



GOVERNANCE COMMITTEE

TUESDAY, 25 JUNE 2019

10.45 AM (OR AT THE CONCLUSION OF THE CABINET, WHICHEVER IS THE LATER)
COMMITTEE ROOM - COUNTY HALL, LEWES

MEMBERSHIP - Councillor Keith Glazier (Chair)
Councillors Nick Bennett, Godfrey Daniel, Rupert Simmons and David Tutt

A G E N D A

- 1 Minutes of the meeting held on 4 June 2019 *(Pages 3 - 4)*
- 2 Apologies for absence
- 3 Disclosures of interests
Disclosures by all members present of personal interests in matters on the agenda, the nature of any interest and whether the member regards the interest as prejudicial under the terms of the Code of Conduct.
- 4 Urgent items
Notification of items which the Chair considers to be urgent and proposes to take at the appropriate part of the agenda. Any members who wish to raise urgent items are asked, wherever possible, to notify the Chair before the start of the meeting. In so doing, they must state the special circumstances which they consider justify the matter being considered urgent.
- 5 Procurement and Contract Standing Orders *(Pages 5 - 28)*
Report by Chief Operating Officer
- 6 Consultation on proposed regulations in relation to the public sector exit payment cap
(Pages 29 - 42)
Report by Chief Operating Officer
- 7 Outside Body Appointment: Sussex Police and Crime Panel
Report by Assistant Chief Executive

PHILIP BAKER
Assistant Chief Executive
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17 June 2019

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GOVERNANCE COMMITTEE

MINUTES of a meeting of the Governance Committee held at Committee Room, County Hall, Lewes on 4 June 2019.

PRESENT Councillors Keith Glazier (Chair), Nick Bennett, Godfrey Daniel and Rupert Simmons

1 MINUTES OF THE MEETING HELD ON 23 APRIL 2019

1.1 RESOLVED – that the minutes of the previous meeting of the Committee held on 23 April 2019 be confirmed and signed as a correct record.

2 REPORTS

2.1 Copies of the reports referred to below are included in the minute book.

3 APOLOGIES FOR ABSENCE

3.1 An apology for absence was received on behalf of Councillor David Tutt.

4 APPOINTMENTS TO OUTSIDE BODIES

4.1 The Committee considered a report by the Assistant Chief Executive regarding appointments to various outside bodies.

4.2 The Committee RESOLVED to agree to the appointments to outside bodies as set out in Appendix one of the report for the period to May 2021.

5 EAST SUSSEX PENSION BOARD - APPOINTMENT OF MEMBERS

5.1 The Committee considered a report by the Chief Operating Officer regarding appointments to the East Sussex Pension Board.

5.2 The Committee RESOLVED to agree to the appointment of the Pension Board members as set out in paragraph 2.4 of the report for a term of 2 years

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Date: **25 June 2019**

To: **Governance Committee**

By: **Chief Operating Officer**

Title of report: **Revisions to Procurement and Contract Standing Orders (PCSOs)**

Purpose of report: **To provide an overview of proposed amendments to the PCSOs, including the rationale for the changes.**

RECOMMENDATIONS:

The Governance Committee is recommended to recommend the County Council to approve the revised Procurement and Contract Standing Orders as set out in Appendix 1 of the report.

1 Background

- 1.1 The Procurement and Contract Standing Orders (PCSOs) set out how the Council governs spending by officers on goods, works and services, on consultants and contractors, and on direct care services. They cover all spend with external suppliers regardless of the source of funding (for example; revenue, capital, ring-fenced government money and/or any grant or third-party funding).
- 1.2 They have four main purposes:
- To ensure that the Council meets its statutory duty to deliver **best value for money** and creates healthy competition and markets for the Goods, Services and Works purchased.
 - To be **transparent** to our residents about how the Council spend their money.
 - To ensure that public money is spent **legally and fairly**.
 - To support **sustainability and social value** objectives, and our public sector **equality** duty, encouraging local small businesses.

2 Supporting information

- 2.1 The PCSOs have been updated to take account of:
- i. The introduction of an Annual Procurement Forward Plan (APFP) which provides a platform for early sight of key strategic procurements, improved planning and management of procurement projects and identification of a future savings pipeline.
 - ii. The introduction of more streamlined procurement thresholds, which reduces the burden on small and local businesses and the voluntary sector to win council work.
 - iii. Provision of consistent and aligned policy and process across the Orbis partnership, engendering greater efficiencies, reducing bureaucracy and developing a flexible pool of expert resources to conduct procurement activity.
 - iv. Incorporating the latest legislative and regulatory changes
- 2.2 Amendments have been included in order to ensure that the Council maintains a fit for purpose set of guidance and rules to govern the procurement process. In summary the changes are as follows:

- i. To implement an Annual Procurement Forward Plan (APFP) for all tenders over the OJEU threshold which CMT reviews and monitors each year. This provides the benefits of early sight to facilitate planning, resourcing and identification of opportunities for collaboration across the Orbis partnership.
- ii. To simplify the governance of tender processes, removing the existing Sourcing Governance Board (SGB) whilst maintaining effective risk management and audit trail of procurement strategy through service specific commissioning processes and governance.
- iii. Procurements above the regulatory threshold not identified on the Plan will require Chief Officers to report to CMT and for those above £1million through the Council's quarterly monitoring process.
- iv. To move the thresholds for formal tendering from £100,000 up to the regulatory limits of £181,302 for Goods and Services, £615,278 for Health and Social Care, and £4,551,413 for Works; and below these thresholds to require three quotations for spend over £25,000 (previously £15,000). This is intended to make it easier for local SMEs to bid for work with the Council. Below £25,000 services will have the flexibility to manage their own procurements, offering greater opportunity to source from local suppliers and reduced administrative burden.
- v. Based on 2018 figures, the changes mean a reduction of 26 tenders and services would handle 173 of their own orders.
- vi. Informational text which duplicates legislation is removed from the PCSOs, and will be revised to form clear, easy-to-use guidance for both Procurement officers and clients and published in the same timescale as the revised Orders.
- vii. Process Maps of changes are attached as Appendix 2.

2.3 The equivalent Orders in Surrey County Council and Brighton & Hove City Council are being revised along similar lines, to support effective partnership working in Orbis.

2.4 The revised Orders are attached as Appendix 1.

3 Conclusion

3.1 In amending the PCSOs we have taken into account good practice at other Local Authorities, and across the wider public sector. This has included reviewing standing orders and supporting policies from other county and unitary authorities across the South East.

3.2 The revised Orders were prepared in consultation with Finance, Legal, Audit, Business Operations and Procurement staff.

3.3 The Director of Procurement in consultation with the Assistant Chief Executive have delegated authority to amend and change the financial thresholds as limits are reviewed and reassessed by the UK Government.

KEVIN FOSTER
Chief Operating Officer

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Procurement and Contract Standing Orders

Rules to be followed when buying on behalf of
East Sussex County Council

Version 0.28

Version History

- V0.1 - 4.4.13
- V0.2 – 22.5.13
- V0.3 – 12.6.13
- V0.4 – 18.6.13
- V0.5 – 20.6.13
- V0.10 – 10.9.13
- V0.12 – 07.10.13
- V0.14 – 21.10.13
- V0.15 – 22.10.13
- V0.16 – 24.10.13
- V0.17 – 07.11.13
- V0.18 – 11.11.13
- V0.19 – 18.12.13
- V0.20 – 20.01.14
- V0.21 – 02.05.14
- V0.22 – 19.01.2016
- V0.23 – 04.02.2016
- V0.24 – 04.03.2016
- V0.25 – 10.03.2016
- V0.26 – 21.03.2016
- V0.27 – 17.12.2017
- V0.28 – 09.07.2019

1. Introduction

The Procurement and Contract Standing Orders (referred to as the 'Orders' from this point on) set out how the Council authorises and manages spending and contracts with other organisations. This ensures that prior to any significant expenditure there is proper consideration of the need first of whether to buy at all and service the need internally, or if external expenditure is required that it is made in a fair, open and transparent way.

