

Committee Agenda



**Epping Forest
District Council**

CONSTITUTION WORKING GROUP Tuesday, 26th January, 2016

Place: EFDCCommittee Room 1, Civic Offices, High Street, Epping
Room: Committee Room 1
Time: 7.00 pm
Democratic Services Officer M Jenkins democraticservices@eppingforestdc.gov.uk
(01992 56 4607)

Members:

Councillors M McEwen (Chairman), M Sartin (Vice-Chairman), D Dorrell, A Mitchell, J Philip, C C Pond, C P Pond, D Stallan, G Waller, S Watson and J H Whitehouse

MEMBERS ARE REMINDED TO BRING THEIR COPIES OF THE EXISTING CONSTITUTION DOCUMENT WITH THEM TO THE MEETINGS – FURTHER COPIES CAN BE SUPPLIED ON REQUEST.

- 1. APOLOGIES FOR ABSENCE**
- 2. SUBSTITUTE MEMBERS (MINUTE ITEM 39 - 23.7.02)**
(Director of Governance) To report the appointment of any substitute members for the meeting.
- 3. DECLARATIONS OF INTEREST**
(Director of Governance) To declare interest on any items on the agenda.
- 4. NOTES OF PREVIOUS MEETING (Pages 3 - 6)**
To approve the notes of the last meeting held on 30 November 2015 (attached).
- 5. TERMS OF REFERENCE AND WORK PROGRAMME (Pages 7 - 10)**
- 6. NEW DRAFT PROCUREMENT RULES (Pages 11 - 72)**
(Director of Communities) To consider the attached report and appendices.

7. CONSTITUTION REVIEW - ARTICLE 18 (ACCESS TO INFORMATION) (Pages 73 - 94)

(Democratic Services Manager) To consider the attached report.

8. CONSTITUTION REVIEW - ARTICLE 13 (OFFICERS) (Pages 95 - 108)

(Democratic Services Manager) To consider the attached report.

9. CONSTITUTION REVIEW - ARTICLE 6 (OVERVIEW & SCRUTINY) (Pages 109 - 112)

(Democratic Services Manager) To consider the attached report.

10. CONSTITUTION REVIEW - ARTICLE 2 (MEMBERS) (Pages 113 - 116)

(Democratic Services Manager) To consider the attached report.

11. FUTURE MEETINGS

The next meeting of the Working Group will be held on Tuesday 22 March 2016 at 7.00p.m. in Committee Room 1.

**EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF CONSTITUTION WORKING GROUP
HELD ON MONDAY, 30 NOVEMBER 2015
IN COMMITTEE ROOM 1, CIVIC OFFICES, HIGH STREET, EPPING
AT 7.00 - 9.12 PM**

Members Present: M McEwen (Chairman), D Dorrell, J Philip, C P Pond, C C Pond, D Stallan, G Waller, S Watson and J H Whitehouse

Other members present:

Apologies for Absence: M Sartin and A Mitchell

Officers Present S G Hill (Assistant Director (Governance & Performance Management)), S Tautz (Democratic Services Manager) and M Jenkins (Democratic Services Officer)

18. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

It was noted that there were no substitutions made for the meeting.

19. DECLARATIONS OF INTEREST

Pursuant to the Member's Code of Conduct, Councillor C C Pond declared a non pecuniary interest in the following item of the agenda by virtue of being Chairman of the Joint Parish Standards Committee. He advised that he would remain in the meeting for the consideration of the item:

- Item 7 Revisions to the Code of Member Conduct

20. NOTES OF THE LAST WORKING GROUP MEETING

RESOLVED:

That the notes of the last meeting of the Working Group held on 22 September 2015 be agreed.

21. TERMS OF REFERENCE AND WORK PROGRAMME

(a) Terms of Reference

The Working Group noted its Terms of Reference.

(b) Work Programme

Although not specifically attached to the Working Group Work Programme, a "Master Map" was attached to guide members on the progress being made in regard to the Constitution review.

(i) Members Code of Conduct

The Standards Committee had referred its comments to this Working Group, any further suggested changes would need to be referred back to the Committee.

(ii) Member's Allowances Scheme

The Remuneration Panel had met recently, its Chairman would make a report to Council on 15 December.

(iii) Item 11 CSO Revisions

The Director of Communities was aiming to bring a revised schedule to the Working Group in January 2016.

(iv) Local Charter for Parish Councils

The Assistant Director (Governance and Performance Management) advised that this should be removed from the Constitution and referred to the Local Council's Liaison Committee for consideration. He said that he had been approached by the Town Clerk of Loughton Town Council who had requested that the Epping Forest Association of Local Councils undertake a draft of the charter before submitting to that committee.

22. DECISION MAKING AND DELEGATION MATTERS

The Working Group received Article (14) Decision Making and the Scheme of Delegation from the Assistant Director (Governance and Performance Management).

Members made progress through these documents making amendments.

RECOMMENDED:

That the revised Article (14) Decision Making and the Scheme of Delegation be recommended to Council for approval.

23. REVISIONS TO THE CODE OF MEMBER CONDUCT

The Working Group received the original Standards Committee report concerning Revisions to the Code of Member Conduct from the Assistant Director (Governance and Performance Management).

It was advised that this revised Code needed approval at Council as soon as possible, therefore it was suggested by officers that amendments made at this meeting could be discussed informally with the Chairman of the Standards Committee for approval without the need to wait for the next committee meeting. However although officers would attempt this there was no guarantee of approval.

In addition Members requested that Paragraph 11.2 Public Perception, "pre-determined" should replace "prejudice."

RESOLVED:

That the revisions to the Code of Member Conduct be re-submitted to the Standards Committee at the earliest opportunity for approval.

24. CONSTITUTION REVIEW - ARTICLE 13 (OFFICERS)

The Working Group received a report from the Democratic Services Manager regarding Article 13 (Officers) of the Constitution.

Members made progress through these documents making amendments. However in regard to Appendix 3 Paragraph 4 Briefing of Political Groups it was advised by members that this item had been discussed two years ago at the former Constitution and Member Services Scrutiny Panel. It was felt therefore that no further work was needed as the same recommendations on this particular issue had been approved by Council. The Democratic Services Manager reported that it was interested in incorporating these conventions within a new Article (Access to Information) of the Constitution.

RECOMMENDED:

That revisions to Article 13 (Officers) be considered further at the next meeting of the Working Group.

25. OTHER MATTERS: DRAFT SUMMARY AND GLOSSARY

The Working Group received the re-drafted Summary and Glossary from the Assistant Director (Performance Management).

Members supported the re-drafted documents for onward process to Council.

RECOMMENDED:

That the Summary and Glossary be recommended to the Council for adoption.

26. PROPOSALS FOR EXTERNAL REVIEW OF THE NEW CONSTITUTION

The Working Group was advised by the Assistant Director (Performance Management) that it was intended to seek an external legal opinion on the new draft Constitution.

Members considered and supported a draft instruction to the District Council's counsel for opinion. It was intended that immediately following the scheduled Working Group meeting in January 2016 the complete draft should be sent for legal review.

RESOLVED:

That the draft instruction to the District Council's counsel in respect of the draft Constitution be approved.

27. FUTURE MEETINGS

The next scheduled meeting of the Working Group was scheduled for Tuesday 26 January 2016 at 7.00p.m. in Committee Room 1.

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CONSTITUTION WORKING GROUP

TERMS OF REFERENCE

Title: Constitution Working Group

Status: Working Group

Terms of Reference:

(1) To complete a review of the Council's Constitution by 31 March 2016 and to recommend new arrangements accordingly;

thereafter:

(2) To review any aspect of the authority's constitutional arrangements as requested by the Council;

(3) To undertake general reviews of specific elements of the Constitution in order to ensure that the authority's constitutional arrangements complement current legislative requirements and decisions made by the Council; and

(4) To consider any proposals of the Director of Governance for necessary revision to any element of the Constitution.

Reporting:

The Working Group shall report directly to the Council in connection with its Terms of Reference and the achievement of its work programme.

Chairman: Councillor M McEwen

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Constitution Working Group (Chairman – Cllr M McEwen)		
Item	Dates	Progresss
(1) Position statement and programme (S Hill)	30 June 2015	COMPLETED
(2) Officer Employment Procedure Rules(P Maginnis)	30 June 2015	COMPLETED
(3) Contract Standing Orders – Review Process (A Hall)	30 June 2015	COMPLETED
(4) Executive Procedure Rules and Revised Articles (S Hill)	30 June 2015	COMPLETED
(5) Overview and Scrutiny Article Revisions (S Tautz)	22 September 2015	COMPLETED – Completed and approved by the Overview and Scrutiny Committee
(6) How to deal with Codes and Protocols (S Hill)	22 September 2015	COMPLETED
(7) Other Procedure Rules (S Hill)	22 September 2015	COMPLETED
(8) Schedule of Delegation – Revision (S Hill)	24 November 2015	COMPLETED
(9) Proposals for External Review (S Hill)	24 November 2015	COMPLETED
(10) Proposals to be agreed for consideration to Members (S Hill)	26 January 2016	Update to be reported at the meeting
(11) Constitution Review – Article 18 (Access to Information)	26 January 2016	On the agenda for this meeting

(12) Constitution Review – Article 13 (Officers)	26 January 2016	On the agenda for this meeting
(13) Constitution Review – Article 6 (Overview and Scrutiny)	26 January 2016	On the agenda for this meeting
(14) Constitution Review – Article 2 (Members)	26 January 2016	On the agenda for this meeting
(15) Agree CSO revisions (A Hall)	26 January 2016	On the agenda for this meeting
(16) Recommend final articles (S Hill)	22 March 2016	Recommendation to Council

Report to Constitution Working Group

Date of meeting: 26 January 2016



**Epping Forest
District Council**

Subject: New Draft Procurement Rules

Responsible Officer: Alan Hall – Director of Communities (01992 56 4004)

Democratic Services Officer: Mark Jenkins (01992 56 4607)

Recommendations:

- (1) That the new Draft Procurement Rules (attached as Appendix C) be considered by the Working Group, noting the list of key differences from the current Contract Standing Orders (attached as Appendix B), prior to an external check being undertaken by a specialist procurement lawyer;**
- (2) That the comments of the Working Group on the Draft Procurement Rules be provided to the Director of Communities (as Chairman of the (officer) Contract Standing Orders Working Party); and**
- (3) That the final version of the Draft Procurement Rules, incorporating any comments from the Working Group at this meeting and the specialist procurement lawyer, be considered at the Working Group's next meeting to be held on 22nd March 2016, together with all the other documents comprising the Council's proposed new Constitution, prior to submission to the full Council for adoption.**

Background

1. At its meeting on 30th June 2015, the Working Group noted that the Council's Corporate Governance Group (CGG - chaired by the Chief Executive and comprising the four Directors, Chief Internal Auditor and Deputy Monitoring Officer) had asked the Director of Communities to chair a new Contract Standing Orders Working Party to fundamentally review the Council's Contract Standing Orders and to formulate a new set of (what is proposed to be called) Procurement Rules for the future that:

- Adopt a more modern and flexible approach;
- Are simpler to understand and comply with;
- Are more responsive to the current and future procurement needs of the Council;
- Meet the recently enacted Public Contracts Regulations 2015; and
- Ensure appropriate controls and probity to safeguard the use of public money;

2. The Working Group also noted the Terms of Reference of the Working Party and the proposed reporting arrangements and timescales. As a result, the Working Group agreed to add the consideration of this subsequent report and recommendations of the Contract Standing Orders Working Party to the Constitution Working Group's Work Programme for 2015/16.

3. The CGG's decision to set up the Working Party followed concerns identified by the CGG about the complexity and inflexibility of the Council's current Contract Standing Orders (which have been developed and added to over many years, without any fundamental review). In the CGG's view, this has led to difficulties in staff understanding

the Council's approach to procurement, and the procedures that need to be followed, which had increase the potential and likelihood of breaches of Contract Standing Orders.

4. Indeed, in November 2015, it was necessary for a total of 260 breaches of one Contract Stranding Order alone (relating to cumulative spends with individual contractors in excess of £10,000 over a 4-year period) to be reported to the Cabinet.

5. The CGG's decision to set up the Working Party has resulted in the most fundamental review of the Council's Contract Standing Orders for at least 25 years.

The Contract Standing Orders Working Party and methodology of approach

6. The Terms of Reference for the Contract Standing Orders Working Party were approved by Management Board on the 3rd June 2015 and are reproduced at Appendix A. The Working Party has met on six occasions since June 2015. The last meeting was held on 4th January 2016.

7. In the first instance, the Director of Communities drafted a Framework for the new Procurement Rules, which set out a proposed structure and details of the proposed coverage of each section. At the same time, he produced a list of questions to put to the Working Party to consider specific issues identified in drafting the Framework.

8. The Working Party then considered, over four separate meetings, the proposals set out within the Framework and each of the queries that needed to be considered. Although this was a laborious exercise, it gave the Working Party a good opportunity to consider and discuss the proposed structure for the new Procurement Rules and the general direction to be taken.

9. Following consideration of the Framework and all the issues, the Director of Communities then drafted the new Draft Procurement Rules, which were considered in detail by the Working Party at its meeting on 4th January 2016.

10. The Draft Procurement Rules, incorporating all the comments of the Working Party, were then considered by the CGG on 13th January 2016, where approval was given to submit the Draft Procurement Rules (incorporating the comments of the CGG) to this meeting of the Constitution Working Group for consideration. Prior to the CGG meeting, all Assistant Directors were also consulted on the proposals and their views taken into account.

New Procurement Rules

11. The new Draft Procurement Rules are attached as Appendix C for consideration by the Working Group.

12. Those members of the Working Group acquainted with the Council's current Contract Standing Orders will see that the new Procurement Rules are, indeed, fundamentally different from the existing Contract Standing Orders. For this reason, it is impossible to "read across" the two documents to see where all of the changes have been made.

13. Therefore, a list of the key differences between the current Contact Standing Orders and the proposed new Procurement Rules is attached at Appendix B. Also attached, at Appendix D, are the existing Contract Standing Orders for reference. It is emphasised that, due to the very many changes that have been made to the new Draft Procurement Rules, compared to the current Contract Standing Orders, it is impossible to list all of the differences.

14. The approach the Working Party has taken to the new Procurement Rules is for the document to comprise all of the main procurement requirements that officers must comply with, supported by a suite of additional new documents which are referred to (and will be accessed through hyperlinks) within the Procurement Rules - and which officers will also be required to follow.

15. It should be noted that most of the supporting documents have not yet been drafted/updated yet, but all those required to be in place at the time the new Procurement Rules are adopted (which is all but one of the documents) will be in place.

Contracts Finder and the Local Government Transparency Code 2015

16. It is a legal requirement, under the Public Contracts Regulations 2015, that for all contracts with a value in excess of £25,000:

(a) If a public body intends to invite contractors to express an interest in being considered for the contract, through the placement of an advertisement in any media, it must also upload details of the invitation on the Government's Contracts Finder website; and

(b) Following the award of a contract, public bodies must upload details of **all** the tenders received, together with the name of the successful tenderer, to the Contracts Finder website (even if details of the original invitation were not be provided to Contracts Finder, since no advertisement was placed in the first instance)

17. These requirements are covered by the Draft Procurement Rules, at Sections 5.3, 16.7 and 16.8.

18. The separate DCLG's Local Government Transparency Code 2015, which is a Code of Recommended Practice:

- Requires local authorities to publish certain procurement information quarterly; and
- Recommends that local authorities publish additional information.

19. The requirement to publish procurement information quarterly is covered by Section 24 of the Draft Procurement Rules.

20. The recommendations of the Code to publish additional information are as follows:

(a) To place on Contracts Finder details of every invitation to tender for contracts with a value that exceeds £10,000 (compared to the £25,000 threshold in the Public Contracts Regulations); and

(b) To publish:

- Monthly - the procurement information that must be published quarterly
- Details of every invitation to tender for contracts to provide goods and/or services with a value that exceeds £500 (instead of £5,000)
- Details of invitations to quote where there has not been a formal invitation to tender
- All contracts in their entirety where the value of the contract exceeds £5,000
- Company registration number at Companies House
- Details of invitations to tender or invitations to quote that are likely to be issued in the next twelve months.

- Details of the geographical (eg. by ward) coverage of contracts entered into by the local authority
- Details of performance against contractual key performance indicators
- Information disaggregated by voluntary and community sector category (eg. whether it is registered with Companies House, Charity or Charitable Incorporated Organisation, Community Interest Company, Industrial and Provident Society, Housing Association, etc).

21. Whilst, clearly, the requirements of the Code to publish certain procurement information quarterly must be followed, the recommendations of the Code to provide additional procurement information have not been incorporated within the Draft Procurement Rules - because both the Working Party and the Corporate Governance Group are of the view that:

- The administrative burden of providing the additional recommended information would be immense, and would require additional staff capacity/resources;
- The additional workload would not justify the very limited benefits that would be obtained;
- The intention to streamline and make the new Procurement Rules more flexible would be hindered if the recommendations were adopted; and
- Very few other local authorities have adopted the recommendations.

Survey of other local authorities

22. As part of its Work Programme, the Working Party undertook an on-line survey of other local authorities to ascertain their approach to Contract Standing Orders. The Working Party formulated a list of questions for the survey, which were sent to all of the local authorities in Essex, together with the other local authorities in the Audit Commission's Nearest Neighbour Group of similar authorities.

23. In total, 25 local authorities were surveyed. The response, however, was a little disappointing - with only 6 councils (24%) responding. As part of its approach, the Working Party considered the results of the survey; although it was interesting to note the results, the outcome of the survey did not result in the Working Party feeling a need to change the proposed direction for the Procurement Rules.

Role of the Constitution Working Group and next steps

24. The Working Group is asked to consider the new Draft Procurement Rules at Appendix C, noting the key differences from the current Contract Standing Orders listed at Appendix B, and to provide any comments to the Director of Communities.

25. It is proposed that the Draft Procurement Rules (incorporating any amendments by the Working Group) are then checked externally by a specialist procurement lawyer, to confirm (or otherwise) that they comply with UK and EU procurement legislation, and to provide any associated advice. This is the same approach as being taken to the external checking of the rest of the proposed new Constitution.

26. It is proposed that the final version of the Draft Procurement Rules, incorporating any comments from the Working Group at this meeting and the specialist procurement lawyer, be considered further at the Working Group's next meeting on 22nd March 2016, together with all the other documents comprising the proposed revised Constitution, prior to submission to the full Council for adoption on 26th April 2016.

27. Shortly after the new Procurement Rules have been formally adopted, mandatory training will be provided to all officers who will be required to know and follow the new procedures.

Appendices

- (A) Terms of Reference – Contract Standing Orders Working Party
- (B) Main differences between Contract Standing Orders and Draft Procurement Rules
- (C) Draft Procurement Rules
- (D) Current Contract Standing Orders

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Epping Forest District Council

Contract Standing Orders Working Party

TERMS OF REFERENCE

(Approved by Management Board on 3rd June 2015)

Purpose

To fundamentally review the Council's Contract Standing Orders and to formulate new ones - that adopt a more modern and flexible approach, are simpler to understand and comply with, are more responsive to the current and future procurement needs of the Council and that meet current EU Procurement Regulations, whilst ensuring appropriate controls and probity to safeguard the use of public money.

Terms of Reference

- 1) To review and consider the current Contract Standing Orders and identify areas of improvement, in accordance with the Working Party's Purpose.
- 2) To understand the implications that EU Procurement Regulations, and particularly the recent changes, have on procurement by the Council and its Contract Standing Orders.
- 3) To formulate new draft Contract Standing Orders that achieve the Working Party's Purpose.
- 4) To report regularly to Management Board on the Working Party's progress and to present new draft Contract Standing Orders to Management Board, prior to submission to members.
- 5) To present the new draft Contract Standing Orders to the Constitution Working Group for consideration and to oversee their onward progression to Full Council.
- 6) To disseminate information and arrange appropriate training on the new Contract Standing Orders to all staff involved with procurement activities.

Chairman

The Working Party will be chaired by the Director of Communities.

In his absence, the meeting will be chaired by a member of the Working Group nominated by the Chairman or the members present.

Membership

Chairman	- Alan Hall
Dem. Services (Constitution)	- Simon Hill
Procurement	- Shane McNamara
Internal Audit	- Sarah Marsh
Accountancy	- Peter Maddock
Legal Services	- Alison Mitchell
Communities (Client)	- Paul Pledger
Facilities Management (Client)	- Mike Hobbs
Neighbourhoods (Client)	- Jim Nolan (initially) / Business Manager (subsequently)

Officer Support / Secretariat

Mark Jenkins – Democratic Services.

Other Attendances

The Working Party can invite other officers to attend meetings as appropriate. Working Party Members may arrange for substitutes to attend in their absence

Frequency of Meetings

Meetings will be held as required – but at least monthly

Target Date for Adoption of New Contract Standing Orders by Full Council

March 2016

Key differences between the proposed new Procurement Rules (PRs) and the current Contract Standing Orders (CSOs)

- All sections have been re-ordered into a more logical, chronological order.
- Duplicated and conflicting requirements that are currently in the CSOs have been removed.
- Instead of having different (large) sections of CSOs relating to different values of contracts, with largely duplicated text:
 - The PRs relate to all contracts and are only covered once; and
 - Appendix 1 provides, at a glance, the different arrangements that apply for different values of contracts.
- The thresholds for the nos. of tenders sought, who opens tenders and who accepts tenders have been reviewed/updated and are set out in Appendix 1. They also include the latest EU Thresholds (1st January 2016 – 31st December 2016) for reference.
- The introduction of Appendix 1 means that the thresholds and associated arrangements can simply be updated when required in the future, rather than having to amend the whole document.
- The PRs do not attempt to duplicate or cover the, separate, more complex arrangements that relate to regulated procurements for contracts with total contract values above the financial thresholds for works, goods, supplies and services set out in the Public Contracts Regulations – however, they do set out the Council’s own requirements for ensuring that officers comply with these arrangements, for example, through the completion of the required Procurement Process (“Regulation 84”) Report.
- Rather than having separate arrangements for the appointment of consultants (as in the current CSOs), all of the PRs now apply to the appointment of consultants too.
- The PRs now place responsibility on Spending Control Officers to ensure that they comply with the PRs, rather than Directors – thereby placing responsibility to comply with the PRs on the people actually undertaking and controlling the procurement process, rather than on those who do not have control over the day-to-day activities with individual procurements.
- The PRs provide Assistant Directors, who are responsible for the delivery of services, with the same authority as Directors for matters covered by the Procurement Rules
- Where other officers are required or offered to provide advice to Spending Control Officers, they refer to the specific post responsible for actually providing the advice (or their designated officer in their absence), rather than their Director – again providing clarity to readers and placing responsibility on the actual officers providing the advice.
- For tenders with contract values over a certain amount, the PRs now require Spending Control Officers to complete a Corporate Procurement Checklist throughout the procurement process, which must be maintained for at least three years after the contract has been let.
- The PRs set out clearer requirements for which people/bodies are authorised to waive compliance with parts of the PRs requirements for different Total Contract Values.
- The PRs take account of the latest Public Contracts Regulations 2015.
- The PRs provide Spending Control Officers with increased flexibility over which contractors are selected to submit competitive tenders, within a defined framework.
- Unless there are good reasons, the PRs now require officers to use in-house Council services to provide the required works, goods, supplies or services (such as the Council’s Reprographics and

Building Control Services) in preference to an external contractor, in order to keep their unit costs to a minimum and to save the Council money overall.

- The PRs require Spending Control Officers to comply with a new separate Council Procedure for Financial Checks on Contractors which, for the first time, sets out: what financial checks should be undertaken; for what values of contracts; at which point in the procurement process; and what action/recommendations should be taken/made as a result.
- For procurements requiring the use of quality assessments, to assess the most economically advantageous tender (MEAT), the PRs require officers to follow the Council's Corporate MEAT Assessment Methodology.
- The PRs now allow tender invitations to be sent electronically (which the current CSOs forbid) – which is a legal requirement for regulated procurements for contracts with values above the Public Contracts Regulations.
- The new PRs enable contractors to be able to return tenders electronically in the future, in accordance with a new Procedure (yet to be drafted) – which is a requirement of the Public Contract Regulations 2015 by 2018.
- The PRs refer to the new requirements within the Public Contract Regulations 2015 to also provide information of any advertisements for inclusion on select lists to the Government's Contract Finder website and to publish details of the outcome of all procurement exercises for contracts in excess of £25,000.
- The PRs amend the currently unworkable requirement within the CSOs to take account of all the anticipated spend by a directorate with an individual contractor over the following four years, when determining the numbers of tender to invite etc, to the following year only.
- The requirement to require contractors to have performance bonds in place for any contracts in excess of £2million has been changed to a requirement for works contracts only in excess of the current EU procurement thresholds (currently £4,104,394) and services contracts with values within Contract Category 4 (£1million) or above only.
- The arrangements for completing Final Accounts have been reviewed and updated.
- New arrangements are included within the PRs for reporting breaches of the PRs to the Corporate Governance Group, Audit and Governance Committee.
- The PRs include a new provision requiring Spending Control Officers, on receipt of a request from a contractor to assign all or part of a contract, to undertake the same checks as those undertaken for the current contractor before approving the assignment.
- The minimum cover for consultants' Professional Indemnity (PI) Insurance has been increased from £1million to £2million.
- The Section on disposals and property transactions within CSOs has been revised for the PRs to separate out those requirements relating to delegated authorities (which have been transferred to the Schedule of Delegation, elsewhere in the Constitution), to update the provision and to delete references to acquisitions – since they do not sit appropriately with the Procurement Rules and are better dealt with through reports to portfolio holders or Cabinet, as is now the case in practice.
- Unlike CSOs, the PRs provide a detailed Glossary and Definitions of Terms at Appendix 2. Terms referred to within PRs, that are covered by the Glossary, are denoted with Capitalised Initials.
- A list of documents that support the operation of the PRs, and are referred to within the PRs, are listed at the beginning of the document, together with hyperlinks to the documents held on the Council's Intranet.

