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DATE: 1 December 2015

To: Members of the

GENERAL PURPOSES AND LICENSING COMMITTEE

Councillor Tim Stevens J.P. (Chairman)
Councillor Diane Smith (Vice-Chairman)
Councillors Teresa Ball, Kathy Bance MBE, Nicholas Bennett J.P., Alan Collins,
Mary Cooke, Ellie Harmer, David Livett, Russell Mellor, Keith Onslow,
Charles Rideout QPM CVO, Pauline Tunnicliffe, Michael Turner and Stephen Wells

A meeting of the General Purposes and Licensing Committee will be held at Bromley Civic Centre on **WEDNESDAY 9 DECEMBER 2015 AT 7.00 PM**

MARK BOWEN
Director of Corporate Services

Copies of the documents referred to below can be obtained from
<http://cds.bromley.gov.uk/>

A G E N D A

1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

2 DECLARATIONS OF INTEREST

3 QUESTIONS FROM MEMBERS OF THE PUBLIC ATTENDING THE MEETING

In accordance with the Council's Constitution, questions to this Committee must be received in writing 4 working days before the date of the meeting. Therefore please ensure questions are received by the Democratic Services Team by 5pm on Thursday 3rd December 2015.

4 CONFIRMATION OF MINUTES OF THE MEETING HELD ON 17TH SEPTEMBER 2015

(Pages 3 - 8)

5 MODEL PAY POLICY FOR CENTRALLY BASED TEACHERS

(Pages 9 - 38)

6 FINANCIAL REGULATIONS AND CONTRACT PROCEDURE RULES

(Pages 39 - 328)

7 APPOINTMENTS TO OUTSIDE BODIES

(Pages 329 - 332)

8 OUTCOME OF LICENSING SUB-COMMITTEE HEARINGS APRIL TO OCTOBER 2015 (Pages 333 - 338)

- 9 **PENSIONS INVESTMENT SUB-COMMITTEE: MINUTES OF THE MEETING HELD ON 23RD SEPTEMBER 2015, EXCLUDING EXEMPT INFORMATION**
(Pages 339 - 346)
- 10 **LOCAL JOINT CONSULTATIVE COMMITTEE: MINUTES OF THE MEETING HELD ON 21ST OCTOBER 2015**
(Pages 347 - 352)
- 11 **LOCAL PENSION BOARD: MINUTES OF THE MEETING HELD ON 26TH OCTOBER 2015**
(Pages 353 - 356)
- 12 **LOCAL GOVERNMENT ACT 1972 AS AMENDED BY THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) (VARIATION) ORDER 2006 AND THE FREEDOM OF INFORMATION ACT 2000**

The Chairman to move that the Press and public be excluded during consideration of the items of business listed below as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the Press and public were present there would be disclosure to them of exempt information.

Items of Business

Schedule 12A Description

- | | |
|--|---|
| 13 PENSIONS INVESTMENT SUB-COMMITTEE: EXEMPT MINUTES - 23RD SEPTEMBER 2015
(Pages 357 - 360) | Information relating to the financial or business affairs of any particular person (including the authority holding that information) |
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GENERAL PURPOSES AND LICENSING COMMITTEE

Minutes of the meeting held at 7.00 pm on 17 September 2015

Present:

Councillor Tim Stevens J.P. (Chairman)
Councillor Diane Smith (Vice-Chairman)
Councillors Teresa Ball, Kathy Bance MBE,
Nicholas Bennett J.P., Ellie Harmer, David Livett,
Russell Mellor, Keith Onslow, Colin Smith and
Pauline Tunncliffe

Also Present:

Councillor Simon Fawthrop

101 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

Apologies for absence were received from Councillors Alan Collins, Stephen Wells and Michael Turner, who was replaced by Councillor Colin Smith.

102 DECLARATIONS OF INTEREST

Councillor Pauline Tunncliffe declared an interest as a foster carer for the borough.

103 QUESTIONS FROM MEMBERS OF THE PUBLIC ATTENDING THE MEETING

No questions had been received.

104 CONFIRMATION OF MINUTES OF THE MEETING HELD ON 14th JULY 2015

RESOLVED that the minutes of the meeting held on 14th July 2015 be confirmed.

105 AUDIT OF FINANCIAL STATEMENTS 2014/15 Report FSD15048

The Committee received the Council's statutory accounts for 2014/15 for approval in accordance with the requirements of the Accounts and Audit (England) Regulations 2011. The report also covered the conclusions and significant issues arising from the work carried out in relation to the audit of the 2014/15 accounts.

Katy Elstrup of PricewaterhouseCoopers LLP (PWC), the Council's external auditors, attended the meeting to respond to questions from Members. She confirmed that there were no unadjusted items and no significant issues with the accounts. With regard to the objection to the 2012/13 accounts regarding the Council's parking enforcement contract, PWC had now issued a preliminary response and the objector had fourteen days to respond. With regard to the other objections regarding bailiff fees and London Councils, PWC expected to be in a position to issue a response shortly.

Asked about the substantial medium term funding gap facing the Council in the next few years, Ms Elstrup responded that while there was concern about the position, PWC were comfortable that measures were being considered to manage the gap.

Committee Members also commented on the need to ensure that assets held for sale were actively marketed and sold, and Ms Elstrup confirmed that, based on the work they had undertaken, PWC were satisfied with the categorisation of these assets. With regard to the control recommendation that the Council should use a separate Pension Fund bank account, members acknowledged that the same point had been raised as part of the previous year's audit and supported officers' view that this would not be cost effective.

Members commented on the lists of related parties and suggested that officers consider whether Mytime Active should be included. (Note: The Auditors subsequently confirmed that appointments to Mytime Active did not need to be disclosed, nor did a number of other Council appointees, so these had been removed from the document.)

The Committee noted that this was PWC's last year as the Council's external auditors and they recorded their thanks and appreciation for their work.

RESOLVED that

- (1) The Council's statutory accounts for 2014/15 be approved.**
- (2) In accordance with the requirements of the Accounts and Audit (England) Regulations 2011, the Chairman of this Committee shall sign and date the statutory statements as a formal record of this Committee's approval.**
- (3) The external auditor's report be received and noted.**
- (4) The Committee confirms agreement with the auditors' conclusion on their independence and objectivity.**
- (5) The Chairman of this Committee be authorised to sign the letter of representation for 2014/15 on behalf of the Council.**
- (6) The Annual Governance Statement which accompanies the statutory statement of accounts be approved.**

106 CAR ALLOWANCE
Report DHR15007

Following extensive consultation with staff and trades unions, and as part of addressing the unprecedented budget pressures faced by the Council, the Committee had agreed proposals on 26th March 2015 to move from a two-tier to a flat rate car allowance arrangement for all authorised car users. This would result in a saving of £300k per annum and bring the Council into line with HMRC recommendations.

The new arrangements applied to new recruits starting after 1st April 2015, and further consultation had been carried out with existing staff. It was now proposed to implement phasing arrangements covering 380 essential car users and 570 casual car users.

RESOLVED that the report be noted and

(1) It is noted that the single flat rate of 45 pence per mile (with no additional annual lump sum as under the old two tier payment system) has had no adverse impact on the Council's ability to compete in the labour markets for new staff.

(2) As far as staff employed by the Council before 1st April 2015 are concerned, it is agreed that they be reimbursed for the use of their car for legitimate business purposes through the phasing arrangements/details set out in paragraph 3.8 of the report.

107 LICENSING ACT 2003 - STATEMENT OF LICENSING POLICY
FOR 2016 TO 2021
Report ES15068

At its last meeting on 14th July 2015 the Committee had approved a draft Statement of Licensing Policy (2016-2021) for public consultation. Four responses had been received from the Copers Cope Area Residents Association, the Babbacombe Road Residents Association, the Bromley Safeguarding Children Board and the Duke of Kent Court Bowls Club. In the light of the responses received a final version of the Statement was attached as Appendix 2 to the report.

RESOLVED that the responses to public consultation be noted and Council be recommended to adopt the Statement of Licensing Policy under the Licensing Act 2003 to have effect from 7th January 2016.

108 GAMBLING ACT 2005 STATEMENT OF LICENSING POLICY
2016 - 2019
Report ES15069

At its meeting on 14th July 2015 the Committee had approved a draft Statement of Gambling Policy for 2016/19 for public consultation. Four responses had been

received, from the Copers Cope Area Residents Association, Bromley Safeguarding Children Board, the association of British Bookmakers (ABB) and Power Leisure Bookmakers (Paddy Power) and these were set out in the report.

The Committee approved the Statement but sought the following amendments –

- Section A.7.1: Information from Operators and Premises License Holders: The paragraph to be amended to allow the Council to seek information from operators/premises license holders when requested rather than once a year.
- Section B.3: Location of Premises: Add a sentence on taking into account age restrictions when considering the impact on children, young or vulnerable people.
- Section B.3 Location of Premises: The paragraph on Risk Profiles being based on factual evidence should be amended to replace the word “should” with “will” and moved to the third paragraph of section B.4: Local Area Profiles.

RESOLVED that, subject to the amendments set out above, the responses to public consultation be noted and Council be recommended to adopt the Statement of Gambling Policy under the Gambling Act 2005 to have effect from 31st January 2015.

109 LOCAL JOINT CONSULTATIVE COMMITTEE: MINUTES OF THE MEETING HELD ON 16TH JUNE 2015

The minutes of the meeting of the Local Joint Consultative Committee meeting held on 16th June 2015 were received.

110 AUDIT SUB-COMMITTEE: MINUTES OF THE MEETING HELD ON 25TH JUNE 2015, EXCLUDING EXEMPT INFORMATION

The minutes of the Audit Sub-Committee meeting held on 25th June 2015 (excluding exempt information) were received.

The Committee noted that there had been an overpayment of £11,336 in relation to Looked After Children, and requested confirmation that this sum had been recovered.

111 INDUSTRIAL RELATIONS SUB-COMMITTEE: MINUTES OF THE MEETING HELD ON 9TH JULY 2015, EXCLUDING EXEMPT INFORMATION

The minutes of the Industrial Relations Sub-Committee meeting held on 9th July (excluding exempt information) 2015 were received.

**112 LOCAL PENSION BOARD : MINUTES OF THE MEETING HELD
 ON 27TH JULY 2015**

The Committee received the minutes of the first meeting of the Local Pension Board held on 27th July 2015.

One of the Board Members, Mr Brian Toms, attended the meeting and with the agreement of the Chairman put the following question -

“At the first meeting of the Bromley Pension Board I raised the question of whether the members would be granted general indemnity against any issues related to the work of the Board.

A clear answer was not available and I should be grateful for this commitment or an explanation as to how Board members are protected.”

Officers confirmed that as Board Members were appointed by the Council, and the Board was conducting Council business, it was covered under the Council’s existing insurance arrangements.

Councillor Simon Fawthrop, who had been the chairman of the Pensions Investment Sub-Committee in 2014/15 when the Local Pensions Board had been established, drew the Committee’s attention to the Local Pensions Board Terms of Reference which stated that the Board would meet only once per annum. He was concerned that, at their introductory meeting, the Board had proposed that they meet quarterly which would increase the scope of the Board beyond that agreed by Members, and emphasised that Board Members were welcome to attend Pensions Investment Sub-Committee meetings.

Officers confirmed that no changes had been made to the Board’s terms of reference and it was intended that the Board would be asked to produce a robust work plan and reasons in support before this was given any further consideration.

Most Members of the Committee considered that the Board should continue to be restricted to one annual meeting as set out in its terms of reference, but after considerable debate it was agreed that legal advice was required and should be included in a follow up report to the next meeting.

RESOLVED that a report be made to the next meeting on the Local Pension Board’s meeting arrangements.

**113 APPEALS SUB-COMMITTEE: MINUTES OF THE MEETING
 HELD ON 13TH AUGUST 2015, EXCLUDING EXEMPT
 INFORMATION**

The minutes of the Appeals Sub-Committee meeting held on 13th August 2015 (excluding exempt information) were received.

**114 LOCAL GOVERNMENT ACT 1972 AS AMENDED BY THE
LOCAL GOVERNMENT (ACCESS TO INFORMATION)
(VARIATION) ORDER 2006 AND THE FREEDOM OF
INFORMATION ACT 2000**

RESOLVED that the Press and public be excluded during consideration of the items of business referred to below as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the Press and public were present there would be disclosure to them of exempt information.

**The following summaries
refer to matters
involving exempt information**

**115 AUDIT SUB-COMMITTEE: EXEMPT MINUTES - 25TH JUNE
2015**

The exempt minutes of the Audit Sub-Committee meeting held on 25th June 2015 were received.

**116 INDUSTRIAL RELATIONS SUB-COMMITTEE: EXEMPT
MINUTES - 9TH JULY 2015**

The exempt minutes of the Industrial Relations Sub-Committee meeting held on 9th July 2015 were received.

**117 APPEALS SUB-COMMITTEE: EXEMPT MINUTES - 13TH
AUGUST 2015**

The exempt minutes of the Appeals Sub-Committee meeting held on 13th August 2015 were received.

The Chairman reminded Members to remain in the room after the meeting for a briefing session on the Committee's human resources responsibilities.

The Meeting ended at 7.42 pm

Chairman

Report No.

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: GENERAL PURPOSES AND LICENCING COMMITTEE

Date: 9 December 2015

Decision Type: Non-Urgent Non-Executive Non-Key

Title: MODEL PAY POLICY FOR CENTRALLY BASED TEACHERS

Contact Officer: Angela Huggett, Head of HR Strategy and Education
Tel: 020 8313 4029 E-mail: angela.huggett @bromley.gov.uk

Chief Officer: Jane Bailey Director of Education
Charles Obazuaye Director Human Resources

Ward: N/A

1. Reason for report

- 1.1 From 1 September 2015 revised arrangements came into force in relation to Teachers' Pay and Conditions through the publication of the statutory 2015 School Teachers' Pay and Conditions Document.
- 1.2 This report sets out the main changes and proposes a model pay policy (Appendix 1) for all centrally based teachers.

2. **RECOMMENDATION(S)**

- 2.1 That Members note and comment on the report and the attached model pay policy for all centrally based teachers.
- 2.2 Agree the model pay policy in respect of centrally based teaching staff employed by the Local Authority.

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Children and Young People Excellent Council
-

Financial

1. Cost of proposal: Not Applicable
 2. Ongoing costs: Not Applicable
 3. Budget head/performance centre: N/A
 4. Total current budget for this head: N/A
 5. Source of funding: N/A
-

Staff

1. Number of staff (current and additional): All Teachers and Heads of Service centrally employed in Education Services i.e.
 - Specialist Support and Disability Services (The Phoenix Centre)
 - Sensory Support Services
 - Primary Pupil Support Advisory Team
 2. If from existing staff resources, number of staff hours: N/A.
-

Legal

1. Legal Requirement: Statutory Requirement Sections 122 and 127 Education Act 2002
 2. Call-in: Applicable
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

- 3.1 The Education Act 2002 gives the Secretary of State power to prescribe pay and conditions and to issue guidance on pay and conditions matters, to which those concerned must have regard.
- 3.2 The statutory requirements for teachers' pay and conditions for maintained schools in England and Wales are set out in the School Teachers' Pay and Conditions Document which is published annually, and schools and local authorities (LAs) must abide by these. LAs and governing bodies are also required to have regard to the statutory guidance issued in conjunction with the document, and in respect of guidance on procedural matters a court or tribunal may take any failure to do so into account in any proceedings.
- 3.3 In accordance with the requirements of the School Teachers' Pay and Conditions Document, the LA as the "relevant body" is required to have in place a pay policy setting out the arrangements for determining pay arrangements for all centrally based teaching staff.
- 3.4 The current pay policy has been revised incorporating the changes as outlined in the School Teachers' Pay and Conditions Document 2015 and is attached to this report at Appendix 1 for consideration and approval.

Background

- 3.5 Each year the School Teachers' Review Body (STRB) is provided with a remit from the Secretary of State to review Teachers' Pay. The remit focuses on specific areas as well as pay trends in general. The school teachers' review body consults with employers and teacher organisations and Unions and reports back to the secretary of state its findings and recommendations. The Secretary of State then determines whether or not to accept the proposals put forward by the review body.
- 3.6 The 25th Review Body report made the following recommendations which were accepted by the secretary of state:

Main Pay Range

- An uplift of 1% to the minima of the range
- An uplift of 2% to the maxima of the range

Upper Pay Range, Leading Practitioner Range, Unqualified Teachers Range

- An uplift of 1% to the minima and maxima of the range

Allowances in the national framework i.e. Teaching and Learning Responsibility Payments (TLRs) and Special Education Needs (SEN) allowances

- An uplift of 1% to the minima and maxima of the TLR payment and SEN allowance ranges

Leadership group range

- An uplift of 1% to the minima of the overall leadership group range
- No uplift to the maxima of the overall leadership group range
- An uplift of 1% to the minima of each of the eight head teacher group pay ranges
- No uplift to the maxima of each of the eight head teacher group pay ranges

These recommendations relate to the national pay and allowance ranges. The Review Body has made it clear that it will be down to schools, in accordance with their pay policies, to determine how to adjust the salaries and allowances payable to individual teachers (within the

bounds of the national framework) and that these decisions must take account of the individual's performance.

Note also, the Review Body's comment that "In the decentralised pay system that now exists, we believe schools can manage our recommendations within current budgets."

In addition, the Report contains the following recommendations:

- Discretionary national reference points should not be published in Departmental advice from September 2015*
- There should be a fuller review of the national pay framework in future - to ensure it enables schools to attract and retain high calibre graduates in an increasingly competitive labour market*

- 3.7 The DfE carried out extensive consultation with relevant parties and published a draft SCTP&CD. The finalised version was laid before Parliament in August 2015 with implementation on the 1st September 2015.
- 3.8 The new pay and conditions document continues to provide flexibility for relevant bodies in relation to reward and performance of staff. Each School and LA is required to determine its own specific pay policy tailored to the needs of the individual school/service.

DfE and Trade Union Perspectives

- 3.9 The LA currently employs Teaching Staff in the following service areas:
- Specialist Support and Disability Services (The Phoenix Centre)
 - Sensory Support Services
 - Primary Pupil Support Advisory Team
- 3.10 There is existing provision for each Teacher's salary to be reviewed annually. In addition the LA already has an appraisal policy in place agreed by Members in autumn 2012.
- 3.11 New Teaching Standards were introduced in 2012 and from September 2014 pay progression for all Teaching staff became directly linked to performance. A copy of the Teacher standards can be found at the following link.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208682/Teachers_Standards_2013.pdf
- 3.12 Teacher Trade Unions nationally were opposed to several elements of the significant pay changes that were introduced in 2013 and this continues to be their position.
- 3.13 Several of the Trade Unions have issued their own guidance/model pay policies including NAHT & ASCL, NASUWT & NUT.
- 3.14 The NASUWT/NUT have made clear that any policy that does not comply with their checklist regarding pay policies will not be accepted by them. They have stated that acting in any way that is contrary to their policy will put schools at risk of unlawful discrimination.
- 3.15 The Secretary of State has previously sent a letter and advice to schools, and Academies giving the DfE perspective on some of the items in the NUT and NASUWT pay policy checklist.

- 3.16 The Secretary of State at the time indicated that in his view elements of the unions' checklist are unlawful and adoption of the checklist would significantly limit schools' ability to take advantage of the flexibilities now available to them in terms of managing their budgets and rewarding performance. He further stated that: "As now, schools need to have regard to how they set objectives and appraise performance and decisions need to be evidence based. However, making differentiated pay decisions is not in itself unlawful."
- 3.17 The 2015 proposed pay policy has been prepared using guidance and advice from DfE. The policy provides flexibility for managers in determining arrangements for Teachers' Pay for all Teaching staff including those employed on the leadership range and fulfils the requirements of the 2015 STP&CD. This includes flexibility regarding starting salaries and progression and is broadly consistent with the current principles applied to those staff employed by the Council on Localised Pay terms and conditions.
- 3.18 Following ECHS DMT agreement in principle the LA began a period of consultation with the Trade Unions recognised by the Council. This consultation period commenced on 16th October 2015 and closed on 15th November 2015. During this period no responses were received although at the Joint Teachers' Liaison Committee held on 22nd October 2015 the Joint Teachers' Committee advised that their position remained the same on this issue and they continued to be in dispute with the Secretary of State regarding this matter. Agreement with the Trade Unions will not therefore be reached due to the position already outlined previously by NASUWT/NUT in terms of adhering to its checklist.

4. POLICY IMPLICATIONS

- 4.1 The model policy is consistent with BBB priorities to provide strategic leadership and support to schools in the Borough to assist and underpin the Government's Education Reform Programme and ensuring the organisation has a workforce of appropriate skills and experience to meet future challenges in delivering local priorities. Various elements of the model policy for teachers are similar or consistent with the key elements of the Council's local terms and conditions of service for all non- teaching staff employed by the authority.

5. FINANCIAL IMPLICATIONS

Any cost implications arising from the application of the policy will need to be met from existing resources.

6. LEGAL IMPLICATIONS

Part 8 of The Education Act 2002 deals with the legal status of teachers pay and conditions. Section 122 gives the Secretary of State a power to prescribe pay and conditions for teachers and Section 127 recites that the Secretary of State after due consultation may issue guidance which a local authority and a school governing body shall have regard to in respect of teachers pay.

7. PERSONNEL IMPLICATIONS

- 7.1 As set out in this report.

Non-Applicable Sections:	N/A
Background Documents: (Access via Contact Officer)	

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**EDUCATION CARE AND HEALTH SERVICES DEPARTMENT PAY POLICY FOR
CENTRALLY BASED TEACHING STAFF**

1 SEPTEMBER 2015

ECHS DEPARTMENT PAY POLICY FOR CENTRALLY BASED TEACHING STAFF

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ECHS DEPARTMENT PAY POLICY FOR CENTRALLY BASED TEACHING STAFF

1. OPENING STATEMENT

This policy will be applied to the pay of all Teaching staff employed by the Local Authority in centralised services.

The Local Authority seeks to ensure that all staff are recognised and rewarded for the level of responsibility that they carry, and for the individual contribution that they make to the work of the service.

Within the budget available to it, the Local Authority will endeavour to maintain a local pay policy, which will enable it to recruit, retain and motivate sufficient staff of suitable quality to achieve the aims and objectives of Building a Better Bromley.

The Local Authority will act with integrity, objectivity and honesty, will be open about decisions made and actions taken, and will be prepared to explain its decisions and actions.

2. AIMS OF THE LOCAL AUTHORITY

The aims of the Local Authority will be consistent with the aims and objectives of Building a Better Bromley.

3. AIMS OF THE PAY POLICY

The pay policy set out below is intended to:

- support and promote the LA's ethos, purpose, and development as set out in Building a Better Bromley;
- promote the principle of best value in terms of the LA's management of its resources;
- complement and support the LA's current personnel procedures and frameworks;
- support the aim of ensuring that all LA policies and procedures make a meaningful and sustained contribution to raising levels of achievement at the service;
- demonstrate the LA's commitment to good employment practice by ensuring that all pay-related decisions are made taking full account of the current version of the School Teachers' Pay and Conditions Document, and Building a Better Bromley and all pay related decisions are taken in compliance with the Equality Act 2010, The Employment Rights Act 1996, The Employment Relations Act 1999, The Employment Act 2002, The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the Agency Workers Regulations 2010.
- demonstrate that the LA intends to treat all staff fairly and responsibly.

4. CONSULTATION

This policy will be reviewed annually or whenever significant changes in the School Teachers' Pay and Conditions Document (STP&CD) necessitate review. Consultation with staff and representatives from recognised teacher trade unions will be planned accordingly. Full information relating to vacant posts and responsibilities will be made available to staff.

5. EQUALITIES

The LA seeks to use this pay policy to promote equal opportunities within the LA, both in terms of applying to staff and providing an equal and wide curriculum with enriched learning opportunities. The LA will ensure that staff will not be unlawfully discriminated against in matters related to any of the protected characteristics set out in the Equality Act 2010.

The LA intends for Services to make fair and consistent pay decisions having due regard to LA advice and good practice. The LA will also try to provide appropriate support for all staff, for example good working facilities and sufficient non-contact time for teachers. All members of staff will have the opportunity to have their training and development needs reviewed regularly under the LA's performance management arrangements.

The LA will observe the relevant employment law provisions, notably the Equality Act 2010, EU Working Time Provisions, and health and safety requirements.

EQUALITIES AND PERFORMANCE RELATED PAY

The LA will ensure that its processes are open, transparent and fair. All decisions will be objectively justified. Adjustments will be made to take account of special circumstances, e.g. an absence on maternity or long-term sick leave. The exact adjustments will be made on a case-by-case basis, depending on the individual teacher's circumstances and the service's circumstances.

6. OTHER LA PROCEDURES

The LA pay policy will be considered alongside other LA personnel procedures/policies where there is a direct link between them. Procedures/Policies in this category are set out below.

APPRAISAL

The LA will comply with The Education (School Teachers' Appraisal) (England) Regulations 2012 concerning the appraisal of teachers. Assessment will be based on evidence from a range of sources (see the LA's appraisal policy). Although the service will establish a firm evidence base in relation to the performance of all teachers, there is a responsibility on individual teachers and appraisers to work together. Teachers should also gather any evidence that they deem is appropriate in relation to meeting their objectives, the Teachers' Standards and any other criteria (i.e. application to be paid on Upper Pay Range) so that such evidence can be taken into account at the review.

The Manager/Head of Service will moderate objectives to ensure consistency and fairness; the Manager/Head of Service will also moderate performance assessment and initial pay recommendations to ensure consistency and fairness.

GRIEVANCE

If a member of staff:

- has a grievance or complaint about their salary; or
- asks for a review of any decision regarding their pay;
- s/he must follow the LA's pay appeals procedure (see Appendix 2).

STAFF CAPABILITY: Pay Progression may be withheld if the employee concerned has been subject to formal capability action during the academic year preceding the award and the action is ongoing at the expected date of award. However, Pay Progression may be reinstated retrospectively if the formal capability process is discontinued or if the employee makes sufficient progress to reach a satisfactory level of performance. Reinstatement will occur from when the improvement in performance occurs.

The employee concerned should be formally notified as soon as possible of the possibility of pay progression being withheld. The employee should be offered appropriate support and/or training to help her/him to improve her/his performance within the context of the capability procedure.

RECRUITMENT AND SELECTION: when advertising permanent posts, the service will provide job applicants with appropriate salary and remuneration details as set out in this policy and will seek to reflect the LA's attributes and ethos in all advertising and recruitment material. All requests to recruit to a vacant post on either a temporary or permanent basis must be processed through the Budget Holder/Head of Service for approval and have regard for any special recruitment measures in place.

7. JOB DESCRIPTIONS

The LA's policy on job descriptions is as follows:

- (a) all staff should receive a job description (JD) in accordance with the staffing structure agreed by the Service, which should be subject to annual review. Staff will be consulted over the drawing up of the contents. The task of drafting and finalising job descriptions is delegated to the Manager/Head of Service who will have regard to advice and guidance issued by DfE and to any advice offered by the LA.
- (b) job descriptions will identify key areas of responsibility and will, where appropriate, contain tasks consistent with the Portfolio Plan and Building a Better Bromley. Staff job descriptions will clearly state management responsibilities attached to the post and any associated allowances.

- (c) appropriate differentials will be created and maintained between posts recognising accountability, job weight, and the need to recruit, retain, and motivate sufficient employees of the required quality at all levels.
- (d) where there is a clear and substantial change in duties, a member of staff may request a review of her/his existing job description. Any such request will be considered first by the Line Manager and then by the Head of Service should the member of staff request it.
- (e) all teacher job descriptions will make reference to teachers' statutory conditions of service as set out in the STP&CD.

8. PERSONNEL RECORDS

The LA holds personnel files for all staff. Staff may have access to their personnel and salary records as long as an HR Advisor is present. Every member of staff is entitled to have access to the pay policy.

9. LA OBLIGATIONS

The LA will fulfil its obligations to:

- **Teachers:** as set out in the School Teachers' Pay and Conditions Document (the Document) and the Conditions of Service for School Teachers in England and Wales (commonly known as the 'Burgundy Book').

The LA will need to consider any updated pay policy and assure itself that appropriate arrangements for linking appraisal to pay are in place, can be applied consistently and that pay decisions can be objectively justified.

The LA will consult with staff and Teaching Unions representatives on the appraisal and pay policies

The LA will ensure that it makes funds available to support pay decisions, in accordance with this pay policy and the LA's spending plan/budgetary commitments.

The LA will monitor the outcomes of pay decisions, including the extent to which different groups of teachers may progress at different rates, ensuring the LA's continued compliance with equalities legislation.

10. LINE MANAGER/HEAD OF SERVICE OBLIGATIONS

The Line Manager/Head of Service will:

- ensure that effective appraisal arrangements are in place and that any appraisers have the knowledge and skills to apply procedures fairly;

- establish clear arrangements for linking appraisal to pay progression and consult with staff, departmental and trade union representatives on appraisal and pay policies
- submit pay recommendations to the LA and ensure the LA has sufficient information upon which to make pay decisions;
- ensure that teachers are informed about decisions reached; and that records are kept of recommendations and decisions made.

11. TEACHERS' OBLIGATIONS

A teacher will:

- engage with appraisal; this includes working with their appraiser to ensure that there is a secure evidence base in order for an annual pay determination to be made;
- keep records of their objectives and review them throughout the appraisal process;
- share any evidence they consider relevant with their appraiser;
- ensure they have an annual review of their performance.

12. DIFFERENTIALS

Appropriate differentials will be created and maintained between posts within the service, recognising accountability and job weight, and the LA's need to recruit, retain and motivate sufficient employees of the required quality at all levels.

13. DISCRETIONARY PAY AWARDS

Criteria for the use of pay discretions are set out in this policy and discretionary awards of additional pay will only be made in accordance with these criteria.

14. PAY REVIEWS

Managers, in consultation with Heads of Service will ensure that every teacher's salary is reviewed following a review of their performance against their appraisal objectives in line with the LA's appraisal policy with effect from 1 September and no later than 31 October (except in the case of the Head Teacher where the deadline is 31 December) each year and give them a written statement setting out their salary and any other financial benefits to which they are entitled. Reviews may take place at other times of the year to reflect any changes in circumstances or job description that lead to a change in the basis for calculating an individual's pay. A written statement will be given after any review and will give information about the basis on which it was made. Decisions on the pay of the Head of Service will be communicated by the Director of Education, in writing together with the reasons why decisions have been taken.

15. SAFEGUARDING

Where a pay determination leads or may lead to the start of a period of safeguarding, the LA will give the required notification as soon as possible and no later than one month after the date of the determination.

16. PAY APPEALS PROCEDURE

A member of staff may seek a review of any determination in relation to his/her pay or any other decision taken by the LA (or a committee or individual acting with delegated authority) that affects his/her pay.

The following list, which is not exhaustive, includes the usual reasons for seeking a review of a pay determination:

That the person or committee by whom the decision was made:

- (a) incorrectly applied any provision of the Document;
- (b) failed to have proper regard for statutory guidance;
- (c) failed to take proper account of relevant evidence;
- (d) took account of irrelevant or inaccurate evidence;
- (e) was biased; or
- (f) otherwise unlawfully discriminated against the member of staff.

The arrangements for considering appeals is attached at Appendix 2

The following sections detail the arrangements for pay determinations for all Teaching staff employed at the service. Where appropriate, specific reference is made to the relevant paragraph's of the School Teachers' Pay and Conditions Document (STP&CD).

The LA will agree the budget to be set for pay, including performance pay, and will make appropriate decisions in the light of the LA's financial circumstances ensuring that appropriate funding is allocated for performance pay progression at all levels.

17. LEADERSHIP GROUP SALARIES

Head Teachers, Deputy Head Teachers, and Assistant Head Teachers are all classed as members of the 'leadership group'. They are paid on the Leadership Group Pay range and in accordance with the range for the Group Size of the School.

The LA will have regard to the provisions of the School Teachers' Pay and Conditions Document and will also take account of any other permanent payments, made to staff within the service to ensure that appropriate differentials are created and maintained between posts of differing responsibility and accountability.

HEAD TEACHER PAY

Pay on appointment

For appointments on or after 1 September 2015, the governing body will determine the pay range to be advertised and agree pay on appointment, taking account of the full permanent responsibilities of the role of the head teacher, any challenges that are specific to the role, and all other relevant considerations.

In the case of a new appointment the LA will consider whether the requirements of the post and the extent to which the preferred candidate meets those requirements are such that it would be appropriate to set the starting salary above the minimum of the head teacher group. The LA will ensure that there is appropriate scope within the range to allow for performance- related progress over time.

Pay ranges for Head Teachers will not normally exceed the maximum of the head teacher group. However, the Head Teacher's pay range may exceed the maximum where the LA determines that circumstances specific to the role or candidate warrant a higher than normal payment. The LA will ensure that the maximum of the Head Teacher's pay range and any additional payments made under the provisions of the School Teachers' Pay and Conditions Document does not exceed the maximum of the Head Teacher group by more than 25% other than in exceptional circumstances; and with the agreement of the Director of Education in such circumstances, the LA will seek external independent advice before providing such agreement and support its decision with a business case.

Serving Head Teachers

The LA will determine the salary of a serving Head Teacher in accordance with paragraph 11 of the 2015 Document.

- The LA will review the Head Teacher's pay in accordance with paragraph 11.2 of the Document and will consider annually whether or not to increase the salary of the Head Teacher and if it determines to do so, what salary within the relevant pay range where there has been a sustained high quality of performance having regard to the results of the most recent appraisal carried out in accordance with the Appraisal Regulations 2012 and any recommendation on pay progression in the head teacher's most recent appraisal report.
- The LA may determine the head's pay range, within the group range for the school, at any time if it considers it is necessary (paragraph 9 of section 3 guidance within the School Teachers' Pay and Conditions Document).
- If the LA makes a determination to change the pay range it will determine the head's pay range within the group range for the school, in accordance with paragraph 9 and paragraph 11 of the SCTP&CD.

Determination of temporary payments to head teachers

The LA may determine that payments be made to a head teacher for clearly temporary responsibilities or duties that are in addition to the post for which their salary has been determined. In each case the LA will not have previously taken such reason or circumstance into account when determining the head teachers pay range.

The total sum of the temporary payments made to a head teacher in any school year must not exceed 25% of the annual salary which is otherwise payable to the head teacher, and the total sum of salary and other payments made to a head teacher must not exceed 25% above the maximum of the head teacher group, except in wholly exceptional circumstances and with the agreement of the Director of Education. The LA will also seek external independent advice before producing a business case seeking such agreement.

DEPUTY/ASSISTANT HEAD TEACHERS

Pay on appointment

The LA will, when a new appointment needs to be made, determine the pay range to be advertised and agree pay on appointment as follows:

- The LA will determine a pay range in accordance with paragraph 9.2 to 9.4 of the Document, taking account of the role of the deputy/assistant head teacher in accordance with part 7 – The Contractual Framework for Teachers;
- The LA will record its reasons for the determination of the deputy/assistant head pay range.
- The maximum of the deputy or assistant head teacher's pay range will not exceed the maximum of the head teacher group for the school. The pay range for a deputy or assistant head teacher will only overlap the head teacher's pay range in exceptional circumstances.

Serving deputy/assistant head teachers

- The LA will review the deputy/ assistant head teacher's pay in accordance with paragraph 11.2 of the Document and will consider annually whether or not to increase the salary of the deputy/assistant head teacher and if it determines to do so, what salary within the relevant pay range where there has been a sustained high quality of performance having regard to the results of the most recent appraisal carried out in accordance with the Appraisal Regulations 2012 and any recommendation on pay progression in the deputy/assistant head teacher's most recent appraisal report.
- the LA will review and, if necessary, re-determine the deputy/assistant head pay range where there has been a significant change in the responsibilities of the serving deputy/assistant head teacher

18. ACTING ALLOWANCES

Acting allowances are payable to teachers who are assigned and carry out the duties of head, deputy head or assistant head in accordance with paragraph 23 of the Document. Except in the case of the Deputy Head, who is contractually obliged to act as the Head in the Head's absence, any member of staff acting up to a higher position should have first agreed to take on the acting duties in question.

The LA will, within a four week period of the commencement of acting duties, determine whether or not the acting postholder will be paid an allowance. In the event of a planned and prolonged absence, an acting allowance will be agreed in advance and paid from the first day of absence.

Any teacher, who carries out the duties of head, deputy head, or assistant head, for a period of four weeks or more, will be paid at an appropriate point of the head's pay range, deputy head range or assistant head range, as determined by the LA. Payment will be backdated to the commencement of the duties.

Should the Deputy Head assume the Head's duties temporarily (s)he will do so without payment only when (s)he has assumed duties in the Head's absence and the period of acting duties does not last for more than four weeks. However, if the Head Teacher position is vacant or the Deputy acts up as the Head for more than four weeks the Deputy should be paid accordingly.

Acting allowances for any position other than a leadership group member, will be decided by the Head Teacher/Manager/Head of Service taking into account the responsibilities of the post, the salary of the person acting up, and the substantive postholder's salary

Please note that the payment of Honoraria to Teachers including Head Teachers is not permitted within the provisions of the School Teachers Pay and Conditions Document.

19. CLASSROOM TEACHERS

Pay on appointment

The LA will determine the starting salary of a vacant classroom teacher post on the main pay range or upper pay range, such as the LA determines, having regard to:

- the requirements of the post;
- any specialist knowledge required for the post;
- the experience required to undertake the specific duties of the post;

- the wider service context.

The LA will, if necessary, use its discretion to award a recruitment incentive benefit to secure the candidate of its choice.

Pay determinations for existing main pay range teachers, effective from 1 September 2015

The LA will follow the provisions of the Document and will consider annually whether or not to increase the salary of the teacher and if it determines to do so, what salary within the relevant pay range, unless the teacher has been notified that their service has been unsatisfactory for the previous academic year. The LA will normally exercise this discretion only in the context of a formal capability procedure. The LA will restore the withheld point at the conclusion of the capability procedure where satisfactory performance has been achieved.

The LA will use reference points. Therefore the pay scale for main pay range teachers is:

Minimum (Reference Point 1)	£25,880
Reference point 2	£27,484
Reference point 3	£29,185
Reference point 4	£30,992
Reference point 5	£33,620
Maximum (Reference Point 6)	£36,182

Appraisal objectives will become more challenging as the teacher progresses up the main pay range.

To move up the main pay range, one annual point at a time, teachers will need to have made good progress towards all their objectives meeting most of them and have shown that they are competent in all elements of the Teachers' Standards. Where direct teaching is undertaken this should be 'good', as defined by Ofsted. Assessors will need to consider the spirit of the Teachers' standards when assessing the performance of advisers.

Judgments will be properly rooted in evidence. As a teacher moves up the main pay range, this evidence should show:

- an increasing positive impact on pupil progress
- an increasing impact on wider outcomes for pupils
- improvements in specific elements of practice identified to the teacher, e.g. behaviour management or lesson planning
- an increasing contribution to the work of the service
- an increasing impact on the effectiveness of staff and colleagues

Further information, including sources of evidence is contained in the LA's appraisal policy.

The LA will be advised by the Head Teacher in making all such decisions. Any increase (i.e. no movement, one point, more than one point) will be clearly attributable to the performance of the teacher in question. The LA will be able to justify its decisions.

20. THRESHOLD APPLICATIONS

APPLICATIONS TO BE PAID ON THE UPPER PAY RANGE

Any qualified teacher can apply to be paid on the Upper Pay Range. If a teacher is simultaneously employed at another school/service(s), they may submit separate applications if they wish to apply to be paid on the UPR in that service(s). The LA will not be bound by any pay decision made by another service where it is not the employer.

All applications should include the results of the two most recent appraisals, under the Appraisal Regulations 2012, in the service, including any recommendation on pay. Where such information is not applicable or available, e.g. those returning from maternity or sickness absence, a written statement and summary of evidence designed to demonstrate that the applicant has met the assessment criteria must be submitted by the applicant.

In order for the assessment to be robust and transparent, it will be an evidence-based process only. Teachers therefore should ensure that they build a mainly paper evidence base to support their application. Those teachers who are not subject to the Appraisal Regulations 2012, or who have been absent, through sickness, disability or maternity, may cite written evidence from a 3 year period before the date of application in support of their application.

Process:

One application may be submitted annually. The closing date for applications is normally 31st December each year; however, exceptions will be made in particular circumstances, e.g. those teachers who are on maternity leave or who are currently on sick leave. The process for applications is:

- Complete the service's application form;
- Submit the application form and supporting evidence to the Head Teacher by the cut-off date of 31st December.
- The teacher will receive notification of the name of the assessor of their application within 5 working days;
- The assessor will assess the application, which will include a recommendation to the Head Teacher or to the LA;
- The application, evidence and recommendation will be passed to the Head Teacher for moderation purposes, if the Head Teacher is not the assessor;
- The LA will make the final decision, advised by the Head Teacher;

- Teachers will receive written notification of the outcome of their application by 31st March. Where the application is unsuccessful, the written notification will include the areas where it was felt that the teacher's performance did not satisfy the relevant criteria set out in this policy (see 'Assessment' below).
- If requested, oral feedback which will be provided by the assessor. Oral feedback will be given within 10 working days of the date of notification of the outcome of the application. Feedback will be given in a positive and encouraging environment and will include advice and support on areas for improvement in order to meet the relevant criteria.
- Successful applicants will move to the minimum of the UPR on 1 September of the following year.
- Unsuccessful applicants can appeal the decision. The appeals process is set out at the back of this pay policy.

Assessment:

The teacher will be required to meet the criteria set out in paragraph 15.2 of the Document, namely that:

- the teacher is highly competent in all elements of the relevant standards; and
- the teacher's achievements and contribution to the service are substantial and sustained.

In this LA, this means:

"highly competent": the teacher's performance is assessed as having excellent depth and breadth of knowledge, skill and understanding of the Teachers' Standards in the particular role they are fulfilling and the context in which they are working.

"substantial": the teacher's achievements and contribution to the service are significant, not just in raising standards of teaching and learning in their own classroom, or with their own groups of children, but also in making a significant wider contribution to service improvement, which impacts on pupil progress and the effectiveness of staff and colleagues.

"sustained": the teacher must have had two consecutive successful appraisal reports in the service and have made good progress towards their objectives during this period (see exceptions, e.g. maternity/sick leave, in the introduction to this section). They will have been expected to have shown that their teaching expertise has grown over the relevant period and is consistently good to outstanding.

Assessors will need to consider the spirit of the Teachers' standards when assessing the performance of advisers.

Further information, including information on sources of evidence is contained within the LA's appraisal policy.

21. UPPER PAY RANGE

Pay determinations effective from 1 September 2015

The LA will determine and will consider annually whether there should be any movement for Teacher's on the Upper Pay Range. In making such a determination, it will take into account:

- the criteria set out in paragraph 15.2 of the Document 2015;
- the evidence base, which should show that the teacher has had a successful appraisal and has made good progress towards all of their objectives meeting most of them;
- evidence that the teacher has maintained the criteria set out in paragraph 15.2, namely that the teacher is highly competent in all elements of the relevant standards; and that the teacher's achievements and contribution to the service are substantial and sustained. The meaning of these criteria is set out in the section of this policy entitled, "Applications to be paid on the Upper Pay Range".

Pay progression on the Upper Pay Range will be clearly attributable to the performance of the individual teacher. The LA will be able to objectively justify its decisions.

Further information, including sources of evidence is contained within the LA's appraisal policy.

The LA will be advised by the Head Teacher/Head of Service in making all such decisions.

22. LEADING PRACTITIONER ROLES

It is not the intention of the LA to create a leading practitioner role at this time but the LA will review its position from time to time.

The LA will take account of paragraph 16 of the Document when determining the role of leading practitioner in the service. Additional duties will be set out in the job description of the leading practitioner and the LA will establish the pay range for each leading practitioner post in accordance with paragraph 16 of the Document; and paragraphs 33 to 37 of the section 3 guidance.

23. UNQUALIFIED TEACHERS

Pay on appointment

The LA will pay any unqualified teacher in accordance with paragraph 17 of the Document. The LA will determine where a newly appointed unqualified teacher will enter the range, having regard to any qualifications or experience s/he may have, which it considers to be of value. The LA will consider whether it wishes to pay an additional allowance, in accordance with paragraph 22.

Pay determinations effective from 1 September 2015

The LA will consider annually whether or not to increase the salary of an Unqualified Teacher and if it determines to do so, what salary within the relevant pay range. In order to progress up the unqualified teacher range, unqualified teachers will need to show that they have made good progress towards all of their objectives meeting most of them.

Judgments will be properly rooted in evidence. As unqualified teachers move up the range, this evidence should show:

- an improvement in teaching skills
- an increasing positive impact on pupil progress
- an increasing impact on wider outcomes for pupils
- improvements in specific elements of practice identified to the teacher
- an increasing contribution to the work of the service
- an increasing impact on the effectiveness of staff and colleagues

Information on sources of evidence is contained within the LA's appraisal policy. The LA will be advised by the Head Teacher/Head of Service in making all such decisions. Pay progression on the unqualified teacher range will be clearly attributable to the performance of the individual teacher. The LA will be able to objectively justify its decisions.

24. TEACHING AND LEARNING RESPONSIBILITY PAYMENTS

The LA may award a TLR to a classroom teacher in accordance with paragraph 20 of the Document and paragraphs 47 to 54 of the section 3 guidance. TLR 1 or 2 will be for clearly defined and sustained additional responsibility in the context of the service's staffing structure for the purpose of ensuring the continued delivery of high quality teaching and learning. All job descriptions will be regularly reviewed and will make clear, if applicable, the responsibility or package of responsibilities for which a TLR is awarded, taking into account the criterion and factors set out below and at paragraph 20.4 of the document.

The award may be while the teacher remains in the same post or occupies another post in the temporary absence of the post-holder.

Factors

Before awarding a TLR, the LA must be satisfied that the teacher's duties include a significant responsibility that is not required of all classroom teachers, and that -

- (a) is focused on teaching and learning;
- (b) requires the exercise of a teacher's professional skills and judgement;
- (c) requires the teacher to lead, manage and develop a subject or curriculum area; or to lead and manage pupil development across the curriculum;
- (d) has an impact on the educational progress of pupils other than the teacher's assigned classes or groups of pupils; and
- (e) involves leading, developing and enhancing the teaching practice of other staff.

Before awarding a TLR1, the LA must be satisfied that the significant responsibility referred to in the previous paragraph includes in addition line management responsibility for a **significant** number of people.

The values of TLRs must fall within the ranges set out in the STP&CD. If the LA awards TLRs of different values to two or more teachers, the minimum difference in value between each award of a TLR1 is £1,500 and between each award of a TLR2 is £1,500.

A teacher may not hold more than one TLR of any value, but a TLR could be based on a job description that itemises several different areas of significant responsibility.

A TLR is a payment integral to a post in the service's staffing structure and therefore may only be held by two or more people when job-sharing that post.

TLRs awarded to part-time teachers must be paid pro-rata at the same proportion as the teacher's part-time contract.

TLRs will be awarded to the holders of the posts indicated in the service's staffing structure.

The values of the TLRs to be awarded are set out below:

TLR1s will be awarded to the following value:

- TLR 1 (a) £7,546
- TLR 1 (b) £9,046
- TLR 1 (c) £12,770

TLR2s will be awarded to the following values:

- TLR 2 (a) £2,613
- TLR 2 (b) £4,113
- TLR 2 (c) £6,386

The LA may award a TLR3 of between £517 to £2,577 for clearly time-limited school improvement projects, or one-off externally driven responsibilities as set out in paragraph 20.3. The LA will set out in writing to the teacher the duration of the fixed term, and the amount of the award will be paid in monthly instalments. No safeguarding will apply in relation to an award of a TLR3.

25. SPECIAL EDUCATIONAL NEEDS ALLOWANCE

The LA will award an SEN spot value allowance on a range of between £2,064 and £4,075 to any classroom teacher who meets the criteria as set out in paragraph 21 of the Document.

When deciding on the amount of the allowance to be paid, the LA will take into account the structure of the service's SEN provision, whether any mandatory qualifications are required for the post, the qualifications or expertise of the teacher relevant to the post; and the relative demands of the post (paragraph 21.3 of the Document). The LA will also establish differential values in relation to SEN roles in the service in order to reflect significant differences in the nature and challenge of the work entailed so that the different payment levels can be objectively justified. The LA will take account of paragraphs 55 to 59 of the section 3 guidance.

The LA has agreed the following Spot Payment levels for SEN duties:

£2,064
£4,075

26. PART-TIME EMPLOYEES

Teachers employed on an ongoing basis at the service but who work less than a full working week are deemed to be part-time.

The LA will apply the provisions of the Document in relation to part-time teachers' pay and working time, in accordance with paragraph 42, and paragraphs 39-46 of the section 3 guidance.

The LA is responsible for ensuring that part-time teachers have a clear statement of the sessions and hours they will be required to work. The LA will ensure that all teachers employed on a part-time basis are provided with a written agreed statement which sets out the expectations of the service, and the part-time teacher, regarding the deployment of directed time both within and beyond the school day in accordance with the professional duties as stated in the STP&CD.

Calculation of Salary

Part-time teachers will be paid the pro rata percentage of the appropriate full-time equivalent salary. The same percentage will be applied to any allowances awarded to a part-time teacher.

Any additional hours such a teacher may agree to work from time to time at the request of the Head Teacher (or in the case where the part-time teacher is a Head Teacher, the relevant body), will also be paid at the same rate.

The LA will use its best endeavours to ensure that all part-time employees are treated no less favourably than a full-time comparator.

27. TEACHERS EMPLOYED ON A SHORT NOTICE BASIS

Teachers employed on a day-to-day or other short notice basis will be paid in accordance with paragraph 44 of the Document on a daily basis calculated on the assumption that a full working year consists of 195 days, periods of employment for less than a day being calculated pro rata.

Teachers who work less than a full day will be hourly paid and will have their salary calculated as an annual amount which will then be divided by 195, then divided again by 6 to arrive at the hourly rate.

Teachers should be paid for all the hours they are required to be on the school premises. Consideration should be made for non-contact time.

A short notice teacher who is employed by the same authority throughout a period of 12 months beginning in August or September must not be paid more in respect of that period than he would have received had he been in regular employment throughout the period.

28. ADDITIONAL PAYMENTS

In accordance with paragraph 26 of the Document and paragraphs 60-69 of the section 3 guidance, the LA may make payments as they see fit to a teacher, in respect of:

- continuing professional development undertaken outside the school day;
- activities relating to the provision of initial teacher training as part of the ordinary conduct of the service;
- participation in out-of-school hours learning activity agreed between the teacher and the Head Teacher;
- additional responsibilities and activities due to, or in respect of, the provisions of services relating to the raising of educational standards to one or more additional services/schools.

The LA will make additional payments to teachers in accordance with the provisions of paragraph 26 of the Document where advised by the Head Teacher/Head of Service.

Payment will be calculated on a daily basis at 1/195th of the teacher's actual salary.

29. RECRUITMENT AND RETENTION INCENTIVE BENEFITS

The LA can award lump sum payments, periodic payments, or provide other financial assistance, support or benefits for a recruitment or retention incentive (paragraph 27 of the Document and paragraphs 70 -72 of the section 3 guidance).

The LA will consider exercising its powers under paragraph 27 of the Document where it considers it is appropriate to do so in order to recruit or retain relevant staff. It will make clear at the outset, in writing, the expected duration of any such incentive or benefit, and the review date after which they may be withdrawn.

The LA will, nevertheless, conduct an annual formal review of all such awards and keep clear records of decisions made including any justification for extension of such an award.

Head Teachers, Deputy Head Teachers and Assistant Head Teachers may not be awarded a recruitment or retention payment.

PAY POLICY APPENDICES

Appendix 1 (Insert a link to the Department's or Service's staffing structure)

Appendix 2 Model Pay Appeals Procedure

Appendix 3 Provision of Services to Other Services/Schools – Operating Principles and Requirements'

The Local Authority approved this policy on the date below.

Signed: _____ Date: _____

MODEL PAY APPEALS PROCEDURE

The School Teachers' Pay and Conditions Document ("the Document") requires schools and local authorities to have a pay policy in place that sets out the basis on which teachers' pay is determined and the procedures for handling appeals.

As part of the overall appraisal process, a pay recommendation is made by the appraiser/reviewer (normally the line manager) and discussed with the teacher at the Review Meeting prior to being submitted to the LA. Written details of and the reasons for the pay recommendation will be given to the teacher.

At this particular stage of the pay determination process, if the teacher wishes to better understand the rationale for the pay recommendation or bring any further evidence to the attention of the appraiser/reviewer, they should be given the opportunity to do so before the final pay recommendation is drafted in the appraisal report. The nature of any subsequent appraisal and pay discussion will be informal and therefore representation (on either side) is not necessary nor would it be appropriate. At the conclusion of any further discussion, the pay recommendation may be adjusted or it may remain the same; the appraisal report will be updated to reflect the discussion.

If a teacher believes that the final pay recommendation falls short of their expectations and they wish to seek a further review of the information that affects their pay, they may wish to formally appeal against the decision, utilising the formal Appeal Hearing Procedure. Appeal Hearings against pay decisions must satisfy the dispute resolution requirements of employment law (i.e. Part 4 of the Trade Union and Labour Relations (Consolidation) Act, 1992) and the ACAS Code of Practice.

APPEAL HEARING PROCEDURE

It is the intention that the Appeals Procedure will be dealt with promptly, thoroughly and impartially.

PAY APPEALS PROCEDURE**Appeals**

The arrangements for considering appeals are as follows:

A teacher may seek a review of any determination in relation to his/her pay or any other decision taken by the LA that affects his pay.

The following list includes the usual reasons for seeking a review of a pay determination;

That the LA or person by whom the decision was made:

- (a) incorrectly applied any provision of the Document;
- (b) failed to have proper regard for statutory guidance;
- (c) failed to take proper account of relevant evidence;

- (d) took account of irrelevant or inaccurate evidence;
- (e) was biased; or
- (f) otherwise unlawfully discriminated against the teacher.

The order of proceedings is as follows:

1. The teacher receives written confirmation of the pay determination and where applicable the basis on which the decision was made.
2. If the teacher is not satisfied, he/she should seek to resolve this by discussing the matter informally with the decision-maker within ten working days of the decision.
3. Where this is not possible, or where the teacher continues to be dissatisfied, he/she may follow a formal appeal process.
4. The teacher should set down in writing the grounds for questioning the pay decision and send it to the Director of Education, within ten working days of the notification of the decision being appealed against or of the outcome of the discussion referred to above.

For any formal hearing or appeal the teacher is entitled to be accompanied by a colleague or union representative. Each step and action of this process must be taken without unreasonable delay. The timing and location of the formal meeting must be reasonable. The formal meeting must allow both parties to explain their cases.

5. The LA or the person who made the determination should provide a hearing within ten working days of receipt of the written grounds for questioning the pay decision to consider this and give the teacher an opportunity to make representations in person. Following the hearing the employee should be informed in writing of the decision and the right to appeal.
6. Any appeal should be heard by the Children's Director or his/her representative normally within 20 working days of the receipt of the written appeal notification. The teacher will be given the opportunity to make representations in person. The decision of the Children's Director or his/her representative will be given in writing, and where the appeal is rejected will include a note of the evidence considered and the reasons for the decision.

Guidance

- When a teacher feels that a pay decision is incorrect or unjust, they may appeal against that decision, especially when there is new evidence to consider.
- Teachers / Head Teachers/Head of Service should put their appeal in writing to either the Head Teacher/Head of Service or the LA; their appeal should include sufficient details of its basis.
- Appeals should be heard without unreasonable delay and at an agreed date, time and place.

- Employees have a statutory right to be accompanied at any stage of an appeal hearing by a companion who may be either a work colleague or a trade union representative.

The Modified Procedure

There will be no entitlement to invoke the appeal procedure in relation to a pay decision if the Teacher/Head Teacher/Head of Service has left the employment of the service.

Where a Teacher/Head Teacher/Head of Service has, whilst employed at the service, lodged an appeal against a pay decision but has then subsequently left the service's employment before any appeal hearing is held, the following steps will be observed:

1. The Teacher/Head Teacher/Head of Service must have set out details of their appeal in writing;
2. The Teacher/Head Teacher/Head of Service must have sent a copy of their appeal to the Director of Education. The Director of Education will consult with relevant service personnel and provide the teacher with an appropriate written response on behalf of the LA.

**PROVISION OF SERVICES TO OTHER SERVICES/SCHOOLS –
OPERATING PRINCIPLES AND REQUIREMENTS**

- a. Any services provided by the Head Teacher of one service/school to another service/school must be authorised formally by the LA and where the work extends over more than a 12 month period, the agreement of the LA must be formally reviewed annually, or sooner if appropriate. The LA should also agree arrangements for terminating such work.
- b. Before such work is undertaken, the LA and the Head Teacher/Head of Service must take into account:
 - the needs of the service and its pupils;
 - the benefits that the activity would bring to the service;
 - the impact of any absence on other staff, including their workload; and
 - the workload and work-life balance of all the individuals concerned.
- c. In particular, before reaching a view the LA should satisfy itself that these matters have been fully considered within the service's leadership team.
- d. Arrangements for payment for external work, including personal remuneration, must be clearly stated and formally incorporated into a protocol by the LA and decisions duly minuted.
- e. The Head Teacher/Head of Service and LA should monitor the operation of the arrangements and their impact on staff and pupils and take action where arrangements prove to be unsatisfactory.
- f. The disposition of any payment, including personal remuneration, for external services must be agreed in advance in accordance with the determinations of the LA. The terms of such an agreement must be set out in a memorandum signed by the LA and the Head Teacher and any other members of staff involved.
- g. Any income derived from external sources for the work of a service's staff should accrue to the service. The LA should decide whether it would be appropriate for individual members of staff to receive additional remuneration for these activities, and if so, determine the appropriate amount.
- h. The LA should ensure that any expenses incurred by the individual as a result of taking on additional work are reimbursed, unless they are accounted for elsewhere.

Report No.
CSD15135

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: **COUNCIL**
GENERAL PURPOSES AND LICENSING COMMITTEE

Date: 14th December 2015
9th December 2015

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **FINANCIAL REGULATIONS AND CONTRACT PROCEDURE RULES**

Contact Officer: Graham Walton, Democratic Services Manager
Tel: 0208 461 7743 E-mail: graham.walton@bromley.gov.uk

Chief Officer: Mark Bowen, Director of Corporate Services

Ward: N/A

1. Reason for report

- 1.1 The Council's Financial Regulations and Contract Procedure Rules were last updated on 12th November 2012. Both documents need updating as a result of changes to legislation, government requirements, organisational changes and technology. The amended documents will be considered in turn by Audit Sub-Committee on 1st December, General Purposes and Licensing Committee on 9th December and full Council on 14th December. If at any stage Members make any additional changes these will be reported to the next meeting in the sequence.
- 1.2 Section 3 of the attached report to Audit Sub-Committee sets out the main changes required to bring these documents up to date, and the amended text is set out in full.

2. **RECOMMENDATION**

General Purposes and Licensing Committee is requested to consider any comments on the updated Financial Regulations and Contract Procedure Rules made by Audit Sub-Committee before referral to full Council.

Subject to formal referral from General Purposes and Licensing Committee, Council is recommended to approve the updated Financial Regulations and Contract Procedure Rules.

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council:
-

Financial

1. Cost of proposal: Not Applicable
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Internal Audit
 4. Total current budget for this head: £540k including 3174k fraud partnership costs
 5. Source of funding: General fund, Admin subsidy, Admin penalties, Legal cost recoveries.
-

Staff

1. Number of staff (current and additional): 6FTE including .5 FTE risk officer post for Internal Audit (Financial Regulations) and 3FTE for Procurement (Contract Procedure Rules)
 2. If from existing staff resources, number of staff hours: Not Applicable
-

Legal

1. Legal Requirement: Statutory Requirement
 2. Call-in: Not Applicable: This report does not involve an executive decision
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All staff, Members and contractors are expected to comply with both documents
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillor's comments: Not Applicable

Non-Applicable Sections:	Policy/Financial/Legal/Personnel – See attached report
Background Documents: (Access via Contact Officer)	Minutes of Council 12th November 2012 Minutes of General Purposes and Licensing Committee, 11th July 2012

Decision Maker: **AUDIT SUB-COMMITTEE**

Date: **Tuesday 1 December 2015**

Decision Type: Non-Urgent Non-Executive Key

Title: **FINANCIAL REGULATIONS & CONTRACT PROCEDURE RULES**

Contact Officer: Luis Remedios, Head of Audit
Tel: 020 8313 4886 E-mail: luis.remedios@bromley.gov.uk

Chief Officer: Chief Executive

Ward: (All Wards);

1. Reason for report

It has been over three years since Members approved the last update to Financial Regulations and the Contract Procedure Rules. It has been necessary to update both documents as a result of legislation changes, government requirements, organisational change and technology.

2. **RECOMMENDATION(S)**

- a) **Members are asked to note and comment on the changes proposed for Financial Regulations before referral to the General Purposes and Licensing Committee and Council.**
- b) **Members are asked to note and comment on the changes proposed for the Contract Procedure Rules before referral to the General Purposes and Licensing Committee and Council.**

Corporate Policy

1. Policy Status: Not Applicable:
 2. BBB Priority: Excellent Council:
-

Financial

1. Cost of proposal: Not Applicable:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Internal Audit
 4. Total current budget for this head: £540K including £174K fraud partnership costs
 5. Source of funding: General fund, Admin subsidy, Admin penalties, Legal cost recoveries
-

Staff

1. Number of staff (current and additional): 6 FTE including 0.5 FTE risk officer post for Internal Audit (Financial Regulations) & 3 FTE for Procurement (Contract Procedure Rules)
 2. If from existing staff resources, number of staff hours: N/A
-

Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Not Applicable:
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All staff, Members, contractors are required to comply with both documents
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

3.1 Financial Regulations

3.2 The last update of Financial Regulations was completed in 2012 and the main proposed changes set out below. The changes in the Financial Regulations 2015 submitted to Members of this Committee are tracked changed for ease of reference but remain largely unchanged. Members are asked to comment on and approve the new changes.