Senior Officers (Heads of Service and above) are accountable for all procurement in their respective area of responsibility. Anyone who buys on behalf of the Council, including staff, contractors and consultants, is responsible for following these Orders, all relevant policies (see appendix 1), and the guidance provided by Procurement. Functions delegated to particular officers under these Orders may be carried out by other officers specifically authorised by them for that purpose.

These Orders must be considered along with the Council's Financial Regulations and Schemes of Delegation.

Note: In these Orders, 'You' means anyone who needs to buy from an external supplier. 'Regulatory Threshold' means any relevant threshold applicable to procurement by UK law or regulation. Further information about other terms used in these Orders is available as guidance on the Intranet.

1.1. Legal status of these Procurement Standing Orders

The Council is required by section 135 of the Local Government Act 1972 to maintain these Orders as part of our Constitution.

The Director of Procurement is the custodian of these Orders and is responsible for keeping them under review. If the law is changed in a way that affects these Orders then the Director of Procurement will recommend an update to the Governance Committee.

1.2 Key Principles

These Orders are based on the following key principles:

- a. To ensure that the Council meets its statutory duty to deliver **best value for money** and creates healthy competition and markets for the Goods, Services and Works purchased
- b. To be **transparent** to our residents about how the Council spend their money
- c. To ensure that public money is spent **legally and fairly**
- d. To support **sustainability and social value** objectives, and our public sector **equality** duty, encouraging local small businesses.

1.3. Compliance

All Officers, and any external contractors empowered to form contracts on behalf of the Council, must comply with these Orders at all times. If you breach them this may lead to disciplinary action under the Code of Conduct. The Director of Procurement will report any breaches of these Orders to the Statutory Officers Group on a quarterly basis.

Every contract made by the Council or on its behalf must comply with legislation, regulation, these orders and the Council's Financial Regulations.

Where there is a difference between current legislation governing procurement and these Orders, the legislation prevails. Where these Orders appear to conflict with other Council-determined rules the Assistant Chief Executive determines which takes precedence.

1.4. Scope

Apart from the exceptions listed below, these Orders cover all spend with external suppliers regardless of how they are funded or which systems are used to place orders with suppliers.

These Orders do not apply to the following items, which are managed by separate policies:

Exclusion	Relevant Policy/Law
Contracts for the acquisition or lease of land and/or real estate	Managed via Property Services
Contracts for permanent or fixed-term employment	HR/Recruitment Policies
Works or orders placed with utility companies (e.g. re-routing pipe-work)	This is carried out as part of larger construction contracts, which remain subject to these orders
Direct payments to customers following care assessment (for example, payments under Self-Directed Support or Individual Budgets)	Section 12 of The Care Act 2014
Non-trade mandatory payments to third parties, such as insurance claims, pension payments, payments to public bodies	These are not subject to competition due to their nature
A declared emergency authorised by the Emergency Planning Officer	The Civil Contingencies Act 2004
Awarding of Grants	Managed according to locally agreed Grant process or Corporate Funding Protocol.

Any contract relating to the engagement of Counsel or other legal specialists	Legal Services are either exempt from Regulations or are subject to the light touch regime, depending on the nature of the advice or representation sought
Placement of a child with Special Educational Needs where already directed following statutory assessment	Children and Families Act 2014 and ESFA guidance 2019-20 para 86

1.5. Roles and Responsibilities

The Director of Procurement is responsible for the complete process from procurement through to ordering and paying suppliers (known as 'Procure-to-Pay') across all Services and local systems. Any developments in the design of the process require the approval of the Director of Procurement.

The Procurement Service is responsible for:

- a. Working closely with Commissioners and Directors to agree and deliver an Annual Procurement Forward Plan to be reported to the Corporate Management Team and Cabinet
- b. Providing expert market knowledge to find the right suppliers for the Council
- c. Maintaining the Contract Management Framework for how contracts are managed
- d. Taking a commercial lead on all major contracts and relationships with suppliers alongside the Contract Manager
- e. Ensuring transparency over spend, contracts and contract opportunities
- f. Embedding social value and sustainability across the supply chain
- g. Ensuring efficient and effective purchasing practices are in place for all staff
- h. Providing commercial support as required, alongside Legal Services, where a decision has been made to decommission or in-source a service
- i. Ensuring suppliers are aware of, and follow, the Council's Supplier Code of Conduct when bidding and carrying out contracts

Anyone who buys from suppliers is responsible for:

- j. Complying with these Orders and all relevant policies (see appendix 1)
- k. Purchasing from existing contracts where they are in place
- l. Ensuring there is adequate budget available for any purchase
- m. Raising and ensuring a purchase order is approved before the requirements are delivered to the Council, regardless of which system is used
- n. Ensuring specifications meet the defined need and requirements and properly take into account equality and diversity as well as social value implications
- o. Ensuring that HR is consulted and the appropriate approval is obtained in respect of the engagement of any temporary workers or consultants outside of any agreed corporate contract
- p. Following the guidance and procedures set out in the Council Contract Management Framework, according to the value, risk and complexity of the contract.

Contracts are to be managed within Services, either by a dedicated contract manager or by a nominated officer who has these responsibilities as part of a broader role.

1.6. Annual Procurement Forward Plan

Chief Officers have delegated authority to carry out procurements with a view to managing the services for which they are responsible. To enable the Council to maintain an accurate oversight of procurement activity across a full range of Council services, the Director of Procurement is responsible for the development of an Annual Procurement Forward Plan (APFP). This is to list the following:

- a. For each Department, all contracts over Regulatory Thresholds which are due for extension, renewal or replacement in the coming financial year, and the notice required for this
- b. The aggregate contract value across the life of the contract
- c. The agreed budget allocated for the year in question
- d. The procurement activity required
- e. The expected start date for procurement
- f. The expected start date of any new contract or extension
- g. Whether there is an option to extend the existing contract or not
- h. Whether the spend is capital, revenue, or a combination

The APFP must be developed and agreed with the Directors of the relevant services, and submitted to the Corporate Management Team for information and monitoring purposes during the business planning cycle each year.

If a need arises during the year for procurement activity on contracts over the Regulatory Thresholds which have not been reported through the APFP, then these must be reported to CMT by the relevant Chief Officer concerned as soon as reasonably practicable.

Planned procurements for the financial year ahead with a value of £1m or more will be set out in the Portfolio Plan. Failure to include a procurement in the Portfolio Plan does not prohibit the procurement, but will be reported, together with an explanation as to why it was not in the Plan, through the Council's quarterly monitoring process.

2. Finding and contracting with suppliers

2.1. Purchase Orders

Once you have found the right supplier in accordance with these Orders, you must not make verbal commitments but must raise a Purchase Order (via SAP or equivalent service-specific system). This must be approved in accordance with the Council's Financial Regulations before it is sent to the supplier, and before any goods or services have been received. Details of financial approval levels are available on the Intranet.

2.2. Using Purchase Cards

The Council makes use of general Purchase Cards, which are effectively like credit cards and are used to make small purchases in a wide range of situations.

You must use purchase cards only as set out in the 'Purchase Card Rules and Guidance', unless otherwise agreed in writing by Procurement, or in emergency circumstances (see also section 4.2).

2.3. Temporary Staff, Consultants and Professional Services

Procurement works closely with HR to manage the Council's temporary workforce needs. This applies to any appointment that is outside the Council's direct employment. No temporary worker, agency or consultant may be procured or engaged outside of existing contract or framework arrangements without prior approval from HR.

A consultant is a person (not an employee), agency or firm engaged for a limited period of time on a project or requirement specific basis to carry out a specific task or tasks which meet a desired set of outputs or outcomes. A consultant provides subject matter expertise, support and/or experience to the Council either because it does not possess the skills or resources in-house or requires an independent evaluation/assessment to be made.

This definition excludes:

- a. Agency staff, interim or role specific duties which should be sourced through the Council's Corporate Contract;
- b. Routine services e.g. maintenance, cleaning and security;
- c. Professional services e.g. Architects, structural engineers, forensic archaeologists, specialist social care support, training etc.

