light of any issues that have arisen during the year.

6. Sanctions for Breach of Protocol

Complaints of a breach of this Protocol by an Officer will be referred to the relevant Executive Director and/or the Chief Executive for appropriate action to be considered, including disciplinary investigation if appropriate.

ANNEX 1

SUMMARY OF MONITORING OFFICER FUNCTIONS

Description		Source
1	Report on contraventions or likely contraventions of any enactment or rule of law.	Section 5 and 5A Local Government and Housing Act 1989.
2	Report on any maladministration or injustice where Ombudsman has carried out an investigation.	Section 5 and 5A Local Government and Housing Act 1989.
3	Appointment of Deputy.	Section 5 Local Government and Housing Act 1989.
4	Report on resources.	Section 5 Local Government and Housing Act 1989.
5	Establish and maintain registers of Members' interests and gifts and hospitality.	Section 29 Localism Act 2011
6	Receive copies of certificates under the Local Authorities (Contracts) Regulations 1997.	Local Authorities (Contracts) Regulations 1997.
7	Maintain, review and monitor the Constitution.	Constitution - Articles 12.3 and 15.1
8	Support the Standards Committee - key role in promotion and maintenance of standards of conduct.	Section 27 Localism Act
12	Proper Officer for access to information	Constitution - Article 12
13	Advise whether executive decisions are within the budget and policy framework	Constitution Article 12
14	Advise on vires issues, maladministration, financial impropriety, probity budget and policy framework issues to all Members.	Constitution Article 12
15	To be responsible for the operation and maintenance of the whistleblowing policy	Whistleblowing: Independent Reporting of Concerns at Work

ANNEX 2

STANDARDS PROCESS

KIRKLEES STANDARDS PROCESS – BRIEF DESCRIPTION

All complaints are subject to an initial assessment that involves consideration by the Monitoring Officer and Independent person to decide whether it is a matter which raises (a) Code of Conduct issue(s). Consideration will also be given to the public interest test at this initial stage¹.

Wherever possible, any complaints will be resolved at this first stage where appropriate and will only proceed to the Standards process outlined below where they cannot be resolved by the Group Business Manager working with the Member who is complained about.

Where it appears that the complaint is a 'repeat complaint' the Monitoring Officer will consider whether it is appropriate to use the 'fast track' option to resolve the complaint. This option condenses the process set out below, allowing complaints to be dealt with more quickly where, on assessment, it is determined that there would be no benefit from using the extended process.

The process is briefly described below. It was adopted by the Council pursuant to the Localism Act 2011 and replaced the previous Standards regime. A link to the current approach is attached:

<http://www.kirklees.gov.uk/beta/contact-the-council/councillor-complaints.aspx>

Under the Standards arrangements the process is briefly as follows:

1. When a complaint is to proceed it is shared with the Councillor or Councillors who are the subject of the complaint and they are given (usually) 14 days to respond to the complaint made. The complaint is also shared with the Councillor's Group Leader and Group business Manager (if the Councillor is in a political group).
2. When the response is received that is shared with the complainant who is able to make further comments (usually within 14 days).
3. Appropriate research will be conducted as appropriate, by the Monitoring Officer staff looking at documents, websites, witnesses and other evidence or information which may assist in informing a decision.
4. Once that has happened a summary report is written and the summary report is circulated to members of the Assessment Panel with relevant background papers (e.g. the complaint and response/emails). The Assessment Panel meets and consists of the Business Managers of each group, myself as Monitoring Officer (as well as a member of my staff usually) the Independent Person and the Chair of Standards. At the Assessment Panel the views of the Business Managers are sought

¹ Kirklees Council adopted a public interest test as one of the best practice recommendations from the CSPL. The test essentially asks if we can investigate a complaint and, if so, whether we should. 'Can' requires us to be satisfied that the person complained of is a Councillor, that the conduct complained about is covered by the code and that the conduct complained of occurred within the last 6 months, in the absence of any exceptional circumstances. 'Should' requires us to consider what evidence there is that supports the complaint, whether the conduct is something that it is possible to investigate and whether any investigation would be proportionate and in the public interest.

in relation to the complaint/as well as any background papers. These are taken into account but ultimately the decision in relation to what action (if any) is taken is the decision of the Independent Person, Chair of Standards and I. Councillor(s) who are the subject of the complaint and complainants are not required to attend.

5. There are various actions/decisions which might be taken including:

- No further action is required
- An apology
- It might involve training
- It might involve a conciliation meeting
- The decision might also contain some advice for future reference
- In addition, if the matter is more serious, the Assessment Panel might decide that we need to have a further investigation in which case I would commission someone to carry out that investigation (internally or a third party) and the results of that would be considered at a Sub-Committee of the Standards Committee. In turn the Sub-Committee would report any decision to the Standards Committee and make a recommendation about any actions. This might be a recommendation that the issues be considered by Council and/or consent of the relevant Councillor

6. I will inform the Councillor, their party Leader and the Group Business Manager of any decision as well as the Complainant.

7. A copy of the decision notice will be published on the Kirklees website to record the outcome of the complaint.

The 'fast track' process will move directly to stage 3, with the exception that the details of the complaint will still be shared with Group Leader and Business Manager, where applicable.

Stage 4 is amended to bypass the assessment panel, meaning that the decision on the complaint is made by the Monitoring Officer, Chair of Standards and the Independent Person, without any input from Group Business Managers.

Stages 5 to 7 will proceed as normal.

If you have got any questions or queries about the process please contact myself or David Stickley (Senior Legal Officer).

Appendix E
Proposed Officer Code of Conduct

KIRKLEES COUNCIL OFFICERS' CODE OF CONDUCT

INTRODUCTION AND INTERPRETATION

This Code of Conduct is in two parts.

The first part, **Standards and Principles**, sets out the fundamental standards of behaviour and propriety the Council requires of its employees and office holders. These are the guiding principles of your employment.

The second part, **Putting the Standards and Principles into practice**, gives examples of how the standards and principles require employees to act or behave in certain specific circumstances.

Other Council policies, protocols and procedures also contain guidance and directions to employees on standards of behaviour; for example the Employee Handbook contains standards of behaviour that employees must follow.

Interpretation

Who does this code cover?

This code covers all employees and office holders of the Council except teachers employed by the Council to work in maintained schools (who have their own set of professional standards).

This Code is not intended to supersede any code or rules of behaviour that may be imposed on employees by virtue of regulation by professional bodies, such as the SRA. Wherever there is any contradiction, officers will be expected to comply with the rules of their own professional bodies.

Part 1 – Standards and Principles

- **Selflessness**

Employees should act in the public interest at all times and should not act to gain financial or other benefits for themselves, their family or friends above or beyond their proper remuneration.

- **Integrity**

Employees must not place themselves under financial or other obligations to outside individuals or organisations that might seek to influence them in the performance of their duties. An employee should avoid behaviour that might cause the public to suspect an improper influence.

- **Objectivity and Impartiality**

In carrying out their duties Employees should show sound judgement and make choices or give advice on merit. Employees must remain politically neutral. Employees must observe any legal restrictions on political activity. This is particularly important for any employees who hold a politically restricted post.

- **Accountability**

Employees are accountable to the Council for their actions and the Council is accountable to the public.

- **Openness**

Employees should be as open as possible about the decisions and actions they take and must not prevent another person gaining access to information that they are entitled to by law. Equally employees should not disclose information that is confidential without proper authority and in the public interest.

- **Honesty**

Employees must behave honestly. Employees must declare personal interests as required by the Council and must not allow conflicts of interest to damage the public interest or undermine the integrity and standing of the Council.

- **Trust and Confidence**

Employees must not do anything calculated or likely to damage the relationship of trust and confidence between them and the Council and must serve the Council faithfully. Employees must use reasonable care and skill in performance of their duties. Employees must not do anything to discredit the Council or bring the Council into disrepute. This principle extends to activities in the employee's "private life".

- **Respect for others**

Employees must treat colleagues and the public with respect and courtesy and not discriminate unlawfully against anyone. Employees must maintain a high level of professionalism, objectivity and courtesy in their dealings with elected members.

- **Stewardship**

Employees must use public funds and Council assets properly, efficiently and with consideration for the environment.

Part 2 –Putting the Standards and Principles into Practice

***Selflessness,
Inducements,
Corruption,
Bribery
Integrity,
Honesty
Gifts and Hospitality***

Kirklees Council must be and must be seen to be free of corruption.

Kirklees Council takes the probity of its employees very seriously. This reflects the seriousness with which the law treats the corruption of public employees and office holders.

The Prevention of Corruption Acts 1889 and 1916 make it an offence for an employee to accept any gift or consideration as an inducement or reward for:-

- Doing or refraining from doing anything in their employment capacity; or
- Showing favour or disfavour, to any person in their employment capacity.

The Local Government Act 1972 makes it a criminal offence for anyone to accept any fee or reward whatsoever other than their normal remuneration.

Misconduct in a public office is itself a serious criminal offence.

The Bribery Act 2010 makes it an offence for a person to request, agree to receive or accept a financial or other advantage.

These are serious criminal offences for which public employees can and routinely are sent to prison even where the size of the bribe or inducement is comparatively small. This is of course in addition to any disciplinary action that the Council as employer would take.

Practical Steps

You should not accept personal gifts through your work for the Council and you should discourage service users or other people or organisations from offering gifts. This particularly applies to suppliers or other commercial organisations who deal with the Council.

You must do nothing that could be construed as acceptance of a gift for services rendered.

Gifts

Any gifts, regardless of value, must be declared and recorded in your service's Gifts and Hospitality record. Your Head of Service is responsible for maintaining this record and for making sure you know how to make declarations.

The only items permitted to be retained are

- Items of an advertising or marketing nature, for example pens, mugs, calendars etc. of a nominal value (less than £15) which may be used in the workplace.
- Items of a token value (less than £15) from an individual service user with whom the Council has a direct welfare or caring relationship.
- Gifts from other parts of the Council, or from partner organisations, such as KAL, or Lawrence Batley Theatre, for example, may be retained but must be recorded (including complementary tickets to events).

If you are offered or sent a gift whose value exceeds this you should, where possible, decline or return the gift and explain the reasons for doing so. If it is not possible to decline or return the gift without causing offence, you should pass it to your Head of Service.

Hospitality

Hospitality, such as meals, alcoholic drinks, or invitations to social events, must be appropriate and incidental to your duties. Any hospitality received, except for tea or coffee, should be recorded in your service's Gifts and Hospitality record.

You should be particularly cautious about accepting hospitality from any organisations that have commercial dealings with the Council.

***Openness,
Honesty,
Trust and Confidence***

Financial Interests Conflicts of Interest

You must declare to your Head of Service if you have any financial interest in any Council supplier or contractor, or if any of your relatives or close friends have a contractual relationship with the Council.

You must also declare if you are active within or have a personal interest in any charity, voluntary organisation, club or society or similar body which has a business relationship with the Council or receives grants or similar assistance.