3.3 The Financial Regulations have operated well over the past three years with little adverse comments. However, where changes are necessary these have been incorporated in the current document as described below

3.4 The key changes are:

Title changes following organisational changes;

- Changes in officer responsibility/contact for particular regulations e.g. Insurance
- Proposals to allow electronic signatures to cut down on bureaucracy;
- Clarification on paying for services in advance of delivery;
- Increase in the individual debt write off limit delegated to Chief Officers to cut down on bureaucracy and align LB Bromley to limits operated in some other local authorities;
- New appendix on the transparency requirements as set out in the Local Government Transparency Code that is attached as an appendix to the Financial Regulations.

3.5 Members should refer to the Financial Regulations with track changes for ease of reference which is attached as Appendix A, comment and approve the document.

3.6 Contract Procedure Rules (CPR)

3.7 The Contract procedure Rules have been amended to reflect the requirements of the 2015 Public Contract Regulations, which set out the statutory requirements for Public Sector Procurement with a value of £25,000 and above and the Local Government Transparency Code 2015. Increasingly the Governments agenda on openness and transparency requires that the authorities approach is modified and strengthened to reflect these changes, which are often prescribed within Statutory Regulations (such as the Public Contract Regulation 2015 (PCR2015)—and associated Statutory Guidance, issued by Crown Commercial, which regulate how the bulk of our third party engagement and contracting is required to be conducted.

3.8 A summary of the amendments and guidance is attached as Appendix B. The Contract Procedure Rules with the proposed changes incorporated are attached as Appendix C. Changes made to the CPR are highlighted for ease of reference and is attached as Appendix D.

3.9 Members should refer to the Contract Procedure Rules, comment and approve the document attached as Appendix C.

4. POLICY IMPLICATIONS

The Financial Regulations and Contract Procedure Rules are key documents which the Council requires adherence to as part of the constitution.

5. FINANCIAL IMPLICATIONS

Non adherence to these two key documents could result in value for money issue, losses, poor practice, fraud and malpractice. Compliance will promote strong controls, value for money and consistency adopted across the Authority.

6. LEGAL IMPLICATIONS

Breaches of both the requirements of both documents could lead to legal/statutory requirements not being met and leave the Authority at risk.

7. PERSONNEL IMPLICATIONS

Breaches of Financial Regulations and the Contract Procedure Rules could lead to officers facing disciplinary action.

Non-Applicable Sections:	None
Background Documents: (Access via Contact Officer)	Financial Regulations 2012/ Contract Procedure Rules 2012

LONDON BOROUGH OF BROMLEY

FINANCIAL REGULATIONS AND PROCEDURES NOVEMBER 2015

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FINANCIAL REGULATIONS 2012

1. STATUS OF FINANCIAL REGULATIONS

- 1.1 Financial Regulations provide the framework for managing the London Borough of Bromley's financial affairs and are deemed to be part of its constitution. They apply to every member and officer of the Authority and anyone acting on its behalf.
- 1.2 The summary Regulations identify the financial responsibilities of the Full Council, Executive and Policy Development and Scrutiny Committee members, the Chief Executive, the Monitoring Officer who is the **Director of Corporate Services**, **Director of Finance** and other Chief Officers. Executive Members and Chief Officers should maintain a written record where decision making has been delegated to members of their staff, including seconded staff. Where decisions have been delegated or devolved to other responsible officers, references to the Chief Officer in the Regulations should be read as referring to them.
- 1.3 More detailed responsibilities of the **Director of Finance** and the Chief Officers are included in Financial Procedures. These set out how the Regulations should be implemented and provide further guidance. The procedures contain both Regulations that must be adhered to and more general guidelines as well as examples to facilitate good financial control. All members and officers have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, properly authorised, provides value for money and achieves best value.
- 1.4 The Regulations shall not override any statutory provisions that apply. However, subject to the above, and with the agreement of the **Director of Corporate Services** and **Director of Finance**, the General Purposes and Licensing Committee may waive compliance with any of these Regulations in a particular case or in any particular class of case where applicable.

- 1.5 Each Chief Officer is responsible for ensuring that these Regulations are strictly adhered to, throughout the department under their control. Except where otherwise stated, all references in these Regulations to “Chief Officer” should be read as meaning heads of department but this includes all officers that are carrying out duties on behalf of a Chief Officer. Such delegation by Chief Officers should be formally approved and documented.
- 1.6 Where applicable consultants or agencies acting for the Council will be bound by these procedures and it should be a condition of their employment or engagement that they do so. The provisions of these procedures shall also apply to services carried out under agency arrangements for any other Authority or Organisation, except where otherwise required by that Authority.
- 1.7 Substantial breaches of Financial Regulations shall be reported to the **Director of Finance** and the Portfolio Holder by the relevant Chief Officer and may be treated as disciplinary offences. Where the **Director of Finance** considers it appropriate he will report to the next meeting of the Audit Sub-Committee any substantial breach of these Regulations that is identified.
The **Director of Finance** shall be responsible for ensuring the Council’s continuing compliance with the Accounts and Audit Regulations 2011 and all relevant Accounting Codes of Practice and Auditing Standards.
- 1.8 As such, no report having financial implications shall be submitted to Members without adequately timed prior consultation with the **Director of Finance**. Any such report that has financial implications shall be drafted in accordance with the “Code of Practice on Drafting Financial Implications in Committee Reports”.
- 1.9 These procedures shall be reviewed regularly by the **Director of Finance** but at least every 3 years. The General Purposes and Licensing Committee should approve all amendments and summaries of changes resulting from reviews of codes of best practice, procedures or explanatory notes. Relevant financial thresholds (e.g. write-offs, petty cash payments) should additionally be reviewed against inflation on an annual basis wherever possible.

- 1.10** As suggested good practice it is recommended that these Regulations be applied to transactions relating to any Amenity or Voluntary Funds handled by staff in the course of their duties.
- 1.11** The **Director of Finance** is responsible for maintaining a continuous review of the Financial Regulations and submitting any additions or changes necessary to full Council for approval. The **Director of Finance** is also responsible for reporting, where appropriate, breaches of Financial Regulations to the Council and/or to the Executive.
- 1.12** Chief Officers are responsible for ensuring that all staff in their departments are made aware of the existence and content of the Authority's Financial Regulations and other internal regulatory documents, and that they comply with them. They must also ensure that either hard or electronic copies are available for reference within their departments.
- 1.13** Members, officers and others acting on behalf of the Authority are required to follow Financial Regulations including the Contract Procedure Rules. The **Director of Finance** is responsible for issuing advice and guidance to underpin this and members, officers and others acting on behalf of the Authority must have regard to such advice.

2. STRATEGIC RESPONSIBILITIES

2.1 Financial Management

2.1.1 Section 151 of the Local Government Act 1972 states that each Local Authority “shall make arrangements for the proper administration of their financial affairs and shall secure that one of their officers has responsibility for the administration of those affairs”. Full Council approves those arrangements taking into account the views of the General Purposes and Licensing Committee who will also, along with the Audit Sub-Committee, carry a monitoring brief to ensure the arrangements remain effective and are applied appropriately. The said “arrangements” include the Council’s Financial Regulations, Contract Procedure Rules and the Scheme of Delegation (so far as it relates to financial matters). In approving those arrangements, Members are bound by the general principles of administrative law. The Council’s appointed officer under Section 151 is the **Director of Finance. In performing his functions as the appointed officer, he shall seek to ensure that the management of the Council’s financial affairs accord with the arrangements approved by Council subject to his overarching statutory duties including those referred to at paragraphs 2.5.7-10 below. The Section 151 officer can be held accountable by the electorate to whom he owes a fiduciary duty to carry out those duties effectively and these cannot be overridden by the Council.**

2.1.2. Financial management covers all financial accountabilities in relation to the running of the Authority, including the budget and policy framework.

2.2 The Full Council

2.2.1 The full Council is responsible for adopting the Authority's constitution and members' code of conduct and for approving the budget and policy framework within which the Executive operates.

2.3 The Executive

2.3.1 The Executive is responsible for proposing the budget and policy framework to the full council, and for discharging Executive functions in accordance with the policy framework and budget.

2.3.2 Executive decisions can be delegated to a committee of the Executive, an individual Executive member or an officer. Executive members must consult with relevant officers before taking a decision within his or her delegation, the member must take account of legal and financial liabilities and risk management issues that may arise from the decision.

2.4 Committees

2.4.1 Policy Development and Scrutiny Committees: There are six Policy Development and Scrutiny (PDS) Committees who have a major role in policy development and scrutinising the decisions of the Executive. They have no decision making powers but make reports and recommendations which advise the Executive and the Council as a whole on its policies, budget and service delivery. PDS Committees also monitor the decisions of the Executive and can challenge or 'call-in' a decision that has been made by the Executive.

2.4.2 General Purposes and Licensing Committee: Legislation prevents all the Council's powers being exercised by the Executive so the General Purposes and Licensing Committee deals with Non Executive functions, quasi-legal issues such as licensing and with staffing and audit matters. In particular the Audit Sub Committee deals with Financial Regulations as well as Internal and External Audit.

2.4.3 The Standards Committee promotes and maintains a high standard of conduct by Bromley councillors and co-opted members. It has a membership of seven, four of whom are persons independent of the Council. It is responsible for advising the Council on the adoption and revision of the members' code of conduct, and for monitoring the operation of the code.

2.5 The Statutory Officers

2.5.1 Chief Executive:

The Chief Executive is responsible for the corporate and overall strategic management of the Authority as a whole. He or she must report to and provide information for the Executive, the full Council, the Overview and Scrutiny committees and other committees. He or she is responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the Authority.

2.5.2 The **Director of Corporate Services as:**

The Monitoring Officer

The Monitoring Officer is responsible for promoting and maintaining high standards of financial conduct and therefore provides support to the Standards Committee. The Monitoring Officer is also responsible for reporting any actual or potential breaches of the law or maladministration to the full Council and/or to the Executive, and for ensuring that procedures for recording and reporting key decisions are operating effectively. The Monitoring Officer is responsible for compliance with the Constitution

2.5.3 The Monitoring Officer must ensure that Executive decisions and the reasons for them are made public. He or she must also ensure that members are aware of decisions made by the Executive and of those made by officers who have delegated Executive responsibility.

2.5.4 The Monitoring Officer is responsible for advising all members and officers about who has authority to take a particular decision.

2.5.5 The Monitoring Officer is responsible for advising the Executive and/or full Council about whether a decision is likely to be considered contrary to, or not wholly in accordance with, the Authority's budget and policy framework.

2.5.6 The Monitoring Officer, together with the **Director of Finance, is responsible for advising the Executive or full Council about**

whether a decision is likely to be considered contrary to, or not wholly in accordance with the budget. Actions that may be contrary to the budget include:

- Initiating a new policy, which has budgetary implications.
- Committing expenditure in future years above the approved budget level.
- Interdepartmental transfers above virement limits.
- Causing total net expenditure to increase beyond the approved budget.

2.5.7 Director of Finance:

The statutory duties arise from (inter alia):

- Section 151 of the Local Government Act 1972.
- The Local Government Finance Act 1988.
- The Local Government and Housing Act 1989.
- The Local Government Acts 2000 and 2003.
- The Accounts and Audit Regulations 2011.
- The Local Government Pension Scheme Regulations

2.5.8 The Director of Finance is responsible for:

- The proper administration of the Authority's financial affairs.
- Setting and monitoring compliance with financial management standards.
- Advising on the corporate financial position and on the key financial controls necessary to secure sound financial management.
- Providing financial information.
- Preparing the revenue budget and capital programme.
- Treasury management and banking.

2.5.9 Section 114 of the Local Government Finance Act 1988 requires the Director of Finance to report to the full Council, Executive and External Audit, if the Authority or one of its officers:

- Has made, or is about to make, a decision which involves incurring unlawful expenditure.

- Has taken, or is about to take, an unlawful action which has resulted or would result in a loss or deficiency to the Authority.
- Is about to make an unlawful entry in the Authority's accounts.

2.5.10 Section 114 of the 1988 Act also requires:

- The **Director of Finance** to nominate a properly qualified member of staff to deputise should he or she be unable to perform the duties under section 114 personally.
- The Authority to provide the **Director of Finance** with sufficient staff, accommodation and other resources, including legal advice where this is necessary, to carry out the duties under section 114.

2.6 Chief Officers

2.6.1 Chief Officers are responsible for ensuring that members are advised of the financial implications of all proposals and that the financial implications have been agreed by the **Director of Finance.**

2.6.2 It is the responsibility of Chief Officers to consult with the **Director of Finance and seek approval on any matter liable to affect the Authority's finances materially, before any commitments are incurred.**

2.7 Other Financial Accountabilities

2.7.1 Virement:

The full Council is responsible for agreeing procedures for virement of expenditure between budget headings.

2.7.2 Chief Officers are responsible for agreeing in-year virements within delegated limits, in consultation with the **Director of Finance where required. They must notify the **Director of Finance** of all virements over £50,000. (The Scheme of Virement sets out the rules and the levels of delegation.)**

2.7.3 Treatment of year-end balances:

The full Council is responsible for agreeing guidelines for the carrying forward of under and overspendings on budget headings.

2.7.4 Accounting policies:

The **Director of Finance** is responsible for setting accounting policies and ensuring that they are applied consistently.

2.7.5 Accounting records and returns:

The **Director of Finance** is responsible for determining the accounting procedures and records for the Authority.

2.7.6 Annual statement of accounts:

The **Director of Finance** is responsible for ensuring that the annual statement of accounts is prepared in accordance with the Code of Practice on Local Authority Accounting in the United Kingdom: A statement of Recommended Practice (CIPFA/LASAAC).

2.7.7 The General Purposes and Licensing Committee is responsible for approving the annual statement of accounts.

2.7.8 Further details are contained in the detailed budget book.

3. FINANCIAL PLANNING

3.1 Introduction

- 3.1.1 The full Council is responsible for approving the Authority's budget and policy framework proposed by the Executive. In terms of financial planning, the key elements are:**

Corporate plans

The budget

Capital programme.

3.2 Policy Framework

- 3.2.1 The full Council is responsible for approving the budget and policy framework. The policy framework comprises the plans and strategies set out in Article 4 of Para 4.02 of the constitution.**

- 3.2.2 The full Council is responsible for setting the level at which the Executive may reallocate budget funds from one service to another. The Executive is responsible for taking in-year decisions on resources and priorities in order to deliver the budget policy framework within the financial limits set by the Council.**

3.2.3 Preparation of Corporate Plans:

The Chief Executive is responsible for proposing corporate plans to the Executive for consideration before their submission to the full Council for approval.

3.2.4 Preparation of the Council's Performance Plan:

The Chief Executive is responsible for proposing the overall performance plan to the Executive for consideration before its submission to the full council for approval.

3.3 Revenue and Capital Budgeting

3.3.1 Budget Format:

The general format of the budget will be approved by the full Council and proposed by the Executive on the advice of the **Director of Corporate Services. The draft budget should include**

allocation to different services and projects, proposed taxation levels and contingency funds.

3.3.2 Budget Preparation:

The **Director of Finance** is responsible for ensuring that a revenue budget is prepared on an annual basis and a financial forecast on a four yearly basis for consideration by the Executive, before submission to the full Council. The full Council may amend the budget or ask the Executive to reconsider it before approving it.

3.3.3 The Executive is responsible for issuing guidance on the general content of the budget in consultation with the **Director of Finance as soon as possible following approval by the full Council.**

3.3.4 It is the responsibility of Chief Officers to ensure that budget estimates reflecting agreed service plans are submitted to the Executive and that these estimates are prepared in line with guidance issued by the Executive and the **Director of Finance.**

3.3.5 Budget Monitoring and Control:

The **Director of Finance** is responsible for providing appropriate financial information to enable budgets to be monitored effectively. He or she must monitor and control overall expenditure and income against budget allocations and report to the Executive on the Council's overall position on a regular basis.

3.3.6 It is the responsibility of Chief Officers to control income and expenditure within their area and to monitor performance, taking account of financial information provided by the **Director of Finance. They should report on variances within their own areas and take necessary action to avoid exceeding their budget allocation and alert the **Director of Finance** to any problems.**

3.3.7 Resource Allocation:

The **Director of Finance** is responsible for developing and maintaining a resource allocation process that ensures due consideration of the full Council's policy framework.

3.3.8 Preparation of the Capital Programme

The **Director of Finance** is responsible for ensuring that a capital programme is prepared on an annual basis for consideration by the Executive before submission to the full Council.

3.3.9 Guidelines

Guidelines on budget preparation are issued to members and Chief Officers by the Executive following agreement with the **Director of Finance**. The guidelines will take account of:

- Legal requirements
- Medium-term planning prospects
- Corporate plans
- Available resources
- Spending pressures
- Best value and other relevant government guidelines
- Other internal policy documents
- Cross-cutting issues (where relevant).

3.3.10 Maintenance of Reserves:

It is the responsibility of the **Director of Finance** to advise the Executive and/or the full Council on prudent levels of reserves for the Authority.

4 RISK MANAGEMENT AND CONTROL OF RESOURCES

4.1 Introduction

4.1.1 It is essential that robust, integrated systems are developed and maintained for identifying and evaluating all significant operational risks to the Authority. This should include the proactive participation of all those associated with planning and delivering services.

4.2 Risk Management

4.2.1 The Executive is responsible for approving the Authority's risk management policy statement and strategy and for reviewing the effectiveness of risk management. The Executive is responsible for ensuring that proper insurance exists where appropriate.

4.2.2 The **Director of Corporate Services is responsible for preparing the Authority's risk management policy statement, for promoting it throughout the Authority and for advising the Executive on proper insurance cover where appropriate.**

4.3 Internal Control

4.3.1 Internal control refers to the systems of control devised by management to help ensure the Authority's objectives are achieved in a manner that promotes economical, efficient and effective use of resources and that the Authority's assets and interests are safeguarded.

4.3.2 The **Director of Finance is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and Regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently, and in accordance with the statutory and other provisions that govern their use.**

4.3.3 It is the responsibility of Chief Officers to establish sound arrangement, for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement,

economy, efficiency and effectiveness and for achieving their financial performance targets.

4.4 Audit Requirements

4.4.1 The Accounts and Audit Regulations 2011 require every local Authority to maintain an adequate and effective Internal Audit.

4.4.2 The responsible body, currently the **Public Sector Audit Appointments Limited is responsible for appointing External Auditors to each local Authority. The basic duties of the External Auditor are governed by **section 20** of the **Local Audit and Accountability Act 2014**.**

4.4.3 The Authority may, from time to time, be subject to audit, inspection or investigation by other external bodies such as HM Customs and Excise and the Inland Revenue, who have statutory rights of access.

4.5 Preventing Fraud and Corruption

4.5.1 The Head of Audit is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.

4.6 Assets

4.6.1 Chief Officers should ensure that records and assets are properly maintained and securely held. They should also ensure that contingency plans for the security of assets and continuity of service in the event of disaster or system failure are in place.

4.7 Treasury Management and Banking

4.7.1 The Authority has adopted CIPFA's Code of Practice for Treasury Management in the Public Services.

4.7.2 The full Council is responsible for approving the Treasury Management Policy Statement. The Executive proposes the policy statement to the full Council. The **Director of Finance has delegated responsibility for implementing and monitoring the policy statement.**

4.7.3 All money in the hands of the Authority is controlled by the officer designated for the purposes of section 151 of the Local

Government Act 1972, referred to in the code as the **Director of Finance**.

4.7.4 The **Director of Finance** is responsible for reporting to the Executive a proposed treasury management strategy for the coming financial year at or before the start of each financial year.

4.7.5 All Executive decisions on borrowing, investment or financing shall be delegated to the **Director of Finance**, who is required to act in accordance with CIPFA's Code of Practice for Treasury Management in the Public Services.

4.7.6 The **Director of Finance** is responsible for reporting to the Executive not less than four times in each financial year on the activities of the treasury management operation and on the exercise of his or her delegated treasury management powers. One such report will comprise an annual report on treasury management for presentation by 30 September of the succeeding financial year.

4.8 Staffing

4.8.1 The full Council is responsible for determining how officer support for Executive and Non-Executive roles within the Authority will be organised.

4.8.2 The Chief Executive is responsible for providing overall management to staff. He or she will also be responsible for ensuring that there is proper use of the evaluation or other agreed systems for determining the remuneration of a job.

4.8.3 Chief Officers are responsible for controlling total staff numbers by:

- Advising the Executive on the budget necessary in any given year to cover estimated staffing levels.
- Adjusting the staffing to a level that can be funded within approved budget provision, varying the provision as necessary within that constraint in order to meet changing operational needs.

5 SYSTEMS AND PROCEDURES

5.1 Introduction

5.1.1 Sound systems and procedures are essential to an effective framework of financial accountability and control.

5.2 General

5.2.1 The **Director of Finance is responsible for the operation of the Authority's accounting systems, the form of accounts and the supporting financial records. Any changes made by Chief Officers to the existing financial systems or the establishment of new systems must be approved by the **Director of Finance**. However, Chief Officers are responsible for the proper operation of financial processes in their own departments.**

5.2.2 Any changes to agreed procedures made by Chief Officers to meet their own specific service needs should be agreed with the **Director of Finance in advance.**

5.2.3 Chief Officers should ensure that their staff receive relevant financial training.

5.2.4 Chief Officers must ensure that, where appropriate, computer and other systems are registered in accordance with data protection legislation. Chief Officers must ensure that staff are aware of their responsibilities under freedom of information legislation.

5.3 Income and Expenditure / Scheme of Delegation

5.3.1 It is the responsibility of Chief Officers to ensure that a proper scheme of delegation has been established within their area and is operating effectively. The scheme of delegation should identify staff authorised to act on the Chief Officer's behalf, or on behalf of the Executive, in respect of payments, income collection and placing orders, together with the limits of their authority. The Executive is responsible for approving procedures for writing-off debts as part of the overall control framework of accountability and control.

5.4 Payments to Employees and Members

5.4.1 The **Director of Finance is responsible for the payments of salaries and wages to all staff, including payments for overtime, and for payment of allowances to Members. - see Salaries, Wages and Pensions.**

5.5 Taxation

5.5.1 The **Director of Finance is responsible for advising Chief Officers, in the light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect the Authority.**

5.5.2 The **Director of Finance is responsible for maintaining the Authority's tax records, making all tax payments, receiving tax credits and submitting tax returns by their due date as appropriate.**

5.6 Trading Accounts/Business Units

5.6.1 It is the responsibility of the **Director of Finance to advise on the establishment and operation of trading accounts and business units.**

6 EXTERNAL ARRANGEMENTS

6.1 Introduction

6.1.1 The **Director of Finance** provides a distinctive leadership role for the community and brings together the contributions of the various stakeholders. It must also act to achieve the promotion or improvement of the economic, social or environmental well being of its area.

6.2 Partnerships

6.2.1 The Executive is the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.

6.2.2 The Executive can delegate functions, including those relating to partnerships, to Chief Officers. These are set out in the scheme of delegation that forms part of the Authority's constitution. Where functions are delegated, the Executive remains accountable for them to the full Council.

6.2.3 Representation of the Authority on partnership and external bodies will be decided in accordance with the scheme of delegation.

6.2.4 The **Director of Finance** must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory. He or she must also consider the overall corporate governance arrangements and legal issues when arranging contracts with external bodies. He or she in conjunction with the appropriate Chief Officer must ensure that the risks have been fully appraised before agreements are entered into with external bodies.

6.2.5 Chief Officers are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies.

6.3 External funding

6.3.1 The **Director of Finance is responsible for ensuring that all funding notified by external bodies is received and properly recorded in the Authority's accounts.**

6.4 Work for third parties

6.4.1 The Executive is responsible for approving the contractual arrangements for any work for third parties or external bodies unless this is delegated to Chief Officers.

SCHEME OF VIREMENT

(Not applicable to schools and colleges, who have separate Regulations)

- 1. The scheme of virement is intended to enable the Executive, Chief Officers and their staff to manage budgets with a degree of flexibility within the overall budget and policy framework determined by the full Council, and therefore to optimise the use of resources.**
- 2. The overall revenue budget is drawn up by the Executive and approved by the full Council. Chief Officers and budget managers are therefore authorised to incur expenditure in accordance with the estimates that make up the budget. The rules below cover virement; that is, switching resources between approved heads of expenditure. For the purpose of this scheme, a budget head is considered to be a cost centre and a division of service is a mandatory division of service as defined by CIPFA's Best Value Accounting Code of Practice service expenditure analysis.**
- 3. Virement does not create additional overall budget liability. Chief Officers are expected to exercise their discretion in managing their budgets responsibly and prudently. For example, they should not support recurring expenditure from one-off sources of savings or additional income, or create future commitments, including full-year effects of decisions made part way through a year, for which they have not identified future resources. Chief Officers must plan to fund such commitments from within their own budgets.**

4. Definition of Terms

“Main Account” - refers to the total budget for employees, running expenses, individual special schemes, financing charges, recharges or income within a single service heading (main code).

“Contingent Budget” - refers to those provisions designated by the **Director of Finance which are mainly outside the direct control of the Authority.**

5. Virement Arrangements

- a) No virement is allowed from or to any of the following budgets without approval of the Executive**

Financing charges

Rates and other taxes

Recharges

Insurances

Contingent budgets (as determined by the **Director of Finance in consultation with the appropriate Chief Officer).**

- b) Portfolio Holder agreement will be required for proposals which:**

- **transfer funds for the creation of new staff posts**

- c) Executive approval will be required for proposals which:**

**would cause the total budget head to be exceeded in the current year or increase the commitment in future years
are to be financed from savings arising from competitive tendering.**

- d) Virement will be allowed within one year between other main accounts as follows:**

I. on the approval of the appropriate Chief Officer for sums up to £50,000

II. on the approval of the appropriate Portfolio Holder for sums in excess of £50,000 and up to £250,000

III. on the approval of the full Executive for sums in excess of £250,000 and up to £1,000,000

IV. on the approval of the full Council for sums above £1,000,000.

- e) Virements actioned by a Chief Officer shall be included on the next quarterly monitoring report to the appropriate Executive meeting and notified to the **Director of Finance**.

6. Maintenance of Buildings

Building Maintenance funding is now split between “landlord and tenant” responsibilities.

7. Notification to **Director of Finance**

Please ensure that your Head of Finance is informed of all virement approvals granted.

Supplementary Estimates

The Executive can agree a supplementary estimate for an individual item up to £1m as long as the full year effect does not exceed £1m. All larger items are to be approved by Full Council. The Executive cannot agree a supplementary estimate if this has the effect of reducing General Fund “Not Earmarked” Reserves below £10m (based upon the latest projections of expenditure).

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1. GENERAL

Contact: Internal Audit

- 1.1 These procedures outline the approved system of corporate financial control to secure the proper administration of the Council's financial affairs, as required by Section 151 of the Local Government Act 1972 and must be adhered to by all.
- 1.2 The **Director of Finance** will add, amend or delete these procedures to reflect the overall needs of Departments and changing circumstances such as, price increases affecting financial thresholds.
- 1.3 Each Chief Officer is responsible for ensuring that these procedures are strictly adhered to, throughout the department under their control.

Except where otherwise stated, all references in these Regulations to "Chief Officer" should be read as meaning heads of department but this includes all officers that are carrying out duties on behalf of a Chief Officer. Such delegation by Chief Officers should be formally approved and documented.
- 1.4 Each Chief Officer should ensure that all staff in their department are made aware of and fully understand the requirements and implications of Financial Procedures as far as they relate to their professional duties and responsibilities. However, this does not remove the requirement for all staff to make themselves conversant with these procedures and comply with their requirements.
- 1.5 Consultants or agencies acting for the Council will be bound by these procedures and it should be a condition of their employment or engagement that they do so. The provisions of these procedures shall also apply to services carried out under agency arrangements for and other Authority or organisation, except where otherwise required by that Authority.
- 1.6 The **Director of Finance** is ultimately responsible for interpreting these Procedures and determining what is considered "substantial", "significant", "adequate", "prompt" etc. as required by these

Procedures. Contact details are given at the start of each procedure to facilitate the provision of advice from **Director of Finance**'s Department. However, in the majority of day-to-day cases it is envisaged that officers will seek advice from their Departmental Head of Finance.

- 1.7 Substantial breaches of the procedures shall be reported to the **Director of Finance** and the Portfolio Holder by the relevant Chief Officer and may be treated as disciplinary offences. Where the **Director of Finance** considers it appropriate he will report to the next meeting of the Audit Sub-Committee any substantial breach of these Regulations that is identified.
- 1.8 The **Director of Finance** shall be responsible for ensuring the Council's continuing compliance with the Accounts and Audit Regulations 2011 and all relevant Accounting Codes of Practice and Auditing Standards.
- 1.9 As such, no report having financial implications shall be submitted to Members without adequately timed prior consultation with the **Director of Finance**. Any such report that has financial implications shall be drafted in accordance with the "Code of Practice on Drafting Financial Implications in Committee Reports".
- 1.10 These procedures shall be reviewed regularly by the **Director of Finance** but at least every 3 years. The General Purposes and Licensing Committee should approve all amendments and summaries of changes resulting from reviews of codes of best practice, procedures or explanatory notes. Relevant financial thresholds (e.g. write-offs, petty cash payments) should additionally be reviewed against inflation on a regular basis.
- 1.11 As suggested good practice it is recommended that these Procedures be applied to transactions relating to any Amenity or Voluntary Funds handled by staff in the course of their duties.
- 1.12 The accounting policies are set out in the statement of accounts, which is prepared at 31st March each year, and covers such items as:
 - Separate accounts for capital and revenue transactions

- The basis on which debtors and creditors at year end are included in the accounts
- Details on substantial provisions and reserves
- Fixed assets
- Depreciation
- Capital charges
- Work in progress
- Stocks and stores
- Deferred charges
- Accounting for value added tax
- Government grants
- Leasing
- Pensions

1.13 Maintaining proper accounting records is one of the ways in which the Authority discharges its responsibility for stewardship of public resources. The Authority has a statutory responsibility to prepare its annual accounts to present fairly its operations during the year. These are subject to External Audit. This audit provides assurance that the accounts are prepared properly, that proper accounting practices have been followed and that quality arrangements have been made for securing economy, efficiency

2. PREPARATION OF BUDGETS

Contacts: Heads of Finance, Technical (Capital Programme)

Revenue Budget

- 2.1 Prior to the start of the revenue budget process, Chief Officers will submit to the **Director of Finance**, in accordance with a timetable laid down by the **Director of Finance**, projections of anticipated real changes (including statutory and demographic factors) over a predetermined period for the services that they manage, this will be for at least three years. Chief Officers will also submit to the **Director of Finance** appropriate supporting information and documentation as specified by him or her. The **Director of Finance** will use this information to compile a forecast of the Council's revenue expenditure and income for consideration by the Executive.
- 2.2 Prior to each financial year, in accordance with a timetable laid down by the **Director of Finance**, draft estimates of income and expenditure for the ensuing year will be prepared jointly by each Chief Officer for the Service(s) they manage and the **Director of Finance**, for presentation to the Executive.
- 2.3 The **Director of Finance** shall then ensure that the summarised budgets for all Departments are presented, together with an estimate of the sums necessary to meet anticipated inflation and other specific items for the following financial year to the Executive to allow them to recommend a levy to the Council before the end of the preceding February.

Capital Programme

- 2.4 Capital programme procedures must be followed in accordance with the manual of Capital Programme Procedures.
- 2.5 The **Director of Finance** is responsible for ensuring that the programme is prepared on an annual basis. This programme will be considered by the Executive before submission to the Full Council.

3. BUDGETARY CONTROL

Contact: Heads of Finance

- 3.1 The format of the budget determines the level of detail to which financial control and management will be exercised. The format shapes how the rules around virement operate, the operation of cash limits, and sets the level at which funds may be reallocated within budgets
- 3.2 Budget management ensures that once the budget has been approved by Full Council, resources allocated are used for their intended purposes and are properly accounted for. Budgetary control is a continuous process, enabling the Authority to review and adjust its budget targets during the financial year. It also calls to account managers responsible for defined elements of the budget.
- 3.3 By continuously identifying and explaining variances against budgetary targets, the Authority can identify changes in trends and resource requirements at the earliest opportunity. The Authority itself operates within an annual cash limit, approved when setting the overall budget. To ensure that the Authority in total does not overspend, each service is required to manage its own expenditure within the cash-limited budget allocated to it.
- 3.4 Chief Officers are responsible for the control of their department's expenditure and income in accordance with the Council's approved "Principles and Budgetary Control Procedures" (see Procedures).
- 3.5 No officer shall incur expenditure outside the limits of the annual revenue budget or the approved capital programme, as amended from time to time by the Executive, except as provided for by the "Principles and Budgetary Control Procedures."
- 3.6 Even if there is insufficient budgetary provision a Chief Officer may incur expenditure that is necessary to carry out any repair, replacement or other work which is of such extreme urgency that it must be done immediately. When such an occasion arises, the Chief Officer shall advise the **Director of Finance** and report to the Executive. In the event of a major environmental disaster or a full scale emergency this can be done retrospectively.
- 3.7 The relevant Chief Officer must consult the **Director of Finance** on any matter within their control that could materially affect the financial

position of the Council.

- 3.8 The Authority is a complex organisation responsible for delivering a wide variety of services. It needs to plan effectively and to develop systems to enable scarce resources to be allocated in accordance with carefully weighed priorities. The budget is the financial expression of the Authority's plans and policies.
- 3.9 The revenue budget must be constructed so as to ensure that resource allocation properly reflects the service plans and priorities of the Full Council. Budgets (spending plans) are needed so that the Authority can plan, authorise, monitor and control the way money is allocated and spent. It is illegal for an Authority to budget for a deficit.
- 3.10 Medium-term planning (or a three to five year planning system) involves a planning cycle in which managers develop their own plans. As each year passes, another future year will be added to the medium term plan. This ensures that the Authority is always preparing for events in advance.
- 3.11 A report on the final accounts will be submitted by the **Director of Finance** to the General Purposes and Licensing Committee as soon as practical after the end of each financial year. The final accounts will need to be approved by the Council annually.
- 3.12 The Local Authority must decide the level of general reserves it wishes to maintain before it can decide the level of council tax. Reserves are maintained as a matter of prudence. They enable the Authority to provide for unexpected events and thereby protect it from overspending, should such events occur. Reserves for specific purposes may also be maintained, such as the purchase or renewal of capital items.
- 3.13 Capital expenditure (including use of capital grants and PFI/PPP projects) involves acquiring or enhancing fixed assets with a long term value to the Authority, such as land, buildings, and major items of plant, equipment or vehicles. Capital assets shape the way services are delivered in the long term and create financial commitments for the future in the form of financing costs and revenue running costs.

- 3.14 The Government places strict controls on the financing capacity of the Authority. This means that capital expenditure should form part of an investment strategy and should be carefully prioritised in order to maximise the benefit of scarce resources.
- 3.15 Chief Officers must comply with guidance concerning capital schemes and controls issued by the **Director of Finance**.

4. ACCOUNTING ARRANGEMENTS

Contact: Heads of Finance/ Internal Audit

- 4.1 Chief Officers and Heads of Finance are responsible for maintaining all accounting and financial records for systems under their control, including automated or computerised systems, in a form approved by the **Director of Finance**.
- 4.2 The Accounts & Audit Regulations 2011 require that the Authority's accounting system and the form of their accounts and supporting accounting records shall be determined by the responsible financial officer.
- 4.3 Where new financial systems are proposed or significant amendments are planned to existing financial systems, the **Director of Finance's** advice shall be sought. No changes to any accounting procedures or form of accounts shall be made without the approval of the **Director of Finance**.
- 4.4 Each Chief Officer shall, in consultation with the **Director of Finance**, prepare such financial instructions as are considered necessary for the proper financial management, operation and control of the services for which they are responsible, in accordance with Financial Regulations and procedures.
- 4.5 Such financial instructions shall, in accordance with the Accounts & Audit Regulations 2011, contain measures to:
- Ensure that the financial transactions of the Authority are recorded as soon as reasonably practical and as accurately as reasonably possible;
 - Enable the prevention and detection of inaccuracies and fraud; and
 - Facilitate the ability to reconstitute any lost records.

Separation of Duties

4.6 Each Chief Officer is responsible for ensuring, so far as is reasonably practicable, that there is adequate internal separation of duties in their department in relation to significant financial transactions. For example:

- staff responsible for calculating, checking and recording monies due to or due to be paid by the Council shall not receive or make such payments;
- staff examining and checking the accounts of cash transactions shall not carry out (i.e. process) such transactions;
- Staff who sign authorise orders, confirm receipt of goods or services, and certify payments shall not perform more than one function for the same transaction.

Authorised Officers

4.7 Each Chief Officer, in consultation with the Departmental Head of Finance, shall determine which officers in their department are Authorising Officers for all main financial transactions on their behalf. These should as a minimum include:

- orders for goods, works or services;
- payment of accounts;
- travel, subsistence and special assistance claims;
- payroll documents (e.g. overtime claims, timesheets)
- recommendations for write-off

4.8 The appropriate Chief Officer shall supply up to date details of all authorised officers together with copies of their specimen signatures or authorisation evidence, and any financial limits that apply to Accounts Payable. Additionally, copies of these lists and specimen signatures or evidence of authorisation shall be provided to the **Director of Finance** where prime documents are processed under procedures within his or her control (e.g. recommendations to the **Director of Finance** to write off bad debts).

i-Procurement

4.9 All orders for Goods, works and services should be placed via the i-Procurement system unless the following apply:

- The Order originates from an established finance element of a service specific system (e.g. Confirm, Care First), Or
- Where agreed by the **Director of Finance**

4.10 The following role definitions will apply when orders are raised and paid on the i-proc system:-

a) *Requisitioning Officer Role:* an officer authorised by their Chief Officer to raise order requisitions on the i-Proc system on behalf of the Council. They would identify the potential supplier, check budget provision is available and best value is obtained, either by using the “Lead Officer” recommendation or their own knowledge and experience, and in accordance with section 6 and Contract Procedures.

b) *Receipting of goods Role:* an officer who confirms on the i-Proc system that goods/services have been received. The officer fulfilling this role must have first hand knowledge that the goods have been received and will be held accountable for funds subsequently released where the corresponding goods have not been received. This role can be completed by the requisitioning officer or an individual other than the approving officer.

c) *Approving Officer Role:* an officer other than a) designated by their Chief Officer to authorise individual orders in accordance with the approval hierarchy. In approving an order the approving officer is confirming that all relevant Financial Regulations and procedures have been complied with and that there is adequate budgetary provision to cover the resulting expenditure.

Where the received invoice legitimately exceeds the order amount by more than 2% by value*, an approving officer must approve an amendment to the order (submitted by the requisitioning officer of the original order) which must also meet the above requirements.

*The Tolerance for print orders is 10% by price or quantity.

- 4.11** The following role definitions will normally apply for non i-Proc processes (notwithstanding that different terms may be in common day to day use within departments):

A) Initiating Officer Role: an officer authorised by their Chief Officer to authorise official orders on behalf of the Council. They would normally identify the potential supplier, ensure budget provision is available and best value is obtained, either by using the “Lead Officer” recommendation or their own knowledge and experience, and in accordance with Contract Procedures.

Departments may of course prefer that one officer completes an order requisition form for authorisation by a manager but this is not a requirement of Financial Procedures (see Section 6). In such cases, it may be that the manager takes responsibility for checking budget provision and demonstrating best value. However, the manager who authorises the order is deemed the Initiating Officer and he/she therefore cannot then receive the goods, or authorise or certify the invoice.

B) Authorising Officer Role: an officer, other than (a) or (c), who passes an invoice for certification, having confirmed receipt of goods or services and checked arithmetical accuracy, quantities, prices etc. to the original order. This officer may in practice be the person who requested the goods / services as they will often be best placed to confirm the order has been delivered accurately.

C) Certifying Officer Role: an officer other than (a) or (b), designated by their Chief Officer to certify individual invoices for payment. In certifying an invoice for payment the Certifying Officer is indicating that all relevant Financial Regulations and procedures have been complied with and evidenced in paying the invoice, prior to input and certification onto Accounts Payable.

Write-Offs

- 4.12 No uncollectable amounts, including bad debts, should be written off except with the approval of the **Director of Finance**, whether exercised personally or properly delegated by him to a member of his staff for this purpose.
- 4.13 Further guidance in this area is given in Income Collection and Write off procedures in Section 12 and the main Financial Procedures.

Retention of Documents

- 4.14 Chief Officers shall be responsible for ensuring that the accounts and supporting records of the Authority are maintained securely in accordance with proper practices and for the safe custody and proper use of controlled stationery (i.e. having an implicit monetary value) within their department.
- 4.15 Chief Officers shall also ensure that accounting records are retained in safe custody for such period as shall be determined by the **Director of Finance** and no voucher or other document shall be destroyed before the specified period has elapsed. Details of the minimum periods for which certain records are to be retained (usually six years), and guidance as to how and when document imaging is permissible (usually once the Council's accounts have been certified by the External Auditor), are provided in the retention of documents procedures.
- 4.16 The ultimate disposal of financial records should be arranged by each Chief Officer as "confidential waste" and on no account should sensitive information be disposed of through the normal waste collection process.

External Arrangements

Partnerships

- 4.17 The **Director of Finance** must ensure that the accounting arrangements to be adopted relating to partnerships and joint ventures are satisfactory and must also consider the overall corporate governance arrangements in respect of financial issues when arranging contracts

with external bodies. The **Director of Finance** must also ensure that the financial risks have been fully appraised before agreements are entered into with external bodies.

- 4.18 Chief Officers are responsible for ensuring that appropriate approvals are obtained before any negotiations are concluded in relation to work with external bodies.
- 4.19 The Relevant Portfolio Holder is responsible for approving the contractual arrangements for any work for third parties or external bodies where the contract value exceeds £500,000 and is within the Council budget.

External funding

- 4.20 The **Director of Finance** is responsible for identifying all the financial implications, including long term issues, resulting from entering into agreements with external bodies. He/she is also responsible for ensuring that all funding notified by external bodies is received and properly recorded.

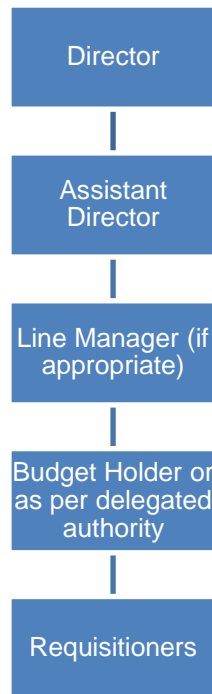
5. AUTHORISATION LIMITS

Contact **Director of Finance** / Internal Audit

5.1 Authorisation Limits for placing of orders and payments

- 5.2 It is the responsibility of Chief Officers to ensure that a proper scheme of delegation has been established within their area and is operating effectively.
- 5.3 The scheme of delegation should identify staff authorised to act on the Chief Officer's behalf, or on behalf of the Executive in respect of payments, placing orders, together with the limits of their authority.
- 5.4 Any delegated authority under the scheme of delegation authorised by a Chief Officer must be in accordance with the Council's Contract Procedure Rules.
- 5.5 The approval limits (other than listed exemptions) are shown below and these apply to any orders placed via i-proc and any certification through AP1 or 2 after Contract Procedures have been complied with.

Amount of order or payment	Procurement Requirements	Director	Assistant Director	Line Manager (if appropriate)	Budget Holder or as per delegated authority
£1m and above	EU process and Executive approval	✓			
£500,000 up to £999,999	EU process and Portfolio Holder approval	✓			
£250,000 up to £499,999	EU process	✓			
£100,000 up to £249,999	Tendering Process - EU process for EU limit and above	✓	✓		
£50,000 up to £99,999	Tendering Process	✓	✓	✓	✓
£5,000 up to £49,999	3 written quotes	✓	✓	✓	✓
Up to £4,999	1 oral quote (confirmed in writing if exceeds £1,000)	✓	✓	✓	✓



5.6 A requisitioner will be able to raise requisitions on i-proc but they will not be able to approve orders. If the value of the requisition is less than £5,000 the requisition will be automatically routed for approval and order generation subject to the departments scheme of delegation. If the requisition value exceeds an approver's limit the requisition will be routed straight to the 1st appropriate management level above for approval.

5.7 Listed Exemptions

5.8 However there are other payments / actions that require authorisation which Chief Officers should include within their Scheme of Delegation. A list of the exceptions from i-proc and AP1/2 certification limits are detailed below:-

1. Travel Expenses and Petty Cash (inc signature on cheque book) – *Budget Holder, Line Manager, Assistant Director or Director*
2. Timesheets Agency - Staff *Budget Holder, Line Manager, Assistant Director or Director*
3. Overtime Claim and Car Mileage - *Director or Assistant Director*
4. Special Leave, Ex-gratia Payments, Season Ticket loans, Interview Expenses - *Budget Holder, Line Manager, Assistant Director or Director*

- 5 Income write offs - *Assistant Director or Director /plus Head of Finance as per Financial Regulations 24*

6. Panel Decisions - *ECS department only. Chief Officers scheme of delegation list.*

7. Hexagon Authorisation – *Finance officers only.*

8. Cheques over £50k and BACS - *Finance officers only*

9. Investment Payments - *Technical Group only (senior accountant and above)*

- 5.9 The authorisation for the above should be locally managed by the Chief Officer for their Department. The completed authorised signatory form should be forwarded to Accounts payable (Resources Department) for them to hold in their records. Any changes should be notified immediately that they occur and not as a result of an update requested by Accounts Payable Department.

- 5.10 Manual signatures can be captured by various types of equipment including scanners, photocopiers and fax machines. Once acquired, signatures can be transmitted electronically and copied between files, as well as being printed on paper documents.

 An electronic document, such as an email, Word file or fax, containing a digitised signature is nowadays considered to be no different from a paper one which has been signed manually.

 It is therefore important that individuals use images of their own signatures with care and that there are controls over the use of other people's digitised signatures.

 Whereas for internal e-mails there is an assumption that they are from a verifiable source, you should seek assurances that external e-mails are similarly from a secure source.

Examples of electronic signatures are:

- Typed name
- E-mail address
- Scanned image of a signature
- Automatic e-mail signature

Images of signatures should be used only when essential and internally within the organisation.

Electronic signatures will not override instances where signatures or a seal is required e.g. contracts over £200k or where there is a legal requirement.

6. ORDERS AND CONTRACTS FOR GOODS, WORKS AND SERVICES

CONTACT: Legal/ Internal Audit

- 6.1 Public money should be spent with demonstrable probity and in accordance with the Authority's policies. Local Authorities have a statutory duty to achieve best value in part through economy and efficiency. The Authority's procedures should help to ensure that services obtain value for money from their purchasing arrangements. These procedures should be read in conjunction with the Authority's contract and procurement rules.
- 6.2 Every officer and member of the Authority has a responsibility to declare any links or personal interests that they may have with purchasers, suppliers and/or contractors if they are engaged in contractual or purchasing decisions on behalf of the Authority, in accordance with appropriate codes of conduct.
- 6.3 Apart from petty cash and other payments from advance accounts, the normal method of payment from the Authority shall be by cheque or through the banks' automated clearing system (BACS) or other electronic transfers of funds drawn on the Authority's bank accounts by
- 6.4 All orders should be raised on the i-Procurement system. Where this is not possible unique pre-numbered official hard copy orders should be raised, any exceptions should be agreed by the **Director of Finance**.
- 6.5 Chief Officers are responsible for the control of all orders held and issued by their department. They should determine which officers in their department should be allowed to be Initiating Officers and raise and authorise orders on their behalf.
- 6.6 It shall be the responsibility of an officer issuing an order to ensure, as far as is reasonable and practicable, that value for money is obtained in respect of each transaction. All arrangements for using Electronic Ordering, (other than through the Councils corporate - Procurement system) needs the approval of the Procurement Section. Permission will be subject to proper audit trails and safeguards being in place.
- 6.7 An official order, or its equivalent, must be raised for all goods, works and services except where one or more of the following apply:

- (i) Where a specific formal contract exists which does not incorporate any facility for the regular draw-down of services;
- (ii) Rents, business rates, council tax and utility services as supplies of a continuous and obligatory nature;
- (iii) Petty cash payments

Where hard copy official orders, are used they shall as a minimum:

- (iv) be clearly identifiable as an order from the London Borough of Bromley, including invoice address, officer contact etc.;
- (v) be serially numbered;
- (vi) be physically authorised by an authorised signatory;

6.8 Provided that the **Director of Finance** is fully satisfied, the method by which an official order is issued shall be at the discretion of the Initiating Officer, having regard to the requirements of this procedure, and the supplier e.g. by post, fax, or (with the **Director of Finance**' initial approval) by internet e-mail or via the supplier's web site. A carbon copy or photocopy or electronic copy (as appropriate) of all authorised orders should be retained in the form issued.

6.9 In exceptional cases only, an oral order may be made. In such cases a confirmation order must be issued. The confirmation iProc order should be despatched the same day where possible and certainly no later than within two working days and should be clearly marked "confirmation only".

6.10 All goods, works and services ordered shall be for the exclusive use of the Council or an organisation which has established arrangements to make purchases through the Council's accounts.

6.11 All leasing arrangements must have the **Director of Finance's** prior approval.

Orders and Authority

6.12 No order shall be raised unless there is uncommitted budgetary provision to meet the estimated cost unless it relates to works necessary within Section 3.3 of these procedures.

Minimum Requirements

6.13 Before placing an order the Initiating Officer shall estimate the probable cost of the goods works or services required. This estimated cost will determine the normal procedures to be followed in obtaining quotations or tenders. These procedures are outlined below:

- a) Up to £5,000 one oral quotation (confirmed in writing where the estimated cost or value exceeds £1,000) using the appropriate approved list
- b) ~~Over~~ Between £5,000 and £50,000 obtain at least three written quotes
–follow the Contract Procedure Rules
- c) ~~Over £50,000 follow Contract Procedures~~

7. **CONTRACT PROCEDURE RULES**

These are now contained in the Procurement part of the Managers Toolkit.

7.1 Contract Procedures must be complied with as applicable

[Contract Procedure Rules](#)

8. PAYMENT OF ACCOUNTS

Contacts: Internal Audit (Certification Controls) /Accounts Payable
Accountancy (FIS Accounts Payable)

PAYMENTS REVISED

- 8.1 The **Director of Finance** is responsible for making safe and efficient arrangements for all payment of accounts. All payments on behalf of the Council shall therefore be made by the **Director of Finance** or under arrangements approved by him. All payments should be made through one of the Council's E payment systems (i-Proc; Carefirst; Confirm) wherever possible and unless otherwise agreed with Internal Audit. Where this is not possible an agreed manual process system may be used.
- 8.2 Payments should be made against official invoices (or their equivalent e.g. Contractor Certificate of Payment) received from suppliers, and not against statements, delivery notes etc. The **Director of Finance** must specifically approve exceptions to this requirement, taking account of the risk and any compensating controls in place (e.g. Residential Care payments are currently exempted from this specific requirement).
- 8.3 Payment against copy invoices (i.e. duplicates / photocopies) should only be made where detailed checking has confirmed that no payment has been made against an original and the Certifying Officer should endorse the copy invoice to that effect. Faxed invoices are acceptable with the approval of the **Director of Finance**, or his delegated representative.
- 8.4 The **Director of Finance** shall be responsible for deciding the most appropriate method of payment for categories of invoice. Payments will normally be made via electronic transfer (e.g. BACS); computer cheques or where appropriate controls are in place. Except where there is no practical alternative (e.g. remittance advice required), cheques should normally be despatched independently of Certifying Officers and other ordering or payments staff. Payments via BACS should only be made where the bank details have been confirmed by the supplier and checked by the Accounts Payable team.

- 8.5 Payments in advance should only be made where there is no practical alternative, and the reasons should be recorded. **Payments should not be made in advance of goods or services being delivered.** Any invoice subsequently obtained should be filed with the original payment documentation, and endorsed appropriately to prevent duplicate payments.
- 8.6 Payments must be made under the Council's normal payment procedures unless there is good reason to make payments as urgent (e.g. to obtain a discount). In exceptional circumstances the **Director of Finance** will prepare manual cheques for urgent payments (i.e. where required immediately) but two Authorised signatories will be required.
- 8.7 The following checks should be conducted for all invoices received:
- Establish whether the invoice relates to an i-Proc order, a Confirm order, a Carefirst order or a purchase card payment.
 - The invoice is correctly due and has not already been paid.
 - The invoice matches or part matches the order.
 - The goods or services billed for have been received.
 - The invoice is arithmetically correct.
 - Where VAT is charged the invoice is a valid VAT invoice.
- 8.8 Where an invoice is received with a corresponding purchasing card slip, this indicates that payment has already been made through use of a purchasing card. The invoice should be sent to the Cardholder (if shown on the invoice) or otherwise sent to Corporate Procurement.
- 8.9 Where the invoice relates to an i-Proc order the following additional checks should be undertaken:
- The i-Proc order number has been included.
 - The value of the invoice does not cause the total amount and/or quantity allocated against an order to be exceeded by more than the tolerance set within i-Proc.

- 8.10 Where the above are satisfied the invoice should be passed for payment promptly.
- 8.11 If the value of an invoice relating to an i-Proc order causes the value of the i-Proc order to be exceeded by more than the tolerance then approval to change the value of the i-Proc order must be obtained.
- 8.12 Other anomalies should be referred to the supplier and a correct invoice supplied for payment.
- 8.13 Where on some occasions the invoice is correctly due, has not been paid previously and should have had an i-Proc order raised at the time the decision to purchase was made then the checks at FP8.7 should be conducted, an i-Proc order raised retrospectively, authorised and the invoice paid against it.
- 8.14 An i-Proc order is not required where one or more of the following apply:
- (a) i-Proc is unavailable
 - (b) The invoice is a utility bill
 - (c) The payment relates to an AP2
 - (d) The payment has been approved via a feeder system, e.g. CONFIRM
- 8.15 An AP1 should be completed in all cases matching 8.14 a) or 8.14b). Utility Bills received from Laser are exempt from the above authorisation controls.
- 8.16 Each Chief Officer shall arrange a suitable division of staff duties within their departments so that the officer who certifies an individual AP1/AP2 for payment shall not be the person who either approved the order or requisition, or has confirmed the receipt of goods or completion of the work concerned.
- 8.17 Chief Officers should ensure that all invoices input onto Accounts Payable for payment have been properly authorised and certified, with evidence of at least three designated officers having been involved in the whole process (ordering / receipt of goods or services / payment). The **Director of Finance** must specifically approve exceptions to this requirement e.g. where authorisation / certification is performed electronically or where less than three officers are involved in the process.

- 8.18 Chief Officers may delegate the authority to certify invoices to designated officers within their department, including, Departmental Heads of Finance and the locally placed central department staff. Chief Officers must supply to Accounts Payable up to date details of such officers together with specimen signatures or evidence of authorisation and any financial limits that apply.

Checking Required

- 8.19 The overriding principle to be adhered to is that authorisation and certification checks should be meaningful. To this end, they should be carried out and evidenced by those officers who are in a position to judge, for instance, whether goods / services have actually been received or whether invoice prices are correct. The evidence should also be unambiguous e.g. an isolated signature on an invoice does not make it clear what has been checked or what is being authorised or certified and is therefore not acceptable.
- 8.20 The certifying of individual invoices that do not relate to i-Proc orders shall only be made in writing on the AP1/2 form (or its equivalent).
- 8.21 No invoice shall be passed for payment unless it either relates to an i-Proc order (or other approved electronic ordering method, e.g. Confirm/Carefirst) or the Certification “section” of AP1/AP2 is completed.
- 8.22 No alterations should be made to AP2 forms once they have been certified for payment. If an error is subsequently highlighted the form should be returned to the officer who certified the payment for correction. In situations where the AP2 form can not be returned to the certifying officer, another authorised officer should certify the amendment on the AP2 form.
- 8.23 Certifying Officers are responsible for ensuring that adequate checks are performed and evidenced prior to the payment of an invoice to satisfy themselves that the payment is accurate and due to be paid.
- 8.24 The following checks are regarded by the **Director of Finance** to be good practice.

For all invoices, that:

- (a) Where appropriate, a match is made with the official order, agreement, Council resolution or other document authorising the expenditure (this is done automatically by the i-Proc system);
- (b) Prices are in accordance with quotations or are otherwise reasonable (this is done automatically by the i-Proc system);
- (c) That the invoice arithmetic is correct;
- (d) Goods have been received, examined and approved with regard to quantity and quality and / or that work done or services rendered have been satisfactorily carried out or provided (except in those cases approved by the **Director of Finance** at FP 8.25 -8.29 e.g. maintenance works where no adverse comments have been received);
- (e) Where VAT is charged that the invoice carries the VAT registration number of the supplier;
- (f) The invoice has not been previously passed for payment;
- (g) The invoice is a proper liability of the Council, has been duly authorised (either via a corresponding i-Proc order (or other approved electronic ordering method, e.g. Confirm/Carefirst) or an AP1/AP2 where an i-Proc order is not appropriate) and is, to the best of the Certifying Officer's belief, legal expenditure.

For a sample of invoices, additional pre or post payment checks as follows, that:

- (a) Expenditure codings are correct. This must be one of the cost centre codes included in the budget holder's area of responsibility and must correspond with the type of goods, works or services described on the invoice;
- (b) VAT issues have been complied with where they apply and any VAT has been properly accounted for (NB VAT invoices should never be amended by officers and attention is drawn to the **Director of Finance**);
- (c) Where appropriate, that any assets have been entered into the relevant departmental inventory or stores record (see Section 17).

- 8.25 The **Director of Finance** recommends the following as the appropriate sample for these additional checks:

<u>Value of Invoice</u>	<u>% to be checked</u>
Under £2,500	5
£2,500 - £10,000	20
Over £10,000	100

- 8.26 Officers certifying batches of invoices onto the Accounts Payable system should carry out sufficient checks to ensure that corresponding i-Proc orders exist, or AP1's or their equivalents are appropriately signed off and that the amounts and supplier details on the invoice match the certification document.

Verification of Goods / Services Received

- 8.27 In recognising the practical difficulties associated with verifying the supply of goods or services received in certain circumstances the following approved exceptions will apply to the requirements at paragraph 8.24(d) above. In these circumstances for non i-Proc related expenditure the Goods / Services box on the relevant AP1 may be marked by the Authorising or Certifying officer as "not applicable" or "n/a".
- 8.28 However, officers responsible for such systems should ensure, in liaison with Internal Audit, that they design and implement sample checks on goods / services received which are appropriate to the level of risk and available resources. In particular, the Director of Education & Care Services should make proper arrangements for the linkage of service visits and inspections to the systems in place for the checking of goods and services received.

Maintenance

- 8.29 Invoices relating to building maintenance works or personal care aids and adaptations for which there is no corresponding i-Proc order may be certified on the basis of "no adverse comments received". Site inspections must still be performed wherever practicable, using either the sample sizes recommended by the **Director of Finance** at FP8.25 or in Education & Care Services by inspecting as part of pre-arranged visits from care managers.

Placements

- 8.30 Education & Care Services placements e.g. in temporary accommodation, children's day care or with permanent and temporary residential placements, may be certified without prior physical inspection provided that: (a) the invoice is independently matched to the approved official order (or its equivalent) and (b) certifying officers promptly take account of information received from care providers and any relevant compensating controls already in place within the system e.g. visits to clients by care managers, temporary accommodation registration signing sheets, adverse comments received from clients when making financial contributions.

Direct Care

- 8.31 As with placements, invoices relating to homecare services (e.g. personal and domestic care) may be certified without prior physical inspection provided that: (a) the invoice is independently matched to the approved official order (or its equivalent) and (b) certifying officers promptly take account of information received from care providers and any relevant compensating controls already in place within the system e.g. visits to clients by care managers, adverse comments received from clients when making financial contributions.

Creditors Provision

- 8.32 As soon as is practicable after the end of each financial year Chief Officers at the request of the **Director of Finance** must provide details of the outstanding payments relating to that year for which creditors provision should be made in the final accounts.

Late Payment of Debts

- 8.33 Guidance on Late Payment of Debts legislation is set out in the Payments Financial Procedure.

Purchasing Cards

- 8.34 Purchasing Cardholder Procedures must be complied with as applicable

[Purchasing Card Procedures](#)

9. IMPREST ACCOUNTS & PETTY CASH

Contact: Corporate Finance, Internal Audit (Internal Controls)

- 9.1 The **Director of Finance** may, at his discretion and at the request of Chief Officers, make available imprest accounts to facilitate the cost-effective payment of minor items of expenditure on behalf of the Council.
- 9.2 Where appropriate, the **Director of Finance** shall open an account or personally approve arrangements for the opening of an account with the Council's bankers for use by a named and responsible officer nominated by the relevant Chief Officer who will be the imprest holder. Under no circumstances is such an account to be allowed to become overdrawn.
- 9.3 Any officer to whom an imprest has been made available shall be responsible for the control and operation of the imprest account. In particular, each such officer shall:
- (a) Ensure that vouchers are obtained and retained to substantiate payments made;
 - (b) Ensure that receipts, where possible, relating to expenditure from an imprest are attached to the relevant voucher;
 - (c) Ensure the safe custody of imprest monies and cheques in their possession;
 - (d) Restrict the amount of any individual payment to £250 (including VAT), unless prior approval has been obtained from the **Director of Finance**. (This approval will normally be delegated to the relevant Head of Finance). Imprest holders must not sub-divide payments to a single recipient;
 - (e) Properly account for VAT on all imprest account transactions (see Section 10), and ensure that HMRC requirements in respect of amounts greater than £100 are fully complied with.

NB a till receipt for items > £250 is not sufficient for VAT return purposes;

- (f) Account to the appropriate Chief Officer for the amount advanced on leaving the employment of the Council or otherwise ceasing to be responsible for holding the imprest.
 - (g) Ensure that the account is reconciled regularly, that regular reimbursement is sought and that the adequacy of the imprest amount / continuing need for the imprest is regularly reviewed;
 - (h) Sign a statement at the end of each financial year confirming the amount of the imprest held. This should also be counter-signed by a senior officer.
- 9.4 No sums received on behalf of the Council may be paid into an imprest account but shall be banked separately.
- 9.5 Every transfer of an imprest account from one member of staff to another shall be evidenced in the records of the department concerned by the signatures of the officers concerned.
- 9.6 The general principle of imprest accounting is that at any time the cash and bank balance, together with the aggregate value of any receipts on hand, unreimbursed claims and cheques not credited should total the approved imprest account balance. At no stage should the cash balance be allowed to fall below zero.
- 9.7 If it becomes apparent that the current level of imprest is insufficient, the items on which the imprest is expended should be reviewed. If it is clear that there is no reasonable alternative to expenditure through the imprest, a formal request in writing to have it increased should be made to the **Director of Finance**. (This approval will normally be delegated to the relevant Departmental Head of Finance).
- 9.8 No officer shall authorise their own claims from an imprest account. Certification by or under delegation from a Chief Officer shall be taken to mean that the certifying officer is satisfied that the expenses and allowances claimed are properly and necessarily incurred and are properly payable.
- 9.9 Expenditure which should form part of the payroll system, e.g. car allowances, shall not be processed through imprest accounts.
- 9.10 The encashment of personal cheques and the advancing of loans from an imprest is strictly forbidden.

