

To: Council
11 September 2024

Adoption of revised Contract Standing Orders to the Constitution
Executive Director: Resources

1 Purpose of Report

- 1.1 The Council's Constitution contain Contract Standing Orders (CSOs) that govern how the Council procures supplies, services and works externally. These CSOs must comply with UK procurement legislation and other central government directives. New procurement legislation, the Procurement Act 2023, requires that the CSOs be revised.

2 Recommendation

That the Council:

- 2.1 Approves the adoption of the proposed Contract Standing Orders into the Council's Constitution.

3 Reasons for Recommendation

- 3.1 The Council must adopt the proposed CSOs in order to comply with new duties imposed by the Procurement Act 2023

4 Alternative Options Considered

- 4.1 As the proposed changes are required under legislation, no alternative options were considered.

5 Supporting Information

Occupational Health Provision

- 5.1 In October 2023 the Procurement Act 2023 was passed, followed by the underlying supporting legislation the Procurement Regulations 2024 in April 2024. These will come into force on the 28th of October 2024, and will apply to all contracts where procurements were commenced after this date.

[Procurement Act 2023 \(legislation.gov.uk\)](https://legislation.gov.uk)

- 5.2 The Procurement Act 2023 (PA2023) replaces the current Public Contract Regulations 2015 and other procurement legislation. The PA2023 imposes a significant number of duties and responsibilities upon contracting authorities, as well as fundamentally altering how we may approach the market with commercial opportunities.
- 5.3 In a move away from current procurement practise, it should be noted that a number of these duties relate to pre-procurement activity and contract management as well as during a procurement. Some also apply to all contracts we commission, not just those above a value threshold.

- 5.4 In addition to this, based upon a number of past audits, areas of improvement have been identified regarding the Council's governance processes and its overall commercial approach to commissioning goods, works and services.
- 5.5 The PA2023, as well as other changes identified through audit and officer consultation, need to be integrated into the Contract Standing Orders (CSOs) and the Constitution in order for the Council to be compliant.
- 5.6 A relatively short period of only 12 months was imposed on contracting authorities for adoption, with many crucial sub-elements not being made available during that period. For example, the related Regulations were only published in April and the professional certification required by the Act only commenced in May 2024. This has meant officers have had to undertake very limited consultation in order to meet the adoption date.
- 5.7 It is not anticipated that there will be any direct cost associated with the proposed recommendations. However, as they influence and direct how the Council will govern and commission its commercial expenditure, the recommendations will have a significant impact.
- 5.8 Due to the implications of the new compulsory duties, a key area of change has been regarding the levels of the approval process. These have been simplified to provide greater clarity to officers and improve compliance, and give Members greater scrutiny for contracts that are above the minimum contract values for the PA2023 to fully apply. At the same time, senior officers and service leads are given greater independence and control for contracts below those values.
- 5.9 This lowers the point where Executive Member and Executive oversight and approval is required for the majority of contracts (from £400,000 to £213,577). Whilst it has increased for social care (from £400,000 to £663,540) and construction from (£400,000 to £5,336,937) contracts, this remains proportionate and appropriate to the scope and nature of those contracts.
- 5.10 The increased control for senior officers and service leads at lower values rebalances from the current CSOs where very low value contracts are subject to a disproportionate governance process.
- 5.11 The new CSOs also enable a number of exemptions related to social care placements, where those placements will not be subject to any part of the CSOs. This is not allowed for within the PA2023, but is supported by other legislation and reflective of the reality of those markets. These exemptions may carry the risk of legal challenge under the PA2023, but this risk is considered to be extremely low and the requirements of the Children & Families Act 2014 could be used as a defence.

6 Consultation and Other Considerations

Legal Advice

6.1

Financial Advice

- 6.2 There are no direct financial implications arising from this report. The adoption of these new Contract Standing Orders will enable the Council to achieve value for money in the use of public money, comply with legal requirements and implement good purchasing practice. However, it is noted that the report highlights the impact on services will be significant with regards to procurement processes.

Other Consultation Responses

6.3 Due to the very limited adoption time provided for the PA2023, consultation on these CSOs has not been as extensive as would have been preferred. However, the Corporate Management Team has had detailed input into the drafting, and each Directorate Management Team has been briefed on the proposals and provided feedback.

Equalities Impact Assessment

6.4 A summary EIA accompanies this report.

Strategic Risk Management Issues

6.5 As highlighted above, there is a risk of legal challenge related to social care exemptions, but this is reflective of the market and therefore considered to be minimal, with a defence also offered by the Children & Families Act 2014.

6.6 The greatest risk lies with officer non-compliance. As highlighted above, the PA2023 places a much greater volume of compulsory activity on contracting authorities, which will also go beyond the procurement itself. The PA2023 also increases the likelihood of challenge in the event of non-compliance. A comprehensive training programme is being prepared to support officers through this.

Climate Change Implications

6.7 There are no direct climate change implications on the CSOs themselves, however they will influence the Council's complete external expenditure and how we commission services. Climate change has been integrated as much as possible to the CSOs regarding requiring officers to consider it where appropriate, but it is acknowledge this is limited by how the Council is required to perform under the PA2023.

6.8 Climate change actions through contracts will be more effectively managed through related but separate Council Policies, such as the Social Value Policy 2024 and the Climate Change Strategy 2020.

Background Papers

- Contract Standing Orders 2024
- CSO Appendix 1 – quick reference guide
- Summary EIA

Contact for further information

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