Procurement Rules *(Draft)*

January 2016

Contents

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8. Checks of financial standing
9. Obtaining value for money for Contracts where Tenders are not required from more than one Contractor
10. Rules for inviting Tenders where more than one Tender is required
11. Additional rules for inviting and accepting Tenders based on the Most Economically Advantageous Tender (MEAT) (i.e. price and quality) and/or a Schedule of Rates
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21. Rules for the Contract Extensions
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25. Disposal and freehold/leasehold property transactions

Appendix 1 Table of Tendering Requirements for Nos. of Tenders, Returns and Openings

Appendix 2 Glossary and Definitions of Terms used in the Procurement Rules

Documents referred to in (and that support the Operation of) these Procurement Rules:

- | | |
|--|--|
| (a) Council’s Corporate Procurement Checklist | [Available here] |
| (b) A Basic Guide to Public Sector EU Procurement Legislation | Can be downloaded here |
| (c) Council’s Standard Pre-Qualification Questionnaire (PQQ) | [Available here] |
| (d) Council’s Procedure Note on Financial Checks for Tender Processes | [Available here] |
| (e) Crown Commercial Service’s Guidance on Electronic Procurement & Electronic Communication | [Available here] |
| (f) Council’s EFDC Guidance of Electronic Tendering | [Available here] |
| (g) Council’s Tender Return Label | [Available here] |
| (h) Council’s Certificate of Bona Fide Tendering | [Available here] |
| (i) Council’s Formal Declaration of Tender Offer | [Available here] |
| (j) EFDC Corporate MEAT Assessment Methodology | [Available here] |
| (k) Standard Procurement Process (“Regulation 84”) Report | [Available here] |
| (l) Council’s Standard Consultants Agreement | [Available here] |

(Note: A Glossary and Definitions of Terms used in these Procurement Rules is provided at Appendix 2. Reference to such terms in these Procurement Rules are denoted with Capitalised Initials)

1. Introduction

- 1.1 These Procurement Rules set out the procedures that must be followed by all officers for the procurement of Contracts for any Works, Supplies or Services on behalf of the Council, including Official Orders issued through the Council's Marketplace electronic ordering system. A serious/wilful failure to comply with these Procurement Rules could result in disciplinary action being taken.
- 1.2 They seek to adopt a modern and flexible approach to procurement, that is easy to follow and comply with, and are responsive to the Council's current and future procurement needs, whilst ensuring appropriate controls and probity to safeguard the use of public money. They are also set out in a logical, sequential order to help lead officers through the procurement process.
- 1.3 These Procurement Rules also relate to certain disposals of land and property, and other property transactions, which are covered in [Section 25 below](#). Associated delegations to officers are covered by the Schedule of Officer Delegations within the Council's Constitution. However, these Procurement Rules do not relate to the acquisition of land or properties, which must be authorised through reports to the relevant Portfolio Holder or Cabinet as appropriate.
- 1.4 The transitional arrangements to apply when these Procurement Rules are first introduced is that, wherever possible, any procurement activities for procurements commenced before the adoption of these Procurement Rules must comply with these Procurement Rules. For example, if a Select List was formulated before the adoption of these Procurement Rules (under the Council's previous Contract Standing Orders), but Tenders had not been invited at the time of adoption, the Tenders should still be invited in accordance with these Procurement Rules.
- 1.5 These Procurement Rules represent the Council's Contract Standing Orders for the purposes of Section 135 of the Local Government Act 1972.

2. General rules

- 2.1 It is the responsibility of the designated Spending Control Officer for the budget that will be used to fund the resultant Contract to ensure that these Procurement Rules are followed.
- 2.2 When the Total Contract Value of a Contract or Official Order to be issued is less than the minimum for Contract Category 1 at Appendix 1, subject to the requirements at [Section 2.9 below](#) (Total Contract Values over a 12-month period), these Procurement Rules do not have to be followed. However, it is the responsibility of all Spending Control Officers to try to obtain value for money, in terms of price and quality, through any Contract or Official Order that they issue, irrespective of its value. Spending Control Officers should therefore be aware of what constitutes appropriate price and quality for the Works, Supplies or Services sought.
- 2.3 In order to help ensure compliance, and to provide a documented audit trail, Spending Control Officers must use and complete the Council's "**Corporate Procurement Checklist**" available on the Council's Intranet [\[here\]](#) throughout the procurement process for any Contracts with a Total Contract Value within Category 2 of Appendix 1 or higher. They must also keep a copy of the completed "**Corporate Procurement Checklist**" on the relevant Contract file, both throughout the procurement process and for at least 3 years after the completion of the Contract.
- 2.4 Reference to "Directors" throughout these Procurement Rules also includes the relevant Assistant Director responsible for providing the service to which the relevant procurement relates, except where an Assistant

Director is also the Spending Control Officer responsible for undertaking the procurement. Where a Director is responsible for a procurement, the Chief Executive will take the role of the Director.

2.5 These Procurement Rules do **not** set out or duplicate the legal requirements that must be followed for Regulated Procurements of Contracts with Total Contract Values above the value thresholds set out in the Public Contracts Regulations 2015. For such Regulated Procurements, officers **must** comply with the requirements of the Public Contracts Regulations 2015. If there is any conflict between these Procurement Rules and the Public Contracts Regulations 2015 or any other legislation, then the relevant legal requirements take precedence. Advice on the Public Contracts Regulations 2015 can be obtained from the Corporate Procurement Officer. A **“Basic Guide to Public Sector EU Procurement Legislation”** [can be downloaded here](#). *However, these Procurement Rules do set out the Council’s own requirements for complying with Regulated Procurements specified within the Public Contracts Regulations 2015, which are shown in italic text. Particular attention is drawn to **Section 17** of these Procurement Rules, which explains the Council’s requirements, in respect of Regulated Procurements, for Spending Control Officers to complete and maintain the required Procurement Process Report under Regulation 84 of the Public Contracts Regulations 2015 throughout the procurement process.*

2.6 Where appropriate, Spending Control Officers are encouraged to use central contracts and existing Framework Agreements – either through the Essex Procurement Hub or with other organisations to which the Council has access. Where such central contracts or existing Framework Agreements are used, some parts of these Procurement Rules do not have to be followed – except where competitive tendering is undertaken amongst Contractors on Framework Agreement Select Lists. Spending Control Officers should seek advice, and receive confirmation in writing, from the Council’s Corporate Procurement Officer on which parts of these Procurement Rules do not have to be followed in such circumstances.

2.7 These Procurement Rules do not have to be followed in the following circumstances:

(a) Where the relevant Director or Asst. Director obtains formal approval from the relevant Portfolio Holder or the Cabinet, confirming that he/she/it is satisfied that the work required could reasonably only be undertaken by one specialist contractor/supplier, together with the reasons.

Such approval is required from:

- (i) A Portfolio Holder for Contracts with a Total Contract Value within Contract Categories 1-3 at Appendix 1; and
- (ii) The Cabinet for Contracts with a Total Contract Value within Contract Category 4.

This provision does not apply for Regulated Procurement for Contracts with a Total Contract Value within Contract Category 5; or

(b) Where it is essential to meet an immediate need:

- (i) Created by a sudden emergency; or
- (ii) Which is outside the Council’s control (e.g. by order of the Courts or any body with an equivalent power), or
- (ii) Which has some other over-riding urgency.

In such circumstances, the Spending Control Officer must provide a report to the next available meeting of the Corporate Governance Group explaining the reasons why the matter had to be treated as a matter of urgency and why these Procurement Rules could not be followed.

If it is necessary to incur expenditure outside of the Council's budgetary framework, Spending Control Officers must comply with the additional relevant requirements within the Council's Financial Regulations

- 2.8 In other circumstances, where a Spending Control Officer feels that there are good reasons why specific parts of these Procurement Rules should not be followed for a particular procurement, they may seek a waiver from compliance with that part of the Procurement Rules. Requests for such waivers must be made in writing by the Spending Control Officer. Approvals can only be given in writing (or through a Portfolio Holder Decision or Cabinet minute as appropriate) by the relevant person/body listed at Appendix 1 who is responsible for accepting Tenders for the Contract Category relating to the Total Contract Value of the proposed Contract.
- 2.9 When seeking to procure a Contract, Spending Control Officers must:
- (a) Consider and assess the likely total value of Contracts and/or Official Orders to be provided to a potential Contractor by their Directorate over a 12 month period for similar Works, Supplies and/or Services *(or over a 4-year period where the total value would exceed the thresholds for Regulated Procurements set out in the Public Contracts Regulations 2015 and reproduced at Appendix 1)* that could, alternatively, be procured through one or more Contracts or Framework Agreements over that period; and
 - (b) If the total value of such Contracts over any 12 month period is likely to be more than the threshold for Contract Category 1 listed at Appendix 1, seek Tenders and procure a Contract in accordance with these Procurement Rules.
- 2.10 Contracts must not be artificially separated to avoid compliance with either these Procurement Rules or the Public Contracts Regulations 2015.
- 2.11 If it comes to light that these Procurement Rules have not been followed, the relevant Assistant Director must submit a report to the next available meeting of the Corporate Governance Group (or successor officer group) explaining the reason for the breach and, if appropriate, the proposed remedy for correcting or mitigating the effects of the breach. The CGG will identify any breaches that it considers to be sufficiently serious to be reported to the Audit and Governance Committee (or successor member body).
- 2.12 The provision of in-house Council Services is excluded from the requirement of these Procurement Rules.
- 2.13 If any Spending Control Officer considers that a Contractor should be suspended from consideration for future Contracts with the Council for a specified period, they must submit a report to the Corporate Governance Group;
- (a) Explaining the reasons for suspending the Contractor;
 - (b) Recommending a proposed period of suspension; and
 - (c) Seeking approval to such a decision.
- 2.14 Contractors cannot be suspended from consideration for future contracts in perpetuity. If the Corporate Governance Group agrees that a Contractor should be suspended, the Spending Control Officer must:
- (a) Advise the Corporate Procurement Officer of the decision, who must in turn notify all Directors and Assistant Directors of the decision; and
 - (b) Advise the Contractor of the reasons for the suspension and the period of the suspension.

- 2.15 No person or body who has given material advice to the Council, or a Consultant acting on behalf of the Council, on a proposed Contract can then submit a Tender for that Contract, where more than one Tender is required (i.e. for Contracts with a Total Contract Value within Contract Category 1 of Appendix 1 or higher).
- 2.16 In the absence of the post-holder, the responsibilities of specifically named posts within these Procurement Rules, can be discharged by:
- (a) Their Director or Assistant Director; or
 - (b) An officer designated by them.
- 2.17 All designations of committees, portfolio holders, other bodies and officers referred to in these Procurement Rules also include successor bodies and posts.

3. Exceptions for consortia

- 3.1 These Procurement Rules do not apply for the procurement of Contracts by a consortium, collaboration or similar body of which the Council is a member, or under which the Council is entitled to benefit by virtue of its status as a public authority. In such circumstances, the rules for procurement that relate to the member of the consortium undertaking the procurement on behalf of the Consortium will apply.
- 3.2 However, where Tenders are invited by an officer of the Council on behalf of a Consortium, these Procurement Rules must be followed.
- 3.3 In any event, if the value of the Works, Supplies or Services that the Council will be required to fund itself through a consortium or collaborative arrangement is:
- (a) Within Contract Category 3 at Appendix 1 or higher - The Spending Control Officer must report to the relevant Portfolio Holder on the proposed arrangements for the procurement of the Contract and obtain a formal Portfolio Holder Decision agreeing to the proposed arrangements;
 - (b) Within Contract Categories 1 or 2 at Appendix 1 - The relevant Director or Asst. Director must be satisfied that the terms and conditions of the proposed Contract are appropriate under all the circumstances, taking any legal advice from the Asst. Director (Legal Services) that the Spending Control Officer, Director and/or Asst. Director considers necessary.

4. Contract Conditions

(a) Compliance with Procurement Rules by Consultants

- 4.1 Where one or more Consultants are appointed to advise or act on behalf of a Spending Control Officer in respect of the procurement or administration of a Contract, the Contract for their appointment(s) must include a condition that the Consultant must comply with these Procurement Rules.
- 4.2 It is the responsibility of the Spending Control Officer to ensure that Consultants appointed by them are aware of the requirements of these Procurement Rules, and that they comply with them.

(b) Standard contract terms

- 4.3 All Contracts must include standard contract terms, which are available on the Council's Intranet, unless the Asst. Director (Legal Services), in consultation with the Spending Control Officer, determines that individual standard terms are not required for a particular Contract.

(c) Liquidated and Ascertained Damages

- 4.4 For Contracts with Total Contract Values within Contract Category 3 of Appendix 1 or higher, and where late completion or non-completion of the Contract would result in a quantifiable financial loss to the Council, the Contract must include a condition that Liquidated and Ascertained Damages will be payable in such circumstances.
- 4.5 In such circumstances, the Contract must set out the level of Liquidated and Ascertained Damages that will be payable, which must be the Spending Control Officer's best estimate of the loss to the Council for each week of late or non-completion. Advice regarding the calculation can be obtained from the Council's Asst. Director (Accountancy) or his/her designated officer.

(d) Performance Bonds and Parent Company Guarantees

- 4.6 A condition must be included within all Contracts (only) for:
- (i) **Services** - with Total Contract Values within Contract Category 4 of Appendix 1 or higher; and
 - (ii) **Works** - with Total Contract Values within Contract Category 5 of Appendix 1 or higher;
- that requires the Contractor to provide, at its own cost, either:
- (iii) A Performance Bond for the Contract's due performance; or
 - (iv) With the agreement of the Asst. Director (Accountancy), either a Parent Company Guarantee or a deposit with the Council, as security, in a form agreed with the Assistant Director (Accountancy).

(e) Retentions

- 4.7 Where a Contract includes provision for a Defects Liability Period, a condition must be included within the Contract allowing the Council to hold a Retention for:
- (a) At least 5% of the Contract Sum during the course of the Contract Period; and
 - (b) At least 2.5% of the Contract Sum on Practical Completion;
- which must not be finally released until the end of the Retention Period.

(f) Insurances

- 4.8 Subject to [Section 4.9 below](#), conditions must be included within:
- (i) All Contracts that require Contractors to have in effect, at the time of signing the Contract, minimum third party insurance cover of £5 million and minimum employer liability cover of £10 million; and
 - (ii) All appointments of Consultants that require them to have in effect, at the time of signing the Contract, Professional Indemnity Insurance with a minimum cover of £2million for any one claim or such other sum as may be determined.
- 4.9 Subject to obtaining written advice from the Council's Insurance Officer, Spending Control Officers may include conditions within Contracts specifying lower levels of insurance than set-out at [Section 4.8 above](#), dependent on the risk assessed by the Spending Control Officer, based on the advice of the Council's Insurance Officer.

4.10 The Contractor shall also be required:

- (i) To show to the Spending Control Officer evidence of all relevant insurance policies, both in place at the time of signing the Contract and any new policies obtained on the expiry of insurance policies, who must check that all required insurances are in effect throughout the duration of the Contract for the required levels of cover; and
- (ii) In respect of Contracts with Total Contract Values within Contract Category 4 of Appendix 1, to have the interest of the Council noted on the insurance policies.

(g) Assignment

4.11 A condition must be included within every Contract which prohibits the Contractor from transferring or assigning (directly or indirectly) any part of the Contract to another person or body without the written permission of the Council.

4.12 On receipt of a request from a Contractor to assign all or part of a Contract, the Spending Control Officer must undertake the checks of the proposed assignee required by **Sections 7 and 8** below, before approving the assignment.

(h) Cancellation

4.13 All Contracts must include conditions relating to the cancellation of the Contract, in terms specified by the Assistant Director (Legal), either generally or for specific contracts.

4.14 *For all Regulated Procurements, in order to comply with Regulation 73 of the Public Contracts Regulations 2015, a condition must be included within every Contract with a Total Contract Value within Category 5 of Appendix 1 providing an express right for the Council to terminate the Contract where a serious breach of the Regulations has occurred. This requirement applies where:*

- (i) The Contract has been substantially modified in breach of the Regulations and should have been re-procured;*
- (ii) The Contractor has, at the time of the Contract Award, been in one of the situations or committed one of the offences listed in Regulation 57 of the Public Contracts Regulations 2015 and should, therefore, have been excluded during the Tender process; or*
- (iii) The European Court of Justice has declared that the Contract should not have been awarded to the Contractor due to a serious breach of the EC Treaties and the Directive.*

(i) Appointment of sub-contractors and alternative suppliers

4.15 A condition must be included within every Contract which prohibits the Contractor from appointing a sub-contractor or alternative supplier to perform any part of the Contract without the prior written consent of the Council.

(j) Access to sites and documentation for audit purposes

4.16 All Contracts must contain a provision allowing an officer designated by the relevant Director, Asst. Director and/or Chief Internal Auditor access, for audit purposes, to:

- (i) A site where a Contract is being performed; and/or
- (ii) Relevant documentation relating to a Contract.

(k) Payments to contractors

4.17 In order to comply with Regulation 113 of the Public Contracts Regulations 2015, a condition must be included within every Contract requiring that all payments made by the Council to Contractors, and by Contractors to any sub-contractors, must be made no later than 30 days from the date a valid and undisputed invoice is received. Spending Control Officers must then ensure that this Contract condition is complied with.

5. Rules for identifying and selecting Contractors/suppliers

5.1 Subject to **2.9 above**, where the Total Contract Value of a Contract is below the values covered by Contract Category 1 at Appendix 1, there is no requirement for Spending Control Officers to obtain competitive Tenders for procurements. In such circumstances, Spending Control Officers can decide the most appropriate Contractor to select to perform the Contract. However, for the avoidance of doubt, Spending Control Officers can seek competitive Tenders if they consider it appropriate.

5.2 For procurements with Total Contract Values covered by any of the Contract Categories set out at Appendix 1, Spending Control Officers may use any of the following methods that they consider most appropriate, under all the circumstances, to determine which Contractors should form a Select List to be invited to submit Tenders, subject to a written explanation of the criteria adopted for selecting Contractors being held on the relevant Contract file and a copy being provided to the Corporate Procurement Officer at the time of formulating the Select List:

- (a) Use of Constructionline – Spending Control Officers may reduce a Long List produced by Constructionline for the type and value of Contract required to an appropriate Short List (comprising the required number of Tenderers set out in Appendix 1) using a method previously considered appropriate, and approved in writing, by their Director or Asst. Director;
- (b) Use of an existing or new Framework Agreement – including a Framework procured by the Essex Procurement Hub;
- (c) Use of Contractors known to be able to meet the Council’s requirements to a good quality and to provide good value for money;
- (d) Use of Contractors who have previously been successful in Tendering for similar work for the Council in the past; and
- (e) Through the formulation of a Select List by:
 - (i) The inclusion of Contractors considered to be able to perform the Contract; and/or
 - (ii) Advertising for potential Contractors as appropriate (but note **5.3 below**).

5.3 Where Contractors are invited to express an interest in being considered for specific procurements for Contracts with a Total Contract Value in excess of £25,000, through the placement of an advertisement in any media, the Corporate Procurement Officer must be notified and provided with the details of the procurement. The Corporate Procurement Officer must then publish the required information on the Government’s Contracts Finder website, in accordance with the Public Contracts Regulations 2015.

5.4 Unless there are good reasons, if an in-house Council service can meet the requirements of the Specification to the required quality, they must be used in preference to an external Contractor. This includes the Council’s Reprographics and Building Control Services.

5.5 When Spending Control Officers are deciding which Contractors should be invited to provide Tenders, they must take account of the following:

- (a) *If the Contract is for a Total Contract Value in excess of the thresholds for Regulated Procurements set out in the Public Contracts Regulations 2015, the selection of Contractors to Invite to Tender must be in accordance with these Regulations;*
- (b) With the exception of Regulated Procurements, where appropriate and possible, at least one business with its headquarters located in the Epping Forest District should be invited to Tender;
- (c) Contractors who have previously provided good quality Works, Supplies or Services with good value for money should be invited to Tender in preference to Contractors with whom the Council has not had any previous experience; and
- (d) It may be appropriate to seek references for Contractors from other local authorities or public bodies for whom they have previously undertaken Works or provided Supplies or Services.

5.6 In accordance with the Public Contracts Regulations 2015, Pre-Qualification Questionnaires (PQQs) must not be used for any procurement exercises that are not Regulated Procurements.

5.7 *For Regulated Procurements, if Pre-Qualification Questionnaires (PQQs) are used, unless there are good reasons, the “Council’s Standard Pre-Qualification Questionnaire (PQQ)” should be used, which is available from the Council’s Intranet [\[here \]](#). If a different form of PQQ is required, the format should be as close as possible to the “Council’s Standard Pre-Qualification Questionnaire (PQQ)” and the amendments must be agreed with the Council’s Corporate Procurement Officer.*

6. Nominated Sub-Contractors and Suppliers

6.1 Nominations made by the Council to a main Contractor for a sub-contractor or a supplier must be made following Tenders being sought in accordance with these Procurement Rules to select the Nominated Sub-Contractor or Supplier, except where a supplier has previously been used by the Council and the likely overall cost to the Council of changing supplier is considered by the relevant Director or Assistant Director to be greater than any reduced costs that could reasonably be obtained through a further Tendering process.

7. Checks to be undertaken on the experience, abilities and financial standing of Tenderers

7.1 If Tenders are to be invited from Contractors listed on Constructionline or an existing Framework Agreement no further checks are required, subject to the required checks of financial standing referred to in [Section 8](#) below.

7.2 If Tenders are to be invited for Contracts with Total Contract Values covered by Contract Categories 1 or 2 in Appendix 1 no checks of Contractors are required, subject to:

- (a) The required checks of financial standing referred to in [Section 8](#) below; and
- (b) If the Contract has any material health and safety implications, evidence of a good track record of health and safety and the adoption and use of satisfactory health and safety policies being obtained, to the satisfaction of the Spending Control Officer.

However, if the Spending Control Officer considers it appropriate, any (further) checks (including those listed at [Section 7.3 and 7.4 below](#)), can be undertaken for any Contracts with Total Contract Values covered by Contract Categories 1 or 2 in Appendix 1.

- 7.3 For all Contracts with Total Contract Values covered by Contract Category 3 in Appendix 1 or higher, the following checks must be undertaken of all Tenderers intended to be invited to submit Tenders, prior to issuing Invitations to Tender, in a form considered appropriate by the Spending Control Officer:
- (a) Details of each potential Tenderer’s previous experience and ability to undertake the work - to ensure that they are able to perform the Contract to the required standard;
 - (b) If the Contract has any material health and safety implications, evidence of a good track record of health and safety and adoption and use of satisfactory health and safety policies;
 - (c) The financial standing of proposed tenderers, if/as required by the Council’s **“Procedures for Financial Checks of Contractors”** referred to **in Section 8 below** (available on the Council’s intranet **[here]**);
 - (d) Details of each Contractor’s approach to equality and diversity, to ensure that both the Contractor and the Council comply with the requirements of the Equality Act 2010; and
 - (e) If the Contractor or their staff are likely to identify any Safeguarding issues relating to the wellbeing of either adults with care and support needs or children in the performance of the Contract, details of each Contractor’s approach to Safeguarding, to ensure that the Contractor and its employees are able to assist the Council to comply with its legal requirements under the Care Act 2014 and the Children Act 2004.

8. Checks of financial standing

8.1 Checks of Contractors’ financial standing should be undertaken as shown below, for the types of Contracts set out below:

- (a) **Supplies** Not required.
- (b) **Works**
 - (i) For all Contracts with a Total Contract Value within Contract Category 2 of Appendix 1 or higher - where the Contractor is not registered on Constructionline.
 - (ii) For all Contracts with a Total Contract Value within Contract Category 3 of Appendix 1 or above - where the Contractor is registered on Constructionline.
- (c) **Services** For all Contracts with a Total Contract Value within Contract Category 5 of Appendix 1.

8.2 If checks of Contractor’s financial standing are required in accordance with **Section 8.1 above**, the checks must be undertaken in accordance with the Council’s **“Procedures for Financial Checks of Contractors”** (available on the Council’s intranet **[here]**), which sets out:

- (a) At what point in the procurement process financial checks should be undertaken;
- (b) Who has responsibility for undertaking the checks;
- (c) What checks should be undertaken and the methodology to be followed; and
- (d) What action should be taken based on the outcome of the checks.