Petty Cash

- 9.11 All relevant Financial Procedures above, and specifically paragraph 9.3, shall also apply to petty cash floats.
- 9.12 All departments holding petty cash should ensure that, at all times, cash is adequately secured. As a minimum this should be in a cash box within a lockable drawer where the insurance limit is £350 (for the cupboard overall). Amounts in excess of £350 should be kept overnight in a safe with restricted access (See Section 15).

10. VAT

Contact: Corporate Finance

- 10.1 Chief Officers must ensure that VAT is identified and correctly accounted for in respect of all income and expenditure (including imprests) in accordance with current VAT Regulations. Failure to do so can lead to loss of income and/or imposition of penalties by Her Majesty's Revenue and Customs.
- 10.2 VAT should not be paid unless the supplier's VAT registration number is shown on the invoice. Certifying officers (as defined in Section 8 of these Regulations) shall satisfy themselves that all suppliers' invoices for goods, works or services have complied with relevant VAT legislation.
- 10.3 Officers responsible for instigating income collection for the Council shall satisfy themselves that the Council has complied with the relevant VAT legislation with regard to the supply of its services.
- 10.4 VAT should only be accounted for on imprest payments where the supplier's VAT registration number is shown on the receipt.
- 10.5 All limits shown in these Regulations exclude VAT.
- 10.6 Further guidance and advice on VAT matters is contained in Financial Procedures and is also available from the Principle Accountancy Assistant.

11. SALARIES, WAGES & PENSIONS

Contact: Exchequer Client Unit

- 11.1 Staff costs are the largest item of expenditure for most local Authority services. It is therefore important that payments are accurate, timely, made only where they are due for services to the Authority and that payments accord with individuals' conditions of employment. It is also important that all payments are accurately and completely recorded and accounted for and that member' allowances are authorised in accordance with the scheme adopted by the Full Council.
- 11.2 All payments of salaries, wages, pensions, compensation and other emoluments to all employees and pensioners of the organisation shall be made by the **Director of Finance** or under arrangements approved by him/her. Salaries and wages must not be paid through the creditors system.
- 11.3 All payments, including travel, subsistence and other allowances shall be made in accordance with current legislation HMRC Regulations and relevant decisions of the Council.
- 11.4 Each Chief Officer should nominate those officers within their department who will be authorised to certify timesheets, overtime claims and claims for travelling and subsistence. This can include the relevant Departmental Head of Finance or the locally placed central department staff. A list of such officers, together with specimen signatures, shall be maintained by the Chief Officer with copies being provided to the **Director of Finance** and the departmental personnel function. Changes shall be notified promptly as they occur.
- 11.5 Each Chief Officer, or their nominated representative, shall notify the **Director of Finance** as soon as is practicable of all matters affecting the payment of emoluments by the **Director of Finance**, and in particular:
- appointments, resignations, retirements, dismissals, suspensions, secondments, transfers and deaths, and for pensions, changes in marital status, dependants and deaths;

- amounts to be recovered from pay e.g. repayment of training expenses on leaving;
- absences from duty for sickness or other reason (e.g. jury service), apart from approved paid leave;
- changes in remuneration (either permanent or temporary), other than normal increments, pay awards and agreements of general application;
- Information necessary to maintain records of service for pensions, income tax, national insurance etc. This will include information on benefits in kind necessary to complete HMRC forms P11D for employees e.g. Council leased cars;
- All time records affecting payments due.

Notification may be by on-line entry into systems where appropriate.

- 11.6 All salaries, wages and pension records, including those relating to 11.4 will be in a form approved by the **Director of Finance** and shall be certified by an officer authorised in accordance with 11.3. All such records should be submitted to the **Director of Finance** in accordance with the timetables and deadlines determined by him.

Self-Employed Status

- 11.7 All payments to individuals, who consider themselves to be self-employed in respect of services provided to the Council, shall still be processed through the payroll system unless the status of the individual has been confirmed as self-employed in accordance with the latest HMRC Guidelines. All casual and part-time employees will nevertheless be included on the payroll.

For further guidance contact Human Resources

Pension Life Certificates

- 11.8 The **Director of Finance** shall ensure that life certificates are obtained in respect of pension beneficiaries at least every two years, with at least half the beneficiaries being checked each year, unless satisfactory alternative automated mechanisms are in place e.g. National Fraud

Initiative (NFI)

- 11.9 The data matching of pension payrolls to official national records of deceased persons as part of the NFI project has provided the first automated, cost-effective and reliable alternative to life certificates. This is significant because if a fraud is being committed, a life certificate sent out by the Council will almost certainly be returned with a false signature.
- 11.10 Records of deceased persons are now provided by the Contributions Agency and are matched, using National Insurance numbers, to pension payrolls. NFI therefore recommends that pension schemes also ask for the National Insurance number of dependants of all their new pensioners.

Travel, Subsistence & Other Allowances

- 11.11 All claims for the payment of car allowances, subsistence allowances, travelling and incidental expenses in relation to the performance of official duties shall be completed in a form approved by the **Director of Finance**, and paid in accordance with approved Council procedures as currently in force.
- 11.12 Below Chief Officer level, claims by officers must be certified by an appropriate line manager, authorised to do so by their Chief Officer. The certification by said officer shall be taken to mean that the journeys were authorised, the expenses properly and necessarily incurred and that the allowances are properly payable by the Council.

12. INCOME

Contact: Audit

- 12.1 Income can be a vulnerable asset and effective income collection systems are necessary to ensure that all income due is identified, collected, receipted and banked properly. It is preferable to obtain income in advance of supplying goods or services as this improves the Authority's cash flow and also avoids the time and cost of administering debts.
- 12.2 The identification of all moneys due to the Council is the responsibility of the relevant Chief Officer.
- 12.3 Chief Officers will take prompt action to either:
- Collect the income due within arrangements approved by the **Director of Finance** and Section 5 of these Regulations; or
 - Raise an account for inclusion in the Council's debtors system, to enable the **Director of Finance** to ensure that appropriate recovery procedures are undertaken where necessary.
- 12.4 Every remittance or sum of money received by a cashier or other officer employed by the Council or received by a contractor on behalf of the Council, shall immediately be acknowledged by the issue of an official receipt, ticket or voucher except where special arrangements have been agreed by the **Director of Finance**.
- 12.5 If a payer by cheque does not require a receipt, the amount should still be recorded with the receipt being retained. The form of all receipts, tickets vouchers or other official documents in use should be approved by the **Director of Finance**. Receipt books should be serially numbered and a register should be kept of all receipts and issues of such documents to officers, which shall be acknowledged by the signature of the recipient.
- 12.6 All moneys received on behalf of the Council should be paid forthwith at the **Director of Finance's** instructions either to his appointed contractor or be banked direct to the credit of the Council. Every employee who receives moneys shall maintain a record, in a form approved by the **Director of Finance**, of all amounts received and deposited.
- 12.7 Every transfer of official money from one member of staff to another will be evidenced in the records of the department concerned by the signature of the receiving officer.

- 12.8 All bankings must be made promptly and intact i.e. personal cheques should not be cashed out of money received on behalf of the Council and official expenditure should not be incurred (i.e. deducted) from moneys collected and due to be banked.
- 12.9 All officers responsible for banking monies should ensure that individual cheques are listed clearly on the reverse of the bank paying-in slip or comprehensive listing. Each officer who so banks should also enter on the paying-in slip a reference to the related debt (such as the receipt number or the name of the debtor) or otherwise indicates the origin of the cheque. On the reverse of each cheque, the officer should enter the name of the relevant department or division.
- 12.10 Responsibility for the safe keeping of all Council monies must be designated by Chief Officers to specified officers within their departments; this can include the relevant Departmental Head of Finance.
- 12.11 Where moneys are held overnight, secure arrangements must exist for their safekeeping. Keys to safes and other secure containers should be carried on the person of the key-holder or kept under secure conditions. Care should be taken to ensure that the moneys held do not exceed the insurance value of the secure facilities provided (see Section 15).
- 12.12 All charges determined by the Council shall be reviewed at least annually by the Executive or by officers under delegated arrangements. Such reviews should consider the possibility of introducing charges where none are currently made.
- 12.13 Any decision to write-off an amount must be taken with the authority of the **Director of Finance**, whether exercised personally or properly delegated by him to a member of his staff. The amounts involved, and approval granted, should be recorded in the accounting records. Write-off procedures are covered in the scheme.

As soon as is practicable after the end of each financial year Chief Officers at the request of the **Director of Finance** must provide details of the outstanding debts relating to that year, for which debtors provision should be made in the final accounts.

13. BANKING ARRANGEMENTS

Contact: Technical

- 13.1 All banking arrangements should be made through or by the **Director of Finance**, who is responsible for liaising with the Council's bankers in relation to the Council's bank accounts and the issue of cheques.
- 13.2 The **Director of Finance** shall be authorised to operate such subsidiary bank accounts as he deems necessary. Only the **Director of Finance** may open or close a bank account for dealing with the Council's funds. All bank accounts shall be in the name of the Council and never an individual.
- 13.3 An overdraft on the Council's main bank account shall be permitted only to the extent approved by the **Director of Finance**. Subsidiary bank accounts shall not be permitted to become overdrawn. In the event that this does happen, the appropriate Chief Officer shall ensure that corrective action is taken immediately.
- 13.4 The **Director of Finance** shall ensure that the Council's main bank account is reconciled at least once a month and subject to independent review, with large or unusual items investigated as appropriate.
- 13.5 The appropriate Chief Officer shall ensure that all subsidiary accounts under their control (including those operated by contractors on the Council's behalf) are reconciled at least once a month, as above.
- 13.6 Cheque stationery (other than standard cheque books for subsidiary accounts) shall be ordered only on the authority of the **Director of Finance** who shall ensure that adequate cheque registers are maintained and regularly reconciled to records of cheques issued by the Council.
- 13.7 Adequate security arrangements shall be maintained by the appropriate Chief Officer for all unused cheques for accounts under their control.
- 13.8 Except for cheque stationery pre-printed with a facsimile signature of the **Director of Finance**, cheques should only be signed by an approved signatory after the cheque (including its counterfoil) has been completed in full. They should not be pre-signed under any circumstances.
- 13.9 Every crossed cheque for an amount of £50,000 or more and any uncrossed cheque for an amount of £1,000 or more and any manual cheque shall be countersigned by an authorised signatory empowered

by the Director of Finance.

14. TREASURY MANAGEMENT

Contact: Technical

- 14.1 Treasury Management comprises all the borrowing and investment activities of the Authority except those relating to the Pension Fund. Specifically it includes the formulation and monitoring of strategy, cash management, debt management and banking arrangements.
- 14.2 A Treasury Policy Statement and an Annual Treasury Strategy setting out the Authority's strategy and policies for cash management, investments and borrowings (short term and long term) shall be adopted by the Council and thereafter its implementation, monitoring and review shall be delegated to the Resources Portfolio Holder. The Council shall adopt Prudential Indicators, designed to monitor and control treasury management activities, which will thereafter be monitored by the Executive.
- 14.3 All money in the hands of the Council shall be aggregated for the purposes of treasury management and shall be under the control of the **Director of Finance**.
- 14.4 All Executive decisions on borrowing, investment or financing (within policy parameters) shall be delegated to the **Director of Finance** or through him to staff designated by him, who shall be required to act in accordance with the Chartered Institute of Public Finance and Accountancy (CIPFA) Code of Practice for Treasury Management in Local Authorities. (See below).
- 14.5 All borrowing and investments shall be in the name of the Council and shall conform to any relevant regulatory requirements. The **Director of Finance** and his staff are required to act in accordance with the Council's treasury management policy statement as approved by the Council.
- 14.6 The **Director of Finance** shall report to the Resources Portfolio Holder not less than four times in each financial year on the activities of the Treasury Management operation and on the exercise of the treasury management powers delegated to him or her including monitoring compliance. One such report shall comprise the Annual Report for presentation by 30th September of the succeeding financial year.

15. INSURANCE AND SECURITY

Contact: Insurance

- 15.1 It is the overall responsibility of the Executive to approve the Council's Risk Management strategy and to promote a culture of risk management awareness throughout the Council. The **Director of Finance** shall be responsible for effecting or approving the arrangements for instituting all insurance cover on behalf of the Council, and for negotiating claims, after consultation where necessary with other officers. The **Director of Finance** will also make arrangements to ensure that appropriate records are kept of all property and risks covered.
- 15.2 This responsibility is delegated on a day-to-day basis to the **Principal Accountant, Technical** in the **Director of Finance's** Department, and covers all of the organisation's assets, as well as claims which may arise in connection with the provision of the Council's services, or from its legal liabilities as an employer, or to third parties.
- 15.3 Separate arrangements exist for Schools and Colleges under the School Standards & Framework Act 1998, but the Local Authority (LA) will require the School to demonstrate that cover relevant to the LA's insurable assets, under a policy arranged by the Governing body, is at least as good as the relevant minimum cover determined by the LA if the LA makes such arrangements.
- 15.4 Every Chief Officer shall notify the **Director of Finance** promptly in writing of any proposals that will change cash storage or alter significantly the value of stocks or stores held within their department. Any additions, deletions or alterations in the functions of the department, that could increase or decrease insurable risk should also be notified in writing. The **Director of Finance** will give advice as appropriate.
- 15.5 Every Chief Officer shall immediately notify the Insurance Section and, where appropriate, the Police upon the occurrence of any loss, damage, liability or potential liability in connection with their department except that notification is not required if the value is less than £500. Initial notification may be by telephone. Evidence supporting the claim should be provided in such form as may be required by the Insurance Section. Notification in writing of every claim must be made in any event within 30 calendar days of the date of the loss or damage.

- 15.6 The **Director of Finance** will advise Chief Officers of maximum levels of cash holdings for insurance purposes. Chief Officers are responsible for ensuring that these insurance limits are not exceeded in their departments.

The limits for cash in transit for insurance purposes are as follow:-

- Up to £1,500.00 – no restriction
- Between £1,500.01 and £4,000.00 – requires 2 able bodied persons and a specialist carrier (this is a cash box that emits dye if tampered with)
- Between £4,000.01 and £7,500.00 – requires 3 able bodied persons and a specialist carrier.
- Over £7,500 – requires use of a specialist secure collection organisation.
- In the event of an insured loss, an excess of £500.00 applies to each incident.

- 15.7 Each Chief Officer is responsible for maintaining adequate security at all times for all assets under their control. All monies must be locked away when unattended and lockable cupboards should be used in the absence of a safe and have an insurance limit of £350 (for the cupboard overall).

- 15.8 Each Chief Officer is responsible for ensuring adequate reference checks are carried out for positions with financial responsibility to ensure the Council complies with its fidelity guarantee insurance arrangements.

- 15.9 Keys to safes and similar receptacles shall be in the safekeeping of those responsible at all times. The loss of any such keys shall be reported to the relevant line manager immediately.

- 15.10 Chief Officers must ensure that the **Director of Finance** is kept informed of any changes to the official departmental safe inventory, whether new safes or replacements.

- 15.11 All overnight cash holdings in safes must in practice be agreed with the **Principal Accountant, Technical** to effect Money Insurance cover, as this is covered internally as a risk rather than with external insurers. A safe schedule will then be maintained containing relevant details e.g. location, type, permitted maximum holding (as determined by the insurance market) and the agreed amount for the particular location. The overnight limit includes pure cash, postal orders, stamps etc. and anything negotiable as money, but not cheques.

- 15.12 The **Director of Finance** is responsible for ensuring that all appropriate employees of the Council shall be included in suitable fidelity insurance.
- 15.13 No employee shall admit liability, take any action or enter into any correspondence admitting liability on behalf of the Council without first consulting with the **Director of Finance**.
- 15.14 Any officer of the Council who is authorised to make use of their own vehicle in the execution of the Council's business shall be responsible for effecting adequate insurance cover for such use and shall produce to their Chief Officer or the **Director of Finance** on request evidence of the adequacy of such cover.
- 15.15 The **Director of Finance** shall be responsible for insuring leased cars.

16. STOCKS AND STORES

Contacts: Head of Finance/ Internal Audit

- 16.1 Chief Officers are responsible for establishing adequate arrangements for the receipt, checking, care, safe custody and issue of stocks and stores held by their department.
- 16.2 Each Chief Officer shall ensure that stocks and stores holdings shall not be in excess of the reasonable requirements of their department. In determining reasonable requirements, due regard shall be paid to the value, usage, and reorder periods of the items concerned as well as perishability and obsolescence.
- 16.3 Each Chief Officer shall ensure that records are maintained of stores received; stores issued and balance in respect of their department. The systems used for stores accounting in departments must have approval of the **Director of Finance**.
- 16.4 Each Chief Officer shall arrange for regular stock taking of significant stores held by their department, preferably involving examination by officers other than the storekeeper(s). This shall include an annual stocktaking following which a certificate of stock held shall be completed, a copy of which will be forwarded promptly to the **Director of Finance**.

17. PLANT AND EQUIPMENT

Contact: - Internal Audit

- 17.1 The Authority holds assets in the form of property, vehicles, equipment, furniture and other items worth many millions of pounds. It is important that assets are safeguarded and used efficiently in service delivery, and that there are arrangements for the security of both assets and information required for service operations. An up to date asset register is a prerequisite for proper fixed asset accounting and sound asset management
- 17.2 Chief Officers are responsible for the safe custody of the plant, machinery, vehicles, furniture, equipment and other non-consumable property held within their department.
- 17.3 Each Chief Officer shall maintain inventories listing all moveable equipment (but not furniture, filing cabinets etc) in the custody of their department which:
- Cost or is valued in its current condition at more than £1,000: or
 - Is attractive and portable: and
 - Is not in store
- 17.4 The inventory should where applicable record details of make, model number etc of equipment held and wherever possible a serial number, and at least one copy should be held separately from the assets that it lists.
- 17.5 Each Chief Officer shall arrange for physical verification of the items on their inventory records to be undertaken at least annually. This verification should be evidenced in writing, signed by the officer(s) concerned and retained for audit purposes.
- 17.6 The Council's property shall not be removed except in the normal course of the Council's business or used otherwise than for the Council's purposes unless specifically authorised by the Chief Officer concerned. Where a Chief Officer authorises temporary removal of property, a formal record shall be maintained indicating where the property can be located and shall be signed by the officer responsible for its safekeeping.
- 17.7 So far as is practical, all items should be effectively marked (using current security techniques e.g. invisible ink) as Council property.

18. LAND AND PROPERTY

Contact: - Property

- 18.1 The **Director of Finance** shall maintain a comprehensive terrier of all land and properties held by the Council.
- 18.2 Each Chief Officer is responsible for making adequate arrangements for the maintenance of buildings under their control in accordance with the approved landlord/tenant split of responsibilities.
- 18.3 The **Director of Corporate** Services shall have the custody of all the title deeds in the possession of the Council under secure arrangements.
- 18.4 The **Director of Finance** shall be responsible so far as land and property under his or her control is concerned for obtaining the best economic return possible consistent with Council policy to which end he or she shall insure that all rents etc. are reviewed regularly.
- 18.5 Each Chief Officer shall be responsible for secure arrangement for the custody of private property of residents in Council establishments (excluding housing) and property held under Trust Fund/Receivership arrangements etc.
- 18.6 For disposal procedures see section 19.

19. DISPOSAL OF ASSETS

Contact: Internal Audit

- 19.1 Each Chief Officer is responsible for ensuring that the best possible price is obtained from the disposal of assets under their control.
- 19.2 Where the estimated current value of the asset exceeds £1,000 but is less than £50,000 the following should be considered:
- Offer the item(s) to all Council Departments - the Purchasing Working Group is the appropriate forum;
 - Sealed tenders or offers;
 - Advertising;
 - Sale by public auction;
 - Sales to staff (this method of disposal should be used only where there are good reasons for not pursuing other alternatives and should always be by sealed offers unless otherwise agreed by the **Director of Finance**).
- 19.3 Where the estimated value of the asset(s) is over £50,000, the tendering procedures in Contract Procedures shall be followed. Subject to 19.4 where the estimated value of the asset is up to £50,000 at least three tenders should be sought and at least two should be obtained and where the asset is estimated to exceed £50,000 in value, at least four competitive tenders should be sought and at least three obtained. All tenders should be received in plain sealed envelopes bearing the word "Tender" and the subject matter to which it relates. It shall not bear any name or mark which would identify the sender. Tenders should be opened at the same time by the Initiating Officer. Where the estimated value of the asset exceeds £150,000, another officer other than the one responsible for the acceptance of the highest bid shall be present.
- 19.4 Where the assets to be disposed of consists of land or premises the Council must (other than the grant of a Lease or assignment of the remainder of a Lease for seven years or less) seek to secure the best consideration that can reasonably be obtained save with the consent of the Secretary of State. The disposal may be effected by a single estate agent or land agent subject to the **Director of Finance** approving the use of such agent. The **Director of Finance** shall certify that he or she considers the use of additional agents or means of advertising or marketing is unnecessary to secure compliance with the aforesaid

statutory duty. Where appropriate, the **Director of Finance** may require the agent to accept offers by way of sealed bids or by way of public auction.

20. **INTERNAL & EXTERNAL AUDIT**

Contact: Internal Audit

Internal Audit

- 20.1 The Authority is complex and beyond the direct control of individuals. It therefore requires internal controls to manage and monitor progress towards strategic objectives.
- 20.2 The Authority has statutory obligations, and, therefore, requires internal controls to identify, meet and monitor compliance with these obligations.
- 20.3 The Authority faces a wide range of financial, administrative and commercial risks, both from internal and external factors, which threaten the achievement of its objectives. Internal controls are necessary to manage these risks.
- 20.4 The system of internal controls is established in order to provide measurable achievement of:
- Efficient and effective operations
 - Reliable financial information and reporting
 - Compliance with laws and Regulations
 - Risk management.
- 20.5 The key controls and control objectives for internal control systems are:
- Key controls should be reviewed on a regular basis and the Authority should make a formal statement annually to the effect that it is satisfied that the systems of internal control are operating effectively
 - Managerial control systems, including defining policies, setting objectives and plans, monitoring financial and other performance and taking appropriate anticipatory and remedial action. The key objective of these systems is to promote ownership of the control environment by defining roles and responsibilities
 - Financial and operational control systems and procedures, which include physical safeguards for assets, segregation of duties, authorisation and approval procedures and information systems
 - An effective Internal Audit function that is properly resourced. It should operate in accordance with the principles contained in the

Public Sector Internal Audit Standards and with any other statutory obligations and Regulations.

- 20.6 An adequate and effective system of Internal Audit of the accounting records and control systems of the Authority will be maintained by the **Director of Finance**, under delegated authority from the Council.
- 20.7 Internal Audit is an assurance function that provides an independent and objective opinion to the Organisation on the control environment, by evaluating its effectiveness in achieving the Organisation's objectives. It objectively examines evaluates and reports on the adequacy of the control environment as a contribution to the proper, economic, efficient and effective use of resources.
- 20.8 The Accounts and Audit Regulations require the Authority ("relevant body") to maintain responsibility for Internal Audit, rather than the Responsible Financial Officer (RFO) designated under section 151 of the Local Government Act 1972. However, Bromley, like many other Local Authorities, has delegated this responsibility to the **Director of Finance**.
- 20.9 Upon production of proof of identity and authority, the Head of Audit or his representative shall have the right to enter, without prior notice, every establishment or department of the Council and require any officer, member, teacher or governor:
- To make available all documents of the Council which relate to their accounting and other records as appear to the Auditor to be necessary for the purpose of the audit, including any information of a confidential nature;
 - To supply such explanations and information as are considered necessary for the purpose of the audit;
 - To produce cash, stores or any property of the Council in their custody.
- 20.10 The Accounts and Audit Regulations 2011 provide for Internal Auditors to have access to any information from the Authority, which they require in order to carry out their duties. Previously, their right of access was confined to the Authority's accounting records.
- 20.11 Internal Auditors comply with the Auditing Practices Board's guideline Guidance for Internal Auditors, as interpreted by CIPFA's Code of Practice for Internal Audit in Local Government in the United Kingdom

External Audit

- 20.12 The Local Audit and Accountability Act 2014 set up the Public Sector Audit Appointments Limited, which is currently responsible for appointing External Auditors to each Local Authority in England and Wales. The External Auditor has rights of access to all documents and information necessary for audit purposes.
- 20.13 The basic duties of the External Auditor are defined in the Local Audit and Accountability Act 2014 and the Local Government Act 1999. In particular the Code of Audit Practice issued by the National Audit Office and Terms of Appointment 2015 set out, what External Auditors must follow when carrying out their duties. The Code of Audit Practice sets out the auditor's objectives to review and report upon:
- the financial aspects of the audited body's corporate governance arrangements
 - the audited body's financial statements
 - Aspects of the audited body's arrangements to manage its performance, including the preparation and publication of specified performance information and compliance in respect of the preparation and publication of the Best Value Performance Plan.
20. 14 The Authority's accounts are scrutinised by the External Auditors, who must be satisfied that the statement of accounts 'presents fairly' the financial position of the Authority and its income and expenditure for the year in question and complies with the legal requirements.

21. FRAUD & CORRUPTION

Contact: Internal Audit

- 21.1 The Authority will not tolerate fraud and corruption in the administration of its responsibilities, whether from inside or outside the Authority.
- 21.2 The Authority's expectation of propriety and accountability is that members and staff at all levels will lead by example in ensuring adherence to legal requirements, rules, procedures and practices.
- 21.3 The Authority also expects that individuals and organisations (e.g. suppliers, contractors, service providers) with whom it comes into contact will act towards the Authority with integrity and without thought or actions involving fraud and corruption.
- 21.4 Chief Officers and nominated officers under the Raising Concerns (“whistle blowing”) procedure shall inform the **Director of Finance** immediately of any suspected irregularity affecting income, expenditure, cash, stores or other resource of the Council so that the **Director of Finance** may, if he or she considers it appropriate, conduct an independent investigation thereof.
- 21.5 All employees have a responsibility for the security of the Council’s assets. Any employee who becomes aware of non-compliance with these Regulations or suspects any irregularity in respect of the Council’s systems and procedures should immediately notify their Chief Officer, normally through their line manager. If for any reason an employee feels unable to raise their concern through line management, they should do so through a nominated officer under the Council’s Raising Concerns Procedure.
- 21.6 Further guidance is contained in the Anti Fraud & Corruption Strategy

22. INFORMATION SYSTEMS

Contact: IS / Internal Audit

- 22.1 Departments have many systems and procedures relating to the control of the Authority's assets, including purchasing, costing and management systems. Departments are reliant on computers for their financial management, service and other information. The information must therefore be accurate and the systems and procedures sound and well administered. They should contain controls to ensure that transactions are properly processed and errors detected promptly.
- 22.2 The **Director of Finance** has a professional responsibility to ensure that the Authority's financial and computer systems are sound and must be notified, in advance, of any new developments or changes.
- 22.3 All Council transactions must be processed through the corporate information systems of the Authority or its approved contractors. To ensure satisfactory standards and control, these systems may only be used with the approval of the **Director of Finance**.
- 22.4 The **Director of Corporate** Services shall ensure that adequate procedures exist to ensure compliance with the Principles of the Data Protection Act 1998 and other relevant legislation including Freedom of Information and Human Rights Acts in respect of personal data held in computerised and manual information systems.
- 22.5 All employees have a responsibility to ensure that they do not cause the loss, unauthorised destruction or disclosure of personal data in contravention of such Principles.
- 22.6 The **Director of Corporate** Services or their nominated representative is the Council's Data Protection Officer and will be responsible for maintaining a central database, recording all systems to be included in notifications to the Data Protection Commissioner. He or she will be responsible for making such notifications as and when required by the Commissioner.
- 22.7 Each Chief Officer shall nominate a supporting Data Protection Officer responsible for:
- Ensuring that the information for his or her department held on the central database is complete, accurate and up to date;

- Collating and providing documentation requested by a Data Subject, in accordance with the Principles of the Data Protection Act 1998.
- 22.8 Each Chief Officer shall be responsible for ensuring that access to computer systems under their responsibility is properly controlled (e.g. appropriate use of, and regular changing of, confidential passwords) and that information is safeguarded by back up copies being taken and kept securely.
- 22.9 All Officers and Members should comply with the Authority's published Code of Conduct on Use of E-Mail & Internet.

23. GIFTS & HOSPITALITY

Contact: **Director of Corporate Services**

- 23.1 All employees and Members of the Council shall be governed by the Council's Codes of Conduct for the acceptance of Gifts and Hospitality.
- 23.2 Material gifts or hospitality offered by an individual or company that does or could provide services to the Council should be refused where they are offered as an inducement to secure favour.
- 23.3 Each Chief Officer shall maintain a register of all gifts and hospitality received by individual members of staff in their department. Any hospitality or gifts accepted must be recorded in the relevant register. The **Director of Corporate Services** holds a separate register for Members for this purpose.

24. PROCEDURES FOR WRITE-OFFS

Background

1. However, circumstances may arise in which amounts due must, for all practical purposes, be deemed uncollectable.
2. The Accounts & Audit Regulations 2011 require that in such circumstances a decision to write-off an amount must be taken with the authority of the “Section 151 Officer” (i.e. **Director of Finance**), whether exercised personally or properly delegated by him to a member of his staff. The amounts involved, and approval granted, should be recorded in the accounting records.
3. No such provisions apply where debts are “cancelled” i.e. because they were incorrectly raised (e.g. wrong amount, wrong debtor) or “waived” i.e. because an authorised policy decision was taken not to charge or to reduce the charge of an amount otherwise properly payable by a debtor.

Bad Debts / Loss of Income

4. The **Director of Finance** may approve the write-off of any amounts properly charged, but deemed uncollectable, in the following cases:
 - (i) bankruptcy or liquidation (where every effort should be made to minimise the loss);
 - (ii) the company having ceased trading and there being no assets;
 - (iii) the debtor being untraceable or having moved abroad;
 - (iv) court decisions;
 - (v) **The debtor having no funds in their estate;**
 - (vi) **The debt being statute barred;**
5. Other individual bad debts or loss of income, not falling into these categories, may be written off as follows:
 - (i) by the **Director of Finance**, if it does not exceed **£15,000**;
 - (ii) by the **Director of Finance** with the approval of the relevant Portfolio Holder if over **£15,000** not exceeding **£25,000**;
 - (iii) by the **Director of Finance** with the approval of the Executive if exceeding **£25,000**.

6. For those items falling within (4) and (5) (i) above, the **Director of Finance** has nominated the following to approve write-offs on his behalf:*

~~Deputy Director of Finance~~

Departmental Heads of Finance

Named School Governors up to £1,000 for Secondary Schools

Named School Governors up to £500 for Primary Schools

Head of Revenues and Benefits

Chief Accountant

Head of Exchequer Services

* This is subject to amendment by the **Director of Finance** and reported annually to Members of the Audit Sub Committee

7. Departments should, for this purpose, regularly notify the above **Director of Finance's** staff of those officers properly delegated responsibility from their Chief Officer to recommend write-offs to the **Director of Finance** and include specimen signatures.

Stocks and Stores

8. Stocks and Stores may be written off as follows:
- (i) If not exceeding £5,000 for one set of adjustments, the balances on stock records may be adjusted by the appropriate Chief Officer to reflect actual stock levels, following such investigations as he deems necessary. If cumulative adjustments in any one year exceed £10,000 the **Director of Finance** must be informed;
 - (ii) If exceeding £5,000 but not exceeding £10,000 the appropriate Chief Officer must obtain the approval of the **Director of Finance** prior to adjusting stock records to reflect actual stock records. The Chief Officer and **Director of Finance** will jointly determine what investigations may be necessary for all adjustments in excess of £5,000.

- (iii) Approval of the relevant Portfolio Holder is required for adjustments exceeding £10,000.

9. Details of all write-offs must be provided to the **Director of Finance**.

Plant and Equipment

10. Chief Officers may authorise items to be deleted from an inventory of their department where:
- (i) the item has become obsolete and / or is no longer adequate for the purpose intended;
 - (ii) the item is broken or worn and of no further useful purpose;
 - (iii) the item has become surplus to requirements;
 - (iv) has been lost or stolen, in which case the **Director of Finance** should be informed.

PROTOCOLS AND SUPPLEMENTARY INFORMATION

FRAUD AND CORRUPTION PROTOCOL

Part of Financial Regulations and Procedures

Introduction

This protocol specifies how the **Director of Finance** and other Chief Officers should manage alleged cases of fraud or corruption. It clarifies responsibilities for carrying out investigations and advises on action to be taken.

Fraud for these purposes is defined as:

“The intentional distortion of financial statements or other records by persons Internal or External to the Authority which is carried out to conceal the misappropriation of assets or otherwise for gain”

Corruption for these purposes is defined as:

“The offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person”

All employees have a responsibility for the security of both the Council’s assets and for clients’ assets where Council employees may have some involvement. Any employee who suspects any irregularity should immediately inform their Chief Officer, normally through their line manager. If for any reason an employee feels unable to raise their concern through line management, then they should go through a nominated officer under the Council’s Raising Concerns Procedure also known as the confidential reporting code (Financial Procedure 21.2).

Chief Officers and nominated officers, under the Raising Concerns Procedure, have a responsibility to inform the **Director of Finance** immediately of any suspected irregularity affecting income, expenditure, cash, stores or other resource of the Council. The **Director of Finance** may, if he or she then considers it appropriate, conduct an independent investigation. (Financial Procedure 21.1)

The Council will take legal and/or disciplinary action in all cases of fraud or irregularity where it is considered appropriate.

Initial Allegation or Suspicion

Internal Audit and the appropriate Chief Officer should be promptly informed of any allegations or suspicions of fraud or irregularity. To facilitate a speedy and appropriate response to any concerns expressed, initial information provided should, where possible, outline the following:

The nature of the potential or actual loss to the Council, or Council's client. When and how the matter came to light Officers and /or other parties alleged to be implicated (names and designations where appropriate) "Organisation" structure showing the position and responsibility of the person(s) allegedly involved identify those who are aware of the potential fraud/irregularity.

Care needs to be taken to ensure that officers or members who may be involved in the suspected irregularity do not become aware of the situation. Staff should not carry out their own investigation prior to notifying Internal Audit as this can affect any subsequent investigation.

Internal Audit will advise if the circumstances demand immediate action to safeguard evidence or to avoid further loss to the Authority. This may include removing documentation from the site and /or the suspension of employees.

Internal Audit will also advise on whether, and if so when, the Police should be informed. The Council has nominated contacts in the Metropolitan Police who can provide advice and, where appropriate, carry out their own investigations. Initial contact with them should be made by Internal Audit. As a general rule the Council can carry out its own investigations regardless of any police involvement.

(Note: there may be instances where it is not possible to contact Internal Audit promptly e.g. weekends or evenings. At such times, for cases of identified theft rather than suspected fraud or irregularity, it is more appropriate for the matter to be reported immediately to the local police station and a crime reference obtained. In these instances Internal Audit, line management and the **Principal Accountant, Technical** should be informed of the details the next working day.)

Investigation

Responsibility for carrying out independent investigations lies with Internal Audit. In some cases, however, it may be more appropriate for

staff in the relevant Department to carry out the investigation with Internal Audit acting in an advisory capacity. In such cases, staff undertaking the investigation will liaise with Internal Audit at intervals agreed at the point of referral, to ensure that evidential requirements continue to be met and that the Local Authority is kept fully informed at all stages.

The most appropriate approach will be decided by Internal Audit following the initial contact and may be revised during the investigation.

Any investigation should be carried out promptly and thoroughly. To do this staff may need to be interviewed and documentation reviewed. All stages of the investigation should be thoroughly documented. The investigation should involve, as a minimum, the following:

- A clear understanding of the allegation/suspicion
- A review of all relevant documentation. Note that documents may need to be retained during the investigation
- Identification and interviews with all appropriate staff/individuals to determine such things as relevant procedures and practices
- Consideration of alternative explanations for the situation
- An evaluation of all the evidence
- A conclusion based on the findings

The findings of the investigation could be used during disciplinary or legal action. Consequently care needs to be taken to ensure that evidence is safeguarded and that the investigation is thorough and the conclusions reached are valid. The findings of the investigation should be treated as confidential.

During the investigation it may be necessary for individuals to be interviewed under caution. In such instances the rules laid down in the Police and Criminal Evidence Act and Criminal Justice and Public Order Act 1994 must be adhered to. Advice on this is available from Internal Audit. There will be instances where documentation is taken away by Internal Audit or the investigating officer for safeguarding during the investigation. The originals should be removed rather than copies. These should be kept secure and a statement prepared stating how, when and who removed the documents and where they will be stored. A decision on the removal of documents needs to be made early on in the investigation to avoid the risk of removal or tampering.

The appropriate Chief Officer and Head of Audit should be kept informed of progress during the investigation. This can be done

verbally and/or by preparing written progress reports. At the end of the investigation a report should be prepared for the appropriate Chief Officer and Head of Audit. This should include all the issues listed above together with any other relevant information. This should form the basis of a decision for any further action to be taken.

Action

It is for the appropriate Chief Officer to take appropriate action where there is evidence to support instances of fraud or irregularity. The Head of Audit should be kept informed of action taken and relevant outcomes.

These could include referral to the police, disciplinary action and/or recovery of any amounts involved.

The Chief Officer is also responsible for ensuring that any system weaknesses identified during the investigation are addressed.

RETENTION OF DOCUMENTS

Background

1. Government requirements for Local Authorities to retain financial and accounting documents are not as prescriptive as those, say, in the NHS which are governed by tailored legislation. However, all officers need to ensure that other legislative requirements, relevant to Local Authorities, are observed, in particular those laid down by the HMRC, in respect of:
 - Minimum periods for which the Council must retain records; and
 - The form in which documents may be retained.
2. The Public Records Office produces standards for the management of government records, and although these are aimed at central government, many of the standards and good practice outlined can be applied equally to local government.
3. The Association of Chief Archivists also produced guidance in 1999 through the DETR/LGA on records management within local government, in accordance with Section 224 of the Local Government Act 1972. This covers the retention of more permanent documents such as deeds, and registers of births, deaths and marriages.
4. The following paper highlights key legislation relevant to Local Authority records and presents guidance for officers on retention periods for common documents. However, clarity in this area is achieved in part by separating the timing issue (i.e. how long to retain documents) from the format issue (i.e. how to retain documents). They are actually separate, but related questions, because there is no specific legislation covering the format in which local government records are to be retained, except for those prescribed by the HMRC.
5. The following therefore sets out the key legislative requirements and best practice in both these areas and then includes at Annexes various recommended retention periods together with suggested formats.

The Local Audit and Accountability Act 2014

6. **Section 2 of the Local Audit and Accountability Act 2014** provides External Auditors with a right of access to every document relating to a body that appears necessary for the purpose of carrying out the Auditor's function under the Act.
7. The Council therefore needs to retain documents in order to be able to satisfy External Auditors' rights of access. Any policy on retention of documents therefore needs to be guided by an assessment of the likelihood that an External Auditor may request certain documents. This assessment needs to ensure that the Council avoids circumstances whereby it could have reasonably foreseen a request for a document, but the document has subsequently been destroyed.

Other Legislation

8. There is very little specific legislation that covers the periods of retention of documents for Local Authorities. The main consideration is the Limitations Act 1980 and this is discussed below.
9. In addition, Part VA of the Local Government Act 1972 deals with Access to Information. Section 100(c) refers to public inspection of minutes and other documents after meetings. This specifies that certain documents, which form part of the public part of the agenda, are required to be available for inspection by members of the public for a period of 6 years from the date of the meeting. These documents are:
 - Minutes, or copies of minutes of the meeting (except exempt items)
 - and related minutes;
 - A copy of the agenda of the meeting; and
 - A copy of any reports discussed (except exempt items).
10. From 1996/97 Local Authorities were required to have their accounts approved by a full committee or the council meeting as a whole. This requirement means that the statement of accounts would have been one of the agenda items and would therefore be one of the records that the Authority would need to retain for 6 years and have available for public inspection.
11. **Central Government guidance** recommends Authorities to consider whether longer periods of retention are appropriate and although nothing is prescribed, key financial records may merit permanent preservation. As a minimum, the following is considered to be in this category:

One set of annual financial accounts and statements approved by Full Council or Committee.

Minimum Retention Periods

12. As noted above, legislation that could be applied generally to local government records is the Limitations Act 1980, which specifies the statutes of limitation. A statute of limitation is one which provides that no Court shall entertain proceedings for the enforcement of certain rights if such proceedings were set on foot after the lapse of a definite period of time, reckoned as a rule from the date of the violation of the right. The Act provides, amongst other things:
 - That actions founded on simple contract and tort should not be brought after the end of 6 years from the date on which the cause of action accrued;
 - That an action on a specialty (which is an obligation contracted by matter of record, or by bond or other instrument under seal) may not be brought after the end of 12 years; and
 - That, in general, no action may be brought to recover land after the end of 12 years from the date when the right of action accrued.
13. Under the 1980 Act documents are therefore normally required to be retained for a period of between 6 and 12 years. For financial and accounting records the period would start from the beginning of the financial year after that to which it relates.
14. **Central Government Guidance** recommends however, that pay and pension records should be retained for a substantial period to safeguard the pension rights of staff e.g. officers may wish to retain records until the employee reaches benefit age. However, where pensions are being paid after retirement, it would seem appropriate to retain records until such time as pension is not required to be paid to any benefactor.
15. For External Audit purposes, the responsible body currently the **Public Sector Audit Appointments Limited** recommends that original records such as invoices, payroll documents etc. should be retained for at least 18 months after the end of the financial year to which they relate and longer if possible. However, where audits remain “open” (i.e. incomplete) due to queries, objections or outstanding litigation, then it would be appropriate to retain the records for the financial years in

question. Items such as general ledger, journals, loan records and interest payments may merit retention for longer periods.

Format of Preservation

16. There is no specific legislation covering the format in which Local Government records are retained except for those prescribed by the Her Majesty's Revenue and Customs (HMRC):
17. The responsible body currently the **Public Sector Audit Appointments Limited** recommends that Local Authorities consider the benefits of retaining the original documents for the financial year for which the audit is still open and the related costs of storage space and staffing involved in keeping original documents and weigh these against the cost of microfilming (which may include the cost of buying, borrowing or sharing the equipment).
18. Where Local Authorities do decide to microfilm records, the responsible body currently the **Public Sector Audit Appointments Limited** states that they need to ensure that the **Director of Finance** has certified the accuracy and completeness of microfilmed records and that this certification accompanies the records.
19. Where a decision is taken to microfilm or maintain documents in some form of electronic format, the responsible body currently the **Public Sector Audit Appointments Limited** also recommends that officers should consider the Code of Practice for Legal Admissibility of Information Stored on Electronic Document Management Systems and its related compliance workbook, which are published by the British Standards Institution.
20. These publications are designed to assist in the evaluation of document management systems and provide a clear audit trail. Officers may also wish to consider the Code of Practice for Information Security Management, which provides guidance and recommendations on information security and IT systems and networks.

Value Added Tax (VAT)

21. Under the VAT Act 1994 (Schedule 11 paragraph 6(1)), Local Authorities must keep records as required by the Commissioners of Customs & Excise. The requirements are set out in the VAT Regulations 1995. A public body's records generally reflect the size and complexity of its activities, which may range from simple manual

records to a sophisticated computerised system. The records do not have to be in any set format, but should be up to date and in sufficient detail to allow:

- Calculation of the correct amount of VAT to be paid or reclaimed; ` and
 - Customs & Excise to readily check the figures on the VAT return.
22. VAT records are normally required to be kept for 6 years. Annexes show the type of records that are required to be kept.
23. The VAT Act 1994 Schedule 11 paragraph 6(3) requires every taxable person to preserve records for a period not exceeding 6 years.
24. Records can be preserved by any means approved by the local HMRC office. Under Schedule 11 paragraphs 6(4) and 6(5) of the VAT Act 1994, records may be kept on microfilm or by computer storage media e.g. scanned images, magnetic tape, optical storage disks.
25. When the local VAT office considers an application to use such systems, the applicant's compliance history and reliability is taken into account. Approval is subject to the following conditions:
- A satisfactory audit trail;
 - Satisfactory and legible copies can be easily produced from the system on request;
 - Adequate facilities exist for viewing the system;
 - HMRC staff have access to the system on request in order to check its operation and the information stored on it;
 - HMRC staff will be given training on the system or its software; and
 - All records on the system are retained for the statutory period or such lesser time as may be allowed.
26. When any of these facilities are denied, the applicant is required to be warned in writing by the local HMRC office that unless they are provided immediately, approval to keep such records on microfilm, computer storage media etc. will be refused or withdrawn.

National Insurance Contributions (NIC)

27. Under the Social Security Contributions and Benefits Act 1992 Schedule 6(1) and SI 1979/591 and subsequent amendments, an employer must keep records of any Class 1 NIC payable in a tax year.

28. Records need to be maintained to support year-end returns, which summarise details of each employee's earnings and deductions. Other information that may be included are Class 1A contributions on the use of company cars, details of statutory maternity pay (SMP) and statutory sickness pay (SSP).
29. All of this information is required to be retained for 3 years after the tax year to which it relates. It can be stored and provided electronically.

Pay As You Earn (PAYE)

30. Details of the records to be maintained are set out in the IT (Employment) Regulations 1993 and its subsequent amendments. Regulation 38 highlights that employers must maintain deductions working sheets for each employee receiving emoluments during the tax year.
31. Year-end returns which summarise details of employees' emoluments and deductions are required to be sent to the HMRC. P11Ds and P9Ds which record details of expenses and benefits not covered by dispensations are required to be sent to the HMRC. Records must be maintained which support the entries on all these returns.
32. All supporting records must be retained for not less than 3 years after the end of the tax year to which they relate. This information may be provided electronically. Where the data is stored electronically, paragraph 55(7) of the Regulations requires that the employer provide suitable facilities to enable an inspector to examine these records.

Payments made under deduction of tax

33. Records are required to be retained of any interest paid on stock issued by Local Authorities under deduction of tax and of returns made to the HMRC. Any rent paid under deduction of tax e.g. to a non-resident landlord must be recorded and returned to the HMRC.

Construction Industry Scheme (CIS)

34. Under the scheme contractors, including Local Authorities, must deduct and pay over to the HMRC tax at the basic rate on payments made to subcontractors (net of the cost of materials).
35. Paragraph 5 of SI 1993/743 advises that contractors are required to maintain records of all payments made and tax deducted from subcontractors who do not hold a valid exemption certificate. Records

are also required to be maintained for payments that have been made without deduction of tax. These should include evidence that determines why no tax should be deducted.

36. All these records are required to be retained for 3 years after the end of the tax year to which they relate and must be available for inspection.
37. There follows a list of certain records and documents indicating what may be regarded as minimum retention periods taking account of the legislation in the preceding paragraphs and best recommended practice, whichever is the longer. Where documents are required for the purpose of actual or contemplated legal action officers should take advice before destroying documents.
38. It is stressed that where possible it may be preferable to keep certain records (e.g. general ledgers) for longer periods, and title deeds, share certificates etc. or any other documents evidencing title to or ownership of assets should, for obvious reasons, be retained until disposal of the assets.
39. It is suggested that good practice for actual invoices to be retained for the current financial year and the previous financial year (until the Accounts have been signed off by the External Audit). The previous year could then be discarded with the microfilmed copy retained.

ACCOUNTING RECORDS	PERIOD AFTER WHICH DOCUMENTS MAY BE DESTROYED	BASIS OF RETENTION	FORMAT OF PRESERVATION
Published Annual Report & Statutory Statement of Accounts (with certificates signed by Director of Corporate Services & District Audit)	Permanent	Responsible Body recommendation Local Government Act 1972 Accounts & Audit Regulations 2003	Hard copy
All records relating to VAT (as per Annex C attached)	6 years after the end of the financial year to which they relate	VAT Act 1994	Subject to conditions, may be kept on microfilm or by computer storage media where local VAT office has approved.
Salaries, Wages & Pensions (as per paras 27 – 32 above)	6 years after the end of the financial year to which they relate, or (Pensions only) on the date on which the officer reaches the age of 70, whichever is the later.	Pension rights of staff Responsible Body recommendation Social Security Contributions & Benefits Act 1992 IT (Employment) Regulations 1993	No specific requirements, except that where stored electronically the Inland Revenue would require the employer to provide suitable facilities to

	Where pensions are being paid after retirement, records should be retained until such time as pension is not required to be paid to any benefactor.		enable an inspector to examine these records
Principal ledger records including cash books, general ledgers and journals	6 years after the end of the financial year to which they relate	Limitation Act 1980 VAT Act 1994	No specific requirements other than those relating to VAT

Other major accounting records: e.g. paid invoices, receipts, cleared cheques, bank statements, insurance policies, investment holdings, loan records	6 years after the end of the financial year to which they relate	Limitation Act 1980 VAT Act 1994 SI 1993/743 (CIS)	Actual invoices should be retained for the current financial year and the previous financial year (until the Accounts have been signed off by the External Auditor). The previous year can then be discarded with the microfilmed copy retained.
Fixed asset registers, year end statements of stock and supporting statements of stocktaking	6 years after the end of the financial year to which they relate	Limitation Act 1980	No specific requirements other than those relating to VAT
Major establishment records including personal files, letters of appointment, employment contracts, references and related correspondence and records of leave	6 years after the officer leaves the service of the Council	Limitation Act 1980	No specific requirements

Internal Audit files and draft and final reports	3 years after formal clearance by the relevant auditor but final reports: 6 years	NHS Internal Audit Standard	Soft copy
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Minor accounting records: pass-books, deposit slips, cheque counterfoils and cancelled and discharged cheques; petty cash expenditure accounts, travel & subsistence records, minor vouchers, duplicate receipt books etc.	<p>Unless the external audit is still “open” (i.e. incomplete) - 18 months after the end of the financial year to which they relate</p> <p>BUT</p> <p>6 years if relates to VAT</p>	Responsible Body recommendation VAT Act 1994	No specific requirements other than those relating to VAT
Debtors records	<p>Unless the external audit is still “open” (i.e. incomplete) - 18 months after the end of the financial year in which they are paid or are written off, but at least 6 years in respect of any unpaid account which has not yet been written off</p> <p>BUT</p> <p>6 years if relates to VAT</p>	Limitations Act 1980 Responsible Body recommendation VAT Act 1994	No specific requirements other than those relating to VAT

Housing & Council Tax Benefits, Council Tax etc.	6 years	Limitations Act 1980	No specific requirements
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RETENTION OF CONTRACT DOCUMENTS

Type of Records	Detail
Documentation bearing signature of witnesses (e.g. contracts); documents relating to successful tender; tender opening summary, envelopes etc.	Must be retained in <u>original form</u> for 6 years (or 12 years for contracts under seal), or the project life plus 2 years, whichever is greater
Unsuccessful tenders tender evaluations; interim valuations.	Must be retained in <u>original form</u> for current year Life off contract
Supporting documents e.g. correspondence and drawings	May be microfilmed

Some records may merit consideration for permanent preservation e.g. key records relating to major building and engineering works such as surveys, site plans, drawings, bill of quantities, contract documents, including those relating to major projects which have been abandoned or deferred, deeds, lease documents, insurance policies, inventories, valuations

Contracts with consultants should include a clause which requires the consultant either to retain documents in accordance with the above, and allow reasonable access to them by the Council's authorised officers, or to return the documents to the Council for retention.

Where Private Finance Initiative contracts are entered into, it would be advisable to retain the contract documents in their original format for at least the life of the contract, and longer if possible.

VAT RECORD REQUIREMENTS

Type of Records	Detail
Business and accounting records	<p>Orders and delivery notes</p> <p>Relevant business correspondence</p> <p>Appointment and job books</p> <p>Purchase and sales books</p> <p>Cash and other accounts books</p> <p>Purchase invoices and copy sales invoices</p> <p>Records of daily takings e.g. till rolls</p> <p>Annual accounts</p> <p>Import and export documents</p> <p>Bank statements and paying-in slips</p> <p>A VAT account</p> <p>Any credit or debit notes issued or received</p>
A VAT Account (prescribed in Regulation 32 VAT Regulations 1994)	An account summarising the totals of the output tax and input tax for each tax period
Copies of all VAT invoices issued (Regulation 31(1) (c))	A copy of all VAT invoices must be retained either on paper, computer or other media and should be readily available for inspection
All VAT invoices received	
Documentation relating to acquisition of goods from other EU countries	
Copy documentation relating to the transfer, dispatch or transportation of goods to or from EU countries	

Documentation relating to imports and exports	
All credit notes, debit notes or other documents which evidence an increase or decrease in consideration that are received and copies of all such documents that are issued	
Additional records as required by Customs and Excise	

CODE OF PRACTICE ON DRAFTING FINANCIAL IMPLICATIONS IN COMMITTEE REPORTS

1. Employee costs should include National Insurance and Pension contributions, leased car costs and overtime pay where appropriate. Gross salaries should normally be calculated on the midpoints of the appropriate pay scales. The **Director of Finance** will circulate updated “ready reckoners” of employee costs within four weeks of a pay award being settled.
2. Departments should have regard to staff turnover savings assumed in the revenue budget when determining the additional savings which are likely to arise from the deletion of posts.
3. All reports should identify clearly:
 - a) recurring and non-recurring expenditure and income
 - b) part-year and full year effects.
4. Appendices should be used when it is necessary to present large volumes of financial information in a report.
5. Avoid quoting figures to the nearest penny or pound. The nearest £’000 will suffice in most instances.
6. Where additional costs are identified:
 - a) virement should be actioned in accordance with Financial Regulations. (The report should identify the specific budgets that are to be vired and seek Member approval where necessary).

OR

- b) there should be a formally recommendation to seek a supplementary estimate from the Executive
7. Reports should cost all proposals even where expenditure can be “met from existing budgets”.
 8. All areas of financial uncertainty or risk should be highlighted. In this respect a paragraph on the risks should be clearly stated so that all risks are clear and transparent and that where relevant a full risk assessment has been carried out in line with the Risk management policy.
 9. Heads of Finance Officers should clear all draft financial reports before being passed to the Committee services.
 10. Every effort should be made to allow the **Director of Finance**’s Department two full working days to comment on a draft report, although it is acknowledged that there will be some instances when a more urgent response is required.
 11. The Chief Accountant should clear all draft reports with financial considerations that impact on the Capital Programme before they are passed to the Committee services.

CODE OF CONDUCT FOR GIFTS AND HOSPITALITY

- i) The main reasons for having Guidelines on Conduct is to ensure that Council Officers maintain the traditional high standards of the Council. These high standards are expected of Local Government generally and their maintenance is necessary to uphold the integrity and reputation of the Council.

These standards are in some areas more rigorous than those applying to the private sector - all of us have to recognise and accept this. The fact that Local Authorities generally and the Council in particular are moving towards more business-like methods of providing services does not mean that the standards have been relaxed.

- ii) All Officers are subject to the provisions of this Code of Conduct, and to the provisions of their conditions of service relating to such matter. One of the purposes of the Code of Conduct is to provide practical guidance on how to deal with matters related to gifts and hospitality.
- iii) The third and perhaps most important reason for this Code of Conduct is that failure to follow the rules puts individual officers at personal risk of disciplinary action and, in certain circumstances, of criminal prosecution. Failure to comply with the Code of Conduct could give rise to disciplinary action, including dismissal. Criminal proceedings can arise from failure to declare pecuniary interests in accordance with the Local Government Act 1972 and under the Prevention of Corruption Acts. Any such criminal action resulting in conviction could give rise to imprisonment and would give rise to disciplinary action, including dismissal.

B. Potential Conflict between Personal and Job Roles

It is sometimes difficult to distinguish between personal and job roles. On some occasions an offer of hospitality will clearly be personal in that there is no connection whatsoever with the job of the officer to

whom it is made. On other occasions an offer of hospitality will be clearly made directly because of the officer's job role. However, there is an area in which the two roles merge, particularly with Chief and Senior Officers. It is difficult to give guidance which would cover all circumstances, but the following are examples:-

- i) If an offer of hospitality purports to be personal, officers should ask themselves whether it would have been made if they did not hold their office with the Council. If not, it should be treated as job related.
- ii) Does the person or organisation making the offer have any connection or potential connection with the Council? If so treat it as job related.

If there is any doubt the only safe course is to treat an offer as job related. At the very least, officers should seek advice. If an offer of hospitality is job related this Code of Conduct should be applied to it, together with any provisions in the conditions of service.

C. Acceptance of Gifts

Gifts should not be accepted (other than items of very small intrinsic value such as business diaries and calendars, which should be used in the work place). There are few permissible exceptions to this general rule but there are occasionally special circumstances such as:

i) Civic Occasions

From time to time there are civic occasions on which personal gifts may be given to officers. For example, an officer may be given a personal gift by a delegation from abroad which is here as part of a twinning arrangement. To refuse it would cause unnecessary offence. Therefore in such circumstances it is permissible for the officer to accept the gift provided that its value is not excessive. If it is a gift which is not personal it should be treated as belonging to the Council and dealt with accordingly. The important point is that such matters should be dealt with openly and, if need be, advice sought.

ii) **Unsolicited Gifts of Value**

Unsolicited gifts may be made which are more than small but still of modest value, e.g. bottles of spirits at Christmas. In such circumstances officers should consider whether they should be immediately returned, if need be with a note explaining why they cannot be accepted. If this is impracticable or would cause unnecessary offence, the gift may be presented to the Mayor for charitable purposes, or similar appropriate action taken. In such circumstances, it is appropriate to tell the donor what has been done and why. In any event, valuable gifts must be returned.

D. Acceptance of Hospitality

Reasonable hospitality may be accepted where it is related to a specific working arrangement (e.g. a working lunch). Caution should be exercised where the invitation is predominantly of a social nature, unless it falls into one of the exceptions mentioned later in this Code of Conduct.

A test which officers should apply in considering any offers of hospitality is that of public scrutiny. Would the acceptance of such hospitality, if made public, be open to misrepresentation, or raise doubts as to the integrity and motives of the provider and the recipient?

i) **Lunches, Dinners and Drinks**

They must only be of a reasonable value. Extravagance must be avoided.

ii) **Civic Hospitality**

It is permissible to accept civic hospitality provided by other Local Authorities, and similar hospitality provided by other public organisations. On such occasions officers will receive formal invitations and any such hospitality is open and above board. Similarly, it is acceptable where officers are invited in an official capacity to represent the Authority at a function or event unless

it falls into one of the excluded categories in this Code of Conduct.

iii) **Commercial Organisations**

Although modest hospitality is an accepted courtesy of a business relationship, this is an area which requires the utmost care. It can conveniently be divided into two parts:

1. Hospitality provided by commercial organisations with whom the Council has an existing business relationship.

This is likely to fall into two categories:-

- (a) The kind which is related to specific Council business.
- (b) The kind which is not specifically business-related but which is provided for representatives of the Council as a client. It is reasonable to accept this kind of hospitality as long as it is not extravagant unless:
 - the renewal of the firm's contract with the Council is imminent;
 - the firm is or is likely to be seeking other contracts with the Council in the immediate future; or,
 - It closely follows the award of a contract.

However, as a general rule business relationships should not become too cosy or too close - a proper distance should be kept.

2. Hospitality provided by commercial organisations with whom the Council does not have an existing business relationship.

The general rule must be to refuse. There may be possible exceptions, e.g. a local connection such as a firm with its headquarters based in Bromley having a Centenary Dinner to which it invites leading Members and Chief Officers of the

Council. However, any exceptions should be carefully considered and, if need be, advice sought.

E. Conferences/Seminars

It is the practice at some Conferences/Seminars for the Sponsors or interested organisations to provide hospitality or entertainment for those participating. Generally it is permissible for officers to accept this kind of hospitality but a distinction needs to be drawn between such hospitality which is generally provided (i.e. all the participants or a large group of them are invited) and individual hospitality (i.e. directed solely to one officer). The former is acceptable but the latter would be unlikely to be acceptable.

F. Study Trips

If these are promoted by, or involve, commercial organisations, they should be dealt with under E. Conference/Seminars. Generally, officers should participate only if the invitation is general and not confined to an individual or a select few.

G. Exhibitions/Demonstrations

Care should be exercised before accepting offers to visit exhibitions and demonstrations at the expense of other organisations. If there is a good reason to inspect equipment, etc. which the Council is considering purchasing then it may be acceptable. Even in such circumstances consideration should be given to the Council meeting any costs. An invitation which is made to a wide range of people is more likely to be acceptable than one which is made to an individual. Hospitality provided in such cases must not be extravagant.

H. Entertainment and Sporting Events

Generally the guidance given above relating to the acceptance of hospitality also applies to the acceptance of invitations coming under the heading of Entertainment, such as invitations at someone else's expense to sporting occasions, theatre trips etc. Generally such invitations should not be accepted unless they can be justified under

one of the various headings in this Code of Conduct. An exception may be where the entertainment or sporting event is of modest value and forms a part of the life of the community where the Council would normally expect to be represented. Invitations to premium events must be declined.

I. Trips Abroad

Trips abroad for business reasons (e.g. study trips or conferences) fall into two categories:

(i) To European Union (EU) Countries

The relevant Chief Officer has delegated authority to approve suitable trips but must report to the relevant service committee subsequently.

(ii) To Non-EU Countries

All trips to non-EU countries require prior approval from the relevant service committee. There is no delegation to officers.

These requirements apply whether the trip is at the Council's expense or is paid for by someone else. However, in the latter case, the same criteria of propriety should be applied, in deciding whether to accept in the first place, as apply to other types of gifts or hospitality.

J. Personal Inducements

Officers should beware of personal inducements being offered by companies in order to achieve orders for goods. The acceptance of such a personal inducement would lay staff open to criminal prosecution and disciplinary action including dismissal. Staff should report any such offer to their Chief Officer who, in appropriate cases, will alert the **Director of Finance** and other relevant Chief Officers. Care needs to be taken if the Council still wishes to purchase the goods from the firm concerned notwithstanding that the personal inducement has been refused and reported. It would be appropriate for written representations to be made to the firm concerned to make them aware that the practice was unacceptable and should cease.