You must declare any directorship or management role in any company, business, charity or voluntary organisation. The requirement to declare any directorship or management role exists even if the company or business is not actively trading or operates outside of Kirklees.

Any shareholding or interest in any business or ownership of shares in a company (other than shares in a public limited company comprising less than either 2500 shares or 0.1% of issued share capital).

You must declare membership of any secret organisation.

It is the responsibility of your Head of Service to maintain a register and to make you aware of how to declare any relevant interests. It is your responsibility to make accurate and up-to-date declarations.

Other Employment

You are permitted to have other jobs provided these do not have a detrimental impact on your work for the Council – for example by making you too tired to do your Council job properly, or where they create an unacceptable conflict of interest.

You are responsible for making your Head of Service aware of any potential impact or conflict of interest.

You must not undertake any work or do anything that might give rise to a suspicion that clients or customers of yours might get preferential treatment in their dealings with the Council.

You must not use your position with the Council to gain a private advantage or benefit for you or a member of your family.

Employees who provide professional or technical advice to the Council – for example lawyers, architects, engineers; or who are involved in the Council's regulatory functions - for example planning officers, Licensing officers, Environmental Health Officers should be particularly careful to avoid compromising their integrity and objectivity in their activities outside work.

The Employee Handbook gives further guidance in this area.

Integrity, Honesty, Trust and Confidence and Stewardship Use of Council Assets and Resources

You must use public funds and Council assets properly and efficiently.

You must not use any Council property or assets for your own personal benefit or gain (unless expressly permitted to do so). This means for example not to undertake private work on Council premises, not using Council equipment, tools or materials for private purposes.

You must use Council equipment and materials carefully and responsibly. You must help the Council avoid waste, damage and unnecessary expenditure.

You must follow the Council's rules and procedures for example the Contract Procedure Rules and the Financial Procedure Rules, as set out in the Council's Constitution.

You must follow the Council's Green policies and help the Council minimise its impact on the environment.

***Openness,
Accountability,
Trust and Confidence,
Information,
Confidentiality,
Loyalty and Whistleblowing***

All employees are accountable to the Council and the Council is accountable to the public.

The Council and its employees are subject to the rule of law.

You are required to carry out reasonable and lawful instructions given to you in the course of your employment. You are not required to do anything unlawful.

If you see something seriously wrong in your workplace you have a responsibility to voice any concerns you have with your manager or someone more senior – your Head of Service or other senior officer.

The Council has a whistleblowing policy and procedure which is part of the anti-fraud, anti-corruption and anti-bribery strategy. You will not be victimised or suffer disadvantage if you report genuine concerns.

You are under a duty to report suspected abuse of vulnerable adults or children.

Confidential Information

In the course of your work you may have access to information which is confidential. Information may be confidential for a number of reasons.

It may be information that the Council is justified in keeping confidential for commercial or administrative reasons, or it may be information held about individuals which by its nature is confidential.

The unauthorised use or disclosure of personal confidential information may be unlawful and put the Council at risk of adverse public criticism and having to pay compensation or financial penalties.

Practical steps

You must not make unauthorised disclosure of confidential information.

You must be alert to any unauthorised persons seeking to obtain confidential information from you and you should report this to your line manager or Head of Service. You must be aware of and comply with the Council's policies and procedures in relation to the security of information and not risk the loss or misuse of data – particularly sensitive personal data relating to individuals.

You must not misuse confidential information for your own personal gain or advantage. Unauthorised disclosure of confidential information in return for money or other inducement is likely to be a serious criminal offence.

As well as protecting confidential information the law gives individuals legal rights to access both their personal data and certain kinds of information held by the Council. You must help the Council comply with its legal obligations under the Data Protection Act, the Freedom of Information Act and the Environmental Impact Regulations.

You must be able to identify any formal requests for information, either as a Subject Access Request, or a Freedom of Information Act or the Environmental Impact Regulations request, and to deal with these appropriately.

You will be required to undertake training relevant to your role on data protection issues.

***Selflessness, Objectivity
and Impartiality,
Accountability
Working with Councillors***

Employees and councillors have a common purpose in serving the community. But their responsibilities are distinct. Councillors are responsible to the electorate for their term of office. Employees are responsible to the Council through their management.

Employees provide independent, impartial, professional advice and expertise and work to implement the policies and decisions taken by the Council.

Councillors have a political dimension to their roles, whereas employees do not and they should therefore take care to be politically neutral in their dealings with elected Councillors.

Mutual respect and courtesy between employees and councillors is essential for good local government and should be maintained at all times.

Councillors have their own Code of Conduct that sets out behavioural expectations that they are required to comply with, and the Constitution contains a 'Member-Officer Protocol' that employees should be familiar with.

Your work with councillors should follow these principles.

1. The mutual commitment to public service;
2. Mutual courtesy and respect;
3. Avoidance of over familiarity with individual members;
4. Provision of timely, accurate and impartial advice and information to members;
5. Political neutrality;
6. Sensitivity to the political context in which the councillors work.

If you work in a politically restricted post then you must observe the restrictions on your political activities. If you are contemplating standing for election to the Council you should make

yourself familiar with the restrictions on employment. More information is found in the Employee Handbook.

***Trust, Confidence and
Respect for Others
Behaviour outside Work, social media,
respect and equality***

Employees are entitled to a private life away from work. However you should not do anything in your private life that is calculated or likely to bring the Council into disrepute. For example you should not post anything on social media sites that makes reference to your role within the Council or is likely to bring the Council into disrepute or upset or offend your colleagues. You must observe the Council's policies and procedures with regard to use of electronic and social media.

You must make yourself familiar with and observe the Council's policies relating to dignity at work and equality of opportunity.

You must treat colleagues and members of the community with respect and dignity at all times.

The Council is subject by law to the public sector equality duty. Under this duty, the Council must have due regard to the need to:-

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between who share a protected characteristic and those who do not.

You must not do anything in the course of your employment which is inconsistent with the public sector equality duty and you must help the Council put it into effect.

Conclusion

If you are uncertain about any aspect of the Code of Conduct you should seek guidance from your line manager or Head of Service. Further information, can be found in:

- Kirklees behaviours
- Employee Handbook
- Whistleblowing Policy
- Member-Officer Protocol
- My Learning
- Members Code of Conduct

Appendix F
Licensing and Safety Committee Protocol

LICENSING AND SAFETY COMMITTEE PROTOCOL

Licensing and Safety Committee Protocol

This Protocol sets out principles to guide members and officers in determining licensing applications and making other decisions within the terms of reference of the Licensing and Safety Committee.

Although it is of particular relevance to members of the Licensing and Safety Committee, it applies to all members of the Council who may become involved in licensing matters.

PROTOCOL - LICENSING AND SAFETY COMMITTEE

1. Introduction

This protocol contains guidance for members of the Licensing and Safety Committee. If members are uncertain about the application of the Protocol, they should seek guidance from officers, preferably in advance of any meeting.

Licensing has a very important role to play in the life of the district. The Licensing and Safety Committee determines applications under the Licensing Act 2003 and applications under the Gambling Act 2005, through its Licensing Panel. The Licensing Act 2003 regulates 'licensable activities' which are defined in the Act as the sale of alcohol, regulated entertainment and late-night refreshment. The Gambling Act 2005 regulates the licensing of gambling premises and certain permissions.

In this Protocol, reference to 'the Regulations' means The Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005 No 44) and/or The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 (SI 2007 No 173)

2. Interests of the Whole Community

Members of the Licensing and Safety Committee should determine licensing matters in the interests of the whole community of the district.

All applications should be determined with regard to the relevant legislation, including the licensing objectives, the statutory guidance and the Licensing and Gambling policy adopted by the Council.

Members of the Licensing and Safety Committee should not prejudge licensing applications nor do anything that may reasonably be taken as giving an indication of having prejudged licensing applications.

All other members should have regard to these principles when dealing with licensing matters and must avoid giving an impression that the Council may have prejudged the matter.

3. Participation of Members

Members must consider carefully whether it is right for them to participate in a matter before the Committee. There are two elements to this:

- where they have Disclosable Personal Interests (DPI) and / or Other interests
- where members of the public may feel that the member will not be able to approach matters with an open mind and consider the application on its own merits.

While this Protocol seeks to guide Members each situation will be different and Members should seek guidance from Officers.

4. Disclosable Pecuniary Interest (DPI) and Other Interests

Members must comply with the provisions regarding DPI's and other interests set out in the Code of Conduct for Members. In particular, members must be mindful that if they have a "DPI" as defined in the Members' Code of Conduct, they must withdraw from the meeting and take no part in the matter.

The only exception to this is where a member may attend to make representations, answer questions or give evidence provided that they are entitled to do so under the relevant sections of the Licensing Act 2003 and the Gambling 2005; see Section 8 below.

Pre-judgment

While the Code of Conduct for Members provides guidance on DPIs and Other interests which may affect a member's ability to take part in the decision-making process, members may have additional interests which may influence their decision which will not amount to a DPI or another interest for the purposes of the Code. In order to maintain the integrity of the licensing system, members should be careful to ensure that such interests do not unduly influence their decisions. Such interests may arise: -

- from ward concerns
- from membership of other Committees of the Council
- from membership of other public or community bodies
- from membership of voluntary associations and trusts (including where appointed by the Council)
- from a connection with a particular policy initiative of the Council.
- from membership of clubs, societies and groups
- from hobbies and other leisure interests
- from employment or professional concerns

Such interests may mean that a Member is involved with a licensing application before the matter comes before the Licensing and Safety Committee. Such involvement need not on its own debar a member from participating in making the licensing decision when the matter is considered by the Licensing and Safety Committee providing that the member has not already decided how they will vote on the matter before the Committee. Members should, however, always consider carefully whether in any particular case they can reasonably be seen to approach the application on its own merits and with an open mind. If the member considers that this is not possible, the member should withdraw from consideration of that item.

As a minimum, the integrity of the licensing system requires openness on the part of members; it must operate fairly and be seen to operate fairly.

5. Natural Justice

There are two elements to natural justice:

(a) Fairness

When the Licensing and Safety Committee is considering an application, the applicant will be given an opportunity to put ~~his/her~~ **their** case before the Committee, in accordance with the Regulations governing such hearings and the procedure adopted by the Licensing and Safety Committee. If the applicant or their representative do not attend, the Licensing and Safety Committee may proceed in the applicant's absence in accordance with the Regulations and the Procedure.

The Licensing Authority will arrange a hearing when it receives relevant representations under the legislation.

All documentation to be considered by the Licensing and Safety Committee will be available in advance in accordance with the Regulations and the Procedure.

All Members of the Licensing and Safety Committee shall be present throughout the consideration of a particular application. Where a Member arrives late or leaves the room once consideration of the matter has started, that Member shall play no part in the decision-making process for the particular application. Where an application is adjourned it shall be heard by the same Members only, and no others.