Refer to the guidance available on the Intranet for Agency workers and consultants.

Temporary & agency staff, and other consultants or contractors, must abide by the terms of their contract with the Council and follow the Council's Code of Conduct and Conflict of Interest Policy.

2.4. Contract Value Calculation

Contract value means the estimated aggregate or recurring value payable in pounds sterling exclusive of Value Added Tax over the entire contract period including any extensions of the contract. Where the contract period is not fixed the estimated value of the contract must be calculated by multiplying the monthly spend value by 48.

Where an existing contract is being extended, the aggregate value includes the amount spent to date plus the expected forward value.

Contracts must not be artificially underestimated or disaggregated into two or more separate contracts with the intention of avoiding the application of these Orders or legislation.

In the case of Framework Agreements or Dynamic Purchasing Systems the contract value must be calculated to include the total estimated value, net of VAT, of all the contracts envisaged to be awarded for the total term of the Framework Agreement or the Dynamic Purchasing System.

2.5. Grants

The making of grants is not subject to these Orders. You must follow the rules and guidance for grant-making available on the Intranet (see appendix 1) and take into account the legal requirements concerning State Aid.

2.6. Bribery, Corruption, Canvassing and Collusion

Bribery and Corruption

You must comply with the Code of Conduct and the Council's anti-fraud strategy. You must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for you, the Officer, to prove that anything received was not received corruptly. Gifts and Hospitality must be recorded in the online register.

Canvassing and Collusion

All Invitations to Tender must include a requirement for tenderers to complete fully and sign a form of tender including certificates relating to canvassing and non-collusion. Every contract must contain a clause entitling the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor or his representative has practiced collusion in tendering for the contract or any other contract with the Council.

See the Counter-fraud Strategy (appendix 1).

2.7. Procurement and Contracting - Overview and summary table

Any Procurement, including extensions and variations to Contracts, set out in the Annual Procurement Forward Plan and reviewed by CMT is deemed as authorised irrespective of the Contract value, and must be advertised, awarded and signed/sealed in line with table 2.7.a columns F-J.

Any procurement not authorised as above must be authorised in accordance with table 2.7.a column E below.

Procurement must maintain a proper audit trail of all approvals and decisions, and track the delivery of savings and benefits in line with the Value Strategy agreed between Finance and Procurement.

2.7.a Summary table

A	B	C	D	E	F	G	H	I	J
Aggregate value including extensions	Purchase Card permitted?	Procurement Method?	How should you approach the market?	Who leads procurement?	Must the contract be formally advertised?	What type of contract is required?	Who must approve the contract award?	Who signs the contract on the Council's behalf?	Contract Award Notice needed?
£0 to £24,999	Yes if within rules & guidance and card limits	One written quote	Email / Call Supplier. Use a local supplier if they offer value for money	Service Officer	No	Standard Terms (see Council's website)	Budget Holder	Not Required – (Approval of Purchase Order)	No
£25,000 to £181,301	Only in formal emergency cases (see section 4.2)	Minimum of two quotes, but seek at least three. If using a framework, follow the rules for its use.	Contact Sourcing Solutions, who will lead sourcing activity	Sourcing Solutions	Yes, must be published via Contracts Finder	Standard Contract in line with agreed level of risk and complexity	Assistant Director for the Service or delegated manager	Under £100k Assistant Director or delegated manager Over £100k: Authorised Signatories via Legal Services	Yes – on Contracts Finder
£181,302 to £999,999	No	Goods and Services – Tender Works – Competitive quotation	Issue Tender via Procurement	Procurement	Yes, as required by Public Contracts Regulations	Contract in line with agreed level of risk and complexity	The relevant Chief Officer or Lead Cabinet Member	Under £500k: Authorised Signatories in Legal Services Over £500k: Sealed as a deed via Legal Services	Yes – as required by Public Contracts regulations
£1m and over	No	Works - up to £4,551,412 - Competitive quotations Works and Concession Contracts over £4,551,413: Full Tender or other compliant route Goods and Services: Full Tender or other compliant route Health, educational, cultural and social care related services above £615,278: Light Touch Regime Tender	Issue Tender via Procurement	Procurement	Yes, as required by Public Contracts Regulations	Contract in line with agreed level of risk and complexity	The relevant Chief Officer or Lead Cabinet Member	Sealed as a deed via Legal Services	Yes – as required by Public Contracts regulations

3. Procurement methods

3.1. Tenders over Regulatory Thresholds

Procurement is responsible for selecting the most appropriate route to market.

3.2. Use of Selection Questionnaires (SQs)

Procurement will apply minimum standards of experience, reputation and economic standing to suppliers to test their suitability to bid for a Council contract.

Procurement must use the Council's standard Selection Questionnaire and adhere to statutory guidance for all procurements of contracts above the relevant Regulatory Threshold.

Procurement must not use a two-stage process for contracts with a value less than regulatory threshold for goods and services, regardless of whether the contract is for goods, services or works (including Light Touch services).

All the methods and criteria used for assessing the suitability of suppliers must be transparent, objective and non-discriminatory.

3.3. Contracts reserved for social enterprises and the employee-owned sector

The Council may reserve participation in procurement processes for limited types of services contracts to certain qualifying organisations from the employee ownership and voluntary sectors. The maximum duration of contracts awarded under this power is three years.

Procurement must obtain approval from Legal Services before commencing a procurement in reliance on this Order.

3.4. Evaluation

Tenders over Regulatory Thresholds are evaluated based on the identification of the 'Most Economically Advantageous Tender (MEAT)'. This takes price into account, alongside quality and social value considerations, but does not require the tender to be awarded to the lowest priced bidder. The weighting given to the considerations will be determined by the Head of Procurement in consultation with the Chief Officer. Where written quotations are invited for contracts below regulatory thresholds MEAT should also be used, but where no clear quality criteria are specified then the Head of Procurement can determine that an assessment can be made based on price. The relevant Chief Officer can accept the most economically advantageous tender, or the lowest cost tender, where such a contract award criterion is being used.

For all tenders over Regulatory Thresholds, a full record of all key decisions and process in relation to the procurement procedure must be kept in the Procurement Report, including such details as required by Regulation 84 of the Public Contracts Regulations 2015.

3.5. Collaboration with other public bodies

The Council may enter into collaborative agreements for the procurement of goods and services with other public bodies or Central Purchasing Bodies where this offers best value for money for residents. Where this is proposed, you must seek advice from Procurement in the first instance.

3.6. Approved or 'Select' Lists

The Council does not operate general 'approved' or 'select' lists of suppliers, instead a formal arrangement must be in place via either a framework agreement, a dynamic purchasing system or other mechanism compliant with regulations.

3.7. Framework agreements and Dynamic Purchasing Systems (DPS)

All requirements to use existing frameworks or DPS, or to set up new ones, must be referred to Procurement, who will make appropriate arrangements in consultation with Legal Services as required.

Where the Council accesses an existing Framework Agreement or DPS, the Framework Agreement or DPS terms and conditions of contract must be used, amended as appropriate, as permitted by the Framework Agreement or DPS and the Regulations.

Before entering into these, due diligence checks must be carried out to demonstrate that the Council can lawfully access them and that they are fit for purpose and provide value for money.

3.8. Concession Contracts

Concession Contracts are contracts under which the council outsources works or services to a contractor or provider, who then has the right to commercially exploit those works or services in order to recoup its investment and make a return. The key feature is that the contractor/provider bears the operating risk of the arrangement and so has no guarantee of recouping its investment or operating costs. Concession Contracts must meet certain requirements and advice must be sought from Procurement in the first instance if a concession contract is required.

3.9. Sustainability and Social Value

The Public Services (Social Value) Act 2012 places an obligation on the Council to consider the economic, social and environmental well-being of our area when we award contracts over Regulatory Thresholds.