K. Register

Each Chief Officer maintains a Register to record:

- (i) Hospitality received - this should cover hospitality whenever and wherever it is received. It is not confined only to hospitality received during working hours.
- (ii) Gifts received (other than items of very low value such as business diaries, pens, pencils, calendars etc.)
- (iii) Entertainment, study trips, visits to exhibitions or demonstrations at the expense of others.
- (iv) Conferences and seminars - any hospitality, entertainment etc., during the course of conferences and seminars should be recorded in the Register.

The register entry should contain the name of the officer, the date of receipt, the name of the person or organisation providing the gift or hospitality, and a brief description of the gift or hospitality.

Officers must understand that making an entry in the Register does not legitimise the receipt of the hospitality or gift where it is questionable on the grounds of propriety. In other words the first decision is whether the hospitality or gift should be accepted taking into account this Code of Conduct - if so, it must be registered, if not the question of registration does arise.

L. Seek Advice/Be Open/Apply Common Sense

There will be occasions when hospitality is offered which is not covered by this Code of Conduct but which nevertheless is acceptable. Similarly, there will be occasions when hospitality offered appears to come within it but nevertheless should be refused. It is a fundamental principle that in considering any offer of a gift or hospitality, officers should use judgement and common-sense.

Finally, if in doubt officers should seek advice and always be open about such matters. They should understand that if they are not prepared to seek advice or be open, it is highly likely that, whatever it is, they should not be doing it.

Transparency Code

Introduction

The Department for Communities and Local Government (DCLG) published a revised Local Government Transparency Code on 27 February 2015. The revised Code came into effect on 1 April 2015. The code seeks to ensure that certain data held by local Councils is published in a timely and open way.

Personal data will not be included if publishing it would contravene the Data Protection Act 1998.

Areas covered

The Code requires the publication of specified categories of data, and recommends the publication of additional data, under the headings below:

- Individual items of expenditure exceeding £500;
- Data on the land and buildings held by the authority;
- Information on invitations to tender, and every contract or purchase order, with a value of over £5,000;
- Details of every transaction on a Government Procurement Card used by the authority;
- Grants to voluntary, community and social enterprise organisations: dates made and amounts granted;
- The authority's organisation chart, covering the top three levels in the organisation, including salary bands;
- Details of trade union facility time: number of representatives and spending upon them;
- The number of controlled parking spaces within their area;
- Data on the value of the authority's social housing stock;
- Data on senior salaries
- The pay multiple
- The authority's constitution;
- Details of counter-fraud work;
- Details of waste contracts;
- Data on parking revenues.

The current Local Government Transparency Code was issued in February 2015. The Code applies to local authorities in England, including fire and

rescue authorities and National Park authorities, and to parish councils with either gross income or expenditure over £200,000; but not to Police and Crime Commissioners. It can be found at:

<https://www.gov.uk/government/publications/local-government-transparency-code-2015>

Summary of Amendments to CPR's - November 2015

The Council's Contract Procedure Rules incorporate a set of core requirements which form a cornerstone for the arrangements used by the Council to ensure its contracting activity and engagement with third part providers are designed to provide value for money, ensure the use of fair and transparent procedures and allow for necessary management and member overview and control.

Increasingly the Governments agenda on openness and transparency requires that the authority's approach is modified and strengthened to reflect these changes, which are often prescribed within Statutory Regulations (such as the Public Contract Regulation 2015 (PCR2015)– and associated Statutory Guidance, issued by Crown Commercial Services, which regulate how the baulk of our third party engagement and contracting is required to be conducted. However, the guiding principles of their content are drafted to enable;

- The achievement of Best Value for public money spent;
- Enables a Value for Money Procurement decision based on Whole Life Costing and the consideration of Sustainable Procurement practice (encompassing Economic, Environmental and Social benefits for the locality);
- Be consistent with the highest standards of integrity;
- Ensure fairness and transparency in the allocation of public contracts;
- Comply with all legal requirements;
- Ensure that Non-Commercial Considerations do not influence any Contracting Decision;
- Support the Council's Corporate and Departmental aims and policies;
- Complies with the Council's Corporate Procurement Strategy.

(A marked up version of the proposed changes being recommended, together with an index of CPR Clauses, is attached for reference – **Blue** Additions / **Red** Deletions).

In general terms the combined effect of the Transparency requirements and contents of the PCR's 2015 opens the Council to an increased degree of external scrutiny and challenge at much lower values of contracting with a consequential need to reflect these risks in our business and tender processes.

Summary of Consequential Amendments

Introduction – reflects the statutory changes required by the PCR2015 and associated guidance – with a new lower limit for regulated procurement at £25k and transparency information on contracting arrangements £5k. The drafting also reflects the possible future use by Third Party Contractors, who may be required to operate a number of the activities on our behalf under delegated arrangements.

Introduction – Amended to allow use of officer delegated power to amend changes in Job Title resulting from re structures.

1) Basic Principles - Amended to reflect revised financial limits, the new "Light Touch" Regime, the relaxation of permissible contracting arrangements and the move towards mandatory use of e procurement/electronic exchange of documentation, together with appropriate reporting arrangements on TUPE/Pension issues.

2) Requirement to ensure financial impacts of TUPE and Pensions are properly considered and mandatory updating of Contract Register on a Quarterly basis by Chief Officers in line with new member expectation and monitoring arrangements.

3) Amendment of authorisation requirements on the use of Frameworks and similar arrangements to reflect their greater use and acceptance as good practice when used appropriately.

Mandatory requirements on use of the Council's E Procurement System(s) to reflect requirements to communicate electronically; secure and publish contracting information; embedding of good contracting practice, coupled with audit trails and management overview to inform and protect the Council from challenge and disrepute claims.

Clarification on e mail exchange being acceptable as "Signature" where required.

4) Inclusion of "Best Consideration" to reflect position on Property and Asset requirements.

5) Steps Prior to Purchase amended to reflect Procurement Regulations, Social Value Act Consultation requirements and improved contract management arrangements, including contract monitoring and "Gate" Reporting to members.

6) Contract Transparency Code requirements - provision for their inclusion in records to be maintained and published.

7) Clause has been amended to reflect UK requirements on £25k and above contracting arrangements (and the mandatory use of Contracts Finder when advertising opportunities identified) and where the use of the £100k dispensation is allowed, together with appropriate use of Approved Lists and of Local Contractors, Constructionline and Trustmark lists when possible and appropriate. The revised drafting also reflects the curtailment of the use of a Prior Qualification Process for all contracts with an estimated value below the EU Threshold for Supplies and Service (currently around £172.5K).

8) Has been amended to reflect the requirements of the PCR's 2015 and their consequential impact on the lower values of intended contracts now subject to their statutory provisions. The opportunity has been taken to bring Consultancy arrangements in to the general provisions of CPR's rather than have them covered within a separate CPR clause and the drafting has the effect of tightening the authorisations and values required for their use.

9) Amended to reflect acceptance and relaxation over the use of prior engagement//consultation with the Market.

10-12) One of the main areas of change and consequential impacts on our working practice resulting from the UK requirements to use "suitability" questions only as part of an "Open" tender process for below EU threshold activity and use only of the mandatory PQQ documents above this value.

Similarly the move towards use of e documentation and the availability of all contract documents at the issue of Notice (both above and below EU Threshold), coupled with the publication of a greater amount of "Transparency" information, makes mandatory use of the Council's e procurement systems more important.

13) The codification of case law around the approach used to calculate the values of allowable modifications to a contract required, beyond the scope and values indicated at the time of the original Notice and tender processes require a closer look to be maintained on the cost and circumstances around contract variations and their costs. The opportunity to provide for officers to deal with

extension of contract periods included in original reports, subject to satisfactory contract monitoring having been completed.

14) Amendments made to reflect the change wording of the Legislation around reasonable and proportionate time allowance being made for the submission of documents, as well as the minimum time periods included, which also underlines the need to use the Council's E procurement systems and modified tender receipt requirements.

15) Amended to reflect that the legislation includes more flexible requirements around the correction/submission of supplementary information post-tender without necessarily invalidating their original tender submission.

16) Amended to reflect the need for all tender process to be fair, equal, transparent and proportionate, with the Tender Evaluation process, in line with current practice, being underwritten by the use of the CIPFA Standing Guide to Commissioning of Local Authority Works and Service to further detail our approach to such matters as Tender Evaluation. Additionally, the officer review mechanism to consider any formal challenges on Tender Award processes is included, to ensure the proper treatment /consideration of any "challenge" made.

17- 23) Wording amended to reflect a tightening of the requirements around Contract Documentation and its content, including Pension Bond arrangements, together with a strengthening of the Contract Monitoring reports required to be produced in line with current practices.

Annex A – Now subsumed in to Procurement Page on Managers Toolkit on OneBromley.

Annex B – Amended to include Crown Commercial Services Guide to the Public Contract Regulations 2015.

A BRIEF GUIDE TO THE EU PUBLIC CONTRACTS DIRECTIVE (2014)

October 2015

Crown Commercial Service, Customer Service Desk: 0345 410 2222 | www.gov.uk/ccs | follow us on [Twitter](#) | connect with us on [LinkedIn](#)

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1. Introduction

- 1.1 The Public Contracts Directives set out the legal framework for public procurement. This guidance note covers the new Public Contracts Directive which will apply when contracting authorities seek to acquire supplies, services, or works (e.g. civil engineering or building). Separate information will be provided to cover new directives on contracts awarded by utilities bodies (e.g. water companies) and concessions contracts. This note does not cover the procurement of contracts for defence and security requirements¹.
- 1.2 The Public Contracts Directive sets out procedures which must be followed before awarding a contract to suppliers (i.e. providers of works, supplies or services) when its value exceeds set thresholds, unless it qualifies for a specific exclusion -- e.g. on grounds of national security. Details of the current thresholds can be found at: <https://www.gov.uk/transposing---eu---procurement---directives>.
- 1.3 This guidance summarises the main provisions of the Public Contracts Directive. It does not set out all the relevant rules. It is not intended as a substitute for project specific legal advice, which should always be sought by a contracting authority where required. This guidance may not apply to contracting authorities in Scotland
- 1.4 The EU procurement regime, based on the Treaty principles of transparency, non---discrimination, equal treatment and proportionality and described by the Public Contracts Directive and Regulations referred to in this guidance, is not static. It is subject to change, driven by evolving European and domestic case law, European Commission communications, new and revised Public Contracts Directives and amendments to the existing UK Regulations.

2. Public Contracts Directives in national law

- 2.1 Public Contracts Directive 2004/18/EC on public procurement was implemented into national law in the UK by the Public Contract Regulations 2006 (with separate transposition in Scotland). These Regulations came into force on 31 January 2006 and have been amended a number of times. New UK Regulations, which will supersede the 2006 Regulations, will implement the new procurement Directives. This

guidance is based on the published text of the new Public Contracts Directive (2014/24/EU) which can be viewed at <https://www.gov.uk/transposing---eu---procurement---directives#the---directives>

3. Purpose

- 3.1 The purpose of the EU procurement rules, underpinned by the Treaty principles, is to open up the public procurement market and to ensure the free movement of supplies, services and works within the EU. In most cases they require competition. The EU rules reflect and reinforce the value for money (vfm)² focus of the Government's procurement policy. This requires that all public procurement must be based on vfm, defined as "the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought", which should be achieved through competition, unless there are compelling reasons to the contrary.

¹ More details at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35925/dsd_govt_awareness_guide.pdf

² See Managing Public Money at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v_2_-_chapters_annex_web.pdf.

4. Reform of the EU rules – The 2014 Public Contracts Directives

- 4.1 On 20 December 2011 the European Commission published proposals to revise and update the public sector and utilities procurement Directives (2004/18/EC and 2004/17/EC respectively) plus a proposed new directive on the award of concession contracts³.
- 4.2 Following negotiations between Member States, the European Parliament and the Commission the texts of the Public Contracts Directives have been agreed and came into force on 17 April 2014. Member States must transpose the Public Contracts Directives into national law within 24 months of that date.
- 4.3 The new rules support UK Government priorities of economic growth and deficit reduction by making the public procurement process faster, less costly, and more effective for business and procurers alike. They represent an excellent outcome from the UK's extensive negotiations in Brussels.
- 4.4 These changes provide a much more modern, flexible and commercial approach compared to the existing regime. Outdated and superfluous constraints have been removed, and many new features have been added to streamline and modernise public procurement. For contracting authorities, this means being able to run procurement exercises faster, with less red tape, and more focus on getting the right supplier and the best tender. And for suppliers, the process of bidding for public contracts should be quicker, less costly, and less bureaucratic, enabling suppliers to compete more effectively.
- 4.5 The Minister for the Cabinet Office has asked the Crown Commercial Service to prepare the transposition of the new rules earlier than the time allowed, to take advantage of the improvements in the rules as soon as possible.

5. New provisions

5.1 This note outlines the requirements of the new Public Contracts Directive, drawing attention to a number of changes to procedures and requirements for public procurement. More detailed guidance on some of the changes described will follow in due course.

5.2 A list of the key changes follows immediately below, with additional detail in the subsequent sections:

General

5.3 Contracting authorities will be able to reserve the award of certain services contracts to mutuals/social enterprises for a time---limited period

5.4 Although the thresholds of application of the rules will not change immediately, the Public Contracts Directive includes a binding commitment on the Commission to review the economic effects of the thresholds on the internal market. This review must be completed by 2019.

Facilitating SME involvement

5.5 Contracting authorities are encouraged to break contracts into lots to facilitate SME participation.

³ Concessions contracts are currently subject to minimal EU regulation; the proposed new legislation aims to ensure that concessions are competed effectively. Concessions contracts involve giving exploitation rights as part of the supplier's reward for delivering a public service or building – examples include toll bridges and car parks built on public---authority---owned land. Risk---transfer is also a significant feature of concessions.

5.6 A turnover cap has been introduced to facilitate SME participation. Contracting authorities will not be able to set company turnover requirements at more than two times contract value except where there is a specific justification.

5.7 A central, on---line point called “E---certis” where suppliers can find out the type of documents, certificates etc which they may be asked to provide in any EU country, even before they decide to bid. This should help suppliers to bid cross---border, if they are unfamiliar with these requirements.

Selection of Suppliers

5.8 A much simpler process of assessing bidders' credentials, involving greater use of supplier self---declarations, and where only the winning bidder should have to submit various certificates and documents to prove their status.

5.9 Poor performance under previous contracts is explicitly permitted as grounds for exclusion.

5.10 Various improved safeguards from corruption:

- Requirements on contracting authorities to put in place appropriate safeguards against conflicts of interest. The rules are not prescriptive on what the safeguards should be, but compliance could be achieved, for example, through a common current practice amongst many UK contracting authorities, where declarations are signed by procurement staff to confirm they have no outside interests with bidders etc;
- Time limits for the exclusion of suppliers (not more than 3 or 5 years depending on the reason for the exclusion);
- Suppliers who have been excluded from public procurement for bad practice can have the exclusion ended if they effectively “self clean”.

Procedure changes

- 5.11 Preliminary market consultations between contracting authorities and suppliers are encouraged, which should facilitate better specifications, better outcomes and shorter procurement times.
- 5.12 More freedom to negotiate. Constraints on using the competitive procedure with negotiation have been relaxed, so that the procedure will generally be available for any requirements that go beyond “off the shelf” purchasing.
- 5.13 The distinction between Part A and Part B Services has been removed, and a new light---touch regime introduced for social and health and some other services. There is an OJEU advertising requirement and other specific obligations for this new light---touch regime, but a much higher threshold has been agreed (EUR 750,000).
- 5.14 A new procedure, the “Innovation Partnership” procedure, has been introduced. This is intended to allow scope for more innovative ideas. The supplier bids to enter into a partnership with the authority, to develop a new product or service.
- 5.15 The statutory minimum time limits by which suppliers have to respond to advertised procurements and submit tender documents have been reduced by about a third. This flexibility could be helpful for speeding up simpler or off---the---shelf procurements, but still permits longer timescales for requirements where suppliers will need more time to respond.

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Electronic procurement

- 5.16 Electronic versions of the procurement documentation must be available through an internet URL immediately on publication of the OJEU contract notice.
- 5.17 Full electronic communication (with some exceptions) will become mandatory for public contracts 4.5 years after the Public Contracts Directive comes into force (i.e. October 2018). For central purchasing bodies the deadline is three years (April 2017).

- 5.18 The rules on “Dynamic Purchasing Systems” (DPS) have been greatly simplified, with the removal of the onerous obligation to OJEU---advertise call---off contracts made under the DPS.
- 5.19 Electronic catalogues for public procurement are expressly permitted, removing any doubt as to their legality.

Contract award

- 5.20 Improved rules on social and environmental aspects, making it clear that:
- social aspects can now also be taken into account in certain circumstances (in addition to environmental aspects which have previously been allowed);
 - contracting authorities can require certification/labels or other equivalent evidence of social/environmental characteristics, further facilitating procurement of contracts with social/environmental objectives;
 - contracting authorities can refer to factors directly linked to the production process.
- 5.21 The full life---cycle costing can be taken into account when awarding contracts; this could encourage more sustainable and/or better value procurements which might save money over the long term despite appearing on initial examination to be more costly.
- 5.22 Legal clarity that contracting authorities can take into account the relevant skills and experience of individuals at the award stage where relevant (e.g. for consultants, architects, etc).

Other

- 5.23 Contracting authorities no longer have to submit detailed annual statistics on their procurement activities. The Commission will collect this information directly from the online system, thereby freeing up valuable time and resources for contracting authorities.
- 5.24 Works concessions contracts are excluded from the Public Contracts Directive. The new Concessions Directive will apply to both works and services concessions when it is transposed into UK law.

6. Training

- 6.1 The EU procurement rules are detailed and technical and to assist in their understanding the Crown Commercial Service has prepared a training package for contracting authorities (though its contents may also be of interest to suppliers, advisers and other interested parties). This document is a part of that package, which is being rolled out across the public sector.
- 6.2 This section of the guide describes briefly the provisions of the EU procurement regime and in particular the new Public Contracts Directive. Where the Public Contracts Directive introduces major changes to the current regime these are **highlighted in bold**.

- 6.3 The training package will be available for free download from <https://www.gov.uk/transposing---eu---procurement---directives> and is also the subject of an electronic learning package which will be available to contracting authorities shortly.

7. Geographical coverage – which countries have access to the EU rules?

- 7.1 In addition to the 28 EU Member States and the 3 states of the European Economic Area (Iceland, Liechtenstein and Norway) the benefits of the EU public procurement rules also continue to apply to suppliers from a number of other countries where the EU has entered into an agreement. The main agreement is the one negotiated through the World Trade Organisation (WTO) titled the Government Procurement Agreement (GPA)
http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm#govt.

- 7.2 Compliance with the EU rules ensures compliance with the GPA, where it applies, and suppliers from GPA countries have the same rights as EU suppliers. The non---EU countries who are signatories to the GPA are:

- Armenia; Aruba; Canada; Hong Kong, China; Iceland; Israel; Japan; Liechtenstein; Montenegro, New Zealand; Norway; Republic of Korea; Singapore; Switzerland; Taipei; and the USA.

- 7.3 The EU has similar Free Trade Agreements with some other countries, and contracting authorities should check to see if any of these apply if they receive expressions of interest or bids from suppliers in other, non---GPA countries. A Commission list of such agreements can be found at:
http://ec.europa.eu/internal_market/publicprocurement/rules/free_trade_agreements/index_en.htm

8. Contracts outside the scope of the Public Contracts Directives

- 8.1 Even when a tender process is not subject to the Public Contracts Directives, (for example because the estimated value of a contract falls below the relevant threshold), EU Treaty---based principles of non---discrimination, equal treatment, transparency, mutual recognition and proportionality apply. Where the authority considers that a contract is likely to attract cross---border interest it is obliged to publish a sufficiently accessible advertisement to ensure that suppliers in other Member States can have access to appropriate information before awarding the contract. This is in line with the UK objective of achieving value for money in *all* public procurement --- not just those covered by the Public Contracts Directives. Some degree of advertising, (appropriate to the scale of the contract), is likely to be necessary to achieve transparency where the contract is likely to attract cross---border interest.
- 8.2 The UK regulations will also include some specific UK rules to support growth by improving suppliers' access to public contracts below the EU thresholds ("sub---threshold contracts"). These rules include requirements for advertising all public contracts below the EU thresholds, but over certain other threshold values, on Contracts Finder. They also include a requirement for contracting authorities to have regard to Crown Commercial Service guidance on the selection of suppliers and the award of contracts and to ensure that suppliers pay their sub---contractors within 30 days (as is already required of contracting authorities).

9. Does the Public Contracts Directive apply to the contract?

- 9.1 The Public Contracts Directive applies in principle to all contracts awarded by a contracting authority.

However, there are some specific exclusions where there is a relevant defence or security dimension, see Annex A, Flowchart 1. **The Public Contracts Directive also exempts certain contracts between contracting authorities where they are effectively meeting genuine ‘in-house’ requirements within a number of contracting authorities.** This could be through the form of a ‘vertical’ arrangement under shared control (so-called ‘Teckal bodies’ from the lead case in the European court, Case C-107/98). Or it might be through a ‘horizontal’ arrangement, where a number of contracting authorities genuinely co-operate with each other to meet a shared legal obligation (as in the *Hamburg* case in the European court, Case C-480/06).

10. Mixed contracts

- 10.1 In some cases contracts awarded by contracting authorities will contain elements that are covered under the rules in the new public sector regulations, the new utilities regulations, the new concessions regulations and/or the Defence and Security Public Contracts Regulations. These issues are complex and will be the subject of separate guidance. See Annex A, Flowchart 2 for mixed procurements involving the new public sector regulations, the Defence and Security Public Contracts Regulations and/or Article 346 of the Treaty.

11. Reservation of certain contracts: mutuals and sheltered workshops

11.1 Mutuals

- 11.2 **One of the UK priorities in the negotiations was to secure flexibility to enable fledgling public service mutuals to gain experience of delivering services before being exposed to EU-wide competition.** The new Public Contracts Directive permits competition for certain contracts, listed by CPV code, mainly in the social and health sectors, to be “reserved” to organisations such as mutuals and social enterprises meeting certain limited criteria described in Article 77 of the Public Contracts Directive. The reservation works in practice by requiring an OJEU competition for those services using the ‘light touch regime’ referred to at paragraph 12.1 below but only allowing bids from organisations meeting the mutual or social enterprise criteria.

- 11.3 The reservation has time-based conditions to prevent misuse, so contracting authorities cannot reserve contracts for organisations that have been awarded contracts within the last 3 years, and contracts cannot be longer than 3 years.

11.4 Sheltered workshops

- 11.5 **The Public Contracts Directive also expands the scope of the existing reservation for sheltered workshops/employment programmes** by allowing reservation of any contract for disadvantaged as well as disabled workers, and reducing the minimum proportion of those workers in the supplier’s workforce required for a supplier to be eligible to bid for a reserved contract. The reservation works in practice by requiring an OJEU competition for those services but only allowing bids from organisations meeting the criteria.

12. The ‘light touch regime’ for certain services

- 12.1 **Under the 2006 Regulations there are different rules for so-called ‘Part A and Part B’ services. In the new Public Contracts Directive, the position for services contracts has changed significantly.**

12.2 The main changes include:

- A new “light---touch regime” for a smaller number of categories of services contracts in the health and social service areas listed at Annex XIV to the Public Contracts Directive. Some contracts that were formerly “Part B” but are not listed in the Annex, will be subject to the *full* EU procurement rules;
- A significantly higher threshold than for supplies and for other services (EUR 750,000 for public sector authorities);
- A new obligation on contracting authorities to publish a call for competition in the OJEU, as well as a contract award notice, for above---threshold contracts covered by the light---touch regime.

12.3 Member States have flexibility to design their light touch rules. To preserve as much of the existing flexibility as possible the UK rules will be much less stringent than the full EU rules regime. As well as the OJEU advertising requirements the UK rules will require compliance with the basic Treaty principles (transparency, equal treatment, non---discrimination) and publication in OJEU of contract award notices. Otherwise, there will be considerable flexibility for contracting authorities to use procedures, tools and techniques of their own choosing, whether analogous to those in the main rules or not. More detailed information will be released by the time the UK Regulations come into effect.

13. Aggregation rules and thresholds

13.1 The threshold levels for the application of the Public Contracts Directives (which can be found using the links at: <https://www.gov.uk/transposing---eu---procurement---directives>) will be unchanged because of GPA commitments but **the Commission has made a commitment to review, by 2019, the** economic effects of the thresholds on the internal market. The Public Contracts Directive’s rules on determining the value of a contract are unchanged.

13.2 Where a single work involves more than one contract, the estimated value of all the contracts must be aggregated to decide whether the threshold is reached. Where the threshold is reached, each of the works contracts will be covered by the rules except small contracts (known as small lots) the value of which falls below the de minimis level provided for in the Public Contracts Directive.

13.3 In determining whether the threshold has been or is likely to be reached for public supplies or services contracts, the rules require aggregation:

- of the estimated value of separate contracts for meeting a single requirement; and
- where a series of contracts or a renewable contract is entered into for supplies/services of the same type during a twelve month period.

13.4 Where an authority is divided into a number of separate operational units (SOUs) with authority to decide independently whether to enter into procurement contracts, then aggregation need only be applied to each unit. In other cases the authority as a whole must be considered for aggregation purposes. The Public Contracts Directive provides greater detail as to when aggregation can be carried out at the SOU level.

14. Electronic procurement

14.1 **The Public Contracts Directive requires electronic submission of OJEU notices, electronic availability of procurement documents at the time of notice publication, and electronic communication and information exchange for all communication under the Public Contracts Directive, subject to specified exclusions.** Contracting authorities must ensure that the tools and devices used for electronic communication meet certain requirements set out in the Public Contracts Directive. Contracting authorities must decide and apply to these communications, appropriate electronic security, guided by a high level framework in the Regulations.

14.2 **The Public Contracts Directive reforms the DPS to remove the previously burdensome need for OJEU**

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advertising of “call-off” contracts to be awarded using the system. Under the new rules, only the DPS itself will need to be OJEU-advertised, with call-off contracts being subject to much more straightforward procedures, similar to the established process for awarding call-off contracts under a framework agreement by mini-competition. A key advantage of a DPS compared to a framework, which it resembles, is that suppliers can be added at any time to a DPS provided that they pass the exclusion criteria and minimum capacity requirements. This will greatly streamline the system and allow greater competition to be maintained.

14.3 **The Public Contracts Directive also provides helpful confirmation that electronic catalogues can be used as a basis for tenders for contracts or frameworks. Some safeguards are required where contracting authorities intend to compare offers without seeking re-submission of catalogues by suppliers.**

15. Central purchasing bodies

15.1 As now contracting authorities may purchase through Central Purchasing Bodies (CPBs). CPBs may act as a ‘wholesaler’ – supplying an authority on the basis of contracts it has itself awarded and/or provide contracting authorities with access to framework deals or dynamic purchasing systems it has established.

16. Frameworks

16.1 The Public Contracts Directive introduces minor clarifications of the rules on frameworks relating mainly to transparency. Thus contracting authorities must not use a framework unless clearly identified in the notice as permissible users and contracting authorities must be transparent about the methods of call off to be used. It does however confirm that a contract awarded under a framework may have a completion date after the end of the framework.

17. OJEU advertising requirement

17.1 As now, generally contracts covered by the Regulations must be the subject of a ‘call for competition’ published in the OJEU. **In most cases this will be a Contract Notice but in a change from the current rules contracting authorities other than central government (e.g. local authorities) will also be able to use the Prior Information Notice (PIN) for this purpose in certain defined circumstances.** A number of detailed changes have also been made to the information that must be included in the notice forms.

17.2 The Commission is preparing revised versions of its Standard Forms to accommodate these changes. We hope these will be available in time for the UK and other Member States to implement the

Public Contracts Directives early. The Crown Commercial Service is considering the most appropriate way to proceed if they are not available and if necessary will issue guidance in due course.

18. Shorter minimum time limits

- 18.1 **The minimum time allowed for responses or tenders is reduced to allow flexibility where the current minimum time limits are unnecessarily long.** In certain circumstances these can be shortened further where the requirement is urgent or where sufficient information has already been provided by a prior information notice to allow suppliers to respond quickly. See Annex B for a summary of the time limits in the new Public Contracts Directive.

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19. Choice of procurement procedure

- 19.1 **The new Public Contracts Directive provides for five award procedures, rather than the existing four:**

- the open procedure, under which all those interested may respond to the advertisement in the OJEU by submitting a tender for the contract;
- the restricted procedure, under which a selection is made of those who respond to the advertisement and only they are invited to submit a tender for the contract.
- the competitive dialogue procedure, under which a selection is made of those who respond to the advertisement and the contracting authority enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender. **The new Public Contracts Directive provides greater freedom to use this procedure than do the existing rules** (see below);
- the competitive procedure with negotiation under which a selection is made of those who respond to the advertisement and only they are invited to submit an initial tender for the contract. The contracting authority may then open negotiations with the tenderers to seek improved offers. **The new Public Contracts Directive provides greater freedom to use this procedure than the existing rules** (see below).
- the innovation partnership procedure, under which a selection is made of those who respond to the advertisement and the contracting authority uses a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing 'product' on the market. The contracting authority is allowed to award partnerships to more than one supplier.

- 19.2 In certain narrowly defined circumstances the contracting authority may also award a contract using the 'negotiated procedure without prior publication'. Here the contracting authority would approach one or more suppliers seeking to negotiate the terms of the contract. One of the permitted circumstances is where, for technical or artistic reasons or because of the protection of exclusive rights, the contract can only be carried out by a particular supplier.

- 19.3 Contracting authorities have a free choice between the open and restricted procedures. **The competitive dialogue procedure and the competitive procedure with negotiation are available where certain criteria are met, including where the contract is complex or cannot be purchased 'off the shelf'.** The 'negotiated procedure without prior publication' may only be used in the limited circumstances described in the Public Contracts Directive.

- 19.4 Contracting authorities using the restricted procedure, competitive dialogue procedure and the competitive procedure with negotiation must aim to select a number of suppliers sufficient to ensure genuine competition. Provided there are sufficient suitable candidates, the Public Contracts Directive requires a

minimum of five for the restricted procedure, and three for competitive dialogue and competitive procedure with negotiation

20. Stages in the procurement process

20.1 The Public Contracts Directive includes procedural requirements designed to ensure all suppliers established in countries covered by the rules are treated on equal terms, to avoid national discrimination. The rules in particular cover the following:

- Specification stage -- how requirements must be described, avoiding brand names and other references which would have the effect of favouring or eliminating particular providers, products or services and the requirement to accept equivalence. The use of performance specifications is encouraged. **The new Public Contracts Directive also makes clear that there is some scope for building into the specification equality issues (e.g. access issues for the disabled) and social/environmental issues (e.g. a requirement to conform to social or environmental labels).** Regarding social/environmental issues, contracting authorities also may specify production processes and methods as long as they are linked to the

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subject matter of the contract.

- Selection stage -- there are a number of grounds for the exclusion of suppliers based on evidence of unsuitability, some of which are mandatory. Reasons include criminal conviction for certain offences (mandatory), failure to pay taxes (mandatory) **and previous poor performance which has led to early termination, damages or other comparable sanctions (discretionary).** Some of the grounds for mandatory exclusion are subject to account being taken of remedial action by the supplier, e.g. organisational changes. **There are statutory limits to the duration of any exclusion period.**
- Those suppliers not excluded can then be assessed on the basis of their economic and financial standing, e.g. whether they meet proportionate levels of financial soundness. **The Public Contracts Directive requires that where this is judged on the basis of turnover this should not normally exceed twice the value of the contract.**
- **Suppliers may also be assessed on their technical capacity and ability e.g. that they will be adequately equipped to do the job and that their track record is satisfactory.**
- **Award stage -- the award of contract must be based on the tender most 'economically advantageous' to the authority (MEAT).** This can however include assessment on the basis of price/cost only as well as other methods including the 'best price/quality ratio' (equivalent to value for money), which can include social and environmental requirements provided they relate to the contract.

20.2 **The Public Contracts Directive also places a duty on the contracting authority to investigate tenders it considers abnormally low and to disregard those that are based on approaches in breach of international environmental or social law.**

20.3 To allow suppliers to seek effective review of contracting authorities' decisions, contracting authorities will as now be required to include a 10---15 day standstill period⁴ between the point when the decision on the award of the contract is made and the signature of the contract. The standstill letter must provide certain information about the contracting authority's decision. There are detailed requirements for this process, which are set out in the Public Contracts Directive.

21. Changes to contracts once awarded

21.1 **The Public Contracts Directive provides useful clarity about the extent to which a contract can be changed after award without the need to re---advertise in OJEU.** Permissible grounds for modification include the existence of suitable “clear, precise and unequivocal” review clauses in the contract; or a need for additional supplies or services where a change of supplier is impossible or would cause significant inconvenience or a need for additional deliveries due to unforeseen circumstances (both subject to 50% maximum increase in contract value); or where a new supplier replaces the existing supplier because of insolvency, genuine restructuring etc.

22. Termination of contracts

22.1 **The Public Contracts Directive contains provisions to ensure that Member States’ contracts allow termination in circumstances where there has been a breach of EU law on public procurement, particularly where this results from a change in an awarded contract.**

22.2 The contracting authority must be able to terminate a contract should any of the following three grounds occur:

⁴ At least 10 days, when the notice is communicated using electronic means, or when using non---electronic means, there is a choice between either 15 days from date of sending; or 10 days from date of receipt

- Where the contract has been subject to a substantial modification that constitutes a new award;
- Where it is discovered after contract award that the contractor should have been excluded on mandatory exclusion grounds;
- Where the Court of Justice of the European Union (CJEU) has declared a serious infringement by the contracting authority of its obligations, meaning the contract should not have been awarded to the contractor.

22.3 The Regulations will specify that contracting authorities must include a condition in contracts allowing them to terminate if any of the grounds are found to apply. As a fallback, the Regulations will also include a deeming provision to ensure this possibility exists where a contract fails to include a termination condition.

23. Enforcement

23.1 The enforcement regime will be included in the Regulations, and derives from the Remedies Directives, which have not changed. The principal means of enforcement for a breach of the Regulations and other enforceable EU law such as the Treaty are:

- action by suppliers against individual contracting authorities in the High Court; and
- action by the Commission against the Member State in the Court of Justice of the European Union (CJEU).

23.2 The High Court’s powers include both pre---contractual remedies (i.e. those that can be imposed before the contract is entered into) and post---contractual. Pre---contractual remedies include the power to suspend an incomplete contract award procedure (an injunction) or the setting aside of a decision in an incomplete contract award procedure. The High Court also has powers to award damages as a pre---contractual remedy.

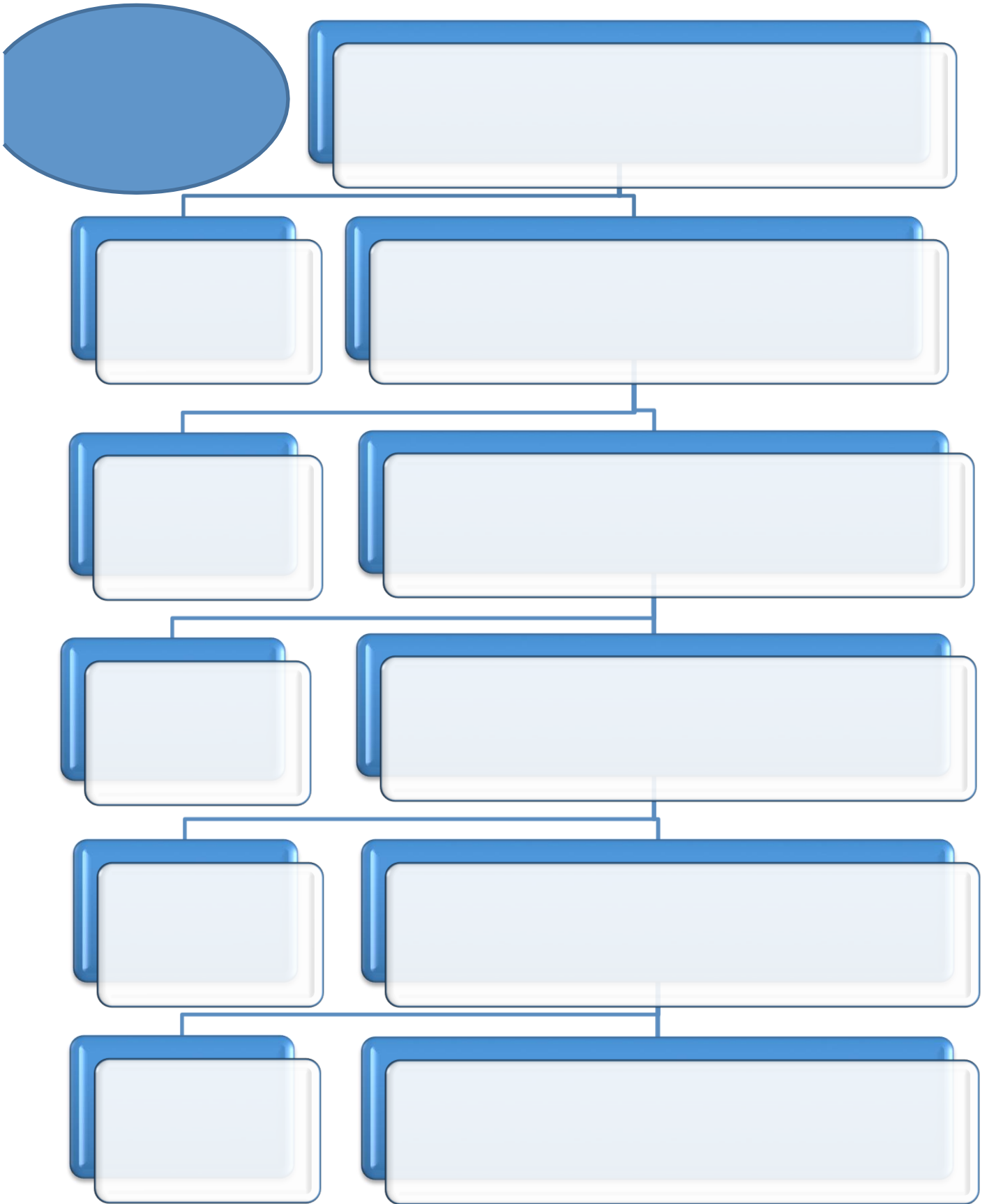
23.3 Post-contractual remedies (for contracts that have already been awarded) include contractual ineffectiveness (i.e. cancellation, but only for very serious rule breaches,) contract shortening, and civil financial penalties (fines). A properly applied standstill period gives good protection against post-contractual remedies.

23.4 Cases can also be pursued via the European Commission, for breach of the relevant European Directive and/or the EU Treaties. These cases, where accepted by the Commission, trigger infraction proceedings against the Member State, and can lead to a CJEU hearing, substantial fines, and potentially other CJEU imposed orders against the Member State if the breach is not satisfactorily resolved by other means.

24. Further information

24.1 For further detailed information, including the training materials, see <https://www.gov.uk/transposing-eu-procurement-directives>. More detailed information on certain aspects of the legislation will also be made available in due course.

24.2 Enquiries should be addressed to: Crown Commercial Service, Customer Service Desk: 0345 410 2222
info@ccs.gsi.gov.uk



Defence and Security Exclusions – Part 2 of the Public Contract Regulations 2015
Flowchart 1

Are some parts of the requirement covered by Article 346 TFEU and/or DSPCR 2011 but other parts are not?

YES

Go to Flowchart 2

NO

Does the requirement fall within the scope of DSPCR 2011, or does DSPCR 2011 not apply in accordance with Regulations 7 or 9 of DSPCR?

YES

Part 2 of PCR 2015 does not apply

NO

Does Article 346 TFEU apply?

YES

Article 346 TFEU prevails over Part 2 of PCR 2015

NO

Do the security and secrecy exemptions apply? (Regulations 15(2) and 15(3))

YES

Part 2 of PCR 2015 does not apply in accordance with Regulations 15(2) and 15(3)

NO

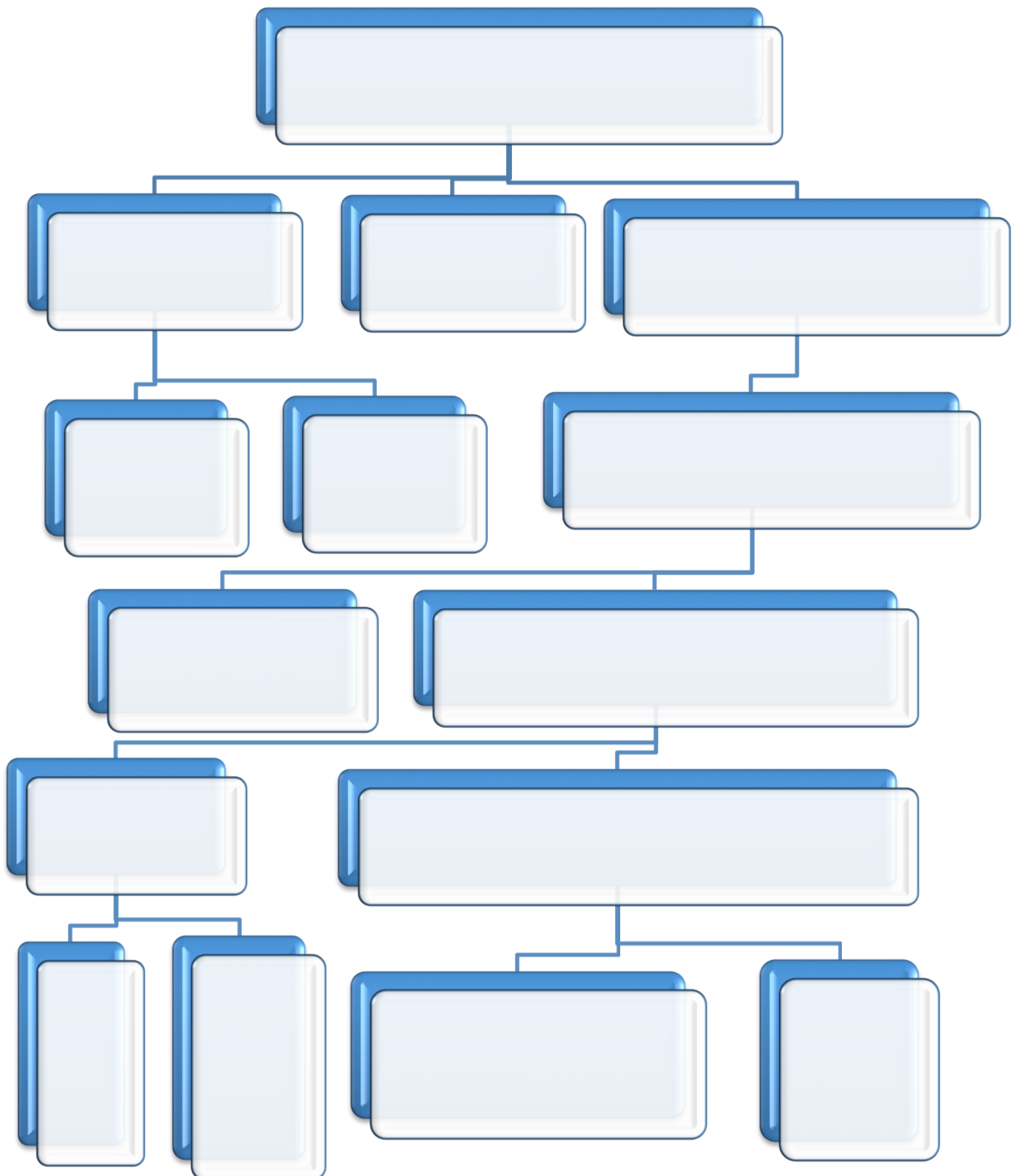
Will the contract be awarded in accordance with relevant international rules? (Regulation 17)

YES

NO

Part 2 of PCR 2015 applies subject to its non-defence/security exclusions and thresholds

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Are the different parts objectively separable?

NO

Does the requirement include parts to which Article 346 TFEU applies?

YES

Contracting Authority can award separate contracts

YES

If Contracting Authority wants to award a single contract covering all the parts:

NO

Contract may be awarded in accordance with DSPCR 2011

YES

No need to apply Part 2 of PCR 2015

Is the decision to award a single contract being taken to exclude it from Part 2 of PCR 2015 or DSPCR 2011?

YES

Separate contracts must be awarded

NO

Is part of the contract covered by Article 346 TFEU, regardless of whether any part is covered by DSPCR 2011?

YES

Is a single contract justified by objective reasons?

NO

Is a single contract justified by objective reasons?

NO

Separate contracts must be awarded

YES

Can award a single contract without applying Part 2 of PCR 2015

YES

Can award a single contract under DSPCR 2011, without prejudice to exclusions and thresholds in DSPCR

NO

Separate contracts must be awarded

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Annex B

OJEU advertising time limits

Minimum OJEU time limits for the Public Contracts Directive

NORMAL MINIMUM TIME	IF ELECTRONIC TENDER PERMITTED	IF URGENT+	WHERE PIN PUBLISHED*	IF SUB CENTRAL AUTHORITY**
Open procedure				
Minimum time limit for receipt of tenders 35 days	Minimum time limit for receipt of tenders 30 days	Minimum time limit for receipt of tenders 15 days	Minimum time limit for receipt of tenders 15 days	-
Restricted procedure				
Minimum time limit for requests to participate 30 days	-	Minimum time limit for requests to participate 15 days	Minimum time limit for requests to participate 30 days	Minimum time limit for requests to participate 30 days
Minimum time limit for tenders 30 days	Minimum time limit for receipt of tenders 25 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders to be set by agreement with tenderers. In the absence of agreement minimum time limit 10 days
Competitive procedure with negotiation and innovation partnerships				
Minimum time limit for requests to participate 30 days	-	Minimum time limit for requests to participate 15 days	Minimum time limit for requests to participate 30 days	Minimum time limit for requests to participate 30 days

Minimum time limit for initial tenders 30 days	Minimum time limit for receipt of initial tenders 25 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders to be set by agreement with tenderers. In the absence of agreement minimum time limit 10 days
Competitive dialogue				
Minimum time limit for requests to participate 30 days	--	--	--	--
No explicit time limits for submission of initial/subsequent tenders	--	--	--	--

Notes

These are minimum time limits. When fixing the time limits for the receipt of tenders and requests to participate, contracting authorities must take account of the complexity of the contract and the time required for drawing up tenders

+ This shorter time limit is allowed where a state of urgency duly substantiated by the contracting authorities renders the minimum impracticable

* This shorter tendering time limit is allowed where contracting authorities have published a prior information notice which was not itself used as a means of calling for competition, provided that all of the following conditions are fulfilled:

- (a) the prior information notice included all the information required in section I of the PIN notice referred to in the Public Contracts Directive, insofar as that information was available at the time the prior information notice was published;
- (b) the prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

** ‘ sub---central contracting authorities’ means all contracting authorities which are not central government authorities

Main Feature of the Documentation

Member Decision Making

3.1 The current process for member involvement, after the establishment and agreement of a budget is to some extent optional, with inclusion in the process being at Chief Officer volition.

3.2 A clear framework for Portfolio and Executive input into contracts with likely strategic importance is set out with a general need for each to authorise contracting activity at critical “gates” in the process. For Portfolio Holders these are set at contracts with a value of contract estimated to be valued over £500k and for the Executive those estimated to have a value over £1m. The “gates” operate at the following points;

- Formal consultation on the intended action and contracting arrangement (Rule 5) prior to embarking on contracting activity, to provide opportunity for member involvement in the formation and shape of any intended contract.
- Any decision to negotiate rather than subject contracting activity to competitive tender. (Rule 13)
- Contract Award (Rule 16.5).
- The submission of an annual report on contractor performance during the life of the contract to monitor the delivery of required contractual outcomes (Rule 23).

3.3 In addition provision is made, by way of retrospective reporting for Audit Sub-Committee to overview certain activities taken under delegated authority with the submission of a bi-annual report into the application of exemptions to competitive tendering (Rule 3.4 and 13.1).

Other member Involvement

3.4 Some relaxation of the current arrangements around the employment of Consultants is provided for within a controlled environment of consultation with Finance and Procurement. Formal Consultation is provided with the Portfolio

Holder where these Commissions exceed £100k. (Rule 8.5). These are supplemented by the reporting regime put in place around the operation of the service and corporate Contract Registers

Improvements to Management Arrangement

3.5 The need to ensure the use of procurement (and management) best practice runs through the drafting of the document and the inclusion of overviews of activity by officers within Resources and Legal. The following provides an indication of the requirements incorporated.

- Rule 1.1 – Value for Money basis of purchasing to be based on Whole Life Costing and Consideration of Sustainable Procurement practice.
- Rule 2.1.1 & 5.1 – Officers must have regard (and discuss with the Head of Procurement, departures from the best practice identified) the guidance provided in the Council's - "Guide to Successful Procurement".
- Rule 2.2.1 – Maintenance and use of Corporate and Service Contract Register.
- Rule 3.4 – Invoking of Business Continuity Plan
- Rule 3.8 – Value for money and the implicit use of Collaborative Procurement arrangements.
- Rule 3.9 – Use of Voluntary Sector Organisations.
- Rule 7.3 - Use of Framework Arrangements.
- Rule 10 – Contract Award Criteria.
- Rule 16 – Mandatory "Standstill" periods and Call in,
- Rule 21-23 - Use of Programme and Project management best practice and onward reporting of contract management and outcomes to Members.

2. Legal Implications

- 4.1 The attached Financial Regulations and Contract Procedure Rules are made under the provisions of s135 Local Government Act 1972 and set out the practices that should be adopted in regard to the making or entering into of contracts by or on behalf of the Authority. These supplement the power of the Council under s111 LGA 1972 and s2 LGA 2003 to enter into contracts to facilitate the discharge of its functions.
- 4.2 The Accounts and Audit Regulations 2003 require the Council to have a sound system of internal control which facilitates the effective exercise of the Council's functions and includes arrangements for management of risk. The Council is required to conduct a review of the effectiveness of such systems at least once a year.
- 4.3 The Financial Regulations provide the framework for managing the Council's financial affairs and apply to every Member and officer as well as anyone acting on its behalf. The Procedure Rules which are mandatory provide further detail and these are in turn supported by CIPFA code of conduct and practice.

ervices

LONDON BOROUGH OF BROMLEY

CONTRACT PROCEDURE RULES

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All costs stated in these contract procedure rules are exclusive of VAT, staff costs and fees.

Terms appearing in the definitions appendix are italicised and capitalised.

Further advice on the interpretation of these requirements can be obtained from the following;

Director of Corporate Services

Director of Finance

Head of Procurement

To aid use of these Contract Procedure Rules the following Colour Coding has been used for those associated with various actions and requirements;

Council /Executive	
Portfolio Holder	
Audit Sub Committee	
Chief Executive	
Director of Corporate Services	
Director of Finance /Head of Finance	
Chief Officer	
Heads of Service	
Head of Procurement	
Contract Manager	
Line Manager	
Officer / Initiating Officer	
Values/Amounts	£

<u>Current EU Limits</u>	£
For Works –	4,322,012
For Supplies and Services (other than Light Touch) -	172,514
For the Specific Services Covered by the “Light Touch” Regime –as identified in Schedule 3 of the Public Contract Regulations	625,050
<u>Current UK Limits</u>	
Additional UK Limits – Publication in Contract Finder	25,000 – 172,514
Permissible LBB CPR Set aside Limit	100,000
Current (additional) UK Limits – Local Government Transparency Code – Mandatory Publication of Procurement Information	5,000
Current (additional) UK Limits – Local Government Transparency Code – Mandatory Publication of Expenditure Information	500

A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

INTRODUCTION

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act), which form part of the Council's Standing Orders, are intended to promote good *Procurement* practice, establish Value for Money, enhance public accountability and deter corruption. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently and protects the Council from challenge on the arrangements used for its contracting activity. They reflect the requirements of the 2015 Public Contract Regulations, which set out the statutory requirements for Public Sector Procurement with a value of £25,000 and above and the Local Government Transparency Code 2015. Further descriptions of these requirements, together with associated Policy, Guidance and Practice Notes can be found the Council's Intranet Site in the Procurement element of the "Manager Toolkit".

VFM/Best Value

All **Officers** responsible for *Procurement* activity or disposal must comply with these Contract Procedure Rules. They lay down minimum requirements only; a more thorough procedure may be appropriate for a particular contract.

(For example, if Rule 8.1 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations in writing or tender submissions. Equally, it may not always be appropriate to make use of an exemption under Rule 3 even if one might apply or be granted.)

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail and fax transmissions as well as hard copy documents or information issued via a Council E Procurement System.

- Follow the rules if you purchase goods or services or order construction work of any type;
- Take all necessary legal, financial, procurement and professional advice;
- Declare any personal financial interest in a contract. Corruption is a criminal offence;
- Conduct a *Best Value Service* review to establish Value for Money to inform the *Procurement* need;
- Check whether there is an existing *Corporate Contract or appropriate framework* you can make use of before undergoing a competitive process;
- Normally allow at least 30 days for submission (more as required, if above EU Threshold) of bids (unless there are good reasons not to);
- Keep bids confidential;
- Complete a written contract and / or Council Purchase Order (using its E Procurement Systems where possible) before the supply, service or works begin (unless otherwise agreed by the **Director of Corporate Services**);
- Identify a contract manager with responsibility for ensuring the contract delivers as intended;
- Keep records of dealings with all tenderers and contractors;

- Assess each contract afterwards to see how well it met and continues to meet the *Procurement* need and *Value for Money* requirements.

In accordance with the *Constitution*, the *Director of Corporate Services*, in agreement with the *Director of Finance* shall have the power to make amendments from time to time to these Contract Procedure Rules *subject to a report being made to the Council within 3 months of any amendment being made*. The *Chief Executive* in agreement with the *Director of Corporate Services*, and the *Director of Finance* shall have the power to amend the titles of the responsible *Officers* identified within these Contract Procedure Rules where these result from changes in organisational structure and/or other amendments to roles and responsibilities of the *Officer* concerned.

The *Head of Procurement* will make the latest version of these Contract Procedure Rules and its associated Guidance Notes available to all officers and members as necessary and be responsible for its circulation and communication

Various Best Practice Guidance Notes and associated processes can be found on the Council's Intranet Site in the Procurement element of the "Manager Toolkit". These complement these Procedural Rules and have been prepared to assist those involved in the *Procurement* process to identify and use best practice. The practices identified should be used by those involved in contracting processes and arrangements unless an alternative course of action has been agreed by the *Head of Procurement in consultation with the Director of Corporate Services as necessary*. In any case the requirements set out in these *Contract Procedural Rules* must be followed unless a general or specific derogation has been agreed by the Council.

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

1. BASIC PRINCIPLES

1.1 All *Procurement* and disposal procedures must:

- Achieve *Best Value* for public money spent;
- Enable a Value for Money *Procurement* decision based on *Whole Life Costing* and the consideration of *Sustainable Procurement* practice and any associated *Life Cycle Costings*.
- Support Local Business to the maximum extent permitted by law and the duty to demonstrate value for money;
- Be consistent with the highest standards of integrity;
- Ensure fairness in allocating public contracts;
- Comply with all legal requirements;
- Ensure that *Non-Commercial Considerations* do not influence any *Contracting Decision*;
- Support the Council's Corporate and Departmental Aims and Policies;
- Comply with the Council's *Corporate Procurement Strategy*.

1.2 In determining the estimated cost (or value) identified in these Rules the following shall apply:

- **Officers** shall not sub-divide work which could reasonably be treated as a single contract;
- The total estimated value of orders for a given type of goods, services or work should wherever practicable be amalgamated for the purpose of determining *Procurement*, in any case due regard should be given to the "Method for Calculating the Estimated Value of *Procurement*" identified in Regulation 6 of the *Public Contract Regulations*. This will also apply to *Framework Agreements* or *Draw Down Facilities*;
- If a contract/arrangement is for a period greater than one year then the estimated value of orders to be placed over the full period (including any identified extensions) should be used to determine the appropriate procedure inclusive of any allowance for inflation;
- Where leasing arrangements are used, the total amount payable over the life of the lease shall determine the appropriate procedure;
- Where contracts entail both revenue and capital costs (e.g. acquisitions and support for IT systems) the value of the contract shall be calculated by the aggregation of the total estimated capital cost and the estimated revenue costs calculated as identified above;
- If the lowest quote/tender obtained exceeds the upper limit applicable to the procedure selected, the **Chief Officer** should consider (and record the reason) whether the procedures for the higher category should be applied.

1.3 The formal advice of the **Director of Corporate Services** and the **Director of Finance** (or their **nominees**) must be sought for the following contracts:

- Where the *Total Value* exceeds **£100,000**;
- Those involving leasing arrangements;

- Where it is proposed to use a supplier's own terms;
- Those involving the purchase of application software with a *Total Value* of more than **£50,000**;
- Involve the placement of a *Contract* with another *Public Sector Organisation*, other than through a *Framework Agreement*, authorised as required in these Contract Procedure Rules;
- Arrangements which require the provision of a formal *Gate Report* to be made to Members during any stage of the contracting process;
- Those that are complex in any other way.

1.4 The *Public Contract Regulations* (see Annex B of these *Contract Procedure Rules*) provide for five (5) main processes under which *Works, Services and Supplies*, that fall within their provisions can be placed. These are identified as being the (1) “*Open Procedure*”; the (2) “*Restricted Procedure*”; the (3) “*Competitive Dialogue Procedure*”; (4) “*Competitive Procedure with Negotiation*” and (5) the “*Innovation Partnership Procedure*”. In addition, but only in very limited circumstances, (6) a “*Negotiated Procedure without Prior Publication*” may be used. However, unless the formal Advice of the **Head of Procurement** has been obtained, and the Agreement of the **Director of Corporate Service** and the **Director of Finance** given, only the first two of these options may otherwise be used.

1.5 Provision is also made within the *Regulations* for the placement of those activities identified in Schedule 3 – “*Social and Other Specific Services*” – to which a “*Light Touch Procurement Regime*” may be applied, which differs from those for other *Works Services and Supplies*, and provide for differing arrangements above and below a threshold of **£625,050**, as identified in Section 7 of the *Public Contract Regulations*, which must be followed in the placement of requirements under this provision.

1.6 For all activities, UK specific requirements as set out in Part 4 of the *Public Procurement Regulations*; apply to any arrangements made with a value greater of **£25,000** and above.

Further detailed *Procurement Guidance* on the requirements around the differing contracting arrangements for contract valued at, **£25,000; £50,000; £100,000; £172,514 £500,000; £625,000 and £1,000,000** are provided in the *Best Practice Guidance Notes* which can be found on the Procurement Site in the *Managers Toolkit*.

1.7 Where the estimated value of any intended *Contract*, either singly or in aggregate, or as otherwise identified in the *Public Contract Regulations*, identifies the Contract as being subject to its requirements, the formal advice of the **Head of Procurement** must be obtained, Any required Notice or details issued under these *Regulations* must be agreed with and issued, as required, by the **Head of Procurement**.

1.8 The Council must ensure that it treats all economic operators equally and without discrimination and must act in a transparent and proportionate manner in its contracting arrangements.

1.9 Unless agreed by the **Director of Corporate Service**, following Consultation with the **Head of Procurement**, the Council's Standard Contract and Tender Process Forms (which are embedded in its *E Procurement System* and/or included within the *Procurement Toolkit*), together with the identified methodologies for their assessment and evaluation, must be used.

1.10 The authorisation of matters which have implications for the Council's Pension Fund, which result from any Contracting Decision, must be Authorised by GP&L Committee (or the Council), acting on recommendations made by the Pensions Sub-Committee.

2. OFFICER RESPONSIBILITIES

2.1 Officers

2.1.1 **Officers** responsible for *Procurement* or disposal must comply with these Contract Procedure Rules, *Financial Regulations*, the Officers Code of Conduct and with all UK and Public Contract binding legal requirements. **Officers** must ensure that any *Agents*, *Consultants* and contractual partners acting on their behalf also comply with these requirements.

2.1.2 **Officers** must:

- Have regard to the *Best Practice Guidance* identified above
- Check whether a suitable *Corporate Contract* exists before seeking to let another contract; where a suitable *Corporate Contract* exists, this must be used unless there is a justified and auditable reason not to;
- Keep the records required by Rule 6;
- Take all necessary legal, financial, pensions, procurement and other professional advice;
- Estimate the cost (or value) of the Supply, *Service or Work* required in accordance with Rule 1.2 above.

2.1.3 No *Order* or *Contract* shall be raised or placed unless there is uncommitted budgetary provision (revenue estimate and/or Capital Programme) to meet the estimated cost (or value) unless it relates to matters undertaken (and reported as required) for reasons of *Extreme Urgency*.

2.1.4 The *Estimate Cost (or Value)* calculated as provided for above will be used to determine the arrangements to be followed in seeking and agreeing quotations and tenders for the Council.

2.1.5 When any employee either of the Authority or of a service provider may be affected by any transfer arrangement, **Officers** must ensure that the Transfer of Undertaking (Protection of Employment) (*TUPE*) issues and any Pensions matters are considered and obtain legal and financial advice before proceeding with inviting *Tenders* or *Quotations*.

2.2 Chief Officers

2.2.1 The **Head of Procurement** will maintain a Register of all Contracts with a value of **£200,000** and above. Directorates are required to use the Corporate System to record contracts with an estimated value of **£50,000** and above, in the detail it requires and provide for its update on a quarterly basis.

2.2.2 **Chief Officers** must:

- Ensure that their staff comply with Rule 2.1;
 - Keep registers of:
 - Contracts completed by signature, rather than by the Council's Seal (see Rule 17.3) and arrange their safekeeping on Council premises;
 - Exemptions recorded under Rule 3.2.
-

3. EXEMPTIONS, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS

3.1 The Council and its Executive have power to Waive any requirements within these Contract Procedure Rules for specific projects, and any such decision may be a Key Decision.