(b) Prevention of Bias

The rules about DPs and Other interests are set out in the Code of Conduct for Members and should be strictly adhered to. Members are also referred to the guidance about prejudgement in paragraph 4.

When the Licensing and Safety Committee moves into private session to consider its decision, it should be accompanied only by its Governance Officer and the Panel's legal adviser who shall have taken no substantive part in the debate and shall play no substantive part in the decision-making process other than to record and advise.

6. Hearings

Hearings shall generally be in public and the Committee shall retire to consider its decision and take advice from officers.

7. Debate

Only members of the Licensing and Safety Committee can take part in the decision making.

Members of the Committee must: -

- a) listen to all arguments for and against an application and weigh them up carefully before deciding whether to support or oppose a particular application.
- b) make sure that they are not swayed by arguments which are not directly related to the merits of the application, **considering only those that relate to the Licensing Objectives.**

8. Role of Members in Relation to Applications

Licensing Act 2003

S18 of the Licensing Act 2003 provides that a 'Responsible Authority' or 'Other Person' may make representations to licensing authorities on applications for the grant, variation or renewal of a premises licence for the licensable activities covered by this Act.

While there is no statutory definition of 'Other Person' the guidance issued under the Act, at paragraph 8.13, provides that it may include:-

8.13 any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises.

The guidance goes on to say at paragraph 8.14

8.14 While any of these persons may act in their own right, they may also request that a representative makes the representation to the licensing authority on their behalf. A representative may include a legal representative, a friend, a Member of Parliament, a Member of the Welsh Government, or a local ward or parish councillor who can all act in such a capacity.

It can be seen therefore that Members are entitled to make representations in relation to this Act and they can do so in their own right, or on behalf of other persons.

Gambling Act 2005

S158 of the Gambling Act 2005 sets out who is an interested party in relation to an application under this Act for a premises licence for gambling. An interested party is a person who: -

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities
- b) has business interests that might be affected by the authorised activities, or
- c) represents persons who satisfy paragraph (a) or (b)

Guidance issued under the Act by the Gambling Commission states at Para. 8.16-8.17:

8.16 Interested parties can be people who are democratically elected such as councillors and MPs, as persons representing individuals in the other categories. This would include county, parish and town councillors. Other representatives might include bodies such as trade associations and trade unions, and residents' and tenants' associations. A school head or governor might act in representing the interests of pupils or parents and a community group might represent vulnerable people living near to the proposed premises.

8.17 Save for democratically elected persons, licensing authorities should satisfy themselves on a case by case basis that a person does represent interested parties and request written evidence where necessary. A letter from the interested person(s) they are representing would be sufficient.

9. Lobbying

While recognising that lobbying of members has an important role in the local democratic process, this should not prejudice the licensing process.

Lobbying can, therefore, unless care and common sense are exercised by all concerned, lead to a member's impartiality and integrity being called into question. In order to avoid any such

criticism or legal challenge and to preserve ~~your~~ a member's right to vote on an application, ~~you~~ members should follow the following advice.

- Avoid organising support for or opposition to a licensing application or involving ~~yourself~~ themselves in such a process and avoid lobbying other councillors on the issue.
- If applicants, potential applicants or objectors ask to meet ~~you~~ a member about a proposal, ~~refer them they should be referred~~ to another councillor who does not serve on the licensing ~~sub-committee~~ panel and will not be involved in the decision; alternatively ~~refer them they should be referred~~ to an officer.
- If anyone (including another councillor) does lobby ~~you~~ a member or raise issues about a particular proposal, ~~refer them they should be referred~~ to officers for advice on procedure and ~~it should be suggested suggest~~ that they send their comments to officers so that they can be included in the committee report; it is also a good idea to explain why ~~you~~ a member has ~~have~~ to remain completely impartial.
- ~~members should~~ ~~K~~keep a record of any approaches by lobbyists and the response given or action taken; these records should be incorporated in the form attached as an appendix to this protocol and the relevant records produced at the start of each ~~panel~~ ~~sub-committee~~ meeting - but note that this is a separate process from that which relates to declaration of DPI or Other interests under the members' code of conduct.
- When approached by anybody (including the press) regarding a particular application, ~~members should~~ take care to avoid expressing an opinion which others might regard as indicating that ~~you~~ they have already made up ~~your~~ their mind on the issue before hearing all the information and arguments presented at the ~~panel~~ ~~sub-committee~~ meeting. Members ~~You~~ can, if pressed, perhaps, indicate the sort of concerns or issues which ~~you~~ they think ~~will need to be considered~~ ~~you'll need to consider~~ when making any decision, but remember that if ~~you~~ a member cannot clearly demonstrate that at the meeting ~~you~~ they have an open mind and are balancing all the various issues and arguments, ~~you~~ they will run the risk of potentially invalidating the decision and making the Council subject to legal challenge. In addition, members should make sure that ~~you~~ they also say ~~you~~ they will not be making a decision until the meeting.
- If ~~you~~ a member cannot avoid expressing a clear opinion on the decision beforehand, ~~you~~ they should not sit on the ~~panel~~ ~~committee~~ concerned with determining the application.
- Remember that ~~your~~ a member's overriding duty in this role is to the whole community not just to the people in ~~your~~ their ward and, taking into account the need to make decisions impartially, ~~you~~ members should not improperly favour any person, company, group or locality or appear to do so. If local people put ~~you~~ a member under pressure, or ~~if~~ ~~you~~ they want to try to be as helpful as possible, ~~they should~~ try to explain the reasons why ~~you can't~~ they cannot favour one side or the other, tell them the best way to get their views across, tell them how to contact another councillor who can help them, or refer them to officers who can explain the issues and reasons.

10. Visits to Premises

The main role of the Licensing ~~and Safety Committee~~ Panel is to decide individual applications which is a quasi-judicial function. The ~~Panel~~ ~~Committee~~ may find it useful in the course of its deliberations on an application to visit the premises in question. While it is proper for the ~~Panel~~ ~~Committee~~ to do this, care must be taken not to prejudice the integrity of the licensing process. The following ground rules will help to prevent this.

Arrangements for visits should be approved by the Committee and arranged by officers. Members should not make their own arrangements. If Members are approached directly, they should pass the person concerned on to officers.

- Members should not accept any gift or any hospitality during such visits
- There should be no discussion of individual applications with anyone except fellow panel members
- At such visits, there should be no one-to-one discussions between Members and others.
- Officers will always be present at such visits.

11. Press Comments

All members should ensure that any contact which they may have with the press should accord with the principles of this Code and should not affect the integrity of the licensing system.

12. Training

Making good, justifiable licensing decisions is not something which can be done by instinct.

Before serving on any committee or panel making licensing decisions (whether as a full member or as a substitute) any ~~councillor~~ member must have undergone suitable training in both the procedural issues outlined in this protocol and in the basic principles of licensing law, so that they can understand the basis on which decisions need to be made and on which officers prepare reports.

~~New members who do not attend this training will not be able to take part in decision making~~

~~Suitable training will be provided sufficient to ensure that councillors who wish to be involved in licensing decisions can do so, but you do need to make an effort to attend.~~

This requirement will also apply to training ~~for returning committee members who will be~~ required to refresh and update their knowledge and understanding. Annual ~~update updating~~ training will ~~also~~ be provided ~~to these members~~. ~~You~~ Members will not be able to continue to take part in licensing decisions unless ~~you take they have taken~~ part in that training.

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REPORT TITLE: Councillor and Officer Protocol update

Meeting:	Corporate Governance and Audit Committee
Date:	7th March 2025
Cabinet Member (if applicable)	Cllr Tyler Hawkins
Key Decision Eligible for Call In	No No
Purpose of Report To seek approval for amendments to the Councillor and Officer Protocol to be recommended to Council.	
Recommendations <ul style="list-style-type: none"> That the suggested amendments to the Councillors and Officers Protocol be recommended to Council 	
Reasons for Recommendations <ul style="list-style-type: none"> The suggested amendments are intended to update and modernise the Constitution 	
Resource Implications: None	
Date signed off by Executive Director & name	Rachel Spencer-Henshall 25/2/2025
Is it also signed off by the Service Director for Finance?	Kevin Mulvaney 25/02/2025
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Samantha Lawton 25/02/2025

Electoral wards affected: All

Ward councillors consulted: Members of the Monitoring Officer's Constitution working group

Public or private: Public

Has GDPR been considered? Yes

1. Executive Summary

- 1.1 The Councillor and Officer Protocol is part of the Kirklees Constitution.
- 1.2 It was recognised that the Councillor Officer protocol had not been reviewed or updated for some time and the former Monitoring Officer felt it was appropriate to involve members and officers in a wider review of the protocol.
- 1.3 The feedback from the external consultant, members and officers was used as the basis for the amendments that have been made.

2. Information required to take a decision

Councillor-Officer Protocol

- 2.1 Following a project to look at the protocol that involved members and officers that was facilitated by external consultant Bethan Evans in May 2023, the protocol has been updated.
- 2.2 The general feedback on the existing protocol was that it was largely fit for purpose, but there were some areas that could be improved, in terms of outlining more clearly, roles, responsibilities and expectations, as well as any areas of complaint and bringing the document up to date as to current practice.
- 2.3 Consequently, a number of amendments have been made to the existing protocol, as it was felt that there was not a need for it to be rewritten entirely.
- 2.4 A copy of the draft revised protocol that shows in 'track change' of the amendments that have been made is attached at Appendix 1. A copy of the current protocol is also attached at Appendix 2.

3. Implications for the Council

- 3.1 **Working with People**
N/A
- 3.2 **Working with Partners**
N/A
- 3.3 **Place Based Working**
N/A
- 3.4 **Climate Change and Air Quality**
N/A
- 3.5 **Improving outcomes for children**

N/A

3.6 **Financial Implications for the People Living or Working in Kirklees**

N/A

3.7 **Other (eg Legal/Financial or Human Resources)**

Regular review of the Constitution will ensure that Kirklees Council is operating lawfully.

4. Consultees and their opinions

4.1 The views of the members and officers who participated in the group sessions have been taken into account when the protocol was being amended.

4.2 The revised protocol has been shared with the Constitution Working Group.

5. Next steps and timelines

5.1 Any recommendation by this Committee will need to be considered by Council and a report to Council will be prepared.

5.2 Any changes to the Constitution agreed by Council will then be put into place.

6. Officer recommendations and reasons

6.1 That members approve the proposed amendments to the Member Officer Protocol.

7. Cabinet portfolio holder's recommendations

N/A

8. Contact officers

David Stickley
Principal Lawyer
david.stickley@kirklees.gov.uk
01484 221000

9. Background Papers and History of Decisions

N/A

10. Appendices

Appendix 1 – Amended Councillor and Officer Protocol

Appendix 2 – Current Councillor and Officer Protocol

11. Service Director responsible

Samantha Lawton
Service Director – Legal, Governance and Commissioning
01484 221000

APPENDIX 1

Councillors and Officers in Kirklees – A Protocol for Working Effectively

Introduction

1. The purpose of this protocol is to guide Councillors and Officers of the Council in their relations with one another in such a way as to ensure the smooth running of the Council and to foster good working relationships for the benefit of the community. This protocol seeks to provide greater clarity, understanding and best practice of the various relationships between Councillors and Officers of all levels of the Council.