9. Obtaining value for money for Contracts where Tenders are not required from more than one Contractor

9.1 Tenders are not required from more than one Contractor for Contracts with a Total Contract Value below the Total Contract Values of Category 1 at Appendix 1. However, Tenders can still be sought in such circumstances - with the manner in which such Tenders are sought being determined by the Spending Control Officer and which does not have to comply with these Procurement Rules.

9.2 If Spending Control Officers do not seek Tenders from more than one Contractor, they must still take reasonable and appropriate steps to ensure that the Council obtains good value for money from Contractors, in terms of price and quality.

10. Rules for inviting Tenders where more than one Tender is required

10.1 For Contracts with a Total Contract Value within Category 1 of Appendix 1 or higher (including the value of any potential Contract Extensions), Spending Control Officers must invite Tenders from at least the number of Contractors shown in Appendix 1 for the relevant Contract Category.

10.2 Where Spending Control Officers consider that increased value for money may be obtained by inviting more Contractors to Tender for a Contract than the number required for the relevant Contract Category at Appendix 1, they should invite more Contractors to Tender as appropriate.

10.3 Where the Total Contract Value (including the value of any potential Contract Extensions) is close to the upper threshold for a Contract Category in Appendix 1, Tenders should be sought based on the Contract Category with the higher Total Contract Values.

10.4 Spending Control Officers must give Tenderers sufficient time to properly complete and return Tenders before the Tender Return Date.

10.5 *For Regulated Procurements of Contracts with a Total Contract Value above the thresholds within the Public Contracts Regulations 2015 (i.e. within Category 5 of Appendix 1), Spending Control Officers must comply with the e-communication requirements of Regulations 22(8-21) and 53 of the Public Contracts Regulations 2015. With effect from 18th October 2018, Spending Control Officers must comply with the full e-communication requirements of Regulation 22 and any other provisions of the Public Contracts Regulations 2015 relating to e-communications. A copy of the Crown Commercial Service's "**Guidance on Electronic Procurement & Electronic Communication**", to comply with the Public Contracts Regulations 2015, is available [\[here \]](#).*

10.6 Any electronic procurements undertaken by Spending Control Officers on behalf of the Council must comply with the "**Council's Guidance on Electronic Tendering**" available [\[here \]](#).

10.7 For procurements within Categories 1-4 of Appendix 1, Invitations to Tender can be issued either by post or electronically. However issued, Invitations to Tender provided in accordance with this Section must:

- (a) Include a copy of the Council's standard "**Tender Return Label**" (obtainable from the Council's Intranet [\[here \]](#)) within the Tender Documents, giving:
 - (i) A brief description of the Tender;
 - (ii) The designation of the person listed in Appendix 1 to whom the Tender must be returned;
 - (iii) The time (which must be Noon) and date by which the Tender must be received by the person designated within Appendix 1; and
 - (iv) Notification in large letters that the return document is a "TENDER".

- (b) Include, in the form prescribed by the Asst. Director (Governance and Performance Management):
 - (i) A **“Certificate of Bona Fide Tendering”** (obtainable from the Council’s Intranet [\[here \]](#)); and
 - (ii) A **“Formal Declaration of Tender Offer”** (obtainable from the Council’s Intranet [\[here \]](#))
- (c) Advise Tenderers that Tenders must be returned:
 - (i) In a plain envelope;
 - (ii) Which must be securely sealed; and
 - (iii) Which must not bear any distinguishing matter or mark to indicate the identity of the sender.
- (d) Advise Tenderers that details of their Tender may be published:
 - (i) In the public agenda or minutes of the Council or become available as a background paper; or
 - (ii) By means of a request under the Freedom of Information (FOI) Act 2000 or the Environmental Information (EI) Regulations 2004, in response to which the Council would provide any information which is not covered by any of the statutory exemptions of the FOI Act or EI Regulations.

10.8 At the same time as sending the Invitations to Tender, Spending Control Officers must:

- (a) Advise the person listed in Appendix 1, to whom the Tender must be returned, of the return details of the Tenders; and
- (b) Request the person to whom Tenders must be returned to arrange a time, date and venue for a Tender Opening.

(a) Invitations to Tender by post

10.9 Invitations to Tender must be sent to all Tenderers on the same date.

10.10 On the same day as sending the Invitations to Tender by post, Spending Control Officers must also send an email to all the Tenderers, but not revealing the names of other tenderers, to:

- (a) Advise them that Invitations to Tender have been despatched; and
- (b) Request Tenderers to confirm safe receipt of the Tender Documents when received.

10.11 If safe receipt is not confirmed by a Tenderer within 3 working days of an Invitation to Tender being sent, Spending Control Officers must contact the Tenderer(s) concerned again to check receipt, and must continue to make appropriate periodic checks until all Tenders have been safely received.

10.12 Where it is apparent that Tender Documents have not been received by a Tenderer within a reasonable period, the Spending Control Officer must make appropriate arrangements to send duplicate Tender Documents as soon as reasonably possible (e.g. by hand or by courier).

(b) Invitations to Tender by email

10.13 Where Invitations to Tender are emailed to Tenderers, they must all be sent on the same date.

10.14 The email Invitation to Tender must require Tenderers to notify the Spending Control Officer of the safe receipt of the Tender Documents when received.

10.15 If safe receipt of Tender Documents is not confirmed within 24 hours of an Invitation to Tender being sent, Spending Control Officers must contact the Tenderer(s) concerned by telephone (not email) to check receipt.

10.16 Where it is apparent that Tender Documents have not been received by a Tenderer, the Spending Control Officer must make appropriate arrangements to immediately re-send the Tender Documents, either by email again or by post as appropriate, and then check receipt in accordance with [Section 10.14 above](#).

11. Additional rules for inviting and accepting tenders based on the Most Economically Advantageous Tender (MEAT) (i.e. price and quality) and/or a Schedule of Rates

(a) Most Economically Advantageous Tenders (MEATs)

11.1 If the assessment of Tenders is to be based on an evaluation to assess the Most Economically Advantageous Tender (MEAT), i.e. taking account of both price and quality, Spending Control Officers must follow the Council's "**Corporate MEAT Assessment Methodology**" available on the Council's Intranet [\[here \]](#).

11.2 Prior to Invitation of Tenders being issued, a MEAT Evaluation Assessment must be formulated by the Spending Control Officer and:

- (i) (A copy) must be provided to the Corporate Procurement Officer, prior to the Invitation of Tenders being issued, for audit purposes;
- (ii) Must not be changed after Invitations to Tender have been issued; and
- (iii) Must be held on the relevant Contract file for at least 1 year after the Contract has been let.

11.3 A copy of the MEAT Evaluation Assessment must be provided to Tenderers as part of the Tender Documents.

(b) Schedule of Rates

11.4 Where Tenders are based on a Schedule of Rates, a reasonable Pre-estimate of Quantities for each of the rates contained in the Tender must:

- (i) Be produced prior to Invitations to Tender being issued;
- (ii) Be lodged with the Corporate Procurement Officer for audit purposes;
- (iii) Not be changed after Invitations to Tender have been issued;
- (iv) Be held on the relevant Contract file for at least 6 years after the Contract has been let;
- (v) Be used to multiply the rates provided by Tenderers to reach an Estimated Tender Sum, which shall be the Tender Sum reported for consideration of acceptance by the relevant person/body specified in Appendix 1.

12. Rules for the receipt, custody and opening of Tenders with Total Contract Values within Category 1 of Appendix 1 or higher

12.1 All Tenders received through electronic procurements must be received, held and opened in accordance with the Council's "**Guidance of Electronic Tendering**" available [\[here \]](#).

12.2 For Tenders with Total Contract Values within Category 1 of Appendix 1 or higher, the Assistant Director (Governance) must:

- (a) Make appropriate arrangements to hold returned Tenders in a secure location; and
 - (b) Maintain a Record of Tenders received by the Council, together with their time and date of receipt.
- 12.3 Unless it is known that all expected Tenders have been received, Tenders must not be opened on the same day as the Tender Return Date. This is to ensure that any Tenders that may have been delivered to the Civic Offices in time still reach the Asst. Director (Governance & Performance Management) before the Tender Opening.
- 12.4 Tenders must be opened, all at the same time, by the person(s) listed in Appendix 1 for the Contract Category related to the expected Total Contract Value and, if possible, the Spending Control Officer or their representative.
- 12.5 Tenders must not be accepted if they:
- (a) Are not in a plain envelope;
 - (b) Are not securely sealed;
 - (c) Do not have a **“Tender Return Label”**;
 - (d) Bear any distinguishing matter or mark to indicate the identity of the sender;
 - (e) Do not include a **“Certificate of Bona Fide Tendering”**; or
 - (f) Do not include a **“Formal Declaration of Tender Offer”**.
- 12.6 The Asst. Director (Governance & Performance Management) must ensure that a Democratic Services Officer maintains a record of all Tenders opened, which must be signed by all those in attendance at the Tender Opening.
- 13. Late receipt of Tenders**
- 13.1 Any Tenders received after the Tender Return Date must be examined, unopened, by the person designated within Appendix 1 to open the Tenders and shall be dealt with in accordance with this section.
- 13.2 Where Tenders have been received after the Tender Return Date, but the other Tenders have not yet been opened, and the person responsible for opening the Tenders is satisfied that there is evidence that the Tender was sent in time for delivery by the Tender Return Date, a Late Tender can be opened at the same time as the other Tenders, provided that:
- (a) The details relating to the Late Tender are noted in the Record of Tenders kept by the Democratic Services Officer at the time the Tenders are opened; and
 - (b) The circumstances are reported to the body or individual responsible for accepting the successful Tender.
- 13.3 Where other Tenders have already been opened or, in the opinion of the person responsible for opening the Tenders, there is no evidence that the Tender was sent in time to reach the Council by the Closing Date:
- (a) The Tender must be opened by the Asst. Director (Governance & Performance Management), in the presence of a Democratic Service Officer and, if possible, the Spending Control Officer or their representative;

- (b) The Record of Tenders received must be annotated with details that a Late Tender was received, but was disqualified;
- (c) The relevant Spending Control Officer must advise the Tenderer, as soon as reasonably possible, of the disqualification and the reason; and
- (d) The circumstances must be reported to the body or individual responsible for approval of the successful Tender.

14. Alterations

- 14.1 Tenders must not be altered after they have been opened. However, the Spending Control Officer can recommend to the person or body responsible for accepting the Tender that it is appropriate to accept the correction of Arithmetical Errors, if the Spending Control Officer is satisfied that such errors were made inadvertently.
- 14.2 If an error is identified within the Tender Documents before the Tender Return Date, all the Tenderers must be informed of the error and invited to adjust their Tenders prior to submission.
- 14.3 If an error in the Tender Documents is identified after the Tender Return Date, all Tenderers must be given details of the error and afforded the opportunity of withdrawing their Tender or submitting an amended Tender.

15. Post-Tender Negotiations

- 15.1 No Post-Tender Negotiations are permitted, unless the Contract has been advertised and Tendered under the Competitive Dialogue Procedure and the relevant Director or Asst. Director is satisfied, and determines, that Post-Tender Negotiations are appropriate to the procurement process.
- 15.2 Seeking clarification from Tenderers on queries related to their Tenders does not constitute Post-Tender Negotiations.
- 15.3 If the Specification for a Contract needs to be amended, due to the lowest Tender exceeding the available budget, or if the Council's requirements have changed since the Tenders were invited, all Tenderers must be given the opportunity to submit revised Tenders based on the revised Specification.

16. Rules for accepting Tenders

- 16.1 Tenders must only be accepted by the person/body listed in Appendix 1 for the relevant Contract Category relating to the Total Contract Value.
- 16.2 Where the actual Total Contract Value of the Tender to be recommended for acceptance exceeds the expected Total Contract Value for the relevant Contract Category at Appendix 1, and results in Tenders not having been invited and/or opened in accordance with the higher Contract Category, the Tenders must be reported to, and approved by, the person/body authorised to accept Contracts for the higher Contract Category, together with an explanation of why the actual Total Contract Value is above the expected Contract Value.
- 16.3 For Contracts that are not the subject of a Regulated Procurement, if a Tender, other than either:
 - (a) The lowest Tender (for Tenders based only on price); or

- (b) The Tender with the highest weighted Tender Evaluation Score (for procurements undertaken to assess the Most Economically Advantageous Tender (MEAT))

is recommended by the Spending Control Officer, it may only be approved by:

- (c) A Director or the relevant Asst. Director - where the Tender would normally be accepted by the Spending Control Officer;
- (d) The relevant Portfolio Holder - where the Tender would normally be accepted by a Director, Asst. Director or the Portfolio Holder; or
- (e) The Cabinet - where the Tender would normally be accepted by the Cabinet.

16.4 *For Regulated Procurements, there are only limited circumstances when a Tender, other than either the lowest-priced Tender or having the highest weighted Tender Evaluation Score, can be accepted. If acceptance of a different Tender is proposed, Spending Control Officers are required to seek the advice of the Corporate Procurement Officer and follow the requirements of the Public Contracts Regulations, and/or undertake a further Tender exercise.*

16.5 For audit purposes, where the circumstances in **Sections 16.3 and 16.4** above apply, the Spending Control Officer must provide an explanation in writing to the person/body accepting the Tender of why the lowest Tender or highest weighted Tender Evaluation Score should not be accepted, and must retain a copy of the written explanation on the Contract file.

16.6 Prior to a Tender being accepted, evidence of valid satisfactory insurances required **under Section 4.8 above** to the amount, and on the terms, determined by the Council's Insurance Officer must be received from the Preferred Tenderer by the Spending Control Officer.

16.7 Spending Control Officers are authorised to enter into Contracts or issue Official Orders that have been Tendered and approved in accordance with these Procurement Rules.

16.8 For all procurement exercises with Total Contract Values in excess of £25,000, Spending Control Officers must provide details of all Tenders received, and the name of the successful Tenderer, to the Council's Corporate Procurement Officer within 5 working days of a Contract being entered into, in order to:

- (a) Maintain a central record of all procurement exercises; and
- (b) Enable the Corporate Procurement Officer to provide the required information to the Contracts Finder website, in order to comply with the requirements of the Public Contracts Regulations 2015.

16.9 On receipt of the information provided by the Spending Control Officer, the Corporate Procurement Officer must upload the required information to the Crown Commercial Service's Contracts Finder website as soon as reasonably possible.

17. Procurement Process ("Regulation 84") Report

17.1 *For Regulated Procurements undertaken with a Total Contract Value within Category 5 of Appendix 1, throughout the procurement process, Spending Control Officers must complete and maintain the required Procurement Process Report under Regulation 84 of the Public Contracts Regulations 2015. At the same time as informing Tenderers that their Tenders have been either successful or unsuccessful, Spending Control Officers must provide a copy of the completed Report to the Corporate Procurement Officer, in order to maintain a central record. A template for the "Procurement Process ("Regulation 84") Report" can be obtained from the Council's Intranet **[here]**.*

18. Contract Documentation and retention

- 18.1 Contracts with a Total Contract Value within Contract Category 1 of Appendix 1 can be dealt with by the use of an Official Order, provided that the relevant Director or Asst. Director is satisfied that there is no need for more extensive terms and conditions to be specified in order to protect the interests of the Council. An Official Order (or formal Contract) is required for all Council Contracts.
- 18.2 All Contracts with a Total Contract Value within Contract Category 2 of Appendix 1 or higher must:
- (a) Be in a standard form of an appropriate formal legal agreement approved by the Council's Asst. Director (Legal Services); and
 - (b) Be under seal, unless the Council's Asst. Director (Legal Services), in consultation with the Spending Control Officer, determines otherwise. This would be on the basis that the period of liability for breach of contract does not need to be extended from six to twelve years.
- 18.3 Spending Control Officers (and their successors) must ensure that:
- (a) All appropriate Contract Documentation is retained in a secure location for a minimum period, following the date of final payment, of at least:
 - (i) Six years if the Contract is not executed as a deed under seal;
 - (ii) Twelve years if the Contract is executed as a deed under seal; and
 - (b) Documentation relating to unsuccessful Tenders is retained in a secure location for a period of at least two years.
- 18.4 Original signed Contracts with Total Contract Values within Contract Category 2 of Appendix 1 or higher must be forwarded to the Asst. Director (Legal Services) for secure storage within 28 days of signing/sealing. Original signed Contracts with Total Contract Values within Contract Category 1 of Appendix 1 can also be forwarded to the Asst. Director (Legal Services) for secure storage if the Spending Control Officer wishes.
- 18.5 The Asst. Director (Governance & Performance Management) must ensure that Records of Tenders are retained indefinitely in a secure location.

19. Rules for negotiated contracts

- 19.1 Contracts with Total Contract Values within Contract Category 1 at Appendix 1 or higher may only be negotiated where the relevant Portfolio Holder (or, for Contracts within Contract Category 4, the Cabinet) has resolved that competitive Tenders need not be invited and that a Contract may be negotiated with just one Contractor.
- 19.2 In such circumstances, the reason for not inviting competitive Tenders must be set out in the report to the Portfolio Holder or Cabinet, which can be for any reason considered appropriate by the relevant Director or Asst. Director, including the following reasons:
- (a) The Contract is urgent and there is insufficient time to invite Tenders;
 - (b) The requirements of the Contract are of a specialist nature, where no other Contractor is known to provide them;
 - (c) No demonstrable material benefit would be obtained from inviting competitive Tenders; or

- (d) Tenders have previously been sought for a similar Contract within the previous 6 months and no Tenders were received.

20. Use of Consultants

- 20.1 The definition of a “Consultant” is provided at Appendix 2.
- 20.2 The procurement of all Consultants must be undertaken in accordance with these Procurement Rules.
- 20.3. Spending Control Officers are responsible for ensuring that any Consultants acting on behalf of the Council comply with these Procurement Rules in full.
- 20.4 Except where a recognised national Form of Contract or other accepted and standard type of agreement is used for the appointment of a Consultant, or where the Asst. Director (Legal Services) determines otherwise, the Council’s **“Standard Consultants Agreement”** must be used for the appointment of any Consultant. A template for the **“Standard Consultants Agreement”** can be found on the Council’s Intranet, and is available [\[here \]](#).
- 20.5 Where a national Form of Contract or other accepted and standard type of agreement is to be used for the appointment of a Consultant, Spending Control Officers must take the advice of the Asst. Director (Legal Services (or staff designated by him/her) on any specific provisions to be included or excluded within the Contract / agreement.

21. Rules for Contract Extensions

- 21.1 Spending Control Officers are authorised to extend existing Contracts where the Contract allows an extension, up to the maximum period allowed by the Contract.

22. Contract monitoring

- 22.1 For all Contracts with a Total Contract Value within Category 4 of Appendix 1, the Spending Control Officer must provide a written progress report to the relevant Portfolio Holder(s) at least every three months, between the Tender Return Date and the date of Practical Completion. The Progress Report must report on the progress with the required Works or Services and the current financial position, in relation to:
- (a) Contract and fee expenditure to date;
 - (b) The latest anticipated Total Contract Cost and the anticipated total cost of all fees;
 - (c) Any variations between the budget approved at the time of the acceptance of the Tender and the latest anticipated Total Contract Cost and anticipated total cost of all fees; and
 - (d) The use of any contingency sums to date and the amount of any contingency sums remaining.
- 22.2 For Contracts with Total Contract Values within Contract Category 3 of Appendix 1 or higher, where the latest anticipated Total Contract Cost is in excess of 20% of the Tender Sum, the Spending Control Officer must submit a written report to the next available meeting of the Council’s Corporate Governance Group after the date the excess has been identified, explaining the reasons for the increase and, if appropriate, any remedial action to be taken to reduce the excess.

23. Final Accounts

- 23.1 The Spending Control Officer responsible for any Contract with a Total Contract Value within Contract Category 4 of Appendix 1 or higher must produce a written Final Account, and provide a copy to the Asst. Director (Accountancy), within 3 months of all financial transactions relating to the Contract being completed. The Final Account must include details of the Tender Sum, Contract variations, Final Account sum, any deducted Liquidated and Ascertained Damages, any extensions of time awarded and any claims agreed with the Contractor.
- 23.2 If considered necessary, the Chief Internal Auditor may examine and audit the Final Account and associated Contract Documentation to satisfy that the Final Account is correct and represents an accurate and appropriate summary of Contract payments and deductions.

24. Publication of procurement information

- 24.1 In order to comply with the Local Government Transparency Code 2015, the Corporate Procurement Officer must obtain from Spending Control Officers every 3 months (who must respond within 10 working days) the information required by Part 2.1 of the Local Government Transparency Code and ensure that the information is published every 3 months in accordance with the Code.

25. Disposal and freehold/leasehold property transactions

- 25.1 For the purposes of these Procurement Rules:
- (a) All disposals and freehold/leasehold property transactions, including interests in land (such as acquisitions, disposals, new lettings, lease renewals, lease surrenders, rent reviews, sub-lettings, assignments, licences, deeds of variations, easements, wayleaves and land covenants on land) must be dealt with in accordance with the Schedule of Delegation set out in Part 3 of the Council's Constitution and any procedures required by law; and
 - (b) References to Total Contract Value within these Procurement Rules (including in Appendix 1) mean:
 - (i) The anticipated purchase price or premium for the disposal or freehold/leasehold property transaction; or
 - (ii) The annual rent.
- 25.2 Disposals or freehold/leasehold property transactions involving Council land and property may be through:
- (a) Formal tendering (providing for an initial deposit and binding contract if the Tender is successful);
 - (b) Formal tendering (providing for no initial deposit and no binding contract if the Tender is successful);
 - (c) Private treaty; or
 - (d) Public auction.
- 25.3 These Procurement Rules must be followed in full for all disposals or freehold/leasehold property transactions where Tenders from potential purchasers are sought in accordance with **Section 25.2 (a) or (b) above**.
- 25.4 If the method of disposal or property transaction set-out in **Section 25.2(a) or (b) above** is followed, the person/body that will be asked to accept the Tender may pre-determine that the relevant sale particulars

should make provision for a two-stage offer process, that provides the Council with the option of inviting best and final offers after receipt of initial offers, where this is demonstrated to them to be appropriate:

- (a) By the relevant Spending Control Officer making such a recommendation in a written report to the person/body that will be asked to accept the Tender; and
- (b) Having considered the case for adopting this method of disposal based on an assessment of the risks involved and concluding that this procedure is the most appropriate for achieving best value.

25.5 Disposals or other freehold/leasehold property transactions involving Council land or property sought through the methods set-out in [Section 25.2 \(c\) or \(d\) above](#) can only be approved:

- (a) In exceptional circumstances and if the person/body that will be asked to accept the Tender has considered a report prepared by the relevant Spending Control Officer which justifies the proposed procedure as the most suitable method of achieving best consideration; and
- (b) If the transaction is for less than the open market value, the report referred to in [Section 25.5\(a\) above](#) contains an estimate of what the value of the transaction would be if advertised on the open market.

25.6 Where disposals or other freehold/leasehold property transactions involving Council land or property are sought through the methods set-out in [Section 25.2 \(c\) or \(d\) above](#):

- (a) The relevant Director or Asst. Director may determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 2 of Appendix 1 or lower;
- (b) The relevant Portfolio Holder must determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 3 of Appendix 1; and
- (c) The Cabinet must determine the appropriate arrangements to be followed if the anticipated Total Contract Value for the disposal or freehold/leasehold property transaction is within Contract Category 4 of Appendix 1 or higher.

25.7 The arrangements referred to in [Section 25.6 above](#) may include:

- (a) Determining the most appropriate method of disposal to achieve the Council's statutory duty of obtaining best consideration; or
- (b) Deciding to sell for less than the open market value, provided that all statutory procedures are complied with, including (where necessary) obtaining the consent of a Secretary of State.

25.8 The Chief Estates Officer or Director of Neighbourhoods may agree, on behalf of the Council, to all estates acquisitions, disposals and licences set out within the Schedule of Officer Delegations in Part 3 of the Council's Constitution, where it would be in accordance with good estate management and would not adversely affect the premises concerned.

25.9 The relevant Portfolio Holder may take decisions under delegated authority for all estates management matters that, individually, have a cumulative value of between £500,001 and £999,999, subject to all other matters within these Procurement Rules being satisfied and undertaken in accordance with Article 14 (Decision Making) of the Council's Constitution.

Table of Tendering Requirements for Nos. of Tenders, Returns and Openings

Contract Category	Total Contract Value ^(*)	Minimum no. of tenders to be invited ^{(+)(@)}	Designation of person to whom tenders must be addressed	Designation of person required to open tenders	Designation of person/body required to accept tender
1	£25,000 - £50,000	Three	Assist. Director (Governance & Performance Mgt)	Spending Control Officer ^(#) + Democratic Services Officer	Spending Control Officer ^(#)
2	£50,001 - £250,000	Three	Assist. Director (Governance & Performance Mgt)	Director or Asst. Director + Democratic Services Officer	Director or Asst. Director
3	£250,001 - £1million	Three	Assist. Director (Governance & Performance Mgt)	Portfolio Holder + Director/Asst. Director + Democratic Services Officer	Portfolio Holder
4	Over £1million	Three	Assist. Director (Governance & Performance Mgt)	Portfolio Holder + Director/Asst. Director + Democratic Services Officer	Cabinet
5	Above the relevant EU Threshold for Works, Supplies or Services	Five	As 1-5 above (dependent on contract value)	As 1-5 above (dependent on contract value)	As 1-5 above (dependent on contract value)

Notes:

(*) Total Contract Value means the total value of the Works, Services and Supplies over the total period of the Contract, including all potential Contract Extensions to the initial Contract Period.