3.2 Where there is the need to Waive the requirements for Competitive Bids pursuant to rule 13.1 or any other provision of these Contract Procurement Rules because of an unforeseeable emergency involving immediate risk to persons or property or serious disruption to Council services or significant damage or potential damage to the image or reputation of the Council (including circumstances which require a Head of Service to invoke a Business Continuity Plan) a Chief Officer may exercise such Exemption or Waiver subject to the following:

- (i) Where the value of a relevant contract (or proposed contract) exceeds £50,000 the Agreement of the Director of Corporate Services shall be obtained.
- (ii) Where the value of a relevant contract (or proposed contract) exceeds £100,000 the Agreement of the Director of Corporate Services, the Director of Finance and the Agreement of the relevant Portfolio Holder shall be obtained. A report advising on the action taken shall be submitted to the Audit Sub Committee on a bi-annual basis.
- (iii) Where the value of a relevant contract (or proposed contract) exceeds £1 million the Agreement of the Director of Corporate Services, the Director of Finance and the Agreement of the relevant Portfolio Holder shall be obtained. A report advising on the action taken shall be submitted to the next meeting of the Executive and to the Audit Sub Committee on a bi-annual basis.

3.3 All exemptions (as identified above and in Rule 13.1), and the reasons for them, must be completed in writing and recorded. Exemptions shall be signed by the Officer and countersigned by the Director of Finance and Director of Corporate Services. For the purpose this and associate CPR requirements, an exchange of e mails or correspondence via similar electronic mediums can be taken to evidence such action.

3.4 Heads of Finance must hold a record and monitor the use of all exemptions granted.

3.5 Use of Framework Type Arrangements

3.5.1 In seeking to demonstrate Value for Money, the Head of Procurement must be consulted prior to commencing any Procurement process using any Framework Contract, Dynamic Purchasing System arrangement or Catalogue provided by "Crown Commercial Services or a similar Central Purchasing Organisation Contracts, or Joint Contracts with another Authority. The terms and conditions of contract applicable to any such arrangement, including the requirement to undertake competition between providers, must be fully complied with and agreed by the Director of Corporate Services.

3.6 Any purchases proposed to be made via any of the entities identified in CPR3.5.1 above are deemed to comply with these *Contract Procedure Rules* and no exemption is required. However, purchases above the *EU Threshold* must be placed under an *EU compliant process*, unless the consortium has satisfied this requirement already by letting their contract in accordance with the *EU Procedures* on behalf of the authority and other consortium members, however, advice must be sought from the *Head of Procurement* as the Council has a legal responsibility for their proper use of such arrangements and any necessary standstill requirements for an above threshold call off observed.

3.6.1 Before entering into any collaborative procurement arrangements, joint contracts or shared service arrangements with another Public Body or Private Entity, other than those identified in 3.5 above, the *Officer* must consult with the *Director of Finance* and the *Director of Corporate Services*.

3.6.2 All *Contracts* placed under these types of arrangement will be reported as required in these *Contract Procedure Rules*

3.7 Where a *Service* is to be provided by a *Voluntary Sector Organisation* through an external *Service Level Agreement* and providing such *Service(s)* is amongst those covered within the arrangements identified in the “*Light Touch Regime*” provided for under Section 7 of the *Public Procurement Regulations*, the relevant *Chief Officer*, in consultation with the *Director of Corporate Services*, can decide not to obtain competitive tenders or quotations provided that:

- The *Chief Officer* is satisfied that the *Voluntary Sector Organisation* is, or will be able to provide a satisfactory quality of *Service* and that the sums payable under any *Service Level Agreement* entered into represent *Value for Money*;
- The relevant *Head of Finance* keeps a record of all payments made and any *Grants* received under the *Service Level Agreement*;
- The *Service Level Agreement* is time limited and subject to renewal under the arrangements identified in this Rule.

Approvals will be obtained as provided for in Rule 13.1, as appropriate for the estimated total value of the intended arrangement and in all cases any overriding requirements of the *Public Contract Regulations* will be observed.

3.8 E Procurement Arrangements

3.8.1 All *Officers* are required to make use of the Council's *E Procurement System* (ProContract) when carrying out any Contracting activity which has an estimated value of *£5,000* and above, unless otherwise agreed with the *Head of Procurement*. Where the Council's *E Procurement System* is not used the relevant *Chief Officer* shall ensure that the information required by CPR 6 is recorded and included within any information required to be published by the Council.

3.8.2 The use of e-procurement technology does not negate the requirement to comply with all elements of these *Contract Procurement Rules*, particularly those relating to completing contracting activity in a fair and transparent way, with any necessary degree of competition and in a way required to establish *Value for Money*.

3.8.3 Unless otherwise agreed by the **Director of Finance** any Purchase Orders placed must make use of and be issued through one of the Council's standard electronic IT systems / processes via *I Proc; Carefirst or Confirm*.

4. RELEVANT CONTRACTS

4.1 All *Relevant Contracts* must comply with these *Contract Procedure Rules*. A *Relevant Contract* is any arrangement made by, or on behalf of, the authority (including schools) for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- The supply or disposal of goods;
- The hire, rental or lease of goods or equipment;
- The delivery of services, including (but not limited to) those related to;
 - the recruitment of staff;
 - land and property transactions;
 - financial and consultancy services;

4.2 *Relevant Contracts* do not include:

- Contracts of employment which make an individual a direct employee of the authority, or
- Agreements regarding the acquisition, disposal, or transfer of interests in land (for which *Financial Regulations* shall apply). or
- Are otherwise include in Section 10 of the *Public Procurement Regulations 2015*.

However, any such Services must be procured in a way which demonstrably secures *Value for Money* and/or as appropriate, *Best Consideration*.

SECTION 2: COMMON REQUIREMENTS

5. STEPS PRIOR TO PURCHASE

5.1 The **Officer** must review the intended *Procurement* in a manner commensurate with its complexity, risk and value, taking into account any relevant guidance contained in the *Best Practice Guidance Notes and associated processes included in the Procurement Element of the Managers Toolkit*,

- Taking into account the requirements from any relevant Service review;
- Appraising the need for the expenditure and its priority;
- Defining the objectives of the purchase;
- Assessing the risks associated with the purchase / procurement and how to manage them, including those associated with any required consultation, TUPE, Pensions, Insurance and the Tax implications of any contracting arrangements proposed, together with the Social Value Act Legislation;
- *Undertake Preliminary Market Consultation* with the “Market” and Service Providers as appropriate and to the extent provided for in the Public Contract Regulations (Cl.40), providing this does not distort or compromise the contracting process;
- Considering what *Procurement* method is most likely to achieve the *Procurement* objectives, including internal or external sourcing, partnering, packaging strategy and collaborative *procurement* arrangements with another local authority, government departments, statutory undertakers, public service procurement consortium or Central Purchasing Organisations (CPO’s);
- Contract Length; Consider the appropriate time limits allowed for the completion of the tender process and any statutory requirements that may apply;
- Consulting users, staff and other interested parties, as appropriate, about the proposed *procurement* method, contract standards and performance and user satisfaction monitoring;
- Identify and record the reasons for any “*Lotting*” Strategy to be used;
- Drafting the terms and conditions that are to apply to the proposed contract;
- Consider the approach to be taken to performance and contract management and the reporting arrangements needed to ensure the delivery of the required service.
- Ensuring the correctness of any use of member or delegated approval for the expenditure and that the purchase is in accords with the approved policy framework, *Scheme of Delegation* as set out in the *Constitution*;
- If the purchase is a *Key Decision*, all appropriate steps have been taken
- Setting out these matters in writing if the *Total Value* of the purchase exceeds **£50,000**.
- Ensure that for any Contracts involving the Outsourcing (or Insourcing) of any requirements, the necessary Legal, Finance, HR, Pensions, Procurement and IT advice is obtained.

5.2 Where the estimated value of the intended arrangement requires the publication of an *OJEU* and / or *Contract Finder Notice*, the required Procurement Documents must be available at the point of publication.

5.3 Where the estimated value of the intended arrangement is **£500,000** or more the relevant **Portfolio Holder** will be *Formally Consulted* on the intended action and contracting arrangements, having submitted, for consideration, a formal “*Gate Report*”, covering, as appropriate, the matters identified in the Council’s Standard “*Gate Reporting Template*”. Reports produced must identify, after discussion with the *Relevant Officers in* Legal, Finance, Human Resources, Procurement and Information Technology, any service and cost implications arising from the proposals being considered.

5.4 Where the value of the intended arrangement is **£1,000,000** or more the **Executive** will be *Formally Consulted* on the intended action and contracting arrangements, having submitted for consideration a formal “*Gate Report*”, covering as appropriate, the matters identified in the Council’s Standard “*Gate Reporting*” Template..

6. RECORDS

6.1 Information to be maintained under the requirements of the “Local Government Transparency Code 2014”

6.1.1 As provided for within the above Code, for all Invitation to Tender or Requests for Quotations with an estimate value of **£5,000** and above, the relevant **Chief Officer**, shall ensure that the following Information and Procurement Records (including that for staff who are employed via consultancy firms of similar agencies or otherwise work on behalf of the Authority), is maintained and provided for publication as necessary.

At the time of the issue of any Invitation to Tender or Request for Quotation the required information to be provided shall include the following;

- reference Number;
- title;
- description of Work / Goods or Service Required;
- the Start and End Date together with any Review Dates envisaged;
- the Service Area responsible.

At Contract and/or Award, the following additional information shall be provided for publication;

- the suppliers name and details;
- the sum to be paid over the length of the Contract (or the estimated annual spend or budget for the Contract);
- any Value Added Tax that can’t be recovered;
- whether or not the contract was a result of a Request for Quotation or a published Invitation to Tender;
- Whether or not the supplier is a small or medium sized enterprise and/or community sector organisation and if so provide the relevant registration number.

The information identified within CPR 6.1 are mandatory fields for completion within the Council’s E Procurement System (ProContract). The System will automatically publish the

required details and the use of the Council's E Procurement System, therefore, negates the need for a separate record of this information to be maintained by the relevant Chief Officer. The published E Procurement System Record will be considered to be the Council's Contract Register for activities valued between £5,000 and £50,000. Check what Confirm and Carefirst set out

6.2 Where the information is not held on the Council's E Procurement System and for Contracts with an estimated value less than £50,000, the following contractual records must also be kept by the relevant Chief Officer:

- Invitations to quote and *Quotations*;
- A record:
 - of any exemptions and the reasons for them,
 - of the reason if the lowest price is not accepted,
- Written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

6.2 Where the *Total Value* exceeds £50,000 the Officer must also record:

- The method for obtaining *Bids* (see Rule 8.1);
- Details of any required Notice and/or advert placed;
- Any *Contracting Decision* and the reasons for it;
- Any exemption under Rule 3 together with the reasons for it;
- The *Award Criteria* in descending order of importance;
- *Tender* documents sent to and received from *Candidates*;
- Pre-tender market research;
- Changes to the contracting timetable
- Clarification and post-tender negotiation (to include minutes of meetings);
- The contract documents;
- Post-contract evaluation and monitoring;
- Communications with *Candidates* and with the successful contractor throughout the period of the contract.

6.3 Records required by this rule must be kept for six years (12 years if the contract is under seal) after the end of the Contract. (However, written documents which relate to unsuccessful *Candidates* may be microfilmed or electronically scanned or stored by some other suitable method or disposed of after 12 months from award of contract), provided there is no dispute about the award. Documents may then be disposed of as identified in the Council's *Financial Regulations*

6.4 Where the *Total Value* exceeds £50,000 the Directorate or Department concerned shall maintain a record of the contract placed in the *Service Contract Register*, using the corporate system, unless otherwise agreed by the Head of Procurement.

6.5 Where the *Total Value* exceeds £200,000 the Head of Procurement will maintain a record of the contract placed, using the information provided under CPR 6.4, to compile the *Corporate Contract Register*.

7. ADVERTISING, APPROVED LISTS AND FRAMEWORK AGREEMENTS – Restrictions on Use

7.1.1 The Public Contract Regulations and their accompanying guidance limit the opportunity to make use of “Approved Lists” for requirements with an Estimated Value above £100,000, without the opportunity also being advertised in Contracts Finder and allowing any who respond to be considered in the tender process.

7.1.2 Where the Estimated Value of an Opportunity is lower than the EU Threshold for Supplies and Services the Authority is also prevented from making use of any Pre-Qualification process and is required to invite all those expressing an interest, who pass any Suitability Criteria set, to Quote or Tender for the Opportunity identified.

7.1.3 As a result Approved Lists, such as *Constructionline* or *TrustMark*, should only be used in appropriate circumstances, as agreed in discussion with the *Head of Procurement*. For opportunities with an Estimated Value below £100,000 the arrangements identified in the Council’s “**Local Rules - OK**” procedure (as included in the Appendices to these Rules), may also be used, unless there are operational considerations which prevent their use.

7.1.4 Where the Councils E Procurement system is not used to manage the tender process the *Chief Officer* will be responsible for ensuring the issue of any Contract Notices and Advertisements, including those for Contract Finder, required.

7.2 Identifying and Assessing Potential Candidates

7.2 .1 *Officers* shall ensure that, where proposed contracts, irrespective of their *Total Value*, might be of interest to potential *Candidates* located in other member states of the EU or as otherwise required within the Public Contracts Regulations, that a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements / notices may be placed include:

- The Council’s website;
- Portal websites specifically created for contract advertisements;
- National official journals; or
- The Official Journal of the European Union (OJEU) / Tenders Electronic Daily (TED) (even if there is no requirement within the *EU Procedure*);
- Contracts Finder

However, the contract opportunity must always be published in Contract Finder if any type of advertisement is to be made.

7.2.2 Where the estimated value of the Contract is greater than £100,000 The *Officer* shall consult with the *Head of Procurement* on the detailed requirements of Part 4 of the *Public Contract Regulation* and their requirement for the envisaged contracting arrangement (see Annex B of these Contract Procedural Rules).

7.2.3 **Officers** are responsible for ensuring that all *Candidates* for a *Relevant Contract* are suitably assessed. The assessment process, shall establish that the potential *Candidates* have sound:

- economic and financial standing;
- technical ability and capacity;

to fulfil the stated requirements of the authority. However, where the estimated value of the contract is below that identified in CPR 7.1.2 the “*Suitability Assessment*” shall be incorporated into the tender process and documentation as part of the Invitation to Tender.

7.2.4 This shall be achieved in respect of proposed contracts by selecting firms from:

- *Approved Lists* of providers, maintained by the authority or on its behalf or
- Shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement, placed on Contract Finder in the first instance.

In the case of *Contracts* with an *estimated value* above the **relevant EU Thresholds** the authority must only consider candidates who respond to the OJEU *Contract Notice*.

7.2.5 Public advertisements issued in respect of Rule 7.2.4 above shall reflect the potential degree of interest from *Candidates* located within other member states of the EU.

7.3 Approved Lists

7.3.1 *Approved Lists* may be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. *Approved Lists* cannot be used where the *Public Contract Procedures* apply.

7.3.2 **Chief Officers** may draw up in consultation with the **Head of Procurement**;

- *Approved Lists* of persons ready to perform contracts to supply goods or services of particular types including without limitation on the basis of agreed contract terms:
- Criteria for establishing the suitability of those being invited to participate from the lists.

7.3.3 No person may be entered on an *Approved List* until there has been an adequate investigation into both their financial and their technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.

7.3.4 All *Approved Lists* shall be maintained in an open, fair and transparent manner, be open to public inspection and be compiled and operated in compliance with the relevant Public Contract Regulations.

7.3.5 A register of pre-qualified contractors and *Consultants* maintained by or on behalf of Central or Local Government, a Central Purchasing Organisation or similar body will be deemed to be an *Approved List* for the purpose of these contract procedure rules and shall not be subject to the requirements of Rules 7.2 to 7.3.6 inclusive.

7.3.6 Any *Approved List* compiled and operated by the Council will reflect the overarching basic principles identified in Rule 1.1.

7.4 Framework Agreements, Dynamic Purchasing Systems and Electronic Catalogues

7.4.1 The term of a *Framework Agreement*, unless otherwise agreed, by the **Director of Corporate Services** and **Director of Finance**, must not exceed four years

7.4.2 In general terms Contracts based on a *Framework Agreements* may be awarded by either:

- Applying the terms laid down in the *Framework Agreement* (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or
- Where the terms laid down in the *Framework Agreement* are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
 - inviting the organisations within the *Framework Agreement* that are capable of executing the subject of the contract to submit written *Tenders*
 - fixing a time limit which is sufficiently long to allow *Tenders* for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract
 - awarding each contract to the tenderer who has submitted the best *Tender* on the basis of the *Award Criteria* set out in the specifications of the *Framework Agreement*.

However, the specific requirement on the operation of Framework agreements, identified below, for opportunities valued above and below the stated thresholds must be followed.

7.4.3 Where a Framework agreement is intended to be used for a Contract with an Estimated Value **above** the relevant EU Thresholds it must be operated as provided for in Part 2 / Section 4/ 334 of the Public Contract Regulations (see Annex B of these Contract Procedure Rules).

7.4.4 Where a Framework agreement is intended to be used for a Contract with an Estimated Value **below** the EU Thresholds it must be operated as provided for in Part 4 /Section 106 of the Public Contract Regulations (see Annex B of these Contract Procedure Rules).

7.4.5 In a similar fashion use may be made of Dynamic Purchasing Systems and Electronic Catalogues providing they are operated in accordance with the arrangements identified in 7.4.4 above.

SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The **Officer** must calculate the *Estimated Cost (or Value)*.

The following procedures apply where there are no other procedures, which take precedence. Other procedures may include Regulatory Requirements, agency agreements with Government or other Public Bodies. If in doubt, **Officers** must seek the advice of the **Director of Corporate Services**.

It is a requirement of the Public Contracts Regulations that, for both above and below EU threshold activity all contract documentation should be available prior to the issue of any required Notice or posting to "Contract Finder".

To encourage SME engagement in the tender process and unless there is good reason not to do so, consideration should be given (and a reason not to do so recorded) to divide the opportunity in to "Lots", however the total value of all such "Lots" will determine the value to be taken in to account when determining the Procurement route to be taken.

Under Regulatory Powers introduced by the UK Government, Prior Qualification Questionnaires are only permitted to be used for contracting arrangements with an estimated value at or above the EU Threshold for Services and Supplies. The Content of the Questionnaire to be use is prescribed by the legislation and any deviation from it are required to be reported to Crown Commercial Services.

Below the value identified above a "*Suitability*" Assessment Process, which is relevant and proportionate to the subject matter of the intended procurement, included within an open tender process, must be used unless other arrangements around these requirements, have been specifically allowed for by the Secretary of State.

8.1 Procurement – Competition Requirements

8.1.1 Where the *Estimated Cost or Value* for a purchase is within the limits identified in the in the first column below, the *Award Procedure* in the second column must be followed. *Shortlisting* shall be done by the persons specified in the third column.

<i>Estimated Cost (or Value)</i>	Sourcing Procedure	Short Listing By
Up to £5,000 (£25,000 for Consultancy Services)	One oral <i>Quotation</i> (confirmed in writing where the <i>Estimated Cost or Value</i> exceeds £1,000) using the Using the Council's "Local Rules" Process where possible and other Approved Lists where Authorised	Officer
£5,000 - up to £25,000	3 written <i>Quotations</i> using the Council's "Local Rules" Process where possible and other lists as Agreed with the Head of Procurement .	Officer

£25,000 – up to £100,000	<p>Request for Quotation using the Council's "Local Rules" Process where possible and other lists as Agreed with the Head of Procurement., to at least 3 and no more than 6 Candidates</p> <p>If for whatever reason, a Request for Quotation is made using a Public Advertisement, the opportunity must also be included on "Contract Finder", with all Suitable Candidates responding, being considered.</p> <p>In both cases use must be made of the Council's E Procurement System, unless otherwise agreed by the Head of Procurement.</p>	Officer and Line Manager
£100,000 up to the EU Threshold for Supplies and Services (applies to all activities)	<p><i>Invitation to Tender</i> making use of a Public Advertisement. The opportunity must also be included on "Contract Finder", with all Suitable Candidates responding, being considered. No Prior Qualification process is permitted</p> <p>Use must be made of the Council's E Procurement System, unless otherwise agreed by the Head of Procurement.,</p>	Officer , HOS and Head of Procurement Head of Finance
Above EU Threshold for Supplies and Services (applies to all activities) and / or £500,000	<i>The appropriate EU / Public Contract Procedure</i> or, where this does not apply, <i>Invitation to Tender</i> by an Appropriate Notice / Advertisement to at least five and no more than eight Candidate	As above + in Consultation with the Director of Corporate Services and Customer Services and Director of Finance – see Rules 7.2.3 & 8.1.4
<p><i>Note – Where an intended arrangement is for the provision of Consultancy Type Service, including those for Construction related activity and the estimated value of the intended arrangement is above £50,000 the relevant Portfolio Holder will be Formally Consulted on the intended action and contracting arrangements to be used.</i></p>		

8.1.2 Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the competition requirement, all suitably qualified *Candidates* must be invited.

8.1.3 An **Officer** must not enter into separate contracts nor select a method of calculating the *Total Value* in order to minimise the application of these Contract Procedure Rules or the *Public Contract Regulations*.

8.1.4 Where a Public Contract Regulations applies, the **Officer** shall discuss with the **Head of Procurement** and Consult with the **Director of Corporate Services** and **Director of Finance** to determine the arrangements to be used for the completion of the *Procurement*. In any case

the Final Contract Documentation shall be available for viewing, via the internet, from the date of publication of any required Contract Notice, unless otherwise agreed.

8.2 Assets for Disposal

8.2.1 Assets for disposal must be sent to public auction except where better *Value for Money* is likely to be obtained by inviting *Quotations* and *Tenders*. (These may be invited by advertising on the Council's internet site.) In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the relevant *Head of Finance*. (see also Financial Regulation / Procedure 19)

8.3 Providing Services to External Purchasers and other Public Sector Organisations

8.3.1 The *Director of Corporate Services* and *Director of Finance* must be *Consulted* where contracts to work for organisations other than the authority are contemplated.

8.4 Collaborative and Partnership Arrangements

8.4.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these *Contract Procedure Rules*. If in doubt, *Officers* must seek the advice of the *Director of Corporate Services* and *Head of Procurement*.

8.5 The Appointment of Consultants to Provide Services

8.5.1 Consultant architects, engineers, surveyors and other professional *Consultants* shall be selected and commissions awarded in accordance with the procedures detailed within these Contract Procedure Rules as outlined above

8.5.2 The engagement of a *Consultant* shall follow the preparation of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment.

8.5.3 Records of consultancy appointments shall be kept in accordance with Rule 6.

8.5.4 *Consultants* shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the relevant *Head of Finance* for the periods specified in the relevant agreement.

9. PRELIMINARY MARKET CONSULTATION

9.1 The *Officer* responsible for the purchase:

- May consult potential suppliers prior to the issue of the *Invitation to Tender* in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential *Candidate*; but

- Must not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Candidates* or distort competition; and
 - Must seek advice from the *Head of Procurement* where the tender under consideration has an estimated value greater than the relevant EU Threshold and observe the requirements of the Public Contract Regulations Cl.40/41 in the approach taken on such consultation and any subsequent involvement, by those consulted in the tender process.
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10. TECHNICAL SPECIFICATIONS, STANDARDS, LABELS, SELECTION, SUITABILITY AND AWARD CRITERIA

10.1 The *Officer* must ascertain what are the relevant British, European or international standards which apply to the subject matter of the contract. The *Officer* must include those standards which are necessary properly to describe the required quality. The *Director of Corporate Services* must be *Consulted* if it is proposed to use standards other than European Standards.

10.2 Where the use of a specific Label is to be used to identify a particular technical requirement others proposed as being equivalent must be considered

10.3 In any case the requirements of the above Rules 10.1 and 10.2 shall be operated as required by Clauses 42 – 44 of the Public Contracts Regulations.

10.4 *Selection Criteria* used, as further identified in Cl.68 of the *Public Contract Regulations*, must be related and proportionate to the subject matter of the contract and may consider factors such as, suitability, economic and financial standing and technical, financial and professional ability. Statutory Guidance on the Standard PQQ Documentation to be used and the approach to its assessment is stipulated by Crown Commercial Services and where such arrangements are used the *Officers* must seek the advice of the *Director of Corporate Services* and *Head of Procurement*, if they wish to depart from the use of the Standard arrangements identified in the Councils *Procurement Practice Notes* and *Model Documents*.

10.5 Where the Estimated Value of any procurement process is below the EU value identified for Supplies and Services, a selection process may not be used and an Open Tender Process. Based on a two stage “Suitability” evaluation and tender submission, by all those found to be suitable, must be followed.

10.6 2 The *Officer* must define *Award Criteria* that are appropriate to the purchase, linked to the subject matter of the contract and designed to secure an outcome giving *Value for Money* for the authority. The basic criteria shall be:

- ‘most economically advantageous’ (“MEAT”), where considerations other than price also apply; or
- ‘lowest price’ where payment is to be made by the authority;
- ‘highest price’ if payment is to be received;

Where “MEAT” criterion are adopted, it must be further defined by reference to sub-criteria, which may refer only to relevant considerations. These may, for example, include price /cost of service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters. The criteria used, and where possible the weighting attributed to them, shall be included in the Notice and or tender documentation as appropriate.

10.5 Award Criteria shall not have the effect of conferring an unrestricted freedom of choice on the Authority and shall ensure the possibility of effective competition.

10.6 Unless there are valid and justified reasons to do otherwise, the Council's preferred method of determining *Value for Money* in its *Procurement* arrangements is by the consideration of the *Whole Life Cost* and / or the *Life Cycle Costing* of the intended arrangement aligned with its *Sustainable Procurement* practice.

10.7 *Award Criteria* must not include:

- *Non-commercial Considerations*;
- Matters, which discriminate against suppliers from the *European Economic Area* or signatories to other *Government Procurement Agreement*.

11. INVITATIONS TO TENDER/QUOTATIONS

11.1 The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. No *Tender* delivered in contravention of this clause shall be considered, unless agreed by The **Director of Corporate Services**.

11.2 All *Invitations to Tender* shall include the following:

- (a) A specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers.
- (b) A requirement for tenderers to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- (c) A requirement for tenderers to complete fully and sign all *Tender Documents* including a form of *Tender* and certificates relating to canvassing and non-collusion.
- (d) Notification that *Tenders* are submitted to the council on the basis that they are compiled at the tenderer's expense.

(e) A description of the *Award Procedure* and, unless defined in a prior advertisement, a definition of the *Award Criteria* in objective terms and if possible in descending order of importance.

(f) Notification that no *Tender* will be considered unless it has been submitted using the Council's E procurement System or, where agreed otherwise, as identified in (g) below, is enclosed in a sealed envelope or container which bears the word '*Tender*' followed by the subject to which it relates, but no other name or mark indicating the sender.

(g) A stipulation that any *Tenders* submitted by fax or other electronic means shall not be considered, unless specifically provided for in the Invitation to Tender and with the prior agreement of the *Director of Corporate Services* and *Director of Finance* as to the process to be used. (see also Rule 14.3)

(h) The method by which any arithmetical errors discovered in the submitted *Tenders* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender*, or vice versa. (See also Rule 16.4)

11.3 All *Invitations to Tender* or *Quotations* must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 17).

11.4 The *Invitation to Tender* or *Quotation* must state that the Council is not bound to accept any *Quotation* or *Tender* and may extend the closing date where appropriate.

11.5 All *Candidates* invited to *Tender* or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

11.6 It is a requirement of the of the Public Contract Regulations 2015, that all relevant Contract documentation and information is available at the point of any required Notice (either in OJEU or Contract Finder) or at Tender, should a Notice not be required.

12. SHORTLISTING

12.1 Where permissible any *Shortlisting* must have regard to the financial and technical standards required to the contract; and be relevant and proportionate to the intended Procurement and be consistent with the selection criteria outlined in the Public Contract Regulation cl.60(9). Specific UK Government Rules apply to UK procurement activity which legislates for different requirements and treatment for all types of contracting arrangement valued between £25,000; £100,000 and the EU Threshold for Supplies and Services. These are in addition to those identified for above EU Threshold activity. The advice of the *Head of Procurement* should be sought before commencing any *Shortlisting* process..

12.2 The *Officers* responsible for *Shortlisting* are specified in Rule 8.1.1.

12.3 Where *Approved Lists* are used, *Shortlisting* may be done by the *Officer* in accordance with the *Shortlisting* criteria drawn up when the *Approved List* was compiled (see Rule 7.2.2).

However, where the *Public Contract Regulations* applies, *Approved Lists* must not be used (where outside of any local dispensation), and requirements must be placed via an OJEU or Contract Finder Notice as appropriate (see Rule 7).

13. EXEMPTIONS TO THE NEED FOR COMPETITIVE TENDER

13.1 A decision to negotiate with one or more candidates on any arrangements required within the *Procurement* process shall not be made except in compliance with the following and any Public Contract Regulations (see also Rule 3). Note - For the purpose of this Rule the establishment of a *Service Level Agreement* is treated as being a negotiated arrangement;

Estimated Value)	Cost(or	Authorisation Requirement
£5,000 - £50,000		Chief Officer Agreement
£50,000 - up to £100,000		Chief Officer in agreement with <i>Director of Corporate Services</i> and <i>Director of Finance</i> with a report of the use made of this exemption being made to <i>Audit Sub committee</i> on a bi-annual basis.
£100,000 – up to £1,000,000		Chief Officer in agreement with <i>Director of Corporate Services</i> and <i>Director of Finance</i> and following Approval of the relevant <i>Portfolio Holder</i> , with a report of the use made of this exemption being made to <i>Audit Sub committee</i> on a bi-annual basis.
£1,000,000 and above		Chief Officer in agreement with <i>Director of Corporate Services</i> and <i>Director of Finance</i> and the approval of the <i>Executive or the Council</i> as appropriate.

13.2 The Officer concerned will need to ensure that the records necessary to justify the intended action are maintained and issued where necessary, for above and below EU Threshold activity as set out in the Public Contracts Regulations.

13.3 In determining the Value (and any Aggregate Values) for a particular requirement, together with those used to calculate the values of any modifications and /or extensions proposed to existing arrangements, care must be taken to value such activity using the approaches identified in the various parts of the Public Contract Regulations. In general terms it is the Value of an activity across the Council, and not of a contract in isolation which determines its treatment within the Public Contract Regulations.

13.4 Subject to the satisfactory completion of any required Contract Monitoring Report (see CPR 23), and where the Report produced as required by CPR 5 provides for a discretionary Extension of the Contract for an additional period of time. Providing the Authorising Committee have indicated their agreement at the point of the CPR 5 Report, without the need for further referral, then the relevant Chief Officer may, in agreement with the *Director of Corporate Services* and *Director of Finance*, and any other person specified in the authorisation and in Consultation with the Portfolio Holder, make use of this permissible extension providing it is notified to the Audit Sub committee, as part of the Bi Annual Report produced and identified in this CPR.

13.5 **Chief Officers** with Social Care responsibilities have specific exemptions provided to them under the Council's *Scheme of Delegation* for certain contracting arrangements

14. SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS

14.1 *Candidates* must be given a reasonable and proportionate amount of time in which to prepare and submit a proper *Quotation* or *Tender*, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of *Tenders*. The *EU Procedure* lays down specific time periods which must be observed.

14.2 All *Quotations* or *Tenders* must be returned in compliance with the following requirements;

<i>Estimated Value)</i>	<i>Cost(or</i>	Receipt Procedure	Opening Procedure
Up to £5,000		Opened on arrival	By Officer
£5,000 – up to £100,000		Held in the custody of the Relevant Chief Officer or their representative until the time appointed for their opening	Opened and recorded by two Officers nominated by the Relevant Chief Officer , Initiating Officer may also attend.
£100,000 and above		Held in the custody of the Director of Corporate Services or their representative until the time appointed for their opening	Opened and recorded by two officers nominated by the Director of Corporate Services , (Initiating Officer may also attend) and returned by them to the Initiating Officer .

The Council's preferred method of issuing an *Invitation to Tender* or *Requests for Quotation* and receiving any responses made is via the use of its E Procurement System, which should be used for all such activity, unless otherwise agreed by the **Head of Procurement**. Where a paper based process is agreed to be used it must follow the following requirements.

In all cases the tender instructions or notice shall state that no *Quotation* or *Tender* shall be received by the Council except in a plain sealed envelope/package which shall bear the words "Tender/Quotation" (as appropriate) followed by the subject matter to which it relates, but shall not bear any name or mark which would identify the sender. They must also make it clear to whom and where the completed tender should be returned, as provided for in the above detail.

14.3 The **Director of Corporate Services** must approve any receipt of tenderers by Fax or other electronic means (e.g. email), which should otherwise be rejected

14.3 Where the Council is utilising an electronic reverse auction as a *Procurement* procedure enabling suppliers/providers to adjust their tender price in the light of information from the tender prices submitted by competing suppliers/providers, then alterations will be accepted as permitted by the auction process. No *Procurement* shall take place by an electronic reverse auction unless the **Director of Finance** agrees that such process is appropriate for the *Procurement* in question and the e-auction is completed in line with methods agreed by the **Head of Procurement**.

14.4 The relevant **Officer** as identified in Rule 14.2 shall be responsible for the safekeeping of *Tenders* until the appointed time of opening and:

- Suitably recording, the date and precise time it was received;
- Securely storing on receipt to guard against amendment of their contents;
- Recording immediately on receipt in the *Tender Record Log*.

14.5 Upon opening, a summary of the main terms of each *Tender* (i.e. significant issues that are unique to each *Tender* submission and were not stated in the *Tender* invitation documents such as *Tender* sum, construction period, etc) must be recorded in the *Tender Record Log*. The summary must be initialled (or tagged as actioned on any E Procurement System used) on behalf of the relevant **Officer** as identified in Rule 14.2.

14.6 In the event that a tender that does not comply with the Council's requirement, as set out in the tender invitation e.g. is qualified, arrive late and /or after other tenders had been opened, is received, with the circumstances recorded on the *Tender Record Log* and any evidence of the relevant events retained (i.e. envelop, packaging, receipt documentation etc.). **Chief Officers** may, however, seek the agreement of the **Director of Corporate Services** and the **Director of Finance** to relax these requirements in appropriate circumstances. Any such relaxation shall be identified when seeking any necessary authorities required before the acceptance of a tender and will include consideration of any reasonable endeavour made by a tenderer to properly submit their tender by the appointed time, and any opportunity presented that might allow the amendment or change of details submitted so as to offer the opportunity for an unfair advantage to be taken.

14.7 For *Tenders* with an estimated *Value* of **£50,000** or above, where fewer than the minimum number of *Tenders* required have been received the **Director of Corporate Services** and the **Director of Finance** shall be *Consulted*, prior to any award decision, on any steps considered necessary to establish and maintain the adequacy of the tender process. Where the *Tender* has an estimated *Value* of less than **£50,000** the relevant **Chief Officer** may decide, on a Value for Money basis, the need for any additional actions required to maintain the adequacy of the tender process.

15. CLARIFICATION PROCEDURES AND ANY PERMISSABLE POST-TENDER NEGOTIATION

15.1 Providing clarification of an *Invitation to Tender* to potential or actual *Candidates* or seeking clarification of a *Tender*, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a *Tender* and before the award of a

contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an *EU Procedure* where this might distort competition, especially with regard to price.

15.2 Where information or documentation submitted at tender is, or appears to be, incomplete or erroneous, or where specific documents are missing, consideration as to allowing the tenderer to submit, supplement, clarify or complete the relevant documentation or document (within an appropriate time limit) shall be made in consultation with the *Head of Procurement* and with the agreement of the *Director of Finance* and the *Director of Corporate Services*.

15.3 If post-tender negotiations are permissible and necessary after a single-stage *Tender* or after the second stage of a two-stage *Tender*, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best *Tender* and after all unsuccessful *Candidates* have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the *Tender* documents. *Officers* appointed by the *Chief Officer* to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

15.4 Post-tender negotiation must only be conducted in accordance with the guidance issued by the *Director of Finance* in consultation with the *Director of Corporate Services* who, together with the *Head of Procurement*, must be *Consulted* wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two *Officers*, one of whom must be from a division independent to that leading the negotiations.

15.5 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered unless the *Director of Corporate Services* and the *Director of Finance* agree to an alternative course of action.

16. EVALUATION, AWARD OF CONTRACT AND DEBRIEFING CANDIDATES

16.1 Apart from the debriefing required or permitted by these Contract Procedure Rules, the confidentiality of *Quotations*, *Tenders* and the identity of *Candidates* must be preserved at all times and information about one *Candidate's* response must not be given to another *Candidate*. Any processes used must ensure compliance with the principles of transparency and the equal treatment of those submitting tenders.

16.2 Contracts must be evaluated and awarded in accordance with the stated *Award Criteria*, which must be linked to the subject matter of the *Procurement* and be contract specific. During this process, *Officers* shall ensure that submitted *Tender* prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.

16.3 Care should be taken in the evaluation process, where it is anticipated there may be subsequent changes to Council requirements, to ensure the impact of a reduction or increase in the volumes of expected activity are considered

16.4 The arithmetic in compliant *Tenders* must be checked. If arithmetical errors are found they should be notified to the tenderer, and dealt with in the following manner:

- The tender(s) should be given details of the error(s) found during the examination of the tender and shall be given an opportunity of confirming without amendment, or withdrawing the tender; or
- Amending the tender to correct any genuine arithmetic error(s) apparent on the face of the document, providing that in this case, apart from the these genuine errors no other adjustment, revision or qualification is permitted.

Such amendments should only be made in circumstances agreed with the **Director of Corporate Services**.

16.5 Unless otherwise agreed by the **Head of Procurement**, the Council's standard approach to Tender Evaluation, as contained in the CIPFA "Standing Guide to the Commissioning of Local Authority Works and Services, shall be used for the evaluation of all contracts with a value of **£25,000** and above.

16.6 **Officers** may accept, within their relevant financial limit, delegated authority and providing the stipulated degree of separation of duties is maintained, Quotations and *Tenders* received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these Contract Procedure Rules and, in respect of proposed contracts that are expected to exceed **£500,000**, the approval of the relevant **Portfolio Holder** has been secured. The awarding of contracts that are expected to exceed **£1,000,000** shall be approved by the **Executive or the Council**, the responsible **Officers** having submitted for consideration a formal "Gate Report", covering, as appropriate, the matters identified in the Council's Standard "Gate Reporting Template for consideration at Award of Contract

16.7. Where the actual value of any intended contract is greater than that provided for in the original budgetary provision, or any tolerance provided for in the Council's *Capital Programme Procedures and/or Financial Regulations* the tender should not be accepted without seeking the advice of the **Director of Finance** and obtaining any necessary authorisations for increased budgetary provision.

16.8 Where the intended contract has a value in excess of **£200,000** it should be completed under seal as provided for in Section 17 of these Rules.

16.9 Where the Council is in receipt of income or net benefit under a contract it should be signed as a Deed.

16.10 In all cases the tender evaluation must be carried out as provided for in the Invitation to tender unless otherwise agreed with the **Director of Corporate Services** following *Consultation* with the **Head of Procurement**.

16.11 Where the *Total Value* is over **£100,000**, the **Officer** must notify all *Candidates* simultaneously and as soon as possible of the intention to award the contract to the successful *Candidate*. The **Officer** must provide unsuccessful *Candidates* with a period of at least ten days in which to challenge the decision before the **Officer** awards the contract.

If the decision is challenged by an unsuccessful *Candidate* then the *Officer* shall not award the contract and shall immediately seek the advice of the *Director of Corporate Services*.

16.12 The *Officer* shall debrief in writing all those *Candidates* who submitted a bid about the characteristics and relative advantages of the leading bidder. No information, other than the following, should be given without taking the advice of the *Director of Corporate Services*:

- How the *Award Criteria* were applied;
- The prices or range of prices submitted, in either case not correlated to *Candidates'* names;
- The names of *Candidates* where there were three or more *Candidates*.

16.13 If a *Candidate* requests in writing the reasons for a *Contracting Decision*, the *Officer* must give the reasons in writing within 15 days of the request (or 10 Days were an electronic medium is used). If requested, the *Officer* may also give the debriefing information at Rule 15.6 above to *Candidates* who were deselected in a pre-tender *Shortlisting* process.

16.14 Where the award of the contract is a *Key Decision* any award must take account and observe the Council's *Call in Procedure* (see Annex C)

16.15 Mandatory Standstill Period – 10 Days

16.15.1. Where a contract decision is required for a tender process completed under the Public Contract Regulation (and unless otherwise provided for), the Council must inform any *candidate* that has submitted an offer, has applied to be amongst those selected to tender for or negotiate the contract, or any candidate who has applied to be party to a *framework agreement*, of its decision in relation to the award of the contract or the conclusion of (setting up) a *framework agreement*.

16.14.2 The process adopted and information sent must be completed in compliance with the requirements set out in Clause 86 of the Public Procurement Regulations and identify, on an individual basis the "...characteristics and relative advantages..." of the successful tenderer(s) and those not successful.

16.14.3. Unless agreed otherwise with the *Head of Procurement*, the required Notice must be sent using the Council's E Procurement System and the recipient must be given until midnight on the end of the 10th day from issue (or if this is a weekend or bank holiday the end of the next working day?), to respond before it can finalise the process and enter in to a contracting arrangement.

16.15. Call in Period

While the periods may run concurrently, officers need also to ensure their compliance with the Council's "*Call In*" requirements as identified in part 4 of the Council's Constitution (summarised in Annex D).

16.16 End of Standstill and Call in Period

At the satisfactory completion of the time periods identified in 16.14 & 16.15 the Head of Service shall notify the Director of Corporate Services and the Head of Procurement of their end to enable the issue of the necessary Contract Documentation and Award Notices.

16.17 Action on the Receipt of Any Challenge

In the event of any letter being received by the Council which indicates a *Challenge* to any element of the Tender or Award Process or if any correspondence is received from the “Mystery Shopper Team” at Crown Commercial, no further actions should be taken on the Tender or Award Process until the Director of Corporate Services and the Head of Procurement have been Consulted and a response agreed. The Council requires that a review of the tender process is completed by the Officers identified above if any formal *challenge* to the tender arrangements is made.

SECTION 4: CONTRACT AND OTHER FORMALITIES

17. CONTRACT DOCUMENTS

17.1 Relevant Contracts

17.1.1 All *Relevant Contracts* that exceed **£100,000** shall be in writing.

17.1.2 All *Relevant Contracts*, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done);
- The provisions for payment (i.e. the price to be paid and when);
- The time, or times, within which the contract is to be performed;
- The provisions for the council to terminate the contract.

17.1.3 Unless otherwise agreed by the **Director of Finance**, the *Council's Official Order Form*, as provided for in *Financial Regulation 5*, shall be used **Director of Corporate Services** shall also agree the use of any standard terms and conditions issued by a relevant professional body which it is proposed to use.

17.1.4 In addition, every *Relevant Contract* of purchase over **£50,000** must be completed under Legal Guidance and state clearly as a minimum:

- That the contractor may not assign or sub-contract without prior written consent;
- Any insurance requirements;
- Health and safety requirements;
- Sustainability requirements;
- Ombudsman requirements;
- Data protection requirements, if relevant;
- That charter standards are to be met if relevant;
- Race relations requirements;
- Disability Discrimination Act requirements;
- Freedom of Information Act requirements;
- Payment requirements within 30 Days to the Contractor and their Sub Contractor to the same effect.
- Variation Clauses which fully reflect the Councils potential requirements and the implications of the Public Procurement Regulations (Clause 72) and any valid associated Guidance
- Where *Agents* are used to let contracts that *Agents* must comply with the Council's contract procedure rules;
- A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.
- Include the Council's standard requirements with regard to "*Whistle Blowing*"
- Any appropriate measures required to support the Council in the event of a Civil Emergency being declared or the Council's Business Continuity Plan invoked.

17.1.5 Where it is envisaged that there may be a need to a *Variation* to the Council's requirements during the period of a contract, appropriate conditions should be included allowing for the valuation of any subsequent changes.

17.2 Contract Formalities

17.2.1 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the **Director of Corporate Services**.

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

17.2.3 Prior to the commencement of the contract (if not provided as part of the tender process) the **Officer** responsible shall request that the Main Contractor provides the names of their Sub Contractors and their representative. The Main Contractor will also be required to advise the Council of any changes in this information during the term of the contract.

17.3 Sealing

17.3.1 Where contracts are completed by each side adding their formal seal, such contracts shall be signed by at least two **Officers** which, together with the fixing of the council's seal, must be witnessed by a further officer on behalf of the **Director of Corporate Services**.

17.3.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed without the authority of the **Director of Corporate Services**.

17.3.3 A contract must be sealed where:

- The Council may wish to enforce the contract more than six years after its end;
- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
- There is any doubt about the authority of the person signing for the other contracting party; or
- The *Total Value* exceeds **£200,000**.

18. BONDS AND PARENT COMPANY GUARANTEES

18.1 The **Officer** must *Consult* with the **Director of Corporate Services** and the **Director of Finance** about whether a *Parent Company Guarantee* is necessary when a *Candidate* is a subsidiary of a parent company and:

- The *Total Value* exceeds **£200,000**; or
- Award is based on evaluation of the parent company; or
- There is some concern about the stability of the *Candidate*.

18.2 The **Officer** must *Consult* with the **Director of Corporate Services** and the **Director of Finance** whether a *Bond* is needed: where the *Total Value* exceeds **£200,000** or where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the *Candidate* or there are other risks associated with the intended contract which require additional security.

18.3 Where the intended *Tender* and/or *Contract* is likely to have *TUPE* implications or require amendment to the Council's Pension Fund arrangements, the **Director of Finance** in consultation with the **Director of Corporate Services** shall agree the intended actions and the value of any Pensions Bond required, prior to any further authorisation otherwise identified.

19. PREVENTION OF CORRUPTION

19.1 The **Officer** must comply with the *Code of Conduct* and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the *Officer* to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 19.2 below.

19.2 The following clause must be put in every written Council contract: *"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:*

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or*
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or*
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.*

Any clause limiting the Contractor's liability shall not apply to this clause."

20. DECLARATION OF INTERESTS

20.1 If it comes to the knowledge of a Member or an employee of the authority that a contract in which he or she has a personal or pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the **Chief Executive**. The **Chief Executive** shall report such declarations to the appropriate *Committee*.

20.2 Such written notice is required irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a contract to which the member or employee is directly a party.

20.3 A shareholding in a body not exceeding a total nominal value of **£25,000 or 1%** of the nominal value of the issued share capital (whichever is the less) is not a personal or pecuniary interest for the purposes of this *Contract Procedure Rule*.

20.4 The **Chief Executive** shall maintain a record of all declarations of interests notified by members and **Officers**.

20.5 The **Chief Executive** shall ensure that the attention of all members is drawn to the National Code of Local Government Conduct.

SECTION 5: CONTRACT MANAGEMENT

21. MANAGING CONTRACTS

21.1 **Heads of Service** in sponsoring departments are to name **Contract Managers** for all new *Contracts*. All *Contracts* must have a named Council **Contract Manager** for the entirety of the contract.

21.2 **Contract Managers** must follow the reporting requirements and procedures set out in these Contract Procedure Rules and any supplementary Guidance issued by the **Head of Procurement**

21.3 As a minimum requirement the named **Contract Manager** will compile and maintain the standard “**Contract Monitoring Summary**” Template Document (as included in the Procurement Pages of the “Mangers Tool Kit” on OneBromley), and ensure their content is maintained and accurately reflects the information included in the *Service Contracts Register* required to be maintained by CPR 2.2 and 6.4.

22. RISK ASSESSMENT AND CONTINGENCY PLANNING

22.1 All *Procurement* activity and projects with an estimated value above **£100, 000** must incorporate the use of the *Council’s Programme and Project* methodologies as appropriate for the cost, complexity and risk associated with the intended activity, including those associated with TUPE, Pensions and Tax liabilities. This includes the preparation of a business case. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

22.2 For all contracts with a value of over **£50,000**, **Contract Managers** must:

- Maintain a risk register during the contract period;
- Undertake appropriate risk assessments and for identified risks;
- Ensure contingency measures are in place.

23. CONTRACT MONITORING, EVALUATION AND REVIEW

23.1 All contracts which have a value higher than **£200,000** limits, or which are *High Risk*, are to be subject to monthly formal review by the **Head of Service**. The review may be conducted quarterly if agreed by the **Director of Finance**.

23.2 For all contracts with a value higher than **£500,000**, or which are *High Risk*, an annual report must be submitted to the **Portfolio Holder** the responsible **Officers** having submitted for consideration a formal “Gate Report”, covering, as appropriate, the matters identified in the Council’s standard “Gate Reporting Template for consideration as part of Contract Monitoring/Management requirements.

23.3 For all contracts with a value higher than **£1,000,000**, or which are *High Risk*, an annual report must be submitted to the **Executive** the responsible **Officers** having submitted for consideration a formal “Gate Report”, covering, as appropriate, the matters identified in the Council’s standard “Gate Reporting Template for consideration as part of Contract Monitoring/Management requirements.

23.4 A Council agreed *Gateway Review* process must be applied to all contracts deemed to be *High Risk*, *High Value*, or *High Profile*. This process must be applied at key stages of major procurements.

23.5 During the life of the contract, the **Officer** must monitor in respect of:

- Performance;
- Compliance with specification and contract;
- Cost;
- Any *Value for Money* requirements;
- User satisfaction;
- Risk management.

23.6 Where the *Total Value* of the contract exceeds **£500,000**, the **Officer** must make a written report to the relevant **Portfolio Holder** evaluating the extent to which the *Procurement* need and the contract objectives (as determined in accordance with Rule 5.2) were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract and the authorisation requirements identified in Rule 5.1 and 16.5 above.

23.7 *Variations and Extensions*

23.7.1 No *Variation* should be issued or *Extension* agreed unless there is sufficient budgetary provision for each contract or where it is permitted under the Council’s *Capital Programme Procedures* and related responsibilities for financial control of capital projects.

23.7.2 All *Variation* Orders must be issued promptly and authorised before the work is undertaken. All variations will be contained within agreed limits for each contract and made within the authorised limits determined by the **Chief Officer** as provided for in *Financial Regulations* and the *Capital Programme Procedures*.

23.7.3 Subject to any requirements of *Financial Regulations*, statutory restrictions and compliance with any provisions of the Public Procurement Regulations (particularly those relating to negotiation; modifications and extensions and any limitations imposed by Clause 72 of the Regulations above), a **Chief Officer** may authorise the following extension to an existing contact:

- An extension for a particular period provided for within the terms of the contract (but subject to satisfactory outcomes of contract monitoring, such information having been provided to where required in these Rules to the relevant *Portfolio Holder* and/or *Executive*); or
- A single extension of the contract by up to one year; or
- An increase in the scope of activities being undertaken.

Providing that where the value of any single and/or all extensions granted is greater than **£50,000** the processes and authorisation procedures required shall be the same as those identified in Rule 13 above.

23.7.4 The *Chief Officer* shall consult with the *Head of Procurement* and *Director of Corporate Services* on any need to issue a *Modification Notice* or take other action required by Cl.72 of the *Public Contract Regulations*.

DEFINITIONS APPENDIX (Needs to be update to amend/add 2015 review requirements)

Agent - A person or organisation acting on behalf of the Council or on behalf of another organisation.

Agree / Agreement – the process whereby a written record of the agreement of the relevant officer/Member is produced. For the Purpose of the operation of Contract Procedure Rules, the evidence of agreement required in writing can either be the physical endorsement /signature of a prepared document or an Email sent from a Council E mail Address associated with the Authorising Officer, providing the necessary records are maintained either in a soft or hard format.

Approval – the process whereby a formal report is submitted to and written approval obtained from the relevant officer/Member/Committee/Council.

Approved List - A list drawn up in accordance with Rule 7.2.

Award Criteria - The criteria by which the successful *Quotation* or *Tender* is to be selected (see further Rules 10 and 11.2e).

Audit Sub Commiitie – A Sub Committee of General Purposes and Licensing Committee having the role and responsibilities described within the Council's Constitution.

Award Procedure - The procedure for awarding a contract as specified in Rules 8, 10 and 15.

Best Value - The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the council. Value for Money has now in many instances superseded this terminology.

Bids – oral or written quotations or written tenders as the context required or demands.

Bond - An insurance policy: if the contractor does not do what it has promised under a contract with the council, the council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the council against a level of cost arising from the contractor's failure.

Business Continuity Plan – A plan compiled and included within the Council's Business Continuity arrangements in compliance with and support of its responsibilities and duties as identified in the Civil Contingencies Act.

Call In Procedure – The procedure whereby 5 or more Members of the Council can require any decision of the Executive, Portfolio Holder, or Committee of the Executive or any decision mad by an officer under delegated authority from the Executive to be subject of scrutiny by the relevant PDS Committee as set out of Part 4 of the Constitution (see Annex D).

Candidate - Any person who asks or is invited to submit a *Quotation* or *Tender*.

Capital Programme (Control) Procedures – as set out and included in the Capital Programme/Budget book

Central Purchasing Organisation (CPO) – A Central Purchasing Body (CPB) as defined in the Public Contracts Regulations which acquires or concludes arrangements for works, goods and services, in compliance with the Regulations and which is intended for the use of one or more contracting authorities.

Chief Executive – the Council's **Head of Paid Service** as defined in the Scheme of Delegation

Chief Finance Officer – the Council's **Director of Finance** or their nominee or such other officer as may be designated Chief Finance Officer by the Council.

Chief Officer - The officers defined as such in the *Constitution*.

Code of Conduct - The code regulating conduct of *Officers* issued by the **Director of Corporate Services**.

Committee - A committee, which has power to make decisions for the Council, for example a joint committee with another local authority, but not a scrutiny committee.

Constitution - The constitutional document approved by the council which:

- allocates powers and responsibility within the council and between it and others
- delegates authority to act to the *Cabinet, Committees, Portfolio Holders and Officers*
- regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

Consult /Consultation - A process whereby the advice and necessary input to any particular contracting process is obtained and properly considered

Consultant - Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the council has no ready access to employees with the skills, experience or capacity to undertake the work.

Contract - A "contract" is an agreement between two or more parties which is intended to give rise to legal relations.

The Council will accept tender documents supported by electronic signature, which have been submitted through the mandated E Procurement System, providing that where the value is £100k+ the contract document is formally compiled and signed with Legal input and overview. Those over £200k are required to be signed under seal as per CPR 17.3.

Contractor - A person or entity that enters into a contract.

Contracting Decision - Any of the following decisions:

- composition of *Approved Lists*
- withdrawal of *Invitation to Tender*
- whom to invite to submit a *Quotation* or *Tender*
- *Shortlisting*
- award of contract
- any decision to terminate a contract
- any resulting amendments of the Council's Pensions Scheme.

Contracts Manager – The officer within a service or client department of the Council with principle responsibility for the letting and management of any contract for the supply of *Goods, Services or Works* on behalf of the Council.

Contract Monitoring Summary Template - A Document held and maintained by the designated **Contract Manager** to accurately record pertinent Contract information on a standard basis, to better inform management, members and other interested parties on the particular circumstances and requirements of Contracts placed.

Contract Notice – The notice published in the Official Journal of the Economic Union advertising the Council's intention to seek tenders or expressions of interest in a contract for the supply of *Goods, Services and Works*.

Corporate Contract - A contract placed by the *Corporate Procurement Division* or endorsed by the *Head of Procurement* for Corporate use.

Corporate Contracts Register - A record of contracting activity maintained by the Council's *Corporate Procurement Group* which records all contracts placed with an estimated value of **£200,000** and above.

Corporate Procurement Group -The council's central procurement unit charged with providing strategic direction and advice to secure *Value for Money* in the Council's procurement activities.

Director of Corporate Services - As defined in the *Constitution*.

Estimated Cost (or Value) - The expected value of *Goods, Services and Works* to be purchased by the Council including any which may be acquired during any optional extension to the term of the contract.

EU Procedure - The procedure required by the EU where the *Total Value* exceeds the *EU Threshold*.

EU Procurement Regulations – Requirements as set out in the "Public Procurement Regulations 2006 (SI 2006/5) as may be amended from time to time.

EU Threshold - The contract value at which the EU Public Procurement Directives apply – as advised from time to time by the **Head of Procurement** and detailed in the Procurement Tool Kit:

Executive (of the Council - As defined in the Council's *Constitution*.

Exemptions – the specific waiver of a requirement for securing competitive *Bids*.

Extensions – The provision whereby an additional period of time is included and/or authorised to allow for continued performance of the contract or the scope of the arrangement and /or requirement carried out is increased.

Extreme Urgency – events unforeseeable by, and not attributable to, the Council which preclude compliance with time limits for tendering contracts in accordance with the *EU Procurement Regulations*.

Director of Finance - – As defined in the *Constitution*

Financial Officer - The most senior *Officer* representing the or designated by him to provide financial advice to the *Chief Officer*.

Financial Regulations - The financial regulations outlining *Officer* responsibilities for financial matters issued by the **Director of Finance** in accordance with the *Constitution*.

Formal Consultation / Formally Consult – A process where a written record and response/acknowledgement of the document considered is produced.

Framework Agreement - An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

Gateway Review – A review process completed using the Council's Programme and Project Management guidance or similar best practice, such as that identified in the Cabinet Office / GPS Gateway process, to overview and validate the direction and outcomes from any particular contracting arrangement.

Goods – A physical asset or consumable such as materials, products or equipment and can include a commodity such as Gas, Water or electricity.

Government Procurement Agreement - The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the *European Economic Area* are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.

Grant Payments - are a means of providing financial assistance to third sector organisations for a special purpose, for example to support the wider objectives of the local authority in promoting the social, economic or environmental well being of the area. Grant funding is usually preceded by a call for proposals. The grant offer letter will normally set out general instructions as to how the special purpose is to be achieved (i.e. through conditions that limit or guide the behaviour of the third sector organisation).

Head of Finance – An Officer designated by the **Director of Finance** – As defined in the *Constitution* as having responsibility for financial matters within a particular Directorate, Department or part thereof.

Head of Procurement – The Officer, appointed from time to time, with a “Head of Profession” responsibility for overseeing the Council’s Procurement activity.

Head of Service (HOS) – The Officer identified in the departmental structure as having responsibility for a particular activity or service below Chief Officer Level

High Profile - A high-profile purchase is one that could have an impact on functions integral to council service delivery should it fail or go wrong.

High Risk - A high-risk purchase is one which presents the potential for substantial exposure on the Council’s part should it fail or go wrong.

High Value - A high-value purchase is where the value exceeds the *EU Threshold* values.

Invitation to Tender - Invitation to tender documents in the form required by these contract procedure rules.

Key Decision - Decisions that are defined as key decisions in the *Constitution*.

Line Manager - The *Officer’s* immediate superior or the *Officer* designated by the *Chief Officer* to exercise the role reserved to the line manager by these contract procedure rules.

Nominated Suppliers and Sub-contractors - Those persons specified in a main contract for the discharge of any part of that contract.

Nominee(s) – A named individual to whom a *Chief Officer* has delegated certain of his/her specific duties, powers and functions in writing.

Non-commercial Considerations -

(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces (‘workforce matters’).

(b) Whether the terms on which contractors’ contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.

(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.

(d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons (‘industrial disputes’).

(e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.

(f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.

(g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.

(h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (*TUPE*) may apply.

Officer - The officer designated by the *Chief Officer* to deal with the contract in question.

Official Order – as provided for in Financial Regulations

Parent Company Guarantee - A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the council, the council can require the parent company to do so instead.

Portfolio Holder - A member of the *Cabinet* to whom political responsibility is allocated in respect of specified functions.

Priority Services - Those services required to be tendered as defined in the EU public procurement directives.

Procurement - The process of acquiring goods, works and services from suppliers. The process spans the whole *Procurement* cycle from the identification of the need through to the end of the service contract or the end of the useful life of an asset. It therefore covers everything from “paper clips” to PFI”.

Procurement Strategy - The document setting out the Council’s approach to *Procurement* and key priorities for the next few years.

Quotation - A quotation of price and any other relevant matter (without the formal issue of an *Invitation to Tender*).

Relevant Contract - Contracts to which these contract procedure rules apply (see Rule 4).

Service Contracts Register – A sub set of the Corporate Contracts Register recording contracting activity required to be subject to competitive tendering and /or valued **£50,000** or above estimated value.

Service Level Agreement (SLA) - An arrangement with a VSO (or similar organisation) which provides the cost and outcome of any given service provision.

Services – An intangible asset, activity or facility provided by a third party (e.g. advertising space).

Scheme of Delegation – The arrangements made by the Council to delegate parts of its decision making processes, as provided for by its *Constitution*.

Shortlisting - The process of selecting *Candidates* who are to be invited to quote or bid or to proceed to final evaluation, including tender lists compiled under a two stage tender process.

Supervising Officer - The *Line Manager's* immediate superior.

Supplies – Generally relates to a purchase or hire of goods (including electricity, gas etc.).

Sustainable Procurement – A process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only for the organisation, but also society and the economy while minimising damage to the environment.

Tender - A *Candidate's* proposal submitted in response to an *Invitation to Tender*.

Tender Record Log - The log kept by the Relevant *Officer* to record details of *Tenders* (see Rule 14.5).

Total Value - The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:

(a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period

(b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months

(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48

(d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result

(e) for *Nominated Suppliers and Sub-contractors*, the total value shall be the value of that part of the main contract to be fulfilled by the *Nominated Supplier or Sub-contractor*.

TUPE - Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246) - Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (eg following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

Value for Money – The optimum combination of *Whole Life Costs* and benefits to meet the service requirements.

Variation – Any amendment to a contract agreed in writing by the parties in accordance with its terms or by means of negotiation. Where *Extension* to the duration of a contract are considered the provisions of Para. 23.7 of these Rules apply.

Voluntary Sector Organisation (VSO) – Also known as the “third sector” it includes a range of organisations from unincorporated associations to companies limited by guarantee with

charitable status. Generally, but not always, they funded by grant and contract with the Council by way of a *Service Level Agreement*, Note - the same organisation may have separate funding arrangements for different elements of the activity required.

Waive or Waiver – the dispensation of the need for compliance with a particular requirement of these *Contract Procedure Rules*.

Whistle Blowing – The raising of concerns under the Public Interest Disclosure Act 1998, in accordance with the Council's Whistleblowing policy, about some danger or illegality arising or potentially arising from performance (or non performance) of its function.

Whole Life Costs – The consideration of all costs incurred during the life cycle of the work, goods, service or utility purchased, including those identified by adopting good *Sustainable Procurement* practice.

Work or Works – Those activities listed as Schedule 2 of the *EU Procurement Regulations* being, in general terms, construction, engineering or building works.