Our councillor / officer relationships should continue to be defined and shaped by our culture and evolve in a way that ensures we are best placed to collectively meet challenges and deliver positive change.

For the most part it is a statement of current practice and convention. It is a source of advice and context in developing such relationships built on trust. This protocol provides a framework for interaction, acknowledging that the officer / councillor relationship is a delicate one. It is a relationship that is at the heart of what the council does and as such needs to be continually nurtured and developed.

This protocol supplements and should be read alongside other codes, procedures and protocols agreed by the Council that regulate the conduct of Councillors and Officers such as the Councillors Code of Conduct, and Officer Codes of Conduct. The objective of these codes is to enhance and maintain the integrity (real and perceived) of local government and they, therefore, demand high standards of personal conduct. The nature and complexity of the relationships means that the protocol cannot be exhaustive. If any Councillor or Officer is unclear about a particular aspect of this Protocol they should contact the Monitoring Officer.

This protocol applies whenever Councillors and Officers are undertaking the Council's business in public and private meetings. This protocol applies to voting non-elected members of committees.

4.2. Expectations

Councillors and Officers should expect each other to....

- ~~Comply with ethical standards and probity requirements~~

~~Councillors should expect officers to...~~

- ~~Be impartial and apolitical~~
- ~~Implement policy and ensure operational delivery~~

- ~~Be responsible for day to day management~~
- ~~Have respect for the role of councillor and the political process~~
- ~~Be aware Councillors wear different hats and fulfil different roles at different times~~
- ~~Appreciate the pressures that councillors face in carrying out their duties~~
- Be sensitive to the politics
- Comply with the Officers Code of Conduct

~~Officers should expect Councillors to...~~

- ~~Add a political dimension~~
- ~~Make policy and determine the core values of the council~~
- ~~Be accountable to the electorate and act in the public interest~~
- ~~Be a community leader for the ward they represent~~
- ~~Understand and represent the interests of the wider community and the whole council as well as those of their ward~~
- ~~Avoid becoming involved in day to day management issues~~
- ~~Make difficult/unpopular decisions for the common good of the district~~
- ~~Lobby on national/local policy issues on behalf of the district/region~~
- Comply with the Members Code of Conduct

2.3. The Kirklees Context

~~Kirklees has a long track record of its councillors and officers working together effectively. This is evidenced by the outcomes we achieve. The relationship between the two develops and changes over time and it is therefore important to revisit and review how such a relationship should work. Only then can we ensure it remains fresh, vibrant and healthy.~~

~~This document seeks to build on sound foundations by capturing in one place the characteristics, roles and expectations that are at the heart of that special and crucial relationship. It is a product of councillors and officers working together and is an important building block as the council evolves. It is a part of the work of the Members Commission, a cross party working group, whose principal focus is to look at the changing role of the councillor as we move towards the New Council.~~

~~Our councillor / officer relationships should continue to be defined and shaped by our culture and evolve in a way that ensures we are best placed to collectively meet challenges and deliver positive change.~~

~~This protocol seeks to set out the parameters of the relationship in Kirklees in order to ensure we can do just that. For the most part it is a statement of current practice. It is not intended to be just a set of rules nor is it a complete guide to the complex landscape in which councillors and officers operate and interact. It is not a substitute for developing effective working relationships built on trust but should be a source of advice and context in developing such relationships. This protocol provides a framework for interaction, acknowledging that the officer / councillor relationship is a delicate one. It is a relationship that~~

is at the heart of what the council does and as such needs to be continually nurtured and developed.

This protocol should be read alongside other key documents such as the Councillors Code of Conduct, the Code of Conduct for Staff and other relevant protocols as set out in Part 5 of the Council's Constitution.

3. Different COUNCILLOR AND OFFICER ROLES Roles / Complementary Relationships

4.

Officers and councillors carry out a wide variety of roles. Mutual trust and respect are essential in setting the right tone for effective working relationships between Councillors and Officers. In undertaking their roles all councillors are expected to do so in accordance with the Principles of Public Life:

Selflessness—councillors should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity—councillors should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity—in carrying out public business (including making appointments, awarding contracts or recommending individuals for rewards and benefits) councillors should make choices on merit.

Accountability—councillors are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness—councillors should be as open as possible about all decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty—councillors have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts in a way that protects the public interest.

- *Leadership*—councillors should promote and support these principles by leadership and example.

Both Officers and Councillors

•Be professional

Adhere to respective Codes of Conduct and uphold ethics and values of the Council

• Are accountable for decisions and actions

• Maintain confidentiality as appropriate

• Act as an Ambassador for the Council

• Continually develop knowledge and skills – keep up to date on Council policy and performance

• Represent the Council on external bodies and provide feedback

•

- Be part of an effective working partnership
- Contribute to safeguarding the reputation of the council

- ~~Respond in a timely way to enquiries and complaints~~
- Be reliable
- Understand and advise on the needs of local communities
- Ensure the council acts lawfully and its reputation is safeguarded
- Fully consider professional advice as part of decision making
- Ensure the allocation of physical, financial and human resources
- Avoid personal criticism
- Be respectful (but not deferential)
- Be professional (but not jargonistic)
- Trust and respect each other's expertise, knowledge and skills
- Listen and understand each other
- Understand the strategic and long term direction of the council
- Inform and manage citizens expectations
- Build community capacity and ~~unlock societal productivity~~ relations and activities
- Understand and explain difficult decisions
- Provide advice, information and guidance

Quick Guide to the Distinct Roles

<u>Councillors</u>	<u>Officers</u>
<u>Accountable to the electorate and act in the public interest</u>	<u>Accountable to the Council</u>
<u>Representative role for a Ward</u> <u>Community Leader understanding and representing the interests of the whole community</u>	<u>Serve the whole Council</u>
<u>Add a political dimension</u>	<u>Politically impartial</u>
<u>Set high level strategy and make high level decisions</u>	<u>Provide guidance on policy</u> <u>Undertake delegated decisions on behalf of Councillors</u> <u>Ensure operational delivery</u>
<u>Do not influence recommendations of reports but may at formal meetings, accept or reject recommendations</u>	<u>Produce reports and make recommendations</u>
<u>Are involved in senior appointments</u>	<u>Day to day staff management and appointment to more junior roles</u>
<u>Regulate certain activities</u>	<u>Implement decisions</u>
<u>Lobby on national/local policy issues</u>	

The conduct of officers is governed by the Employees' Code of Local Government Conduct, the Employee Handbook and the relevant protocols as set out in Part 5 of the Council's Constitution.

The nature of both officer and councillor roles and the consequent relationships are increasingly complex and changing in a dynamic local government environment. The Widdicombe Committee description of those roles and relationships remains relevant:

“Local Government has derived strength over the years from a complementary relationship between part-time councillors drawn from and representative of the general public, and full time officers with professional expertise. We accept that this cannot be a rigid or static model. Some councillors will need to devote considerable time to council business, and there has sometimes been too great a stress on officer professionalism. Councillors moreover have the right to ensure that some of their decisions for which they are statutorily responsible and accountable are implemented by officers. Nevertheless, a merging of roles is not desirable. Councillors should leave the day to day implementation of council policies, including staff management, as far as possible to officers and officers should demonstrate that they are sensitive to the political aspirations underlying those policies”.

Key Officer Roles

Statutory Posts. Certain Senior Officers hold posts with mandatory statutory responsibilities including the Chief Executive, the Monitoring Officer (Director of Legal, Governance and Commissioning), appointed under Section 5 of the Local Government and Housing Act 1989, the Chief Finance Officer (Director of Finance and Commercial Services) appointed under Section 151 Local Government Act 1972, the Director of Public Health appointed under Section 2 of the Local Government and Housing Act 1989 and the Executive Director for Children's and Families appointed under Section 18 of the Children Act 2004. Councillors must respect these responsibilities and accept that these Officers may be required to give advice or make decisions which Councillors may not agree with or support.

The Monitoring Officer role includes responsibility for reporting to the Council any case where s/he is of the opinion that a proposal or decision of the authority has given rise to or is likely to or would give rise to any illegality, maladministration or breach of statutory code and for investigating any such reportable incident including allegations of breach of Councillors standards of conduct.

The Chief Finance Officer (Section 151 Officer) role includes responsibility for the strategic arrangements for the administration of the Council's financial affairs, delivery by the whole authority of good financial management to safeguarding public money and ensuring it is used appropriately, effectively, efficiently and economically.

The Executive Directors are individually responsible for their portfolio of services and collectively responsible for management of staff their work and delivery of Council functions and priorities. The role of Deputy Chief Executive will be filled by one of the Executive Directors.

Service Directors manage the service for which they have responsibility, ensure that the statutory responsibilities are properly discharged on a day to day basis, account for the efficiency and effectiveness and professional practice of their service.

Officers and Councillors have day to day responsibilities for adhering to the rules of procedure and the financial regulations in the Constitution which are there to protect the whole Council. In addition, certain officers may have, by virtue of their qualifications and memberships of professional bodies, additional requirements placed upon them to comply with additional professional obligations. To further understand roles, Members and Officers refer to the Constitution and easy to read role profiles, job descriptions and induction materials In reality, there are grey areas, where Councillors and Officers need to work together and for this reason, it is important to set out ways of working, expectations, relationships and communications.

Whilst on a number of levels there is a distinct separation between the two roles, the relationship is most effective when it operates in partnership. In order for such a relationship to work well it is important for each to have an awareness of the distinct boundaries and expectations that each can legitimately have of the other. These (whilst not necessarily exhaustive) are summarised below:

Whilst there is a separation between the two roles it is important to ensure that both are maximised to best effect as both bring skills, knowledge and experience which contributes to a joint leadership approach. Both are indispensable to, and dependent of, one another.

~~Subsequent sections of the protocol seek to look in more detail at specific contexts, roles and relationships between officers and councillors, acknowledging that these are diverse, complex and changing.~~

THE PROFESSIONAL RELATIONSHIP

A Guide to Expectations

In forging an effective working relationship, Councillors and Officers will have certain basic expectations of each other. Much of this is about ensuring high standards of behaviour and acting within a clear framework of ethical governance.

Courtesy

It is important that Councillors and Officers are courteous to each other at all times, even if they disagree strongly with each other's views. Contact between Councillors and Officers should always be courteous both in public and in private.

Bullying

Councillors and Officers must not bully any person. Bullying may be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once, or be part of a pattern of behaviour. Councillors may from time to time become frustrated by what they regard as unacceptable or incompetent Officer behaviour. It is self-evident that sometimes these feelings may be entirely justified although sometimes there may be a legitimate reason why Councillor expectations cannot be met – for example, due to Council Policy or a legal requirement. In these circumstances, Councillors are to take up their concerns through the Service or Executive Directors as set out in the dispute procedure described in this document, rather than through public criticism.