(+) If the estimated Total Contract Value is in excess of the value thresholds for Works, Supplies or Services, above which the Public Contracts Regulations 2015 apply, the required number of Tenders determined by the Regulations must be applied.

(@) Includes any in-house Tenders submitted.

(#) Spending Control Officer means the person who is the named person responsible for the budget heading under which payments for the contract will be made, and is responsible for all aspects of the procurement process for a Contract and for complying with these Procurement Rules.

Current EU Procurement Thresholds (1st January 2016 – also from 31st December 2016)

Supplies	£164,176
Services	£164,176
Works	£4,104,394
Light Touch	£589,148

Link to website with the most up to date thresholds: [\[Available here \]](#)

Glossary and Definitions of Terms used in the Procurement Rules

Term	Definition or Explanation
Arithmetical Error	An error in addition, subtraction, multiplication or division within a submitted Tender.
Cabinet	The Leader of the Council and other councillors appointed by the Leader to form a group of councillors authorised by the Council's Constitution to make decisions on certain issues.
<i>“Certificate of Bona Fide Tendering”</i>	A form that Tenderers must complete, sign and return with their Tender to confirm that the Tender they are putting forward is the true offer that will be available to the Council if the Tender is won by the Tenderer (i.e. to confirm that the offer is genuine and is not just a competitive offer to push them forward through the Tender process). The Council's Standard <i>“Certificate of Bona Fide Tendering”</i> can be obtained from the Council's Intranet, and is available [here] .
Competitive Dialogue Procedure	A formal and complex process, allowed by the Public Contracts Regulation 2015, for procuring a Contract through discussions with Contractors in a structured way.
Constructionline	The UK's leading procurement and supply chain management web-based service that collects, assesses and monitors standard company information through a question set that is aligned to the standardised pre-qualification questionnaire developed by the British Standards Institute, to reduce duplication within the construction industry.
Consultant	A person or organisation who is not employed by the Council, included on the Council's payroll or covering an establishment post, who is procured directly - through a company (or similar commercial undertaking) or an agency and is engaged to perform a specific task over a predetermined period.
Contract Award	The decision to enter into a Contract with a Contractor
Contract Documentation	All documents related to the administration of a Contract, not just the Tender Documents
Contract Extension	The continuation of a Contract for a further period of time allowed by the Contract. There can be more than one Contract Extension for a Contract.
Contracts Finder	A service provided by the Crown Commercial Service, and referred to in the Public Contracts Regulations 2015, that enables Contractors to search for information about Contracts worth over £25,000 with the Government, Government agencies and local government.
Contract Period	The period commencing with the date a Contract specifies that the provisions of the Contract are to start to the date the Contract comes to an end.

Contract Sum	The amount to be paid to a Contractor to perform a Contract, prior to any Contract Extensions, and referred to in the formal Contract between the Council and the Contractor.
Contracts	Contracts, agreements or orders for Works, Supplies or Services.
Contractors	Works contractors, Suppliers, Service providers and Consultants.
Corporate Governance Group	A group of officers, chaired by the Chief Executive, comprising members of Management Board, the Chief Internal Auditor and the Deputy Monitoring Officer.
Corporate Procurement Officer	The officer designated by the Director responsible for procurement arrangements within the Council, who co-ordinates procurement matters on the Director's behalf.
Crown Commercial Service	A Government Agency that brings together policy, advice and direct buying information in a single organisation and provides commercial Services to the public sector and saving money for the taxpayer. Much of the CCS's advice gives formal detailed guidance on the operation of the Public Contracts Regulations 2015.
Defects Liability Period	A set period of time after a Works Contract has been completed, during which a Contractor has the right to return to the site to remedy any defects at the Contractor's own cost.
Director	A Director, Assistant Director or the Chief Executive.
e-Communications	The method of using electronic communications, including email and web-based applications, to provide and receive documents and communications to and from Contractors, in accordance with the Public Contracts Regulations 2015 – detailed in the "Guidance on Electronic Procurement & Electronic Communication" produced by the Crown Commercial Service [Which can be found here]
Essex Procurement Hub	A consortium of six local authorities in Essex, including Epping Forest DC, that provides strategic and operational procurement support, advice and guidance in order to add demonstrable value to the procurement process to its members. The Hub lets and manages a number of national Framework Agreements that are accessible to any UK Public Authority.
Estimated Tender Sum	A Tender Sum formulated by applying rates submitted by a Tenderer to Pre-Estimated Quantities that are estimated to apply over the Contract Period and used to compare the Tenders received from different Contractors. This is nearly always different from the Total Contract Cost.
Final Account	A written statement that includes details of the Tender Sum, Contract variations, Final Account sum, any deducted Liquidated and Ascertained Damages, any extension of time awarded and any claims agreed with the Contractor.

<i>“Formal Declaration of Tender Offer”</i>	The form that Tenderers must complete, sign and return with their Tender to state and confirm their Tender Sum. The form includes a number of statements that Tenderers sign to confirm their compliance. The Council’s Standard <i>“Formal Declaration of Tender Offer”</i> is available on the Council’s Intranet, and is also available [here] .
Framework Agreement	An agreement with Contractors to establish terms governing Contracts that may be awarded during the life of the Framework Agreement, or a general term for agreements that set out terms and conditions for making specific purchases (referred to as “call-offs”).
Insurance Officer	The officer designated by the Director responsible for insurance arrangements within the Council, who co-ordinates insurance matters on behalf of the Director.
Invitations to Tender	A letter, email or other communication sent to Tenderers – either by post or electronically – together with Contract Documents, that invites Tenderers to submit a Tender by the Tender Return Date.
Late Tender	A Tender that has not been received by the Asst. Director (Governance & Performance Management) by the Tender Return Date.
Light Touch Regime (LTR) / Procurement	A specific set of rules introduced by the Public Contracts Regulations 2015 for certain Services contracts that tend to be of lower interest to cross-border competition, that replace the previous distinction between “Part A” and “Part B”. These include certain social, health and education services, defined by the Regulations. A relatively high financial threshold is applied to the LTR, below which contracts do not need to be advertised in the OJEU. For LTR contracts above the threshold, contracting authorities have to follow a new light-touch set of procurement rules, set out in the Regulations.
Liquidated and Ascertained Damages	Fixed damages stated in a Contract, and usually set as an amount per week (or part of a week), which the Contractor must pay the Council (or which the Council may deduct from payments to the Contractor) if completion of the Contract is delayed beyond the Contract completion date, as adjusted by any extensions of time. Note that they are void as a penalty if they are not a "genuine pre-estimate" of the Council’s potential loss, in which case the Council can usually recover normal, unliquidated damages for breach of Contract.
Long List	A list of all Contractors expressing an interest in receiving an Invitation to Tender, before any selection process has been undertaken by the Council to produce a Short List.
Most Economically Advantageous Tender (MEAT)	A Tender for a Contract that has been evaluated not only on the basis of the price submitted by a Tenderer, but also on the basis of the assessed quality of both the submitted Tender and the Tenderer. This is in accordance with a pre-determined MEAT Assessment Methodology, with Tenders evaluated using a pre-determined MEAT Evaluation Assessment, which usually provides for pre-determined weightings to be applied to the price and the quality of various aspects of the Tender.

“MEAT Assessment Methodology”	The pre-determined approach agreed by the Council, and available on the Council’s Intranet, to assess the Most Economically Advantageous Tender (MEAT). The Council’s current Methodology [is available here]
MEAT Evaluation Assessment	The document that sets out the pre-determined weightings to be applied to the price and the quality of various aspects of the Tender, and used to calculate the relative scores of all the Tenders received.
Nominated Sub-Contractors and Suppliers	Sub-contractors and suppliers that the Council requires a Works Contractor, Service provider or other Supplier to use to perform the Contract.
Official Order	A standard form of Contract placed with a Works Contractor, supplier, service provider or Consultant, that is usually issued through the Council’s Marketplace System or the Northgate Open Housing Management System (OHMS)
Parent Company Guarantee	A guarantee by the parent company of a Contractor in respect of the Contractor’s performance under its Contract with the Council, where the Contractor is a subsidiary of the parent company
Partnering Contract	A broad term used to describe a collaborative management approach that encourages openness and trust between the parties to a Contract. The parties become dependent on one another for success, which often requires a change in culture, attitude and procedures throughout the supply chain. Most commonly used on large, long-term or high-risk contracts, Partnering Contracts can be adopted for a one-off project, or can be a long-term relationship over a number of projects (such as a Framework Agreement).
Performance Bond	A means of insuring a Contractor against the risk of the Contractor failing to fulfil its contractual obligations to the Council. The Performance Bond provides compensation, guaranteed by a third party, up to the amount of the Performance Bond (which is typically set at 10% of the Total Contract Value), to enable the Council to overcome difficulties that have been caused by non-performance of the Contractor, such as, for example, finding a new Contractor to complete Works.
Portfolio Holder	A Councillor appointed by the Leader of the Council as a member of the Cabinet with responsibility for a particular portfolio of services, as set out in the Council’s Constitution.
Post-Tender Negotiations	Discussions that take place with one or more Tenderers on price and/or other terms of the Contract or Specification after Tenders have been received and opened.
Practical Completion	The completion of all the Works required to fulfil a Contract.
Pre-estimate of Quantities	A Spending Control Officer’s best estimate of the quantities of items relating to the Contract that will arise over the Contract Period, that are applied to rates submitted by Tenderers to produce an Estimated Tender Sum, which is used to compare the Tenders received from different Contractors.

Preferred Contractor	A Tenderer that is being recommended to be awarded a Contract.
“Procurement Process (“Regulation 84”) Report”	A requirement of Regulation 84 of the Public Contracts Regulations 2015, relating to procurements where the Total Contract Value is above the EU thresholds for regulated procurements, which is completed throughout the procurement process and is a written statement, in a defined format, that provides information on different aspects of the procurement and must be made available to Tenderers on request. A template for the “Procurement Process (“Regulation 84”) Report” can be obtained from the Council’s Intranet, and is available [here] .
Professional Indemnity (PI) Insurance	A liability insurance that helps protect individuals and companies (usually Consultants) from bearing the full cost of defending a negligence claim in respect of professional advice provided to the Council by the Consultant.
Public Contracts Regulations 2015	Regulations made by the UK Government to exercise the powers given by the European Communities Act 1972, relating to procurements by public bodies in the UK and, in particular, for Regulated Procurements that are above the financial thresholds for Works, Supplies and Services Contracts referred to in the Regulations.
Record of Tenders	A record of Tenders received for every procurement, where the Total Contract Value is within Contract Category 1 of Appendix 1 or higher, listing the Tender Sums submitted by each Tenderer, together with the Tenderer’s names, completed by a Democratic Services Officer and held by the Asst. Director (Governance & Performance Management).
Regulated Procurements	Procurements by public bodies in the UK that are above the financial thresholds for Works, Supplies and Services Contracts referred to in the Public Contracts Regulations 2015, which stipulate the way in which any procurements above the financial thresholds must be undertaken. A “Basic Guide to Public Sector EU Procurement Legislation” can be downloaded here
Retention	A percentage of the amount certified as due to a Contractor following their completion of a Contract, which is deducted from the amount due and retained by the Council. The purpose of holding a Retention is to ensure that the Contractor properly completes the activities required of them under the Contract.
Retention Period	The period during which a Retention is held by the Council.
Safeguarding	Ensuring the wellbeing of either adults with care and support needs or children in accordance with the requirements of the Care Act 2014 and the Children Act 2004 respectively.
Schedule of Rates	A list of prices provided by a Tenderer against items within a list produced by the Council for Tenderers to complete. The prices are multiplied by the Pre-Estimate of Quantities to produce an Estimated Tender Sum.
Select List	A list of selected Contractors to which Invitations to Tender are issued.

Services	<i>(According to Volume 1 of the EU Public Procurement: Law and Practice)</i> In relation to public Contracts, means matters which have as their object the provision of services other than those defined as Works.
Short List	A list of Contractors that has been reduced, following a selection process, from a Long List of Contractors expressing an interest in receiving an Invitation to Tender. The Short List often then forms a Select List.
Specification	A document that sets out the detailed requirements of the Council for the undertaking or provision of Works, Supplies or Services, and forms an important part of the Tender Documents and the subsequent Contract issued to a Contractor.
Spending Control Officer	The officer designated by a Director as being responsible for a specified Council budget, from which payments for a Contract will be made, who is responsible for all aspects of the procurement process for a Contract and for complying with these Procurement Rules.
Supplies	<i>(According to Volume 1 of the EU Public Procurement: Law and Practice)</i> In relation to public contracts, means a matter that has as its object the purchase, lease, rental or hire-purchase (with or without an option to buy) of a product or products.
Tender	A written tender, quotation or fee submission submitted by a Tenderer in accordance with these Procurement Rules, that sets out the Tenderer's proposed price for performing a Contract, together with any other information required by the Council and these Procurement Rules.
Tender Documents	A set of documents sent to Contractors with an Invitation to Tender, which explains the Council's requirements for a proposed Contract and includes documents to be returned to the Council for consideration
Tenderer	A person or organisation that is invited to submit a Tender to the Council.
Tender Evaluation Score	The score that results from a MEAT Evaluation Assessment of a Tender, which is used to rank Tenders in order of the Most Economically Advantageous Tender in terms of best price and quality. A Contractor with the highest Tender Evaluation Score is usually offered the Contract.
Tender Sum	The total price set out in a Tender that a Contractor would charge to perform the required Contract, before any Contract Extensions are applied. An Estimated Tender Sum is calculated where a Contractor prices a Schedule of Rates.
Tender Opening	A meeting between those designated within Appendix 1 to be present when Tenders received for a Contract are opened, and which must be held no earlier than the day after the Tender Return Date.
Tender Return Date	The time and date specified within an Invitation to Tender by which Tenders must be returned and received by the Council. The time must always be specified as Noon, in order to minimise the potential for Tenders not being received by the Asst. Director (Governance &

	Performance Management) or his/her staff on the day of the Tender Return Date and to provide time for Tenders received at the Civic Offices before Noon to be passed to the Asst. Director (Governance & Performance Management) before the Tender Opening
<i>“Tender Return Label”</i>	A label provided by the Council to Tenderers to affix to the envelope in which they return their Tender - which gives details of the Contract, the Tender Return Date and the name of the officer to whom the Tender must be returned. A copy of the Council’s <i>“Tender Return Label”</i> can be obtained from the Council’s Intranet, and is available [here] .
Total Contract Cost	The actual total cost of the Contract at the end of the Contract Period, after any Contract Extensions have been applied.
Total Contract Value	The total value of the Works, Services, and/or Supplies over the Contract Period, including all potential Contract Extensions to the initial Contract Period.
Works	<p><i>(According to Volume 1 of the EU Public Procurement: Law and Practice)</i> means the outcome of building or civil engineering works taken as a whole, which is sufficient in itself to fulfil an economic or technical function.</p> <p>In relation to public contracts, means matters which have as their object any one of the following:</p> <ul style="list-style-type: none"> (a) The execution, or both the design and execution, of works related to one of the activities listed in Schedule 2 to the Public Contracts Regulations 2015; (b) The execution, or both the design and execution, of a work; and/or (c) The realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority “exercising a decisive influence on the type or design of the work”.

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CONTRACT STANDING ORDERS (CSO)

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CONTRACT STANDING ORDERS

TENDER AND BID RIGGING – IMPORTANT NOTICE

DURING EACH STAGE OF THE CONTRACT PROCESS CHIEF OFFICERS SHOULD BE AWARE OF THE PRINCIPLES IN THE GUIDELINES FOR FIGHTING BID RIGGING IN PUBLIC PROCUREMENT, ISSUED BY THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) AND THE OFFICE OF FAIR TRADING AND THE CHECK LIST PROVIDED WITHIN THESE GUIDELINES. THE GUIDELINES CAN BE FOUND IN THE PROCUREMENT SECTION OF THE COUNCIL'S INTRANET.

C1 Local Businesses

Chief Officers are required to obtain, where possible, at least one quotation or tender from a business located in the Epping Forest District (including those with headquarters elsewhere) for any contract or official order being placed by the Authority, provided that in awarding the contract to a local business, the Council's duty to achieve value for money and to comply with legal duties and any other requirements of Contract Standing Orders is not compromised.

C2 Compliance with Standing Orders

(1) Every contract made by the Council or on behalf of the Council except as hereinafter provided shall comply with:

- Standing Orders
- Financial Regulations
- The Local Government Act 1972
- The Local Government Act 1988, Part 2
- The Local Government Planning and Land Act 1989, and supporting documentation.
- Local Government Acts 1999, 2000, 2003
- Common-hold and Leasehold Reform Act 2003
- The Local Government (Contracts) Act 1997
- The EU Regulations
- Any relevant European Council Directive and any other current legislation for the time being in force
- Asset Management Plan
- Public Services (Social Value) Act 2013

Where there is a conflict between Standing Orders, Financial Regulations and any statutory requirements, the Council must comply with statutory requirements.

- (2) Before seeking quotations or inviting tenders in respect of any contract, a Chief Officer must establish whether a central contract exists which meets the requirement. If a central contract does exist then it must be used unless the appropriate Chief Officer in consultation with the Cabinet or Portfolio Holder if authorised under the general scheme of delegation or specific regulation is able to demonstrate that there are specific advantages to be obtained via alternative arrangements. In such circumstances consideration shall be given to whether a new/revised central contract would be advantageous and appropriate.
- (3) Where the Council is acting as agent for a Government Department, or for another authority under the terms of an agency agreement, nothing in these Standing Orders shall be taken to authorise or require any departure from the instructions or requirements of those departments or the terms of any Agency Agreement.
- (4) No exception from any of the provisions of these Standing Orders other than those provided for within the Standing Orders themselves, shall be made otherwise than by direction of the Council, the Cabinet, or a Portfolio Holder where satisfied that the exception is of necessity and justified in special circumstances where a Portfolio Holder seeks to waive any provisions in these Contract Standing Orders, they may do so only on the recommendation of the relevant Chief Officer and after consultation with the Monitoring Officer and the Chief Financial Officer and subject to the financial consequences not exceeding £250,000 or not constituting a departure from existing Council policy.
- (5) The reasons for any exception so made by the Council, or the Cabinet shall be made only pursuant to a report of the relevant Chief Officer and the reasons for such an exception shall be recorded both in the report of the Chief Officer and in the minutes of the appropriate meeting.
- (6) For the purposes of these Standing Orders, the expressions
 - (a) "Chief Officer" means the Chief Executive, a Service Director and Assistant Service Director;
 - (b) "Cabinet" means a duly constituted and convened meeting of those Councillors appointed to serve as Cabinet members;
 - (c) "Cabinet Committee" means a duly constituted and convened meeting of those Councillors appointed by the Leader of Council to the Cabinet Committee concerned;
 - (d) "Portfolio Holder" means a Councillor appointed by the Leader of the Council as a member of the Cabinet with responsibility for particular portfolio of services.

(See also C16 (appointment of consultants))
- (7) Unless otherwise specifically provided, where a value or an estimated value is given in these Contract Standing Orders, this refers to the aggregate payable in pounds sterling exclusive of VAT over the entire contract period.
- (8) Chief Officers must ensure that a pre-tender estimate for a contract of a value in excess of £50,000 of anticipated costs is prepared and recorded in writing. Where the EU Public Procurement rules apply, Chief Officers must also ascertain the value of a contract in accordance with those rules.

- (9) The value of orders which can be combined in one contract, must be added together over a period of four years when deciding which tendering or quotation method is to apply. Contracts must not be artificially under or over estimated or divided into two or more separate contracts where the effect is to avoid the application of Contract Standing Orders and/or EU Regulations.
- (10) Where the aggregate sum payable within a single service directorate to one supplier of goods, works or services over a period of four years is likely to exceed the limits of authority referred to in these Contract Standing orders, the Chief Officer must report to the Portfolio Holder (in respect of contracts up to £250,000) and the Cabinet (in respect of contracts if over £250,000 in value) and seek a waiver of the Standing Order. It is the responsibility of the Chief Officer to ensure that such a report is submitted prior to the limit of authority being breached. In exercising their responsibilities under this paragraph, Chief Officers are required to have regard to the overall cost (including any management costs and those which extend over longer than a single financial year).
- (11) If any officer is made aware of or becomes aware of an actual or potential breach of the procedures contained in these Contract Standing Orders or any other statutory requirement, that officer shall report the breach immediately to the Chief Officer or the Chief Internal Auditor as appropriate. It shall be a further requirement that any instances of serious non-compliance shall be reported by the Chief Officer concerned or the Chief Internal Auditor to the Cabinet at the first available meeting if the value of the contract exceeds £50,000.
- (12) These Contract Standing Orders apply to procurement of goods, services or works outside the Essex Procurement Hub (EPH). Use of these Contract Standing Orders for procurement purposes shall only be used where Chief Officers can demonstrate that procurement through the EPH is not possible.
- (13) Chief Officers are required to ensure that, whichever procurement method is selected, they obtain the appropriate approval from a Portfolio Holder or the Cabinet in accordance with the value thresholds for contracts as set out in these Contract Standing Orders.
- (14) The provisions of Contract Standing Orders relating to competitive quotations or tenders and use of the Essex Procurement Hub shall not apply to the procurement of goods services or works from its own works organisations or equivalent unless in the opinion of the relevant Head of Service there are clear value for money reasons for doing otherwise.
- (15) The Contract Standing Orders are part of the Constitution of the Council and may only be varied at a Council Meeting.

C3 Selection of Tendering Method

- (1) A Chief Officer is required, prior to the invitation of tenders or quotations, to determine the correct procurement procedure in accordance with the provisions of Standing Orders, based on the best estimate available at that time, of the contract sum.
- (2) A Chief Officer who is of the opinion that tenders or quotations are only likely to be available from a single source, shall compile and record auditable evidence which justifies his or her decision not to pursue procurement by competition.
- (3) Chief Officers are also required to select alternatives to the Essex Procurement Hub only where this can be demonstrated as being more appropriate to the Council's

procurement requirements and the Hub has been notified of this view and has confirmed that it is unable to provide appropriate alternatives within existing framework agreements. In all other circumstances, Chief Officers are required to utilise the Essex Procurement Hub for advising on tender specifications, and for managing the procurement process. The Council remains responsible for the drafting of tender and quotation specifications together with the evaluation and acceptance of tenders.

- (4) In the event that the value of tenders or quotations received exceeds the upper financial limit prescribed by the relevant Standing Order, the Chief Officer concerned shall report the circumstances to the Cabinet where the acceptance of any such tender or quotation, will be considered.

C4 Contracts Not Exceeding £25,000

- (1) Each Chief Officer may, in respect of the service or services for which they are responsible, by the issue of an official order in accordance with Standing Order C25(1) enter into a contract not exceeding £25,000 in value or amount other than a contract for consultancy services. In the case of a contract for consultancy services, the form of agreement is available on the Council's intranet unless the Director of Governance otherwise directs. Each Chief Officer shall at all times have regard to best value requirements in the procurement of services and entering into contracts which are set out in Financial Regulations and if best value considerations result in a quotation other than the lowest in financial terms being accepted, the reasons for so deciding shall be documented by the Chief Officer making that decision.

- (2) Written quotations must be obtained for contracts which have a value of up to £25,000. The minimum number of quotations needed is:

Contract Value:	Number of Quotations
------------------------	-----------------------------

Up to £10,000	One, unless the price and terms are known in advance
---------------	--

£10,001 - £15,000	Two
-------------------	-----

£15,001 - £25,000	Three
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- (3) Where the supply of goods, works and/or services are of a repetitive and regular nature and not covered by a central contract as referred to in Standing Order C1(2), a contract shall be entered into for the supply of such goods, works or services in accordance with Standing Orders C13 (Serial Contract) or C15 (Exceptions for Consortia, Public Supply Agencies etc).
- (4) The terms of the delegation set out in (1)-(3) above shall not be applicable if the requirements of Standing Order C11 (Contractor Selection) apply.