Procurement Guidance and Practice Notes – see

<http://onebromley/HDol/ManKit/wikisite/Wiki%20Pages/Procurement.aspx>

on the Procurement Pages on the Mangers Toolkit

EU Contracting Values and Summary of Contracting Arrangements



Crown
Commercial
Service

A BRIEF GUIDE TO THE EU PUBLIC CONTRACTS DIRECTIVE (2014)

October 2015

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Introduction

- 1.1 **The Public Contracts Directives set out the legal framework for public procurement. This guidance note covers the new Public Contracts Directive which will apply when contracting authorities seek to acquire supplies, services, or works (e.g. civil engineering or building). Separate information will be provided to cover new directives on contracts awarded by utilities bodies (e.g. water companies) and concessions contracts. This note does not cover the procurement of contracts for defence and security requirements¹.**
- 1.2 **The Public Contracts Directive sets out procedures which must be followed before awarding a contract to suppliers (i.e. providers of works, supplies or services) when its value exceeds set thresholds, unless it qualifies for a specific exclusion -- e.g. on grounds of national security. Details of the current thresholds can be found at: <https://www.gov.uk/transposing---eu---procurement---directives>.**
- 1.3 **This guidance summarises the main provisions of the Public Contracts Directive. It does not set out all the relevant rules. It is not intended as a substitute for project specific legal advice, which should always be sought by a contracting authority where required. This guidance may not apply to contracting authorities in Scotland**
- 1.4 **The EU procurement regime, based on the Treaty principles of transparency, non---discrimination, equal treatment and proportionality and described by the Public Contracts Directive and Regulations referred to in this guidance, is not static. It is subject to change, driven by evolving European and domestic case law, European Commission communications, new and revised Public Contracts Directives and amendments to the existing UK Regulations.**

2. Public Contracts Directives in national law

- 2.1 Public Contracts Directive 2004/18/EC on public procurement was implemented into national law in the UK by the Public Contract Regulations 2006 (with separate transposition in Scotland). These Regulations came into force on 31 January 2006 and have been amended a number of times. New UK Regulations, which will supersede the 2006 Regulations, will implement the new procurement Directives. This guidance is based on the published text of the new Public Contracts Directive (2014/24/EU) which can be viewed at <https://www.gov.uk/transposing---eu---procurement---directives#the---directives>

3. Purpose

- 3.1 The purpose of the EU procurement rules, underpinned by the Treaty principles, is to open up the public procurement market and to ensure the free movement of supplies, services and works within the EU. In most cases they require competition. The EU rules reflect and reinforce the value for money (vfm)² focus of the Government's procurement policy. This requires that all public procurement must be based on vfm, defined as "the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought", which should be achieved through competition, unless there are compelling reasons to the contrary.

¹ More details at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35925/dsd_govt_awareness_guide.pdf

² See Managing Public Money at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_Av2---chapters_annex_web.pdf.

4. Reform of the EU rules – The 2014 Public Contracts Directives

- 4.1 On 20 December 2011 the European Commission published proposals to revise and update the public sector and utilities procurement Directives (2004/18/EC and 2004/17/EC respectively) plus a proposed new directive on the award of concession contracts³.
- 4.2 Following negotiations between Member States, the European Parliament and the Commission the texts of the Public Contracts Directives have been agreed and came into force on 17 April 2014. Member States must transpose the Public Contracts Directives into national law within 24 months of that date.
- 4.3 The new rules support UK Government priorities of economic growth and deficit reduction by making the public procurement process faster, less costly, and more effective for business and procurers alike. They represent an excellent outcome from the UK's extensive negotiations in Brussels.
- 4.4 These changes provide a much more modern, flexible and commercial approach compared to the existing regime. Outdated and superfluous constraints have been removed, and many new features have been added to streamline and modernise public procurement. For contracting authorities, this means being able to run procurement exercises faster, with less red tape, and more focus on getting the right supplier and the best tender. And for suppliers, the process of bidding for public contracts should be quicker, less costly, and less bureaucratic, enabling suppliers to compete more effectively.
- 4.5 The Minister for the Cabinet Office has asked the Crown Commercial Service to prepare the transposition of the new rules earlier than the time allowed, to take advantage of the improvements in the rules as soon as possible.

5. New provisions

- 5.1 This note outlines the requirements of the new Public Contracts Directive, drawing attention to a number of changes to procedures and requirements for public procurement. More detailed guidance on some of the changes described will follow in due course.
- 5.2 A list of the key changes follows immediately below, with additional detail in the subsequent sections:

General

- 5.3 Contracting authorities will be able to reserve the award of certain services contracts to mutuals/social enterprises for a time---limited period

- 5.4 **Although the thresholds of application of the rules will not change immediately, the Public Contracts Directive includes a binding commitment on the Commission to review the economic effects of the thresholds on the internal market. This review must be completed by 2019.**

Facilitating SME involvement

- 5.5 **Contracting authorities are encouraged to break contracts into lots to facilitate SME participation.**

³ Concessions contracts are currently subject to minimal EU regulation; the proposed new legislation aims to ensure that concessions are competed effectively. Concessions contracts involve giving exploitation rights as part of the supplier's reward for delivering a public service or building – examples include toll bridges and car parks built on public-authority-owned land. Risk-transfer is also a significant feature of concessions.

- 5.6 **A turnover cap has been introduced to facilitate SME participation. Contracting authorities will not be able to set company turnover requirements at more than two times contract value except where there is a specific justification.**
- 5.7 **A central, on---line point called “E---certis” where suppliers can find out the type of documents, certificates etc which they may be asked to provide in any EU country, even before they decide to bid. This should help suppliers to bid cross---border, if they are unfamiliar with these requirements.**

Selection of Suppliers

- 5.8 **A much simpler process of assessing bidders’ credentials, involving greater use of supplier self---declarations, and where only the winning bidder should have to submit various certificates and documents to prove their status.**
- 5.9 **Poor performance under previous contracts is explicitly permitted as grounds for exclusion.**
- 5.10 **Various improved safeguards from corruption:**
- **Requirements on contracting authorities to put in place appropriate safeguards against conflicts of interest. The rules are not prescriptive on what the safeguards should be, but compliance could be achieved, for example, through a common current practice amongst many UK contracting authorities, where declarations are signed by procurement staff to confirm they have no outside interests with bidders etc;**
 - **Time limits for the exclusion of suppliers (not more than 3 or 5 years depending on the reason for the exclusion);**
 - **Suppliers who have been excluded from public procurement for bad practice can have the exclusion ended if they effectively “self clean”.**

Procedure changes

- 5.11 **Preliminary market consultations between contracting authorities and suppliers are encouraged, which should facilitate better specifications, better outcomes and shorter procurement times.**
- 5.12 **More freedom to negotiate. Constraints on using the competitive procedure with negotiation have been relaxed, so that the procedure will generally be available for any requirements that go beyond “off the shelf” purchasing.**
- 5.13 **The distinction between Part A and Part B Services has been removed, and a new light---touch regime introduced for social and health and some other services. There is an OJEU advertising requirement and other specific**

obligations for this new light---touch regime, but a much higher threshold has been agreed (EUR 750,000).

- 5.14 A new procedure, the “Innovation Partnership” procedure, has been introduced. This is intended to allow scope for more innovative ideas. The supplier bids to enter into a partnership with the authority, to develop a new product or service.
- 5.15 The statutory minimum time limits by which suppliers have to respond to advertised procurements and submit tender documents have been reduced by about a third. This flexibility could be helpful for speeding up simpler or off---the---shelf procurements, but still permits longer timescales for requirements where suppliers will need more time to respond.

Electronic procurement

- 5.16 Electronic versions of the procurement documentation must be available through an internet URL immediately on publication of the OJEU contract notice.
- 5.17 Full electronic communication (with some exceptions) will become mandatory for public contracts 4.5 years after the Public Contracts Directive comes into force (i.e. October 2018). For central purchasing bodies the deadline is three years (April 2017).
- 5.18 The rules on “Dynamic Purchasing Systems” (DPS) have been greatly simplified, with the removal of the onerous obligation to OJEU---advertise call---off contracts made under the DPS.
- 5.19 Electronic catalogues for public procurement are expressly permitted, removing any doubt as to their legality.

Contract award

- 5.20 Improved rules on social and environmental aspects, making it clear that:
- social aspects can now also be taken into account in certain circumstances (in addition to environmental aspects which have previously been allowed);
 - contracting authorities can require certification/labels or other equivalent evidence of social/environmental characteristics, further facilitating procurement of contracts with social/environmental objectives;
 - contracting authorities can refer to factors directly linked to the production process.

- 5.21 The full life---cycle costing can be taken into account when awarding contracts; this could encourage more sustainable and/or better value procurements which might save money over the long term despite appearing on initial examination to be more costly.
- 5.22 Legal clarity that contracting authorities can take into account the relevant skills and experience of individuals at the award stage where relevant (e.g. for consultants, architects, etc).

Other

- 5.23 Contracting authorities no longer have to submit detailed annual statistics on their procurement activities. The Commission will collect this information directly from the online system, thereby freeing up valuable time and resources for contracting authorities.
- 5.24 Works concessions contracts are excluded from the Public Contracts Directive. The new Concessions Directive will apply to both works and services concessions when it is transposed into UK law.

6. Training

- 6.1 The EU procurement rules are detailed and technical and to assist in their understanding the Crown Commercial Service has prepared a training package for contracting authorities (though its contents may also be of interest to suppliers, advisers and other interested parties). This document is a part of that package, which is being rolled out across the public sector.
- 6.2 This section of the guide describes briefly the provisions of the EU procurement regime and in particular the new Public Contracts Directive. Where the Public Contracts Directive introduces major changes to the current regime these are highlighted in bold.
- 6.3 The training package will be available for free download from [https://www.gov.uk/transposing---eu--- procurement---directives](https://www.gov.uk/transposing---eu---procurement---directives) and is also the subject of an electronic learning package which will be available to contracting authorities shortly.

7. Geographical coverage – which countries have access to the EU rules?

- 7.1 In addition to the 28 EU Member States and the 3 states of the European Economic Area (Iceland, Liechtenstein and Norway) the benefits of the EU public procurement rules also continue to apply to suppliers from a number of other countries where the EU has entered into an agreement. The main agreement is the one negotiated through the World Trade Organisation

(WTO) titled the Government Procurement Agreement (GPA) http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm#govt.

- 7.2 Compliance with the EU rules ensures compliance with the GPA, where it applies, and suppliers from GPA countries have the same rights as EU suppliers. The non-EU countries who are signatories to the GPA are:

- Armenia; Aruba; Canada; Hong Kong, China; Iceland; Israel; Japan; Liechtenstein; Montenegro, New Zealand; Norway; Republic of Korea; Singapore; Switzerland; Taipei; and the USA.

- 7.3 The EU has similar Free Trade Agreements with some other countries, and contracting authorities should check to see if any of these apply if they receive expressions of interest or bids from suppliers in other, non-GPA countries. A Commission list of such agreements can be found at: http://ec.europa.eu/internal_market/publicprocurement/rules/free_trade_agreements/index_en.htm

8. Contracts outside the scope of the Public Contracts Directives

- 8.1 Even when a tender process is not subject to the Public Contracts Directives, (for example because the estimated value of a contract falls below the relevant threshold), EU Treaty-based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality apply. Where the authority considers that a contract is likely to attract cross-border interest it is obliged to publish a sufficiently accessible advertisement to ensure that suppliers in other Member States can have access to appropriate information before awarding the contract. This is in line with the UK objective of achieving value for money in *all* public procurement -- not just those covered by the Public Contracts Directives. Some degree of advertising, (appropriate to the scale of the contract), is likely to be necessary to achieve transparency where the contract is likely to attract cross-border interest.

- 8.2 The UK regulations will also include some specific UK rules to support growth by improving suppliers' access to public contracts below the EU thresholds ("sub-threshold contracts"). These rules include requirements for advertising all public contracts below the EU thresholds, but over certain other threshold values, on Contracts Finder. They also include a requirement for contracting authorities to have regard to Crown Commercial Service guidance on the selection of suppliers and the award of contracts and to ensure that suppliers pay their sub-contractors within 30 days (as is already required of contracting authorities).

9. Does the Public Contracts Directive apply to the contract?

- 9.1 The Public Contracts Directive applies in principle to all contracts awarded by a contracting authority.

However, there are some specific exclusions where there is a relevant defence or security dimension, see Annex A, Flowchart 1. **The Public Contracts Directive also exempts certain contracts between contracting authorities where they are effectively meeting genuine ‘in-house’ requirements within a number of contracting authorities.** This could be through the form of a ‘vertical’ arrangement under shared control (so-called ‘Teckal bodies’ from the lead case in the European court, Case C-107/98). Or it might be through a ‘horizontal’ arrangement, where a number of contracting authorities genuinely co-operate with each other to meet a shared legal obligation (as in the *Hamburg* case in the European court, Case C-480/06).

10. Mixed contracts

- 10.1 In some cases contracts awarded by contracting authorities will contain elements that are covered under the rules in the new public sector regulations, the new utilities regulations, the new concessions regulations and/or the Defence and Security Public Contracts Regulations. These issues are complex and will be the subject of separate guidance. See Annex A, Flowchart 2 for mixed procurements involving the new public sector regulations, the Defence and Security Public Contracts Regulations and/or Article 346 of the Treaty.**

11. Reservation of certain contracts: mutuals and sheltered workshops

11.1 Mutuals

- 11.2 One of the UK priorities in the negotiations was to secure flexibility to enable fledgling public service mutuals to gain experience of delivering services before being exposed to EU-wide competition.** The new Public Contracts Directive permits competition for certain contracts, listed by CPV code, mainly in the social and health sectors, to be “reserved” to organisations such as mutuals and social enterprises meeting certain limited criteria described in Article 77 of the Public Contracts Directive. The reservation works in practice by requiring an OJEU competition for those services using the ‘light touch regime’ referred to at paragraph 12.1 below but only allowing bids from organisations meeting the mutual or social enterprise criteria.

- 11.3 The reservation has time-based conditions to prevent misuse, so contracting authorities cannot reserve contracts for organisations that have been awarded contracts within the last 3 years, and contracts cannot be longer than 3 years.**

11.4 Sheltered workshops

- 11.5 The Public Contracts Directive also expands the scope of the existing reservation for sheltered workshops/employment programmes** by allowing reservation of any contract for disadvantaged as well as disabled workers, and reducing the minimum proportion of those workers in the supplier’s workforce required for a supplier to be eligible to bid for a reserved contract. The reservation works in practice by requiring an OJEU competition for those services but only allowing bids from organisations meeting the criteria.

12. The ‘light touch regime’ for certain services

12.1 Under the 2006 Regulations there are different rules for so-called 'Part A and Part B' services. In the new Public Contracts Directive, the position for services contracts has changed significantly.

12.2 The main changes include:

- A new “light-touch regime” for a smaller number of categories of services contracts in the health and social service areas listed at Annex XIV to the Public Contracts Directive. Some contracts that were formerly “Part B” but are not listed in the Annex, will be subject to the *full* EU procurement rules;
- A significantly higher threshold than for supplies and for other services (EUR 750,000 for public sector authorities);
- A new obligation on contracting authorities to publish a call for competition in the OJEU, as well as a contract award notice, for above-threshold contracts covered by the light-touch regime.

12.3 Member States have flexibility to design their light touch rules. To preserve as much of the existing flexibility as possible the UK rules will be much less stringent than the full EU rules regime. As well as the OJEU advertising requirements the UK rules will require compliance with the basic Treaty principles (transparency, equal treatment, non-discrimination) and publication in OJEU of contract award notices. Otherwise, there will be considerable flexibility for contracting authorities to use procedures, tools and techniques of their own choosing, whether analogous to those in the main rules or not. More detailed information will be released by the time the UK Regulations come into effect.

13. Aggregation rules and thresholds

13.1 The threshold levels for the application of the Public Contracts Directives (which can be found using the links at: <https://www.gov.uk/transposing-eu-procurement-directives>) will be unchanged because of GPA commitments but the Commission has made a commitment to review, by 2019, the economic effects of the thresholds on the internal market. The Public Contracts Directive's rules on determining the value of a contract are unchanged.

13.2 Where a single work involves more than one contract, the estimated value of all the contracts must be aggregated to decide whether the threshold is reached. Where the threshold is reached, each of the works contracts will be covered by the rules except small contracts (known as small lots) the value of which falls below the de minimis level provided for in the Public Contracts Directive.

13.3 In determining whether the threshold has been or is likely to be reached for public supplies or services contracts, the rules require aggregation:

- of the estimated value of separate contracts for meeting a single requirement; and

- where a series of contracts or a renewable contract is entered into for supplies/services of the same type during a twelve month period.

13.4 Where an authority is divided into a number of separate operational units (SOUs) with authority to decide independently whether to enter into procurement contracts, then aggregation need only be applied to each unit. In other cases the authority as a whole must be considered for aggregation purposes. The Public Contracts Directive provides greater detail as to when aggregation can be carried out at the SOU level.

14. Electronic procurement

14.1 The Public Contracts Directive requires electronic submission of OJEU notices, electronic availability of procurement documents at the time of notice publication, and electronic communication and information exchange for all communication under the Public Contracts Directive, subject to specified exclusions. Contracting authorities must ensure that the tools and devices used for electronic communication meet certain requirements set out in the Public Contracts Directive. Contracting authorities must decide and apply to these communications, appropriate electronic security, guided by a high level framework in the Regulations.

14.2 The Public Contracts Directive reforms the DPS to remove the previously burdensome need for OJEU

advertising of “call---off” contracts to be awarded using the system. Under the new rules, only the DPS itself will need to be OJEU---advertised, with call---off contracts being subject to much more straightforward procedures, similar to the established process for awarding call---off contracts under a framework agreement by mini---competition. A key advantage of a DPS compared to a framework, which it resembles, is that suppliers can be added at any time to a DPS provided that they pass the exclusion criteria and minimum capacity requirements. This will greatly streamline the system and allow greater competition to be maintained.

14.3 The Public Contracts Directive also provides helpful confirmation that electronic catalogues can be used as a basis for tenders for contracts or frameworks. Some safeguards are required where contracting authorities intend to compare offers without seeking re---submission of catalogues by suppliers.

15. Central purchasing bodies

15.1 As now contracting authorities may purchase through Central Purchasing Bodies (CPBs). CPBs may act as a ‘wholesaler’ – supplying an authority on the basis of contracts it has itself awarded and/or provide contracting authorities with access to framework deals or dynamic purchasing systems it has established.

16. Frameworks

- 16.1 **The Public Contracts Directive introduces minor clarifications of the rules on frameworks relating mainly to transparency. Thus contracting authorities must not use a framework unless clearly identified in the notice as permissible users and contracting authorities must be transparent about the methods of call off to be used. It does however confirm that a contract awarded under a framework may have a completion date after the end of the framework.**

17. OJEU advertising requirement

- 17.1 As now, generally contracts covered by the Regulations must be the subject of a 'call for competition' published in the OJEU. **In most cases this will be a Contract Notice but in a change from the current rules contracting authorities other than central government (e.g. local authorities) will also be able to use the Prior Information Notice (PIN) for this purpose in certain defined circumstances.** A number of detailed changes have also been made to the information that must be included in the notice forms.
- 17.2 **The Commission is preparing revised versions of its Standard Forms to accommodate these changes. We hope these will be available in time for the UK and other Member States proposing to implement the Public Contracts Directives early. The Crown Commercial Service is considering the most appropriate way to proceed if they are not available and if necessary will issue guidance in due course.**

18. Shorter minimum time limits

- 18.1 **The minimum time allowed for responses or tenders is reduced to allow flexibility where the current minimum time limits are unnecessarily long.** In certain circumstances these can be shortened further where the requirement is urgent or where sufficient information has already been provided by a prior information notice to allow suppliers to respond quickly. See Annex B for a summary of the time limits in the new Public Contracts Directive.

19. Choice of procurement procedure

- 19.1 **The new Public Contracts Directive provides for five award procedures, rather than the existing four:**
- **the open procedure, under which all those interested may respond to the advertisement in the OJEU by submitting a tender for the contract;**
 - **the restricted procedure, under which a selection is made of those who respond to the advertisement and only they are invited to submit a tender for the contract.**
 - the competitive dialogue procedure, under which a selection is made of those who respond to the advertisement and the contracting authority enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender. **The new Public Contracts Directive provides greater freedom to use this procedure than do the existing rules (see below);**
 - the competitive procedure with negotiation under which a selection is made of those who respond to the advertisement and only they are invited to submit an initial tender for the contract.

The contracting authority may then open negotiations with the tenderers to seek improved offers. **The new Public Contracts Directive provides greater freedom to use this procedure than the existing rules** (see below).

- **the innovation partnership procedure, under which a selection is made of those who respond to the advertisement and the contracting authority uses a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing ‘product’ on the market. The contracting authority is allowed to award partnerships to more than one supplier.**

19.2 **In certain narrowly defined circumstances the contracting authority may also award a contract using the ‘negotiated procedure without prior publication’. Here the contracting authority would approach one or more suppliers seeking to negotiate the terms of the contract. One of the permitted circumstances is where, for technical or artistic reasons or because of the protection of exclusive rights, the contract can only be carried out by a particular supplier.**

19.3 Contracting authorities have a free choice between the open and restricted procedures. **The competitive dialogue procedure and the competitive procedure with negotiation are available where certain criteria are met, including where the contract is complex or cannot be purchased ‘off the shelf’.** The ‘negotiated procedure without prior publication’ may only be used in the limited circumstances described in the Public Contracts Directive.

19.4 **Contracting authorities using the restricted procedure, competitive dialogue procedure and the competitive procedure with negotiation must aim to select a number of suppliers sufficient to ensure genuine competition. Provided there are sufficient suitable candidates, the Public Contracts Directive requires a minimum of five for the restricted procedure, and three for competitive dialogue and competitive procedure with negotiation.**

20. Stages in the procurement process

20.1 **The Public Contracts Directive includes procedural requirements designed to ensure all suppliers established in countries covered by the rules are treated on equal terms, to avoid national discrimination. The rules in particular cover the following:**

- Specification stage -- how requirements must be described, avoiding brand names and other references which would have the effect of favouring or eliminating particular providers, products or services and the requirement to accept equivalence. The use of performance specifications is encouraged. **The new Public Contracts Directive also makes clear that there is some scope for building into the specification equality issues (e.g. access issues for the disabled) and social/environmental issues (e.g. a requirement to conform to social or environmental labels).** Regarding social/environmental issues, contracting authorities also may specify production processes and methods as long as they are linked to the

subject matter of the contract.

- Selection stage -- there are a number of grounds for the exclusion of suppliers based on evidence of unsuitability, some of which are mandatory. Reasons include criminal conviction for certain offences (mandatory), failure to pay taxes (mandatory) and **previous poor performance which has led to early termination, damages or other comparable sanctions (discretionary)**. Some of the grounds for mandatory exclusion are subject to account being taken of remedial action by the supplier, e.g. organisational changes. **There are statutory limits to the duration of any exclusion period.**
- Those suppliers not excluded can then be assessed on the basis of their economic and financial standing, e.g. whether they meet proportionate levels of financial soundness. **The Public Contracts Directive requires that where this is judged on the basis of turnover this should not normally exceed twice the value of the contract.**
- Suppliers may also be assessed on their technical capacity and ability e.g. that they will be adequately equipped to do the job and that their track record is satisfactory.
- Award stage -- the award of contract must be based on the tender most 'economically advantageous' to the authority (MEAT). This can however include assessment on the basis of price/cost only as well as other methods including the 'best price/quality ratio' (equivalent to value for money), which can include social and environmental requirements provided they relate to the contract.

20.2 The Public Contracts Directive also places a duty on the contracting authority to investigate tenders it considers abnormally low and to disregard those that are based on approaches in breach of international environmental or social law.

20.3 To allow suppliers to seek effective review of contracting authorities' decisions, contracting authorities will as now be required to include a 10---15 day standstill period⁴ between the point when the decision on the award of the contract is made and the signature of the contract. The standstill letter must provide certain information about the contracting authority's decision. There are detailed requirements for this process, which are set out in the Public Contracts Directive.

21. Changes to contracts once awarded

21.1 The Public Contracts Directive provides useful clarity about the extent to which a contract can be changed after award without the need to re---advertise in OJEU. Permissible grounds for modification include the existence of suitable "clear, precise and unequivocal" review clauses in the contract; or a need for additional supplies or services where a change of supplier is impossible or would cause significant inconvenience or a need for additional deliveries due to unforeseen circumstances (both subject to 50% maximum increase in contract value); or where a new supplier replaces the existing supplier because of insolvency, genuine restructuring etc.

22. Termination of contracts

22.1 The Public Contracts Directive contains provisions to ensure that Member States' contracts allow termination in circumstances where there has been a breach of EU law on public procurement, particularly where this results from a change in an awarded contract.

22.2 The contracting authority must be able to terminate a contract should any of the following three grounds occur:

⁴ At least 10 days, when the notice is communicated using electronic means, or when using non-electronic means, there is a choice between either 15 days from date of sending; or 10 days from date of receipt

- Where the contract has been subject to a substantial modification that constitutes a new award;
- Where it is discovered after contract award that the contractor should have been excluded on mandatory exclusion grounds;
- Where the Court of Justice of the European Union (CJEU) has declared a serious infringement by the contracting authority of its obligations, meaning the contract should not have been awarded to the contractor.

22.3 The Regulations will specify that contracting authorities must include a condition in contracts allowing them to terminate if any of the grounds are found to apply. As a fallback, the Regulations will also include a deeming provision to ensure this possibility exists where a contract fails to include a termination condition.

23. Enforcement

23.1 The enforcement regime will be included in the Regulations, and derives from the Remedies Directives, which have not changed. The principal means of enforcement for a breach of the Regulations and other enforceable EU law such as the Treaty are:

- action by suppliers against individual contracting authorities in the High Court; and
- action by the Commission against the Member State in the Court of Justice of the European Union (CJEU).

23.2 The High Court's powers include both pre-contractual remedies (i.e. those that can be imposed before the contract is entered into) and post-contractual. Pre-contractual remedies include the power to suspend an incomplete contract award procedure (an injunction) or the setting aside of a decision in an incomplete contract award procedure. The High Court also has powers to award damages as a pre-contractual remedy.

23.3 Post-contractual remedies (for contracts that have already been awarded) include contractual ineffectiveness

(i.e. cancellation, but only for very serious rule breaches,) contract shortening, and civil financial penalties (fines). A properly applied standstill period gives good protection against post-contractual remedies.

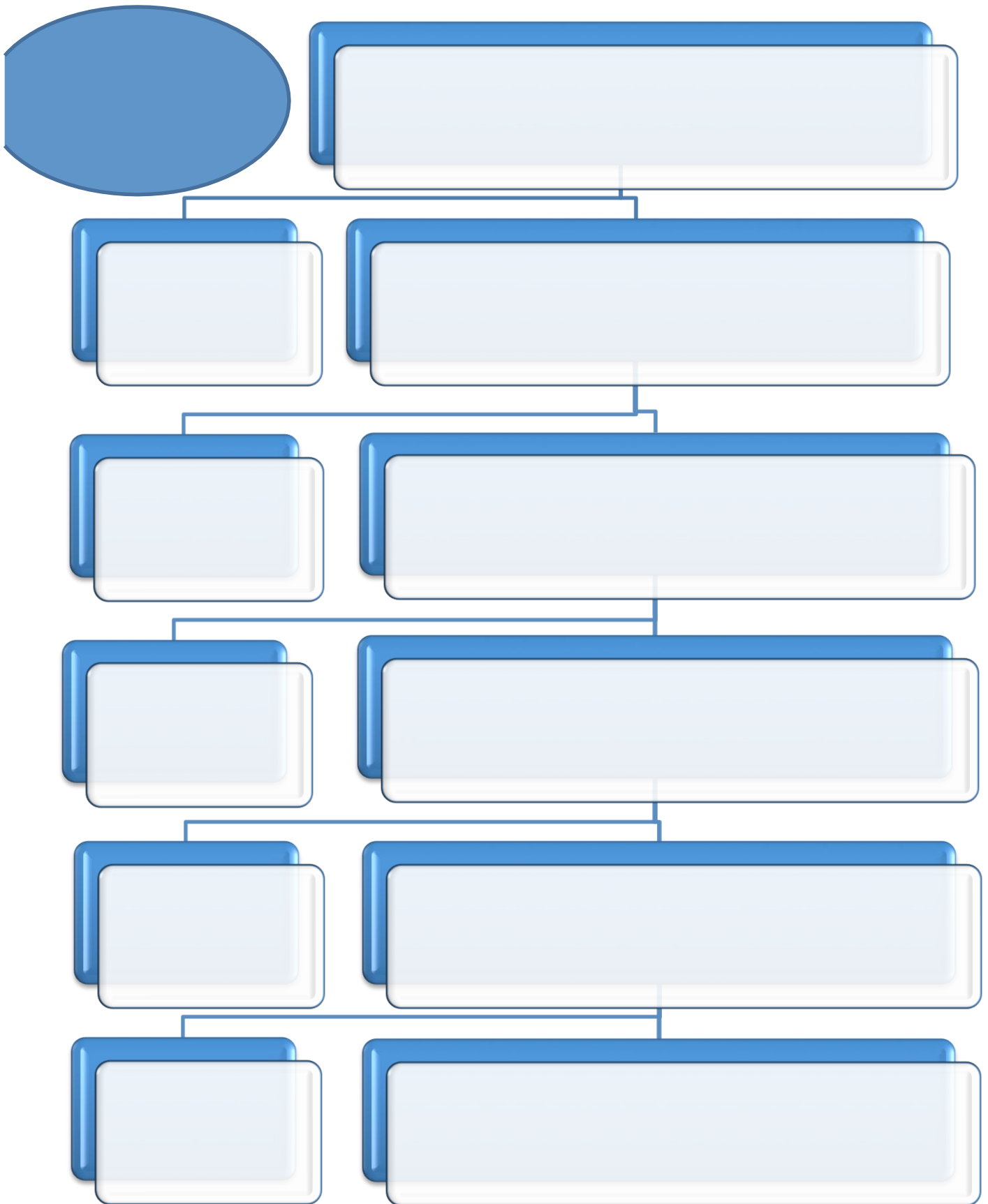
23.4 Cases can also be pursued via the European Commission, for breach of the relevant European Directive and/or the EU Treaties. These cases, where accepted by the Commission, trigger infraction proceedings against the Member State, and can lead to a CJEU hearing, substantial fines, and potentially other CJEU imposed orders against the Member State if the breach is not satisfactorily resolved by other means.

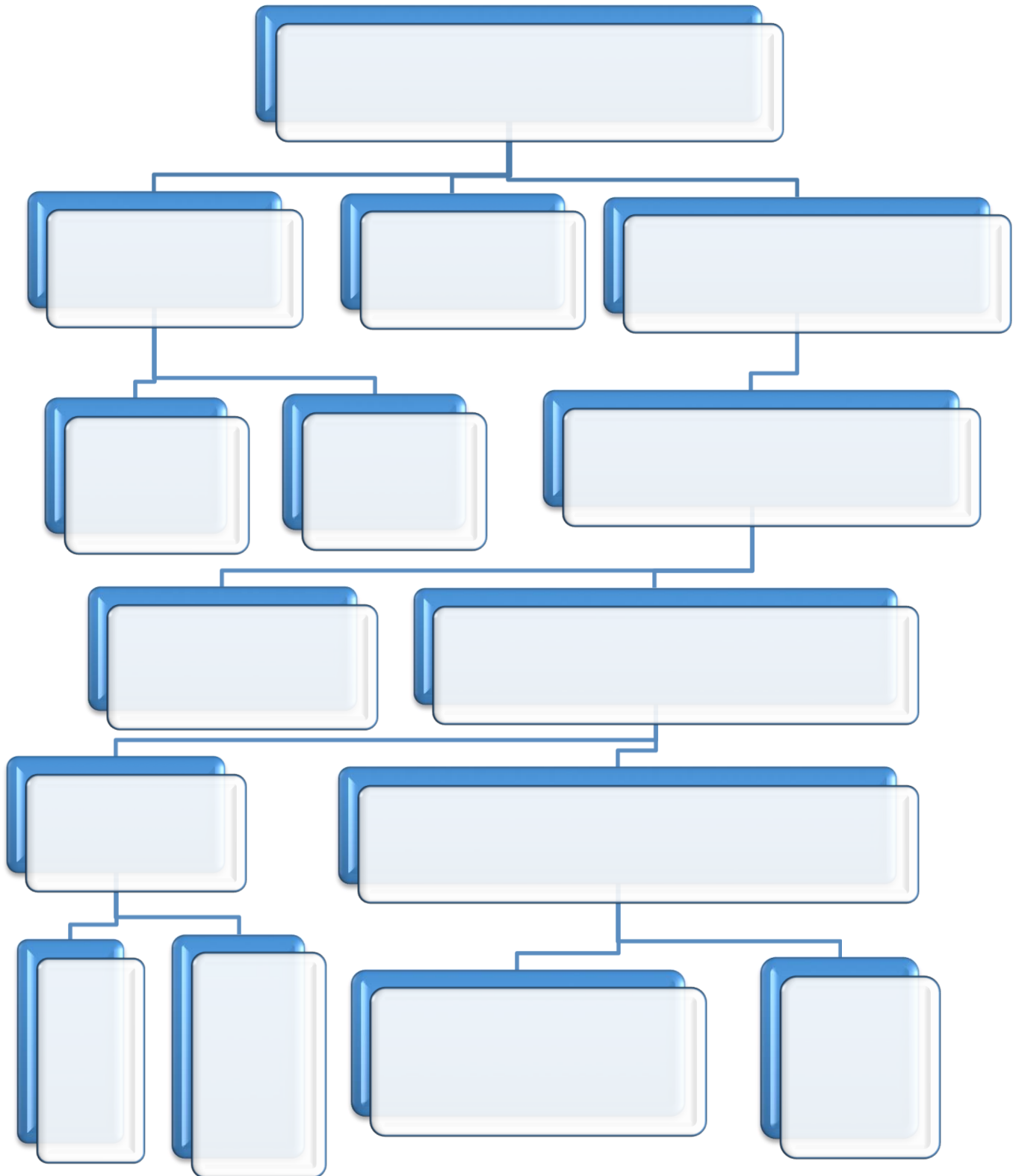
24. Further information

24.1 For further detailed information, including the training materials, see <https://www.gov.uk/transposing-eu-procurement-directives>. More detailed information on certain aspects of the legislation will also be made available in due course.

24.2 Enquiries should be addressed to: Crown Commercial Service, Customer Service Desk:
0345 410 2222

info@ccs.gsi.gov.uk





Annex B

OJEU advertising time limits

Minimum OJEU time limits for the Public Contracts Directive

NORMAL MINIMUM TIME	IF ELECTRONIC TENDER PERMITTED	IF URGENT+	WHERE PIN PUBLISHED*	IF SUB CENTRAL AUTHORITY**
Open procedure				
Minimum time limit for receipt of tenders 35 days	Minimum time limit for receipt of tenders 30 days	Minimum time limit for receipt of tenders 15 days	Minimum time limit for receipt of tenders 15 days	...
Restricted procedure				
Minimum time limit for requests to participate 30 days	...	Minimum time limit for requests to participate 15 days	Minimum time limit for requests to participate 30 days	Minimum time limit for requests to participate 30 days
Minimum time limit for tenders 30 days	Minimum time limit for receipt of tenders 25 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders to be set by agreement with tenderers. In the absence of agreement minimum time limit 10 days
Competitive procedure with negotiation and innovation partnerships				
Minimum time limit for requests to participate 30 days	...	Minimum time limit for requests to participate 15 days	Minimum time limit for requests to participate 30 days	Minimum time limit for requests to participate 30 days
Minimum time limit for initial tenders 30 days	Minimum time limit for receipt of initial tenders 25 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders to be set by agreement with tenderers. In the absence of agreement minimum time limit 10 days
Competitive dialogue				
Minimum time limit for requests to participate 30 days

No explicit time limits for submission of initial/subsequent tenders	--	--	--	--
--	----	----	----	----

Notes

These are minimum time limits. When fixing the time limits for the receipt of tenders and requests to participate, contracting authorities must take account of the complexity of the contract and the time required for drawing up tenders

+ This shorter time limit is allowed where a state of urgency duly substantiated by the contracting authorities renders the minimum impracticable

* This shorter tendering time limit is allowed where contracting authorities have published a prior information notice which was not itself used as a means of calling for competition, provided that all of the following conditions are fulfilled:

- (a) the prior information notice included all the information required in section I of the PIN notice referred to in the Public Contracts Directive, insofar as that information was available at the time the prior information notice was published;
- (b) the prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

** ‘ sub---central contracting authorities’ means all contracting authorities which are not central government authorities

ANNEX C

Contracting Extract - Officer Scheme of Delegation

PART I

GENERAL CONDITIONS GOVERNING DELEGATION OF FUNCTIONS TO CHIEF OFFICERS

	Responsibility Delegated from
1. These General Conditions and any amendment of or addition to made by the Council, shall apply to the delegation of functions specified in Part II of this document, and to any amendment of or addition to made by the Council or the Leader or the Monitoring Officer under paragraph 12 of this Part.	-
2. Powers delegated shall be exercised in conformity with the Constitution, Standing Orders, Financial Regulations and other directives of the Council in force from time to time, and in accordance with the expressed policies and objectives of the Council, the Executive or Committees relevant to the matter upon which action is to be taken.	-
3. The delegation of authority to deal with any matter shall not derogate from the power of the Council, the Executive, or Committee, Sub-Committee or Panel to call for a report on any decision or action taken, or to require any such matter under consideration to be referred to the Council or to the appropriate Executive body or Committee Sub-Committee or Panel for determination so far as this accords with the law.	Council/Leader
4. A Chief Officer may refer a matter to the Executive, the appropriate Executive Portfolio Holder or to the Chairman of an appropriate Committee and will, in any event, ensure that care is taken to identify any case within his delegated authority where unusual circumstances or other reasons suggest the desirability of Member consideration.	Council/Leader
5. If a matter involves considerations not within the purview of the Chief Officer primarily concerned, he shall consider whether it is necessary to consult any other Chief Officer concerned before authorising action, shall do so if he concludes it is necessary and shall take due account of any views that are expressed.	Council/Leader
6. When the implementation of a decision taken under the delegated authority by a Chief Officer requires the preparation of formal documents, legal proceedings or other legal process or advice, the Chief Officer concerned shall refer the matter to the Director of Corporate Services for appropriate action.	Council

7. Authority to take decisions and other action including but not limited to the signing of documents and the requirement to arrange consultations shall be exercised and undertaken on behalf of the Council in the name of the Chief Officer to whom the authority to act is given, but not necessarily personally by him. ¹ Therefore, under this condition each Chief Officer has power to authorise others to exercise any power conferred on him provided that any such authorisation shall be subject to these General Conditions and be commensurate with the nature of the matters to be dealt with. Further, the Chief Executive may authorise any other Chief Officer to exercise any power delegated to him in this scheme which in his judgement is consistent with that other officer's responsibility. Authorisations given by Chief Officers to others to exercise powers delegated under this scheme should be recorded in writing in a list maintained by each Chief Officer. This shall be taken to mean that, provided a Chief Officer has authorised the person making a decision on his behalf to act, that person may sign in his own name or in his Chief Officer's name when he makes that decision.	Council/Leader
8. The Chief Executive may, after consultation with any Chief Officer, refer to the Executive, the appropriate Executive Portfolio Holder, or appropriate Committee for decision any matter which has been brought to his notice and which, in his opinion, because of special difficulty or otherwise, warrants such reference.	Council/Leader
9. For the purposes of these General Conditions and the general and specific authorities to act to which they apply, the expression 'Chief Officer' shall mean:- e Chief Executive, the Director of Corporate Services, the Director of Education and Care Services, the Director of Environmental Services, the Director of Renewal and Recreation, the Assistant Chief Executive, Human Resources, the Director of Finance and the Chief Planner.	Council
10. Reference to an enactment in a grant of delegation shall be deemed to extend to and include reference to any subsequent enactment having like or similar effect as though the delegation had been granted under the subsequent enactment.	Council/Leader
11. An officer exercising any power under this scheme of delegation shall ensure that some written or other permanent record is made of his decision and, in cases where a range of alternative decisions presented themselves, shall record why he made the particular decision.	Council/Leader

¹ This shall be taken to mean that, provided a Chief Officer has authorised the person making a decision on his behalf to act, that person may sign in his own name or in his Chief Officer's name when he makes that decision.

12. For the avoidance of doubt, the Council and the Leader hereby declare that any exercise of a power by a Chief Officer, or an officer authorised by him and which, if expressly provided for by this Scheme of Delegation, could have been lawfully exercised by an officer under powers delegated to him by the Council or a Committee, shall be deemed to be authorised by this Scheme notwithstanding such express provision may not have been made in it; PROVIDED THAT, where an officer relies on this paragraph, the Monitoring Officer shall be informed by the officer of this action and the Monitoring Officer shall make a report on the matter to the next ordinary meeting of the Council.	Council/Leader
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PART II

Subject to the foregoing, and without derogation from the powers or duties now or hereafter conferred or imposed upon officers of the Council, by statute or by any statutory instrument or regulation, authority to act for and on behalf of the Council without reference to the Council or Executive body or any Committee shall be delegated as follows:-

A. GENERAL AUTHORITIES	Responsibility Delegated from
1. To each Chief Officer Authority to:-	
(i) Take all necessary action for the effective day-to-day management, administration and supervision of their Department and of the services for which they are responsible, and for the efficient discharge of the professional responsibilities of their office.	Council/Leader
(ii) Within budgetary provision, take all necessary action for the effective day-to-day management, administration and supervision of the land and buildings for which they are responsible, such action to include for each property concerned and as far as practicable <ul style="list-style-type: none"> (a) proper documentation; (b) appropriate occupation; (c) maintenance to retain value; (d) security and satisfactory appearance; (e) an annual review to ensure property is still required; and (f) prompt release if surplus to requirements. 	Council/Leader
(iii) That all powers delegated to Chief Officers include authority to take action in respect of any London Residuary Body matter transferred to Bromley by virtue of the London Residuary Body (Transfer of Property etc) Order 1990 in the same way and to the same extent that they have delegated powers in respect of any	Leader

equivalent Bromley matters.	
(iv) Incur expenditure and accept tenders for items provided for in the approved revenue estimates or approved capital programme, in accordance with the Council's Contract Procedure Rules.	Council/Leader
(v) Select quotations and tenders for works, services and/or goods within approved budgetary provision on all contracts in accordance with the Council's Contract Procedure Rules.	Council/Leader
(vi) On the best terms obtainable, dispose of stores, plant, vehicles, equipment, furniture or other such items which are obsolete, or are unusable for or surplus to the Council's requirements, subject to the Director of Finance's prior agreement to any consequential writing off of balances of book value.	Leader
(vii) Make adjustments of stock ledgers and accounts following stocktaking, subject to the Director of Corporate Services' prior agreement.	Leader
(viii) Authorise officers under their control to attend conferences, courses and similar events appropriate to their personal, official responsibilities and to the work of the particular Department, in accordance with an approved list or agreed code of practice.	Council/Leader
(ix) Vary annually fees and charges (except car parking) within policy established by an Executive body or Committee.	Council/Leader
(x) Deal with applications for re-grading in accordance with the Council's agreed procedures.	Council
(xi) Sign authorisation documents, with the exception of the Chief Officer's own personal authorisation, which shall be signed by the Director of Corporate Services.	Council
(xii) Where a complaint has been made through the Council's complaints system, decide whether there is a justifiable case for which the Council should apologise and pay compensation, up to a limit of £5,000 in any one case (or, in the case of the Chief Executive, £10,000).	Council/Leader
(xiii) Approve trips to EU countries made on Council business subject; in each case, to a subsequent report to the appropriate Executive body or Committee on the action taken.	Leader
(xiv) Enter into contracts with any voluntary sector organisation (VSO) for the provision of services by way of a service level agreement (SLA) without the necessity of competition, provided that:	Council/Leader

<p>(1) the Chief Officer is satisfied that the VSO is able to provide a satisfactory quality of service and that the sums payable under the SLA represent best value;</p> <p>(2) the relevant Portfolio Holder is notified of any new SLAs being entered into;</p> <p>(3) any approval, extensions or renewals of such SLAs comply with the provisions of rule 13.1 of the Contract Procedure Rules;</p>	
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<p>3. To the Director of Corporate Services Authority to:-</p> <p>(i) authorise proceedings before any Court of Summary jurisdiction in respect of any offence for which the Council by virtue of any Act of Parliament; , regulation, order or bye-law, is now or may hereafter be empowered to prosecute or to authorise the institution of such proceedings; except in cases where some other officer is specifically authorised to act;</p> <p>(ii) authorise proceedings for the recovery of debts of all kinds due to the Council (other than rates) and for the recovery of possession of premises;</p> <p>(iii) authorise the institution or defence of proceedings in the Courts to safeguard the Council's interest;</p> <p>(iv) obtain Counsel's Opinion to ensure adequate advice to the Council or Committees;</p> <p>(v) in accordance with instructions given, institute or defend any legal proceedings authorised to be taken or defended on behalf of the Council, or serve notices, including directions under section 77 of the Criminal Justice and Public Order Act 1994;</p> <p>(vi) take any action urgently required to settle legal proceedings during the course of a trial or other hearing;</p> <p>(vii) authorise permanent or temporary members of staff to represent the Council under Section 223 of the Local Government Act 1972 in proceedings before a Magistrates' Court or a Juvenile Court or Family Proceedings Court and under Section 60(2) of the County Courts Act 1984 to represent the Council in the County Court;</p> <p>(viii) issue written authorities to individual officers to act as the Council's authorised officers in the performance of their statutory or other duties (as evidence of their bona fides); provided that any written authority to enter upon land or premises is in pursuance of a statutory power of entry or inspection;</p> <p>(ix) sign and serve on behalf of the Council notices authorised by statute to ascertain ownership and other interest in land;</p> <p>(x) sign and approve service of Notices to Treat in pursuance of confirmed compulsory purchase orders and, where possession is required without waiting for settlement of terms of acquisition, sign and approve the service of Notices of Entry;</p>	<p>Council/Leader</p> <p>Council/Leader</p> <p>Council/Leader</p> <p>Council/Leader</p> <p>Council/Leader</p> <p>Council/Leader</p> <p>Council</p> <p>Council/Leader</p> <p>Council</p> <p>Leader</p>
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(xi) approve the assignment of contracts;	Council/Leader
<p>4. To the Director of Education and Care Services , authority to:-</p> <p>Negotiate schedules of rates and other contractual provisions with registered residential and nursing home providers and/or care service providers to facilitate client choice within community care legislation. Clients should be directed to providers on such Approved Lists although the Director may agree to placement with a non approved provider provided that</p> <p>(i) the clients' choice is appropriate to their needs and</p> <p>(ii) the client meets the relevant eligibility criteria</p> <p>(iii) the costs fall within the rates accepted by the Council for accommodation and/or care for clients with their specific eligibility or a third party has entered into a binding contract with the provider and Council to meet any difference</p> <p>(iv) as far as possible inflationary increases in such rates should be negotiated at the outset.</p>	Leader

AUTHORITIES RELATED TO THE FUNCTIONS OF INDIVIDUAL PORTFOLIO HOLDERS AND COMMITTEES

DECS	(27)	Approve the placing of children with special educational needs in suitable schools as specified in a statement and including day, residential, independent and non-maintained special schools and special schools maintained by other authorities.	Leader
DECS	(28)	Arrange for home or hospital tuition in appropriate cases.	Leader
DECS	(30)	Make arrangements for transport of pupils.	Leader
DECS	(31)	Provide support services as requested by establishments.	Leader
DECS	(41)	In cases of urgency seek planning permission for mobile accommodation at primary and secondary schools in accordance with Regulation 3 of the	Leader

Town & Country Planning General Regulations Act 1992 on the understanding that a full explanation for the need will accompany each application.

Minor Improvement Budget Schemes

DES	(62)	Approve expenditure on schemes from within the minor improvement budget.	Leader
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Traffic Management Schemes – Civil Engineering Costs

DES	(63)	Following agreement in principle to traffic management schemes by the Council, approve the detailed civil engineering element costs.	Leader
-----	------	--	--------

Contractors Bonds

All	(44)	Allow contractors to obtain their own bonds for due performance of any proposed contract, subject to the nominated bondsman being acceptable to the Director of Corporate Services and to any additional cost being met by the contractor.	Leader
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FD	(46)	The Director of Finance shall be the Chief Finance Officer for the purposes of Section 114 of the Local Government Finance Act 1988.	Council
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Energy Contracts

FD	(51)	In consultation with the DECS and relevant Executive Portfolio Holders, to accept energy tenders for gas and electricity for those schools which have opted into a corporate contract (in accordance with the decision of the Executive on 21 st July 2008).	Leader
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FD	(52)	To accept energy tenders for gas and electricity for the remainder of the Council (in accordance with the decision of the Executive on 21 st July 2008).	Leader
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DECS	(18)	Authority to allocate Housing Association Programme funds in accordance with the criteria contained in Social Services and Housing Committee Minute 232(g) (21 st July 1997).	Leader
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Libraries

DRR	(2)	Select and purchase books and other library and museum materials and arrange loan exhibitions.	Leader
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KEY DECISIONS, MEMBER AUTHORISATION AND DELEGATION

GUIDELINES FOR KEY DECISIONS MADE BY OFFICERS

Where a Chief Officer is taking a Key Decision it must in most respects be dealt with in a similar way to a Key Decision being made by a Portfolio Holder or the full Executive at a meeting. The following guidelines explain what action is required to comply with the Local Authorities (Executive Arrangements) (Access to Information) Regulations 2000 and the Council's Constitution.

What is a Key Decision?

A Key Decision is an executive decision which

(a) results in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the budget for the service or the function to which the decision relates – the thresholds for the various portfolios are set out below –

Adult & Community Services/Children & Young People/Environment & Leisure
Resources
Public Protection & Safety/Local Economy

£500,000
£250,000
£50,000

(b) is significant in terms of its effects on communities living or working in an area comprising two or more wards. Any decision likely to have an impact on the amenity of a community or quality of service provided by the authority to a significant number of people should be regarded as key.

A Key Decision may be taken by the Council, the Executive, an individual Executive Portfolio Holder or by an officer using delegated powers. Decisions made by Chief Officers concerning the award of contracts will be key decisions where the total value of the contract is likely to be above the relevant portfolio threshold.

Before a Key Decision is made -

- it must be included up to four months beforehand in the monthly **Forward Plan of Key Decisions** issued by Democratic Services.

(The Forward Plan is updated in the middle of each month and a request for new items for inclusion is issued by Democratic Services* at the beginning of each month.)

- a **report** should be prepared by the officer dealing with the matter and issued to the decision taker five clear days** before the decision is to be taken. *The report must be supplied to Democratic Services to be copied to Members. The report need not follow the corporate Committee report format in all respects, but it should set out clearly the recommended decision and the reason for the decision. The report should also include a section for the decision taker to sign and date after the five clear days have expired signifying their agreement.)*

After a Key Decision has been made -

- a **statement of decision** must be issued to all Councillors by Democratic Services
(This must state who has taken the decision, what the decision is and give a statement of reasons - a blank example is attached. Democratic Services will draft the statement of decision from the recommendations and reasons contained in the report.)
- A further period of five calendar working days is allowed during which time the decision may be called in by any five Members (unless reasons of urgency determine that the decision must be implemented immediately.) Only after the call-in period has expired can the decision be implemented. This means that you may need to build in extra time to allow not only for this period, but for the possibility of a call-in. If a decision is called in it will need to be considered by a relevant PDS Committee, which may decide to refer it to the Executive for re-consideration.

Where a matter for decision qualifies as exempt/part 2, no exempt information will be disclosed to the public, but it will still be necessary for the matter to be included in the Forward Plan and for a Part 1 summary of the statement of decision to be available for the public.

** Democratic Services Contact = Graham Walton, tel. 020 8461 7743*

**** Five clear days excluding the day the report is issued, the day the report is signed and any intervening weekends, public holidays etc**

Updated 15/8/06

**LONDON BOROUGH OF BROMLEY
STATEMENT OF KEY DECISION**

SUBJECT:

Notice is hereby given that the following Key Decision on the above mentioned subject has
been taken by

.....

for the reason(s) set out below.

Summary of Decision:

.....
.....
.....
.....
.....
.....

Reason(s) for Decision:

*(to include details of any alternative
options considered and rejected)*

.....
.....
.....
.....
.....
.....
.....

Mark Bowen

Director of Corporate Services

Publication Date:

Decision Ref: 2006/.....

**(This decision will come into force, and may then be implemented on the expiry of 5 working
days after the publication of the decision, unless it is subject to call-in.)**

SUMMARY OF THE COUNCIL'S "CALL IN" REQUIREMENTS

Holding the Executive to Account

Moving to an Executive decision making model should mean that decision-making is quicker and more efficient but to ensure that decisions made are effective, the Executive and individual Portfolio Holders must be held to account.

This role involves scrutinising Executive and Portfolio Holder decisions at a number of different stages of the decision-making process: before decisions are made, before they are implemented and after they are implemented.

There are a number of ways in which the Executive can be held to account:

- ❑ Examining Executive and Portfolio Holder minutes and agendas
- ❑ Using call-in procedures
- ❑ Attending Executive and Portfolio Holder meetings
- ❑ Examining the Forward Plan of Key Decisions
- ❑ Calling the Portfolio Holder as a witness
- ❑ Meetings with Portfolio Holders
- ❑ Officer briefings

Call-in Procedure

When a decision is made by:

- ❑ the Executive,
- ❑ an individual member of the Executive,
- ❑ a Committee of the Executive or
- ❑ an officer with delegated authority from the Executive;

the decision will be published and sent to all Members of the Council normally within two working days. The decision will come into force, and may then be implemented, five working days from the date of publication.

During that five-day period the decision can be 'called-in'. This procedure allows executive decisions to be scrutinised before they are implemented - an important part of the PDS process. Requests for call-in must be submitted to the Director of Legal, Democratic and Customer Services during this five-day 'call-in' period. Requests should be made, in writing, detailing the reasons for the call-in. Each call-in needs to be supported by five Members of the Council.

The relevant PDS committee will then meet within a time period agreeable to all parties of the call-in. Having considered the decision, the PDS Committee has three options –

- (i) if it decides that the decision is correct, no further action is taken on the call-in and the decision may then be implemented;
- (ii) if it decides that the decision should be reconsidered it may refer it back to the Executive, giving its reasons. The Executive (not just a single Portfolio Holder) must reconsider the matter;
- (iii) in exceptional circumstances, if the Committee considers that the decision contradicts the Council's policy and financial framework, it can refer the matter to a full Council meeting for reconsideration.

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LONDON BOROUGH OF BROMLEY

A GUIDE TO CHANGES IN CONTRACT PROCEDURE RULES

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All costs stated in these contract procedure rules are exclusive of VAT, staff costs and fees.

Terms appearing in the definitions appendix are italicised and capitalised.

Further advice on the interpretation of these requirements can be obtained from the following;

Director of Corporate Services

Director of Finance

Head of Procurement

To aid use of these Contract Procedure Rules the following Colour Coding has been used for those associated with various actions and requirements;

Council /Executive	
Portfolio Holder	
Audit Sub Committee	
Chief Executive	
Director of Corporate Services	
Director of Finance /Head of Finance	
Chief Officer	
Heads of Service	
Head of Procurement	
Contract Manager	
Line Manager	
Officer / Initiating Officer	
Values/Amounts	£

<u>Current EU Limits</u>	£
For Works –	4,322,012
For Supplies and Services (other than Light Touch) -	172,514
For the Specific Services Covered by the “Light Touch” Regime –as identified in Schedule 3 of the Public Contract Regulations	625,050
<u>Current UK Limits</u>	
Additional UK Limits – Publication in Contract Finder	25,000 – 172,514
Permissible LBB CPR Set aside Limit	100,000
Current (additional) UK Limits – Local Government Transparency Code – Mandatory Publication of Procurement Information	5,000
Current (additional) UK Limits – Local Government Transparency Code – Mandatory Publication of Expenditure Information	500

A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

INTRODUCTION

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act), which form part of the Council's Standing Orders, are intended to promote good *Procurement* practice, [establish Value for Money](#), enhance public accountability and deter corruption. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently [and protects the Council from challenge on the arrangements used for its contracting activity](#). They reflect the requirements of the 2015 Public Contract Regulations, which set out the statutory requirements for Public Sector Procurement with a value of £25,000 and above and the Local Government Transparency Code 2015. Further descriptions of these requirements, together with associated Policy, Guidance and Practice Notes can be found [the Council's Intranet Site in the Procurement element of the "Manager Toolkit"](#).

VFM/Best Value

All **Officers** responsible for *Procurement* activity or disposal must comply with these Contract Procedure Rules. They lay down minimum requirements only; a more thorough procedure may be appropriate for a particular contract.

(For example, if Rule 8.1 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations in writing or tender submissions. Equally, it may not always be appropriate to make use of an exemption under Rule 3 even if one might apply or be granted.)

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail and fax transmissions as well as hard copy documents or information issued via a Council E Procurement System.

- Follow the rules if you purchase goods or services or order construction work of any type;
- Take all necessary legal, financial, [procurement](#) and professional advice;
- Declare any personal financial interest in a contract. Corruption is a criminal offence;
- Conduct a [Service Best Value](#) review to [establish Value for Money](#) and [appraise inform](#) the *Procurement* need;
- Check whether there is an existing *Corporate Contract* [or appropriate framework](#) you can make use of before undergoing a competitive process;
- Normally allow at least [30 days four weeks](#) for submission (more [as required](#), if above EU Threshold) of bids. [\(where not being submitted by fax or e-mail – slightly less if they are\);\(unless there are good reasons not to\);](#)
- Keep bids confidential;
- Complete a written contract [and / or Council Purchase Order](#) (using its E Procurement Systems where possible) before the supply, [service](#) or works begin ([unless otherwise agreed by the Director of Corporate Services](#));
- Identify a contract manager with responsibility for ensuring the contract delivers as intended;
- Keep records of dealings with all tenderers and contractors;

- Assess each contract afterwards to see how well it met and continues to meet the *Procurement* need and *Value for Money* requirements.

In accordance with the *Constitution*, the *Director of Corporate Services*, in agreement with the *Director of Finance* shall have the power to make amendments from time to time to these Contract Procedure Rules *subject to a report being made to the Council within 3 months of any amendment being made*. The Chief Executive, in agreement with the *Director of Corporate Services*, and the *Director of Finance* shall have the power to amend the titles of the responsible officers identified within these Contract Procedure Rules where these result from changes in organisational structure and/or other amendments to roles and responsibilities of the *Officer* concerned.

The *Head of Procurement* will make the latest version of these Contract Procedure Rules and its associated Guidance Notes available to all officers and members as necessary and be responsible for its circulation and communication

The Council's "*Guide to Successful Procurement*" *Various Practice Notes and Best Practice Guidance Notes and associated processes*, which can be found on the Council's Intranet *Site* in the *Procurement* element of the "*Manager Toolkit*". These complement these Procedural Rules and have been prepared to assist those involved in the *Procurement* process to identify and use best practice. The practices identified should be used by those involved in contracting processes and arrangements unless an alternative course of action has been agreed by the *Head of Procurement* in consultation with the *Director of Corporate Services* as necessary. In any case the requirements set out in these *Contract Procedural Rules* must be followed unless a general or specific derogation has been agreed by the Council.

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

1. BASIC PRINCIPLES

1.1 All *Procurement* and disposal procedures must:

- Achieve *Best Value* for public money spent;
- Enable a Value for Money *Procurement* decision based on *Whole Life Costing* and the consideration of *Sustainable Procurement* practice and any associated *Life Cycle Costings*.
- Support Local Business to the maximum extent permitted by law and the duty to demonstrate value for money;
- Be consistent with the highest standards of integrity;
- Ensure fairness in allocating public contracts;
- Comply with all legal requirements;
- Ensure that *Non-Commercial Considerations* do not influence any *Contracting Decision*;
- Support the Council's Corporate and Departmental Aims and Policies;
- Comply with the Council's *Corporate Procurement Strategy*.

1.2 In determining the estimated cost (or value) identified in these Rules the following shall apply:

- **Officers** shall not sub-divide work which could reasonably be treated as a single contract;
- The total estimated value of orders for a given type of goods, services or work should wherever practicable be amalgamated for the purpose of determining *Procurement*, in any case due regard should be given to the "Method for Calculating the Estimated Value of *Procurement*" identified in Regulation 6 of the *Public Contract Regulations*. This will also apply to *Framework Agreements* or *Draw Down Facilities*;
- If a contract/arrangement is for a period greater than one year then the estimated value of orders to be placed over the full period (including any identified extensions) should be used to determine the appropriate procedure inclusive of any allowance for inflation;
- Where contracts run year to year with the Council or Contractor having the option to terminate on notice the value of the contract shall be calculated over the period prior to the date when the break clause may first be exercised. Unless otherwise agreed by **Director of Corporate Services** in consultation with **Head of Procurement** the contract term should not exceed 4 years in total (including any optional extension period(s));
- Where leasing arrangements are used, the total amount payable over the life of the lease shall determine the appropriate procedure;
- Where contracts entail both revenue and capital costs (e.g. acquisitions and support for IT systems) the value of the contract shall be calculated by the aggregation of the total estimated capital cost and the estimated revenue costs calculated as identified above;
- If the lowest quote/tender obtained exceeds the upper limit applicable to the procedure selected, the **Chief Officer** should consider (and record the reason) whether the procedures for the higher category should be applied.

1.3 The formal advice of the **Director of Corporate Services** and the **Director of Finance** (or their **nominees**) must be sought for the following contracts:

- Where the *Total Value* exceeds **£100,000**;
- Those involving leasing arrangements;
- Where it is proposed to use a supplier's own terms;
- Those involving the purchase of application software with a *Total Value* of more than **£50,000**;
- Involve the placement of a *Contract* with another *Public Sector Organisation*, other than through a *Framework Agreement*, authorised as required in these Contract Procedure Rules;
- Arrangements which require the provision of a formal Gate Report to be made to Members during any stage of the contracting process;
- Those that are complex in any other way.

1.4 The *Public Contract Regulations* (see Annex B of these *Contract Procedure Rules*) provide for five (5) main processes under which *Works, Services and Supplies*, that fall within their provisions can be placed. These are identified as being the (1) “*Open Procedure*”; the (2) “*Restricted Procedure*”; the (3) “*Competitive Dialogue Procedure*”; (4) “*Competitive Procedure with Negotiation*” and (5) the “*Innovation Partnership Procedure*”. In addition, but only in very limited circumstances, (6) a “*Negotiated Procedure without Prior Publication*” may be used. However, unless the formal Advice of the **Head of Procurement** has been obtained, and the Agreement of the **Director of Corporate Service** and the **Director of Finance** given, only the first two of these options may otherwise be used.