Councillor and Officer Development

Councillors and Officers should participate in the Council's development and training programme which is core to their role.

Councillors should participate in Councillor inductions and all learning identified as mandatory from time to time including any committees such as Planning, licensing or the Appeals committee.

What Councillors can expect from Officers

<u>Officers Do</u>	<u>Officers Don't</u>
<u>Pursue lawful policies and comply with the Officers Code of Conduct</u>	<u>Deviate from the Constitution, legal or contractual obligations</u>
<u>Promote inclusion, serve all Councillors equally with dignity, respect and courtesy, regardless of political group or position</u>	
<u>Comply with legal duty to provide professional advice, impartiality and implement Council policy</u>	<u>Allow their personal or political opinions to interfere with their work or professional judgement and advice</u>
<u>Avoid close personal familiarity with Councillors and follow any Council guidelines on personal relationships</u>	
<u>Follow Council procedures when answering or dealing with Councillor enquiries effectively efficiently</u>	
<u>Respond in a timely manner and keep Councillors updated</u>	

<u>Act with integrity and appropriate [not absolute] levels of confidentiality</u>	<ul style="list-style-type: none"> • <u>Seek to improperly influence Councillors;</u> • <u>Improperly disclose information received from one Councillor to another; or</u> • <u>Raise their personal circumstances or those of another directly with Councillors.</u>
<u>Be prepared to justify and give reasons for decisions made under delegated powers;</u>	
<u>Report the least suspicion of fraud, corruption or impropriety</u>	<u>Conceal any information which it is proper for them to disclose (particularly where they have a duty to reveal it);</u>
<u>Be respectful of the different roles of Councillor and the political process</u>	
<u>Be sensitive to the politics and pressures that Councillors face</u>	

What Officers can expect from Councillors

<u>Councillors Do</u>	<u>Councillors Don't</u>
<u>Comply with the Councillor Code of Conduct – ensuring the highest standards of behaviour</u>	
<u>Promote equality and treat all Officers with dignity and respect.</u>	<u>Subject individuals to unreasonable or personal attacks</u>
<u>Councillors are to must comply with the equality laws prohibiting discrimination, harassment and victimisation</u>	<u>Undermine respect for Officers in public meetings, the media or at any</u>

<p><u>Chairs of meetings are expected to apply the rules of debate/procedures to prevent abusive or disorderly conduct</u></p>	<p><u>other time when dealing with Council business;</u></p>
<p><u>Only ask Officers to provide professional advice on matters that clearly arise from being an elected Councillor;</u></p> <p><u>Respect impartiality and integrity of Officers and do not compromise it</u></p>	<p><u>Ask Council Officers to improperly spend Council time or resources for political purposes.</u></p> <p><u>Insist an Officer changes his/her professional advice</u></p>
<p><u>Provide political leadership and direction, making timely decisions</u></p>	<p><u>Get involved in day to day management</u></p> <p><u>Ask Officers to breach Council procedures or policy when acting on behalf of constituents</u></p> <p><u>Put pressure on an Officer on matters which have been delegated for Officer decision. A Councillor who behaves in this way may lead Officers to make decisions that are not objective and that cannot be accounted for</u></p> <p><u>Seek special or adverse treatment for themselves or any individual by using his/her position as a Councillor, nor improperly seek to gain an advantage or disadvantage for his/herself or any other person when dealing with Council Officers</u></p>
<p><u>Apply appropriate levels of confidentiality to information</u></p>	
<p><u>Report the least suspicion of fraud, corruption or impropriety</u></p>	<p><u>Instruct Officers to take actions which are unlawful, financially improper or likely to amount to maladministration. Councillors have an obligation under their Code of Conduct to have regard, when reaching decisions, to any advice provided by the Monitoring Officer or the Chief Finance Officer.</u></p>
<p><u>Where relevant to casework or a decision, declare any special relationships/other interests with constituents to relevant Officers and/or constituents.</u></p>	

<u>Where the relationship causes a conflict of interests, Councillors will ask another Ward Councillor to assist.</u>	

5. ~~Executive Councillors and Officers~~—Cabinet and Officers - Decision Making

- 46.1 Kirklees operates a strong leader model of executive governance. As such, Cabinet will take decisions in accordance with the Constitution (see Article 7). Senior officers will be responsible for instructing and deploying staff to implement those decisions.
- 46.2 Implicit within these arrangements is a need for a close working relationship between the members of Cabinet and senior officers. Such relationships should never become, or appear to become, so close as to bring into question the officer's ability to deal impartially with other councillors and political groups. Cabinet must respect the political neutrality of the officers. Officers must ensure that their political neutrality is not compromised.
- 46.3 When producing reports the **Executive** Director / Senior Officer will always be fully responsible for the contents of any report submitted in his / her name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. This is to be distinguished from a situation where there is a value judgement to be made. Any issues arising between the Cabinet / a Cabinet Member and a senior officer should be referred to the Chief Executive for resolution.
- 46.4 Before taking any formal decisions the Cabinet will seek appropriate professional advice (including the Monitoring Officer and Chief Finance officer in particular) and will not direct officers in the framing of recommendations. Where Cabinet recommendations differ from those of officers, this should be made explicit in the submitted report.
- 46.5 Where officers are taking decisions under their delegated powers they should consider informing the relevant Cabinet Member of their intentions in advance. This is particularly important where such a decision falls within the requirements of the Access to information Regulations 2012, as amended ~~in August 2014~~, where there is a requirement for the decision to be recorded, and in all instances where the Officer decision constitutes a Key Decision. Such decisions will be publicly accessible.

6. Overview and Scrutiny Councillors and Officers

- 57.1 Kirklees currently has a single Overview and Scrutiny Management Committee, supported by a Health and Social Care Scrutiny Panel. To undertake in-depth investigations Ad Hoc Panels are established. For full details see Article 6 of the Constitution. In a council with Executive arrangements Overview and Scrutiny plays an important role in scrutinising Cabinet business and the decisions that it takes. It also plays an important role in overseeing policy implementation and service performance.
- 57.2 As part of conducting its business the Committee and / or its Panels will require officers to attend scrutiny meetings. All requests should be made to the relevant Executive Director and / or Service Director in the first instance.
- 57.3 In giving evidence to the Committee or its Panels officers must not be asked to express political views.
- 57.4 Officers should respect scrutiny members in the way they respond to their questions.
- 57.5 Scrutiny members should not question officers in a way which could be interpreted as harassment or bullying. Neither should they ask about matters of a disciplinary nature.
- 57.6 Scrutiny proceedings must not be used to question the capability or competence of officers. Scrutiny members need to make a distinction between scrutinising the policies and performance of the council and its services, and appraising the personal performance of staff. The latter is not a scrutiny function.
- 57.7 When Officers are asked to provide information by Overview and Scrutiny Management Committee / Panels they should do so in accordance with the provisions of Section 24 of the Access to Information Procedure Rules.

7. Party **Political** Groups and Officers

- 68.1 Political groups have, and will continue to be, an important part of the political and informal governance landscape. In light of this it is possible that officers may be asked to attend a party group meeting whether of the controlling group or an opposition group. Any such request should be made in writing to the Chief Executive and / or the relevant Executive Director. If agreed it will be on the basis that similar arrangements will be made for other groups should they request it.
- 68.2 An officer accepting an invitation to the meeting of one party group shall not decline an invitation to advise another group about the same matter. He / she must provide consistent information to each group.
- 68.3 Officer involvement should be limited to the provision of factual information or professional advice in relation to matters of council

business. Officers should not advise on matters of party business and should leave the meeting before the group discuss and / or decide their political course of action.

- 68.4 Officers should not be put in a position where they feel their political impartiality or integrity are put at risk and may leave the meeting if they believe this is the case.
- 68.5 Special care should be taken where officers are involved in providing information and advice to a party group meeting where that includes persons who are not members of the council. Due to issues of confidentiality officers may not be able to provide the same level of information and advice.
- 68.6 Officers must respect the confidentiality of any group discussions at which they are present and will not relay the content of such discussions to another party group or to any other councillors. This shall not prevent an officer providing feedback to other senior officers on a need to know basis.

8. Ward Councillors and Officers

- 79.1 All of the 23 electoral wards in Kirklees are represented by three councillors. It is they who provide the bedrock of representative democracy and as such it is important that they are supported effectively to carry out their community leadership role. With this in mind, communication is a very important factor for officers to bear in mind. Councillors need to be fully informed about matters affecting their ward.
- 79.2 Executive Directors and Service Directors must ensure that all relevant staff are aware of the requirement to keep local councillors informed. This will allow councillors to perform their local leadership role. This requirement is particularly important:
 - (1) During the formative stages of policy development, where practicable and through Policy Committee where appropriate.
 - (2) In relation to significant or sensitive operational matters
 - (3) Whenever any form of public consultation exercise is undertaken, and
 - (4) During a scrutiny episode
- 79.3 Issues may affect a single ward. Where they have a wider impact, a number of local councillors will need to be kept informed.
- 79.4 Where a public meeting is organised by the council to consider a local issue, all councillors representing the wards affected should be invited to the meeting as a matter of course.
- 79.5 In your capacity as an Officer you must not attend ward or constituency political party meetings.

79.6 In seeking to deal with constituents' queries or concerns councillors should be mindful of the pressures on officer time. They may not be able to carry out the work required by councillors in the requested timescale. On some occasions it may not be possible to do what the councillor wants. It is important that councillors are realistic when managing the expectations of their constituents in terms of what officers and the council are able to do. Officers have a responsibility to ensure councillors are clear as to what is possible, and more importantly, what is not and to communicate that. Officers should be aware that a timely response is required but timescales will vary from service to service depending on what the enquiry is and how complex it is to answer.

Committees

Committee/panel decisions cannot by law be made by the Chair alone but are made by the committee collectively. The Chair should not seek to influence Officers to reduce the options or withhold information which s/hethey should properly report to a committee.

The Senior Officers will offer to arrange regular informal meetings with Chairs as necessary.

Senior Officers (including the Monitoring Officer and the Chief Finance Officer) have the right to attend meetings and to present reports and give advice to committees.

Members of a committee/panel shall take decisions within the remit of that committee and will not otherwise instruct Officers to act.

Chairs and Members of the relevant committee/panel should accept briefings from the Officers to inform decision making for complex or technical cases/items or where there is new national legislation or guidance. At some committee/panel meetings, a resolution may be passed which authorises a named Officer to take action between meetings in consultation with the Chair (or other Members). In these circumstances it is the Officer, not the Chair, who takes the action and is responsible for it. A Chair has no legal power to take decisions on behalf of a committee, neither should he/shethey seek inappropriately to influence the Officer. Whilst the Officer is required to consult the Chair, and the Chair may express a view, it is the Officer who takes the final decision.