Our procurement approach covers these areas:

- Economic Sustainability – we aim to purchase goods, works and services which enhance the local economy. We recognise the importance of Small & Medium Enterprises (SME) and Voluntary & Community organisations and Social Enterprises (VCSE) to the local community and ensure every effort is made to make our contract opportunities and tender processes accessible to them
- Social Sustainability - we aim to purchase goods, works and services which promote community well-being, and that supply chain partners operate fair and ethical working practices including compliance with the Modern Slavery Act 2015
- Environmental Sustainability – we aim to purchase goods, works and services which minimise our carbon footprint, encourage a positive impact on the local environment, and

have the best value costs and benefits taking into account their whole life cycle from origination to disposal

- Equalities & Diversity - we only purchase goods, works and services from suppliers who meet our standards of equality of employment and service delivery, and we ensure that the tender process is free from discrimination or perceived discrimination in accordance with the Council's Equality Scheme
- Compact – where we are purchasing from the voluntary and community sector you must comply with the Compact Code of Practice on Funding and Procurement

Procurement must carry out an assessment of relevant Social Value and record the results in the Procurement Report. Contract Managers should include social value delivery checks in line with the Contract Management Framework.

All suppliers to the Council are required to comply with all relevant environmental legislation and regulation, and any such superseding legislation. The Council may also introduce from time to time particular local and national policies which support environmental and sustainable procurement and Officers should include these in relevant procurement documentation and procedures.

3.10. Voluntary Ex-Ante Transparency Notice (VEAT)

Should a VEAT Notice be assessed by the Head of Procurement (ESCC) and Legal Services as being required to manage potential risk to the Council, this will be approved by the Director of Procurement and Monitoring Officer, and a log of all published VEAT notices maintained by Procurement.

3.11. Developing Local suppliers

The Council is committed to encouraging businesses in the county to compete for contract opportunities in order to support the development of the local economy. It provides information and support via dedicated websites and through supplier events. We actively encourage the use of locally-based suppliers where they can offer best value for money. Local is defined as within the county boundaries of East Sussex. If no supplier exists within these boundaries this can be extended to include Orbis partner county boundaries.

You must use our purchasing power to work with local businesses wherever possible where this provides equal or better Value for Money for the Council than alternatives. However it must also be noted that the Public Contracts Regulations require that any procurement activity should not discriminate, favour or show bias.

You should carefully review the required specifications of any contract to ensure that small and medium sized enterprises are not being disadvantaged in their ability to tender for goods, works or services with the Council.

For contracts over Regulatory Threshold you must also consider whether the contract should be divided into Lots in order that small and medium sized enterprises can bid for local work. The decision not to divide into Lots should be clearly documented in the Procurement Report.

3.12. Commercial Confidentiality and Intellectual Property

If you are discussing developments with suppliers you should take care to ensure that you do not inadvertently share key commercial or confidential information such as budgets, existing pricing from other suppliers, or suggestions for improvements unless you have a Non-Disclosure Agreement in place.

This protects the Council's interests and our intellectual property. Procurement are responsible for putting these agreements in place where appropriate with advice from the Monitoring Officer, and can provide commercial advice and support in dealing with suppliers. Where arrangements include the Intellectual property of the Council, appropriate or relevant contract clause/s must be included.

Intellectual property is a generic term that includes inventions and writings. If these are created by the Council as a general rule they belong to the Council not the supplier. Certain activities undertaken by the Council may give rise to items that may be patentable, for example software development. These items are collectively known as Intellectual Property.

4. Waivers and Emergencies

4.1. Waivers

In the event that the application of these orders prevents or inhibits the delivery or continuity of service, a waiver may be sought. A waiver is required for any proposed procurement or contractual action which is not compliant with these Orders. A waiver cannot be given if it would contravene the Public Contracts Regulations 2015 or any other applicable legislation.

You must obtain approval for a waiver in writing specifically identifying the PSO that is being waived and the reason for which the waiver is sought, including justification and risk. The approval process for waivers is set out in the table below. When a waiver is sought advice from Procurement should be sought at the earliest opportunity. A waiver cannot be granted retrospectively; this is viewed as non-compliance with these Orders.

Procurement must maintain a log of all waivers, and store documentation for waivers on the Contract Management System.

The approval required for a waiver is as follows:

Contract Value (for waivers in relation to existing contracts this refers to the value of the original contract)	Approval
Up to Regulatory Thresholds	Chief Officer in consultation with Head of Procurement (ESCC)
Over Regulatory Thresholds	Chief Officer in consultation with the Head of Procurement (ESCC) and the Assistant Chief Executive

4.2. Emergency Purchases

An emergency purchase is only allowed for purchasing outside the hours 9am to 5pm on working days or at weekends and during public holidays where there is an imminent risk to life or property.

An emergency purchase can also apply in situations outside these hours where there is a need to arrange for emergency care where an adult or child is at risk of physical harm, or to secure Council property or assets e.g. when there has been a break in or equipment failure, such as flood. You can use a Purchase Card, within your allocated limits, to pay. If the supplier does not accept Purchase Cards then you may give a verbal order and raise a formal purchase order the following working day. You must also inform Procurement of any emergency purchases on the following working day.

Issues arising with contracts leading to a requirement for urgent mitigation action are not necessarily considered emergency purchases. This will be dealt with as part of business continuity within the contract management process.

5. Liability and Security

5.1. Insurance Liability

To protect the Council, insurance is required where we use goods, works or services provided by a supplier (including consultancy).

The minimum levels of cover for Public Liability Insurance and Employers' Liability Insurance required, and Professional Indemnity Insurance are set out below.

- a. Public Liability - £10m
- b. Employers Liability - £5m-£10m depending on the contract used
- c. Professional Indemnity - £1m-£5m (undertake a risk assessment and take advice from the Insurance Team)

In some instances where the contract value, risk or scope may be particularly high, additional levels of cover may be required. Equally, where some contracts may be suitable for micro business, lower levels of insurance may be considered. Any variation from the standard levels above must have the agreement of the Insurance team and be noted in the Procurement Report.

5.2. Financial Security

Procurement and Finance must confirm that suppliers are financially robust both prior to contract award and during the life of the contract as appropriate. Details of the requirements or potential guarantees a supplier may need to provide must be set out in the procurement documents.

If either the total aggregate value of the contract exceeds £2m within twelve months, or there is doubt as to the financial credibility of a supplier but the Council has decided to accept the level of risk, then additional forms of security to a level determined between the Assistant Chief Executive and the Chief Finance Officer are required, for example:

- a. a Parent Company, Ultimate Company or Holding Company guarantee where their financial standing proves acceptable;
- b. a Director's Guarantee or Personal Guarantee where finances prove acceptable;

- c. a Performance Bond, retained funds or cash deposit;
- d. any other security (such as escrow arrangements) as determined by the Section 151 Officer and/or the Monitoring Officer.

All documents inviting tenders and contracts issued must contain a statement that the supplier needs to provide security for performance and the level of security needed, financial checks to be applied at tender, plus how financial suitability will be assessed and any checks that will be required during the life of the contract.

Additional documentation, where required, should be stored on the electronic tendering system.

5.3. Document Retention periods

The retention of tenders and contractual documentation is prescribed in the Limitation Act 1980 and the Public Contract Regulations. In summary:

- a. All received Tenders & SQs must be retained for a minimum of eighteen months following the issue of the Contract Award Notice;
- b. All signed contracts under £499,999 (including all tender documentation) must be retained for a minimum of six years following contract expiry;
- c. All sealed contracts over £500,000 (including all tender documentation) must be retained for a minimum of twelve years following contract expiry.

Procurement must maintain an online record confirming the location of the contract/tender and scheduled date of destruction.

6. Managing Contracts

All purchases must be delivered under a form of contract approved by Legal Services and Procurement. (Contracts can take various forms from Frameworks, Spot purchases, call off agreement and purchase orders). The Council manages the process of awarding contracts via its e-tendering and contract management systems, to ensure that contracts are properly filed and documented.