1.5 Provision is also within the *Regulations* for the placement of those activities identified in Schedule 3 – “*Social and Other Specific Services*” – to which a “*Light Touch Procurement Regime*” may be applied, which differs from those for other *Works Services and Supplies*, and provide for differing arrangements above and below a threshold of **£625,050**, as identified in Section 7 of the *Public Contract Regulations*, which must be followed in the placement of requirements under this provision.

1.6 For all activities, UK specific requirements as set out in Part 4 of the *Public Procurement Regulations*; apply to any arrangements made with a value greater of **£25,000** and above.

Further detailed *Procurement Guidance* on the requirements around the contracting arrangements for contract valued at, **£25,000; £50,000; £100,000; £172,514 £500,000; £625,000 and £1,000,000** are provided in the *Best Practice Guidance Notes* which can be found on the Procurement Site in the *Managers Toolkit*.

1.7 Where the estimated value of any intended Contract, either singly or in aggregate, or as otherwise identified in the *Public Contract Regulations*, identifies the Contract as being subject to its requirements, the formal advice of the **Head of Procurement** must be obtained, Any required Notice or details issued under these *Regulations* must be agreed with and issued, as required, by the **Head of Procurement**.

1.8 The Council must ensure that it treats all economic operators equally and without discrimination and must act in a transparent and proportionate manner in its contracting arrangements.

1.9 Unless agreed by the **Director of Corporate Service**, following Consultation with the **Head of Procurement**, the Council's Standard Contract and Tender Process Forms (which are embedded in its *E Procurement System* and/or included within the *Procurement Toolkit*), together with the identified methodologies for their assessment and evaluation, must be used.

1.10 The authorisation of matters which have implications for the Council's Pension Fund, which result from any Contracting Decision, must be Authorised by GP&L Committee (or the Council), acting on recommendations made by the Pensions Sub-Committee.

2. OFFICER RESPONSIBILITIES

2.1 Officers

2.1.1 **Officers** responsible for *Procurement* or disposal must comply with these Contract Procedure Rules, *Financial Regulations*, the Officers Code of Conduct and with all UK and **Public Contract European Union** binding legal requirements. **Officers** must ensure that any *Agents, Consultants* and contractual partners acting on their behalf **also comply with these requirements**.

2.1.2 **Officers** must:

- Have regard to the *Best Practice Guidance* identified above in **guidance the Council's "Guide to Successful Procurement"**;
- Check whether a suitable *Corporate Contract* exists before seeking to let another contract; where a suitable *Corporate Contract* exists, this must be used unless there is a justified and auditable reason not to;
- Keep the records required by Rule 6;
- Take all necessary legal, financial, **procurement** and **other** professional advice;
- Estimate the cost (or value) of the **Supply Goods, Service or Work** required in accordance with Rule 1.2 above.

2.1.3 No *Order* or *Contract* shall be raised or placed unless there is uncommitted budgetary provision (revenue estimate and/or Capital Programme) to meet the estimated cost (or value) unless it relates to matters undertaken (and reported as required) for reasons of *Extreme Urgency*.

2.1.4 The *Estimate Cost (or Value)* calculated as provided for above will be used to determine the arrangements to be followed in seeking and agreeing quotations and tenders for the Council.

2.1.5 When any employee either of the Authority or of a service provider may be affected by any transfer arrangement, **Officers** must ensure that the Transfer of Undertaking (Protection

of Employment) (*TUPE*) issues and any Pensions matters are considered and obtain legal and financial advice before proceeding with inviting *Tenders* or *Quotations*.

2.2 Chief Officers

2.2.1 The **Head of Procurement** **Director of Finance** will maintain a Register of all Contracts with a value of **£200,000** and above. Directorates are required to use the Corporate System to record contracts with an estimated value of **£50,000** and above, in the detail it requires and provide for its update on a quarterly basis.

2.2.2 **Chief Officers** must:

- Ensure that their staff comply with Rule 2.1;
 - Keep registers of:
 - Contracts completed by signature, rather than by the Council's Seal (see Rule 17.3) and arrange their safekeeping on Council premises;
 - Exemptions recorded under Rule 3.2.
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3. EXEMPTIONS, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS

3.1 The Council and its Executive have power to Waive any requirements within these Contract Procedure Rules for specific projects, and any such decision may be a Key Decision.

3.2 Where there is the need to Waive the requirements for Competitive Bids pursuant to rule 13.1 or any other provision of these Contract Procurement Rules because of an unforeseeable emergency involving immediate risk to persons or property or serious disruption to Council services or significant damage or potential damage to the image or reputation of the Council (including circumstances which require a Head of Service to invoke a Business Continuity Plan) a Chief Officer may exercise such Exemption or Waiver subject to the following:

- (i) Where the value of a relevant contract (or proposed contract) exceeds £50,000 the Agreement of the Director of Corporate Services shall be obtained.
- (ii) Where the value of a relevant contract (or proposed contract) exceeds £100,000 the Agreement of the Director of Corporate Services, the Director of Finance and the Agreement of the relevant Portfolio Holder shall be obtained. A report advising on the action taken shall be submitted to the Audit Sub Committee on a bi-annual basis.
- (iii) Where the value of a relevant contract (or proposed contract) exceeds £1 million the Agreement of the Director of Corporate Services, the Director of Finance and the Agreement of the relevant Portfolio Holder shall be obtained. A report advising on the action taken shall be submitted to the next meeting of the Executive and to the Audit Sub Committee on a bi-annual basis.

3.3 All exemptions (as identified above and in Rule 13.1), and the reasons for them, must be completed in writing and recorded using the form in the Council's "Guide to Successful Procurement". Exemptions shall be signed by the Officer and countersigned by the Director of Finance and Director of Corporate Services. For the purpose this and associate CPR requirements an exchange of e mails or correspondence via similar electronic mediums can be taken to evidence such action.

3.4 Heads of Finance must hold a record and monitor the use of all exemptions granted.

3.5 Use of Framework Type Arrangements

3.5.1 In seeking to demonstrate Value for Money, the Head of Procurement must be consulted and the agreement of the Director of Finance obtained prior to commencing any Procurement process using any Framework Contract, Dynamic Purchasing System arrangement or Catalogue provided by "Crown Commercial Services Office of Government Commerce (OGC) Buying Solutions or a similar Central Purchasing Organisation Contracts, or Joint Contracts with another Authority. The terms and conditions of contract applicable to any such arrangement, including the requirement to undertake competition between providers, must be fully complied with and agreed by the Director of Corporate Services.

3.6 All Any purchases proposed to be made via any of the entities identified in CPR3.5.1 above *Central Purchasing Organisation, the Office of Government Commerce, a local authority or similar consortium* are deemed to comply with these *Contract Procedure Rules* and no exemption is required. However, purchases above the *EU Threshold* must be let placed under an *EU compliant process Procedure*, unless the consortium has satisfied this requirement already by letting their contract in accordance with the *EU Procedures* on behalf of the authority and other consortium members, however, advice must be sought from the *Head of Procurement*. as the Council has a legal responsibility for their proper use of such arrangements and any necessary standstill requirements for an above threshold call off observed.

3.6.1 In order to secure *Value for Money*, the authority may Before entering into any collaborative procurement arrangements, joint contracts or shared service arrangements with another Public Body or Private Entity, other than those identified in 3.5 above, the *Officer* must consult with the *Director of Finance* and the *Director of Corporate Services* .where the purchase is to be made using collaborative *Procurement* arrangements including a local authority, government department, statutory undertaker or public service purchasing consortium.

3.6.2 All *Contracts* placed under these types of arrangement will be reported as required in these *Contract Procedure Rules*

3.7 Where a *Service* is to be provided by a *Voluntary Sector Organisation* through an external *Service Level Agreement* and providing such *Service(s)* is amongst those covered within the arrangements identified in the “*Light Touch Regime*” provided for under *Section 7 of the Public Procurement Regulations*, the relevant *Chief Officer*, in consultation with the *Director of Corporate Services*, can decide not to obtain competitive tenders or quotations provided that:

- The *Chief Officer* is satisfied that the *Voluntary Sector Organisation* is, or will be able to provide a satisfactory quality of *Service* and that the sums payable under any *Service Level Agreement* entered into represent *Value for Money*;
- The relevant *Head of Finance* keeps a record of all payments made and any *Grants* received under the *Service Level Agreement*;
- The *Service Level Agreement* is time limited and subject to renewal under the arrangements identified in this Rule.

Approvals will be obtained as provided for in Rule 13.1, as appropriate for the estimated total value of the intended arrangement and in all cases any overriding requirements of the *Public Contract Regulations* will be observed.

3.8 E Procurement Arrangements

3.8.1 All *Officers* are required to make use of the Council's *E Procurement System* (ProContract) when carrying out any Contracting activity which has an estimated value of *£5,000* and above, unless otherwise agreed with the *Head of Procurement*. Where the Council's *E Procurement System* is not used the relevant *Chief Officer* shall ensure that the information required by CPR 6 is recorded and included within any information required to be published by the Council.

3.8.2 The use of e-procurement technology does not negate the requirement to comply with all elements of these Contract Procurement Rules, particularly those relating to completing contracting activity in a fair and transparent way, with any necessary degree of competition and in a way required to establish *Value for Money*.

3.8.3 Unless otherwise agreed by the **Director of Finance** any Purchase Orders placed must make use of and be issued through one of the Council's standard electronic IT systems / processes via *I Proc; Carefirst or Confirm*.

4. RELEVANT CONTRACTS

4.1 All *Relevant Contracts* must comply with these *Contract Procedure Rules*. A *Relevant Contract* is any arrangement made by, or on behalf of, the authority (including schools) for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- The supply or disposal of goods;
- The hire, rental or lease of goods or equipment;
- The delivery of services, including (but not limited to) those related to;
 - the recruitment of staff;
 - land and property transactions;
 - financial and consultancy services;

4.2 *Relevant Contracts* do not include:

- Contracts of employment which make an individual a direct employee of the authority, or
- Agreements regarding the acquisition, disposal, or transfer of interests in land (for which *Financial Regulations* shall apply). or
- Are otherwise include in Section 10 of the *Public Procurement Regulations 2015*.

However, any such Services must be procured in a way which demonstrably secures *Value for Money* and/or as appropriate, *Best Consideration*.

SECTION 2: COMMON REQUIREMENTS

5. STEPS PRIOR TO PURCHASE

5.1 The **Officer** must review the intended *Procurement* in a manner commensurate with its complexity, risk and value, taking into account any relevant guidance contained in the *Council's "Guide to Successful Procurement, by: Best Practice Guidance Notes and associated processes included in the Procurement Element of the Managers Toolkit,*

- Taking into account the requirements from any relevant *Best Value Service* review;
- Appraising the need for the expenditure and its priority;
- Defining the objectives of the purchase;
- Assessing the risks associated with the purchase / procurement and how to manage them, including those associated with any required consultation, TUPE, Pensions, Insurance and the Tax implications of any contracting arrangements proposed, together with the Social Value Act Legislation;
- *Undertake Preliminary Market Consultation* with the "Market" and Service Providers as appropriate and to the extent provided for in the Public Contract Regulations (CI.40), providing this does not distort or compromise the contracting process;
- Considering what *Procurement* method is most likely to achieve the *Procurement* objectives, including internal or external sourcing, partnering, packaging strategy and collaborative *procurement* arrangements with another local authority, government departments, statutory undertakers, public service procurement consortium or Central Purchasing Organisations (CPO's); Contract Length;
- Consider the appropriate time limits allowed for the completion of the tender process and any statutory requirements that may apply;
- Consulting users, *staff and other interested parties*, as appropriate, about the proposed *procurement* method, contract standards and performance and user satisfaction monitoring;
- Identify and record the reasons for any "*Lotting*" Strategy to be used;
- Drafting the terms and conditions that are to apply to the proposed contract;
- Consider the approach to be taken to performance and contract management and the reporting arrangements needed to ensure the delivery of the required service.
- Ensuring the correctness of any use of member or delegated approval for the expenditure and that the purchase is in accords with the approved policy framework, *Scheme of Delegation* as set out in the *Constitution*;
- If the purchase is a *Key Decision*, all appropriate steps have been taken
- Setting out these matters in writing if the *Total Value* of the purchase exceeds **£50,000**.
- Ensure that for any Contracts involving the Outsourcing (or Insourcing) of any requirements, the necessary Legal, Finance, Pensions, HR, Procurement and IT advice is obtained.

5.2 Where the estimated value of the intended arrangement requires the publication of an *OJEU* and / or *Contract Finder Notice*, the required Procurement Documents must be available at the point of publication.

5.23 Where the estimated value of the intended arrangement is **£500,000** or more the relevant **Portfolio Holder** will be *Formally Consulted* on the intended action and contracting arrangements, having submitted, for consideration, a formal “*Gate Report*”, covering, as appropriate, the matters identified in the Council’s Standard “*Gate Reporting Template*”. Reports produced must identify, after discussion with the *Relevant Officers in Legal, Finance, Human Resources, Procurement and Information Technology*, any service and cost implications arising from the proposals being considered.

5.34 Where the value of the intended arrangement is **£1,000,000** or more the **Executive** will be *Formally Consulted* on the intended action and contracting arrangements, having submitted for consideration a formal “*Gate Report*”, covering as appropriate, the matters identified in the Council’s Standard “*Gate Reporting*” Template..

6. RECORDS

6.1 Information to be maintained under the requirements of the “Local Government Transparency Code 2014”

6.1.1 As provided for within the above Code, for all Invitation to Tender or Requests for Quotations with an estimate value of **£5,000** and above, the relevant **Chief Officer**, shall ensure that the following Information and Procurement Records (including that for staff who are employed via consultancy firms of similar agencies or otherwise work on behalf of the Authority), is maintained and provided for publication as necessary.

At the time of the issue of any Invitation to Tender or Request for Quotation the required information to be provided shall include the following;

- reference Number;
- title;
- description of Work / Goods or Service Required;
- the Start and End Date together with any Review Dates envisaged;
- the Service Area responsible.

At Contract and/or Award, the following additional information shall be provided for publication;

- the suppliers name and details;
- the sum to be paid over the length of the Contract (or the estimated annual spend or budget for the Contract);
- any Value Added Tax that can’t be recovered;
- whether or not the contract was a result of a Request for Quotation or a published Invitation to Tender;
- Whether or not the supplier is a small or medium sized enterprise and/or community sector organisation and if so provide the relevant registration number.

The information identified within CPR 6.1 are mandatory fields for completion within the Council’s E Procurement System (ProContract). The System will automatically publish the

required details and the use of the Council's E Procurement System, therefore, negates the need for a separate record of this information to be maintained by the relevant Chief Officer. The published E Procurement System Record will be considered to be the Council's Contract Register for activities valued between £5,000 and £50,000. Check what Confirm and Carefirst set out

6.21 Where the information is not held on the Council's E Procurement System and for Contracts with an estimated value Where the Total Value is less than £50,000, the following contractual records must also be kept by the relevant Chief Officer:

- Invitations to quote and *Quotations*;
- A record:
 - of any exemptions and the reasons for them,
 - of the reason if the lowest price is not accepted,
- Written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

6.2 Where the Total Value exceeds £50,000 the Officer must also record:

- The method for obtaining *Bids* (see Rule 8.1);
- Details of any required Notice and/or advert placed;
- Any Contracting Decision and the reasons for it;
- Any exemption under Rule 3 together with the reasons for it;
- The Award Criteria in descending order of importance;
- Tender documents sent to and received from Candidates;
- Pre-tender market research;
- Changes to the contracting timetable
- Clarification and post-tender negotiation (to include minutes of meetings);
- The contract documents;
- Post-contract evaluation and monitoring;
- Communications with Candidates and with the successful contractor throughout the period of the contract.

6.3 Records required by this rule must be kept for six years (12 years if the contract is under seal) after the end of the Contract. (However, written documents which relate to unsuccessful Candidates may be microfilmed or electronically scanned or stored by some other suitable method or disposed of after 12 months from award of contract), provided there is no dispute about the award. Documents may then be disposed of as identified in the Council's Financial Regulations

6.4 Where the Total Value exceeds £50,000 the Directorate or Department concerned shall maintain a record of the contract placed in the Service Contract Register, using the corporate system, unless otherwise agreed by the Head of Procurement.

6.5 Where the Total Value exceeds £200,000 the Director of Finance Head of Procurement will maintain a record of the contract placed, using the information provided under CPR 6.4, to compile using the information provided by the Corporate Contract Register.

7. ADVERTISING, APPROVED LISTS AND FRAMEWORK AGREEMENTS – Restrictions on Use

7.1.1 The Public Contract Regulations and their accompanying guidance limit the opportunity to make use of “Approved Lists” for requirements with an Estimated Value above £100,000, without the opportunity also being advertised in Contracts Finder and allowing any who respond to be considered in the tender process.

7.1.2 Where the Estimated Value of an Opportunity is lower than the EU Threshold for Supplies and Services the Authority is also prevented from making use of any Pre-Qualification process and is required to invite all those expressing an interest, who pass any Suitability Criteria set, to Quote or Tender for the Opportunity identified.

7.1.3 As a result Approved Lists, such as *Constructionline*, should only be used in appropriate circumstances, as agreed in discussion with the *Head of Procurement*. For opportunities with an Estimated Value below £100,000 the arrangements identified in the Council’s “**Local Rules - OK**” procedure (as included in the Appendices to these Rules), may also be used, unless there are operational considerations which prevent their use.

7.1.4 Where the Councils E Procurement system is not used to manage the tender process the *Chief Officer* will be responsible for ensuring the issue of any Contract Notices and Advertisements, including those for Contract Finder, required.

7.21 Identifying and Assessing Potential Candidates

7.21.1 *Officers* shall ensure that, where proposed contracts, irrespective of their *Total Value*, might be of interest to potential *Candidates* located in other member states of the EU or as otherwise required within the *Public Contracts Regulations*, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements / notices may be placed include:

- The Council’s website;
- Portal websites specifically created for contract advertisements;
- National official journals; or
- The Official Journal of the European Union (OJEU) / Tenders Electronic Daily (TED) (even if there is no requirement within the *EU Procedure*);
- Contracts Finder *Supply2Gov*.

However, the contract opportunity must always be published in Contract Finder if any type of advertisement is to be made.

7.21.2 Where the estimated value of the Contract is greater than £100,000 The *Officer* shall consult with the *Head of Procurement* on the detailed requirements of Part 4 of the *Public Contract Regulation* and their requirement for the envisaged contracting arrangement (see Annex B of these Contract Procedural Rules).

7.21.32 **Officers** are responsible for ensuring that all *Candidates* for a *Relevant Contract* are suitably assessed. The assessment process, shall establish that the potential *Candidates* have sound:

- economic and financial standing;
- technical ability and capacity;

to fulfil the stated requirements of the authority. However, where the estimated value of the contract is below that identified in CPR 7.1.2 the “*Suitability Assessment*” shall be incorporated into the tender process and documentation as part of the Invitation to Tender.

7.21.43 This shall be achieved in respect of proposed contracts by selecting firms from:

- *Approved Lists* of providers, maintained by the authority or on its behalf, and compiled following responses to a public advertisement; or
- Shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement, placed on Contract Finder in the first instance.

In the case of *Contracts* with an *estimated value* above the relevant *EU Thresholds* the authority must only consider candidates who respond to the relevant *OJEU Contract Notice*.

7.21.54 Public advertisements issued in respect of Rule 7.1.3.2.4 above shall reflect the potential degree of interest from *Candidates* located within other member states of the EU.

7.32 Approved Lists

7.32.1 *Approved Lists* should be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. *Approved Lists* cannot be used where the *EU Procedure Public Contract Procedures* apply.

7.32.2 **Chief Officers** may draw up in consultation with the **Head of Procurement**:

- *Approved Lists* of persons ready to perform contracts to supply goods or services of particular types including without limitation on the basis of agreed contract terms;
- Criteria for *Shortlisting* establishing the suitability of those being invited to participate from the lists.

7.32.3 No person may be entered on an *Approved List* until there has been an adequate investigation into both their financial and their technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.

7.32.4 *Approved Lists* must be drawn up after an advertisement inviting applications for inclusion on the list. The advertisement must be placed to secure the widest publicity among relevant suppliers as appropriate for the nature and value of the intended contract and in compliance with any EU Public Procurement requirements. Persons may be entered on a list between the initial advertisement and re-advertisement provided the requirements of Rule 7.32.3 are met.

7.32.5 The list and *Shortlisting* criteria must be reviewed, by the **Chief Officer** at least annually or as otherwise considered necessary and re-advertised at least every three years unless otherwise agreed by the **Director of Corporate Services** and **Director of Finance**. On re-advertisement, a copy of the advertisement must be sent to each person on the list, inviting them to reapply. Review means:

- The reassessment of the financial and technical ability and performance of those persons on the list, unless such matters will be investigated each time bids are invited from that list;
- The deletion of those persons no longer qualified, with a written record kept justifying the deletion.

7.32.4 All *Approved Lists* shall be maintained in an open, fair and transparent manner, and be open to public inspection and be compiled and operated in compliance with the relevant Public Contract Regulations.

7.32.5 A register of pre-qualified contractors and *Consultants* maintained by or on behalf of Central or Local Government, a Central Purchasing Organisation or similar body will be deemed to be an *Approved List* for the purpose of these contract procedure rules and shall not be subject to the requirements of Rules 7.32.2 to 7.32.6 inclusive.

7.32.6 Any *Approved List* compiled and operated by the Council will reflect the overarching basic principles identified in Rule 1.1.

7.43 Framework Agreements, Dynamic Purchasing Systems and Electronic Catalogues

7.43.1 The term of a *Framework Agreement* unless otherwise agreed, by the **Director of Corporate Services** and **Director of Finance**, must not exceed four years and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.

7.43.2 In general terms Contracts based on a *Framework Agreements* may be awarded by either:

- Applying the terms laid down in the *Framework Agreement* (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or
- Where the terms laid down in the *Framework Agreement* are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
 - inviting the organisations within the *Framework Agreement* that are capable of executing the subject of the contract to submit written *Tenders*
 - fixing a time limit which is sufficiently long to allow *Tenders* for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract

- awarding each contract to the tenderer who has submitted the best *Tender* on the basis of the *Award Criteria* set out in the specifications of the *Framework Agreement*.

However, the specific requirement on the operation of Framework agreements, identified below, for opportunities valued above and below the stated thresholds must be followed.

7.4.3 Where a Framework agreement is intended to be used for a Contract with an Estimated Value **above** the relevant EU Thresholds it must be operated as provided for in Part 2 / Section 4/ 334 of the Public Contract Regulations (see Annex B of these Contract Procedure Rules).

7.4.4 Where a Framework agreement is intended to be used for a Contract with an Estimated Value **below** the EU Thresholds it must be operated as provided for in Part 4 /Section 106 of the Public Contract Regulations (see Annex B of these Contract Procedure Rules).

7.4.5 In a similar fashion use may be made of Dynamic Purchasing Systems and Electronic Catalogues providing they are operated in accordance with the arrangements identified in 7.4.4 above.

SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The **Officer** must calculate the *Estimated Cost (or Value)*.

The following procedures apply where there are no other procedures, which take precedence. Other procedures may include **Regulatory Requirements**, agency agreements with Government or other Public Bodies. If in doubt, **Officers** must seek the advice of the **Director of Corporate Services**.

It is a requirement of the Public Contracts Regulations that, for both above and below EU threshold activity all contract documentation should be available prior to the issue of any required Notice or posting to "Contract Finder".

To encourage SME engagement in the tender process and unless there is good reason not to do so, consideration should be given (and a reason not to do so recorded) to divide the opportunity in to "Lots", however the total value of all such "Lots" will determine the value to be taken in to account when determining the Procurement route to be taken.

Under Regulatory Powers introduced by the UK Government, Prior Qualification Questionnaires are only permitted to be used for contracting arrangements with an estimated value at or above the EU Threshold for Services and Supplies. The Content of the Questionnaire to be use is prescribed by the legislation and any deviation from it are required to be reported to Crown Commercial Services. Below the value identified above a "Suitability" Assessment Process, which is relevant and proportionate to the subject matter of the intended procurement, included within an open tender process, must be used unless other arrangements around these requirements, have been specifically allowed for by the Secretary of State.

8.1 Procurement – Competition Requirements

8.1.1 Where the *Estimated Cost or Value* for a purchase is within the limits identified in the in the first column below, the *Award Procedure* in the second column must be followed. *Shortlisting* shall be done by the persons specified in the third column.

<i>Estimated Cost (or Value)</i>	<i>Sourcing Procedure</i>	<i>Short Listing By</i>
Up to £5,000 (£25,000 for Consultancy Services)	One oral <i>Quotation</i> (confirmed in writing where the <i>Estimated Cost or Value</i> exceeds £1,000) using the Approved List as appropriate Using the Council's "Local Rules" Process where possible and other Approved Lists where Authorised	Officer
£5,000 - up to £25,000	3 written <i>Quotations</i> using the Approved List as appropriate Council's "Local Rules" Process where possible and other lists as Agreed with	Officer

	the Head of Procurement.	
£2550,000 – up to £100,000	<p>Request for Quotation using the Council's "Local Rules" Process where possible and other lists as Agreed with the Head of Procurement., to at least 3 and no more than 6 Candidates</p> <p>If for whatever reason, a Request for Quotation is made using a Public Advertisement, the opportunity must also be included on "Contract Finder", with all Suitable Candidates responding, being considered.</p> <p>In both cases use must be made of the Council's E Procurement System, unless otherwise agreed by the Head of Procurement.</p>	Officer and Line Manager
£100,000 up to the EU Threshold for Supplies and Services (applies to all activities)	<p><i>Invitation to Tender to at least three and no more than five Candidates using the Approved List as appropriate</i> making use of a Public Advertisement. The opportunity must also be included on "Contract Finder", with all Suitable Candidates responding, being considered. No Prior Qualification process is permitted</p> <p>Use must be made of the Council's E Procurement System, unless otherwise agreed by the Head of Procurement.,</p>	Officer, HOS and Head of Procurement Head of Finance
£100,000 – up to The EU Threshold and / or £500,000	<i>Invitation to Tender by an Appropriate EU Notice / advertisement / Approved list to at least three and no more than six Candidates</i>	Officer, HOS and Head of Procurement
Above EU Threshold for Supplies and Services (applies to all activities) and / or £500,000	<i>The appropriate EU / Public Contract Procedure or, where this does not apply, Invitation to Tender by an Appropriate Notice / Advertisement / Council Approved List to at least five and no more than eight Candidate</i>	As above + in Consultation with the Director of Corporate Services and Customer Services and Director of Finance – see Rules 7.21.3 & 8.1.4
<p>Note – Where an intended arrangement is for the provision of Consultancy Type Service, including those for Construction related activity and the estimated value of the intended arrangement is above the EU Threshold £50,000 the relevant Portfolio Holder will be Formally Consulted on the intended action and contracting arrangements to be used. Was part of 8.5</p>		

8.1.2 Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the competition requirement, all suitably qualified *Candidates* must be invited.

8.1.3 An **Officer** must not enter into separate contracts nor select a method of calculating the *Total Value* in order to minimise the application of these Contract Procedure Rules or the *Public Contract Regulations*.

8.1.4 Where a *Public Contract Regulations* the *EU Procedure* applies, the **Officer** shall discuss with the **Head of Procurement** and Consult with the **Director of Corporate Services** and **Director of Finance** to determine the arrangements to be used for the completion of the *Procurement*. In any case the Final Contract Documentation shall be available for viewing, via the internet, from the date of publication of any required Contract Notice, unless otherwise agreed.

8.2 Assets for Disposal

8.2.1 Assets for disposal must be sent to public auction except where better *Value for Money* is likely to be obtained by inviting *Quotations* and *Tenders*. (These may be invited by advertising on the Council's internet site.) In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the relevant **Head of Finance**. (see also Financial Regulation / Procedure 19)

8.3 Providing Services to External Purchasers and other Public Sector Organisations

8.3.1 The **Director of Corporate Services** and **Director of Finance** must be *Consulted* where contracts to work for organisations other than the authority are contemplated.

8.4 Collaborative and Partnership Arrangements

8.4.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these *Contract Procedure Rules*. If in doubt, **Officers** must seek the advice of the **Director of Corporate Services** and **Head of Procurement**.

8.5 The Appointment of Consultants to Provide Services

8.5.1 Consultant architects, engineers, surveyors and other professional *Consultants* shall be selected and commissions awarded in accordance with the procedures detailed within these Contract Procedure Rules as outlined above *below*.

<i>Estimated Cost(or Value)</i>	<i>Tender procedure</i>	<i>Shortlisting</i>
Up to £25,000 £30,000	One oral <i>Quotation to be confirmed</i> in writing where the <i>Estimated Cost(or Value)</i> exceeds £1,000	Officer and Line Manager
£25,000 30,000 – up to £100,000 EU Threshold for “Supplies & Services”	Three written <i>Quotations Request for Quotations</i> issued via “ <i>Contract Finder</i> ” using the Council's E Procurement System, with all Candidates responding being considered.	Officer, HOS and relevant Head of Finance
£100,000 – up to EU Threshold	<i>Invitation to Tender</i> by advertisement/list to at least three and no more than six <i>Candidates</i>	Officer, HOS relevant Head of Finance and

Above EU Threshold	EU Procedure or, where this does not apply, Invitation to Tender by advertisement / Council Approved List to at least five and no more than eight Candidates	Head of Procurement As above In agreements with Head of Finance and Head of Procurement and in Consultation with Director of Corporate Services and Director of Finance – see Rule 8.1.4
Note – Where the estimated value of the intended arrangement is above the EU Threshold £100,000 or more the relevant Portfolio Holder will be Formally Consulted on the intended action and contracting arrangements.		

8.5.2 Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the competition requirement, all suitably qualified *Candidates* must be invited.

8.5.23 The engagement of a *Consultant* shall follow the preparation of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment.

8.5.34 Records of consultancy appointments shall be kept in accordance with Rule 6.

8.5.45 *Consultants* shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the relevant **Head of Finance** for the periods specified in the relevant agreement.

9. PRE-TENDER PRELIMINARY MARKET RESEARCH AND CONSULTATION

9.1 The **Officer** responsible for the purchase:

- May consult potential suppliers prior to the issue of the *Invitation to Tender* in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential *Candidate*; but
- Must not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Candidates* or distort competition; and
- **Should** **Must** seek advice from the **Head of Procurement** where the tender under consideration has an estimated value greater than the relevant EU Threshold and observe the requirements of the Public Contract Regulations Cl.40/41 in the approach taken on such consultation and any subsequent involvement, by those consulted in the tender process.

10. TECHNICAL SPECIFICATIONS, STANDARDS, LABELS, SELECTION, SUITABILITY AND AWARD CRITERIA

10.1 The **Officer** must ascertain what are the relevant British, European or international standards which apply to the subject matter of the contract. The **Officer** must include those standards which are necessary properly to describe the required quality. The **Director of Corporate Services** must be *Consulted* if it is proposed to use standards other than European Standards.

10.2 Where the use of a specific Label is to be used to identify a particular technical requirement others proposed as being equivalent must be considered

10.3 In any case the requirements of the above Rules 10.1 and 10.2 shall be operated as required by Clauses 42 – 44 of the Public Contracts Regulations.

10.4 *Selection Criteria* used, as further identified in Cl.68 of the *Public Contract Regulations*, must be related and proportionate to the subject matter of the contract and may consider factors such as, suitability, economic and financial standing and technical, financial and professional ability. Statutory Guidance on the Standard PQQ Documentation to be used and the approach to its assessment is stipulated by Crown Commercial Services and where such arrangements are used the **Officers** must seek the advice of the **Director of Corporate Services** and **Head of Procurement**, if they wish to depart from the use of the Standard arrangements identified in the Councils *Procurement Practice Notes* and *Model Documents*.

10.5 Where the Estimated Value of any procurement process is below the EU value identified for Supplies and Services, a selection process may not be used and an Open Tender Process. Based on a two stage “Suitability” evaluation and tender submission, by all those found to be suitable, must be followed.

10.6 **2** The **Officer** must define *Award Criteria* that are appropriate to the purchase, linked to the subject matter of the contract and designed to secure an outcome giving *Value for Money* for the authority. The basic criteria shall be:

- ‘most economically advantageous’ (“MEAT”), where considerations other than price also apply; or
- ‘lowest price’ where payment is to be made by the authority;
- ‘highest price’ if payment is to be received;

Where “MEAT” If the latest criterion is adopted, it must be further defined by reference to sub-criteria, which may refer only to relevant considerations These may, for example, include price /cost of service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters. The criteria used, and where possible the weighting attributed to them, shall be included in the Notice and or tender documentation as appropriate.

10.5 Award Criteria shall not have the effect of conferring an unrestricted freedom of choice on the Authority and shall ensure the possibility of effective competition.

10.36 Unless there are valid and justified reasons to do otherwise, the Council's preferred method of determining *Value for Money* in its *Procurement* arrangements is by the consideration of the *Whole Life Cost* and / or the *Life Cycle Costing* of the intended arrangement aligned with its *Sustainable Procurement* practice.

10.47 *Award Criteria* must not include:

- *Non-commercial Considerations*;
 - Matters, which discriminate against suppliers from the *European Economic Area* or signatories to other *Government Procurement Agreement*.
-

11. INVITATIONS TO TENDER/QUOTATIONS

11.1 The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. No *Tender* delivered in contravention of this clause shall be considered, unless agreed by The *Director of Corporate Services*.

11.2 All *Invitations to Tender* shall include the following:

- (a) A specification that describes the authority's requirements in sufficient detail to enable the submission of competitive offers.
- (b) A requirement for tenderers to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- (c) A requirement for tenderers to complete fully and sign all *Tender Documents* including a form of *Tender* and certificates relating to canvassing and non-collusion.
- (d) Notification that *Tenders* are submitted to the council on the basis that they are compiled at the tenderer's expense.
- (e) A description of the *Award Procedure* and, unless defined in a prior advertisement, a definition of the *Award Criteria* in objective terms and if possible in descending order of importance.
- (f) Notification that no *Tender* will be considered unless it has been submitted using the Council's E procurement System or, where agreed otherwise, as identified in (g) below, is enclosed in a sealed envelope or container which bears the word '*Tender*' followed by the subject to which it relates, but no other name or mark indicating the sender.
- (g) A stipulation that any *Tenders* submitted by fax or other electronic means shall not be considered, unless specifically provided for in the *Invitation to Tender* and with the prior agreement of the *Director of Corporate Services* and *Director of Finance* as to the process to be used. (see also Rule 14.3)

(h) The method by which any arithmetical errors discovered in the submitted *Tenders* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender*, or vice versa. (See also Rule 16.4)

11.3 All *Invitations to Tender* or *Quotations* must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 17).

11.4 The *Invitation to Tender* or *Quotation* must state that the Council is not bound to accept any *Quotation* or *Tender* and may extend the closing date where appropriate.

11.5 All *Candidates* invited to *Tender* or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

11.6 It is a requirement of the of the Public Contract Regulations 2015, that all relevant Contract documentation and information is available at the point of any required Notice (either in OJEU or Contract Finder) or at Tender, should a Notice not be required.

12. SHORTLISTING

12.1 Where permissible any *Shortlisting* must have regard to the financial and technical standards required relevant to the contract; and the *Award Criteria* and be relevant and proportionate to the intended Procurement and be consistent with the selection criteria outlined in the Public Contract Regulation cl.60(9). Special rules apply to UK procurement activity, as stipulated in the Lord Young Procurement Reforms, which legislate for different requirements and treatment for all types of contracting arrangement valued between £25,000; £100,000 and the EU Threshold for Supplies and Services. These are in addition to those identified for above EU Threshold activity the respect of the *EU Procedure* and the advice of the *Head of Procurement* should be sort before commencing any the *Shortlisting* process..

12.2 The *Officers* responsible for *Shortlisting* are specified in Rule 8.1.1.

12.3 Where *Approved Lists* are used, *Shortlisting* may be done by the *Officer* in accordance with the *Shortlisting* criteria drawn up when the *Approved List* was compiled (see Rule 7.2.2). However, where the *EU Public Contract Regulations Procedure* applies, *Approved Lists* must not be used (where outside of any local dispensation), must be placed via an OJEU or Contract Finder Notice as appropriate (see Rule 7).

13. EXEMPTIONS TO THE NEED FOR COMPETITIVE TENDER

13.1 A decision to negotiate with one or more candidates on any arrangements required within the *Procurement* process shall not be made except in compliance with the following and any Public Contract *Procurement* Regulations (see also Rule 3). *Note* - For the purpose of this Rule the establishment of a *Service Level Agreement* is treated as being a negotiated arrangement;

Estimated Cost(or Value)	Authorisation Requirement
£5,000 - £50,000	Chief Officer Agreement
£50,000 - up to £100,000	Chief Officer in agreement with <i>Director of Corporate Services</i> and <i>Director of Finance</i> with a report of the use made of this exemption being made to <i>Audit Sub committee</i> on a bi-annual basis.
£100,000 – up to £1,000,000	Chief Officer in agreement with <i>Director of Corporate Services</i> and <i>Director of Finance</i> and following Approval of the relevant <i>Portfolio Holder</i> , with a report of the use made of this exemption being made to <i>Audit Sub committee</i> on a bi-annual basis.
£1,000,000 and above	Chief Officer in agreement with <i>Director of Corporate Services</i> and <i>Director of Finance</i> and the approval of the <i>Executive or the Council</i> as appropriate.

13.2 The Officer concerned will need to ensure that the records necessary to justify the intended action are maintained and issued where necessary, for above and below EU Threshold activity as set out in the Public Contracts Regulations.

13.3 In determining the Value (and any Aggregate Values) for a particular requirement, together with those used to calculate the values of any modifications and /or extensions proposed to existing arrangements, care must be taken to value such activity using the approaches identified in the various parts of the Public Contract Regulations. In general terms it is the Value of an activity across the Council, and not of a contract in isolation which determines its treatment within the Public Contract Regulations.

13.4 Subject to the satisfactory completion of any required Contract Monitoring Report (see CPR 23), and where the Report produced as required by CPR 5 provides for a discretionary Extension of the Contract for an additional period of time. Providing the Authorising Committee have indicated their agreement at the point of the CPR 5 Report, without the need for further referral, then the relevant Chief Officer may, in Consultation with the Portfolio Holder, make use of this permissible extension providing it is notified to the Audit Sub committee, as part of the Bi Annual Report produced and identified in this CPR.

13.5 **2 Chief Officers** with Social Care responsibilities have specific exemptions provided to them under the Council's *Scheme of Delegation* for certain contracting arrangements

14. SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS

14.1 *Candidates* must be given an **adequate period** reasonable and proportionate amount of time in which to prepare and submit a proper *Quotation* or *Tender*, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of *Tenders*. The *EU Procedure* lays down specific time periods which must be observed. (see guidance in the Council's "*Guide to Successful Procurement*").

14.2 All *Quotations* or *Tenders* must be returned in compliance with the following requirements;

Estimated Value)	Cost(or	Receipt Procedure	Opening Procedure
Up to £5,000		Opened on arrival	By Officer
£5,000 – up to £200,000 the £100,000		Held in the custody of the Relevant Chief Officer or their representative until the time appointed for their opening	Opened and recorded by two Officers nominated by the Relevant Chief Officer, Initiating Officer may also attend.
£200,000 £100,000 and above		Held in the custody of the Director of Corporate Services or their representative until the time appointed for their opening	Opened and recorded by two officers nominated by the Director of Corporate Services, (Initiating Officer may also attend) and returned by them to the Initiating Officer.

The Council's preferred method of issuing an *Invitation to Tender or Requests for Quotation* and receiving any responses made is via the use of its E Procurement System, which should be used for all such activity, unless otherwise agreed by the *Head of Procurement*. Where a paper based process is agreed to be used it must follow the following requirements.

In all cases the tender instructions or notice shall state that no *Quotation* or *Tender* shall be received by the Council except in a plain sealed envelope/package which shall bear the words "Tender/Quotation" (as appropriate) followed by the subject matter to which it relates, but shall not bear any name or mark which would identify the sender. They must also make it clear to whom and where the completed tender should be returned, as provided for in the above detail.

14.3 The *Director of Corporate Services* must approve any receipt of tenderers by Fax or other electronic means (eg email), which should otherwise be rejected. **must be rejected, unless they have been sought in accordance with an electronic tendering process approved by the Director of Finance**

14.34 Where the Council is utilising an electronic reverse auction as a *Procurement* procedure enabling suppliers/providers to adjust their tender price in the light of information from the tender prices submitted by competing suppliers/providers, then alterations will be accepted as permitted by the auction process. No *Procurement* shall take place by an electronic reverse auction unless the *Director of Finance* agrees that such process is appropriate for the *Procurement* in question and the e-auction is completed in line with methods agreed by the *Head of Procurement*.

14.45 The relevant *Officer* as identified in Rule 14.2 shall be responsible for the safekeeping of *Tenders* until the appointed time of opening and:

- Suitably recording, the date and precise time it was received;
- Securely storing on receipt to guard against amendment of their contents;

- Recording immediately on receipt in the *Tender Record Log*.

14.56 Upon opening, a summary of the main terms of each *Tender* (i.e. significant issues that are unique to each *Tender* submission and were not stated in the *Tender* invitation documents such as *Tender* sum, construction period, etc) must be recorded in the *Tender Record Log*. The summary must be initialised (or tagged as actioned on any E Procurement System used) on behalf of the relevant *Officer* as identified in Rule 14.2.

14.67 In the event that a *Any* tender that does not comply with the Council's requirement, as set out in the tender invitation e.g. is qualified, arrive late and /or after other tenders had been opened, is received should normally be excluded from consideration, with the circumstances recorded on the *Tender Record Log* and any evidence of the relevant events retained (i.e. envelop, packaging, receipt documentation etc.). *Chief Officers* may, however, seek the agreement of the *Director of Corporate Services* and the *Director of Finance* to relax these requirements in appropriate circumstances. Any such relaxation shall be identified when seeking any necessary authorities required before the acceptance of a tender, and will include consideration of any reasonable endeavour made by a tenderer to properly submit their tender by the appointed time, and any opportunity presented that might allow the amendment or change of details submitted so as to offer the opportunity for an unfair advantage to be taken.

14.78 For *Tenders* with an estimated *Value* of **£50,000** or above, where fewer than the minimum number of *Tenders* required have been received the *Director of Corporate Services* and the *Director of Finance* shall be *Consulted*, prior to any award decision, on any steps considered necessary to establish and maintain the adequacy of the tender process. Where the *Tender* has an estimated *Value* of less than **£50,000** the relevant *Chief Officer* may decide, on a Value for Money basis, the need for any additional actions required to maintain the adequacy of the tender process.

15. CLARIFICATION PROCEDURES AND ANY PERMISSABLE POST-TENDER NEGOTIATION

15.1 Providing clarification of an *Invitation to Tender* to potential or actual *Candidates* or seeking clarification of a *Tender*, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a *Tender* and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an *EU Procedure* where this might distort competition, especially with regard to price.

15.3 Where information or documentation submitted at tender is, or appears to be, incomplete or erroneous, or where specific documents are missing, consideration as to allowing the tenderer to submit, supplement, clarify or complete the relevant documentation or document (within an appropriate time limit) shall be made in consultation with the *Head of Procurement* and with the agreement of the *Director of Finance* and the *Director of Corporate Services*.

15.2 If post-tender negotiations are *permissible and* necessary after a single-stage *Tender* or after the second stage of a two-stage *Tender*, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best *Tender* and after all unsuccessful *Candidates* have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the *Tender* documents. *Officers* appointed by the *Chief Officer* to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

15.3 Post-tender negotiation must only be conducted in accordance with the guidance issued by the *Director of Finance* in consultation with the *Director of Corporate Services* who, together with the *Head of Procurement*, must be *Consulted* wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two *Officers*, one of whom must be from a division independent to that leading the negotiations.

15.4 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered unless the *Director of Corporate Services* and the *Director of Finance* agree to an alternative course of action.

16. EVALUATION, AWARD OF CONTRACT AND DEBRIEFING CANDIDATES

16.1 Apart from the debriefing required or permitted by these Contract Procedure Rules, the confidentiality of *Quotations*, *Tenders* and the identity of *Candidates* must be preserved at all times and information about one *Candidate's* response must not be given to another *Candidate*. *Any processes used must ensure compliance with the principles of transparency and the equal treatment of those submitting tenders.*

16.2 Contracts must be evaluated and awarded in accordance with the *stated Award Criteria, which must be linked to the subject matter of the Procurement and be contract specific.* During this process, *Officers* shall ensure that submitted *Tender* prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.

16.3 Care should be taken in the evaluation process, where it is anticipated there may be subsequent changes to Council requirements, to ensure the impact of a reduction or increase in the volumes of expected activity are considered

16.4 The arithmetic in compliant *Tenders* must be checked. If arithmetical errors are found they should be notified to the tenderer, and dealt with in the following manner:

- The tender(s) should be given details of the error(s) found during the examination of the tender and shall be given an opportunity of confirming without amendment, or withdrawing the tender; or
- Amending the tender to correct any genuine arithmetic error(s) apparent on the face of the document, providing that in this case, apart from the these genuine errors no other adjustment, revision or qualification is permitted.

Such amendments should only be made in circumstances agreed with the **Director of Corporate Services**.

16.5 Unless otherwise agreed by the **Head of Procurement**, the Council's standard approach to Tender Evaluation, as contained in the CIPFA "Standing Guide to the Commissioning of Local Authority Works and Services, shall be used for the evaluation of all contracts with a value of **£25,000** and above.

16.65 **Officers** may accept, within their relevant financial limit, delegated authority and providing the stipulated degree of separation of duties is maintained, Quotations and *Tenders* received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these Contract Procedure Rules and, in respect of proposed contracts that are expected to exceed **£500,000**, the approval of the relevant **Portfolio Holder** has been secured. The awarding of contracts that are expected to exceed **£1,000,000** shall be approved by the **Executive or the Council**, the responsible **Officers** having submitted for consideration a formal "Gate Report", covering, as appropriate, the matters identified in the Council's Standard "Gate Reporting Template for consideration at Award of Contract

16.7.6 Where the actual value of any intended contract is greater than that provided for in the original budgetary provision, or any tolerance provided for in the Council's *Capital Programme Procedures and/or Financial Regulations* the tender should not be accepted without seeking the advice of the **Director of Finance** and obtaining any necessary authorisations for increased budgetary provision.

16.87 Where the intended contract has a value in excess of **£200,000** it should be completed under seal as provided for in Section 17 of these Rules.

16.98 Where the Council is in receipt of income or net benefit under a contract it should be signed as a Deed.

16.10 In all cases the tender evaluation must be carried out as provided for in the Invitation to tender unless otherwise agreed with the **Director of Corporate Services** following Consultation with the **Head of Procurement**.

16.119 Where the *Total Value* is over **£100,000**, the **Officer** must notify all *Candidates* simultaneously and as soon as possible of the intention to award the contract to the successful *Candidate*. The **Officer** must provide unsuccessful *Candidates* with a period of at least ten days in which to challenge the decision before the **Officer** awards the contract. If the decision is challenged by an unsuccessful *Candidate* then the **Officer** shall not award the contract and shall immediately seek the advice of the **Director of Corporate Services**.

16.1210 The **Officer** shall debrief in writing all those *Candidates* who submitted a bid about the characteristics and relative advantages of the leading bidder. No information, other than the following, should be given without taking the advice of the **Director of Corporate Services**:

- How the *Award Criteria* were applied;
- The prices or range of prices submitted, in either case not correlated to *Candidates'* names;
- The names of *Candidates* where there were three or more *Candidates*.

16.1311 If a *Candidate* requests in writing the reasons for a *Contracting Decision*, the *Officer* must give the reasons in writing within 15 days of the request. If requested, the *Officer* may also give the debriefing information at Rule 15.6 above to *Candidates* who were deselected in a pre-tender *Shortlisting* process.

16.1312 Where the award of the contract is a *Key Decision* any award must take account and observe the Council's *Call in Procedure* (see Annex C)

16.1413 Mandatory Standstill Period – 10 Days

16.14.1. Where a contract decision is required for a tender process completed under the Public *Contract* Regulation (and unless otherwise provided for), the Council must inform any *candidate* that has submitted an offer, has applied to be amongst those selected to tender for or negotiate the contract, or any candidate who has applied to be party to a *framework agreement*, of its decision in relation to the award of the contract or the conclusion of (setting up) a *framework agreement*.

16.14.2 The process adopted and information sent must be completed in compliance with the requirements set out in Clause 86 of the Public Procurement Regulations and identify, on an individual basis the "...characteristics and relative advantages..." of the successful tenderer(s) and those not successful.

16.14.3. Unless agreed otherwise with the *Head of Procurement*, the required Notice must be sent using the Council's E Procurement System and the recipient must be given until midnight on the end of the 10th day from issue (or if this is a weekend or bank holiday the end of the next working day?), to respond before it can **the Council must allow at least 10 days between the date of despatch of the required information and the date on which it proposes to finalise the process and enter in to a contracting arrangement.**

16.15. Call in Period

While the periods may run concurrently, officers need also to ensure their compliance with the Council's "*Call In*" requirements as identified in part 4 of the Council's Constitution (summarised in Annex D).

16.165 End of Standstill and Call in Period

At the satisfactory completion of the time periods identified in 16.143 & 16.154 the *Head of Service* shall notify the *Director of Corporate Services* and the *Head of Procurement* of their end to enable the issue of the necessary Contract Documentation and Award Notices.

16.17 Action on the Receipt of Any Challenge

In the event of any letter being received by the Council which indicates a *Challenge* to any element of the Tender or Award Process or if any correspondence is received from the "*Mystery Shopper Team*" at *Crown Commercial*, no further actions should be taken on the Tender or Award Process until the *Director of Corporate Services* and the *Head of Procurement* have been Consulted and a response agreed. The Council requires that a

review of the tender process is completed by the Officers identified above if any formal *challenge* to the tender arrangements is made.

SECTION 4: CONTRACT AND OTHER FORMALITIES

17. CONTRACT DOCUMENTS

17.1 Relevant Contracts

17.1.1 All *Relevant Contracts* that exceed **£100,000** shall be in writing.

17.1.2 All *Relevant Contracts*, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done);
- The provisions for payment (i.e. the price to be paid and when);
- The time, or times, within which the contract is to be performed;
- The provisions for the council to terminate the contract.

17.1.3 Unless otherwise agreed by the **Director of Finance**, the *Council's Official Order Form*, as provided for in *Financial Regulation 5*, shall be used **Director of Corporate Services** shall also agree the use of any standard terms and conditions issued by a relevant professional body which it is proposed to use.

17.1.4 In addition, every *Relevant Contract* of purchase over **£50,000** must be completed under **Legal Guidance** and **also** state clearly as a minimum:

- That the contractor may not assign or sub-contract without prior written consent;
- Any insurance requirements;
- Health and safety requirements;
- Sustainability requirements;
- Ombudsman requirements;
- Data protection requirements, if relevant;
- That charter standards are to be met if relevant;
- Race relations requirements;
- Disability Discrimination Act requirements;
- Freedom of Information Act requirements;
- **Payment requirements within 30 Days to the Contractor and their Sub Contractor to the same effect.**
- **Variation Clauses which fully reflect the Councils potential requirements and the implications of the Public Procurement Regulations (Clause 72) and any valid associated Guidance**
- Where *Agents* are used to let contracts that *Agents* must comply with the Council's contract procedure rules;
- A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.
- Include the Council's standard requirements with regard to "*Whistle Blowing*"
- Any appropriate measures required to support the Council in the event of a Civil Emergency being declared or the Council's Business Continuity Plan invoked.

17.1.5 Where it is envisaged that there may be a need to a *Variation* to the Council's requirements during the period of a contract, appropriate conditions should be included allowing for the valuation of any subsequent changes.

17.2 Contract Formalities

17.2.1 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the **Director of Corporate Services**.

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

17.2.3 Prior to the commencement of the contract (if not provided as part of the tender process) the **Officer** responsible shall request that the Main Contractor provides the names of their Sub Contractors and their representative. The Main Contractor will also be required to advise the Council of any changes in this information during the term of the contract.

17.3 Sealing

17.3.1 Where contracts are completed by each side adding their formal seal, such contracts shall be signed by at least two **Officers** which, together with the fixing of the council's seal, must be witnessed by a further officer on behalf of the **Director of Corporate Services**.

17.3.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed without the authority of the **Director of Corporate Services**.

17.3.3 A contract must be sealed where:

- The Council may wish to enforce the contract more than six years after its end;
- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
- There is any doubt about the authority of the person signing for the other contracting party; or
- The *Total Value* exceeds **£200,000**.

18. BONDS AND PARENT COMPANY GUARANTEES

18.1 The **Officer** must *Consult* with the **Director of Corporate Services** and the **Director of Finance** about whether a *Parent Company Guarantee* is necessary when a *Candidate* is a subsidiary of a parent company and:

- The *Total Value* exceeds **£200,000**; or
- Award is based on evaluation of the parent company; or
- There is some concern about the stability of the *Candidate*.

18.2 The **Officer** must *Consult* with the **Director of Corporate Services** and the **Director of Finance** whether a *Bond* is needed: where the *Total Value* exceeds **£200,000** or where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the *Candidate* or there are other risks associated with the intended contract which require additional security.

18.3 Where the intended *Tender* and/or *Contract* is likely to have *TUPE* implications or require amendment to the Council's Pension Fund arrangements, the **Director of Finance** in consultation with the **Director of Corporate Services** shall agree the intended actions and the value of any Pensions Bond required, prior to any further authorisation otherwise identified.

19. PREVENTION OF CORRUPTION

19.1 The **Officer** must comply with the *Code of Conduct* and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the *Officer* to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 19.2 below.

19.2 The following clause must be put in every written Council contract: *"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:*

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or*
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or*
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.*

Any clause limiting the Contractor's liability shall not apply to this clause."

20. DECLARATION OF INTERESTS

20.1 If it comes to the knowledge of a Member or an employee of the authority that a contract in which he or she has a personal or pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the **Chief Executive**. The **Chief Executive** shall report such declarations to the appropriate *Committee*.

20.2 Such written notice is required irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a contract to which the member or employee is directly a party.

20.3 A shareholding in a body not exceeding a total nominal value of **£25,000 or 1%** of the nominal value of the issued share capital (whichever is the less) is not a personal or pecuniary interest for the purposes of this *Contract Procedure Rule*.

20.4 The **Chief Executive** shall maintain a record of all declarations of interests notified by members and **Officers**.

20.5 The **Chief Executive** shall ensure that the attention of all members is drawn to the National Code of Local Government Conduct.

SECTION 5: CONTRACT MANAGEMENT

21. MANAGING CONTRACTS

21.1 **Heads of Service** in sponsoring departments are to name **Contract Managers** for all new contracts. All contracts must have a named Council **Contract Manager** for the entirety of the contract.

21.2 **Contract Managers** must follow the reporting requirements and procedures set out in these Contract Procedure Rules and any supplementary Guidance issued by the **Council's "Guide to Successful Procurement"**. **Head of Procurement**.

21.3 As a minimum requirement the named **Contract Manager** will compile and maintain the standard "Contract Monitoring Summary" Template Document (as included in the Procurement Pages of the "Mangers Tool Kit" on OneBromley), and ensure their content is maintained and accurately reflects the information included in the Service Contracts Register required to be maintained by CPR 2.2 and 6.4.

22. RISK ASSESSMENT AND CONTINGENCY PLANNING

22.1 All *Procurement* activity and projects with an estimated value above **£100, 000** must incorporate the use of the *Council's Programme and Project* methodologies as appropriate for the cost, complexity and risk associated with the intended activity, **including those associated with TUPE, Pensions and Tax liabilities**. This includes the preparation of a business case. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

22.2 For all contracts with a value of over **£50,000**, **Contract Managers** must:

- Maintain a risk register during the contract period;
- Undertake appropriate risk assessments and for identified risks;
- Ensure contingency measures are in place.

23. CONTRACT MONITORING, EVALUATION AND REVIEW

23.1 All contracts which have a value higher than **£200,000** limits, or which are *High Risk*, are to be subject to monthly formal review by the **Head of Service**. The review may be conducted quarterly if agreed by the **Director of Finance**.

23.2 For all contracts with a value higher than **£500,000**, or which are *High Risk*, an annual report must be submitted to the **Portfolio Holder** the responsible **Officers** having submitted for consideration a formal "Gate Report", covering, as appropriate, the matters identified in the

Council's standard "Gate Reporting Template for consideration as part of Contract Monitoring/Management requirements.

23.3 For all contracts with a value higher than **£1,000,000**, or which are *High Risk*, an annual report must be submitted to the **Executive** the responsible **Officers** having submitted for consideration a formal "Gate Report", covering, as appropriate, the matters identified in the Council's standard "Gate Reporting Template for consideration as part of Contract Monitoring/Management requirements.

23.4 A Council agreed *Gateway Review* process must be applied to all contracts deemed to be *High Risk*, *High Value*, or *High Profile*. This process must be applied at key stages of major procurements.

23.5 During the life of the contract, the **Officer** must monitor in respect of:

- Performance;
- Compliance with specification and contract;
- Cost;
- Any *Value for Money* requirements;
- User satisfaction;
- Risk management.

23.6 Where the *Total Value* of the contract exceeds **£500,000**, the **Officer** must make a written report to the relevant **Portfolio Holder** evaluating the extent to which the *Procurement* need and the contract objectives (as determined in accordance with Rule 5.2) were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract and the authorisation requirements identified in Rule 5.1 and 16.5 above.

23.7 *Variations and Extensions*

23.7.1 No *Variation* should be issued or *Extension* agreed unless there is sufficient budgetary provision for each contract or where it is permitted under the Council's *Capital Programme Procedures* and related responsibilities for financial control of capital projects.

23.7.2 All *Variation* Orders must be issued promptly and authorised before the work is undertaken. All variations will be contained within agreed limits for each contract and made within the authorised limits determined by the **Chief Officer** as provided for in *Financial Regulations* and the *Capital Programme Procedures*.

23.7.3 Subject to any requirements of *Financial Regulations*, statutory restrictions and compliance with any provisions of the **Public Procurement Regulations** **EU Procurement Regulations** (particularly those relating to negotiation; **modifications and extensions** and any **limitations imposed by Clause 72 of the Regulations** above), a **Chief Officer** may authorise the following extension to an existing contact:

- An extension for a particular period provided for within the terms of the contract (but subject to satisfactory outcomes of contract monitoring, such information having been provided to where required in these Rules to the relevant **Portfolio Holder** and/or **Executive**); or
- A single extension of the contract by up to one year; or
- An increase in the scope of activities being undertaken.

Providing that where the value of any single and/or all extensions granted is greater than **£50,000** the processes and authorisation procedures required shall be the same as those identified in Rule 13 above.

23.7.4 The **Chief Officer** shall consult with the **Head of Procurement** and **Director of Corporate Services** on any need to issue a *Modification Notice* or take other action required by Cl.72 of the *Public Contract Regulations*.

DEFINITIONS APPENDIX (Needs to be update to amend/add 2015 review requirements)

Agent - A person or organisation acting on behalf of the Council or on behalf of another organisation.

Agree / Agreement – the process whereby a written record of the agreement of the relevant officer/Member is produced. For the Purpose of the operation of Contract Procedure Rules, the evidence of agreement required in writing can either be the physical endorsement /signature of a prepared document or an Email sent from a Council E mail Address associated with the Authorising Officer, providing the necessary records are maintained either in a soft or hard format.

Approval – the process whereby a formal report is submitted to and written approval obtained from the relevant officer/Member/Committee/Council.

Approved List - A list drawn up in accordance with Rule 7.2.

Award Criteria - The criteria by which the successful *Quotation* or *Tender* is to be selected (see further Rules 10 and 11.2e).

Audit Sub Commiitie – A Sub Committee of General Purposes and Licensing Committee having the role and responsibilities described within the Council's Constitution.

Award Procedure - The procedure for awarding a contract as specified in Rules 8, 10 and 15.

Best Value - The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the council. Value for Money has now in many instances superseded this terminology.

Bids – oral or written quotations or written tenders as the context required or demands.

Bond - An insurance policy: if the contractor does not do what it has promised under a contract with the council, the council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the council against a level of cost arising from the contractor's failure.

Business Continuity Plan – A plan compiled and included within the Council's Business Continuity arrangements in compliance with and support of its responsibilities and duties as identified in the Civil Contingencies Act.

Call In Procedure – The procedure whereby 5 or more Members of the Council can require any decision of the Executive, Portfolio Holder, or Committee of the Executive or any decision mad by an officer under delegated authority from the Executive to be subject of scrutiny by the relevant PDS Committee as set out of Part 4 of the Constitution (see Annex D).

Candidate - Any person who asks or is invited to submit a *Quotation* or *Tender*.

Capital Programme (Control) Procedures – as set out and included in the Capital Programme/Budget book

Central Purchasing Organisation (CPO) – A Central Purchasing Body (CPB) as defined in the Public Contracts Regulations which acquires or concludes arrangements for works, goods and services, in compliance with the Regulations and which is intended for the use of one or more contracting authorities.

Chief Executive – the Council's **Head of Paid Service** as defined in the Scheme of Delegation

Chief Finance Officer – the Council's **Director of Finance** or their nominee or such other officer as may be designated Chief Finance Officer by the Council.

Chief Officer - The officers defined as such in the *Constitution*.

Code of Conduct - The code regulating conduct of *Officers* issued by the *Director of Legal, Democratic and Customer Services*.

Committee - A committee, which has power to make decisions for the Council, for example a joint committee with another local authority, but not a scrutiny committee.

Constitution - The constitutional document approved by the council which:

- allocates powers and responsibility within the council and between it and others
- delegates authority to act to the *Cabinet, Committees, Portfolio Holders* and *Officers*
- regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

Consult /Consultation - A process whereby the advice and necessary input to any particular contracting process is obtained and properly considered

Consultant - Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the council has no ready access to employees with the skills, experience or capacity to undertake the work.

Contract - A "contract" is an agreement between two or more parties which is intended to give rise to legal relations.

The Council will accept tender documents supported by electronic signature, which have been submitted through the mandated E Procurement System, providing that where the value is £100k+ the contract document is formally compiled and signed with Legal input and overview. Those over £200k are required to be signed under seal as per CPR 17.3.