C5 Contracts Exceeding £25,000 but not exceeding £50,000

- (1) In respect of contracts exceeding £25,000 but not exceeding £50,000 in value or amount the appropriate Chief Officer may, subject to the provisions of Standing Order C17 (Receipt and Custody of Quotations and Tenders), enter into a contract, provided that:
 - (a) at least three quotations (plus any 'in-house' bid) are obtained from those companies included on Constructionline;

- (b) where the required trade or profession is not served by Constructionline, at least three quotations are obtained from sources considered appropriate by the relevant Chief Officer;
 - (c) the proposed contract forms a continuation of an existing contract which is based on rates and prices obtained in accordance with these Standing Orders and the achievement of best value procurement can be demonstrated.
 - (d) all quotations under (a) and (b) above being invited in such a way as to allow sufficient time, as determined by the Chief Officer, to enable those companies to submit competitive quotations or tenders;
 - (e) the receipt, custody and opening of such quotations or tenders being carried out as prescribed in Standing Orders C17 (Receipt and Custody), C18 (Opening) and C19 (Late Receipt);
 - (f) a register being maintained by Chief Officers of the selection criteria employed to obtain a tender list; and
 - (g) Where the Council has procured services, supplies or works through a competitive process, and the service, supplies or works that are being provided is considered to represent best value in terms of quality and price, then the relevant Chief Officer should be enabled to continue for a period of no more than two years in accordance with Standing Order C11 (2) to appoint that service provider, supplier or contractor through a negotiated process subject to the Chief Officer being satisfied that the negotiated price represents best value, based on a value assessment each year based on market conditions.
- (2) Where the goods and/or services are of a repetitive and regular nature and not covered by a central contract as referred to in Standing Order C2(2) (Central Contracts) an annual contract or contract for such other period as the Chief Officer shall consider appropriate shall be entered into for the supply of such goods/services and be in accordance with Standing Orders C13 (Serial Contracts) or C15 (Exceptions for Consortia).
- (3) Chief Officers will notify the Chief Internal Auditor of all individual purchases and contracts for goods, works and services over £25,000 in value whatever the period of the contract. Similarly, the Chief Internal Auditor should be notified of goods, works and services purchased from one supplier which total over £25,000 in value over a period of four years. These requirements shall apply equally to procurement under the Essex Procurement Hub and Contract Standing Orders.

C6 Contracts Exceeding £50,000

Where the estimated value or amount of a proposed contract for the supply of goods or services exceeds £50,000 or where the conditions of Standing Orders C3(3) or C4(3) (Repetitive or Regular Contracts) apply, tenders shall be invited in accordance with Standing Orders C7 (Restricted Tendering), C8 (Ad Hoc Lists), C9 (Open Tendering), C10 (Negotiated Tendering), C11 (Contractor Selection) or C12 (Serial Contracts). Standing Order C5(3) (Notification to Chief Internal Auditor) shall also apply.

C7 Restricted Tendering: For Contracts Exceeding £50,000 in Value

- (1) For the purposes of this Standing Order restricted tendering is defined as any procurement where large numbers of applicants to join a tendering process are anticipated. Such tendering arrangements will consist of:
 - (a) The pre-qualification stage where potential suppliers are required to demonstrate their financial standing and technical ability to meet the Council's requirements. Account will be taken at this stage of the potential suppliers' past performance, experience in equivalent contracts with the Council or similar bodies, health and safety, environmental and equality procedure checks and any references thought appropriate.
 - (b) The tendering stage – where suppliers shortlisted at the pre-qualification stage are invited to tender.
- (2) This Standing Order shall apply to projects with an estimated value not exceeding the limits specified in the EU Regulations and mentioned in Standing Order C36 (EU Procurement Thresholds). A Chief Officer will resolve that invitation to tender for a contract be limited to those persons or bodies whose names are on Constructionline, the national qualification system, unless the trade or profession is not served by Constructionline.
- (3) The system will be administered by the Director of Resources via the Senior Finance Officer – Procurement and Administration designated as the Contract Compliance Officer to whom comprehensive details shall be provided in respect of the contractor selection criteria applied, tenders invited and contracts awarded. All Chief Officers are placed under a duty to provide this information to the designated Contract Compliance Officer.
- (4) If any Chief Officer considers that any contractor should no longer be considered for any future invitation to tender, a report shall be made to the relevant Portfolio Holder. If approved, a report shall also be made to Constructionline.
- (5) Invitations to tender shall be:
 - (a) sent to not fewer than five contractors selected from Constructionline if the contract exceeds £50,000 unless the trade or profession is not served by Constructionline in which case the contractors selected in accordance with Standing Orders C9, C10 or C11 may be invited to tender;
 - (b) where fewer than five are available, to all such contractors.

C8 Ad Hoc List - Contracts over £2 million

- (1) This Standing Order shall apply to projects;
 - (a) with an estimated value in excess of £2 million; or
 - (b) where the Council has resolved that invitation to tender be made to persons who have replied to a public notice; or
 - (c) where the EU regulations specified in C2(1) (Contract Compliance) or C36 (EU Procurement Thresholds) apply.

- (2) This Standing Order shall apply also to the provision of goods and services of an ad hoc nature that cannot be accommodated by Standing Order C6 (Restricted Tendering).
- (3) Where the EU Regulations apply, the Chief Officer shall send:
 - (a) as soon as possible after the decision to approve any works; or
 - (b) in the case of services and supplies, as soon as possible after the commencement of the Council's financial year, to the Official Journal of the European Union (OJEU) a Prior Information Notice (PIN) via the Essex Procurement Hub in the form prescribed by the appropriate EU Regulations to alert prospective tenderers to the availability of contracts during the next financial year.
- (4) In order that applicants will have a reasonable opportunity of expressing an interest, at least ten days public notice shall be given in trade journals circulating among persons who undertake such contracts.
- (5) Where required a contract notice must be placed in the OJEU stating the nature and purpose of the contract. Where the Notice is not being placed by the Hub the content of European Union Notices shall be agreed in advance with the Director of Resources through the Essex Procurement Hub or in exceptional circumstances by any method approved by the Director of Resources by the appropriate Chief Officer and shall be published in the official journal at such a date prior to the letting of the contract which complies with EU public procurement regulations.
- (6) After the expiry of the period specified in the public notice and the contract notice invitations to tender for the contract shall be sent to:
 - (a) not less than four persons or bodies who have applied for permission to tender and who have been selected as suitable by the appropriate Chief Officer but only in respect of contracts valued in excess of £50,000 but less than the EU procurement thresholds;
 - (b) If this is a contract to which the EU regulations apply, to the number specified in the advertisement as the minimum number of tenderers to be invited apply;
 - (c) where fewer than five have applied, all those applicants considered suitable; and
 - (d) in exercising their delegated authority under paragraph (a) above, Chief Officers will record the criteria used in decisions on the ad hoc list of tenderers to supply a copy to the Chief Internal Auditor for audit purposes.

C9 Open Tendering - Contracts in Excess of £50,000

- (1) This Standing Order shall apply only in exceptional circumstances where the Director of Resources determines that the opportunities for real competition are limited and the Council, the Cabinet, a Cabinet Committee, or Portfolio Holder have resolved that tenders for a contract are to be obtained by open competition. When open tendering is adopted, all tenders received must be reviewed in accordance with the requirements of EU regulations.
- (2) For the purposes of this Standing Order procedures should comply with the requirements of Standing Orders C8(2), (3), (4)(Contracts over £2 million), and other

Standing Orders as appropriate (e.g. C11 (Contractor Selection), C17 (Receipt and Custody of Tenders), C18 (Opening of Tenders), C19 (Late Receipt of Tenders) etc).

- (3) The procedures for the opening of tenders may be varied in accordance with C20 (relating to pre tender estimates).

C10 Negotiated Tendering - Contracts in Excess of £50,000

- (1) This Standing Order shall apply where the Council, the Cabinet, a Cabinet Committee or a Portfolio Holder have resolved that tenders need not be invited and that a contract may be negotiated in the following circumstances:
- (a) the subject matter of the contract is urgently required and that loss, injury or damage would result from a delay whilst advertising takes place and the requirements of Financial Regulations relating to urgent expenditure are followed;
 - (b) the subject matter of the contract is of such a specialised nature that no advantage would accrue by inviting competitive tenders;
 - (c) there is no effective competition for the subject matter of the contract because payment is fixed under statutory authority or because the subject matter is a patented or proprietary article or is available from only one source;
 - (d) other tendering procedures have been used and resulted in:
 - (i) unacceptable or irregular tenders; or
 - (ii) no tenders being received;
 - (e) where the tender sought is in respect of a continuation contract and the preceding contract was won in competition, subject to the tenderer's satisfactory performance on the previous phase and to the approval not resulting in a contract which is for more than a four year period; or
 - (f) where the tender sought is in respect of specialist works or services, and the Council is satisfied that it is fair and reasonable in view of an existing relationship with a contractor to extend that relationship in regard to a new project, and the reasons for proceeding by means of a negotiated tender shall be recorded in the minutes of the appropriate meeting.
- (2) If the value of the contract is such that EU regulations apply, then the negotiated tender procedure or competitive dialogue procedure may only be used in the circumstances permitted by the regulations and public notice shall be given in accordance with EU requirements where applicable.

C11 Contractor Selection

(a) All Contracts Valued at More than £25,000

- (1) For contracts in excess of £25,000, under no circumstances shall an invitation to quote be given to any person or body:
- (i) who has given advice to the Council on any matter relating to the proposed contract either in their own right, jointly with another firm or company or as agent, consultant or employee of such company; or

- (ii) who has not met the requirements mentioned in the Contract Notice where the contract is one to which the EU Regulations apply.
- (b) Contracts in Excess of £50,000 only**
- (2) Subject to Standing Order C7 (4) invitations to tender (other than those in accordance with the EU Regulations) shall –
 - (i) be agreed in consultation with the Director of Resources unless the contract is let in accordance with Standing Orders C4 (Contracts not Exceeding £25,000), C6 (Contracts Exceeding £50,000), C7 (Restricted Tendering), C7 (Ad Hoc Lists), C8 (Open Tendering), C9 (Negotiated Tendering) or if not previous contract has been let for this type of work, service or goods;
 - (ii) include the Housing Repairs Service and the previously successful contractor unless deemed to be inappropriate;
 - (iii) be subject to a report to the appropriate Council body if a contractor succeeds in winning more than two successive contracts in the same financial year as lowest tenderer;
 - (iv) be subject to the EU Procurement Regulations procedures for letting contracts if the contract exceeds the value thresholds prescribed by those regulations
 - (3) The results of all tenders received together with details of any contract awarded shall be notified in writing to the Director of Resources and to the Chief Internal Auditor prior to the commencement of the contract. All Chief Officers are placed under a duty to provide this information to the Senior Finance Officer - Procurement Administration, the designated Contract Compliance Officer.
 - (4) In respect of a contract to which the EU Regulations apply, a Contract Award Notice must be sent via the Essex Procurement Hub to OJEU in the form prescribed by the EU Regulations within 48 days of the award of the contract.
 - (5) As part of the tender process, the pre-qualification information held on Constructionline (or obtained from other sources), should be in conjunction with pre-contract checks on any contractor as follows:
 - (i) the contractor's background and competence to carry out the task in question;
 - (ii) evidence of satisfactory Employers and Public liability Insurance cover, the amount and terms of which are to the satisfaction of the Head of Finance;
 - (iii) acceptable Health and Safety and Equal Opportunities policies;
 - (iv) details of any registration with a nationally recognised regulating body or its European equivalent as appropriate to the work and any guarantee schemes attached are satisfactory;
 - (v) the qualification of the workforce and supervisors in relation to the proposed works is satisfactory;
 - (vi) the contractor's previous work record for the Council is considered satisfactory;

- (vii) obtaining satisfactory banking references, statements of account (which should be no more than 18 months old) or similar references by referees of sufficient standing. An entry in Constructionline may count as one reference; and
 - (viii) asking the contractor to attend for interview if considered necessary.
- (6) Chief Officers may reduce any Long List produced by Constructionline to a Short List; using a priority rating system provided documentary justification is held. Priorities should include locality to the District, extent of relevant experience, previous working relationships with the Authority and any other relevant factors at the discretion of Heads of Service (e.g. qualification awards).

C12 Contract Extensions

- (1) No contract in excess of £25,000 shall be extended (other than extensions provided for under CSO 13 (serial contracts) without prior approval by a Portfolio Holder or the Cabinet. Any such proposal shall explain the circumstances which leads the relevant Chief Officer to recommend that course of action and indicate the terms on which the contract is to be extended and a date on which the proposed extension will terminate.
- (2) No more than two contract extensions shall be approved in respect of any one contract.

C13 Serial Contracts

- (1) This Standing Order shall apply where the Council has resolved that the proposed contract forms part of a serial programme.
- (2) The terms of such contract shall be negotiated with the contractor on the basis of the rates and prices contained in an initial contract awarded competitively following an invitation to tender in accordance with the provisions of Standing Orders C7 (Restricted Tendering) or C8 (Ad Hoc Tendering) and any such serial programme shall continue for a maximum of four years following the end of the financial year in which rates and prices are first obtained.
- (3) Where tenders or quotations for works, supplies or services are based on a schedule of rates or hourly rates, then a reasoned pre-estimate of quantities for each of the rates contained in the tender are to be quantified at the point of tender, and recorded at the tender opening. When evaluating the tenders, the rates contained in the tender or quotation must then be multiplied by the pre-estimate of quantities to reach an estimated tender sum. The estimated tender is the contract sum that is to be reported, and the tender evaluation report is to be held as a record of the tender analysis.

C14 Sub-Contractors and Nominated Suppliers

- (1) Tenders for sub-contracts to be performed or goods or materials to be supplied by nominated sub-contractors or suppliers shall be invited in accordance with the methods prescribed in these Standing Orders.
- (2) The Chief Officer concerned is authorised to nominate to the main contractor the sub-contractor, or supplier whose tender, obtained in accordance with the preceding sub-paragraph, is in his opinion, the most satisfactory; provided that, where the tender is not the lowest received or where the tender it is proposed to accept, exceeds by 10%

the prime cost sum included in the main contract sum, the circumstances shall be reported to the next meeting of the Council or the Cabinet, as appropriate.

- (3) Any contractor appointed by the Council to perform any contract shall not appoint a Sub Contractor to perform any part of that contract or any supplier without the prior written consent of the Council.

C15 Exception for Consortia, Public Supply Agencies etc.

The procedures for invitation of tenders by the Council need not apply where special arrangements have been entered into by any consortium, collaboration or similar body of which the Council is a member or under which the Council is entitled to benefit by virtue of its status as a public authority. The terms and conditions of any proposed contract must be acceptable to the Council's Chief Financial Officer and its Director of Governance. Where, however, tenders are invited by an officer of the Council, which includes any consortia or public supply agency as one of those invited to tender, then the delivery, opening and acceptance of tenders shall comply with the provisions of these Standing Orders.

C16 Appointment of Consultants

- (1) It shall be a condition of the appointment of any architect, engineer, quantity surveyor or other consultant (not being an officer of the Council) who is to be responsible to the Council for the supervision of a contract on its behalf, that in relation to that contract there shall be compliance with the requirements of these Standing Orders relating to contracts as though the Consultant was a Chief Officer. The Council's standard forms of appointment for consultants shall apply in all cases unless the Director of Governance directs otherwise. These are set out on the Council's intranet. All Chief Officers shall be required to take advice from the Council's legal staff on the form of contract to be used and specific provisions to be included therein before any contract is executed.
- (2) The engagement of consultants shall be in accordance with Standing Orders C4 (Contracts not Exceeding £25,000), C5 (Contracts Exceeding £25,000 but not Exceeding £50,000), C6 (Contracts Exceeding £50,000), C7 (Restricted Tendering), C8 (Ad Hoc List - Contracts over £2 million), C9 (Open Tendering), C10 (Negotiated Tendering - Contracts over £50,000) or C13 (Serial Contracts), and C14(1) (Legal Advice) dependant on the estimated amount of the fees and disbursements to be paid to them.
- (3) The procurement of consultants as defined in paragraph (5) below shall be exempt from the requirements of paragraph (2) above if appointments are sought and made through the Essex Procurement Hub or the Capita system. In the event that the Procurement Hub and the Capita system cannot secure a suitable appointment, paragraph (2) above will apply.
- (4) The appointment of any consultant to the Council in respect of duties performed or services rendered on projects with an estimated or potential scheme value in excess of £250,000 shall be under seal. The appropriate Chief Officer may however, require that any contract in respect of a scheme of less than £250,000 in value or amount shall be under seal if it is considered that this would be in the Council's best interests.
- (5) For the purposes of this Contract Standing Order, "consultant" is defined as an appointment of a non-established person (i.e. not employed by the Council or included on the Council's payroll or covering an establishment post) which is procured directly, through a company or similar commercial undertaking or through an

agency and engaged to perform a specific task over a predetermined period.

- (6) Any appointment which does not meet the definition of consultant shall be deemed to be an appointment of a temporary member of staff, being a person included on the Council's staffing establishment and payroll, whether procured directly, through a company, or similar commercial undertaking or through an agency. Such a temporary appointment shall be deemed to be for the purpose of covering establishment posts within the Council. Such appointments shall be made by the relevant chief officer under delegated authority subject to the following conditions:
- (a) appointments being funded from the existing salary budget for the service or Directorate concerned;
 - (b) appointments being made at a salary within the appropriate salary scale for the post being covered;
 - (c) delegated authority being exercisable by the relevant chief officer within a salary level equivalent to 20% above the highest scale point in the salary scale concerned;
 - (d) such temporary appointments being made for no more than six months.
- (7) The engagement of Counsel (or similar legal adviser) is exempted from the requirement to place orders through the Essex Procurement Hub or the Capita system but the Director of Governance is required to demonstrate value for money has been obtained provided that the nature of the legal advice concerned makes competitive arrangements realistic.

C17 Receipt and Custody of Quotations and Tenders

- (1) All specifications for the provision of goods and services by tender or quotation shall include a statement advising potential bidders that details of their tender may be published in the public agenda or minutes of the Council or may become available as a background paper or by means of Freedom of Information Act (FOI) request in response to which the Council would provide any information which is not covered by any of the Statutory Exemptions.
- (2) All quotations and tenders invited in accordance with standing orders shall be sent out by Special Delivery. The instruction shall include 'T&T' or equivalent system so that the progress of the documentation will be traced.
- (3) Quotations and tenders invited in accordance with these Standing Orders will not be considered unless contained in a plain envelope which shall be securely sealed and shall not bear any distinguishing matter or mark intended to indicate the identity of the sender, such envelope to be marked and returned in one of the following ways:
- (a) in respect of contracts with an estimated value up to £25,000 the envelope shall bear the word "Quotation", followed by the subject to which the quotation relates, the closing date for receipt and shall be addressed impersonally to the relevant Chief Officer, or
 - (b) in respect of contracts with an estimated value in excess of £50,000 the envelope shall bear the word "Tender" followed by the subject to which the tender relates, the closing date for receipt, and shall be addressed

impersonally to the Director of Governance, who shall maintain in a secure location a record of tenders and the dates and times of receipt.

- (4) Any tender or quotation submitted to the Council by electronic means shall be disqualified from consideration.
- (5) All tenders shall be in the custody of the Director of Governance and shall be kept in a secure location until required to be opened.
- (6) The provisions of Standing Orders C17(1) (Delivery of Tenders) and C17(2) (Envelopes etc) shall not apply in relation to Standing Order C3. (Contracts Not Exceeding £25,000).
- (7) Specifications for tenders and quotations shall include a statement regarding the Council's policy of paying invoices within 20 days of receipt and a requirement for the following:
 - (a) the submission of a statement of the policies of tenderers regarding payment of sub contractors and suppliers and the timescales which apply to such payments; and
 - (b) a statement by the Council that the statement under (a) above will be taken into in the Council's assessment of all tenders and quotations."

C18 Opening of Tenders and Quotations - Contracts in Excess of £25,000

Quotations and tenders received in accordance with these Standing Orders shall be opened at one time, as follows:

- (a) in respect of contracts with an estimated value exceeding £25,000 but not exceeding £50,000, the relevant Chief Officer or at least one of his principal or senior officers and a representative of the Director of Governance, shall open the quotations received;
- (b) in respect of contracts with an estimated value in excess of £50,000 the Portfolio Holder concerned, in the presence of authorised representatives of the Director of Governance and the relevant Chief Officer, shall open the tenders which in the normal course of events will not be less than three working days after the closing date for receipt of those tenders; and
- (c) the Director of Governance or his/her authorised representative shall maintain and sign a record of all tenders opened which shall also be signed by a member of the Cabinet in attendance (in respect of contracts valued in excess of £50,000 only) and the representative of the Chief Officer concerned.

C19 Late Receipt of Quotations and Tenders

Quotations and tenders invited in accordance with these Standing Orders which are received after the date stipulated for their return shall be examined unopened by the relevant chief officer and shall be dealt with as follows:

- (a) where other quotations or tenders have been received but not opened and the Chief Officer is satisfied that there is evidence of posting in time for delivery, a late tender shall be noted in the record kept by the Chief Officer and retained for opening in accordance with Standing Order C18 (Opening of Tenders and

Quotations - Contracts in Excess of £25,000) and the circumstances reported to the body or individual responsible for approval;

- (b) where other tenders have been opened or there is no evidence in the opinion of the Chief Officer of posting of the tender in time to reach the Council by the closing date, the tender will be opened by the Assistant to the Chief Executive or the relevant Chief Officer for the purpose of advising the tenderer of their disqualification from consideration, the record of tenders received being annotated accordingly.

C20 Alterations

- (a) Quotations and tenders shall not be altered after the date stipulated for their return, save that the relevant Chief Officer shall permit correction of arithmetical errors if he is satisfied that such errors were made inadvertently.
- (b) If an error is identified before the closing date for the return of tenders, all the tenderers shall be informed of the error and invited to adjust their tenders.
- (c) If an error in the specification is identified after the closing date for the return of tenders, all tenderers shall be given details of the error and afforded the opportunity of withdrawing the offer or submitting an amended tender.

NOTE: For the purposes of paragraph (a) above the term “arithmetical error” is defined as an error in addition, subtraction, multiplication or division which has no impact on the results of the tendering exercise. Where omissions or similar errors occur in the tender which, if corrected would change the outcome of the tendering exercise, such corrections will not be undertaken except as a result of further consultation with all tenderers.

C21 Acceptance of Quotations and Tenders - Contracts exceeding £25,000 but not exceeding £50,000

- (1) A Chief Officer may, subject to the provisions of Standing Order C5 (Contracts exceeding £25,000 but not exceeding £50,000) accept the lowest quotation received in respect of a contract not exceeding £50,000 in value or amount; a quotation other than the lowest received shall not be accepted until the relevant Portfolio Holder has considered a report from the appropriate Chief Officer or other person.
- (2) Paragraph (1) above shall not apply where:
 - (a) the tender documentation prepared by the Chief Officer and submitted to prospective tenderers specifies that the acceptance of any tender will be not only based on consideration of price but also on an assessment of quality;
 - (b) where sub-paragraph (a) above applies, the methodology for assessing tenders on the basis of price and quality shall be documented and signed by the Chief Officer prior to the opening of tenders and retained as part of the contract documentation;
 - (c) the relevant Chief Officer has obtained approval in advance of the terms under which quotations will be accepted from the Cabinet or the relevant Portfolio Holder and acceptance of a quotation is fully in compliance with that decision in which case the results of the evaluation process shall be reported back to the Cabinet or Portfolio Holder as appropriate; and

- (d) in cases where quotations received exceed the limit of £50,000, provided that the lowest quotation exceeds the pre-contract estimate by no more than 10%.

C22 Acceptance of Tenders – Contracts Exceeding £50,000

- (1) No tender valued in excess of £1 million shall be accepted unless approval by the Council or the Cabinet has been given.
- (2) Tenders of value between £50,000 and £1 million may be accepted by the relevant Portfolio Holder provided that the tender sum is within the approved budget provision for the contract and all other requirements of Contract Standing Orders have been met. In the event that the amount of the tender exceeds the approved budgetary provision, the acceptance of that tender shall stand referred to the next Cabinet meeting.
- (3) A tender other than the lowest received may only be accepted after approval by the Council or the Cabinet on the recommendation of the appropriate Chief Officer to the Portfolio Holder concerned unless the terms for accepting a tender have been approved in advance and the acceptance of other than the lowest tender is fully in compliance with that approval. This standing order shall not apply to tenders where the Cabinet or a Portfolio Holder has determined prior to the invitation of tenders that they will be assessed on the basis of quality considerations or on the most economically advantageous proposal to the Council.
- (4) Acceptance of tenders for the disposal of land or property and proposals for acquisition of interests in land or property shall be dealt with in accordance with (1) – (4) above and Standing Order 34 below. References in this Standing Order to "budget provision" shall be deemed to be the Council's pre-contract valuation estimate in relation to land and property matters.

C23 Acceptance of Tenders – Certificates of Bona Fide Tendering

Each Chief Officer shall ensure that a certificate of bona fide tendering is completed by every tenderer before a tender valued in excess of £50,000 is accepted. This certificate shall be in a form prescribed by the Director of Resources.

C24 Post Tender Negotiation

- (1) Where procurement is conducted through either the open or restricted procedure, and the EU (UK) Regulations apply, no post tender negotiations are permitted unless the contract has been advertised and tendered under the competitive dialogue procedure where the Director of Governance determines that the procedure is appropriate to the nature of the contract concerned. The Council may seek clarification from suppliers where appropriate and this does not constitute post-tender negotiation.
- (2) Where procurement is conducted through the open or restricted procedures and the EU (UK) Regulations do not apply, post tender negotiations are only permitted to the extent indicated in the tender documentation. Any negotiation will be in strict compliance with the tender documentation. Proper and sufficient records of any negotiation shall be maintained.
- (3) Should negotiations be required because the lowest tender exceeds the budget available, or the Council's requirements have changed since the tenders were invited, all tenderers must be given the opportunity to submit revised tenders based on a revised specification.