A Chair (or cabinet Member) are able to take a decision if it has been specifically delegated to them by the Committee/Panel (usually in consultation)

9. Councillors' Access to Documents and Information

(To be read in conjunction with the Access to Information Procedure Rules in the Council's Constitution).

§10.1 It is important that officers keep councillors routinely informed about the major issues concerning the council. Similarly, councillors should be informed about proposals that affect their ward before they are announced publicly.

§10.2 Where an issue affecting a particular ward is to be discussed by the Cabinet, a committee, sub-committee or panel on which the local councillor does not serve the councillor will be invited to attend and may speak on it if he or she wishes to do so.

§10.3 Councillors may request senior officers to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as councillors. This may range from general information about Council services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:

- It is in the public domain, and
- It is not barred by legislation from being given
- It does not compromise personal confidentiality

§10.4 Every member of the Cabinet, Overview and Scrutiny Management Committee / Panels, and / or any other committee or sub-committee has a right to inspect documents about the business of that Cabinet, Overview and Scrutiny Management Committee / Panels, and / or any other committee or sub-committee.

§10.5 A councillor who is not a member of the Cabinet, Overview and Scrutiny Management Committee / Panels, and / or any other committee or sub-committee may have access to any document published by that specific part of the Council provided:

- He / she can demonstrate a reasonable need to see the documents in order to carry out his / her role as a councillor (the “need to know” principle), and
- The documents do not contain “confidential” or “exempt” information as defined by law.

§10.6 Should disputes occur with regards to the validity of a councillor’s request to see a document on a need to know basis, these will be determined by the Monitoring Officer.

§10.7 A councillor should obtain advice from the Monitoring Officer in circumstances where ~~he / she~~they wishes to have access to documents or information:

- Where to do so is likely to be in breach of the Data Protection Act, or
- Where the subject matter is one in which he / she has a personal or “other” interest as defined in the Members’ Code of Conduct.

810.8 Information given to a councillor must only be used by the Councillor for the purpose for — which it was ~~requested~~ provided i.e. in connection with the proper performance of a Councillor's official duties.

10. Communication and Social Contact Between Officers and Councillors

911.1 Officers must recognise that it is their duty to keep members of all political groups (not just members of the majority party) fully informed about developments of significance in relation to the Council's activities.

911.2 Regular contact between councillors and senior officers is necessary to ensure the efficient working of the Council. In this context, it is the responsibility of Executive Directors and / or Service Directors to identify senior officers who should have regular contact with councillors and to inform them of that. This will depend upon the nature of the service they provide and the nature of the councillor contact envisaged. As part of any contact and relationship bullying and harassment should not take place.

911.3 Councillors should ensure contact is through the members of staff identified by the Executive Director and /or Service Director and should always bring major concerns about issues directly to the attention of the relevant Executive Director and /or Service Director concerned. Such concerns should, where possible, be evidenced based. Serious problems can arise if councillors' by-pass appropriate lines of communication to Executive Directors and /or Service Directors and their senior colleagues and, for example, deal with more junior members of staff, or more than one member of staff, to seek views on policy issues, non-routine business, or attempt to give instructions to staff. This has the effect of depriving councillors of the formal, informed and accountable advice they have a right to expect from Executive Directors and /or Service Directors and which they have a duty to consider. It may also serve to undermine the formal accountability of staff to their line manager.

911.4 Social contact between senior officers and councillors is only beneficial in a public setting and a work-related context. For example the management team may wish to invite appropriate councillors to an office Christmas lunch. Professionalism must be maintained at all times.

11. Councillors and Council Resources

(To be read in conjunction with the Code of Conduct, Members' Allowances Scheme, Pre-election Guidance and the Support for Councillors document produced by Governance and Democratic Services).

4012.1 The Council provides councillors with a range of support services (computers, IT facilities, stationery, printing, photocopying etc). Such

services should only be used to assist them in discharging their roles as members of the Council. They should not be used in connection with party political or campaigning activities. Personal use of technology is permitted:

- Subject to the terms of the Council's Use of Electronic Communications Policy and Information Security Policy
- Where councillors who have mobile technology have agreed for the appropriate deduction to be made from their allowance.

4012.2 Councillors should not approach or pressure officers to carry out duties or provide resources which they are not permitted to give. Examples include:

- Business which is solely to do with a political party;
- Work in connection with a ward or constituency party political meeting;
- Electioneering
- Work associated with an event attended by a councillor in a capacity other than as a Member of the Council;
- Private personal correspondence;
- Work in connection with another body or organisation where a councillor's involvement is other than as a Member of the Council; and
- Support to a councillor in his / her capacity as a councillor of another local authority.

4012.3 It is important that councillors are equipped with the skills and knowledge to carry out their roles effectively. Officers have a role to play in ensuring that councillors are kept up to date. Councillors have a responsibility to read appropriate documentation and attend training as relevant to their role.

12. ~~Courtesy~~, Complaints and Breaches of the Protocol

4113.1 ~~Contact between councillors and officers should always be courteous both in public and in private.~~

13.2 Officers concerns about Councillors

Councillor behaviour needs to be equally respectful. Bullying or harassment of officers is entirely unacceptable

If an individual officer has a complaint about a ~~member~~Councillor, it should be raised by the officer with their line manager or with the appropriate or Service Director to have an informal discussion.

If the conduct continues or is disputed, an officer may refer the complaint to the Monitoring Officer if there is evidence of a breach of the Code of Conduct.

If informal procedures do not reach a satisfactory conclusion where an Officer feels a Councillor has breached the Councillor Code of Conduct, in particularly serious cases and with the advice of the Monitoring Officer referral of the matter ~~to~~through the Standards ~~Committee~~Process, may be appropriate.

13.3 Councillors concerns about Officers

Councillor behaviour needs to be equally respectful. Bullying or harassment of officers is entirely unacceptable
Officer behaviour towards Councillors needs to be equally respectful.

If a ~~member~~Councillor has a complaint about an officer or officers, this should be raised with the appropriate Service Director for response.

41.3 If a councillor feels that an officer has acted contrary to the spirit of this protocol they should raise it with the relevant Service Director who will consider how the issue should be dealt with.

13.4 Councillor Concerns about Senior Officers

If the complaint concerns a Statutory Officer or an Executive Director the complaint may be referred to the Deputy Chief Executive and/or Chief Executive who will consider how the issue should be dealt with.

Where ~~this a complaint~~ relates to a Service Director this should be raised with the relevant Executive Director. Where this relates to an Executive Director this should be raised with the Chief Executive.

Nothing in this protocol prevents ~~This does not however preclude~~ a councillor from making public, at a meeting or in another appropriate way, a concern about the manner in which the Service has acted. Nor does it prevent councillors at formal meetings being critical of officer advice or action or of the quality of reports before them.

A breach of this protocol by an officer may lead to an investigation under the Council's Disciplinary Policy and Procedure.

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APPENDIX 2

Councillors and Officers in Kirklees – A Protocol for Working Effectively

1. Expectations

Councillors and Officers should expect each other to....

- Comply with ethical standards and probity requirements
- Be part of an effective working partnership
- Contribute to safeguarding the reputation of the council
- Be friendly (but not friends)
- Respond in a timely way to enquiries and complaints
- Be reliable
- Understand and advise on the needs of local communities
- Ensure the council acts lawfully and its reputation is safeguarded
- Fully consider professional advice as part of decision making
- Ensure the allocation of physical, financial and human resources
- Avoid personal criticism
- Be respectful (but not deferential)
- Be professional (but not jargonistic)
- Trust and respect each other's expertise, knowledge and skills
- Listen and understand each other
- Understand the strategic and long term direction of the council
- Inform and manage citizens expectations
- Build community capacity and unlock social productivity
- Understand and explain difficult decisions
- Provide advice, information and guidance

Councillors should expect officers to...

- Be impartial and apolitical
- Implement policy and ensure operational delivery
- Be responsible for day to day management
- Have respect for the role of councillor and the political process
- Be aware Councillors wear different hats and fulfil different roles at different times
- Appreciate the pressures that councillors face in carrying out their duties
- Be sensitive to the politics

Officers should expect Councillors to...

- Add a political dimension
- Make policy and determine the core values of the council
- Be accountable to the electorate and act in the public interest

- Be a community leader for the ward they represent
- Understand and represent the interests of the wider community and the whole council as well as those of their ward
- Avoid becoming involved in day to day management issues
- Make difficult/unpopular decisions for the common good of the district
- Lobby on national/local policy issues on behalf of the district/region

2. The Kirklees Context

Kirklees has a long track record of its councillors and officers working together effectively. This is evidenced by the outcomes we achieve. The relationship between the two develops and changes over time and it is therefore important to revisit and review how such a relationship should work. Only then can we ensure it remains fresh, vibrant and healthy.

This document seeks to build on sound foundations by capturing in one place the characteristics, roles and expectations that are at the heart of that special and crucial relationship. It is a product of councillors and officers working together and is an important building block as the council evolves. It is a part of the work of the Members Commission, a cross party working group, whose principal focus is to look at the changing role of the councillor as we move towards the New Council.

Our councillor / officer relationships should continue to be defined and shaped by our culture and evolve in a way that ensures we are best placed to collectively meet challenges and deliver positive change.

This protocol seeks to set out the parameters of the relationship in Kirklees in order to ensure we can do just that. For the most part it is a statement of current practice. It is not intended to be just a set of rules nor is it a complete guide to the complex landscape in which councillors and officers operate and interact. It is not a substitute for developing effective working relationships built on trust but should be a source of advice and context in developing such relationships. This protocol provides a framework for interaction, acknowledging that the officer / councillor relationship is a delicate one. It is a relationship that is at the heart of what the council does and as such needs to be continually nurtured and developed.

This protocol should be read alongside other key documents such as the Councillors Code of Conduct, the Code of Conduct for Staff and other relevant protocols as set out in Part 5 of the Council's Constitution.

3. Different Roles / Complementary Relationships

Officers and councillors carry out a wide variety of roles. In undertaking their roles all councillors are expected to do so in accordance with the Principles of Public Life:

- *Selflessness* – councillors should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- *Integrity* – councillors should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- *Objectivity* – in carrying out public business (including making appointments, awarding contracts or recommending individuals for rewards and benefits) councillors should make choices on merit.
- *Accountability* – councillors are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- *Openness* – councillors should be as open as possible about all decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- *Honesty* – councillors have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts in a way that protects the public interest.
- *Leadership* – councillors should promote and support these principles by leadership and example.

The conduct of officers is governed by the Employees' Code of Local Government Conduct, the Employee Handbook and the relevant protocols as set out in Part 5 of the Council's Constitution.

The nature of both officer and councillor roles and the consequent relationships are increasingly complex and changing in a dynamic local government environment. The Widdicombe Committee description of those roles and relationships remains relevant:

“Local Government has derived strength over the years from a complementary relationship between part-time councillors drawn from and representative of the general public, and full time officers with professional expertise. We accept that this cannot be a rigid or static model. Some councillors will need to devote considerable time to council business, and there has sometimes been too great a stress on officer professionalism. Councillors moreover have the right to ensure that some of their decisions for which they are statutorily responsible and accountable are implemented by officers. Nevertheless, a merging of roles is not desirable. Councillors should leave the day to day implementation of council policies, including staff management, as far as possible to officers and officers should demonstrate that they are sensitive to the political aspirations underlying those policies”.