Where contract funding is received by the Council from a third party (for example, an incoming grant), the contract terms must include a provision for dealing with liabilities under the contract should that funding cease to be available.

6.1. Contract Segmentation and Management

Heads of Service are responsible for the performance of contracts in their area in line with the contract segmentation model, and all Contract Management activities are to be delivered either by a dedicated contract manager or by someone with that responsibility as part of a wider role.

Procurement is responsible for assessing the level of risk, value and complexity of managing a contract once it has been established (known as 'segmentation') using a consistent model approach with six levels (1 being the higher value, higher risk, most complex and 6 the lowest). Procurement will provide support, training and guidance in line with the segmentation model.

All identified Level 1 and 2 contracts must have a written business continuity plan, to be held on the contract management system.

6.2. Contract Award Notices

A full Contract Award Notice must be published no later than 30 days after the award of a contract for all contracts over the Regulatory Threshold values, excluding call-offs from framework agreements. For all contracts called-off from a DPS, the Notice must be published within 30 days of the call-off or be grouped together and published on a quarterly basis within 30 days of the end of each quarter.

For contracts above threshold and where commercial sensitivity or personal information is associated with the publication of this information, please contact Procurement for advice.

For all other contracts under Regulatory Thresholds a simplified Contract Award Notice must be published on the Contracts Finder website for all contracts awarded over a value of £25,000 (including all call-off contracts from Framework Agreements) as soon as is reasonably practicable after the conclusion of the contract.

All staff undertaking procurement competitions from Framework Agreements are responsible for the providing the required appropriate information to enable publication of the Contract Award Notice.

6.3. Contracts Register

All contracts over £5,000, including any variations or amendments, must be registered and maintained in the Electronic Contract Management System (eCMS) managed by Procurement. The council is required by law to publish transparency data about our contracts on a quarterly basis. Data regarding contracts may additionally be maintained in other systems for local use.

All original signed contracts over Regulatory Threshold must have a completed summary contract certificate and be stored in a secure fireproof location.

All contracts over Regulatory Thresholds must have a designated Contract Manager throughout the life of the contract as defined in the Council contract management framework segmentation model.

6.4. Contract Modifications and Extensions

Extensions

Contracts that have been originally advertised with extension options can be extended subject to acceptance in accordance with Table 2.7.a. and under Regulation 72 of the Public Contracts Regulations 2015.

Extensions or renewals of an existing Contract which are not included in the original public notice or the contract itself can, in certain circumstances, be made without triggering a requirement for a new Procurement exercise. For contracts with an original estimated value below the Regulatory Threshold the extension can be approved by the Chief Officer in consultation with the Head of Procurement.

For those contracts with an original estimated value over the Regulatory Threshold any extension which is not defined by the original public notice or the contract itself may be approved by the Chief Officer where permitted by law and where best value to the Council has been demonstrated. The Chief Officer must consult with the relevant Lead Cabinet Member, the Head of Procurement and the Assistant Chief Executive.

Other Modifications

For contracts with an original estimated value over the Regulatory Threshold the agreement of the Head of Procurement (ESCC) and the Assistant Chief Executive is required before any modifications (save for extensions which are dealt with in the proceeding paragraph) are made.

Any extension or modification must have an approved budget allocation. All amendments must then be recorded in writing, signed appropriately and retained with the original contract on the Contract Management System.

Procurement guidance is available on the Intranet setting out the circumstances under which contract modifications or extensions are permitted by Regulation 72 in the Public Contract Regulations 2015, or superseding legislation or regulation.

6.5. Contract Novation

Where a contractor sells, merges or transfers their business to another organisation, the existing contract(s) the Council has with that contractor should be novated if this is acceptable to the Council and permitted by law. A Chief Officer may approve the novation of a contract to a new supplier if they are satisfied as to the financial standing and the technical competence of the proposed supplier. The agreement of the Chief Finance Officer and the Assistant Chief Executive is required and if a novation is agreed, then the revised contract will be passed to Procurement Sourcing Solutions who will update the contract register and ensure that the master data is updated on the relevant purchase to pay system.

7. Paying our suppliers

7.1 Invoice Payments

The Council aims to move all invoicing to electronic format to make it easier for our suppliers to trade with us and to track the progress of orders and payments.

Where you are using a supplier registered for electronic invoicing you must follow the rules and guidance issued by Procurement.

Suppliers must issue all invoices via the route provided by Business Operations. No invoice may be received or processed directly by your Service unless it is agreed as a payment exception by the Head of Procurement, who may agree general exceptions where Service-specific systems are in use. Business Operations are responsible for maintaining a register of all agreed payment exceptions.

All invoices received in Business Operations must include a Purchase Order number. Invoices without a Purchase Order number will be returned to the supplier.

Suppliers cannot be paid until you have confirmed that the requirement has been satisfactorily delivered. A Purchase Order must be followed by a Goods Receipt Notice before an invoice can be paid. It is the purchaser's responsibility to ensure all purchases are receipted to the appropriate value and in a timely fashion.

7.3 Payment Terms

The standard payment terms are 30 days from the invoice date, with payments made via BACS (electronic bank transfer). If a Supplier has identified themselves as an SME ("small or medium enterprise"), they can be paid on preferential payment terms of 10 working days.

You must obtain the agreement of the Head of Procurement (ESCC) and the Section 151 Officer (or authorised delegates) for any deviation from the standard payment terms. This must be in writing as a Payment Exception.

Where payments are agreed in advance, appropriate review of a supplier's financial stability and standing and due regard for risk in the event of supplier failure must be undertaken and agreed by the Head of Procurement (ESCC) and the Section 151 Officer.

8. Disposing of surplus goods

Disposal of surplus materials, goods or assets (including recycling of materials that have a scrap value), must have adequate defined processes and controls to ensure that the council receives proper reimbursement, where appropriate and cost effective.

In principle, for assets being sold with a value of:

£0 - £14,999	A minimum of 1 bid is required
£15,000 - £99,999	A minimum of three bids must be invited;
£100,000 and over	A minimum of three sealed bids must be invited

You must seek advice from Procurement when making valuations and the book value of the asset will be primarily used to calculate value. In most cases, it is anticipated that the highest bid received will be accepted.

Where recycling of materials can be progressed to sale or scrap, the council may enter into a profit share arrangement with Contractor. Examples are construction, servicing and repair type contracts, where scrap metals or building materials can be re-sold. The contractor will need robust processes to define how they deal with disposal and council authorisation to sell scrap value materials or goods.

Care must be taken to ensure that environmental sustainability as well as security and other associated issues and obligations (including those from the Data Protection Act and WEEE Regs) are considered and complied with when disposing of goods.

Appendix 1 – policies and guidance relevant to these Orders

All Officers must follow the Council's policies, in particular those relevant to these Orders, which are listed below.

Financial Procedure Rules (part 4 of the Constitution)

Scheme of Delegation (see part 3 Table 6 of the Constitution)

Code of Conduct (see part 5 of the Constitution)

Ethical Procurement Statement

Guidance for Agency workers and consultants

Guidance for Grants and External Funding

Procurement in the UK is regulated by:

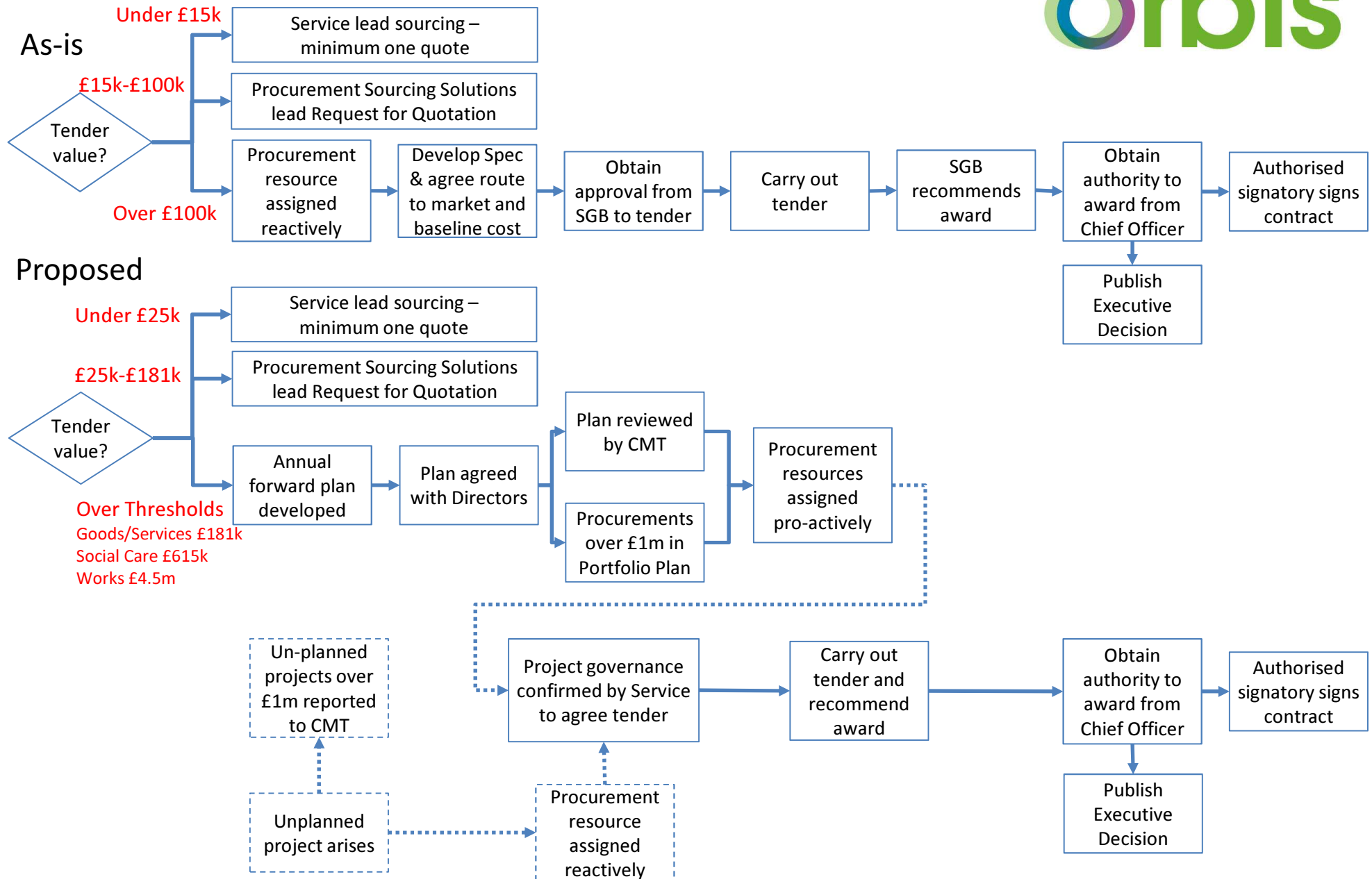
The Public Contracts Regulations 2015

The Concession Contracts Regulations 2016

The Public Services (Social Value) Act 2012

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Appendix 2 Overview of Process Changes



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Report to:	Governance Committee
Date of meeting:	25 June 2019
By:	Chief Operating Officer
Title:	Consultation on the Proposed Regulations to Implement the £95k Exit Payment Cap
Purpose:	To inform the Governance Committee about the Government's proposal to introduce a cap on exit payments in the public sector and provide a draft response to the current consultation on the regulations to implement the cap.

RECOMMENDATIONS

The Governance Committee is recommended to:

- 1. note the Government's proposal to implement a Public Sector Exit Payment Cap; and**
 - 2. give their views on the proposed draft response to the consultation on the regulations to implement the cap and delegate authority to the Chief Operating Officer to respond to the consultation, reflecting the Committee's views.**
-

1. Background

1.1 The Government first announced plans to introduce a cap on exit payments in the public sector in 2015. The Council's response to that consultation was essentially not in favour of such a cap and the Governance Committee approved a consultation response setting that out at its meeting on 22 September 2015. A copy is attached at Appendix 1.

1.2 Following that consultation, the cap on exit payments was legislated for in the Enterprise Act 2016 which amended the Small Business, Enterprise and Employment Act 2015. However, this required secondary legislation to be introduced to effect the cap.

1.3 On 10 April 2019, HM Treasury opened a further consultation on draft regulations, directions and guidance to implement the cap. The draft regulations define the types of payments intended to be subject to the cap, how the proposed cap is intended to operate and the scope of the regulations.

1.4 It is proposed that the exit payment cap remains set at £95k and will include redundancy payments, severance payments, PILON (pay in lieu of notice) if more than three months, pension strain costs and other payments made as a consequence of termination of employment. Payments related to death in service or ill health retirement, pay in lieu of holiday and payments made in compliance with a court or tribunal order are excluded

1.5 It should be noted that although regulation 153A of the Small Business, Enterprise and Employment Act 2015 allows for Regulations to be introduced which change the cap, there is no provision for the cap to be index-linked.

1.6 The cap will apply to the whole of the public sector but implemented in two stages with the majority of public sector employers in the first stage. It is proposed that the UK Civil Service, the NHS, Academy Schools, Local Government including Fire Authorities and Maintained Schools and Police Forces will be included in the first stage.

2. Supporting Information

2.1 There are a number of specific considerations that are worth highlighting.

Redundancy Payments

2.2 The draft regulations propose that the statutory redundancy element of an exit payment cannot be reduced. If the cap is exceeded, other elements that make up the exit payment must be reduced to

achieve an exit payment of £95,000. In circumstances of redundancy, the Council's current local discretionary policy is to pay an enhanced redundancy payment, based on (i) the actual, uncapped, weekly rate of gross pay of the employee and (ii) to enhance the lump sum severance payment further by applying a multiplier of 1.75 (up to a maximum of 52.5 weeks' pay).

2.3 As the enhanced redundancy payment is over and above the statutory entitlement, it may be appropriate for consideration to be given to the Council's current policy discretion, to apply an enhanced redundancy payment, once the outcome of the consultation is known.

Local Government Pension Scheme – LGPS

2.4 The draft regulations currently include pension strain costs as counting towards the cap. These arise in circumstances where an individual is accessing their pension before their normal date of retirement. Under the LGPS regulations, where an individual, over the age of 55, is made redundant, it is mandatory for the Council to pay the cost of the pension strain arising. It is important to note however that this is not cash for an individual in the same way as a redundancy or compensation payment and neither is the pension being enhanced beyond the entitlement the individual has earned; the strain costs are simply a reflection that the pension entitlement is being accessed earlier than expected (i.e. no more employer or employee contributions will be made).

2.5 The current policy intent of the regulations is for the individual's pension benefits to be reduced to the extent that the exit payment cap is not breached, with the individual having the option of paying extra to buy-out some or all of the reduction. The LGPS regulations do not currently allow partial reduction of pension benefits or the buying out of a reduction. As such, amendments to the LGPS regulations will be required. At present, there is no clarity about the Government's plans to enact such amendments.

2.6 It is clear that the inclusion of pension strain costs will affect many staff, not just the target group of 'high earners'. Some indicative examples have been worked through and these show that with 25 years plus service, frontline staff such as Senior Practitioners and Team Leaders will be impacted. These are attached at Appendix 2.

Relaxation of the cap

2.7 The draft regulations set out the circumstances in which the cap must be relaxed - mandatory cases (TUPE, complaints under whistleblowing or discrimination) and the circumstances when they may be relaxed – discretionary (to avoid undue hardship, to effect urgent workplace reforms or exits agreed before the regulations take effect).

2.8 The power to relax the cap is delegated to Full Council. However, where this is on discretionary grounds, the consent of HM Treasury is also required which potentially undermines the current autonomous status of Councils as democratically elected bodies. In addition to this, the grounds on which the cap can be exercised are very loosely defined, for example, 'undue hardship'. Local policies will therefore need to be developed to define this more clearly. Given the reach and impact of the cap, it is likely that this will lead to dispute and challenge, including through legal processes, in relation to how this discretion is exercised. Likewise, the provisions around relaxing the cap in circumstances of complaints of whistleblowing and discrimination are likely to drive more litigious behaviour.