C25 Contract Documentation

- (1) Contracts placed in accordance with Standing Order C5 (Contracts not Exceeding £25,000) may be dealt with by the use of an official order, providing that the relevant Chief Officer is satisfied there is no need for more extensive terms and conditions in order to protect the interests of the Council. An official Council purchase order is required, in conjunction with all contracts.
- (2) Contracts for the execution of works placed in accordance with Standing Orders C5 (Contracts Exceeding £25,000 and not Exceeding £50,000) and C6 (Contracts Exceeding £50,000) shall be in writing and be in a standard format such as ICE, PPC 2000 or similar partner contracts or JCT as approved by the Director of Governance.
- (3) Every contract for the supply of goods, materials or services or for the execution of works for an amount in excess of £50,000 shall be under seal as should any other contract where it is desired that the period of liability for breach of contract should be extended from six to twelve years.
- (4) Every contract for the execution of works shall contain a provision affording the relevant Chief Officer, the Chief Internal Auditor or their authorised representatives access to the site and the relevant documentation for audit purposes during the construction of the works.
- (5) All contracts shall include standard contract terms, which are available on the Council's Intranet, unless the Director of Governance agrees an amended clause in substantially the same term or agrees that it would not be relevant to a particular contract.

C26 Retention of Documents

The relevant Chief Officer shall ensure that:

- (a) all appropriate contract documentation must be retained for a minimum of six years, or if a contract is executed as a deed under seal, twelve years, following the date of the final payment;
- (b) unsuccessful tenders should be retained in a secure location for a period of two years; and
- (c) tender opening records should be retained indefinitely in a secure location.

C27 Liquidated Damages, Performance Bonds and Insurance

- (1) Contracts (including contracts under PPC 2000 or similar partnering contracts) for the execution of works for an amount in excess of £50,000 shall provide for liquidated damages. These should be calculated by using the standard formulae drawn up by the Chief Society of Quantity Surveyors in Local Government as a basis. Advice regarding the calculations may be obtained from the Internal Audit Unit.
- (2) The Council shall not require security for the due performance for any contract below £2m, unless there are special circumstances which in the opinion of the relevant Chief Officer would warrant this provision.
- (3) For every contract of £2m and above, a performance bond shall be obtained for its due performance.

- (4) In exceptional circumstances, a Chief Officer may, subject to the agreement of the Chief Financial Officer, require a parent company guarantee or a deposit with the Council, as security. The precise form of any parent company guarantee must be agreed with the Director of Governance.
- (5) Notwithstanding the fact that Constructionline does include insurance details of contractors and consultants, there shall be a requirement to insert in every written contract which places upon the contractor liability to effect insurance in respect not only of the works to be carried out or goods to be supplied but also in respect of its employees and third parties. The insurance shall have the interest of the Council noted and the contractor shall be required to supply evidence of insurance cover effected and premiums paid as and when required for the approval of the Chief Financial Officer. The minimum third party insurance cover shall be £5,000,000 or such other sum as may be determined by the Chief Financial Officer. The contractor shall also be required to show evidence of a level of employer liability cover which is considered appropriate by the Chief Financial Officer.
- (6) In contracts for professional services, confirmation of Professional Indemnity Insurance with a minimum cover of £1,000,000 for any one claim or such other sum as may be determined by the Chief Financial Officer, shall be additionally provided when required.

C28 Retentions

A contractually specified retention must be held on all contracts where there is a defects liability or maintenance period. The monies held must not be finally released until the end of these periods. Retention clauses shall also be included in other forms of contract where the Chief Officer considers it appropriate.

C29 Assignment

- (1) Every written contract shall contain a provision which prohibits the contractor from transferring or assigning directly or indirectly, to any person or persons whatever, any portion of the contract without the written permission of the Council.
- (2) Whenever a contractor is unable to conform with C26 (Retentions), and every alternative measure has been evaluated, then the Chief Officer responsible shall request approval to proceed from the relevant Portfolio Holder.

C30 Cancellation

Every written contract shall include a provision for cancellation in the terms specified in the annex unless the Director of Governance agrees an amended clause in substantially the same terms.

C31 Final Account

- (1) The Chief Officer responsible for every contract for the provision of works, goods and services in excess of £50,000 shall provide at the end of the contract, a final account. This account will include details of the tender sum, contract variations, final account sum, any deducted liquidated damages, any extension of time awarded and any claims agreed with the contractor.
- (2) The Chief Officer responsible is fully accountable for the agreement of the final account and is authorised to sign off the final payment.

- (3) At the time the final account is agreed, a Final Account Certificate where applicable should be completed by the Chief Officer responsible and copied to the Chief Internal Auditor.
- (4) For contracts in excess of £500,000, the Chief Officer responsible should advise the Chief Internal Auditor of all details relating to the contract at the time of practical completion. If considered necessary, any contract could be subject to examination by Internal Audit.

C32 Contract Monitoring

- (1) All contracts let in excess of £1 million in value shall be the subject of monitoring reports to the relevant Portfolio Holder every three months, as should any other contract where the Portfolio Holder so requests.
- (2) On completion of contracts in excess of £1 million, a review should be carried out and reported to the Council, the Cabinet, or a Portfolio Holder in order to:
 - (a) provide a means of accountability, in showing how far the authority has done what it set out to do, and how much it cost; and
 - (b) enable the Council to learn from experience; this covers identifying how well projects met client and user requirements, recording issues that might require changes to procedures and transferring lessons between different services and types of project.
- (3) The relevant Chief Officer shall prepare and submit jointly with the Chief Financial Officer reports to the Cabinet on completion of all contracts where the final expenditure exceeds the approved contract sum by more than the lesser of 10% or £50,000 as required by Section 2 of Financial Regulations (Budgeting).

C33 Contract Monitoring - Quality Considerations

It shall be the responsibility of all Chief Officers to monitor the quality aspects of any tender or contract (including any contract to which Contract Standing Order 19(2) or 20(3) under their control applies) so as to ensure:

- (a) that quality requirements in the tender specification are met by any tenderer before a contract is let; and
- (b) that those quality standards are consistently achieved throughout the lifetime of the contract.

C34 Special Market Conditions

- (1) Chief Officers may (with the approval of the Cabinet) place an order for the purchase or disposal of goods or materials which in their opinion would take advantage of any special conditions in the market or any other special conditions which they consider would be to the benefit of the Council; any case in which this Standing Order is utilised shall be the subject of a written report to the next meeting of the Cabinet.
- (2) This Standing Order shall not apply where EU Procurement legislation is applicable.

C35 Acquisition and Disposal of Interests in Land

Note: This Standing Order has been amended to reflect consequential amendments to the Executive delegations approved by the Leader under decision LDR-006-2014/15 EX 40

- (1) For the purposes of these Standing Orders, any acquisition or disposal of land and property or interest in land and property shall be dealt with as follows:
- (2) The Director of Neighbourhoods may negotiate, agree terms and complete any lease, assignment, underletting, change of use or alterations to premises leased (irrespective of term) with a rental or premium not exceeding £25,000 per annum, subject to the exercise of this delegated authority being exercised:
 - (a) only up to a limit of £250,000 (or ten years) for any single transaction;
 - (b) after consultation with the relevant Portfolio Holder in the case of any transaction which involves a material change of use or conflicts with any other Council policy in order to determine whether a decision is to be made by the Director of Neighbourhoods, by the Portfolio Holder or by the Cabinet.
- (3) The Director of Neighbourhoods is further authorised to negotiate terms for land and agree property transactions within the categories set out in C32(1) (Special Market Conditions) in excess of £25,000 in value but unless otherwise required by statute shall treat such offers as tenders or quotations.
- (4) The procedures set out in Standing Order C5(1) (a) (3 quotations from Constructionline) and C6 (Contracts Exceeding £50,000) and C22 Acceptance of Tenders valued between £50,000 and £1 million which apply to tenders and quotations for works, goods and services are applied to this Standing Order. Any Cabinet terms of reference shall be adhered to regarding transactions of £250,000 in value or more, or of 0.25 hectares or more, or of land or property of strategic importance to the district, and any other terms and conditions shall be subject to confirmation by the Cabinet, including the acquisition and disposal of dwellings within the Housing Revenue Account, which shall be dealt with by the Cabinet.
- (5) Any acquisition or disposal of land or property or interest in land or property shall comply with:
 - (a) all governance arrangements set out elsewhere in Contract Standing Orders; and
 - (b) all procedures set out in the Office of Government Commerce (OGC) Guide for the Disposal of Surplus property.
- (6) It shall be competent for the Cabinet (in respect of transactions for the disposal of land where the pre-contract valuation estimate is in excess of £250,000 or for a Portfolio Holder (in respect of pre-contract valuation estimates of between £50,000 and £250,000) to determine the most appropriate method of disposal which achieves the Council's statutory duty of obtaining best consideration.
- (7) Pursuant to (5) above, the appropriate disposal methods are prescribed as follows:
 - (a) formal tendering (providing for an initial deposit and binding contract if tender is successful);

- (b) formal tendering (providing for no initial deposit and no binding contract if bid is successful);
 - (c) private treaty; and
 - (d) public auction.
- (8) Paragraphs 5(c) and (d) above shall only be approved in exceptional circumstances if the decision-maker has considered a statement prepared by the Director of Neighbourhoods which justifies the proposed procedure as the most suitable method of achieving best consideration.
- (9) The Cabinet or a Portfolio Holder (as appropriate) may also determine that sale particulars should make provision for a two stage offer process that provides the Council with the option of inviting best and final offers after receipt of initial offers where this is demonstrated by them to be appropriate, this procedure being subject to the following conditions:
- (a) the Director of Neighbourhoods having so recommended;
 - (b) the Cabinet having considered the case for adopting this method of disposal based on an assessment of the risks involved and concluding that this procedure is the most appropriate for achieving best value; and
 - (c) the sale particulars including the option for inviting best and final offers after the receipt of initial offers.
- (10) The provisions contained in this Standing Order shall not apply to any land or property transaction (including transactions in relation to interests in property land) where the pre-contract valuation estimate is less than £50,000.
- (11) The Director of Neighbourhoods may agree on behalf of the Council to the grant of any of the following licences in respect of existing leases where the appropriate enquiries have been carried out and is satisfied that to grant the licence would be in accordance with good estate management and would not adversely affect the premises concerned:
- (a) licences to assign the lease;
 - (b) licences to underlet;
 - (c) licences to change the use of the premises; and
 - (d) licences to carry out alterations.

provided that there is no prohibition contained in the lease in respect of these matters.

- (12) Where there is a prohibition against any of the matters mentioned in paragraph (c) above or the Director of Neighbourhoods considers that it is appropriate then the application for the appropriate licence will be referred to the relevant Portfolio Holder.

C36 EU Procurement Thresholds for Local Government - 1 January 2014

SUPPLIES	SERVICES	WORKS
£172,514	£172,514	£4,332,012 ¹

NOTE:

These thresholds are regularly updated. Officers should check with the Director of Resources on the current thresholds. The Director of Resources will also update this Standing Order from time to time on the Council's intranet.

¹ Including subsidised services contracts under regulation 34 of the Public Works Contracts Regulations 2006.

Report to Constitution Working Group

Date of meeting: 26 January 2016



**Epping Forest
District Council**

Subject: Constitution Review - Article 18 (Access to Information)

Officer contact for further information: S. Tautz (01992 564180)

Democratic Services Officer: M. Jenkins (01992 564607)

Recommendations/Decisions Required:

That the Working Group consider a proposed new Article 18 (Access to Information) of the Constitution.

Report:

1. (Democratic Services Manager) The aim of the current review of the Council's Constitution is for the Working Group to look critically at each part of the Constitution to try and bring together and rationalise procedures against the relevant legislative background.
2. Under the current Constitution, provisions relating to access to information are contained in a number of separate protocols and conventions. The opportunity has therefore been taken as part of the ongoing review of the Constitution to incorporate these various provisions within a new Article 18 (Access to Information).
3. A draft version of Article 18 is attached as Appendix 1 to this report for consideration by the Working Group. This also incorporates matters agreed by the former Constitution and Members' Services Scrutiny Panel in 2013 that were inadvertently not added to the Constitution at that time.
4. As part of its ongoing review of the Constitution, the Working Group has previously decided that where rules apply generally, they should be taken into the main rules section. Therefore in the redrafting of the rules section of the Constitution, officers have attempted to take sections into the rules. Some of what was previously contained in separate protocols and conventions has been inserted into the new Article 18 and the Article also seeks to address instances of relevant procedures being spread across the Constitution, making it difficult to use.
5. Members are reminded to bring their copies of the Constitution to the meeting.

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ARTICLE 18 - ACCESS TO INFORMATION (NEW)

1. SCOPE

- 1.1 ~~These rules apply~~ **This Article applies** to all meetings of the Council, the Overview and Scrutiny Committee, all committees, ~~the Standards Committee and regulatory committees and other public meetings of the executive (together called meetings).~~ Rules **Access to information provisions** specific to the Executive **Cabinet** are set out in Section 12 of this Article.

2. ADDITIONAL RIGHTS TO INFORMATION

- 2.1 These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

3. RIGHT TO ATTEND MEETINGS

- 3.1 Members of the public may attend all meetings subject only to the exceptions in these rules **set out in this Article**.

- 3.2 **Any meeting of a decision-making body will be held in public and the public may only be excluded in the following circumstances:**

- (a) **if any part of the meeting is likely to disclose confidential or exempt business; or**
- (b) **a lawful power of exclusion is used to maintain orderly conduct or prevent misbehaviour.**

- 3.3 **A person attending the meeting for the purpose of reporting the proceedings will be afforded reasonable facilities for the purpose.**

4. NOTICE OF MEETING

- 4.1 The Council will give at least five clear days notice of any meeting by posting details of the meeting at the Civic Offices, High Street, Epping, Essex CM16 4BZ **and on the authority's website.**

5. ACCESS TO AGENDA AND REPORTS BEFORE A MEETING

- 5.1 The Council will make copies of all agenda and reports for meetings that are open to the public available for inspection at the designated office **Civic Offices** at least five clear days before the meeting. If an item is added to an agenda later, ~~the revised~~ **such supplementary** agenda (where reports are prepared after the summons has been sent out, the designated officer shall make each such report available to the public as soon as the report is completed and sent to councillors) will be open to inspection from the time that the item was added to the agenda.

- 5.2 **All agenda (and supplementary agenda) will be sent to members of the Council either by electronic means (if the member has opted-in to the service of such documents electronically) or to their designated postal address, and will also be published on the Council's website.**

6. SUPPLY OF COPIES

- 6.1 The Council will supply copies of **the following, subject (where necessary) to the payment of appropriate costs in respect of copying and postage etc.**
- (a) any agenda and reports which are open to public inspection;
 - (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
 - (c) if the Chief Executive **Monitoring Officer** thinks fit, copies of any other document(s) supplied to councillors in connection with an item ~~to any person on payment of a charge for postage and any other costs.~~

7. ACCESS TO MINUTES ETC. AND DECISIONS AFTER A MEETING

- 7.1 The Council will make available copies of the following for six years after a meeting:
- (a) the minutes of the meeting and/or records of decisions taken, together with reasons, for all meetings of the executive **Cabinet**, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
 - (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
 - (c) the agenda for the meeting; and
 - (d) reports relating to items when the meeting was open to the public.

7.2 All documentation will also be available on the Councils website.

8. BACKGROUND PAPERS

List of Background Papers

- 8.1 The Chief Executive will set out in every report a list of those documents (called background papers) relating to the subject matter of the report, which in his/her opinion:
- (a) disclose any facts or matters on which the report or an important part of the report is based; and
 - (b) which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10 **the glossary to this Constitution**) and in respect of executive **Cabinet** reports, the advice of any political advisor.

~~Public Inspection of Background Papers~~

- 8.2 The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

9. SUMMARY OF PUBLIC RIGHTS

- 9.1 A written summary of the public's rights to attend meetings and to inspect and copy documents ~~must be kept at and available to the public at the Civic Offices, High~~

~~Street, Epping, Essex CM16 4BZ~~ is set out within Article ??? of this Constitution.

10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

Confidential Information - Requirement to Exclude Public

- 10.1 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

Exempt Information - Discretion to Exclude Public

- 10.2 Exempt information is any information falling within the seven categories applied by Part 1 of Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006. The categories of exempt information are set out in Appendix 1 to this Article.

- 10.3 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.
- 10.4 Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6 that Act.

~~10.3~~ Meaning of Confidential Information

~~Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order.~~

~~10.3~~ DELETE – Definition to be included within glossary

~~10.4~~ Meaning of Exempt Information

~~Exempt information means information falling within the following 7 categories (subject to any condition):~~

- ~~1. Information relating to any individual.~~
- ~~2. Information which is likely to reveal the identity of an individual.~~
- ~~3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).~~
- ~~4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.~~
- ~~5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.~~
- ~~6. Information which reveals that the authority proposes –~~
 - ~~(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or~~

- (b) — to make an order or direction under any enactment.
7. — Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

10.5 — Qualifications

1. — Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under —
- (a) — the Companies Act 1985;
 - (b) — the Friendly Societies Act 1974;
 - (c) — the Friendly Societies Act 1992;
 - (d) — the Industrial and Provident Societies Act 1965 to 1978;
 - (e) — the Building Societies Act 1986; or
 - (f) — the Charities Act 1993.
2. — Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992(a).
3. — Information which —
- (a) — falls within any of paragraphs 1 to 7 above; and
 - (b) — is not prevented from being exempt by virtue of paragraph 10.5 (sub paragraphs 1 or 2) above,
- is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

DELETE – Transfer to Appendix 1

~~EXCLUSION OF ACCESS BY THE PUBLIC - STANDARDS COMMITTEE MEETINGS~~

The provisions contained in paragraph 10 above shall apply with any necessary exceptions to the proceedings of the Standards Committee.

Furthermore, where a meeting of a Standards or a Sub-Committee of a Standards Committee is convened to consider a matter referred under the provisions of Section 64(2) or 71(2) of the Local Government Act the provisions of Schedule 12A of the 1972 Act shall apply with the addition of the following descriptions of exempt information:

- (a) — Information which is subject to any obligation of confidentiality.
- (b) — Information which relates in any way to matters concerning national security.
- (c) — The deliberations of a standards committee or of a sub-committee of a standards committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act.

DELETE – Not required

11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

- 11.1 **These rules summarise the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, to which reference must be made.**

- 11.2 If the Chief Executive thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with Rule 10, the meeting is likely not to be open to the public. Such reports will be marked 'Not for publication' together with the category of information likely to be disclosed.

IMPORTANT NOTE

THESE RULES SUMMARISE THE PROVISIONS OF THE LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS) (MEETINGS AND ACCESS TO INFORMATION) (ENGLAND) REGULATIONS 2012 TO WHICH REFERENCE MUST BE MADE.

12. ADDITIONAL RULES APPLICABLE TO THE CABINET

- 12.1 The following additional rules apply to the Executive **Cabinet**, its Committees, individual Cabinet members and officers (where appropriate).

Admission of the Public to Meetings of the Cabinet

Any meeting of a decision-making body must be held in public and the public may only be excluded in the following circumstances:

- (a) if any part of the meeting is likely to disclose confidential or exempt business; or
- (b) a lawful power of exclusion is used to maintain orderly conduct or prevent misbehaviour.

A person attending the meeting for the purpose of reporting the proceedings is to will be afforded reasonable facilities for the purpose.

DELETE – Duplication, transferred to Section 3

Private Meetings of the Cabinet

- 12.2 Notice of the Executive's **Cabinet's** intention to hold a private meeting (whether a whole meeting or a part) shall be given at least twenty-eight days in advance at the Council **Civic** Offices and on the Council's website. The notice must give reasons for holding the meeting in private.

- 12.3 Further notice must be given of a private meeting at least five clear days before the meeting, at the Council Offices and on the website giving the reasons for holding the meeting in private and any representations received from the public about why it should be held in public.

Private Meetings of the Cabinet – Urgency

- 12.4 Where the date of the meetings is such that it is impracticable to comply with paragraph 12.2 above, the meeting may only be held in private where:
- (a) the approval of the Chairman of Overview and Scrutiny Committee has been obtained or, in his or her absence, that of the Chairman of the Council; or

- (b) a notice has been published at the Council **Civic** Offices and on the Council's website indicating the reasons as to urgency and why meeting cannot be reasonably deferred.

Procedures prior to Public Meetings of the Cabinet

- 12.5 Public meetings of the Executive **Cabinet** may only be held where:
- (a) the time and place of the meeting has been published at the Council **Civic** Offices and on the Council's website at least five clear days before the meeting; or
 - (b) where the meeting is convened at shorter notice, the time and place, at which it is convened; and
 - (c) a copy of the agenda (or part thereof) has been available for inspection by the public at least five clear days before the meeting (or at such shorter notice as indicated above).

Access to Cabinet Agenda and Reports for Public Meetings

- 12.6 There is no requirement for a copy of the agenda, item or report to be available for inspection by the public until a copy is available to members of the decision-making body concerned.

13. KEY DECISIONS

Definition

- 13.1 Key decisions are defined in Article 14.04 (**Decision Making**) of this Constitution.

Publicity for Key Decisions

- 13.2 Where the Cabinet intends to make a key decision it may not be made until a public notice to that effect has been available at the Council **Civic** Offices and on the Council's website for at least twenty-eight days beforehand. The notice must include:
- (a) the subject matter;
 - (b) the name of the decision-maker;
 - (c) the date on or period during which the decision will be made;
 - (d) a list of documents submitted to the decision taker for consideration in connection with the decision;
 - (e) the address where copies can be obtained (subject to any redacted content); and
 - (f) any other documents to be provided to the decision taker and how details may be requested.

- 13.3 The notice must not disclose any exempt or confidential information but must, otherwise, give particulars of the subject matter.

General Exceptions to Key Decisions Procedure

- 13.4 Where publication of a proposed key decision cannot practically be achieved under paragraph 13.6 above, the Proper Officer shall:

- (a) inform the Chairman of the Overview and Scrutiny Committee (or, if he/she is not available for any reason, every member of that Committee) of the decision;
- (b) publish a notice at the Council **Civic** Offices and on the Council's website of the matter concerned; and
- (c) at the end of that period of five clear days from the day of publication of that notice, publish a further notice of why compliance in paragraph (b) is impracticable at the Council **Civic** Offices and on the Council's website.

Key Decisions – Special Urgency

- 13.5 Where the date on which a key decision must be made renders compliance with paragraphs **this section** 13.6(2) and 13.6(3) above impracticable, that decision may be made only if it is urgent and cannot reasonably be deferred.
- 13.6 The requirements under Paragraph 13.4 above (General Exception) shall also apply to any such decision.

Reports to the Council Where Key Decision Procedures Not Followed

- 13.7 In cases where an Cabinet decision has been made and the decision taker did not treat it as a key decision, the Overview and Scrutiny Committee may require a report to the Council from the Cabinet explaining:
 - (a) the decision and the reasons for it;
 - (b) who made the decision; and
 - (c) the reason the Cabinet considered that it was not a key decision, if that is their opinion.

Recording of Cabinet Decisions at Meetings and by Individuals

- 13.8 All Cabinet decisions (including those of individual Portfolio Holders) must be recorded by means of a written statement. This must be produced as soon as reasonably practical after the decision is made. A written statement must include the following:
 - (a) a record of the decision and the date on which it was made;
 - (b) reasons for the decision;
 - (c) alternative options considered and rejected;
 - (d) any conflict of interest declared; and
 - (e) any dispensation granted by the ~~Head of Paid Service~~ **Monitoring Officer**.
- 13.9 This statement applies to decisions by the Cabinet, a Cabinet Committee, Portfolio Holders and officers acting under specific delegations approved by the Cabinet at a meeting or by a Portfolio Holder. The requirement to record executive decisions made by officers will not extend to management of services or exercise of delegated authorities for service provision as recorded in Part ??? of the Constitution (Responsibility for Functions).

Inspection of Documents and Background Papers following Cabinet Decisions

- 13.10 **The provisions of Sections 5-7 of this Article shall apply** to all recorded Cabinet decisions ~~shall be available for inspection by the public as soon as reasonably practical at the Council Offices and on the website.~~

~~Copies of such documents must be supplied to the press on payment of postage and copying and any necessary transmission costs in accordance with the scheme operated for the time being by the Council.~~

~~A list of background papers in respect of a public meeting of the Executive must be available for inspection at the Council Offices and on the website. The list must be accompanied by at least one copy of each background paper.~~

DELETE – Not required

Additional Rights of Access to Documents by Councillors

- 13.11 Any document in the possession of the Cabinet and which contains material relating to business at a public meeting, must be available for inspection by any Councillor of the Authority at least five clear days before any relevant meeting.
- 13.12 Where a meeting is convened or an item added to an agenda at shorter notice relevant documents must become available when the meeting is convened or item added.
- 13.13 Documents relating to decisions at private meetings, by Portfolio Holders or by an officer, must become available no longer than 24 hours after the meeting concludes or the decision is made.
- 13.14 Documents disclosing exempt information are not required to be available for inspection. Documents disclosing exempt information category 3 shall only be available in so far as they relate to any terms for a contract with the Council or any contract negotiations.