Whilst on a number of levels there is a distinct separation between the two roles, the relationship is most effective when it operates in partnership. In order for such a relationship to work well it is important for each to have an awareness of the distinct boundaries and expectations that each can legitimately have of the other. These (whilst not necessarily exhaustive) are summarised below:

Whilst there is a separation between the two roles it is important to ensure that both are maximised to best effect as both bring skills, knowledge and experience which contributes to a joint leadership approach. Both are indispensable to, and dependent of, one another.

Subsequent sections of the protocol seek to look in more detail at specific contexts, roles and relationships between officers and councillors, acknowledging that these are diverse, complex and changing.

4. Executive Councillors and Officers – Decision Making

- 4.1 Kirklees operates a strong leader model of executive governance. As such, Cabinet will take decisions in accordance with the Constitution (see Article 7). Senior officers will be responsible for instructing and deploying staff to implement those decisions.
- 4.2 Implicit within these arrangements is a need for a close working relationship between the members of Cabinet and senior officers. Such relationships should never become, or appear to become, so close as to bring into question the officer's ability to deal impartially with other councillors and political groups. Cabinet must respect the political neutrality of the officers. Officers must ensure that their political neutrality is not compromised.
- 4.3 When producing reports the Executive Director / Senior Officer will always be fully responsible for the contents of any report submitted in his / her name. This means that any such report will be amended only where the amendment reflects the professional judgement of the author of the report. This is to be distinguished from a situation where there is a value judgement to be made. Any issues arising between the Cabinet / a Cabinet Member and a senior officer should be referred to the Chief Executive for resolution.
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- 4.5 Where officers are taking decisions under their delegated powers they should consider informing the relevant Cabinet Member of their intentions in advance. This is particularly important where such a decision falls within the requirements of the Access to information Regulations 2012, as amended in August 2014, where there is a requirement for the decision to be recorded, and in all instances where the Officer decision constitutes a Key Decision. Such decisions will be publicly accessible.

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- 5.2 As part of conducting its business the Committee and / or its Panels will require officers to attend scrutiny meetings. All requests should be made to the relevant Executive Director and / or Service Director in the first instance.
- 5.3 In giving evidence to the Committee or its Panels officers must not be asked to express political views.
- 5.4 Officers should respect scrutiny members in the way they respond to their questions.
- 5.5 Scrutiny members should not question officers in a way which could be interpreted as harassment or bullying. Neither should they ask about matters of a disciplinary nature.
- 5.6 Scrutiny proceedings must not be used to question the capability or competence of officers. Scrutiny members need to make a distinction between scrutinising the policies and performance of the council and its services, and appraising the personal performance of staff. The latter is not a scrutiny function.
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6. Party Groups and Officers

- 6.1 Political groups have, and will continue to be, an important part of the political and informal governance landscape. In light of this it is possible that officers may be asked to attend a party group meeting whether of the controlling group or an opposition group. Any such request should be made in writing to the Chief Executive and / or the relevant Executive Director. If agreed it will be on the basis that similar arrangements will be made for other groups should they request it.
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- 6.4 Officers should not be put in a position where they feel their political impartiality or integrity are put at risk and may leave the meeting if they believe this is the case.
- 6.5 Special care should be taken where officers are involved in providing information and advice to a party group meeting where that includes persons who are not members of the council. Due to issues of confidentiality officers may not be able to provide the same level of information and advice.
- 6.6 Officers must respect the confidentiality of any group discussions at which they are present and will not relay the content of such discussions to another party group or to any other councillors. This shall not prevent an officer providing feedback to other senior officers on a need to know basis.

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- 7.2 Executive Directors and Service Directors must ensure that all relevant staff are aware of the requirement to keep local councillors informed. This will allow councillors to perform their local leadership role. This requirement is particularly important:
 - (1) During the formative stages of policy development, where practicable and through Policy Committee where appropriate.
 - (2) In relation to significant or sensitive operational matters
 - (3) Whenever any form of public consultation exercise is undertaken, and
 - (4) During a scrutiny episode
- 7.3 Issues may affect a single ward. Where they have a wider impact, a number of local councillors will need to be kept informed.
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8. Councillors' Access to Documents and Information

(To be read in conjunction with the Access to Information Procedure Rules in the Council's Constitution).

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- 8.3 Councillors may request senior officers to provide them with such information, explanation and advice as they may reasonably need to assist them to discharge their roles as councillors. This may range from general information about Council services to specific information on behalf of a constituent. Where information is requested on behalf of a third party, it will only be provided if:
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 - It is not barred by legislation from being given
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- 8.5 A councillor who is not a member of the Cabinet, Overview and Scrutiny Management Committee / Panels, and / or any other committee or sub-committee may have access to any document published by that specific part of the Council provided:

- He / she can demonstrate a reasonable need to see the documents in order to carry out his / her role as a councillor (the “need to know” principle), and
 - The documents do not contain “confidential” or “exempt” information as defined by law.
- 8.6 Should disputes occur with regards to the validity of a councillor’s request to see a document on a need to know basis, these will be determined by the Monitoring Officer.
- 8.7 A councillor should obtain advice from the Monitoring Officer in circumstances where he / she wishes to have access to documents or information:
- Where to do so is likely to be in breach of the Data Protection Act, or
 - Where the subject matter is one in which he / she has a personal or “other” interest as defined in the Members’ Code of Conduct.
- 8.8 Information given to a councillor must only be used for the purpose for which it was requested.

9. Communication and Social Contact Between Officers and Councillors

- 9.1 Officers must recognise that it is their duty to keep members of all political groups (not just members of the majority party) fully informed about developments of significance in relation to the Council’s activities.
- 9.2 Regular contact between councillors and senior officers is necessary to ensure the efficient working of the Council. In this context, it is the responsibility of Executive Directors and / or Service Directors to identify senior officers who should have regular contact with councillors and to inform them of that. This will depend upon the nature of the service they provide and the nature of the councillor contact envisaged. As part of any contact and relationship bullying and harassment should not take place.
- 9.3 Councillors should ensure contact is through the members of staff identified by the Executive Director and /or Service Director and should always bring major concerns about issues directly to the attention of the relevant Executive Director and /or Service Director concerned. Such concerns should, where possible, be evidenced based. Serious problems can arise if councillors’ by-pass appropriate lines of communication to Executive Directors and /or Service Directors and their senior colleagues and, for example, deal with more junior members of staff, or more than one member of staff, to seek views on policy issues, non-routine business, or attempt to give instructions to staff. This has the effect of depriving councillors of the formal, informed and accountable advice they have a right to expect from Executive Directors and /or Service Directors and which they have a duty to consider. It may also serve to undermine the formal accountability of staff to their line manager.

- 9.4 Social contact between senior officers and councillors is only beneficial in a public setting and a work-related context. For example the management team may wish to invite appropriate councillors to an office Christmas lunch. Professionalism must be maintained at all times.

10. Councillors and Council Resources

(To be read in conjunction with the Members' Allowances Scheme, Pre-election Guidance and the Support for Councillors document produced by Governance and Democratic Services).

- 10.1 The Council provides councillors with a range of support services (computers, IT facilities, stationery, printing, photocopying etc). Such services should only be used to assist them in discharging their roles as members of the Council. They should not be used in connection with party political or campaigning activities. Personal use of technology is permitted:
- Subject to the terms of the Council's Use of Electronic Communications Policy and Information Security Policy
 - Where councillors who have mobile technology have agreed for the appropriate deduction to be made from their allowance.
- 10.2 Councillors should not approach or pressure officers to carry out duties or provide resources which they are not permitted to give. Examples include:
- Business which is solely to do with a political party;
 - Work in connection with a ward or constituency party political meeting;
 - Electioneering
 - Work associated with an event attended by a councillor in a capacity other than as a Member of the Council;
 - Private personal correspondence;
 - Work in connection with another body or organisation where a councillor's involvement is other than as a Member of the Council; and
 - Support to a councillor in his / her capacity as a councillor of another local authority.
- 10.3 It is important that councillors are equipped with the skills and knowledge to carry out their roles effectively. Officers have a role to play in ensuring that councillors are kept up to date. Councillors have a responsibility to read appropriate documentation and attend training as relevant to their role.

11. Courtesy, Complaints and Breaches of the Protocol

- 11.1 Contact between councillors and officers should always be courteous both in public and in private. If an individual councillor has a complaint

about a junior officer, it should be raised with the appropriate Executive Director and /or Service Director. This does not however preclude a councillor from making public, at a meeting or in another appropriate way, a concern about the manner in which the Service has acted. Nor does it prevent councillors at formal meetings being critical of officer advice or action or of the quality of reports before them.

- 11.2 Councillor behaviour needs to be equally respectful. Bullying, harassment or hectoring of officers is entirely unacceptable and should be referred by the relevant Executive Director and /or Service Director to the relevant Group Leader and Group Business Manager for consideration and resolution in the first instance. If satisfactory resolution cannot be reached the matter will be referred to the Monitoring Officer who will then liaise with the relevant Group Business Manager. Where resolution still cannot be reached the Monitoring Officer will progress through the formal Standards route.
- 11.3 If a councillor feels that an officer has acted contrary to the spirit of this protocol they should raise it with the relevant Service Director who will consider how the issue should be dealt with. Where this relates to a Service Director this should be raised with the relevant Executive Director. Where this relates to an Executive Director this should be raised with the Chief Executive. A breach of this protocol by an officer may lead to an investigation under the Council's Disciplinary Policy and Procedure.



Report title: Proposal for the Review of Procurement Practices in accordance with the Council Motion resolved on 13 November 2024

Meeting	Corporate Governance and Audit Committee
Date	7th March 2025
Cabinet Member (if applicable)	Cllr Tyler Hawkins
Key Decision Eligible for Call In	No No
<p>Purpose of Report</p> <p>To obtain approval for the scope of the review of procurement practices as resolved in the motion on 13 November 2024.</p>	
<p>Recommendations</p> <p>It is recommended that Corporate Governance and Audit Committee oversee the review of procurement practice to address the motion agreed at Cabinet on 13 November 2024.</p> <p>Reasons for Recommendations</p> <p>The committee has an important role in ensuring the adequacy of the review to ensure that it has appropriate oversight and assurance that procurement practice is undertaken in accordance with applicable legislation, therefore it is felt it is appropriate that the committee has oversight of the work required.</p>	
<p>Resource Implication:</p> <p>There are likely to be some resource implications from the Procurement Team, HD One Shared Services and Legal Services to undertake the review due to the scope of reviewing purchasing and contracts data and all applicable legislation.</p>	
<p>Date signed off by <u>Executive Director</u> & name</p> <p>Is it also signed off by the Service Director for Finance?</p> <p>Is it also signed off by the Service Director for Legal Governance and Commissioning (Monitoring Officer)?</p>	<p>Rachel Spencer-Henshall – Deputy Chief Executive and Executive Director for Public Health and Corporate Resources (18/2/25)</p> <p>Kevin Mulvaney – Service Director Finance (18/2/25)</p> <p>Samantha Lawton – Service Director Legal & Commissioning (18/2/25)</p>

Electoral wards affected: All

Ward councillors consulted: Not applicable

Public or private: Public

Has GDPR been considered? No GDPR considerations

Executive Summary

A motion was carried at Council on 13 November 2024 which requested that the Council commits to conducting a thorough review of its procurement practices to ensure that goods and consumables sourced from companies directly or indirectly involved in the Gaza conflict are not used. The Motion is attached at Appendix A.