Contractor - A person or entity that enters into a contract

Contracting Decision - Any of the following decisions:

- composition of *Approved Lists*
- withdrawal of *Invitation to Tender*
- whom to invite to submit a *Quotation* or *Tender*
- *Shortlisting*
- award of contract
- any decision to terminate a contract
- any resulting amendments of the Councils Pensions Scheme.

Contracts Manager – The officer within a service or client department of the Council with principle responsibility for the letting and management of any contract for the supply of *Goods, Services or Works* on behalf of the Council.

Contract Monitoring Summary Template - A Document held and maintained by the designated **Contract Manager** to accurately record pertinent Contract information on a standard basis, to better inform management, members and other interested parties on the particular circumstances and requirements of Contracts placed.

Contract Notice – The notice published in the Official Journal of the Economic Union advertising the Council's intention to seek tenders or expressions of interest in a contract for the supply of *Goods, Services and Works*.

Corporate Contract - A contract placed by the *Corporate Procurement Division* or endorsed by the *Head of Procurement* for Corporate use.

Corporate Contracts Register - A record of contracting activity maintained by the *Council's Corporate Procurement Group* which records all contracts placed with an estimated value of **£200,000** and above.

Corporate Procurement Group -The council's central procurement unit charged with providing strategic direction and advice to secure *Value for Money* in the Council's procurement activities.

Director of Corporate Services - As defined in the *Constitution*.

Estimated Cost (or Value) - The expected value of *Goods, Services and Works* to be purchased by the Council including any which may be acquired during any optional extension to the term of the contract.

EU Procedure - The procedure required by the EU where the *Total Value* exceeds the *EU Threshold*.

EU Procurement Regulations – Requirements as set out in the “Public Procurement Regulations 2006 (SI 2006/5) as may be amended from time to time.

EU Threshold - The contract value at which the EU Public Procurement Directives apply – as advised from time to time by the **Head of Procurement** and detailed in the Procurement Tool Kit:

Executive (of the Council - As defined in the Council's *Constitution*.

Exemptions – the specific waiver of a requirement for securing competitive *Bids*.

Extensions – The provision whereby an additional period of time is included and/or authorised to allow for continued performance of the contract or the scope of the arrangement and /or requirement carried out is increased.

Extreme Urgency – events unforeseeable by, and not attributable to, the Council which preclude compliance with time limits for tendering contracts in accordance with the *EU Procurement Regulations*.

Director of Finance - – As defined in the *Constitution*

Financial Officer - The most senior *Officer* representing the or designated by him to provide financial advice to the *Chief Officer*.

Financial Regulations - The financial regulations outlining *Officer* responsibilities for financial matters issued by the **Director of Finance** in accordance with the *Constitution*.

Formal Consultation / Formally Consult – A process where a written record and response/acknowledgement of the document considered is produced.

Framework Agreement - An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

Gateway Review – A review process completed using the Council's Programme and Project Management guidance or similar best practice, such as that identified in the Cabinet Office / GPS Gateway process, to overview and validate the direction and outcomes from any particular contracting arrangement.

Goods – A physical asset or consumable such as materials, products or equipment and can include a commodity such as Gas, Water or electricity.

Government Procurement Agreement - The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the *European Economic Area* are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.

Grant Payments - are a means of providing financial assistance to third sector organisations for a special purpose, for example to support the wider objectives of the local authority in promoting the social, economic or environmental well being of the area. Grant funding is usually preceded by a call for proposals. The grant offer letter will normally set out general instructions as to how the special purpose is to be achieved (i.e. through conditions that limit or guide the behaviour of the third sector organisation).

Guide to Successful Procurement - The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these contract procedure rules. The guide is available on the council's intranet.

Head of Finance – An Officer designated by the **Director of Finance** – As defined in the *Constitution* as having responsibility for financial matters within a particular Directorate, Department or part thereof.

Head of Procurement – The Officer, appointed from time to time, with a “Head of Profession” responsibility for overseeing the Council's Procurement activity.

Head of Service (HOS) – The Officer identified in the departmental structure as having responsibility for a particular activity or service below Chief Officer Level

High Profile - A high-profile purchase is one that could have an impact on functions integral to council service delivery should it fail or go wrong.

High Risk - A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.

High Value - A high-value purchase is where the value exceeds the *EU Threshold* values.

Invitation to Tender - Invitation to tender documents in the form required by these contract procedure rules.

Key Decision - Decisions that are defined as key decisions in the *Constitution*.

Line Manager - The *Officer's* immediate superior or the *Officer* designated by the *Chief Officer* to exercise the role reserved to the line manager by these contract procedure rules.

Nominated Suppliers and Sub-contractors - Those persons specified in a main contract for the discharge of any part of that contract.

Nominee(s) – A named individual to whom a *Chief Officer* has delegated certain of his/her specific duties, powers and functions in writing.

Non-commercial Considerations -

(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').

(b) Whether the terms on which contractors' contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.

(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.

(d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').

(e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.

(f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.

(g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.

(h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (*TUPE*) may apply.

Officer - The officer designated by the *Chief Officer* to deal with the contract in question.

Official Order – as provided for in Financial Regulations

Parent Company Guarantee - A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the council, the council can require the parent company to do so instead.

Portfolio Holder - A member of the *Cabinet* to whom political responsibility is allocated in respect of specified functions.

Priority Services - Those services required to be tendered as defined in the EU public procurement directives.

Procurement - The process of acquiring goods, works and services from suppliers. The process spans the whole *Procurement* cycle from the identification of the need through to the end of the service contract or the end of the useful life of an asset. It therefore covers everything from “paper clips” to PFI”.

Procurement Strategy - The document setting out the Council’s approach to *Procurement* and key priorities for the next few years.

Quotation - A quotation of price and any other relevant matter (without the formal issue of an *Invitation to Tender*).

Relevant Contract - Contracts to which these contract procedure rules apply (see Rule 4).

Service Contracts Register – A sub set of the Corporate Contracts Register recording contracting activity required to be subject to competitive tendering and /or valued **£50,000** or above estimated value.

Service Level Agreement (SLA) - An arrangement with a VSO (or similar organisation) which provides the cost and outcome of any given service provision.

Services – An intangible asset, activity or facility provided by a third party (e.g. advertising space).

Scheme of Delegation – The arrangements made by the Council to delegate parts of its decision making processes, as provided for by its *Constitution*.

Shortlisting - The process of selecting *Candidates* who are to be invited to quote or bid or to proceed to final evaluation, including tender lists compiled under a two stage tender process.

Supervising Officer - The *Line Manager's* immediate superior.

Supplies – Generally relates to a purchase or hire of goods (including electricity, gas etc.).

Sustainable Procurement – A process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only for the organisation, but also society and the economy while minimising damage to the environment.

Tender - A *Candidate's* proposal submitted in response to an *Invitation to Tender*.

Tender Record Log - The log kept by the Relevant *Officer* to record details of *Tenders* (see Rule 14.5).

Total Value - The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:

- (a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period
- (b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months
- (c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48
- (d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result
- (e) for *Nominated Suppliers and Sub-contractors*, the total value shall be the value of that part of the main contract to be fulfilled by the *Nominated Supplier or Sub-contractor*.

TUPE - Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246) - Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (eg following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

Value for Money – The optimum combination of *Whole Life Costs* and benefits to meet the service requirements.

Variation – Any amendment to a contract agreed in writing by the parties in accordance with its terms or by means of negotiation. Where *Extension* to the duration of a contract are considered the provisions of Para. 23.7 of these Rules apply.

Voluntary Sector Organisation (VSO) – Also known as the “third sector” it includes a range of organisations from unincorporated associations to companies limited by guarantee with charitable status. Generally, but not always, they funded by grant and contract with the Council by way of a *Service Level Agreement*, Note - the same organisation may have separate funding arrangements for different elements of the activity required.

Waive or Waiver – the dispensation of the need for compliance with a particular requirement of these *Contract Procedure Rules*.

Whistle Blowing – The raising of concerns under the Public Interest Disclosure Act 1998, in accordance with the Council’s Whistleblowing policy, about some danger or illegality arising or potentially arising from performance (or non performance) of its function.

Whole Life Costs – The consideration of all costs incurred during the life cycle of the work, goods, service or utility purchased, including those identified by adopting good *Sustainable Procurement* practice.

Work or Works – Those activities listed as Schedule 2 of the *EU Procurement Regulations* being, in general terms, construction, engineering or building works.

Council's Guide to Successful Procurement

EU Contracting Values and Summary of Contracting Arrangements

ADD

CCS “A brief Guide to the New Public Contracts Directive 2014”

ANNEX C

Contracting Extract - Officer Scheme of Delegation

PART I

GENERAL CONDITIONS GOVERNING DELEGATION OF FUNCTIONS TO CHIEF OFFICERS

	Responsibility Delegated from
1. These General Conditions and any amendment of or addition to made by the Council, shall apply to the delegation of functions specified in Part II of this document, and to any amendment of or addition to made by the Council or the Leader or the Monitoring Officer under paragraph 12 of this Part.	-
2. Powers delegated shall be exercised in conformity with the Constitution, Standing Orders, Financial Regulations and other directives of the Council in force from time to time, and in accordance with the expressed policies and objectives of the Council, the Executive or Committees relevant to the matter upon which action is to be taken.	-
3. The delegation of authority to deal with any matter shall not derogate from the power of the Council, the Executive, or Committee, Sub-Committee or Panel to call for a report on any decision or action taken, or to require any such matter under consideration to be referred to the Council or to the appropriate Executive body or Committee Sub-Committee or Panel for determination so far as this accords with the law.	Council/Leader
4. A Chief Officer may refer a matter to the Executive, the appropriate Executive Portfolio Holder or to the Chairman of an appropriate Committee and will, in any event, ensure that care is taken to identify any case within his delegated authority where unusual circumstances or other reasons suggest the desirability of Member consideration.	Council/Leader
5. If a matter involves considerations not within the purview of the Chief Officer primarily concerned, he shall consider whether it is necessary to consult any other Chief Officer concerned before authorising action, shall do so if he concludes it is necessary and shall take due account of any views that are expressed.	Council/Leader
6. When the implementation of a decision taken under the delegated authority by a Chief Officer requires the preparation of formal documents, legal proceedings or other legal process or advice, the Chief Officer concerned shall refer the matter to the Director of Corporate Services for appropriate action.	Council

7. Authority to take decisions and other action including but not limited to the signing of documents and the requirement to arrange consultations shall be exercised and undertaken on behalf of the Council in the name of the Chief Officer to whom the authority to act is given, but not necessarily personally by him. ¹ Therefore, under this condition each Chief Officer has power to authorise others to exercise any power conferred on him provided that any such authorisation shall be subject to these General Conditions and be commensurate with the nature of the matters to be dealt with. Further, the Chief Executive may authorise any other Chief Officer to exercise any power delegated to him in this scheme which in his judgement is consistent with that other officer's responsibility. Authorisations given by Chief Officers to others to exercise powers delegated under this scheme should be recorded in writing in a list maintained by each Chief Officer. This shall be taken to mean that, provided a Chief Officer has authorised the person making a decision on his behalf to act, that person may sign in his own name or in his Chief Officer's name when he makes that decision.	Council/Leader
8. The Chief Executive may, after consultation with any Chief Officer, refer to the Executive, the appropriate Executive Portfolio Holder, or appropriate Committee for decision any matter which has been brought to his notice and which, in his opinion, because of special difficulty or otherwise, warrants such reference.	Council/Leader
9. For the purposes of these General Conditions and the general and specific authorities to act to which they apply, the expression 'Chief Officer' shall mean:- e Chief Executive, the Director of Corporate Services, the Director of Education and Care Services, the Director of Environmental Services, the Director of Renewal and Recreation, the Assistant Chief Executive, Human Resources, the Director of Finance and the Chief Planner.	Council
10. Reference to an enactment in a grant of delegation shall be deemed to extend to and include reference to any subsequent enactment having like or similar effect as though the delegation had been granted under the subsequent enactment.	Council/Leader
11. An officer exercising any power under this scheme of delegation shall ensure that some written or other permanent record is made of his decision and, in cases where a range of alternative decisions presented themselves, shall record why he made the particular decision.	Council/Leader

¹ This shall be taken to mean that, provided a Chief Officer has authorised the person making a decision on his behalf to act, that person may sign in his own name or in his Chief Officer's name when he makes that decision.

12. For the avoidance of doubt, the Council and the Leader hereby declare that any exercise of a power by a Chief Officer, or an officer authorised by him and which, if expressly provided for by this Scheme of Delegation, could have been lawfully exercised by an officer under powers delegated to him by the Council or a Committee, shall be deemed to be authorised by this Scheme notwithstanding such express provision may not have been made in it; PROVIDED THAT, where an officer relies on this paragraph, the Monitoring Officer shall be informed by the officer of this action and the Monitoring Officer shall make a report on the matter to the next ordinary meeting of the Council.	Council/Leader
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PART II

Subject to the foregoing, and without derogation from the powers or duties now or hereafter conferred or imposed upon officers of the Council, by statute or by any statutory instrument or regulation, authority to act for and on behalf of the Council without reference to the Council or Executive body or any Committee shall be delegated as follows:-

A. GENERAL AUTHORITIES	Responsibility Delegated from
1. To each Chief Officer Authority to:-	
(i) Take all necessary action for the effective day-to-day management, administration and supervision of their Department and of the services for which they are responsible, and for the efficient discharge of the professional responsibilities of their office.	Council/Leader
(ii) Within budgetary provision, take all necessary action for the effective day-to-day management, administration and supervision of the land and buildings for which they are responsible, such action to include for each property concerned and as far as practicable <ul style="list-style-type: none"> (a) proper documentation; (b) appropriate occupation; (c) maintenance to retain value; (d) security and satisfactory appearance; (e) an annual review to ensure property is still required; and (f) prompt release if surplus to requirements. 	Council/Leader
(iii) That all powers delegated to Chief Officers include authority to take action in respect of any London Residuary Body matter transferred to Bromley by virtue of the London Residuary Body (Transfer of Property etc) Order 1990 in the same way and to the same extent that they have delegated powers in respect of any	Leader

equivalent Bromley matters.	
(iv) Incur expenditure and accept tenders for items provided for in the approved revenue estimates or approved capital programme, in accordance with the Council's Contract Procedure Rules.	Council/Leader
(v) Select quotations and tenders for works, services and/or goods within approved budgetary provision on all contracts in accordance with the Council's Contract Procedure Rules.	Council/Leader
(vi) On the best terms obtainable, dispose of stores, plant, vehicles, equipment, furniture or other such items which are obsolete, or are unusable for or surplus to the Council's requirements, subject to the Director of Finance's prior agreement to any consequential writing off of balances of book value.	Leader
(vii) Make adjustments of stock ledgers and accounts following stocktaking, subject to the Director of Corporate Services' prior agreement.	Leader
(viii) Authorise officers under their control to attend conferences, courses and similar events appropriate to their personal, official responsibilities and to the work of the particular Department, in accordance with an approved list or agreed code of practice.	Council/Leader
(ix) Vary annually fees and charges (except car parking) within policy established by an Executive body or Committee.	Council/Leader
(x) Deal with applications for re-grading in accordance with the Council's agreed procedures.	Council
(xi) Sign authorisation documents, with the exception of the Chief Officer's own personal authorisation, which shall be signed by the Director of Corporate Services.	Council
(xii) Where a complaint has been made through the Council's complaints system, decide whether there is a justifiable case for which the Council should apologise and pay compensation, up to a limit of £5,000 in any one case (or, in the case of the Chief Executive, £10,000).	Council/Leader
(xiii) Approve trips to EU countries made on Council business subject; in each case, to a subsequent report to the appropriate Executive body or Committee on the action taken.	Leader
(xiv) Enter into contracts with any voluntary sector organisation (VSO) for the provision of services by way of a service level agreement (SLA) without the necessity of competition, provided that:	Council/Leader

<p>(1) the Chief Officer is satisfied that the VSO is able to provide a satisfactory quality of service and that the sums payable under the SLA represent best value;</p> <p>(2) the relevant Portfolio Holder is notified of any new SLAs being entered into;</p> <p>(3) any approval, extensions or renewals of such SLAs comply with the provisions of rule 13.1 of the Contract Procedure Rules;</p>	
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<p>3. To the Director of Corporate Services Authority to:-</p> <p>(i) authorise proceedings before any Court of Summary jurisdiction in respect of any offence for which the Council by virtue of any Act of Parliament; , regulation, order or bye-law, is now or may hereafter be empowered to prosecute or to authorise the institution of such proceedings; except in cases where some other officer is specifically authorised to act;</p> <p>(ii) authorise proceedings for the recovery of debts of all kinds due to the Council (other than rates) and for the recovery of possession of premises;</p> <p>(iii) authorise the institution or defence of proceedings in the Courts to safeguard the Council's interest;</p> <p>(iv) obtain Counsel's Opinion to ensure adequate advice to the Council or Committees;</p> <p>(v) in accordance with instructions given, institute or defend any legal proceedings authorised to be taken or defended on behalf of the Council, or serve notices, including directions under section 77 of the Criminal Justice and Public Order Act 1994;</p> <p>(vi) take any action urgently required to settle legal proceedings during the course of a trial or other hearing;</p> <p>(vii) authorise permanent or temporary members of staff to represent the Council under Section 223 of the Local Government Act 1972 in proceedings before a Magistrates' Court or a Juvenile Court or Family Proceedings Court and under Section 60(2) of the County Courts Act 1984 to represent the Council in the County Court;</p> <p>(viii) issue written authorities to individual officers to act as the Council's authorised officers in the performance of their statutory or other duties (as evidence of their bona fides); provided that any written authority to enter upon land or premises is in pursuance of a statutory power of entry or inspection;</p> <p>(ix) sign and serve on behalf of the Council notices authorised by statute to ascertain ownership and other interest in land;</p> <p>(x) sign and approve service of Notices to Treat in pursuance of confirmed compulsory purchase orders and, where possession is required without waiting for settlement of terms of acquisition, sign and approve the service of Notices of Entry;</p>	<p>Council/Leader</p> <p>Council/Leader</p> <p>Council/Leader</p> <p>Council/Leader</p> <p>Council/Leader</p> <p>Council/Leader</p> <p>Council</p> <p>Council/Leader</p> <p>Council</p> <p>Leader</p>
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(xi) approve the assignment of contracts;	Council/Leader
<p>4. To the Director of Education and Care Services , authority to:-</p> <p>Negotiate schedules of rates and other contractual provisions with registered residential and nursing home providers and/or care service providers to facilitate client choice within community care legislation. Clients should be directed to providers on such Approved Lists although the Director may agree to placement with a non approved provider provided that</p> <p>(i) the clients' choice is appropriate to their needs and</p> <p>(ii) the client meets the relevant eligibility criteria</p> <p>(iii) the costs fall within the rates accepted by the Council for accommodation and/or care for clients with their specific eligibility or a third party has entered into a binding contract with the provider and Council to meet any difference</p> <p>(iv) as far as possible inflationary increases in such rates should be negotiated at the outset.</p>	Leader

AUTHORITIES RELATED TO THE FUNCTIONS OF INDIVIDUAL PORTFOLIO HOLDERS AND COMMITTEES

DECS	(27)	Approve the placing of children with special educational needs in suitable schools as specified in a statement and including day, residential, independent and non-maintained special schools and special schools maintained by other authorities.	Leader
DECS	(28)	Arrange for home or hospital tuition in appropriate cases.	Leader
DECS	(30)	Make arrangements for transport of pupils.	Leader
DECS	(31)	Provide support services as requested by establishments.	Leader
DECS	(41)	In cases of urgency seek planning permission for mobile accommodation at primary and secondary schools in accordance with Regulation 3 of the	Leader

Town & Country Planning General Regulations Act 1992 on the understanding that a full explanation for the need will accompany each application.

Minor Improvement Budget Schemes

DES	(62)	Approve expenditure on schemes from within the minor improvement budget.	Leader
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Traffic Management Schemes – Civil Engineering Costs

DES	(63)	Following agreement in principle to traffic management schemes by the Council, approve the detailed civil engineering element costs.	Leader
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Contractors Bonds

All	(44)	Allow contractors to obtain their own bonds for due performance of any proposed contract, subject to the nominated bondsman being acceptable to the Director of Corporate Services and to any additional cost being met by the contractor.	Leader
FD	(46)	The Director of Finance shall be the Chief Finance Officer for the purposes of Section 114 of the Local Government Finance Act 1988.	Council

Energy Contracts

FD	(51)	In consultation with the DECS and relevant Executive Portfolio Holders, to accept energy tenders for gas and electricity for those schools which have opted into a corporate contract (in accordance with the decision of the Executive on 21 st July 2008).	Leader
FD	(52)	To accept energy tenders for gas and electricity for the remainder of the Council (in accordance with the decision of the Executive on 21 st July 2008).	Leader
DECS	(18)	Authority to allocate Housing Association Programme funds in accordance with the criteria contained in Social Services and Housing Committee Minute 232(g) (21 st July 1997).	Leader

Libraries

DRR	(2)	Select and purchase books and other library and museum materials and arrange loan exhibitions.	Leader
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KEY DECISIONS, MEMBER AUTHORISATION AND DELEGATION

GUIDELINES FOR KEY DECISIONS MADE BY OFFICERS

Where a Chief Officer is taking a Key Decision it must in most respects be dealt with in a similar way to a Key Decision being made by a Portfolio Holder or the full Executive at a meeting. The following guidelines explain what action is required to comply with the Local Authorities (Executive Arrangements) (Access to Information) Regulations 2000 and the Council's Constitution.

What is a Key Decision?

A Key Decision is an executive decision which

(a) results in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the budget for the service or the function to which the decision relates – the thresholds for the various portfolios are set out below –

Adult & Community Services/Children & Young People/Environment & Leisure
Resources
Public Protection & Safety/Local Economy

£500,000
£250,000
£50,000

(b) is significant in terms of its effects on communities living or working in an area comprising two or more wards. Any decision likely to have an impact on the amenity of a community or quality of service provided by the authority to a significant number of people should be regarded as key.

A Key Decision may be taken by the Council, the Executive, an individual Executive Portfolio Holder or by an officer using delegated powers. Decisions made by Chief Officers concerning the award of contracts will be key decisions where the total value of the contract is likely to be above the relevant portfolio threshold.

Before a Key Decision is made -

- it must be included up to four months beforehand in the monthly **Forward Plan of Key Decisions** issued by Democratic Services.

(The Forward Plan is updated in the middle of each month and a request for new items for inclusion is issued by Democratic Services* at the beginning of each month.)

- a **report** should be prepared by the officer dealing with the matter and issued to the decision taker five clear days** before the decision is to be taken. *The report must be supplied to Democratic Services to be copied to Members. The report need not follow the corporate Committee report format in all respects, but it should set out clearly the recommended decision and the reason for the decision. The report should also include a section for the decision taker to sign and date after the five clear days have expired signifying their agreement.)*

After a Key Decision has been made -

- a **statement of decision** must be issued to all Councillors by Democratic Services
(This must state who has taken the decision, what the decision is and give a statement of reasons - a blank example is attached. Democratic Services will draft the statement of decision from the recommendations and reasons contained in the report.)
- A further period of five calendar working days is allowed during which time the decision may be called in by any five Members (unless reasons of urgency determine that the decision must be implemented immediately.) Only after the call-in period has expired can the decision be implemented. This means that you may need to build in extra time to allow not only for this period, but for the possibility of a call-in. If a decision is called in it will need to be considered by a relevant PDS Committee, which may decide to refer it to the Executive for re-consideration.

Where a matter for decision qualifies as exempt/part 2, no exempt information will be disclosed to the public, but it will still be necessary for the matter to be included in the Forward Plan and for a Part 1 summary of the statement of decision to be available for the public.

* *Democratic Services Contact = Graham Walton, tel. 020 8461 7743*

**** Five clear days excluding the day the report is issued, the day the report is signed and any intervening weekends, public holidays etc**

Updated 15/8/06

**LONDON BOROUGH OF BROMLEY
STATEMENT OF KEY DECISION**

SUBJECT:

Notice is hereby given that the following Key Decision on the above mentioned subject has
been taken by

.....

for the reason(s) set out below.

Summary of Decision:

.....
.....
.....
.....
.....
.....

Reason(s) for Decision:

*(to include details of any alternative
options considered and rejected)*

.....
.....
.....
.....
.....
.....
.....

Mark Bowen

Director of Corporate Services

Publication Date:

Decision Ref: 2006/.....

**(This decision will come into force, and may then be implemented on the expiry of 5 working
days after the publication of the decision, unless it is subject to call-in.)**

SUMMARY OF THE COUNCIL'S "CALL IN" REQUIREMENTS

Holding the Executive to Account

Moving to an Executive decision making model should mean that decision-making is quicker and more efficient but to ensure that decisions made are effective, the Executive and individual Portfolio Holders must be held to account.

This role involves scrutinising Executive and Portfolio Holder decisions at a number of different stages of the decision-making process: before decisions are made, before they are implemented and after they are implemented.

There are a number of ways in which the Executive can be held to account:

- ❑ Examining Executive and Portfolio Holder minutes and agendas
- ❑ Using call-in procedures
- ❑ Attending Executive and Portfolio Holder meetings
- ❑ Examining the Forward Plan of Key Decisions
- ❑ Calling the Portfolio Holder as a witness
- ❑ Meetings with Portfolio Holders
- ❑ Officer briefings

Call-in Procedure

When a decision is made by:

- ❑ the Executive,
- ❑ an individual member of the Executive,
- ❑ a Committee of the Executive or
- ❑ an officer with delegated authority from the Executive;

the decision will be published and sent to all Members of the Council normally within two working days. The decision will come into force, and may then be implemented, five working days from the date of publication.

During that five-day period the decision can be 'called-in'. This procedure allows executive decisions to be scrutinised before they are implemented - an important part of the PDS process. Requests for call-in must be submitted to the Director of Legal, Democratic and Customer Services during this five-day 'call-in' period. Requests should be made, in writing, detailing the reasons for the call-in. Each call-in needs to be supported by five Members of the Council.

The relevant PDS committee will then meet within a time period agreeable to all parties of the call-in. Having considered the decision, the PDS Committee has three options –

- (i) if it decides that the decision is correct, no further action is taken on the call-in and the decision may then be implemented;
- (ii) if it decides that the decision should be reconsidered it may refer it back to the Executive, giving its reasons. The Executive (not just a single Portfolio Holder) must reconsider the matter;
- (iii) in exceptional circumstances, if the Committee considers that the decision contradicts the Council's policy and financial framework, it can refer the matter to a full Council meeting for reconsideration.

Report No.
CSD15133

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: GENERAL PURPOSES AND LICENSING COMMITTEE

Date: 9th December 2015

Decision Type: Non-Urgent Non-Executive Non-Key

Title: APPOINTMENTS TO OUTSIDE BODIES

Contact Officer: Graham Walton, Democratic Services Manager
Tel: 0208 461 7743 E-mail: graham.walton@bromley.gov.uk

Chief Officer: Mark Bowen, Director of Corporate Services

Ward: Various

1. Reason for report

- 1.1 At its meeting on 27th May 2015 the Committee made appointments to various outside bodies. This report deals with a request for an appointment received since then from Nash College.

2. **RECOMMENDATION**

That, subject to a suitable nomination being received, a Councillor be appointed to the governing body of Nash College.

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council:
-

Financial

1. Cost of proposal: No Cost:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Democratic Services
 4. Total current budget for this head: £326,980
 5. Source of funding: Revenue budget
-

Staff

1. Number of staff (current and additional): 8 posts (7.27fte)
 2. If from existing staff resources, number of staff hours: N/A
-

Legal

1. Legal Requirement: None:
 2. Call-in: Not Applicable: This report does not involve an executive decision.
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments: Not Applicable

3. COMMENTARY

- 3.1 At the first meeting of each Council year this Committee makes appointments to outside bodies on behalf of the Council. These are mainly annual appointments, but some are for three or four year terms, particularly in a Council election year, and some appointments end on specific dates throughout the year.
- 3.2 Nash College is an independent specialist college providing specialised high quality care and education for students aged 18 – 25 in Croydon Road, Hayes. A new Instrument and Articles of Government for the College took effect on 1st September 2015. The Council has received a request from Liveability, a national charity which runs Nash College, for a local authority representative to sit on the College's newly re-formed governing body. The Committee previously appointed Councillor Neil Reddin as the Council's representative to Nash College, but he does not wish to be appointed to the new governing body. The Committee is now asked to consider appointing another member to the Nash College governing body.

Non-Applicable Sections:	Policy/Finance/Legal/Personnel
Background Documents: (Access via Contact Officer)	Outside Bodies Report to Committee on 27 th May 2015

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Report No.
ES15089

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: GENERAL PURPOSES AND LICENSING COMMITTEE

Date: Wednesday 9 December 2015

Decision Type: Non-Urgent Non-Executive Non-Key

Title: OUTCOME OF LICENSING SUB COMMITTEE HEARINGS
APRIL TO OCTOBER 2015

Contact Officer: Paul Lehane, Head of Food Safety, Occupational Safety and Licensing
Tel: 020 8313 4216 E-mail: Paul.Lehane@bromley.gov.uk

Chief Officer: Nigel Davies, Executive Director of Environment & Community Services

Ward: (All Wards);

1. Reason for report

To update Members regarding decisions made by Licensing Sub Committees between 1 April 2015 and 31 October 2015.

2. **RECOMMENDATION(S)**

Members are asked to note the decisions made by the licensing sub committees

Corporate Policy

1. Policy Status: Existing Policy: Statement of Licensing Policy 2011-2016
 2. BBB Priority: Children and Young People Excellent Council Quality Environment Safer Bromley Vibrant, Thriving Town Centres:
-

Financial

1. Cost of proposal: Not Applicable:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Public Protection and Safety Portfolio budget
 4. Total current budget for this head: £2.1m
 5. Source of funding: Existing Revenue Budget 2015/16
-

Staff

1. Number of staff (current and additional): 51 fte
 2. If from existing staff resources, number of staff hours: N/A
-

Legal

1. Legal Requirement: Statutory Requirement: Where relevant representations are made in respect of an application for a licence the decision must be referred to a Licensing Sub committee
 2. Call-in: Not Applicable:
-

Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All residents
-

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

- 3.1 Members of General Purposes and Licensing Committee (GP&L) have responsibility for the Council's licensing functions. Under the scheme of delegated authority officer's deal with non contentious applications but where objections are received the determinations of applications falls to members of this Committee sitting as Licensing Sub Committees.
- 3.2 Cllr Stevens (Chairman of GP&L) has requested a regular summary of the outcome of the hearings undertaken by Members sitting on licensing sub committees. This report covers the hearings held between 1 April and 31 October 2015.
- 3.3 In this period the Licensing Team received a total of 792 applications. (35 for new premises licences, 15 for variations, 585 Tens and 157 personal licences) under the Licensing Act 2003 and Gambling Act 2005. Of these, 15 received objections which could not be resolved by mediation and were referred to a Licensing Sub Committee for determination.
- 3.4 Full details of these subcommittee decisions can be found on the Council's website at <https://searchapplications.bromley.gov.uk/onlineapplications/search.do?action=simple&searchType=LicencingApplication>

Search for Licences by the premises name and select the Documents tab .

	Premises	Date	Type of application and outcome
1	Bar Du Vin, East Street, Bromley	9 April 15	Agreed to extend the operating hours, with an additional condition that 3 SIA-registered door stewards be employed from 20.20 to 30 minutes after closing
2	Royal Bell, High Street, Bromley	9 April 15	Agreed to vary the licence in respect of the layout and to extend hours of operation for sale of alcohol, recorded music and late-night refreshment, and add film shows. 8 additional conditions added
3	Venue 28, Beckenham Road, Beckenham	23 April 15	New premises licence granted with 6 additional conditions
4	Vue Cinema, St Mark's Square, Bromley	23 April 15	New premises licence granted with 16 additional conditions
5	Widmore Convenience Store, 191 Widmore Road	23 April 15	New premises licence granted with 4 additional conditions

6	Greater Than Gatsby, High Street, Bromley	17 June 15	New premises licence granted (replacing an earlier one). Large number of additional conditions volunteered and imposed
7	Bromley Tennis Centre, Avebury Road, Orpington	15 July 15	New premises licence granted with one additional condition
8	Croft Tea Rooms, 263 High Street, St Mary Cray	12 Aug. 15	New premises licence granted with 5 additional conditions
9	Vu Vu East Street Bromley	12 Aug. 15	Review of licence brought by Police on Crime and Disorder grounds. Licence suspended for 30 days and 6 conditions added to the licence. Decision subject to an appeal to Bromley Magistrates Court. Hearing listed for 8 March 2016
10	Costcutter, Beaconsfield Parade, Mottingham	27 Aug. 15	New premises licence granted with revised hours of operation
11	Time, High Street, Beckenham	27 Aug. 15	Objection to a Temporary Event Notice by Police. Application granted subject to 2 conditions and 3 undertakings
12	Wickham Manor Service Station	10 Sept.15	New premises licence granted with 7 additional conditions
13	Chimes Service Station, Sevenoaks Road, Pratts Bottom	10 Sept. 15	Premises licence varied to allow 24 hour operation
14	Marco's Of Hayes, Hayes Street	22 Sept.15	New premises licence granted with 5 agreed additional conditions
15	Ronnys 237-239 High Street Bromley	29 Oct. 15	Police and Public Health Nuisance Team objected to a TEN (Temporary Event Notice). Counter Notice Served

4. POLICY IMPLICATIONS

- 4.1 In reaching these decisions Members would have taken into account the Councils Statement of Licensing Policy 2011-2016.

5. FINANCIAL AND LEGAL IMPLICATIONS

- 5.1 The applicant and any objectors have the right to appeal to the Magistrates Court against the decision taken by a Licensing sub Committee. Any such application would incur costs which would have to be contained within the existing Portfolio budget.

Non-Applicable Sections:	PERSONNEL IMPLICATIONS
Background Documents: (Access via Contact Officer)	[Title of document and date]

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PENSIONS INVESTMENT SUB-COMMITTEE

Minutes of the meeting held at 7.30 pm on 23 September 2015

Present

Councillor Teresa Ball (Chairman)
Councillor Keith Onslow (Vice-Chairman)
Councillors Eric Bosshard, Simon Fawthrop, David Livett and
Russell Mellor

Also Present

Councillor Graham Arthur, Resources Portfolio
Jane Harding, Employer Representative - Local Pension
Board
Alick Stevenson, AllenbridgeEpic Investment Advisers
Brian Toms, Employer Representative - Local Pension
Board

1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

No apologies were received.

2 DECLARATIONS OF INTEREST

Councillor Russell Mellor declared a personal interest by virtue of receiving a Pension from the Local Government Scheme. Councillor Simon Fawthrop declared a personal interest as a former Member of the Local Government Pension Scheme.

3 CONFIRMATION OF MINUTES OF THE MEETING HELD ON 19TH MAY 2015

The minutes were agreed.

4 QUESTIONS BY MEMBERS OF THE PUBLIC ATTENDING THE MEETING

There were no questions.

5 GENERAL UPDATE

Report FSD15058

An update was provided on various matters affecting the Pension Fund. This included: (i) the pooling of Investments; (ii) State Pension Reforms and the cost of Contracted-Out National Insurance removal; (iii) Local

Pensions Board; (iv) a combined Local Pension Board (an Administering Authority discharging its functions through an existing Committee could, with Secretary of State approval and subsequent conditions, combine its Local Pension Board and Pensions Committee); (v) the forthcoming Pension Seminar; (vi) consultation on a Public Sector Exit Payment Cap (including a potential redundancy payments cap and reducing costs of unreduced early retirement pensions); and (vii) reference to the “*Options for Reform*” work for the LGPS Scheme Advisory Board, including a complete separation of pension fund from host authority. Further details of an investment proposal were also provided at Part 2 of the Sub-Committee’s agenda.

Concerning the Local Pensions Board (LPB), it was suggested that members of the Board receive a copy of the Sub-Committee’s full agenda for future meetings (including any Part 2 material).

Noting that the Board unanimously requested to meet at the same frequency as the Sub-Committee, it was highlighted that the Board’s terms of reference would need changing before it could meet more than once per year. Additional meetings each year would increase administration costs to the Pension Fund. Any case for changes to the Board’s Terms of Reference would need Full Council agreement with the Sub-Committee and General Purposes and Licensing Committee first considering the evidence for change. LPB Members have been requested to provide a robust workplan prior to any further consideration of frequency of their meetings. No decisions on changes in frequency had been made at this stage. LPB Members would continue to be invited to each meeting of the Sub-Committee. They could also contribute to discussion and were welcome to attend future Pension seminars.

An update was also provided on Government proposals for the pooling of investments. This included reference to proposals in the Chancellor’s Summer Budget. The Government had subsequently indicated a wish to see all assets (including equities and bonds) pooled within three years, with more time for unlisted assets. Administering Authorities were expected to pool scheme assets into eight or less investment pools, each pooled fund comprising a significant size. In November 2015, the Department of Communities and Local Government (DCLG) was expected to publicise (i) legislative changes to give the Secretary of State increased powers; (ii) proposed changes to investment regulations; (iii) criteria to determine pooling of investments; and (iv) back-stop measures to ensure that Government “common criteria” for pooling could be imposed on non-complying schemes. The Government was expected to formally consult and invite authorities to indicate by February 2016 how assets were to be pooled to fulfil the criteria. For authorities not wishing to join pooled arrangements it was proposed that the Secretary of State would have additional intervention powers.

The Director of Finance indicated that, subject to Members’ views, the response to Government could be on the basis that pooling options should not be geographically based and various pooled schemes could be used according to the largest discount on manager’s fees for different fund

managers. Procurement arrangements for fund managers should continue to be a choice of individual administering authorities and that any new proposal should allow administering authorities to control asset allocation using a mix of pooled fund operators for reducing management fees. Such an approach might enable greater economies of scale should individual pooled funds be limited to a few fund managers. To maximise fee reductions, some national coordination would be necessary. The Government's proposals indicate that Councils would continue to retain decisions on asset allocation and funding responsibilities for current and past deficit contributions would also remain.

If pooling options were regionally based, the London Collective Investment Vehicle (CIV) would be available for London boroughs – two other London Boroughs apart from L B Bromley had not yet joined the CIV. Other Local Authorities were looking at non-regionally based pooling options which would be helpful to L B Bromley. Significant research on pension fund size and performance demonstrated that “big” was not always best - Orkney Islands Council Pension Fund being one of the best performing local authority pension funds.

With reference to the Government's proposal for a living wage (also highlighted in the Chancellor's Summer Budget), no staff at L B Bromley were thought to be affected and employer contributions to the fund would not therefore increase. If any staff in admitted bodies were eligible, the admitted organisation would be liable for increased employer contributions although few contractors admitted to the Fund were thought to have staff earning less than the minimum wage.

The Chairman encouraged Members to attend the Pension seminar on Wednesday 11th November 2015 at 7.30pm.

RESOLVED that:

(1) the report be noted; and

(2) the opportunity identified at Appendix 1 to Report FSD15058 (considered in Part 2 proceedings) be progressed further.

6 PENSION FUND PERFORMANCE Q1 2015/16

Report FSD15055

Summary details were provided of the investment performance of Bromley's Pension Fund for the first quarter 2015/16 along with information on general financial and membership trends of the Fund and summarised information on early retirements.

AllenbridgeEpic provided further detail on investment performance and Baillie Gifford provided commentary on first quarter performance, future economic outlook, and recent developments in financial markets.

Representatives of Blackrock gave a presentation on performance, economic outlook/prospects and other matters related to their portfolio. A representative of the WM Company presented an annual investment performance review for the period ending 31st March 2015.

The market value of the Fund ended the June quarter at £710.9m (£742.9m as at 31st March 2015) but by the end of August 2015 it had fallen to £695.0m. The Fund's medium and long-term returns remained particularly strong.

The total fund returned -4.5% (net of fees) in the latest quarter, compared to the benchmark return of -4.2% and the local authority average of -2.5%. In regard to the local authority average, the fund's performance in the June quarter was in the 100th percentile (the lowest rank being 100%).

Mr Stevenson outlined market conditions and, from an investment perspective, assessed the first quarter 2015/16 as poor. Markets had been volatile and conditions could continue to be volatile going forward. However, the Fund's long term performance was significantly higher than the 5.6% actuarial assumption. The Fund's value had regained in the past and Mr Stevenson suggested a stable performance when markets normalise and central banks opt for interest rate rises. Although tempting to take action in such conditions, Fund Managers were doing their best to search for best of breed investments - long term performance was key. As long as returns paid pensions, Mr Stevenson advised Members to delay taking action, as he was confident that markets would turn and returns would be driven upwards. He advised against buying more fixed income to reduce risk.

Concerning Phase 3 of the Investment Strategy, the Sub-Committee agreed at its previous meeting to switch £6m from the Baillie Gifford Sterling Aggregate Plus Fund to their Global Bond Fund (£3m) and Emerging Market Bond Fund (£3m). A proposal to switch a further £6m from Fidelity's UK Aggregate Bond Fund into the Fidelity FIDA Fund was not agreed.

The matter was given further consideration and a short report from Mr Stevenson appended to Report FSD15055 recommended no further action with funds earmarked for the "switch" retained in the fixed interest portfolio managed by Fidelity. Should Members proceed with the switch, Mr Stevenson recommended where the funds could be placed.

The Chairman was mindful of actuarial views and base requirements and following discussion it was agreed to support Mr Stevenson's primary recommendation. In the meantime work could be undertaken to further investigate fixed income asset classes.

It was noted that the level of employee contributions at year end was expected to reduce with the level of normal employer contributions expected to increase. However, the contribution rates were determined by the triennial valuation and actuarial review. Actual staff contributions had reduced with low

earning staff contributing less and high earners contributing more. It was felt that the level of employer contributions was not sustainable (for the future) and discussions had been held with local MPs.

Report FSD15055 also provided an update on admission agreements for outsourced services.

RESOLVED that:

(1) the report be noted;

(2) the position regarding admission agreements for outsourced services, as set out at paragraphs 3.11 to 3.13 of Report FSD15055, be noted; and

(3) no action be taken to switch funds from Fidelity's UK Aggregate Bond Fund and further work be undertaken to investigate fixed income asset classes.

7 PENSION FUND - INVESTMENT REPORT

Before receiving a presentation from Blackrock representatives, a representative from WM Global Services (now known as State Street) presented on the investment performance of L B Bromley's Pension Fund to March 2015.

Last year (2014/15) had been a strong year for Local Government Pension Fund returns. An analysis of Total Fund Performance demonstrated that Bromley's Fund had outperformed benchmark over one, three, five, and ten years. Stock selection was adding value. On longer term attribution, the Fund had outperformed its benchmark for nine of the ten years from 2006 to 2015. There was a good performance in converting risk to return. A Member suggested that Asset Allocation since 2010 represented five years of under-performance. Another enquired whether performance would have improved with more or less equities. To answer the enquiry, the representative offered to undertake some more analysis on the Fund's history.

The review also considered Manager Performance and amongst its conclusions highlighted a particularly good annual return of 18.5% for the fund, 1.8% ahead of benchmark, driven by equity returns. There was also outperformance over three, five and ten year periods.

The Chairman thanked the representative for a succinct and informative presentation.

Members then received Blackrock's presentation from their Client Director and Portfolio Manager. This included first quarter performance and market outlook comprising three months and 12 months index performance to 30 June 2015 for Equities, Bonds and Other. Reference was also made to key trends and key investment themes looking ahead. Other performance related

aspects included market forces, attribution, current positioning, country positioning and industry positioning. Reference was also made to stock type investment and stock selection process.

The presentation highlighted that the value of Blackrock's *Ascent Life Enhanced Global Equity* fell in value at 30th June 2015 compared to 31st August 2015. This was attributed to market movements rather than performance of the fund. However, the fund outperformed its performance target (index) over 12 months. In considering fund performance, softer performance continued to be ahead of the market but the fund was not achieving the performance pace experienced last year. There were clear trends in the market but much more volatility this year. There had been much movement – if purchasing stocks in a volatile market it was difficult to generate returns.

It was confirmed that figures reported (in the presentation) were inclusive of fees (the portfolio was paying the fee to the broker).

RESOLVED that the presentations from WM Global Services (now known as State Street) and Blackrock be noted.

8 PENSION FUND ANNUAL REPORT 2014/15

Report FSD15057

Members considered the annual report and accounts of the L B Bromley Pension Fund for year ended 31st March 2015. The annual report included a number of documents requiring the Sub-Committee's approval namely: Governance Policy Statement; Funding Strategy Statement; Statement of Investment Principles; and Communications Policy Statement. The annual report would be published on the Council's website by 1st December 2015. The report had been audited by the Fund's external auditor, PricewaterhouseCoopers LLP (PWC), with a statement from PWC included.

Concerning administration, fund management costs had risen due to an increased number of Fund Managers upon re-structuring the investment strategy. Fund manager fees were linked to the values of portfolio funds.

It was suggested that consideration be given to how the fees are structured; however, with an increased diversity of fund managers the level of fees could be expected to increase. Fund Managers looked to apply the same level of costs for all local authorities; if it were possible to negotiate lower fees for L B Bromley, Fund Managers would need to match those fees for other local authority clients. They would not therefore be prepared to reduce their fees and officers had previously sought a lower proportion of fees for LB Bromley. For the future, lower management fees could be possible through pooled arrangements. A combined value of funds in a London-wide Collective Investment Vehicle would amount to some £3bn potentially leading to reduced management fees for all London boroughs.

RESOLVED that:

- (1) the Pension Fund Annual Report 2014/15 be noted and approved;**
- (2) the Statement of Investment Principles be amended as outlined at paragraph 3.7 of Report FSD15057;**
- (3) the Governance Policy Statement, the Funding Strategy Statement, the Statement of Investment Principles and the Communications Policy Statement set out in the Annual Report be adopted; and**
- (4) arrangements be made to ensure publication of the Annual Report by the statutory deadline of 1st December 2015.**

**9 LOCAL GOVERNMENT ACT 1972 AS AMENDED BY THE
LOCAL GOVERNMENT (ACCESS TO INFORMATION)
(VARIATION) ORDER 2006 AND FREEDOM OF INFORMATION
ACT 2000**

RESOLVED that the Press and public be excluded during consideration of the items of business referred to below as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the Press and public were present there would be disclosure to them of exempt information.

**The following summaries
refer to matters
involving exempt information**

10 GENERAL UPDATE

Members considered a Part 2 appendix to the General Update Report (FSD 15058) concerning further details of an investment proposal. A separate Part 2 report on the proposal was also at item 11 on the meeting agenda covering views and a recommendation from the Pension Fund Investment Adviser. As such, Members combined their consideration of items 10 and 11 of the agenda.

**11 RESIDENTIAL PROPERTY ACQUISITIONS - PROPOSAL BY
MEARS GROUP LIMITED**

Report FSD15059

Members considered a report from the Fund's Investment Adviser on the investment proposal referred to above (Minute 10) along with a recommendation. The report also sought to answer questions that Members had previously raised.

The Meeting ended at 10.35 pm

Chairman

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LOCAL JOINT CONSULTATIVE COMMITTEE

Minutes of the meeting held at 6.30 pm on 21 October 2015

Present:

Employer's Side

Councillor Russell Mellor (Chairman)
Councillor Stephen Carr
Councillor Simon Fawthrop
Councillor Tom Philpott
Councillor Colin Smith
Councillor Diane Smith
Councillor Tim Stevens J.P.
Councillor Michael Turner
Councillor Angela Wilkins
Councillor Colin Smith

Staff Side and Departmental Representatives

Glenn Kelly, Staff Side Secretary
Gill Slater, Regeneration & Transformation Service
Kathy Smith, Unite
Tony Urquhart, Adult and Community Services

8 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

Apologies for absence were received from Cllr Nicholas Bennett, and Cllr Colin Smith attended as substitute. On the Staff Side, apologies were received from Mary Odoi and from Max Winters; Gill Slater (LBB Regeneration and Transformation Service) and Mr Tony Urquhart (LBB Adult and Community Services) sat as substitutes.

9 DECLARATIONS OF INTEREST

There were no declarations of interest.

10 MINUTES FROM THE PREVIOUS MEETING OF THE LOCAL JOINT CONSULTATIVE COMMITTEE HELD ON 16th JUNE 2015.

The minutes of the previous meeting were agreed.

11 QUESTIONS CONCERNING THE NEW ARRANGEMENTS TO TRADE UNION FACILITY TIME

The Staff Side wished to bring to Members' attention, issues that they perceived to be problematic concerning the changes in Trade Union facility time. The Staff Side requested a review of the new arrangements on the basis that it was now difficult for LBB staff members to receive adequate representation under the new system. They informed the Committee that there were lots of problems with the new system, especially for Unite. Kathy Smith (Unite) stated that she had to use her personal time to provide

representation, as she could not be released from her work responsibilities. She stated that she had recently passed two cases to departmental representatives as she was not able to deal with them herself. One of the representatives was a Planner, and the other was a Social Worker; the Planner could not be released due to workload, and the Social Worker could not be released as safeguarding issues required attention.

Ms Smith pointed out that the guidance concerning staff representation stated that employees could have Trade Union representation at hearings, but that in some cases this was being denied because of release issues. She asked if this was an unintended consequence of the new arrangements. Ms Smith referenced a previous conversation with Cllr Turner concerning the Library Service, and stated that he did not appreciate the effect that cuts had had on the service, which had affected her ability to be released for service on trade union matters. She stated that all areas in LBB had been cut to the bone, and requested a review of the current arrangements. She pointed out to the Committee that she was referring to members of their staff.

Mr Glenn Kelly (Staff Side Secretary) reminded the Committee that Cllr Ian Dunn had previously asked for a review, and that there was a lack of clarity in the process. Cllr Simon Fawthrop wondered if LBB could be in a vulnerable position at future tribunal hearings if adequate representation could not be provided at Disciplinary Hearings. He stated that he would be interested to learn how many people had not been represented previously, compared to more current figures. The Director of Human Resources informed the Committee that individuals could choose to be represented or not, and that they could use the services of external representatives. Cllr Fawthrop asked if individuals had employed the services of external solicitors at previous hearings. The Head of Human Resources responded affirmatively. He informed the Committee that staff were occasionally represented by external representatives including solicitors, friends and family members.

The Director of Human Resources explained to the Committee that the law required that if a representative was not available for an applicant on the first occasion, then the hearing may be postponed for a minimum of five days; the hearing would then proceed on the second occasion. The Director stated that he was not aware of a lack of trade union representation, and that of the previous seven hearings that he was aware of, there was only one case where a representative was not present, and that was due to the preference of the applicant. Ms Smith stated that regardless of LBB permitting a diverse range of representation, the point remained that if a person requested trade union representation, then this should not be denied. The Director of Human Resources added that trade union representation was not being denied, but any request for release had to be balanced against the impact on services consistent with the core principles behind the law, namely proportionality and reasonableness.

Councillor Stephen Carr confirmed that he supported the general direction of travel with respect to the new arrangements, and that he desired LBB to conduct itself in a manner that was reasonable, good and fair.

He was of the opinion that what had been done so far was not unreasonable and was not averse to having a review meeting of the current arrangements. Cllr Angela Wilkins asked if the LJCC made “resolutions”, and was informed that the LJCC did not make resolutions, but rather made recommendations. She stated that LBB should be facilitating trade union representation, and that she was in favour of a review meeting.

The Director of Human Resources informed the LJCC that the report on the new arrangements for this matter had previously been presented to the General Purposes and Licensing Committee, and that the report had referred to a review going forward. He did not agree to the view that the changes were disadvantageous to anyone. It was the case that a trade union representative would be made available, but it may be the case that sometimes this would be someone else other than Glenn Kelly or Kathy Smith.

Cllr Tim Stevens stated that the GP&L Committee had promised to review the matter, and this would take place, and Trade Union Members would be advised accordingly. The Chairman noted both viewpoints and proposed that a review be undertaken by the GP& L Committee at either the next GP& L meeting, or the subsequent one. Cllr Carr agreed with this and proposed that officers prepare the relevant papers for a review.

It was RECOMMENDED that both sides prepare the necessary papers so that the matter of Trade Union facility time could be reviewed by the GP&L Committee in the near future.

12 CONTRACT MONITORING AND COMMISSIONING DECISIONS

Mr Glenn Kelly stated that it was the opinion of the Staff Side that LBB had adopted a dogmatic position as far as the commissioning process was concerned, and he requested a review of the current programme of outsourcing. He felt that it would be of particular use to have a look at recent ECHS outsourcing. Mr Kelly referred the LJCC to the 300-400 ECHS staff who had been outsourced in the last 12 months. It was his view that the savings made in this regard were marginal, and this being the case, he wondered why the outsourcing was undertaken. In addition to the financial issues, Mr Kelly asked if the appropriate service level issues were being delivered. He referred the Committee to the outsourcing of the Parks contract, and stated that in this case, staff had been dismissed.

Ms Lesley Moore (Assistant Director-Corporate Projects and Transformation) responded that commissioning was not about outsourcing, but about identifying the need, and then how best to meet this need which could result in outsourcing if that offered better value for money. If a service could be provided with no reduction in service levels at a cheaper price, then it would be correct to implement the process.

Cllr Simon Fawthrop asked if staff were made aware of savings when they were made, and felt that staff should be informed when savings were made. Cllr Carr stated that services would be reviewed on a case by case basis, and

that the process was not dogmatic. The aim of the Council was to deliver and protect services. It was the case that the YOT and Legal Services were brought back in to the Council. Cllr Carr stated that LBB would seek to correct mistakes and conduct reviews as appropriate. Ms Kathy Smith asked how many services had gone through the commissioning process without being outsourced. Ms Smith stated that loyal workers with long service histories had been dismissed, and that the Council were setting up workers to be made redundant. She also referenced concerns around the Landscape Group, by stating that some of their staff members were being asked to undertake dangerous work that they had not been trained for. The Council should ensure that workers had the relevant training to undertake work required of them.

The Assistant Director informed the LJCC that since 1990, only two contracts had come back in to the Council, so the commissioning process was doing well. Mr Tony Urquhart asked the Assistant Director if the Reablement Service was going to be outsourced. The Assistant Director responded that the service was being looked at in a different way, as part of a bundle, and that staff would be kept informed. The Director of HR pointed out that this was an evolving process. The Assistant Director concluded by informing the LJCC that there were a lot of cases that were looked at that were not commissioned because there was no business case to do so. Mr Urquhart requested that staff be kept informed.

The Assistant Director made the following points concerning outsourcing:

- The Adult Education Centre was reviewed and then not outsourced
- Regulatory Services was reviewed and then not outsourced
- The Reablement Service remained under review

The Assistant Director stated that given the current financial climate, all service levels would need to be reviewed whether they were provided directly by the Council or by a Third Party, which would therefore impact on staff.

Mr Kelly reiterated his early contention that outsourcing was not delivering savings, and stated that once the relevant infrastructure was gone, it would be difficult to replace. This had been a recurrent pattern, and the Staff Side were looking for an input.

The Chairman noted that LBB had set up a Contracts Working Party (chaired by Cllr Stephen Wells) to look into all of these matters. Mr Kelly stated that the staff side would be very keen to have an input into the Contracts Working Party. It was suggested that this being the case he should write to Cllr Wells.

The Chairman stated that input from the Staff Side had been requested previously, and he reminded Mr Kelly that he should write to Cllr Stephen Wells if he wished to input into the Contracts Working Group. It was hoped that time would be made available for Mr Kelly to attend.

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13 DATE OF NEXT MEETING

The date of the next meeting was confirmed as December 8th 2015, and the Chairman reminded the Staff Side that if they required items to be heard at the meeting, then details should be provided to the Committee Clerk in plenty of time. Items for the agenda should be with the Committee Clerk seven working days before the meeting date.

The Meeting ended at 8.00 pm

Chairman

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LOCAL PENSION BOARD

Minutes of the meeting held at 2.00 pm on 26 October 2015

Present

Jane Harding, Lesley Rickards and Brian Toms

Also Present

David Kellond, Pensions Manager
Keith Pringle, Democratic Services

1 DECLARATIONS OF INTEREST

There were no declarations.

2 APPOINTMENT OF CHAIRMAN 2015-16

Mr Brian Toms was elected Chairman of the Local Pension Board for a period of 12 months, effective from 26th October 2015.

3 MINUTES OF THE PREVIOUS MEETING HELD ON 27 JULY 2015

The minutes of the previous meeting were agreed and signed by the Chairman.

In agreeing the minutes further consideration was given to the number of Board meetings considered necessary.

Both Brian Toms and Jane Harding confirmed that they had attended the meeting of Pensions Investment Sub-Committee (PISC) on 23rd September 2015 and had participated in that meeting. Brian Toms had also attended General Purposes and Licensing Committee (GP&L) on 17th September 2015. Both now considered that the Board would not request an amendment to the current Terms of Reference, which provide for one annual meeting of the Board supported by attendance at both PISC and GP&L. This was also agreed by Lesley Rickards. Additionally, the Board agreed amongst themselves that they may wish to hold ad-hoc "discussion and liaison" meetings, if considered necessary to support their work plan, but that these would be on an informal basis involving Board Members only and would require no support from Council officers or Members.

4 MINUTES OF THE GENERAL PURPOSES AND LICENSING COMMITTEE MEETING 17th SEPTEMBER 2015

Draft minutes of the General Purposes and Licensing Committee meeting held on 17th September 2015 were available.

The Chairman had attended the meeting and reported that he had enquired whether Board members would be granted general indemnity against any issues

related to the work of the Board. The Chairman received confirmation at that meeting that as Board members were appointed by the Council, and the Board was conducting Council business, it was covered under the Council's existing insurance arrangements.

5 MINUTES OF THE PENSIONS INVESTMENT SUB-COMMITTEE MEETING 23RD SEPTEMBER 2015

Apologies were also given that it was not possible to present minutes of the Pensions Investment Sub-Committee meeting held on 23rd September 2015. These would be circulated to Board Members when available (**ACTION: Democratic Services**).

6 LOCAL PENSION BOARD WORK PLAN

Members considered the areas of work the Board could usefully look at in line with its primary remit for assisting the Administering Authority in ensuring compliance with regulations. Options considered for future work included:

- reviewing the monthly Liberata performance report;
- reviewing compliance in regard to admitted bodies;
- reviewing compliance on governance in line with considerations such as the Statement of Investment Principles, perhaps looking at some reports to the Pensions Investment Sub Committee;
- reviewing communications from the employer side;
- considering internal/external audit reports; and
- considering the Council's statutory accounts and annual report for the Pension Fund.

The Council has an internal disputes and resolution procedure for dealing with complaints and this could provide an indication of complaints concerning the Pension Fund. The monthly Liberata performance report also included a section on complaints and compliments. Liberata were the first point of contact for L B Bromley scheme members having any concern related to their pension. At Pension Manager meetings held with other local authorities a standard item is considered of cases submitted to the Pensions Ombudsman. Where appropriate, such cases, although for other Administering Authorities could be highlighted to the Board for consideration, where there may be a potential impact for the Bromley Fund.

The Chairman felt that the Board's work needed to avoid duplication. It was also necessary to take a top down approach, the Board not having the resources to look into line by line detail. Board Members were reminded that their key role was that of assisting the Administering Authority in ensuring compliance with

regulations e.g. undertaking checks to ensure that statutory requirements of the relevant regulations were being met. There was no remit for the Board on policy making. The Chairman saw a role for the Board in asking key questions relating to existing procedures. The Pensions Manager offered to circulate a Code of Practice published by The Pension Regulator which could be of interest to Board Members **(ACTION: Pensions Manager)**.

It was also suggested that the Board focus on areas where there might be the greatest risk of things going wrong, particularly where there is something new, which needs to be implemented.

In refining the Board's Work Plan the Chairman felt the Board could also look at:

- Pension Fund Investment Strategy; and
- the actuarial valuation methodology.

The Chairman also suggested that the Board may assist in reviewing the terms on which other employers join or leave the Fund. It was suggested that the Board's Work Plan could include a review of bodies admitted into the Fund and compliance with the terms of their admission.

The Pensions Manager confirmed that he would produce a draft work-plan and send to the Chairman who may then, following consultation with other Board members suggest any additions, deletions or amendments the Board felt necessary.

7 PENSION FUND ANNUAL REPORT AND AUDITED ACCOUNTS

Members were presented with a copy of the L B Bromley Pension Fund Annual Report and Statutory Accounts for 2014/15.

The Chairman suggested that it may be helpful for the Annual Report to separately identify the cost to the Fund of WM's performance measurement service along with the investment advice provided by AllenbridgeEpic Investment Advisers.

An enquiry was also made on whether it was necessary for the Actuary to provide an intermediate funding statement for the Fund each year. The Pensions Manager agreed to make relevant enquiries and inform Board members **(ACTION: Pensions Manager)**.

8 LOCAL PENSION BOARD TRAINING PLAN

A number of generic training events were available but some were cost prohibitive and there were questions about their usefulness. Some were also time consuming with one course lasting three days.

At another borough general training was undertaken for 60 or 30 minutes prior to a Local Pension Board meeting. A similar approach could be taken at Bromley perhaps combined with some online training. Were much of the training to be

delivered in-house it would be more manageable.

At another London borough general training was undertaken for 60 or 30 minutes prior to a Local Pension Board meeting. It was agreed that a similar approach would be taken at Bromley. Additionally some online training has been developed by The Pensions Regulator and will be made available for Board Members to use.

The Chairman suggested that Board Members visit a Pensions Committee meeting in adjacent boroughs. This may help to provide benchmarking and the Pensions Manager agreed to discuss further with colleagues at LB Croydon and LB Bexley to establish whether this was possible. It was thought the meetings would be open to public attendance and details would be available on websites for the two authorities **(ACTION: Pensions Manager)**.

9 ANY OTHER BUSINESS

Board Members were encouraged to attend the Pensions seminar on 11th November 2015.

The Chairman enquired of the procedure for claiming travel expenses related to work of the Local Pension Board and the Pensions Manager offered to confirm the position **(ACTION: Pensions Manager)**.

10 LOCAL GOVERNMENT ACT 1972 AS AMENDED BY THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) (VARIATION) ORDER 2006 AND FREEDOM OF INFORMATION ACT 2000

11 EXEMPT MINUTES OF THE PENSIONS INVESTMENT SUB COMMITTEE MEETING 23RD SEPTEMBER 2015

Please see minute for item 14 above.

The Meeting ended at 3.12 pm

Chairman

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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