Additional Rights of Access for Members of the Overview and Scrutiny Committee

- 13.15 A member of the Overview and Scrutiny Committee is entitled to a copy **of any document:**
- (a) ~~of any document~~ under the control of the Cabinet; and/or
 - (b) containing material relating to (i) business transacted at a public meeting; or (ii) a decision of a portfolio holder or officer.
- 13.16 When requested the document must be provided by the Proper Officer no later than 10 clear days after the request is received. There is no entitlement to a copy of any such document if it contains exempt or confidential information unless:
- (a) it is relevant to a review or scrutiny of a decision with which that member is carrying out; or
 - (b) it is relevant to a review being conducted by the Overview and Scrutiny Committee or any of its **Select Committees or Task and Finish** Panels and which is contained in their programme of work; or
- 13.17 If the ~~Executive~~ **Cabinet** determines that there is no entitlement to any such document, a written statement must be provided to the Overview and Scrutiny Committee **by the Proper Officer**.

Cabinet Reports to the Council

13.18 The Leader of Council must submit one report per year containing details of decisions made by the Cabinet on grounds of urgency. The frequency of such reports shall otherwise be as determined by the Council.

14. THE FORWARD PLAN KEY DECISION LIST

Period of Forward Plan the Key Decision List

14.1 ~~Forward plans~~ **The Key Decision List** will be prepared by the Leader of the Council to cover a period of four months, beginning with the first day of any month.

14.2 ~~They~~ **The Key Decision List** will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

Contents of Forward Plan the Key Decision List

14.3 ~~The Forward Plan~~ **Key Decision List** will contain matters which the Leader has reason to believe will be subject of a key decision to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, officers (**if specifically delegated**), area committees or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. ~~It will~~ **The Key Decision List will incorporate details of proposed private decisions** and describe the following particulars in so far as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

14.4 ~~The forward plan~~ **Key Decision List** ~~must~~ **will** be published at least 14 days before the start of the period covered. ~~The Council will publish once a year a notice in at least one newspaper circulating in the area, stating:~~

- ~~(a) that key decisions are to be taken on behalf of the Council;~~
- ~~(b) that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;~~
- ~~(c) that the plan will contain details of the key decisions to be made for the four-month period following its publication;~~
- ~~(d) that each plan will be available for inspection at reasonable hours free of charge at the Council's offices;~~
- ~~(e) that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the key decisions on the plan;~~

- (f) ~~the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available;~~
- (g) ~~that other documents may be submitted to decision takers;~~
- (h) ~~the procedure for requesting details of documents (if any) as they become available; and~~
- (i) ~~the dates on each month in the following year on which each forward plan will be published and available to the public at the Council's offices.~~

DELETE – These publication requirements not currently undertaken

- 14.5 Exempt information need not be included in a forward plan **the Key Decision List** and confidential information cannot be included.

15. GENERAL EXCEPTION

- 15.1 If a matter which is likely to be a key decision has not been included in the Forward Plan **Key Decision List**, then subject to Rule **Section** 15 (Special Urgency) **of this Article**, the decision may still be taken if:
- (a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next forward plan and until the start of the first month to which the next forward plan relates;
 - (b) the Proper Officer has informed the Chairman of a ~~relevant~~ the Overview and Scrutiny Committee, or if ~~there is no such person~~ **the Chairman of the Overview and Scrutiny Committee is unable to act**, each member of that committee in writing, by notice, of the matter to which the decision is to be made;
 - (c) the Proper Officer has made copies of that notice available to the public at the offices of the Council; and
 - (d) at least five clear days have elapsed since the Proper Officer complied with (a) and (b) above. Where such a decision is taken collectively, it must be taken in public.

16. SPECIAL URGENCY

- 16.1 If by virtue of the date by which a decision must be taken, Rule **Section** 14 (General Exception) above cannot be followed, the decision may only be taken if the decision-taker (if an individual) or the chairman of the body making the decision, obtains the agreement of the Chairman of a ~~relevant~~ **the** Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If ~~there is no Chairman of the Overview and Scrutiny Committee~~, or if the Chairman of the Overview and Scrutiny Committee is unable to act, the agreement of the Chairman of the Council, or in his/her absence the Vice-Chairman of the Council will suffice.

17. REPORT TO COUNCIL

When the Overview and Scrutiny Committee can require a Report

- 17.1 If the Overview and Scrutiny Committee considers that a key decision has been taken which was not:
- (a) included in the ~~forward plan~~ **key decision list**; or
 - (b) the subject of the general exception procedure; or

- (c) the subject of an agreement with the Chairman of ~~a relevant~~ **the** Overview and Scrutiny Committee, or the Chairman/Vice-Chairman of the Council under **Rule Section 16** above:

the Committee may require the Cabinet to submit a report to the Council within such reasonable time as the committee specifies. The power to require a report rests with the Committee, but is also delegated to the Proper Officer, who shall require such a report on behalf of the committee when so requested by (the chairman or any five members). Alternatively the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Committee.

Cabinet's Report to Council

- 17.2 The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the Leader is of the opinion that it was not a key decision the reasons for that opinion.

Quarterly Reports on Special Urgency Decisions

- 17.3 ~~In any event the~~ **The** Leader will submit ~~quarterly reports~~ **a report** to the Council on ~~the executive decisions~~ **on any Cabinet decision** taken in the circumstances set out in Section 16 (Special Urgency) of this Article ~~in the preceding three months~~. The report will include ~~the number of decisions so taken and~~ a summary of the matters in respect of which those decisions were taken.

18. RECORD OF DECISIONS

- 18.1 After any meeting of the Cabinet or any of its committees, whether held in public or private, the Chief Executive or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

19. CABINET MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS

- 19.1 The Cabinet will decide whether meetings relating to matters, which are not key decisions, will be held in public or private.

20. NOTICE OF PRIVATE MEETING OF THE CABINET

- 20.1 Members of the Cabinet or its committees will be entitled to receive five clear working days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency. Notice and papers will be sent to all other members of the Council.

21. ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET

- 21.1 All members of the Cabinet will be served notice of all private meetings of committees of the Cabinet, whether or not they are members of that committee. All members of the Cabinet are entitled to attend a private meeting of any committee of the Cabinet.

- 21.2 Notice of private meetings of the Cabinet and its committees will be served on the Chairman of the Overview and Scrutiny Committee ~~and sub-committees~~, at the same time as notice is served on members of the Cabinet. ~~Where an overview and scrutiny committee does not have a Chairman~~ **If the Chairman of the Overview and Scrutiny Committee is unable to act**, the notice will be served on all the members of the committee.
- 21.3 Members other than Cabinet members will not be entitled to attend private meetings of the Cabinet and its committees, except by specific invitation. Such members may be able to address the Cabinet or a Cabinet Committee if invited and may answer questions.
- 21.4 The Head of Paid Service, the Chief Finance Officer and the Monitoring Officer (~~and~~ **or** their nominees) are entitled to attend any meeting of the Cabinet and its committees. The Cabinet may not meet unless the Proper Officer has been given reasonable notice that a meeting is to take place. A private Cabinet meeting may only take place in the presence of the Proper Officer or his/her nominee with responsibility for recording and publicising the decisions.
- 21.5 ~~In all of the above examples~~, The provisions of Rule **Section** 18 (Recording and Publicising Decisions) of this Article will apply to all private meetings of the Cabinet.

22. DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET

~~22.1 Reports Intended to be taken into Account~~

~~Where an individual member of the Executive receives a report which he/she intends to take into account in making any key decision, then he/she will not make the decision until at least 5 clear days after receipt of that report.~~

DELETE – Relevance unclear

~~22.2 Provision of Copies of Reports to the Overview and Scrutiny Committee~~

~~On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the Chairman of the Overview and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.~~

DELETE – Relevance unclear

Record of Individual Decision

- 22.1 As soon as reasonably practicable after an Cabinet decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he/she will prepare, or instruct the Proper Officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. **The record of the decision will utilise the pro-forma decision sheet maintained by Democratic Services.**
- 22.2 The provisions of Rules **Sections** 7 and 8 **of this Article** (Inspection of Documents after Meetings) will also apply to the making of decisions by individual members of the Cabinet. **Details of all decisions taken will be published in the Council Bulletin to facilitate the commencement of the period for call-in.** ~~This does not require the disclosure of exempt or confidential information or advice from a political or mayor's assistant.~~

23. OVERVIEW AND SCRUTINY COMMITTEE - ACCESS TO DOCUMENTS

Rights to Copies

23.1 Subject to **Rule Section 23.2** below, the Overview and Scrutiny Committee (including any **Standing Select Committee** or Task and Finish Panel appointed by it) will be entitled to a copy of any document which is in the possession or control of the Cabinet or its committees and which contains material relating to:

- (a) any business transacted at a public or private meeting of the Cabinet or its committees; or
- (b) any decision taken by an individual member of the Cabinet.

Limit on Rights

23.2 The Overview and Scrutiny Committee will not be entitled to:

- (a) any document that is in draft form; or
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or
- (c) the advice of a political adviser **(NB - Definition of 'Political Advisor' to be included in glossary)**

24. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

Material Relating to Previous Business

24.1 All members will be entitled to inspect any document which is in the possession or under the control of the Cabinet or its committees and contains material relating to any business previously transacted at a private meeting unless: ~~either (a) or (b) below applies.~~

- (a) it contains exempt information falling within ~~paragraphs 1 to 6, 9, 11, 12 and 14~~ of the categories of exempt information; or
- (b) it contains the advice of a political adviser.

Material Relating to Key Decisions

24.2 All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet or its committees which relates to any key decision unless paragraph 24.1 (a) or (b) above applies.

Nature of Rights

24.3 These rights of a member are additional to any other right he/she may have

25. CONVENTIONS ON THE RELATIONSHIPS BETWEEN POLITICAL GROUPS & COUNCILLORS WITH OFFICERS

25.1 **The formal business of the Council is regulated by the Constitution and various supplementary guidance. The conventions set out in Appendix 2 to this Article are for guidance of members of the Council and Directors and are aimed at supplementing such rules and guidance.**

APPENDIX 1

EXEMPT INFORMATION

1. EXEMPT INFORMATION

1.1 Exempt information means information falling within the following categories (subject to any condition):

- (a) information relating to any individual;
- (b) information which is likely to reveal the identity of an individual;
- (c) information relating to the financial or business affairs of any particular person (including the authority holding that information);
- (d) information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority;
- (e) information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;
- (f) information which reveals that the authority proposes:
 - (i) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (ii) to make an order or direction under any enactment; and
- (g) information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

2. QUALIFICATIONS

2.1 Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under:

- (a) the Companies Act 1985;
- (b) the Friendly Societies Act 1974;
- (c) the Friendly Societies Act 1992;
- (d) the Industrial and Provident Societies Act 1965 to 1978;
- (e) the Building Societies Act 1986; or
- (f) the Charities Act 1993.

2.2 Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992(a).

2.3 Information which:

- (a) falls within any of paragraphs 1 to 7 above; and
- (b) is not prevented from being exempt by virtue of paragraph 10.5 (sub paragraphs 1 or 2) above,

is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

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APPENDIX 2

CONVENTIONS ON THE RELATIONSHIPS BETWEEN POLITICAL GROUPS & COUNCILLORS WITH OFFICERS

1. ENTITLEMENT TO INFORMATION

- 1.1 Any member of the Council may ask the appropriate Director for written factual information about a Directorate (or part thereof) or service. Such requests will be met, subject to any legal requirements (including the Freedom of Information and Data Protection Acts).
- 1.2 A Councillor may require the Director to treat the request for information as confidential and this confidentiality will be respected unless it is agreed with the Councillor concerned that request no longer needs to be treated in that way.
- 1.3 All such requests shall be made to a **the appropriate** Director or Assistant Director.
- 1.4 Where a Director on his own initiative provides information to any political group, the information will also be supplied to the other Groups unless it is of a routine or minor nature.

2. BRIEFING MEETINGS

- 2.1 Formal briefings may be arranged for meetings to discuss business to be transacted at meetings. Briefings will be attended by the Chairman and Vice-Chairman concerned except in the case of the District Development Control **Management** Committee and Area Plans Sub-Committees where appointed group representatives and independent members serving on the Committee or Sub-Committee concerned will also attend.
- 2.2 Briefing meetings will deal with (a) procedural matters; and (b) the up-dating of information contained in agenda items by officers.
- 2.3 All political groups will notify their group representatives on the District Development Control Committee and the Area Plans Sub-Committees at the beginning of each Council year. **DELETE – covered elsewhere** The role of the Group representative shall be to act as spokesman for their group in connection with those meetings.
- 2.4 All briefings will be held at a mutually convenient time, usually on the day of the meeting in question and where possible will be published on the weekly calendar in the Council Bulletin. **DELETE – Briefing arrangements not routinely published in Council Bulletin**
- 2.5 Group Leaders and independent members may attend the briefing for the Chairman and Vice-Chairman of the Council meetings.

3. BRIEFING OF POLITICAL GROUPS

- 3.1 The Chief Executive, Directors and Assistant Directors of the Council shall only attend meetings of political groups if this is for the purpose of assisting Council business. Where a political group invites an officer to attend a meeting, such invitations should be accepted only if the same opportunity is afforded to all political groups. Where officers have doubts about the appropriateness of accepting such an invitation, the Chief Executive will make a final decision.

- 3.2 Where an officer considers that it would assist Council business to attend a political group meeting for the purpose of briefing and makes a proposal that he/she should attend, the officer concerned shall be careful to extend that offer to all political groups.
- 3.3 Meetings of group leaders may be held. Such meetings will have no executive powers but will be authorised to meet with the Chief Executive on an informal basis to discuss business to be considered by the Council. Group Leaders' meetings shall have formal agenda and minutes and shall be chaired by the Leader of the largest political group present.

NB - Don't think that meetings of group leaders have formal agenda/minutes

MEETING PRACTICE

DELETE - This detail adequately covered elsewhere in the Constitution or in the Members' Charter)

Role of Chairman

~~The Chairman of the Council, the Leader of the Cabinet or the Chairman of any Committee, Sub-Committee or Panel/Working Group shall ensure that there is a reasonable opportunity for debate and that there is effective despatch of Council business. The Chairman shall ensure that every motion which is properly proposed and seconded is put to the vote.~~

DELETE - Provisions relating to motions covered elsewhere in the Constitution

Casting Vote

~~In circumstances where a second or casting vote may be required, the Chairman shall consider whether to make a second or casting vote by taking advice on whether the decision is necessary and whether there will be a further opportunity to debate the issue concerned within a reasonable timescale. The Chairman may decide, dependant on that advice, not to make a casting vote or if one is cast, to vote according to the status quo. However, in some cases there is no status quo (e.g. quasi judicial decisions concerning planning, licensing and appeals of various kinds) and in those circumstances the Chairman shall vote in accordance with their judgement of the public interest. Chairmen will acknowledge at all times the requirement under the Constitution to signify whether he or she intends to vote in the first vote on any matter before a meeting.~~

DELETE - Provisions relating to casting vote covered elsewhere in the Constitution

Respect for the Chair and Behaviour

~~Group Leaders will do everything possible to ensure that members of their groups are aware of the rules of debate and proper standards of behaviour at all meetings.~~

Seating Arrangements – Council and Committee Meetings

~~Seating in the Council Chamber shall be agreed between the political groups.~~

Committee Minutes

~~Draft minutes will be cleared with the appropriate Chairman.~~

4. RELATIONS WITH THE MEDIA

- 4.1 Official media statements will be issued on behalf of the District Council, a Portfolio Holder, ~~an~~ **or the Chairman of the** Overview and Scrutiny or other Committee Chairman. Such statements may be prepared in consultation with appropriate Directors but must be approved by the quoted Members before issue. Quoted members will also be consulted on statements issued within the broader context of a proactive media releases and in response media enquiries. Statements issued through the Public Relations and Marketing Officer (Including quoted comments by members) must reflect the nature of decisions or Council policy and exclude 'political' comment.
- 4.2 Members may speak directly to the media on any given issue (subject to legal constraints such as the Data Protection Act 1998) in order to express personal or political points of view.
- 4.3 Political Groups may issue their own press releases either through group leaders or group representatives. These will be solely the province of the political group concerned and will not involve officer input except in so far as a group wish to check factual information. Press statements arising from Council business and issued in a party capacity by a Leader or Group Representative must be careful to differentiate between the Council's policy and the views of the group concerned.
- 4.4 The Chairman and Vice-Chairman of the Council have a special role within the authority by virtue of their civic responsibilities. To reflect this role, they will receive special support from relevant officers in carrying out those duties.
- 4.5 Political groups and individual councillors should bear in mind the special rules which apply to Council publicity during election periods and shall bear in mind the guidance set out in Appendix 2 to this report. **(NB – Include previously issued ‘Purdah’ guidance?)**

APPOINTMENT OF REPRESENTATIVES

The appointment of representatives to any outside body of a permanent nature or involving regular attendance will be determined by the Council in accordance with Council Procedure Rules.

DELETE - Provisions relating to the appointment of representatives covered elsewhere in the Constitution

5. OFFICER SUPPORT ARRANGEMENTS

- 5.1 **Management Board will manage the business submitted to the Cabinet and Overview and Scrutiny. The Chief Executive will be the lead officer for the Cabinet with Service Directors chief officers attending when required. The Head of the Policy Unit will undertake the role of “Cabinet Secretary”. The Deputy Chief Executive will be the lead officer for the Overview and Scrutiny Committee. The co-ordination of the “call-in” procedure will be undertaken within Democratic Services led by the Assistant to the Chief Executive.**
- 5.2 **Democratic Services will support both the Cabinet and non-Executive sides of the Council and Agenda Planning Groups will be held for Cabinet and the Overview and Scrutiny Committee. The Agenda Planning Group for the Cabinet will be chaired by the Chief Executive whilst the Overview and Scrutiny Committee Agenda Planning Group will be chaired by the Deputy Chief Executive.** A Democratic Services Officer will support both agenda planning groups

~~and the Cabinet and Overview and Scrutiny Committee themselves. Existing officer agenda planning party meetings for non-executive committees, groups etc. will continue where appropriate.~~

5.3 **Draft minutes will be cleared with the appropriate Chairman.**

6. FACILITIES FOR MEMBERS

6.1 Word processing and photocopying facilities are available in accordance with Council policy, on application to Democratic Services. Typing for the Chairman and Vice-Chairman of the Council is provided through Democratic Services **the Public Relations and Marketing Officer.**

7. REVIEW OF CONVENTIONS

7.1 ~~The conventions set out in this document will be reviewed from time to time.~~ The Chief Executive will also initiate a special review at any time if required by a change in the political balance on the Council or on the request of any of the political groups.

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Report to Constitution Working Group

Date of meeting: 26 January 2016



**Epping Forest
District Council**

Subject: Constitution Review - Article 13 (Officers)

Officer contact for further information: S. Tautz (01992 564180)

Democratic Services Officer: M. Jenkins (01992 564607)

Recommendations/Decisions Required:

That the Working Group further consider proposed revisions to Article 13 (Officers) of the Constitution.

Report:

1. (Democratic Services Manager) The aim of the current review of the Council's Constitution is for the Working Group to look critically at each part of the Constitution to try and bring together and rationalise procedures against the relevant legislative background.
2. Under the current Constitution, the rules relating to the Council's officers are contained in Article 13 and a number of separate protocols and conventions. At its last meeting, the Working Group considered a revised version of Article 13 of the Constitution. This report presents the proposed final draft version of the revised Article. In particular:
 - the existing Statutory Officer Protocols have now been incorporated within Article 13;
 - the existing Conventions on the Relationships between Political Groups/Councillors and Officers have been revised as necessary and incorporated within Article 2 (Members) and the new Article 18 (Access to Information) as appropriate; and
 - the existing Member's Charter has been revised as necessary and incorporated within to Article 2 (Members).
3. The final version of Article 13 of the Constitution is attached as Appendix 1 to this report for consideration by the Working Group. The proposed additions to Article 2 (Members) and Article 18 (Access to Information) to reflect the issues set out above, are the subject of separate reports elsewhere in the agenda for this meeting.
4. As part of its ongoing review of the Constitution, the Working Group has previously decided that where rules apply generally, they should be taken into the main rules section. Therefore in the redrafting of the rules section of the Constitution, officers have attempted to take sections into the rules. Some of what was previously contained in separate protocols and conventions has been inserted into the new Article 13 and the re-drafted Article also seeks to address instances of relevant procedures being spread across the Constitution, making it difficult to use.
5. Members are reminded to bring their copies of the Constitution to the meeting.

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ARTICLE 13 – OFFICERS

1. MANAGEMENT STRUCTURE

(a) General

- 1.1 The full Council may engage such staff (referred to as 'officers') as it considers necessary to carry out its functions.

(b) Chief Officers

- 1.2 The Council will engage persons subject to the Officer Employment Procedure Rules for the following posts, who will be designated as chief officers:

Chief Executive
Director of Communities
Director of Governance
Director of Neighbourhoods
Director of Resources

- 1.3 The main functions and areas of responsibility of each chief officer will be as set out in the management structure chart attached as Appendix 1 to this Article, as revised from time to time.
- 1.4 The chief officers are members of the Management Board and share responsibility for the proper running of the Council.

(c) Statutory Officers

- 1.5 The Council will designate the following posts as statutory officers. Such posts will have the functions described in Section 2 of this Article:

Post	Designation
Chief Executive	Head of Paid Service (<u>Local Government and Housing Act 1989 (Section 4)</u>)
Director of Governance	Monitoring Officer (<u>Local Government and Housing Act 1989 (Section 4)</u>)
Director of Resources	Chief Finance Officer (<u>Local Government Act 1972 (Section 151)</u>) (also known as the <u>Section 151 Officer</u>)

- 1.6 The following restrictions apply in relation to appointment to statutory officer positions:
- (a) the Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer, if a qualified accountant; and
- (b) the Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.

- 1.7 To assist the Monitoring Officer and Chief Finance Officer (Section 151 Officer), the Council will designate a Deputy Monitoring Officer and Deputy Section 151 Officer to assist with their responsibilities. **The Deputy Monitoring Officer and the Deputy Section 151 Officer will act in the absence of the Monitoring Officer and Chief Finance Officer and will be briefed on emerging issues.**
- 1.8 **The Head of Paid Service, the Monitoring Officer and the Chief Finance Officer are members of the Corporate Governance Group and share responsibility for the proper governance of the Council, including matters related to probity and finance.**

(d) Structure

- 1.9 The Head of Paid Service will determine and publicise a description of the overall organisational structure of the Council showing the management structure and deployment of officers.

2. FUNCTIONS & RESPONSIBILITIES OF THE STATUTORY OFFICERS

Head of Paid Service

- 2.1 **The Head of Paid Service will discharge their statutory responsibilities in a positive way and in a manner that enhances the overall reputation of the Council.**
- 2.2 **In general terms, the Head of Paid Service's ability to discharge the following duties and responsibilities will depend, to a large extent, on elected members and officers:**

- (a) **addressing and meeting the staffing needs of the Council; and**
(b) **meeting the staffing needs of the Council;**
(c) **the appointment and proper management of the staff.**

Having excellent working relations with members and officers will assist in the discharge of the statutory responsibilities of the Head of Paid Service. Equally, a speedy flow of relevant information and access to debate (particularly at the early stages of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and officers should, therefore, work with the Head of Paid Service to discharge the Council's statutory and discretionary responsibilities.

- 2.3 **The following arrangements and understandings between the Head of Paid Service, Members and Directors are designed to ensure the effective discharge of the Council's business and functions. The Head of Paid Service will:**
- (a) **be alerted by Members and officers to any issue(s) that may become of concern to the Council, including the manner in which the discharge by the Council of its different functions is co-ordinated, the number and grades of staff required for the discharge of its functions, the organisation of the Council's staff and the appointment and proper management of the Council's staff;**
- (b) **have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Council at which a decision may be made (including a failure to take a decision where one should have been taken) at or before the Council, Executive, Committee meetings and Sub-Committee meetings (or equivalent arrangements);**

- (c) have the right to attend any meeting of the Council (including the right to be heard and report to the Executive) before any decision is taken (including a failure to take a decision where one should have been taken) at or before the Council, Executive, Committee meetings and Sub-Committee meetings (or equivalent arrangements);
- (d) in carrying out any investigation(s) and exercising any duties have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of the functions;
- (e) ensure that other statutory officers (Chief Finance Officer and the Monitoring Officer) are kept up-to date with relevant information regarding the manner in which the Council discharges its various functions, the corporate approach of the Council, the staffing needs of the Council, the organisation of the staff and the appointment and proper management of the staff;

~~meet regularly with the Chief Finance Officer and the Monitoring Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern described in (e) above;~~

(NB: Corporate Governance Group meets on a monthly basis already)

- (f) report to the Council, from time to time, on the corporate approach of the Council and any necessary or desirable changes following consultation, in particular, with the Chief Finance Officer and Monitoring Officer;
 - (g) in accordance with the statutory requirements, make a report to the Council, as necessary, on the staff, accommodation and resources required to discharge his statutory functions;
 - (h) develop a relationship based on respect and trust with the Leader, Deputy Leader and the Chairmen of the Standards, Regulatory, and Scrutiny Committees with a view to ensuring the effective and efficient discharge of Council business;
 - (i) develop effective working liaison and relationship with the External Auditor;
 - (j) in consultation, as necessary, with the Chairman of the Council, the Executive and the External Auditor, defer the making of a formal report under Section 4 of the Local Government and Housing Act 1989 where another investigative body is involved;
 - (k) have access to an appropriate budget (whether corporate or serviced based) to address any matter concerning the Head of Paid Service's functions.
- 2.4 To ensure the effective and efficient discharge of the arrangements set out in Section 2.3 above, Members and Officers will report any breaches of statutory duty or Council policies or procedures and other legal or constitutional concerns to the Head of Paid Service, as soon as practicable.
- 2.5 The Head of Paid Service is also available for Members and Officers to consult on any issues of the corporate approach of the Council, staffing needs, appointment and management of staff.