The motion also requested that the Council avoids purchases of goods from Israeli companies illegally occupying Palestinian Territories where it is lawful and practical to do so.

It is recommended that Corporate Governance and Audit Committee oversee the review to ensure that it is undertaken with appropriate oversight and in accordance with applicable legislation.

This report sets out the scope of the review and highlights some of the key issues the review will address.

1. Information required to take a decision

A motion was received at Council on 13 November 2024 which requested that the Council commits to conducting a thorough review of its procurement practices to ensure that goods and consumables sourced from companies directly or indirectly involved in the Gaza conflict are not used. The motion requests that the Council avoids purchases of goods from Israeli companies illegally occupying Palestinian Territories where it is lawful and practical to do so.

A review of procurement practices must ensure that the recommendations comply with the Procurement Act 2023, the Public Contracts Regulations 2015, and any other relevant guidance and legislation published by the Cabinet Office, such as (but not limited to) Procurement Policy Notes. There have been recent changes by the introduction of the new Procurement Act 2023 and as such it is felt appropriate to refer the review to Corporate Governance and Audit Committee for oversight.

At this stage, it is proposed that the following steps will be taken to undertake the review:

- Assessment of the United Nations database of business enterprises in relation to the Occupied Palestinian Territory.
- Examine the Council's Contracts Register to identify existing contracts for the supply of goods and consumables which are valued at over £5,000.
- Review expenditure on goods and consumables to identify the current suppliers used by the Council.

- Review of all relevant procurement legislation to ensure compliance and understand the legal framework associated with the motion.
- Review Procurement Policy Notes (PPNs) issued by the Cabinet Office.

2. Implications for the Council

2.1 Council Plan

The Council's capacity to work effectively and to deliver aspects of its corporate outcomes is underpinned by ensuring that its procurement practice operates within a legal framework that promotes free and open competition, adhering to both international and national obligations and regulations.

2.2 Financial Implications

There are likely to be resource implications for the Procurement Team, HD One Shared Services, and Legal Services to carry out the review, given the scope of examining spend and contract information in accordance with applicable procurement legislation and best practices. However, it is difficult to quantify these implications.

2.3 Legal Implications

The Council is required to ensure its procurement practices are undertaken in accordance with the Procurement Act 2023, the Public Contracts Regulations 2015 and any associated guidance that is issued by the Cabinet Office

2.4 Climate Change and Air Quality

None directly

2.5 Other (e.g. Risk, Integrated Impact Assessment or Human Resources)

None directly

4 Consultation

N/A

5 Engagement

The procurement team are engaging with CGAC to ensure oversight and input in relation to scope of the review.

6 Options

6.1 Options Considered

1. Not carry out review (this would not address the motion agreed)
2. Carry out the review

6.2 Reasons for recommended Option

It is recommended that the Corporate Governance and Audit Committee oversee the review of procurement practices to address the motion agreed upon at the Cabinet meeting on 13 November 2024. The Committee's oversight will ensure the review's adequacy and compliance with all applicable legislation.

7 Next steps and timelines

Subject to approval of the scope by the Corporate Governance and Audit Committee the Procurement Team will carry out the review and provide a final report to CGAC in June 2025 on the outcome of the review.

- 8 Contact officer**
Ruth Calladine, Head of Procurement (01484 221000, email – ruth.calladine@kirklees.gov.uk)
- 9 Background Papers and History of Decisions**
Not applicable
- 10 Appendices**
Appendix A – Motion and resolution – 13 November 2024
- 11 Service Director responsible**
Samantha Lawton, Service Director Legal & Commissioning

Appendix A - Council Motion resolved on 13 November 2024

12: Motion submitted in accordance with Council Procedure Rule 14 as to Gaza - a year on, urgent action is needed

To consider the following Motion in the names of Councillors J D Lawson, Arshad, Khan, Safdar, Anwar, Kahut and Bramwell.

“This Council notes that nearly a year on from the start of the latest conflict in Gaza:

- a) 10,000’s of innocent men, women and children have been killed or seriously injured. Many more are missing in the debris of Gaza.
- b) Gaza is being raised to the ground. There has been indiscriminate bombing of refugee camps, medical facilities, schools, places of worship of all denominations and the general infra structure.
- c) Aid is still not getting into Gaza in the quantity needed due to interference by the Israeli Govt this has resulted in widespread malnutrition and the remaining medical facilities running without even the basic of medical supplies.
- d) That the Israeli government is guilty of war crimes and breaching International Humanitarian Law. Creating an Apartheid State within the Palestinian Territories of Gaza and the West Bank.
- e) The International Court of Justice has declared the situation in Gaza to be genocide
- f) That many residents of Kirklees remain gravely concerned about the ongoing situation in Gaza and wish to see an end to the genocide in Gaza.

This Council calls on the Leader of the Council to write to Keir Starmer, the Prime Minister to urge him to revoke licenses which allow the selling of arms and military equipment to Israel until a time the Israeli Government stops the on-going genocide in Gaza, ceases to occupy the Palestinian Territories of the West Bank and Gaza, abides by the IJC rulings and the numerous United Nations resolutions. That the Prime Minister lobbies his Israeli counterpart to immediately allowed in aid to Gaza unfettered by obstructions, in a bid to holt the humanitarian crisis that is occurring within Gaza. And that the Prime Minister uses all diplomatic channels at his disposal to call for a ceasefire and the return of the Israeli hostages.

We ask that the Palestinian Flag be flown at Huddersfield, Batley and Dewsbury Town Halls in an act of remembrance for those who have died. This would be at no expense to local council tax payers as the flags would be purchased by a local group.

We ask that Kirklees Council where at all lawful and practical to avoid purchases of goods from Israeli companies illegally occupying the afore mentioned Palestinian Territories.

That the council commits to conducting a thorough review of its procurement practices to ensure that goods and consumables sourced from companies directly or indirectly involved in the conflict are not used.”

RESOLVED –

1) That this Council notes that nearly a year on from the start of the latest conflict in Gaza:

- a) 10,000’s of innocent men, women and children have been killed or seriously injured. Many more are missing in the debris of Gaza.

- b) Gaza is being raised to the ground. There has been indiscriminate bombing of refugee camps, medical facilities, schools, places of worship of all denominations and the general infra structure.
- c) Aid is still not getting into Gaza in the quantity needed due to interference by the Israeli Govt this has resulted in widespread malnutrition and the remaining medical facilities running without even the basic of medical supplies.
- d) That the Israeli government is guilty of war crimes and breaching International Humanitarian Law. Creating an Apartheid State within the Palestinian Territories of Gaza and the West Bank.
- e) The International Court of Justice has declared the situation in Gaza to be genocide
- f) That many residents of Kirklees remain gravely concerned about the ongoing situation in Gaza and wish to see an end to the genocide in Gaza.

2) That this is Council calls on the Leader of the Council to write to Keir Starmer, the Prime Minister to urge him to;

- revoke licenses which allow the selling of arms and military equipment to Israel until a time the Israeli Government stops the on-going genocide in Gaza, ceases to occupy the Palestinian Territories of the West Bank and Gaza, abides by the IJC rulings and the numerous United Nations resolutions.

- lobby his Israeli counterpart to immediately allowed in aid to Gaza unfettered by obstructions, in a bid to holt the humanitarian crisis that is occurring within Gaza.

- all diplomatic channels at his disposal to call for a ceasefire and the return of the Israeli hostages

3) That we ask that Kirklees Council where at all lawful and practical to avoid purchases of goods from Israeli companies illegally occupying the afore mentioned Palestinian Territories.

4) That this Council commits to conducting a thorough review of its procurement practices to ensure that goods and consumables sourced from companies directly or indirectly involved in the conflict are not used.

Corporate Governance and Audit Committee – Outline Agenda Plan – 2024/25

MEETING DATE	ITEMS FOR CONSIDERATION
28 June 2024	<ol style="list-style-type: none"> 1. Customer Complaints 2. Treasury Outturn Report (Reference to Council) 3. Annual Governance Statement (draft) 4. Amendment to Risk Management Statement (Reference to Council)
26 July 2024	<ol style="list-style-type: none"> 1. Annual Corporate Emergency Planning & Business Continuity 2. Annual Report of the Committee 3. External Auditors Recommendations 4. Appointment of a second Independent Person 5. Q1 of IA
27 September 2024	<ol style="list-style-type: none"> 1. Health & Safety Report 2. Information Governance Annual Report 3. Members Allowances 4. Internal Audit update plan Oct 24 – March 25 5. District Heating request for officer attendance
06 December 2024	<ol style="list-style-type: none"> 1. Notification of a Second Independent Member 2. Bad Debt Write Off Report 3. Treasury 6-month Outturn Report 4. Q2 of IA
31 January 2025	<ol style="list-style-type: none"> 1. Dates of Council Meetings (Reference to Council) 2. Members Allowances 3. Audit Finding Report 4. Annual Governance Statement 5. Final Accounts 6. Treasury Strategy Report 7. 2023-24 Auditors Annual Report (Value for Money)
21 February 2025	<ol style="list-style-type: none"> 1. Annual Customer Standards Report 2. Risk Management Update 3. Q3 of IA 4. Cyber Security Update 5. Dates of Council Meetings 6. Code of Corporate Governance 7. Outside Bodies Update
07 March 2025	<ol style="list-style-type: none"> 1. Proposed amendments to Financial Procedure Rules (Reference to Council) 2. Proposed amendments to Contract Procedure Rules (Reference to Council) 3. Proposed changes to the Constitution (Reference to Council) 4. District Heating Update

	<ol style="list-style-type: none"> 5. Proposed Amendment to Councillor and Officer Protocol 6. Procurement Review (Motion)
25 April 2025	<ol style="list-style-type: none"> 1. Informing the Audit Risk Assessment 2. 2024-25 Audit Plan 3. Annual report of Internal Audit 4. Q4 of IA 5. Internal Audit Plans 2025-26 (Q1-Q2) 6. Housing Tenant Allocation Update 7. Dates of Council Meetings (reference to Council) 8. Minimum Revenue Provision Briefing