Broader Impact

2.9 Given the impact of the cap, it is highly likely that its implementation will significantly reduce our ability to achieve workforce reductions through voluntary means, therefore leading to more contentious negotiations with the attendant increase in costs and time associated. In addition, given that the cap will not just impact on the target group of 'high earners' but also on mid-level staff with long service, it is likely to have a negative impact on the image of Local Government as trusted employer of choice as staff will no longer be able to access all the benefits they have earned.

2.10 There are already a number of significant recruitment and retention issues in the local government workforce, for example, Social Workers and direct care staff, and the implementation of the cap is likely to compound this, particularly as it is not currently proposed for the cap to be index-linked.

3. Conclusion and Recommendations

3.1 The draft regulations raise a number of issues as highlighted above. In particular, it is clear that the cap will impact on a range of staff and not just the government's target group of 'high earners'.

3.2 The consultation closes on 3 July 2019 and attached at Appendix 3 is the proposed draft response. In formulating our response, we have linked in with both our public sector neighbours and professional bodies such as the Local Government Association and ALACE (the Association of Local Authority Chief Executives and Senior Managers) which are along very similar lines to ours. The Committee is invited to review this response and make any amendments it deems appropriate.

KEVIN FOSTER
Chief Operating Officer

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LOCAL MEMBERS

All

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Consultation on a Public Sector Exit Payment Cap

Question 1 What other forms of exit costs do you think are relevant in this context?

We do not support the introduction of a cap. If one is introduced, it is our view that this should only be for genuine exit payments (see response to Q3) ie redundancy payments

Question 2 Do you agree that the Government should introduce a cap on the value of public sector exit payments on the basis set out above [see page 10 of consultation document].

Whilst recognising that exit payments need to be proportionate, it is important to recognise that these are important tools in enabling local authorities to achieve workforce reductions. This is of particular relevance currently as we, in common with most other Councils, are developing proposals to transform and reduce the services delivered in order to meet the significant financial challenges we are facing over the next 3 years and beyond. The introduction of a cap will significantly reduce our ability to achieve the necessary workforce reductions through voluntary means and will therefore lead to more contentious negotiations with the attendant increase in costs associated with that, as well as the likely negative impact on the workforce in terms of morale and motivation.

We are confident that we are proportionate in our approach and that legislation of the kind proposed would remove the County's freedom to operate without clarity as to why the Government feels that it needs this legislation for local authorities. This seems at odds with the Devolution agenda, which we welcome, which seeks to further devolve powers and funding to Local Authorities. Publication of such data is welcomed with regards to public trust and transparency; electors should be able to hold local politicians to account for these payments, unfettered by imposed national limits.

Question 3 Do you agree that the payments listed above should be subject to a cap on exit payments under the terms set out above? If you believe certain payment types should be excluded please provide a rationale and examples.

No – we believe the following should not be included:

- Payment for untaken annual leave – this is effectively pay for work they have carried out
- Pay in lieu of notice – a PILON payment is effectively damages and therefore not appropriate to include in a cap
- Special severance payments – given the circumstance in which these are used, inclusion would significantly reduce and in some cases remove our ability to settle any litigation. Inclusion of this would therefore likely increase costs to the tax payer as the full legal process would then ensue. Severance Payments are subject to a robust business case, including the inclusion of a full cost benefits analysis and demonstrate that entering into them is a cheaper option for the public purse than litigation.

Question 4 Are there further payments the Government should include?

No

Question 5 Do you agree that a cap on exit payments should be set at £95,000? If you think an alternative level would be more appropriate, please provide evidence and analysis to support your proposal.

No, we disagree with the concept of the national cap – please see responses to Q1 and Q2.

Question 6 Are there other ways to ensure such arrangements are consistent with the cap on lump sum payments?

Please see responses to Q1 and Q2; the elected Council Members are able and do ensure all arrangements are appropriate.

Question 7 Do you agree with the proposed approach of limiting early retirement benefits with reference to the cost for the employer? What alternative approaches would you suggest and why?

Increasingly the public sector is operating in a commercial environment. Limiting benefits in the way proposed will inevitably limit the flexibility of public sector employers and reduce their ability to compete in the same way as private sector employers. Additionally, if local Council Members felt that this blanket approach was of value, it would be in place already. The assumption is that Members are not able to exercise judgement and balance in this at a local level.

In addition, it is our view that ‘pension strain costs’ should not be included in any type of cap as these are not exit payments. The Pension strain costs are calculated based on the performance of individual pension funds and as such, inclusion of these would be inequitable. Further, the ability for an individual to access an unreduced pension at age 55 if made redundant is a feature of the statutory LGPS .

Question 8 Do you agree that the Government has established the correct scope for the implementation of this policy?

No – please see responses to Q1 and Q2.

Question 9 How do you think the Government should approach the question of employees who are subject to different capping and recovery provisions under TUPE rules following a transfer to (or from) the private sector and whether there should be consistency with public sector employees in general.

We do not support the introduction of a cap. However, in the event one was introduced, where individuals are outsourced to the private sector, comparability should then be with the private sector and the freedoms operated, rather than the public sector. By the same token, it is logical that where individuals are transferred into the public sector, they should be subject to the same provisions as their public sector comparators.

Question 10 Do you agree with the proposed approach for waivers to the cap on exit payments?

Please see responses to Q1 and Q2.

Question 11 Are there other impacts not covered above which you would highlight in relation to the proposals in this consultation document?

Please see response to Q2.

Question 12 Are you able to provide information and data in relation to the impacts set out above?

n/a

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Examples Showing Impact of £95k

Position	Age when emp ends	Years' service when emp ends	FTE	Grade	FTE salary	Statutory Redundancy Payment	Enhanced Redundancy Payment	Pension Strain	Total 1 (statutory + pension strain)	Above / Below £95k	Total 2 (enhanced + pension strain)	Above / Below £95k
Practice Manager	58	39	1	LMG2	£47,546	£25,987	£45,478	£73,514	£99,501	+£4,501	£118,992	+£23,992
Snr Prac OT	56	37	1	SS13	£41,965	£22,132	£38,731	£100,546	£122,678	+£27,678	£139,277	+£44,277
Snr Prac SW	58	27	0.92	SS13	£41,965	£21,077	£36,885	£55,841	£76,918	-£18,082	-£92,726	-£2,274
Snr Trading Standards Officer	55	29	1	SS12	£36,133	£18,710	£32,742	£72,521	£91,231	-£3,769	£105,263	+£10,263

The draft regulations propose that the statutory redundancy element of the exit payment cannot be reduced. Using the 'Practice Manager' example above, the statutory redundancy pay is £25,987, leaving £69,013 until the cap is reached. The enhanced redundancy payment is £45,478, therefore leaving only £49,522 until the cap is reached. The greater the amount available towards pension strain costs will reduce the impact on the pension reduction.

Our current policy does not provide for any choice around whether or not an enhanced redundancy payment is made. Assuming the LGPS regulations are amended to allow for partial reduction of pension benefits, consideration could be given to amending our current policy to allow individuals to decide whether they want to take a statutory or enhanced redundancy payment, depending on how they are impacted by the cap. This will be a very individual decision, based on factors such as whether an immediate lump sum or annual pension at the maximum amount that can be achieved is more important.

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Restricting Exit Payments in the Public Sector: Consultation on implementation of the regulations – Proposed Response

Q1. Does draft Schedule 1 to the Regulations capture the bodies intended (described in section 2.1 of the consultation paper)? If not, please provide details

NO

The list of bodies does not reference Unitary Councils.

Q2. Do you agree with the current list of bodies in scope, for the first round of implementation? If not, please provide reasons

NO

The Enterprise Act 2016 received Royal Assent on 4 May 2016. The Treasury has had almost 3 years to bring forward an approach that applies across the public sector. It is unacceptable and unfair that the regulations might apply to many parts of the public sector before they are brought into force for other public bodies.