- 2.6 **To ensure the effective and efficient discharge of this Protocol, the Head of Paid Service will ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the Council and the proper discharge of the Head of Paid Service role.**

The Head of Paid Service will record details of any advice given;

- 2.7 **In the event that the Head of Paid Service acknowledges, after taking appropriate advice, that a conflict of interest exists on a matter which requires action he or she will not be involved in the consideration of that matter and will make arrangements for the action to be taken by one of the other statutory officers or another Director;**

- 2.8 The Head of Paid Service will report to full Council on the manner in which the discharge of the Council's functions is co-ordinated, the number and grade of officers required for the discharge of functions and the organisation of officers; and

The Head of Paid Service may not be the Monitoring Officer but may hold the post of Chief Finance Officer, if a qualified accountant.

Monitoring Officer

- 2.9 **The Monitoring Officer will discharge their statutory responsibilities in a positive way and in a manner that enhances the overall reputation of the Council.**

- 2.10 The Monitoring Officer undertakes to discharge the responsibilities outlined in this Protocol with determination and in a manner which will enhance the reputation of the Council. In general terms the ability **of the Monitoring** Officer to discharge these duties depends on excellent working relations with colleagues and elected Members of the Council, but also on the flow of information and access to debate, particularly at early stages.

- 2.11 **The following arrangements and understandings between the Monitoring Officer and colleagues and Councillors are designed to help ensure the effective discharge of the Monitoring Officer's functions. The Monitoring Officer will:**

the Monitoring Officer will be a member of the Council's Management Board;

- (a) **be given advance notice of meetings (whether formal or informal) between Chief Officers, Committee and Sub Committee Chairmen where any procedural, vires or other constitutional issues are likely to arise;**
- (b) **have access to all meetings;**
- (c) **members of Management Board (the Chief Executive and Directors) will be responsible for alerting the Monitoring Officer to all emerging issues of concern including legality, probity, vires and constitutional issues;**
- (d) **be provided with access to all reports to Councillors;**
- (e) **develop good liaison and working relations with the Standards for England (or any successor body), its Ethical Standards Officers, the External Auditor and the Local Government Ombudsman, including giving and receiving relevant information, whether confidential or otherwise, whether requested or not;**

(f) ensure that the Head of Paid Service and the Chief Finance Officer have up-to-date information regarding emerging issues;

(g) make or commission enquiries into allegations of misconduct by Councillors;

~~the Head of Paid Service, Chief Financial Officer and Monitoring Officer will meet regularly to consider and recommend action in connection with current governance issues and other probity matters;~~

(NB: Corporate Governance Group meets on a monthly basis already)

(h) in carrying out any investigation, will have unqualified access to any information held by the Council and any employee who can assist in the discharge of his/her functions;

(i) have access to an appropriate budget (whether corporate or service based) sufficient to enable him/her to seek Counsel's opinion or take appropriate action on any matter concerning his/her functions;

(j) be responsible for preparing a training programme for Members of the Council on the ethical framework, for approval by the Standards Committee;

(k) report to the Council from time to time on the Constitution and any necessary or desirable changes following consultation, in particular with the Head of Paid Service and the Chief Finance Officer;

(l) defer (if required) the making of a formal report under Section 5 of the Local Government and Housing Act 1989 where another investigative body is involved;

(m) make (if required) an annual report to the Council on the staff, accommodation and resources required to discharge his/her functions;

~~the Monitoring Officer will appoint a deputy to act in his/her absence and will ensure that he/she is briefed on emerging issues;~~

(n) make arrangements to ensure good communication with the Clerks to the Town and Parish Councils in the District;

(o) be the primary qualified person in respect of advice on the application of Section 36 of the Freedom of Information Act 2000 in accordance with the Secretary of State's decision of December 2004. Where the Monitoring Officer is absent responsibility for carrying out the functions of the qualified person will fall to the Deputy Monitoring Officer, subject to consultation with the Chief Executive.

Summary of Other Monitoring Officer Functions

NB: Is this table required? Relevant matters transferred to (a)-(z) list.

Description	Source
1. Report on contraventions or likely contraventions of any enactment or rule of law (Covered elsewhere)	Section 5, Local Government and Housing Act 1989

2.	Report on any maladministration or injustice where Ombudsman has carried out an investigation (Covered elsewhere)	Section 5, Local Government and Housing Act 1989
3.	Personal appointment of Deputy (Covered elsewhere)	Section 5, Local Government and Housing Act 1989
4.	Report on resources (Chief Finance Officer?)	Section 5, Local Government and Housing Act 1989
5.	Investigate misconduct in compliance with regulations made and directions of Ethical Standards Officers (Ethical Standards Officers no longer exist)	Regulations when made. Directions when made in individual cases. LGA 2000 Section 66 (1) + 66 (6)
6.	Establish and maintain registers of Members' interests and gifts and hospitality (Covered elsewhere)	Section 81 LGA 2000 and Model Code of Local Government Conduct
7.	Advice to Members on the interpretation of the Code of Conduct and Local Protocols (Covered elsewhere)	Model Code and title of Regulations
8.	Key role in promoting and maintaining high standards of conduct through support to Standards for England (Standards Board abolished 31 March 2012)	Statutory Guidance, paragraph 8.20
9.	Liaison with Standards for England and Ethical Standards Officers (Standards Board abolished 31 March 2012)	New ethical framework, practical implications
10.	New ethical framework functions in relation to Town and Parish Councils (Covered elsewhere)	Section 83 (12) LGA 2000
11.	Power to make payments or provide other benefit as compensation for maladministration (Covered elsewhere)	Section 92 LGA 2000
12.	Advice on vices issues, maladministration, financial impropriety, probity and policy framework and budget issues to all elected Members (Covered elsewhere)	DETR guidance; Council Constitution 2007

Maintaining the Constitution

- (p) maintain an up-to-date version of the Constitution and ensure that it is widely available for consultation by members, staff and the public;

Ensuring Lawfulness and Fairness of Decision-Making

- (q) after consulting with the Head of Paid Service and Chief Finance Officer, report to the full Council or to the Executive in relation to an executive function if he/she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered;

Supporting the Standards Committee

- (r) contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee;

Receiving Reports

- (s) receive and act on reports made by ethical Standards Officers and decisions of case tribunals in relation to standards matters;

(NB: Ethical Standards Officers no longer exist?)

Conducting Investigations

- (t) conduct investigations into standards matters referred by ethical Standards Officers and make reports or recommendations in respect of them to the Standards Committee;

(NB: Ethical Standards Officers no longer exist?)

- (u) ensure that executive decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible;

~~Advising whether Executive Decisions are within the Budget and Policy Framework~~

- (v) advise whether decisions of the Executive are in accordance with the budget and policy framework;

Providing Advice

- (w) Report on contraventions or likely contraventions of any enactment of rule of law;
- (x) Report on any maladministration or injustice where Ombudsman has carried out an investigation;
- (y) provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors;
- (z) establish and maintain registers of Members' interests and gifts and hospitality; and
- (aa) make payments or provide other benefit as compensation for maladministration.

~~The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.~~

2.12 If any member of the Council has concerns about any conflict of interest concerning the duties of the Monitoring Officer, they shall raise those concerns with the Head of Paid Service or with the Monitoring Officer directly.

2.13 The Monitoring Officer will undertake to review the issue (if necessary taking advice of the Corporate Governance Group) and respond to the concerns with action proposed. Such

concerns about possible conflicts of interest shall be expressed on the understanding that it is for the Monitoring Officer to determine whether a conflict of interest exists and that such concerns should not be raised in formal meetings of the authority without prior consultation with the Monitoring Officer.

- 2.14 In the event that the Monitoring Officer acknowledges that a conflict of interest exists he/she will make arrangements for the matter concerned to be undertaken by the Deputy Monitoring Officer, if necessary after discussion with the Corporate Governance Group.

Chief Finance Officer

- 2.15 **The Chief Finance Officer will discharge their statutory responsibilities in a positive way and in a manner that enhances the overall reputation of the Council.**

~~The current responsibilities of the Chief Finance Officer role rest with the Director of Finance and ICT, who undertakes to discharge these statutory responsibilities in a positive way and in a manner that enhances the overall reputation of the Council. In doing so, the Chief Finance Officer will also safeguard, so far as is possible, elected members and officers whilst acting in their official capacities, from financial difficulties.~~

- 2.16 ~~A summary list of the statutory responsibilities appears in the table annexed to this document. In general terms, the ability of the Chief Finance Officer to discharge these duties and responsibilities will depend, to a large extent, on members and officers:~~

- ~~(a) complying with the Council's financial procedures;~~
- ~~(b) making lawful payments; and~~
- ~~(c) not taking action that would result in unlawful payments or unlawful action.~~

~~Having good working relations with Members and Officers will assist in the discharge of the statutory responsibilities of the Chief Finance Officer. Equally, a speedy flow of relevant information and access to debate (particularly at the early stages of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and officers should, therefore, work with the Chief Finance Officer to discharge the Council's statutory and discretionary responsibilities.~~

- 2.17 The following arrangements and understandings between the Chief Finance Officer, Members and Directors are designed to ensure the effective discharge of the Council's business and functions. The Chief Finance Officer will:

- (a) be alerted by Members and Officers to any issue(s) that may become of concern to the Council, including in particular, issues concerning financial management, accounts and audit regulations, proposed expenditure or proposed actions which might lead to a loss or deficit;
- (b) have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Council particularly those at which a decision may be made (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Committee meetings and Sub-Committee meetings (or equivalent arrangements);
- (c) have the right to attend any meeting of the Council (including the right to be heard and report to the Cabinet) before any decision is taken (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Committee meetings and Sub-Committee meetings (or equivalent arrangements);

- (d) in carrying out any investigation(s) and excising any fiduciary duties, have unqualified access to any information held by the Council and to any officer who can assist in the discharge of his/her functions;
- (e) ensure the other statutory officers (Head of Paid Service and the Monitoring Officer) are kept up-to-date with relevant information regarding any financial management, accounts and audit regulations, proposed expenditure or proposed actions which might lead to a loss or deficit;

~~meet regularly with the Head of Paid Service and the Monitoring Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any financial management, accounts and audit regulations, proposed expenditure or proposed actions which might lead to a loss or deficit;~~

(NB: Corporate Governance Group meets on a monthly basis already)

- (f) report to the Council, from time to time, on Financial Regulations and any necessary or desirable changes following consultation, in particular with the Head of Paid Service and the Monitoring Officer;
- (g) ~~as per the statutory requirements, make a report to the Council, as necessary, on the staff, accommodation and resources required to discharge his statutory functions;~~
- (h) develop effective working liaison and relationship with the External Auditor (including having the authority, on behalf of the Council, to complain to the same, refer any breaches to the same or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary);
- (i) in consultation, as necessary, with the Chairman of the Council, the Executive and the External Auditor, defer the making of a formal report under Section 114, 115 and 116 of the Local Government and Finance Act 1988 where another investigative body is involved;
- (j) have access to sufficient resources from within corporate or service budgets to carry out the responsibilities of the Chief Finance Officer's functions but without a designated budget being provided; and

~~nominate a suitably qualified deputy and keep the deputy briefed on any relevant issues that the deputy may be required to deal with in the absence of the Chief Finance Officer;~~

- (k) appoint an appropriate adviser in cases where the Chief Finance Officer is precluded from offering advice and the deputy is unable to advise; and

~~the Council shall appoint a suitably qualified officer to act as Deputy Chief Finance Officer.~~

2.18 To ensure the effective and efficient discharge of the arrangements set out above, members and officers will report any breaches of statutory duty or of Council policies or procedures and other legal or constitutional concerns to the Chief Finance Officer, as soon as practicable.

- 2.19 The Chief Finance Officer ~~is also~~ **will** be available for members and officers to consult on any issues relating to the Council's financial powers, possible unlawful payments, or general advice on the financial arrangements.
- 2.20 To ensure the effective and efficient discharge of ~~this Protocol~~ **their duties and responsibilities**, the Chief Finance Officer will ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the Council and the proper discharge of the role of the Chief Finance Officer.

~~The Chief Finance Officer or deputy will record details of any advice given.~~

~~CONFLICTS OF INTEREST~~

- 2.21 If any member of the Council has concerns about any conflict of interest concerning the duties of the Chief Finance Officer they shall raise those concerns with the Head of Paid Service or with the Chief Finance Officer directly.
- 2.22 The Chief Finance Officer will undertake to review the issue (if necessary taking advice of the Corporate Governance Group) and respond to the concerns with action proposed. Such concerns about possible conflicts of interest shall be expressed on the understanding that it is for the Chief Finance Officer to determine whether a conflict of interest exists and that such concerns should not be raised in formal meetings of the authority without prior consultation with the Chief Finance Officer.
- 2.23 In the event that the Chief Finance Officer acknowledges that a conflict of interest exists he/she will make arrangements for the matter concerned to be undertaken by the Deputy Chief Finance Officer, if necessary after discussion with the Corporate Governance Group.

~~Ensuring Lawfulness and Financial Prudence of Decision-making~~

- 2.24 After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the full Council or to the Executive in relation to an executive function and the Council's external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully. Such a report will have the effect of stopping the proposal, decision or course of action being implemented until the first business day after the report has been considered.

~~Proper Administration of Financial Affairs~~

- 2.25 The Chief Finance Officer will have responsibility for the proper administration of the financial affairs of the Council.

~~Contributing to Corporate Management~~

- 2.26 The Chief Finance Officer will contribute to the corporate management of the Council, in particular, through the provision of professional financial advice.

~~Providing Advice~~

- 2.27 The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors ~~and the Elected Mayor~~ and will support and advise

Councillors and Officers in their respective roles. **The Chief Finance Officer will record details of any advice given.**

Provision of Financial Information

2.28 The Chief Finance Officer will provide financial information to the media, members of the public and the community.

3. DUTY TO PROVIDE SUFFICIENT RESOURCES TO THE MONITORING OFFICER AND CHIEF FINANCE OFFICER

3.1 The Council will provide the Monitoring Officer and Chief Finance Officer with such ~~Officers~~, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed.

4. CONDUCT

4.1 All officers will comply with the Council's Officers' Code of Conduct.

5. EMPLOYMENT AND DISMISSAL OF STAFF

5.1 The recruitment, selection and dismissal of officers will comply with the Council's Officer Employment Rules set out elsewhere in this Constitution, supplemented where appropriate by the Council's ~~personnel~~ **human resources** policies and procedures.

6. DELEGATION TO OFFICERS

6.1 The delegation of powers to chief officers is set out in Part 3 of this constitution.

APPENDIX 1

MANAGEMENT STRUCTURE

Management structure chart to be added here.

DRAFT

Report to Constitution Working Group

Date of meeting: 26 January 2016



**Epping Forest
District Council**

Subject: Constitution Review - Article 6 (Overview & Scrutiny)

Officer contact for further information: S. Tautz (01992 564180)

Democratic Services Officer: M. Jenkins (01992 564607)

Recommendations/Decisions Required:

That the Working Group consider a proposed addition to Article 6 (Overview & Scrutiny) of the Constitution.

Report:

1. (Democratic Services Manager) At its meeting on 22 September 2015, the Working Group considered a review of Article 6 of the Constitution and the procedure rules relating to Overview and Scrutiny and the operation of the Overview and Scrutiny Committee. The revised Article and procedure rules were subsequently agreed by the Overview and Scrutiny Committee on 20 October 2015.
2. Article 6 of the Constitution contains a procedure for the consideration and reporting on executive decisions that are 'called-in' by members of the Council, setting out how the Overview and Scrutiny Committee (or a delegated Select Committee or Task and Finish Panel) should deal with call-in matters. This procedure also makes provision for consideration to be given to the 'Withdrawal or modification of a call-in', whereby a meeting is held with the Chairman of the Overview and Scrutiny Committee prior to the call-in being considered by the Committee (if necessary), in order to discuss the possibility of reaching agreement on removing any objections to the decision subject of the call-in.
3. This procedure was introduced as a result of the last (2013) review of the Council's overview and scrutiny arrangements and has recently been exercised for the first time, at the request of the lead member to a call-in and the relevant Portfolio Holder. In order for this process to be conducted effectively, a brief procedure note was developed in relation to the handling of matters related to these formal arrangements for discussion to be held on the potential for withdrawal or modification of a call-in, based on the existing arrangements applied by the Overview and Scrutiny Committee to the handling of call-in requests where this initial stage is not requested.
4. The procedure note is attached as an appendix to this report and incorporates feedback arising from the recent instigation of this process for the first time. The Working Group is requested to consider whether this procedure should be incorporated within Article 6 of the Constitution, as part of the existing protocol for the administration of call-in requests.

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**PROTOCOL ON CONSIDERATION AND REPORTING ON EXECUTIVE
DECISIONS CALLED IN BY OVERVIEW AND SCRUTINY**

ANNEX - WITHDRAWAL OR MODIFICATION OF CALL-IN

1. The Council's requirements for a validated 'Call-In' are set out within the Constitution. A valid call-in may be withdrawn at any time by the lead signatory.
2. In accordance with these requirements, the lead signatory to a valid call-in, or the relevant Portfolio Holder, may request a meeting with the Chairman of the Overview and Scrutiny Committee prior to the call-in being considered by the Committee (if necessary), in order to discuss the following:
 - (a) the possibility of reaching agreement on removing any objections to the decision in question which are raised in the call-in request; or
 - (b) the withdrawal of a call-in; or
 - (c) the management of the call-in debate at a meeting of the Overview and Scrutiny Committee.
3. Once formally requested by either the lead signatory to the call-in or the relevant Portfolio Holder, the meeting with the Chairman of the Overview and Scrutiny Committee will be held as soon as possible following the receipt of a valid call-in. Arrangements for the meeting will be made by the Democratic Services Section, in consultation with the Chairman of the Overview and Scrutiny Committee.
4. When convened, the meeting will be chaired by the Chairman of the Overview and Scrutiny Committee. The proceedings of the meeting will be conducted in a formal manner in order to ensure that proper consideration is given to the call-in. The meeting will be supported by the relevant chief officer relating to the decision subject of the call-in, together with appropriate Democratic Services officers. The lead signatory may be accompanied at the meeting by no more than one other member signatory to the call-in.
5. At the meeting, those in attendance will receive:
 - (a) copies of all documentation submitted to the cabinet or an individual Portfolio Holder on which the decision subject of the call-in was based;
 - (b) a copy of the written notification of the call-in, including the names of the relevant Councillors who have requested the call-in and their grounds for so doing; and
 - (c) any other relevant documentation.

Procedure

6. The following procedure will be adopted at the meeting:
 - (a) the lead signatory to the call-in will present the case for the reconsideration of the decision subject of the call-in, supported by other member signatories as appropriate;

- (b) the Portfolio Holder will have the opportunity to ask questions of the lead signatory in relation to his/her proposal. The Chairman of the Overview and Scrutiny Committee may also ask questions of the lead signatory at this stage; and
 - (c) the Portfolio Holder responsible for the decision subject of the call-in will explain the reasons for the decision that has been made (either by the Cabinet or by the Portfolio Holder individually). The lead signatory to the call-in (and other supporting members present) will have the opportunity to ask questions of the Portfolio Holder in relation to the decision. The Chairman of the Overview and Scrutiny Committee may also ask questions of the Portfolio Holder at this stage.
7. Having considered the representations of the lead signatory (and other signatories) to the call-in and the Portfolio Holder, the Chairman of the Overview and Scrutiny Committee will determine whether it has been possible to reach agreement on the removal of the objections made to the decision subject of the call-in, and whether the call-in can therefore be withdrawn or modified as appropriate.
 8. In accordance with the Council's existing arrangements for the management of call-in requests, where the lead signatory agrees to withdraw or modify the call-in as a result of this procedure, he/she shall notify each of their fellow signatories as soon as practicable. The withdrawal or modification of the call-in shall also be reported to the Overview and Scrutiny Committee and, if a call-in is withdrawn, the circumstances will be notified to all members through the Council Bulletin. The Democratic Services Section will undertake these reporting requirements.
 9. If, in the opinion of the Chairman of the Overview and Scrutiny Committee, it has not been possible to reach agreement at the meeting on the removal of the objections to the decision in question, such that the call-in can be withdrawn, it will stand referred to the Overview and Scrutiny Committee for consideration, in accordance with the protocol set out in the Constitution. The meeting may at this stage, give consideration to the management of the call-in debate by the Committee.

Report to Constitution Working Group

Date of meeting: 26 January 2016



**Epping Forest
District Council**

Subject: Constitution Review - Article 2 (Members)

Officer contact for further information: S. Tautz (01992 564180)

Democratic Services Officer: M. Jenkins (01992 564607)

Recommendations/Decisions Required:

That the Working Group consider the addition of the Members' Charter to Article 2 (Members) of the Constitution.

Report:

1. (Democratic Services Manager) At its meeting on 30 November 2015, the Working Group considered a revised version of Article 13 of the Constitution, relating to the Council's officer arrangements.
2. The initial proposals for the review of Article 13 included the incorporation of the existing Members' Charter. However, the content of the Charter is clearly more focussed on the provision of services, support and facilities for members and it is therefore suggested that it would be more appropriately located within Article 2 of the Constitution, which relates to members. This approach was supported by the Working Group at its meeting in November 2015.
3. A revised version of Article 2 has already been agreed by the Working Group, as part of the ongoing review of the Constitution.
4. The Members' Charter has been reviewed in order to bring it up to date and is attached as an appendix to this report. The Working Group is requested to consider whether this should be added to Article 2 of the Constitution.

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ADDITION TO ARTICLE 2 (MEMBERS)

MEMBERS' CHARTER

1. Epping Forest District Council hereby undertakes for all members of the Council -
 - (a) to provide information on a timely basis about the Council which is available under the law and to which members are entitled;
 - (b) to have the right to attend meetings of the Cabinet, committees, sub-committees and panels of the Council, except regulatory committees, notwithstanding he/she is not a member thereof and, with the permission of the Chairman, take part in the discussion, but not vote or introduce new business;
 - (c) to ensure open access to relevant officers subject to normal protocols and courtesies, e.g. prior notification to relevant ~~Head of Service~~ **Director** or Assistant ~~Head of Service~~ **Director** before approaching junior **other** officers;
 - (d) to recognise the rights of all councillors to be consulted in advance about matters affecting them as members, with particular regard to their ward constituency role and to be notified in advance about any proposed action;
 - (e) to meet the reasonable training needs of all members necessary for their duties and responsibilities for the authority;
 - (f) to recognise and provide support for the role of members in:
 - carrying out ~~Best Value~~ Service Reviews
 - representing their constituents
 - scrutinising Executive decisions
 - participating in review of policy and procedure
 - exercising their right to challenge and call in Executive decisions
 - (g) to respond promptly to correspondence from Councillors and to provide dedicated ~~secretarial, administrative and research~~ support;
 - (h) to provide suitable facilities for all members consistent with their communication and information needs;
 - (i) to provide a continual development training programme relating to duties as a Councillor; and
 - (j) to recognise the duty of the Chairman of the Council to act as spokesperson or champion for the needs of all Councillors in upholding this Charter.
2. Each member of the Council undertakes:
 - (a) to respect the duties and responsibilities of the Executive and its legal right to make decisions on its functions;

- (b) to respect confidentiality of Council information and proceedings where appropriate particularly where exempt or confidential business is involved;
- (c) to recognise that there is an expectation for training attaching to duties of a Councillor;
- (d) to acknowledge that failure to participate in required training will risk members being unable to participate fully in relevant decision making, particularly in relation to regulatory and planning committees;
- (e) not to use the "call-in" procedure unnecessarily;
- (f) to treat officers and other members with respect at all times;
- (g) to respect the role of officers in running their services;
- (h) to avoid unreasonable or personalised criticism of officers or other members at public meetings or similar occasions, or to the press or to constituents;
- (i) to adhere to the requirements of Standing Orders regarding visits to Council premises and dealings with individual staff; and
- (j) to uphold the Local Government Code of Conduct at all times.

3. Breach of this Charter **by members** may result in reference to the ~~Standards Committee~~ **Monitoring Officer**.