It is, however, difficult to comment further as it is not clear which bodies will be included in the second round of implementation and no reason has been given for this different treatment.

Q3. Do you agree with the exemptions outlined? If not please provide evidence.

NO

Bodies in Scope: we do not believe that all exit payments in respect of the armed forces and the security service should be exempt. For senior officers or officials, it is normal to work until their mid-50s or beyond and earn relatively high salaries with good pensions. We do not believe therefore that there is a rationale for a blanket exemption for such posts.

Payments in scope:

It is our view that the cap should only apply to genuine exit payments such as redundancy payments. We do not believe that pension strain costs should be included as these are not payments to the individual but rather to a pension fund to ensure the individual gains access to the pension they have earned and paid into over a long period of time. In addition, the existence of the cap will mean that the terms of the pension benefits being offered are different to those that individuals signed up to and therefore planned for, when they joined the pension scheme.

It is also important to note that the inclusion of pension strain costs will not only affect the 'high earners' that are the Government's target group but also mid-level staff with long service eg frontline Senior Social Worker and Team Leader roles where the post holders have more than 25 years' service.

Further, under the local government pension scheme regulations, it is mandatory for councils to pay the cost of pension strain where an individual aged 55 or over is made redundant and there is no choice for the employee – including on whether to defer receipt of pension if the cap is brought into force. Further clarity and guidance is therefore required on the proposed option of allowing partial reduction and the option of buy-out.

The method of calculating pension strain cost is currently set locally by each administering authority and is based on the demographics of their membership and actuarial assumptions. This will therefore result in the exit payment cap having different results for individuals in the LGPS in different administering authorities, despite being the same in all other respects, eg age, salary, length of service etc.

The cost of pension strain is not cash in an individual's pocket in the same way as a redundancy or compensation payment i.e. it is not an immediate lump sum payment to an individual but rather it is spread out over the life of the pension. Further, it does not give anyone a pension that is higher than the entitlement they have earned. We therefore feel strongly that pension strain should be omitted altogether. At the very least, its "cash value" to the individual should be assessed by applying an appropriate divisor as the pension will be received over many years, not in a single lump sum. We would suggest a divisor of 20, the mirror of the multiplier of 20 used to test whether a pension exceeds the lifetime allowance.

Finally, bearing in mind the recent changes to the Tax and National Insurance treatment of payments in lieu of notice to simplify the system, the exemption for payments in lieu of notice (where notice is three months or less) should be extended to all payments in lieu of notice to provide clarity and simplify calculations on exit.

Q4. Does the guidance adequately support employers and individuals to apply the draft Regulations as they stand? If not, please provide information on how the guidance could be enhanced.

NO

The guidance has largely been written from the perspective of Government Departments as there are several references to what departments should do. Given the different nature of the Local Government Pension Scheme and the autonomous role of directly-elected councils, we believe there should be a separate version that better meets the needs of Local Government.

In addition, greater clarity on the order of priority for different payments is needed e.g. redundancy pay, pension strain costs, other payments. Allied to this, clarity on the provisions for offering a cash payment as an alternative to a pension strain cost is required.

The guidance is not clear on whether the power to relax the cap can be delegated by Full Council to another sub-Committee, particularly important given the frequency of Full Council meetings.

Further guidance on how the regulations will operate for Schools and Academies is also required, particularly in terms of the relaxation of the cap arrangements.

Finally, a clear date for when they will come into force is needed with sufficient lead-in time to make necessary adjustments, policy changes and communications

Q5. Is the guidance sufficiently clear on how to apply the mandatory and discretionary relaxation of the Regulations, especially in the case of whistleblowers?

NO

The guidance on relaxation is very widely written and will require each organisation to determine a policy/protocol setting out the circumstances that would be deemed to meet the criteria for relaxation. As well as resulting in a lack of consistency in the way in which the regulations are applied, it will also lead to formal challenges from individuals about the way in which any discretions to relax the cap are exercised.

Further guidance should be provided on the information needed by the Minister of the Crown to relax the cap on mandatory grounds. Likewise, clearer guidance on what circumstances will count as 'hardship' is also required, as well as the criteria to be used in the context of facilitating 'workforce reform'.

In addition, the inclusion of the settlement of complaints of whistleblowing and/or discrimination as specific grounds for relaxing the cap are likely to lead to a significant increase in the number of cases being presented under these headings. This will lead to an increase in formal processes such as grievances, Tribunal claims etc, as well as an increase in litigation costs.

Q6. Is there further information or explanation of how the Regulations should be applied which you consider should be included in the guidance? If so, please provide details.

YES

More information and explanation is required regarding pension strain costs for Local Government, specifically around the interaction of the LGPS for those over 55 who are provided with automatic access to an unreduced pension on being made redundant. It is understood that the policy intent is for the individual's benefits to be reduced to the extent that the cap is not breached, with the individual having the option of paying extra to buy-out some or all of the reduction.

Amendments to the LGPS regulations will be required to facilitate this change plus guidance on calculating the pension reduction and operating the buy-out.

Q7. Are there other impacts not covered above which you would highlight in relation to the proposals covered in this consultation document? If yes, please provide details.

YES

Workforce Reform

Exit payments are important tools in enabling local authorities to achieve workforce reductions. In common with most other Councils we are facing significant financial challenges and the implementation of a cap will significantly reduce our ability to achieve the necessary workforce reductions through voluntary means.

This will therefore lead to more contentious negotiations with the attendant increase in costs and time associated with that, as well as the likely negative impact on the workforce in terms of morale and motivation. As noted previously, the provisions for relaxing the cap are very widely drawn. This will lead to cases of formal challenge and appeal on the way such a discretion is designed and exercised as well as an increase in the costs of litigation.

Discrimination

The inclusion of the pension strain costs is likely to significantly impact on those working in Local Government who have reached the age of 55. This creates a potential for age discrimination either because this group had their exit pay capped or from a younger age group who have been selected for redundancy because there will be no liability for pension strain costs.

In addition, men are more likely to suffer a detriment compared to women. Gender Pay Gap reports show that men generally earn more than women and are likely to have longer lengths of service. As such, it is more likely that the cap will limit their exit pay. This is potentially discriminatory on the grounds of sex.

Given the above, an updated equality impact assessment should be completed.

Hardship

If the LGPS regulations are changed to allow an individual to take an actuarially reduced pension, rather than have the pension strain costs included in their exit pay, this could cause significant financial hardship in the future. As previously noted, clear guidance is required around what constitutes hardship for the purposes of relaxation of the cap.

Recruitment and Retention

As previously noted and demonstrated in the example below, the cap will not just impact on the government's target group of 'high earners' but also mid-level staff with long service eg frontline Senior Social Worker and Team Leader roles where the post holders have more than 25 years' service. The impact of the cap on lower paid, long serving members of the workforce is likely to have a negative impact on the image of Local Government as a trusted employer of choice as workers will no longer be able to access all the benefits they have earned.

There are already a number of significant recruitment and retention issues in the local government workforce, for example, Social Workers and direct care staff and the cap will simply compound this.

The cap amount has not risen since the £95k figure was first proposed three years ago. Meanwhile, salaries have increased and ONS indicates that living costs have risen by 9.4%. The cap figure needs to be linked to average pay increases or index linked, or have a clear timescale for regular review. In addition, failure to index-link the cap will impact a growing number of individuals over time, likely leading individuals to choose career options and/or sectors where the cap does not exist.

Q8. Are you able to provide information and data in relation to the impacts set out above?

YES

We have previously noted that the cap will impact much deeper into the workforce than just the target group of 'high earners'. The example below shows how the cap will impact on a frontline worker in an occupation of national shortage.

Position	Age	Service	Salary	Statutory Redundancy	Pension Strain	Total	Impact
Senior Social Worker	56	37 years	£41,965	£22,132.14	£100,546	£122,678	-£27,678